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Dec 28 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Honorable John C. Hayes III, Circuit Court Judge
Honorable Brian M. Gibbons, Circuit Court Judge

Appellate Case Nos.: 2022-001312 and 2022-001390

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard.....Plaintiffs,
Of whom Heidi Gersten is the APPELLANT.

v.

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Insurance Company, Interinsurance
Exchange of the Automobile Club, John Ammendola, Trustguard Insurance Company, SC
Department of Public Safety, Chevrolet, GMC, Unknown Joe Does, RESPONDENTS.

**NATIONWIDE INSURANCE COMPANY AND JOSEPH TIRBOVICH'S MOTION TO
DISMISS APPEAL**

Nationwide Insurance Company and Joseph Tirbovich (collectively “Nationwide Respondents”) respectfully move the Court, pursuant to South Carolina Appellate Court Rule 240, to dismiss Heidi Gersten’s (“Appellant”) appeal of the Order dated September 21, 2018 (the “Order”).

BACKGROUND

This appeal stems from two consolidated actions arising out of an automobile accident that occurred on or around March 19, 2015. In 2018, each respondent filed a motion to dismiss the claims raised in this matter, in whole or in part. The Circuit Court heard each of the various motions on September 5, 2018. On September 21, 2018, the Honorable John C. Hayes, III filed an Order Granting Defendant Nationwide Insurance Company and Joseph Tirbovich’s Motion to Dismiss. (**Ex. 1**, the Order).¹ In the Order, the trial court found that Appellant failed to allege facts sufficient to withstand Nationwide Respondents motion to dismiss, and Appellant, as a third party to an insurance contract, lacked standing. *Id.* at p. 3-6. Following the dismissal of most of the defendants, including Nationwide Respondents, on October 8, 2018, Appellant filed a Motion to Alter or Amend, which was denied by Judge Hayes via a Form 4 Order on October 16, 2018.

The 2018 Appeal: On November 21, 2018, Appellant filed a Notice of Appeal (the “2018 Notice of Appeal”); wherein, Appellant notified this Court that she intended to appeal the trial court’s orders dismissing several of the respondents.² (**Ex. 2, NOA**)(the “2018 Appeal”). Appellant attached the orders she intended to appeal to the Notice of Appeal, including the Order dismissing Nationwide Respondents. *Id.*

¹ Judge Hayes also issued orders dated September 18, 2018, September 19, 2018, September 21, 2018, and September 24, 2018 dismissing most of the other defendants in this matter. Following these orders, the only defendant that remained a party to this action was Kevin Carter.

² The Notice of Appeal also sought to challenge a consolidation order which was entered on April 26, 2018, by the Honorable Judge Brian M. Gibbons.

On December 27, 2018, Respondent Interinsurance Exchange of the Automobile Club (“AAA”) filed a Motion to Dismiss the 2018 appeal, based, in part, on Appellant’s failure to comply with the South Carolina Appellate Court Rules. Appellant filed a return to AAA’s motion on January 23, 2019. On January 31, 2019, Respondents Carter and Davis filed a Motion to Dismiss the appeal on the grounds that Appellant did not timely file the Notice of Appeal with the Court. Appellant did not file a timely return to Respondents Carter and Davis’ motion.

Appellant’s Motions for Extensions in the 2018 Appeal: Appellant filed a total of eight motions for extensions in the 2018 Appeal; wherein, she reasoned that the extensions were necessary based on her disability. The first of these motions, dated December 17, 2018, asked this Court to allow Appellant additional time to file her initial brief³; meanwhile, the remaining extensions were centered around filing a return to Respondents Carter and Davis’ Motion to Dismiss, as well as addressing instructions from this Court.

On February 15, 2019, this Court sent Appellant instructions asking her to provide specific dates of when she received notice of entry of the trial court’s orders dismissing the various defendants/respondents in this matter, as well as to file a return to Respondents Carter and Davis’ Motion to Dismiss. Appellant failed to provide the requested dates, nor did she file a return to Carter and Davis’ motion. Instead, Appellant proceeded to file several motions requesting 10-day extensions to file a return and/or amended return to Carter and Davis’ Motion. On April 9, 2019, this Court issued an Order granting Appellant’s requested extensions and extending Appellant’s time to file an amended return until April 15, 2019. The Court explained: “[i]f the amended return is not actually received in this office on or before April 15, 2019, the Court will consider only the

³ Appellant did not file an initial brief in the 2018 Appeal.

motions and the filings previously received in this matter. No further extensions will be granted absent extraordinary circumstances.” (Ex. 3, April 9, 2019 Order).

Rather than complying with the April 9, 2019 Order, Appellant proceeded to file two additional requests for extensions: on April 18, 2019 and April 29, 2019. Finally, on May 2, 2019, this Court issued an Order which referenced the February 15, 2019 Order, and explained that the 2018 Appeal would be dismissed if Appellant fails to file a response to the Court by May 10, 2019. Appellant did not file a response, and this Court entered an Order, dated May 14, 2019, which dismissed the 2018 Appeal based on Appellant’s failure to comply with the May 2, 2019 Order. (Ex. 4, Dismissal Order).

