

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Roger L. Couch, Circuit Court Judge

APPELLATE CASE NO. 2017-002290

RECEIVED
MAY 15 2020
SC Court of Appeals

Deborah B. Harwell, Respondent/Appellant,

v.

Robert Bryan Harwell, individually and as the
Personal Representative of the Estate of
David W. Harwell; and the South Carolina
Department of Health and Environmental Control,
Division of Vital Records, Defendants,

Of whom Robert Bryan Harwell, individually
and as the Personal Representative of the
Estate of David W. Harwell is the Respondent/Appellant,

Of whom the South Carolina Department of
Health and Environmental Control,
Division of Vital Records is the Respondent,

v.

Law Office of Deidre W. Edmunds, P.A.
And Deidre W. Edmunds, Individually, Appellants/Respondents.

Return to Petition For Partial Rehearing and Suggestion For Rehearing *En Banc* of
Respondent/Appellant Deborah B. Harwell

Kevin M. Barth #559
BARTH BALLENDER & LEWIS
P.O. Box 107
Florence, SC 29503
(843)662-6301
(843)664-8384(fax)
kbarth@bblawsc.co

Gena Phillips Ervin #4453
ORR Elmore & Ervin LLC
P.O. Box 2527
Florence, SC 29503
(843) 667-6613
(843) 667-0340(fax)
gpe@orrfirm.com

Marian D. Nettles, Esquire
NETTLES, TURBEVILLE & REDDECK
PO Box 699/261 Kelley Street
Lake City, SC 29560
843-374-8511/843-493-2221
843-374-3211(fax)

Attorneys for R. Bryan Harwell, Individually
and as Personal Representative of the Estate of
David W. Harwell

TABLE OF CONTENTS

Table of Authorities 2

Procedural History..... 3

Standard of Review 5

Argument..... 5

 A. The amount of sanctions awarded against Widow was not
 excessive..... 5

 B. The Obituary Claim was frivolous as a matter of Law.....6

 C. The amount of sanctions awarded against Widow was not
 excessive..... 7

 D. The suggestion for a re-hearing *En Banc* should be denied.....9

Conclusion.....10

TABLES OF AUTHORITIES

CASES:

Biales v. Young 315 SC 166, 432 SE 2d 482 (1993)..... 9

Pee Dee Health Care PA v. Estate of Thompson 418 SC 557, 795 S E 2d 40
(Ct. App 2016).....9

Site Prep, LLC v. atl. Coast Builders & Contractors, LLC 394 SC 97,
713 S E 2d 650 (Ct. App. 2011)..... 5,10

STATUTES:

South Carolina Rules of Civil Procedure, Rule 11.....3,4,5,10

South Carolina Code of Laws §15-30-10 (1976, as amended)..... 3,4,5,10

OTHERS

South Carolina Appellate Court Rules, Rule 219..... 10

South Carolina Appellate Court Rules, Rule 219..... 5

Procedural History

Decedent, David W. Harwell, and Widow Deborah B. Harwell were, married on November 21, 2001. (R. P. 141) Before the marriage, Decedent and Widow executed a prenuptial agreement. (R. P. 91-107) In March 2015, following their separation, Decedent filed an action for Separate Support and Maintenance which requested that the prenuptial agreement be granted full force and effect. (R. P. 86-107) Thereafter, the parties submitted to mediation which resulted in the consummation of a comprehensive settlement agreement. (R. P. 175-178) The Family Court subsequently issued its order incorporating the mediation agreement into the Final Decree on July 21, 2015. (R. P. 167-178) The Decedent died on September 30, 2015. (R. P. 229) A *Pro Se* claim dated December 3, 2018, was filed in which the Widow sought reimbursement of \$1457.25 for obituary publication costs which she personally contracted. (R. P. 108)

The Widow appearing *Pro Se* also filed a claim dated January 13, 2016 against the estate in which she sought \$3.1 million dollars allegedly based upon the terms of the prenuptial agreement, in direct contravention to the terms of the Settlement Agreement and the Final Decree (Ending Action) filed July 21, 2015. (R. P. 167-178) After the denial of these two claims by the Personal Representative, Widow filed formal Probate Court Petitions on March 9, 2017 through counsel, Deirdre N. Edmonds, to allow both claims. (R. p 147-157)

The Personal Representative filed Answers and Counterclaims seeking dismissal of Widow's petitions and sanctions pursuant to Rule 11, *South Carolina Rules of Civil Procedure and the South Carolina Frivolous Civil Procedure Sanctions Act*. § 15-30-10

South Carolina Code of Laws (1976, as amended) (R. P. 153-178) On May 26, 2016 Widow acting *Pro Se* filed a third petition seeking an elective share of Decedent's estate. (R. P. 276-278) Thereafter, she filed an action in the Family Court seeking to set aside the Final Decree.

