

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Edgar W. Dickson, Circuit Court Judge
Civil Action No. 2021-CP-10-01343

S.C. SUPREME COURT

Appellate Case No. 2023-001779

Andrew Pampu; Amanda Pampu; and John Pampu, Appellants

v.

Clawson Fagnoli, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and Brewer Law Firm, LLC..... Respondents

**RESPONDENTS' JOINT
PETITION FOR WRIT OF CERTIORARI**

INTRODUCTION

Respondents Clawson Fagnoli, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and Brewer Law Firm, LLC (“Respondents”), pursuant to Rule 242, SCRAP, respectfully and jointly petition the Supreme Court to issue a writ of certiorari to review the final decision of the Court of Appeals in this case.

QUESTION PRESENTED FOR REVIEW

1. Did the Court of Appeals err in holding that Appellants’ expert affidavit was timely filed pursuant to South Carolina Code Annotated 15-36-100?

STATEMENT OF THE CASE

Appellants initiated this action on March 19, 2021, asserting causes of action for professional negligence, breach of fiduciary duty, and breach of contract related to legal services Respondents provided in two underlying lawsuits. [*See* Complaint, R. pp. 36-56]. Appellants did not include the required expert witness affidavit pursuant to S.C. Code Ann. § 15-36-100. [*See id.*]. Instead, Appellants alleged that pursuant to § 15-36-100(C)(1), the Complaint was being filed without the required affidavit because there was “a good faith basis to believe the expiration of the statute of limitations is imminent or that the Lawyers may argue that the expiration of the statute of limitations may expire.” R. p. 55, ¶ 103.

Appellants then amended their Complaint 42 days later on April 30, 2021, and included an affidavit from Justin Dillon, Esq. [*See* Amended Complaint, R. pp. 58-78; *and* Expert Affidavit by Justin Dillon, Esq., R. pp. 79-87]. On May 9, 2021, and May 10, 2021, respectively, the Clawson Fagnoli Respondents and the Brewer Respondents filed motions to dismiss, asking the trial court to dismiss Appellants’ Amended Complaint in its entirety. [*See* Clawson Fagnoli Motion to Dismiss Amended Complaint, R. pp. 88-91; *and* Brewer Motion to Dismiss Amended Complaint,

R. pp. 95-98]. In their motions, Respondents raised Appellants' untimely expert affidavit as one of several grounds for dismissal. [*See id.*]. In response, Appellants amended their complaint a second time on June 16, 2021. [*See Second Amended Complaint*, R. pp. 110-41]. Appellants added further allegations related to expert affidavit issue. R. pp. 129, ¶ 103. Specifically, Appellants claimed that the statute of limitations expired on March 21, 2021 (two days after the filing of the initial Complaint) and alleged—for the first time—that because of time constraints, the expert affidavit could not be prepared in time to file it before that date. *Id.* Appellants further claimed that they were filing their Second Amended Complaint under § 15-36-100(E), which they contend permitted them to file an amended pleading to cure the alleged defects. *Id.* Appellants' Second Amended Complaint remains the operative pleading in this action.

On June 28, 2021, and June 30, 2021, respectively, Respondents filed motions to dismiss, asking the trial court to dismiss Appellants' Second Amended Complaint in its entirety. [*See Brewer Motion to Dismiss Second Amended Complaint*, R. pp. 194-97; *and Clawson Fargnoli Motion to Dismiss Second Amended Complaint*, R. pp. 169-72]. On July 28, 2021, Appellants replied to Respondents' respective counterclaims. [*See Reply to Brewer Counterclaims*, R. pp. 198-202; *and Reply to Clawson Fargnoli Counterclaims*, R. pp. 203-07]. On October 22, 2021, Respondents jointly submitted a memorandum in support of their motions to dismiss. [*See Respondents' Joint Memorandum in Support of Motion to Dismiss Second Amended Complaint*, R. pp. 241-63]. On December 15, 2021, Appellants submitted a response in opposition to Respondents' memorandum. [*See Combined Memorandum in Opposition to Motions to Dismiss Second Amended Complaint*, R. pp. 264-76].

On March 2, 2022, the trial court conducted a virtual hearing on Respondents' motions to dismiss. [*See Transcript*, R. pp. 285-337]. On June 23, 2022, the trial court issued separate orders

granting Respondents' respective motions to dismiss and dismissing Appellants' Second Amended Complaint in its entirety. [*See* Order Granting Brewer Motion to Dismiss, R. pp. 6-18; *and* Order Granting Clawson Fargnoli Motion to Dismiss, R. pp. 19-30]. In each order, the Circuit Court addressed the timeliness of Appellants' expert affidavit filed pursuant to South Carolina Code Annotated 15-36-100. Specifically, the Circuit Court held in response to the Motion to Dismiss filed by Respondents Barrett Brewer and the Brewer Law Firm:

Plaintiffs now argue that simply by filing the initial Complaint only three (3) days before the expiration of the statute of limitations for their legal malpractice claims, the Brewer Defendants should have presumed an affidavit of an expert witness could not be filed due to time constraints. However, Plaintiffs failed to allege such time constraints in the initial filing of the Complaint which blatantly fails to comply with the requirements of S.C. Code § 15-36-100(B)-(C). Therefore, Plaintiffs' claims against the Brewer Defendants are dismissed because their expert witness affidavit was untimely filed.