On May 29, 2019, Appellant filed a Motion to Reinstate or rehear the dismissal of the 2018 Appeal. On July 30, 2019, this Court entered its Order denying Appellant’s motion. On September 24, 2019, Appellant filed a Petition for Writ of Certiorari. On June 23, 2020, the Supreme Court of South Carolina ultimately denied Appellant’s Writ of Certiorari, resulting in a Remittitur to the Circuit Court of Chester County.

Present Appeal: Following the remittitur from the South Carolina Supreme Court, Appellant and Respondent Kevin Carter were the sole remaining parties to this matter in the trial court. On July 28, 2022, Respondent Carter filed a Motion to Compel or, in the Alternative, Motion to Dismiss for Failure to Prosecute⁴, which was heard on by the Honorable Judge J. Mark Hayes, II on August 18, 2022. On August 22, 2022, Judge Hayes signed an Order granting Respondent Carter’s Motion to Dismiss effectively ending the entirety of Appellant’s case based on Appellant’s failure to prosecute her claims against Respondent Carter. On September 19, 2022,

⁴ Respondent Carter’s motion also included a Motion to Dismiss Plaintiff Ivanka Ayoub’s claims, which was granted by the trial court. Plaintiff Ayoub is not a party to this appeal, and it appears this portion of Respondent’s motion is not subject to this appeal.

Appellant filed the present appeal; wherein, she indicates that she is appealing the orders of Judge Gibbons and Judge Hayes dated: April 26, 2018; May 22, 2018; September 19, 2018; September 21, 2018; September 24, 2018; and March 7, 2022.⁵

Following notice of this appeal, on November 11, 2022, Respondent AAA filed a Motion to Dismiss this appeal (“AAA’s 2022 Motion to Dismiss”), citing the 2018 Appeal, and its dismissal, as the basis for its motion. On December 1, 2022, Appellant filed a Return to AAA’s 2022 Motion to Dismiss (“Appellant’s 2022 Return to AAA”), claiming, among other reasons, that the dismissal of the 2018 Appeal was not a final adjudication because the dismissal was for failure to prosecute rather than based on the merits of the appeal. (**Appellant’s 2022 Return**, p. 4).

Nationwide Respondents have not been a party to this matter since the trial court’s dismissal on September 21, 2018, and this Court’s dismissal of the 2018 Appeal.

ARGUMENT

I. NATIONWIDE RESPONDENTS WERE A PARTY TO THE 2018 APPEAL

The 2018 Appeal encompassed all the 2018 dismissal orders issued by Judge Hayes, including Nationwide Respondents. Rule 203(e)(1)(C), SCACR, provides that a notice of appeal shall contain the date of the order or judgment being challenged. Meanwhile, Rule 203(d)(1)(B)(ii), SCACR, requires that a notice of appeal, upon filing with the clerk of court, include a copy of the order or judgment being challenged on appeal. The 2018 Notice of Appeal indicated that Appellant was appealing the dismissal orders issued by Judge Hayes, from a hearing that occurred on September 5, 2018; however, Appellant failed to include the individual dates of the dismissal orders on the Notice of Appeal. (**Ex. 2**). Instead, Appellant attached the individual

⁵ The March 7, 2022 Order appears to be an Order of Protection filed on behalf of Respondent Carter’s attorney.

dismissal orders to the 2018 Notice of Appeal, including the Order dismissing Nationwide Respondents. *Id.*

Despite Appellant's failure to comply with Rule 203(e), SCACR, Appellant clearly intended to appeal the Order which dismissed Nationwide Respondents, as evidenced by Appellant attaching the Order to the 2018 Notice of Appeal, as required pursuant to Rule 203(d), SCACR. *See Babae v. Moisture Warranty Corp.*, No. 2012-UP-030, 2012 WL 10826255, at *2 (S.C. Ct. App. Jan. 25, 2012) (allowing an appeal to go forward despite that appellant's failure to include the date of the order it sought to appeal on the notice of appeal; and finding that appellant's omission of naming the date of the order on a notice of appeal was clerical in nature); *Weatherford v. Price*, 340 S.C. 572, 340 S.C. 572, 577-78, 532 S.E.2d 310, 313 (Ct. App. 2000)(finding that, where a notice of appeal did not list the date of the order being challenged but was instead attached to the notice of appeal, the omission was the result of a clerical error and the appeal was allowed to proceed). It was no mistake that Appellant included the Order dismissing Nationwide Respondents as an exhibit to the 2018 Notice of Appeal. Appellant's omission of naming the Order in the 2018 Notice of Appeal was merely clerical in nature; however, Appellant attached the Order to the 2018 Notice of Appeal and Nationwide Respondents retained counsel throughout the duration of the 2018 Appeal. Thus, Nationwide Respondents were properly a party to the 2018 Appeal and the May 14, 2019 Order dismissing the same.

