RECEIVED
Feb 21 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
William McGee, Circuit Court Judge

Appellate Case No. 2024-001626, 2025-000164
Case No.: 2022-CP-40-01415

Rhonda Meisner.....Appellant

v.

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

---

INITIAL BRIEF OF RESPONDENTS Tricia L. Flowers, Flowers Consulting, Flowers Consulting LLC

MICHAEL C. TANNER LLC
Michael C. Tanner (S.C. Bar #12424)
Emre Ersoy (S.C. Bar # 104958)
P.O. Box 1061
Bamberg, S.C. 29003
(803) 245-9153
Attorneys for Tricia Flowers
and Flowers Consulting, LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Case Law

Statutes Rules and Other Authorities

COUNTERSTATEMENT OF ISSUES ON APPEAL

I. The Trial Court was proper in dismissing Respondents Tricia Flowers and Flowers LLC as a party to this lawsuit and correctly found that Plaintiff/Appellant failed to state sufficient facts to constitute action against them.

II. The Trial Court properly ruled in dismissing these Defendants and correctly found that there is no subject matter jurisdiction to dismissing Respondents Tricia Flowers and Flowers LLC.

III. The Trial Court properly ruled Respondents Tricia Flowers and Flowers LLC were not liable to Plaintiff/Appellant based upon the doctrine of quasi-judicial immunity.

IV. The Trial Court properly ruled in dismissing these Defendants

STATEMENT OF FACTS

A. Background

Plaintiff/Appellant Rhonda Meisner, pro se, commenced this action on March 18, 2022, in the county of Richland, Court of Common Pleas, making numerous allegations against the above-named defendants: her ex-husband (Dr. Grant Meisner MD,) her ex-husband's clinic (Grant Meisner MD, LLC,) her ex-husband's divorce attorney (Sheila Robinson, Esquire) and and his law firm (named in the Complaint as "Moore Taylor & Thomas PA, "Moore Taylor Lawfirm," and "Moore Bradley Myers Law Firm LLC",) Dr. Erwin Mangubat, the guardian ad litem (GAL) appointed for her divorce matter (Richard G. Whiting) and his law firm, Dr. Meisner's private process server (Tricia L. Flowers) and her company (Flowers Consulting LLC.) The matter is filed in the Richland County Court of Common Pleas and docketed as 2022-CP-40-01415. The allegations include but are not limited to, civil conspiracy, defamation, false light, trespassing, and public disclosure of private information. The Summons and Complaint was amended on May 6, 2022.

On December 15, 2022, former Chief Justice Jean H. Toal granted the Motion to Dismiss on behalf of Erwin Mangubat, Law Office of Richard Whitting, Richard Whitting personally, Sheila Robinson, Grant Meisner, MD, and Grant Meisner MD LLC. Five days later, on December 20, 2022, Moore Bradley Myers Law Firm PA a/k/a Moore & Taylor & Thomas PA a/k/a Moore Taylor Law Firm PA was also dismissed from the case upon their Rule 59 motion.

Plaintiff filed a Motion to alter or amend that order on December 29, 2022. By order filed on January 10, 2023, former Chief Justice Toal denied Appellant's Motion to Alter or Amend. That very day, the Richland County Clerk of Court mailed a copy of the Order to Appellant,

whose address is located at Blythewood, South Carolina. It appears Plaintiff/Appellant belatedly filed Notice of Appeal on February 15, 2023, by this court which was docketed as 2023-000232. This appeal has been dismissed by the South Carolina Court of Appeals on June 6, 2023, as untimely. (Dispositional Decision – Order). (2023-000232). On July 28, 2023, the Court of Appeals also granted in part Respondents Richard G. Whiting, Erwin Mangubat, Dr. Grant Meisner, Grant Meisner MD LLC, his attorney Sheila Robinson and Moore Taylor & Thomas, P.A., Moore Taylor Law Firm, P.A., and Moore Bradley Law Firm P.A.'s, motion for costs in part pursuant to Rule 222, SCACR. (See Non-Dispositional Decision – Order)(2023-000232).

