

RECEIVED

Nov 24 2021

SC Court of Appeals

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas**

Walton J. McLeod, Circuit Judge

Appellate Case No.: 2019-000367

Desa Ballard and Desa Ballard, P.A.,
d/b/a Ballard & Watson, Appellants,

v.

Admiral Insurance Company and Adele R. Pope, individually and as Special
Administrator of The Estate of Gloria Corley,
Respondents.

**PETITION AND MEMORANDUM OF RESPONDENT ESTATE OF GLORIA P.
CORLEY FOR ORDER LIFTING STAY AND FOR RELATED RELIEF**

Respondent Estate of Gloria P. Corley (“Mrs. Corley”) respectfully petitions this Honorable Court pursuant to rules SCACR Rule 241(d)(2) and other applicable Rules to lift any stay related to this appeal, including but not limited to the stay imposed by Order of the Honorable Debra McCaslin dated October 6, 2021, which is attached hereto as Exhibit A.

In connection with this petition, Mrs. Corley's Estate respectfully moves for an order directing Appellants (collectively "Ballard") to make such redactions as are required to publish the record on appeal ("ROA") in this matter.

The grounds of this motion are that lower court's order failed to consider that lifting the stay is necessary to preserve the court's jurisdiction of the appeal and to prevent contested issues from being moot. Further, the lower court's order declining to lift stay was based on erroneous facts and erroneously concluded that the stay imposed would not damage Mrs. Corley's Estate.

The facts show, however, that a lifting of the stay is necessary in order for the Court to retain jurisdiction over this appeal, which involves professional negligence which took place almost a decade ago, in 2012, and to prevent the issues in this appeal from becoming moot. Further, the lower court's stay order is manifestly unjust and violates the Due Process rights not only of Mrs. Corley's Estate, but of the sole devisee of Mrs. Corley's Estate, Andra Williams.

The request that Appellant Ballard take such action as is necessary to comply with Appellate Court rules and redact any confidential and personal information so that the record on appeal (ROA) may be entered into the public record is necessary. On information and belief, the Ballard Appellants do not object to taking this action.

This Petition is Supported by the ROA in this matter; the attachments to this Petition; the affidavits of the Special Administrator ("SA") of Mrs. Corley's Estate and of its sole devisee Andra Williams dated October 5, 2021, filed with the lower court in opposition to the stay order; and the Memorandum which follows.

Memorandum in Support of Motion to Lift Stay and For Related Relief.

A. Statement of Facts Related to the Motion to Lift Stay

Ballard, a law firm, and its members began representation of Mrs. Corley in 2011. The representation terminated several years later. Mrs. Corley died on March 31, 2016.

Prior to her death, through a GAL, Mrs. Corley engaged Camden Lewis, Esq., to commence an action against Ballard related to a 2012 “Lump Sum Buyout” of Mrs. Corley’s interest in a trust created by her deceased husband. M. L.

Lewis secured from Professor John Freeman a professional opinion related to Ballard’s actions in relation to the 2012 Lump Sum Buyout.

Although Ballard was aware of the proposed action by Mrs. Corley, it was not filed prior to her death.

Upon Mrs. Corley’s death, her daughter Andra Williams (“Angie”) produced to the Lexington County Probate Court a will prepared by Ballard in 2012 (the “Ballard Will”), which was informally admitted to probate.

Angie is Mrs. Corley’s sole devisee under the Ballard Will. The period for challenging the Ballard Will has elapsed and Angie is the sole, undisputed devisee of the assets of Mrs. Corley’s Estate.

By final order of the Honorable Daniel R. Eckstrom, Lexington County Probate Judge, issued in late 2016, Ballard was directed to deliver Mrs. Corley’s entire file to the Adele Pope, Mrs. Corley’s SA.

On February 23, 2017, Mrs. Corley’s Estate commenced Lexington County Case No. 2017-CP-32-00618 against Ballard (the “Underlying Malpractice Action”).

On September 19, 2017, Ballard Commenced the within against Admiral Insurance and related companies (collectively “Admiral”) in Richland County. In the complaint Ballard seeks declaratory belief, an injunction, and a bad faith award of damages against Admiral.

Mrs. Corley’s Estate and the SA, individually, were named as parties to the Ballard/Admiral suit, but moved to dismiss or strike. [See Affidavit, ROA 113-122]

After a convoluted history the Ballard/Admiral case landed in Lexington County. [ROA 123 – 171].

By Order of the Honorable Walton McLeod IV dated February 15, 2019. Mrs. Corley’s Estate and its SA, individually, were dismissed as parties to the Admiral Action. Neither Admiral nor Ballard sought reconsideration of , or appealed, the February 15, 2019 dismissal order.

The February 15, 2019 dismissal order explored and rejected Ballard’s contention that Rule 19 SCRPC required that the SA, in her official capacity and individually, had an interest in the policy. The order stated:

The court finds that Ms. Pope, in either capacity, is not a necessary party to this declaratory judgment action, which is a dispute between an insured and the insured’s carrier.

The unappealed order also found:

Further, Plaintiffs [Ballard] submit that Ms. Pope and the Estate of Gloria Corley should be bound by the factual findings herein, but the court finds that Ms. Pope as Special Administrator of the Estate of Gloria Corley, is already litigating the factual issues in the separate underlying malpractice action, and Mrs. Pope, individually, is not a party to that case or any other pending litigation related to this matters. It would, therefore be improper to force Ms. Pope in either

capacity, to litigate these facts in this contractual dispute, where those which are relevant to the Estate of Gloria Corley were already subject to litigation in another case.

