

93440

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

OCT 21 2020

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

SC Court of Appeals

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,

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

v.

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

Petition For Partial Rehearing and Suggestion For Rehearing *En Banc* of
Appellants /Respondents Robert Bryan Harwell individually and as Personal
Representative of the Estate of David W. Harwell

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

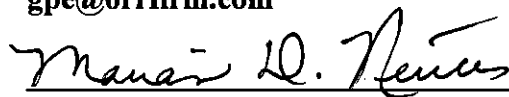
Attorneys for R. Bryan Harwell, Individually
and as Personal Representative of the Estate of
David W. Harwell

PETITION FOR PARTIAL REHEARING AND
AND SUGGESTION FOR REHEARING *EN BANC*

Respondent /Appellant Robert Bryan Harwell individually and as Personal Representative of the Estate of David W. Harwell by and through their undersigned counsel, file the following Petition for Partial Rehearing and Suggestion for Rehearing *en Banc* only with respect to the Court's reversal of the imposition of sanctions upon Attorney Edmonds (Section I. B of the Court's Unpublished Opinion No. 2020-UP-103 ("Opinion") filed October 7, 2020) and the revision of the section entitled "Harwell Appeal" in the opinion which deleted the word "tactless." Petitioners/Appellant do not seek rehearing of the Court's affirmance of the sanctions, as discussed in Section I. A with the heading "Harwell's Appeal" of the Opinion. Respondent/ Appellant's argument in support of a rehearing *En Banc* is set forth in Argument E on page 13 herein. Several points have been overlooked or misapprehended by the Court. (See Rule 221 (a))

Kevin M. Barth #559
BARTH BALLENGER & 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

Petition for Rehearing <i>En banc</i>	i
Table of Contents	ii
Table of Authorities	iii
Procedural History	1
Standard of Review	4
Comparison of the two opinions	4
Argument	7
A. The record does not support the finding of a good faith basis to file or continue the Obituary Claim.	7
B. The Court of Appeals erred in its finding of fact that Edmonds withdrew the Obituary Claim after further involvement in the case.	10
C. The Court of Appeals did not follow an abuse of discretion standard of review.	11
D. The Court of Appeals should reinstate its initial ruling under the heading “B Harwell Appeal” contained in original opinion 2020-UP-103 filed April 8, 2020.	12
E. Petitioners suggest that this case would be appropriate for a rehearing <i>En Banc</i>	13
Conclusion	14

TABLES OF AUTHORITIES

CASES:

Ex Parte Bon Secours St. Francis Xavier Hospital 393 SC 590, 713 SE 2d 624 (2011). 7,8

Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC 394 SC 97, 713 S E 2d 650 (Ct. App. 2011). 4,11

STATUTES:

South Carolina Rules of Civil Procedure, Rule 11. 1,2,4,6,7,10

South Carolina Code of Laws §15-30-10 (1976, as amended). . . .1,2,4,6,9,10

OTHERS

South Carolina Appellate Court Rules, Rule 219. 13

Procedural History

Decedent, David W. Harwell, and Widow Deborah B. Harwell were married on November 21, 2001. (R. P. 142) 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 of the parties 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 its 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, 2015, 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. 109-178) After the denial of these two claims by the Personal Representative, Widow filed formal Probate Court Petitions on March 9, 2016 through counsel, Deirdre N. Edmonds, to allow both claims. (R. p 147-157) Widow acting *Pro Se* filed a third Petition against the estate seeking an elective share on May 25, 2016. (R. P. 276-278)

The Personal Representative filed Answers and Counterclaims seeking dismissal of Widow's petitions and sanctions against Widow and Edmonds 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) (R. P. 276-278) Widow filed a *Pro Se* motion in the Family Court seeking to set aside the Final Decree on May 26, 2016. (R p. 542)

On June 10, 2016, the Probate Court issued its order removing the Probate Petitions to the Circuit Court. (R. P. 7-9) The Widow, through new counsel Desa Ballard, filed stipulations on August 31, 2016, 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 for an adjudication that she was the surviving spouse for purposes of amendment of the Death Certificate. (R. P. 353-363) The Circuit Court convened a hearing on the Personal Representative's counterclaims for sanctions on July 21, 2016. (R. P.65) The Court issued its order filed April 12, 2017 imposing sanctions, against both the Widow and Edmonds (R. P. 58-74). The Circuit Court ruled that the creditor's claims filed 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 against the Widow in the amount of \$40,000 subject to a setoff of up to \$25,000 for any monies paid by Widow in a separate Family Court Contempt order. (R. P. 74) The Court awarded sanctions against the Edmonds parties in the amount of \$5000.00 based upon her filing and pursuing the Obituary Claim. (R. P.72)

The Widow, the Edmonds parties and the Personal Representative individually and as Personal Representative 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. (Unpublished opinion no. 2020-up-103) (Exhibit A) The Widow and the Edmonds parties filed Petitions for Rehearing *En Banc* on April 23, 2020. Robert Bryan Harwell individually and as Personal Representative of the Estate of David W. Harwell declined at that time to seek rehearing of the April 8, 2020, decision of the Court of Appeals stating that while he believed that the Widow and Edmonds should have been sanctioned more harshly he accepted the decision. He hoped for an end to what the Circuit Court previously referred to “as this useless litigation” (R. P. 77). On October 7, 2020 the Court of Appeals withdrew the initial opinion filed April 8, 2020, and substituted it with a new opinion on October 7, 2020. (Unpublished opinion number 2020-up-103) (Exhibit B) The new opinion reaffirmed the sanctions against the Widow but reversed the token award of sanctions against the Edmonds parties altogether. In the second opinion, the Court of Appeals found that the Circuit Court had abused its discretion in sanctioning the Edmonds parties.

Standard of Review

As indicated by the Court of Appeals in both opinions issued herein, 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 of 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.*

Comparison of the two Appellate Opinions

The Court of Appeals correctly affirmed the decision of the Circuit Court when it sanctioned Edmonds, in its April 8, 2020, opinion (Exhibit A) the Court of Appeals stated:

- (1) Based upon our review of the record, we agree with the circuit court's findings of fact. Thus, we review the court's imposition of sanctions for an abuse of discretion and address the parties' various contentions in turn. *See Se. Site Prep*, 394 S.C. at 104, 713 S.E.2d at 654 (providing that when the appellate court agrees with circuit court's findings of fact, it reviews the circuit court's imposition of sanctions under an abuse of discretion standard). (Exhibit A p.4)
- (2) Edmonds argues the circuit court erred in issuing sanctions against her pursuant to Rule 11 and the Act for filing the petition for allowance of Widow's Obituary Claim against the estate...WE DISAGREE (Emphasis added) (Exhibit A p.3)

Below are other direct quotations from the first opinion:

- (3) The Mediation Agreement entered into between the parties and incorporated into the Separation Decree contained the following provision: “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 shall be bound by the term of this agreement.” (emphases added). Following Decedent’s death, the estate published an obituary. Displeased with this obituary because it failed to name her as Decedent’s surviving spouse, Widow, without authorization from the estate, published two more obituaries, which named her a Decedent’s widow. Widow thereafter filed a pro se creditor’s claim against the estate seeking reimbursement in the amount of \$1,457.25 for the publication costs of the obituaries. Harwell, as personal representative of the estate, served a notice of disallowance of the claim pursuant to section 62-3-803(a). After receiving Harwell’s notice of disallowance, Widow retained Edmonds as counsel. Edmonds subsequently filed a petition for allowance of Widow’s Obituary Claim in the probate court. (Exhibit A p.4)
- (4) We further find the circuit court DID NOT ABUSE ITS DISCRETION IN IMPOSING SANCTIONS AGAINST EDMONDS FOR FILING A PETITION OF ALLOWANCE FOR WIDOW’S OBITUARY CLAIMS. (Emphasis Added) In the Mediation Agreement, 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 the estate. Therefore, we find Widow’s filing of a creditor’s claim against the estate for reimbursement was unreasonable and frivolous. Accordingly, we hold Edmond’s filing of the petition for allowance of the Obituary Claim was equally frivolous as Widow had no reasonable expectation that the estate would reimburse her for the additional, unauthorized obituaries. See § 15-36-10 (B) (2) (providing a court may upon its own motion or motion of a party impose sanctions against an attorney for violation of subsection (A) (4)); § 15-36-10(A) (4) (a) (iii) (providing that an attorney may be sanctioned for filing a frivolous pleading, motion, or document if “a reasonable attorney presented with

the same circumstances would believe that the procurement, initiation, *continuation*, or defense of civil cause was intended merely to harass or injure the other party” (emphasis added)); Rule 11(a), SCRCF (providing that a court may impose sanctions on a party or a party’s attorney for filing a frivolous pleading, motion, or other paper); *Ex parte Bon Secours-St. Francis Xavier Hosp.*, 393 S.C. at 598, 713 S.E.2d at 628 (“While Rule 11 is evaluated by a subjective standard, the rule still may be violated with a filing that is so patently without merit that no reasonable attorney could have a good faith belief in its propriety.” (Footnote omitted)). Thus, we hold the circuit court properly sanctioned Edmonds for this claim. (Exhibit A p.4)

