

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Appellate Case No. 2017-002290
Opinion No. 2020-UP-103 (S.C. Ct. App. filed Apr. 8, 2020)
(Withdraw, Substituted, and Refiled Oct. 7, 2020)
(Withdrawn, Substituted, and Refiled Nov. 18, 2020)

Deborah B. Harwell, Plaintiff,

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..... **PETITIONER,**

v.

Law Office of Deidre W. Edmonds, P.A. and
Deidre W. Edmonds, Individually, Third-Party Defendants, are the..... **RESPONDENTS.**

PETITION FOR A WRIT OF CERTIORARI

Marian D. Nettles
Nettles, Turbeville & Reddeck
P.O. Box 699
Lake City, SC 29560
(843) 374-8511
missy@ntrlaw.com

(continued)

Kevin M. Barth
Barth, Ballenger & Lewis, LLP
P.O. Box 107
Florence, SC 29503
kbarth@bblawsc.com

Gena Phillips Ervin
Orr & Ervin, LLC
P.O. Box 2527
Florence, SC 29503

Attorneys for Petitioner

Other Counsel of Record:

M. Dawes Cooke, Jr.
Barbara J. Wagner
Barnwell Whaley Patterson & Helms, LLC
288 Meeting Street, Suite 200 (29401)
P.O. Drawer H
Charleston, SC 29402
(843) 577-7700
mdc@barnwell-whaley.com
bwagner@barnwell-whaley.com
Attorneys for Respondents

Deborah B. Harwell, *Pro Se*
1459 River Highway
 Mooresville, NC 28117
Pro se Plaintiff

John Harleston
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201
Attorney for Defendant

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that Petitioner made a Petition for Rehearing on October 21, 2020, which was finally ruled on by the Court of Appeals on November 18, 2020.

QUESTIONS PRESENTED

- 1. Did the Court of Appeals—despite its original opinion correctly affirming as to Attorney Edmonds's/Respondents' appeal—subsequently ignore the appellate standard of review (abuse of discretion) and err in finding the record is devoid of evidence showing Attorney Edmonds/Respondents filed Widow's claim for any other reason than to preserve Widow's claim for judicial review, and ignore Attorney Edmonds's/Respondents' continued pursuit of the frivolous claim, and thereby disregard existing law as to Rule 11 and the South Carolina Frivolous Proceedings Sanctions Act in its second and third opinions?**
- 2. Did the Court of Appeals err in reversing course in two subsequent opinions, when its original opinion and the circuit court's factual findings confirmed that there was indeed a factual basis for the award of attorney sanctions and that the circuit court did not abuse its discretion?**
- 3. Did the Court of Appeals, without *any* request or petition for rehearing by *any* party, err in *sua sponte* modifying its original opinion filed April 8, 2020, as to "B. Harwell's Appeal"?**

STATEMENT OF THE CASE

David W. Harwell (Decedent) and Deborah B. Harwell (Widow) entered into a prenuptial agreement on November 19, 2001, before marrying each other on November 21, 2001. Record on Appeal (R.) 91-107, 142. In March 2015, Decedent filed a family court action seeking a decree of separate support and maintenance to enforce the parties' prenuptial agreement. R. 86-107. The parties successfully mediated the matter and entered into an agreement (the Mediation Agreement) that the family court adopted and incorporated into its final order (the Separation Decree) issued on July 21, 2015. R. 167-78. Decedent passed away on September 30, 2015. R. 229.

On January 14, 2016, Widow filed a *pro se* action in the probate court alleging 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 had published for Decedent. R. 109-78. Robert Bryan Harwell (Petitioner or

Harwell), individually and as the personal representative for Decedent's estate, served a notice disallowing Widow's claims against the estate and subsequently initiated contempt proceedings in the family court based upon Widow's numerous violations of the Mediation Agreement that the family court had incorporated into its final order. R. 153-78.¹

On March 1, 2016, attorney Deirdre Edmonds of the Law Office of Deirdre Edmonds, P.A. (Respondents or Edmonds) assumed representation of Widow for the pending matters in the probate court. R. 147-57. 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, seeking to list Widow as Decedent's surviving spouse. *Id.* Edmonds additionally filed petitions for allowance of Widow's previous creditor's claims against the estate. *Id.* 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, SCRPC, and the South Carolina Frivolous Civil Proceedings Sanctions Act (the Act). R. 153-207. On May 26, 2016, Widow filed another *pro se* probate petition seeking to collect her elective share from Decedent's estate. R. 542.

