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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge
Case No.: 2022-CP-26-06296

Appellate Case No. 2024-000786
Order Dismissing Appeal, Dated August 14, 2024

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall .....Respondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm. ..... Petitioners

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APPENDIX

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
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Kristi F. Curtis, Circuit Court Judge
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Appellate Case No. *Pending*

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall .....Respondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm. ..... Appellants.

NOTICE OF APPEAL

William Bertram von Herrmann and The Von Herrmann Law Firm appeals the order of the Honorable Kristi F. Curtis entered November 1, 2023. ***See* Ex. A (11.1.23 Order)**. Appellants timely filed a Motion to Alter or Amend on November 10, 2023. **Ex. B (11.10.23 Motion for Reconsideration)**. The Court denied the Motion to Alter or Amend on April 17, 2024. **Ex. C (4.17.24 Order)**. Appellants also appeal the Order denying their Motion to Reconsider.

Out of an abundance of caution, and to aid in the Court of Appeals' review, Appellants explain the background of the case and why they believe an immediate appeal is necessary under the circumstances.

Background

Respondents Anna, Bryan, and Katherine Coggeshall filed suit against Attorney William Bertram von Herrmann and his law firm, The Von Herrmann Law Firm, asserting liability for the

use and disclosure of Respondents' electronic communications that Mr. von Herrmann was provided by his client, Justin Fulmer. Respondents assert Appellants used the electronic communications to bring a lawsuit against the Respondents on Mr. Fulmer's behalf (Fulmer Action). Respondents allege Mr. Fulmer intercepted the electronic communications and Appellants, with knowledge the information was "unlawfully obtained", disseminated the material. The Fulmer Action was tried to verdict in December 2023, and is being appealed.

In the present lawsuit, Appellants originally asserted claims for violation of the South Carolina Homeland Security Act (S.C. Code Ann. § 17-30-10, *et seq.*), the Computer Fraud and Abuse Act (18 U.S.C. § 1030), and Invasion of Privacy for publicizing private affairs and for wrongful intrusion and outrage. Respondents removed the case to federal court based on the federal claim and moved to dismiss based on the defense of attorney immunity. Appellants quickly voluntarily dismissed the federal claim to deprive the federal court of jurisdiction. As a result, the federal court remanded the case and did not rule on the motion to dismiss.

On remand, the circuit court granted in part and denied in part Appellants' motion to dismiss. **Ex. A**. The court ruled that attorney immunity barred Respondents' claims for Invasion of Privacy. The court noted that the Amended Complaint made clear Attorney von Herrmann's allegedly wrongful actions took place while he was representing Mr. Fulmer. Because the Amended Complaint did not allege Respondents breached an independent duty to Appellants, or that Respondents acted in their own interest and outside the scope of representing Mr. Fulmer, Respondents were protected by the attorney-immunity defense.

However, the court found, as a matter of law on a novel issue, that the common law attorney-immunity defense did not apply to claims under the South Carolina Homeland Security Act. The court denied Respondents' motion to dismiss the Homeland Security Act claim, and

found Respondents "cannot assert the defense going forward." Respondents timely moved for reconsideration, but the court denied that motion. ***See*** **Exs. B & C**. As outlined below, Respondents assert the orders are immediately appealable.

Argument

I. The Circuit Court's orders are immediately appealable because they involve the merits and have the effect of striking Respondents' defense of attorney-immunity.

The right to an appeal is governed by statute. Section 14-3-330(1) of the South Carolina Code permits appeal of "[a]ny intermediate judgment, order or decree in a law case involving the merits." Section 14-3-330(2)(c) also permits immediate appeal of an "[a]n order affecting a substantial right made in an action when such order . . . (c) strikes out an answer or any part thereof or any pleading in any action." An appeal can arise under either or both. *Link v. Sch. Dist. of Pickens Cnty.*, 302 S.C. 1, 6, 393 S.E.2d 176, 178 (1990).

"An order involves the merits under [section]14-3-330(1) when it finally determines some substantial matter forming the whole or part of a cause of action or defense." *Stone v. Thompson*, 426 S.C. 291, 294, 826 S.E.2d 868, 869-70 (2019) (finding that order determining couple were common-law married was immediately appealable despite the remaining claims for divorce and equitable distribution because the determination of marriage was a substantial part of the causes of action and defenses); *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988).

"An order affects a substantial right by striking a pleading if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial." *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011). In determining whether an order "strikes" a material issue from the case, the court must examine "the effect of the

order, not the label given to the motion or to the order granting it." *Id.* at 303, 705 S.E.2d at 479. "If the circuit court errs in striking out any material allegations of a good cause of action or good defense, *it is impossible to remedy it in the course of the trial*, because the evidence and the issues submitted to the jury cannot be extended beyond the issues made by the pleading, and on appeal from the final judgment this court could not say there was error of law in confining the evidence and charge to the pleadings." *Id.* at 303-04, 705 S.E.2d at 479 (emphasis added) (quoting *Bowden v. Powell*, 194 S.C. 482, 484, 10 S.E.2d 8, 9 (1940)). Ultimately, appealability is determined on a case-by-case basis. *Stone*, 426 S.C. at 295, 826 S.E.2d at 870.

No court has decided the appealability of an order denying a motion to dismiss based on the attorney-immunity defense under *Gaar v. N. Myrtle Beach Realty Co*. In addition, no appellate court has addressed the common law attorney-immunity defense's application under the South Carolina Homeland Security Act. As a general matter, denials of motions to dismiss are usually not immediately appealable. And some courts have held that denials of motions to dismiss on other immunity claims are not immediately appealable. *Brown v. Cnty. of Berkeley*, 366 S.C. 354, 361, 622 S.E.2d 533, 537 (2005) (finding denial of individual county council members' motion to dismiss based on absolute immunity was not immediately appealable).

Orders denying motions to dismiss based on immunity claims are usually not appealable because the order denying the motion to dismiss is not supposed to finally decide anything about a case and the litigants are free to raise the issues at a later point in the case. *Id.* ("Furthermore, the trial court's denial of the individual council members' motion to dismiss does not preclude the individual council members from raising the issues presented in their motion at a later point in the case."); *see Frazier v. Badger*, 361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004) (noting immunity under the Tort Claims Act must be proven at trial because it is an affirmative defense).

Considering that appealability is determined on a case-by-case basis and the court must examine the effect of the order appealed from, this Court must examine the effect of the order denying attorney-immunity's application to claims under the Homeland Security Act to determine appealability.

Here, the order is immediately appealable because it involves the merits and has the effect of striking a good defense. The order explicitly states that Appellants "cannot assert the [attorney-immunity] defense going forward." Because it prevents Appellants from asserting the attorney-immunity defense during litigation, the order has "finally determined" a substantial matter forming the whole or part of a defense and, therefore, "involves the merits" and is immediately appealable under 14-3-330(1). *See Stone*, 426 S.C. at 294, 826 S.E.2d at 869-70. In addition, because the order has the effect of striking a defense and removing the material issue from the case, it affects a substantial right, prevents the issue from being litigated on the merits and, therefore, is appealable under 14-3-330(2)(c). As stated in *Thorton*, the court's ruling that Respondents cannot assert the defense going forward is impossible to remedy in the course of a trial in this case because the evidence and issues submitted to the jury cannot extend beyond the issues in the pleadings. *Thorton*, 391 S.C. at 303-04, 705 S.E.2d at 479. This deprives the appellate court from being able to evaluate on appeal if there is an error of law confining the evidence and jury charges to the pleadings, which would not include attorney-immunity because the court explicitly stated Respondents cannot assert the defense moving forward. *Id.* Because Appellants cannot assert the defense, they are prevented from raising the issue at a later point in time in the case. Therefore, the reasoning in *Brown* is not applicable because the council members could continue to litigate the issue of their claimed immunity. Appellants are foreclosed from continuing to litigate attorney-immunity.

Moreover, this case presents novel issues on the interplay of attorney-immunity and liability under the South Carolina Homeland Security Act. Respondents are attempting to impose liability on Appellants for quintessential attorney activities—bringing a lawsuit on behalf of a client and engaging in discovery. Because the claims relate to attorney activities, discovery and litigation will include getting into attorney-client privileged and work-product doctrine protected material generated in the underlying Fulmer Case. The novelty of the issues and the dangers of discovery intruding upon privileges essential to our justice system warrants finding the issue is immediately appealable and addressing the merits.

COPELAND, STAIR, VALZ & LOVELL, LLP

May 10, 2024.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge
Case No.: 2022-CP-26-06296

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Appellate Case No. Pending

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall .....Respondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm. ..... Appellants.

PROOF OF SERVICE

I certify that I have served ***Appellants' Notice of Appeal***, upon the parties below by electronic mail, addressed as follows:

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This 10th day of May, 2024.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2022-CP-26-06296
	)	
Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall,	)	**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS**
Plaintiffs,	)	
vs.	)	
William Bertram von Herrmann and The Von Herrmann Law Firm,	)	
Defendants.	)	

This matter comes before the Court on Defendants' Motion to Dismiss Plaintiffs' claims for (1) violation of the South Carolina Homeland Security Act, (2) invasion of privacy – publicizing private affairs, and (3) invasion of privacy – wrongful intrusion and outrage. For the reasons explained below, this Court GRANTS the motion in part and dismisses both invasion of privacy causes of action but DENIES the motion with respect to the alleged violation of the South Carolina Homeland Security Act.

Background

Plaintiffs Anna, Bryan, and Katherine Coggeshall brought this lawsuit against Attorney William Bertram von Herrmann and his law firm, The Von Herrmann Law Firm, asserting liability for the use and disclosure of Plaintiffs' electronic communications that Mr. von Herrmann was provided by his client, Justin Fulmer.

Plaintiffs allege Mr. Fulmer illegally acquired Plaintiff Anna's iWatch, and accessed her and Plaintiffs Bryan and Katherine's electronic communications. Plaintiffs assert Mr. Fulmer "or his agent" copied the electronic communications, and Defendants printed them. They assert Defendants used the electronic communications to bring a lawsuit against the Plaintiffs on Mr. Fulmer's behalf (Fulmer Action). Plaintiffs allege Mr. Fulmer intercepted the electronic

communications and Defendants, with knowledge the information was "unlawfully obtained" disseminated the material. The Fulmer Action is still ongoing.

As a result of Defendants' actions, Plaintiffs brought this lawsuit in the Horry County Court of Common Pleas. Defendants removed the case to federal court because Plaintiffs' original complaint asserted a federal claim. Plaintiffs amended their complaint in federal court to remove the federal claim. Defendants moved to dismiss the amended complaint in federal court, Plaintiffs responded, and Defendants replied. Plaintiff also moved to remand the case back to state court. The federal court remanded the case to the Horry County Court of Common Pleas without deciding the motion to dismiss. This Court heard Defendants' Motion to Dismiss on August 14th, 2023.

Procedural Standard

When ruling on a Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP, "[t]he circuit court may dismiss a claim when the defendant demonstrates the plaintiff's 'failure to state facts sufficient to constitute a cause of action' in the pleadings filed with the court." *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 121, 634 S.E.2d 5, 7 (Ct. App. 2006). If, in viewing the complaint in the light most favorable to the plaintiff, the court determines the facts in the complaint are insufficient to entitle the plaintiff to the relief it seeks, the court should grant the motion. *Baird v. Charleston Co.*, 333 S.C. 519, 527, 511 S.E.2d, 69, 73 (1999). Dismissal at the pleading stage is warranted when a complaint against an attorney by a non-client fails to state facts sufficient to remove the attorney from the ambit of general immunity. *Hager v. McCabe, Trotter & Beverly, P.C.*, 435 S.C. 740, 747, 869 S.E.2d 886, 889 (Ct. App. 2022); *see also Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995).

Legal Analysis

Defendants argue Plaintiffs' claims should be dismissed based on the attorney-immunity doctrine. After considering Defendants' arguments in their motion and reply, Plaintiffs' response, and the arguments at the hearing, this Court finds the attorney-immunity doctrine shields Defendants from the invasion of privacy claims, but the defense does not apply to the alleged violation of the South Carolina Homeland Security Act.

Attorney-Immunity and Invasions of Privacy

Attorneys are immune from liability to a third party arising from the performance of their professional activities on behalf of and with the knowledge of the client. *Hager*, 435 S.C. at 746, 869 S.E.2d at 889; *see also Stiles*, 318 S.C. at 298, 457 S.E.2d at 602; *Gaar v. North Myrtle Beach Realty Co.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986). Attorneys normally conduct litigation solely in their professional capacity and have no personal interest in the lawsuit. *Garr*, 287 S.C. at 529, 339 S.E.2d at 889. Even if the client has no probable cause to bring a lawsuit, the attorney who brings the lawsuit is not liable to the party sued if the attorney acts primarily to aid the client in obtaining an adjudication of the client's claim. *Id.* (citing *Restatement (Second) of Torts*, § 674 cmt. d. (1975)). An attorney is not liable to a third-party in giving the client poor advice. *Hager*, 435 S.C. at 747, 869 S.E.2d at 889. "The purpose of the doctrine of attorney immunity is to encourage zealous representation of clients without fear of lawsuits by disgruntled opposing parties." *Hunt v. Mortgage Electronic Registration*, 522 F. Supp. 2d 749, 758 (D.S.C. 2007).

Immunity will not shield an attorney, however, if in addition to representing the client, the attorney (a) breaches an independent duty to a third party, or (b) "acts in his own personal interest[] outside the scope of his representation of the client." *Stiles*, 318 S.C. at 300, 457 S.E.2d at 602. A complaint that fails to allege the lawyer acted in his own personal interest and

outside the scope of his representation of the client should be dismissed. *Hager*, 435 S.C. at 747, 869 S.E.2d at 889; *see also Stiles* 318 S.C. at 300, 457 S.E.2d at 602. The doctrine has barred many different common law claims against attorneys, including those for fraud, conversion, civil conspiracy, and malicious prosecution. *See, e.g.*, *Hager*, 435 S.C. at 747, 869 S.E.2d at 889 (fraud and conversion); *Stiles*, 318 S.C. at 300; 457 S.E.2d at 603 (civil conspiracy); *Gaar*, 339 S.E.2d at 889 (malicious prosecution).

This Court finds that Plaintiffs' claims for Invasion of Privacy are barred by the attorney-immunity defense. Attorney-immunity is a common law defense that has prevented common-law claims, such as civil conspiracy and malicious prosecution, when the attorney was acting with the client's knowledge and within scope of the representation. Taking the allegations of the amended complaint as true at the motion to dismiss stage, the amended complaint makes clear that the invasions of privacy took place while Defendants were representing Mr. Fulmer—alleging that Defendants used the communications to bring a lawsuit against Plaintiffs on Mr. Fulmer's behalf. The amended complaint is devoid of any allegations Defendants breached some independent duty to the Plaintiffs or acted in their own interests and outside the scope of their representation of Mr. Fulmer. This is precisely the scenario for which attorney immunity exists and Courts have relied upon to dismiss common law claims previously. Accordingly, this Court agrees with Defendants and DISMISSES with prejudice Plaintiffs' causes of action for (1) invasion of privacy – publicizing private affairs, and (2) invasion of privacy – wrongful intrusion and outrage.

Attorney Immunity and South Carolina Homeland Security Act (Act)

Defendants argue attorney immunity applies to the Act because the legislature enacts against the backdrop of common law and, pursuant to statutory interpretation rules of plain meaning and strict construction, the Act does not clearly and unambiguously change the common

law in a way that abrogates the attorney-immunity defense. Plaintiffs, on the other hand, argue that attorney-immunity does not apply because the Act does not expressly exempt attorneys from its application. Although this is a novel question in South Carolina, this Court agrees with Plaintiffs and finds the attorney-immunity defense does not apply to the Act.

The Act makes it a felony for any "person" to intentionally disclose to another person, or use, the contents of any electronic communication, "knowing or having reason to know that the information was obtained through the interception" of an electronic communication. *See* S.C. Code Ann. § 17-30-20(3) & (4). The Act creates a civil cause of action, stating that "[a]ny person whose . . . electronic communication is intercepted, disclosed, or used in violation of this chapter has a civil cause of action against any person or entity who intercepts, discloses, or uses . . . the communications." S.C. Code Ann. § 17-30-135(A). The statute creating the civil cause of action lists one defense: "A good faith reliance on a court order, subpoena, or request of an agent of the South Carolina Law Enforcement Division under [s]ection 17-30-95 constitutes a complete defense to any civil . . . action, other than an action for preliminary or equitable or declaratory relief." S.C. Code Ann. § 17-20-135(B). The statute is otherwise silent on the application of any defenses. Further, the Act explains in what circumstances the interception of an electronic communication is legal, section 17-30-35, and exempts the employees of the Federal Communications Commission and employees of providers of communications services in certain scenarios. *See* §§ 17-30-25, 17-30-35.

This Court finds that attorneys fall within the common meaning of "any person" as used in the Act and, therefore, the Act applies to attorneys. This Court finds that if the South Carolina legislature had intended to exempt attorneys from liability under the Act, it could have expressly included that group as it did employees of certain entities. Because the Act applies to attorneys and the legislature did not expressly exempt attorneys, this Court finds the common law

attorney-immunity defense does not apply to claims arising under the Act. Therefore, Defendants' Motion to Dismiss the claim under the Act is DENIED and Defendants cannot assert the defense going forward.

Conclusion

After considering the arguments and authorities cited by Defendants in their Motion to dismiss and reply, by Plaintiffs in response to the Motion to Dismiss, and the arguments at the hearing, it is ORDERED:

1. Defendants' Motion to Dismiss Plaintiffs' Amended Complaint is GRANTED as to the Plaintiffs' claims for (1) invasion of privacy – publicizing private affairs, and (2) invasion of privacy – wrongful intrusion and outrage, and such claims are hereby dismissed with prejudice; and

2. Defendants' Motion to Dismiss Plaintiffs' Amended Complaint is DENIED as to Plaintiffs' claim for violation of the South Carolina Homeland Security Act and Defendants cannot assert the attorney-immunity defense going forward.

SO ORDERED!

The Honorable Kristi F. Curtis
Fifteenth Judicial Circuit

[Electronic Signature Page Follows]

Horry Common Pleas

Case Caption: Anna Coggeshall , plaintiff, et al VS William Bertram Von Herrmann , defendant, et al

Case Number: 2022CP2606296

Type: Order/Dismissal

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	FOR THE FIFTEENTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-26-06296
Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall, Plaintiffs, vs. William Bertram von Herrmann and The Von Herrmann Law Firm, Defendants.	**DEFENDANTS' MOTION FOR RECONSIDERATION OF ORDER DENYING IN PART MOTION TO DISMISS**

Defendants William Bertram von Herrmann and The Von Herrmann Law Firm, by and through their undersigned counsel and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, move this Court to reconsider its order denying in part Defendants' Motion to Dismiss because it has overlooked or failed to consider issues of law that warrant granting the motion in full.

BACKGROUND

Plaintiffs Anna, Bryan, and Katherine Coggeshall brought this lawsuit against Attorney William Bertram von Herrmann and his law firm asserting liability under various statutes and common law causes of action for the interception and disclosure of Plaintiffs' electronic communications that Mr. von Herrmann was provided by his client, Justin Fulmer. On behalf of their client Mr. Fulmer, Defendants sued the Plaintiffs based, in part, on the information in the electronic communications. Fulmer's lawsuit against the Coggeshalls is still ongoing. It is currently scheduled for trial on November 27, 2023.

FACTUAL ALLEGATIONS

Plaintiffs allege Mr. Fulmer illegally acquired Plaintiff Anna's iWatch, and accessed her and Plaintiffs Bryan and Katherine's electronic communications. ***See* Ex. 1 at ¶¶ 5-6**.

Plaintiffs' assert Mr. Fulmer "or his agent" copied the electronic communications, and Defendants printed them. ***Id.*** They assert Defendants used the electronic communications to bring a lawsuit against the Plaintiffs on Mr. Fulmer's behalf. ***Id.* at ¶¶ 6-7**. Plaintiffs allege Mr. Fulmer intercepted the electronic communications and Defendants, with knowledge the information was "unlawfully obtained," disseminated the material. ***Id.* at ¶ 10**.

PROCEDURAL BACKGROUND

As a result of Defendants' actions, Plaintiffs brought a lawsuit in the Horry County Court of Common Pleas. Because the lawsuit originally included a federal claim, Defendants removed the lawsuit to Federal Court and moved to dismiss based on attorney-immunity. **Ex. 2 (Notice of Removal); Ex. 3 (Motion to Dismiss)**. Plaintiffs amended their complaint to drop the federal claim and deprive the Federal Court of jurisdiction, and moved to remand the case. **Ex. 1 (Amended Complaint)**. Plaintiffs also opposed the motion to dismiss. **Ex. 4 (Pltfs MIO MTD)**. Defendants opposed remand, and replied to Plaintiffs' opposition to the motion to dismiss. **Ex. 5 (Defs Reply to Pltfs MIO MTD)**. The Federal Court remanded the case without deciding the motion to dismiss. **Ex. 6 (Order on Remand)**. In conjunction with the remand, Plaintiffs filed all of the federal court filings with the Horry County Court of Common Pleas.

This Court heard Defendants' Motion to Dismiss on August 14, 2023, and took the matter under advisement. **Ex. 7 (Form 4 Order)**. On November 1, 2023, this Court entered an Order granting in part and denying in part the motion to dismiss, finding the attorney-immunity doctrine did not apply to the alleged violations of the South Carolina Homeland Security Act. **Ex. 8 (Order on MTD)**. Defendants file the present Motion to Reconsider, requesting this Court amend its order and grant Defendants' Motion to Dismiss in full.

STANDARD

A motion for reconsideration is appropriate when "the court has misunderstood, failed to fully consider, or . . . failed to rule on an argument or issue." *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). "A party is usually allowed to ask the court to reconsider its decision even if it means rehashing an argument previously presented." *Id.* at 21, 602 S.E.2d at 778-79. Motions for reconsideration are a vehicle to call the court's attention to a possible misapprehension of an argument, and "to revisit a previously raised argument." *Id.*, 602 S.E.2d at 779.

ARGUMENT

This Court's November 1 Order found that the attorney-immunity defense did not apply to claims under the Homeland Security Act because the Act applies to any "person," which would include attorneys, and the legislature did not expressly exempt attorneys as it did other individuals or groups under the Act. The Court further found that Defendants could not assert the attorney-immunity defense moving forward. Defendants request this Court reconsider and amend its Order.

I. This Court should amend its order and grant Defendants' Motion to Dismiss because the correct statutory interpretation standard begins with a presumption the common law prevails unless expressly and unambiguously abrogated by statute.

The attorney-immunity defense is a common law doctrine. *See Gaar v. North Myrtle Beach Realty Co.*, 287 S.C. 525, 528-29, 339 S.E.2d 887, 889 (Ct. App. 1986). Although originating in South Carolina through the Court of Appeals in *Gaar*, the defense has been repeatedly sanctioned by our supreme court. *See, e.g., Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions*, 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010).

"[I]t is presumed that no change in common law is intended unless the Legislature explicitly indicates such an intention by language in the statute." *State v. Prince*, 316 S.C. 57,

66, 447 S.E.2d 177, 182 (1993) (citing *Nuckolls v. Great Atlantic & Pacific Tea Co.*, 192 S.C. 156, 5 S.E.2d 862 (1939)). Furthermore, statutes that limit the common law are strictly construed. *Eades v. Palmetto Cardiovascular and Thoracic, PA*, 422 S.C. 196, 201, 810 S.E.2d 848, 850 (2018). Such statutes "will 'not be extended beyond the clear intent of the legislature.'" *Id.* (quoting *Grier v. AMISUB of S.C., Inc.*, 397 S.C 532, 536, 725 S.E.2d 693, 695 (2012)). "The common law remains in full force and effect in South Carolina unless changed by clear and unambiguous legislative enactment." *Singleton v. State*, 313 S.C. 75, 83, 437 S.E.2d 53, 58 (1993).