Finally, the Court stated that:

Based on the foregoing, we hold the circuit did not abuse its discretion in imposing a sanction against Edmonds for filing the Obituary Claim. See *Se. Site Prep*, 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 conclusion.”) (Exhibit A p. 5)

In the second opinion filed by Court of Appeals on October 7, 2020 (Exhibit B) the Court again indicated that based upon their review of the record, that it agreed with the Circuit Court’s findings of fact, and therefore indicated that the case would be reviewed for an abuse of discretion. The Court then, in a 180 degree turn, reversed the award of sanctions against Edmonds and withdrew its own prior opinion which specifically found that in view of the Final Decree approving Mediation Agreement the filing of the obituary claim was unreasonable and frivolous and therefore, Edmonds’ filing of the petition for allowance of the Obituary Claim was equally frivolous. In support of the first ruling the Court cited *S.C. Code of Laws* §15-36-10 (B)(2) and §15-36-10 (A) (4) (a) (iii) which provides for sanctions when “a reasonable attorney presented with the same circumstances would believe that the

procurement, initiation, *continuation* or defense of a civil cause was intended to merely harass or injure the other party” The Court also cited *Ex Parte Bon Secours-St. Fancies Xavier Hospital* 393 SC 590 713 SE 2d 624 (2011) which holds that Rule 11 may be violated by a filing that is so patently without merit that no reasonable attorney could have a good faith belief in its propriety.

**A. THE RECORD DOES NOT SUPPORT THE FINDING
OF A GOOD FAITH BASIS TO FILE OR CONTINUE
THE OBITUARY CLAIM**

The Court of Appeals justified its reversal of the sanctions award upon two grounds:

In its second opinion the Court of Appeals stated:

(1) “ The record is devoid of evidence showing Edmonds filed the petition for any other reason than to preserve Widow’s claim for Judicial review.” (Opinion filed October 7, 2020 (Exhibit B p. 6)

(2) “Moreover, after further involvement in the case, Edmonds filed a stipulation of dismissal, voluntarily dismissing the Obituary claim.” (Opinion filed October 7, 2020 Exhibit B p. 6)

With regard to the first point, the motive of Edmonds in filing the petition for allowance of the Obituary Claim, *Rule 11 (a) South Carolina Rules of Civil Procedure* provides in pertinent part:

The written or electronic signature of an attorney or party 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.

There is no requirement in the rule that the filing be made with a bad motive. The standard is that there must be a good faith belief that there is a good ground to support the claim. While the Rule allows that a party MAY ALSO be sanctioned for filing a pleading, motion, or other paper in bad faith WHETHER OR NOT THERE IS GOOD GROUND TO SUPPORT IT, bad faith or bad motive is not required.

The Court in *Ex Parte Bon Secours St. Francis Xavier Hospital Inc.* 393 SC 590, 713 SE 2d 624 (2011) stated, “While Rule 11 is evaluated by a subjective standard, the rule still may be violated with a filing that is so patently without merit that no reasonable attorney could have a good faith belief in its propriety.” In its first opinion filed April 8, 2020, the Court specifically cited this case in support of its finding that the Circuit Court had properly sanctioned Edmonds. (Exhibit A p. 4). That is exactly how the Circuit Court evaluated this claim in the first place. The Circuit Court stated in its Order filed January 4, 2018:

Next I will consider the issues raised by Third party Defendant Deidre E. Edmonds in her Rule 59 (e) Motion for Reconsideration.

1. She raises the issue that the claim for reimbursement for the obituary was not a frivolous claim. This court made that finding based on the fact that Ms. Harwell had waived any and all claims, including future claims that she might have had against David Harwell or his estate. Her decision to run and (sic) alternate obituary was made by her with full knowledge of this waiver of past, current and future claims. When she ran the Obituary she was in no position to bind the estate or to contract on it's behalf. I see no reason to amend my ruling that the claim should not have been made and was without legal basis. I am not aware of any case or statute that allows a family member or an in-law to take independent action that creates a legally binding obligation on the part of an estate unless that person has been given the legal authority to do so. I know of no such authority in this case. (R. P. 78)

The South Carolina Frivolous Civil Proceedings Act South Carolina Code of Laws (1976, as amended) §15-36-10 (A) (4) (a) (iii) South Carolina Code of Laws (1976, as amended) provides:

- (ii) A reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

It also provides that sanction may be imposed when:

- (iv) A reasonable attorney presented with the same circumstances would believe that pleading, motion, or document is frivolous, interposed for merely delay, or brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

These conditions are set forth as alternate scenarios in a given case. The Circuit Court specifically found as set forth hereinabove that the Obituary was in fact frivolous. (R. p 78)

Under the reasonable attorney standard, it cannot be argued that an attorney would have a good faith basis to pursue the obituary claim in this case. There is abundant evidence in the record to support the finding of sanctions herein. Edmonds advanced the Obituary claim by the filing of a Petition to allow the claim. (R. P. 148) A reasonable attorney would not have advanced this claim in view of the direct prohibition in the Decree of Separate Support and Maintenance. 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 her private practice of nearly twenty-eight years and as a Probate judge, for twelve of those years, to read Family Court Orders. She agreed that she was “comfortable” reading such orders and understanding them. (R. P. 396-397) Edmonds filed her Petition to allow claims after having read the relevant order that barred such claims. 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)

As the Court of Appeals originally ruled, the record does contain the factual basis for the imposition of sanctions herein.

**B. THE COURT OF APPEALS ERRED IN ITS FINDING
OF FACT THAT EDMONDS WITHDREW THE OBITUARY
CLAIM AFTER FURTHER INVOLVEMENT IN THE CASE**

As to the second ground for reversal of the sanctions against the Edmonds parties, the Court found that “Moreover, after further involvement in the case, Edmonds filed a stipulation of dismissal, voluntarily dismissing the Obituary Claim. (Exhibit B p. 6) Based upon this, the Court stated, “accordingly, we find Edmonds’ intent in filing the petition was not malicious or for any improper purpose.” (Exhibit B p.6) **This is not correct.** Edmonds NEVER filed for a dismissal of any of the claims or petitions. (R. P. 353- p.363) Edmonds filed her petitions to allow creditor claims (including the Obituary Claim at issue herein) on March 9, 2016. (R. p 550) (R p.150-151). She also filed a claim for \$3.1 million dollars against the estate on behalf of the Widow on March 1, 2016 Petition for adjudication as surviving spouse. A hearing was convened on the Personal Representative Respondent/Appellants’ request for sanctions against Widow and Edmonds under Rule 11

and the *South Carolina Frivolous Proceedings Act* on July 21, 2016. (R.P. 65) The day prior to that hearing, Widow hired Desa Ballard to represent her. (R.p.65) At that hearing, Ms. Ballard requested additional time to familiarize herself with the case and to attempt to resolve some of the matters before the Court. An order substituting her as counsel was filed on August 31, 2016. (R. P 65) On that same day, new counsel Ms. Ballard filed the Partial Stipulation of Dismissal Pursuant to Rule 41 (a) (1) *SCRCP* (R.p.355). Furthermore, on October 19, 2016, Stipulations were filed which detailed the conclusion of these petitions and claims. (R. P. 357-363) It is informative to note that in a matter of weeks after Ms. Ballard assumed representation of Widow, these claims were dismissed. Again, Edmonds had no part in the dismissal of these claims. In fact, Edmonds was represented by her own counsel at this point. To the extent the Court of Appeals gives Edmonds credit for seeing the error of her ways and taking corrective action, this did not happen. **To the contrary, Edmonds continued throughout this appeal to assert the propriety of the Obituary Claim!** In her corrected Final Brief of Appellants/Respondents Law Office of Deidre W. Edmonds PA and Deidre W. Edmonds individually she argues “it is not uncommon for estates to bear the expense of publishing an Obituary”. (Brief p. 11) The difference in this case is that she waived that right in the Agreement which was incorporated in the Final Decree in the Family Court litigation. (R. p. 177 paragraph 12)

C. THE COURT OF APPEALS DID NOT FOLLOW AN ABUSE OF DISCRETION STANDARD OF REVIEW

Both the April 20, 2020, Opinion (Exhibit A p.3) and the October 7, 2020 Opinion (Exhibit B p.3) indicated that the Court of Appeals agreed with the factual findings of the Trial Court herein and would be reviewing the case under an abuse of discretion standard,

wherein the imposition of sanctions would not be reversed unless the decision is controlled by an error of law or is based upon unsupported factual conclusions. Citing *Se. Site Prep*. The factual basis for the imposition of sanctions was set forth in the Trial Court's order filed October 2, 2017. (R. p. 78 paragraph B). The Court of Appeals agreed with the Trial Court's assessment. (Exhibit A p. 4). In the second Opinion, the court indicated that the record was devoid of evidence of bad motive on the part of Edmonds. (Exhibit B p. 6) It justifies this argument by its finding as a fact that "after further involvement in the case" Edmonds withdrew the claim. As detailed in Argument B hereinabove, the Court is mistaken in this finding of fact. (R. P. 65) (R. p. 353-363).

