

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS IN
) THE SEVENTH JUDICIAL CIRCUIT
 COUNTY OF SPARTANBURG)
) C/A No.: 2024-CP-42-02781
)
 Carnie Norris III,)
)
) Plaintiff,)
)
) vs.)
) Order Granting Defendant's
) Motion to Dismiss
 Dr. Gary Poliakoff,)
)
) Defendant.)

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SC Court of Appeals

This matter was before the Court on November 7, 2024, to hear Defendant's Motion to Dismiss Present at the hearing were Carnie Norris, representing himself, and Thomas Pendarvis as counsel for defendant. Prior to rendering its decision in this matter, the Court had the opportunity to review the motion filed by Defendant and Return filed by Plaintiff, as well as considering the arguments of counsel and pro se plaintiff.

Standard of Review

The 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." *Hambriek v. GMAC Mortg. Corp.*, 370 S.C. 118, 121, 634 S.E.2d 5 (Ct. App. 2006) (citing *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 412, 574 S.E.2d 228, 230 (Ct.App.2002) (quoting Rule 12(b)(6), SCRCP)). The circuit court "must dispose of a motion for failure to state a cause of action based solely upon the allegations set forth on the face of the complaint." *Id.* at 122 (citing *Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987)). "The motion cannot be sustained if facts alleged in the complaint and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory of the case."

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Id. “All properly pleaded factual allegations are deemed admitted for the purposes of considering a motion for judgment on the pleadings.” Id. (quoting *FOC Lawshe Ltd. P'ship*, 352 S.C. at 413, 574 S.E.2d at 230 (Ct.App.2001)).

Based on a review of the Court’s file, the motion and return as filed by counsel, and the arguments of counsel, the Court orders as follows.

1. The Claim is Barred by the Statute of Limitations

Plaintiff knew or should have known that he had a claim more than three years prior to filing the lawsuit. The statute of limitations for a tort claim other than for recovery of property is governed by S.C. Code § 15-3-530, which states that a claim must be brought within three years after it arises or after discovery of potential claim may be known. A civil action is commenced when the summons and complaint are filed with the clerk of court if service is accomplished within 120 days after filing, as outlined in SC Code § 15-3-20.

In this case, defendant, as attorney for the personal representative in the Estate of Plaintiff’s mother, sent a letter dated February 23, 2021. The letter stated that there was no will found for plaintiff’s mother. Plaintiff acknowledged receiving this letter. That letter placed him on notice of the claim he now raises, that the will was improperly destroyed. Plaintiff filed this action in July 2024. Given plaintiff’s acknowledgment of receipt of the letter, the court finds that the three year statute of limitation had run by July 2024. Therefore, any claim regarding knowledge of a will or improper destruction of the will is barred by the statute of limitations. Plaintiff was on notice that defendant did not present a will as of February 23, 2021.

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2. The Claim is Barred Because a Plaintiff May not Maintain an Action Against an Attorney for Actions Taken in His Professional Capacity for a Third-party.

Plaintiff may not maintain an action against Defendant for his professional actions taken in representing a third party. There are two applicable rules to this issue. Unless explicitly authorized, a fiduciary duty between an attorney and her client shall not impose upon the attorney any duties or obligations to other persons interested in the estate, trust estate, or other fiduciary property. S.C. Code § 62-1-109. The South Carolina Supreme Court reinforced the premise that an attorney has no liability for injury to a third party arising out of his professional performance. *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601. This immunity is not absolute. To achieve this immunity, an attorney must act for the purpose of obtaining a proper adjudication for his client. *Stiles v. Onorato*, at 602 (citing *Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 528-529, 339 S.E.2d 887, 889 (Ct. App. 1986)). The Court in this case ruled that an attorney may be held liable for conspiracy if, while representing his client, breaches an independent duty to a third person or acts in his own personal interest, outside the scope of his representation to the client. *Id.* at 300.

Here, it is alleged that Defendant Poliakoff knew that there was a will, and intentionally ignored the will or disregarded it in some way. This is not actionable for a few reasons. First, the issue of the existence of a will was adjudicated in probate, ruling the decedent mother passed intestate. Despite Carnie's understanding of his mother's will, there is no signed will; only a written will with an attached affidavit from her attorney saying it was her will. The fact that the mother was adjudicated decedent intestate would strongly favor the defendant in a motion for summary judgment, which is applicable here because matters outside the pleadings were

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presented in the motion not excluded by the court. SCRCRCP Rule 12(c). During the hearing, plaintiff acknowledged he did not believe Mr. Poliakoff acted improperly, but that his brothers fraudulently destroyed a will that Mr. Poliakoff should have known about.

Further, Plaintiff cannot maintain a claim in compliance with the above attorney immunity rules. Here, Defendant was the attorney for Carnie Norris's brother(s), Clyde Norris, the personal representative of their mother's estate. Defendant owed no fiduciary duty to Carnie, even though Plaintiff had an interest in the estate. Defendant has attorney immunity for acting in his professional capacity for his client, Clyde Norris.

3. The Plaintiff Failed to State Facts Sufficient to Constitute a Cause of Action and Judgment upon the Pleadings.

Defendant moved to dismiss the case pursuant to Rule 12(b)(6) for failure to state a cause of action upon which relief may be granted. Plaintiff's complains of defendant Poliakoff's actions in a letter from defendant Poliakoff to plaintiff dated December 11, 2020 and a letter from defendant Poliakoff to plaintiff's former attorney dated December 30, 2021. These letters were written by defendant Poliakoff in his capacity as attorney for plaintiff's brothers regarding the Estate of Mary Norris. No attorney-client relationship existed between Plaintiff and Defendant Poliakoff. The second letter was a letter regarding settlement negotiations. Nothing in the pleadings raises any allegation regarding the letters other than plaintiff asserts they were improper and not in his best interest, as he believed or knew a version of his mother's will made him the primary beneficiary.

For the reasons already stated, the arguments provided by plaintiff at the hearing, and based upon an additional review of the pleadings, this court finds that plaintiff's complaint does

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not properly raise any cause of action against defendant Poliakoff. There is no basis for an action from an attorney to a third party based upon the facts alleged in this pleading.

4. The Plaintiff Failed to File an Affidavit of Expert Witness

Taking the complaint in the light most favorable to the plaintiff, plaintiff raises a question of professional negligence or legal malpractice. However, as stated above, there was no attorney client relationship between plaintiff and defendant Poliakoff. There is no third-party claim for legal negligence. If plaintiff's complaint did properly present such a claim, plaintiff failed to file an affidavit of expert witness as required by S.C. Code Section 15-36-100(B). The court must construe the statute strictly. *Ranucci v. Crain*, 409 S.C. 493, 505, 763 S.E.2d 189 (2014).

Therefore, this case must be dismissed on this ground, as well.

For these reasons, Plaintiff's case is dismissed.

IT IS SO ORDERED.

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Spartanburg Common Pleas

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IT IS SO ORDERED.

/s/ Hon. Martha M. Rivers (2788)

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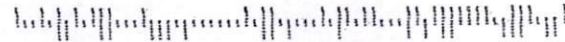
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