On February 15, 2019 the lower court also granted Admiral's Motion for Judgment on the pleadings. This order was eventually appealed on March 6, 2019.

Despite the Order dismissing Mrs. Corley's Estate and its SA individually as parties to the Ballard/Admiral case, Ballard named both as parties to this appeal.

After the initial briefs had been filed, and Mrs. Corley's Estate was required to correct certain factual matters alleged by Ballard, Ballard moved to dismiss Mrs. Corley's Estate and its SA, individually, as parties to this appeal.

In their October 21, 2019 Reply to the response of Mrs. Corley's Estate and the SA, individually, Ballard stated to this Court on page 2:

The issues on appeal here have nothing to do with Pope or Corley and relate solely to the issues [that] were raised against Admiral Insurance.

By Order dated February 5, 2020 this Court denied Ballard's motion to dismiss certain Respondents, and directed Appellants to file and served the record on appeal ("ROA") within thirty days.

The ROA when filed failed to comply with Appellate Court rules, including by failing to redact certain personal information and bank account numbers. Mrs. Corely's Estate believes that the publication of the ROA is important to this case, and Ballard has indicated it does not oppose a motion that the ROA be properly redacted so that it can be published.

During the pendency of this appeal, the Underlying Malpractice Action has proceeded, including by the completion of mediation, the filing of motions for summary judgment, and the issuance of scheduling orders.

Among the issues now ready for trial in the Underlying Malpractice Action is the Third-Party Complaint of Ballard against Angie in which Ballard alleges that Angie, sole devisee under Mrs. Corely's Ballard Will, misappropriated funds of Mrs. Corley during the Ballard representation.

Angie was not made a party to this Ballard/Admiral proceeding.

On August 20, 2021, with the Underlying Malpractice Action ready to be tried in September 2021, or as soon as possible, Ballard moved to stay the action based on this appeal. A copy of that motion is attached as Exhibit B.

Ballard asserted that a stay of the Underlying Malpractice Action "to allow resolution of the Appeal would be in the interests of justice and promote judicial economy..." Paragraph 17 of the motion stated:

17. Upon information and belief, Defendants have received notice that the [Ballard/Admiral] Appeal has been selected for oral argument during the month of December 2021.

Ballard argued, incorrectly, that staying the Underlying Malpractice Action would "not prejudice" Mrs. Corley's Estate, but it has, in fact, severely prejudiced both Mrs. Corley's Estate and Angie, its sole beneficiary.

By Order dated October 6, 2021 the Honorable Debra R. McCaslin issued a stay and characterized the Ballard/Admiral case as a declaratory judgment action. The stay was to last "until the Court of Appeals decides the case..." See Exhibit A.

By motion dated October 15, 2021, Mrs. Corley's estate moved to alter, vacate, or lift the order staying the case. A copy of that motion is attached as Exhibit C.

By order filed November 8, 2021 Judge McCaslin denied the motion to alter the stay order, but slightly modified its terms. A copy of that order is attached as Exhibit D.

b. The Stay Should be Lifted.

In granting a stay of the Underlying Malpractice Action which is now 4 ½ years old, and relates to events which occurred almost a decade ago, the lower court severely prejudiced Mrs. Corley's Estate and Angie, its sole beneficiary. The lower court failed to consider that its actions threatens to deprive this Court of jurisdiction and render the matters which are the subject of this appeal moot.

The persons familiar with the facts of the Underlying Malpractice Actions which date back to 2011, but are principally centered around the Ballard Will and Lump Sum Buyout of 2012, formerly included: Camden Lewis, who is deceased; Hoyt Rowell III, Esq., who was deposed in 2021 and had almost no recollection of the events; Professor John Freeman, who died in 2021; Samuel Corley, Mrs. Corley's son-in-law, who is deceased; Respondent Pope, who represented Mrs. Corley more than 20 years ago, and is 78; and Angie.

The current expert who has testified against Ballard suffers from Parkinson's disease. Angie is being accused by Ballard of being a thief of property the Ballard Will made hers, and hers alone.

Ballard has attempted to justify its actions in 2011 and 2012 based on events which took place between 1997 and 2001. Most parties familiar with those transactions are deceased or have no memory.

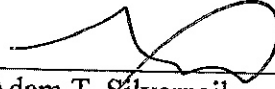
Appellants' stay claim just before trial was based on incorrect statement which are contrary to those being made in this Court. If Appellants can delay the Underlying Malpractice Action as allowed by the lower court, there will likely be nobody to testify. This will render moot the matters before this Court, and deprive this Court of jurisdiction over an important question: Can a law firm and its malpractice carrier work together to rewrite the facts and law related to the firm's actions and responsibilities to a former client by filing a contract suit which indefinitely delays the malpractice action, renders issues moot and deprives the Appellate Court of jurisdiction?

Conclusion

For the reasons stated herein, the orders staying the Underlying Malpractice Action which is the subject of the contract between Appellants and Admiral should be vacated. Appellants should be directed to properly redact the ROA in this appeal so that it can be published. And the Underlying Malpractice Action, Lexington County Case No. 2017-CP-32-00618, which relates to actions which took place principally in 2012, should proceed to trial.