On June 10, 2016, the Probate Court issued its order removing the Probate Petitions to the Circuit Court. (R. P. 7-9) The Widow filed stipulations, prior to the hearing on the Sanctions Counterclaim, which resulted in the voluntary dismissal of all petitions against the estate with the exception of her petition to amend the death certificate and for an adjudication that she was the surviving spouse for purposes of amendment of the Death Certificate. The Circuit Court convened a hearing on the Personal Representative's counterclaims for sanctions. On April 12, 2017, the Court issued its order imposing sanctions against both the Widow and Edmonds. (R. P. 58-74 and R. P. 75-81) The Circuit Court ruled that the creditor's claims filed by the Widow against the estate were frivolous and without merit. It awarded sanctions under Rule 11 *South Carolina Rules of Civil Procedure* and under *The South Carolina Frivolous Civil Proceedings Act §15-30-10* in the amount of \$40,000 subject to setoff of up to \$25,000 for any monies paid by Widow in a separate Family Court Contempt order. ¹(R. P. 74)

The Widow, the Edmonds parties and the Personal Representative individually and as Personal Representative all filed Rule 59 (e) motions. An Order was issued by the Circuit

¹ The Personal Representative continues to maintain the Widow was not prevented from receiving her retirement benefits, as she had a copy of a valid Family Court Order and testified she in fact received her benefits before the death certificate was amended. (R. P. 19 paragraph 13). Further, no prudent administrator would have acted any sooner under the circumstances of this case and the multiple frivolous claims involving millions of dollars.

Court on September 27, 2017 (R. P. 75-81) which clarified certain points but denied the motions of all parties.

On April 8, 2020, the Court of Appeals issued its opinion affirming the decision of the Circuit Court. Widow and the Edmonds parties have filed Petitions for Rehearing *En Banc*. Robert Bryan the Personal Representative individually and as Personal Representative of the Estate of David W. Harwell has declined to seek rehearing of the decision of the Court of Appeals.

Although Harwell the Personal Representative still believes there should have been no “offset” reduction in sanctions by the trial court, he respects the Court’s ruling and submits there are no points misapprehended or overlooked. (*Rule 221 South Carolina Appellate Court Rules*)

Standard of Review

The imposition of sanctions pursuant to Rule 11 South Carolina Rules of Civil Procedure and South Carolina Code of Laws § 15-36-10 (1976, as amended) is a matter of equity. In general when an action is tried before the Judge alone, the Appellate Court has jurisdiction to find facts in accordance with its own view if the preponderance of the evidence. *Site Prep, LLC v. Atl. Coast Builders & Contractors LLC* 394 SC 97, 713 S E 2d 650 (Ct. App 2011). Nevertheless, when the appellate court agrees with the circuit court’s findings of fact, it reviews the matter under an abuse of discretion standard. In that case the imposition of sanctions ruling will not be reversed unless the decision is controlled by an error of law or is based on unsupported factual conclusions. *Se Site Prep, supra*

Argument

The Widow persists in making baseless frivolous allegations to this date. On page one of her petition she alludes to some secret hidden trust worth a 100 million dollars. There is no support for this in the record. She raises issues not before the Court.

A. The Trial Court did in fact rule that the Obituary Claim was frivolous.

In support of her claim for reversal of the imposition of sanctions against her related to the Obituary Claim, widow argues that there has never been a determination that the Obituary Claim was actually frivolous. The Circuit Court specifically found in its initial order filed April 12, 2017 that, "The Obituary Claims filed by *Pro Se* was improper and frivolous" (R. p.77)

In its Order on Reconsideration the Circuit Court further explained that it:

was my intention to include the actions filed by Ms. Harwell for an Elective Share and an Action for Reimbursement for the obituary claims written by her as part of the actions for which there was no justification. Ms. Harwell had waived any claims against the Estate in the Family Court Order that she agreed to. Until and unless that order is vacated it is the order that binds her. The Family Court further concluded "When she ran the obituary she was in no position to bind the estate or to contract on its behalf." (R. P. 77)

The Court of Appeals noted in its opinion herein on page 8:

In the Mediation agreement Widow waived any claims she had against Decedent's estate, and at the time Widow filed the Obituaries Claim, Widow had not filed any motions to set aside the Separation Decree, which incorporated the parties' Mediation Agreement. Further, widow published the two supplemental Obituaries upon her own initiative and without authorization, from estate. Therefore, we find Widow's filing of a creditor's claim against the estate

for reimbursement was unreasonable and frivolous.