It would appear that in the second Opinion the Court of Appeals made a *De Novo* finding of fact which finds no basis in the record. For these reasons Respondent/Appellants would respectfully request that the imposition of sanctions be reinstated.

**D. THE COURT SHOULD REINSTATE ITS INITIAL RULING
UNDER THE HEADING "B. HARWELLS APPEAL"
CONTAINED IN ITS ORIGINAL OPINION FILED APRIL 8, 2020**

The Petitions for Rehearing filed by Edmonds and Widow both indicate that they are not seeking rehearing of the Court's affirmance of the denial of certain sanctions as discussed in Section I B (with the heading "Harwell's Appeal"). Harwell himself did not petition for a rehearing of the denial of certain sanctions stating "although the Personal Representative believes Edmonds should have been sanctioned more harshly, he respects the Court's ruling, and submits that there were no points overlooked." (Return to Petition for Partial Rehearing mailed May 14, 2020 and received by the Court May 15, 2020 p.5) Harwell was satisfied with the description of Edmonds' conduct in accusing him of committing a felony in his

application for the death certificate as “tactless”. The Circuit Court found these allegations to be false and without justification (R p. 71, R. P. 136-137)

The Court of Appeals in its original Opinion (Exhibit A p.5) concluded “... we acknowledge Edmonds made tactless assertions in filing that were unnecessary to obtain the relief sought...”. The Second Opinion herein, filed October 7, 2020, deleted the word “tactless”. Harwell was satisfied with the relatively mild description of Edmonds’ conduct as “tactless”. No monetary sanctions were associated with Edmonds’ false allegations of Harwell’s having committed a felony. Harwell accepts this. However, he respectfully requests that the word “tactless” be reinserted into the opinion as a small recognition of the nature of Edmonds’ conduct. Procedurally, neither Harwell, nor any party including Edmonds requested a Petition for Rehearing on Harwell’s appeal, yet the opinion was modified without request by any party.

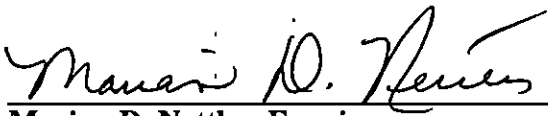
**E. THE SUGGESTION FOR A REHEARING
EN BANC SHOULD BE GRANTED**

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 two decisions by the Court of Appeals. In the first decision, the Court of Appeals granted sanctions against the Edmonds parties, applying an abuse discretion standard of review and adopting the findings of fact made by the Circuit Court. In the second opinion it again indicates that it reviewed the case utilizing an abuse of discretion standard. However it makes a *De novo* factual finding which is inaccurate.

That erroneous factual finding played an integral part in the reversal of the award of sanctions against Edmonds. (See Argument B hereinabove) The second opinion sanitizes Edmonds' sanctionable conduct by overlooking or misapprehending the correct standard of review, as well as finding facts that are nonexistent in the record.(See Argument B hereinabove)

Conclusion

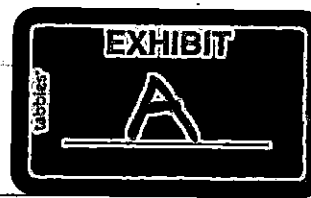
For the reasons set forth herein, Robert Bryan Harwell individually, and as Personal Representative of the Estate of David W. Harwell, requests that this Petition for Partial Rehearing herein be granted, and that this matter be heard *En Banc*.


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 BALLENGER & 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**



KeyCite Red Flag - Severe Negative Treatment

Opinion Withdrawn and Superseded by 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, v. Law Office of Deidre W. Edmonds, P.A. and Deidre W. Edmonds, Individually, Appellants/Respondents., S.C.App., October 7, 2020

2020 WL 1722496

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

**THIS OPINION HAS NO PRECEDENTIAL
VALUE. IT SHOULD NOT BE CITED
OR RELIED ON AS PRECEDENT
IN ANY PROCEEDING EXCEPT AS
PROVIDED BY RULE 268(d)(2), SCACR.
Court of Appeals of South Carolina.**

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. Edmonds,
P.A. and Deidre W. Edmonds,
Individually, Appellants/Respondents.

Appellate Case No. 2017-002290

|

Unpublished Opinion No. 2020-UP-103

|

Submitted December 2, 2019

|

Filed April 8, 2020

Appeal From Florence County, Roger L. Couch, Circuit Court
Judge

Attorneys and Law Firms

M. Dawes Cooke, Jr. and Barbara J. Wagner, both of Barnwell
Whaley Patterson & Helms, LLC, of Charleston, for Deidre
W. Edmonds, Individually, and the Law Office of Deidre W.
Edmonds, P.A.

Kevin Mitchell Barth, of Barth, Balleuger & Lewis, LLP,
and Gena Phillips Ervin, of Orr & Ervin LLC, both of
Florence, for Robert Bryan Harwell, Individually and as
Personal Representative of the Estate of David W. Harwell.

Deborah B. Harwell, pro se, of Mobresville, North Carolina.

John Harleston, of Columbia, for South Carolina Department
of Health and Environmental Control, Division of Vital
Records.

Opinion

PER CURIAM:

*1 In this cross-appeal from the circuit court, the Law
Office of Deidre Edmonds, P.A. and Deidre Edmonds
individually (collectively, Edmonds) appeal the circuit court's
orders issuing sanctions against her amounting to \$5,000.
Robert B. Harwell (Harwell), individually and as the personal
representative for the estate of David W. Harwell (Decedent),
also appeals the circuit court's orders, seeking additional
sanctions against Edmonds for her representation of Deborah
B. Harwell (Widow), the estranged wife of Decedent.
Widow additionally appeals the aforementioned circuit court
orders.¹ We affirm.

FACTS/PROCEDURAL HISTORY

Decedent and Widow were married on November 21, 2001,
having previously entered into a prenuptial agreement on
November 19, 2001. In March 2015, Decedent filed a
family court action seeking a decree of separate support and
maintenance that enforced the parties' prenuptial agreement.
After successful mediation efforts, the parties entered into
a mediation agreement (the Mediation Agreement), which
the family court adopted and incorporated into its final order
(the Separation Decree) issued on July 21, 2015. Shortly
thereafter, Decedent passed away on September 30, 2015.

On January 14, 2016, Widow filed a pro se action in the probate court in which she brought two creditor's claims against Decedent's estate, seeking (1) an elective share in the amount of \$3.1 million pursuant to the prenuptial agreement (the Prenuptial Claim) and (2) reimbursement in the amount of \$1,457.25 for obituary publication costs (the Obituary Claim) associated with two obituaries she filed for Decedent. Harwell, as personal representative of the estate, served a notice disallowing Widow's claims against the estate and subsequently initiated contempt proceedings in the family court, alleging Widow violated the Mediation Agreement.²

On March 1, 2016, Edmonds assumed representation of Widow for the pending matters in the probate court. On March 9, 2016, Edmonds filed a petition in the probate court seeking an adjudication of Widow as Decedent's surviving spouse and an amendment to Decedent's death certificate, which would list Widow as Decedent's surviving spouse.³ Edmonds additionally filed petitions for allowance of Widow's previous creditor's claims against the estate. On April 1, 2016, Harwell filed answers and counterclaims, seeking dismissal of Widow's petitions and sanctions against Widow and Edmonds pursuant to Rule 11, SCRCP, and the South Carolina Frivolous Civil Proceedings Sanctions Act (the Act).⁴ On May 26, 2016, Widow filed another pro se probate petition seeking to collect her elective share from Decedent's estate.⁵

*2 By order dated June 10, 2016, the probate court removed the pending probate petitions to the circuit court. On August 31, 2016, Widow filed a partial stipulation of dismissal, voluntarily dismissing all of her petitions against the estate except for her petition for adjudication as the surviving spouse and amendment of Decedent's death certificate. By order dated October 21, 2016, the circuit court adopted Widow's stipulations and dismissed the aforementioned petitions. Additionally, the court dismissed Widow's remaining petition against the estate as moot, stating "DHEC has now already amended the death certificate to reflect [Widow] as the surviving spouse for vital records purposes with Bryan Harwell's consent."

On February 2, 2017, the circuit court held a hearing on Harwell's remaining action for sanctions against Widow and Edmonds. On April 12, 2017, the circuit court issued an order (Final Order) imposing sanctions against Widow and Edmonds. Specifically, the circuit court found the pro se creditor's claims filed by Widow against the estate

were frivolous and without merit and consequently imposed sanctions pursuant to Rule 11 and the Act in the amount of \$40,000. The circuit court further provided Widow's sanctions would be reduced by "any sums which she may have already paid pursuant to the [f]amily [c]ourt award of \$25,000.00 in attorney's fees as provided in the [c]ontempt [o]rder." As to Edmonds, the circuit court imposed sanctions pursuant to Rule 11 and the Act in the amount of \$5,000. Specifically, the court found Edmonds's filing of the Obituary Claim was frivolous and without merit. Regarding Widow's petition for declaration as the surviving spouse and amendment of the death certificate, the circuit court found the relief sought was justified and the actions taken by Edmonds were necessary to obtain such relief. The court further found Edmonds's filing of the Prenuptial Claim, based upon the information provided to her by Widow, was reasonable and therefore not frivolous.

