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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Court of Common Pleas

Honorable Daniel Coble

Appellate Case No. 2025-000172

Michael T. Braxton,

Appellant,

v.

Don A. Thompson,

Respondent.

INITIAL BRIEF OF
RESPONDENT DON A. THOMPSON

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ISSUE(S) ON APPEAL

- a. Whether the Circuit Court properly dismissed Appellant's case with prejudice due to his failure to state a claim, his inability to plead requisite elements, and the failure of claims based upon res judicata and improper forum.

STATEMENT OF THE CASE

Appellant filed a summons and complaint on April 11, 2024, essentially alleging that Respondent was negligent by failing to provide Appellant with effective assistance of counsel during Sexual Violent Predator (“SVP”) Civil Commitment proceedings which led to Appellant being placed into custody. Complaint, p. 5. Respondent filed an Answer on May 6, 2024, primarily denying the allegations set forth by Appellant and asserting, *inter alia*, affirmative defenses arising under Rule 12(b)(2), (4), (5), and (6), SCRCF. See Defendant’s Answer to Plaintiff’s Complaint. Respondent filed a motion to dismiss on May 6, 2024, seeking that Respondent be dismissed from the action with prejudice in accordance with Rule 12(b)(6), SCRCF, on the grounds that Appellant failed to state a claim for which relief may be granted and in accordance with Rule 12(b)(2), (4), and (5), SCRCF, on the grounds that Appellant failed to properly serve his Summons and Complaint and, therefore, the court lacked personal jurisdiction over Respondent. See Defendant’s Motion to Dismiss. Respondent also filed a motion to change venue on May 6, 2024, to transfer venue from Richland County to Greenville County, or alternatively Anderson County, based on the fact that Respondent resides in Greenville County. See Defendant’s Motion to Transfer Venue. Appellant filed a “Rebuttal to Defendant’s Answer to Complaint with Memorandum” on June 4, 2024, essentially contending, *inter alia*, that Respondent’s Motion to Dismiss should be denied on the grounds that dismissal “does not resolve the contest surrounding the stated facts, the merit of the claim, or the applicability of defense” and that public policy favors dismissal on the merits rather than technicalities. See Rebuttal to Defendant’s Answer to Complaint with Memorandum of Law. On June 10, 2024, Appellant filed a “Plaintiff’s Rebuttal to Defendant’s Motion to Dismiss with Memorandum” essentially arguing the same points. See Plaintiff’s Rebuttal to Defendant’s Motion to Dismiss with Memorandum.

Appellant filed a Motion to Amend on June 27, 2024, and, without leave of court, filed an Amended Complaint on July 27, 2024, with apparently the same contentions contained in the original Summons and Complaint except that Appellant included additional allegations and legal arguments in the Amended Complaint. See Amended Complaint. Respondent filed an Answer to Amended Complaint similarly denying Appellant's allegations. See Defendant's Answer to Plaintiff's Amended Complaint. Respondent filed a motion to dismiss the Amended Complaint on July 22, 2024, reiterating, *inter alia*, (1) that Respondent be dismissed from the action in accordance with Rule 12(b)(6), SCRCF, even if the court considers the allegations included in the Amended Complaint, and (2) that Appellant improperly filed an Amended Complaint since Appellant had not been granted leave of the court to file the Amended Complaint. See Defendant's Motion to Dismiss Plaintiff's Amended Complaint. On November 15, 2024, Respondent filed a motion to exempt case from alternative dispute resolution and also moved to take Appellant's deposition. See Defendant's Motion for Leave to Take Plaintiff's Deposition; Defendant's Motion to Exempt Case from ADR.

The Richland County Court of Common Pleas (hereinafter the "Circuit Court") held a motion hearing on December 19, 2024, before the Honorable Daniel Coble to address the multiple pending motions. See Order Granting Defendant's Motion to Dismiss, (January 21, 2025); Transcript of December 19, 2024, Motion Hearing. Following the motion hearing, Appellant filed a Petition to Fortify the Record on December 30, 2024, and Respondent filed a response on January 6, 2025, arguing that Appellant had the opportunity to introduce evidence before and during the motions hearing. See Petition to Fortify the Record; Defendant's Response to Plaintiff's "Petition to Fortify the Record". On January 20, 2025, Judge Coble issued an Order granting Respondent's motion to dismiss on the grounds that (1) based off of Appellant's Complaint and improper attempt

at an Amended Complaint, Appellant failed to state a claim against Respondent; (2) Appellant cannot set forth a Constitutional Claim; (3) Appellant failed to provide the required Affidavit to support a legal malpractice claim; and (4) the Complaint and improper attempt at an Amended Complaint are improper attempts to re-litigate claims previously raised in other court actions. See Order Granting Defendant’s Motion to Dismiss, (January 21, 2025). Appellant filed a Notice of Appeal on January 30, 2025. See Notice of Appeal. On May 21, 2025, Appellant filed an Initial Brief before this Court essentially arguing that Respondent was ineffective counsel. See Appellant’s Initial Brief.

