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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
The Honorable Martha M. Rivers, Circuit Court Judge

Appellate Case No. 2025-000306

Trial Court Case No. 2024-CP-42-02781

Carnie Norris, III, Appellant,

vs.

Dr. Gary W. Poliakoff¹, Respondent.

[INITIAL] BRIEF OF RESPONDENT

Thomas A. Pendarvis (SC Bar #064918)
PENDARVIS LAW OFFICES, P.C.
710 Boundary Street, Unit 1-A
Beaufort, SC 29902
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Respondent Gary W. Poliakoff, Esq.

¹ The Appellant improperly identifies Gary W. Poliakoff, Esq. as “Dr. Gary W. Poliakoff.” At some point, the court filings erroneously added “Dr.” before Respondent’s name.

TABLE OF CONTENTS

Table of Authorities.....ii

Statement of Issues on Appeal1

Statement of the Case1

Material Facts2

Arguments.....4

 I. The Circuit Court Properly Found that Mr. Norris’s Claims are Time-Barred. 4

 II. Mr. Poliakoff Owed No Legal Duty to Mr. Norris as a Non-Client..... 4

 III. Mr. Norris Failed to State Facts Sufficient to Constitute a Cause of Action..... 6

 IV. The Complaint was Properly Dismissed for Lack of Expert Affidavit..... 6

 V. The Rules of Prof. Conduct Do Not Create Independent Civil Causes of Action..... 6

Conclusion7

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987)	6
Douglass ex rel. Louthian v. Boyce, 344 S.C. 5, 542 S.E.2d 715, 717 (2001)	5
Hughes on behalf of Est. of Hughes v. Bank of Am. Nat’l Ass’n, 442 S.C. 113, 898 S.E.2d 102 (2024)	4
Ranucci v. Crain, 409 S.C. 493, 763 S.E.2d 189 (2014)	6
Smith v. Haynesworth, Marion, McKay & Geurard, 322 S.C. 433, 472 S.E.2d 612 (1996)	3, 6
Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995)	3, 5
 <u>Statutes</u>	
S.C. CODE ANN. § 15-3-530(5)	2, 4
S.C. CODE ANN. § 15-36-100(B)	1, 3, 6
S.C. CODE ANN. § 62-1-109	3-5
 <u>Other Authorities</u>	
Rule 4.1, RPC, Rule 406, SCACR	6

STATEMENT OF ISSUES ON APPEAL

1. Whether the circuit court correctly dismissed Appellant’s claims as barred by the statute of limitations.
2. Whether the circuit court correctly held that Respondent owed no legal duty to Appellant as a non-client.
3. Whether the circuit court correctly found Appellant failed to state facts sufficient to constitute a cause of action.
4. Whether dismissal was proper due to Appellant’s failure to file an expert affidavit as required by S.C. CODE ANN. § 15-36-100(B).

STATEMENT OF THE CASE

This appeal arises from a July 2024 lawsuit brought by Appellant Carnie Norris, III (“Mr. Norris”) against Gary W. Poliakoff, Esq. (“Mr. Poliakoff”), a well-respected lawyer practicing in South Carolina for over 40 years. Mr. Norris alleged that Mr. Poliakoff “conspired” with his clients, the personal representative of the Estate of Mary F. Norris, and another heir, to suppress a will and engaged in extortionate behavior, thereby violating the Rules of Professional Conduct. On November 22, 2024, the Honorable Martha M. Rivers granted Respondent’s motion to dismiss. *See* Order of Dismissal at 2-5.

The circuit court ruled that the statute of limitations barred Mr. Norris’s claims, his pleadings failed to state a cause of action, and he was precluded from pursuing claims against Mr. Poliakoff under attorney immunity doctrines. The circuit court also found the claims resembled a professional negligence action, which was not supported by an expert affidavit. *Id.* at 3-5.

The motion to alter or amend filed by Mr. Norris was denied on January 27, 2025. This appeal followed.

STATEMENT OF MATERIAL FACTS

For a limited period of time, Mr. Poliakoff represented Clyde Norris, the personal representative of the Estate of Mary F. Norris, and his brother, Charles Norris (both of whom are brothers of Mr. Norris), on a *pro bono* basis. Mr. Norris's Complaint alleges that on December 30, 2020, Mr. Poliakoff sent him a letter that "misrepresented the true and accurate fact[s]" concerning Clyde Norris and Charles Norris. *See* Complaint, p. 8, ¶¶ 36-37; Order of Dismissal at 2; and Appellant's Br. at 4. Mr. Norris alleged that Mr. Poliakoff made false statements in the letter dated December 30, 2020. *Id.* Mr. Norris contended that Mr. Poliakoff's actions were "extortionate". Complaint, p. 6, ¶¶ 24-25; Appellant's Br. at 15.