II. APPELLANT'S APPEAL, AS IT RELATES TO NATIONWIDE RESPONDENTS, SHOULD BE DISMISSED BECAUSE THE 2018 DISMISSAL OF NATIONWIDE RESPONDENTS HAS ALREADY BEEN FULLY APPEALED AND ADJUDICATED THROUGH THE 2018 APPEAL.

Appellant brings this appeal in an effort to have a “second bite at the apple.” However, the Order dismissing Nationwide Respondents has already been appealed once, and was dismissed by this Court, in an Order dated May 14, 2019. South Carolina Appellate Court Rule 260(a) provides:

[w]henver it appears that an appellant or petitioner has failed to comply with the requirements of [South Carolina’s Appellate Court] Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown[.]

Rule 260(a), SCACR (emphasis added). South Carolina’s public policy favors compliance with the rules. *See Wade v. Gore*, 154 S.C. 262, 151 S.E. 470, 472 (1930). Pursuant to Rule 260(a), SCACR, this Court “shall” dismiss an appeal whenever an appellant fails to comply with the requirements of the Court’s rules—which is precisely what happened with the 2018 Appeal. (Ex. 4). Appellant now improperly brings this appeal in an attempt to reinstate and/or supersede the dismissal of the 2018 Appeal; however, Appellant has failed to establish any showing of good cause to justify reinstatement of the 2018 Appeal.

Having fully exhausted her right to appeal Nationwide Respondents’ dismissal, Appellant’s claims against Nationwide Respondents are now barred from further judicial determination and Appellant’s appeal should be dismissed. *See e.g. Jones v. Google LLL, Inc.*, No. 20-3133, 2020 WL 5626124, at *1 (10th Cir. July 30, 2020), *cert. denied*, 208 L. Ed. 2d 243, 141 S. Ct. 641 (2020)(explaining that a party may not appeal the same order twice); *Scott v. Chipotle Mexican Grill, Inc.*, 103 F. Supp. 3d 542, 545 (S.D.N.Y. 2015)(reasoning that “[i]t is unfair to [the respondent] to allow [an appellant] to seek multiple ‘bites at the apple’ by effectively appealing the same order twice.”); *Fla. Real Est. Comm’n v. Harris*, 134 So. 2d 785, 788 (Fla. 1961)(explaining that a litigant does not have the right to two appeals of the same order).

III. ADDRESSING APPELLANT'S RETURN TO RESPONDENT AAA'S MOTION TO DISMISS THIS APPEAL

On December 1, 2022, Appellant filed a return to Respondent AAA's 2022 Motion to Dismiss this appeal. (**Appellant's 2022 Return to AAA**). As stated above, Appellant's 2022 Return to AAA is in response to the current appeal—not the 2018 Appeal. Through her return, Appellant asserts that this Court's dismissal of the 2018 Appeal was not final because it was a dismissal based on her failure to comply with the court's instruction rather than ruling upon the merits of that appeal. However, public policy favors finality in judicial orders. *See Chewning v. Ford Motor Co.*, 354 S.C. 72, 86, 579 S.E.2d 605, 613 (2003) (recognizing the "longstanding policy towards final judgments" and that "important benefits are achieved by the preservation of final judgments"). This Court dismissed the 2018 Appeal due to Appellant's failure to prosecute, which resulted in a final determination as to the basis for the 2018 Appeal. Thus, Appellant's current attempt at an appeal of the Order should be dismissed because it is a second attempt to appeal an order which has already been appealed and fully adjudicated. *See e.g. Nielsen v. U.S.*, 976 F.2d 951, 957 (5th Cir. 1992)(explaining that a dismissal of an appeal for failure to prosecute bars any further adjudication).

Appellant also notes that her disability status, and related "noncompliance issues" from the 2018 Appeal, will be raised at a later date in this appeal. (**Appellant's 2022 Return to AAA**, p. 6). To the extent that Appellant seeks to reinstate the 2018 Appeal based on her disability, it is important to note that, in the 2018 Appeal, Appellant filed eight requests for extensions of time, the basis for each extension was due to her disability status. This Court afforded Appellant with ample time to file responsive documents in the 2018 appeal, resulting in approximately 100 days of extensions. Ultimately, this Court entered an order dated May 2, 2019, which clearly instructed Appellant that if responsive documents were not filed with this Court by May 10, 2019, the 2018

Appeal would be dismissed. (Ex. 3). Appellant failed to file responsive documents within the timeframe set forth by this Court; thus, resulting in the May 14, 2019 Order which dismissed the 2018 Appeal. (Ex. 4). In the alternative, Appellant could have requested a stay in the 2018 Appeal, but chose not to. Instead, Appellant sought adjudication of the 2018 Appeal, but failed to comply with the South Carolina Appellate Court Rules, resulting in the May 14, 2019 dismissal.