STANDARD OF REVIEW

“In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRPC, the appellate court applies the same standard of review as the trial court.” Doe v. Marion, 373 S.C. 390, 395, (2007) (citing Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001)). “In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint.” Doe v. Marion, 373 S.C. at 395 (citing Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006)). “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, then dismissal under Rule 12(b)(6) is improper.” Doe v. Marion, 373 S.C. at 395 (citing Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999); Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995)). “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” Doe v. Marion, 373 S.C. at 395 (citing Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999)). “The complaint should not be

dismissed merely because the court doubts the plaintiff will prevail in the action.” Doe v. Marion, 373 S.C. at 395 (citing Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987)).

STATEMENT OF THE FACTS

The Circuit Court summarizes Appellant’s allegations and the surrounding facts as follows:

In his pleadings, the Plaintiff alleges that he is a prisoner of the State of South Carolina in the custody of the South Carolina Department of Mental Health. He claims he is confined under an act that is inapplicable to him. He claims the Defendant was grossly negligent in his professional capacity. The Plaintiff claims the Defendant failed to provide effective assistance of counsel. He also alleges Constitutional claims. It is important to note that *Mr. Thompson was not the Plaintiff’s trial counsel*. Further, Mr. Thompson is not a governmental employee. *All of the Plaintiff’s allegations pertain to alleged pretrial conduct before a substitution of counsel occurred.*

Order Granting Defendant’s Motion to Dismiss, p. 2 (January 21, 2025) [emphasis added].

Appellant’s criminal history and some prior cases have already been summarized by this Court.

See Braxton v. S.C. Dep’t of Corr., 430 S.C. 637, 641–42, (Ct. App. 2020). This Court’s summary reads as follows:

On November 17, 1983, Braxton was sentenced to thirty years’ incarceration after pleading guilty to first degree criminal sexual conduct (CSC). Braxton served ten years and four months of his sentence, and on March 31, 1994, he was conditionally released to the state of Tennessee on parole. On April 16, 1996, while on parole in Tennessee, Braxton was arrested for two counts of aggravated rape. On May 28, 1996, while he was in custody for those arrests, South Carolina issued a parole violation warrant, and a parole violation hold was placed on Braxton. Braxton was held in pretrial detention until he was sentenced to twenty-three years’ imprisonment in the custody of the Tennessee Department of Corrections (TDOC), and he was transferred to TDOC on June 1, 1998. On June 8, 1998, South Carolina issued a second parole violation warrant on Braxton. Braxton completed his sentence in Tennessee on November 2, 2015. Thus, from the time of his arrest in 1996 until he finished serving his sentence in 2015, Braxton served approximately nineteen years and five months in Tennessee. Following his release, beginning November 8, 2015, Braxton was incarcerated in Anderson County, South Carolina.² Following an appearance before the Full Board of the South Carolina Board of Pardons and Parole on January 20, 2016, Braxton was transferred back into the custody of SCDC with a release date of June 22, 2022.

Braxton v. S.C. Dep't of Corr., 430 S.C. 637, 641–42 (Ct. App. 2020) [footnotes omitted].

