THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

Unpublished Opinion No. 2022-UP-331 (Filed August 10, 2022)
Lower Court Case No. 2015-CP-04-00667

Ex Parte: Donald L. Smith,
In Re: Greg Battersby,
Appellant,
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead & Draisen, P. A.,
Respondents.

APPELLATE CASE NO.: 2020-000070

AMENDED PETITION FOR WRIT OF CERTIORARI

Respectfully submitted by:

s/Donald L. Smith
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Anderson, South Carolina
December 19, 2022.

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on November 14, 2022. (App., p. 71).

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred by not finding the trial court trial judge abused his discretion in assessing $11,206.20 in sanctions against Petitioner for an alleged frivolous filing.

2. Whether the Court of Appeals erred by not finding the trial court's refusal to view any evidence in the light most favorable to the non-moving party was punitive in nature resulting in an arbitrary and capricious determination the complaint filed was baseless.

STATEMENT OF THE CASE

Procedural History

Petitioner was sanctioned $11,206.20 for filing what the lower Court deemed, a frivolous action, against Respondents on February 4, 2016. A Motion to Reconsider was filed on February 18, 2016. The Circuit Court issued a Form 4, Denying the Motion to Reconsider on February 22, 2016. On October 15, 2019, more than three (3) years after the Circuit Court made its verbal ruling, Respondents filed a Motion to Enter Monetary Sanction in the Judgment Roll. On December 16, 2019, the lower Court filed its Formal Order.

A timely Notice of Appeal was served on January 13, 2020, and the appeal was perfected. Due to circumstance outside of Petitioner's control, he was unable to obtain the Transcripts necessary to complete the initial brief, Appellant's Initial Brief and Designation of Matter were not filed until March 29, 2021. Respondents filed Respondents' Initial Brief and Designation of Matter. Petitioner filed his Reply to Respondents' Initial Brief on May 7, 2021. On July 12, 2021, Respondents filed a Motion to Dismiss the Appeal. On August 6, 2021, Petitioner moved for an order to amend the Designation of Matter. Since no return to said motion was filed, the Court granted the motion and Petitioner filed the Appellant's Amended Designation of Matter on July 12, 2021. Respondents filed their Final Brief of Respondents and Designation of Matter on August 27, 2021. Petitioner filed Appellant's Final Reply Brief on August 30, 2021. Respondents filed letters with the Court on September 1, 2021, and September 7, 2021, with Petitioner filing Appellant's Response to Respondent's letter to the Court of Appeals on September 8, 2021, and a Reply to Respondent's Letter-Regarding Record on Appeal on September 27, 2021. Respondents filed a Second Motion to Dismiss the Appeal on September 16, 2021 and Petitioner filed his Reply to Respondent's Second Motion to Dismiss on September

27, 2021. On August 10, 2022, the Court issued its Opinion. Petitioner filed a Petition for Rehearing on August 23, 2022. Respondents filed a Reply to Petition for Rehearing on September 6, 2022. Petitioner filed Appellant's Reply to Respondents Response to Petition for Rehearing on November 2, 2022. The Court issued its denial of Petitioner's Rehearing request on November 14, 2022.

Summary of the Case

Two separate warrants were issued against Petitioner, who was arrested on August 2. 2013, for exposing himself to Neal and Morton. He was indicted on both charges on November 19, 2013. As a result of the conflicting stories of the alleged victims, the Tenth Circuit Solicitor's Office subsequently dropped the criminal cases against Petitioner on April 24, 2014. Battersby, thereafter filed suit against the Labor Licensing Board for the manner in which it took his license to practice chiropractic. (Battersby v. Ashley, et al, Case No. 8:15-cv-00066-BHH-JDA).

In the prosecution of his claim against the LLR, he swiftly set up the depositions of Neal and Morton. Michael Moske was hired to serve the subpoenas on the ladies. He served Neal with a subpoena for her deposition on May 27, 2014. (R, p. 205-6). As he was in the process of serving said deposition, Neal offered the following, "I'm not the only one. There are other guys." (R, p. 207). Appellant recognized the women were creating a scheme to acquire money from him with the baseless accusations they had made; and the fact Morton had already sought counsel.

