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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM FLORENCE 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 Roger L. Couch

Appellate Case No. 2020-001639

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 Deirdre W. Edmonds, P.A. and Deirdre W.  
Edmonds, individually .....Appellants/Respondents

**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

AND NOW COME Appellants/Respondents Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds (collectively "Attorney Edmonds"), by and through their undersigned counsel, and file the following Return to Petition for Writ of *Certiorari*.

**COUNTERSTATEMENT OF ISSUES PRESENTED**

1. Did the Court of Appeals properly conclude that the trial court erred in imposing sanctions on Attorney Edmonds where there was no evidence that Attorney Edmonds acted in bad faith or with any ulterior motive other than to protect her client's rights?

**Suggested Answer:** *Yes*

2. Did the Court of Appeals properly conclude that the trial court erred in imposing sanctions on Attorney Edmonds where the evidence showed that there was a reasonable basis for the assertion of the Obituary claim?

**Suggested Answer:** *Yes*

3. Did the Court of Appeals properly exercise its discretion to modify its opinion to remove a superfluous word that has no bearing on the outcome of the issues in the appeals involving Attorney Edmonds?

**Suggested Answer:** *Yes*

**STATEMENT OF THE CASE**

This matter began as an action styled: (*Estate of David W. Harwell*) *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*, No. 2015-ES-21-00778 (In the Probate Court of Florence County, South Carolina) ("*'778 Florence Action*").<sup>1</sup> The portion of this appeal at issue in the instant Petition for Writ of *Certiorari* concerns sanctions the trial judge imposed on Attorney Edmonds because of a claim she asserted on behalf of her client Deborah D. Harwell ("Mrs. Harwell") against Robert Bryan

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<sup>1</sup> On June 10, 2016, the trial court removed and transferred the '778 Florence Action to the Circuit Court of Florence County. (*See R.* pp. 7-9). That action is now styled *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*, No. 2016-CP-21-01435.

Harwell ("Petitioner"), as Personal Representative of the Estate of David W. Harwell ("Husband"), for reimbursement of approximately \$1,400.00 that Mrs. Harwell spent for the publication of an accurate obituary.

On or about December 3, 2015, Mrs. Harwell, acting *pro se*, filed a Statement of Creditor's Claim for \$1,457.25 for the publication of an obituary of her husband, the late Justice Harwell. (*See* R. p. 108). Petitioner denied that claim. On March 9, 2016, Attorney Edmonds filed a Petition for Allowance of Creditor's Claim in that amount against the estate on Mrs. Harwell's behalf for an "[o]bituary published in newspapers, The Sun News and the State" (the "Obituary Petition"). (*See* R. pp. 147-52). This obituary accurately identified Mrs. Harwell as Justice Harwell's widow; obituaries published by Justice Harwell's estate had pointedly omitted any reference to her.

On April 1, 2016, Petitioner filed Answers and Counterclaims and Third-Party Claims in the '778 Florence County Action. (*See* R. pp. 153-232). He denied the claim for the obituary as an expense of the estate. (*See* R. pp.155-56 ¶¶ 2, 4). He also moved for sanctions against Attorney Edmonds. On or about April 12, 2017, the trial court granted Petitioner's request for sanctions, in part. (*See generally* R. pp. 58-74). While denying most of the sanctions claims, the judge held that Attorney Edmonds "was not justified in filing or pursuing the claim for the reimbursement of the obituary" and imposed sanctions of \$5,000. (*See* R. pp. 72-73).

Attorney Edmonds appealed.<sup>2</sup> On April 8, 2020, the Court of Appeals filed an Opinion ("First Opinion") that, among other things, affirmed the imposition of sanctions on Attorney Edmonds with regard to the Obituary Petition. Attorney Edmonds filed a timely Petition for Rehearing arguing that the Court of Appeals erred in affirming the sanctions against her. On October 7, 2020, the Court of Appeals granted Attorney Edmonds' Petition for Rehearing and filed a substituted opinion that reversed the trial judge's imposition of sanctions on Attorney Edmonds ("Second Opinion"). Petitioner then filed his own Petition for Rehearing.