To provide additional insight, the Circuit Court reviewed Appellant’s prior actions filed in State and Federal Courts. The Circuit Court states:

The Plaintiff filed a separate Petition for Writ of Habeas Corpus in the South Carolina Supreme Court seeking release from his civil commitment to the Sexually Violent Predator Treatment Program alleging his incarceration is illegal and unconstitutional, *claiming ineffective assistance of counsel by the Defendant and subsequent counsel*. See Appellate Case No. 2023-000661. Further, the Plaintiff previously filed a habeas action in Federal Court challenging his civil commitment under the Sexually Violent Predator Act and his detention at the Anderson County Detention Center. That action was recommended for dismissal pursuant to the Younger Abstention Doctrine by the Magistrate, which was adopted by the District Court Judge and the subsequent appeal dismissed by the Federal 4th Circuit Court of Appeals. See Braxton v. Warden of Anderson Cnty. Det. Ctr., No. 822CV02806HMHJDA, 2022 WL 9501277, at *1 (D.S.C. Sept. 9, 2022), report and recommendation adopted, No. CV82202806HMHJDA, 2022 WL 9477346 (D.S.C. Oct. 13, 2022); appeal dismissed by Braxton v. Warden of Anderson Cnty. Det. Ctr., No. 22-7232, 2023 WL 4701007, at *1 (4th Cir. July 24, 2023), cert. denied sub nom. Braxton v. Warden, 144 S. Ct. 1075, 218 L. Ed. 2d 250 (2024).

It should also be noted that the Plaintiff filed a separate civil action pursuant to 42 U.S.C. § 1983, alleging the Defendants in that case violated his constitutional rights. Braxton v. Scarborough, No. 8:22-CV-1106-HMH-JDA, 2022 WL 1558765, at *1 (D.S.C. Apr. 19, 2022), report and recommendation adopted, No. CV82201106HMHJDA, 2022 WL 1558431 (D.S.C. May 17, 2022), aff'd, No. 22-6638, 2023 WL 2158369 (4th Cir. Feb. 22, 2023). That case noted that the Plaintiff was incarcerated at the time at the Anderson County Detention Center pursuant to a petition filed under the South Carolina Sexually Violent Predator Act (“SVP”) at case number 2020-cp-04-01330 in the Anderson County Court of Common Pleas. Id. That case set forth Plaintiff’s numerous similar and duplicative court filings in detail. Id.

Order Granting Defendant’s Motion to Dismiss, pp. 3-4 (January 21, 2025) [emphasis added]. The

Circuit Court also highlighted passages from Braxton v. Scarborough which read:

This action is subject to dismissal because the parties, the claims, and the operative facts in this action are all duplicative of prior actions filed by Plaintiff in the State court and in this Court. Crowe v. Leeke, 550 F.2d 184, 186 (4th Cir. 1977) (“The principle of res judicata ... is fully applicable in prisoners’ civil rights suits brought under [§] 1983.”). “Collateral estoppel, or issue preclusion, provides that once a court of competent jurisdiction actually and necessarily determines an issue,

that determination remains conclusive in subsequent suits, based on a different cause of action but involving the same parties, or privies, to the previous litigation.” Weinberger v. Tucker, 510 F.3d 486, 491 (4th Cir. 2007) (citation omitted).

Plaintiff previously litigated his claims in the state court and in this Court. See Braxton, 846 S.E.2d 383; Braxton II, 2021 WL 252582. Those cases were decided on the merits, and Plaintiff lost. Thus, Plaintiff's claims in this action for damages under § 1983 are barred under res judicata. See Boston v. Stobbe, 586 F. Supp. 2d 574, 580 (D.S.C. 2008) (explaining res judicata precluded an inmate's § 1983 action based on the court's determination of the same issues in a prior habeas action). Accordingly, having previously lost in his cases filed in both the state court and in this Court, Plaintiff is precluded from taking another bite at the apple in this Court. See Wells v. Powers, No. 2:16-cv-1060-TMC-MGB, 2016 WL 6070088, at *4 (D.S.C. Sept. 12, 2016), Report and Recommendation adopted by 2016 WL 6039163 (D.S.C. Oct. 14, 2016).

Order Granting Defendant’s Motion to Dismiss, p. 4 (January 21, 2025) (citing Braxton v. Scarborough, No. 8:22-CV-1106-HMH-JDA, 2022 WL 1558765, at *5 (D.S.C. Apr. 19, 2022), report and recommendation adopted, No. CV82201106HMHJDA, 2022 WL 1558431 (D.S.C. May 17, 2022), aff’d, No. 22-6638, 2023 WL 2158369 (4th Cir. Feb. 22, 2023)).

