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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of
Appeals

Appeal from Richland County Circuit Court
The Honorable Jean Toal, retired Chief Justice

2024-001626

Rhonda Meisner,

Appellant,

v.

Grant Meisner, Grant Meisner,
MD, LLC; Sheila Robinson; Erwin
Mangubat, MD; Moore, Taylor, &
Thomas, P.A.; Moore Taylor
Lawfirm; Moore Bradley Myers Law
Firm, LLC; Tricia L. Flowers;
Flowers Consulting, LLC; Richard
G. Whiting, Esquire; Law Offices of
Richard Whiting, P.A.; John Doe
(1-10) a fictional name assigned to
identify parties that are not yet
known or not yet determined.

Respondent
s.

INITIAL BRIEF OF APPELLANT



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The appellant certifies this brief complies with SCACR Rule 267

Statement of Issues on Appeal

1. Did the circuit court have subject matter jurisdiction over the claims and personal jurisdiction over the parties as alleged in the complaint?
2. Did the circuit court err in granting defendant's motion to dismiss?
3. Did the circuit court err by transforming the motion to dismiss into a motion for summary judgment prior to discovery being completed because it evaluated documents and arguments outside of the complaint and amended complaint?
4. Did the circuit court err when it denied the Plaintiff's request for appointment of a mediator, to participate in discovery, and other relief when all defendants were not subject to the dismissal orders?

STATEMENT OF THE CASE

This appeal is based on the trial court's dismissal of claims against Defendants Grant Meisner¹; Grant Meisner, MD, LLC *; Sheila Robinson*; Moore Bradley Myers Law firm*² Richard Whiting; the law Offices of Richard Whiting; and Erwin Mangubat, MD with claims of Civil Conspiracy, Trespass, Trespass after Notice, Defamation, Abuse of Process, Negligence, Depicting the Plaintiff in a false light, and Public Disclosure of Private Facts, all claims that entitle plaintiff to a jury trial. (R___)Defendants counterclaimed for attorney's fees and punitive damages.

¹ Defendant's Grant Meisner, Grant Meisner, MD, LLC filed its motion to dismiss on April 6, 2022; Sheila Robinson, and the law firm's filed their Motion to Dismiss on April 12, 2022 and Dick Whiting filed his motion to dismiss on May 2, 2022 of the original complaint against them. On May 31, 2022 Dick Whiting filed an additional Motion to Dismiss the Amended Complaint and Erwin Mangubat filed his Motion to Dismiss on June 13, 2022 ; however, an Amended Complaint was filed on May 6, 2022 and served on the parties. The dismissal of the original complaint was mooted by the Amended Complaint, which was amended as of right within 30 days of the responsive pleading. There has been no Motion to Dismiss the Amended complaint by Defendant's Grant Meisner, Grant Meisner, MD,LLC; Sheila Robinson, Moore Bradley Myers law firm, PA, only an answer.

² The collective law firm defendants in its current legal iteration.

The Appellant filed a cause of action against the defendants for civil conspiracy alleging the defendants worked in tandem to injure her for their collective and individual pecuniary benefit in several particulars. Notably, the Court's proper purposes were abused to achieve some of their pecuniary goals by dispatching a process server, Tricia Flowers, ³("Flowers") to exceed her lawful purpose of serving papers to collect pictures, videos, and to be able to provide a personal testimony of her interaction with the Appellant (in the presence of her children), under the guise of serving papers. (R___)

The appellant, Rhonda Meisner ("Ms. Meisner") alleged respondent Grant Meisner ("Dr. Meisner") was "not thinking right." Upon information and belief, Dr. Meisner requested and received a letter from one of his operating room colleagues at Prisma Health indicating he was fine. The letter was addressed "to whom it may concern" and included a pre-surgical one page neurological report. This report was submitted to the Richland County Family Court to prove Dr. Meisner was well; however, it was discovered that Dr. Meisner was not a patient of Dr. Mangubat, Dr. Meisner's neurosurgeon operating room colleague.⁴ The submission to the family court never indicated Dr. Mangubat was an expert witness and no expert witness designation was submitted until months after using the report in the family court and the attorney for Dr. Meisner denying any experts were named in discovery responses.

³ At the time of the dismissals of the other defendants Ms. Flowers and her company Flowers Consulting, LLC were default defendants; however, they were named as part of the civil conspiracy claim naming the other defendants as part of the conspiracy.

