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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY

In the Courts of Common Pleas of Beaufort and Florence Counties  
Trial Court Case Nos. 2016-ES-07-00302, 2016-CP-21-01435, and 2015-ES-21-00778

The Honorable Roger L. Couch

Appellate Case No. 2017-002290

Deborah B. Harwell..... Respondent/Appellant

v.

Robert Bryan Harwell, individually and as the Personal  
Representative of the Estate of David W. Harwell; and the South  
Carolina Department of Health and Environmental Control,  
Division of Vital Records.....Defendants

Of whom Robert Bryan Harwell, individually and as the Personal  
Representative of the Estate of David W. Harwell is the ..... Respondent/Appellant

And the South Carolina Department of Health and Environmental  
Control, Division of Vital Records is the ..... Respondent

v.

Law Office of Deirdre W. Edmonds, P.A. and Deirdre W.  
Edmonds, individually..... Appellants/Respondents

PETITION FOR PARTIAL HEARING EN BANC  
APPELLANT/RESPONDENT DEBORAH HARWELL

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## **PETITION FOR PARTIAL REHEARING EN BANC**

AND NOW COME Appellant/Respondent Deborah Harwell as Pro Se to file the following Petition for Partial Rehearing En Banc with respect to the Court's affirmance of the imposition of sanctions upon Deborah Harwell. (Section I.A of the Court's Unpublished Opinion No. 2020-UP-103 ("Opinion")). Deborah Harwell does not seek rehearing of the Court's affirmance of the denial of certain sanctions, as discussed in Section I.B (with the heading "Harwell's Appeal") of the Opinion.

### **INTRODUCTION**

Deborah and David began legally residing together on March 25, 1997, and legally married on November 21, 2001. Mrs. Harwell signed a prenuptial agreement on November 21, 2001 on the way to her wedding. The person in the attorney's office backdated her signature to November 19<sup>th</sup>, saying it had to match what she was typing on November 19, 2001, at 4:30 pm. Years later, Mr. Harwell informed his wife that the pre-nuptial agreement would not standup, according to Robert Bryan Harwell and CPA Buzz Rogers; and he would have to file a separation agreement but nothing would be different. Nothing happened for two years; then her husband disappeared from their Florence home three days after Mrs. Harwell brought him home from knee surgery. He could not drive. Her husband disappeared for several weeks and upon reappearing, came home every day to Cherry Grove until a Mediation which was not initiated by David and was scheduled by Robert Bryan Harwell.

The center of this whole controversy has to do with Robert Bryan Harwell making sure that the hidden Trust of the Estate of her husband, that are millions of dollars, were to end up under his control and that document and others were kept from her in violation of the discovery orders.

A Mediation was not completed as ordered by Family Court Judge Melissa Buckhannon in June 2016. This matter began with Mrs. Harwell finding out in the Florence Probate's office that the widow's name was listed as N/A on her legal husband's Death Certificate. After meeting with

the Florence County DHEC office twice, meeting with the Stoudemire-Dowling Funeral Home once, telephoning the SCDEC Vital Records office in Columbia, contacting the Personal Representative's attorney Kevin Barth, meeting with the Horry County Coroner; the Horry County DHEC Manager Dorothy Lewis, advised Mrs. Harwell in their Conway, SC office, once again, that she could not receive a copy of her husband's death certificate because her name had been left off with only N/A inserted. She advised that N/A is normally used for homeless persons whose identification is not known. She advised Mrs. Harwell that she would have to retain an attorney to make the request for her. She also advised that she was holding the worksheet and that the person who had given the information to the funeral home and left off her name was Robert Bryan Harwell, the Personal Representative of the Estate of David W. Harwell. As a result of the personal representative repeatedly refusing to submit a request change to DHEC, which DHEC had advised was the only way to amend the Death Certificate, Mrs. Harwell was forced to find an attorney and forced into this legal action.

This court erred in referring to Mrs. Harwell as the estranged wife of Decedent. Mr. and Mrs. Harwell were together until the weeks near his death. Her husband had been sexually dysfunctional for eight years before his death due to congestive heart failure and oxygen not going to the brain.

This court also erred that the Death Certificate was corrected with Bryan Harwell's consent. Deborah Harwell spent over \$70,000 to get her name on the Death Certificate as required by law. The reason it cost so much was that Bryan Harwell attempted every means to block the widow's name from being on the death certificate despite the law requiring it. This disrupted Mrs. Harwell's application for Social Security and application for PEBA Retirement as they both asked for her husband's death certificate on the applications proving her as the widow. Not having a wife's name on her husband's certificate puts her in a status of limbo. She is not married, single, divorced or widowed. The only thing Bryan Harwell accomplished by not

having the widow's name on the certificate was to hide her. Records showed that the short form of Death Certificate was sent to Insurance companies and others which did not require a wife's name.

This court erred in stating that the Widow failed to present evidence establishing the Obituary Claim was frivolously asserted. That information was presented before the cases were bifurcated. Also, Robert Bryan Harwell had no standing to have The State newspaper withdraw the obituary that she had paid for. He was not the Personal Representative at the time of this action and Mrs. Harwell was the legal wife.

This court erred in exercising an opinion that the Widow was displeased with the obituary because it failed to name her as Decedent's surviving spouse. This is not true. The Widow was unhappy that her husband of nearly 20-years did not get the recognition that he solely desired for giving 60-years of public service. He believed that he deserved better. It was a legal reason for having to make the proper legal designation. Willingly and knowingly not putting Mrs. Harwell's name on the Death Certificate intentionally is a violation of section 44-63-161 (A) (2), which is a felony under section 44-63-161(B).

This court erred in confirming that sanctions were appropriate for Mrs. Harwell for placing an obituary for Mrs. Harwell. Mrs. Harwell was the legal wife. Mr. Harwell wore his wedding ring to the day he died. The Personal Representative was not appointed until later. Mrs. Harwell wrote and paid for the obituary as advised by her Mediation attorney. Robert Bryan Harwell was not the PR at the time that he asked the SC Bar Association to pull the online obituary. Robert Bryan Harwell had no standing to take Mrs. Harwell's money that she had paid for the obituary. Sanctions should have been placed on Robert Bryan Harwell and not on Mrs. Harwell for his actions in this matter.

