THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
In the Court of Common Pleas for the Ninth Circuit

Jean Hoefer Toal, Circuit Court Judge, Presiding, Chief Justice (Ret.)
South Carolina Supreme Court

Appellate Case No.: 2018-000467

Amy S. Kovach, Plaintiff,

v.

Joshua S. Whitley and Karen Whitley, in her Individual Capacity, Respondents,

And

Joshua S. Whitley, Defendant/Counterclaimant,

v.

Amy Kovach, Plaintiff/Counterclaim Defendant,

And

Joshua S. Whitley, Defendant/Third-Party Plaintiff,

v.

Rodney Thompson, Third-Party Defendant,

Of whom Amy Kovach is the Appellant.

RESPONDENTS' JOINT BRIEF

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RESPONDENTS' JOINT BRIEF

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I. The trial judge was correct in imposing sanctions under Rule 11 of the South Carolina Rules of Civil Procedure against Appellant for filing a Complaint against Respondents Joshua Whitley and Karen Whitley alleging civil conspiracy because there were no good grounds to support the claims and Appellant's own pleading was in direct contradiction to her sworn guilty plea regarding the same facts and circumstances.

II. The trial judge was correct in her assessment of attorneys' fees against Appellant.

STATEMENT OF THE CASE

On October 15, 2015, Appellant, Amy Kovach ("Kovach" or "Appellant"), filed a Complaint against the Berkeley County School District ("BCSD"), Joshua Whitley ("Mr. Whitley"), Scott Marino, Karen Whitley ("Karen Whitley"), Terry Hardesty, and the Berkeley County Republican Party, LLC in the Court of Common Pleas for Berkeley County. In it, she included, *inter alia*, a claim for civil conspiracy against Mr. Whitley and others, including Karen Whitley. Mr. Whitley filed responsive pleadings, including an Answer, Counter-claim (against Appellant) and a Third-Party Claim on November 3, 2015, along with a Motion for Sanctions against Kovach's attorney, Nancy Bloodgood ("Bloodgood"). Karen Whitley filed a Motion to Dismiss and for Rule 11 Sanctions against Bloodgood on November 16, 2015. Mr. Whitley amended his Motion for Sanctions on February 12, 2016 to include a motion for sanctions against Kovach pursuant to Rule 11 of the South Carolina Rules of Civil Procedure. Karen Whitley filed an Amended Motion for Sanctions against Bloodgood and Kovach on February 23, 2016. The matter came before the trial court for a hearing on September 16, 2016, with Chief Justice Toal presiding. On October 24, 2016, Chief Justice Toal granted the Whitleys' motions for sanctions against both Bloodgood and Kovach. In accordance with the Order, counsel for

Karen Whitley filed an Affidavit for Attorneys' Fees on November 2, 2016, and a Supplemental Affidavit on January 13, 2017. Mr. Whitley submitted his petition for fees on November 3, 2016, and amended it by letter on January 11, 2017 to segregate billing entries pursuant to the Court's request. Bloodgood and Kovach moved for reconsideration, and Chief Justice Toal heard the motions on January 17, 2017. On February 19, 2018, the trial court entered an order denying the motions for reconsideration and assessing sanctions against Bloodgood in the amount of $17,000 ($2,000 to Karen Whitley and $15,000 to Mr. Whitley) and Kovach in the amount of $48,000 ($13,000 to Karen Whitley and $35,000 to Mr. Whitley).

Bloodgood has paid the sanctions imposed against her and does not appeal the Court's Order. Kovach appeals Chief Justice Toal's award of sanctions against her.

STATEMENT OF FACTS

In this case, a public official alleged civil conspiracy against a private citizen for his efforts to expose the public official's corrupt activities, after the public official pled guilty to, and was convicted of, the corruption exposed. Kovach is the former Director of Communications and Community Relations for the BCSD. Kovach was fired from that position after she pled guilty to two crimes related to her leadership role in Berkeley County's 2012 School Bond Referendum ("Referendum"). The Referendum called for a $198 million bond offering to pay for the building of five (5) new schools and renovations on nineteen (19) schools. In support of the Referendum, a campaign known as the "Vote Yes 4 Schools" was established.

During the Referendum campaign, Mr. Whitley, a private citizen, attorney, and taxpayer in Berkeley County, became concerned that Kovach and others at the BCSD were campaigning in favor of the Referendum using BCSD resources to do so, in violation of S.C. Code Ann. § 8-13-1346, which prohibits the use of public funds to influence an election. Mr. Whitley

investigated the matter by gaining access to relevant documents from the BCSD through the South Carolina Freedom of Information Act ("FOIA"), pursuant to which "*any person* has a right to inspect or copy any public record of a public body...." S.C. Code Ann. § 30-4-30 (emphasis added).

After the election, the BCSD responded to Mr. Whitley's FOIA request. Upon review of the documents produced under FOIA – in particular, emails from Kovach in which she actively engaged in campaigning in favor of the Referendum in violation of the law – Kovach's misconduct was manifest. Mr. Whitley brought this information to the attention of the Attorney General and, thereafter, the South Carolina Law Enforcement Division ("SLED") began an investigation into Kovach's activities.

SLED's investigation eventually led the Attorney General's office to indict Kovach on five charges: (1) misconduct in office in violation of the common law of South Carolina; (2) criminal use of public funds to influence an election in violation of Section 8-13-1346 of the South Carolina Code of Laws; (3) two counts of forgery based on Kovach's efforts to cover up her criminal misconduct; and (4) and one count of perjury related to fraudulently conducting procurement matters to cover up her criminal misconduct related to the campaign and use of district resources.

Kovach was provided with a defense attorney by her employer, BCSD, pursuant to S.C. Code Ann. § 59-17-110, based on her claim that she had done nothing illegal and had always acted in good faith. The BCSD incurred more than $300,000.00 on Kovach's behalf in paying her defense attorney. After spending eighteen months on paid leave from the school district, Kovach ultimately pled guilty in a negotiated plea to the misconduct in office and criminal use of public funds charges in exchange for dismissal of the remaining three charges. In exchange for

dismissing the three remaining charges, Kovach admitted to the underlying facts of those indictments as part of her global misconduct charge. In other words, Kovach pled guilty to two counts while admitting that she was guilty of all five counts against her.