Turning to the immediate case, the Circuit Court highlights that “[t]he Plaintiff makes similar claims in this case that he is being wrongfully detained under the Sexually Violent Predator Act. As set forth above, the Plaintiff claims the Defendant was grossly negligent in his professional capacity. The Plaintiff claims the Defendant failed to provide effective assistance of counsel. He also alleges Constitutional claims.” Order Granting Defendant’s Motion to Dismiss, p. 4 (January 21, 2025). First, the Circuit Court addressed Appellant’s ineffective assistance of counsel claims and found:

The Defendant is not a governmental employee and is not a state actor for purposes of Plaintiff’s attempted federal claims. See Lott v. Sheek, No. 819CV00954DCCJDA, 2019 WL 3308415, at *4 (D.S.C. Apr. 4, 2019), report and recommendation adopted, No. 8:19-CV-00954-DCC, 2019 WL 2511253 (D.S.C. June 18, 2019). The Plaintiff has also failed to allege a cognizable claim for relief for alleged ineffective assistance of counsel. Id. Ineffective assistance of counsel claims are not cognizable as a constitutional tort under Section 1983 where the

Plaintiff makes no allegations to plausibly show the Defendant exceeded the traditional functions of counsel. Id.

The Plaintiff's allegations contained in his Complaint and improper attempt at an Amended Complaint do not set forth any allegations of any alleged conduct outside the traditional functions of counsel or outside the parameters of legal representation. Id.; citing Polk Cty. v. Dodson, 454 U.S. 312, 325 (1981) (explaining ineffective assistance of counsel claims are not cognizable as a constitutional tort under § 1983 where plaintiff makes no allegations to plausibly show an attorney exceeded the "traditional functions as counsel"); Martin v. Burton, No. 0:12-cv-01088-RBH, 2012 WL 2502711, at *2 (D.S.C. June 28, 2012), aff'd, 485 F. App'x 634 (4th Cir. 2012); Trexler v. Giese, No. 3:09-cv-144-CMC-PJG, 2010 WL 104599, at *3 (D.S.C. Jan. 7, 2010) (finding attorney was entitled to summary dismissal in § 1983 action where attorney's representation in the state criminal case fell "squarely within the parameters of his legal representation" although the plaintiff was unhappy with the manner in which the attorney represented her).

Through this lawsuit, the Plaintiff is improperly attempting to relitigate his prior state criminal case. The Plaintiff may not challenge his state conviction in a civil rights action and/or through a purported civil action for damages rather than a Post-Conviction Relief (PCR) action. In Heck v. Humphrey, 512 U.S. 477, 486–87, 114 S.Ct. 2364, 129 L.Ed.2d 383, the Supreme Court held that until a plaintiff's sentence and conviction are set aside, any civil rights action based on the conviction, sentence, direct appeal, and related matters will be barred. 512 U.S. at 484; see also Hart v. Ranier, No. CIV.A.8091688RBHBHH, 2010 WL 2228405, at *3 (D.S.C. May 4, 2010), report and recommendation adopted sub nom. Hart v. Ranier, No. 8:09-CV-01688-RBH, 2010 WL 2228413 (D.S.C. June 1, 2010).

To the extent Plaintiff's Complaint and improper attempt at an Amended Complaint can be construed as a legal malpractice claim, the Plaintiff has failed to file a contemporaneous expert affidavit as required by S.C. Code Ann. § 15-36-100. The failure to file an expert affidavit is fatal to the Plaintiff's case.

Order Granting Defendant's Motion to Dismiss, pp. 5-6 (January 21, 2025). Next, the Circuit Court turned to Appellant's improper attempt at an Amended Complaint and found:

The Plaintiff has filed his Amended Complaint before receiving a ruling from the Court on his pending Motion to Amend. The Plaintiff has not been granted leave of Court to file the Amended Complaint. As such, his filing is an improper attempt at an Amended Complaint. Regardless, even if the allegations contained in the improper attempt at an Amended Complaint are considered, the Plaintiff has failed to set forth allegations to support a cause of action against the Defendant and

the arguments and law set forth above compel dismissal of the Plaintiff's case with prejudice.

In addition, based on the Plaintiff's other cases cited above, the Plaintiff is also improperly attempting to relitigate claims previously made pertaining to his detention under the Sexually Violent Predator Act, albeit against a different Defendant. To the extent the Plaintiff is relitigating claims already raised and ruled upon, those claims are also barred by the doctrine of collateral estoppel. See 2022 WL 1558765, at *5, supra.