This court erred in stating that Attorney Edmonds was hired after the personal representative of the estate served a notice of disallowance of the claim. This is not true. The fact is that Attorney Edmonds was not Mrs. Harwell's attorney at this time.

Mrs. Harwell had a hard time finding an attorney to represent her because of Bryan Harwell's status as a US District Judge. Finally, after meeting with and calling numerous attorneys, Mrs. Harwell was able to hire the former Honorable Probate Judge of Horry County Deirdre Edmonds who was again practicing law. Everything was filed in Florence County. Attorney Edmonds worked diligently to obtain all records from Bryan Harwell's attorney Kevin Barth and unknowing to Barth, all records that were transmitted to DHEC and Medical Records regarding the Death Certificate signing and changes from the doctor's office. When the state office of DHEC compared the two, what attorney Barth sent Attorney Edmonds, was not what had been sent to SCDHEC in Columbia. The DHEC Administration reviewed all information and asked Attorney Edmonds a question of what they were hiding? Attorney Edmonds and Mrs. Harwell talked about a series of peculiar incidents two and a half years before her husband's death and after his death. Upon information and belief, recently research has indicated that Bryan Harwell was concealing a multi-million dollar trust, at this date possibly over \$100 million, which led to these legal actions against Mrs. Harwell.

Some of the extreme irrational behavior by the Personal Representative that contributed to these beliefs included:

- 1) The first incident was a frivolous lawsuit that did not have David Harwell's signature on it. Only Kevin Barth's signature filed May 13, 2015 for Breach of Contract Civil Action 2015-CP-26-3526 against Mrs. Harwell. Mr. and Mrs. Harwell were seeing each other ost every day during this period of time. The suit was never served on Mrs. Harwell and she only found out about its existence through a friend seeing it online. There had been no

actions prior to this date about anything. David Harwell said he knew nothing about it and it was dropped. It wasn't until June 2015, when Kevin Barth served any papers; and they were served on attorney Julian Derrick. There was no Divorce action and no talk of a Divorce action except that there would be none.

- 2) Prior to David Harwell's death in 2015, a direct family member called her to say that he had a serious incident and that she should rush to the hospital that David would want her there. She was in Banner Elk, NC when the call came and she left for the Florence Hospital immediately, arriving around 10:00 p.m. The nurse unlocked the glass door to her husband's glass room, attached to the nurse's station. Both sons were there and she thought were cordial when they all said hellos. She bent over her husband, who was on a ventilator and showing little signs of life, to tell him that she loved him and squeezed his hand. She started talking to David of all the wild turkey she had been seeing and Bryan Harwell, had an immediate and extreme burst of anger and asked her to leave. Mrs. Harwell told him that David was her husband and that she was going to sit in the waiting room and please let her know if his condition changed. As she sat in the dimmed waiting room with no one else around, the elevator doors opened with a policeman coming out and threatening her with an arrest if she ever was in the hospital at all when her husband was there and he would take her to jail right then. Mrs. Harwell sat in the hospital parking lot for hours crying and could not get home. Mrs. Harwell was not notified of her husband's death, except by a former construction business partner Ron Huffman, who had been actively going to the hospital to get company deeds signed by Bryan Harwell. Her entire confirmation of David's death was a text, "It's over."

- 3) Mrs. Harwell contacted attorney Tommy Brittain, as a long-time friend but not a legal representative, to ask if he would contact Bryan Harwell's attorney to let him know that Mrs. Harwell wanted to attend her husband's visitation and funeral. Brittain did this with Barth replying that he felt it would be no problem. Within 15-minutes Barth sent Mrs. Harwell a text

saying that she could not attend her husband's visitation because it was on private property and the funeral service was private and that she would be taken away if she attempted to attend. It was not until the second week in October, when Bryan Harwell became the Personal Representative of the Estate.

4) Mrs. Harwell knew that she would never get to say good-bye to her husband and time was running out. David Harwell died Wednesday, September 30, 2015. On Saturday, October 3, she called the Stoudenmire-Dowling Funeral Home in Florence to say that she would like to drive over to see her husband's body. When she was advised that her husband was not ready; she was sure that could not be correct. She subsequently called Steve McMillian at the McMillian Small Funeral Home in Myrtle Beach and he called The Funeral Home Director Charles Miles, who told him the same. McMillian called Mrs. Harwell and told her to go see her husband that she had every right to do so. Mrs. Harwell had a pleasant conversation with Charles Miles, who called Bryan Harwell, who did not become the Personal Representative until the end of the second week of October 2015. Mrs. Harwell could hear Bryan Harwell refusing to let her see her husband. Finally, Charles Miles told Bryan that he was dragging him into a legal situation because Mrs. Harwell presented her marriage certificate. Miles coerces Bryan Harwell into letting Mrs. Harwell see her husband's body for 5-minutes. He asked that they take away her cell phone and sit in the car for :30 minutes until they got him ready. When she asked where he was and she started looking in the viewing rooms, the Funeral Home Director told her that Bryan Harwell had ordered his father hidden and that no one could see him. After :30 minutes they came to the SUV and made her leave her cellphone in the vehicle. Four men stood behind her with their cell phones with video streams. David Harwell had laid naked in a storage room of the funeral home from Wednesday until Saturday, when Mrs. Harwell insisted that they ready him. When he was brought out, his glasses were crooked, his Judge's robe dirty and flaking, no Supreme Court pin or none of the collars that she laid out for him to wear. Ultimately, Mrs. Harwell was devastated that her husband was not given a funeral after 60-years of public service.

Friends called wanting closure with her husband's death; but there seemed to be nothing that she could do without being arrested or sued by Robert Bryan Harwell.