Specifically, at Kovach's guilty plea and sentencing hearing on August 28, 2015, she admitted under oath to the material facts supporting all five charges against her, including the two felony forgery charges and the perjury charge related to her efforts to cover up her misconduct. During the hearing, Assistant Deputy Attorney General Creighton Waters set forth the factual predicate for the charges and the state's proof in detail. (R. pp. 1091-1111.) After hearing the declaration of the incriminating facts that the state was prepared to prove, Kovach replied to the Court under oath that she "agree[d] with the facts as stated by the attorney general." (R. pp. 1102-1104.) As part of the guilty plea, Kovach also admitted to the facts underlying the charges against her that were dismissed in the plea deal. (R. pp. 1086, 1093 (plea to misconduct covers and incorporates all of the charged conduct in addition to the underlying ethics act count); R. pp. 1089-1090 (Kovach admits that the allegations in the indictment were truthful after the Court read them to her, including the statement that she engaged in "covering up her actions with dishonesty"); R. p. 1111 (Kovach agrees under oath with the facts that the state set forth including those supporting forgery and perjury charges); R. pp. 1113, 1116-1118 (Kovach agreed under questioning from the Court that she was guilty of the charges).) After hearing the prosecutor's factual presentation, including facts underlying the perjury and forgery indictments, the presiding judge, the Hon. Jeffrey Young, stated at the time of sentencing:

> THE COURT: All right, I've considered the presentations given by the attorney general and Mr. Theos; and even in my limited exposure to this case was (*sic*) started a month ago, what I see here is lies, lies, and lies. Ms. Kovach from what I see ignored every warning sign that was available to her. Again, she lied to every opportunity reading one's emails somebody warned her that this was not the right thing to do. The email says all fixed. Well, it's not all fixed. Her actions included,

> again, lies, **fabrication of documents**, and at every opportunity she chose deceit over the truth."

(R. pp. 1138-1139.) (emphasis added).

Judge Young sentenced Kovach to five years' imprisonment, suspended upon the completion of two years' probation and payment of a $25,000 fine. In light of the guilty plea and admissions to her illegal role in the Referendum, the BCSD recommended her termination to the Berkeley County School Board ("Board"). The Board received input from the Attorney General's office regarding the evidence in the criminal case against Kovach. On August 31, 2015, Deputy Assistant Attorney General Waters wrote a lengthy letter to the Board explaining in detail the facts supporting the charges that Kovach admitted to just days earlier. (R. pp. 1358-1364.) Kovach was then terminated from her employment.

On or about September 3, 2015, Kovach met with Bloodgood to discuss filing a grievance with the BCSD and civil claims in circuit court. Consulting with Bloodgood, Kovach prepared an Affidavit dated August 4, 2015, to accompany the grievance package sent to the Board. (R. pp. 33-44.) The essence of the Kovach Affidavit is that she was falsely accused, that SLED and the Attorney General's Office had improper motives, and that the perjury and forgery charges "were completely bogus," among other things. The Affidavit contains material contradictions of her sworn admissions made during the guilty plea hearing. By way of example, Kovach stated under oath that "[n]o public funds were used to create or pay for any campaign video." (R. p. 38.) However, at her plea and sentencing on August 28, 2015, she admitted under oath that she "did use public funds to pay for the creation of a campaign video," which admission was material to her indictments and guilty plea. (R. p. 1090, lines 10-12.)

On or about September 16, 2015, the Board denied the Kovach employment grievance appeal, which finalized her termination. Kovach then turned to the pursuit of this litigation. On

October 15, 2015, within two months of the sentencing hearing, Kovach, through Bloodgood, filed the instant civil action against the BCSD, Mr. Whitley, Scott Marino, Karen Whitley, Terry Hardesty, and the Berkeley County Republican Party, LLC. The Complaint is thirty pages in length and continues with the central theme contained in the Kovach Affidavit–that she was not in fact guilty of the crimes to which she admitted only weeks prior, and others were to blame for her conduct.

The fourth cause of action in Kovach's Complaint asserts a claim of civil conspiracy against Mr. Whitley, Karen Whitley, and others. The essence of the conspiracy allegation was that the Whitleys conspired with others to have Kovach prosecuted. Specifically, Kovach alleged that Mr. Whitley conspired with others to bring Kovach's criminal conduct to the attention of the Attorney General's Office–conduct that ultimately resulted in her indictment and admission to her criminal conduct. On November 3, 2015, Mr. Whitley filed his Answer, Counterclaims, and Third Party Complaint, as well as a Motion for Sanctions against Bloodgood for having filed a frivolous pleading against him. Karen Whitley filed a Motion for Sanctions on November 16, 2015.

The Complaint also contains various allegations of wrongdoing against non-parties. Specifically, Kovach through her attorney alleges obstruction of justice, fraud on the court, and ethical breaches against the Attorney General, his lawyers, SLED, and one if its agents. (R. p. 60 (perjury and forgery indictments were "retaliatory" and "completely bogus"); R. p. 61 (SLED agent "drafted a false interview report with witness..."); R. pp. 61-62 (Attorney General attributed a doctored document to Kovach knowing that it was not Kovach's and SLED agent "obstructed justice"); R. p. 62 (SLED knew that "smurfing" charges were "patently false"); and R. pp. 62-63 (Attorney Generals' Office "manufactured" smurfing charge to injure Kovach).) In

her Complaint, Kovach alleged no actual claims against these parties, but questioned the credibility of the investigation and indictment and implied throughout that she was not actually guilty of the crimes to which she pled guilty or the indicted charges dismissed in her plea deal.[1] Indeed, Kovach alleged that the dismissed charges were "completely bogus." (R. p. 60.)