[Signatures on following page]

Respectfully submitted,



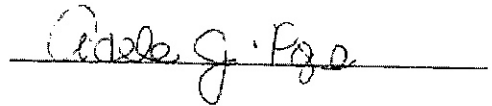
Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 7995
Columbia, South Carolina 29202
adam@silvernailfirm.com

*Counsel for Respondent Estate of Gloria
Corley*

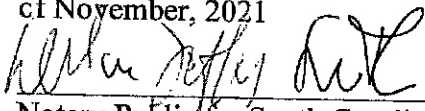
November 23, 2021

Verification

The undersigned Adele J. Pope, Special Administrator of the Estate of Gloria P. Corley, hereby certifies that I have read the allegations in the forgoing Petition and that they are true based on my knowledge and belief.



SWORN TO BEFORE ME THIS 23rd Day
of November, 2021


(L.S.)

Notary Public for South Carolina

My Commission expires: 2/27/2027

EXIBHIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Estate of Gloria P. Corley, by its Special)
Administrator, Adele Pope,)
)
Plaintiffs,)

CIVIL ACTION NO: 2017-CP-32-00618

vs.)

Desa Ballard and Desa Ballard, PA,)
)
Defendants.)

ORDER GRANTING DEFENDANTS'
MOTION TO STAY

Desa Ballard and Desa Ballard, PA,)
)
vs.)
)
Andra R. Williams,)
)
Third-Party Defendant.)

THIS MATTER COMES BEFORE THE COURT via Webex on September 23, 2021, on Defendants Desa Ballard and Desa Ballard, PA’s (collectively “Defendants”) Motion to Stay and Motion for Continuance of Trial. Plaintiff Estate of Gloria P. Corley, by its Special Administrator, Adele Pope (“Plaintiff”) and Defendants each filed pleadings related to the two motions, as well as made oral arguments at the hearing on the two motions. Present at the hearing was Claude Prevost for the Defendants, Steven Anderson for Third-Party Defendant, and the Plaintiff’s attorney Adam Silvernail.

On September 19, 2017, Defendants filed a declaratory judgment action in the Richland County Court of Common Pleas, Civil Action Number 2017-CP-40-5628 (“the Declaratory Judgment Action”). The Declaratory Judgment Action was transferred to Lexington County (Civil Action Number 2018-CP-32-1743) and decided on the insurer’s Motion for Judgment on the Pleadings on February 15, 2019. On March 1, 2019, Defendants appealed the Declaratory Judgment Action trial court’s order granting of the insurer’s Motion for Judgment on the Pleadings, which denied Defendants/Third-Party Plaintiffs’ requested relief. The appeal (“the Appeal”) was assigned Appellate Case No. 2019-000367. The Appeal is currently pending.

Based on the pleadings on file and oral arguments at the hearing, Defendants’ Motion to Stay is GRANTED¹. This matter is stayed until the Court of Appeals decides the case, at which time this matter may be reviewed.

IT IS SO ORDERED.

Debra R. McCaslin
Judge, Eleventh Circuit

October 6, 2021
Lexington, South Carolina

¹ Defendant’s Motion to Continue is moot.



Lexington Common Pleas

Case Caption: Gloria P Corley Est , plaintiff, et al VS Desa Ballard , defendant, et al

Case Number: 2017CP3200618

Type: Order/Other

So Ordered

Debra R. McCaslin

EXHIBIT B

| | | |
|--|---|------------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF LEXINGTON |) | ELEVENTH JUDICIAL CIRCUIT |
| |) | |
| Estate of Gloria P. Corley, by its Special Administrator, Adele Pope, |) | Civil Action No.: 2017-CP-32-00618 |
| |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | |
| |) | DEFENDANTS/THIRD PARTY |
| Desa Ballard and Desa Ballard, PA, |) | PLAINTIFFS' MOTION TO STAY |
| |) | PROCEEDINGS, OR, IN THE |
| Defendants/Third-Party Plaintiff, |) | ALTERNATIVE, MOTION FOR |
| |) | CONTINUANCE |
| vs. |) | |
| |) | |
| Andra R. Williams, |) | |
| |) | |
| Third-Party Defendant. |) | |
| |) | |

TO: W.H. BUNDY JR., ESQUIRE AND M. BRENT MCDONALD, ESQUIRE, COUNSEL FOR PLAINTIFF AND S.R. ANDERSON, ESQUIRE AND TIMOTHY G. QUINN, ESQUIRE, COUNSEL FOR THIRD-PARTY DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that on the tenth day after service hereof, or as soon thereafter as counsel may be heard, Defendants Desa Ballard and Desa Ballard, P.A. (“Defendants”) will move before the Presiding Judge of the Lexington County Court of Common Pleas for an Order staying the proceedings in this action pending the resolution of an appeal (Appellate Case No. 2019-000367) of a declaratory judgment action (Civil Action Number 2018-CP-32-1743) affecting the rights of Defendants with regard to a potential negotiated resolution of the instant action.