Order Granting Defendant's Motion to Dismiss, p. 6 (January 21, 2025). These findings led the Circuit Court to hold, *inter alia*, that Appellant failed to state a claim against Respondent. Order Granting Defendant's Motion to Dismiss, p. 6-7 (January 21, 2025). In relevant part, the Circuit Court held:

Based on the foregoing law which is directly applicable to the Plaintiff's attempted claims and based upon a plain reading of the allegations contained in the Plaintiff's Complaint and improper attempt at an Amended Complaint, the Plaintiff has failed to state a claim against the Defendant. The Plaintiff cannot set forth a Constitutional Claim. The Plaintiff has failed to provide the required Affidavit to support a legal malpractice claim. In addition, the Complaint, the improper attempt at an Amended Complaint are improper attempts to re-litigate claims previously raised in other Court actions noted above. As a result, this Court finds the above-captioned case should be dismissed with prejudice.

Order Granting Defendant's Motion to Dismiss, pp. 6-7 (January 21, 2025).

ARGUMENT

The issues raised by Appellant on appeal are identical to the issues brought before the Circuit Court during the motions hearing on December 19, 2024. See Order Granting Defendant's Motion to Dismiss, p. 6 (January 21, 2025); Appellant's Initial Brief. Further, the Circuit Court did not err in its decision granting Respondent's motion to dismiss with prejudice since the Circuit Court considered all facts surrounding this action and considered Appellant's improper Amended Complaint. As such, the Court should uphold the Circuit Court's ruling granting Respondent's motion to dismiss.

1. Appellant failed to state a cause of action in his Complaint and improper Amended Complaint.

As stated *supra*, “[i]n deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief.” Spence v. Spence, 368 S.C. at 116 (citing Gentry v. Yonce, 337 S.C. 1, 522 S.E.2d 137). Appellant’s Complaint and improper Amended Complaint argue that Respondent allegedly failed to effectively communicate with Appellant and allegedly failed to contest various hearings and determinations. See Amended Complaint. Appellant essentially argues that Respondent was grossly negligent in his professional capacity by failing to provide effective assistance of counsel. See Amended Complaint.

However, Respondent is not a governmental employee and is not a state actor for purposes of Appellant’s attempted federal claims. See Lott v. Sheek, No. 819CV00954DCCJDA, 2019 WL 3308415, at *4 (D.S.C. Apr. 4, 2019), report and recommendation adopted, No. 8:19-CV-00954-DCC, 2019 WL 2511253 (D.S.C. June 18, 2019). Appellant has also failed to allege a cognizable claim for relief for alleged ineffective assistance of counsel. Id.

Ineffective assistance of counsel claims are not cognizable as a constitutional tort under Section 1983 where a plaintiff makes no allegations to plausibly show a defendant exceeded the traditional functions of counsel. Id. Appellant’s allegations contained in his Complaint and improper attempt at an Amended Complaint do not set forth any allegations of any alleged conduct outside the traditional functions of counsel or outside the parameters of legal representation. Id.; citing Polk Cty. v. Dodson, 454 U.S. 312, 325 (1981) (explaining ineffective assistance of counsel claims are not cognizable as a constitutional tort under § 1983 where plaintiff makes no allegations to plausibly show an attorney exceeded the “traditional functions as counsel”); Martin v. Burton,

No. 0:12-cv-01088-RBH, 2012 WL 2502711, at *2 (D.S.C. June 28, 2012), aff'd, 485 F. App'x 634 (4th Cir. 2012); Trexler v. Giese, No. 3:09-cv-144-CMC-PJG, 2010 WL 104599, at *3 (D.S.C. Jan. 7, 2010) (finding attorney was entitled to summary dismissal in § 1983 action where attorney's representation in the state criminal case fell “squarely within the parameters of his legal representation” although the plaintiff was unhappy with the manner in which the attorney represented her).

Further, Appellant is improperly attempting to relitigate his prior state criminal case. Indeed, this issue was brought by Respondent before the Circuit Court on the motion hearing held on December 19, 2024. See Transcript of December 19, 2024, Motion Hearing, p. 5, lines 13-17; p. 6, line 24-p. 7 line 10. Appellant may not challenge his state conviction in a civil rights action and/or through a purported civil action for damages rather than a Post-Conviction Relief (PCR) action. In Heck v. Humphrey, 512 U.S. 477, 486–87, 114 S. Ct. 2364, 129 L.Ed.2d 383, the Supreme Court held that until a plaintiff's sentence and conviction are set aside, any civil rights action based on the conviction, sentence, direct appeal, and related matters will be barred. 512 U.S. at 484; see also Hart v. Ranier, No. CIV.A.8091688RBHBHH, 2010 WL 2228405, at *3 (D.S.C. May 4, 2010), report and recommendation adopted sub nom. Hart v. Ranier, No. 8:09-CV-01688-RBH, 2010 WL 2228413 (D.S.C. June 1, 2010).