Much like the Affidavit filed in conjunction with her employment grievance, Kovach's Complaint contains numerous material contradictions of her sworn testimony at the guilty plea hearing. In response to the sworn contradictions in the Affidavit and the allegations of misconduct in the Complaint on the part of SLED and the Attorney General's Office, the Assistant Attorney General filed, on November 9, 2015, a Rule to Show Cause "why Amy Kovach should not be held in contempt of court for her statements to this Court and her subsequent actions relating to her plea of guilty before this Court on August 28, 2015." (R. pp. 158-167.) The basis of the Attorney General's show cause petition was that Kovach committed perjury when she submitted her affidavit directly contradicting her previous sworn testimony, and committed constructive contempt "by making a mockery of the criminal justice system and false statements after her solemn plea of guilty before this Court." (R. pp. 158-167.) The Hon. W. Jeffrey Young, who presided at Kovach's guilty plea and sentencing, signed the Rule to Show Cause on November 20, 2015. (R. p. 4.)

On November 25, 2015, counsel for Mr. Whitley wrote to Bloodgood, acknowledging receipt of her assistant's email correspondence, to which she attached a proposed Stipulated Order of Dismissal for signature by Mr. Whitley's attorney. However, the draft order provided for dismissal without prejudice and for each party to bear its own expenses. Counsel for Mr. Whitley responded in the November 25, 2015 letter that Mr. Whitley would be willing to

[1] The Complaint also implicates and impugns a Vice President of Santee Cooper, State Senator Larry Grooms and his wife, and the law firm that represented the BCSD–all while alleging no actual claims against any of them or giving them the ability to refute the same. (R. pp. 54-55, 70-71.)

stipulate to dismissal only if it were with prejudice, and accompanied by the payment of attorneys' fees. Bloodgood did not respond.

At the Show Cause hearing on February 8, 2016, the Complaint in this action, which largely contains the same material contradictions as the Affidavit, was addressed by the Court. Kovach testified during the Show Cause hearing that her attorney, Bloodgood, failed to perform due diligence before filing the Complaint, and that the advice her attorney gave her was provided without a clear understanding of what the Attorney General had alleged or what had occurred at Kovach's guilty plea hearing held on August 28, 2015. (R. pp. 1148-1150.) She also agreed with her criminal attorney's statement that Bloodgood did not review the transcript of the guilty plea hearing before the Complaint was filed, and that the instant civil case against Mr. Whitley and others had been "withdrawn with prejudice." (R. pp. 1148-1149.) Kovach testified that she filed the Complaint on the advice of her counsel, Bloodgood. (R. p. 1150.) Kovach thus placed the blame for the filing of the frivolous Complaint on Bloodgood.

Ultimately, Judge Young agreed with the Deputy Assistant Attorney General not to hold Kovach in contempt based on her sworn reaffirmation that her admissions under oath at her guilty plea were in fact true, and her express representation that she would dismiss the ill-advised civil Complaint against all parties, immediately and with prejudice and never file another suit arising out of the same facts. Kovach also admitted under oath at the Show Cause hearing that her Complaint contained information that was inconsistent with her sworn testimony at the guilty plea hearing. Kovach and her criminal attorney shifted blame for the filing of the Complaint by claiming a failure to perform due diligence on the part of her civil attorney Bloodgood. (R. pp. 1141-1153.) Immediately after the Show Cause hearing, Mr. Whitley wrote to Bloodgood to tell her that her client misrepresented to the court that the case against him had been dismissed with

prejudice. (R. pp. 1369-1370.) Thereafter, Bloodgood agreed to dismiss the case with prejudice, but refused to agree to compensate Mr. Whitley for his legal fees.

On February 12, 2016, Bloodgood filed her opposition to the Whitleys' original motions for sanctions against her. In it, she claimed that she received the guilty plea transcript on October 13, 2015, and revised the draft Complaint on October 14, 2015 based on her review of the transcript, before filing it on October 15, 2015. (R. p. 276.) She also asserted that she reviewed versions of the Complaint with Kovach. (R. p. 277.) On February 12, 2016, Mr. Whitley filed an Amended Motion for Sanctions to include a Rule 11 motion for sanctions against Kovach. (R. pp. 292-310.) On February 23, 2016, Karen Whitley also filed an Amended Motion for Sanctions to include a motion for sanctions against Kovach under Rule 11.

On September 16, 2016, the trial court, the Honorable Chief Justice Jean H. Toal (ret.) presiding, heard the arguments of counsel on the motions for sanctions. Kovach was represented at the hearing by her current counsel, who never expressed a need to present evidence. At the close of the hearing, the Court asked counsel to submit memoranda providing authorities addressing the issue of the imposition of sanctions for filing a complaint in a civil case arising out of a criminal proceeding in which Kovach entered a guilty plea and proposed Orders. The parties then submitted reply briefs in accordance with the Court's request. On October 24, 2016, the Court entered its Order Granting Motion for Sanctions. (R. pp. 5-28.) In accordance with the Order, counsel for Karen Whitley filed an Affidavit for Attorneys' Fees on November 2, 2016, and a Supplemental Affidavit on January 13, 2017. Mr. Whitley submitted his Petition for Fees on November 3, 2016, and amended it by letter on January 11, 2017 to segregate billing entries pursuant to the Court's request.

Bloodgood moved for reconsideration of the Court's October 24, 2016 Order on November 7, 2016, and Mr. Whitley filed a brief in opposition. Kovach moved for reconsideration on January 13, 2017. On January 17, 2017, Justice Toal held a hearing on the motions for reconsideration. On February 19, 2018, Justice Toal entered an Order denying the motions for reconsideration and imposing sanctions against Bloodgood in the amount of $15,000 and Kovach in the amount of $48,000. (R. pp. 29-32.)

In her Statement of Facts, Kovach states that she "believed, and contended, that her criminal prosecution was politically motivated." She continues in her refusal to take responsibility for her actions, claiming that she acted in good faith, and that she is not guilty of the crimes for which she entered pleas of guilty. She is attempting here, as she did below, to absolve herself of her criminal conviction, despite her admission to the underlying facts in support of that conviction in her guilty plea. For the reasons set forth below, the Court should affirm Chief Justice Toal's decision.

