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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
EUGENE C. GRIFFITH, JR., CIRCUIT COURT JUDGE

Case No. 2019-CP-30-00140
Appellate Case No. 2020-001472

Vidhyaben R. Patel, Individually and as Co-Personal Representative Of the Estate of Rameschandra Prabhudas Patel, and Darshak Kumar Patel, Individually and as Co-Personal Representative Of the Estate of Rameschandra Prabhudas Patel, ...Appellants/Respondents,

v.

Hardik R. Patel, Anal H. Patel and AAHARVID, LLC, ...Respondents/Appellants.

RESPONDENT/APPELLANT'S INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. The trial judge erred in failing to grant relief to Appellants under the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. 15-36-10 *et seq.* when respondents failed to file an opposition to the Motion pursuant to the statute.

II. The trial judge erred in failing to award attorneys' fees and costs against Respondents Vidhya Patel and Darshak Patel, who brought this action for improper reasons, invented a false narrative and likely suborned perjury.

STATEMENT OF THE CASE

Following the trial judge's denial of relief to Respondents on their bad faith claims for resulting trust and constructive trust (and other claims that were withdrawn or dismissed), Hardik Patel, his wife Anna Patel, and Anna's company AAHARVID LLC (hereafter 'Appellants") filed for an award of attorneys' fees against the Respondents (but not their attorneys[1]) pursuant to S.C. Code Ann. § 15-36-10, the South Carolina Frivolous Civil Proceedings Sanction Act (hereafter "the Act"). Respondents failed to respond within the time provided by statute, and for more than three (3) months thereafter. When the matter was set for determination, three months later, Respondents finally submitted a memorandum in opposition to the motion, but still failed to file a response as required by the Act.

Respondents failed to comply with the statute applicable to the motion, which provided a 10-day period within which to dispute the claims made in support of relief under the Act. Had Judge Griffith applied the provisions of the act, the court should not have permitted any opposition to the motion for attorney's fees.

Judge Griffith denied the motion for attorney's fees and costs, concluding that "the case was very close on weight, but the defendants' testimony and evidence outweighed (but not substantially) the Plaintiffs' testimony and evidence." (Order dated January 19, 2021). He also failed to mention the argument made by Appellants that Respondents had not filed any objection to the motion as required by statute. In other words, he allowed Respondents to ignore the statutory

[1] As set forth in the motion for attorney's fees and costs, Appellants did not seek an award of sanctions against opposing counsel because Appellants were "informed and believe the [Respondents Vidhya and Darshak Patel are] responsible for this charade and the waste of the Court's (and the [Appellants'] time. Motion for Attorney Fees dated September 8, 2020, footnote 1.

requirements for responding under the Act and, in denying relief, he rejected his own conclusions of lack of evidentiary support in his order denying relief on the merits of the lawsuit.

Judge Griffith's denial of the motion for attorneys' fees contradict his own order of August 28, 2020 on the merits of the case, in which he found virtually no evidence, documentary or otherwise, to support Respondents' claims. Instead, as to attorneys' fees and costs, Judge Griffith concluded "the Plaintiff's claims were not frivolous under the FCSPSA." (Order dated January 19, 2021).

In truth, as demonstrated by Appellants, and not denied by Respondents within the statutory time period for doing so, this lawsuit was filed because Respondents deliberately fabricated a story that had no evidentiary support whatsoever. Other than providing fabricated testimony and trying to shame Appellants because of their decision to live their lives as Americans, Respondents proved nothing they attempted to prove.

The evidence presented by Appellants in support of the motion for attorney's fees and costs shows that Respondents attempted to steal property owned by Appellants through proceeding in probate court and, when they were unsuccessful in doing so, made up the story that is now in its third year of litigation and has tied up four days of in-court circuit court resources and hundreds, if not thousands, of hours work power for the parties and the court system. Based on Judge Griffith's denial of the motion for attorney's fees and costs, they abused the court system and Appellants, without having to suffer any consequences.

In his ruling on the merits, Judge Griffith ruled that Respondents failed to prove nothing they attempted to prove. Paragraphs 39, 34, 42, 51, 52, 55, 66, and 57 of the order, as well as footnotes 9, 74, 76, 94, 96 and 99. (Order dated August 28, 2020).

He further found Respondents introduced fabricated testimony: Paragraphs 46, 52, 59, 60, 62, 66 and 69.

The complaint in this case contained numerous overtly false statements, the falsity of which could easily have been established by documentary evidence that was available to Respondents, had they bothered to look. All documents necessary to investigate the facts which were asserted in this case were within the power of respondents, who served as co-personal representatives of the Estate of Ramesh Patel, pending in Laurens County.