⁴ Dr. Meisner and Dr. Mangubat worked in the operating room at Prisma Health along with Dr. Meisner's partners.

Subsequent to the appellant's allegations and the submission of the letter by Dr. Mangubat, Dr. Meisner, a former anesthesiologist and the appellant's former husband, misused the appellant's personal identifying information and filed a prescription for an HIV/Aids medication at CVS pharmacy, naming Ms. Meisner, as his patient. Dr. Meisner then paid for and picked-up the prescription for his own personal use. Upon information and belief, defendant Dr. Meisner misused not only the appellant's personal identification without her knowledge or consent to order the medication, but also used her health insurance information to get a reduction in the cost of the medication. Ms. Meisner, has never been Dr. Meisner's patient, and does not have HIV/Aids. Ms. Meisner was Dr. Meisner's estranged wife, living in a separate home and not speaking in person or on the phone with him at the time he wrote the improper prescription. CVS pharmacy sent a text message to Ms. Meisner asking if she needed additional Kaletra which is how Ms. Meisner discovered the prescription fraud and defamation.(R___) The prescription for HIV/Aids medication made all those who viewed the prescription think that Ms. Meisner had HIV or AIDS, and "treat" her accordingly, including medical doctors with whom she worked.(R___) The prescription event lended credence to the fact that Dr. Meisner was indeed ill.

The appellant filed a cause of action for defamation after Sheila Robinson ("Robinson") told third parties, including, but not limited to Christopher Leventis, ("Mr. Leventis")that Ms. Meisner "was found to have abused her children." Mr.

Leventis, who is a financial expert, and former Heathwood Hall student⁵, scribed Ms. Robinson's statement that "Ms. Meisner was found to have abused her children" into his notes for others in his practice to see. (R___) Rhonda Meisner has never abused any child, much less her own children.

The appellant filed a cause of action against Tricia Flowers and Flowers Consulting, LLC after Tricia Flowers entered the lands that Rhonda Meisner was in constructive and actual possession of and upon information and belief when Ms. Meisner was not home "peered into the windows of the house and car" for the purposes of taking pictures of the appellant's business papers, personal items, etc located in her car and home. (R___)

Ms. Flowers then returned to the property when Ms. Meisner had custody of her children, as instructed by the other defendants, for the purposes of starting an altercation with the appellant in front of her children, at the home occupied by Ms. Meisner, after she completed service of process for the papers. (R___) Defendant Tricia Flowers upon information and belief was consulting with the other defendants to time her arrival with that of the appellant and her children, despite the fact, the children were scheduled to be returned to her estranged spouse, within minutes of Ms. Flowers "service of process." (R___) The complaint alleged that after serving her papers, Tricia Flowers remained on the property after being asked to leave and picked a fight with the appellant by claiming Ms. Meisner lied about her

⁵ Rhonda Meisner's children previously attended Heathwood Hall Episcopal School and she continues to have business associates and friends that are affiliated with the School.

whereabouts and accused her of trying to avoid process and accused the appellant of “lying” multiple times in front of her children.(R__)

The appellant filed a claim for defamation against Sheila Robinson who told third parties, including, but not limited to Christopher Leventis, that Rhonda Meisner “was found to have abused her children” in an unprivileged setting.(R__) The comment that “Rhonda Meisner was found to have abused her children” was never true. Not true at the time of the utterance, not true at the time of the filing and is not true today. A claim for defamation was made against those two parties and their respective corporate entities for which the individual defendant worked because the defamatory act involved or occurred at their place of work.

Defendants claim the circuit court has no jurisdiction over the claims while the appellant avers the circuit court has jurisdiction over the claims because a jury trial was requested, there is no privilege that attaches to their actions (R__)and the circuit court is the proper court to adjudicate claims of defamation, abuse of process, civil conspiracy and negligence, when a jury trial is requested.(R__)

Defendants also claim the circuit court has no personal jurisdiction over the parties because they enjoy a qualified judicial immunity and/or they claim a privilege.

The appellant avers the defendants exceeded their qualified judicial immunity and any claimed privilege by their actions,(R__) the location of the actions,(R__) and, by their intent(R__). All acts and actions by the defendants

occurred outside of the judicial proceedings in private front yards, (R___)public pharmacies,(R___) hospital grounds,(T___) law offices,(R___) and on the internet.