B. <u>Defendants Tricia L. Flowers and Flowers Consulting, LLC.</u>

Defendant, Tricia L. Flowers, is the process server, and is the owner and sole agent of her business, Flowers Consulting LLC (collectively as "these Defendants.") Plaintiff /Appellant alleges these Defendants entered upon her land and took pictures of Plaintiff and her car, and then distributed the photos. Plaintiff/Appellant further alleges that she warned these Defendants not to enter, that they were on trespass notice, and that these Defendants engaged in combative conversation with Plaintiff in front of her children. Plaintiff/Appellant also alleges that these Defendants were part of conspiracy along with the other defendants against Plaintiff/Appellant by meeting and speaking among themselves and others (Plaintiff Amended Complaint ¶ 49) and that these Defendants put her in a false light publishing the pictures "illegally gained by Defendant Tricia Flowers trespass after notice with reckless disregard of Plaintiff's rights" (¶ 143) despite South Carolina law not recognizing false light claims.[1] She further alleges abuse of process by these Defendants (Id at ¶ 146-176) despite implying the fact that she might have been

[1] See Brown v. Pearson, 326 S.C. 409, 422, 483 S.E.2d 477, 484 (Ct. App. 1997) (explaining no South Carolina case has recognized a cause of action for "false light")

avoiding the service of process since she alleged that Defendant Tricia Flowers was "on notice not to serve papers in the presence of her minor children (Id at ⁋ 123,)" that "[her] children originally thought Defendant Flowers was a neighbor, and "that Defendant Flowers 'lied' about whether Appellant/Plaintiff was at home." (Id at ⁋ 128-129).

On March 17, 2023, these Defendants filed a Motion to Set Aside Default pursuant to Rule 55, SCRCP. Plaintiff/Appellant then filed a Motion For Default as to these Defendants on March 30, 2023, and these Motions were heard by the Hon. Jocelyn Newman on July 11, 2023, who properly found that Plaintiff/Appellant improperly served these Defendants under Rule 4(d)(3), SCRCP and under S.C. Code Ann. §15-9-520. These Defendants argued that the person who was served with the pleadings happened to be a bona fide purchaser of the premises Defendant Flowers used to reside in and operated her business, and that the bona fide purchaser had no relation with Defendant Flowers or her business in any way. Furthermore, the service was defective in a way that the process server noted under additional comments of affidavit of service that "take flowers accepted documents." Hence, these Defendants, whether personally or in her capacity as a business owner of Flowers Consulting, LLC, were never notified of the lawsuit, and therefore, the service of process was defective. Judge Newman issued a Form 4 Order and indicated in the order information that "Plaintiff's Motion For Continuance (Filed on 7/3/23) is DENIED; Plaintiff's Motion For Entry of Default (filed on 3/30/23) is DENIED; and Defendant Tricia L. Flowers' Motion to Set Aside Default (filed on 3/17/23) is GRANTED." Therefore, these Defendants are informed and believe there is no dispute or question as to whether these Defendants were properly reinstated or remained as "non-default" parties.

Thereafter, these Defendants filed a Motion to Dismiss on January 23, 2024 for (1) failure to state a claim, (2) lack of jurisdiction over the subject matter, (3) lack of jurisdiction over the person, and (4) under the doctrine of absolute and quasi-judicial immunity.

These Defendants' Motion to Dismiss were heard on September 17, 2024, by the Hon. William McGee. Contemporaneously, Plaintiff/Appellant filed a Motion to Alter/Amend on September 6, 2024, as to the other defendants/respondents which was denied by Judge the Hon. Daniel Coble in a form 4 order on September 13, 2024.

Judge McGee entered an order on November 5, 2024, dismissing these Defendants from the lawsuit with prejudice. Plaintiff/Appellant followed with this appeal.