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<sup>2</sup> Petitioner and Client also filed appeals that were consolidated with Attorney Edmonds' Appeal. Those issues are not relevant to this Petition for Writ of *Certiorari*.

On December 2, 2020, the Court of Appeals filed a second substituted Opinion ("Final Opinion"), which made some minor factual changes.<sup>3</sup> Of relevance to this Petition for Writ of *Certiorari*, the Court of Appeals' Final Opinion reversed the imposition of sanctions on Attorney Edmonds, finding that the trial judge had abused his discretion:

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

(See Pet. for Writ of *Cert. Ex. C*, at 12).

Subsequently, Petitioner has filed the instant Petition for Writ of *Certiorari* seeking review of the Final Opinion's reversal of the sanctions on Attorney Edmonds. For the reasons that follow, Attorney Edmonds respectfully asserts that this Court should deny Petitioner's Petition for Writ of *Certiorari*.

## ARGUMENTS

### A. Irrespective of the Merits of His Arguments, Petitioner Has Not Shown Any "Special and Important Reasons" Warranting the Grant of *Certiorari*.

The instant Petition for Writ of *Certiorari* focuses on the merits of Petitioner's appeal and argues that the Court of Appeals erred in reversing the imposition of sanctions on Attorney Edmonds. However, the issue in the instant Petition for Writ of *Certiorari* is not whether the Court of Appeals should have ruled in Petitioner's favor. Rather, the question immediately before the Court is whether it should exercise its discretion to hear this appeal in the first instance. The Appellate Court Rules set forth numerous guidelines for the granting of *certiorari*:

A writ of *certiorari* is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or

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<sup>3</sup> The First Opinion, Second Opinion and Final Opinion are attached to Petitioner's Petition for Writ of *Certiorari* as Exhibit A, B and C, respectively.

power to grant review in general, indicate the character of reasons which will be considered:

- (1) Where there are novel questions of law.
- (2) Where there is a dissent in the decision of the Court of Appeals.
- (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
- (4) Where substantial constitutional issues are directly involved.
- (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

*See S.C.A.C.R., Rule 226(b) (emphasis added).* For the reasons that follow, because there are no special and important reasons necessitating review, the Court should deny the Petition for Writ of *Certiorari*.

Petitioner has not argued or shown that any special and important reasons exist that would support this Court's discretionary review. Petitioner does not argue that there are novel questions of law requiring this Court's clarification for the benefit of the citizens of South Carolina. There was no dissenting opinion in the Court of Appeals suggesting the existence of a disputed legal issue necessitating Supreme Court review. Furthermore, Petitioner has not shown that the Court of Appeals' Final Opinion conflicts with a prior decision of the Court of Appeals or this Court. In addition, this case does not involve constitutional or federal issues.

Rather, the Court of Appeals simply determined that the trial judge abused his discretion in his consideration of the evidence. Far from being a broad legal question that would necessitate this Court's intervention for the benefit of the bar and the public, the issues in the Petition for Writ of *Certiorari* are case-specific and not susceptible to broad application:

An exhaustive definition of the phrase "abuse of discretion" would be difficult, if not impossible. Each case must be determined with reference to its own peculiar facts. The exercise of a sound judicial discretion must and should be performed in every case with a conscientious regard for what is just and proper under the circumstances

*See State v. Scates*, 212 S.C. 150, 155-56, 46 S.E.2d 693, 695 (1948); *Sexton v. Sexton*, 321 S.C. 487, 494, 469 S.E.2d 608, 612 (Ct. App. 1996) ("Under the unique facts of this case, we find no abuse of discretion in making the reduction of alimony retroactive.") (emphasis added). In other words, the issues raised in the Petition for Writ of *Certiorari* are not susceptible of wider relevance beyond the parties to this appeal.

Therefore, because this is not a case involving special and important reasons for Supreme Court review, this Court should deny Petitioner's invitation to grant *certiorari* in this matter.