By order dated June 10, 2016, the probate court removed the pending probate petitions to the circuit court. R. 7-9. On August 31, 2016, an order was filed substituting attorney Desa Ballard as counsel for Widow. R. 65. Also on August 31, 2016, Widow filed a partial stipulation of dismissal, voluntarily dismissing all her petitions against the estate except for her petition for adjudication as the surviving spouse and amendment of Decedent's death certificate. R. 353-63. By order dated October 21, 2016, the circuit court adopted Widow's stipulations and dismissed said petitions. R. 359-63. Edmonds had no part in the dismissal of these claims. 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." R. 360.

On February 2, 2017, the circuit court held a hearing on Harwell's remaining action for sanctions against Widow and Edmonds. R. 865. On April 12, 2017, the circuit court issued an order (the Final Order) imposing sanctions against Widow and Edmonds. R. 58-74. Specifically,

¹ The family court found Widow in contempt for violating various provisions of the final family court order. R. 10-30. The family court's decision has been affirmed by the Court of Appeals, which has issued the remittitur. See *Harwell v. Harwell*, Op. No. 2020-UP-306 (S.C. Ct. App. filed Nov. 12, 2020).

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. R. 70. 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." *Id.* 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 Respondents' filing of the Obituary Claim was in fact frivolous and without merit. R. 78; *see* R. 72-73 (finding Edmonds "was not justified in filing or pursuing the claim for reimbursement of the obituary Publication"). 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 Respondents were necessary to obtain such relief. R. 70-71. The court further found Respondents' filing of the Prenuptial Claim, based upon the information provided to her by Widow, was reasonable and therefore not frivolous. R. 72.

All parties filed motions to reconsider pursuant to Rule 59(c), SCRCP, and the circuit court held a hearing on the motions on July 19, 2017. R. 533-69, 941. By order dated September 27, 2017, the circuit court denied the parties' motions to reconsider. R. 75-81. Respondents, Petitioner, and Widow all filed appeals.

On April 8, 2020, the Court of Appeals issued an opinion (the First Opinion) affirming as to the appeals of all three parties. *See Harwell v. Harwell*, Op. No. 2020-UP-103, 2020 WL 1722496 (S.C. Ct. App. filed Apr. 8, 2020) (attached as Exhibit A). Edmonds filed a petition for rehearing, and on October 7, 2020, the Court of Appeals granted Edmonds's petition, withdrew the First Opinion, and issued another opinion (the Second Opinion) reversing as to Respondents' appeal.² *See Harwell v. Harwell*, Op. No. 2020-UP-103, 2020 WL 6037016 (S.C. Ct. App. filed Oct. 7, 2020) (attached as Exhibit B). Harwell filed a petition for rehearing and a suggestion for rehearing *en banc*, and on November 18, 2020, the Court of Appeals granted the petition in part, denied *en banc* rehearing, withdrew the Second Opinion, and issued another opinion (the Third Opinion) still reversing as to Edmonds's appeal. *See Harwell v. Harwell*, Op. No. 2020-UP-103, 2020 WL 6037016 (S.C. Ct. App. filed Oct. 7, 2020) (attached as Exhibit C).

² Widow also filed a petition for rehearing, which the Court of Appeals denied.

ARGUMENT

1. DESPITE ITS ORIGINAL OPINION CORRECTLY AFFIRMING AS TO ATTORNEY EDMONDS'S/RESPONDENTS' APPEAL, THE COURT OF APPEALS SUBSEQUENTLY IGNORED THE APPELLATE STANDARD OF REVIEW (ABUSE OF DISCRETION) AND ERRED IN FINDING THE RECORD IS DEVOID OF EVIDENCE SHOWING ATTORNEY EDMONDS/RESPONDENTS FILED WIDOW'S CLAIM FOR ANY OTHER REASON THAN TO PRESERVE WIDOW'S CLAIM FOR JUDICIAL REVIEW, AND IGNORED ATTORNEY EDMONDS'S/RESPONDENTS' CONTINUED PURSUIT OF THE FRIVOLOUS CLAIM, THEREBY DISREGARDING EXISTING LAW AS TO RULE 11 AND THE SOUTH CAROLINA FRIVOLOUS PROCEEDINGS SANCTIONS ACT IN ITS SECOND AND THIRD OPINIONS.