STANDARD OF REVIEW

In reviewing a motion to dismiss, this Court applies the same standard of review as the trial court. Carolina Park Assocs., LLC v. Marino, 400 S.C. 1, 6, 732 S.E. 2d 876, 878 (2012) citing Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). A ruling dismissing a complaint for failure to state facts sufficient to constitute a cause of action must be based solely on allegations set forth in the complaint. Id. "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory," dismissal is improper. Id. "Questions of law may be decided with no particular deference to the trial court." Wiegand v. U.S. Auto. Ass'n , 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011). "On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the [circuit] court." Kelaher, Connell & Conner, P.C. v. S.C. Workers' Comp. Comm'n, 435 S.C. 55, 60, 863 S.E.2d 842, 844, (Ct. App. 2021) citing Grimsley v. S.C. Law Enf't Div., 396 S.C. 276, 281, 721 S.E.2d 423, 426 (2012) (quoting Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009)). "That standard

requires the [c]ourt to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." Id. (quoting Rydde, 381 S.C. at 646, 675 S.E.2d at 433).

ARGUMENT

I. The Trial Court was proper in dismissing Respondents Tricia Flowers and Flowers LLC as a party to this lawsuit and correctly found that Plaintiff/Appellant failed to state sufficient facts to constitute action against them.

South Carolina Rules of Civil Procedure Rule 12(b)(6) states "Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion. . . (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action."

"Under Rule 12(b)(6), SCRCP, a defendant may move for dismissal based on a failure to state facts sufficient to constitute a cause of action." Santos v. Harris Inv. Holdings, LLC, 2023 S.C. App. LEXIS 8, *6, 2023 WL 379719 citing Ashley River Props. I, LLC v. Ashley River Props. II, LLC, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct. App. 2007). "That standard requires the Court to construe the complaint in a light most favorable to the nonmovant and determine if the 'facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.'" Santos citing Hager v. McCabe, Trotter & Beverly, P.C., 435 S.C. 740, 746, 869 S.E.2d 886, 889 (Ct. App. 2022)(quoting Ryddee v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009)). "If the facts and inferences would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper." Id. In Santos, the Court of Appeals of South Carolina found that the trial court did not err in granting

the defendant's Motion to Dismiss under 12(b)(6), where it found the defendant properly ejected the Plaintiff upon the termination of commercial lease entered between the plaintiff and the defendant. In the current case, the trial court properly found Plaintiff/Appellant was not entitled to any relief on any theory.

Trespass/Trespass After Notice

Plaintiff/Appellant asserted trespass and trespass after notice as her cause of actions against these Defendants. The trial court properly found that she failed to state a claim on trespass. "One in peaceable possession may maintain an action for **trespass** against another who interferes with his quiet and exclusive enjoyment of the property. Charleston Joint Venture v. McPherson, 308 S.C. 145, 153, 417 S.E.2d 544, 549 (1992) citing Lane v. Mims, 221 S.C. 236, 70 S.E.2d 244 (1952). S.C. Code Ann. §16-11-620 states:

> Any person who, ***without legal cause*** or ***good excuse***, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative shall, on conviction, be fined not more than two hundred dollars or be imprisoned for not more than thirty days.

(Emphasis added). These Defendants had legal cause to enter on the premises of Plaintiff/Appellant's premises as she was the process server. Rule 4 (c), SCRCP, states "Service of summons may be made by the sheriff, his deputy, or *by any other person not less than eighteen (18) years of age*, not an attorney in or a party to the action." (Emphasis added). Rule 4(d)(1), SCRCP, states service should be made "upon an individual other than a minor under the age of 14 years or an incompetent person, by delivering a copy of the summons and complaint to him personally or *by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein*, or by delivering a copy to an

agent authorized by appointment or by law to receive service of process." (Emphasis added). These Defendants properly went to Plaintiff/Appellant's residence to leave copies to Plaintiff/Appellant and made sure she received the pleadings. These Defendants are not required to schedule service with Plaintiff/Appellant. These defendants did not interfere with Plaintiff/Appellant's "quiet and exclusive enjoyment" of her property. The trial court properly held that defendant Flowers' court-imposed duty requires under Rule 4, of SCRCP, when it comes to serve process, defendant Flowers is obligated to hand legal documents to the individual intended to be served or other people who are authorized to accept service on behalf of that individual. Thus, as a process server and sole agent for her company, assert Plaintiff's trespass and trespass after notice claims are not applicable to her.