These principles apply to statutes creating causes of action or rights where none existed at common law. *See, e.g.*, *Simpson v. Sanders*, 314 S.C. 413, 415, 445 S.E.2d 93, 94 (1994) (finding elective share statute was statute of creation in derogation of common law because common law previously permitted spouse to leave out surviving spouse from will and, therefore, the statute had to be strictly construed); *Crosby v. Glasscock Trucking Co.*, 340 S.C. 626, 628, 532 S.E.2d 856, 857 (2000) (strictly construing statute creating cause of action for wrongful death of a "person" as against common law principle that tort action dies with injured person and, therefore, the statute did not apply to death of nonviable, stillborn fetus); *Davenport v. Summer*, 273 S.C. 771, 772-73, 259 S.E.2d 815, 816 (1979) (finding statute permitting joinder of insurer to action did not change well-established common law that in motor vehicle collision cases the insurance carrier of defendant cannot be joined, recognizing statutes in derogation of common law rights are strictly construed and not be extended beyond clear legislative intent).

Our courts have found common-law defenses were not abrogated under similar statutory schemes. For example, the Payment of Wages Act requires unconditional payment to an employee of wages due, and is silent on whether the common law defense of breach of loyalty would permit an employer to withhold wages due under the Act. Our court of appeals found,

and our supreme court affirmed, that nothing in the Payment of Wages Act "directly or indirectly abrogate[d] the common law duty of loyalty owed to an employer by an employee." If the duty is breached, forfeiture of wages due under the Act is appropriate. *See Futch v. McAllister Towing of Georgetown, Inc.*, 328 S.C. 312, 318, 491 S.E.2d 577, 580 (S.C. Ct. App. 1997) ("Futch I"), *overruled on other grounds by* 335 S.C. 598, 518 S.E.2d 591 (1999) ("Futch II"); *Futch II*, 335 S.C. at 605, 518 S.E.2d at 594 (affirming court of appeals and finding "the Legislature did not intend to prevent employers from asserting valid defenses or counterclaims against employees"). *Futch I* and *Futch II* were applications of strict construction of statutes in derogation of common law.

Here, this Court should reconsider its ruling and grant the Motion to Dismiss because the ruling applied the incorrect standard. This Court interpreted the Act to apply to attorneys by referencing the any "person" language and found that, because the Act does not expressly exempt attorneys as a class but exempts other individuals and it lists one defense, the common-law attorney immunity defense does not apply. This ruling, however, is based on the presumption that the statute displaces common law—interpreting silence as to common-law defenses and classes of persons exempted from the Act to abrogate common law defenses. The logic of this interpretation works only if we begin with a presumption the common law does not apply unless expressly included within a statute. If this was true, then every single statute would have to expressly incorporate the common law because most apply to any "person."

South Carolina case law is clear, however, that the opposite presumption applies: we presume the common law is unchanged by a statute unless the language in the statute explicitly, clearly, or unambiguously indicates an intention to change the common law. *Prince*, 316 S.C. at 66, 447 S.E.2d at 182. The common law here is the defense of attorney-immunity. Thus, the Court must presume the attorney-immunity defense applies unless *explicitly*, *clearly*, or

unambiguously changed by the Act. Further, because the Act creates a cause of action where none existed, the Court must strictly construe the Act.

Presuming the attorney immunity applies and strictly construing the Act establishes there is no explicit rejection of the attorney immunity defense. The Act applying to any "person," and noting attorneys are people, is not an explicit legislative intent that the attorney-immunity defense does not apply. Simply because the Act expresses one defense to its violation—good faith reliance—is not an explicit legislative intent that the attorney-immunity defense does not apply, let alone that all other defenses are eviscerated. This reasoning is precisely why *Futch I* and *Futch II* found the language of Payment of Wages Act *unconditionally* requiring payment of wages due an employee did not abrogate an employer's common law "breach of loyalty" defense to paying those wages.

If attorney immunity applies to claims under the Act, then Plaintiffs' claim should be dismissed. The defense applies to third-party claims against an attorney for actions taken on behalf of the client with the client's knowledge, as long as there is no independent duty or allegations that the attorney acted in his own interest. *See Argoe*, 388 S.C. at 400, 697 S.E.2d at 554. Plaintiffs do not allege Defendants owed an independent duty to them, or that Defendants acted in their own interest outside the scope of their representation of Mr. Fulmer. In reality, Plaintiffs' claims are alleged to have arisen within the scope of Defendants' representation of Mr. Fulmer. Accordingly, the attorney-immunity defense would bar the claims.

Because the Court applied the incorrect standard for interpreting the Act, the application of the correct standard under South Carolina law establishes the attorney-immunity defense was unchanged by the Act, and the attorney-immunity defense would bar Plaintiffs' remaining claim, this Court should reconsider its order and grant Defendants' Motion to Dismiss Plaintiffs' claim under the Act.

II. This Court should adopt the reasoning in *Taylor v. Tolbert* because it applies legal principles similar to South Carolina and finds attorney immunity applies to a statute prohibiting interception of electronic communications.

Taylor is a recent case from the Supreme Court of Texas both Plaintiffs and Defendants referred to in their arguments on the motion to dismiss, which applied attorney-immunity to prevent claims for violations of Texas's wiretap statute. *See Taylor v. Tolbert*, 644 S.W.3d 637, 650-51 (Tx. 2022).

Like South Carolina, Texas's wiretap statute makes it a crime to intercept electronic communications, or to intentionally use or disclose those communications knowing or having reason to know the communications were intercepted. *Compare* Tex. Penal Code Ann. § 16.02 *with* S.C. Code Ann. § 17-30-20. In addition, the two states' laws create a civil remedy for the interception, or use or disclosure of intercepted communications. *Compare* Tex. Code Crim. Proc. Ann. art. 18A.502 *with* S.C. Code Ann. § 17-30-135(A). Also, Texas' attorney-immunity defense is nearly identical to South Carolina's, and applies to an attorney's work in the scope of representing a client. *Taylor*, 644 S.W.3d at 646; *Argoe*, 388 S.C. at 400, 697 S.E.2d at 554.

The *Taylor* Court found that Texas's common-law attorney immunity defense applied to claims under Texas's wiretap statute pursuant to legal principles similar to South Carolina, and in the process rejected the exact arguments Plaintiffs make here and this Court adopted.

The *Taylor* Court began by noting statutes purporting to abrogate common-law principles must do so expressly. 644 S.W.3d at 649. It also recognized the Texas wiretap statute created liability where none existed and, therefore, must be strictly construed and not extended beyond its plain meaning. *Id.* at 650. Thus, it presumed that the attorney immunity defense applied unless its wiretap statute expressly abrogated it. *Id.* It ultimately held "Texas's wiretap statute does not expressly repudiate the common law or the attorney-immunity defense." *Id.* at 649. Applying South Carolina's exact same presumption and rules for strict construction should result

in the same holding: South Carolina's Act does not expressly repudiate the common law or the attorney-immunity defense.

In reaching its holding, *Taylor* rejected the plaintiff's argument that the application of the wiretap statute to "any person" meant to include attorneys and abrogate the immunity defense. *Id*. at 651. The Court noted that, "[a]lthough 'any person' would inarguably include attorneys, we are not convinced the breadth of the statutory language—which is not at all uncommon—clearly shows legislative intent to abrogate common-law defenses generally or attorney immunity specifically." *Id.*

The *Taylor* Court also rejected the plaintiff's arguments that, by including specific defenses under the statute like the good-faith reliance defense, the Texas wiretap statute "fences out" all common law defenses not explicitly included in the statute. *Id.* at 650. The court noted that by plaintiff's line of reasoning, the legislature would have to "opt-in" to the common law in every statute, and that reasoning is contrary to the presumption the common law remains in effect. *Id.* at 650. The court also found that the Act did not make the listed defenses exclusive, and the language could not be read as clearly repudiating all civil-liability defenses otherwise available. *Id.*

The Texas Supreme Court's analysis in *Taylor* is highly persuasive considering Texas's parallels to South Carolina's legal principles regarding the attorney-immunity defense, statutory civil liability related to intercepted communications, and strictly construing statutes purportedly abrogating common law. But it rejected the exact reasoning advanced by Plaintiffs—the breadth of the any "person" language and inclusion of certain defenses—which this Court relied upon in ruling on Defendants' Motion to Dismiss. Because *Taylor* is persuasive and opposite this Court's ruling, this Court should reconsider its order, adopt *Taylor*'s reasoning similar to South Carolina's laws, and grant Defendants' Motion to Dismiss Plaintiffs' claim under the Act.

III. Applying attorney-immunity to claims under the Act does not have the effect of exempting all attorneys from the violating the Act.

This Court's ruling relies, in part, on reasoning that the attorney-immunity defense does not apply because, if the legislature wanted to exempt attorneys from the Act, it could have expressly done so like it did for other groups. This is based, however, on a misunderstanding of the attorney-immunity defense.

The attorney-immunity defense is not absolute immunity for attorneys as a class of people. The defense is qualified. It immunizes attorneys from claims (1) by third parties; (2) for actions in the scope of representing a client; (3) with the client's knowledge; (4) when there is no independent duty to the third-party. *See Argoe*, 388 S.C. at 400, 697 S.E.2d at 554; *see also Taylor*, 644 S.W.3d at 646 (noting similar limitations on the attorney-immunity defense and recognizing it does not protect from liability for all attorney conduct). Neither does the defense magically legalize illegal conduct because it is conduct of an attorney. Its purpose is to shield attorneys for actions that are illegal, i.e., would expose the attorney to civil liability.

Recognizing the attorney-immunity defense would not be akin to exempting attorneys from liability for violations of the Act, attorneys could still be liable if any of the four conditions to the application of attorney immunity are not met with respect to the Act. For example, attorney immunity would not shield an attorney against a *client's* claims that the attorney intercepted communications, or used or disclosed those communications, without the client's consent. Under the same scenario it would not shield the attorney against claims under the Act by the other party to the client's communications—client knowledge lacking. Because recognizing attorney-immunity under the Act would not amount to an exemption for attorneys from the Act, this Court should not have refused to recognize the defense on the basis it would amount to an exemption similar to other classes of persons listed under the Act. Accordingly,

this Court should reconsider its ruling and grant Defendants' Motion to Dismiss Plaintiffs' claims under the Act.

IV. This Court's finding that attorney-immunity does not apply under the Act undercuts the policy of encouraging zealous client representation and will lead to an erosion of the attorney-client privilege.

"The purpose of the doctrine of attorney immunity is to encourage zealous representation of clients without fear of lawsuits by disgruntled opposing parties." *Hunt v. Mortgage Electronic Registration*, 522 F. Supp. 2d 749, 758 (D.S.C. 2007). "Attorneys must be free to act and advise their clients without constant fear of harassment from lawsuits." *Garr*, 287 S.C. at 529, 339 S.E.2d at 889. Attorneys have ethical obligations to zealously assert a client's position. Rule 407, SCACR, Preamble ("As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system."). It would create a conflict of interest with an attorney's obligation to represent and support his or her client if attorneys become liable for, and must safeguard against, acting overzealously. *Garr*, 287 S.C. at 529-30, 339 S.E.2d at 889-90. In other words, with every exception recognized for attorney-immunity, it has a chilling effect on an attorney's faithful discharge of his or her ethical obligations. *Taylor*, 644 S.W.3d at 647.

Here, considering the breadth with which this Court interprets the Act—it applies to any "person" and attorney immunity does not apply—it would be nearly impossible to faithfully and zealously represent a client defending against claims for violations of the Act. An attorney representing his or her client would have to exercise even more caution when dealing with any electronic communications provided by a client. Considering attorney-immunity does not apply, Defendants' counsel could potentially be held responsible for "using" the messages to mount a defense to Plaintiffs' claims. Defendants' counsel would be prohibited from sharing any of the messages with an expert to prepare a defense. If Defendants are not entitled to immunity under the Act for advocating on behalf of their client with their client's direction, then the same could

be said for Defendants' counsel in this matter. Thus, not applying attorney-immunity to claims under the Act has a chilling effect in on an attorney's obligation to zealously represent his or her client.

For similar reasons, not recognizing attorney-immunity under the Act has a chilling effect on and erodes the attorney-client privilege. The attorney-client privilege is based on the wise policy that the "interests of society are best promoted by inviting the utmost confidence on the part of the client in disclosing his secrets to his professional advisor, under the pledge of the law that such confidence should not be abused by permitting disclosure of such communications." *S.C. State Highway Dep't v. Booker*, 260 S.C. 245, 254, 195 S.E.2d 615, 619-20 (1973). First, if attorneys are liable under the Act for advocating on behalf of their clients, attorneys will take precautions in communicating with clients to reduce the likelihood of a violation of the Act and, accordingly, will discourage clients from being truthful with their attorney. Moreover, pursuing a claim under the Act when an attorney is involved would require disclosure of attorney-client protected communications and work-product material in discovery. Case in point, Plaintiffs are directly requesting in discovery communications between Defendants and their client, Mr. Fulmer. **Ex. 9 (Plaintiffs' Discovery Requests).** Thus, refusing to recognize the attorney-immunity defense to claims under the Act would chill and intrude upon the attorney-client privilege. This cannot be what the legislature intended.

By finding the attorney-immunity defense does not apply to claims under the Act, it has a chilling effect on an attorney's ethical obligations to zealously represent his or her client and will inevitably lead to intrusion upon the attorney-client privilege. This Court should reconsider its ruling and grant the Motion to Dismiss claims under the Act based on attorney-immunity because it would foster ethical obligations to zealously represent clients and preserve the attorney-client privilege.

CONCLUSION

This Court should reconsider its ruling and grant Defendants' Motion to Dismiss because the ruling relies upon the incorrect statutory presumption, ignores persuasive authority from another state based on similar laws, misconstrues what the attorney-immunity defense is meant to protect from, results in a chilling effect on an attorney's obligation to zealously represent his or her client, and will lead to erosions of the attorney-client privilege.

This 10th day of November, 2023.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

By: *s/Skyler C. Wilson*
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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FIFTEENTH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	2022-CP-26-06296
	)	
Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall,	)	
	)	**ORDER DENYING THE MOTION TO RECONSIDER**
Plaintiff,	)	
vs.	)	
	)	
William Bertram von Herrmann and The Von Herrmann Law Firm,	)	
	)	
Defendant,	)	

PRESIDING JUDGE:	The Honorable Krisi F. Curtis
DATE OF HEARING:	December 19, 2023
ATTORNEY FOR PLAINTIFF:	Steve Abrams, *Esq.* and Richard Whiting, *Esq.*
ATTORNEY FOR DEFENDANT:	Skyler C. Wilson, *Esq.* and Douglas W. MacKelcan, *Esq.*

This matter comes before the court pursuant to the Defendants' Notice of Motion and Motion for Reconsideration of its Order filed November 10, 2023.

After further review of the Defendants' Motion for Reconsideration in this matter, the Defendants' Motion is respectfully denied. The court recognized that this is a Novel Issue, but is persuaded by the reasoning contained in Plaintiffs' original Reply to the Defendants' original Motion, filed May 7, 2023.

The controlling statute is extremely broad. This statute mirrors the Federal Wiretap Action in many respects in that it prohibits the interception of electronic communications as well as the disclosure of illegally intercepted communications. The South Carolina Homeland Security Act is the State's equivalent of the Federal Electronic Communication Privacy Act, which also expressly

prohibits any evidence derived from the illegally intercepted communication from being entered into evidence in any trial, hearing or other proceeding before any court. See South Carolina code §17-30-65. The only exception for court proceedings is that set forth in South Carolina code §17-30-75, which allows for disclosure while giving testimony under oath in criminal and grand jury proceedings. This statute also specifically allows disclosure by SLED to attorneys who are authorized by law to investigate and prosecute certain alleged crimes.

It is illogical for the legislation to specifically carve out this narrow exception while also intending to allow broad common law immunity for disclosure by attorneys in civil and family court narratives.

The court finds that it would be illogical for the legislation to prohibit a pro se individual from disclosing the contents of electronic communications (and to make any such disclosure actionable) while allowing that individual's attorney to take the exact same actions with absolute immunity. Accordingly, the Defendants' Motion for Reconsideration is denied.

AND IT IS SO ORDERED.

_____

The Honorable Kristi F. Curtis
Presiding Circuit Judge

_____, 2024.

Horry, South Carolina.

Horry Common Pleas

Case Caption: Anna Coggeshall , plaintiff, et al VS William Bertram Von Herrmann , defendant, et al

Case Number: 2022CP2606296

Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

From:	Rewt, Teri J. on behalf of Wilson, Skyler C.
To:	Dick.whiting@whitinglawsc.com
Cc:	steve@abramsforensics.com; Mackelcan, Douglas W.; Wilson, Skyler C.; Moran, Rosie
Subject:	Coggeshall v William Bertram von Herrmann; Case No.: 2022-CP-26-06296; CSVL File No.: 64549
Date:	Friday, May 10, 2024 12:44:00 PM
Attachments:	image001.png Ltr to Pltfs" encl Notice of Appeal (to be filed)(7319926.1).pdf

Good afternoon Dick,

On behalf of Attorneys Doug MacKelcan and Skyler Wilson, please see attached for service upon Plaintiffs/Respondents, Defendants'/Appellants' Notice of Appeal in this case, together with Exhibits A-C. We will be filing this Notice and Exhibits with the Courts on or before May 20, 2024.

Thank you and best regards,

COPELAND STAIR VALZ & LOVELL LLP

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REPLY TO SC OFFICE

May 10, 2024

VIA EMAILONLY
Richard G. Whiting, Esq.
P.O. Box 1515 Lady Street
Columbia, SC 29201
Dick.whiting@whitinglawsc.com

Re: Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall v William Bertram von Herrmann and The Von Herrmann Law Firm
Case No.: 2022-CP-26-06296
CSVL File No.: 2283-64549

Dear Dick:

Please find enclosed, Defendants' Notice of Appeal of Judge Kristi Curtis's April 17, 2024 Order Denying Defendants' Motion for Reconsideration of her November 10, 2023 Order, Denying in Part Defendants' Motion to Dismiss this case. We will be filing the Notice of Appeal within ten (10) days of this letter, together with Exhibits A through C, attached to the enclosed Notice of Appeal. Let me know if you have any questions or concerns.

Sincerely yours,

s/Skyler C. Wilson

DOUGLAS W. MACKELCAN
SKYLER C. WILSON

SCW:tjr
Enclosures: *as stated above*
cc: Steven Abrams, Esq. (steve@abramsforensics.com)

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REPLY TO SC OFFICE

May 13, 2024

VIA EMAILand REGULAR MAIL
Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

Re: Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall v William Bertram von Herrmann and The Von Herrmann Law Firm
Case No.: 2022-CP-26-06296
CSVL File No.: 2283-64549

Dear Ms. Kitchings:

Enclosed please find Appellants William Bertram von Herrmann and The Von Herrmann Law Firm's Notice of Appeal in the above-referenced case, together with Exhibits A through C, Proof of Service, and Appellants' service email and letter to Respondents, together with the $250.00 filing fee. If anything further is required from Appellants at this time, please advise.

Sincerely yours,

s/Skyler C. Wilson

DOUGLAS W. MACKELCAN
SKYLER C. WILSON

SCW:tjr
Enclosures: *as stated above*
cc: Richard G. Whiting, Esq.; Steven Abrams, Esq.
Dick.whiting@whitinglawsc.com; steve@abramsforensics.com

The South Carolina Court of Appeals

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall, Respondents,

v.

William Bertram von Herrmann and The Von Herrmann Law Firm, Appellants.

Appellate Case No. 2024-000786

ORDER

After careful consideration, Respondents' motion to dismiss this appeal is granted. *See* S.C. Code Ann. § 14-3-330 (2017) (providing our appellate courts may review an interlocutory order that involves the merits of the case or affects a substantial right); *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 300, 705 S.E.2d 475, 477 (Ct. App. 2011) ("An interlocutory order not governed by a specialized appealability statute is not immediately appealable unless it fits into one of the categories listed in section 14-3-330 of the South Carolina Code (1976 & Supp. 2009)."); *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 526, 443 S.E.2d 539, 540 (1994) (holding the denial of a motion to dismiss is not immediately appealable under section 14-3-330); *id.* at 526 n.2, 443 S.E.2d 539, 540 n.2 ("Like the denial of a motion for summary judgment, the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings."). The remittitur will be sent as required by Rule 221(b), SCACR.

FOR THE COURT

Columbia, South Carolina

FILED
Aug 14 2024

cc:
Richard Giles Whiting, Esquire
Steven Marc Abrams, Esquire
Douglas Walker MacKelcan, III, Esquire
Skyler Cole Wilson, Esquire
Robert E. Lee, Esquire
Kenneth Ray Moss, Esquire

The South Carolina Court of Appeals

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall, Respondents,

v.

William Bertram von Herrmann and The Von Herrmann Law Firm, Appellants.

Appellate Case No. 2024-000786

ORDER

On August 14, 2024, the court dismissed this appeal, concluding the order on appeal was interlocutory and not immediately appealable. Appellants filed a petition for rehearing. With this court's permission, Respondents filed a return. Thereafter, Appellants filed a reply. After careful consideration of the filings, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

C.J.

J.

J.

Columbia, South Carolina

FILED
Nov 04 2024

cc:

Richard Giles Whiting, Esquire
Steven Marc Abrams, Esquire
Douglas Walker MacKelcan, III, Esquire
Skyler Cole Wilson, Esquire
Robert E. Lee, Esquire
Kenneth Ray Moss, Esquire

RECEIVED
Jun 03 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge
Case No. 2022-CP-26-06296

Appellate Case No. 2024-000786

Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall ..... Respondents,

v.

William Bertram von Herrmann and The von Herrmann Law Firm. ..... Appellants.

MOTION TO DISMISS APPEAL

Respondents Anna Coggeshall, Brian Coggeshall, and Katherine Coggeshall hereby move this Court to dismiss the above-referenced appeal in its entirety. This interlocutory appeal is from the portion of the Order by the Court of Common Pleas for the Fifteenth Judicial Circuit, County of Horry, filed on November 1, 2023, which denied Appellants' Motion to Dismiss Respondents' claim for violation of the *South Carolina Homeland Security Act*, S.C. Code Ann §§ 17-30-10 to 17-30-145, and barred Appellants from raising the defense of common-law attorney immunity going forward. A copy of the trial court's November 1, 2023, Order is attached as Exhibit 1. Appellants also appeal the trial court's Order of April 17, 2024, denying their Motion to Reconsider. A copy of the April 17, 2024, Order is attached as Exhibit 2.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Appellants William Bertram von Herrman and The Von Hermann Law Firm acted as legal counsel for Justin Fulmer ("Mr. Fulmer") in a prior lawsuit that Mr. Fulmer brought against Respondents ("Fulmer Action"). In the Fulmer Action, Respondents contended in part that Mr. Fulmer surreptitiously acquired an iWatch belonging to Respondent Anna Coggeshall ("Anna") and used the device to unlawfully intercept and access electronic communications made by all three Respondents in violation of the South Carolina Homeland Security Act.

