IN THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Appellate Case No. 2025-001338

Ida Maeve Nordan, Randall Houston Nordan and Chip Eugene McCants, Jr.,

by and through his parent and natural guardian, Ida Maeve Nordan,..... Appellants,

v.

Sheriff of Richland County in his official capacity, and Half Moon Pictures, LLC, Defendants

of which Half Moon Pictures, LLC is the.....Respondent,

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the lower court err in granting Half Moon Pictures, LLC ("Half Moon") a dismissal of the Plaintiff's Complaint under Rule 12(b)(6) on the grounds that Half Moon owed no duty to the Plaintiff because Half Moon did not create the risk?

STATEMENT OF THE CASE

On May 5, 2023, Maeve Nordan ("Nordan") suffered life changing injuries in a motor vehicle accident when her car was struck by a fleeing vehicle that was being pursued by a Richland County Deputy Sheriff who was being filmed for the television show On Patrol. Nordan filed the underlying action against the Richland County Sheriff's Department and Half Moon Pictures, LLC on December 14, 2023. Nordan amended her Complaint on May 14, 2024. On May 29, 2024, Half Moon filed its Motion to Dismiss pursuant to Rule 12(b)(6) on the grounds, *inter alia*, that it owed no legal duty to Nordan.

On October 30, 2024, the Honorable Paul Burch heard arguments on the Motion to Dismiss and by Order entered December 18, 2024, Judge Burch granted the Motion to Dismiss. On December 20, 2024, Nordan filed a Motion to Reconsider the Order of Dismissal pursuant to Rule 59(e). By Form 4 Order dated July 25, 2025, the Motion to Reconsider was denied. This appeal followed.

STANDARD OF REVIEW

A ruling on a motion to dismiss a claim pursuant to Rule 12(b)(6), SCRCP, must be based solely on the allegations set forth on the face of the complaint. *United Educational Distributors, LLC, v. Educational Testing Service*, 350 S.C. 7, 13, 564 S.E.2d 324, 328 (Ct. App. 2002). The motion will not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. *Washington v. Lexington County Jail*,

337 S.C. 400, 404, 523 S.E.2d 204, 206 (Ct. App.1999); *McCormick v. England*, 328 S.C. 627, 632–33, 494 S.E.2d 431, 433 (Ct. App.1997).

"[A] judgment on the pleadings is considered to be a drastic procedure by our courts." *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991). Therefore, pleadings in a case should be construed liberally and the trial court and this Court must presume all well pled facts to be true so that substantial justice is done between the parties. See *Justice v. Pantry*, 330 S.C. 37, 42, 496 S.E.2d 871, 874 (Ct. App.1998). "The cause of action should not be struck merely because the court doubts the plaintiff will prevail in the action." *McCormick*, 328 S.C. at 633, 494 S.E.2d at 434.

Further, "a novel issue should not be summarily decided on a 12 (b)(6) motion." *Keiger v. Citgo, Coastal Petroleum Inc*., 326 S.C. 369, 373, 482 S.E.2d 792, 794 (Ct. App. 1997). Viewed in the light most favorable to the non-moving party, the facts alleged and inferences deducible therefrom may entitle Plaintiff to relief on any theory of the case.

To recover for negligence, a plaintiff must show: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach. *South Carolina Ins. Co. v. James C. Greene & Co.,* 290 S.C. 171, 348 S.E.2d 617 (Ct.App.1986). The absence of any one of these elements renders the cause of action insufficient. *South Carolina State Ports Authority v. Booz–Allen & Hamilton Inc.,* 289 S.C. 373, 346 S.E.2d 324 (1986). The existence of a duty owed is a question of law for the courts. *Ballou v. Sigma Nu General Fraternity,* 291 S.C. 140, 352 S.E.2d 488 (Ct.App.1986).

Under South Carolina law there is no general duty to control the conduct of another or to warn a third person or potential victim of danger. *Rogers v. South Carolina Dep't of Parole & Cmty Corr.,* 320 S.C. 253, 464 S.E.2d 330 (1995); *Rayfield v. South Carolina Dep't of Corr.,* 297 S.C.

