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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 REPLY BRIEF

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ISSUE ONE

As to this appeal, Respondents argue that the statute under which Appellants seek an award of attorney's fees "does not contain a statutory deadline to respond. . . that would result in a moving patty being granted the fought for relief if the non-moving party filed no response." (Respondent's Initial Brief p. 6). While it is true that no response is mandated by S.C. Code Ann. §15-36-10, it is also true that if a response is filed, it must be filed within thirty (30) days after the motion for relief is filed. Here, the trial judge initially recognized the failure of Respondents to file a timely opposition to the motion, when he directed counsel for Appellants to submit a proposed order via email on November 6, 2020. (11.06.2020 law clerk email, with db email of 10.29.2020).

In response to Judge Griffith's request (via his law clerk) for a proposed order on Appellants' Motion for Attorney's Fees, Appellants' counsel sent a proposed order via email and e-filing on November 9, 2020. (11.09.2020 email from Beth w/o attachment). For the first time, more than two months after the motion for attorney's fees was filed, Respondents acknowledged the filing of the motion by requesting a hearing. (Moore email 11.10.2020, with db response of same date). No hearing was set.

On November 9, 2020, Respondents submitted their counsel's Affidavit of Attorney's fees). (Affidavit 11.9.2020). No objection to the Affidavit of Attorney Fees was filed (other than counsel's request for a hearing, which followed the submission of the proposed order on November 9, 2020). Judge Griffith did not respond.

On December 9, 2020, Appellants submitted an amended proposed order granting the motion for attorney's fees, incorporating the affidavit which had been submitted on November 9, 2020. In response, Respondent's counsel said, "Your honor we surely object to the motion and seek a hearing" (Moore email 12.09.2020 @ 1:50 p.m.). Appellant's counsel again pointed out

respondent's failure to file any response to the motion for attorney's fees as set forth in the statute. "Mr. Moore's deadline to oppose the motion passed without response on October 9, 2020." (db email 12.9.2020 @ 1:55 p.m.). Respondent's counsel then stated, inaccurately, that there was "no deadline to respond to a motion." (Moore email 12.9.2020 @ 1:57 p.m.).

By letter dated December 18, 2020, more than three months after Appellants' motion for attorney's fees was filed, Respondent's counsel wrote Judge Griffith and for the first time requested an extension of time to file a response to the motion. (Moore letter 12.18.2020). Judge Griffith granted the motion and permitted Respondents to file a memorandum of opposition no later than January 6, 2021.[1] (Griffith email 12.22.2020). Respondents filed their memorandum in opposition on January 6, 2021, three months after the deadline provided by statute.

In his order denying the motion for attorney's fees, the trial judge did not address Appellant's arguments that Respondents were permitted to file a response well after the deadline in the statute for doing so. In effect, the trial judge permitted Respondents to again ignore deadlines imposed by rules or statutes, reinforcing the lack of consequences which have respondents have exhibited throughout these proceedings.

The trial judge erroneously found that "the attorneys for the Plaintiffs had reasonable beliefs that the claims alleged were valid under the laws of South Carolina" but that is not the basis upon which attorney's fees were sought. Appellants did not seek an award of attorney's fees against opposing counsel but only against Respondents themselves. As was made abundantly clear, Appellants recognized that the story fabricated by Respondents was manufactured, packaged and sold to Respondents' counsel, who found themselves presenting a case which had no evidence

[1] Judge Griffith also shared his exasperation that the Patel family would not resolve this matter among themselves by way of settlement and stated he had "grown weary" of what he characterized as "email jousting" among all counsel except Mr. Price.

to support it. The fault for this charade and incredible waste of resources is with Respondents, who created this fantasy and then hoped by not responding they could avoid being assessed attorney's fees.

Respondents even present perjured testimony[2] in an effort to sell their version of the story to the court. Appellants recognize that Respondents themselves, and not their counsel, made up the story and suborned the perjury that was presented. Respondents made up their lies, packed the courtroom with their cult of supporters (some of whom testified, so they too bought into the lies) and hoped the court would feel sorry for Vidhya. Fortunately, the documents established that the story asserted by Respondents was not true, and also established most of the testimony they offered was not true.