Because of the above actions and other information, an action was styled: (*Estate of David W. Harwell*) *Deborah B. Harwell v. Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records*, No. 2015-ES-21-00778 (In the Probate Court of Florence County, South Carolina) ("778 Florence Action").<sup>1</sup> To get Mrs. Harwell's name on the Death Certificate because the Personal Representative refused. Then it came to light that knowing altering and putting incorrect information on a public document is a Felony, which most likely alarmed U. S. District Judge Robert Bryan Harwell and motivated him toward filing the lawsuits against Deborah Harwell as a red herring.

This appeal concerns sanctions imposed on Attorney Edmonds and Deborah Harwell because of a claim Attorney Edmonds placed against Robert Bryan Harwell in 2016, as Personal Representative of the Estate of David W. Harwell ("Justice Harwell") ("Respondent"), for the payment of approximately \$1,400.00 that Mrs. Harwell spent for the publication of an obituary in 2015.

On or about December 3, 2015, Mrs. Harwell, acting *pro se*, filed a Statement of Creditor's Claim for \$1,457.25 for the publication of an obituary of her husband, the late Justice Harwell. (*See R. p. 108*). The Personal Representative denied that claim on behalf of Justice Harwell's Estate. On March 9, 2016, Attorney Edmonds filed a Summons and Petition for

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<sup>1</sup> On June 10, 2016, the trial court removed and transferred the '778 Florence Action to the Circuit Court of Florence County. (*See R. pp. 7-9*). That action is now styled *Deborah B. Harwell v. Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records*, No. 2016-CP-21-01435.

Allowance of Creditor's Claim in that amount against Justice David Harwell's estate on her Client's behalf, for an "obituary published in newspapers, The Sun News and the State" (the "Obituary Claim"). (See R. pp. 147-52). This obituary accurately identified Client as Justice Harwell's widow, whereas obituaries published by Justice Harwell's estate had outright excluded her. Bryan Harwell, despite not being the personal representative of the estate at this time, had pressured the SC Bar Association get the obituary withdrawn from The State newspaper. She was not refunded her money for the obituary by the newspaper.

On April 1, 2016, Respondent as Personal Representative of Justice Harwell's Estate filed Answers and Counterclaims and Third-Party Claims in the '778 Florence County Action. (See R. pp. 153-232). Respondent denied the claim for the obituary as an expense of the estate. (See R. pp.155-56 ¶¶ 2, 4). He also moved for sanctions under Rule 11 against Attorney Edmonds, prior to any trial, any hearing, any evidence or even a trace of Due Process. On or about April 12, 2017, the Trial Judge in a Spartanburg Courtroom, granted in part Respondent's request for sanctions. (See generally R. pp. 58-74). While denying most of the sanctions claims, the trial judge found that Attorney Edmonds "was not justified in filing or pursuing the claim for the reimbursement of the obituary publications" and imposed sanctions in the amount of \$5,000.00 because of her filing for a refund of the Obituary publication cost. (See R. pp. 72-73). appeared The Personal Representative used the sanctions as a way to create a legal conflict between Mrs. Harwell and her attorney; thus having Attorney Edmonds try to find other representation for Mrs. Harwell. At the point of suing the former Honorable Horry County Probate Judge Edmonds, no one would represent Mrs. Harwell for fear of being sued or creating a financial loss for their firm, themselves or their children in the Federal Court system. Mrs. Harwell heard this over and over from hundreds of attorneys in SC and NC. Mrs. Harwell has already documented this and provided it to the court.

Mrs. Harwell and Attorney Edmonds appealed the imposition of sanctions.<sup>2</sup> On April 8, 2020, the Court of Appeals filed its Opinion that, in part, affirmed the imposition of sanctions on Mrs. Harwell and Attorney Edmonds with regard to the Obituary Claim. Specifically, the Court of Appeals found that the trial court did not err in imposing sanctions where: (a) there was no specific finding that the Obituary Claim was frivolous and (b) Respondent had not presented any evidence supporting that the Obituary Claim was frivolous, slanderous or untruthful in any manner. *This appears to be a violation of the First Amendment of the United States Constitution granting Freedom of Speech.* Additionally, this Court held that the trial court did not abuse its discretion by imposing excessive sanctions despite the clear violation of the First Amendment of the United States Constitution by this Court. This Court should grant a rehearing as to its affirmance of the sanctions imposed on Mrs. Harwell and reverse the trial judge's imposition of those sanctions as a violation of the United States' Constitution First Amendment.

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<sup>2</sup> Respondent and Client have also filed appeals that have been consolidated with Attorney Edmonds' Appeal. Those issues are not relevant to this Petition.

## ARGUMENT

### A. The Court Should Grant This Petition for Partial Rehearing and Reverse the Imposition of Sanctions on Mrs. Harwell

In its Opinion, this Court affirmed the imposition of sanctions upon Mrs. Harwell pursuant to Rule 11 of the South Carolina Rules of Civil Procedure and the South Carolina Frivolous Civil Proceedings Sanctions Act (the "Frivolous Proceedings Act"), S.C. Code § 15-36-10.

Rule 11(a) of the South Carolina Rules of Civil Procedure requires every pleading to be signed with the signature constituting a certificate by the signor that he has read the pleading and "that to best of his knowledge, information and belief there is good ground to support it." "[T]he criteria for Rule 11 sanctions are essentially the same as those for sanctions under the [Frivolous Proceedings Act]." *See In re Beard*, 359 S.C. 351, 360, 597 S.E.2d 835, 839 (Ct. App. 2004) (quoting *Father v. South Carolina Dep't of Soc. Servs.*, 345 S.C. 57, 72, 545 S.E.2d 523, 531 (Ct. App. 2001)). Under the Frivolous Proceedings Act, "[a]n attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for . . . filing a frivolous pleading, motion, or document." *See* S.C. Code § 15-36-10(A)(4)(a).