This Court has explained "the standard for sanctions under Rule 11 is essentially the same as that of the" the South Carolina Frivolous Civil Proceedings Sanction Act (the Act).^{3, 4} *Father v. S.C. Dep't of Soc. Servs.*, 353 S.C. 254, 262, 578 S.E.2d 11; 15 (2003) (recognizing a Rule 11 sanction is "for [a] frivolous filing or argument, or for [a] bad faith filing," while a sanction under the Act is for "frivolity"); see *Ex parte Gregory*, 378 S.C. 430, 436, 663 S.E.2d 46, 50 (2008) (recognizing sanctions imposed under Rule 11 and the Act are "an equity matter"). "When reviewing [a] judge's order of sanctions, the appellate court takes its own view of the facts," but when "the appellate court agrees with the trial court's findings of fact, it reviews the decision to award sanctions, as well as the terms of those sanctions, under an abuse of discretion standard." *Ex parte Bon Secours-St. Francis Xavier Hosp., Inc.*, 393 S.C. 590, 597, 713 S.E.2d 624, 628 (2011). "An abuse of discretion occurs where the decision is controlled by an error of law or is based on unsupported factual conclusions." *Ex parte Gregory*, 378 S.C. at 437, 663 S.E.2d at 50.

³ S.C. Code Ann. §§ 15-36-10 to -100.

⁴ Rule 11 permits a circuit court to "impose sanctions on a party, a party's attorney, or both for filing a pleading, motion, or other paper to cause delay or when no good grounds exist to support the filing." *Ex parte Bon Secours*, 393 S.C. at 597, 713 S.E.2d at 628; see Rule 11(a), SCRCP ("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."). "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 (explaining Rule 11 sanctions are appropriate for frivolous pleadings and arguments). "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*, 393 S.C. at 598, 713 S.E.2d at 628 (internal footnote omitted). Similarly, the 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. The Act provides that an attorney or *pro se* litigant in a civil action may be sanctioned for filing a frivolous pleading, motion, or document or for making frivolous arguments. See S.C. Code Ann. § 15-36-10(A)(4).

In all three opinions, the Court of Appeals stated, "[W]e agree with the circuit court's findings of fact. Thus, we review the court's imposition of sanctions for an abuse of discretion . . ." See Exhibits A, B, & C. Importantly, *no* party has challenged this conclusion by the Court of Appeals, and therefore that conclusion is the law of the case. See *Eldridge v. Eldridge*, 398 S.C. 113, 121, 728 S.E.2d 24, 28 (2012) (recognizing "an unchallenged ruling, right or wrong, is the law of the case"); *Mazloom v. Mazloom*, 392 S.C. 403, 404, 709 S.E.2d 661 (2011) (recognizing an "issue not raised in [a] petition for rehearing is the law of the case").

In the First Opinion, the Court of Appeals correctly upheld the award of sanctions against Edmonds for filing a petition of allowance for Widow's Obituary Claim. See Exhibit A. The Court of Appeals correctly recognized: (1) in the Mediation Agreement, Widow waived any claims she had against Decedent's estate; (2) 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; (3) Widow published the two supplemental obituaries upon her own initiative and without authorization from the estate; (4) Widow's filing of a creditor's claim against the estate for reimbursement was unreasonable and frivolous; and therefore (5) Respondents' 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 *id.* These facts provided ample support for the circuit court to exercise its discretion and sanction Respondents.

However, in its Second and Third Opinions, the Court of Appeals ignored these facts and simply concluded "the record is devoid of evidence showing [Respondents] filed the petition for any other reason than to preserve Widow's claim for judicial review." See Exhibits B & C. In fact, in the Second Opinion the Court of Appeals erroneously stated, "Moreover, after further involvement in the case, Edmonds filed a stipulation of dismissal, voluntarily dismissing the Obituary Claim." See Exhibit B. The Court of Appeals deleted this statement in its Third Opinion after Harwell explained in his Petition for Rehearing that not only did Edmonds not dismiss the claim, but she had continued to pursue the frivolous claim, and that it was Widow's new counsel (attorney Ballard) who dismissed the claim.

Also, in its Second and Third Opinions, the Court of Appeals stated, "Accordingly, we find Edmonds's intent in filing the petition was not malicious or for any improper purpose." See

Exhibits B & C. The Court of Appeals appears to have now judicially engrafted an additional condition, requirement, or savings clause that a matter is not sanctionable under Rule 11 or the Act unless the matter is filed maliciously or for an improper purpose. This could have a profound impact on the law of sanctions in this State.