Alternatively, if this Court denies Defendants’ Motion to Stay, Defendants move for a continuance of this action to the next available term of court, pursuant to Rule 40(i)(1), SCRCP, to 1) accommodate Defendant Ballard’s schedule, namely a previously scheduled trial in Beaufort

County beginning on August 30, 2021,¹ and 2) attorney Charles Kinney, Defendants' primary defense counsel for the prior three years, has taken a position with a new firm and is being replaced by other counsel from Collins & Lacy, P.C. In support of this motion, Defendants would respectfully show as follows:

1. This is an action sounding in alleged legal malpractice, although it has been brought in the name of the "Estate of Gloria P. Corley, by its Special Administrator," the Special Administrator is Adele Pope, a judgment creditor of the Estate of Gloria P. Corley (the "Estate"). [Answer at ¶ 1]. Mrs. Pope sued Mrs. Corley in 2011 in this Court for declaratory judgment and breach of contract based on alleged non-payment of legal fees owed to Mrs. Pope by Mrs. Corley (the "Underlying Litigation"). [Compl. at ¶ 11; Answer at ¶¶ 1, 10]. Mrs. Corley's attorney-in-fact, Andra Williams, retained Defendants to defend Mrs. Corley in the Underlying Litigation. [Compl. at ¶ 11; Answer at ¶ 10].

2. Mrs. Pope's claim against Mrs. Corley related to her belief that she was entitled to an ongoing contingency fee in perpetuity as a result of a "Contingency Fee Plus Costs Agreement" entered into with Mrs. Corley and dated August 28, 1998. [Compl. at ¶ 7-10; Exhibit B to Compl.; Answer at ¶ 7]. Mrs. Corley was designated in the will of her late husband as the recipient of certain trust monies from the M.L. Corley Marital Trust (the "Trust"). [Compl. at ¶ 7; Answer at ¶ 6]. Mrs. Pope represented Mrs. Corley in litigation in 1998 and 1999 to obtain additional funds from the Trust, beyond those funds which were left to Mrs. Corley. The litigation settled when the "Agreement Among Successors to Decedent" (the "Successors' Agreement") was reached. [Answer at ¶ 6; Exhibit A to Compl.]. Under the Successors' Agreement, Mrs. Corley would

¹ Currently, Ms. Ballard is listed as the number one and two trials for the Beaufort County Jury Roster for August 30, 2021.

receive monthly distributions of \$7,500.00 for her lifetime. In addition, Mrs. Corley would receive an annual distribution of no less than \$55,000.00. [Id.].

3. After the litigation ended, Mrs. Pope took a contingency fee of one-third of the \$55,000.00 annual distribution (or approximately \$18,333.33 per year). [Compl. at ¶¶ 7-9]. Mrs. Pope received this fee each year through 2010 in spite of the fact that she provided no legal services to Mrs. Corley beyond 2001. [Answer at ¶ 8; Exhibit D to Answer at 68:8-14]. In 2011, Mrs. Corley's attorney-in-fact, Andra Williams, decided that Mrs. Corley would not pay Mrs. Pope her yearly contingency fee, which prompted Mrs. Pope to sue Mrs. Corley and the Trust. [Compl. at ¶¶ 10-11; Answer at ¶¶ 9-10, 12].

4. During their representation of Mrs. Corley, Defendants negotiated a lump sum buyout of the future monthly payments to Mrs. Corley by the Trust, as memorialized in the "Agreement to Terminate Interests in the Martin L. Corley Trust" executed on April 19, 2012 by Mrs. Corley's attorney-in-fact, Andra Williams. [Answer at ¶¶ 12-13, 75; Exhibit D to Compl.]. The lump sum buyout did not include the annual distribution Mrs. Pope achieved for Mrs. Corley, which Defendants maintained was the basis for Mrs. Pope's ongoing yearly contingency fee. Pursuant to the Termination Agreement, Mrs. Corley received a lump sum payment of \$650,000.00. Defendants made Ms. Williams aware of the possibility that Mrs. Pope would make a claim on some of the funds the Trust paid to Mrs. Pope, but that Mrs. Pope would have to make an affirmative claim against money in Mrs. Corley's possession, as opposed to Mrs. Pope's contingency fee in perpetuity under the Fee Agreement. [Id.].

5. In spite of Defendants' best efforts, Mrs. Pope won a judgment against Mrs. Corley in August 2013 of \$248,673.87, plus daily interest and costs of collection. [Compl. at ¶ 25; Answer at ¶ 11]. This amount was based on a portion of the lump sum payment received by Mrs. Corley

pursuant to the Termination Agreement. Defendants moved for reconsideration, and the motion was denied. [Answer at ¶ 11]. Defendants appealed the judgment, and the appeal was dismissed on grounds that it was not timely filed. [Id. at ¶ 24].

6. Gloria Corley died on March 31, 2016. [Compl. at ¶ 1]. At the time of her death, a portion of Mrs. Pope's judgment remained unsatisfied. [Answer at ¶¶ 1-2, 11, 24-25, 33; Exhibit A to Answer].

7. On June 27, 2016, Mrs. Pope, as Petitioner, petitioned the Probate Court of Lexington County, South Carolina, to be appointed Special Administrator of Mrs. Corley's Estate. Mrs. Pope represented to the Court that she was granted a judgment against Mrs. Corley, and she petitioned for appointment as Special Administrator of the Estate in order to "marshal Gloria's assets; timely pursue one or more of Gloria's claims; and pay Petitioner's (Mrs. Pope's) judgment." [Answer at ¶ 2; Exhibit A to Answer]. Mrs. Pope petitioned to be appointed as Special Administrator of the Estate so as to "protect her rights as a judgment creditor of Gloria," and not for the benefit of the Estate. [Id.].