Widow now apparently seeks to have the remaining members of the Appellate Court to weigh in on what appears to be obvious findings by both the Circuit Court and the original panel of the Court of Appeal which heard this case.

B. The Obituary Claim was frivolous as a matter of law

The Widow further argues that the Obituary Claim was not frivolous. She argues beginning on page 16 of her Petition for Partial Petition for Rehearing *En Banc* that:

Respondent simply alleged that “in the Final Order and Agreement, the Petitioner waived any and all claims or rights against the Estate and such Order was a final, binding, unappealed order.” (R . P. 209) specifically, Respondent argued (and this Court held) that the Obituary Claim was waived in a Mediation Agreement attached to a final Decree (Ending Action) filed in Client’s Divorce Action••• In particular, Respondent and this Court’s opinion rely on a provision in the Mediation Agreement stating that “both parties waive any and all rights they may have in the estate of the other or to make a claim against the estate of the other” (See R. P. 147 paragraph 12).

This quotation from the Petition filed by Widow herself, cogently summarizes the justification for the decision of both the Circuit Court and the Court of Appeals herein. Her argument that the Obituary claim did not exist at the time of the Mediation Agreement and Final Decree (Ending Action) and could not have been contemplated, is a farce. At the time the parties executed the Agreement neither had a probate estate since both were still alive. Probate claims by their very nature do not arise until death. The Agreement and Order intended to “ waive ANY AND ALL rights they may have TO MAKE A CLAIM upon or against THE ESTATE OF THE OTHER. “ (R. p. 177 Emphasis added) No Final action for Separate Support and Maintenance would be complete without bringing an end to all

entitlements between the parties except those provided in the Decree. Widow's claim is clearly without merit. As with all litigation settlement agreements, the goal is to end all disputes between the parties, past, present and future.

The Widow further argues that when she filed the Obituary Claim she intended in the future to challenge the validity of the Mediation Agreement and the Separation Decree in Family Court. (Widow's Petition for Partial Rehearing *En Banc* p. 17) The challenge to the Decree which barred the filing of the Obituary claim should have been a condition precedent to the filing of the claim. (Widow's Petition for Partial Rehearing *En Banc* p. 17) The Wife eventually withdrew her claim for reimbursement of the Obituary claim. (R p. 353-383) However, she argues on page 15 of her Petition herein that the trial judge should not have imposed sanctions because Respondent did not present a "scintilla of evidence" that the Obituary claim was in fact frivolous or without any merit. Reference to the Mediation Agreement and the Decree cited above, by the Widow herself, verifies the evidence considered by the Trial Court in this regard. (R. P. 15)

C. The amount of sanctions awarded against Widow should be affirmed.

The Widow argues that even if an sanction were appropriate, the total amount of the amount of the sanctions awarded against her of \$40,000.00 (subject to or credit of \$25,000.00) was excessive. The sanctions against Widow included not only the filing of the Obituary Claim of \$1457.25 but also the filing of a claim for an elective share estate of the deceased. (Order filed October 7, 2017) Widow seems to misapprehend this fact since she argues that the \$40,000 sanction (subject to a credit of \$25,000) is "Facially excessive and grossly disproportionate to defend a claim of less than \$1500". (Petition for Partial

Rehearing filed by Deborah B. Harwell p.21) The trial court imposed sanctions based upon the filing of the obituary claim and her claim for an Elective Share. (R. p. 77) The value of an elective share herein is considerably more than the smaller obituary claim. The Trial Court specifically considered the attorneys fees expended by the Personal Representative in the total amount of \$51,897.06 and allowed a reduction of 10% for the action to amend the death certificate. The Court granted \$40,000 in fees and gave Widow a credit of \$25,000 for any fees paid in a separate Family Court contempt action. The amount of fees expended is a legitimate consideration. *Pee Dee Health Care PA v. Estate of Thompson 418 SC5 77,795 S 2d 40* (Ct App. 2016) other appropriate considerations include deterrence from future litigation abuse. *Pee Dee Health Care PA., Supra* If the award of sanctions is broken down between the two claims and if Widow were sanctioned \$5000 on the Obituary claim (the same as the Edmonds parties) and if she paid \$25,000 she owes the Family Court action for which she is given credit in this action the remaining balance allocated to the Elective Share Claim in this case would be \$10,000.00. Considering the size of the Elective Share claim, \$10,000.00 is not excessive. It should also be considered that the Court found that Widow's filing of the Pre-Nuptial Claim in the amount of \$3.1 million dollars was improper but did not even sanction her for that claim. (R. P. 72) It is also important to note that the Widow's argument is contained on pages 10-23 of her Petition herein. Widow did not challenge the finding of the Trial Court that the Elective Share Claim was improperly decided below. This unchallenged finding is the law of the case. *Biales v. Young 315 SC 166, 432 SE 2d 482 (1993)*