Appellants did not seek an award of attorney's fees under these facts against opposing counsel. Appellants sought sanctions against Respondents, whose story was clearly made up only after Ramesh died and Vidhya found herself without any asset or means of income. They blamed Hardik for their inability to prove their case, claiming, without any evidence whatsoever, that he must have stolen the records that would prove the case. (Order of Judge Griffith p. ___). When Hardik produced his own records, however, the real facts established by the records caused Respondents' concocted story to implode.

Nonetheless, the failure of Respondents to respond to the motion as permitted by the statute, and the permission of the trial judge for Respondents to file a written response despite a timely motion for extension, which came only after the trial judge's office requested a proposed order from Appellants, cannot escape consequence. While the trial judge did not address this issue as he should have, the issue is preserved and presented to this Court.

[2] Detailed in Appellant's Initial Brief and Motion for Attorney's Fees.

ISSUES TWO, THREE AND FOUR

Testimony at trial established that the entire concept of the house and store being purchased for Vidhya and Ramesh came into existence only after Ramesh's death when Vidhya realized Ramesh had not left her anything. (June Tr. p. 313, line 23 – 314, line 5). "[D]ad did not leave any property for me, so I don't have any property under my name…" (June Tr. p. 313, line 23 – 314, line 5). Prior to Ramesh's death, there was never a discussion that the store was leased or purchased for Ramesh or Vidhya. (Tr. p. 313, line 5 – 22).

As explained in detail in their motion, Appellants described the elaborate lengths to which Vidhya (primarily) and Darshak went to try to harm them after first attempting to manipulate Hardik into giving his property to Vidhya. (Motion for Attorney's Fees, p. ___).

Appellants initiated proceedings in probate court were based upon the false assertion that the property Judge Griffith found was Hardik's property was actually Ramesh's property. Only when appellants were unsuccessful in stealing the property via probate court was this story made up and this action brought.

Vidhya's deposition testimony in this action, wherein she said she brought the action because Hardik would not talk to her, clearly demonstrate that this action was filed for a wrongful purpose.

Appellant Vidhya Patel was deposed on June 17, 2019, and it was clear that she had no facts to support the claims she had made as set forth above.[3] Vidhya testified she filed this lawsuit because she

[3] Co-plaintiff Darshak accompanied Vidhya to her deposition and attempted to answer questions for her. (Depo p. 7, line 14; lines 20). Darshak said it would be "necessary" for him to answer for Vidhya "a little bit." (Depo. Tr. p.7, lines 19-25). "If she does not understand she's going to… just look at me, and that's why I'm here." *Id.* Darshak answered some questions for Vidhya. (Depo Tr. p. 13, lines 17-22; p. 14, line 21 – p. 15, line 12; p. 16, lines 20-21; p. 22, lines 13-20; p. 32, line 9; p. 112, lines 14-20). Darshak began correcting Vidhya's answers and explaining them. (Depo Tr. p. 10, lines 20-25; p. 25, lines 5-11; p. 58, line 1-9; p. 102, lines 20-24; p. 107, lines 19-21; p. 109, lines 7-10; p. 124, lines 6-11; p. 125, lines 15-25; p. 159, lines 6-15). He offered to or answered questions before Vidhya could answer. (Tr. p. 32, line 24 – p. 8; p. 34, lines 6-11; p. 35, line 2-3; p. 43, lines 5-12; p. 45, lines 17-22; p. 72, lines 20-25; p. 107, lines 4-8; p. 125, lines 3-8; p. 128, lines 4-6; p. 128, lines 19-22; p. 174, lines 3-5). Vidhya began

thought her son Hardik owed her an apology because "he hurt Mom" and because he would not talk to her. "Because he didn't answer me. Or he like – he stop talking me like November, and how I can do?" (Depo Tr. p. 204, lines 5-24).

> Q. So you filed a lawsuit against him because he stopped talking to you?
>
> A. Yeah. We need a decision. If you want something, sit together and talk to me about what you want… If he want just sit together and dispute – talk to each other what you want. I am ready to do that. So many people try to convince him, please sit together, talk to your Mom, and what is – your Mom is ready what to do, because all Mom is ready for the kids. You understand that?... I need a decision. Because see, if one then select sit down, Mom, this is your part, this is my part, this is brother part, right? But he don't want to do… How come he got the store? … I paid for the education, everything. I married to him. I took all the expenses. I raise his kids, okay. Everything, you live together… He change name of my store his name.

