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Oct 27 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Jennifer B. McCoy

Case No: 2007-CP-10-01444
App. Case No: 2020-000968

Cynthia Holmes, M.D.Respondent/Appellant,

v.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A.,
Manton Grier and James Y. Becker, Defendants,

Of which Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A.,
Is theAppellant/Respondent.

**APPELLANT/RESPONDENT’S MEMORANDUM IN OPPOSITION TO
RESPONDENT/APPELLANT’S MOTION TO DISMISS**

HAYNSWORTH SINKLER BOYD, P.A.
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Mary Cothonneau Eldridge

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Attorneys for Appellant/Respondent

BACKGROUND AND ARGUMENT

Appellant/Respondent Haynsworth Sinkler Boyd, P.A. (“HSB”) herein submits its Memorandum in Opposition to Respondent/Appellant Cynthia Holmes, M.D.’s (“Holmes”) Motion to Dismiss. A brief summary of this appeal’s procedural history is set forth below.

HSB filed its Notice of Appeal on June 30, 2020 (the “Appeal”), and Holmes filed her Notice of Cross-Appeal on August 4, 2020 (the “Cross-Appeal”). The Cross-Appeal specifically sought to appeal certain orders entered by the lower court, including the order entered on June 26, 2020. HSB filed its Initial Brief and Designation of Matter in the Appeal on August 31, 2020, and Holmes filed her Initial Brief and Designation of Matter in the Appeal on September 29, 2020. HSB filed its Initial Reply Brief on October 9, 2020. HSB attempted to file the Record on Appeal (the “ROA”) in the Appeal on November 9, 2020, but the Court informed HSB by letter dated December 4, 2020 that the ROA had been submitted prematurely.

Meanwhile, Holmes filed her Initial Brief and Designation of Matter in the Cross-Appeal on November 16, 2020, and seemingly expanded the Cross-Appeal to encompass the *entire* lower court hearing and all orders arising from that hearing, requesting that the Court vacate all such orders. HSB filed its Motion to Dismiss the Cross-Appeal on December 15, 2020, and the Court granted the motion in part on February 4, 2021. Holmes filed a Motion to Reconsider shortly thereafter, which the Court denied on March 29, 2021. The Court specifically noted in its Order denying the Motion to Reconsider that “Respondent/Appellant’s appeal of the June 10, 2020 order denying relief and the June 26, 2020 order denying the motion to reconsider *remains pending before the court.*” (Order entered March 29, 2021) (emphasis added). HSB filed its Initial Brief on April 28, 2021. HSB filed its Designation of Matter on Appeal on April 28, 2021, as well.

Also on April 28, 2021, Holmes attempted to file her Petition for Writ of Certiorari with the Court of Appeals. On April 29, 2021, the Court informed all counsel that the Petition must be filed with the Supreme Court. Holmes' Petition for Writ of Certiorari was denied on August 6, 2021, and the Court of Appeals issued a *partial* remittitur on the same day, referencing and incorporating the March 29, 2021 order *partially* dismissing Holmes' Cross-Appeal. To date, Holmes has not filed a Reply Brief in the Cross-Appeal, which remains pending as to the June 10, 2020 and June 26, 2020 lower court orders.

Rule 210(a), SCACR, provides that a Record on Appeal must be filed within thirty days of service of the last brief. As set forth above, HSB understood the Court's February 4, 2021, and March 29, 2021 orders to only partially dispose of Holmes' Cross-Appeal, as the March 29, 2021 Order specifically states that "Respondent/Appellant's appeal of the June 10, 2020 order denying relief and the June 26, 2020 order denying the motion to reconsider *remains pending before the court.*" (Order entered March 29, 2021) (emphasis added). HSB's understanding is further buttressed by the August 6, 2021 remittitur, which is only a partial remittitur and which references and incorporates the March 29, 2021 Order. Because HSB understood that Holmes was expected to file a responsive brief as to HSB's Initial Brief in the Cross-Appeal, HSB did not believe that the deadline to file the ROA was triggered. As a result, HSB respectfully requests that the Court direct Holmes to file a Reply Brief in the Cross-Appeal within ten days after disposition of Holmes' Motion to Dismiss, and HSB to file the ROA within ten days after service of Holmes' Reply Brief, or in accordance with any schedule that the Court shall direct.

CONCLUSION

For the foregoing reasons, HSB respectfully requests that the Court deny Holmes' Motion and grant HSB the relief requested above.

Respectfully submitted,



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Columbia, South Carolina

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App. Case No.: 2020-000968

Cynthia Holmes, M.D. Respondent/Appellant,

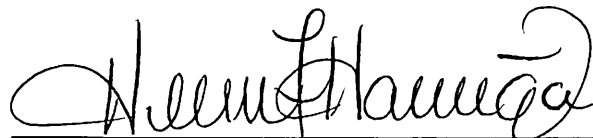
v.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A.,
Manton Grier and James Y. Becker, Defendants,

Of which Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A.,
Is the Appellant/Respondent.

PROOF OF SERVICE

I certify that the **Appellant/Respondent's Memorandum In Opposition to Respondent/Appellant's Motion to Dismiss** was served upon the Respondent/Appellant's attorney of record by electronic mail only, on this 27th day of October, 2021, sent to Chalmers C. Johnson, Esquire at chalmersjohnson@gmail.com.



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October 27, 2021

via email: ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk of Court, The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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SC Court of Appeals

RE: *Cynthia Holmes, M.D. v. Haynsworth Sinkler Boyd, PA*
Case No. 2007-CP-10-1444
Appellate Case No. 2020-000968
HSB File No. 04625.1439

Dear Ms. Kitchings:

Enclosed for filing in connection with the referenced matter are Appellant/Respondent Haynsworth Sinkler Boyd, P.A.'s Memorandum In Opposition to Respondent/Appellant's Motion to Dismiss and Proof of Service.

Please contact me at 803-779-3080 if you have any questions or need anything further from us at this time.

Thank you for your assistance in this matter.

Sincerely,



Mary Cothonneau Eldridge

MCE/hh

Enclosure

cc(w/encl.): Chalmers Johnson, Esq. (via e-mail: chalmersjohnson@gmail.com)
Mary M. Caskey, Esq. (via e-mail: mcaskey@hsblawfirm.com)