ARGUMENT

STANDARD OF REVIEW

The decision of whether to award attorney's fees pursuant to Rule 11 or the FCPSA is treated as one in equity. *Southeastern Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC*, 394 S.C. 97, 104, 713 S.E.2d 650, 653 (2011). "In an action in equity tried by a judge alone, the appellate court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence." *In re Beard*, 359 S.C. 351, 357, 597 S.E.2d 835, 838 (Ct. App. 2004). "However, the abuse of discretion standard plays a role in the appellate review of a sanctions award." *Ex parte Gregory*, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008). When the appellate court agrees with the circuit court's factual findings, it reviews the award of

sanctions under an abuse of discretion standard. *Atl. Coast Builders*, 394 S.C. at 104, 713 S.E.2d at 654. "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 contentions." *Id.*

I. Sanctions Are Available Against Kovach Under Rule 11.

In their amended motions for sanctions, the Whitleys sought sanctions against Kovach pursuant to Rule 11 of the South Carolina Rules of Civil Procedure. (R. pp. 292-310, 372-391.) Rule 11(a), SCRCP, provides in part as follows:

> The written or electronic signature of an attorney or party [on a pleading, motion, or other paper] constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.
>
> .....
>
> If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

Rule 11, SCRCP. Under this Rule, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. *See Runyon v. Wright*, 322 S.C. 15, 18-19, 471 S.E.2d 160, 161-162 (1996); *see also Link v. School District of Pickens County.* 302 S.C. 1, 393 S.E.2d 176 (1990); *Ex parte Gregory*, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008). The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith (i.e., to cause unnecessary delay) whether or not there is good ground to support it. *See Johnson v. Dailey,* 318 S.C. 318, 457 S.E.2d 613 (1995). "The sanction may include an order to pay the reasonable costs and attorney's fees

incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith." *Runyon, supra*; Rule 11, SCRCP. "Further, if appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith." *Id.* The trial court was vested with inherent authority to award sanctions for the filing of frivolous pleadings. *See Holmes v. Haynsworth Sinkler Boyd, P.A.*, 408 S.C. 620, 641, 760 S.E.2d 399, 410 (2014) (abrogated on other grounds).

The fundamental question before the trial court was whether "good grounds" existed to support the filing of a civil conspiracy claim against Mr. Whitley. If not, the trial court had discretion under Rule 11 to award sanctions not only against Bloodgood, but also against Kovach. Rule 11, SCRCP; *Runyon v. Wright*, 322 S.C. 15, 18-19, 471 S.E.2d 160, 161-62 (1996) (holding that under Rule 11, a party may be sanctioned for filing a frivolous pleading); *Ex parte Bon Secours St. Francis Xavier Hosp., Inc.*, 393 S.C. 590, 597-598, 713 S.E.2d 624, 628 (2011) (affirming an award of sanctions in the form of attorneys' fees and costs against a hospital defendant for removing a case, on the day of trial, to federal court for a second time).

Kovach claims that sanctions under Rule 11 or the South Carolina Frivolous Civil Proceedings Sanctions Act ("FCPSA") are impermissible against a represented party prior to the conclusion of trial. Section 15-36-10(A)(4) of the FCPSA provides for sanctions against an "attorney or pro se litigant" for filing a pre-trial frivolous pleading. She argues that because she was not an "attorney or pro se litigant," she could not be sanctioned, pretrial, under the FCPSA. However, her attorney could be, and was, sanctioned under the FCPSA for filing a frivolous

pleading. In their amended motions for sanctions, the Whitleys moved for sanctions against Kovach under Rule 11, which is permitted under South Carolina law. Rule 11, SCRCP; *Runyon, supra*; *Ex parte Bon Secours St. Francis Xavier Hosp., Inc., supra.*

Kovach also asserts that "Rule 11 requires an attorney, and not her client, to verify the legal sufficiency of a filing." (Initial Brief, p. 11.) This argument misses the mark. Under the plain language of Rule 11, Bloodgood's signature on the Complaint, which was in violation of the Rule 11's "good grounds" requirement, permitted the Court, "upon motion or upon its own initiative" to "impose upon the person who signed it, *a represented party, or* both, an appropriate sanction. Rule 11(a) SCRCP (emphasis added). Hence, the Rule does not permit Kovach to place all of the blame for the frivolous filing in this case on her attorney. Kovach was the person who engaged in criminal conduct, entered a guilty plea, and then sought to hold others responsible for bringing that conduct to the attention of authorities, by asserting a frivolous claim for civil conspiracy.[2] Justice Toal properly held her responsible for that conduct. Kovach's argument that Rule 11 was not designed to undermine the ability of a litigant to pursue good faith legal claims is equally unavailing. Kovach's intent in filing her frivolous Complaint was not to pursue a good faith legal claim. Her motive was to exact revenge upon those who discovered and reported her illegal activities.

Kovach also asks the Court to find fault in the speed with which Mr. Whitley filed his motions for sanctions. She claims that it was "impermissible for Respondents to use a sanctions motion to test the veracity of information Kovach's counsel obtained and the merits of the

[2] Importantly, the factual allegations within the Complaint are the same as those Kovach signed under oath in her affidavit preceding the Complaint. Accordingly, blaming her attorney for filing the frivolous Complaint based on mistruths signed under oath is Kovach's continued attempt to blame someone else for her bad acts. This case is exactly why Rule 11 allows sanctions against both attorney and the represented party.

conspiracy claim when both properly belong at the dispositive motion stage after full discovery or a trial on the merits." (Initial Brief, p. 14.) In the Complaint, Kovach maligned Mr. Whitley's character, sought to damage his reputation, and questioned his ethics as an attorney based on his filing of a FOIA request and providing information to the Attorney General concerning what he believed to be illegal activities on the part of Kovach and others during the Referendum campaign. Discovery was not necessary to show that the claim was frivolous, and Mr. Whitley cannot be faulted for acting quickly to defend himself from Kovach's bad faith attack on his character and reputation.[3]

II. Kovach's Civil Conspiracy Claim Against the Whitleys Has No Good Grounds To Support It.

The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. *See Pye v. Estate of Fox*, 369 S.C. 555, 566-567, 633 S.E.2d 505, 511 (2006); *see also LaMotte v. Punch Line of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988); *Peoples Federal Savings & Loan Ass'n of S. Carolina v. Resources Planning Corp.*, 358 S.C. 460, 470, 596 S.E.2d 51, 56-57 (2004) (holding "[a] civil conspiracy is a combination of two or more parties joined for the purpose of injuring the plaintiff and thereby causing special damage"). It is essential that the plaintiff prove all of these elements in order to recover. *See Lyon v. Sinclair Refining Co.*, 189 S.C. 136, 200 S.E. 78 (1938).