To the extent that Appellant brings this appeal now, challenging the validity of the dismissal of the 2018 Appeal, this is an improper attempt by Appellant to piecemeal an appeal after the fact. Piecemeal appeals are highly disfavored by public policy. *See e.g. State v. Isaac*, 405 S.C. 177, 184, 747 S.E.2d 677, 680 (2013) (“It is a bad practice, and generally condemned, to hear appeals by piecemeal []; for it is destructive of the prompt administration of justice, which is so essential to the peace of society”)(internal citations omitted).

CONCLUSION

Based on the foregoing, this Court should grant Nationwide Respondents’ Motion to Dismiss this appeal because the Order dismissing Nationwide Respondents from this action were fully adjudicated through the 2018 Appeal.

s/Pamela J. Larson

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*Attorney for Respondent Nationwide Insurance Company
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EXHIBIT 1

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTER

CIVIL ACTION NO: 2018-CP-12-00117

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard,

Plaintiff,

**ORDER GRANTING DEFENDANTS
NATIONWIDE INSURANCE COMPANY'S
AND JOSEPH TURBOVICH'S MOTION TO
DISMISS**

vs.

Kevin Carter, Richard Davis, Joseph Tribovich, Nationwide Insurance Company, Interinsurance Exchange of the Automobile Club, John Ammendola, Trustguard Insurance Company, SC Department of Public Safety, Chevrolet, GMC, Unknown John Does,

Defendants.

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SC Court of Appeals

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This matter comes before the Court upon Defendants Nationwide Mutual Insurance Company's ("Nationwide") and Joseph Tirbovich's ("Tirbovich") Motions to Dismiss. The Court held a hearing on these Motions and a number of other motions on September 5, 2018. For the reasons set forth below, Defendants Nationwide Mutual Insurance Company and Joseph Tirbovich's Motions are granted.

PROCEDURAL BACKGROUND

This action arises out of an automobile collision that took place on March 19, 2015 between a vehicle operated by Heidi Gersten and allegedly owned by Ivanka Ayoub and a vehicle operated and owned by Kevin Carter. Plaintiff Gersten originally filed a property damage arbitration claim on February 21, 2018 (hereinafter "Arbitration Action"). The claim

named Kevin Carter, Richard Davis, Nationwide Mutual Insurance Company, Interinsurance of the Automobile Club, and Trustguard Insurance as defendants.

Gersten then created a "First Amended Claim for Property Damage Verified" (hereinafter "Amended Arbitration Complaint") on or about March 2, 2018, however, she did not file the Amended Arbitration Complaint at that time. The Amended Arbitration Complaint added Gersten's mother, Ivanka Ayoub, as a claimant and added Joseph Tirbovich and John Ammendola as additional defendants. Gersten and Ayoub never obtained an Amended Summons listing Ayoub as a claimant, and the Amended Arbitration Complaint was not filed until March 27, 2018.

On March 16, 2018, Gersten, Ayoub, and Daniel Hubbard filed the above-captioned case in Circuit Court purporting to seek recovery for injuries arising out of the same collision. In addition to the defendants named in the Amended Arbitration Complaint, the Plaintiffs named the South Carolina Department of Public Safety, Blackwell (*sic*), Chevrolet, GMC, and unknown John Doe defendants.

Kevin Carter, Richard Davis, and the other Defendants who have allegedly been served in the case filed motions to dismiss both cases.¹ Interinsurance Exchange sought to dismiss the Arbitration Action, in part, on the grounds that the arbitration panel lacked jurisdiction over some of the claims asserted in the Arbitration Action. On April 26, 2018, Judge Gibbons, acting as the Chief Administrative Judge for Chester County Circuit Court, entered an Order finding the claims asserted in the Arbitration Action were outside the scope of arbitration. Therefore, he transferred the Arbitration Action to the Common Pleas docket and consolidated the case with the Circuit Court action. (April 26, 2018 Form 4 Order). Because the cases have been

¹ The Court has no record of Blackwell, GMC, Chevrolet or any John Doe defendants being served. Furthermore, John Ammendola and Joseph Tirbovich deny that they have been served.

consolidated, this Order will address the allegations set forth in the Circuit Court Complaint. However, the Court has reviewed all three Complaints, and the Court's ruling would be the same regardless of which pleading(s) were in effect.

This case was set for a hearing on the various pending motions for September 5, 2018. The case was also placed on the non-jury roster for a merits hearing for the same week. Plaintiff Heidi Gersten filed a motion for continuance. At the hearing, the defendants all consented to continuing the merits hearing of the case, but they requested that the motions be heard. Gersten consented to the Court proceeding with hearing the various motions.