Though the Opinion is unpublished, the Court's holding runs counter to sound public policy in two important respects. First, it permits imposition of sanctions without any development of the merits of the underlying claim, thus encouraging parties and attorneys to continue to prosecute cases rather than risk creating an inference that the case was frivolous. Parties should be free to reconsider their decisions to pursue litigation, as Client did here, rather than feel obliged to build a record to stave off sanctions. Second, and more importantly, the holding punishes a lawyer for honoring her attorney's oath by maintaining a suit that she "believe[s] to be honestly debatable under the law of the land, but no testimony was ever allowed on this case, quite the opposite. Extreme measures were taken as holding this case in multiple counties and disallowing Mrs. Harwell notification of some hearings. No testimony was allowed and the opinion by the Expert Witness was not considered because sanctions were given at the

same hearing and the Expert Witness Opinion was not touched. This all appears to be a violation of the *Due Process Rights of the 14<sup>th</sup> Amendment of the United States Constitution*. This case was heard in Florence County, Beaufort County, Spartanburg County and Charleston County, in what confused the issues and prevented any evidence or testimony. Mrs. Harwell was given the wrong date of the second hearing. As will be shown below, Mrs. Harwell had at least a Widow's Claim, which she would lose forever if Attorney Edmonds did not promptly pursue it in Probate Court. A lawyer considering representation of a client in a difficult matter should not face a Hobson's choice of shirking her professional duty or facing sanctions. The widow had the right to make the claim with alleging fraud in the claim.

For the reasons that follow, this Court should grant a partial rehearing in this matter because the trial court erred in imposing sanctions on Mrs. Harwell.

Also, this Court determined that the cases should be bifurcated and Mrs. Harwell filed a paper objecting. Now, the bifurcated case is intertwined into these cases and Mrs. Harwell is prevented from presenting information that is crucial to these cases. This is a Constitutional error. Also, the facts of this court are inaccurate. This court provided facts of:

“On January 14, 2016, Widow filed a pro se action in the probate court which she brought two creditor's claims against Decedent's estate seeking (1) an elective share in the amount of \$3.1 million.”

This is an untrue statement which is explained later in this Appeal for Rehearing Plea. The \$3.1m claim was because the Mediation Agreement confirmed the Pre-nuptial Agreement and in it, Mr. Harwell owed a reimbursement of \$3.1m. Mrs. Harwell's belief is that the assets were not revealed in the Mediation; but Mrs. Harwell could not find and confirm until recently.

This court has also stated incorrectly that Contempt proceedings were related to the Widow's violation of the Agreement. Mrs. Harwell was charged with five items for Civil Contempt that was changed to Criminal Contempt three weeks after a trial. Those charges included going to see her husband's body at the Funeral Home and going to see her husband at

the hospital just before he died. There was no Restraining Order and Bryan Harwell was not the Personal Representative at that time of these incidences. It also included filing for the overpayment on the Harwell's joint tax return that was agreed upon in the Mediation and giving the widow's cell phone to her husband that had been deceased for ten months. Although this court says that the contempt charges are not part of this action; the court mentioned the contempt repeatedly and it needs to be clarified for the court record. The court was in err by bifurcating the cases to lessened the ability for Mrs. Harwell to use evidentiary documentation.

This Court erred about Attorney Edmonds resignation from Mrs. Harwell's case. This was not voluntary. Personal Representative Robert Bryan Harwell sued Attorney Edmonds for conspiracy. No one is sure exactly for what and it caused a conflict and caused Mrs. Harwell not to have an attorney at all.

This Court also erred when stating that the Death Certificate said married but separated initially. The Death Certificate stated N/A where Mrs. Harwell's name was to be inserted. It wasn't until after the lawsuit that DHEC decided to be in compliance with the law and place Mrs. Harwell's name on the Death Certificate. Mrs. Harwell spent \$70,000 in legal fees to accomplish being consistent with the law.

1. **There Has Never Been a Determination The Obituary Claim Was Actually Frivolous**

It is undisputed that the trial court did not make any finding that Client's Obituary Claim was frivolous. It never dismissed those claims on the merits or for any procedural deficiency and no testimony was ever allowed, nor witnesses allowed. The trial judge did not find that the Obituary Claim was so baseless as to warrant the exceptional remedy of sanctions on Mrs. Harwell. Nonetheless, this Court held in its Opinion that the trial judge did not err in imposing sanctions despite having failed to do so:

Although subsection 15-36-10(C)(1) delineates at what procedural stage a court will determine if a claim or defense is considered frivolous upon a motion of the prevailing party, we find this subsection does not prescribe a court's sole method for imposing sanctions for filing or advancing frivolous claims. Subsection (B)(2) provides a court may "upon its own motion or motion of a party" impose sanctions upon an attorney or pro se litigant for violations of subsection (A)(4). Furthermore, the circuit court additionally found sanctions were warranted pursuant to Rule 11, which contains no such procedural prerequisites. *See* Rule 11(a), SCRCP ("If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction . . .").

(*See* Opin., at 8). For the reasons that follow, this Court should grant Mrs. Harwell a rehearing, reconsider its holding on this issue, and reverse the trial judge's sanctioning of Mrs. Harwell.

The Frivolous Proceedings Act — which is one of the bases for the trial courts' sanctions award — “provides that any person who takes part in the procurement, initiation, and continuation of any civil proceeding is subject to being assessed for payment of all or a portion of the attorney fees and court costs of the other party if . . . the proceedings have terminated in favor of the person seeking an assessment of the fees and costs.” *Ex parte Gregory*, 378 S.C. 430, 438, 663 S.E.2d 46, 50-51 (2008). The Frivolous Proceedings Act further provides that “[a]t the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous.” *See* S.C. Code § 15-36-10(C)(1) (emphasis added). “Motions made pursuant to the [Frivolous Proceedings Act] are *post-trial* motions.” *Holmes v. East Cooper Comm. Hosp., Inc.*, 408 S.C. 138, 160, 758 S.E.2d 483, 495 (2014) (emphasis added).

