

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

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,

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SC Court of Appeals

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

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713 S E 2d 650 (Ct. App. 2011).5

STATUTES:

South Carolina Rules of Civil Procedure, Rule 11.3,4,5,7

South Carolina Code of Laws §15-30-10 (1976, as amended). 3,4,5,7

OTHERS

South Carolina Appellate Court Rules, Rule 219.12

South Carolina Appellate Court Rules, Rule 221. 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)

While Edmonds was actively representing widow, 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)

While Edmonds was actively representing widow, 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. (R. P. 72)

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. (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 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 Harwell 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 the Personal Representative believes Edmonds should have been sanctioned more harshly, he respects the Court's ruling, and submits there were no points misapprehended or overlooked. *Rule 221(a) South Carolina Appellate Court of 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

A. The imposition of sanctions against the Edmonds parties should be affirmed because the filing of the Petition for allowance of the Obituary Claim was patently frivolous.

1. In support of her claim for reversal of the imposition of sanctions against her related to the Obituary Claim, the Edmonds parties argue that there has never been a court determination that the Obituary Claim was actually frivolous. (Petition for Rehearing p.10)

The Circuit Court specifically found in its initial order filed April 12, 2017 that, “The Creditors Claims filed *Pro Se* by her were filed without Merit and frivolous” (R p.70)

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:

Widow waived any claims she had against Decedent’s estate, and at the time Widow filed the Obituary 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 creditors claim against the estate for reimbursement was unreasonable and frivolous.

2. Edmonds further argues that the Obituary Claim was not frivolous in fact.

The factual basis for the findings of the Trial Court and the Court of Appeals are contained in the Final Decree (Ending Action) which incorporated the Mediated Agreement. Paragraph 12 of the Mediated Agreement, specifically provides, “12. Both parties waive any and all rights they may have in the estate of the other or to make any claim upon or against the estate of the other.” Edmonds further argues that when she filed the Petition regarding Obituary the claim, the Widow intended in the future to challenge the validity of the Mediation Agreement and the Separation Decree in Family Court. (Pet. P. 17) The Widow eventually withdrew her claim for reimbursement of the Obituary claim. (R. P. 355)

The Trial Court correctly quoted Paragraph 12 of the mediation agreement cited hereinabove and concluded “That Order has never been amended or appealed.” Furthermore, “It remains the law of their property settlement.” (R. P. 63). In its Order on Reconsideration, the Court clearly stated “the claim should not have been made and was without legal basis.” (R. P. 78) Further, “I am not aware of any case or statute that allows a family member or an in-law to take independent action that create a legally binding obligation on the part of an estate unless that person has been given legal authority to do so.” (R. P. 78) Edmonds advanced the obituary claim which was without legal merit.

The Court of Appeals affirmed the imposition of sanctions upon the Edmonds parties pursuant to Rule 11 *South Carolina Rules of Civil Procedure* and *South Carolina Frivolous Civil Proceedings Act* §15-36-10. Rule 11 provides that by signing a pleading an attorney certifies “to the best of his knowledge, information and belief there is good ground to support it.” The Frivolous Proceedings Act provides “an attorney or *Pro Se* litigant participating in a civil or administrative action or defense may be sanctioned for ... filing a frivolous pleading motion or document. *S.C. Code of Laws §15-36-10 (A) (4) (a)*. Edmonds argues that the client made the initial claim and that she only filed the formal petition to allow the claim. An attorney cannot be heard to argue that, “My client made me do it.”

First, Edmonds argues that the sanctions were imposed without any development of the merits of the underlying claim. Edmonds specifically states that “Respondent did not present a scintilla of evidence that the Obituary Petition was in fact, frivolous or without merit.” There could have had no reasonable expectation that the estate would reimburse for the obituaries widow personally contracted and which were not authorized by the estate. In

fact it is an elementary principle of contract law that “in order for there to be binding contract between parties, there must be a mutual manifestation of assent to the terms.” *Edens v. Laurel Hill Inc.*, 271 SC 360 247 SE 2d 434 (1978) Widow contracted with the newspapers. The estate was not a party to the contract. The Estate did not authorize these publications. These claims were properly denied by the Personal Representative.

Second, Edmonds alleges that this Court’s holding punishes her for advancing Widow’s Obituary claim which she “believes to be honestly debatable under the Law of the Land.” (Petition p.2) She states “Ms. Harwell had every right to ask the Estate to pay the cost of publishing a correct obituary.” (Petition p.4) That is absolutely not correct based upon the record. The Final Decree (Ending Action) filed July 21, 2015 approved the Mediation Agreement executed by the parties which provided in pertinent part, “Both parties waive any and all rights they may have in the estate of the other or to make any claim upon or against the estate of the other. Each party’s estate shall be bound by the terms of this agreement.” (R. 177) Considering the straightforward language set forth in the Mediated Agreement executed on July 17, 2015 and approved by the Family Court in its Final Decree (Ending Action) filed July 21, 2015 (R. P. 167-178), there can be no legitimate debate about the propriety of the Obituary claim. Edmonds should not have advanced that claim in view of the valid order which prohibited the same. Edmonds simply did not have a Rule 11 good ground or nonfrivolous basis under the Act.