**B. Petitioner's Arguments in His Petition for Writ of *Certiorari* Do Not Have Merit.<sup>4</sup>**

**1. The Court of Appeals Did Not Create a New Requirement for the Imposition of Sanctions.**

Petitioner argues that the Court of Appeals erred in basing its reversal of the imposition of sanctions upon the fact that Attorney Edmonds' "intent in filing the petition was not malicious or for any improper purpose." (*See* Pet. for Writ of *Cert.* Ex. C, at 12). Specifically, Petitioner asserts that "[t]he 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 [South Carolina Frivolous Civil Proceedings Sanction Act ("the Act")] unless the matter is filed maliciously or for an improper purpose." (*See* Pet. for Writ of *Cert.*, at 6).

The Court of Appeals correctly noted that sanctions against Attorney Edmonds would not be proper in the absence of evidence of subjective bad faith by Attorney Edmonds. (*See* Pet. for Writ of *Cert.* Ex. C, at 12 ("[W]e find Edmonds's intent in filing the petition was not malicious or for any improper purpose.") (*citing Ex parte Bon Secours St. Francis Xavier Hosp., Inc.*, 393 S.C. 590, 598, 713 S.E.2d 624, 628 (2011)). As this Court has held, Rule 11 requires that sanctions be reviewed under a subjective standard:

Prior to its 1983 amendment, Rule 11 of the Federal Rules of Civil Procedure provided a subjective standard for determining whether an attorney's actions

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<sup>4</sup> Attorney Edmonds will briefly discuss the merits of this appeal in this Return. However, in the event this Court grants *certiorari*, Attorney Edmonds respectfully requests the opportunity to brief the substance of Petitioner's arguments more fully and completely on the merits.

violated the rule. The amendment, however, changed it to an objective standard. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 47, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991) (recognizing the change from a subjective standard to an objective standard with the 1983 amendment to Rule 11). The South Carolina Rules of Civil Procedure, however, did not undergo a similar amendment. The notes to the [South Carolina] rule demonstrate that the subjective standard has not been changed. Rule 11, SCRCP note ("This version of Rule 11(a) is not nearly so stringent as the latest version of the Federal Rule which became effective August 1, 1983.")

*See Ex parte Bon Secours*, 393 S.C. at 598 n.8, 713 S.E.2d at 628. "[T]he 'criteria for Rule 11 sanctions are essentially the same as those for sanctions under the [Act].'" *See In re Beard*, 359 S.C. 351, 360, 597 S.E.2d 835, 839 (Ct. App. 2004) (quoting *Father v. South Carolina Dep't of Soc. Servs.*, 345 S.C. 57, 72, 545 S.E.2d 523, 531 (Ct. App. 2001)). (See also *Pet. for Writ of Certiorari*, at 4 ("This Court has explained 'the standard for sanctions under Rule 11 is essentially the same as that of the' the [sic] . . . Act.")).

The Court of Appeals correctly concluded that, under such a subjective standard, there was no evidence whatsoever supporting the trial judge's imposition of sanctions on Attorney Edmonds. There is no evidence that Attorney Edmonds acted with any intention other than to protect her client's legal rights. There is no evidence she acted with malice. There is no evidence of bad faith on her part. The Court of Appeals properly determined that the trial judge abused his discretion in imposing sanctions on Attorney Edmonds.

**2. The Trial Judge Abused His Discretion in Finding Attorney Edmonds' Filing of the Obituary Claim Was Frivolous.**

In its *First Opinion*, the Court of Appeals expressly found that "Edmonds's filing of the petition for allowance of the Obituary Claim was equally frivolous" for the following reasons:

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.

(See *Pet. for Writ of Cert. Ex. A*). Upon Attorney Edmonds' Petition for Rehearing, the Court of Appeals modified its *First Opinion* and withdrew its finding that Attorney Edmonds had asserted

or maintained a frivolous action. This correction was unarguably proper inasmuch as the Mediation Agreement between Mrs. Harwell and Justice Harwell could not have waived claims that did not even exist when they entered into the Agreement.

In the instant Petition for Writ of *Certiorari*, Petitioner suggests, in part, that Court of Appeals erred and that sanctions against Attorney Edmonds are proper under an objective standard under the Act, which authorizes sanctions upon an attorney for filing a frivolous document, if:

- (i) the person has not read the frivolous pleading, motion, or document;
- (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;
- (iii) 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
- (iv) 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;

*See* S.C. Code § 15-36-10(A)(4)(a). Sanctions under the Act are also permitted where an attorney makes "frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts" or "frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law." *See* S.C. Code § 15-36-10(A)(4)(b)-(c).