All parties filed motions to reconsider pursuant to Rule 59(e), SCRCP, and the circuit court held a hearing on the motions on July 19, 2017. By order dated September 27, 2017, the circuit court denied the parties' motions to reconsider. This appeal followed.

STANDARD OF REVIEW

The determination of whether a court should impose sanctions pursuant to Rule 11, SCRCP, or the Act is a matter of equity. *Se. Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC*, 394 S.C. 97, 104, 713 S.E.2d 650, 653 (Ct. App. 2011). "In an action in equity tried by the judge alone, the appellate court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence." *Id.* However, when the appellate court agrees with the circuit court's findings of fact, it reviews the circuit court's imposition of sanctions under an abuse of discretion standard. *Id.*; *see also Ex parte Gregory*, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008). "Under the abuse of discretion standard, the imposition of sanctions will not be disturbed on appeal unless the decision is controlled by an error of law or is based on unsupported factual conclusions." *Se. Site Prep*, 394 S.C. at 104, 713 S.E.2d at 654.

LAW/ANALYSIS

I. Sanctions

Rule 11(a), SCRCP, provides:

The written or electronic signature of an attorney or party 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.

Pursuant to Rule 11, a court may impose sanctions on a party or a party's attorney for filing a frivolous pleading, motion, or other paper. *Id.*; see also *Ex parte Gregory*, 378 S.C. at 437, 663 S.E.2d at 50. "The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it." *Ex parte Gregory*, 378 S.C. at 437, 663 S.E.2d at 50. "The sanction may include an order to pay the reasonable costs and attorney fees incurred by the party or parties defending against the frivolous action or action brought in bad faith" *Id.* at 437-38, 663 S.E.2d at 50. "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.* at 438, 663 S.E.2d at 50. "While Rule 11 is evaluated by a subjective standard, the rule still may be violated with a filing that is so patently without merit that no reasonable attorney could have a good faith belief in its propriety." *Ex parte Bon Secours-St. Francis Xavier Hosp., Inc.*, 393 S.C. 590, 598, 713 S.E.2d 624, 628 (2011) (footnote omitted).

*3 Additionally, "[t]he South Carolina Frivolous Civil Proceedings Sanction[s] Act provides for liability for attorney fees and costs of frivolous suits." *Ex parte Gregory*, 378 S.C. at 438, 663 S.E.2d at 50. Subsection 15-36-10(A)(4)(a) of the South Carolina Code 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 if: ... a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense

was clearly not warranted under existing law ... a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or ... a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

Subsection 15-36-10(A)(4)(b) further provides an attorney or pro se litigant may be sanctioned for "making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts." Pursuant to subsection 15-36-10(B)(2), if "an attorney or pro se litigant has violated subsection (A)(4), the court, upon its own motion or motion of a party, may impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstances."

Based upon our review of the record, we agree with the circuit court's findings of fact. Thus, we review the court's imposition of sanctions for an abuse of discretion and address the parties' various contentions in turn. *See Se. Site Prep*, 394 S.C. at 104, 713 S.E.2d at 654 (providing that when the appellate court agrees with the circuit court's findings of fact, it reviews the circuit court's imposition of sanctions under an abuse of discretion standard).

A. Edmonds's Appeal

Edmonds argues the circuit court erred in issuing sanctions against her pursuant to Rule 11 and the Act for filing the petition for allowance of Widow's Obituary Claim against the estate. Specifically, Edmonds contends the court improvidently issued the sanctions because (1) a determination on the merits of the Obituary Claim was never made as required under the Act and (2) Harwell failed to present evidence establishing the Obituary Claim was frivolously asserted. Edmonds further asserts the sanction imposed was excessive. We disagree.

The Mediation Agreement entered into between the parties and incorporated into the Separation Decree contained the following provision: "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 shall be bound by the terms of this agreement." (emphases added).

Following Decedent's death, the estate published an obituary. Displeased with this obituary because it failed to name her as Decedent's surviving spouse, Widow, without authorization from the estate, published two more obituaries, which named her as Decedent's widow.⁶ Widow thereafter filed a pro se creditor's claim against the estate seeking reimbursement in the amount of \$1,457.25 for the publication costs of the obituaries. Harwell, as personal representative of the estate, served a notice of disallowance of the claim pursuant to section 62-3-806(a).⁷ After receiving Harwell's notice of disallowance, Widow retained Edmonds as counsel. Edmonds subsequently filed a petition for allowance of Widow's Obituary Claim in the probate court.

*4 We find Edmonds's initial contention that the circuit court erred in imposing sanctions against her because a merits determination was never made on the Obituary Claim as allegedly required under the Act unpersuasive. Although subsection 15-36-10(C)(1) delineates at what procedural stage a court will determine if a claim or defense is considered frivolous upon a motion of the prevailing party, we find this subsection does not prescribe a court's sole method for imposing sanctions for filing or advancing frivolous claims. Subsection (B)(2) provides a court may "upon its own motion or motion of a party" impose sanctions upon an attorney or pro se litigant for violations of subsection (A)(4). Furthermore, the circuit court additionally found sanctions were warranted pursuant to Rule 11, which contains no such procedural prerequisites. *See* Rule 11(a), SCRCP ("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").

We further find the circuit court did not abuse its discretion in imposing sanctions against Edmonds for filing a petition for allowance for Widow's Obituary Claim. In the Mediation Agreement, 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 the estate. Therefore, we find Widow's filing of a creditor's claim against the estate for reimbursement was unreasonable and frivolous. Accordingly, we hold Edmonds's filing of the petition for allowance of the Obituary Claim was equally frivolous as Widow had no reasonable expectation that the estate would reimburse her for the additional, unauthorized obituaries. *See* § 15-36-10(B)(2) (providing a court may upon its own motion or motion of a party impose sanctions against an attorney for violations of subsection (A)(4)); § 15-36-10(A)(4)(a)(iii) (providing that an attorney may be sanctioned for filing a frivolous pleading, motion, or document if "a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party" (emphasis added)); Rule 11(a), SCRCP (providing that a court may impose sanctions on a party or a party's attorney for filing a frivolous pleading, motion, or other paper); *Ex parte Bon Secours-St. Francis Xavier Hosp.*, 393 S.C. at 598, 713 S.E.2d at 628 ("While Rule 11 is evaluated by a subjective standard, the rule still may be violated with a filing that is so patently without merit that no reasonable attorney could have a good faith belief in its propriety." (footnote omitted)). Thus, we hold the circuit court properly sanctioned Edmonds for this claim.

Moreover, we find the circuit court's sanction of \$5,000 against Edmonds was not excessive. Pursuant to subsection 15-36-10(B)(2), if "an attorney or pro se litigant has violated subsection (A)(4), the court, upon its own motion or motion of a party, may impose upon the person in violation *any sanction which the court considers just, equitable, and proper under the circumstances*." § 15-36-10(B)(2) (emphasis added). Likewise, under Rule 11(a), a court has wide discretion to impose "an appropriate sanction" for violations of the rule. Although Edmonds contends the sanction is disproportionate to the amount of the claim and is therefore excessive, we find nothing in Rule 11 or the Act confines the court to such a measure; rather, the court has wide discretion to fashion a sanction it deems appropriate given the underlying circumstances. In its order denying the parties' motions for reconsideration, the circuit court explained it arrived at \$5,000 by calculating twenty hours of legal work at a rate of \$250 per hour. Considering the length of the litigation and number of motions filed, we find the circuit court did not abuse its discretion in determining the amount of the sanction.

*5 Based on the foregoing, we hold the circuit court did not abuse its discretion in imposing a sanction against Edmonds for filing the Obituary Claim. *See Se. Site Prep*, 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 conclusions.”).

B. Harwell's Appeal

Harwell argues the circuit court erred in failing to sanction Edmonds for (1) asserting he committed a felony in her filing of the claim seeking a declaration of Widow as Decedent's surviving spouse and amendment of Decedent's death certificate and (2) filing the petition for allowance of the Prenuptial Claim, which the Mediation Agreement barred. Harwell additionally contends the circuit court erred in offsetting the sanctions issued against Widow with prior contempt sanctions issued against her by the family court. We disagree.