8. After the filing of Mrs. Pope's Petition, the Probate Court held a hearing on August 15, 2016. [Answer at ¶ 2]. Mrs. Corley's only known heirs, A. Hoyt Rowell, III and Andra R. Williams, appeared at the hearing. [Id.; Exhibit B to Answer]. Mr. Rowell took no position with regard to Mrs. Pope's appointment as Special Administrator of the Estate. Ms. Williams initially objected to Mrs. Pope's appointment, but agreed to withdraw her objection upon the Court's direction that the Estate not commence an action against Ms. Williams or take action to substantially involve Ms. Williams in discovery in contemplation of litigation, except upon further Order of the Probate Court. Based on Mrs. Pope's Petition and the hearing of same, the Probate Court appointed Mrs. Pope, a judgment creditor of the Estate and adversarial party to Mrs. Corley

in the Underlying Litigation, as Special Administrator of the Estate and directed the Estate not to file suit against Ms. Williams, or initiate her involvement in litigation, absent further Order of the Probate Court. [Id.].

9. Mrs. Pope has now brought this action in the name of the Estate in order to attempt to satisfy her judgment against Mrs. Corley. [Answer at ¶¶ 1-2]. In her Complaint, Mrs. Pope alleges a cause of action in the name of the Estate for professional negligence.² [Compl. at ¶¶ 31-34.]

10. On September 19, 2017, Defendants filed a declaratory judgment action in the Richland County Court of Common Pleas, Civil Action Number 2017-CP-40-5628 (“the Declaratory Judgment Action”), pursuant to the South Carolina Declaratory Judgment Act, S.C. Code Ann. §§15-53-10, et seq. The Declaratory Judgment Action seeks to resolve a dispute between these Defendants and their professional liability carrier.

11. Defendants have a professional liability policy, which Defendants contend provides them with the right to approve any settlement that the insurer may be inclined to offer in the resolution of a claim. When the current action was brought against Defendants, Defendants submitted the claim for defense and indemnity under that policy. Defendants allege that the insurers of the professional liability policy desire to offer a settlement to Plaintiffs in this matter to avoid the cost of defending the claim, which violates the policy. Defendants refuse to authorize any settlement in this action. Defendants’ professional liability carrier has expressly told Defendants it would withdraw its defense in this claim if Defendants continue to prohibit the insurer from attempting to settle this matter.

² Causes of action for breach of fiduciary duty [Compl. at ¶¶ 35-39] and “disgorgement” [Compl. at ¶¶ 40-44] were dismissed by a consent motion of the parties and subsequent Order filed September 19, 2017.

12. Defendants filed the Declaratory Judgment Action to determine whether the professional liability policy obligates the insurer to provide a defense to the claim until and unless the Defendants herein consent to permit the insurer to pursue settlement.

13. On October 3, 2017, Defendants moved this Court for a stay of proceedings during the pendency of the Declaratory Judgment Action.

14. On November 28, 2017, this Court granted Defendants' Motion to Stay pending the outcome of the Declaratory Judgment Action over Plaintiff's objections.

15. The Declaratory Judgment Action was transferred to Lexington County (Civil Action Number 2018-CP-32-1743) and decided on the insurer's Motion for Judgment on the Pleadings on February 15, 2019.

16. On March 1, 2019, Defendants appealed the Declaratory Judgment Action trial court's granting of the insurer's Motion for Judgment on the Pleadings, which denied Defendants' requested relief. The appeal ("the Appeal") was assigned Appellate Case No. 2019-000367.

17. Upon information and belief, Defendants have received notice that the Appeal has been selected for oral argument during the month of December of 2021.

18. A stay of this action to allow resolution of the Appeal would be in the interests of justice, promote judicial economy, and would not prejudice Plaintiffs, as interest in the amount of \$42.21 per day continues to accrue on the judgment against the Estate of Mrs. Corley.

19. Whether Defendants can refuse to authorize settlement in this action clearly has a direct effect on the potential resolution of this case.

20. Defendants believe that a settlement offer in this matter would carry an inference that there was merit to the professional negligence claim in this suit, which Defendants vehemently

deny. Further, any settlement would affect Defendants' reputation and standing in the community, and it would also affect Defendants' insurability with another professional malpractice carrier.

21. Staying this proceeding until the resolution of the Appeal will not prejudice Plaintiff in this action. However, failure to stay this proceeding would be highly prejudicial to Defendants for the reasons stated herein. Furthermore, if the professional liability insurer withdraws its defense of Defendants in this matter, Defendants would expend a substantial sum of money in defending this action, which would further prejudice Defendants.

22. In the event this Court denies Defendants' Motion to Stay, good cause exists to continue this action to the next term of Court, pursuant to Rule 40(i)(1) of the SCRCF. This action is scheduled to appear third on the trial roster for Lexington County Court of Common Pleas for the week of August 30, 2021; however, Defendant Ballard has a previously scheduled trial occurring in Beaufort County beginning on August 30, 2021. Accordingly, to the extent this case is not stayed, Defendants would respectfully request a continuance of this action to the next term of court to accommodate their previously scheduled trial.

23. Additionally, primary defense counsel, Charles A. Kinney, has taken a position with a new firm and his last day with Collins & Lacy, P.C. is August 27, 2021. The case will stay with the firm and reassigned to other counsel within the firm in another filing with the Court.