Contrary to Petitioner's arguments, the record clearly shows that the trial judge abused his discretion in finding that Attorney Edmonds acted in a frivolous manner in connection with the Obituary Claim. "An abuse of discretion may be found where the appellant shows that the conclusion reached by the trial court was without reasonable factual support and resulted in prejudice to the rights of appellant, thereby amounting to an error of law." *Karppi v. Greenville*

*Terrazzo Co.*, 327 S.C. 538, 542, 489 S.E.2d 679, 681 (Ct. App. 1997). "[T]he unhappily framed expression, 'abuse of discretion' means a ruling made upon grounds and for reasons clearly untenable." *See Weinberg v. Weinberg*, 208 S.C. 157, 162, 37 S.E.2d 507, 509 (1946). A filing is frivolous "when it is clearly insufficient on its face . . . and is presumably interposed for mere purposes of delay or to embarrass the plaintiff." (*See* <https://thelawdictionary.org/frivolous/> (visited Dec. 22, 2020)). The South Carolina Supreme Court has stated the following:

Pleas, which may be rejected as frivolous, must be such as are impertinent, or nonsensical-trifling with the dignity of the court, and the majesty of the law; such pleas, on which no serious question of fact or law can properly arise. If it appear to be, at first blush, a material plea, and has form, it cannot be rejected as frivolous. The plaintiff, if he chose to question the legal effect, or propriety, of the replication, might have demurred to it, and thus have brought the question of law before the court, upon the record.

*See Etiwan Fertilizer Co. v. Johns*, 202 S.C. 29, 24 S.E.2d 74, 76–77 (1943) (citation omitted).

Judge Easterbrook has defined "frivolous" as follows:

Something is frivolous only when (a) we've decided the very point, and recently, against the person reasserting it, or (b) 99 of 100 practicing lawyers would be 99% sure that the position is untenable, and the other 1% would be 60% sure it's untenable. Either one is a pretty stiff test.

*See* American Bar Association, Rule 11 Sanctions § 5.03 (2004).

Petitioner did not present any evidence that the Obituary Petition was frivolous or without merit. The Estate published an obituary that acknowledged Justice Harwell's relatives (even his dog) but failed to mention his widow. The inclusion of the surviving spouse is standard, and its absence from the obituaries that the Estate published arguably defeated the purpose of an obituary. Mrs. Harwell had every right to ask the Estate to pay the cost of publishing a complete and correct obituary. The Probate Court might have ultimately denied the Obituary Petition, but that claim was hardly frivolous. Attorney Edmonds could not, consistent with her professional duties, permit Client's claim to become time-barred simply because she was not sure that it would be approved.

The filing of the Obituary Petition was justified – indeed, required – under the same rationale that the trial court and the Court of Appeals applied to Attorney Edmonds’ challenge to the Harwells’ prenuptial agreement. The Court of Appeals Court correctly observed — in affirming the denial of sanctions concerning Mrs. Harwell's petition pursuant to a prenuptial agreement ("Prenuptial Petition") — that Mrs. Harwell “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.” (*See* Pet. for Writ of *Cert.* Ex. C, at 11). The Court of Appeals also noted that Attorney Edmonds said that the challenge to the Mediation Agreement would have to take place in Family Court; she advised Mrs. Harwell to obtain other counsel for that pursuit, as she did not have expertise in that court. (*See id.*). The Final Opinion continues: “[b]ased 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 id.*). This cogent analysis of the Prenuptial Claim applies with equal force to the Obituary Petition; if valid, the claim would have been lost had Attorney Edmonds failed to file a timely Petition to preserve it.