Jurisdiction of this Court and standard of review

The Court reviews a dismissal pursuant to SCRPC Rule 12 (b)(6) in the same way the circuit reviews the case and by the same standard. The Court reviews a dismissal pursuant to SCRPC Rule 12 (b)(1)(2) as a question of law for the Court. This Court is free to decide questions of law “with no deference to the circuit court.” *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009)

S.C. Code Ann. §14-8-260 grants the authority of this Honorable Court to hear appeals of judgment, order or decree from the family court and the circuit court. This is an appeal from a circuit court order that does not include any of the outlined exceptions. The circuit court entered the original dismissal of some parties on December 15, 2022. A Motion to alter and amend was filed by the law firm defendants on December 16, 2022. The Court amended the order to include dismissal of the law firm defendants on December 20, 2022.⁶The Appellant filed a motion to alter and amend pursuant to SCRPC Rule 52 and Rule 59 via US mail on December 27, 2022 (December 26, 2022 was a court holiday) which was timely filed and stamped by the Clerk on December 29, 2022), having received notice of entry of the order by review of the records. The Court denied relief of that motion on January 10, 2022. The Second Form 4 order dismissing the law firm defendants was

⁶ The Motion to Dismiss that is subject of this appeal is for the original summons and complaint and was filed before the Amended Summons and Complaint was filed.

received by the appellant on December 28, 2022 according to the motion which was timely filed according to the certificate of service on the Motion to Alter and Amend pursuant to Rule 52 and Rule 60 on January 7, 2022 and entered into the record on January 11, 2023.

Importantly, the Motion to Alter and Amend pursuant to Rule 52 and Rule 60 filed on January 7, 2023 via U.S. Mail and entered on January 11, 2023 was pending during the initial appeal of this case, which was dismissed as untimely. The plaintiff's second motion to alter and amend pursuant to Rule 52 and rule 60 was not acted on by the Court until a subsequent Rule 60 motion was filed requesting action on the Motion to Alter and Amend pursuant to Rule 52 and Rule 60, filed on January 7, 2022 via U.S. Mail and stamped on January 11, 2023. This appeal was timely filed within 30 days of the second rule 60 motion⁷ that was an effort to attempt to get a ruling on the outstanding Rule 60 motion that was never acted on.

Jurisdiction of the Circuit Court over all Claims and all Parties

The claims subject to this appeal are for defamation, negligence, abuse of process, civil conspiracy, trespass, and trespass after notice, and civil conspiracy between South Carolina citizens that either live or work in Richland County. The Richland County Circuit Court routinely hears these claims when the amounts

⁷ The Honorable Justice Jean Toal testified before the Judicial Merit Selection Hearing that she reviewed the records and there were no outstanding motions that required her action; however, a review of the Court filings indicate the motion was filed on January 11, 2023 which was one day after her final order on January 10, 2023.

exceed \$7500, as is the case here. These claims provide for a jury trial and are frequently heard by the circuit court for the county in which they occurred, the parties reside, and work.

Respondents suggest the claims the complaint is a “continuation of the divorce” is inaccurate because there are no causes of action for trespass, defamation, or negligence in divorce proceedings, as a normal course. It is not part of a divorce proceeding for a party to file a fraudulent prescription naming the other party as his patient for a loathsome disease, such as HIV/AIDS. The attorneys that are representing clients typically do not defame the other party by spreading falsehoods in the community and the family court does not provide for a jury demand.

ARGUMENT

I. The circuit court had subject matter jurisdiction over all claims and personal jurisdiction over the parties as alleged in the complaint

As an initial matter, there are no allegations in the complaint or the amended complaint for causes of action reserved for the exclusive jurisdiction of the family court such as divorce, separate support and maintenance, or any other claim reserved by the legislature for the family court.(R___)

Moreover, a jury trial is *only available* in the circuit court, not the family court. As such, even if the family court heard defamation cases, it could not hear a defamation claim that also requested a jury trial, if filed in the family court, the appellant would be required to waive the jury demand. As such the circuit court is

the *only* court that could hear the claims with a jury demand because all citizens are from South Carolina and the amount requested is in excess of \$7500.

II. The circuit court erred when it denied the motion to Alter and Amend pursuant to Rule 60 and Rule 52 filed in an attempt to get a ruling on the Motion to Alter and Amend stamped January 11, 2022 and the underlying orders that dismissed the Defendants in the Order of December 15, 2022 and December 20, 2022.