Appellant sued Neal and Morton for defaming him. Tommy Dunaway, Esquire, who had shirked his responsibility of paying Petitioner his chiropractic fees filed an Answer and Counterclaim for Neal. In his filing, Dunaway stated the fee was not paid due to the conduct of

Petitioner; and the charges which stemmed from it. Furthermore, Dunaway attached several case opinions and reports involving Petitioner from foreign jurisdictions, indicating he had done research on him. (R., 352-447). The Complaint was amended to include Dunaway for the breach of contract and conspiracy. (R, p. 237-8).

Upon taking the case, any recorded interviews which had been taken were demanded. The result of the request was a recorded interview Jan Morton had given to the detectives investigating her case. When Ms. Morton was deposed her testimony was vastly different from the facts gleaned from the incident report. She alleged Plaintiff had called incessantly after the incident to seek her return to treatment. Morton's phone records failed to illustrate any calls from Plaintiff to Morton. She also contradicted her allegations from her interview to her deposition by saying he had put his "junk" on her back at the office. In the incident report, she had gone out of her way to nullify any thought he had sexually, or attempted to sexually, assaulted her.

In Ms. Morton's interview, she spouted off a great deal of knowledge regarding Dr. Battersby. She told them his practice specialized in pediatric care. She told them his license had been suspended. She told them he had issues in Arizona. She told them she had a file on Dr. Battersby. (RA, p. 324.336; 6.23).

In her deposition, she was asked whether her attorney had provided her with the research. She stated, "He didn't provide me with anything. I just saw it." (RA, p. 335, 1.2). The defense attached exhibits to its Answer and Counterclaim. The first was to be cited as *State v. Battersby,* 2008-Ohio-836. (RA, p. 372.373). In that case, Plaintiff was alleged to have exposed himself in his home to a potential maid. That occurred in June of 2006. (*Id.)* The undersigned also attached

another case from Ohio. In this 1994 case relating to sexual harassment, a jury awarded the plaintiff $2.45 million dollars against Plaintiff. (RA, p. 406.447).

When she was pressed on whether Moorhead had provided her with research, she unflinchingly said, “I have never done research on Dr. Battersby.” (RA, p. 336; 11.13). When asked again whether the materials she allegedly read at Moorhead’s office, were in fact research, she struggled to say, “I didn’t do that. I didn’t – I don’t –” (RA, p. 336; 20). If she didn’t do the research, and she read it in Moorhead’s office, he is the only one who could have done the research.

BATTERSBY V. NEAL: THE CONSPIRACY

Battersby believed Neal, Morton and their counsels had information regarding a prior Ohio case involving Battersby. The Ohio case, involving similar facts found herein, went to the jury and resulted in an award for Plaintiff in the amount of $2,450,000.00 against Battersby and his Mentor Chiropractic Center.

MON. 2/05/96 VERDICT--FOR PLAINTIFF AGAINST MENTOR CHIROPRACTIC CTR & GREGG N. BATTERSBY COMPENSATORY DMG $125,000 AG MENTOR CHIROPRACTIC CT. COMPENSATORY DMG $125,000 AG GREGG N. BATTERSBY PUNITIVE DMG $250,000 AG MENTOR CHIROPRACTIC CT. PUNITIVE DMG $1,250,000 AG GREGG N. BATTERSBY AR VOLUME # 1045 PAGE # 876

MON. 6/17/96 PLAINTIFF GRANTED ATTORNEY FEES CONSISTENT WITH THE CONTINGENCY FEE ARRANGEMENT ENTERED INTO BETWEEN PLAINTIFF AND HER COUNSEL. PLAINTIFF SHALL RECOVER TOTAL ATTORNEY FEES OF SEVEN HUNDRED THOUSAND DOLLARS ($700, 000) WITH INTEREST AT THE RATE OF TEN PERCENT (10%) AS PROVI DED BY LAW ACCRUING FROM FEBRUARY 20, 1996, THE

DATE OF THIS COURT'S ORIGINAL JUDGMENT ENTRY. DEFENDANTS' MOTION FOR SUPERSEDEAS BOND IS GRANTED IN THE AMOUNT OF $2,450,000 WHICH BOND SHALL BE POSTED NOT LATER THAN THREE DAYS FROM THE DATE OF THIS ENTRY. IT IS SO ORDERED. VOLUME # 1062 PAGE # 1047

(R., p. 418-9).