In an Order by a three-judge panel of this Court dated September 2, 2022, ("2022 *Buchannon* Order") and entered in a previous appeal captioned *Justin Shayne Fulmer v. Melissa Emery Buchannon Esq., et al.*, Appellate Case No. 2022-000330, this Court found "the preponderance of the evidence indicates [Anna] Coggeshall was the rightful owner of the iWatch. Accordingly, [Mr.] Fulmer's repeated use of the device to view her text messages amounted to interceptions under the Homeland Security Act." (2022 *Buchannon* Order, at 5.) A copy of the 2022 *Buchannon* Order is attached hereto as Exhibit 3. The appellate panel further found that even if Mr. Fulmer was the original owner of the iWatch, there was "no evidence [Anna] Coggeshall gave him permission to access her communications on the device." (2022 *Buchannon* Order, at 5.)

In the present case, Respondents allege that Appellants, while acting as Mr. Fulmer's legal counsel in the Fulmer Action, had knowledge that Mr. Fulmer unlawfully obtained the subject electronic communications from Respondent Anna's iWatch but knowingly used and disseminated the material in their pursuit of the Fulmer Action against Respondents, in violation of the *South Carolina Homeland Security Act*. Appellants, in turn, moved to dismiss the action against them based on the common-law doctrine of attorney immunity.

On November 1, 2023, the trial court issued an Order denying Appellants' Motion to Dismiss Respondents' claim for violation of the *South Carolina Homeland Security Act*. In that Order, the court concluded that the common-law attorney-immunity defense did not apply to shield Appellants, as Mr. Fulmer's legal counsel, from any potential liability on this claim. (Exhibit A, 11/01/2023 Order, at 4-6.) Consequently, the trial court precluded Appellants from asserting the common-law attorney-immunity defense going forward. (*Id.* at 5-6.)

On November 10, 2023, Appellants filed a Motion for Reconsideration of the portion of the trial court's November 1, 2023, Order denying their Motion to Dismiss. On April 17, 2024, the trial court filed an Order Denying the Motion to Reconsider. The trial court stated that although this is a Novel Issue, it was persuaded that the South Carolina Legislature did not intend to allow "broad common law immunity for disclosure by attorneys in civil and family court narratives." (Exhibit B, 04/17/2024 Order, at 2.)

On May 13, 2024, Appellants filed their Notice of Appeal with this Court, alleging that the trial court's Orders of November 1, 2023, and April 17, 2024, are immediately appealable. Because the Orders in question are not properly appealable on an interlocutory basis under S.C. Code Ann. § 14-3-330, the appeal should be dismissed in its entirety.

ARGUMENT

I. STANDARD FOR APPEAL OF A NONFINAL ORDER

The trial court's Orders of November 1, 2023, and April 17, 2024, are nonfinal. An "appeal ordinarily may be pursued only after a party has obtained a final judgment[.]" *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005). However, in certain instances, S.C. Code Ann. § 14-3-330 authorizes a party to pursue an interlocutory appeal of a nonfinal order. Absent the applicability of a specialized statute, a nonfinal order must fall within one of the

categories authorized by § 14-3-330 in order to be immediately appealable. *Ex parte Wilson*, 367 S.C. 7, 13, 625 S.E.2d 205, 208 (2005). Moreover, "[t]he provisions of section 14-3-330, including subsection (2), have been narrowly construed, and the immediate appeal of orders issued before or during trial generally has not been permitted." *State v. Wilson*, 387 S.C. 597, 601, 693 S.E.2d 923, 925 (2010).

Here, Appellants' interlocutory appeal is ostensibly brought under S.C. Code Ann. § 14-3-330(1) and (2)(c). Subsection 330(1) permits an immediate appeal from "[a]ny intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions[.]" Subsection 330(2)(c) authorizes an immediate appeal from "[a]n order affecting a substantial right made in an action when such order . . . (c) strikes out an answer or any part thereof or any pleading in any action[.]"

A circuit court's order "involves the merits" for purposes of § 14-3-330(1) when it "finally determine[s] some substantial matter forming the whole or a part of some cause of action or defense." *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (internal quotation marks omitted). In other words, "[a]n interlocutory order is appealable under subsection (1) only if it involves the merits, that is, 'finally determines some substantial matter forming the whole or a part of some cause of action or defense." *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988).

An order affects a substantial right within the meaning of subsection 330(2)(c) when it would "strike out an action or defense." *Mid-State Distribs.*, 310 S.C., at 334 n.4, 426 S.E.2d at 780; *see also Edwards v. SunCom*, 369 S.C. 91, 94, 631 S.E.2d 529, 530 (2006). This commonly occurs when the trial court enters an order "striking out an answer." *Jefferson*, 295 S.C. at 318, 368 S.E.2d at 456.

For the reasons detailed below, Appellants' interlocutory appeal is not appropriate under either § 14-3-330(1) or (2)(c). Accordingly, Respondents' Motion to Dismiss the appeal should be granted.

II. THE TRIAL COURT'S ORDERS DENYING APPELLANTS' MOTION TO DISMISS RESPONDENTS' CLAIM FOR VIOLATION OF THE SOUTH CAROLINA HOMELAND SECURITY ACT ON GROUNDS OF COMMON-LAW ATTORNEY IMMUNITY ARE NOT SUBJECT TO IMMEDIATE APPEAL UNDER S.C. CODE ANN. § 14-3-330(1) OR (2)(c)

The common-law doctrine of attorney immunity provides that "an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client." *Gaar v. N. Myrtle Beach Realty Co.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986). However, such immunity is not absolute. *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). For example, "an attorney may be held liable for conspiracy 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." *Id.*

In the present case, Respondents allege that Appellants, while pursuing the underlying Fulmer Action on Mr. Fulmer's behalf, deliberately used and disseminated electronic communications that they knew Mr. Fulmer had unlawfully intercepted and accessed from Respondent Anna's iWatch. In analyzing Appellants' Motion to Dismiss, the trial court first concluded that Respondents did not have actionable invasion-of-privacy claims against Appellants because Appellants acted in their capacity as Mr. Fulmer's legal counsel at all relevant times. (Exhibit A, 11/01/2023 Order, at 4.) Even so, the trial court went on to rule (correctly) that the common-law attorney-immunity doctrine did not apply to shield Respondents from all potential liability for violating the *South Carolina Homeland Security Act*. (*Id.* at 5-6.) In reaching this

decision, the trial court determined that "the Act does not exempt attorneys from its application." (*Id.* at 5.)

> The *South Carolina Homeland Security Act* makes it a felony if a person
>
> (1) intentionally intercepts, attempts to intercept, or procures any other person to intercept or attempt to intercept any wire, oral, or electronic communication;
>
> . . .
>
> (3) intentionally discloses or attempts to disclose to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;
>
> (4) intentionally uses or attempts to use the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection[.]

S.C. Code Ann. § 17-30-20.

For purposes of the *South Carolina Homeland Security Act*, a "person" includes "any individual, partnership, association, joint stock company, trust, or corporation." S.C. Code Ann. § 17-30-15(5). The trial court properly concluded that both Appellant William Bertram von Hermann and his Appellant law firm met the definition of "persons" for purposes of the South Carolina Act. (Exhibit A, 11/01/2023 Order, at 5.)

Under the Act, "[a]ny person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of this chapter has a civil cause of action against any person or entity who intercepts, discloses, or uses, . . . the communications and is entitled to recover from the person or entity which engaged in that violation relief as may be appropriate[.]" S.C. Code Ann § 17-30-135(A). This statute authorizes the institution of the present civil action against Appellants.

The statute creating a civil cause of action contains one defense against liability: "A good faith reliance on a court order, subpoena, or a request of an agent of the South Carolina Law Enforcement Division under Section 17-30-95 constitutes a complete defense to any civil . . . action, other than an action for preliminary or equitable or declaratory relief." S.C. Code Ann. § 17-30-135(B). The *South Carolina Homeland Security Act* also contains a separate provision that sets forth the circumstances in which an electronic communication is legal. S.C. Code Ann. § 17-30-35. In addition, the Act exempts Federal Communications Commission employees and employees of providers of communications services in certain scenarios. S.C. Code Ann. §§ 17-30-25, 17-30-35.

When the trial court in the present case denied Appellants' Motion to Dismiss the claim for violation of the *South Carolina Homeland Security Act*, this ruling merely allowed the case to go forward. The trial court's Orders in no way represented or signaled the ultimate conclusion that Appellants did, in fact, violate the *South Carolina Homeland Security Act*. Thus, no final determination on the merits has been made that would authorize an interlocutory appeal under S.C. Code Ann. § 14-3-330(1). *See Mid-State Distribs.*, 310 S.C. at 334, 426 S.E.2d at 780; *Jefferson*, 295 S.C. at 318, 368 S.E.2d at 456.

Moreover, the trial court's Orders in question do not affect a substantial right of Appellants within the meaning of S.C. Code Ann § 14-3-330(2). The Orders on appeal did not strike Appellants' Answer but rather allowed the claim to move forward. *See Jefferson*, 295 S.C. at 318, 368 S.E.2d at 456.

Further, Appellants did not possess the "substantial right" to knowingly use and disseminate electronic communications that Mr. Fulmer unlawfully intercepted from Respondent Anna's iWatch in their pursuit of the Fulmer Action against Respondents. In the 2022 *Buchannan*

Order, a three-judge panel of this Court found that the preponderance of the evidence indicates that Mr. Fulmer's repeated use of Respondent Anna's iWatch to view Anna's text messages "amounted to interceptions under the [South Carolina] Homeland Security Act", and that S.C. Code Ann. § 17-30-20 prohibits "the intentional interception of electronic communications." (Exhibit 3, 2022 *Bucannon* Order, at 5.) This Court further found that even if Mr. Fulmer was the original owner of the iWatch, there was "no evidence that [Anna] Coggeshall gave him permission to access her communications on the device." (*Id.*) Consequently, Mr. Fulmer violated the *South Carolina Homeland Security Act* when he intercepted and accessed electronic communications from Respondent Anna's iWatch. (*Id.*)

Pursuant to the express language of S.C. Code Ann. § 17-30-20(3) and (4), additional "persons" are similarly liable for violating the *South Carolina Homeland Security Act* if they knowingly used or disseminated the electronic communications that Mr. Fulmer intercepted and accessed in violation of the Act. Because Appellants meet the definition of "persons" subject to the *South Carolina Homeland Security Act*, Respondents have an actionable claim against them for violation of the Act through their knowing use and dissemination of the subject electronic communications in in the Fulmer Action. *See* S.C. Code Ann. § 17-30-15(5) (stating for purposes of the *South Carolina Homeland Security Act*, a "person" includes an "individual, partnership, association, joint stock company, trust, or corporation"). Accordingly, the trial court's denial of Appellants' Motion to Dismiss did not impinge upon any "substantial right' held by Appellants, and Appellants are not entitled to an immediate appeal of this Order. *See* S.C. Code Ann. § 14-3-330(2); *Edwards*, 369 S.C. at 94, 631 S.E.2d at 530; *Mid-State Distribs.*, 310 S.C. at 334 n.4, 426 S.E.2d at 780.

In an attempt to avoid this conclusion, Appellants raise the common-law attorney-immunity defense. No South Carolina court has addressed application of attorney immunity in this context. However, it should be recognized that South Carolina's Homeland Security Act "is patterned after Title Ill of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-22 (2002)." *State v. Guerrero-Flores*, 402 S.C. 530, 534, 741 S.E.2d 577, 580 (Ct. App. 2013); *see also State v. Whitner*, 399 S.C. 547, 553, 732 S.E.2d 861, 864 (2012). This federal act is commonly referred to as a wiretap statute and is referenced herein as the "Federal Wiretap Act." *See, e.g., Nix v. O'Malley*, 160 F.3d 343, 345-46 (6th Cir. 1998). Even though no South Carolina cases have addressed the attorney-immunity issue with reference to the *South Carolina Homeland Security Act*, "federal cases analyzing comparable provisions of the Federal [Wiretap] Act are persuasive in interpreting the provisions of the Homeland Security Act applicable to this case." *Guerrero-Flores*, 402 S.C. at 534, 741 S.E.2d at 580. *See Orr v. Clyburn*, 277 S.C. 536, 540, 290 S.E.2d 804, 806 (1982) ("Under general rules of statutory construction, a jurisdiction adopting legislation from another jurisdiction imports with it the judicial gloss interpreting that legislation").

The Federal Wiretap Act "prohibit[s] more than the placing of wiretaps, because [it] forbids both the interception of certain communications -- even if the interceptor does not use or disclose the contents of the communication -- and the use or disclosure of the contents of the communication -- even if the user or discloser did not intercept the communication." *Nix*, 160 F.3d at 345-46. Specifically, 18 U.S.C. § 2511 – like S.C. Code Ann § 17-30-20 -- provides in relevant part:

> (1) Except as otherwise specifically provided in this chapter [18 USCS §§ 2510 et seq.] any person who—
>
> (a) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;

. . .

> (c) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;
>
> (d) intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; . . .
>
> shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5).

The text of 18 U.S.C. § 2511(1)(a) "quite clearly expresses a blanket prohibition on all electronic surveillance not specifically authorized by the Act." *Fultz v. Gilliam*, 942 F.2d 396, 400 (6th Cir. 1991). In addition, "[t]he syntax of sections 2511(1)(c) and (d) parallels that in section 2511(1)(a) and carries the same semantic import." *Id.* "Sections 2511(1)(c) and (d) plainly forbid all intentional disclosures and uses of the contents of intercepted communications where the individual knows or should know that the source of the material is an unauthorized interception." *Fultz*, 942 F.2d at 401. "By prohibiting all intentional uses and disclosures of unauthorized interceptions by an individual with knowledge of the violation, subsections (1)(c) and (d) strengthen subsection (1)(a) by denying the wrongdoer the fruits of his conduct." *Id.* Subsections (1)(c) and (d) also "insure protection for the wiretap victim from third parties, unrelated to the wrongdoer, who, having access to the material and a reasonable basis to know its source, might desire to disclose the information for their own purposes." *Id.*

Pursuant to 18 U.S.C. § 2511(1)(c) and (d), a civil action may be brought against any person who "intentionally discloses, or endeavors to disclose, to any other person" or "intentionally uses, or endeavors to use" "the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection." *Babb v. Eagleton*, 614 F. Supp. 2d 1232, 1243-44 (N.D. Okla. 2008). For a defendant to be held liable for violation of 18 U.S.C. § 2511(c) or (d), the plaintiff must demonstrate that the defendant knew "1) the information used or disclosed came from an intercepted communication, and 2) sufficient facts concerning the circumstances of the interception such that the defendant could, with presumed knowledge of the law, determine that the interception was prohibited in light of Title III [the Federal Wiretap Act]." *Thompson v. Dulaney*, 970 F.2d 744, 749 (10th Cir. 1992).

If these criteria are satisfied, an attorney and/or his law firm may be held liable for violation of § 2511(c) or (d). *Nix*, 160 F.3d at 352; *Marsh v. Curran*, 362 F. Supp. 3d 320, 328 (E.D. Va. 2019); *Babb*, 614 F. Supp. 2d at 1243. "There is nothing in the [Federal Wiretap] Act which affords attorneys special treatment." *United States v. Wuliger*, 981 F.2d 1497, 1505 (6th Cir. 1992), *cert. denied*, 510 U.S. 1191, 114 S. Ct. 1293 (1994).

Indeed, courts in several jurisdictions have rejected common-law attorney immunity and litigation privilege defenses in this context. In *Lewton v. Divingnzzo*, 772 F. Supp. 2d 1046, 1060 (D. Neb. 2011), for example, the court concluded that an attorney was liable under the Federal Wiretap Act for "intentionally using and disclosing the plaintiffs' oral communications [ ] for the purpose of advancing [his client's] . . . position in the state court Custody Case."

Similarly, in *Nix*, the Sixth Circuit expressly "decline[d]" the "invitation to immunize attorneys for certain violations of [federal] and Ohio wiretap law." *Nix*, 160 F.3d at 352. This was

so even though the attorneys "disclosed the contents of the intercepted communications in relation to a judicial proceeding." *Id.*

Notably, "[a] client's disclosure of information she obtained in violation of wiretapping laws to her attorneys for a purpose other than defending herself against wiretapping charges violates the wiretapping laws." *Marsh*, 362 F. Supp. 3d at 329; *see* 18 U.S.C. § 2511(1); *Nix*, 160 F.3d at 351 (although a client may disclose the contents of intercepted communications to her attorneys when the facing wiretap charges, the disclosure or use "for purposes other than to prepare a defense against [ ] wiretap charges, exceeds the bounds of the privilege"). Thus, a client's communications with his attorneys "about using information from the intercepted conversations to prepare and prosecute [a] lawsuit fall within the crime/fraud exception to the attorney-client privilege." (N.D. Ill. 1987); *see also Marsh*, 362 F. Supp. 3d at 329; *Sound Video Unlimited, Inc. v. Video Shack, Inc.*, 661 F. Supp. 1482, 1486 (N.D. Ill. 1987).

Here, Respondents allege that Appellants, acting as legal counsel for Mr. Fulmer, violated the *South Carolina Homeland Security Act* when they deliberately accepted, used, and disseminated electronic communications made by Respondents that they knew were wrongfully intercepted by Mr. Fulmer from Respondent Anna's iWatch for the purpose of advancing Mr. Fulmer's position in the underlying Fulmer Action. This constitutes a violation of the Federal Wiretap Act and, by analogy, of the *South Carolina Homeland Security Act*. *See Guerrero-Flores*, 402 S.C. at 534, 741 S.E.2d at 580; *see also Nix*, 160 F.3d at 352; *Wuliger*, 981 F.2d at 1505; *Marsh*, 362 F. Supp. 3d at 328; *Lewton*, 772 F. Supp. 2d at 1060; *Babb*, 614 F. Supp. 2d at 1243; *Sound Video Unlimited*, 661 F. Supp. at 1489. The doctrine of common-law attorney immunity does not apply to shield Appellants from liability for this violation. *See Nix*, 160 F.3d at 352;

Wuliger, 981 F.2d at 1505; *Marsh*, 362 F. Supp. 3d at 328; *Lewton*, 772 F. Supp. 2d at 1060; *Babb*, 614 F. Supp. 2d at 1243.

Because the common-law doctrine of attorney immunity is inapplicable, the trial court's Orders appealed from do not infringe upon a substantial right of Appellants within the meaning of S.C. Code Ann. § 14-3-330(2)(c). Hence, Appellants are not entitled to pursue an interlocutory appeal of such Orders. *See Ex parte Wilson*, 367 S.C. at 13, 625 S.E.2d at 208.

CONCLUSION

For the foregoing reasons, Respondents' Motion to Dismiss the Appeal in its entirety should be granted.

Respectfully submitted:

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ALL COUNSEL FOR THE RESPONDENTS

June 3, 2024
Marion, South Carolina

Exhibit 1

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	CASE NO.: 2022-CP-26-06296
Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall, Plaintiffs, vs. William Bertram von Herrmann and The Von Herrmann Law Firm, Defendants.	**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS**

This matter comes before the Court on Defendants' Motion to Dismiss Plaintiffs' claims for (1) violation of the South Carolina Homeland Security Act, (2) invasion of privacy – publicizing private affairs, and (3) invasion of privacy – wrongful intrusion and outrage. For the reasons explained below, this Court GRANTS the motion in part and dismisses both invasion of privacy causes of action but DENIES the motion with respect to the alleged violation of the South Carolina Homeland Security Act.

Background

Plaintiffs Anna, Bryan, and Katherine Coggeshall brought this lawsuit against Attorney William Bertram von Herrmann and his law firm, The Von Herrmann Law Firm, asserting liability for the use and disclosure of Plaintiffs' electronic communications that Mr. von Herrmann was provided by his client, Justin Fulmer.

Plaintiffs allege Mr. Fulmer illegally acquired Plaintiff Anna's iWatch, and accessed her and Plaintiffs Bryan and Katherine's electronic communications. Plaintiffs assert Mr. Fulmer "or his agent" copied the electronic communications, and Defendants printed them. They assert Defendants used the electronic communications to bring a lawsuit against the Plaintiffs on Mr. Fulmer's behalf (Fulmer Action). Plaintiffs allege Mr. Fulmer intercepted the electronic

communications and Defendants, with knowledge the information was "unlawfully obtained" disseminated the material. The Fulmer Action is still ongoing.

As a result of Defendants' actions, Plaintiffs brought this lawsuit in the Horry County Court of Common Pleas. Defendants removed the case to federal court because Plaintiffs' original complaint asserted a federal claim. Plaintiffs amended their complaint in federal court to remove the federal claim. Defendants moved to dismiss the amended complaint in federal court, Plaintiffs responded, and Defendants replied. Plaintiff also moved to remand the case back to state court. The federal court remanded the case to the Horry County Court of Common Pleas without deciding the motion to dismiss. This Court heard Defendants' Motion to Dismiss on August 14th, 2023.

Procedural Standard

When ruling on a Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP, "[t]he circuit court may dismiss a claim when the defendant demonstrates the plaintiff's 'failure to state facts sufficient to constitute a cause of action' in the pleadings filed with the court." *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 121, 634 S.E.2d 5, 7 (Ct. App. 2006). If, in viewing the complaint in the light most favorable to the plaintiff, the court determines the facts in the complaint are insufficient to entitle the plaintiff to the relief it seeks, the court should grant the motion. *Baird v. Charleston Co.*, 333 S.C. 519, 527, 511 S.E.2d, 69, 73 (1999). Dismissal at the pleading stage is warranted when a complaint against an attorney by a non-client fails to state facts sufficient to remove the attorney from the ambit of general immunity. *Hager v. McCabe, Trotter & Beverly, P.C.*, 435 S.C. 740, 747, 869 S.E.2d 886, 889 (Ct. App. 2022); *see also Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995).

Legal Analysis

Defendants argue Plaintiffs' claims should be dismissed based on the attorney-immunity doctrine. After considering Defendants' arguments in their motion and reply, Plaintiffs' response, and the arguments at the hearing, this Court finds the attorney-immunity doctrine shields Defendants from the invasion of privacy claims, but the defense does not apply to the alleged violation of the South Carolina Homeland Security Act.

Attorney-Immunity and Invasions of Privacy

Attorneys are immune from liability to a third party arising from the performance of their professional activities on behalf of and with the knowledge of the client. *Hager*, 435 S.C. at 746, 869 S.E.2d at 889; *see also Stiles*, 318 S.C. at 298, 457 S.E.2d at 602; *Gaar v. North Myrtle Beach Realty Co.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986). Attorneys normally conduct litigation solely in their professional capacity and have no personal interest in the lawsuit. *Garr*, 287 S.C. at 529, 339 S.E.2d at 889. Even if the client has no probable cause to bring a lawsuit, the attorney who brings the lawsuit is not liable to the party sued if the attorney acts primarily to aid the client in obtaining an adjudication of the client's claim. *Id.* (citing *Restatement (Second) of Torts*, § 674 cmt. d. (1975)). An attorney is not liable to a third-party in giving the client poor advice. *Hager*, 435 S.C. at 747, 869 S.E.2d at 889. "The purpose of the doctrine of attorney immunity is to encourage zealous representation of clients without fear of lawsuits by disgruntled opposing parties." *Hunt v. Mortgage Electronic Registration*, 522 F. Supp. 2d 749, 758 (D.S.C. 2007).