The Trial Court and the Court of Appeals were lenient in their treatment of the Widow herein. The Trial Court explained that "it is my findings (sic) that the sanctions that

I ordered will put an end to the useless litigation when taken into consideration with all sanctions imposed in both this case and the Family Court action (Order filed October 2, 2017). Unfortunately, as evidenced by Widow's continual absurd baseless claims of a 100 million secret hidden trust, this useless litigation has not ended. The Court of Appeals directly addressed Widow's argument that sanctions were imposed despite the fact that a merit determination was never made on the Obituary Claim. The claim was withdrawn before the Circuit Court hearing. The Court of Appeals correctly pointed out that under §15-36-10 (B)(2) a court may itself impose sanctions for violation of 15-36-10(A)(4). Furthermore, Rule 11(a) *South Carolina Rules of Civil Procedure* has no procedural prerequisites to the impositions of sanctions. (Opinion p. 8). The Court of Appeals also explained that the trial court has wide discretion to fashion appropriate sanctions. (Opinion p.9) In this case the Court of Appeals agreed with the Circuit Court's findings of fact. Based upon *Se Site Prep, LLC v. atl. Coast Builders & Contractors LLC* 394 SC97, 104,713 SE 2d 650, 653 (Ct App 2011) The Court of Appeals ruled that:

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 upon unsupported factual conclusion.” (Opinion p.5).

Widow did not have a Rule 11 good nonfrivolous basis under the Act. The Court found that the sanctions imposed against Widow were proper in this case. The ruling of this Trial Court should be affirmed.

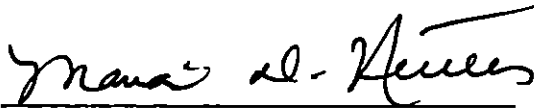
D. The suggestion for a rehearing *En Banc* should be denied

Rule 219 South Carolina Appellate Court Rules provides that “ a hearing or rehearing *en banc* is not favored and ordinarily will not be ordered.” The Rule further states that a

request will be granted “(1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.” This case involves a very straightforward ruling on a request for sanctions. No argument is made that there is a lack of uniformity of decisions in this area of the law. While the ruling of the Courts herein is important to the parties themselves, there is no indication that there is a question of exceptional importance to the bench and bar involved herein. This is an appeal involving the award of sanctions. The Court’s opinion is unpublished and is very fact specific to this case.

Conclusion

For the reasons set forth herein, Robert Bryan Harwell individually and as Personal Representative of the Estate of David W. Harwell requests the Petition for Rehearing herein be denied and that this matter not be heard *En Banc*.



Marian D. Nettles, Esquire
NETTLES, TURBEVILLE & REDDECK
PO Box 699/261 Kelley Street
Lake City, SC 29560
843-374-8511/843-493-2221
843-374-3211(fax)

Kevin M. Barth #559
BARTH BALLENDER & LEWIS
P.O. Box 107
Florence, SC 29503
(843)662-6301
(843)664-8384(fax)
kbarth@bblawsc.co

Gena Phillips Ervin #4453
ORR ELMORE & ERVIN LLC
P.O. Box 2527
Florence, SC 29503
(843) 667-6613
(843) 667-0340(fax)
gpe@orrfirm.com

**Attorneys for R. Bryan Harwell, Individually
and as Personal Representative of the Estate of
David W. Harwell**

RECEIVED
MAY 15 2020
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

In the Courts of Common Pleas of Beaufort and Florence Counties

Trial Court Case Nos. 2016-ES-07-00302, 2016-CP-21-01435, and 2015-ES-21-00778

The Honorable Kenneth E. Fulp, Jr. And
The Honorable Roger L. Couch

APPELLATE CASE NO. 2017-002290

Deborah B. Harwell, Respondent/Appellant,

v.

Robert Bryan Harwell, individually and as the
Personal Representative of the Estate of
David W. Harwell; and the South Carolina
Department of Health and Environmental Control,
Division of Vital Records, Defendants,

Of whom Robert Bryan Harwell, individually
and as the Personal Representative of the
Estate of David W. Harwell is the Respondent/Appellant,

And the South Carolina Department of
Health and Environmental Control,
Division of Vital Records is the Respondent,

v.

Law Office of Deidre W. Edmunds, P.A.
And Deidre W. Edmunds, Individually, Appellants/Respondents.