Whether Neal, Morton and their lawyers were inspired by this case may be gleaned from what occurred in this case. On May 30, 2014, Battersby filed a case against Neal and Morton alleging the following causes of action: (1) false arrest and or deprivation of liberty; (2) defamation; (3) false arrest at instigation of defendants; (4) malicious prosecution; and (5) civil conspiracy.

By virtue of Order, dated September 4, 2014, Battersby amended his complaint to include Dunaway and add the cause of action for breach of contract, on September 26, 2014. The inclusion of Dunaway was based on the medical lien agreement entered into between Battersby and Dunaway which allowed Battersby to treat Neal for injuries related to the car accident. In turn, Battersby's services would be satisfied upon the settlement of the vehicular accident litigation. The car accident case was settled, and the settlement proceeds were placed in trust and subsequently distributed to all providers, except Battersby. After meeting Neal to sign the release and endorse the carrier check, neither she nor Dunaway made contact with Battersby. Battersby's inquiry into the status of his proceeds was followed being charged for indecent exposure. Neal, Morton and Dunaway, each filed an answer and/or motion to dismiss the case against them.

STANDARD OF REVIEW

The determination of whether a court should impose sanctions pursuant to Rule 11,

SCRCP, or the Act is a matter of equity. Se. Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC, 394 S.C. 97, 104, 713 S.E.2d 650, 653 (Ct. App. 2011). "In an action in equity tried by the judge alone, the appellate court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence." *Id*. However, when the appellate court agrees with the circuit court's findings of fact, it reviews the circuit court's imposition of sanctions under an abuse of discretion standard. *Id*.; *see also* Ex parte Gregory, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008). "Under the abuse of discretion standard, the imposition of sanctions will not be disturbed on appeal unless the decision is controlled by an error of law or is based on unsupported factual conclusions." *Se. Site Prep*, 394 S.C. at 104, 713 S.E.2d at 654, as cited in Harwell v. Harwell, Appellate No. 2017-002290 (S.C. Ct. App. Nov. 18, 2020).

ARGUMENTS

I.

THE COURT OF APPEALS ERRED BY NOT FINDING THE TRIAL JUDGE ABUSED HIS DISCRETION IN ASSESSING $11, 206.20 IN SANCTIONS FOR AN ALLEGED FRIVOLOUS FILING.

A. THE CLAIMS HAVE BASIS IN LAW AND FACT.

The Complaint and the legal contentions supporting the same have meritorious bases.

1. There was a good ground to support the Complaint.

A cursory reading of the text of the Rule shows the pleader need not be correct in his view of the law. It only requires the pleader must have a good faith argument for his view of what the law is or should be. This can be achieved through a reasonable inquiry.

Prior to filing this suit, Appellant and his counsel reviewed the evidence and whether he would be able to substantiate his claim. Appellant was able to procure and has in fact submitted the following material evidence: Affidavit of Moske, Medical Lien Agreement between

Dunaway and Battersby, audiotaped interview of Morton with Officer Ashley, Incident Report, etc.

It has long been established a suit is frivolous if it lacks "an arguable basis in law or fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). In this case, Battersby's Complaint against Respondents had basis in law and in fact. This case was grounded on Dunaway's failure to address his client's outstanding lien to Battersby. Neal and Dunaway attempted to justify the non-payment of the balance by way of the charges brought against Battersby. The case was initiated by Neal and Morton who both alleged Battersby exposed himself to them on one occasion. Neal and Morton were friends who were in constant communication with each other. These charges were filed after Dunaway encountered difficulty resolving Neal's wreck case with Battersby's $12,100.00 chiropractic bill for services.

Appellant and Battersby believed in good faith Dunaway, Neal and Morton conspired to deprive Battersby of his lawful professional fees by instituting baseless complaints against him. Due to these incredible claims by Neal and Morton, Battersby's professional license was suspended, and he was deprived of his means of livelihood for two (2) years.

The case against Respondent Moorhead was based on good faith belief he facilitated the conspiracy by filing a Complaint riddled with inconsistent and false statements with the LLR. It was also Defendant's understanding and belief Respondents provided the information regarding Battersby's judgment in Ohio to Neal and Morton, which fueled the conspiracy.

Appellant sufficiently established the elements of the cause of action for conspiracy.