A party seeking sanctions under Rule 11 must prove an attorney signed a pleading or motion “to cause delay or when no good grounds exist to support the filing.” *See Ex parte Bon Secours–St. Francis Xavier Hosp., Inc.*, 393 S.C. 590, 597, 713 S.E.2d 624, 628 (2011). “A court imposing sanctions under Rule 11 should, in its order, describe the conduct determined to

constitute a violation of the Rule and explain the basis for the sanction imposed." *Ex parte Gregory*, 378 S.C. 430, 438, 663 S.E.2d 46, 50 (2008).

The trial judge never made any findings as to the merits of the Obituary Claim. He wrongfully never considered or analyzed the substance of the competing obituaries. He never examined whether paying for a true and accurate obituary to correct a prior misleading obituary could be charged against Respondent or Justice Harwell's Estate. He never considered that Mrs. Harwell paid for the obituary and Bryan Harwell, who was not the Personal Representative of the Estate at that time, used his legal contacts and Federal Judgeship to have the on-line obituary pulled, after Mrs. Harwell paid for it. The presiding Judge did not permit an evidentiary hearing or discovery on the issue. He never determined that the denial of the Estate Claim was appropriate under South Carolina law. Such a judicial determination that the Obituary Claim actually lacked merit was an absolutely necessary condition precedent to the imposition of sanctions under Rule 11 or the Frivolous Proceedings Act. Instead, the trial court (and this Court) relied upon Client's voluntary dismissal of the Obituary Claim as the basis for sanctions. In doing so, the trial court did *not* explain *why* it felt the Obituary Claim was improper and did not provide Client an opportunity to withdraw the Obituary Claim. No notice that sanctions could be placed was given. As a result, its imposition of sanctions on Deborah Harwell was plainly premature and unjustified. Therefore, this Court should reverse the imposition of sanctions in this case.

In its Opinion, the Court of Appeals states that a finding that the Obituary Claim was frivolous was not a prerequisite to the trial court's award of sanctions, relying on Section 15-35-10(B)(2) of the Frivolous Proceedings Act, which states that a court may impose sanctions where "a document is signed in violation of this section, or an attorney or pro se litigant has violated subsection (A)(4)." This Court suggests that this subsection is an alternative basis under the Frivolous Proceedings Act from Subsection (C)(1) (permitting sanctions *after* an unfavorable ruling on the claim at issue). Respectfully, subsection (B)(2) does not permit the imposition of sanctions without a dismissal and finding of frivolousness. Neither Respondent nor this Court

has cited any authority permitting sanctions to be imposed where the underlying claim was never resolved by the court against the sanctioned party. Here, the Obituary Claim was voluntarily withdrawn; *Respondent has cited no authority permitting sanctions under such circumstances. (Emphasis Added).*

2. **As a Matter of Law and Fact, the Obituary Claim Was Not Frivolous**

Even if the trial judge was not required to rule on the merits of the claim before imposing sanctions, it erred in imposing sanctions because Respondent did not present a scintilla of evidence that the Obituary Claim was, in fact, frivolous or without any merit. Mrs. Harwell expected to be reimbursed for the obituary because she had paid for the obituary, that she believed to exemplify her husband's life which the estate's obituary did not, plus insert her name as the wife after the children's names. Robert Bryan Harwell was not the Personal Representative at the time that he had the obituary that Mrs. Harwell wrote pulled. (*See Opin.*, at 8). This Court based that conclusion on the existence of the Mediation Agreement that \*Family Court Judge Melissa Buchannan declared was incomplete. This court concluded that Mrs. Harwell published the obituaries at issue on her own initiative. This is not true as Mrs. Harwell consulted the Mediation attorney and was told that obituaries in these days are paid for and to write her own. Mrs. Harwell followed the attorney's instructions.

This Court erred in concluding that the record supports that the Obituary Claim was frivolous. To the contrary, the obituary was factually accurate and was asserted in good faith. The Estate published an obituary that acknowledged all of Justice Harwell's relatives (even his dog) but failed even to mention his widow. The inclusion of the surviving spouse is a standard part of an obituary, and its absence from the obituaries that the Estate published arguably defeated the very purpose of publishing an obituary. Client had every right to ask the Estate to pay the cost of publishing a correct obituary, especially since they had the online version pulled

from record before any Personal Representative was appointed and she was still the legal wife for nearly 20-years.

\*Litigation was in the wrong court

This Court should reverse and vacate the imposition of sanctions.

a. **Client Had a Correct and Justified Argument That the Mediation Agreement Did Not Foreclose the Obituary Claim**

Respondent, as the party moving for sanctions, bore the burden of showing that the claims were frivolous. As discussed above, a motion for sanctions is normally made following an adjudication of the merits of the underlying claim. There was no such adjudication here. Instead, in his motion for sanctions Respondent simply alleged that "[i]n the Final Order and Agreement, the Petitioner waived any and all claims or rights against the Estate, and such Order was a final, binding, unappealed order." (*See R.*, at 209). Specifically, Respondent argued (and this Court has held) that the Obituary Claim was waived in a Mediation Agreement attached to a Final Decree (Ending Action) filed in Client's \*Divorce Action, in which Attorney Edmonds did not appear or represent Client. (*See R.* pp. 167-78). In particular, Respondent and this Court's Opinion rely on a provision in the Mediation Agreement stating that "[b]oth parties waive any and all rights they may have in the estate of the other or to make any claim upon or against the estate of the other." (*See R.* p. 147 ¶ 12). Mrs. Harwell had a good-faith argument that the Mediation Agreement could not have been intended to bar a claim that not only did not exist at the time of the mediation but would not arise out of conduct by her husband. The Mediation Agreement provided that: "The parties have settled all of the issues *arising out of their marriage and of the Prenuptial Agreement* by this Mediation Agreement and request the Family Court to approve and incorporate this Mediation Agreement into an order of the Court." (*See R.* p. 145 ¶ 2 (emphasis added)). The Obituary Claim is not a claim arising out of Client's marriage to Justice Harwell or her Prenuptial Agreement. It did not even exist at the time the parties entered into the Mediation Agreement and could not have been within the contemplation of the parties.