The Appellant avers all defendants were improperly dismissed as further explained below.

a. As to Defendants Grant Meisner, Grant Meisner, MD, LLC; Sheila Robinson; Moore Bradley Myers, PA

The appellant avers the dismissal of these defendants was improper for multiple reasons.

First, the filed Motion to Dismiss that was subject to the dismissal order of December 20, 2022 was a dismissal for the original complaint, not the Amended Complaint. As such, dismissal is inappropriate. An amended Complaint was filed on May 6, 2022 these defendants motions to dismiss were filed before the Amended Complaint was filed as of right on May 6, 2022 (R__) and the Order dismissing the defendants identified the date the Motion to Dismiss was filed for each of them.(R__) A party can amend his complaint once as a matter of right within 30 days after a pleading is filed. *Mims ex rel. Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 347, 732 S.E.2d 395, 398 (2012) the plaintiff's right to amend the complaint as a right was not affected by the Defendants motion to dismiss. *Bowers v. Robinson*, 311 S.C. 412, 414, 429 S.E.2d 799, 800 (1993)(“The motion to dismiss did not alter the time allowed to the plaintiff to amend his complaint as a matter of right.”).

Second, upon information and belief, none of the above defendants moved to dismiss the Amended Complaint and even if they did, the Order failed to dismiss the Amended Complaint Claims against them. Nevertheless, the Defendants have removed themselves from the caption in the lower court.

Third, The Complaint *and the Amended Complaint* must be construed in light most favorable to the Appellant, who is the non-moving. *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001).(emphasis by the appellant) this standard means “if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief *on any theory* of the case, the complaint should not be dismissed. *Id.* at 233, 553 S.E.2d at 499. (Emphasis by the Appellant).

Fourth, A Motion to Dismiss should be based solely on the four corners of the document. *Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999).

Fifth, the appellant avers each and every claim is adequately pled with all the requisite facts to support each and every element of the cause of action.

Sixth, South Carolina has not adopted the *Iqbal* and *Twombly* heightened pleading standards and specifically rejected this standard. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). South Carolina Rules of Civil Procedure 8(a)(2) requires “A pleading which sets forth a cause of action...shall contain...a short and plain statement of the facts showing that the pleader is entitled to relief...” As such, as long as the facts correspond to meet the necessary elements of the tort (claim), the claim should defeat a

challenge under SCRCRCP Rule 12 (b)(6). "The grant of a motion to dismiss for failure to state facts sufficient to constitute a cause of action cannot be upheld if facts alleged in the complaint and inferences reasonably deducible therefrom, if proven, would entitle the plaintiff to relief on any theory of the case. *Newton v. South Carolina Public Railways Comm'n* 319 S.C. 430, 462 S.E. 2d 266 (1995). In South Carolina only the ultimate facts are necessary to give notice of the claim against them.

Seventh, the fact these defendants are part of the civil conspiracy cause of action and Tricia Flowers and Flowers Consulting, LLC were default defendants suggests the claims against them should not have been dismissed.

Eighth, the Court did not allow the plaintiff to give the explanation of what was in front of the court to explain the default defendants and the limited motion to dismiss for the original complaint and not the Amended Complaint.

b. Defendants Grant Meisner and Grant Meisner, MD, LLC Defamation Claim should stand and not be dismissed.

First, in addition to not filing a Motion to Dismiss for the Amended Complaint Claims against Defendants Grant Meisner and Grant Meisner, MD, LLC these defendants do not claim any quasi judicial immunity or privilege in their defense by way of their motion to dismiss pursuant to SCRCRCP Rule 12 (b)(6).

Second, should this Court decide the Motion to Dismiss was applied to the Amended Claims despite the fact the motion was filed before the Amended Complaint was filed and any subsequent motion was not identified in the motion,

the Appellant avers these claims should be reversed and remanded because all the necessary elements were properly pled.

Third, South Carolina takes the minority view that spouses can sue their spouses.⁸

In order to prevail on a slander claim, a plaintiff must establish 1) a false and defamatory statement was made; 2) the unprivileged publication was made to a third party; 3) the publisher was at fault and 4) the statement is actionable. Here, filing a prescription for someone that does not have a disease is a false statement. The fact the medication treats a loathsome disease like AIDS is defamatory because it presumes that the recipient (Ms. Meisner) has AIDS, and she does not. The writing of a false prescription is not privileged and there is no one to blame other than the author of the prescription (Dr. Meisner) for writing the prescription, he is solely at fault for the creating and submitting the prescription. The false statement (prescription) is actionable *per se* because it assumes common law malice. Because the prescription treats a loathsome disease, the filing of the prescription is defamatory and actionable *per se* and damages are presumed.