Next, these Defendants believe the trial court properly found that Plaintiff/Appellant failed to properly allege the elements required to maintain a cause of action for civil conspiracy, defamation, invasion of privacy, false lights, abuse of process, and disclosure of private information.[2] As stated in her affidavit filed with the circuit court, to support her motion to set aside default, she was the process server for Sheila Robinson, Esq. of Moore Bradley Myers, P.A., which represented Plaintiff/Appellant's husband at the time this suit commenced in the divorce action. (Flowers Affidavit ¶ 12). These Defendants maintain that Defendant Flowers would always record a cell phone video to track timing of her process serving. Id. This is something she regularly does for her business for every service she completes to show the proof that the proper and correct person has been served on date and time certain. Id. This is not a

[2] During the hearing, Plaintiff/Appellant argued that because Brown v. Pearson, 326 S.C. 409, 422, 483 S.E.2d 477, 484 (Ct. App. 1997) is a Court of Appeal case and because the holding was not issued by the South Carolina Supreme Court, this is not a proper authority to determine whether South Carolina recognizes false light claims.

violation of the South Carolina Rules of Civil Procedure or any other statutes.[3] [4] In fact, as stated in Defendant Flowers' affidavit, the judges in the Richland County approve and endorse the defendant's recording herself and the area during the service as it helps for proper service of process. Id.

A. Abuse of Process

Plaintiff/Appellant claimed abuse of process as to these Defendants. "A plaintiff alleging abuse of process in South Carolina must assert two essential elements: 1) an 'ulterior purpose,' and 2) a 'willful act' in the use of the process not proper in the conduct of the proceeding." Food Lion, Inc. v. United Food & Commer. Workers Int'l Union, 351 S.C. 65, 71, 567 S.E.2d 251, 253, (Ct. App. 2002) citing Hainer v. Am. Med. Int'l, Inc., 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997); see LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 370 S.E.2d 711 (1988). "An ulterior purpose exists if the process is used to gain an objective not legitimate in the use of the process." First Union Mortgage Corp. v. Thomas, 317 S.C. 63, 74, 451 S.E.2d 907, 914 (Ct. App. 1994); see Davis v. Epting, 317 S.C. 315, 454 S.E.2d 325 (Ct. App. 1994) (finding no ulterior purpose where the record presented no evidence the process was used to gain anything other than a right to access disputed property); Rycroft v. Gaddy, 281 S.C. 119, 125, 314 S.E.2d 39, 44 (Ct. App. 1984) (holding no ulterior purpose was shown where defendants' use of subpoena to obtain bank records was for the "entirely legitimate purpose" of

[3] In South Carolina, a process server can legally video record someone while serving legal documents as long as they have the consent of at least one party involved, as the state is considered a "one-party consent" state for recording audio and video conversations; meaning only one person needs to agree to be recorded for it to be legal. S.C. Code Ann. § 17-30-15, 17-30-30. In the present matter, the Respondent Flowers properly recorded the interaction between her and Plaintiff/Appellant.

[4] Plaintiff failed to cite any authority or statute in her Summons and Complaint showing it is a violation of South Carolina law to record the defendant when the process server serves judicial pleadings.

gathering evidence"). "As to the second, or 'willful act' element, our supreme court has stated that "some definite act . . . not authorized by the process or aimed at an object not legitimate in the use of the process is required." Id citing Hainer, 328 S.C. at 136, 492 S.E.2d at 107.