Harwell respectfully submits the Court of Appeals ignored the appropriate standard of review (i.e., abuse of discretion given its agreement with the circuit court's findings of fact) and erred in finding the record is devoid of evidence showing Edmonds filed Widow's claim for any other reason than to preserve Widow's claim for judicial review and ignored Edmonds's continued pursuit of a frivolous claim, thus disregarding existing law as to Rule 11 and the Act.

2. THE ORIGINAL OPINION BY THE COURT OF APPEALS AND THE CIRCUIT COURT'S FACTUAL FINDINGS CONFIRM THAT THERE WAS INDEED A FACTUAL BASIS FOR THE AWARD OF ATTORNEY SANCTIONS AND THAT THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION; HOWEVER, THE COURT OF APPEALS ERRONEOUSLY REVERSED COURSE IN TWO SUBSEQUENT OPINIONS.

As explained above, the Court of Appeals in its First Opinion upheld the award of sanctions against Respondents for filing a petition of allowance for Widow's Obituary Claim. However, the Court of Appeals erroneously and inexplicably made a 180-degree turn and reversed course in its Second and Third Opinions. A side-by-side-by-side comparison of the section "Edmonds's Appeal" in the three opinions issued by the Court of Appeals best illustrates this argument:

- **First Opinion:**

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 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. Thus, we hold the circuit court properly sanctioned Edmonds for this claim.^{15]}

See Exhibit A (internal citations omitted).

- **Second Opinion:**

[W]e 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. 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. Thus, we reverse the circuit court's sanction of Edmonds regarding the Obituary Claim.

See Exhibit B (internal citations omitted).

- **Third Opinion:**

[W]e 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. Accordingly, we find Edmonds's intent in filing the petition was not malicious or for any improper purpose. Thus, we reverse the circuit court's sanction of Edmonds regarding the Obituary Claim.

See Exhibit C (internal citations omitted).

¹⁵ The circuit court stated in its January 4, 2018 order:

Next I will consider the issues raised by Third Party Defendant Deidre W. 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 an[] 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 actions that create 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.

Under the reasonable attorney standard, it cannot be argued that such 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 circuit court's imposition of sanctions on Edmonds. Edmonds advanced the Obituary Claim by filing a petition to allow the claim. R. 148. A reasonable attorney would not have advanced this claim in view of the direct prohibition in the Separation Decree. Attorney Edmonds admitted she filed the petition for allowance of the claim after reviewing the Notice of Disallowance of Claim, which had the Separation Decree and Mediation Agreement both attached. R. 397-401. Although Attorney Edmonds does not practice law in Family Court, she testified 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 she was "comfortable" reading such orders and understanding them. R. 396-397. Attorney Edmonds filed the petition to allow the claims after having read the relevant order barring such claims. She affixed her signature thereto. R. 401. The circuit court held Attorney Edmonds "was not justified in filing or pursuing the claim for reimbursement of the obituary Publication." R. 72-73. As the Court of Appeals originally ruled, the record *does* in fact contain the factual basis supporting the sanctions imposed on Respondents.

Harwell respectfully submits the Court of Appeals' First Opinion and the circuit court's factual findings confirm that there was indeed a factual basis for the award of attorney sanctions and that the circuit court did not abuse its discretion, and therefore the Court of Appeals erroneously reversed course in its two subsequent opinions (including the operative Third Opinion).⁶

⁶ Attorney Edmonds never filed for a dismissal of any of the monetary claims or petitions. R. 353-63. Attorney Edmonds filed her petitions to allow creditor claims---including the Obituary Claim at issue---on March 9, 2016. R. 150-51, 550. She also filed a claim for \$3.1 million dollars against the estate on behalf of Widow on March 1, 2016, and a Petition for adjudication as surviving spouse. R. 147-49. The circuit court held a hearing on Petitioner's request for sanctions against Wife and Edmonds under Rule 11 and the Act on July 21, 2016. R. 65. The day before that hearing, Widow hired attorney Desa Ballard to represent her. R. 65. At that hearing, Ms. Ballard requested additional time to familiarize herself with the case and to attempt to resolve some of the matters. An order substituting her as counsel was filed on August 31, 2016. R. 65. That same day, Ms. Ballard filed a partial stipulation of dismissal. R. 355. Furthermore, on October 19, 2016, the parties filed stipulations detailing the conclusion of these petitions and claims. R. 357-63. Significantly, 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 and in fact was represented by her own counsel at this point. To the extent the Court of Appeals gave Attorney Edmonds credit in the Second Opinion filed October 7, 2020, for seeing the error of her ways and taking corrective action, this simply did not happen. To the contrary, Respondents have continued throughout this appeal to assert the propriety of the Obituary Claim. In her corrected Final Brief, Respondents argue "it is not uncommon for estates to bear the expense of publishing an Obituary." Brief p. 11. The difference in this case is that Widow waived that right in the Mediation Agreement that