**c. Defendants Sheila Robinson and the Moore Bradley Myers
Defendants defamation claims should stand.**

⁸ It is the public policy of our State to provide married persons with the same legal rights and remedies possessed by unmarried persons. See *Bryant v. Smith*, 187 S.C. 453, 198 S.E. 20 (1938) (recognizing purpose of predecessor to § 15-5-170 is to give married women all rights and remedies possessed by unmarried women); see also S.C.Code Ann. § 16-3-615 (Supp.2000) (amending law to provide spouse may be convicted of sexual battery against spouse)

First, the Amended Complaint was not subject to this Motion to Dismiss. As such, Sheila Robison and Moore Bradley Myers Law Firm, PA should not have been dismissed.

Second, Defendant Sheila Robinson is liable individually for her defamation because 1) Ms. Robinson made a false and defamatory statement when she told Christopher Leventis and others that "Rhonda Meisner was found to have abused her children." 2) The unprivileged publication was made to a third party. Ms. Robinson's statement was not privileged. 3) She was solely at fault for dissemination of the false report to Christopher Leventis and others. She alone was responsible for her false statements and the publication thereof and 4) the statement is actionable because she stated Ms. Meisner committed a crime of moral turpitude e.g.: abusing your children. A false statement that attributes a crime of moral turpitude to a plaintiff, it is actionable *per se* and the defendant is presumed to have acted with common law malice. In such an instance, general damages to the plaintiff are assumed.

Moore Bradley Myers Law Firm is liable for the claims of their agent Sheila Robinson and they too like Robinson did not file a motion to dismiss the Amended Complaint, but even if they did, all elements of the defamation are adequately pled and there is no privilege that could be used in defense. The appellant avers abusing a child is a crime of moral turpitude as explained in the Appellant's return to the Motion to Dismiss. (R____) For the reasons explained, the appellant avers common law malice is implied, because the defamation is

actionable per se. But even if it is not, the facts of this case adequately allege common law malice because the facts of the civil conspiracy and abuse of process are incorporated into that claim by reference. The South Carolina Supreme Court has defined common law malice as “the defendant acted with ill will toward the plaintiff, or acted recklessly, or wantonly, i.e. with conscious indifference of the plaintiff’s rights.” *Erickson v. Jones St. Publishers, LLC* 368 S.C. 444, 629 S.E. 2d 653, 665 (2006).

Litigation Privilege alleged by Defendants Sheila Robinson, Dick Whiting, The Law Offices of Richard Whiting, and Moore Bradley Myers Law firm, PA. Whether the claim of privilege applies as an affirmative defense is a question for the jury in the merits phase, not now. *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019) (Rule 12(b)(6) addresses “the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits.”) In *Spence*, our Supreme Court explained affirmative defenses could not be used in SCRPC 12(b)(6) motion unless it pled the elements of the affirmative defense. *Spence v. Spence*, 368 S.C. 106, 123, 628 S.E.2d 869, 878 (2006)(affirmative defenses may not be raised on a motion to dismiss under Rule 12(b)(6) unless the Complaint’s allegations establish the affirmative defense’s elements)

The same affirmative defense of quasi-judicial immunity that Mr. Whiting pleads is likewise an affirmative defense not available at the SCRPC Rule 12(b)(6). Additionally, the complaint adequately pleads that Mr. Whiting operated

outside of his appointment by participating in the conspiracy and the abuse of process claims. (R___)As such, whatever quasi-judicial immunity he claims, the facts as plead indicated he exceeded his immunity.(R___) The appellant incorporates her return to the motion to dismiss. (R___)

d. All Defendants civil conspiracy claims

In *Paradis*, the South Carolina Supreme Court eliminated the requirement to plead special damages as an element of civil conspiracy and this complaint was filed after this time. *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 577, 861 S.E.2d 774, 781 (2021). The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. Even though pleading special damages is not required, the Appellant avers her Amended Complaint adequately pleaded special damages.

Here, an explanation of the relationship between the respondents is required.