Appellant submits Battersby's Complaint has sufficiently established the elements of civil conspiracy as follows: (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. Pye v. Estate of Fox ex rel. Estate of

Fox, 369 S.C. 555 (S.C. 2006).

In alleging civil conspiracy against Battersby, Battersby raised the following claims in in his Complaint:

(1) Moorhead was part of a conspiracy claiming Battersby exposed himself to Morton on June 1, 2013. (R., p. 38).
(2) Moorhead encouraged Morton to file criminal charges against Battersby with the ACSO. (R., p. 38).
(3) Moorhead encouraged Morton to embolden Neal, to file a similar criminal complaint with the ACSO. (R., p. 38).
(4) Moorhead filed a Complaint with SC Department of Labor Licensing Regulations against Battersby on behalf of Morton. (R., p. 39).
(5) Battersby was arrested by the ACSO based on false statements made by Morton and her then counsel of record, Respondents. (R., p. 38).
(6) Respondents knew that the statements were false (at least implicitly) and intended for the ACSO to act on these. (R., p. 39).
(7) Battersby's liberty was restricted by his arrest and his license to practice chiropractic suspended based on false charges, which were dismissed without the opportunity to speak to a jury of his peers. (R., p. 40).

Under Rule 11. A "complaint containing allegations unsupported by any information obtained prior to the filing, or allegations based on information which minimal factual inquiry would disprove, will subject the author to Rule 11 sanctions." Baker v. Bootz Allen Hamilton, Inc. 358 Fed. Appx. 476, 483-484 (4th Cir. 2009).

These allegations were supported by Morton's admission on the following:

(1) Morton admitted having knowledge of the sexual harassment case against Battersby, which took place in Ohio.
(2) Neal's admission she knew of the Ohio case.
(3) Morton admitted having read court documents pertaining to the Ohio case at her counsel's office.
(4) Morton admitted Respondent Moorhead completed her LLR Complaint.
(5) Morton admitted the LLR Complaint contains false statement/information.
(6) Morton admitted her counsel suggested for her to talk and ask Neal to file a report against Battersby.
(7) Neal denied having experienced any misconduct or indecent acts from Battersby in her 87 visits and/or treatment with him.
(8) Neal's complaint came after she received her billing and after consulting with Dunaway.

(9) Dunaway signed a medical lien on November 21, 2021, and he admitted he instructed Neal not to honor the lien because of the alleged misconduct. (Tom Dunaway's Answer and Counterclaim).
(10) Neal's admission of returning to Battersby's house after the alleged misconduct defies logic.

On Morton's knowledge of the Ohio case vs. Battersby:

Despite her repeated denials, it was shown during her deposition that Morton had not been forthright on her knowledge of Battersby. Morton admitted having seen and/or read Battersby's Ohio case at Respondents' office.

03. MS. MORTON: I read in the court document that he
04. had, I don't know if it was Arizona or Ohio,
05. and I don't know if it was the judge, I was
06. just skimming over it, but said that he had
07. shown signs or something of anger and agitation
08. as -- I don't know what case it was, but as it
09. continued.
10. MR. ASHLEY: I didn't see it. I'll have to read over
11. it again. I just got it last week.

(R., p. 330, 3.11).

This strengthened Battersby and Appellant's beliefs Morton, Neal, Dunaway and Moorhead knew of Battersby's case in Ohio. They made use of this information to somehow evade payment of Neal's staggering unpaid balance (amounting to $11,206.20) by conspiring to bring a baseless case against Battersby.

On Respondent Moorhead providing false or incorrect information in the LLR Complaint:

The intent to cause injury on Battersby was evident in Morton and her counsel. Respondent's act of submitting multiple contradictory statements in different agencies. (R., p. 39). To substantiate this, Battersby submitted Morton's deposition statement admitting Respondent Moorhead provided false information in the DLLR Form. In this regard, Battersby's Complaint may not be considered frivolous, as it was based on facts and document and

testimonial evidence. The claims presented by Battersby had underlying justification, and while the theories proposed may be challenging, they are not improbable.

Appellant is aware of the difficulty in proving conspiracy as direct proof of agreement is very rare to obtain. United States v. Koenig, 856 F.2d 843, 854 (7th Cir. 1988). However, just because a case is difficult to prove does not mean there is no ground to support it. That Appellant had difficulty providing direct proof to substantiate his civil conspiracy claims against Respondents did not mean the claims were frivolous.

