

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2012-CP-22-01056
App. Case No. 2132726

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SC Court of Appeals

Erika Fabian. Appellant,

vs.

Ross M. Lindsay, III, and
LINDSAY & LINDSAY, LLC. Respondents.

**APPELLANT'S MOTION TO CERTIFY CASE
FOR REVIEW BY THE SUPREME COURT**

Thomas A. Pendarvis (SC Bar # 64918)
Catherine B. Kerney (SC Bar # 81429)
PENDARVIS LAW OFFICES, P.C.
500 Carteret St., Suite A
Beaufort, SC 29902-5066
(843) 524.9500 tel.

J. Matthew Dillon (SC Bar # 64099)
DILLON LAW FIRM
805 Creekside Drive
Mt. Pleasant, SC 29464
(843) 216-0414

Lawyers for Appellant, Erika Fabian

MOTION

Pursuant to Rules 204(b) and 240, SCACR, Appellant, Erika Fabian, respectfully moves to certify this case for review by the Supreme Court. The grounds for this motion are based on 1) the fact that the issues involved in this appeal involve legal principles of major public importance with no prior precedent, including, among other things, whether a lawyer can be sued by an intended third-party beneficiary of the lawyer's client for alleged drafting errors in a will or estate plan when the drafting lawyer's errors defeat or diminish the client's intent causing injuries to the third-party and 2) the judicial economy in reassigning this matter to the Supreme Court. There is no precedent or prior decisions by our Supreme Court on the specific issues in this appeal.

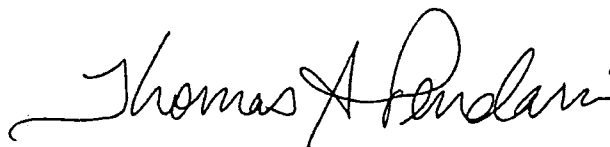
As noted by well-respected and honorable commentators, "[t]he Court of Appeals is an error-correction court, whereas the Supreme Court is a law-giving court." Jean Hoefler Toal, APPELLATE PRACTICE IN SOUTH CAROLINA, 12 (SC Bar ed., 2d ed. 2002). *Cf. Cauldwell v. Wiquist*, ___ S.C. ___, S.E.2d ___, Op No. 2012-207208, p. 2 (Ct. App. March 27, 2013) (Court of Appeals has "no authority to overrule Supreme Court precedent") (citing *Blyth v. Marcus*, 322 S.C. 150, 155 n.1, 470 S.E.2d 389, 392 n.1 (Ct. App. 1996)). Like the trial court, the Court of Appeals is without the authority to create new law, including new law on third-party standing to assert legal malpractice claims. Notwithstanding any ruling by the Court of Appeals in this matter, it is clear that a Petition for Certiorari will be filed by the party or parties who do not prevail on their position.

CONCLUSION

WHEREFORE, Appellant, Erika Fabian, respectfully requests this Court or the South Carolina Supreme Court to issue an Order reassigning this case to the South Carolina Supreme Court.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis (SC Bar # 64918)
Catherine B. Kerney (SC Bar # 81429)
500 Carteret St., Suite A
Beaufort, SC 29902-5066
(843) 524.9500 tel.
Thomas@PendarvisLaw.com
Carey@PendarvisLaw.com

J. Matthew Dillon (SC Bar # 64099)
DILLON LAW FIRM
805 Creekside Drive
Mt. Pleasant, SC 29464
(843) 216-0414 tel.
mattd@mattdillonlaw.com

Lawyers for Appellant, Erika Fabian

Beaufort, South Carolina

April 2, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2012-213726
Lower Case No. 2012-CP-22-01056

Erika Fabian. Appellant,

vs.

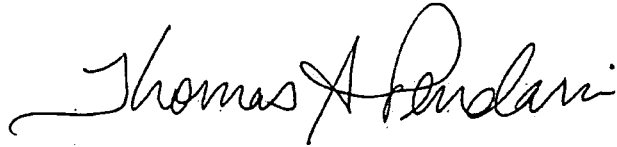
Ross M. Lindsay, III, and
LINDSAY & LINDSAY, LLC. Respondents.

PROOF OF SERVICE

I, Thomas A. Pendarvis, a lawyer with PENDARVIS LAW OFFICES, P.C., certify that I have served one (1) copy of APPELLANT'S MOTION TO CERTIFY CASE FOR REVIEW BY SUPREME COURT on counsel for Respondents: Ross M. Lindsay, III, and LINDSAY & LINDSAY, LLC by depositing a copy of the same in the United States Mail, postage prepaid, on the 2nd day of April, 2013 addressed to Curtis W. Dowling, J.D., BARNES, ALFORD, STORK & JOHNSON, LLP, P.O. Box 8448, Columbia, SC 29202.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink that reads "Thomas A. Pendarvis". The signature is written in a cursive style with a large, looping initial 'T'.

Thomas A. Pendarvis (SC Bar # 64918)
Catherine B. Kerney (SC Bar # 81429)
500 Carteret St., Suite A
Beaufort, SC 29902-5066
(843) 524.9500 tel.
(843) 524.9501 fax.
Thomas@PendarvisLaw.com
Carey@PendarvisLaw.com

J. Matthew Dillon, J.D.
Dillon Law Firm
805 Creekside Drive
Mt. Pleasant, SC 29464
(843) 216-0414
mattd@mattdillonlaw.com

Attorneys for Appellant, Erika Fabian

April 2, 2013