For these reasons, Defendants seek a stay of all proceedings in this action until the resolution of the Appeal or, in the alternative, continued to the next available term of court. In accordance with Rule 11(a), SCRCF, counsel for Defendants communicated with opposing counsel in a good faith attempt to resolve this matter, but such resolution could not be reached regarding the stay.

Plaintiff is in agreement to continue this matter and is filing her own motion for other reasons.

This motion is based on the pleadings filed with the Court (and all exhibits thereto filed with the Court), other documents as permitted by the Rules, and any memorandum of law that may be filed and served under separate cover prior to the hearing of this matter

Respectfully submitted,

COLLINS & LACY, P.C.

By: s/Charles A. Kinney
Charles A. Kinney, Esquire
SC Bar Number: 77635
ckinney@collinsandlacy.com
J. Lucas Richardson, Esquire
SC Bar No. 103745
lrichardson@collinsandlacy.com
Post Office Box 12487
Columbia, SC 29211
803.256.2660 (voice)
803.771.4484 (fax)

ATTORNEYS FOR DEFENDANTS DESA
BALLARD AND DESA BALLARD, PA

**DEFENDANTS/THIRD PARTY
PLAINTIFFS' MOTION TO STAY
PROCEEDINGS**

August 20, 2021
Columbia, South Carolina

EXHIBIT C

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 Estate of Gloria P. Corley, by its Special)
 Administrator, Adele Pope,)
)
 Plaintiff,)
 vs.)
)
 Desa Ballard and Desa Ballard, PA,)
 Defendants/Third-Party Plaintiffs,)
)
 vs.)
)
 Andra R. Williams)
)
 Third-Party Defendant)
)
 _____)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT

C/A NO: 2017-CP-32- 00618

**PLAINTIFF’S MOTION TO
 ALTER, VACATE OR LIFT ORDER
 STAYING TRIAL BASED ON
 CT. OF APPEALS CASE NO. 2019-000367
 BALLARD V. ADMIRAL ET AL.**

**TO: DESA BALLARD AND DESA BALLARD, PA, DEFENDANTS/THIRD PARTY
 PLAINTIFFS, THEIR COUNSEL AND ALL PARTIES TO THIS ACTION.**

Plaintiff Estate of Gloria P. Corley (“Estate” or “Gloria’s Estate”), through its Special Administrator, Adele J. Pope (“SA”) moves, and ten days after service hereof will move, before the Honorable Debra McCaslin (“Judge McCaslin”) pursuant to Rules 59 and 60 SCRPC and other applicable law, for an order vacating the Order of Judge McCaslin dated October 6, 2021, the effect of which is to stay the trial of this case for what may be in excess of three years; lifting the stay; and directing that this case proceed to trial on an expedited basis. The Order which should be vacated is attached hereto as Exhibit A.

The grounds of this motion are that the Court’s order is wholly unsupported by the record in this case; was issued based solely on inaccurate and unauthorized representations of Defendants Desa Ballard and Desa Ballard, PA (collectively “Ballard”), through counsel, including incorrect statements about the status of *Ballard v. Admiral*, South Carolina Court of

Appeals Case No. 2019-000367, and unauthorized and inaccurate representations to the Court by Ballard, through counsel, of the current and future positions of Admiral Insurance Company, the opposing party in the lawsuit Ballard is using to try to delay a trial related to its wrongdoing and damage to Mrs. Corley and her estate and Ballard's false theft allegations against Mrs. Corley's sole devisee.

Based on these misrepresentations, the Court overlooked the undisputed 10-year record of Ballard's damage to Gloria Corley, an elderly, vulnerable adult, which began in 2011; to Mrs. Corley estate since her death on March 31, 2016; and to Mrs. Corley's daughter and sole devisee, Andra Williams ("Angie"), both before and after Mrs. Corley's death.

The Court's Reliance on Misstatements About Oral Argument in *Ballard v. Admiral*

1. The Court overlooked or misapprehended that since 2017 Ballard has improperly used the case of *Ballard v. Admiral* to delay and damage both Mrs. Corley's estate and Angie.
2. The Court overlooked or misapprehended that in August 2020 Ballard began representing to the Court that *Ballard v. Admiral* was scheduled for oral argument in December 21 when there was no basis for the representation.
3. The Court overlooked or misapprehended that at the hearing held in this Case, Ballard failed to notify the Court of its incorrect representation, and continued the inaccurate representation although the actual facts, as shown on Exhibit B, is that oral argument is not scheduled, and will not take place before February 2022, at the earliest.
4. The Court overlooked or misapprehended that it is not unusual to have a lapse of no less than one year between oral argument and a final decision in the Court of Appeals, which decision will not be final until certiorari is denied or granted and heard, if either party is dissatisfied and seeks certiorari, and the stay order, with no support in the record, enjoins the trial of this case for what may be 3 years or more.

5. The Court overlooked or misapprehended that the sworn statements of Angie, receiver Kathleen Palinski, and the Special Administrator of Mrs. Corley's estate presented to the Court and incorporated herein, confirm that the stay sought by Ballard and imposed by the stay order, will cause irreparable harm to Mrs. Corley's Estate and Angie; violate Due Process rights; and exponentially increase the damage already inflicted on Mrs. Corley, her estate and Angie by Ballard since 2011.