2. The legal contentions supporting the Complaint were warranted by law.

In their Motion to Dismiss Battersby's Complaint, Respondents raised as defense the doctrine of attorney immunity laid down in in *Pye v. Estate of Fox,* that an attorney is generally immune from liability to third person arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client. Pye v. Estate of Fox, 369 S.C. 55, 564 S.E.2d 505, 509 (2006). (R., p. 78). This doctrine is based in the pronouncement by the Court of Appeals in *Gaar v. Mrytle Beach*, that an attorney normally litigates solely in his professional capacity, and he has no personal interest in the suit. Gaar v. North Myrtle Beach Realty Co., 287 S.C. 525 (S.C. Ct. App. 1986).

Appellant submits this Court failed to appreciate the aforesaid doctrine of attorney immunity provides for an exception. (R., p. 88-90). The cases of Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995) and Douglas ex rel. Louthian v. Boyce, 344 S.C. 5, 542 S.E.2d 715 (S.C., 2001) discussed an exception to this attorney immunity doctrine. Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions, 388 S.C. 394, 697 S.E.2d 551 (S.C., 2010). In both *Stiles* and *Douglas,* the Court ruled an "attorney may be held liable where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own

personal interest, outside the scope of his representation of the client**.**"

While the Court did not apply the exception in *Douglas* and *Stiles*, these cases paved the way in proving the attorney immunity doctrine is not absolute. Given the above ruling, a lawyer may be sued if he: (1) commits a breach of independent duty to third person; (2) acts in his own personal interest, outside the scope of his representation of his client.

The Fourth Circuit Court had an occasion to restate the *Gaar* doctrine in its decision in Fleming v. Asbil, 42 F.3d 886, 890 (4th Cir. 1994) where it ruled "So long as an attorney acts in his client's interests, and not for personal or malicious reasons, he is immune from suit to an opposing party." *Ibid.* Appellant infers from this a lawyer may be susceptible to suit if he acts with malicious intent or for personal reasons.

South Carolina courts have discussed exceptions to the Attorney Immunity doctrine in several cases such as Moore v. Weinberg, 373 S.C. 209, 225, 644 S.E.2d 740, 748 (Ct. App. 2007) (where court held debtor's attorney owed a duty of care to creditor), Gordon v. Busbee, 397 S.C. 119, 133-34, 723 S.E.2d 822, 830 (Ct. App. 2011), (where court held attorney liable to third person for aiding and abetting the breach of fiduciary duty, by another person or his client.

Even out of state courts recognized the exception to attorney immunity: Wisconsin Courts in Goerke v. Vojvodich, 67 Wis.2d 102, 105, 226 N.W.2d 211 (1975) and Auric v. Continental Casualty Co., 111 Wis.2d 507, 331 N.W.2d 325 (1983) ruled ***immunity does not apply when the attorney acts in a malicious, fraudulent or tortious manner which frustrates the administration of justice or to obtain something for the client to which the client is not justly entitled.***

Applying this exception to the instant case, Battersby asserted that under Rule 3.3 of the South Carolina Rules of Professional Conduct, Respondents had a duty to disclose the false

statements proffered by Morton to the ACSO. (R., p. 89). Appellant further avers Respondent violated Rule 3.4 of the said Rules. Both Appellant and Battersby asserted Respondents committed acts outside the scope of their representation of their client.

Respondents violated a duty to third person.

Rule 3.3 (a) proscribes a lawyer from knowingly making a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer. (Rule 3.3(a) of the Rules of Professional Conduct). Appellant and his client assert Respondent Moorhead, who did not represent Morton in the LLR case, violated the same when in preparing and assisting Morton with the LLR Complaint (and/or Form), he knowingly provided false information. That Moorhead himself accomplished the LLR Complaint was admitted by Morton in her deposition:

16. Q. Is there a reason you used Jan Gantner on this
17. one, not Jan Morton?
18. A. Yes.
19. Q. Why is that?
20. A. My attorney had typed that information in.
21. Q. Did you see Mr. Moorhead before July 8th or
22. after July 8th?
23. A. Oh, I don't know. I don't recall.
24. Q. Who told you to call the LLR?

(R. 310, 16.24).