In the present case, Plaintiff/Appellant has no sufficient claim or evidence to assert these Defendants had any ulterior purpose to gain anything other than her court-imposed duty to serve Plaintiff/Appellant with the pleadings. Moreover, Defendants' acts were entering and serving legal pleadings as a process server were authorized under the laws of South Carolina.

Therefore, the trial court properly found this claim is frivolous and fails to state sufficient facts.

B. Civil Conspiracy

The trial court properly concluded Plaintiff/Appellant did not assert a sufficient cause of action as to civil conspiracy. A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff." Allegro, Inc. v. Scully, 418 S.C. 24, 32, 791 S.E.2d 140, 144, (2016) citing McMillan v. Oconee Mem'l Hosp., Inc., 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). The primary inquiry in civil conspiracy is whether the principal purpose of the combination is to injure the plaintiff. Pye v. Estate of Fox, 369 S.C. 555, 567, 633 S.E.2d 505, 511 (2006).

Here, Plaintiff/Appellant falsely claims in her Amended Summons and Complaint that these Defendants and respondents Sheila Robinson, Richard G. Whiting, and Law Office of Richard Whitting distributed photographs of the plaintiff and her chattel property that depicted the plaintiff "false light." She also made a frivolous argument that all these respondents were together in a conspiracy against her. These Defendants correctly stated at their Motion To

Dismiss hearing that Richard G. Whiting is the Guardian Ad Litem appointed by the Court. These Defendants believe one of his duties are "conducting an independent, balanced, and impartial investigation to determine the facts relevant to the situation of the child and the family." S.C. Code Ann. §63-3-830 (2). These Defendants were in no way part of "civil conspiracy" with other respondents. Again, she was the process server who served the pleadings to Plaintiff/Appellant for their divorce matter. She was hired by the respondent Robinson and followed her instructions. She properly recorded Plaintiff/Appellant receiving the pleadings as it was her and Plaintiff/Appellant under "one party consent." There is no evidence plead to demonstrate she ever communicated with Plaintiff/Appellant's children. She did not injure Plaintiff/Appellant and/or attempted to ruin her business. These Defendants maintains that they have no relation with the respondent Richard Whitting nor his law office, they only receive instructions to Dr. Grant's counsel Sheila Robinson. In fact, these Defendants believe Plaintiff/Appellant tries to assert a false conspiracy scheme including the respondents to falsely allege they were in conspiracy to harm her or her children which is not real.

C. Public Disclosure of Private Information and Invasion of Privacy

Under a cause of action for the "publicizing of one's private affairs with which the *public* has no legitimate concern" (emphasis added), an essential element of recovery is a showing of a public disclosure of private facts. Rycroft at 281 S.C. 119, 124, 314 S.E.2d 39, 43. The disclosure of private facts must be a public disclosure, and not a private one; there must be, in other words, publicity. Id. It is publicity, as opposed to publication, that gives rise to a cause of action for **invasion of privacy**. Id.

In Rycroft, the Court of Appeals held no cause of action for abuse of process lies against the respondent bank as it caused no process to issue against the appellant; rather, it merely

responded to the subpoenae caused to be issued by the other respondents. Id at 281 S.C. 119, 125, 314 S.E.2d 39, 43-44. The Court further held that the appellant has also failed to make out a valid abuse of process claim against the respondents due to lack of the element of an ulterior purpose. Id. The Court found that the bank records were subpoenaed for an entirely legitimate purpose to be used as evidence by one of the respondents in the prosecution of his client's action. Id.

Just like in Rycroft, Plaintiff/Appellant has failed to show the element of ulterior purpose. These Defendants only recorded Plaintiff/Appellant for the purpose of showing proof that she was served with the pleadings, a purpose which is a legitimate and required as the proof of service. Plaintiff has also failed to show these Defendants ever publicly disclosed or publicized the recordings gathered from Plaintiff/Appellant when she accepted the service.