LAW

Nationwide's and Tirbovich's Motion to Dismiss seeks dismissal of all claims asserted against Nationwide and Tirbovich on the following grounds:

- a) Dismissal of all causes of action for failure to state facts sufficient to constitute a cause of action;
- b) Dismissal of all causes of action due to lack of standing;
- c) Dismissal of Daniel Hubbard's claims;
- d) Dismissal of Ivanka Ayoub's claims;
- e) Dismissal of all claims against Joseph Tirbovich for failure to properly serve the Summons and Complaint;

The Court will address each of these grounds in turn.

A. All Causes of Action as to Defendants Nationwide and Tirbovich.

The Complaint only references Joseph Tirbovich in the caption and is not mentioned anywhere else in the Complaint. Nationwide is only mentioned in one paragraph, stating "The Defendant Nationwide Mutual Insurance Company is a company maintaining and operating and

doing business in the State of North Carolina.” (Compl. ¶ 5). Pursuant to Rule 12(b)(6), SCRCPP, a Complaint should be dismissed if it fails “to state facts sufficient to constitute a cause of action.” Rule 12(b)(6), SCRCPP. The Complaint alleges no factual allegations against Defendants Nationwide and Tirbovich.

B. Dismissal Due to Lack of Standing

The Plaintiffs argue they have asserted a cause of action against Nationwide and Tirbovich. To the extent they seek to assert third-party claims against such a liability insurer, they lack standing to do so. *Kleckley v. Northwestern Nat. Cas. Co.*, 526 S.E.2d 218, 219 (S.C. 2000). In *Kleckley*, the Supreme Court held that third-party claimants have no standing to pursue a cause of action against a liability insurer. Thus, Plaintiffs do not have standing to assert any claims against Nationwide or its adjuster, Tirbovich in either the Civil Action Complaint or the Arbitration Action.

C. Daniel Hubbard’s claims.

Nationwide and Tirbovich moved to dismiss Daniel Hubbard’s claims on the ground that South Carolina does not recognize a cause of action for loss of a sibling’s consortium. However, Daniel Hubbard did not appear for the hearing on the Motions to Dismiss. Therefore, his claims are dismissed for failure to prosecute pursuant to Rule 41(b), SCRCPP.²

D. Ivanka Ayoub’s claims.

Plaintiff Ayoub appears to have asserted a property damage claim in the Amended Arbitration Complaint and a cause of action for loss of consortium in the Circuit Court Complaint. Ayoub is Gersten’s mother. The Circuit Court Complaint does not allege Ayoub

² Even if Hubbard had appeared at the hearing, his claim would nonetheless fail for the reasons set out in Part D.

was personally involved in the accident, but it does allege she “suffered, among other things, loss of consortium.” (Compl. ¶ 103).

Our Supreme Court has refused to recognize a cause of action in tort for filial loss of consortium. *See Doe v. Greenville County School Dist.*, 375 S.C. 63, 70, 651 S.E.2d 305, 308 (2007) (“Accordingly, in the absence of some action from the legislature, this Court has no authority upon which it could rely in finding that South Carolina law recognizes claims for loss of filial consortium.”).³ While South Carolina does recognize loss of spousal consortium, that cause of action was expressly recognized by the South Carolina General Assembly. *See* S.C. Code Ann. § 15-75-20. Our Supreme Court has held the absence of a similar statutory cause of action for filial loss of consortium indicates the General Assembly did not intend to recognize such causes of action. *See Greenville County School Dist.*, 375 S.C. at 69, 651 S.E.2d at 308.

Because South Carolina does not recognize claims for loss of filial consortium, the causes of action asserted by Ayoub in the Circuit Court Complaint must be dismissed.

E. All Other Causes of Action asserted by Plaintiffs

The Complaint lists eighteen separate causes of action. As it relates to Nationwide and Tirbovich, these causes of action merely allege the legal elements of various other causes of action, and several of these causes of action fail to even allege the basic legal elements. Rule 8(a) of the South Carolina Rules of Civil Procedure states that a pleading setting forth a cause of action “shall contain . . . a short and plain statement of the facts showing the pleader is entitled to relief.” Rule 8(a), SCRPC. In reviewing a motion to dismiss pursuant to Rule 12(b)(6), the Court’s analysis is limited solely to the Complaint itself, and no other documents may be

³ *See also Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35 (1996) (declining to recognize loss of filial consortium claim of child relating to injury to parent); *Kirkland v. Sam’s East, Inc.*, 411 F. Supp. 2d 639, 641 (D.S.C. 2005) (“South Carolina does not recognize a cause of action for filial loss of consortium”).

considered. *See Woodell by Allen v. Marion School Dist. One*, 307 S.C. 297, 298, 414 S.E.2d 794, 794 (Ct. App. 1992). Moreover, a “trial court must dismiss a claim pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, if the pleadings, when taken in the light most favorable to the plaintiff, fail to allege sufficient facts to constitute a cause of action.” *Trancik v. USAA Ins. Co.*, 354 S.C. 549, 552, 581 S.E.2d 858, 860 (Ct. App. 2003).