Edmonds makes the strained argument that the interdiction against filing claims against the Estate of the other contained in paragraph 12 does not apply since the Obituary Petition did not arise out of their marriage. One might ask what other basis might Widow

have had to publish obituaries which named her as Wife. (R. P. 146) The stated complaint with the obituaries already published by the family was that those obituaries did not identify her as Wife. (Pet. for Rehearing p. 4)

Edmonds argues that the Court of Appeals should not impose sanctions on her because (a) there was no specific finding that the Obituary Petition was frivolous and (b) Respondent had not presented evidence supporting that the obituary petition was frivolous.

Contrary to Edmonds statement that the trial judge did not permit an evidentiary hearing, the trial judge allowed, and the parties submitted, what they wished at the sanctions hearing. (R. P. 865-939)

The Order on reconsideration filed specifically states:

The Defendant Personal Representative asks that this Court to clarify the actions taken by the Ms. Harwell which are the subject of the sanction issued by this Court. After a review of my Order I would agree that this does need clarification. It was my intention to include the actions filed by Ms. Harwell for an Elective Share and an Action for Reimbursement for the obituary 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. It was improper for her to begin any action for those items against the Estate. To this extent my previous Order is hereby amended to include these actions as improper and frivolous and therefore the proper subject for sanctions. (R. P. 77)

Edmonds advanced the Obituary claim by the filing of a Petition to allow the claim. (R. P. 148) A reasonable investigation would have led a reasonable attorney to decline to advance this claim in view of the direct prohibition in the Decree of Separate Support and Maintenance cited above. Edmonds admitted that she filed her Petition for allowance of

claim after reviewing the Notice of Disallowance of Claim, which had the Decree of Separate Support and Maintenance attached along with the Mediation Agreement (R. P. 397- p. 401) Although she does not practice law in Family Court, she testified that she was called upon in both private practice and as a Probate judge to read Family Court Orders. She agreed that she was “comfortable” reading such an order and understanding them. (R. P. 396-397) Edmonds filed her Petition to allow claims after having read the relevant order. She affixed her signature thereto. (R. P. 401) The Trial Court held that Edmonds “was not justified in filing or pursuing the claim for reimbursement of the obituary Publication.” (R. P. 72-73) The Widow withdrew the Obituary claim through her new counsel of record on August 31, 2016, (R. P. 314) The sanctions ordered against Edmonds should be affirmed.

B. The amount of sanctions awarded should be affirmed

Edmonds argues that an award of \$5000.00 for advancing the obituary claim for \$1457.25 is excessive. Furthermore, she argues that there was no evidence that there were any attorney fees attributable to the Obituary Petition. She notes that the Widow voluntarily dismissed the Petition. (Petition p. 12). Citing the case of *Pee Dee Health Care PA v. Estate of Thompson* 418 SC 557, 795 SE 2d 40 (Ct App 2016), the Trial Court held that sanctions are intended to end litigation and prevent the filing of future frivolous actions. The Trial Court explained that the sanctions he ordered in this case would put an end to the “useless litigation.” (R. P. 77) It should also be kept on mind that Edmonds accused the Personal Representative of making false statements to the Department of Health and Environmental Control concerning his father’s marital status. By virtue of this, she accused him of committing a felony. The Court specifically stated that “some of the allegations contained

in that petition concerning the allegations of the Personal Representative were false and ultimately found to be without justification.” (R.. P. 71) Furthermore “ the allegations of intentional wrongdoing by Bryan Harwell were false...” (R. P. 71) The Court characterized the allegations “as perhaps overzealous when made...”. No sanctions were associated with these findings. The Trial Court explained in it’s Order on Reconsideration, that the award of \$5000.00 in sanctions against Edmonds was reasonable based upon 20 hours billed at \$250.00 per hour and that this sanction would discourage future improper conduct. (R. P. 79) This Court ruled that based upon the abuse of discretion standard, the imposition of sanctions will not be disturbed on appeal absent an error of law or unsupported factual allegations. Further, this Court correctly concluded that “Considering the length of the litigation and the number of motions filed, we find the Circuit Court did not abuse its discretion in determining the amount of the sanctions. ” (Opinion p. 9)

The Trial Court by its sanctions hoped to end this “useless litigation.” Unfortunately as evidenced by both petitions for rehearing which are remarkably similar, this has not occurred.

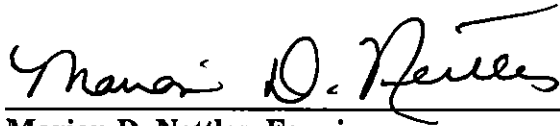
C. The suggestion for a rehearing *En Banc* should be denied

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 the decision 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*.



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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.

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Of whom Robert Bryan Harwell, individually
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And the South Carolina Department of
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v.

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

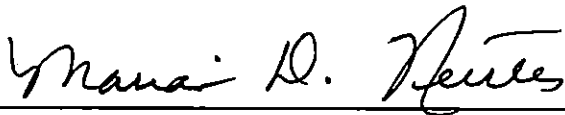
PROOF OF SERVICE

I certify that I have served the Return to Petition for Rehearing and Suggestion for Rehearing
En Banc filed on behalf of the Law Office of Deidre W. Edmunds and Deidre W. Edmunds
Individually, 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;

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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
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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 Appellants/Respondents Law Office of Deirdre W. Edmonds and Deirdre W. Edmonds, individually.
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.

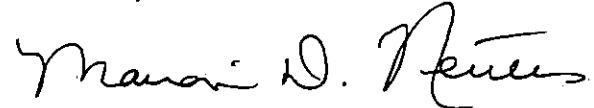
(Edmonds Petition)

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".

Marian D. Nettles

MDN/mmd

Enclosure


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

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Edmonds Petition

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