Therefore, these Defendants believe Plaintiff/Appellant's Summons and Complaint does not contain sufficiently pleaded facts as to the causes of actions but rather, it was merely filed due to causing stress and intimidation as to these Defendants.

II. The Trial Court properly ruled in dismissing these Defendants and correctly found that there is no subject matter jurisdiction to dismissing Respondents Tricia Flowers and Flowers LLC.

"The question of subject matter jurisdiction is a question of law for the court." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009). Thus, when reviewing the trial court's grant of a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), SCRCP, this court is free to decide questions of law with no deference to the trial court. Id. "Whether subject matter jurisdiction exists is a question of law, which this [c]ourt is free to decide with no particular deference to the circuit court." Id. Nat'l

Trust v. City of N. Charleston, 439 S.C. 222, 226, 886 S.E.2d 487, 490 (Ct. App. 2023) citing Vicary v. Town of Awendaw, 425 S.C. 350, 355, 822 S.E.2d 600, 602 (2018).

At the Motion to Dismiss hearing, Plaintiff made arguments with no legal basis, such as asserting that this Motion being argued by Michael C. Tanner's associate attorney, Emre Ersoy, instead of Michael C. Tanner himself would violate her constitutional rights of equal protection clause [5]. She also requested a continuance because "she had a meeting with client."

Her request was granted and the Motion was moved to the afternoon hearing on the same day. Despite Plaintiff/Appellant's assertion of otherwise as indicated in her initial brief, the trial judge The Hon. William McGee correctly found that this matter originated and stemmed from the Plaintiff/Appellant and her ex-husband Defendant/Respondent Dr. Meisner's divorce action. Plaintiff/Appellant's also conceded in her initial brief that she filed this matter "because a jury trial was requested . . . 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," and that "a jury trial is only available in the circuit court, not the family court" Id. (Appellant's Initial Brief at p. 5, 8). Moreover, Plaintiff stated for the court record at the motion hearing that she was unhappy with the justice system because they were not being fair to her and her children and that

[5] It appears Plaintiff/Appellant misunderstood the concept of Equal Protection Clause under the Fourteenth Amendment of the United States Constitution. Equal Protection Clause constitutes that the Constitution of the United States, in its present form, forbids, so far as civil and political rights are concerned, discrimination by the **General Government**, or by the States, against any citizen because of his race." Bolling v. Sharpe, 347 U.S. 497, 499, 74 S. Ct. 693, 694, 98 L. Ed. 884, 886-887 (1954)(Emphasis added). The Supreme Court of the United States later extended discrimination to age, gender, disability, national origin, non-marital children, and undocumented aliens over the course of time. There is no established class of attorneys for violation of their equal protection, even had there been one, Plaintiff/Appellant is not a licensed attorney. Furthermore, it also appears Plaintiff/Appellant misunderstood the general understanding of the law that constitutional rights must be violated by the government actors, not private parties . "Because the United States Constitution regulates only the Government, not private parties, a litigant claiming that his constitutional rights have been violated must first establish that the challenged conduct constitutes state action." Meadow v. United Servs., 963, F.3d 240, 243 (2d. Cir. 2020) citing Fabrikant v. French, 691 F.3d. 193, 205 (2d. Cir. 2012)(internal quotation marks omitted). Thus, neither Mr. Michael Tanner, nor Mr. Ersoy are capable of violating Appellant/Plaintiff's constitutional rights as they are private parties.

the defendants/respondents should be retaliated for "what they have done to her and her children."

Therefore, These Defendants maintain their position that the trial court properly found Plaintiff/Appellant had a lack of subject matter jurisdiction.

III. The Trial Court properly ruled Respondents Tricia Flowers and Flowers LLC were not liable to Plaintiff/Appellant based upon the doctrine of quasi-judicial immunity.