Plaintiff must allege facts supporting each element of the causes of action asserted in the Complaint. She has failed to do so. Therefore, all causes of action against Nationwide and Tirbovich will be dismissed pursuant to Rule 12(b)(6).

CONCLUSION

For the above-stated reasons, the Court finds Defendants Nationwide Mutual Insurance Company’s and Joseph Tirbovich’s Motions should be granted. It is ORDERED, ADJUDGED, and DECREED that:

- 1) All causes of action asserted against Nationwide and Tirbovich are dismissed pursuant to Rule 12(b)(6), SCRCF.
- 2) All causes of action asserted against Nationwide and Tirbovich are dismissed for lack of standing;
- 3) The causes of action asserted by Daniel Hubbard are dismissed pursuant to Rule 41(b), SCRCF for failure to prosecute.
- 4) Ivanka Ayoub’s loss of consortium claim is dismissed pursuant to Rule 12(b)(6), SCRCF because South Carolina does not recognize a claim for filial loss of consortium.
- 5) All causes of action against Tirbovich are dismissed pursuant to Rule 12(b)(5) for Plaintiffs’ failure to serve him with the Summons and Complaint in either the Arbitration Action of the Civil Action.

It is so ORDERED.

John C. Hayes, III
Circuit Court Judge



Chester Common Pleas

Case Caption: Heidi Gersten , plaintiff, et al VS Kevin Carter , defendant, et al

Case Number: 2018CP1200117

Type: Order/Dismissal

So Ordered

s/John C. Hayes III 2049

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EXHIBIT 2

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Honorable John C. Hayes III, Circuit Court Judge
Honorable Brian M. Gibbons, Circuit Court Judge

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Case No. 2018-CP-12-00117
2018-AP-12-00074

Kevin Carter, Richard Davis,
Joseph Tirbovich, Nationwide
Mutual Insurance Co., Respondents,
Interinsurance Exchange of
the Automobile Club, John
Ammendola, Trustgard
Insurance Co., SC Dept. of
Public Safety, Blackwell,
Unknown John Does

v.

Heid Gersten, Ivanka Ayoub,
Daniel Hubbard Appellants.

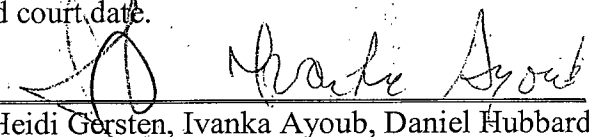
NOTICE OF APPEAL

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard ('Appellants') appeal the orders [judgments] of the Honorable Judges Brian M. Gibbons and John C. Hayes III dated April 26, 2018, September 5, 2018 and October 16, 2018. Appellants received written notice of entry of some of these orders [judgments] on September 18-October 21, 2018.

This appeal is subject to being premature and a stay may be in order as there are orders left to be reconsidered and/or determined by the lower (circuit) court. The Appellants retain their filing as paid in full at the time of filing for all purposes of the orders made and/or pertaining to

and/or regarding, whether ruled on or not, said court date.

November 15, 2018


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CERTIFICATE OF SERVICE
(2018-AP-12-00074)
(2018-CP-12-00117)

The undersigned, over 18 years of age and not a party to the said action, hereby certifies that (s)he has served the following named individuals with a copy of the foregoing: FILE NO: 2018-CP-12-00117/2018-AP-12-00074 **NOTICE OF APPEAL IN A CIVIL CASE** by mailing a copy of same to them in the U. S. Post Office mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

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By: 