10. BY MR. SMITH:
11. Q. Who filled out the online complaint to the LLR?
12. A. I did that with my attorney.
13. Q. How many times did you see Dr. Battersby?
14. A. I don't recall.
15. Q. When was the first day you saw him?
16. MR. MATTHEWS: Object to the form.
17. THE DEPONENT: I think it was May 2nd, I believe.
18. I'm not sure.
19. EXAMINATION RESUMED
20. BY MR. SMITH:

Q. In this complaint it says that you've been treating with Dr. Battersby once a week for about 20 weeks.
A. Where is it?
Q. It's in the LLR complaint, first paragraph, third sentence, I think.
MR. MATTHEWS: Are you talking about Exhibit 3?
MR. SMITH: Yes, sir.
THE DEPONENT: No, it wasn't 20 weeks. I didn't see him until May 2nd, I believe.

(R., p. 322, 10.18)

Q. But you didn't see him for 20 weeks?
A. No, I did not see him for 20 weeks.

(R., p. 323, 17.18).

Q: "Dr. Battersby had been treating me for cervical issues once a week for 20 weeks."
Is that true?
A: "No. The 20 weeks is wrong."
Q: "And can you estimate—I believe you said earlier that you thought you may have started with Dr. Battersby back in April."
A: I thought I did, but I went back and looked. It was May 2nd."
Q: What did you look at?
A: The cancelled check from my first visit.

(R., p. 337, 6-17).

In all the above-cited statement, Morton stated confidently she had not seen Battersby twenty (20) times and, therefore, the statement contained in the DLLR Complaint and/or Form was false. It was also established Respondent Moorhead prepared the required (online) document. (R., p. 322, 10.25 & p. 323, 1.18). The only logical conclusion to be gathered based on Morton's statements is either Morton lied about the number of times she had seen Battersby, or that Respondent Moorhead knowingly misrepresented the frequency of the visits. Either way,

Respondent Moorhead still violated the above-cited Rule for failing to amend the LLR Complaint and/or Form.

Respondents violated a duty to opposing party and counsel.

Appellant declares Respondents were also guilty of violating Rule 3.4 of the Rules of Professional Conduct, which prohibits a lawyer from falsifying evidence, counseling or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law. (Rule 3.4(b)South Carolina Rules of Professional Conduct).

Battersby presented evidence of inconsistent statements offered by Morton on different occasion:

a) in the police report, she said Battersby was wearing a robe when he invited her in his house (R., p. 299 & p. 300, 1.13), while in her interview at her house some ten (10) days later, she changed her story and stated Battersby was wearing a towel, (R., p. 331, 10.22).

(b) in the police report, Morton stated there was no sexual contact (R., p. 309, 1.4), while she claimed Battersby placed his Johnson on her back (R., p. 309, 11.25).

Morton's propensity to fabricate was in full show during the Deposition when she was asked regarding her knowledge about Battersby's practice. In the interview with Officer Ashley, which was played during Morton's deposition and later transcribed in it, Morton volunteers the following information to Officer Ashley:

08. MS. MORTON: And I think that he -- he specializes in
09. pediatrics, so that's really what –

(R. p. 334, 8.9).

It should be noted the interview with Officer Ashley took place before Morton's deposition. Thus, it can be deduced Morton have known of Battersby's practice at the pediatrics long before the deposition took place, where she testified to the following:

23.		Can you remember who told you about the
24.		pediatric aspect of his practice?
25.	A.	I don't know. It had to have been somebody at
01.		the police department.

(R., p. 316, 23.25; p. 317, 1).

II.

THE COURT OF APPEALS ERRED BY NOT FINDING THE TRIAL COURT'S REFUSAL TO VIEW ANY EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE NON-MOVING PARTY WAS PUNITIVE IN NATURE RESULTING IN AN ARBITRARY AND CAPRICIOUS DETERMINATION THE COMPLAINT FILED WAS FRIVOLOUS.

Contrary to the Circuit Court's ruling, Appellant does not find these inconsistencies as "subtle differences of no material distinction". (R., p. 32). Appellant believes the discrepancies are far too prevalent, and underscore Morton's deceitful character. Respondents' convenient ignorance and their fostering and facilitation of baseless, heinous charges against Battersby by their client are actionable.

Respondents Acted outside the scope of their representation of their client.