Paragraphs 10, 11, 12, 13, 14, 16, 19, 20, 21, 24, 25, 26, 27, 28, 29, 33, 34, 38, 39, 41, 44, 47, 50, 53 and 54 of the complaint in this action were outright falsehoods, a fantasy concocted to try to steal assets from Appellants.

Judge Griffith paid particularly close attention to the testimony in this case in order to judge the credibility of witnesses. "I carefully observed each witness, and I noticed such things as their tone of voice, gesture, hesitation or readiness to answer questions, their sincerity and mannerisms, as well as their biases and alliances, all of which assisted in my evaluation of the credibility of each witness. (Order dated 8.28.2020, p. 4).

No one was happier than the Appellants to have a final order in the underlying case. But Respondents have to bear the consequences of their attempted fraud on the court.

ARGUMENT

I. THE TRIAL JUDGE ERRED IN FAILING TO GRANT RELIEF TO APPELLANTS UNDER THE S.C. FRIVOLOUS CIVIL PROCEEDINGS SANCTIONS ACT, WHEN RESPONDENTS FAILED TO FILE AN OPPOSITION TO THE MOTION PURSUANT TO THE STATUTE.

Appellants timely filed a motion for attorneys' fees and costs under the Act on September 8, 2020, and included documentary evidence that was not already before the Court to establish the factual background to establish the malicious purposes behind the lawsuit.

The Act expressly provides:

> A person is entitled to notice and an opportunity to respond before the imposition of sanctions… A court or party proposing a sanction… shall notify the court and all parties of the conduct constituting a violation of this section and explain the basis for the potential sanction [to be] imposed. Upon notification, the… party… who allegedly violated subsection (A)(4) has thirty days to respond to the allegations as that person considers appropriate, including but not limited to… by offering an explanation of mitigation.

S.C. Code §15-36-10(D) (emphasis added).

This was not a motion filed pursuant to the South Carolina Rule of Civil Procedure. This was a motion filed pursuant to statute, with a specific statutory deadline for a response.

Respondents did nothing to respond. Nothing. Appellants' counsel repeatedly attempted to move the matter forward after Respondents missed their deadline to respond. (db email dated 10.19.2020; law clerk email and our response 2020 009 24). After Appellants' counsel requested permission to send a proposed order because Respondents missed the statutory deadline for responding, the trial judge's law clerk requested a proposed order and it was submitted. (db email 2020 10 19 requesting permission with response from clerk to prepare order; db email submitting a proposed order). Respondents did not object to the proposed order or otherwise respond.

Appellants' counsel again attempted to move the matter forward by sending proposed amended order, pointing out once again that Respondents' time to respond had expired. (db email 2020 09 12). Respondents' counsel even admitted in communication on December 9, 2020 that he was unaware of a statutory deadline to respond. (2020.012.09 Jake email).

The circuit court responded on December 22, 2020 that he would allow Respondents' counsel "until Wednesday, January 6, 2021 to respond." (2020 22 12 Judge Griffith email).[2]

Respondents finally filed a memorandum in opposition by filing on January 6, 2021. (Lynn Ivey email dated Jan. 6, 2021). That was four (4) months after Appellants had filed their motion which required a response within thirty days. S.C. Code Ann. §15-36-10(D). Appellants filed a reply with exhibits the following day. (Reply filed Jan 7, 2021 without exhibits).

Respondents never asked for an extension of time; they never asked for relief from the statutory deadline. Respondents' counsel even admitted he didn't know there was a statutory deadline, even though Appellants' counsel had repeatedly cited it in communications with the court on which Respondent's counsel was copied.

Despite the failure of Respondents to meet the deadline, request an extension, or offering any explanation (other than counsel not reading the statute) the trial judge permitted Appellants to file a memorandum even though they never asked to do so. Instead, the trial judge reprimanded Appellants' counsel for attempting to move the matter forward, and issued a brief order denying Appellants' motion without any fact-finding, or addressing Respondents' failure to timely respond at all, much less within the statutory deadline and without any request for extension ever having been made. (Order dated January 19, 2021).

Appellants filed a detailed Motion for Reconsideration, again pointing out Respondents' failure to comply with the statutory deadline, as well as pointing out additional actions

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[2] He also reprimanded what he called counsel's "email jousting" and encouraged counsel to resolve the issue without him having to decide the outstanding motion. *Id.*

demonstrating the bad faith of Respondents throughout the litigation. (Motion for Reconsideration dated January 22, 2021). The motion was denied. (Order dated Jan. 22, 2021).