\*There was no Divorce action nor was there ever a discussion between the husband and wife and both parties intended and did continue their relationship irrespective of the Mediation provocation initiated by Bryan Harwell.

It is not a claim that Client was entitled to a portion of Justice Harwell's Estate. Instead, this was a simple claim to be reimbursed for incurring an expense that the Estate should have paid to ensure that a complete and accurate obituary was published. It was far from a foregone conclusion that the Mediation Agreement would be interpreted to bar this claim. It should also be argued that an on-going investigation into the hiding of assets in the Mediation Agreement, drawn by attorney Kevin Barth, has resulted in a family member confirming the existence of a very large family trust. Attempts to subpoena the testimony of the Personal Representative Robert Bryan Harwell and the former CPA for Mr. and Mrs. Harwell's joint return have resulted in the subpoenas being block to deny any testimony. The Court's determinations may be contemplated too early.

**b. Client Intended to Challenge the Validity of the Mediation Agreement and the Separation Decree in Family Court**

The obituary claim was filed, in an effort to protect Mrs. Harwell's interests from being forever lost through the passage of time. (*See R. pp. 298-99 ¶¶ 19-21*). As this Court correctly observed in the context of the Prenuptial Claim, "Widow informed Edmonds that she believed Decedent withheld information regarding the extent of his assets when they entered the Mediation Agreement and she intended to challenge the Separation Decree." Mrs. Harwell filed a 60-B for a re-hearing but Personal Representative Bryan Harwell had Mrs. Harwell thrown in jail on the morning of the same day as the after 60-B hearing was scheduled. It is incongruent to charge Mrs. Harwell with a frivolous action that was never filed or heard in the court. Thus, it was not a foregone conclusion that the Mediation Agreement was valid. The claim only preserved the timeframe in the Probate Court. Arguments to its validity never occurred. Mrs. Harwell filed a 60-B request for a re-hearing and it disappeared. The Mediation Agreement was

not successful in two different ways. It was to be concluded in two parts. The Mediation was never completed. It appeared to give Mrs. Harwell a \$70,000 check which was correct; however, it also left Mrs. Harwell with \$600,000 of debt that was listed in her assets and debts listings. As Mrs. Harwell searched for the evidence of fraud in the Mediation agreement, Personal Representative Robert Bryan Harwell decided to take a different direction 10-months after the death of David Harwell. He asked Horry County Family Court Judge Melissa Buckhannon to put Mrs. Harwell in jail for 45-days for actions such as placing an accurate obituary, going to see her husband's deceased body at the funeral home, going to see her legal husband (there was no personal representative at this time and Mr. and Mrs. Harwell had been spending a great deal of time with each other) at the Florence Hospital when he was on a respirator approaching death. For asking for the couple's joint tax return overpayment that the Mediation Agreement clearly stated was to go to Mrs. Harwell in full, even prior to Mr. Harwell's death and not giving Mr. Harwell, who was dead, his cell phone, which belonged to Mrs. Harwell.

Oddly enough, Mrs. Harwell's attorney Cary Warner, that she had paid a \$5,000 retainer and signed a contract for her services, pulled out of the Contempt Hearing 48-hours before court. Mrs. Warner had all of Mrs. Harwell's files in Columbia and had meet for hours preparing for Contempt Court. Family Court Judge Melissa Buckhannon denied the retired Chief Justice's wife's Emergency Request for Continuance and made her go forth with 98% of the trial with no attorney, no records and no warning that this could happen. After Judge Buckhannon received an emergency call to pick up her daughter, she paused court and resumed in 30-days.

Judge Buckhannon told Mrs. Harwell that she did not believe her when she was trying to testify. She continuously berated Widow Harwell and told her she was "the most vial of human being and that the boys were sweet." She read from prepared notes. The actions of handcuffing and putting shackles on Mrs. Harwell's ankles while the personal representative Robert Bryan Harwell and his two attorneys Kevin Barth and Probate attorney Gina Ervin openly scoffed and laughed at Mrs. Harwell. All done at their table in the courtroom in front of the public and the court officers. Before the Judge gave the Order for Mrs. Harwell go to jail; Mrs. Harwell heard

them laughing about July 4<sup>th</sup>. It turns out that Mrs. Harwell's exited jail on July 4<sup>th</sup>. No evidence could be presented because all of Mrs. Harwell's records were in Columbia with the resigning attorney. Mrs. Harwell is not training as an attorney and has never taken one law class. The unfairness and abuse of power in these cases is at best, classified as abuse.

Family Court Judge Melissa Johnson Buckhannon charged Mrs. Harwell in writing with Civil Contempt; but when the Order was turned into the Court by Attorney Kevin Barth, it had changed to Criminal Contempt; which put into place a whole new set of rules.

C. **Even if Deborah Harwell's Conduct Was Sanctionable, This Court Should Have Concluded That the Trial Court Imposed Sanctions That Were Excessive and Disproportionate to the Actual Expense Incurred or Amount at Stake**

The trial judge sanctioned Deborah Harwell \$24,000 to award to Respondent Robert Bryan Harwell. He also sanctioned Attorney Edmonds and awarded Respondent Robert Bryan Harwell \$5,000.00 in legal fees related to the \$1,457.25 Obituary Claim. The Court of Appeals affirmed the amount of sanctions, stating:

Harwell contends the sanction is disproportionate to the amount of the claim and is therefore excessive, we find nothing in Rule 11 or the [Frivolous Proceedings] Act confines the court to such a measure; rather, the court has wide discretion to fashion a sanction it deems appropriate given the underlying circumstances. In its order denying the parties' motions for reconsideration, the circuit court explained it arrived at \$5,000 by calculating twenty hours of legal work at a rate of \$250 per hour. Considering the length of the litigation and number of motions filed, we find the circuit court did not abuse its discretion in determining the amount of the sanction.