Boca Raton, Florida
November 15, 2018

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SC Court of Appeals

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Product Description	Sale Qty	Final Price
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First-Class Mail Letter (Domestic) (YORK, SC 29745) (Weight:0 Lb 1.60 Oz) (Estimated Delivery Date) (Monday 11/19/2018)	1	\$0.71
Certified (@@USPS Certified Mail #) (70181830000149570691)	1	\$3.45
Return Receipt (@@USPS Return Receipt #) (9590940243858190011350)	1	\$2.75
First-Class Mail Letter (Domestic) (COLUMBIA, SC 29202) (Weight:0 Lb 0.80 Oz) (Estimated Delivery Date) (Monday 11/19/2018)	1	\$0.50
Certified (@@USPS Certified Mail #) (70181830000149570738)	1	\$3.45
Return Receipt (@@USPS Return Receipt #) (9590940243858190011329)	1	\$2.75
First-Class Mail Letter (Domestic) (COLUMBIA, SC 29201) (Weight:0 Lb 0.70 Oz) (Estimated Delivery Date) (Monday 11/19/2018)	1	\$0.50
Certified (@@USPS Certified Mail #) (70181830000149570721)	1	\$3.45
Return Receipt (@@USPS Return Receipt #) (9590940243853190011312)	1	\$2.75
First-Class Mail Letter (Domestic) (FLORENCE, SC 29503) (Weight:0 Lb 0.80 Oz) (Estimated Delivery Date) (Monday 11/19/2018)	1	\$0.50
Certified (@@USPS Certified Mail #) (70181830000149570677)	1	\$3.45
Return Receipt (@@USPS Return Receipt #) (9590940243858190011275)	1	\$2.75
First-Class Mail Letter (Domestic) (FLORENCE, SC 29502) (Weight:0 Lb 0.80 Oz) (Estimated Delivery Date) (Monday 11/19/2018)	1	\$0.50
Certified (@@USPS Certified Mail #) (70181830000149570684)	1	\$3.45
Return Receipt (@@USPS Return Receipt #) (9590940243858190011282)	1	\$2.75
First-Class Mail Letter (Domestic) (COLUMBIA, SC 29206) (Weight:0 Lb 0.80 Oz) (Estimated Delivery Date) (Monday 11/19/2018)	1	\$0.50
Certified (@@USPS Certified Mail #) (70181830000149570707)	1	\$3.45
Return Receipt (@@USPS Return Receipt #) (9590940243858190011299)	1	\$2.75
First-Class Mail Letter (Domestic) (MYRTLE BEACH, SC 29578) (Weight:0 Lb 0.80 Oz) (Estimated Delivery Date) (Monday 11/19/2018)	1	\$0.50
Certified (@@USPS Certified Mail #) (70181830000149570714)	1	\$3.45
Return Receipt (@@USPS Return Receipt #) (9590940243858190011305)	1	\$2.75

Total \$47.11

Cash \$100.00
 Change (\$52.89)

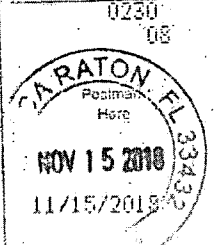
Text your tracking number to 28777

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

COLUMBIA, SC 29202

Certified Mail Fee \$3.45
 Extra Services & Fees (check box, add fee):
 Return Receipt (hardcopy) \$2.75
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00
 Postage \$0.50
Total Postage and Fees \$5.70



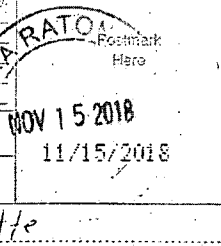
Sent To: *W. Williams*
 Street and Apt. No., or PO Box No.: *1330 Lady Street, 6th Floor*
 City, State, ZIP+4®: *Columbia, SC 29202*

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

FLORENCE, SC 29502

Certified Mail Fee \$3.45
 Extra Services & Fees (check box, add fee):
 Return Receipt (hardcopy) \$2.75
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00
 Postage \$0.50
Total Postage and Fees \$6.70



Sent To: *Alexander Gogsette*
 Street and Apt. No., or PO Box No.: *P.O. Box 5478*
 City, State, ZIP+4®: *Florence, SC 29502*

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

COLUMBIA, SC 29201

Certified Mail Fee \$3.45
 Extra Services & Fees (check box, add fee):
 Return Receipt (hardcopy) \$2.75
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00
 Postage \$0.50
Total Postage and Fees \$6.70

Postmark: CARATON, FL 33430, NOV 15 2018, 11/15/2018

Sent To: *Peter M. Du...*
 Street and Apt. No., or PO Box No.: *1330 Lady Street, 6th Floor*
 City, State, ZIP+4®: *Columbia, SC 29201*

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

COLUMBIA, SC 29206

Certified Mail Fee \$3.45
 Extra Services & Fees (check box, add fee):
 Return Receipt (hardcopy) \$2.75
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00
 Postage \$0.50
Total Postage and Fees \$6.70

Postmark: CARATON, FL 33430, NOV 15 2018, 11/15/2018

Sent To: *Wesley Brown...*
 Street and Apt. No., or PO Box No.: *4706 Forest Dr #B*
 City, State, ZIP+4®: *Columbia, SC 29206*

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

FLORENCE, SC 29503

Certified Mail Fee \$3.45
 Extra Services & Fees (check box, add fee):
 Return Receipt (hardcopy) \$2.75
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00
 Postage \$0.50
Total Postage and Fees \$6.70

Postmark: CARATON, FL 33430, NOV 15 2018, 11/15/2018

Sent To: *Reynolds Williams*
 Street and Apt. No., or PO Box No.: *130 Box 1909*
 City, State, ZIP+4®: *Florence, SC 29503-1909*

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

MYRTLE BEACH, SC 29578

Certified Mail Fee \$3.45
 Extra Services & Fees (check box, add fee):
 Return Receipt (hardcopy) \$2.75
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00
 Postage \$0.50
Total Postage and Fees \$6.70

Postmark: CARATON, FL 33430, NOV 15 2018, 11/15/2018

Sent To: *David R. Singh*
 Street and Apt. No., or PO Box No.: *P.O. Box 2116*
 City, State, ZIP+4®: *Myrtle Beach, SC 29578*