Prior to Widow's claim seeking adjudication as Decedent's surviving spouse and amendment of Decedent's death certificate, Decedent's death certificate indicated his marital status as “married but separated” and stated “NA” in the surviving spouse designation, which prevented Widow from receiving his retirement benefits from the General Assembly as provided in the Mediation Agreement as well as prevented her from receiving other death benefits. When Widow attempted to amend the death certificate with DHEC, it informed her that only Harwell could request a correction to the certificate as he was the prior informant and if he was unwilling to do so, a court order would be required. On March 9, 2016, Edmonds filed a petition in the probate court seeking an adjudication of Widow as Decedent's surviving spouse and an amendment to Decedent's death certificate, which would list Widow as Decedent's surviving spouse. In her filing, Edmonds asserted Harwell willfully and knowingly supplied false information to DHEC in violation of section 44-63-161(A)(2), which was a felony under section 44-63-161(B).⁸

In its Final Order, the circuit court found sanctions were not warranted regarding Widow's claim, stating:

I find that the relief sought in that action was justified and that the action was necessary. While it is clear that

some of the allegations contained in that petition concerning the alleged actions of the personal representati[ve] were false and ultimately found to be without justification, it is my finding that these allegations were the result of what appears to be an almost paranoid belief on the part of the parties to these actions concerning the evaluation of the motives of the other side. ... This is an equitable matter and I must consider th[e] possibility that [] Harwell could have taken steps to resolve the problem early in the life of this [d]eath [c]ertificate issue to resolve the matter, ... but instead used this issue as a bargaining chip to seek withdrawal of the other unrelated claims. At any rate, the claim was necessary since the [d]eath [c]ertificate was incorrect in the manner in which it did not reflect the existence of a surviving spouse. It is my finding that Ms. Edm[on]ds[s] preparation of this pleading was based on information provided to her by DHEC and [Widow]. While some of her allegation[s] were not later proven to be true and perhaps overzealous when made, it did result in obtaining the relief her client needed in that situation.

*6 We agree with the circuit court's assessment of the situation at hand. Although we acknowledge Edmonds made tactless assertions in the filing that were unnecessary to obtain the relief sought, we find the circuit court properly found *the overall purpose* of the claim was not frivolous, and therefore, sanctions were not warranted pursuant to Rule 11 and the Act for “continuing” the claim. *See* § 15-36-10(A)(4)(a)(iii) (providing that an attorney may be sanctioned for filing a frivolous pleading, motion, or document if “a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, *continuation*, or defense of a civil cause was intended merely to harass or injure the other party” (emphasis added)); *Se. Site Prep*, 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 conclusions.”).

As to Harwell's contention that the circuit court erred in failing to sanction Edmonds for filing the petition for allowance of the Prenuptial Claim, we agree with the court's assessment that sanctions were not warranted. Prior to assuming representation of Widow, Edmonds met with Widow to discuss the notice of disallowance she received from the estate and other potential claims she might have. During this meeting, Widow informed Edmonds that she believed Decedent withheld information regarding the extent of his assets when they entered the Mediation Agreement and she intended to challenge the Separation Decree. Edmonds advised Widow she would need to file a motion to set aside the order in family court; Edmonds further advised Widow to obtain other counsel for that action because she was not a family court practitioner and would only represent her regarding her probate claims. Based upon her experience and knowledge as a long term probate practitioner and former probate judge, Edmonds determined Widow would need to file a petition for allowance of the Prenuptial Claim so that if Widow succeeded in the family court, she would not be foreclosed from making resulting claims against the estate in probate court. *See* § 62-3-806(a) (“Every claim which is disallowed in whole or in part by the personal representative *is barred* so far as not allowed *unless the claimant commences a proceeding for allowance of the claim in accordance with Section 62-3-804(2) not later than thirty days after the mailing or other service of the notice of disallowance or partial disallowance by the personal representative.*” (emphases added)). Having determined the petition for allowance could be filed no later than March 12, 2016, Edmonds filed a petition on March 9, 2016. In support of her motions in opposition of sanctions, Edmonds submitted expert affidavits from Burnele Powell and Mitchell Payne, who both opined Edmonds's filing of the petition for allowance of the Prenuptial Claim was reasonable and not a violation of the provisions of Rule 11 or the Act.

Based on the foregoing, we find the circuit court did not abuse its discretion in declining to impose sanctions against Edmonds for filing the Prenuptial Claim. *See* § 15-36-10(B) (2) (providing a court may upon its own motion or motion of a party impose sanctions against an attorney for violations of subsection (A)(4)); § 15-36-10(A)(4)(a)(iii) (providing that an attorney may be sanctioned for filing a frivolous pleading, motion, or document if “a reasonable attorney presented with the same circumstances would believe that

the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party”); Rule 11(a), SCRCP (providing that a court may impose sanctions on a party or a party's attorney for filing a frivolous pleading, motion, or other paper). We agree with the circuit court and the submitted affidavits that based upon the information provided to her by Widow and the timeframe at hand, Edmonds's actions were reasonable and in the best interest of her client. Although Harwell contends Edmonds was required to investigate the merits of the claim prior to filing the petition for allowance, we find no such duty existed and Edmonds was entitled to rely on the information provided to her by Widow. *See Ex parte Gregory*, 378 S.C. at 439 n.3, 663 S.E.2d at 51 n.3 (“Our conclusion that an attorney must conduct a reasonable investigation *beyond what is related to the attorney by his client is limited to the situation whe[n] a client is alleging conversion against his or her former attorney for misappropriation of client funds or legal malpractice.*” (emphases added)). Furthermore, we note the merit of the Prenuptial Claim was contingent upon the success of Widow's motion pursuant to Rule 60(b), SCRCP,⁹ in the family court, which was unknowable during the timeframe Edmonds had for filing a petition for allowance. Accordingly, we hold the circuit court properly found Edmonds's filing of the petition for allowance was not frivolous.

*7 Finally, Harwell contends the circuit court erred in offsetting the sanctions issued against Widow with prior sanctions issued against her by the family court for contemptuous conduct. In the Final Order, the circuit court imposed sanctions against Widow in the amount of \$40,000, but the court specified Widow's sanctions would be reduced by “any sums which she may have already paid pursuant to the [f]amily [c]ourt award of \$25,000.00 in attorney's fees as provided in the [c]ontempt [o]rder.” In its order denying the parties' motions for reconsideration, the court explained it ordered this particular remedy as an equitable protection for Widow in an effort to prevent punishing her twice for her actions surrounding the pro se creditor's claims against the estate, since these claims had previously been the subject of Harwell's contempt action against her. Although a unique stipulation, we find the sanction fashioned by the circuit court was within the scope of its authority. *See* § 15-36-10(B) (2) (providing that if “an attorney or pro se litigant has violated subsection (A)(4), the court, upon its own motion or motion of a party, may impose upon the person in violation *any sanction which the court considers just, equitable, and proper under the circumstances*” (emphasis added)); Rule 11(a), SCRCP (“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*" (emphasis added)). Accordingly, we hold the circuit court did not err in offsetting Widow's sanctions issued pursuant to Rule 11 and the Act with the prior sanctions issued against her in the family court.

Based on the foregoing, we find the sanctions issued by the circuit court against Edmonds and Widow were proper. *See Se. Site Prep*, 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 conclusions.").

II. Expert Testimony

Widow asserts the circuit court erred in failing to admit the expert testimony of Burnele Powell.¹⁰ We find this issue is without merit as Edmonds submitted Powell's affidavit as an exhibit to her motion opposing sanctions, and nothing in the record indicates the court did not consider

the affidavit. Moreover, we find this issue is unpreserved for appellate review as Widow neither objected during the sanctions hearing nor raised the issue in her motion for reconsideration.¹¹ *See Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733 ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [circuit court] to be preserved for appellate review."). Accordingly, this court is foreclosed from considering this issue.

CONCLUSION

Based on the foregoing, the circuit court's orders are

AFFIRMED.¹²

WILLIAMS, KONDUROS, and MCDONALD, JJ., concur.

All Citations

Not Reported in S.E. Rptr., 2020 WL 1722496

Footnotes

- 1 On November 1, 2017, Edmonds filed a notice of appeal with this court, appealing the circuit court's order issuing sanctions against Edmonds and Widow and the circuit court's order following the parties' Rule 59(e), SCRPC, motions. On November 2, 2017, Harwell filed a notice of appeal with this court, appealing the aforementioned circuit court orders, which was assigned a different appellate case number from Edmonds's appeal. On November 8, 2017, Widow filed a notice of appeal with this court, cross-appealing the aforementioned circuit court orders appealed by Harwell. Desa Ballard filed Widow's notice of appeal but simultaneously filed a motion to be relieved as counsel, which this court granted by order dated November 27, 2017. On February 7, 2018, this court granted a motion to consolidate the three appeals.
- 2 By order dated July 20, 2016, the family court found Widow in contempt and sentenced her to forty-five days' imprisonment. The family court additionally ordered Widow to pay \$25,000 in attorney's fees. This contempt action is not the subject of this appeal.
- 3 At that time, Decedent's death certificate indicated his marital status as "married but separated" and stated "NA" in the surviving spouse designation, which prevented Widow from receiving his retirement benefits from the General Assembly as provided in the Mediation Agreement. When Widow attempted to amend the death certificate with the Department of Health and Environmental Control (DHEC), DHEC informed her that only Harwell could request a correction to the certificate as he was the prior informant and if he was unwilling to do so, a court order would be required.
- 4 S.C. Code Ann. §§ 15-36-10 to -100 (Supp. 2019).
- 5 Widow additionally filed a pro se motion in the family court to set aside the Separation Decree, which incorporated the Mediation Agreement, pursuant to Rule 60(b), SCRPC, on May 26, 2016.
- 6 Widow published obituaries in The Sun News and The State newspapers.