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[3] As to Kovach's assertion that Mr. Whitley failed to comply with the consultation requirement of SCRCP 11, Mr. Whitley re-filed the Amended Motion with the affirmation that consultation would have served no useful purpose promptly (within 24 hours) after the omission was called to his attention, in accordance with Rule 11(a). Prior to filing his initial motion for sanctions, Whitley knew, based on the meeting between Karen Whitley's counsel and Bloodgood after she filed the Complaint, that she was steadfast in her position that the Complaint would be served and the claims therein pursued. The futility of consultation is evidenced, even now on appeal, by Kovach's continuing efforts to justify the claim against Whitley as meritorious.

The conspiracy claims Kovach filed against the Whitleys had no "good ground to support" them. Indeed, the sum total of the conspiracy allegations against Mr. Whitley in Kovach's fourth cause of action is as follows:

- He and others (including Karen Whitley) "conspired with each other" to file a complaint with the Attorney General, and took actions to ensure a Resolution was passed by the Berkeley County Republican Party, LLC encouraging the Attorney General to prosecute Kovach. (R. p. 70.)
- He and others "played an active and inappropriate role in SLED's investigation and upon information and belief provided false statements to SLED and the Attorney General." (*Id.*)
- He and others "suggested stories and provided false information to the press...." and "communicated directly with Defendant BCSD Board members to turn them against Plaintiff." (*Id.*)
- State Senator Larry Grooms, who sat in the front row at Kovach's criminal case hearings and "acknowledged Defendant Joshua S. Whitley's actions towards Kovach when he stated publicly, 'Josh has got the goods on her.'" (*Id.*)
- He exchanged emails with his mother, Defendant Karen Whitley, regarding the lease of Karen Whitley's private property while Karen Whitley was at work. (R. p. 71.)
- He violated Rule 3.6 of the Professional Rules of Conduct for Lawyers by repeatedly commenting on a pending matter that SLED was investigation in order to influence the outcome of the SLED investigation. (*Id.*)
- He "threatened to sue volunteer Campaign Coordinator Co-Chair Jane Pulling if she continued to support Plaintiff." (R. p. 72.)

- He "bragged publically that he hoped to harm the School District." (*Id.*)
- He "issued multiple FOIA requests for emails of other BCSD employees who publically expressed support for Plaintiff." (*Id.*)
- He "knew and encouraged his mother to use public resources while she was working to lease her personal property which personally benefited her." (*Id.*)

Thus, the only actions that Kovach alleges that Whitley and others "conspired with each other" to do was to (1) file a complaint with the Attorney General, and (2) ensure a Resolution was passed by the Berkeley County Republican Party, LLC encouraging the Attorney General to prosecute Kovach, both of which were within his rights to do. Kovach alleged that false statements were made to SLED and the press, but she failed to identify any such statements. She complained that Mr. Whitley sought information through FOIA, which is a right preserved to any person under Section 30-4-30 of the Code of South Carolina. She asserted that Mr. Whitley violated Rule 3.6 of the Professional Rules of Conduct, which is clearly inapplicable to his speech as a concerned private citizen/taxpayer and does not prevent him from exercising his First Amendment rights. Against Karen Whitley alone, she claimed only that Karen Whitley "advocated and spoke publicly in favor of the Referendum as an employee of the District, knowing that the speeches she gave had been written by Plaintiff, and used public resources to conduct personal business. (R. p. 55.)

Kovach asserts that, at the time she filed her Complaint, she had a "viable claim against the Respondents for civil conspiracy arising out of a political fight between Respondents and the former Berkeley County School Board even in light of her guilty plea and sworn testimony." (Initial Brief, p. 19.) She did not. A citizen's efforts to have a corrupt public employee prosecuted are not actionable in a civil case; to the contrary, such efforts are commendable. Our

Supreme Court has held that "a public official is answerable to the public; members of the public are not third-party interlopers." *Angus v. Burroughs & Chapin Co. (Angus II)*, 368 S.C. 167, 628 S.E.2d 261, 262 (2006). In *Angus II*, the Horry County Council terminated the employment of Linda Angus, the county administrator. *Id.; see Angus v. Burroughs & Chapin Co. (Angus I)*, 358 S.C. 498, 596 S.E.2d 67, 69 (S.C. Ct. App. 2005). She brought a civil conspiracy action against four members of the Horry County Council in their individual capacities; the Myrtle Beach Herald and its publisher; Burroughs & Chapin Co.; and certain individuals. The plaintiff alleged that these parties conspired to have her employment terminated. The Supreme Court held, in no uncertain terms, that the plaintiff could not maintain a conspiracy action against the private individual defendants, explaining as follows:

> In our democratic society, a public official is answerable to the public; members of the public are not third-party interlopers. Because of Angus's status as a public official, we conclude her action for civil conspiracy cannot be maintained against any of these defendants. The Court of Appeals' decision overturning the grant of summary judgment to Newspaper and Developer is therefore reversed.

Angus II, 368 S.C. at 170-171, 628 S.E.2d at 262. Likewise, here, Mr. Whitley, as a private citizen and member of the public, had every legal right as a citizen to report Kovach's illegal acts to the authorities, and cannot be held liable for conspiracy in doing so under South Carolina law.

Kovach completely ignores the *Angus II* decision in her Initial Brief. The Respondents in this action, who suspected criminal activity, had the right to make a complaint to the Attorney General. Indeed, as Justice Toal recognized, they had the right to be wrong – that is, had the Attorney General not found criminal activity, a civil conspiracy claim would still not exist against the persons that reported suspected criminal activity to authorities. Nevertheless, Mr. Whitley got it right – Kovach had indeed committed the very criminal acts he complained of to

the Attorney General. In fact, Kovach admitted to committing these criminal acts, pled guilty, and was sentenced.

