

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

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

Jan 20 2021
S.C. SUPREME COURT

APPELLATE CASE NO. 2020-001639

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,

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

v.

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

REPLY TO RETURN TO PETITION FOR
WRIT OF CERTIORARI

Marian D. Nettles, Esquire
Nettles, Turbeville & Reddeck
P.O. Box 699
Lake City, SC 29560
(843) 374-8511
(843 374-3211 (fax)
missy@ntrlaw.com

Kevin M. Barth
Barth, Ballenger & Lewis, LLP
P.O. Box 107
Florence, SC 29503
Kbarth@bblaws.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., Esq.
Barbara J. Wagner, Esq.
Barnwell, Whaley, Patterson & Helms, LLC
288 Meeting Street, Suite 200 (29401)
Post Office Drawer H
288 Meeting Street, Suite 200 (29401)
Charleston, SC 29402
(843) 577-7700 Fax: (843) 577-7708
mdc@barnwell-whaley.com
bwagner@barnwell-whaley.com
Attorneys for Respondents

Deborah B. Harwell, *Pro Se*
1459 River Highway
Mooreville, NC 28117

Deborah B. Harwell
PO Box 298
Fallston, NC 28042

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

Table of Contents

Table of Authorities ii

Issues presented iii

Argument

 A. Special and important reasons do exist herein warranting the
 granting of a *Writ Certiorari* herein 1

 B. The Court of Appeals could not have properly concluded that
 there was a reasonable basis for filing the Obituary Claim. 1

 C. The Court of Appeals should not procedurally have revised its
 opinion without a request or petition for rehearing by any party. 2

 D. No additional sustaining grounds support the Court of Appeals’
 reversal of sanctions. 2

Conclusion 3

Table of Authorities

I. Cases:

<i>Ex Parte Gregory</i> 378SC 430, 663 SE 2d. 46 (2008)	1
<i>Pee Dee Health Care PA v. Estate of Thompson</i> 418 SC 557, 795 SE2d 40 (Ct App 2016)	3

II. Statute:

South Carolina Frivolous Civil Proceedings Sanctions Act §15-36-10 (2005)	1
---	---

III. Rules:

<i>South Carolina Appellate Court Rule</i> 242	1
<i>South Carolina Rules of Civil Procedure Rule</i> 11	1

Issues Presented

- A. Special and important reasons do exist herein warranting the granting of a *Writ Certiorari* herein.
- B. The Court of Appeals could not have properly concluded that there was a reasonable basis for filing the Obituary Claim.
- C. The Court of Appeals should not procedurally have revised its opinion without a request or petition for rehearing by any party.
- D. No additional sustaining grounds support the Court of Appeals' reversal of sanctions.

A.

Special and important reasons do exist herein warranting the granting of *Certiorari* herein.

Rule 242 *South Carolina Appellate Court Rules* provides that *Certiorari* may be granted where there are special and important reasons in a particular case. Subpart (3) of Rule 242 provides that *Certiorari* may be granted “where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court”. The Court of Appeals concluded that “we find that Edmonds’s intent in filing the petition (for allowance of Obituary Claim) was not malicious or for any improper purpose.” (See Exhibit C to Petition for *Writ Certiorari* page 6). The Court of Appeals now appears to have judicially engrafted a requirement that the motive of the attorney be malicious or in bad faith. This is not the standard of Rule 11 or the Frivolous Claims Act. Frivolous claims are sanctionable. *See Ex Parte Gregory* 378 SC 430, 663 SE2d 46 (2008)

The Court of Appeals ignored the standard of review applicable (abuse of discretion) when it agreed with the factual findings of the Trial Court. The Court of Appeals specifically said in each of its three opinions that it agreed with the factual findings of the Trial Court. (See Exhibits A, B and C, Petition for *Writ of Certiorari*.)

Finally without authorization by Rule or statute and without request by any party, the Court of Appeals erred in *sua sponte* modifying the section of the opinion dealing with Petitioner’s Appeal.

B.

The Court of Appeals could not have properly concluded that there was a reasonable basis for filing the Obituary Claim herein.

As set forth in Argument 1 of the Petition for *Writ Certiorari* herein, there was no reasonable basis for the filing of the Obituary Claim herein. In its first opinion (Exhibit

A to Petition for *Writ Certiorari*) the Court correctly concurred with the Trial Court's findings of fact

(1) in the Mediation Agreement, Widow waived any claims she had against Decent'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 p. 70-72 Record on Appeal). As noted by the Circuit Court, "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 legal authority to do so". "I know of no such authority in this case". (R.P. 78)

These findings are indisputable and are supported by the record, and as such required affirmance of sanctions under an abuse of discretion standard. **The Court of Appeals should not procedurally have revised its opinion without request or petition for rehearing by any party.**

C.

The Court of Appeals *Sua Sponte* revised its opinion without a request or petition for rehearing by any party. Every party had elected not to seek rehearing of the section of the first original opinion entitled "B. Harwell's Appeal". (See Argument 3, Petition for *Writ Certiorari*) Edmonds claims that Petitioner only seeks to include the word "tactless" in order to "harass or embarrass" Edmonds. The word "tactless" was a very mild description of Edmonds' accusations against Petitioner. Edmonds accused Petitioner of having committed a felony regarding the processing of the death certificate. The Trial Court found these allegations to be false and unjustified (R. P.71) The

redaction should not have been made given the fact that all parties had elected not to seek rehearing of Petitioner's appeal (not Mrs. Harwell's appeal as erroneously stated by Respondent at p. 13 of their Return).

D.

No additional sustaining grounds support the Court of Appeals' reversal of sanctions.

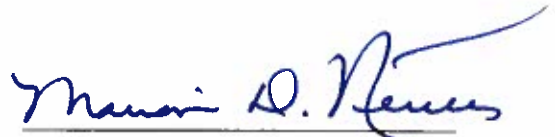
Edmonds claims that there has never been a determination that the Obituary Claim was actually frivolous. This is not true. (See R.p. 70-72) The Court of Appeals properly noted the factual findings of the Trial Court as set forth in Argument A hereinabove.

The indisputable fact is that the Obituary claim was frivolous for the five reasons noted by the Court of Appeals in its First Opinion (Exhibit A).

Edmonds claims as an additional sustaining ground that \$5000 was an excessive sanction for the filing of the \$1457.25 Obituary Claim. The Court of Appeals in its first opinion, (Exhibit A to Petition for *Writ Certiorari*) and the Trial Court in its Final Order, detailed the analysis which produced the \$5000.00 sanctions award. (R. p. 72-73) It should also be noted that the Trial Court cited the case of *Pee Dee Health Care PA v. Estate of Thompson* 418 SC 557, 795 SE 2d 40 (Ct App 2016) in support of the proposition that the primary purpose of Rule 11 sanctions is to deter future litigation abuse. Other purposes include compensation of the offended party.

Conclusion

For the foregoing reasons, the Petitioner requests that the Petition for Certiorari be granted.



Marian D. Nettles, Esquire
Nettles, Turbeville & Reddeck
P.O. Box 699
Lake City, SC 29560
(843) 374-8511
(843 374-3211 (fax)

missy@ntrlaw.com

**Kevin M. Barth
Barth, Ballenger & Lewis, LLP
P.O. Box 107
Florence, SC 29503
Kbarth@bblaws.com**

**Gena Phillips Ervin
Orr & Ervin, LLC
P.O. Box 2527
Florence, SC 29503
Attorneys for Petitioner**