- 7 S.C. Code Ann. § 62-3-806(a) (Supp. 2019) ("[W]ithin sixty days after the presentment of the claim, or within
fourteen months after the death of the decedent, whichever is later, the personal representative must serve
upon the claimant a notice stating the claim has been allowed or disallowed in whole or in part.").
- 8 S.C. Code Ann. § 44-63-161(A)(2) (2018) ("It is unlawful for a person: ... to wilfully make a false statement
in a certificate, record, or report required to be filed by this chapter or a regulation, or in an application for an
amendment to or for a certified copy of the certificate, record, or report, or to wilfully supply false information
intending that the information be used in the preparation or amendment of the certificate, record, or report.");
S.C. Code Ann. § 44-63-161(B) (2018) ("A person who violates a provision of item (1), (2), (3), or (4) of
subsection (A) is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars
or imprisoned not more than five years, or both.").
- 9 Rule 60(b)(3), SCRPC ("On motion and upon such terms as are just, the court may relieve a party or
his legal representative from a final judgment, order, or proceeding for the following reasons: ... fraud,
misrepresentation, or other misconduct of an adverse party").
- 10 In her appellant's brief, Widow raised five issues on appeal; however, the first four issues solely pertain to
criminal contempt sanctions Widow received following a contempt proceeding in the family court. Widow did
not appeal the family court contempt order in this appeal. Accordingly, this court is confined to considering
only the fifth issue.
- 11 Widow's motion for reconsideration is not included in the record on appeal. However, the circuit court did not
list this issue in its recitation of the issues asserted by Widow in her motion for reconsideration.
- 12 We decide this case without oral argument pursuant to Rule 215, SCACR.



2020 WL 6037016

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

**THIS OPINION HAS NO PRECEDENTIAL
VALUE. IT SHOULD NOT BE CITED
OR RELIED ON AS PRECEDENT
IN ANY PROCEEDING EXCEPT AS
PROVIDED BY RULE 268(d)(2), SCACR.
Court of Appeals of South Carolina.**

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,
v.

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

Appellate Case No. 2017-002290

Unpublished Opinion No. 2020-UP-103

Submitted December 2, 2019

Filed April 8, 2020

Withdrawn, Substituted,
and Refiled October 7, 2020

Appeal From Florence County

Roger L. Couch, Circuit Court Judge

AFFIRMED IN PART AND REVERSED IN PART

Attorneys and Law Firms

M. Dawes Cooke, Jr. and Barbara J. Wagner, both of Barnwell
Whaley Patterson & Helms, LLC, of Charleston, for Deidre

W. Edmonds, Individually, and the Law Office of Deidre W.
Edmonds, P.A.

Kevin Mitchell Barth, of Barth, Ballenger & Lewis, LLP,
and Gena Phillips Ervin, of Orr & Ervin LLC, both of
Florence, for Robert Bryan Harwell, Individually and as
Personal Representative of the Estate of David W. Harwell.

Deborah B. Harwell, pro se, of Mooresville, North Carolina.

John Harleston, of Columbia, for South Carolina Department
of Health and Environmental Control, Division of Vital
Records.

Opinion

PER CURIAM

*1 In this cross-appeal from the circuit court, the Law
Office of Deidre Edmonds, P.A. and Deidre Edmonds
individually (collectively, Edmonds) appeal the circuit court's
orders issuing sanctions against her amounting to \$5,000.
Robert B. Harwell (Harwell), individually and as the personal
representative for the estate of David W. Harwell (Decedent),
also appeals the circuit court's orders, seeking additional
sanctions against Edmonds for her representation of Deborah
B. Harwell (Widow), the estranged wife of Decedent.
Widow additionally appeals the aforementioned circuit court
orders.¹ We affirm in part and reverse in part.

FACTS/PROCEDURAL HISTORY

Decedent and Widow were married on November 21, 2001,
having previously entered into a prenuptial agreement on
November 19, 2001. In March 2015, Decedent filed a
family court action seeking a decree of separate support and
maintenance that enforced the parties' prenuptial agreement.
After successful mediation efforts, the parties entered into
a mediation agreement (the Mediation Agreement), which
the family court adopted and incorporated into its final order
(the Separation Decree) issued on July 21, 2015. Shortly
thereafter, Decedent passed away on September 30, 2015.

On January 14, 2016, Widow filed a pro se action in the
probate court in which she brought two creditor's claims
against Decedent's estate, seeking (1) an elective share
in the amount of \$3.1 million pursuant to the prenuptial
agreement (the Prenuptial Claim) and (2) reimbursement in
the amount of \$1,457.25 for obituary publication costs (the
Obituary Claim) associated with two obituaries she filed
for Decedent. Harwell, as personal representative of the

estate, served a notice disallowing Widow's claims against the estate and subsequently initiated contempt proceedings in the family court, alleging Widow violated the Mediation Agreement.^{2, 3}

*2 On March 1, 2016, Edmonds assumed representation of Widow for the pending matters in the probate court. On March 9, 2016, Edmonds filed a petition in the probate court seeking an adjudication of Widow as Decedent's surviving spouse and an amendment to Decedent's death certificate, which would list Widow as Decedent's surviving spouse.⁴ Edmonds additionally filed petitions for allowance of Widow's previous creditor's claims against the estate. On April 1, 2016, Harwell filed answers and counterclaims, seeking dismissal of Widow's petitions and sanctions against Widow and Edmonds pursuant to Rule 11, SCRCP, and the South Carolina Frivolous Civil Proceedings Sanctions Act (the Act).⁵ On May 26, 2016, Widow filed another pro se probate petition seeking to collect her elective share from Decedent's estate.⁶

By order dated June 10, 2016, the probate court removed the pending probate petitions to the circuit court. On August 31, 2016, Widow filed a partial stipulation of dismissal, voluntarily dismissing all of her petitions against the estate except for her petition for adjudication as the surviving spouse and amendment of Decedent's death certificate. By order dated October 21, 2016, the circuit court adopted Widow's stipulations and dismissed the aforementioned petitions. Additionally, the court dismissed Widow's remaining petition against the estate as moot, stating "DHEC has now already amended the death certificate to reflect [Widow] as the surviving spouse for vital records purposes with Bryan Harwell's consent."

On February 2, 2017, the circuit court held a hearing on Harwell's remaining action for sanctions against Widow and Edmonds. On April 12, 2017, the circuit court issued an order (the Final Order) imposing sanctions against Widow and Edmonds. Specifically, the circuit court found the pro se creditor's claims filed by Widow against the estate were frivolous and without merit and consequently imposed sanctions pursuant to Rule 11 and the Act in the amount of \$40,000. The circuit court further provided Widow's sanctions would be reduced by "any sums which she may have already paid pursuant to the [family] court award of \$25,000.00 in attorney's fees as provided in the [contempt] order." As to Edmonds, the circuit court imposed sanctions pursuant to

Rule 11 and the Act in the amount of \$5,000. Specifically, the court found Edmonds's filing of the Obituary Claim was frivolous and without merit. Regarding Widow's petition for declaration as the surviving spouse and amendment of the death certificate, the circuit court found the relief sought was justified and the actions taken by Edmonds were necessary to obtain such relief. The court further found Edmonds's filing of the Prenuptial Claim, based upon the information provided to her by Widow, was reasonable and therefore not frivolous.

All parties filed motions to reconsider pursuant to Rule 59(e), SCRCP, and the circuit court held a hearing on the motions on July 19, 2017. By order dated September 27, 2017, the circuit court denied the parties' motions to reconsider. This appeal followed.

STANDARD OF REVIEW

*3 The determination of whether a court should impose sanctions pursuant to Rule 11, SCRCP, or the Act is a matter of equity. *See Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC*, 394 S.C. 97, 104, 713 S.E.2d 650, 653 (Ct. App. 2011). "In an action in equity tried by the judge alone, the appellate court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence." *Id.* However, when the appellate court agrees with the circuit court's findings of fact, it reviews the circuit court's imposition of sanctions under an abuse of discretion standard. *Id.*; *see also Ex parte Gregory*, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008). "Under the abuse of discretion standard, the imposition of sanctions will not be disturbed on appeal unless the decision is controlled by an error of law or is based on unsupported factual conclusions." *See Site Prep*, 394 S.C. at 104, 713 S.E.2d at 654.

LAW/ANALYSIS

I. Sanctions

Rule 11(a), SCRCP, provides:

The written or electronic signature of an attorney or party 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.