Battersby maintains Respondents' acts of condoning and/or promoting perjury as well as deliberately providing misleading and/or false information in the LLR Complaint were acts considered outside the scope of their representation of their client. Rule 4.1. Truthfulness in Statements to Others, South Carolina Rules of Professional Conduct provides that a lawyer shall not knowingly make (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

Appellant maintains he has submitted substantial circumstantial evidence, sufficient for the Circuit Court to submit the case to trial.

> Circumstantial evidence, however, gains its strength from its combination with other evidence, and all the circumstantial evidence presented in a case must be considered together to determine whether it is sufficient to submit to the jury. *See Frazier*, 386 S.C. at 532, 533, 689 S.E.2d at 613, 614 (viewing circumstantial evidence "collectively" and "as a whole" to hold directed verdict properly denied); *Cherry*, 361 S.C. at 595, 606 S.E.2d at 478.

State v. Rogers, 748 S.E.2d 265 (S.C. Ct. App. 2013).

By knowingly submitting a Complaint with false statement and/or faulty information with the LLR, Respondents bolstered the violation of ethical standards imposed upon lawyers.

In assessing sanctions, the Circuit Court found the following reasons for imposition of $11,206.20: (1) Appellant filed the claims without researching the law on attorney immunity to determine whether the claims were viable and supported by law; (2) cause of action for conspiracy was based upon mere suspicion without supporting evidence; (3) there is simply no cognizable basis in law or fact to conclude these acts falls outside the scope of attorney's representation; (4) no evidence to support bald assertions created, made up or embellished facts to strengthened their client's case (R., p. 13); and, (5) Rule 3.3 does not impose a duty on Respondents, and even if duty was owed, that Respondents breached no such duty. (R., pp. 13 & 34).

Appellant briefly addresses each ground as follows:

(1) It is clear from the above-discussion Appellant argued this case was an exception from the doctrine of attorney immunity since the Complaint alleged Respondent Moorhead acted outside the scope of his representation when he knowingly provided false and misleading information in the LLR case, and in instructing Morton to convince Neal to report a baseless claim. Appellant discussed how Respondents were responsible for violating their duty to the court, opposing party and his client.

(2) Appellant's conspiracy allegations were not mere suspicion. He presented circumstantial evidence showing Neal, Morton, Dunaway and Moorhead obtained information on Battersby's Ohio case, which Morton admitted having "seen" in Respondents' office. Appellant has also submitted Moske' Affidavit, which detailed Neal admitting she wasn't the only one. There were other guys involved in this case. The false information provided by Respondent Moorhead in the LLR case, which was never amended to reflect the truth, facilitated the suspension of Battersby's license. While this circumstantial evidence may not be sufficient to establish conspiracy, they were not without merit and were substantiated by evidence.

(3) Appellant submits he has laid down case law confirming the exceptions to the attorney immunity doctrine. Appellant has also argued that Moorhead's insistence in getting Neal to file a report, when he knew or should have known that the same had no basis, and inspiring Morton's false testimonies show the willingness on Respondents' part to simply succeed, regardless of the manner.

(4) The Court said Appellant made "bald assertions created, made up or embellished facts to strengthen their client's case". I guess you could think that if you disregarded the evidence; or, you simply refused to look at the evidence to enable you to make such conclusory statements. Of course, this is an example of the lower court taking away the fact-finding province of a jury.

> Ms. Neal said, "I'm not the only one. There are other guys." (R., p. 208).
>
> Deputy Marler created an incident report in which Ms. Morton was the storyteller. (R., p. 196). When she was asked about it, she said, "I don't know what this is. This is not the statement I gave." (R., p. 299, 5.6).

These and similar pieces of circumstantial evidence create a more than credible prima facia case.

(5) Implicit with the license to practice law is the requirement to follow the rules of court. Normally, an attorney would not have a duty to a third party. However, playing by the rules/not filing fabricated complaints is something everyone is entitled. The attorney owes a duty to his client, the court, the opposition, to himself, to uphold the integrity of the Court. If you don't do that with your actions or inactions, you have breached a duty to everyone in the process, and society in general.

CONCLUSION

Based upon the foregoing, Petitioner respectfully requests this Honorable Court grant certiorari to provide the opportunity for baseless sanctions to be erased based on logic and reason.

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