In her uncontroverted affidavit, Attorney Edmonds averred that she filed the Obituary Petition to protect Mrs. Harwell's right to assert that claim from being forever lost by the passage of time. (*See* R. pp. 298-99 ¶¶ 19-21). She attested that she asserted claims because Mrs. Harwell intended to challenge the Mediation Agreement in Family Court. In the event that undertaking succeeded (removing the trial judge's basis for imposing sanctions), Mrs. Harwell would ultimately need to pursue the Obituary Petition in Probate Court. Unless Attorney Edmonds immediately preserved Mrs. Harwell's rights, they would be forever lost. (*See* R. pp. 413-14 ¶¶ 5-8). Mrs. Harwell sincerely believed ¶¶ that Justice Harwell failed to disclose assets and intended to set the settlement aside. Having learned this, Attorney Edmonds filed the Prenuptial and Obituary Petitions because she "could not, consistent with my professional responsibility,

allow [Mrs. Harwell's] claim against the estate to become time-barred when there was no way for me to determine whether she might be entitled to recovery." (*See* R. p. 414 ¶ 8). If Attorney Edmonds had not filed the Obituary Petition, that claim would have been forever barred, even if she set aside the Mediation Agreement. *See* S.C. Code § 62-3-806(a). It was not a foregone conclusion that the Mediation Agreement was valid or would bar Mrs. Harwell's claims. Only time and litigation in Family Court – where Attorney Edmonds did not regularly practice – would determine the Mediation Agreement's validity.

Additionally, Attorney Edmonds had a legitimate argument that the Mediation Agreement could not bar a claim that did not exist at the time of the Mediation Agreement and would not arise out of her husband's actions. The Mediation Agreement provided that: "The parties have settled all of the issues arising out of their marriage and of the Prenuptial Agreement by this Mediation Agreement and request the Family Court to approve and incorporate this Mediation Agreement into an order of the Court." (*See* R. p. 145 ¶ 2 (emphasis added)). The Obituary Petition did not arise out of the marriage or prenuptial agreement. It did not even exist when the parties entered into the Mediation Agreement and was not within their contemplation. It was far from certain that the Mediation Agreement would bar the obituary claim.

Mrs. Harwell had incredible difficulty finding an attorney. The Harwell name is rightly revered in South Carolina legal circles. No attorney would want to challenge his estate. Nevertheless, Mrs. Harwell believed she had a claim and needed legal representation. Mrs. Harwell's stepchildren intentionally omitted her from her husband's obituary, which had included every other family member (even his dog). This understandably caused Mrs. Harwell great distress, and she wished to enforce her legal rights and be compensated for righting this wrong. At the time that Ms. Harwell's Obituary Petition had to be filed, Attorney Edmonds had no way of knowing whether the claim could succeed.

The Rules of Professional Conduct and the Lawyer's Oath encourage lawyers to take on unpopular causes and to protect the helpless and oppressed. Attorney Edmonds should not be punished for helping Mrs. Harwell preserve whatever claims she might have against her

husband's estate.<sup>5</sup> Imposing sanctions will chill attorneys from taking on unpopular causes and deprive those most in need of legal representation.

For the foregoing reasons, this Court should deny Petitioner's Petition for Writ of Certiorari.

**C. There Are Additional Sustaining Grounds Supporting the Court of Appeals' Reversal of Sanctions.**

**1. There Has Never Been a Determination That The Obituary Petition Was Actually Frivolous**

A judicial determination on the merits of the Obituary Petition would be necessary for the imposition of sanctions. However, the trial court made no finding that the Obituary Petition was frivolous. It never dismissed those claims on the merits or for any deficiency. The trial judge did not find those claims were so baseless as to warrant the exceptional remedy of sanctions. The trial judge did not permit an evidentiary hearing or discovery. Instead, the trial court relied on Mrs. Harwell's voluntary dismissal of the Obituary Petition as the basis for sanctions. The trial court did *not* explain *why* the Obituary Petition was improper and did not provide Mrs. Harwell an opportunity to withdraw it. As a result, the trial court's imposition of sanctions was plainly premature. Petitioner has cited no authority permitting sanctions under such circumstances.