Pursuant to Rule 11, a court may impose sanctions on a party or a party's attorney for filing a frivolous pleading, motion, or other paper. *Id.*; see also *Ex parte Gregory*, 378 S.C. at 437, 663 S.E.2d at 50. "The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it." *Ex parte Gregory*, 378 S.C. at 437, 663 S.E.2d at 50. "The sanction may include an order to pay the reasonable costs and attorney fees incurred by the party or parties defending against the frivolous action or action brought in bad faith" *Id.* at 437-38, 663 S.E.2d at 50. "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.* at 438, 663 S.E.2d at 50. "While Rule 11 is evaluated by a subjective standard, the rule still may be violated with a filing that is so patently without merit that no reasonable attorney could have a good faith belief in its propriety." *Ex parte Bon Secours-St. Francis Xavier Hosp., Inc.*, 393 S.C. 590, 598, 713 S.E.2d 624, 628 (2011) (footnote omitted).

Additionally, "[t]he South Carolina Frivolous Civil Proceedings Sanction[s] Act provides for liability for attorney fees and costs of frivolous suits." *Ex parte Gregory*, 378 S.C. at 438, 663 S.E.2d at 50. Subsection 15-36-10(A)(4)(a) of the South Carolina Code 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 if: ... a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law ... a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or ... a reasonable attorney presented with

the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based

Subsection 15-36-10(A)(4)(b) further provides an attorney or pro se litigant may be sanctioned for "making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts." Pursuant to subsection 15-36-10(B)(2), if "an attorney or pro se litigant has violated subsection (A)(4), the court, upon its own motion or motion of a party, may impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstances."

*4 Based upon our review of the record, we agree with the circuit court's findings of fact. Thus, we review the court's imposition of sanctions for an abuse of discretion and address the parties' various contentions in turn. See *Se. Site Prep*, 394 S.C. at 104, 713 S.E.2d at 654 (providing that when the appellate court agrees with the circuit court's findings of fact, it reviews the circuit court's imposition of sanctions under an abuse of discretion standard).

A. Harwell's Appeal

Harwell argues the circuit court erred in failing to sanction Edmonds for (1) asserting he committed a felony in her filing of the claim seeking a declaration of Widow as Decedent's surviving spouse and amendment of Decedent's death certificate and (2) filing the petition for allowance of the Prenuptial Claim, which the Mediation Agreement barred. Harwell additionally contends the circuit court erred in offsetting the sanctions issued against Widow with prior contempt sanctions issued against her by the family court. We disagree.

Prior to Widow's claim seeking adjudication as Decedent's surviving spouse and amendment of Decedent's death certificate, Decedent's death certificate indicated his marital status as "married but separated" and stated "NA" in the surviving spouse designation, which prevented Widow from receiving his retirement benefits from the General Assembly, as provided in the Mediation Agreement, as well

as death benefits. When Widow attempted to amend the death certificate with DHEC, it informed her that only Harwell could request a correction to the certificate as he was the prior informant and if he was unwilling to do so, a court order would be required. On March 9, 2016, Edmonds filed a petition in the probate court seeking an adjudication of Widow as Decedent's surviving spouse and an amendment to Decedent's death certificate, which would list Widow as Decedent's surviving spouse. In her filing, Edmonds asserted Harwell willfully and knowingly supplied false information to DHEC in violation of section 44-63-161(A)(2), which was a felony under section 44-63-161(B).⁷

In its Final Order, the circuit court found sanctions were not warranted regarding Widow's claim, stating:

I find that the relief sought in that action was justified and that the action was necessary. While it is clear that some of the allegations contained in that petition concerning the alleged actions of the personal representati[ve] were false and ultimately found to be without justification, it is my finding that these allegations were the result of what appears to be an almost paranoid belief on the part of the parties to these actions concerning the evaluation of the motives of the other side. ... This is an equitable matter and I must consider th[e] possibility that [] Harwell could have taken steps to resolve the problem early in the life of this [d]eath [c]ertificate issue to resolve the matter, ... but instead used this issue as a bargaining chip to seek withdrawal of the other unrelated claims. At any rate, the claim was necessary since the [d]eath [c]ertificate was incorrect in the manner in which it did not reflect the existence of a surviving spouse. It is my finding that Ms. Edm[on]ds[s] preparation of this pleading was based on information provided to her by DHEC and [Widow]. While some of her allegation[s] were not later proven to be true and perhaps overzealous when made, it did result in obtaining

the relief her client needed in that situation.

*5 We agree with the circuit court's assessment of the situation at hand. Although we acknowledge Edmonds made assertions in the filing that were unnecessary to obtain the relief sought, we find the circuit court properly found *the overall purpose* of the claim was not frivolous, and therefore, sanctions were not warranted pursuant to Rule 11 and the Act for "continuing" the claim. *See* § 15-36-10(A)(4)(a)(iii) (providing that an attorney may be sanctioned for filing a frivolous pleading, motion, or document if "a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, *continuation*, or defense of a civil cause was intended merely to harass or injure the other party" (emphasis added)); *See Site Prep*, 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 conclusions.").

As to Harwell's contention that the circuit court erred in failing to sanction Edmonds for filing the petition for allowance of the Prenuptial Claim, we agree with the court's assessment that sanctions were not warranted.

The Mediation Agreement entered into between the parties and incorporated into the Separation Decree contained the following provision: "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 shall be bound by the terms of this agreement." (emphases added).

Prior to assuming representation of Widow, Edmonds met with Widow to discuss the notice of disallowance she received from the estate and other potential claims she might have. During this meeting, Widow informed Edmonds that she believed Decedent withheld information regarding the extent of his assets when they entered the Mediation Agreement and she intended to challenge the Separation Decree. Edmonds advised Widow she would need to file a motion to set aside the order in family court; Edmonds further advised Widow to obtain other counsel for that action because she was not a family court practitioner and would only represent her regarding her probate claims. Based upon her experience and knowledge as a long term probate practitioner and former probate judge, Edmonds determined Widow would need to file a petition for allowance of the Prenuptial Claim so

that if Widow succeeded in the family court, she would not be foreclosed from making resulting claims against the estate in probate court. *See* § 62-3-806(a) ("Every claim which is disallowed in whole or in part by the personal representative is *barred* so far as not allowed *unless the claimant commences a proceeding for allowance of the claim* in accordance with Section 62-3-804(2) *not later than thirty days after the mailing or other service* of the notice of disallowance or partial disallowance by the personal representative." (emphases added)). Having determined the petition for allowance could be filed no later than March 12, 2016, Edmonds filed a petition on March 9, 2016. In support of her motions in opposition of sanctions, Edmonds submitted expert affidavits from Burnele Powell and Mitchell Payne, who both opined Edmonds's filing of the petition for allowance of the Prenuptial Claim was reasonable and not a violation of the provisions of Rule 11 or the Act.

Based on the foregoing, we find the circuit court did not abuse its discretion in declining to impose sanctions against Edmonds for filing the Prenuptial Claim. *See* § 15-36-10(B) (2) (providing a court may upon its own motion or motion of a party impose sanctions against an attorney for violations of subsection (A)(4)); § 15-36-10(A)(4)(a)(iii) (providing that an attorney may be sanctioned for filing a frivolous pleading, motion, or document if "a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party"); Rule 11(a), SCRPC (providing that a court may impose sanctions on a party or a party's attorney for filing a frivolous pleading, motion, or other paper). We agree with the circuit court and the expert affidavits that based upon the information provided to her by Widow and the timeframe at hand, Edmonds's actions were reasonable and in the best interest of her client. Although Harwell contends Edmonds was required to investigate the merits of the claim prior to filing the petition for allowance, we find Edmonds was entitled to rely on the information provided to her by Widow. *See Ex parte Gregory*, 378 S.C. at 439 n.3, 663 S.E.2d at 51 n.3 ("Our conclusion that an attorney must conduct a reasonable investigation *beyond what is related to the attorney by his client* is limited to the situation whe[n] a client is alleging conversion against his or her former attorney for misappropriation of client funds or legal malpractice." (emphases added)). Furthermore, we note the merit of the Prenuptial Claim was contingent upon the success of Widow's motion pursuant to Rule 60(b), SCRPC,⁸ in the family court, which Edmonds could not have known during the timeframe she had for filing a petition for

allowance. Accordingly, we hold the circuit court properly found Edmonds's filing of the petition for allowance was not frivolous.

*6 Finally, Harwell contends the circuit court erred in offsetting the sanctions issued against Widow with prior sanctions issued against her by the family court for contemptuous conduct. In the Final Order, the circuit court imposed sanctions against Widow in the amount of \$40,000, but the court specified Widow's sanctions would be reduced by "any sums which she may have already paid pursuant to the [f]amily [c]ourt award of \$25,000.00 in attorney's fees as provided in the [c]ontempt [o]rder." In its order denying the parties' motions for reconsideration, the court explained it ordered this particular remedy as an equitable protection for Widow in an effort to prevent punishing her twice for her actions surrounding the pro se creditor's claims against the estate, since these claims had previously been the subject of Harwell's contempt action against her. Although a unique stipulation, we find the sanction fashioned by the circuit court was within the scope of its authority. *See* § 15-36-10(B) (2) (providing that if "an attorney or pro se litigant has violated subsection (A)(4), the court, upon its own motion or motion of a party, may impose upon the person in violation *any sanction which the court considers just, equitable, and proper under the circumstances*" (emphasis added)); Rule 11(a), SCRPC ("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*" (emphasis added)). Accordingly, we hold the circuit court did not err in offsetting Widow's sanctions issued pursuant to Rule 11 and the Act with the prior sanctions imposed by the family court.