Immunity will not shield an attorney, however, if in addition to representing the client, the attorney (a) breaches an independent duty to a third party, or (b) "acts in his own personal interest[] outside the scope of his representation of the client." *Stiles*, 318 S.C. at 300, 457 S.E.2d at 602. A complaint that fails to allege the lawyer acted in his own personal interest and

outside the scope of his representation of the client should be dismissed. *Hager*, 435 S.C. at 747, 869 S.E.2d at 889; *see also Stiles* 318 S.C. at 300, 457 S.E.2d at 602. The doctrine has barred many different common law claims against attorneys, including those for fraud, conversion, civil conspiracy, and malicious prosecution. *See, e.g.*, *Hager*, 435 S.C. at 747, 869 S.E.2d at 889 (fraud and conversion); *Stiles*, 318 S.C. at 300; 457 S.E.2d at 603 (civil conspiracy); *Gaar*, 339 S.E.2d at 889 (malicious prosecution).

This Court finds that Plaintiffs' claims for Invasion of Privacy are barred by the attorney-immunity defense. Attorney-immunity is a common law defense that has prevented common-law claims, such as civil conspiracy and malicious prosecution, when the attorney was acting with the client's knowledge and within scope of the representation. Taking the allegations of the amended complaint as true at the motion to dismiss stage, the amended complaint makes clear that the invasions of privacy took place while Defendants were representing Mr. Fulmer—alleging that Defendants used the communications to bring a lawsuit against Plaintiffs on Mr. Fulmer's behalf. The amended complaint is devoid of any allegations Defendants breached some independent duty to the Plaintiffs or acted in their own interests and outside the scope of their representation of Mr. Fulmer. This is precisely the scenario for which attorney immunity exists and Courts have relied upon to dismiss common law claims previously. Accordingly, this Court agrees with Defendants and DISMISSES with prejudice Plaintiffs' causes of action for (1) invasion of privacy – publicizing private affairs, and (2) invasion of privacy – wrongful intrusion and outrage.

Attorney Immunity and South Carolina Homeland Security Act (Act)

Defendants argue attorney immunity applies to the Act because the legislature enacts against the backdrop of common law and, pursuant to statutory interpretation rules of plain meaning and strict construction, the Act does not clearly and unambiguously change the common

law in a way that abrogates the attorney-immunity defense. Plaintiffs, on the other hand, argue that attorney-immunity does not apply because the Act does not expressly exempt attorneys from its application. Although this is a novel question in South Carolina, this Court agrees with Plaintiffs and finds the attorney-immunity defense does not apply to the Act.

The Act makes it a felony for any "person" to intentionally disclose to another person, or use, the contents of any electronic communication, "knowing or having reason to know that the information was obtained through the interception" of an electronic communication. *See* S.C. Code Ann. § 17-30-20(3) & (4). The Act creates a civil cause of action, stating that "[a]ny person whose . . . electronic communication is intercepted, disclosed, or used in violation of this chapter has a civil cause of action against any person or entity who intercepts, discloses, or uses . . . the communications." S.C. Code Ann. § 17-30-135(A). The statute creating the civil cause of action lists one defense: "A good faith reliance on a court order, subpoena, or request of an agent of the South Carolina Law Enforcement Division under [s]ection 17-30-95 constitutes a complete defense to any civil . . . action, other than an action for preliminary or equitable or declaratory relief." S.C. Code Ann. § 17-20-135(B). The statute is otherwise silent on the application of any defenses. Further, the Act explains in what circumstances the interception of an electronic communication is legal, section 17-30-35, and exempts the employees of the Federal Communications Commission and employees of providers of communications services in certain scenarios. *See* §§ 17-30-25, 17-30-35.

This Court finds that attorneys fall within the common meaning of "any person" as used in the Act and, therefore, the Act applies to attorneys. This Court finds that if the South Carolina legislature had intended to exempt attorneys from liability under the Act, it could have expressly included that group as it did employees of certain entities. Because the Act applies to attorneys and the legislature did not expressly exempt attorneys, this Court finds the common law

attorney-immunity defense does not apply to claims arising under the Act. Therefore, Defendants' Motion to Dismiss the claim under the Act is DENIED and Defendants cannot assert the defense going forward.

Conclusion

After considering the arguments and authorities cited by Defendants in their Motion to dismiss and reply, by Plaintiffs in response to the Motion to Dismiss, and the arguments at the hearing, it is ORDERED:

1. Defendants' Motion to Dismiss Plaintiffs' Amended Complaint is GRANTED as to the Plaintiffs' claims for (1) invasion of privacy – publicizing private affairs, and (2) invasion of privacy – wrongful intrusion and outrage, and such claims are hereby dismissed with prejudice; and

2. Defendants' Motion to Dismiss Plaintiffs' Amended Complaint is DENIED as to Plaintiffs' claim for violation of the South Carolina Homeland Security Act and Defendants cannot assert the attorney-immunity defense going forward.

SO ORDERED!

The Honorable Kristi F. Curtis
Fifteenth Judicial Circuit

[Electronic Signature Page Follows]

Horry Common Pleas

Case Caption:	Anna Coggeshall , plaintiff, et al VS William Bertram Von Herrmann , defendant, et al
Case Number:	2022CP2606296
Type:	Order/Dismissal

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Exhibit 2

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FIFTEENTH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	2022-CP-26-06296
	)	
Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall,	)	
	)	**ORDER DENYING THE MOTION TO RECONSIDER**
Plaintiff,	)	
vs.	)	
	)	
William Bertram von Herrmann and The Von Herrmann Law Firm,	)	
	)	
Defendant,	)	

PRESIDING JUDGE:	The Honorable Krisi F. Curtis
DATE OF HEARING:	December 19, 2023
ATTORNEY FOR PLAINTIFF:	Steve Abrams, *Esq.* and Richard Whiting, *Esq.*
ATTORNEY FOR DEFENDANT:	Skyler C. Wilson, *Esq.* and Douglas W. MacKelcan, *Esq.*

This matter comes before the court pursuant to the Defendants' Notice of Motion and Motion for Reconsideration of its Order filed November 10, 2023.

After further review of the Defendants' Motion for Reconsideration in this matter, the Defendants' Motion is respectfully denied. The court recognized that this is a Novel Issue, but is persuaded by the reasoning contained in Plaintiffs' original Reply to the Defendants' original Motion, filed May 7, 2023.

The controlling statute is extremely broad. This statute mirrors the Federal Wiretap Action in many respects in that it prohibits the interception of electronic communications as well as the disclosure of illegally intercepted communications. The South Carolina Homeland Security Act is the State's equivalent of the Federal Electronic Communication Privacy Act, which also expressly

prohibits any evidence derived from the illegally intercepted communication from being entered into evidence in any trial, hearing or other proceeding before any court. See South Carolina code §17-30-65. The only exception for court proceedings is that set forth in South Carolina code §17-30-75, which allows for disclosure while giving testimony under oath in criminal and grand jury proceedings. This statute also specifically allows disclosure by SLED to attorneys who are authorized by law to investigate and prosecute certain alleged crimes.

It is illogical for the legislation to specifically carve out this narrow exception while also intending to allow broad common law immunity for disclosure by attorneys in civil and family court narratives.

The court finds that it would be illogical for the legislation to prohibit a pro se individual from disclosing the contents of electronic communications (and to make any such disclosure actionable) while allowing that individual's attorney to take the exact same actions with absolute immunity. Accordingly, the Defendants' Motion for Reconsideration is denied.

AND IT IS SO ORDERED.

_____

The Honorable Kristi F. Curtis
Presiding Circuit Judge

_____, 2024.

Horry, South Carolina.

Horry Common Pleas

Case Caption:	Anna Coggeshall , plaintiff, et al VS William Bertram Von Herrmann , defendant, et al
Case Number:	2022CP2606296
Type:	Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Exhibit 3

The South Carolina Court of Appeals

Justin Shayne Fulmer, Respondent,

v.

Melissa Emery Buckhannon Esq., Frazier Law Firm P.C., SC House Calls, Inc., Anna Coggeshall, Bryan Coggeshall, Katherine Coggeshall, Lauren Trent Fulmer, and Thomas Buckhannon, Defendants.

Of whom Anna Coggeshall is the Petitioner.

Appellate Case No. 2022-000330

ORDER

This case involves two ongoing family court and circuit court actions: Justin Fulmer (Fulmer) is the plaintiff in an ongoing civil matter (Civil Case) [1] against Anna Coggeshall, Lauren Trent Fulmer (Trent), and Frazier Law Firm, P.C. (Frazier), and a party in a divorce action (Divorce Action) with Trent. Coggeshall filed a motion to suppress the contents of text messages pursuant to section 17-30-110 of the South Carolina Code (2014), a part of the South Carolina Homeland Security Act. *See* S.C. Code Ann. §§ 17-30-10 to -145 (2014). Sections 17-30-110 and 17-30-15 require that this court hear the motion to suppress. *See* § 17-30-110(A) (requiring motions to suppress the contents of intercepted wire or oral communications be made to the "reviewing authority"); § 17-30-15(9) (defining "[r]eviewing authority" as "a panel of three judges of the South Carolina Court of Appeals"). Coggeshall contends Fulmer illegally intercepted text messages sent between her and several individuals utilizing an Apple iWatch that was stolen from her home. Trent and Frazier moved to join the motion because their communications with Fulmer were among those

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[1] Justin claims he filed the Civil Case because he believed the communications involved "a scheme to undermine his relationship with his young daughter."

obtained by Fulmer using the iWatch. We grant the motions to join and the motion to suppress.

FACTS

Coggeshall and Fulmer have one child together, a daughter (Daughter). According to Coggeshall, she discovered her Apple iWatch—which was "synched" with her phone and received copies of text messages between herself and others—went missing while she and Fulmer were in the midst of paternity, child support, and custody litigation (Custody Litigation) over Daughter. When that litigation concluded in December 2021, Coggeshall discovered text messages obtained from her missing iWatch were being used by Fulmer as the basis for the Civil Case against Coggeshall, Trent, Frazier, and others.[2]

Fulmer claims the iWatch in question belongs to him and that he "allowed" Coggeshall to use his iWatch in the past. He asserts Coggeshall later returned the device to him and he noticed her "messages began appearing on the watch." He argues Coggeshall failed to delete her electronic information from the iWatch or take other "precautions to secure the contents of the device." While the parties dispute ownership of the iWatch, they agree Fulmer currently possesses the watch and used it to view text messages that were sent to and from Coggeshall's cell phone.

INTERPRETATION OF THE HOMELAND SECURITY ACT

"The Homeland Security Act is patterned after Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510–22 (2002) (Federal Act)." *State v. Guerrero-Flores*, 402 S.C. 530, 534, 741 S.E.2d 577, 580 (Ct. App. 2013). "[F]ederal cases analyzing comparable provisions of the Federal Act are persuasive in interpreting the provisions of the Homeland Security Act . . . ." *Id.*

MOTIONS TO JOIN

"The decision to grant or deny a motion to join an action pursuant to Rule 19, SCRCP, or intervene in an action pursuant to Rule 24, SCRCP, lies within the sound discretion of the trial court." *Ex parte Gov't Emps. Ins. Co. (Ex parte*

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[2] The Civil Case includes other named defendants, but they did not move to join Coggeshall's motion.

GEICO), 373 S.C. 132, 135, 644 S.E.2d 699, 701 (2007). Rule 24(a), SCRCP provides:

> Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

"Generally, the rules of intervention should be liberally construed where judicial economy will be promoted by declaring the rights of all affected parties." *Ex parte GEICO*, 373 S.C. at 138, 644 S.E.2d at 702. Accordingly, this court "should consider the practical implications of a decision denying or allowing intervention." *Id.* "A party has standing if the party has a personal stake in the subject matter of a lawsuit and is a 'real party in interest.'" *Id.* (quoting *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994)).

> Prior to any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority, *any aggrieved person* may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that the: (1) communication was unlawfully intercepted . . . . The reviewing authority may, in its discretion, conduct a hearing and require additional testimony or documentary evidence.

§ 17-30-110(A) (emphasis added).

We find Frazier and Trent are "aggrieved person[s]" pursuant to the Homeland Security Act because their communications with Coggeshall were among those obtained by Fulmer and resolution of Coggeshall's motion inevitably impacts their rights in the Civil Case. *See* § 17-30-110(A) (stating any aggrieved person may move to suppress the contents of intercepted communications); Rule 24(a)(2), SCRCP (stating anyone claiming an interest related to the transaction at issue and "so situated that disposition of the action may . . . impair or impede his ability to

protect that interest" should be permitted to intervene in an action). Accordingly, we grant both motions to join.

MOTION TO SUPPRESS

"The interception of wire, electronic, or oral communications is hereby authorized only in the manner permitted by this chapter." § 17-30-10. The Act is violated when a person "intentionally intercepts . . . any wire, oral, or electronic communication"; "intentionally discloses or attempts to disclose to any other person the contents of any . . . electronic communication, knowing or having reason to know the information was obtained through the interception of a[n] . . . electronic communication"; or when a person "intentionally uses or attempts to use the contents of any . . . electronic communication, knowing or having reason to know that the information was obtained through the interception of a[n] . . . electronic communication." § 17-30-20(1), (3), (4).

"'Intercept' means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device." § 17-30-15(3). An "'[e]lectronic, mechanical, or other device' means any device or apparatus which can be used to intercept a wire, electronic, or oral communication." § 17-30-15(4). An "aggrieved person" is any person "who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed." § 17-30-15(10). "Whenever any wire, oral, or electronic communication has been intercepted, no part of the contents of the communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court . . . ." § 17-30-65(A).

In *United States v. Szymuszkiewicz*, the Seventh Circuit observed an interception must be "contemporaneous" with the sending of the communication, which includes communications obtained while in transit between intended devices and also communications that are received by an intended recipient but then, through programming, automatically forwarded to an unintended recipient. 622 F.3d 701, 705-06 (7th Cir. 2010). In *Epstein v. Epstein*, the Seventh Circuit clarified its reasoning in *Szymuszkiewicz*, noting an interception "need not occur at the time the wrongdoer *receives* the [communication]" because "'copying [the communication] at the server was the unlawful interception.'" 843 F.3d 1147, 1150 (2016) (quoting *Szymuszkiewicz*, 622 F.3d at 704).

Based on the affidavits provided by the parties, we find the preponderance of the evidence indicates Coggeshall was the rightful owner of the iWatch. Accordingly, Fulmer's repeated use of the device to view her text messages amounted to interceptions under the Homeland Security Act. *See* § 17-30-15(3) (defining an interception as the acquisition of electronic communications through the use of any electronic device); § 17-30-20 (prohibiting the intentional interception of electronic communications). Further, even if Fulmer was the original owner of the iWatch, we find there is no evidence Coggeshall gave him permission to access her communications on the device. *See Berry v. Funk*, 146 F.3d 1003, 1010-11 (D.C. Cir. 1998) (stating that implicit consent to an interception, absent actual notice, may only be implied "when '[t]he surrounding circumstances [] convincingly show that the party knew about and consented to the interception'" (quoting *United States v. Lanoue*, 71 F.3d 966, 981 (1st Cir. 1995))).

CONCLUSION

Accordingly, we grant Coggeshall's motion to suppress and prohibit Fulmer from using these communications in the Civil Case and Divorce Action and any potential future litigation. *See* § 17-30-65(A) ("Whenever any wire, oral, or electronic communication has been *intercepted*, no part of the contents of the communication and no evidence derived therefrom may be received in evidence in *any* trial, hearing, or other proceeding . . . ." (emphases added)). Additionally, we deny Coggeshall's request for attorney's fees.[3] Any further motions concerning these cases should be addressed to the family and circuit courts.

C.J.

J.

J

[3] However, the parties may still pursue attorney's fees and damages in a civil action. *See* § 17-30-135(A)(4) ("Any person whose wire, oral, or electronic communication is *intercepted* . . . has a civil cause of action . . . and is entitled to recover . . . a reasonable attorney's fee and other litigation costs reasonably incurred." (emphasis added)).

FILED
Sep 02 2022

Columbia, South Carolina

cc:
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Richard Giles Whiting, Esquire
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Jun 03 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge
Case No.: 22-CP-26-06296

Appellate Case No. 2024-000786

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall.....Respondents

v.

William Bertram von Hermann and The Von Herrmann Law Firm.....Appellants.

PROOF OF SERVICE

I certify that I have served ***Motion To Dismiss Appeal,*** upon the parties below by electronic mail, addressed as follows:

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This 3rd day of June, 2024

S/ Robert E. Lee
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Via EMAIL and Regular Mail

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RE: Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall v William Bertram von Herrmann and The Von Herrmann Law Firm
Appeal case No.: 2024-000786

Dear Ms. Kitchings:

Enclosed find Respondents, Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall's Motion to Dismiss Appeal in the above-referenced case, Proof of Service, and Respondents' service email and letter to Appellants counsel.

Sincerely yours,

ROBERT E. LEE

REL:bss
Enclosures: *as stated above*

cc: Douglas MacKelcan, Esq.; Skyler C. Wilson
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FLORENCE MARION NORTH MYRTLE BEACH

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge
Case No.: 2022-CP-26-06296

Appellate Case No. 2024-000786

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall .....Respondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm. ..... Appellants.

Appellants' Memorandum in Opposition to Respondents' Motion to Dismiss

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Introduction

This appeal involves a claim arising under the South Carolina Homeland Security Act (the Act) against an attorney for actions taken in the scope of the attorney's representation of a client in litigation, raising the novel issue of whether our common law attorney-immunity defense applies to shield an attorney against liability for claims under the Act for the disclosure or use of allegedly intercepted electronic communications. The defense does apply to claims under the Act. Appellants raised this novel issue to the circuit court via motion to dismiss, but the circuit court disagreed and denied that aspect of the motion. Yet the circuit court went further, ruling that Appellants "cannot assert the defense going forward." This additional ruling is why immediate appeal is required and why this Court must deny Respondents' Motion to Dismiss.

Background

Respondents Anna, Bryan, and Katherine Coggeshall filed suit against Attorney William Bertram von Herrmann and his law firm, The Von Herrmann Law Firm, asserting liability for the use and disclosure of Respondents' electronic communications that Mr. von Herrmann was provided by his client, Justin Fulmer. Respondents assert Appellants used the electronic communications to bring a lawsuit against the Respondents on Mr. Fulmer's behalf (Fulmer Action). Respondents allege Mr. Fulmer intercepted the electronic communications and Appellants, with knowledge the information was "unlawfully obtained", disseminated the material. This Court addressed the interception in the Fulmer Action. ***See* Resp. MTD, Ex. 3**. The Fulmer Action was tried to verdict in December 2023, and is being appealed.

In the present lawsuit, Appellants originally asserted claims for violation of the South Carolina Homeland Security Act (S.C. Code Ann. § 17-30-10, *et seq.*), the Computer Fraud and Abuse Act (18 U.S.C. § 1030), and Invasion of Privacy for publicizing private affairs and for wrongful intrusion and outrage. Respondents removed the case to federal court based on the federal claim and moved to dismiss based on the defense of attorney immunity. Appellants quickly voluntarily dismissed the federal claim to deprive the federal court of jurisdiction. As a result, the federal court remanded the case and did not rule on the motion to dismiss.

On remand, the circuit court granted in part and denied in part Appellants' motion to dismiss. **Ex. A**. The court ruled that attorney immunity barred Respondents' claims for Invasion of Privacy. The court noted that the Amended Complaint made clear Attorney von Herrmann's allegedly wrongful actions took place while he was representing Mr. Fulmer. Because the Amended Complaint did not allege Respondents breached an independent duty to Appellants, or

that Respondents acted in their own interest and outside the scope of representing Mr. Fulmer, Respondents were protected by the attorney-immunity defense. **Ex. A.**

However, the court found, as a matter of law on a novel issue, that the common law attorney-immunity defense did not apply to claims under the South Carolina Homeland Security Act. The court denied Respondents' motion to dismiss the Homeland Security Act claim, and found Respondents "cannot assert the defense going forward." Respondents timely moved for reconsideration, but the court denied that motion. ***See*** **Exs. B & C**.

Preventing Appellants from asserting and litigating the attorney immunity defense is precisely why an immediate appeal is necessary. In their notice of appeal, Appellants preemptively briefed the issue of appealability. Respondents moved to dismiss the appeal on June 3, 2024, arguing that the orders are not immediately appealable. Appellants submit this response to Respondents' motion to dismiss.

Argument

As a threshold matter, it is not apparent from Respondents' motion to dismiss whether they paid the $50 filing fee required under Rule 240(d) of the South Carolina Appellate Court Rules. If they did not, this Court could find Respondents have abandoned their motion. *See* Rule 240(g), SCACR ("Failure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition."). If Respondents have paid, or this Court allows them to pay, this Court should deny the motion. For the Court's ease of reference, Appellants include below the arguments from the Notice of Appeal on appealability. Appellants then address the arguments in Respondents' motion.

I. The Circuit Court's orders are immediately appealable because they involve the merits and have the effect of striking Respondents' defense of attorney immunity.

The right to an appeal is governed by statute. Section 14-3-330(1) of the South Carolina Code permits appeal of "[a]ny intermediate judgment, order or decree in a law case involving the merits." Section 14-3-330(2)(c) also permits immediate appeal of an "[a]n order affecting a substantial right made in an action when such order . . . (c) strikes out an answer or any part thereof or any pleading in any action." An appeal can arise under either or both. *Link v. Sch. Dist. of Pickens Cnty.*, 302 S.C. 1, 6, 393 S.E.2d 176, 178 (1990).

"An order involves the merits under [section]14-3-330(1) when it finally determines some substantial matter forming the whole or part of a cause of action or defense." *Stone v. Thompson*, 426 S.C. 291, 294, 826 S.E.2d 868, 869-70 (2019) (finding that order determining couple were common-law married was immediately appealable despite the remaining claims for divorce and equitable distribution because the determination of marriage was a substantial part of the causes of action and defenses); *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988).

"An order affects a substantial right by striking a pleading if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial." *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011). In determining whether an order "strikes" a material issue from the case, the court must examine "the effect of the order, not the label given to the motion or to the order granting it." *Id.* at 303, 705 S.E.2d at 479. "If the circuit court errs in striking out any material allegations of a good cause of action or good defense, *it is impossible to remedy it in the course of the trial*, because the evidence and the issues submitted to the jury cannot be extended beyond the issues made by the pleading, and on appeal

from the final judgment this court could not say there was error of law in confining the evidence and charge to the pleadings." *Id.* at 303-04, 705 S.E.2d at 479 (emphasis added) (quoting *Bowden v. Powell*, 194 S.C. 482, 484, 10 S.E.2d 8, 9 (1940)). Ultimately, appealability is determined on a case-by-case basis. *Stone*, 426 S.C. at 295, 826 S.E.2d at 870.

No court has decided the appealability of an order denying a motion to dismiss based on the attorney-immunity defense under *Gaar v. N. Myrtle Beach Realty Co*. In addition, no appellate court has addressed the common law attorney-immunity defense's application under the South Carolina Homeland Security Act. As a general matter, denials of motions to dismiss are usually not immediately appealable. And some courts have held that denials of motions to dismiss on other immunity claims are not immediately appealable. *Brown v. Cnty. of Berkeley*, 366 S.C. 354, 361, 622 S.E.2d 533, 537 (2005) (finding denial of individual county council members' motion to dismiss based on absolute immunity was not immediately appealable).