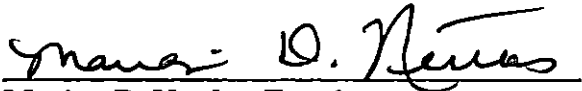
PROOF OF SERVICE

I certify that I have served the Respondent Appellant's Return to Petition for Rehearing and Suggestion for Rehearing En Banc filed by Deborah B. Harwell on the above-referenced parties by depositing a copy of it in the United States Mail, postage prepaid, on May 14, 2020, addressed to them or to their attorneys of record;

Deborah B. Harwell, *Pro Se*
1459 River Highway
Mooreville, NC 28117
Respondent/Appellant

John Harleston
S.C. Department of Health and
Environmental Control
2600 Bull Street
Columbia, SC 29201
Respondent

M. Dawes Cooke, Jr., ESQ.
Barbara J. Wagner, Esq.
Barnwell, Whaley, Patterson & Helms, LLC
288 Meeting Street, Suite 200 (29401)
Post Office Drawer H
Charleston, SC 29402
Attorneys for Appellants/Respondents
Deirdre W. Edmonds, PA and Deirdre W. Edmonds, individually



Marian D. Nettles, Esquire
NETTLES, TURBEVILLE & REDDECK
PO Box 699/261 Kelley Street
Lake City, SC 29560
843-374-8511/843-493-2221
843-374-3211(fax)

Kevin M. Barth #559
BARTH BALLENDER & LEWIS
P.O. Box 107
Florence, SC 29503
(843)662-6301
(843)664-8384(fax)
kbarth@bbllawsc.co

Gena Phillips Ervin #4453
ORR ELMORE & ERVIN LLC
P.O. Box 2527
Florence, SC 29503
(843) 667-6613
(843) 667-0340(fax)
gpe@orrfirm.com

Attorneys for R. Bryan Harwell

LAW OFFICES

NETTLES, TURBEVILLE & REDDECK.

P. O. BOX 699
261 KELLEY STREET
LAKE CITY, SOUTH CAROLINA 29560

E. LEROY NETTLES
ELBERT K. TURBEVILLE
LARRY G. REDDECK
MARIAN D. NETTLES
E. LEROY NETTLES III

843-374-8511
843-493-2221
FAX: 843-374-3211

Via Fax and First Class Mail
May 14, 2020

RECEIVED
MAY 15 2020
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: *Deborah B. Harwell v. Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records, and Law Office of Deirdre W. Edmonds, PA; and Deirdre W. Edmonds, individually, Appellants/Respondents*

Appellate Case No. 2017-002290

Dear Ms. Kitchings:

Enclosed for filing please find the following regarding the above referenced matter:

1. The original and six (6) copies of the Return to Petition for Rehearing and Suggestion for Rehearing *En Banc* filed by Deborah B. Harwell Respondent/Appellant.
2. The original and six (6) copies of the Certificate of Service.

I would appreciate if you would file the originals and return the filed, stamped copies to us in the envelope provided for your convenience.

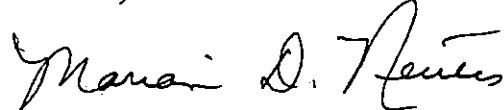
(Harwell Petition)

The Honorable Jenny Abbott Kitchings
Page 2

With my best regards, I am

Yours very truly,

NETTLES, TURBEVILLE & REDDECK

A handwritten signature in cursive script that reads "Marian D. Nettles". The signature is written in dark ink and is positioned below the firm name.

Marian D. Nettles


MDN/mmd

Enclosure

cc: Kevin M. Barth, Esq.
Gena Philips Erwin, Esq.
M. Dawes Cooke, Jr., Esq.
Barbara J. Wagner, Esq.
Deborah B. Harwell
John Harleston, Esq.

RECEIVED

MAY 15 2020
SC Court of Appeals

| | | |
|---|---|----------------------|
| UNITED STATES POSTAL SERVICE | | Retail |
| P | US POSTAGE PAID | |
| | \$8.25 <small>Origin: 29560 05/14/20 4548800560-22</small> | |
| PRIORITY MAIL 1-DAY® | | |
| | | 1 Lb 3.50 Oz 1006 |
| EXPECTED DELIVERY DAY: 05/15/20 | | |
| SHIP TO: | | B012 |
| PO BOX 11629 COLUMBIA SC 29211-1629 | | |
| USPS TRACKING®NUMBER | | |
|  | | |
| 9505 5102 9556 0135 1889 65 | | |

LAW OFFICES
Nettles
& Reddeck

P.O. BOX 699
LAKE CITY, SC 29560
(843) 374-8511

To:
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

FIRST CLASS MAIL

HARWELL Petition