95, 374 S.E.2d 910 (Ct.App.1988), *cert. denied,* 298 S.C. 204, 379 S.E.2d 133 (1989); Restatement (Second) of Torts § 314 (1965). South Carolina recognizes five exceptions to this rule: 1) where the defendant has a special relationship to the victim; 2) where the defendant has a special relationship to the injurer; 3) where the defendant voluntarily undertakes a duty; 4) where the defendant negligently or intentionally creates the risk; and 5) where a statute imposes a duty on the defendant. *See generally,* Hubbard & Felix, *The South Carolina Law of Torts* 57–72 (1990) (Internal citations omitted).

STATEMENT OF FACTS

On May 5, 2023, Maeve Nordan was operating her 2020 Honda in Richland County at approximately 10:30 pm, with her son beside her in the front passenger seat. (Amended Complaint, paras. 28-29). A Richland County Deputy Sheriff observed a third party committing a minor traffic infraction which precipitated a high-speed chase that ended tragically when the fleeing vehicle collided with the Plaintiff's vehicle. (Amended Complaint, paras. 30-38). The decision of the Richland County Deputy Sheriff to pursue was influenced by the opportunity to "create entertaining television" (Amended Complaint, para. 32) because the Deputy Sheriff was accompanied by a Half Moon camera crew, which was filming the television show Live PD and/or On Patrol: Live. (Amended Complaint, para. 30). Half Moon knew that its television partnerships with police departments resulted in an increase in police chases and a corresponding danger to the public because it had been barred from filming a similar show in the State of Texas through the passage of Javier's Law after statistics showed that police chases increased by 54% when Half Moon was producing its television shows. (Amended Complaint, para. 44). The gravamen of the Amended Complaint is that the Defendants are jointly and severally liable in negligence for their

conduct by (among other things) "encouraging aggressive policing practices in order to produce entertaining television." (Amended Complaint, para. 49(c)).

ARGUMENT

The lower court erred in granting Half Moon Pictures, LLC ("Half Moon") a dismissal of the Plaintiff's Complaint under Rule 12(b)(6) on the grounds that Half Moon owed no duty to the Plaintiff because Half Moon did not create the risk.

The lower court erroneously adopted Half Moon's contention that it was entitled to a dismissal of the Amended Complaint under Rule 12(b)(6) because it owed no legal duty to the Plaintiffs as a matter of law. In arguing for dismissal, Half Moon incorrectly and narrowly construed the Plaintiffs' Amended Complaint as appearing to claim that "Half Moon owed them a duty of care to protect Plaintiffs from the conduct of third parties (*i.e.*, to intercede or mitigate the actions of Rogers, a fleeing criminal suspect, or the responding RCSD deputies)." (Memorandum in Support of Motion to Dismiss, p. 8). However, the standard under Rule 12(b)(6) requires a broad reading of the Amended Complaint and an inquiry of whether relief would be available under any theory. Additionally, the application of Rule 12(b)(6) is disfavored in addressing novel issues. Applying the correct standard, the Amended Complaint did not (and does not) contend that Half Moon owed a duty to the Plaintiffs to intercede in the actions of the fleeing suspect or the responding Officer. To the contrary, the Amended Complaint clearly advances the theory that Half Moon is liable because it knowingly created the risk of harm that befell the Plaintiffs through the encouragement and promotion of aggressive policing.

While it is true that "[u]nder South Carolina law, there is no general duty to control the conduct of another or to warn a third person or potential victim of danger," *Faile v. S.C. Dep't of Juv. Just.*, 350 S.C. 315, 334 (2002), it is equally true that liability is imposed where a defendant negligently or intentionally creates the risk. *Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 246-247

(2011). Again, the Amended Complaint unquestionably advances the theory that Half Moon either negligently or intentionally created the risk because "its television show creates celebrities out of peace officers – or at least out of those who provide entertaining policing." (Amended Complaint, para. 17). Furthermore, "[s]hows like Live PD and/or On Patrol: Live encourage officers to engage in dangerous, high-risk tactics because it makes for more entertaining television." (Amended Complaint, para. 24).[1] By ignoring the well-pleaded allegations of the Amended Complaint, the lower court effectively found **as a matter of fact** that Half Moon did not create the risk and that the mere presence of Half Moon did not incentivize aggressive policing for the sake of entertaining television.