Judicial immunity affords absolute immunity from suit. O'Laughlin v. Windham, 330 S.C. 379, 382-383, 498 S.E.2d 689, 691, (1998) quoting Stump v. Sparkman, 435 U.S. 349, 55 L. Ed. 2d 331, 98 S. Ct. 1099 (1978). In other words, judicial immunity, if applicable, acts as a bar to suit, not just as an ultimate bar to relief. Therefore, a finding of judicial immunity renders a complaint alleging judicial misconduct meritless. "Communications in judicial proceedings are absolutely privileged and are immune from an action for an **invasion of privacy**. Rycroft at 281 S.C. 119, 124, 314 S.E.2d 39, 43 (1984) citing Wolfe v. Arroyo, 543 S.W. (2d) 11 (Tex. Civ. App. 1976). (emphasis added). "Our law affords absolute immunity to those persons who aid the truth-seeking mission of the judicial system. This protection extends to judges, prosecutors and witnesses." Day v. Johns Hopkins Health Sys. Corp., 907 F.3d 766, 771 (4th Cir. 2018). "Any erosion of the common law immunity for witnesses would undermine the truth-seeking function of the initial proceeding, invite new claims by disgruntled litigants, and deter participation by those in a position to offer valuable testimony. The privilege has been around so long and recognized so widely for a reason: it helps the judicial system work." Day at 773.

In Gaar v. North Myrtle Beach Realty Co., Inc., 287 S.C. 525, 528-29, 339 S.E.2d 887, 889 (Ct. App. 1986), the Court of Appeals held 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. Accordingly, an attorney ***who acts in good faith*** with the authority of his client is not liable to a third party in an action for malicious prosecution." (Emphasis supplied). The Gaar Court further noted,

> "The attorney normally conducts the litigation solely in his professional capacity. He has ***no personal interest*** in the suit. ***In his professional capacity*** the attorney is not liable…for injury allegedly arising out of the performance of his professional activities….Even if the attorney who initiates civil proceedings for his client has no probable cause to do so, he is still not liable it he acts primarily for the purpose of aiding his client in obtaining a proper adjudication of the client's claim." *Id.* (Emphasis supplied).

Again, while the Respondent Flowers is not a judge, an attorney, or a witness in the current matter, she is a process server whose mission is to hand deliver official court and legal documents such as subpoenas, summons, complaints, and more to individuals involved in court cases to support court and legal system. These Defendants believe that that as a process server, the Respondent Flowers and her company are allowed to have protection under the quasi-judicial immunity. In Re John A. Betts, Debtor ,165 B.R. 233 (Bankr. N.D. III.1994) (citation omitted) is a proper authority which supports the defendant Flowers' assertion.

In Re Betts, Debtor filed a petition against numerous defendants, including the presiding judge and the court-appointed private process server, Kevin Mason, for rule to show cause after the presiding judge had found Debtor's motion in opposition to the Personal Representative of the estate's relief from the automatic stay was moot and entered a discharge order. There, the court found that the actions of the presiding judge in entering the order were acts performed in his judicial capacity. The court, however, further found that similarly, Mason's actions as a court appointed special private process server under order of the state court, allows him to have a limited protection, and that immunity should also be accorded to non-judicial officials for their quasi-judicial conduct when acting pursuant to a court directive, citing Henry v.

Farmer City State Bank, 808 F.2d 1228, 1238-1239 (7th Cir. 1986); Young v. Peoria Housing Authority, 479 F.Supp. 1093, 1096 (C.D.Ill.1979); Heller v. Heller, 1989 WL 152556 *4 (N.D.Ill. Dec. 6, 1989). (Emphasis added).