As pointed out by the Supreme Court, the "American Rule" is that each party to a lawsuit usually pays his or own attorney's fees. *Layman v. State*, 376 S.C. 434, 658 S.E.2d 320 (2008). There are limited circumstances for awarding attorneys' fees to the winning party. *Id.* at 329.

A statutory award of attorneys' fees is typically authorized under what is known as a fee-shifting statute, which permits a prevailing party to recover attorneys' fees from the losing party." *Id.*

This court has recognized there is a limited exception to the "American Rule" provided by the courts, for instance in an equitable indemnification setting, where the attorneys' fees incurred by the losing party are recognized as the proximate result of the actions of the offending party. *Fountai v. Fred's*, 429 S.C. 533, 839 S.Ee.22d 475 (Ct.App. 2020).

While there are apparently no South Carolina cases directly on point,[3]some jurisdictions have addressed a court's authority to relax a statutory deadline. By way of example, the United States District Court for the Southern District of New York, Bankruptcy Court, denied a request to "toll" a statutory deadline when the request was based on the grounds of fraud by the other party. *In re: Calpine Corporation*, 389 B.R. 323 (S.D.N.Y. 2008). Mississippi has recognized a court's authority to extend a statutory deadline upon a showing of "good cause." *Keyes v. Mississippi Department of Employment Security*, 95 So.3d 757 (Miss.App. 2012); New Jersey has

[3] A school district's failure to comply with a statutory deadline for terminating a teacher as required by the South Carolina Teacher Employment and Dismissal Act, S.C. Code §§59-25-410 to 530 (Supp. 1997) was discussed as a triggering event in a discussion of events which followed the school district's efforts to affect a change in a teacher's position while deciding whether the teacher had exhausted administrative remedies. However, this Court did not discuss a court's authority to extend a statutory deadline, likely because the question was not asked.

noted a court's authority to extend a statutory deadline upon a showing of "good cause" coupled with a lack of prejudice to the non-moving party. *D.R. Horton Inc. v. New Jersey Dept of Environmental Protection*, 383 N.J. Super. 405, 891 A.2d 1253 (Appellate Division 2006). Other state courts have discussed extensions of statutory deadlines under the laws of those states. *See e.g., State v. Stidson*, 343 P3d, 911 (Alaska 2015); *In re: D. Patrick Smitherman,* 533 S.W.3d 907 (Ct.App. Texas 2017); *Freedman v. Superior Court of Orange County*, 82 Cal.Rptr.3d 563, 166 CalApp.4th 198 (Fourth District, Division Three 2008).

The theme in common among all these cases is, of course, when a request for extension was made. Here, no request for extension was made by Respondents, and Respondents never filed what the statute permitted, *i.e.,* an opportunity to "respond," instead filing a memorandum of law three months after the statutory deadline expired and only when the trial judge *sua sponte* imposed a deadline for a memorandum.

The question of whether a statutory deadline can be gratuitously extended by the circuit court *sua sponte* and many months after the statutory deadline has expired may lie in that line of cases that hold that statutes in derogation of the common law must be strictly construed. *See Brown v. Key*, 425 S.C. 490, 823 S.E.2d 212 (Ct.App. 2019); *Wilson v. Charleston County School District,* 419 S.C. 442, 798 S.E.2d 449 (Ct.App. 2017). Since the "American Rule" that each side pays its own attorneys' fees ordinarily and the Act provides a statutory exception to the common law rule, it may be that the circuit court lacks authority to grant an extension to a statutory deadline. *See Cunninghan v. Anderson County*, 402 S.C. 434, 741 S.E.2d 545 (Ct.App. 2013).

Of course, this Court need not tackle this issue here, since Respondents made no request to extend the statutory deadline before or after it expired and no effort to show a reasonable

explanation for why the deadline was missed. The question presented here is whether a circuit judge can *sua sponte* ignore a statutory deadline and allow a filing whenever the opposing side gets around to filing something, even if it is not what the statute requires.

Appellants made numerous efforts to spoon-feed the requirements of the statute to opposing counsel in an effort to move her clients' case forward, and was rewarded by a reprimand for lack of civility and a ruling against her clients when Respondents didn't bother to comply with a statutory requirement to respond.

Appellants are not contenting that the reprimand of counsel was not warranted, nor are they requesting relief on that issue. Appellants do, however, ask this Court to recognize that when a statute imposes a deadline that goes completely ignored, by the party obligated to respond <u>and</u> by the Court, there must be some consequences.