However, orders denying motions to dismiss based on immunity claims are usually not appealable because the order denying the motion to dismiss is not supposed to finally decide anything about a case and the litigants are free to raise the issues at a later point in the case. *Id.* ("Furthermore, the trial court's denial of the individual council members' motion to dismiss does not preclude the individual council members from raising the issues presented in their motion at a later point in the case."); *see Frazier v. Badger*, 361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004) (noting immunity under the Tort Claims Act must be proven at trial because it is an affirmative defense). These decisions are based on the principle the "denial of a Rule 12(b)(6) motion does not establish the law of the case nor does it preclude a party from raising the issue at a later point or points in the case." *Bessinger v. Bi-Lo, Inc.*, 366 S.C. 426, 431, 622 S.E.2d 564, 567 (Ct. App. 2005).

Considering that appealability is determined on a case-by-case basis and the court must examine the effect of the order appealed from, this Court must examine the effect of the order denying attorney-immunity's application to claims under the Homeland Security Act to determine appealability.

Here, the order is immediately appealable because it involves the merits and has the effect of striking a good defense. The order explicitly states that Appellants "cannot assert the [attorney-immunity] defense going forward." Because it prevents Appellants from asserting the attorney-immunity defense during litigation, the order has "finally determined" a substantial matter forming the whole or part of a defense and, therefore, "involves the merits" and is immediately appealable under 14-3-330(1). *See Stone*, 426 S.C. at 294, 826 S.E.2d at 869-70. In addition, because the order has the effect of striking a defense and removing the material issue from the case, it affects a substantial right, prevents the issue from being litigated on the merits and, therefore, is appealable under 14-3-330(2)(c). As stated in *Thorton*, the court's ruling that Respondents cannot assert the defense going forward is impossible to remedy in the course of a trial in this case because the evidence and issues submitted to the jury cannot extend beyond the issues in the pleadings. *Thorton*, 391 S.C. at 303-04, 705 S.E.2d at 479. This deprives the appellate court from being able to evaluate on appeal after trial if there was an error of law confining the evidence and jury charges to the pleadings, which would not include attorney-immunity because the court explicitly stated Respondents cannot assert the defense moving forward. *Id.* Because Appellants cannot assert the defense, they are prevented from raising the issue at a later point in time in the case. Therefore, the reasoning in *Brown* is not applicable because the council members could continue to litigate the issue of their claimed immunity. Further, the circuit court's order purports to do exactly what denials of motions to dismiss are not supposed to do—it establishes the law of the case and

explicitly precludes Appellants from raising the issue at a later point in the case. The order expressly forecloses Appellants from continuing to litigate attorney immunity.

Moreover, this case presents novel issues on the interplay of attorney immunity and liability under the South Carolina Homeland Security Act. Respondents are attempting to impose liability on Appellants for quintessential attorney activities—bringing a lawsuit on behalf of a client and engaging in discovery. Because the claim relates to attorney activities, discovery and litigation will include getting into attorney-client privileged and work-product doctrine protected material generated in the underlying Fulmer Case—which is currently on appeal before this Court. The novelty of the issues and the dangers of discovery intruding upon privileges essential to the functioning of our justice system warrants finding the orders are immediately appealable and addressing the merits.

II. Respondents do not address the language in the order precluding Appellants from continuing to litigate attorney immunity and their motion demonstrates that this Court should address the substance of the Court's orders.

Respondents do not address the primary reason that the order is appealable: the language precludes Appellants from litigating attorney immunity. Instead, Respondents argue that the circuit court's ruling denying the motion to dismiss is not immediately appealable under section 14-3-330(1) because it "in no way represented or signaled the ultimate conclusion that Appellants did, in fact, violate" the Act. **Resp. MTD, 7**. This is not the standard for appeals under section 14-3-330(1). An order involves the merits under 14-3-330(1) when it finally determines some substantial matter forming the whole or part of a cause of action or defense. *See Stone*, 426 S.C. at 294, 826 S.E.2d at 869-70. The standard is not that the order must determine the entirety of the action, otherwise it would be a final order and not "interlocutory." Further, Respondents argue in their motion that the circuit court came to the correct conclusion that attorney immunity does not

apply to claims under the Act. Certainly, the circuit court determining that the attorney immunity defense does not apply is a final determination on a matter forming the whole or part of a defense and is immediately appealable.

Respondent also argues that the order did not affect a substantial right of appellants because it did not strike an answer and, therefore, is not appealable under 330(2)(c). Respondents add that Appellants did not have a substantial right to use the text messages. **Resp. MTD, 7**. This is not the standard for appealability under section 14-3-330(2)(c). An order affects a substantial right under section 14-3-330(2)(c) when it has the effect of striking any material allegations of a good defense, making it impossible to remedy in the course of trial. *See Thorton*, 391 S.C. at 303-04, 705 S.E.2d at 479. By finding attorney immunity does not apply under the Act and preventing Appellants from litigating the issue in the course of trial, the order has the effect of striking the defense and it cannot be corrected during trial. Therefore, the orders are immediate appealable under section 14-3-330(2)(c).

Respondents' arguments for appealability rely on a determination that attorney immunity does not apply and should be construed as a waiver of Respondents' appealability argument or, at the very least, demonstrates that this Court must hear the appeal immediately.

Beginning at page seven of their motion, Respondents argue that Appellants do not have a substantial right to use the allegedly intercepted messages. Respondents then refer to this Court's order in the Fulmer case finding the messages were intercepted, and how the Act applies to any "person," which would include Appellants. Respondents state that because Appellants did not have a substantial right to utilize the messages, the orders denying application of attorney immunity are not immediately appealable. Respondents then spend five pages addressing why the common law attorney-immunity defense does not apply under the Act, analogizing to the Federal

Wiretap Act and various federal court cases addressing the application of state common law attorney-immunity defenses to claims under the Federal Wiretap Act. Respondents conclude that because attorney immunity is inapplicable to claims under the Act, the circuit court's orders do not infringe a substantial right under section 14-3-330(2)(c). **Resp. MTD, 13**.

Respondents' arguments should be construed as a waiver of the appealability issue or at least demonstrate this Court must hear the appeal now. Respondents' argument is that the order that determined "common law attorney immunity does not apply to claims under the Act" is interlocutory and not appealable because the order did not determine a substantial right, there being no substantial right because "attorney immunity does not apply to claims under the Act." In other words, Respondents are asking this Court to find that the order is not immediately appealable because attorney immunity does not apply to the Act. By asking this Court to address the merits of the underlying order on appeal to reach a decision on appealability, Respondents have waived arguments that the issue is not immediately appealable—it is a position inconsistent with the effect of the relief requested in their motion.

Even if there is no waiver, Respondents' arguments demonstrate that the Court must hear the appeal. If this Court were to address Respondents' arguments that the orders are not appealable because they do not affect a substantial right, this Court would have to evaluate and determine whether the appeal involves an order affecting a substantial right. According to Respondents, the appeal does not involve a substantial right because common law attorney immunity does not apply to claims under the Homeland Security Act. Thus, to determine whether the appeal should be dismissed, this Court must determine whether the common law attorney immunity defense applies to claims under the Act such that it would or would not be a substantial right. Although

Respondents' arguments generally miss the mark, Appellants agree that this Court should just go ahead and address the application of attorney immunity to claims under the Act.

Conclusion

This Court should deny Respondents' motion to dismiss because the orders are immediately appealable. The orders "involve the merits" because they prevent Appellants from asserting the attorney-immunity defense during litigation, finally determining a substantial matter forming the whole or part of a defense under section 14-3-330(1). Further, the orders are immediately appealable under section 14-3-330(2)(c) because they remove the material issue of attorney immunity from the case, and prevent Appellants from litigating the issue on the merits and seeking to correct errors in the order during or after trial.

Respondents' arguments to the contrary are unconvincing and, because their appealability arguments rely on this Court itself determining whether attorney immunity applies under the Act, this Court should deny the motion to dismiss and allow the appeal to continue so it can address this novel issue.

COPELAND, STAIR, VALZ & LOVELL, LLP

June 13, 2024.

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	CASE NO.: 2022-CP-26-06296
Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall, Plaintiffs, vs. William Bertram von Herrmann and The Von Herrmann Law Firm, Defendants.	**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS**

This matter comes before the Court on Defendants' Motion to Dismiss Plaintiffs' claims for (1) violation of the South Carolina Homeland Security Act, (2) invasion of privacy – publicizing private affairs, and (3) invasion of privacy – wrongful intrusion and outrage. For the reasons explained below, this Court GRANTS the motion in part and dismisses both invasion of privacy causes of action but DENIES the motion with respect to the alleged violation of the South Carolina Homeland Security Act.

Background

Plaintiffs Anna, Bryan, and Katherine Coggeshall brought this lawsuit against Attorney William Bertram von Herrmann and his law firm, The Von Herrmann Law Firm, asserting liability for the use and disclosure of Plaintiffs' electronic communications that Mr. von Herrmann was provided by his client, Justin Fulmer.

Plaintiffs allege Mr. Fulmer illegally acquired Plaintiff Anna's iWatch, and accessed her and Plaintiffs Bryan and Katherine's electronic communications. Plaintiffs assert Mr. Fulmer "or his agent" copied the electronic communications, and Defendants printed them. They assert Defendants used the electronic communications to bring a lawsuit against the Plaintiffs on Mr. Fulmer's behalf (Fulmer Action). Plaintiffs allege Mr. Fulmer intercepted the electronic

communications and Defendants, with knowledge the information was "unlawfully obtained" disseminated the material. The Fulmer Action is still ongoing.

As a result of Defendants' actions, Plaintiffs brought this lawsuit in the Horry County Court of Common Pleas. Defendants removed the case to federal court because Plaintiffs' original complaint asserted a federal claim. Plaintiffs amended their complaint in federal court to remove the federal claim. Defendants moved to dismiss the amended complaint in federal court, Plaintiffs responded, and Defendants replied. Plaintiff also moved to remand the case back to state court. The federal court remanded the case to the Horry County Court of Common Pleas without deciding the motion to dismiss. This Court heard Defendants' Motion to Dismiss on August 14th, 2023.

Procedural Standard

When ruling on a Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP, "[t]he circuit court may dismiss a claim when the defendant demonstrates the plaintiff's 'failure to state facts sufficient to constitute a cause of action' in the pleadings filed with the court." *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 121, 634 S.E.2d 5, 7 (Ct. App. 2006). If, in viewing the complaint in the light most favorable to the plaintiff, the court determines the facts in the complaint are insufficient to entitle the plaintiff to the relief it seeks, the court should grant the motion. *Baird v. Charleston Co.*, 333 S.C. 519, 527, 511 S.E.2d, 69, 73 (1999). Dismissal at the pleading stage is warranted when a complaint against an attorney by a non-client fails to state facts sufficient to remove the attorney from the ambit of general immunity. *Hager v. McCabe, Trotter & Beverly, P.C.*, 435 S.C. 740, 747, 869 S.E.2d 886, 889 (Ct. App. 2022); *see also Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995).

Legal Analysis

Defendants argue Plaintiffs' claims should be dismissed based on the attorney-immunity doctrine. After considering Defendants' arguments in their motion and reply, Plaintiffs' response, and the arguments at the hearing, this Court finds the attorney-immunity doctrine shields Defendants from the invasion of privacy claims, but the defense does not apply to the alleged violation of the South Carolina Homeland Security Act.

Attorney-Immunity and Invasions of Privacy

Attorneys are immune from liability to a third party arising from the performance of their professional activities on behalf of and with the knowledge of the client. *Hager*, 435 S.C. at 746, 869 S.E.2d at 889; *see also Stiles*, 318 S.C. at 298, 457 S.E.2d at 602; *Gaar v. North Myrtle Beach Realty Co.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986). Attorneys normally conduct litigation solely in their professional capacity and have no personal interest in the lawsuit. *Garr*, 287 S.C. at 529, 339 S.E.2d at 889. Even if the client has no probable cause to bring a lawsuit, the attorney who brings the lawsuit is not liable to the party sued if the attorney acts primarily to aid the client in obtaining an adjudication of the client's claim. *Id.* (citing *Restatement (Second) of Torts*, § 674 cmt. d. (1975)). An attorney is not liable to a third-party in giving the client poor advice. *Hager*, 435 S.C. at 747, 869 S.E.2d at 889. "The purpose of the doctrine of attorney immunity is to encourage zealous representation of clients without fear of lawsuits by disgruntled opposing parties." *Hunt v. Mortgage Electronic Registration*, 522 F. Supp. 2d 749, 758 (D.S.C. 2007).

Immunity will not shield an attorney, however, if in addition to representing the client, the attorney (a) breaches an independent duty to a third party, or (b) "acts in his own personal interest[] outside the scope of his representation of the client." *Stiles*, 318 S.C. at 300, 457 S.E.2d at 602. A complaint that fails to allege the lawyer acted in his own personal interest and

outside the scope of his representation of the client should be dismissed. *Hager*, 435 S.C. at 747, 869 S.E.2d at 889; *see also Stiles* 318 S.C. at 300, 457 S.E.2d at 602. The doctrine has barred many different common law claims against attorneys, including those for fraud, conversion, civil conspiracy, and malicious prosecution. *See, e.g.*, *Hager*, 435 S.C. at 747, 869 S.E.2d at 889 (fraud and conversion); *Stiles*, 318 S.C. at 300; 457 S.E.2d at 603 (civil conspiracy); *Gaar*, 339 S.E.2d at 889 (malicious prosecution).

This Court finds that Plaintiffs' claims for Invasion of Privacy are barred by the attorney-immunity defense. Attorney-immunity is a common law defense that has prevented common-law claims, such as civil conspiracy and malicious prosecution, when the attorney was acting with the client's knowledge and within scope of the representation. Taking the allegations of the amended complaint as true at the motion to dismiss stage, the amended complaint makes clear that the invasions of privacy took place while Defendants were representing Mr. Fulmer—alleging that Defendants used the communications to bring a lawsuit against Plaintiffs on Mr. Fulmer's behalf. The amended complaint is devoid of any allegations Defendants breached some independent duty to the Plaintiffs or acted in their own interests and outside the scope of their representation of Mr. Fulmer. This is precisely the scenario for which attorney immunity exists and Courts have relied upon to dismiss common law claims previously. Accordingly, this Court agrees with Defendants and DISMISSES with prejudice Plaintiffs' causes of action for (1) invasion of privacy – publicizing private affairs, and (2) invasion of privacy – wrongful intrusion and outrage.

Attorney Immunity and South Carolina Homeland Security Act (Act)

Defendants argue attorney immunity applies to the Act because the legislature enacts against the backdrop of common law and, pursuant to statutory interpretation rules of plain meaning and strict construction, the Act does not clearly and unambiguously change the common

law in a way that abrogates the attorney-immunity defense. Plaintiffs, on the other hand, argue that attorney-immunity does not apply because the Act does not expressly exempt attorneys from its application. Although this is a novel question in South Carolina, this Court agrees with Plaintiffs and finds the attorney-immunity defense does not apply to the Act.

The Act makes it a felony for any "person" to intentionally disclose to another person, or use, the contents of any electronic communication, "knowing or having reason to know that the information was obtained through the interception" of an electronic communication. *See* S.C. Code Ann. § 17-30-20(3) & (4). The Act creates a civil cause of action, stating that "[a]ny person whose . . . electronic communication is intercepted, disclosed, or used in violation of this chapter has a civil cause of action against any person or entity who intercepts, discloses, or uses . . . the communications." S.C. Code Ann. § 17-30-135(A). The statute creating the civil cause of action lists one defense: "A good faith reliance on a court order, subpoena, or request of an agent of the South Carolina Law Enforcement Division under [s]ection 17-30-95 constitutes a complete defense to any civil . . . action, other than an action for preliminary or equitable or declaratory relief." S.C. Code Ann. § 17-20-135(B). The statute is otherwise silent on the application of any defenses. Further, the Act explains in what circumstances the interception of an electronic communication is legal, section 17-30-35, and exempts the employees of the Federal Communications Commission and employees of providers of communications services in certain scenarios. *See* §§ 17-30-25, 17-30-35.

This Court finds that attorneys fall within the common meaning of "any person" as used in the Act and, therefore, the Act applies to attorneys. This Court finds that if the South Carolina legislature had intended to exempt attorneys from liability under the Act, it could have expressly included that group as it did employees of certain entities. Because the Act applies to attorneys and the legislature did not expressly exempt attorneys, this Court finds the common law

attorney-immunity defense does not apply to claims arising under the Act. Therefore, Defendants' Motion to Dismiss the claim under the Act is DENIED and Defendants cannot assert the defense going forward.

Conclusion

After considering the arguments and authorities cited by Defendants in their Motion to dismiss and reply, by Plaintiffs in response to the Motion to Dismiss, and the arguments at the hearing, it is ORDERED:

1. Defendants' Motion to Dismiss Plaintiffs' Amended Complaint is GRANTED as to the Plaintiffs' claims for (1) invasion of privacy – publicizing private affairs, and (2) invasion of privacy – wrongful intrusion and outrage, and such claims are hereby dismissed with prejudice; and

2. Defendants' Motion to Dismiss Plaintiffs' Amended Complaint is DENIED as to Plaintiffs' claim for violation of the South Carolina Homeland Security Act and Defendants cannot assert the attorney-immunity defense going forward.

SO ORDERED!

The Honorable Kristi F. Curtis
Fifteenth Judicial Circuit

[Electronic Signature Page Follows]

Horry Common Pleas

Case Caption: Anna Coggeshall , plaintiff, et al VS William Bertram Von Herrmann , defendant, et al

Case Number: 2022CP2606296

Type: Order/Dismissal

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	FOR THE FIFTEENTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-26-06296
Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall, Plaintiffs, vs. William Bertram von Herrmann and The Von Herrmann Law Firm, Defendants.	**DEFENDANTS' MOTION FOR RECONSIDERATION OF ORDER DENYING IN PART MOTION TO DISMISS**

Defendants William Bertram von Herrmann and The Von Herrmann Law Firm, by and through their undersigned counsel and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, move this Court to reconsider its order denying in part Defendants' Motion to Dismiss because it has overlooked or failed to consider issues of law that warrant granting the motion in full.

BACKGROUND

Plaintiffs Anna, Bryan, and Katherine Coggeshall brought this lawsuit against Attorney William Bertram von Herrmann and his law firm asserting liability under various statutes and common law causes of action for the interception and disclosure of Plaintiffs' electronic communications that Mr. von Herrmann was provided by his client, Justin Fulmer. On behalf of their client Mr. Fulmer, Defendants sued the Plaintiffs based, in part, on the information in the electronic communications. Fulmer's lawsuit against the Coggeshalls is still ongoing. It is currently scheduled for trial on November 27, 2023.

FACTUAL ALLEGATIONS

Plaintiffs allege Mr. Fulmer illegally acquired Plaintiff Anna's iWatch, and accessed her and Plaintiffs Bryan and Katherine's electronic communications. ***See* Ex. 1 at ¶¶ 5-6**.

Plaintiffs' assert Mr. Fulmer "or his agent" copied the electronic communications, and Defendants printed them. ***Id.*** They assert Defendants used the electronic communications to bring a lawsuit against the Plaintiffs on Mr. Fulmer's behalf. ***Id.* at ¶¶ 6-7**. Plaintiffs allege Mr. Fulmer intercepted the electronic communications and Defendants, with knowledge the information was "unlawfully obtained," disseminated the material. ***Id.* at ¶ 10**.

PROCEDURAL BACKGROUND

As a result of Defendants' actions, Plaintiffs brought a lawsuit in the Horry County Court of Common Pleas. Because the lawsuit originally included a federal claim, Defendants removed the lawsuit to Federal Court and moved to dismiss based on attorney-immunity. **Ex. 2 (Notice of Removal); Ex. 3 (Motion to Dismiss)**. Plaintiffs amended their complaint to drop the federal claim and deprive the Federal Court of jurisdiction, and moved to remand the case. **Ex. 1 (Amended Complaint)**. Plaintiffs also opposed the motion to dismiss. **Ex. 4 (Pltfs MIO MTD)**. Defendants opposed remand, and replied to Plaintiffs' opposition to the motion to dismiss. **Ex. 5 (Defs Reply to Pltfs MIO MTD)**. The Federal Court remanded the case without deciding the motion to dismiss. **Ex. 6 (Order on Remand)**. In conjunction with the remand, Plaintiffs filed all of the federal court filings with the Horry County Court of Common Pleas.

This Court heard Defendants' Motion to Dismiss on August 14, 2023, and took the matter under advisement. **Ex. 7 (Form 4 Order)**. On November 1, 2023, this Court entered an Order granting in part and denying in part the motion to dismiss, finding the attorney-immunity doctrine did not apply to the alleged violations of the South Carolina Homeland Security Act. **Ex. 8 (Order on MTD)**. Defendants file the present Motion to Reconsider, requesting this Court amend its order and grant Defendants' Motion to Dismiss in full.

STANDARD

A motion for reconsideration is appropriate when "the court has misunderstood, failed to fully consider, or . . . failed to rule on an argument or issue." *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). "A party is usually allowed to ask the court to reconsider its decision even if it means rehashing an argument previously presented." *Id.* at 21, 602 S.E.2d at 778-79. Motions for reconsideration are a vehicle to call the court's attention to a possible misapprehension of an argument, and "to revisit a previously raised argument." *Id.*, 602 S.E.2d at 779.

ARGUMENT

This Court's November 1 Order found that the attorney-immunity defense did not apply to claims under the Homeland Security Act because the Act applies to any "person," which would include attorneys, and the legislature did not expressly exempt attorneys as it did other individuals or groups under the Act. The Court further found that Defendants could not assert the attorney-immunity defense moving forward. Defendants request this Court reconsider and amend its Order.

I. This Court should amend its order and grant Defendants' Motion to Dismiss because the correct statutory interpretation standard begins with a presumption the common law prevails unless expressly and unambiguously abrogated by statute.

The attorney-immunity defense is a common law doctrine. *See Gaar v. North Myrtle Beach Realty Co.*, 287 S.C. 525, 528-29, 339 S.E.2d 887, 889 (Ct. App. 1986). Although originating in South Carolina through the Court of Appeals in *Gaar*, the defense has been repeatedly sanctioned by our supreme court. *See, e.g., Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions*, 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010).

"[I]t is presumed that no change in common law is intended unless the Legislature explicitly indicates such an intention by language in the statute." *State v. Prince*, 316 S.C. 57,

66, 447 S.E.2d 177, 182 (1993) (citing *Nuckolls v. Great Atlantic & Pacific Tea Co.*, 192 S.C. 156, 5 S.E.2d 862 (1939)). Furthermore, statutes that limit the common law are strictly construed. *Eades v. Palmetto Cardiovascular and Thoracic, PA*, 422 S.C. 196, 201, 810 S.E.2d 848, 850 (2018). Such statutes "will 'not be extended beyond the clear intent of the legislature.'" *Id.* (quoting *Grier v. AMISUB of S.C., Inc.*, 397 S.C 532, 536, 725 S.E.2d 693, 695 (2012)). "The common law remains in full force and effect in South Carolina unless changed by clear and unambiguous legislative enactment." *Singleton v. State*, 313 S.C. 75, 83, 437 S.E.2d 53, 58 (1993).