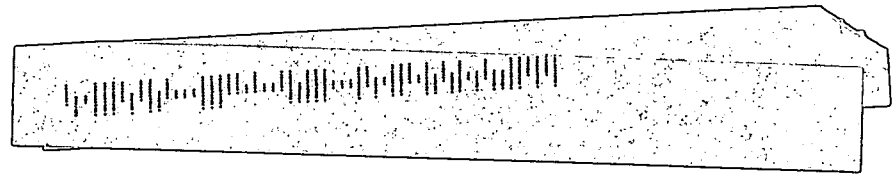
Heidi Gersten, IVANKA Ayoub,
1438 W. LANTANA Rd.
LANTANA, FL 33462



1000

29201-3769

U.S. POSTAGE PAID
FCM LG ENV
BOCA RATON, FL
33432
NOV 26, 18
AMOUNT
\$8.67
R2305K143038-07



RETURN RECEIPT
REQUESTED

RECEIVED
NOV 29 2018
SC Court of Appeals

SOUTH CAROLINA Court of Appeals
1220 Senate St.
Columbia, SC 29201

The South Carolina Court of Appeals

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten and Ivanka Ayoub are
Appellants,

v.

Kevin Carter, Richard Davis, Joseph Tirbovich,
Nationwide Insurance Company, Interinsurance
Exchange of the Automobile Club, John Ammendola,
Trustguard Ins. Co., Blackwell, SC Department of Public
Safety, Chevrolet, GMC, Unknown John Does,
Respondents.

Appellate Case No. 2018-002115

The Honorable John C. Hayes, III,
The Honorable Brian M. Gibbons
Chester County

Trial Court Case No. 2018CP1200117, 2018CP1200074

ORDER

The time for serving and filing the amended return to the motion to dismiss filed by Kevin Carter and Richard Davis is hereby extended until April 15, 2019. If the amended return is not actually received in this office on or before April 15, 2019, the Court will consider only the motions and the filings previously received in this matter. No further extensions will be granted absent extraordinary circumstances.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

FILED

April 9, 2019

Columbia, South Carolina

cc:

Heidi Gersten

Ivanka Ayoub

Peter H. Dworjanyn, Esquire

Michael Reid Burchstead, Esquire

Wesley Brian Sawyer, Esquire

William Reynolds Williams, Esquire

David Richard Sligh, Esquire

William H. Davidson, II, Esquire

The South Carolina Court of Appeals

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten and Ivanka Ayoub are
Appellants,

v.

Kevin Carter, Richard Davis, Joseph Tirbovich,
Nationwide Insurance Company, Interinsurance
Exchange of the Automobile Club, John Ammendola,
Trustguard Ins. Co., Blackwell, SC Department of Public
Safety, Chevrolet, GMC, Unknown John Does,
Respondents.

Appellate Case No. 2018-002115

The Honorable John C. Hayes, III,
The Honorable Brian M. Gibbons
Chester County

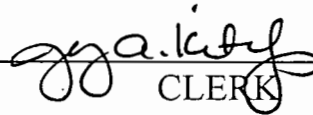
Trial Court Case No. 2018CP1200117, 2018CP1200074

ORDER

Appellant has failed to comply with the Court's order dated May 2, 2019.
Accordingly, this matter is dismissed. The remittitur will be sent as provided by
Rule 221(b), SCACR.

FOR THE COURT

BY


CLERK

FILED

May 14, 2019

Columbia, South Carolina

cc:

Heidi Gersten

Ivanka Ayoub

Peter H. Dworjanyn, Esquire

Michael Reid Burchstead, Esquire

Wesley Brian Sawyer, Esquire

William Reynolds Williams, Esquire

David Richard Sligh, Esquire

William H. Davidson, II, Esquire

RECEIVED

Dec 28 2022

SC Court of Appeals

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an attorney at law licensed to practice in the State of South Carolina, is attorney for Defendant and is a person of such age and discretion as to be competent to serve process.

That on December 28, 2022, she served a copy of the attached **NATIONWIDE INSURANCE COMPANY AND JOSEPH TIRBOVICH'S MOTION TO DISMISS APPEAL** by placing said copy in a first-class postpaid envelope and addressed to the person hereinafter named, at the place and address stated below, and by depositing said envelope and its contents in the United States Mail at Charleston, South Carolina.

Heidi Gersten
1438 West Lantana Rd. #330
Lantana, FL 33462

Shelley Sunderman Montague
Jessica W. Laffitte
Gallivan White Boyd
1201 Main Street
Columbia, SC 29201
(803) 779-1833

Wesley Brian Sawyer, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260

William H. Davidson, II, Esquire
Davidson, Wren & Plyler, P.A.
P.O. Box 8568
Columbia, SC 29202

Reynolds Williams, Esquire
Willcox, Buyck & Williams, P.A.
P.O. Box 1909
Florence, SC 29503

s/Pamela J. Larson

Pamela J. Larson