Appellants respectfully assert that the trial court erred in inviting Respondents to submit a memorandum months after they missed a statutory deadline, and even though no request to submit the memorandum was made by Respondents.

It is respectfully asserted that the trial judge should not have entertained the inexplicable failure by Respondents to comply with the statutory deadline as set forth in the Act. While the trial judge's decision on the merits of the motion for attorneys' fees and costs might have been the same despite Respondents' default, Appellants urge the court to recognize that statutory deadlines cannot simply be ignored.

II. THE TRIAL JUDGE ERRED IN FAILING TO AWARD ATTORNEYS' FEES AND COSTS AGAINST RESPONDENTS VIDHYA PATEL AND DARSHAK PATEL, WHO BROUGHT THIS ACTION FOR IMPROPER REASONS, INVENTED A FALSE NARRATIVE AND LIKELY SUBORNED PERJURY.

The South Carolina Frivolous Civil Proceedings Sanction Act ("the Act") was signed into law by the Governor of South Carolina on April 5, 1988 as part of sweeping legislation responding to what it called "frivolous lawsuits." 1988 Act No. 432, Section 6. In addition to creating the Act, the General Assembly included provisions to, *inter alia*, reduce statutes of limitations from six years to three years, to "permit a new trial limited to damages only in those instances where the plaintiff was entitled to a directed verdict," to require expert witness affidavits as a prerequisite to lawsuits against numerous professionals, and numerous other restrictive measures. 1988 Act No. 10432.[4]

Appellants set forth in detail, with citation to the record and addition of supplemental materials, the many reasons supporting a finding that Respondents had violated the act by manufacturing a false narrative that had failed them in probate court, suborned perjury, filed this action for improper purposes, the most bizarre of which was the admission by Vidhya that she filed the lawsuit because Hardik would not talk to her. (Motion for Attorney Fees, p. 7, citing to the deposition of Vidhya taken on June 17, 2019).

In the interests of efficiency, Appellants will not repeat what is clearly set forth in their motion for attorneys' fees and costs, since the detailed argument with exhibits were not addressed by the trial judge and instead incorporates that motion with attachments herein as fully as if repeated verbatim.

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[4] The Act was rewritten entirely in 2005 to require the signature of an attorney or party on all pleadings, to provide a procedure for administering sanctions for a violation, and to provide for reporting of an attorney to the Commission on Lawyer Conduct. 2005 Act No. 27.

The trial judge's ruling that the case was not "frivolous" misstates the requirements set forth in the act and is based upon a very narrow construction of the evils the General Assembly was attempting to address when the Act was enacted in 1988 and revised in 2005. While the Act is not model of clarity, it must set a standard that did not already exist.

This Court has expressly stated that "a court must assume the legislature intended to accomplish something through an enacted statute and did not engage in futile action." *Home Health Services v. SC Department of Revenue*, 333 S.C. 691, 511 S.E.2d 404 (Ct.App. 1999), citing *Purvis v. State Farm Mutual Auto. Ins. Co.*, 304 SC. 283, 288, 403 S.E.2d 6622, 666 (Ct.App. 1991).

To date, the appellate courts of the state have opined that the Act is essentially a restated version of Rule 11, SCRCP. *Pee Dee Health Care P.A. v. Estate of Hugh S. Thompson*, 424 S.C. 520, 818 S.E.2d 758 (2018); *Holmes v. East Cooper Community Hospital*, 408 S.C. 138, 758 S.E.2d 483 (2014); *Southeastern Site Prep LLC v. Atlantic Coast Builders and Contractors LLC*, 394 S.C. 97, 713 S.E.2d 650 (Ct.App. 2011).

This court has noted that the "cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Crocker v. S.C. Dep't of Health & Envtl. Control*, 428 S.C. 1, 831 S.E.2d 924 (Ct.App. 2019). Appellants respectfully submit that an analysis under the act cannot possibly rise and fall solely on a consideration of whether an action is "frivolous."

However, even if it does, surely an action brought for an improper purpose, using fabricated facts, perjured testimony and years of abuse of the courts[5] rises to the level of "frivolous." This

[5] As demonstrated by this record, Respondents' efforts to steal the property of Appellants began in the probate court of Laurens County and, when that was unsuccessful, this action was filed. As if that was not enough, a third action,

must especially be true when the fabricated facts are directly contradicted by exhibits which do not depend on credibility determinations and establish the falsity of the offered testimony.

In concluding that Respondents were not responsible for an award of attorneys' fees and costs as a consequence of pursuing wrongful litigation, the trial court overlooked his own specific findings, as set forth in his detailed, thoughtful order:

Paragraph 29: There is insufficient evidence to concluded that Ramesh received any funds from the sale of the Newberry hotel or that his interest in the Newberry hotel was somehow converted to a legal or equitable ownership in the convenience store. (Order p. 10).