6. The Court overlooked or misapprehended that Angie is not even a party to the Admiral suit and, as shown on Exhibit C, located within the record of appeal (ROA) in *Ballard vs Admiral*, at pages 23-28, Ballard improperly named Mrs. Corley's Estate to the *Admiral* litigation in an effort to bind Mrs. Corley's estate to the false "facts" presented by Ballard in that case; and that by Order dated January 15, 2019, the Honorable Walton J McCloud dismissed Mrs. Corley's estate as a party to Ballard's case against Admiral.

7. The Court overlooked or misapprehended that Ballard failed to challenge the dismissal of Mrs. Corley's estate as a party to its case against *Admiral*, but, in bad faith and to secure further delay in this case, Ballard added Mrs. Corley estate as a Respondent to the appeal, requiring Mrs. Corley's estate – for the second time – to have to refute the false "facts" about the representation set out by Ballard in the *Ballard v. Admiral* suit, and that the stay order, by rewarding this improper action by Ballard, has denied Angie and Mrs. Corley's estate the level playing field to which they are entitled under the Due Process clause of the U.S. Constitution as applied to the states.

8. The Court overlooked or misapprehended that the only, and undisputed, evidence contained within the record is that the improper delays sought by Ballard irreparably harm Mrs. Corley's estate and Angie.

Ballard's Unauthorized and Inaccurate Statements to the Court for Admiral

9. The Court overlooked or misapprehended that Ballard's counsel, whether paid by Admiral or not, speaks solely for Ballard, and had no duty or authority to act for, or speak for, Admiral in this case.

10. The Court overlooked or misapprehended that Ballard, despite this clear limitation, improperly purported to advise the Court of what Admiral would do at the conclusion of the *Ballard v. Admiral* suit, even though it had no authority whatsoever to speak for Admiral.

11. The Court overlooked or misapprehended there is not a scintilla of evidence to support Ballard's unauthorized statement made on behalf of Admiral, and the Court's reliance on the incorrect, unauthorized effort of Ballard's counsel to speak for Admiral in this case deprived both Angie and Mrs. Corley's estate of substantial rights, exponentially increasing the damage to them by Ballard.

12. The Court overlooked or misapprehended that the Court's reliance on Ballard's misstatements prolongs the gratuitous attacks on Angie, Mrs. Corley's sole devisee, and damage both to Angie and Mrs. Corley's estate.

Ballard's Slander of Angie and Violation of Angie's Rights are Unrelated to Admiral

13. The Court overlooked or misapprehended, that the Order endorses slanderous attacks on Angie by Ballard, including the claim that she is a thief, who Ballard never made to, or for the benefit of, Mrs. Corley, even though Mrs. Corley was present in Ballard's office in 2015 and Ballard had a duty to inform Mrs. Corley of the alleged wrongdoing if she believed it to be theft.

14. The Court overlooked or misapprehended that Ballard had a duty in 2014 or earlier to notify Pete Denton, Mrs. Corley's CPA, if she believed that her funds had been stolen by Angie or anyone and failed to do so.

15. The Court overlooked or misapprehended that the 2012 will Ballard drafted and supervised for Mrs. Corley, a copy of which Ballard failed to deliver to Mrs. Corley's GAL or the Receiver, made clear that Angie could not steal from Mrs. Corley, and her transfers were violations of the Statute of Elizabeth made at the direction of Ballard to Angie and the CPA for Mrs. Corley.

16. The Court overlooked or misapprehended that the Special Administrator of Mrs. Corley estate, who is 78, and her counsel, who has undergone a bone marrow transplant, are the only two remaining witnesses with full knowledge of this damage Ballard inflicted on Angie, and a delay of what may be 3 years or more may deprive Mrs. Corley's estate and Angie of this testimony.

17. The Court overlooked or misapprehended that Mrs. Corley's original attorney seeking damages against Ballard, Camden Lewis, Esq., is deceased; Samuel Corley, who participated with Ballard in the damage to Mrs. Corley, is deceased; at least two beneficiaries of the Corley Trust are deceased; Professor John Freeman, the original expert as to the damages caused by Ballard, is unwell; and that Plaintiff's current expert Pope Johnson, Esq, suffers from Parkinson's disease.

Ballard's Misrepresentation to the Court of Availability of Experts

18. The Court overlooked or misapprehended that Ballard also asked for delays related to its expert Greg Adams, Esq, but has confirmed that its other expert, Kenneth Wingate, Esq., is available, as well as Alan Medlin, a second expert with which Ballard attorneys assert that they have been consulting since at least 2012.

19. The Court overlooked or misapprehended that Ballard has confirmed that it finds the fact that Medlin and Wingate both represent Tommie Rae Hynie, who sued Mrs. Corley's special administrator in 2010 in a still-pending lawsuit, poses no conflict for either to appear, and

yet Ballard has represented that it would take months to have Mr. Adams or any expert ready for trial.

20. The Court overlooked or misapprehended that Mrs. Corley's file shows that Wingate advised Ballard that \$50,000 of the \$650,000 Lump Sum settlement should be paid to Angie, but Ballard failed to follow the advice of its own expert, causing further damage both to Mrs. Corley and Angie.

21. The Court overlooked or misapprehended that Ballard is now seeking to prevent a trial where Ballard's own experts, while supporting certain positions of Ballard, will have clear testimony of the damage inflicted by Ballard on non-client Angie, as well as Mrs. Corley, resulted, in part, from Ballard's failure to follow the advice of its own expert.