These principles apply to statutes creating causes of action or rights where none existed at common law. *See, e.g.*, *Simpson v. Sanders*, 314 S.C. 413, 415, 445 S.E.2d 93, 94 (1994) (finding elective share statute was statute of creation in derogation of common law because common law previously permitted spouse to leave out surviving spouse from will and, therefore, the statute had to be strictly construed); *Crosby v. Glasscock Trucking Co.*, 340 S.C. 626, 628, 532 S.E.2d 856, 857 (2000) (strictly construing statute creating cause of action for wrongful death of a "person" as against common law principle that tort action dies with injured person and, therefore, the statute did not apply to death of nonviable, stillborn fetus); *Davenport v. Summer*, 273 S.C. 771, 772-73, 259 S.E.2d 815, 816 (1979) (finding statute permitting joinder of insurer to action did not change well-established common law that in motor vehicle collision cases the insurance carrier of defendant cannot be joined, recognizing statutes in derogation of common law rights are strictly construed and not be extended beyond clear legislative intent).

Our courts have found common-law defenses were not abrogated under similar statutory schemes. For example, the Payment of Wages Act requires unconditional payment to an employee of wages due, and is silent on whether the common law defense of breach of loyalty would permit an employer to withhold wages due under the Act. Our court of appeals found,

and our supreme court affirmed, that nothing in the Payment of Wages Act "directly or indirectly abrogate[d] the common law duty of loyalty owed to an employer by an employee." If the duty is breached, forfeiture of wages due under the Act is appropriate. *See Futch v. McAllister Towing of Georgetown, Inc.*, 328 S.C. 312, 318, 491 S.E.2d 577, 580 (S.C. Ct. App. 1997) ("Futch I"), *overruled on other grounds by* 335 S.C. 598, 518 S.E.2d 591 (1999) ("Futch II"); *Futch II*, 335 S.C. at 605, 518 S.E.2d at 594 (affirming court of appeals and finding "the Legislature did not intend to prevent employers from asserting valid defenses or counterclaims against employees"). *Futch I* and *Futch II* were applications of strict construction of statutes in derogation of common law.

Here, this Court should reconsider its ruling and grant the Motion to Dismiss because the ruling applied the incorrect standard. This Court interpreted the Act to apply to attorneys by referencing the any "person" language and found that, because the Act does not expressly exempt attorneys as a class but exempts other individuals and it lists one defense, the common-law attorney immunity defense does not apply. This ruling, however, is based on the presumption that the statute displaces common law—interpreting silence as to common-law defenses and classes of persons exempted from the Act to abrogate common law defenses. The logic of this interpretation works only if we begin with a presumption the common law does not apply unless expressly included within a statute. If this was true, then every single statute would have to expressly incorporate the common law because most apply to any "person."

South Carolina case law is clear, however, that the opposite presumption applies: we presume the common law is unchanged by a statute unless the language in the statute explicitly, clearly, or unambiguously indicates an intention to change the common law. *Prince*, 316 S.C. at 66, 447 S.E.2d at 182. The common law here is the defense of attorney-immunity. Thus, the Court must presume the attorney-immunity defense applies unless *explicitly*, *clearly*, or

unambiguously changed by the Act. Further, because the Act creates a cause of action where none existed, the Court must strictly construe the Act.

Presuming the attorney immunity applies and strictly construing the Act establishes there is no explicit rejection of the attorney immunity defense. The Act applying to any "person," and noting attorneys are people, is not an explicit legislative intent that the attorney-immunity defense does not apply. Simply because the Act expresses one defense to its violation—good faith reliance—is not an explicit legislative intent that the attorney-immunity defense does not apply, let alone that all other defenses are eviscerated. This reasoning is precisely why *Futch I* and *Futch II* found the language of Payment of Wages Act *unconditionally* requiring payment of wages due an employee did not abrogate an employer's common law "breach of loyalty" defense to paying those wages.

If attorney immunity applies to claims under the Act, then Plaintiffs' claim should be dismissed. The defense applies to third-party claims against an attorney for actions taken on behalf of the client with the client's knowledge, as long as there is no independent duty or allegations that the attorney acted in his own interest. *See Argoe*, 388 S.C. at 400, 697 S.E.2d at 554. Plaintiffs do not allege Defendants owed an independent duty to them, or that Defendants acted in their own interest outside the scope of their representation of Mr. Fulmer. In reality, Plaintiffs' claims are alleged to have arisen within the scope of Defendants' representation of Mr. Fulmer. Accordingly, the attorney-immunity defense would bar the claims.

Because the Court applied the incorrect standard for interpreting the Act, the application of the correct standard under South Carolina law establishes the attorney-immunity defense was unchanged by the Act, and the attorney-immunity defense would bar Plaintiffs' remaining claim, this Court should reconsider its order and grant Defendants' Motion to Dismiss Plaintiffs' claim under the Act.

II. This Court should adopt the reasoning in *Taylor v. Tolbert* because it applies legal principles similar to South Carolina and finds attorney immunity applies to a statute prohibiting interception of electronic communications.

Taylor is a recent case from the Supreme Court of Texas both Plaintiffs and Defendants referred to in their arguments on the motion to dismiss, which applied attorney-immunity to prevent claims for violations of Texas's wiretap statute. *See Taylor v. Tolbert*, 644 S.W.3d 637, 650-51 (Tx. 2022).

Like South Carolina, Texas's wiretap statute makes it a crime to intercept electronic communications, or to intentionally use or disclose those communications knowing or having reason to know the communications were intercepted. *Compare* Tex. Penal Code Ann. § 16.02 *with* S.C. Code Ann. § 17-30-20. In addition, the two states' laws create a civil remedy for the interception, or use or disclosure of intercepted communications. *Compare* Tex. Code Crim. Proc. Ann. art. 18A.502 *with* S.C. Code Ann. § 17-30-135(A). Also, Texas' attorney-immunity defense is nearly identical to South Carolina's, and applies to an attorney's work in the scope of representing a client. *Taylor*, 644 S.W.3d at 646; *Argoe*, 388 S.C. at 400, 697 S.E.2d at 554.

The *Taylor* Court found that Texas's common-law attorney immunity defense applied to claims under Texas's wiretap statute pursuant to legal principles similar to South Carolina, and in the process rejected the exact arguments Plaintiffs make here and this Court adopted.

The *Taylor* Court began by noting statutes purporting to abrogate common-law principles must do so expressly. 644 S.W.3d at 649. It also recognized the Texas wiretap statute created liability where none existed and, therefore, must be strictly construed and not extended beyond its plain meaning. *Id.* at 650. Thus, it presumed that the attorney immunity defense applied unless its wiretap statute expressly abrogated it. *Id.* It ultimately held "Texas's wiretap statute does not expressly repudiate the common law or the attorney-immunity defense." *Id.* at 649. Applying South Carolina's exact same presumption and rules for strict construction should result

in the same holding: South Carolina's Act does not expressly repudiate the common law or the attorney-immunity defense.

In reaching its holding, *Taylor* rejected the plaintiff's argument that the application of the wiretap statute to "any person" meant to include attorneys and abrogate the immunity defense. *Id*. at 651. The Court noted that, "[a]lthough 'any person' would inarguably include attorneys, we are not convinced the breadth of the statutory language—which is not at all uncommon—clearly shows legislative intent to abrogate common-law defenses generally or attorney immunity specifically." *Id.*

The *Taylor* Court also rejected the plaintiff's arguments that, by including specific defenses under the statute like the good-faith reliance defense, the Texas wiretap statute "fences out" all common law defenses not explicitly included in the statute. *Id.* at 650. The court noted that by plaintiff's line of reasoning, the legislature would have to "opt-in" to the common law in every statute, and that reasoning is contrary to the presumption the common law remains in effect. *Id.* at 650. The court also found that the Act did not make the listed defenses exclusive, and the language could not be read as clearly repudiating all civil-liability defenses otherwise available. *Id.*

The Texas Supreme Court's analysis in *Taylor* is highly persuasive considering Texas's parallels to South Carolina's legal principles regarding the attorney-immunity defense, statutory civil liability related to intercepted communications, and strictly construing statutes purportedly abrogating common law. But it rejected the exact reasoning advanced by Plaintiffs—the breadth of the any "person" language and inclusion of certain defenses—which this Court relied upon in ruling on Defendants' Motion to Dismiss. Because *Taylor* is persuasive and opposite this Court's ruling, this Court should reconsider its order, adopt *Taylor*'s reasoning similar to South Carolina's laws, and grant Defendants' Motion to Dismiss Plaintiffs' claim under the Act.

III. Applying attorney-immunity to claims under the Act does not have the effect of exempting all attorneys from the violating the Act.

This Court's ruling relies, in part, on reasoning that the attorney-immunity defense does not apply because, if the legislature wanted to exempt attorneys from the Act, it could have expressly done so like it did for other groups. This is based, however, on a misunderstanding of the attorney-immunity defense.

The attorney-immunity defense is not absolute immunity for attorneys as a class of people. The defense is qualified. It immunizes attorneys from claims (1) by third parties; (2) for actions in the scope of representing a client; (3) with the client's knowledge; (4) when there is no independent duty to the third-party. *See Argoe*, 388 S.C. at 400, 697 S.E.2d at 554; *see also Taylor*, 644 S.W.3d at 646 (noting similar limitations on the attorney-immunity defense and recognizing it does not protect from liability for all attorney conduct). Neither does the defense magically legalize illegal conduct because it is conduct of an attorney. Its purpose is to shield attorneys for actions that are illegal, i.e., would expose the attorney to civil liability.

Recognizing the attorney-immunity defense would not be akin to exempting attorneys from liability for violations of the Act, attorneys could still be liable if any of the four conditions to the application of attorney immunity are not met with respect to the Act. For example, attorney immunity would not shield an attorney against a *client's* claims that the attorney intercepted communications, or used or disclosed those communications, without the client's consent. Under the same scenario it would not shield the attorney against claims under the Act by the other party to the client's communications—client knowledge lacking. Because recognizing attorney-immunity under the Act would not amount to an exemption for attorneys from the Act, this Court should not have refused to recognize the defense on the basis it would amount to an exemption similar to other classes of persons listed under the Act. Accordingly,

this Court should reconsider its ruling and grant Defendants' Motion to Dismiss Plaintiffs' claims under the Act.

IV. This Court's finding that attorney-immunity does not apply under the Act undercuts the policy of encouraging zealous client representation and will lead to an erosion of the attorney-client privilege.

"The purpose of the doctrine of attorney immunity is to encourage zealous representation of clients without fear of lawsuits by disgruntled opposing parties." *Hunt v. Mortgage Electronic Registration*, 522 F. Supp. 2d 749, 758 (D.S.C. 2007). "Attorneys must be free to act and advise their clients without constant fear of harassment from lawsuits." *Garr*, 287 S.C. at 529, 339 S.E.2d at 889. Attorneys have ethical obligations to zealously assert a client's position. Rule 407, SCACR, Preamble ("As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system."). It would create a conflict of interest with an attorney's obligation to represent and support his or her client if attorneys become liable for, and must safeguard against, acting overzealously. *Garr*, 287 S.C. at 529-30, 339 S.E.2d at 889-90. In other words, with every exception recognized for attorney-immunity, it has a chilling effect on an attorney's faithful discharge of his or her ethical obligations. *Taylor*, 644 S.W.3d at 647.

Here, considering the breadth with which this Court interprets the Act—it applies to any "person" and attorney immunity does not apply—it would be nearly impossible to faithfully and zealously represent a client defending against claims for violations of the Act. An attorney representing his or her client would have to exercise even more caution when dealing with any electronic communications provided by a client. Considering attorney-immunity does not apply, Defendants' counsel could potentially be held responsible for "using" the messages to mount a defense to Plaintiffs' claims. Defendants' counsel would be prohibited from sharing any of the messages with an expert to prepare a defense. If Defendants are not entitled to immunity under the Act for advocating on behalf of their client with their client's direction, then the same could

be said for Defendants' counsel in this matter. Thus, not applying attorney-immunity to claims under the Act has a chilling effect in on an attorney's obligation to zealously represent his or her client.

For similar reasons, not recognizing attorney-immunity under the Act has a chilling effect on and erodes the attorney-client privilege. The attorney-client privilege is based on the wise policy that the "interests of society are best promoted by inviting the utmost confidence on the part of the client in disclosing his secrets to his professional advisor, under the pledge of the law that such confidence should not be abused by permitting disclosure of such communications." *S.C. State Highway Dep't v. Booker*, 260 S.C. 245, 254, 195 S.E.2d 615, 619-20 (1973). First, if attorneys are liable under the Act for advocating on behalf of their clients, attorneys will take precautions in communicating with clients to reduce the likelihood of a violation of the Act and, accordingly, will discourage clients from being truthful with their attorney. Moreover, pursuing a claim under the Act when an attorney is involved would require disclosure of attorney-client protected communications and work-product material in discovery. Case in point, Plaintiffs are directly requesting in discovery communications between Defendants and their client, Mr. Fulmer. **Ex. 9 (Plaintiffs' Discovery Requests).** Thus, refusing to recognize the attorney-immunity defense to claims under the Act would chill and intrude upon the attorney-client privilege. This cannot be what the legislature intended.

By finding the attorney-immunity defense does not apply to claims under the Act, it has a chilling effect on an attorney's ethical obligations to zealously represent his or her client and will inevitably lead to intrusion upon the attorney-client privilege. This Court should reconsider its ruling and grant the Motion to Dismiss claims under the Act based on attorney-immunity because it would foster ethical obligations to zealously represent clients and preserve the attorney-client privilege.

CONCLUSION

This Court should reconsider its ruling and grant Defendants' Motion to Dismiss because the ruling relies upon the incorrect statutory presumption, ignores persuasive authority from another state based on similar laws, misconstrues what the attorney-immunity defense is meant to protect from, results in a chilling effect on an attorney's obligation to zealously represent his or her client, and will lead to erosions of the attorney-client privilege.

This 10th day of November, 2023.

Respectfully submitted,

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FIFTEENTH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	2022-CP-26-06296
	)	
Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall,	)	
	)	**ORDER DENYING THE MOTION TO RECONSIDER**
Plaintiff,	)	
vs.	)	
	)	
William Bertram von Herrmann and The Von Herrmann Law Firm,	)	
	)	
Defendant,	)	

PRESIDING JUDGE:	The Honorable Krisi F. Curtis
DATE OF HEARING:	December 19, 2023
ATTORNEY FOR PLAINTIFF:	Steve Abrams, *Esq.* and Richard Whiting, *Esq.*
ATTORNEY FOR DEFENDANT:	Skyler C. Wilson, *Esq.* and Douglas W. MacKelcan, *Esq.*

This matter comes before the court pursuant to the Defendants' Notice of Motion and Motion for Reconsideration of its Order filed November 10, 2023.

After further review of the Defendants' Motion for Reconsideration in this matter, the Defendants' Motion is respectfully denied. The court recognized that this is a Novel Issue, but is persuaded by the reasoning contained in Plaintiffs' original Reply to the Defendants' original Motion, filed May 7, 2023.

The controlling statute is extremely broad. This statute mirrors the Federal Wiretap Action in many respects in that it prohibits the interception of electronic communications as well as the disclosure of illegally intercepted communications. The South Carolina Homeland Security Act is the State's equivalent of the Federal Electronic Communication Privacy Act, which also expressly

prohibits any evidence derived from the illegally intercepted communication from being entered into evidence in any trial, hearing or other proceeding before any court. See South Carolina code §17-30-65. The only exception for court proceedings is that set forth in South Carolina code §17-30-75, which allows for disclosure while giving testimony under oath in criminal and grand jury proceedings. This statute also specifically allows disclosure by SLED to attorneys who are authorized by law to investigate and prosecute certain alleged crimes.

It is illogical for the legislation to specifically carve out this narrow exception while also intending to allow broad common law immunity for disclosure by attorneys in civil and family court narratives.

The court finds that it would be illogical for the legislation to prohibit a pro se individual from disclosing the contents of electronic communications (and to make any such disclosure actionable) while allowing that individual's attorney to take the exact same actions with absolute immunity. Accordingly, the Defendants' Motion for Reconsideration is denied.

AND IT IS SO ORDERED.

_____

The Honorable Kristi F. Curtis
Presiding Circuit Judge

_____, 2024.

Horry, South Carolina.

Horry Common Pleas

Case Caption: Anna Coggeshall , plaintiff, et al VS William Bertram Von Herrmann , defendant, et al

Case Number: 2022CP2606296

Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge
Case No.: 2022-CP-26-06296

Appellate Case No. 2024-000786

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall .....Respondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm. ..... Appellants.

PROOF OF SERVICE

I certify that I have served ***Appellants' Memorandum in Opposition to Respondents' Motion to Dismiss***, upon the parties below by electronic mail, addressed as follows:

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This 13th day of June, 2024.

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To:	Dick.Whiting@whitinglawsc.com; steve@abramsforensics.com; Kenneth R. Moss; rel@rellawfirm.com
Cc:	Britney Sawyer; Cindy Dassoulas; Mackelcan, Douglas W.; Moran, Rosie
Subject:	RE: Coggeshall v. von Herrmann, Appellate Case No.: 2024-000786 - Memorandum in Opposition to Motion to Dismiss
Date:	Thursday, June 13, 2024 3:14:11 PM
Attachments:	image001.png Appellants" Memorandum in Opposition to Motion to Dismiss with Exhibits.pdf

Gentlemen,

Attached is the same memo along with the exhibits. Apologies for the multiple emails.

Best regards,

Skyler

csvl-block

Skyler C. Wilson
Partner
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From: Wilson, Skyler C. <swilson@csvl.law>
Sent: Thursday, June 13, 2024 3:05 PM
To: Dick.Whiting@whitinglawsc.com; steve@abramsforensics.com; Kenneth R. Moss <KennethMoss@wwpemlaw.com>; rel@rellawfirm.com
Cc: Britney Sawyer <bss@rellawfirm.com>; Cindy Dassoulas <CindyDassoulas@wwpemlaw.com>; Mackelcan, Douglas W. <dmackelcan@csvl.law>; Moran, Rosie <rmoran@csvl.law>
Subject: Coggeshall v. von Herrmann, Appellate Case No.: 2024-000786 - Memorandum in Opposition to Motion to Dismiss

Gentlemen,

Please find attached for service upon you Appellants' Memorandum in Opposition to Respondents' Motion to Dismiss.

Best regards,

Skyler

csvl-block

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RECEIVED
Jun 18 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge
Case No. 2022-CP-26-06296

Appellate Case No. 2024-000786

Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall ..... Respondents,

v.

William Bertram von Herrmann and The von Herrmann Law Firm. ..... Appellants.

RESPONDENTS' REPLY TO APPELLANTS' MEMORANDUM IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS APPEAL

Respondents submit this Reply to make a few discrete points in response to Appellants' Memorandum in Opposition to Respondents' Motion to Dismiss Appeal. For the reasons detailed below and in Respondents' Motion, Appellants' interlocutory appeal should be dismissed, and the matter allowed to proceed through the conclusion of pretrial discovery in the trial court.

In their Opposition, Appellants mischaracterize the underlying litigation by asserting that this case involves "allegedly intercepted [electronic] messages." (Appellants' Memo. in Opp., at 8.) Contrary to Appellants' representations, this issue was fully resolved in Respondents' favor by this Court.

In the related *Buchannon* appeal, discussed in Respondents' Motion to Dismiss, this Court ruled that Justin Fulmer's "repeated use" of Respondent Anna Coggeshall's iWatch "to view her text messages amounted to interceptions under the [South Carolina] Homeland Security Act."

(2022 Buchannon Order, at 5.) This is an established fact for purposes of the present litigation. Stated differently, the 2022 Buchannon Order constitutes the law of the case and is binding on Appellants, as Mr. Fulmer's legal counsel.

"It is well settled in this jurisdiction that a decision of this court on a former appeal is the law of the case. The questions therein decided are res judicata and this court will not on subsequent appeal review its former decision." *Huggins v. Winn-Dixie Greenville, Inc.*, 252 S.C. 353, 357, 166 S.E.2d 297, 299 (1969); *see also Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 573, 776 S.E.2d 397, 404 (Ct. App. 2015), *cert. denied*, 2016 S.C. LEXIS 221 (Aug. 4, 2016). Res judicata applies here because the *Buchannon* litigation involved the same parties (*i.e.*, Respondents) or privies (*i.e.*, Mr. Fulmer's counsel, Appellants William Bertram von Herrmann and The von Herrmann Law Firm) and the same issues (*i.e.*, intercepted electronic communications in violation of the South Carolina Homeland Security Act). *See Equivest Fin., LLC v. Ravenel*, 422 S.C. 499, 507, 812 S.E.2d 438, 442 (Ct. App. 2018) ("In order for res judicata to apply, the parties -- or their privies -- and subject matter must be identical, and the prior suit adjudicated the issue").

Appellants are barred by res judicata from revisiting the issue of whether electronic communications from Respondent Anna Coggeshall's iWatch were wrongly intercepted in violation of the South Carolina Homeland Security Act. *See id.*; *see also Huggins*, 252 S.C. at 357, 166 S.E.2d at 299; *Flexon*, 413 S.C. at 573, 776 S.E.2d at 404. This Court previously answered this question in the affirmative. Thus, Respondents' assertion that Anna's electronic text messages were illegally intercepted in violation of the South Carolina Homeland Security Act is not merely an "allegation" but an established fact. The sole remaining question is whether Appellants von Herrmann and his law firm likewise violated the South Carolina Homeland

Security Act when they knowingly used and disclosed the illegally intercepted electronic communications in their pursuit of Mr. Fulmer's case against Respondents.

Notably, Respondents never contended that Appellants von Herrmann and his law firm personally intercepted any electronic communications from Respondents. Rather, they allege that Appellants knowingly used and disclosed such communications. The knowing use and disclosure of a third-party's electronic communications violates the express provisions of the South Carolina Homeland Security Act to the same degree as the actual interception of electronic communications. *See* S.C. Code Ann. § 17-30-20(3), (4).

Moreover, as a matter of policy, an interlocutory appeal is disfavored because it promotes "[p]iecemeal appeals." *State v. Wilson*, 387 S.C. 597, 601, 693 S.E.2d 923, 925 (2010). "Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial." *Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005). Thus, the provisions of S.C. Code § 14-3-330 must be "narrowly construed, and the immediate appeal of orders issued before or during trial generally [should not be] . . . permitted." *Wilson*, 387 S.C. at 601, 693 S.E.2d at 925; *see also Myles v. Laffitte*, 881 F.2d 125, 127 (4th Cir. 1989).

In their Opposition, Appellants invoke highly technical arguments as a means of deflection. However, this case is far more straightforward than Appellants suggest. It is undisputed that Appellants used and disclosed Respondent Anna Coggeshall's electronic communications from her iWatch during the course of their representation of Mr. Fulmer. If Appellants did so knowingly, they are liable to Respondents for violating the South Carolina Homeland Security Act. *See* S.C. Code Ann. § 17-30-20(3), (4). As a matter of policy, the Court should not allow Appellants to needlessly delay resolution of this issue and add to the cost of litigation through the piecemeal approach of an interlocutory appeal. *See Chaplain v. Chaplain*, 54 Va. App. 762, 770, 682 S.E.2d

108, 112 (2009) ("By their nature, interlocutory appeals are disruptive, time-consuming, and expensive"). This is particularly so given the fact that the interception of the electronic communications as well as their use and disclosure by Appellants in the litigation brought by Mr. Fulmer has already been definitively determined.

Respectfully submitted:

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ALL COUNSEL FOR THE RESPONDENTS

June 18, 2024
Marion, South Carolina

RECEIVED
Jun 18 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge
Case No.: 22-CP-26-06296

Appellate Case No. 2024-000786

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall.....Respondents

v.

William Bertram von Hermann and The Von Herrmann Law Firm.....Appellants.