Paragraph 42: There is no credible evidence that Ramesh invested any sales proceeds from the Newberry hotel or from any other source into the convenience store, either while it was leased or when purchased by AAHARVID, LLC. (Order p. 12).

Paragraph 45: The records and evidence establish by clear and convincing evidence that Anna and Hardik used the income generated from the store to pay the lease obligations of AAHARVIE, LLC from 2007, and to pay the note/mortgage on the store of AAHARVID, LLC (as personally guaranteed by Anna and Hardik) that was taken out in 2012 to purchase the store and real estate. (Order p. 13).

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which was eventually moved to York County and concluded there (although an appeal is pending before this Court), subjected Appellants to multiple attacks on multiple fronts, all because an immigrant son decided to become an American and raise his children as Americans, freeing himself from years of abuse imposed upon him under the guise of "culture" (June Tr. p. 152, line 1 - p. 16, line 24). "I'm an American. My kids are American. My wife is American. It's a free country." *Id.*

Paragraph 46: . . . No other witness [besides Darshak] even Vidhya, supported this version of events. Darshak's dislike of Hardik was apparent and his credibility suffered as a result of his obvious animus toward Hardik. (Order p. 13).

Paragraph 52: Vidhya's testimony that she and Ramesh had paid for virtually everything related to the home and convenience store was not supported by personal knowledge or documentation, or even recollection of matters she was shown to have signed. . . She lacked any meaningful knowledge of Ramesh's, the family's, or the store's financial affairs. (Order p. 14).

Paragraph 55: Vidhya and Darshak claim some set of non-specified documents disappeared from the Clinton home and the convenience store during their trip to India. She attributes the missing documents to Hardik and Anna, but there is no evidence that supports that assertion . . . (Order p. 15).

Paragraph 62: Champa testified her husband loaned some money to Ramesh for the purchase and that Vidhya and Ramesh paid for the house . . . Champa also said Hardik invested no money in the house, Champa also testified the purchase was an all-cash purchase. . . . (Order p. 16)

Paragraph 66: Champa's testimony, therefore, is directly contradicted by the purchase, sale and loan document produced at trial. (Order p. 17).

Paragraph 80: The proclivity to interact solely with other Indian immigrants and the expectation to adherence to traditional Indian norms as interpreted by Vidhya was a particular point of contention. . . (Order p 20).

Paragraph 82: After Hardik and Anna no longer shared a home with Ramesh and Vidhya, Hardik began to realize that the ostensibly "Indian culture" that had been imposed on him by his parents was merely the way his parents chose to interact with him and it was toxic. . . Vidhya was verbally abusive of Hardik and Anna. Hardik wanted to protect Anna and his children from the life he had endured as a child. . . Hardik described the group of Indian people who surrounded his parents as a "cult." (Order p. 21).

There was overwhelming evidence that Vidhya and Darshak used every means they could to sell their false narrative to the circuit court and have done the same in this Court. (Initial Appellants' Brief of Appellants/Respondents).

Even a glancing review of this record cannot avoid the conclusion that Vidhya and Darshak lied and suborned perjury to try to get their way. Whether that violates the act is a determination that should be made on all the circumstances, such as those set forth in the Motion for Attorney's Fees and not based on a restrictive interpretation of the word "frivolous."

If this Court takes away the testimony of Vidhya and Darshak and the testimony from members of their cult, and look only at the exhibits provided by Hardik and Anna, the conclusion that the claims against Hardik and Anna is inescapable. The documents (none of which came from Vidhya and Darshak other than an intentionally edited version of Anna's 2007 tax return, support the false narrative in any way.

Whether this Court's determination turns on an interpretation of the sole word "frivolous" or looks at the Act as a whole and the evils it was meant to deter, it is respectfully submitted the trial judge's denial of attorneys' fees to Appellants Hardik, Anna, and AAHARVID, LLC should be reversed.

CONCLUSION

Appellants are informed and believe that Respondents' failure to time respond to the motion for attorney's fees and costs requires that order denying the motion be vacated, and the matter remanded with direction to enter an order on the emotion for attorneys' fees and costs to Appellants.

Additionally, Appellants are informed and believes there is a sufficient factual record before this Court in the appeal for the Court to make its own findings of fact in favor of Appellants and order an award of attorneys' fees and costs be granted, with remand to the circuit court to determine the amount of such fees and costs.

Respectfully submitted,

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