3. WITHOUT ANY REQUEST OR PETITION FOR REHEARING BY ANY PARTY, THE COURT OF APPEALS ERRONEOUSLY *SUA SPONTE* MODIFIED ITS ORIGINAL OPINION FILED APRIL 8, 2020, AS TO "B. HARWELL'S APPEAL."

In the First Opinion, as to the section entitled "B. Harwell's Appeal," the Court of Appeals affirmed as to Harwell's appeal but "acknowledge[d] Edmonds made tactless assertions in the filing that were unnecessary to obtain the relief sought." See Exhibit A (emphasis added). However, in both the Second and Third Opinions, the Court of Appeals deleted the word "tactless" without any request by any party, thereby making a substantive change *sua sponte*.

Edmonds's and Widow's petitions for rehearing both indicated they were not seeking rehearing of the Court of Appeals' affirmance of the denial of certain sanctions regarding Harwell's appeal and made no request for modification or revision of the opinion regarding "B. Harwell's Appeal" at any time. Harwell himself did not originally file a petition for rehearing as to the First Opinion, and he stated in his return to Respondents' petition that "although the [Petitioner] believes [Respondents] should have been sanctioned more harshly, he respects the Court's ruling, and submits that there were no points overlooked." See Return filed May 14, 2020. Petitioner was satisfied with the apt description of Respondents' conduct in accusing him of committing a felony in the application for the death certificate as "tactless," as the circuit court found these allegations to be false and unjustified. See R. 71, 136-137.

No monetary sanctions were associated with Respondents' false allegations that Petitioner committed a felony. Harwell accepted this result in large part because of the "tactless" description in the First Opinion, a description that was subsequently deleted without request by any party. In his Petition for Rehearing, Petitioner respectfully requested that the word "tactless" be reinserted into the opinion to recognize the imprudent nature of Edmonds's conduct. However, the Court of Appeals neither reinserted the word "tactless" nor explained its reason for not doing so. Procedurally, neither Petitioner nor Respondents nor Widow petitioned for rehearing as to Petitioner's appeal, yet the Court of Appeals modified this section of the opinion without request by any party. Petitioner respectfully submits the Court of Appeals erred in making an unwarranted, unrequested, unauthorized by any statute or rule, *sua sponte* change to the portion of its opinion addressing Harwell's appeal.

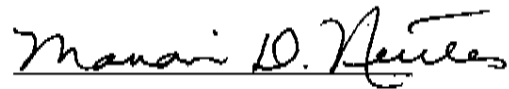
was incorporated in the Separation Decree in the family court litigation. R. p. 177. Edmonds's actions constitute sanctionable conduct.

CONCLUSION

The Court of Appeals erroneously sanitized an attorney's sanctionable conduct under Rule 11 and the Act by issuing multiple opinions, ignoring the standard of review, ignoring facts supporting sanctions, and even revising/modifying an opinion when no party requested it. Either Rule 11 or the Act have some teeth as to attorneys; or Rule 11 and the Act are toothless and can be ignored by the Bar, according to the final opinion by the Court of Appeals. For the reasons stated herein, Petitioner asks the Court to grant the Petition for a Writ of Certiorari.

Respectfully submitted,

December 17, 2020



Marian D. Nettles
Nettles, Turbeville & Reddeck
P.O. Box 699
Lake City, SC 29560
(843) 374-8511
missy@ntrlaw.com

Kevin M. Barth
Barth, Ballenger & Lewis, LLP
P.O. Box 107
Florence, SC 29503
kbarth@bbblawsc.com

Gena Phillips Ervin
Orr & Ervin, LLC
P.O. Box 2527
Florence, SC 29503

Attorneys for Petitioner