22. The Court overlooked or misapprehended that Ballard has already admitted the mistake of Desa Ballard in signing the Lump Sum agreement for Angie, and representing to the Honorable Daniel Eckstrom, Probate Judge that she represented both Angie and Mrs. Corley, and both Mrs. Corley's estate and Angie are entitled to a trial 9 years after Ballard made these mistakes damaging both Mrs. Corley and Angie and should not be required to wait for 14 years or more.

23. The Court overlooked or misapprehended that the Court's stay is a denial of a level playing field and Due Process rights to victims of admitted errors by lawyers which not only violates the Due Process and statutory rights of the victims themselves, but damages public confidence in the judicial system.

**The Court's Order Fails to Make Clear that Discovery and
Trial Preparation Should Proceed**

24. At the hearing on this matter, both Ballard's counsel and the Court made clear that, if the trial of this case were to be stayed, the parties would be able to continue preparing the case

for trial, including taking depositions to preserve testimony. Although since that time, Ballard has cooperated with Plaintiff in scheduling one deposition, and Ballard has subpoenaed documents, Plaintiff submits that the current Order, which can be read to stay all matters in this case, is subject to being used as a basis for avoidance and delay.

Conclusion

For the foregoing reasons, Plaintiff respectfully asks that this Court alter, amend, vacate and/or reconsider its October 6, 2021 Order; lift the stay in this case; and direct that the case proceed to trial. This motion is based on the entire record herein, including the Affidavits of Kathleen Palinski, Andra R. Williams and the Special Administrator setting out the irreparable harm the stay will cause to the Estate of Gloria P. Corley and its beneficiary.

Respectfully submitted,

s/Adam T. Silvernail (SCBAR#80219)

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 7995
Columbia, South Carolina 29202-7995
803-779-1770
adam@silvernailfirm.com

W.H. Bundy, Jr, Esquire, SC Bar #1012
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
Telephone: 888-552-1559
walter@bundymcdonald.com

October 15, 2021

Attorneys for Plaintiff

EXHIBIT D

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

ELEVENTH JUDICIAL CIRCUIT

Estate of Gloria P. Corley, by its Special Administrator, Adele Pope,)

CIVIL ACTION NO: 2017-CP-32-00618

Plaintiffs,)

vs.)

Desa Ballard and Desa Ballard, PA,)

ORDER DENYING PLAINTIFF’S MOTION TO ALTER, VACATE, OR LIFT ORDER STAYING TRIAL

Defendants.)

Desa Ballard and Desa Ballard, PA,)

vs.)

Andra R. Williams,)

Third-Party Defendant.)

THIS MATTER CAME BEFORE THE COURT, on Plaintiff’s Motion to Alter, Vacate, or Lift order staying the trial pursuant to Rules 59 and 60 SCRPC and other applicable law. Plaintiff Estate of Gloria P. Corley, by its Special Administrator, Adele Pope (“Plaintiff”) and Defendants each filed pleadings related to the two motions.

Plaintiff argues that this Court relied on misstatements about oral argument in *Ballard v. Admiral*. The Court has carefully considered the Plaintiff’s arguments and finds them without merit. The Court found that *Ballard v. Admiral*, South Carolina Court of Appeals Case No. 2019-

000367, is germane to this case and the decision by the South Carolina Court of Appeals will substantially affect the outcome of the case at bar.

Further, the Court found that no party would be prejudiced by granting the Motion to Stay. In fact, Plaintiff is accruing interest against the Defendants each day. The Court finds that this relatively small delay in time for a decision from the South Carolina Court of Appeals is not prejudicial to any party in this case.

Based on the pleadings and a review of the record, Plaintiff's Motion to Alter, Vacate, or Lift is DENIED.

IT IS SO ORDERED.

Debra R. McCaslin
Presiding Judge

November 7, 2021
Lexington, South Carolina



Lexington Common Pleas

Case Caption: Gloria P Corley Est , plaintiff, et al VS Desa Ballard , defendant, et al

Case Number: 2017CP3200618

Type: Order/Other

So Ordered

Debra R. McCaslin

RECEIVED

Nov 24 2021

SC Court of Appeals

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas**

Walton J. McLeod, Circuit Judge

Appellate Case No.: 2019-000367

Desa Ballard and Desa Ballard, P.A.,
d/b/a Ballard & Watson, Appellants,
v.

Admiral Insurance Company and Adele R. Pope, individually and as Special
Administrator of The Estate of Gloria Corley, Respondents.

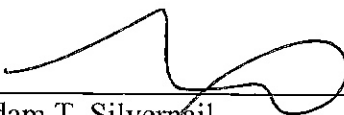
Proof of Service

The undersigned hereby certifies that on November 23, 2021 he has served a copy of the Petition and Memorandum of Respondent Estate of Gloria Corley for Order Lifting Stay and for Related Relief on counsel for Appellant and Respondent Admiral Insurance Company herein by emailing a copy of same to their counsel, addressed as follows:

Ronald L. Richter, Esquire
Scott M. Mongillo, Esquire
Eric S. Bland, Esquire
ronnie@blandrichter.com
scott@blandrichter.com
ericbland@blandrichter.com

Wesley B. Sawyer, Esquire
wsawyer@murphygrantland.com

Adele J. Pope, Esquire
adele@popelawfirm.com



Adam T. Silvermail
Counsel for Respondent Estate of Gloria Corley