The Parties and Relationship with each other:

Grant Meisner is a former anesthesiologist and former husband of the appellant. He hired Moore Bradley Myers law firm to represent him in family court.(R___) Grant Meisner, MD, LLC is the legal entity that Grant Meisner worked for in addition to his practice at Prisma Health and formerly with his group practice. It is unclear whether Grant Meisner, MD, LLC was a client of law firm Moore Bradley Myers, LLC prior to this lawsuit.(R___) Sheila Robinson is a partner with Moore Bradley Myers and was the attorney assigned to Grant Meisner.

(R___)It is unclear whether Moore Bradley Myers took on Grant Meisner, MD, LLC as a client prior to this litigation.(R___)Tricia Flowers is a private process server who worked for Flowers Consulting, LLC and was hired by Moore Bradley Myers Law firm to serve papers on Rhonda Meisner.(R___)Dick Whiting was assigned as a Guardian *ad Litem* for the minor children during the divorce proceedings. (R___)He worked for the Law Offices of Richard Whiting, PC and the bills sent to the appellant were from the Law Offices of Richard Whiting, PC.(R___)

Civil Conspiracy Claim

The appellant avers Sheila Robinson, Grant Meisner, Richard Whiting, and Erwin Mangubat are liable for civil conspiracy along with the companies for whom they work because these respondents conspired among themselves for pecuniary gain and to harm the appellant to keep the health status of respondent Grant Meisner secret.

Each of the individuals doing their part in the conspiracy and acting in tandem. Erwin Mangubat provided a letter of health and a one page neurological report falsely indicating respondent Grant Meisner was “neurologically fine.” R___(Cmplt ¶#33-37) Sheila Robinson and Dick Whiting both withdrew their requests for psychological analysis and opposed Ms. Meisner’s request for a psychiatrist who is a medical doctor evaluate Grant Meisner.R___(Cmplt¶ # 41-45) Dick Whiting went so far as to have his secretary make a report that “his hands are steadier than hers when he wrote a check.”(R___)

Their actions harmed Rhonda Meisner and her children by delaying diagnosis and treatment.(R___)Grant Meisner was allowed to continue working as an anesthesiologist. Clearly, Dr. Mangubat did not do the necessary tests to diagnose the Respondent's symptoms because Dr. Meisner was subsequently diagnosed with acute myeloid leukemia that has as side effects his reported hallucinations, delusions, and unsteadiness on his feet.⁹(R___)

Normally, an attorney cannot "conspire" with her client except as here when Ms. Robinson in furtherance of the conspiracy for her own pecuniary gain breached a duty to third parties and committed an extrinsic fraud on the court in doing so. (R___)

Under South Carolina law a party is required to disclose expert witnesses and their opinion whether or not they are going to use the expert in the final hearing. The appellant avers Sheila Robinson breached her duty to disclose an expert witness and his corresponding expert opinion in her request for production and updates to interrogatories. Ms. Robinson along with Mr. Whiting withdrew multiple motions for psychiatric testing on multiple occasions to further keep the illness of Dr. Meisner from the court and the parties.

In effect, she lied to the court by omission by failing to update interrogatories and requests for production and by taking direct action to avoid disclosure of his illness by withdrawing her motion for psychiatric exams. Dick Whiting to further the conspiracy likewise abandoned a motion for psychological evaluations going so

⁹ Dr. Mangubat through his attorney provided the trial court with the letter and the one-page neurological report.

far as to have his secretary report that she did not keep the information secret that he too knew Dr. Meisner was ill had his secretary become a witness for the sole purpose of misdirecting the court.(R___) He too, like Ms. Robinson, abandoned a motion for psychological evaluations even after he received a court order to perform them. (R___)

Notably, the designation of expert witness came after it was discovered that Grant Meisner was not Erwin Mangubat, MD's patient because he had no patient record or bills.(R___) In effect, once the conspiracy to keep the health status of Defendant Grant Meisner from the court and the appellant was discovered, the late naming of Dr. Mangubat as an expert was part of the conspiracy, along with Richard Whiting's use of the report to indicate Grant Meisner was healthy when in fact he was not, all for the purpose of pecuniary gain and to harm Rhonda Meisner by gaslighting her concerns for the health of her former husband and keep the children in his custody to their severe detriment.