(Depo Tr. p. 206, line 11 – p. 207, line 20).

In other portions of her deposition on June 17, 2019, Vidhya acknowledged she had no proof to establish many of her allegations.

a. She was not involved in the purchase of the store. (Tr. p. 51, lines 12-p. 52, line 12; p. 53, line 22 – p. p. 54, line 4).

b. She had no idea how much money was paid to lease the store in 2007. (Tr. p. 53, lines 1-7).

c. She could not explain why the 2007 lease of the store was not in Ramesh's name if the immigration status simply prohibited ownership. (Tr. p. 56, line 15 – p. 60, line 2).

looking to Darshak to answer for her. (Tr. p. 55, lines 20-25; p. 226, line 16 – p. 227, line 5). Darshak started coaching Vidhya on her answers or correcting them. (Tr. p. 111, lines 3-25; p. 130, lines 4-22; p. 141, lines 22-25; p. 153, lines 3-11; p. 154, lines 15-20; p. 159, lines 17-25; p. 180, lines 7-13; p. 183, lines 21-25; p. 198, lines 6-16; p. 201, lines 11- 18; p. 203, lines 2-6; p. 211, lines 15-20). Darshak's behavior became disruptive and he was asked to stop coaching Vidhya and changing her answers. (Tr. p. p. 211, lines 21-p. 212, line 1; p. 216, lines 17-21). When Vidhya said she did not know the answer to a question, Darshak exploded and answered it for her, adding "My God." (Tr. p. 229, line 18 – 25). Darshak was asked by his counsel to "step out for a minute, catch your breath and come back in, all right?" (Tr. p. 230, lines 1-4). Darshak stopped interfering in the deposition after he was asked to leave.

d. She contributed no money to the BB&T account, which was the account she believed paid the lease for the store. (Tr. p. 63, lines 18-25).

e. She did not see the paperwork for the purchase of the store. (Tr p. 78, lines 11 – 19).

f. She had no proof that Hardik had removed paperwork from the house and she simply assumed he took unidentified missing documents. (Tr. p. 90, line 18 – p. 94, line 5; p. 94, lines 19- p. 95, line 21; p. 97, lines 11-14).

g. She made no effort to get copies of bank statements to support her claims. (Tr. p. 99, lines 1-10).

h. She had no proof that Hardik diverted her mail. (Tr. p. 143, lines 4-17).

i. She just assumed Hardik decided to take the store and house for himself, she had no proof. (Tr. p. 193, line 11 – p. 194, line 6).

Despite the argument she made in this action, Vidhya testified in her deposition that Ramesh owned interests in hotels in the United States as early as 2005. However, she also posited the theory that Ramseh could not own anything in his own name because he was not a green card holder when the store was leased in 2007 as the entire basis for her "trust" theory. (Depo. p. 32, lines 6-13; p. 49, lines 3-22).

As the South Carolina Supreme Court has pointed out, South Carolina is unique among all United States jurisdictions in that the State Constitution provides that "every person shall have speedy remedy [in the state courts] for wrong sustained." S.C. Constitution Article I, §9, cited in *Ex Parte Hearst-Argyle Television Inc.*, 369 S.C. 69, 89, 631 S.E.2d 86 (2006). In 1982, the South Carolina Supreme Court revisited Article I, §9, as it applied to the right to a speedy appeal in a civil action. *Maner v. Maner,* 278 S.C. 377, 296 S.E.2d 533 (1982). While the Court recognized the right existed, it pointed to the absence of legislative remedies to increase the speed with which

civil appeals could be heard. Under the circumstances presented in that case, the Supreme Court held that the General Assembly was the only source for a remedy for the delays in processing appeals.

Here, the General Assembly provided a remedy for sanctions against persons who use the courts for wrongful purposes and set forth statutory procedure to address a shifting of fees under the circumstances provided when it enacted the Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10, originally enacted in 1988, modified 2005. There is no requirement for an action to be deemed frivolous before sanctions are awarded.

While not the most intuitive of statutory schemes, the Act provides a standard against which the conduct of litigants is to be judged. The Act provides that an "attorney, party or *pro se* litigant may be sanctioned under standards set forth in the statute. Unfortunately, while permitting parties to be sanctioned while not sanctioning their counsel, the standard against which a party's conduct is to be assessed under the act is what "a reasonable attorney in the same circumstances" would have judged.