PROOF OF SERVICE

I certify that I have served ***Respondent's Reply to the Appellants' Memorandum in Opposition to Respondents' Motion to Dismiss Appeal,*** upon the parties below by electronic mail, addressed as follows:

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This 18th day of June, 2024

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June 18, 2024

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Via EMAIL and Regular Mail

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ctappfilings@sccourts.org

RE: Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall v William Bertram von Herrmann and The Von Herrmann Law Firm
Appeal case No.: 2024-000786

Dear Ms. Kitchings:

Enclosed find Respondents, Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall's Reply to the Appellants' Memorandum in Opposition to the Respondents' Motion to Dismiss Appeal in the above-referenced case, Proof of Service, and Respondents' service email and letter to Appellants counsel.

Sincerely yours,

ROBERT E. LEE

REL:bss
Enclosures: *as stated above*

cc: Douglas MacKelcan, Esq.; Skyler C. Wilson
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FLORENCE MARION NORTH MYRTLE BEACH

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge
Case No.: 2022-CP-26-06296

Appellate Case No. 2024-000786

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall .....Respondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm. ..... Appellants.

Appellants' Petition for Rehearing

Appellants petition this Court to rehear its Order dismissing the appeal as interlocutory, and ask it to take up this novel issue of law as a result of the lower court's incorrect ruling at the motion to dismiss stage that the common law defense of attorney immunity—which is fundamental to the functioning and operation of our judicial system—is abrogated by implication in a statute that is silent on its effect on the common law, and preventing Appellants from asserting the defense moving forward.

Introduction

This appeal involves a claim arising under the South Carolina Homeland Security Act (the Act) against an attorney for actions taken in the scope of the attorney's representation of a client in litigation, raising the novel issue of whether our common law attorney-immunity defense applies to shield an attorney against liability for claims under the Act for the disclosure or use of allegedly

intercepted electronic communications. The defense does apply to claims under the Act. Appellants raised this novel issue to the circuit court via motion to dismiss, but the circuit court disagreed and denied that aspect of the motion. Yet the circuit court went further, ruling that Appellants "cannot assert the defense going forward." This is why the circuit court's order is immediately appealable and why this Court should hear the appeal rather than dismissing it.

Background

Respondents sued Appellants asserting liability for the use and disclosure of Respondents' electronic communications that Appellants were provided by their client, Justin Fulmer, who shares a daughter with Respondent Anna. Respondents allege Mr. Fulmer intercepted the electronic communications and Appellants, with knowledge the information was "unlawfully obtained", disseminated the material. This Court addressed the interception in the Fulmer Action. ***See* Resp. MTD, Ex. 3**. The Fulmer Action was tried to verdict in December 2023, and is being appealed.

Respondents moved to dismiss the case based on attorney immunity and the circuit court granted that motion in part and denied it in part. **Ex. A to Return to MTD**. The only surviving claim was Respondents' claim under the S.C. Homeland Security Act (Act) for using or disclosing intercepted communications. As a matter of law on a novel issue, the court ruled attorney-immunity does not apply to claims under the Act, and found Appellants "cannot assert the defense going forward." ***See* Exs. B & C to Return to MTD.** Appellants timely appealed the order, primarily based on the troubling finding preventing Appellants from asserting the defense going forward.

Respondents moved to dismiss the appeal, arguing that the orders are not immediately appealable. Appellants responded, asserting the holding that they could not assert the defense

moving forward made the order immediately appealable. The Court granted Respondents' motion to dismiss on August 14, 2024, by summary reference to authorities without an express opinion on the effect of the circuit court barring Appellants from asserting the attorney immunity defense. Appellants respectfully petition this Court to rehear the matter and take up the appeal.

Argument

I. This Court should rehear its August 14, 2024 Order because it overlooked or misapprehended the effect of the circuit court's order barring Appellants from asserting the attorney immunity defense.

This Court's order recognizes that the right to appeal an interlocutory order is governed by section 14-3-330 of the South Carolina Code, but notes that "the denial of a motion to dismiss is not immediately appealable under section 14-3-330." Respectfully, this Court has overlooked the effect of the circuit court's order and is relying on the name given to it rather than its substance.

This Court is bound to examine the effect of an interlocutory order and not the label given to it. *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 303, 705 S.E.2d 475, 479 (Ct. App. 2011). Our supreme court has reaffirmed this principle as recently as 2015. *See Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539, 773 S.E.2d 144, 147 (2015) (citing *Thornton* and holding the court is free to evaluate the trial court's order for appealability regardless of what the order says).

Interestingly, the circumstances in *Morrow* are remarkably similar to this appeal, and support a finding the order is immediately appealable. In *Morrow*, a nursing home resident sued a nursing home and its parent entities when the resident sustained injuries at the nursing home. *Id.* at 535-36, 773 S.E.2d at 144-45. The parent entities moved to bifurcate trial, which the trial court granted, and stayed trial and discovery against the parent entities while the claims against the nursing home moved forward. *Id.* at 536, 773 S.E.2d at 145. The order, however, also noted that

the claims against the parent entities could only proceed if the plaintiff was successful against the nursing home. *Id.* The plaintiff appealed the order bifurcating trial. *Id.* A single judge of the Court of Appeals dismissed the appeal after finding an order bifurcating trial was not immediately appealable. *Id.* The plaintiff petitioned for rehearing and three judge panel of the court of appeals denied the petition. *Id.*

The supreme court, however, granted writ of certiorari and reversed the court of appeals. The supreme court recognized the line of cases holding that an order bifurcating trial is not immediately appealable. *Id.* at 540, 773 S.E.2d at 147. But the court examined the effect of the order and found it affected a substantial right because the circuit court's ruling misunderstood the claims against the parent entities—the circuit court's finding the plaintiff could proceed against the parent entities only if successful against the nursing home was based on a theory of vicarious liability and overlooked that plaintiff was also proceeding on a theory of direct corporate liability. *Id.* at 538-39, 773 S.E.2d at 146. Despite its name, the effect of the order implicated a substantial right and was immediately appealable. *Id.* at 539, 773 S.E.2d 146. As a result, the supreme court reversed the court of appeals' order dismissing the case and remanded for a determination on the merits of the appeal. *Id.* at 540, 773 S.E.2d at 147.

Following *Morrow*'s guidance, this Court should examine the effect of the circuit court's order and not the order's name. By its summary ruling, this Court appears to be ruling based on the name of the order: denial of a motion to dismiss. This Court acknowledges that a denial of a motion to dismiss is not immediately appealable, and notes the denial of a motion to dismiss does not establish the law of the case and the issue can be raised again later. The Court does not, however, address the effect of the order barring Appellants from asserting the defense of attorney-immunity moving forward. Thus, the Court's reference to only the name of the circuit court's order

appears to be a ruling based on the name not the effect of the order. If instead the Court examined the effect of the order, the order should be immediately appealable under the statute and *Morrow*'s guidance because the order affects a substantial right by removing the attorney-immunity defense from litigation and *attempts* to establish the law of the case by barring Appellants from asserting the defense moving forward. As argued in Appellants' notice of appeal and in Return to the Motion to Dismiss, incorporated herein by reference, the circuit court's order affects a substantial right and is immediately appealable under section 14-3-330.

Certainly, although an order denying a motion to dismiss is not *supposed* to establish the law of case and the issues can be raised later, the order at issue *purports* to establish the law of the case by finding the Act abrogated the common law attorney immunity defense and barring Appellants from raising it later. Without question, the language of the order strikes out a defense, affects a substantial right, and is immediately appealable.

Moreover, this case presents novel issues on the interplay of attorney immunity and liability under the South Carolina Homeland Security Act. Respondents are attempting to impose liability on Appellants for quintessential attorney activities—bringing a lawsuit on behalf of a client and engaging in discovery. Because the claim relates to attorney activities, discovery and litigation will include getting into attorney-client privileged and work-product doctrine protected material generated in the underlying Fulmer Case—which is currently on appeal before this Court. The novelty of the issues and the dangers of discovery intruding upon privileges essential to the functioning of our justice system warrants finding the orders are immediately appealable and addressing the merits.

Further, our courts have previously addressed novel issues involved in an appeal, despite dismissing an order as not immediately appealable. *See Ex parte Wilson*, 367 S.C. 7, 14, 625 S.E.2d

205, 208 (2005). *Wilson* involved an appeal of an order quashing a subpoena duces tecum and the scope of discovery under Rule 69, SCRCP. *Id.* at 11, 625 S.E.2d at 207. Our supreme court determined the order on the subpoena duces tecum was not immediately appealable under section 14-3-330. *Id.* at 13-14, 625 S.E.2d at 208. However, the court addressed the novel issue of discovery under Rule 69, SCRCP, in the interest of judicial economy. *Id.* at 14, 625 S.E.2d at 208. ("Although we dismiss the order as not immediately appealable, we address this novel issue in the interest of judicial economy.").

Judicial economy favors ruling on the Act's effect on the common-law attorney immunity defense regardless of appealability. First, judicial economy favors ruling on the issue because the appeal is already before the court of appeals, and it is a novel threshold issue to imposing liability. If the defense applies under the Act, then the case should be dismissed, and the parties do not need to spend any time, effort, or funds to litigate the issue any further.

If this Court's ruling dismissing the appeal has the effect of upholding the circuit court's ruling that Appellants cannot assert the defense going forward, then the parties will need to spend time, effort, and funds litigating the entire case through summary judgment or trial, without developing the facts or arguments on the defense, before Appellants can appeal. If, on the subsequent appeal, it is determined that the defense applies and Appellants should have been allowed to develop it through litigation or that it results in the case being dismissed, then the parties and the judiciary will have wasted time and resources litigating the case before the subsequent appeal.

Ultimately, Appellants assert this Court overlooked the effect of the circuit court's order that affects a substantial right (removing a valid defense) and, instead, focused on the name of the order (denying a motion to dismiss) and generally applicable law noting that a denial of a motion

to dismiss does not establish the law of the case. The language of the order makes it immediately appealable, not its name. Regardless, notions of judicial economy support addressing the novel question now, before the parties and the circuit court waste their resources litigating a case that will eventually find its way back on appeal.

II. If the effect of this Court's order dismissing the appeal is intended to suggest that Respondents can continue to advance the attorney-immunity defense, this Court should make that ruling more apparent because it will save the parties from future disputes over the defense's application to the case.

This Court's summary ruling notes that denials of motions to dismiss do not establish the law of the case and the issues can be raised later in the litigation. In the part in which it denied Appellants' motion to dismiss, the circuit court analyzed the application of the Act to the attorney-immunity defense, found it abrogated the defense, and barred Appellants from asserting it further.

If this Court's ruling is that a denial of a motion to dismiss does not prevent a litigant from raising the issue later in litigation, it follows that Appellants are not prevented from litigating attorney immunity's application under the Act, because that ruling was contained in the portion of the circuit court's order denying the motion to dismiss. This holding, however, would be contrary to the circuit court order's express language barring Appellants from asserting the defense moving forward.

Considering the above, Appellants will read this Court's order as permitting them to continue to assert and litigate attorney immunity in the case, including asserting it in an answer and moving for summary judgment on that ground. Respondents will likely dispute Appellants' ability to do so and tout the circuit court's prior order. Thus, a more explicit ruling on that issue, i.e., stating Appellants can assert the defense, would save the parties time and effort fighting over continued reference to the defense. In addition, this appeal, even in its current procedural posture, would be a great opportunity to educate the bench and bar on how the principle "denials of motions

to dismiss do not establish the law of the case" affects circuit court orders that make explicit rulings on issues when denying a motion to dismiss.

Conclusion

This Court should rehear its August 14 Order dismissing the appeal, because it overlooked or misapprehended the effect of the circuit court's order finally determining a defense and, instead, focused on the name of the order and general principles regarding the effect of a denial of a motion to dismiss. In the alternative, if this Court's reference to law that a denial of a motion to dismiss does not establish the law of the case and the issues can continue to be litigated is intended to permit Appellants to assert attorney immunity after remittitur—how Appellants will interpret the Order and contrary to the circuit court's explicit ruling—this Court should rehear its August 14 Order and make that ruling explicit rather than implied.

COPELAND, STAIR, VALZ & LOVELL, LLP

August 28, 2024.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge
Case No.: 2022-CP-26-06296

Appellate Case No. 2024-000786

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall .....Respondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm. ..... Appellants.

PROOF OF SERVICE

I certify that I have served ***Appellants' Petition for Rehearing***, upon the parties below by electronic mail, addressed as follows:

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This 28th day of August, 2024.

COPELAND, STAIR, VALZ & LOVELL, LLP

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From:	Rewt, Teri J.
To:	Dick.whiting@whitinglawsc.com; steve@abramsforensics.com; Kenneth R. Moss; rel@rellawfirm.com
Cc:	Mackelcan, Douglas W.; Wilson, Skyler C.; Moran, Rosie
Subject:	Coggeshall v. von Herrmann; Appellate Case No. 2024-000786; CSVL File No.: 64549
Date:	Wednesday, August 28, 2024 1:22:00 PM
Attachments:	image001.png Petition for Rehearing.pdf

Good afternoon everyone,

With the attached, we are providing Respondents' with a copy of Appellants' Petition for Rehearing in this case, which is being filed today. You will be copied on our email to the Court when we file the Petition.

Thank you and best regards,

COPELAND STAIR VALZ & LOVELL LLP

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REPLY TO SC OFFICE

August 28, 2024

VIA EMAILand REGULAR MAIL
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ctappfilings@sccourts.org

Re: Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall (*Respondents*) v. William Bertram von Herrmann and The Von Herrmann Law Firm (*Appellants*)
Appellate Case No. 2024-000786
State Case No.: 2022-CP-26-06296
CSVL File No.: 2283-64549

Dear Ms. Kitchings:

Enclosed for filing, please find Appellants William Bertram von Herrmann and The Von Herrmann Law Firm's Petition for Rehearing in the above-referenced case, together with Proof of Service, and Appellants' service email to Respondents. A $50.00 check for the filing fee will follow by regular mail. If anything further is required from Appellants at this time, please advise. By copy of this letter, we are again providing the Petition to Respondents' counsel, and advising of our communication with the Court.

Sincerely yours,

s/Skyler C. Wilson

DOUGLAS W. MACKELCAN
SKYLER C. WILSON

SCW:tjr
Enclosures: *as stated above*
cc: Richard G. Whiting, Esq.; Steven Abrams, Esq.; Kenneth R. Moss, Esq.; Robert E. Lee, Esq.
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Sep 20 2024
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Appellate Case No. 2024-000786

Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall ..... Respondents,

v.

William Bertram von Herrmann and The von Herrmann Law Firm. ..... Appellants.

RESPONDENTS' RESPONSE IN OPPOSITION TO APPELLANTS' PETITION FOR REHEARING

Respondents Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall, by counsel, hereby submit their Response in Opposition to Appellants' Petition for Rehearing. For the reasons detailed below, Appellants' Petition for Rehearing should be denied.

Introduction

This case questions whether Appellant William Bertram von Herrmann ("Mr. von Herrmann"), a South Carolina attorney, and his law firm may be held liable for violating the South Carolina Homeland Security Act, S.C. Code Ann. §§ 17-30-10, et seq., by making use in a civil suit of electronic communications that were unlawfully intercepted by their client. After the Horry County Court of Common Pleas entered an Order denying a Rule 12(b)(6) motion to dismiss, Mr. von Herrmann and his law firm filed an interlocutory appeal with this Court. This Court properly dismissed the interlocutory appeal. Mr. von Herrmann and his law firm have failed to present any credible factual or legal basis for this dismissal to be set aside on rehearing.

Factual Background

A. The Fulmer Action

Mr. Von Herrmann and his law firm represented Justin Shayne Fulmer ("Fulmer") in an action filed in the Horry County Court of Common Pleas[1] (the "Fulmer Action"). Fulmer brought the Fulmer Action against Respondents herein and other Co-Defendants. Accordingly, this Court may take judicial notice of the pleadings, jury verdict, and court orders issued in the Fulmer Action. *See* Rule 201(b), SCRE ("A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned"); *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984) ("A court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records"); *see also Lucht v. Youngblood*, 266 S.C. 127, 134, 221 S.E.2d 854, 858 (1976) ("Generally, the prior pleadings in an action may be received in evidence against the pleader").

Fulmer's claims in the Fulmer Action were based solely on text messages that he intercepted from Respondent Anna Coggeshall's iWatch. Specifically, Fulmer, without Respondent Anna Coggeshall's permission or knowledge, intercepted, used, and disclosed Coggeshall's text messages that were synched to her cell phone. In an appeal filed with this Court in the Fulmer action, this Court ruled that Fulmer's "repeated use" of Respondent Anna Coggeshall's iWatch "to view her text messages amounted to interceptions under the [South Carolina] Homeland Security Act." (2022 Buchannon Order, at 5.)

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[1] The Fulmer Action was captioned *Justin Shayne Fulmer v. Melissa Emery Buchannon Esq., et al* and bore Civil Action No. 2021-CP-26-06975.

The Fulmer Action was tried before a jury on November 27-30, 2023, and the jury issued a verdict in favor of Respondent Anna Coggeshall on her Counterclaim against Fulmer for violation of the South Carolina Homeland Security Act. Although Fulmer did file an appeal that is presently pending before this Court, Appellants' Petition for Rehearing mischaracterizes the nature of that appeal. Although Mr. von Herrmann suggests otherwise, Fulmer did **not** appeal the underlying jury verdict or the jury's damages award issued against him. Instead, Fulmer appealed only the amount of attorney's fees imposed against him. Thus, the issue of Fulmer's liability to Respondent Anna Coggeshall for violating the South Carolina Homeland Security Act has been definitively established.

The only question that remains is whether Mr. von Herrmann and his law firm, as Fulmer's attorneys, may likewise be held civilly liable for violation of the Act. In this regard, Mr. von Herrmann used the electronic communications that Fulmer intercepted from Respondent Anna Coggeshall's iWatch in the prosecution of the Fulmer Action. Respondents contend that Mr. von Herrmann knew that the intercepted messages were illegally obtained by Fulmer but, despite this knowledge, Mr. von Herrmann used and disseminated the text messages in his prosecution of the Fulmer Action.

B. The Underlying Lawsuit

In the underlying action, Respondents allege that Mr. von Herrmann and his law firm violated the South Carolina Homeland Security Act by using and disseminating electronic communications that they knew were unlawfully intercepted by their client, Fulmer, in the prosecution of the Fulmer Action. Mr. von Herrmann and his law firm unsuccessfully moved to dismiss this claim under Rule 12(b)(6), SCRCP, for failure to state facts sufficient to constitute a cause of action.

The trial court's Order issued on November 1, 2023, found that attorneys are "persons" subject to the provisions of the South Carolina Homeland Security Act, and that "the attorney-immunity defense does not apply to the Act." (Trial Court Order, p. 5.) The trial court then concluded that because the Act applies to attorneys and the common-law attorney-immunity defense does not apply to claims arising under the Act, Appellants' motion to dismiss would be denied, and Appellants "cannot assert the defense going forward." (*Id.* at pp. 5-6.)

Respondents served pretrial discovery requests on Mr. von Herrmann, but Mr. von Herrmann refused to provide any responses. Similarly, Mr. von Herrmann and his law firm did not file any Answer. Instead, they filed an interlocutory Notice of Appeal with this Court. The Notice of Appeal claims that the Court of Appeals should grant an interlocutory appeal under S.C. Code Ann. § 14-3-330 because the trial court's Order involved the merits and affected a substantial right.

Respondents, in turn, filed a motion to dismiss the interlocutory appeal. In an Order filed on August 14, 2024, this Court granted Respondents' motion to dismiss. Mr. von Herrmann and his law firm have now filed a Petition for Rehearing.

Argument

I. THIS COURT PROPERLY DISMISSED APPELLANTS' INTERLOCUTORY APPEAL BECAUSE THE TRIAL COURT'S ORDER DENYING APPELLANTS' MOTION TO DISMISS DOES NOT FIT INTO ANY OF THE CATEGORIES OF APPEALABLE ORDERS LISTED IN S.C. CODE ANN. § 14-3-330

"Absent a specialized statute, an order must fall into one of several categories set forth Section 14-3-330 in order to be immediately appealable." *Ex Parte Capital U-Drive-It*, Inc., 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). S.C. Code Ann. § 14-3-330 authorizes an appeal of the following categories of orders:

> (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
>
> (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
>
> (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
>
> (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

Here, the trial court's Order denying Appellants' motion to dismiss Respondents' claim for violation of the South Carolina Homeland Security Act does not fall into any of the categories of appealable orders listed in S.C. Code Ann. § 14-3-330. The trial court's Order is a nonfinal order that does not "affect a substantial right, or prevent a judgment from which an appeal may later be taken." *Edwards v. SunCom*, 369 S.C. 91, 94, 631 S.E.2d 529, 530 (2006).

Pursuant to S.C. Code Ann § 14-3-330(2), an interlocutory order that affects a "substantial right" may be immediately appealed. "Orders affecting a substantial right discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense." *Edwards*, 369 S.C. at 94, 631 S.E.2d at 530.

As stated in *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 526, 443 S.E.2d 539, 540 (1994) -- one of the cases cited in this Court's August 14, 2024, Order -- a trial court's order denying a motion to dismiss under Rule 12(b)(6), SCRCP, is not an interlocutory order that affects a substantial right. This is exactly the type of Order that the trial court issued

here. Hence, the trial court's denial of Appellants' motion to dismiss is not the proper subject of an interlocutory appeal under S.C. Code Ann. § 14-3-330(2), and this Court correctly dismissed the appeal. *See McLendon*, 313 S.C. at 526, 443 S.E.2d at 540. Consequently, no viable grounds exist for rehearing or reconsideration of the issue.

In an attempt to avoid this conclusion, Appellants' Petition for Rehearing incorrectly relies on *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015). *Morrow* is easily distinguishable from and, therefore, is inapplicable to the present case.

Unlike Respondents here, the *Morrow* plaintiffs brought two different sets of claims against two diverse groups of defendants. First, the Morrows filed personal injury claims against the nursing home in which plaintiff Lawrence Morrow resided. These claims related to an injury that Lawrence suffered while being assisted in the shower as well as the nursing home's alleged failure to properly monitor Lawerence's diabetes or care for his pressure wounds. *Id.* at 535-36, 773 S.E.2d at 145. The Morrows also filed separate corporate negligence claims against the owners of the nursing home pertaining to underfunding and corollary issues regarding staffing, training, and nutrition. *Id.* at 536, 773 S.E.2d at 145.

The corporate entities filed a motion to bifurcate the trial between the Morrows' negligence claims against the nursing home and their separate negligence claims against the corporate entities. The trial court granted the motion, "finding that without first proving negligence against the nursing home the Morrows' claims for corporate negligence could not proceed." *Id.* The Morrows appealed, and the court of appeals dismissed the appeal on the grounds that an order granting bifurcation was not immediately appealable. *Id.*

On petition to the South Carolina Supreme Court for writ of certiorari, the supreme court reversed. The supreme court ruled that the trial court's order was immediately appealable under

S.C. Code Ann. § 14-3-330 because it was "based on a material misunderstanding of [the Morrows'] claims against the [corporate entities]." *Morrow*, 412 S.C. at 538, 773 S.E.2d at 146. Specifically, the trial court's order "conflate[d] the theories of vicarious liability and direct liability by determining the Morrows [could] move forward on their claims against the corporate defendants only if they first recover[ed] against [the nursing home]." *Id.* The trial court incorrectly applied the theory of vicarious liability to the Morrows' claims against the corporate entities when the claims were actually "grounded in direct corporate liability which follows independent, albeit interconnected, duties owed to the Morrows." *Id.* at 539, 773 S.E.2d at 146. By incorrectly considering the Morrows' claims against the corporate entities as dependent on their claims against the nursing home, "the trial court's order effectively grants the [corporate] Entities potential summary judgment on the issues of direct corporate liability." *Id.*

Accordingly, the supreme court in *Morrow* concluded that the trial court's order fit "neatly within the statutory provision allowing immediate appeals where a substantial right is implicated. S.C. Code Ann. § 14-3-330(2)(a). The effect of this order [was] to prevent the Morrows from being architects of their own complaint, and deprive[d] them of bringing their case against the defendant of their own choosing." *Morrow*, 412 S.C. at 539, 773 S.E.2d at 146.