Kovach also ignores the requirement that she demonstrate a causal relationship between the combination element of a conspiracy claim and the damage sustained. Here, any damage she sustained was the result of her criminal conduct, for which she entered a plea of guilty, including an admission to the entire factual predicate for the crimes charged. Moreover, the actual claim asserted in the Complaint was a conspiracy to have her prosecuted for her criminal activity – despite her having entered a plea of guilty for that misconduct. (R. p. 70.)

Kovach also failed to allege special damages flowing from the conspiracy. Kovach's purported damages flowing from the conspiracy–public humiliation, reputational damage, loss of career opportunities, etc.– proximately flow not from the alleged conspiracy but from the SLED investigation, the criminal indictments, Kovach's guilty plea, sentencing, resulting termination from her employment, and the public notoriety surrounding all of those proceedings that were brought upon her by her own choices and criminal acts. These damages cannot qualify as special damages required to support a claim for civil conspiracy. *See, e.g., Lawson v. South Carolina Dept. of Corrections*, 340 S.C. 346, 352, 532 S.E.2d 259, 261 (2000) (finding summary judgment proper where no special damages alleged).

Finally, Kovach asserts, wrongly, that her claims against the Whitleys are akin to a claim for abuse of process, which "does not require proof of innocence." (Initial Brief, p. 17.) In *Zurcher v. Bilton*, 379 S.C. 132, 136, 666 S.E.2d 224, 226 (2008), the plaintiff brought an abuse of process claim based on facts to which he had entered a plea of guilty. The Court held that his claim was precluded by his guilty plea. Likewise, here, Kovach's claims against the Whitleys hinge upon her innocence. They cannot be held liable for conspiracy for bringing her claims to

light, pursuant to *Angus II.*

III. Kovach's Civil Conspiracy Claims Were Foreclosed By The Doctrines Of Collateral Estoppel and Judicial Estoppel.

No actionable claim for civil conspiracy could exist against the Whitleys because of Kovach's admissions under oath at the sentencing hearing. There is no question that Kovach is *bound by her guilty plea* and cannot take a position contrary to her previous admissions under oath at the guilty plea hearing. In South Carolina, "once a person has been criminally convicted, the person is bound by that adjudication in a subsequent civil proceeding based on the same facts underlying the criminal conviction." *Doe v. Doe*, 346 S.C. 145, 146, 551 S.E.2d 257, 258 (2001). In this context, a plea of guilty is a "confession of guilt, made in a formal manner and has the same effect in law as a verdict of guilty." *Sanders v. Leeke,* 254 S.C. 444, 447, 175 S.E.2d 796, 797 (1970). Thus, a defendant who enters a guilty plea "may be collaterally estopped from litigating the same issue in a subsequent civil suit." *Zurcher, supra.*

Kovach argues that the doctrine of collateral estoppel was not applicable to her civil claims because she did not make statements or admissions during her guilty plea hearing or in the subsequent show cause hearing regarding the specific civil conspiracy allegations she made against the Respondents in her Complaint. (Initial Brief, pp. 20-21.) She is mistaken. All of the allegations in her Complaint relate to the same issue, i.e., Kovach's corrupt campaign activities in favor of the Referendum in violation of South Carolina law. Having entered a plea of guilty to corruption, Kovach was estopped from litigating the same issues in a subsequent civil suit. *Zurcher, supra.*[4]

[4] In addition, Mr. Whitley's actions were protected by the doctrine of judicial privilege. *See Crowell v. Herring*, 301 S.C. 424, 430, 392 S.E.2d 464, 467 (Ct. App. 1990) ("We hold the absolute privilege exists as to any utterance arising out of the judicial proceeding and having any

Furthermore, in her Complaint, Kovach specifically contradicts the facts to which she agreed during the sentencing hearing and which established the factual predicate for the crimes she committed. (R. p. 50 ("The video plaintiff was working on was not prepared in anticipation of the Referendum"); R. p. 50 ("Plaintiff never personally profited from her position with the Berkeley County School District ("BCSD") and no one has ever alleged that she did"); R. p. 53 ("The [FOIA'd] emails merely indicated Plaintiff and other BCSD employees were responding to questions about the school bond referendum, providing correct information to the volunteer Referendum committee, and preparing Defendant BCSD Board members for public presentations."); R. p. 57 ("No public funds were used by Plaintiff to create or pay for any Referendum campaign video. The video Plaintiff finalized for the District in September of 2012 had been started months before the beginning of the Referendum process and for an entirely different purpose."); R. p. 61 ("The indictment was false and unfounded, as was the first indictment, and was ultimately dismissed); R. p. 60 ("Then, after Plaintiff's Attorney moved to disqualify the Attorney General from the case and change venue, Plaintiff was further retaliated against by the Attorney General's office with three (3) additional indictments, including a perjury and forgery charge, both of which were completely bogus and were later dismissed by the Attorney General."); R. pp. 63-64 ("After receiving no support from Defendant BCSD, Plaintiff eventually pled guilty to this particular charge because she had to end the criminal proceedings for her own mental health").) Kovach's litany of false allegations, as also similarly alleged in her grievance Affidavit, prompted the Attorney General to issue a show cause. At the hearing, where she admitted that the allegations of the Complaint conflicted with her admissions during the sentencing hearing, she was admonished for having filed this lawsuit, and she

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reasonable relation to it, including preliminary steps leading to judicial action of any official nature...").

represented, falsely, that it had been dismissed with prejudice. As the trial court properly recognized, she was attempting, through the instant action, to re-litigate her criminal case here and blame the damages she has sustained on others.

Kovach's reliance on *Haring v. Prosise*, 462 U.S. 306, 308 (1983) is misplaced. That decision was based on Virginia law, which, according to the Court, did not give criminal judgments, whether by guilty plea or verdict, preclusive effect in subsequent civil litigation. By contrast, South Carolina *does* give preclusive effect to guilty pleas. *Zurcher, supra* (holding that "so long as a defendant has entered a guilty plea freely and voluntarily, an admission of guilt fully and fairly litigates the matter in the same manner as a contested trial in which a defendant is adjudicated guilty"). The issue of whether Kovach is guilty of the crimes charged has thus been fully and completely litigated. Under South Carolina law, she cannot revisit those issues by suing those who brought her to justice.