In addition to the specific allegations in his Complaint stating that Mr. Poliakoff sent him a letter on December 30, 2020, Mr. Norris acknowledged receiving the letter by in advance of February 23, 2021, which placed him on notice of the estate's intestate administration. *See* Order of Dismissal at 2-3 and Complaint, p. 8, ¶¶ 36-37. (By February 23, 2021, Mr. Norris had retained his own attorney to represent him.)

Despite having this knowledge about facts giving rise to his alleged claims, Mr. Norris waited until July 2024 to file suit, well beyond the governing three-year statute of limitations found in S.C. CODE ANN. § 15-3-530(5). The circuit court correctly found the claim time-barred. *See* Order of Dismissal at 2-3.

The circuit court held that this letter was written during the professional representation of Mr. Poliakoff's clients, Mr. Clyde Norris and Mr. Charles Norris, and thus was protected by the qualified attorney immunity doctrine. *See* Order of Dismissal at 3-4 (citing S.C. CODE ANN. § 62-1-109; *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995)).

Mr. Norris failed to plead any facts demonstrating that Mr. Poliakoff acted outside his role as counsel for Clyde Norris and Charles Norris, breached any independent legal duty to Mr. Norris, or that Mr. Poliakoff acted on his own personal interests. *See* Order of Dismissal at 4.

Additionally, the circuit court found that even if construed as legal malpractice, Mr. Norris's claim failed due to his failure to file the affidavit of an expert as required by S.C. ANN. CODE § 15-36-100(B). *See* Order of Dismissal at 5.

Mr. Norris attempted to rely on Rule 4.1 of the South Carolina Rules of Professional Conduct. As the trial court noted, however, the Rules of Professional Conduct do not create independent civil causes of action. *See* Order of Dismissal at 4; *see also Smith v. Haynesworth, Marion, McKay & Geurard*, 322 S.C. 433, 472 S.E.2d 612 (1996) (finding that the South Carolina Rules of Professional Conduct may be relevant and admissible through an expert's testimony to assist a jury in assessing the legal duty of a lawyer in a malpractice action).

ARGUMENTS

I. The Circuit Court Properly Found that Mr. Norris’s Claims are Time-Barred.

Under South Carolina law, tort actions must be commenced within three years after the plaintiff knew or, by the exercise of reasonable diligence, should have known that a cause of action existed. S.C. CODE ANN. § 15-3-530. Mr. Norris admitted receiving Mr. Poliakoff’s letter dated December 30, 2021, prior to February 23, 2021, which expressly stated that no will had been located for the estate of Mary F. Norris. *See* Order of Dismissal at 2; Complaint, p. 8, ¶¶ 36-37.

The circuit court correctly found Mr. Norris’s receipt of Mr. Poliakoff’s letter triggered the statute of limitations. Because Mr. Norris did not file his complaint until July 2024—more than three years after receiving Mr. Poliakoff’s letter—his claims are time-barred. *See* Order of Dismissal at 2; Complaint, p. 8, ¶¶ 36-37. *See also, Hughes on behalf of Est. of Hughes v. Bank of Am. Nat’l Ass’n*, 442 S.C. 113, 133, 898 S.E.2d 102, 112 (2024) (“The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct.”).

II. Mr. Poliakoff Owed No Legal Duty to Mr. Norris as a Non-Client.

The circuit court correctly found that Mr. Norris’s Complaint contains no allegations that Mr. Poliakoff acted outside his role as the lawyer for Clyde Norris and Charles Norris, or that he acted in his own personal interest. Mr. Norris acknowledges in his brief that “[t]here never was an attorney - client relationship between appellant and defendant Poliakoff.” Appellant’s Br. at 11. The circuit court properly applied S.C. CODE

ANN. § 62-1-109 and the qualified immunity doctrine, as established in *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995), in dismissing the claim. *See* Order of Dismissal at 3-4.

S.C. Code Ann. § 62-1-109 provides in pertinent part

[T]he creation of an attorney-client relationship between a lawyer and a person serving as a fiduciary shall not impose upon the lawyer any duties or obligations to other persons interested in the estate, trust estate, or other fiduciary property, even though fiduciary funds may be used to compensate the lawyer for legal services rendered to the fiduciary.

S.C. CODE ANN. § 62-1-109.

Generally, lawyers are “immune from liability to third persons arising from the attorney’s professional activities on behalf of and with the knowledge of the client, absent an independent duty to the third party.” *Douglass ex rel. Louthian v. Boyce*, 344 S.C. 5, 542 S.E.2d 715, 717 (2001) (citing *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995) (“[A]n 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.”)). The circuit court’s finding that Mr. Norris’s Complaint contains no allegations that Mr. Poliakoff acted outside his role as the lawyer for Clyde Norris and Charles Noris, or that he acted in his own personal interest.