In the current case, the trial court properly found that these Defendants, while being a non-judicial official, were within the scope of their quasi-judicial conduct when serving court documents to the Plaintiff/Appellant. Furthermore, these Defendants had no personal interest in the suit and that they were in their professional capacity. "When a witness takes the oath, submitting his own testimony to cross-examination, the common law *does not* allow his participation to be deterred or undermined by subsequent collateral actions for damages. The vital protection afforded all participants in litigation is unwavering. It is a bedrock of our law today just as it was centuries ago. Day v. John Hopkins Supra. at 771 citing Rehberg v. Paulk, 566 U.S. 356, 363, 132 S. Ct. 1497, 182 L. Ed. 2d 593 (2012); Bradley v. Fisher, 80 U.S. 335, 346-47, 20 L. Ed. 646 (1871). These Defendants believe the same analogy is applicable to them.

While the Respondent Flowers was not a testifying witness, she "participated" in Plaintiff/Appellant's and Dr. Meisner's divorce matter as a process server. These Defendants believe this lawsuit is a mere path for Plaintiff/Appellant to retaliate against her and her company with false, frivolous, and sham allegations only because she served her the legal documents, which was her duty imposed by the judicial system and rules. As the Respondent Flowers stated in her affidavit, she has only followed the same procedure she has been following with other individuals, which, the defendant Flowers asserts, was proper and approved by the local judges and proper pursuant to S.C. Code Ann. § 17-30-15, 17-30-30. For this reason, these Defendants collectively believe the Respondent Flowers should not be deterred by subsequent collateral actions for damages. All of the Plaintiff/Appellant's allegations against these Defendants, now

respondents, relate to the services of Respondent Flowers in her capacity as a process server, and as such, she is entitled to absolute-quasi judicial immunity.

IV. The Trial Court Properly ruled in dismissing these Defendants

Rule 220(c), SCRCP states that "the appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." It provides that the respondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by this rule.

The trial court properly took judicial notice that numerous judges, including former Chief Justice Jean H. Toal and Judge Daniel Coble, denied Plaintiff/Appellant's repetitive harassing motions. Also, Judge Newman granted these Defendants' Motion to Set Aside Default and once they were determined to not be in default by the order of Judge Newman [6], these Defendants argued that they were entitled to be dismissed just like the other defendants because Plaintiff/Appellant's allegations are not separate and distinct [7], numerous causes of actions are directed to these Defendants in the same fashion as to the other defendants/respondents. Plaintiff/Appellant filed at least more than one Rule 52, Rule 59, and Rule 60 Motions against the respondents during the hearing. All were denied. The Trial Court properly found that a Motion to Dismiss hearing held on December 2, 2022, and presided by Former Chief Justice Jean H. Toal and Justice Toal dismissed all other defendants (now respondents.)

[6] Throughout the litigation in the trial court and the Court of Appeals, Plaintiff/Appellant repeatedly maintained false contention that these Defendants were default defendants (Appellant Brief at p. 2, 11, 20,) despite the fact that there has never been an Order of Default entered by the Clerk of Court deeming them in default.

[7] Plaintiff/Appellant alleged numerous joint causes of actions, such as trespass after notice to all defendants, invasion of privacy to all defendants, false light to all defendants, abuse of process to all defendants, public disclosure of private information naming these Defendants and the other defendants together.

Therefore, these Defendants refer to any other ruling, order, decision, or judgment related to this matter and upon any grounds appearing in the Record on appeal, pursuant to Rule 220(c), SCRCP, to affirm the decision of the Trial Court.

CONCLUSION

Therefore, for the reasons hereinabove, the defendants Tricia L. Flowers, individually and as an owner and sole agent of Flowers Consulting, respectfully asserts that this appeal should be dismissed and the decision of the Circuit Court should be affirmed.

[signature block is as follows]

Respectfully Submitted,

MICHAEL C. TANNER L.L.C.

By : *s/ Michael C. Tanner*

Michael C. Tanner LLC (S.C. Bar #12424)
Emre Ersoy (S.C. Bar #104958)
P.O. Box 1061
Bamberg, S.C. 29003
(803)245-9153
Attorneys for Respondents Tricia Flowers and Flowers Consulting LLC

Bamberg, SC
February 21, 2025