(See Opin., at 9). For the reasons that follow, this Court should have reversed the trial judge's amount of sanctions as being excessive and disproportionate. It should also be considered that sanctions were made prior to any court hearing and no testimony was allow, no witnesses were allowed and no findings were allowed

First and foremost, contrary to this Court's holding, the record does not include any evidence that Respondent incurred *any* attorneys fees attributable to the Obituary Claim. The

United States Supreme Court has held a sanctions award is only compensatory where it compensates the moving party for fees that would not have been incurred but for the sanctioned conduct:

[A]s we have previously noted, a sanction counts is compensatory only if it is 'calibrate[d] to [the] damages caused by' the bad-faith acts on which it is based. . . . A fee award is so calibrated if it covers the legal bills that the litigation abuse occasioned. . . . That kind of causal connection, as this Court explained in another attorney's fees case, is appropriately framed as a but-for test: The complaining party (here, the Haegers) may recover 'only the portion of his fees that he would not have paid but for' the misconduct. *Fox v. Vice*, 563 U. S. 826, 836 (2011); see *Paroline v. United States*, 572 U. S. \_\_\_, \_\_\_, 134 S.Ct. 1710, 1722, 188 L.Ed.2d 714 (2014).

*Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186 (2017). The record is devoid of evidence of legal expenses Respondent could or would have avoided but for Attorney Edmonds' filing of the Obituary Claim.

Substantially all of Respondent's counsel's efforts, as evidenced by their Motions, Memoranda, Affidavit and live testimony, were spent arguing against the merits of a \$3.1 million creditor claim (for which sanctions were not imposed) and the amendment of the death certificate (the defense of which was itself spurious, inasmuch as Client was unarguably Justice Harwell's surviving spouse). (See R. pp. 153-207, 237-40, 339-52, 364-83, 384-441, 511-619, 855-74). Respondent did not present any billing records or other evidence showing the hourly rate, the number of hours worked or what work was performed because of the Obituary Claim. There is certainly no evidence supporting that any attorney performed 20 hours of legal work in responding to the relatively small Obituary Claim. Indeed, it appears that Respondent and his counsel did nothing more to defend that claim than to deny it and include it in the motion to dismiss and for sanction (in a motion that was also directed to another much larger claim). Client voluntarily dismissed the Obituary Claim without any action by the Probate Court and without the need for Respondent to incur any legal fees in litigation. To the contrary, the trial judge himself created the figure of \$5,000, without any evidentiary support whatsoever.

Second, neither the trial court nor this Court engaged in a sufficient detailed evidentiary analysis to determine whether the attorneys' fees awarded in the sanctions were reasonable. In determining the reasonableness of legal fees, South Carolina courts typically focus on six factors from the case of *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997): (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. The factors for determining the reasonableness of fees set forth in Rule 1.5 of the Rules of Professional Conduct, Rule 407, SCACR, include the same factors as those in *Jackson*. Neither the trial judge nor this Court analyzed any of these factors, which would not have supported a \$40,000 sanction award. To the contrary, there is no evidence in the record of the nature of the Obituary Claim, the time devoted to defending that claim, the work actually performed, or any other factor.

Further, even if supported by any evidence, the amount of \$40,000 allegedly spent to defend a claim of less than \$1,500 is facially excessive and grossly disproportionate. Personal According to Mrs. Harwell's former attorney Representative Robert Bryan Harwell told her that he would not drop any claims against attorney Edmonds and wanted a paper on every attorney's desk in the state to show her found guilty. The Petitioner would have to have been uncommonly vindictive and contumacious to spend \$40,000 to defend a claim that small and that innocuous. It was an abuse of discretion for the trial judge to impose sanctions against Attorney Edmonds that are more than three times the amount of the underlying claim.

Therefore, even if sanctions were appropriate in this case, the trial judge erred in imposing such sanctions in the excessive amount of \$40,000.00 total.

In the Circuit Court Judge's personal opinion, Mrs. Harwell could have acted earlier to resolve the death certificate issue; but the Judge had no way of knowing that she did. He would not let her speak. He would not allow testimony. A trial was requested and no trial was ever conducted. The Circuit Court Judge also stated that certain finding were false regarding the personal representative but did not indicate what those were and would not allow anyone to

testify. It would have been impossible for him to determine this and the indication of berating the widow without any facts and all of which violates Mrs. Harwell's Due Process Rights.

The court erred in citing that Edmond's assertions were unnecessary to obtain the relief sought. The tenacious nature of the Personal Representative were out of hand. Also, none of attorney Edmonds statements in the pleading were overzealous and the court erred in not citing exactly what they were talking about.

This court erred in making an assumption that the Circuit Court Judge did consider the Expert affidavits from Burnele Powell and Mitchell Payne, stating that there was violation of the provisions of Rule 11 or the Act. However, Mrs. Harwell and Attorney Edmonds were in the courtroom and when the opinions were presented. The opinions were set to the side and sanctions were given without reading anything. The expert witnesses had traveled to go Spartanburg, SC, where the Circuit Judge was having this Florence, SC hearing.

This court wrongfully assumed and stated that Attorney Edmonds relied solely on Mrs. Harwell's information for her filing of the obituary claim. Attorney Edmonds was presenting the facts and evidence to Mrs. Harwell that she was finding through subpoenas, research and telephone calls to DHEC, medical persons and the funeral home. How this court could assertion this position with the mountain of documents presented it other-wise is a reckless matter of personal opinion or open bias which is very concerning to all involved in a Judicial proceeding. There is no room for one-sided opinions in a fact-finding mission.

This court erred in stating that Rule 60(b), SCRCP, in the family court, was unknowable during the timeframe Edmonds had for filing a petition for allowance. Mrs. Harwell's 60-B was pending during the entire time that Attorney Edmonds was representing Mrs. Harwell. Mrs. Harwell was not told by Desa Ballard, until a year after Attorney Edmonds representation ended, that her 60B had disappeared.