The Complaint alleges Richard Whiting (Mr. Whiting) had an independent duty to investigate the allegations of illness of Defendant Grant Meisner. (R___.) As Guardian *ad Litem*, Richard Whiting was supposed to act in the best interests of the children and do an independent investigation (R___); however, he breached his duty by delaying, denying, and then abandoning a motion for psychological evaluations in furtherance of the conspiracy for pecuniary gain.(R___) His actions were contrary to his appointment pursuant to the Guardian *ad Litem* Reform Act.(R___).

In *Stiles*, our Supreme Court determined “an attorney could be liable for conspiracy with his/her client if the attorney breached a duty to a third party or acts in his own personal interests, outside the scope of the representation of his client.”

Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995).

The allegations in the complaint and the amended complaint adequately allege that Sheila Robinson breached her duty as an attorney to designate Erwin Mangubat as an expert witness and disclose his expert opinion prior to submitting the opinion to the court.(R._____)S.C. Code Ann. § 19-12-170 (A) Whether or not a party elects to request a pretrial hearing as contemplated in Section 19-12-160, all parties *shall* disclose to other parties to the litigation the identity of all persons who *may be used at trial* to present expert evidence. In this case, the mandatory language in the statute requires Sheila Robinson to disclose the expert witness prior to using at trial or the Appellant avers even before a pre-trial hearing. The facts section adequately alleged the report was used on two occasions before designation as an expert witness. R____(Amnd'd Cmplt at #26-29)

Ms. Robinson also breached her duty to update interrogatories and Request for production, as required by the rules of civil procedure and she breached her duty to name Erwin Mangubat, MC as an expert witnesses and provide his opinion to the other side, as required by the rule.(R__)

"[A]gents for a corporation acting in the scope of their duties cannot conspire with the corporation absent the guilty knowledge of a third party."); *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 325, 701 S.E.2d 39, 46 (Ct. App. 2010) Here,

the other parties absolutely knew about the conspiracy because they each dismissed filed motions to get psychological evaluations and then abandoned them all together.() Mr. Whiting abandoned two motions for psychological evaluations and both Sheila Robinson and Mr. Whiting opposed psychiatric evaluations.(R) The appellant avers this was because they did not want a medical doctor to evaluate Dr. Meisner. In the case of Mr. Whiting, he had an order in hand for psychological evaluations that he disobeyed.

e. All Defendants abuse of process claims

The Appellant references her return to the motion to dismiss and incorporates it into this argument.(R)

Two Defendants were default defendants at the time the Order was entered, both of which were involved in the abuse of process claim, Tricia Flowers and Flowers Consulting, LLC. As such, the other defendants referenced should not have been dismissed. Additionally, the proper processes were not followed as it relates to the abandoned motions which were incorporated into this cause of action to withhold the health status of Dr. Meisner for pecuniary gain.

The appellant incorporates her arguments into here along with the amended complaint.

III. The circuit court erred by allowing the attorney for Erwin Mangubat to hand up documents and make arguments that effectively converted the motion to dismiss into a motion for summary judgment prior to discovery which the court considered based on her comments from the bench.

January 22, 2025

Respectfully Submitted,



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During the Motion to Dismiss hearing the attorney for Defendant Mangubat handed up the letter and the neurological evaluation that Dr. Mangubat completed. (R___) Further, he argued that Dr. Mangubat was an expert witness contrary to the allegations in the complaint and referenced a ruling gained in the family court; however, a jury could determine that Dr. Mangubat was not an expert witness since there were no payments. (R___) Additionally, the attorney indicated that this was as alleged in the hearing a favor when he said “no good deed goes unpunished” or words to this effect. (R___) The Court made multiple comments that family court could not be transferred to this Court (circuit court) and other comments that evidenced she considered the evidence and argument of the attorney. As such, appellant avers the trial court converted the Motion to dismiss into summary judgment without the benefit of discovery which the appellant avers is in error.

IV. The Circuit Court erred in not granting the motion to appoint a mediator and other relief.

The court was made aware of the fact there was a default defendant. (R___) As such the appointment of a mediator and requirement to participate in discovery because some defendants were subject to the same claims as the default defendants like civil conspiracy, and abuse of process, which required discovery and a mediator.

The appellant respectfully incorporates her arguments in response to the Motions to dismiss as filed and made at the hearing as well as all references to the record on appeal and requests this Honorable Court to reverse and remand the dismissal based on the aforementioned reasons.

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