B. Edmonds's Appeal

Edmonds argues the circuit court erred in sanctioning her under Rule 11 and the Act for filing the petition for allowance of Widow's Obituary Claim against the estate. Specifically, Edmonds contends the court improvidently issued the sanctions because (1) a determination on the merits of the Obituary Claim was never made as required under the Act and (2) Harwell failed to present evidence establishing the Obituary Claim was frivolously asserted. We agree in part.

Following Decedent's death, the estate published an obituary. Displeased with this obituary because it failed to name her as Decedent's surviving spouse, Widow, without authorization from the estate, published two more obituaries, which named

her as Decedent's widow.⁹ Widow thereafter filed a pro se creditor's claim against the estate seeking reimbursement in the amount of \$1,457.25 for the publication costs of the obituaries. After Widow received Harwell's notice of disallowance on behalf of the estate, Edmonds filed a petition for allowance of the claim on Widow's behalf.

We find unpersuasive Edmonds's initial contention that the circuit court erred in imposing sanctions against her because a merits determination was never made on the Obituary Claim. Although subsection 15-36-10(C)(1) delineates at what procedural stage a court will determine if a claim or defense is considered frivolous upon a motion of the prevailing party, we find this subsection does not prescribe a court's sole method for imposing sanctions for filing or advancing frivolous claims. Subsection (D)(2) provides a court may "upon its own motion or motion of a party" impose sanctions upon an attorney or pro se litigant for violations of subsection (A)(4). Furthermore, the circuit court additionally found sanctions were warranted pursuant to Rule 11, which contains no such procedural prerequisite. *See* Rule 11(a), SCRCP ("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").

However, we agree the circuit court abused its discretion in sanctioning Edmonds for filing the petition for allowance of the Obituary Claim as the record is devoid of evidence showing Edmonds filed the petition for any other reason than to preserve Widow's claim for judicial review. *See* § 62-3-806(a) ("Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant commences a proceeding for allowance of the claim in accordance with Section 62-3-804(2) not later than thirty days after the mailing or other service of the notice of disallowance or partial

disallowance by the personal representative." (emphases added)). Moreover, after further involvement in the case, Edmonds filed a stipulation of dismissal, voluntarily dismissing the Obituary Claim. Accordingly, we find Edmonds's intent in filing the petition was not malicious or for any improper purpose. *See Ex parte Bon Secours-St. Francis Xavier Hosp., Inc.*, 393 S.C. at 598, 713 S.E.2d at 628 (providing that Rule 11 is evaluated by a subjective standard). Thus, we reverse the circuit court's sanction of Edmonds regarding the Obituary Claim.¹⁰ *See Se. Site Prep*, 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 conclusions.").

II. Expert Testimony

*7 Widow asserts the circuit court erred in failing to admit the expert testimony of Burnele Powell.¹¹ We find this issue is without merit as Edmonds submitted Powell's affidavit as an exhibit to her motion opposing sanctions, and the circuit court indicated on the record that it received and reviewed the affidavit. Further, the court referenced its consideration of the submitted affidavits in its order denying the parties' motions to reconsider.

CONCLUSION

Based on the foregoing, the circuit court's orders are

AFFIRMED IN PART AND REVERSED IN PART.¹²

WILLIAMS, KONDUROS, and MCDONALD, JJ., concur.

All Citations

Not Reported in S.E. Rptr., 2020 WL 6037016

Footnotes

- 1 On November 1, 2017, Edmonds filed a notice of appeal with this court, appealing the circuit court's order issuing sanctions against Edmonds and Widow and the circuit court's order following the parties' Rule 59(e), SCRCP, motions. On November 2, 2017, Harwell filed a notice of appeal with this court, appealing the aforementioned circuit court orders, which was assigned a different appellate case number from Edmonds's appeal. On November 8, 2017, Widow filed a notice of appeal with this court, cross-appealing the aforementioned circuit court orders appealed by Harwell. Desa Ballard filed Widow's notice of appeal but

simultaneously filed a motion to be relieved as counsel, which this court granted by order dated November 27, 2017. On February 7, 2018, this court granted a motion to consolidate the three appeals.

2 S.C. Code Ann. § 62-3-806(a) (Supp. 2019) ("[W]ithin sixty days after the presentment of the claim, or within fourteen months after the death of the decedent, whichever is later, the personal representative must serve upon the claimant a notice stating the claim has been allowed or disallowed in whole or in part.").

3 By order dated July 20, 2016, the family court found Widow in contempt and sentenced her to forty-five days' imprisonment. The family court additionally ordered Widow to pay \$25,000 in attorney's fees. This contempt action is not the subject of this appeal.

4 At that time, Decedent's death certificate indicated his marital status as "married but separated" and stated "NA" in the surviving spouse designation, which prevented Widow from receiving his retirement benefits from the General Assembly as provided in the Mediation Agreement. When Widow attempted to amend the death certificate with the Department of Health and Environmental Control (DHEC), DHEC informed her that only Harwell could request a correction to the certificate as he was the prior informant and if he was unwilling to do so, a court order would be required.

5 S.C. Code Ann. §§ 15-36-10 to -100 (Supp. 2019).

6 Widow additionally filed a pro se motion in the family court to set aside the Separation Decree, which incorporated the Mediation Agreement, pursuant to Rule 60(b), SCRPC, on May 26, 2016.

7 S.C. Code Ann. § 44-63-161(A)(2) (2018) ("It is unlawful for a person: ... to wilfully make a false statement in a certificate, record, or report required to be filed by this chapter or a regulation, or in an application for an amendment to or for a certified copy of the certificate, record, or report, or to wilfully supply false information intending that the information be used in the preparation or amendment of the certificate, record, or report."); S.C. Code Ann. § 44-63-161(B) (2018) ("A person who violates a provision of item (1), (2), (3), or (4) of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than five years, or both.").

8 Rule 60(b)(3), SCRPC ("On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: ... fraud, misrepresentation, or other misconduct of an adverse party").

9 Widow published obituaries in The Sun News and The State newspapers.

10 Edmonds additionally argues the sanction imposed by the circuit court was excessive. Because we reverse the circuit court's imposition of the sanction, we need not address this issue. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

11 In her appellant's brief, Widow raised five issues on appeal; however, the first four issues solely pertain to criminal contempt sanctions Widow received following a contempt proceeding in the family court. Widow did not appeal the family court contempt order in this appeal. Accordingly, this court is confined to considering only the fifth issue.

12 We decide this case without oral argument pursuant to Rule 215, SCACR.

RECEIVED

OCT 21 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.

CERTIFICATE OF SERVICE

I certify that I have served the Respondent Appellant's Petition for Partial Rehearing and Suggestion for Rehearing *En Banc* on the above-referenced parties by depositing a copy of it in the United States Partial Mail, postage prepaid, on October 21, 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 BALLENGER & 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 Respondent/Appellant

RECEIVED

OCT 21 2020

SC Court of Appeals

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 Electronic Mail and U.S. Mail
October 21, 2020

(Hand - Delivered)

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 Appellate Case No. 2017-002290

Dear Ms. Kitchings:

Enclosed for filing please find the following documents for filing:

1. The original and six copies of the Petition for Rehearing and suggestion for partial Rehearing *En Banc* on behalf of Robert Bryan Harwell individually and as Personal Representative of the Estate of David W. Harwell;
2. My firm's check in the amount of \$50.00 for the filing fee;
3. The original and six copies of the Certificate of Service

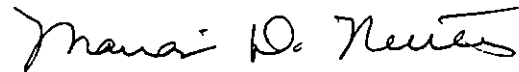
I have also enclosed an extra copy of the Petition and suggestion for partial Rehearing *En Banc* and the Certificate of Service which I would appreciate your clocking and returning to me in the self-addressed stamped envelope provided.

The Honorable Jenny Abbott Kitchings
Page 2
October 21, 2020

With my best regards, I am

Yours very truly,

NETTLES, TURBEVILLE & REDDECK

A handwritten signature in cursive script, appearing to read "Marian D. Nettles".

Marian D. Nettles

MDN/mmd

Enclosure

cc: Kevin M. Barth (kbarth@bblawsc.com)
Gena Philips Ervin (gpe@orrfirm.com)
M. Dawes Cooke, Jr. (mdc@barnwell-whaley.com)
Barbara J. Wagner (bwagoner@barnwell-whaly.com)
Deborah B. Harwell (adobepalm@aol.com)
John Harleston (harlesjdhec.sc.gov)
Bryan Harwell (Bryan_Harwell@scd.uscourts.gov)

HAND DELIVERED 10/21/20

2017-002290

md

LAW
OFFICES
Nettles
Turbeville,
& Reddeck

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

To:

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Columbia, SC 29211

FIRST CLASS MAIL