This court erred in stating that the Widow neither objected during the sanctions hearing nor raised the issue in her motion for reconsideration. The widow and Attorney Edmonds begged for the court to let the experts testify. They were not allowed to testify.

**Deborah Harwell Suggests That This Case Would  
Be Appropriate for Rehearing En Banc**


South Carolina Rules of Appellate Procedure 219(a) provides that a rehearing *en banc* may be appropriate where “(1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.” As discussed above, the issues in Deborah Harwell’s appeal implicate matters of exceptional importance to the South Carolina legal profession and to those who seek legal representation. Due Process and the Rights of the Constitution of the United States have been questioned. The Court has affirmed the award of sanctions under circumstances that threaten to discourage attorneys from taking on unpopular causes or difficult cases out of fear of hurting their profession. It is appropriate for the Court of Appeals en banc to consider these difficult and important legal questions.

**CONCLUSION**

The violations of Due Process contained in the United States Constitution, the number of incorrect facts presented as unproven evidence and suspect bias of the issues most likely resulting from incorrect facts cited above is very concerning. For the foregoing reasons, the Court should grant the Petition for Partial Rehearing of Appellant/Respondent Deborah Harwell and should reverse the trial judge's imposition of any sanctions of upon Deborah Harwell.

April 22, 2020

Deborah Harwell

By:   
Deborah Harwell  
Post Office 298  
Fallston, NC 28042  
(843)458-3300  
adobepalm@aol.com

STATE OF SOUTH CAROLINA )  
)  
)  
RE: Deborah Harwell v Robert Bryan Harwell, )  
individually and as Personal Representative )  
of the Estate of David W. Harwell, and SC DHEC, )  
and Law Office of Deirdre W. Edmonds, PA; )  
and Deirdre W. Edmonds, individually )

IN THE COURT OF APPEALS  
**CERTIFICATE OF SERVICE**  
  
CASE NO.: 2017-002290

I CERTIFY THAT ON THIS DATE, I SERVED A COPY OF THIS ACTION, DATED APRIL 23, 2020 BY THE US POSTAL SERVICE TO:

Mr. M. Dawes Cooke, Jr., Esquire  
PO Drawer H  
Charleston, SC 29402-0197

Dr. Barbara J. Wagner, Esquire  
PO Drawer H  
Charleston, SC 29402-0197

Mr. Kevin Mitchell Barth, Esquire  
PO Box 107  
Florence, SC 29503

Mr. John Harleston, Esquire  
2600 Bull Street  
Columbia, SC 29201

Ms. Gena Phillips Ervin, Esquire  
Orr & Ervin, LLC  
PO Box 2527  
Florence, SC 29503-2527

  
Signature

  
Date

**RECEIVED**  
**Apr 24 2020**  
**SC Court of Appeals**

Deborah Harwell  
of Myrtle Beach, South Carolina  
Mail Address: PO Box 298, Fallston, NC 28042  
[adobepalm@aol.com](mailto:adobepalm@aol.com)  
843-458-3300

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April 23, 2020

**RECEIVED**

**Apr 24 2020**

**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201  
[ctappfilings@sccourt.org](mailto:ctappfilings@sccourt.org)

RE: Deborah Harwell v Robert Bryan Harwell, individually and as Personal Representative Of the Estate of David W. Harwell and South Carolina Department of Health and Environmental Control Division of Vital Records, and Law Office of Deirdre W. Edmonds, PA; And Deirdre W. Edmonds, individually  
Case No.: 2017-002290 COA (Combined Case Number)

Dear Honorable Clerk Kitchings:

Enclosed for filing, please find the following regarding the above-referenced cases:

- 1) The original and six (6) copies of a Petition for Partial Rehearing En Banc
- 2) A copy of a \$50 Money Order #6000809545 required for filing
- 3) The original and six (6) copies of the Certificate of Service
- 4) One return envelope to return the filed, stamped copy to Deborah Harwell

Most Sincerely,



Deborah Harwell  
VIA U.S. Mail

Enclosed Original and six copies  
Certificate of Service

NOTICE TO CUSTOMER: The purchase of a Surety Bond and/or execution of an Indemnity Agreement may be required before the check may be replaced or refunded in the event it is lost, misplaced or stolen.

# PERSONAL MONEY ORDER

6000809545

PURCHASER'S AGREEMENT: You, the purchaser, agree to immediately complete this Money Order by filling in the front of the Money Order, signing it, and addressing it at the bottom. The terms of this Money Order bind you, your heirs, or others who receive this Money Order from you.

CLIENT COPY

ISSUING BRANCH 6042303-BOONE - TYNECASTLE

DATE April 22, 2020

S.C. Court of Appeals

\$50.00

Fifty and 00/100ths Dollars

COPY NOT NEGOTIABLE

## BB&T

2017-002290

THIS DOCUMENT CONTAINS A TRUE WATERMARK - HOLD TO LIGHT TO VIEW

### LIMITED RECOURSE:

This Money Order will not be paid if it has been forged, altered or stolen, and recourse is only against the endorser. This means that persons receiving this Money Order should accept it only from those known to them and against whom they have effective recourse.

# PERSONAL MONEY ORDER

6000809545

NOT VALID OVER \$1,000.00

68-236/514

ISSUING BRANCH 6042303-BOONE - TYNECASTLE

DATE April 22, 2020

PAY TO THE ORDER OF

SC Court of Appeals

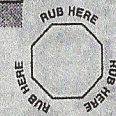
\$50.00

Fifty and 00/100ths Dollars

## BB&T

2017-002290

**\$50.00**  
DOLLAR FIVE ZERO PERIOD ZERO ZERO



PURCHASER, BY SIGNING YOU AGREE TO THE TERMS ON PURCHASER'S COPY

Deborah Herwell

PURCHASER SIGNER

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Fallston, NC 28042

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