IV. The Trial Judge Properly Awarded Sanctions Against Kovach.

Kovach is equally, if not more, responsible with Bloodgood, for the consequences of the frivolous filing. Rule 11, SCRCP; *Runyon, supra*; *Ex parte Bon Secours St. Francis Xavier Hosp., Inc., supra*. Both Kovach's Affidavit and Complaint contain factual allegations that are irreconcilable with material aspects of her sworn testimony at the sentencing hearing and with conduct she has admitted under oath to committing. Kovach pled guilty to a detailed and clear factual predicate to her crimes as set forth by the Attorney General. Thereafter, she perjured herself in an affidavit to the School Board in which she attempted to deny her guilt. When that was unsuccessful, she filed a lawsuit with similar false accusations. The Attorney General then moved for contempt, wherein Kovach reaffirmed her guilt. Despite Kovach's multiple attempts to qualify her guilt, she is responsible for her criminal misconduct and her past actions. Kovach

cannot evade or qualify her guilt and avoid the consequences of the filing of this frivolous lawsuit that directly contradicts her own sworn admissions.

Kovach's argument that she had a "viable claim" under South Carolina law simply begs credulity. First, in South Carolina, a public official cannot maintain such a claim. In *Angus v. Burroughs & Chapin Co.*, 368 S.C. 167, 170, 628 S.E.2d 261, 262 (2006), the Supreme Court instructed that an action for civil conspiracy may not be maintained against a public official because citizens are "not third-party interlopers" and public officials are "answerable to the public." *Id.* Second, having entered a plea of guilty to the corruption, Kovach was estopped from litigating the same issues in a subsequent civil suit. *Zurcher v. Bilton*, 379 S.C. 132, 666 S.E.2d 224 (2008). Third, Whitley's actions are protected by the doctrine of judicial privilege. *See Crowell v. Herring*, 301 S.C. 424, 430, 392 S.E.2d 464, 467 (Ct. App. 1990) ("We hold the absolute privilege exists as to any utterance arising out of the judicial proceeding and having any reasonable relation to it, including preliminary steps leading to judicial action of any official nature..."). Finally, Kovach was judicially estopped from taking a position contrary to that taken during the sentencing hearing. *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997) (holding that the judicial estoppel doctrine "precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation.").

In Mr. Whitley's Amended Motion for Sanctions, he listed Kovach's myriad admissions during her sentencing hearing that were in direct conflict to the allegations made in her Complaint. The allegations in Kovach's grievance Affidavit were *materially the same* - including the allegations of criminal wrongdoing on the part of SLED and the Attorney General's office - as those alleged in the Complaint. Kovach's dismissal of the Complaint, which Kovach admitted to contain allegations that were contrary to the statements made during

the plea, was of primary concern to the Court during the Show Cause hearing. The Show Cause was only dismissed because Kovach represented to the Court that all claims alleged in the Complaint had been dismissed with prejudice (which was false) and Kovach agreed never to file another claim arising out of the same facts. (R. pp. 1150-1151.) The Court's concern was that the Complaint was rife with false allegations, a fact that Kovach still refuses to acknowledge.

Rule 11 is violated where the allegations of the complaint are contradicted by the plaintiff's testimony. *Alexander v. Our Lady of Mercy Med. Ctr.*, 99 Civ. 1076 (HB), 2000 U.S. Dist. LEXIS 2510 (S.D.N.Y. Mar. 7, 2000). And where a plaintiff's attorney knows of testimony and documents that directly contradict information contained in the Complaint, yet fails to verify and explore that evidence, sanctions are appropriate due to the attorney's failure to conduct a reasonable investigation. *Houtakker v. Houtakker (In re Estate of Houtakker)*, 226 Wisc. 2d 562, 596 N.W.2d 501 (Wis. Ct. App. 1999). The Second Circuit Court of Appeals affirmed the imposition of Rule 11 sanctions against a plaintiff's attorney for filing a baseless complaint where the allegations the complaint were contradicted by defendant's admissions during testimony given in a prior deposition. *Levine v FDIC*, 2 F.3d 476, 479 (2d Cir. 1993). *See Feister v. Miller*, 2002-Ohio-7396, P1, 2002 Ohio App. LEXIS 7244, *1 (Ohio Ct. App., Tuscarawas County Dec. 31, 2002) (sanctioning an attorney for filing suit and maintaining a will contest action on behalf of a decedent's caregiver, despite his knowledge that the decedent had removed the caregiver as attorney-in-fact prior to his death due to theft and despite the attorney's knowledge that plaintiff had been indicted and entered a plea of guilty to theft from the decedent).

Sanctions were also properly awarded based on the reasoning in *Heck v. Humphrey*, 512 U.S. 477 (1994). In *Heck*, the Supreme Court held that a plaintiff who had been convicted of a crime could not bring a civil rights claim against those whose alleged unlawfulness would

undermine the validity of the conviction. The United States District Court for the Middle District of Florida applied *Heck* in *Tozier v. City of Temple Terrace*, No. 8:10-cv-2750, 2011 U.S. Dist. LEXIS 101618 (M.D. Fla. 2011) as a basis for an award of sanctions against a plaintiff's attorney. In *Tozier*, the plaintiff was arrested and charged with aggravated battery on a law enforcement officer. He entered a plea of guilty to the lesser charge of assault on a law enforcement officer. He then filed a civil rights suit against the officers involved in his arrest. The court in *Tozier* held that the plaintiff could not maintain such claims because if he prevailed, it would necessarily implicate the validity of the charges for which he had already admitted guilt. The Court noted that allegations in a civil suit that contradict plaintiff's plea of guilty to criminal charges should be rejected. *Id.* at *17 (citing *Ojegba v. Murphy*, 178 F. App'x 888 (11th Cir. 2006)). The Court held that plaintiff's attorney, who had been present when the plea was taken, should have known that the pleading was frivolous and sanctions against the attorney, therefore, were warranted. *Id.* at *18.