**2. The Sanctions Were Excessive and Disproportionate.**

The trial judge sanctioned Attorney Edmonds and awarded Petitioner \$5,000.00 in legal fees related to the \$1,457.25 Obituary Petition. However, the record is devoid of any evidence that Petitioner incurred *any* attorneys' fees attributable to the Obituary Petition. The United States Supreme Court has held a sanctions award is only proper where it compensates the moving party for fees that would not have been incurred but for the sanctioned conduct. *See*

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<sup>5</sup> “Section 15-36-20 creates a presumption that a person taking part in the initiation or continuation of proceedings acted with a proper purpose ‘if he reasonably believes in the existence of facts upon which his claim is based’ and . . . reasonably believes under the facts that his claim may be valid under existing or developing law.” *Hanahan v. Simpson*, 326 S.C. 140, 156, 485 S.E.2d 903, 912 (1997) (*quoting* S.C. Code Ann. § 15-36-20(1)).

*Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186 (2017). There is no evidence of legal fees Petitioner could have avoided but for the Obituary Petition.

Substantially all of Petitioner's counsel's efforts were spent arguing against the merits of a \$3.1 million creditor claim (for which sanctions were not imposed) and the amendment of the death certificate. (See R. pp. 153-207, 237-40, 339-52, 364-83, 384-441, 511-619, 855-74). Petitioner did not present billing records or evidence of the hourly rate, the number of hours or work performed because of the Obituary Petition. There is no evidence that any attorney performed 20 hours of legal work in responding to the relatively minor Obituary Petition. Indeed, it appears that Petitioner and his counsel did nothing more to defend that claim than to deny it and include it in the motion to dismiss and for sanctions (which was also directed to a much larger claim). Mrs. Harwell voluntarily dismissed the Obituary Petition without any action by the Probate Court and without the need for Petitioner to incur any legal fees. To the contrary, the trial judge created the figure of \$5,000 without any evidentiary support.

Second, the trial court did not engage in a detailed analysis to determine whether the attorneys' fees awarded were reasonable. In determining the reasonableness of legal fees, courts focus on six factors set forth in *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997): (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. The factors for determining the reasonableness of fees set forth in Rule 1.5 of the Rules of Professional Conduct, Rule 407, SCACR, include the same factors. The trial judge did not analyze any of these factors, which Attorney Edmonds submits would not have supported the sanctions.

Finally, the amount of \$5,000 to defend a claim of less than \$1,500 is facially excessive and grossly disproportionate. Petitioner would have to have been uncommonly vindictive and contumacious to spend \$5,000 to defend a claim that small and that innocuous. It was an abuse of discretion for the trial judge to impose sanctions more than three times the underlying claim.

Therefore, the trial judge plainly erred in imposing such sanctions in the excessive amount of \$5,000.00.

**D. This Court Should Not Grant *Certiorari* to Review the Court of Appeals' Deletion of a Single Word in Its Substituted Opinions.**

As if to illustrate how this litigation has been replete with personal animosity, Petitioner asks the Court to grant *certiorari* because the Court of Appeals' Second Opinion and Final Opinion *sua sponte* removed the word "tactless" from the following phrase: "Edmonds made *tactless* assertions in the filing that were unnecessary to obtain the relief sought." This statement has nothing to do with the reversal of sanctions against Attorney Edmonds; in fact, it is in a section of the Second Opinion and Final Opinion dealing with Mrs. Harwell's appeal.


In any event, Petitioner has not shown that this is an issue warranting the exercise of this Court's discretionary jurisdiction. The deletion of this single word had no impact upon the appeal with regard to Attorney Edmonds. To the contrary, Petitioner only seeks the intervention of this Court to include that word to harass and embarrass Attorney Edmonds. Petitioner asserts that the word "tactless" should "be reinserted into the opinion to recognize the imprudent nature of Edmonds's conduct." (*See* Petit. for Writ of *Cert.*, at 9). However, this would have no bearing on the outcome of any remaining appellate issue in this case. Respectfully, Petitioner's punitive desire to have the Court of Appeals' Final Opinion make a commentary about Attorney Edmonds is not an appropriate reason for this Court to exercise jurisdiction.

**CONCLUSION**

For the foregoing reasons, the Court should deny Petitioner's Petition for Writ of *Certiorari* and decline to review this matter.

January 12, 2021

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