Contrary to Mr. von Herrmann's contentions, *Morrow* differs fundamentally from the present case. Unlike the trial court in *Morrow*, the Horry County Court of Common Pleas here did not apply an incorrect legal theory to effectively grant potential summary judgment on the issue of liability against Mr. von Herrmann and his law firm. Instead, the Horry County court simply determined that the common-law attorney-client privilege did not apply to absolutely shield Mr. von Herrmann from any potential liability for violating the South Carolina Homeland Security Act in his prosecution of the Fulmer Action. The trial court's Order does not, however, in any way

address the merits of the action. It does not find or even suggest that Mr. von Herrmann is, in fact, liable for violation of the Act. It simply precludes Mr. von Herrmann from relying on a common-law privilege as an end-run around potential liability.

Next, Appellants' Petition for Rehearing incorrectly contends that the trial court's Order in question had the effect of establishing the law of the case by precluding Mr. von Herrmann from raising the attorney-client privilege going forward. Notably, Mr. von Herrmann fails to cite any statute, rule, case law, or any other legal authority to support this contention. This is reflective of the conclusion that no such authority exists.

"The doctrine of the law of the case applies to an order or ruling which finally determines a substantial right. . . . Ordinarily an interlocutory order which merely decides some point or matter essential to the progress of the cause, collateral to the issues in the case, is not binding as the law of the case, and may be reconsidered and corrected by the court before entering a final order on the merits." *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013). As mentioned above, a trial court's interlocutory order affects a substantial right only if it "discontinue[s] an action, prevent[s] an appeal, grant[s] or refuse[s] a new trial, or strike[s] out an action or defense." *Edwards*, 369 S.C. at 94, 631 S.E.2d at 530.

The Horry County Court's Order at issue here does none of these things. Although the Order precludes Mr. von Herrmann from raising the attorney-client privilege in future proceedings before the trial court, it does not affect a substantial right by effectively establishing the law of the case.

"The attorney-client privilege protects against disclosure of confidential communications by a client to his attorney." *State v. Owens*, 309 S.C. 402, 407, 424 S.E.2d 473, 476 (1992), *cert. denied*, 507 U.S. 1036, 113 S. Ct. 1861 (1993). It is an evidentiary privilege. *Drayton v. Indus.*

Life & Health Ins. Co., 205 S.C. 98, 108, 31 S.E.2d 148, 152 (1944). "An evidentiary privilege is '[a] privilege that allows a specified person to refuse to provide evidence or to protect the evidence from being used or disclosed in a proceeding.'" *Hartsock v. Goodyear Dunlop Tires N. Am. Ltd.*, 422 S.C. 643, 647, 813 S.E.2d 696, 698-99 (2018) (quoting Evidentiary Privilege, Black's Law Dictionary (10th ed. 2014)).

Notwithstanding Mr. von Herrmann's contentions, the trial court's Order barring Mr. von Herrmann from raising the attorney-client privilege going forward must be classified as an evidentiary ruling. It is not tantamount to the striking of an affirmative defense that affects a substantial right.

Unlike an evidentiary privilege, an affirmative defense "conditionally admits the allegations of the complaint, but asserts new matter to bar the action. . . . In other words, it assumes all elements of the plaintiff's case have been established." *O'Neal v. Carolina Farm Supply, Inc.*, 279 S.C. 490, 494, 309 S.E.2d 776, 779 (Ct. App. 1983). An evidentiary privilege, in contrast, does not address the truth of the allegations made in the complaint.

Here, the trial court's Order only precludes Mr. von Herrmann from raising the common-law attorney-client privilege in future proceedings before that court. It does not invoke the merits of Respondents' claim for violation of the South Carolina Homeland Security Act. Further, Mr. von Herrmann remains free to raise the evidentiary issue in an appeal of any final order or judgment rendered against him.

In further contravention to Mr. von Herrmann's claims, an examination of the effect of the trial court's Order reinforces the conclusion that this Court properly dismissed the interlocutory appeal. The practical effect of the trial court's evidentiary ruling is that Mr. von Herrmann must

provide pretrial discovery concerning his receipt and use of the electronic communications that Fulmer intercepted from Respondent Anna Coggeshall's iWatch.

In *Tucker v. Honda of S.C. Mfg.*, 354 S.C. 574, 577, 582 S.E.2d 405, 407 (2003), the South Carolina Supreme Court held that an order compelling discovery involving information allegedly protected by the attorney-client privilege is not immediately appealable. Further, in *Wieters v. Bon-Secours-St. Francis Xavier Hosp., Inc.*, 381 S.C. 332, 332-33, 673 S.E.2d 417, 418 (2009), the supreme court vacated the court of appeals' review of a discovery order that may have resulted in the disclosure of confidential information because the order was interlocutory and not immediately appealable.

Under established South Carolina law, Mr. von Herrmann is required to engage in pretrial discovery and to provide full and substantive responses to Respondents' discovery requests. The proposition that such discovery may involve the disclosure of confidential information or information that is traditionally shielded by the common-law attorney-client privilege does not provide a valid basis for an immediate appeal of the trial court's Order directing the action to proceed. *See id.*; *Tucker*, 354 S.C. at 577, 582 S.E.2d at 407.

Finally, judicial economy will not be served by granting the interlocutory appeal. In arguing otherwise, Mr. von Herrmann mistakenly relies on *Ex parte Wilson*, 367 S.C. 7, 625 S.E.2d 205 (2005). Although the *Wilson* court did take the opportunity to clarify the procedure for discovery under Rule 69, SCRCP, it nevertheless "dismiss[ed] the appeal because the order quashing the subpoena duces tecum [was] not immediately appealable." *Wilson*, 367 S.C. at 16, 625 S.E.2d at 209.

Here, there is no procedure for the Court to clarify. Instead, it is clear that the trial court's Order, which is tantamount to an order directing discovery to proceed, is interlocutory and,

therefore, it is not subject to immediate appeal. *See Wieters*, 381 S.C. at 332-33, 673 S.E.2d at 418; *Wieters v. Bon-Secours-St. Francis Xavier Hosp., Inc.*, 381 S.C. 332, 332-33, 673 S.E.2d at 418. Consequently, this Court correctly dismissed the interlocutory appeal, and Appellants' Petition for Rehearing should be denied.

II. APPELLANTS' REQUEST FOR AN ADVISORY OPINION SHOULD BE DENIED

In Part II of the Argument set forth in the Petition for Rehearing, Mr. von Herrmann asks the Court to direct whether and to what extent he may raise the attorney-client privilege before the trial court. Toward this end, Mr. von Herrmann suggests that he may assert the privilege in an answer and may subsequently move for summary judgment on this basis.

The South Carolina Supreme Court has stated that "even when answering questions on certification, this Court will not issue advisory opinions nor alter precedent based on questions presented in the abstract." *Concerned Dunes W. Residents v. Ga.-Pacific Corp.*, 349 S.C. 251, 261, 562 S.E.2d 633, 639 (2002) (discussing *Sangamo Weston v. Nat'l Sur. Corp.*, 307 S.C. 143, 148, 414 S.E.2d 127, 130 (1992)). By postulating about a potential future course of action in the underlying litigation, Mr. von Herrmann assumes a state of events that is not in existence and describes a dispute that "may never arise." *Concerned Dunes W. Residents*, 349 S.C. at 261, 562 S.E.2d at 639. This equates to a request for the Court to issue an advisory opinion – something that the appellate courts have firmly stated that they will not do.

Consequently, this Court should decline to advise Mr. von Herrmann as to the course of action he can or should take in future proceedings before the trial court. Part II of Appellants' Argument in the Petition for Rehearing should, therefore, be disregarded.

Conclusion

For the foregoing reasons, Appellants' Petition for Rehearing should be denied.

Respectfully submitted,

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September 20, 2024
Marion, South Carolina

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2024-000786

Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall

Respondents,

v.

William Bertram von Herrmann and The Von Herrmann Law Firm

Appellants.

PROOF OF SERVICE

I certify that I have served ***Respondents' Response In Opposition to Appellants' Petition For Rehearing***, upon the parties below by electronic mail, addressed as follows:

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This 20th day of September 2024

Respectfully submitted,

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Robert E. Lee

From:	Robert E. Lee
Sent:	Friday, September 20, 2024 12:30 PM
To:	Mackelcan, Douglas W.; Wilson, Skyler C.; Moran, Rosie; Rewt, Teri J.
Cc:	Dick.Whiting@whitinglawsc.com; Steven Abrams; 'Kenneth Moss'; Robert E. Lee; Meredith Baxley
Subject:	Appellate Case No. 2024-000786; Coggeshall v. von Herrmann; State Case No.: 2022-CP-26-06296
Attachments:	doc04663420240920112528.pdf
Importance:	High
Sensitivity:	Confidential

Good afternoon everyone

With the attached, we are providing Appellants' with a copy of *Respondents' Response in Opposition to Appellants' Petition for Rehearing* in this case, which is will be filed today. You will be copied on our email to the Court when we file the Petition. Thank you and best regards

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September 20, 2024

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VIA U.S. MAIL & E-MAIL (CTAPPFILINGS@SCCOURTS.ORG)

Re: *Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall (Respondents) v. William Bertram von Herrmann and The Von Herrmann Law Firm (Appellants)*
Appellate Case No.: 2024-000786
Common Please Case No.: 2022-CP-26-06296

Dear Ms. Kitchings:

Enclosed for filing find Respondents, Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall's *Response in Opposition to Appellants' Petition for Rehearing* in the above-referenced case, together with Proof of Service, and Respondents' service email to Appellants. A $50.00 check for filing fee will follow by regular mail. If anything, further is required from Respondents currently, please advise. By copy of this letter, we are again providing the Petition to Appellants' counsel and advising of our communication with the Court.

Sincerely yours,

ROBERT E. LEE

REL:mlb

W/Enclosure

cc: Skyler C. Wilson, Esq.
Douglas W. MacKelcan, Esq.
(*Via E-Mail Only*)

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge
Case No.: 2022-CP-26-06296

Appellate Case No. 2024-000786

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall .....Respondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm. ..... Appellants.

Appellants' Reply to Respondents' Return to Petition for Rehearing

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Appellants petitioned this Court to rehear its Order dismissing the appeal as interlocutory. The Court permitted Respondents a Return to that Petition. Given some of the statements in that Return, Appellants file this Reply out of an abundance of caution.

Argument

Respondents' Return makes two arguments. First, that the Petition should be denied because the appeal is interlocutory and does not fit neatly within the categories of section 14-3-330 of the South Carolina Code. Second, Respondents argue that this Court should not issue an advisory opinion. The content of those arguments, however, are unclear and confuse the issues that are before this Court, which supports granting the Petition.

I. Respondents' argument that the appeal is interlocutory confuses a material difference between an evidentiary privilege and a defense to liability.

Respondents' arguments to convince this Court that the appeal is interlocutory rest on a flawed basis. Respondents recite the basic law on how a denial of a motion to dismiss does not affect a substantial right. But then Respondents mischaracterize the circuit court's ruling, referring to it as a ruling on the common-law attorney-client privilege and what its practical effect would be. ("Instead, the Horry County court simply determined that the common-law attorney-client privilege did not apply to absolutely shield Mr. von Herrmann from any potential liability . . . ."); ("[The Order] simply precludes Mr. von Herrmann from relying on a common-law privilege as an end-run around potential liability."); ("The practical effect of the trial court's evidentiary ruling is that Mr. von Herrmann must provide pretrial discovery concerning his receipt and use of the electronic communications . . . .").

Attorney-client *privilege* is not at issue. The issue is the common law *defense* of attorney immunity under *Gaar*, and the fact that the circuit court ruled Appellants "cannot assert the defense going forward." ***See* Exs. B & C to Return to MTD**. As Respondents recognize, "a trial court's interlocutory order affects a substantial right only if it 'discontinue[s] an action, prevent[s] an appeal, grant[s] or refuse[s] a new trial, or strike[s] out an action or defense.'" **Resp. Ret. at 8** (quoting *Edwards*, 369 S.C. at 94, 631 S.E.2d at 530). If this Court is bound to examine the effect of the order and not its label, pursuant to *Thorton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 303, 705 S.E.2d 475, 479 (Ct. App. 2011), then the effect of the circuit court's order purports to prevent Appellants from asserting a defense to liability. That language effectively strikes the defense. The circuit court may be wrong in that it ruled in the context of denying a motion to dismiss, but a swing and a miss is still a strike.

Respondents' arguments are unavailing, and only serve to confuse the issues and indicate that this Court should take the opportunity to rule on the issue or provide clarity to the parties.

II. Appellants are not requesting an advisory opinion.

Respondents argue that Appellants' request for clarity in this Court's Order is inviting this Court to issue an advisory opinion. That is incorrect. Courts will not issue advisory opinions on issues where no meaningful relief can be granted. *Matter of Angela Suzanne C.*, 286 S.C. 186, 189, 332 S.E.2d 542, 543 (Ct. App. 1985). Stated differently, a court will not rule on academic or moot issues, or make a ruling where there is no actual controversy. *Jones v. Dillon-Marion Hum. Res. Dev. Comm'n*, 277 S.C. 533, 536, 291 S.E.2d 195, 196 (1982).

Appellants ask this Court to clarify how its ruling impacts litigation in this case moving forward. To support its Order, the Court cites authorities indicating a denial of a motion to dismiss decides nothing about a case, is interlocutory, and the parties are free to raise the issues at a later stage in litigation. Within the portion of the circuit court's order denying the motion to dismiss, it ruled that Appellants cannot assert a defense moving forward. If it is true that a denial of a motion to dismiss decides nothing and the parties are free to raise the issues later, then Appellants are free to raise the defense of attorney immunity later in this litigation. Appellants expect Respondents will contest that, which is why a clearer ruling would be beneficial in this litigation. This request for clarity is on an issue where the parties disagree—attorney immunity. It is not an invitation for this Court to opine on an academic, hypothetical, or moot question. The parties will continue to argue about it in this litigation and a clearer ruling would be meaningful.

In sum, this Court should grant Appellants' Petition for Rehearing and address whether attorney-immunity is available as a defense to a claim under the South Carolina Homeland Security Act. At the very least, this Court should grant the Petition to clarify whether the parties can

continue to litigate the issue on remand, when the circuit court ruled Appellants "cannot assert the defense going forward."

COPELAND, STAIR, VALZ & LOVELL, LLP

October 2, 2024.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge
Case No.: 2022-CP-26-06296

Appellate Case No. 2024-000786

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall .....Respondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm. ..... Appellants.

PROOF OF SERVICE

I certify that I have served ***Appellants' Reply to Respondents' Return to Petition for Rehearing*** upon the parties below by electronic mail, addressed as follows:

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This 2nd day of October, 2024.

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Skyler C. Wilson
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From:	Rewt, Teri J.
To:	Dick.whiting@whitinglawsc.com; steve@abramsforensics.com; Kenneth R. Moss; Robert E. Lee
Cc:	Mackelcan, Douglas W.; Wilson, Skyler C.; Moran, Rosie
Subject:	Coggeshall v. von Herrmann; Appellate Case No.: 2024-000786
Date:	Wednesday, October 2, 2024 4:36:00 PM
Attachments:	image001.png Appellants" Reply to Respondents" Return to Petition for Rehearing.pdf

Good afternoon Counselors,

The attached Reply in this case will be filed with the Appellate Clerk this afternoon, and we will cc you on that email.

Best regards,

COPELAND STAIR VALZ & LOVELL LLP

Teri Rewt
Legal Assistant II
d: 843.329-8346 | f: 843.727.2995
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REPLY TO SC OFFICE

June 20, 2024

VIA EMAIL
Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

Re: Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall v William Bertram von Herrmann and The Von Herrmann Law Firm
Case No.: 2022-CP-26-06296
Appellate Case No. 2024-000786
CSVL File No.: 2283-64549

Dear Ms. Kitchings:

Enclosed please find Appellants William Bertram von Herrmann and The Von Herrmann Law Firm's email correspondence with the Court Reporter that confirms the production of transcripts of the August 8, 2023 and December 19, 2023 hearings. If anything further is required from Appellants at this time, please advise.

Sincerely yours,

s/Skyler C. Wilson

DOUGLAS W. MACKELCAN
SKYLER C. WILSON

SCW:rm
Enclosures: *as stated above*
cc: Richard G. Whiting, Esq.; Steven Abrams, Esq.; Robert E Lee, Esq.; Kenneth R. Moss, Esq.; Jenny Abbott Kitchings, Clerk
Dick.whiting@whitinglawsc.com; steve@abramsforensics.com; rel@rellaw.com; kennethmoss@wwpemlaw.com

From:	Kevin Dehlinger
To:	Moran, Rosie
Cc:	Transcripts; Wilson, Skyler C.
Subject:	RE: Coggesshall v Von Herrmann Transcripts
Date:	Thursday, June 20, 2024 8:24:58 AM
Attachments:	image002.png image003.png image004.png image005.png image006.png image007.png Coggeshall v Von Herrmann 12-19-23 Transcript.pdf Coggeshall v Von Herrmann 8-7-23 Transcript.pdf Invoice 103224.pdf

Rosie,

Attached are the transcripts and invoice for the above referenced matter. If you have any questions after the review of the transcript, please let us know. We would be happy to revisit any concerns. Thank you.

Kevin Dehlinger
Director of Operations

M (864) 444-4219 | **P** (864) 467-1373
E kdehlinger@legaleagleinc.com

107 LeGrand Blvd., Greenville, SC 29607
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From: Moran, Rosie <rmoran@csvl.law>
Sent: Friday, June 7, 2024 1:51 PM
To: Kevin Dehlinger <kdehlinger@LegalEagleInc.com>
Cc: Transcripts <transcripts@sccourts.org>; Wilson, Skyler C. <swilson@csvl.law>
Subject: RE: Coggesshall v Von Herrmann Transcripts

Great, thanks! Have a nice weekend.

Rosie

Rosie Moran
Legal Assistant
d: 843.266.8218 | f: 843.727.2995
rmoran@csvl.law | www.csvl.law
40 Calhoun Street, Suite 400, Charleston, SC 29401

From: Kevin Dehlinger <kdehlinger@LegalEagleInc.com>
Sent: Friday, June 7, 2024 1:49 PM
To: Moran, Rosie <rmoran@csvl.law>
Cc: Transcripts <transcripts@sccourts.org>; Wilson, Skyler C. <swilson@csvl.law>
Subject: RE: Coggesshall v Von Herrmann Transcripts

Rosie,

We have these two transcripts in production. They are due in on June 18th since standard delivery was selected. If you have any other questions, please let us know. Have a good weekend.

Kevin Dehlinger
Director of Operations

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E kdehlinger@legaleagleinc.com

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From: Moran, Rosie <rmoran@csvl.law>

Sent: Friday, June 7, 2024 1:43 PM
To: Kevin Dehlinger <kdehlinger@LegalEagleInc.com>
Cc: Transcripts <transcripts@sccourts.org>; Wilson, Skyler C. <swilson@csvl.law>
Subject: RE: Coggesshall v Von Herrmann Transcripts

Good afternoon,

Please confirm that these transcripts have been ordered. If so, please let us know when to expect the delivery.

Thank you,
Rosie

Rosie Moran
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rmoran@csvl.law | www.csvl.law
40 Calhoun Street, Suite 400, Charleston, SC 29401

From: Moran, Rosie
Sent: Tuesday, May 21, 2024 11:26 AM
To: Kevin Dehlinger <kdehlinger@LegalEagleInc.com>
Cc: Transcripts <transcripts@sccourts.org>
Subject: RE: Coggesshall v Von Herrmann Transcripts

Please proceed.

Thanks!
Rosie

Rosie Moran
Legal Assistant
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40 Calhoun Street, Suite 400, Charleston, SC 29401

From: Kevin Dehlinger <kdehlinger@LegalEagleInc.com>
Sent: Friday, May 17, 2024 3:50 PM
To: Moran, Rosie <rmoran@csvl.law>
Cc: Transcripts <transcripts@sccourts.org>

Subject: RE: Coggesshall v Von Herrmann Transcripts

Rosie,

The estimated cost would lower to $170.00 or $4.25 per page. Please let us know if you would like for us to proceed. Thank you.

Kevin Dehlinger
Director of Operations

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E kdehlinger@legaleagleinc.com

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www.LegalEagleInc.com

From: Moran, Rosie <rmoran@csvl.law>
Sent: Friday, May 17, 2024 1:57 PM
To: Kevin Dehlinger <kdehlinger@LegalEagleInc.com>
Cc: Transcripts <transcripts@sccourts.org>
Subject: RE: Coggesshall v Von Herrmann Transcripts

Kevin,

We no longer need expedited delivery on these transcripts. What is the estimated time and cost for regular delivery? Skyler Wilson is the attorney for the defendant, and Steve Abrams and Dick Whiting are Plaintiff's attorneys.

Thank you!
Rosie

Rosie Moran

COPELAND STAIR VALZ & LOVELL LLP

Legal Assistant
d: 843.266.8218 | f: 843.727.2995
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40 Calhoun Street, Suite 400, Charleston, SC 29401

From: Kevin Dehlinger <kdehlinger@LegalEagleInc.com>
Sent: Friday, May 17, 2024 1:14 PM
To: Moran, Rosie <rmoran@csvl.law>
Cc: Transcripts <transcripts@sccourts.org>
Subject: Coggesshall v Von Herrmann Transcripts

Rosie,

Today, Legal Eagle was assigned two transcript requests (8-7-23 and 12-19-23) in the above referenced matter. Based upon our review of the records, it appears the transcripts will be approximately 15 and 25 pages long respectively. The following was indicated on the request from:

- Expedited Delivery (7 Days)
- PDF/Email Requested

The estimated 7 business day expedited cost for these transcripts is $200.00.

Please note that the page estimate is not guaranteed. The price indicated above is an approximation based on the audio length. The actual cost and page count may vary due to several factors including but not limited to speech rate, side bars, Q&A v Colloquy, and hearing type. A final invoice will be sent when the transcript is completed.

Please include any attorneys who were present at each hearing and who they represented with your confirmation as the attorneys are not always introduced in the audio.

Once you have authorized us to proceed by responding to this email, we will place your transcript inline for production. If you have any questions, please let us know.

Thank you,

Kevin Dehlinger
Director of Operations

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Dec 04 2024

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge
Case No.: 2022-CP-26-06296

Appellate Case No. 2024-000786

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall .....Respondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm. ..... Petitioners

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PROOF OF SERVICE

I certify that I have served ***Petitioners' Appendix to Petition for Writ of Certiorari*** upon the parties below by electronic mail, addressed as follows:

Richard G. Whiting, Esq.
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Counsel for Respondents

This 4th day of December, 2024.

COPELAND, STAIR, VALZ & LOVELL, LLP

s/Skyler C. Wilson
Douglas W. MacKelcan
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Skyler C. Wilson
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