Here, Kovach alleges that the Whitleys and others "conspired with each other" to file a complaint with the Attorney General, and took actions to ensure a Resolution was passed by the Berkeley County Republican Party, LLC encouraging the Attorney General to prosecute Kovach. (R. p. 70.) She alleges further that the Whitleys and others "played an active and inappropriate role in SLED's investigation and upon information and belief provided false statements to SLED and the Attorney General." (*Id.*) These allegations, if permitted to proceed, would necessarily undermine the validity of Kovach's guilty plea and conviction. She was properly sanctioned for these specious allegations under Rule 11.

V. The Sanctions Levied Against Kovach Were Reasonable.

As an initial matter, Kovach has failed to preserve her argument concerning the amount of the sanctions imposed against her, as it was first raised in her January 13, 2017 Motion for Reconsideration. *See Johnson v. Sonoco Products Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider."). Ahead of the Court's October 16, 2016 Order, Kovach made no argument concerning the amount of sanctions that should be awarded in the event the Court granted the Whitleys motions, or the method by which such sanctions should be calculated. She has thus waived the issue, and it should not be considered on appeal.

In any event, the sanctions Chief Justice Toal imposed on Kovach were reasonable. In his letter to the trial court segregating fees, counsel for Mr. Whitley expressed his opinion to the trial court that February 10, 2016 was likely the most appropriate demarcation date, as it was the date of final communication with Bloodgood concerning the dismissal of Mr. Whitley with prejudice following the February 8, 2016 hearing wherein Kovach advised the criminal court that the case had been dismissed with prejudice. (R. pp. 1371-1372.) The reduced fees sought based on the segregation were for the period from October 26, 2015 through February 9, 2016. They included 204.10 hours for three attorneys, at $300 per hour, for a total of $61,230.00. Counsel for Karen Whitley submitted his Affidavit in support of attorneys' fees on November 1, 2016, wherein he requested fees in the amount of $89,511.57. (R. pp. 583-598.) In his Supplemental Affidavit, counsel for Karen Whitley reduced his fees to $15,000.00 because the BCSD had agreed to pay part of Karen Whitley's attorneys' fees in connection with Kovach's lawsuit. (R. pp. 1060-1070.) In her Order Denying Motions for Reconsideration, the Court found Karen Whitley was entitled to a total of $15,000 in attorneys' fees, with Kovach responsible for

$13,000 and Bloodgood responsible for $2,000; and that Mr. Whitley was entitled to a total of $50,000 in attorneys' fees, with Kovach responsible for $35,000 and Bloodgood responsible for $15,000.00. (R. pp. 29-32.)

Despite Kovach's representation to Judge Jeffrey Young during the Show Cause hearing on February 8, 2016 that all defendants had been dismissed, with prejudice, with no further conditions, this case is still pending without a final dismissal order. Kovach, through her attorney, wholly ignored a reasonable settlement in November of 2015 regarding dismissal that was offered by counsel for Mr. Whitley. (R. pp. 1367-1368.) Importantly, although Kovach claims in her Initial Brief to have instructed her attorney to dismiss the case in November 2015, she never agreed to a dismissal, with prejudice, before the February 8, 2016 hearing, along with a payment of Whitley's attorneys' fees.

Kovach complains that Respondents' refusal in November of 2015 to sign a stipulation of dismissal without payment of attorney's fees from Kovach's counsel "drove an economic wedge between Kovach and her counsel and manufactured a conflict of interest between them." (Initial Brief, p. 27.) Again, Kovach fails to take responsibility for her actions. Any conflict between Kovach and her attorney was created by Kovach's filing of a frivolous Complaint and refusing to dismiss it with prejudice and pay the Whitleys' attorneys' fees.

In her argument that the fees were excessive, Kovach relies on the Fourth Circuit's opinion in *In re Kunstler*, 914 F.2d 505 (4th Cir. 1990) relating to various factors to be considered by the Court in the assessment of sanctions; however, she fails to cite a South Carolina case that requires such considerations in a Rule 11 award of sanctions. In any event, the application of those factors demonstrates that the sanctions imposed were reasonable. Kovach never agreed to dismissal of her claim against the Whitleys with prejudice and the

payment of their attorneys' fees, and Mr. Whitley properly refused to agree to the dismissal under the circumstances presented here. The amount of the sanctions was in keeping with the minimum amount necessary to deter future similar actions by Kovach and other individuals seeking to file frivolous lawsuits. Kovach's argument relating to her "ability to pay" fails to inform the Court that her financial resources are not limited to her working as a yoga instructor. Finally, Kovach's argument that she has no prior history of filing lawsuits does not militate against the amount of the sanctions awarded. In this case, she sought to malign the character and reputation of a young attorney and his mother through the filing of what she knew would be a very public Complaint. Hence, this factor does nothing to further her argument. Accordingly, even following the factors applied in *Kuntsler*, the sanctions awarded were reasonable.

CONCLUSION

For the foregoing reasons, Respondents, Joshua S. Whitley and Karen Whitley, respectfully request that this Court affirm Chief Justice Toal's February 19, 2018 Order Denying Motions for Reconsideration and Ordering Sanctions.

August 9, 2018
Charleston, South Carolina

Respectfully submitted,

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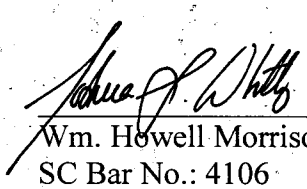

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
In the Court of Common Pleas for the Ninth Circuit

Jean Hoefer Toal, Circuit Court Judge, Presiding, Chief Justice (Ret.)
South Carolina Supreme Court

Appellate Case No.: 2018-000467

Amy S. Kovach, Plaintiff,

v.

Joshua S. Whitley and Karen Whitley, in her Individual Capacity, Respondents,

And

Joshua S. Whitley, Defendant/Counterclaimant,

v.

Amy Kovach, Plaintiff/Counterclaim Defendant,

And

Joshua S. Whitley, Defendant/Third-Party Plaintiff,

v.

Rodney Thompson, Third-Party Defendant,

Of whom Amy Kovach is the Appellant.

PROOF OF SERVICE

I certify that I have served Respondents' Joint Brief on the above-referenced Appellant by depositing a copy of it in the United States Mail, postage prepaid, on August 9, 2018, addressed to the following parties and their attorneys of record:

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