To compound the errors, the lower court held that the lack of a duty is supported by portions of the contractual language between Half Moon and the Richland County Sheriff's Department in an Access Agreement which provided in part that the parties were "fully independent of each other" and that Half Moon was contractually prohibited from making "any law enforcement decisions." Access Agreement, p. 1. There are actually two contracts between Half Moon and the Richland County Sheriff's Department: The Access Agreement and the License Agreement. Nordan takes no exception to the lower court reviewing the Agreements in the context of a 12(b)(6) motion because the contractual relationship between the parties is alleged and is therefore incorporated by reference. *Brazell v. Windsor*, 384 S.C. 512, 516 (2009). Nordan does, however, take exception to the Court resolving factual inconsistencies between the Agreements and factual inferences flowing from the performance of the Agreements in the context of a 12(b)(6) motion.

First, relying on the Agreements as the *sine qua non* of the lack of a duty ignores the central theme of the Appellant's claim that it is the relationship itself between Half Moon and the Richland

[1] The Amended Complaint is rife with similar references and allegations.

County Sheriff's Department that creates the atmosphere of risk. Second, reliance on the Agreements ignores the fact that the Amended Complaint never alleges and is not predicated upon Half Moon making law enforcement decisions. Third, it is clear from the Insignia License Agreement that payment from Half Moon to the Richland County Sheriff's Department only occurs if and when Half Moon selects footage featuring the Richland County Deputy Sheriff's Department to air, which is supportive of the Plaintiffs' allegation that Half Moon rewards aggressive or "entertaining" policing. See Insignia License Agreement. Furthermore, the lower court erred in its consideration of the Agreements by holding effectively that two parties to a contract may by agreement limit their duty in tort to third parties to bar a third party's ability to assert a claim regardless of how the contracting parties conducted themselves in the performance of their contract. Finally, as set forth explicitly in the factual background of the case, the Respondent was previously precluded by an act of the legislature in the State of Texas from filming shows like OnPatrol because of the resulting increase in aggressive policing and the corresponding increase in the danger to the public. As such, the Respondent knew of the danger it was creating and chose to export the danger to South Carolina. The Respondent created the risk.

The Court erred further in making factual determinations based on the limited materials before the Court which were construed adversely to the Appellant:

a. "As in Mitchell, Half Moon had no legal right to control or direct the RCSD deputy's conduct or take any affirmative role in the pursuit of Rogers, **or the ability to influence Rogers**, who is the one that fled RCSD and collided with Plaintiffs' vehicle." Order, p. 6.

- **<u>ARGUMENT</u>**: The Amended Complaint asserts repeatedly that the "ability to influence" existed in the mere presence of the cameras, in the financial incentive to

create entertaining content and in the allure of fame. There is no legal basis upon which the lower court could find that Half Moon lacked the "ability to influence." This is an erroneous factual point of view that clearly infected the court's view of the Appellant's claims.

b. "Even viewing the facts here in a light most favorable to Plaintiffs, as the Court must do, the circumstances here – where **Half Moon passively filmed police officers doing their jobs** in the context of a documentary television show – are vastly distinguishable from cases in which courts have found that a defendant negligently or intentionally created a risk." Order, p. 6.

- **ARGUMENT**: The Amended Complaint does not allege that Half Moon passively filmed police officers doing their jobs, and it is impossible for the lower court to have arrived at this view of the facts. The Amended Complaint clearly sets forth the proposition that the presence of the cameras alone incentivizes risky police behavior. Half Moon seems to contend (and the lower court seems to have accepted) that for liability to exist in the present circumstances the cameraman needed to be yelling "go, go, go!" The factual inference to which the Plaintiff is entitled is that the presence of the camera alone screamed "go, go, go!"

CONCLUSION

The production of television shows that feature actual police interactions promotes aggressive policing for the sake of making entertaining television. The lower court erred in granting Half Moon a dismissal of the Plaintiff's Complaint pursuant Rule 12(b)(6) on the grounds that Half Moon owed no duty to the Plaintiff because it did not create the risk. In so erring, the lower court found as a matter of fact that Half Moon's production crew was "passive" on the day

that a Richland County Deputy Sheriff chased a fleeing vehicle at high speed until it struck the car being driven by Maeve Nordan causing her to suffer life-altering injuries. The Court erred in ignoring the well-pleaded facts of the Complaint and the inferences to be drawn therefrom which allege that it was the presence of the cameras and the alure of fame that encouraged the reckless police behavior which foreseeably ended in the injury of an innocent civilian. Had the cameraman been saying "go, go, go," then under the lower Court's view the Appellant would have had a viable claim. The cameras said "go, go, go."

Respectfully submitted,

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