In addition, to the extent Appellant's Complaint and improper attempt at an Amended Complaint can be construed as a legal malpractice claim, Appellant has failed to file a contemporaneous expert affidavit as required by S.C. Code Ann. § 15-36-100. The failure to file an expert affidavit is fatal to Appellant's case. Appellant does not offer any law or evidence that contradicts this. See Appellant's Initial Brief; Appellant's Designation of Matter.

2. The Circuit Court did not abuse its discretion in granting Respondent’s motion to dismiss with prejudice.

This Court should uphold the Circuit Court’s decision granting Respondent’s motion to dismiss with prejudice as the Circuit Court considered all facts surrounding the action and even considered Appellant’s Amended Complaint.

“When a complaint is dismissed under Rule 12(b)(6) for failure to state facts sufficient to constitute a cause of action, the dismissal generally is without prejudice. Spence v. Spence, 368 S.C. at 129. “A circuit court does not have ‘discretion’ to dismiss a complaint with prejudice for failure to state a claim under Rule 12(b)(6) without at least considering whether to allow leave to amend under Rule 15(a).” Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 189 (2019). “Under Rules 12(b)(6) and 15(a), the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and *after considering the amended pleading*, the court is certain there is no set of facts upon which relief can be granted.” Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. at 189 [emphasis added]. “[A]n appellate court must find the dismissal was without prejudice and remand for the filing of an amended complaint *unless the court concludes any amendment would be clearly futile.*” Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. at 190 [emphasis added].

Here, the Circuit Court considered Appellant’s improper Amended Complaint, even though it admitted that the Appellant filed the Amended Complaint without leave of the court, and still found that Appellant failed to establish a cause of action. Order Granting Defendant’s Motion to Dismiss, p. 5 (January 21, 2025) [emphasis added]. In this regard, the Circuit Court states:

The Plaintiff’s allegations contained in his Complaint *and improper attempt at an Amended Complaint* do not set forth any allegations of any alleged conduct outside the traditional functions of counsel or outside the parameters of legal

representation. *Id.*; citing Polk Cty. v. Dodson, 454 U.S. 312, 325 (1981) (explaining ineffective assistance of counsel claims are not cognizable as a constitutional tort under § 1983 where plaintiff makes no allegations to plausibly show an attorney exceeded the “traditional functions as counsel”); Martin v. Burton, No. 0:12-cv-01088-RBH, 2012 WL 2502711, at *2 (D.S.C. June 28, 2012), *aff’d*, 485 F. App’x 634 (4th Cir. 2012); Trexler v. Giese, No. 3:09-cv-144-CMC-PJG, 2010 WL 104599, at *3 (D.S.C. Jan. 7, 2010) (finding attorney was entitled to summary dismissal in § 1983 action where attorney’s representation in the state criminal case fell “squarely within the parameters of his legal representation” although the plaintiff was unhappy with the manner in which the attorney represented her).

Order Granting Defendant’s Motion to Dismiss, p. 5 (January 21, 2025) [emphasis added]. Further, the Circuit Court even took judicial notice of Appellant’s prior actions filed in State Courts and Federal Courts before granting Respondent’s motion to dismiss. Order Granting Defendant’s Motion to Dismiss, p. 3 (January 21, 2025). As such, when the Circuit Court granted Respondent’s motion to dismiss, it was aware of all facts surrounding this action. Indeed, remanding the case back to the Circuit Court would be futile as the Circuit Court would have no new information to consider. Thus, any possible contentions by Appellant—that the improper Amended Complaint contains additional allegations and legal arguments that were not in the original Complaint—are without merit.

CONCLUSION

Based on the foregoing law which is directly applicable to the Appellant’s attempted claims and based upon a plain reading of the allegations contained in Appellant’s Complaint and improper attempt at an Amended Complaint, Appellant has failed to state a claim against the Respondent. In addition, the Circuit Court did not err in dismissing Appellant’s claim with prejudice. As a result, Respondent requests that this Court uphold the Circuit Court’s decision granting Respondent’s motion to dismiss with prejudice.

s/James P. Walsh

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