The circuit court was correct when it found that Mr. Norris’s Complaint contains no allegations that a) Mr. Poliakoff owed him a direct duty as a beneficiary of his mother’s estate or b) that Mr. Poliakoff acted outside his role as the lawyer for Clyde

Norris and Charles Norris, or c) that he acted in his own personal interest. The circuit court's rulings on this point should be affirmed.

III. Mr. Norris Failed to State Facts Sufficient to Constitute a Cause of Action.

Mr. Norris's Complaint is grounded in perceived wrongdoing by Mr. Poliakoff arising from professional representation of a client. South Carolina courts require a plaintiff to plead facts establishing all elements of a recognized claim, not merely opinions or conclusions. *See Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987). The trial court found no facts were pled to support claims of fraud, conspiracy, or any tort duty owed by Mr. Poliakoff to Mr. Norris. *See Order of Dismissal at 4-5.*

IV. The Complaint was Properly Dismissed for Lack of Expert Affidavit.

Even if Mr. Norris had stated a viable claim for legal malpractice, dismissal was proper under S.C. CODE ANN. § 15-36-100(B) due to the failure to include an affidavit of an expert witness. *See Ranucci v. Crain*, 409 S.C. 493, 505, 763 S.E.2d 189, 196 (2014) (statute must be strictly construed). The trial court correctly held that this omission was fatal. *See Order of Dismissal at 5.* Any competent attorney reviewing this matter likely would find no legitimate claim against Mr. Poliakoff, which may explain the failure by Mr. Norris.

V. The Rules of Professional Conduct Do Not Create Independent Civil Causes of Action.

Mr. Norris's reliance on Rule 4.1 of the Rules of Professional Conduct is misplaced. The South Carolina Supreme Court has expressly held that violations of the RPC do not create independent civil liability. *See Smith v. Haynesworth, Marion, McKay*

& *Geurard*, 322 S.C. 433, 472 S.E.2d 612 (1996). The circuit court properly rejected Mr. Norris's theory. *See* Order of Dismissal at 4.

CONCLUSION

For the foregoing reasons, Mr. Poliakoff respectfully requests that this Court affirm the decision of the Spartanburg County Court of Common Pleas dismissing all claims against Respondent Gary W. Poliakoff with prejudice.

Respectfully submitted,

/s/ Thomas A. Pendarvis

Thomas A. Pendarvis (SC Bar #064918)

PENDARVIS LAW OFFICES, P.C.

710 Boundary Street, Unit 1-A

Beaufort, SC 29902

843.524.9500

Thomas@PendarvisLaw.com

Counsel for Respondent Gary W. Poliakoff, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I served a true and correct copy of the foregoing INITIAL BRIEF OF RESPONDENT upon the following party by U.S. Mail, first-class postage prepaid, addressed as follows:

Carnie Norris, III
Pro Se Appellant
Perry Correctional Institution Q4B-220
430 Oaklawn Rd.
Pelzer, SC 29669

Dated this 4th day of June, 2025.

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #064918)
PENDARVIS LAW OFFICES, P.C.
710 Boundary Street, Unit 1-A
Beaufort, SC 29902
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Respondent Gary W. Poliakoff, Esq.

PENDARVIS LAW



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SC Court of Appeals

June 4, 2025

Via Email Only

The Honorable Jenny Abbott Kitchings
SOUTH CAROLINA COURT OF APPEALS
ctappfilings@sccourts.org

RE: Carnie Norris, III vs. DR. GARY POLIAKOFF
Trial Court Case No.: 2024-CP-42-02781; Appellate Case No.: 2025-000306

Dear Ms. Kitchings:

On behalf of the Respondent, Gary W. Poliakoff, Esq. ("Dr. Poliakoff"), please see the following for filing regarding the above-referenced matter:

1. Initial Brief of Respondent;
2. Designation of Matter to be Included in the Record on Appeal;
3. Certificate of Counsel; and
4. Proof of Service.

By copy of this correspondence, we are serving a copy of the enclosed documents via US Mail to Mr. Norris.

With warmest personal regards, I am

Sincerely,

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in blue ink that reads "Thomas A. Pendarvis".

Thomas A. Pendarvis

TAP/tll

Enclosure(s)

ec (w/ enclosure(s): Gary W. Poliakoff, Esq.

cc (w/enclosure(s): Carnie Norris, III

THOMAS A. PENDARVIS, ESQ.
Admitted in SC and GA
Thomas@PendarvisLaw.com
Board Certified in Legal Malpractice
by the American Board of
Professional Liability Attorneys

PENDARVIS LAW OFFICES, P.C.
710 Boundary Street, Unit A1
Beaufort, SC 29902-4188
PendarvisLaw.com
843.524.9500

CHRISTOPHER W. LEMPESIS, JR.
LEMPESIS LAW FIRM, LLC
Juris Doctor and Master of Laws
Chris@LempesisLaw.com
Of Counsel