Section C(1)(3) provides that sanction is appropriate when "a reasonable attorney in the same circumstances would believe that the case or defense was . . interposed merely to harass or injure the other party." There is no requirement under the act that an action be "frivolous." When the action is brought "merely to harass or injure the other party" sanctions are available. This is not a situation in which the court weighs the evidence and tries to determine how much weight to give to each side. The inquiry is *solely* whether the action was brought to injure or harass the other party.

Vidhya's own testimony established this action was filed to try to force Hardik to talk to Vidhya and to give her assets or income to which she thought she was entitled. As demonstrated

by their original motion, Appellants detailed the falsehoods told in probate court, and the malicious filing of a second lawsuit against Appellant Hardik in support of their showing that Respondents had a wrongful purpose in bringing this lawsuit.

The trial judge considered none of the collateral proceedings in probate court or the second circuit court action, nor did he consider Vidhya's own admissions in her deposition in concluding that the action was not frivolous. Instead, he conducted a "weight of the testimony" analysis to determine that the action "was not frivolous."

With all respect to the trial judge, that was not the question before the court. The General Assembly has created a statutory scheme to be employed when a party brings an action for a wrongful purpose, and it is the Frivolous Civil Proceedings Sanctions Act.

The trial judge considered none of the collateral proceedings in his evaluation that resulted in the denial of relief to Appellants. The trial judge inaccurately described the Act as requiring a finding that the action was frivolous.

CONCLUSION

Appellants certainly understand the trial judge's reluctance to find that Respondents engaged in wrongful conduct in their overt actions to harm Appellants, but the evidence clearly establishes otherwise. He inaccurately thought Appellants were seeking to assess attorney's fees against Respondents' counsel, not Respondents themselves.

The order of the trial judge should be reversed, and the matter remanded for entry of judgment in favor of Appellants, noting Respondents' failure to oppose the motion and the undisputed evidence of Respondents' intent to harass and damage Appellants. Since Respondents did not object to the amount of attorney's fees Appellants were seeking, there is no further fact-

finding necessary, and judgment should be entered in favor of Appellants for the amount sought in the motion and affidavit for attorney's fees.

Respectfully submitted,

s/ Desa Ballard
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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.

PROOF OF SERVICE

I, Beth Cogan, an employee with Ballard & Watson, Attorneys at Law, do hereby certify that on July 22, 2021, I served a copy of the **Respondent/Appellant's Initial Reply Brief** and **Respondent/Appellant's Reply Designation of Matter** in the above-captioned case on the following individuals by electronic mail, addressed as follows:

S. Jahue Moore, Esquire
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Beth Cogan, Paralegal

July 22, 2021
West Columbia, South Carolina

Beth Cogan

From: Beth Cogan
Sent: Thursday, July 22, 2021 11:27 AM
To: jennifer@nicholspricelaw.com; Samuel M. Price, Jr., Esquire; jake@mttlaw.com; Diane Corley
Cc: Desa Ballard
Subject: (Patel v. Patel 2020-001472) Ltr to COA encl Initial Reply Brief and Reply DOM
Attachments: 2021 07 22 Ltr to COA encl Resp. Appell. IRB.pdf; 2021 07 22 Resp. Appell. Initial Reply Brief.pdf; 2021 07 22 Resp. Appell. Reply DOM.pdf; 2021 07 22 POS Resp. Appell. IRB.pdf

Good morning,
The attached Initial Brief and Reply Designations of Matter for the above-referenced matter are being filed today with the COA.

Kindest Regards,
-Beth

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Via Email (ctappfilings@sccourts.org)
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Re: *Vidhyaben R. Patel v. Hardik R. Patel*
Appellate Case No.: 2020-001472

Dear Ms. Kitchings:

Enclosed for filing please find **Respondent/Appellant's Initial Reply Brief and Reply Designation of Matter** for the above-referenced matter.

By copy of this letter and as evidenced by the Proof of Service, these filing has been served upon counsel for the Appellants/Respondents. Thank you for your time in this matter. If you have any questions, please do not hesitate to contact our office.

Please do not hesitate to contact our office if you should have any questions. With warm personal regards, I am,

Sincerely yours,

Desa Ballard/dkc

Desa Ballard
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cc: *Via Electronic Mail*
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