R. pp. 7-8. In response to the Motion to Dismiss filed by Respondents Clawson Fargnoli, LLC, Christina R. Fargnoli, and Samuel R. Clawson, the Circuit Court held:

However, this argument does not address their original failure to file an expert witness affidavit. It merely suggests that, based on the filing date of the original Complaint, the Clawson Fargnoli Defendants should have presumed that there were time limitations to obtaining an expert witness affidavit. However, Plaintiffs failed to allege such time constraints in the initial filing of the Complaint, which blatantly fails to comply with the requirements of S.C. Code § 15-36-100(B)-(C). Therefore, Plaintiffs' claims against the Clawson Fargnoli Defendants are dismissed because their expert witness affidavit was untimely filed.

R. p. 26.

Thereafter, on July 5, 2022, Appellants filed a Motion for Reconsideration and to Alter or Amend the Orders Granting Defendants' Motions to Dismiss [*see* R. pp. 277-84]. On October 23, 2023, the trial court denied the motion. [*See* Order Denying Motion for Reconsideration, R. pp. 1-2].

On November 14, 2023, Appellants served a Notice of Appeal. Appellants seek to appeal three orders issue by the trial court: (1) June 23, 2022 Order Granting Motion to Dismiss for the Brewer Respondents, (2) June 23, 2022 Order Granting Motion to Dismiss for the Clawson Fagnoli Respondents, and (3) October 23, 2023 Order Denying Appellants' Motion for Reconsideration and to Alter and/or Amend the two aforementioned orders.

After submission of the parties' final briefs, the Court of Appeals heard oral argument on March 6, 2025. On July 30, 2025, the Court of Appeals issued its Opinion in this case, affirming in part and reversing in part the Circuit Court's decision. Regarding the timeliness of Appellants' expert affidavit, the Court of Appeals held:

We hold Appellants' expert affidavit was timely filed and sufficient. Appellants' original complaint cited section 15-36-100(C)(1) of the South Carolina Code (Supp. 2024) and stated Appellants would file an amended complaint with the required affidavit within forty-five days. Additionally, Appellants' second amended complaint alleged the affidavit could not be prepared prior to the expiration of the statute of limitations due to time constraints. We find this adequately met section 15-36-100(C)(1)'s exception to the filing requirement. *See* S.C. Code Ann. § 15-36-100(B) (Supp. 2024) (requiring in an action for legal malpractice, the contemporaneous filing with the complaint of "an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit"); § 15-36-100(C)(1) ("The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire . . . within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared.").

Opinion at 3.

Appellants and Respondents filed Petitions for Rehearing pursuant to Rule 221(a), SCRAP, on August 14, 2025, and August 28, 2025, respectively.

The Court of Appeals denied both Petitions for Rehearing on September 29, 2025.

Therefore, Respondents timely file this Petition for Writ of Certiorari pursuant to Rule 242(c), SCRAP.

ARGUMENT

“The Supreme Court, or any two (2) justices thereof, may in its discretion, on motion of any party to the case or on its own motion, issue a writ of certiorari to review a final decision of the Court of Appeals.” Rule 242(a), SCRAP. A writ of certiorari is appropriate “where there are special and important reasons.” Rule 242(b), SCRAP. Here, special and important reasons exist to issue a writ of certiorari. Specifically, the Court of Appeals’ holding contradicts the plain language of S.C. Code Ann. § 15-36-100 and operates to extend the statute of limitations for professional negligence claims beyond what the Legislature intended.

Appellants concede the statute of limitations ran on their claims on March 21, 2021. R. p. 129, ¶ 103. Appellants did not file any expert affidavit until April 30, 2021, more than thirty (30) days after the expiration of the statute of limitations. And Appellants did not allege until June 16, 2021, more than 88 days after filing the original Complaint, that, because of time constraints, a contemporaneous expert affidavit could not be filed. R. p. 129, ¶ 103.

The Circuit Court correctly held that Appellants’ proffered affidavit of Justin Dillon was untimely as a matter of law. “If a plaintiff fails to file an affidavit as required by [§ 15-36-100], and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation unless a court determines that the plaintiff had the requisite affidavit within the time required pursuant to this section and the failure to file the affidavit is the result of a mistake.” S.C. Code Ann. § 15-36-100(F).

When Appellants filed their initial Complaint on March 19, 2021, they did not include the required expert witness affidavit. R. pp. 35-56. Instead, Appellants alleged that pursuant to § 15-36-100(C)(1), the Complaint was being filed without the required affidavit because there was “a good faith basis to believe the expiration of the statute of limitations is imminent or that the Lawyers may argue that the expiration of the statute of limitations may expire.” R. p. 55, ¶ 103. Appellants then amended their Complaint 42 days later to include an expert witness affidavit. *See* R. pp. 58-78. In response to Respondents’ respective motions to dismiss, which raised Appellants’ untimely expert affidavit as one of several grounds for dismissal, Appellants amended their Complaint a second time to add further allegations related to expert affidavit issue. R. pp. 129, ¶ 103. Specifically, Appellants claimed that the statute of limitations expired on March 21, 2021 (two days after the filing of the initial Complaint) and alleged—for the first time—that because of time constraints, the expert affidavit could not be prepared in time to file it before that date. *Id.* Appellants further claimed that they were filing their Second Amended Complaint under § 15-36-100(E), which they contend permitted them to file an amended pleading to cure the alleged defects. *Id.* Appellants have argued that the trial court ignored these allegations, which they contend establish that the expert affidavit was timely filed. *See* Appellants’ Brief, pp. 28-29.

As an initial matter, by its plain language, § 15-36-100(E) only applies where a plaintiff has filed an expert affidavit that is alleged to be insufficient, not where a plaintiff has failed to file any expert affidavit. *See* S.C. Code Ann. § 15-36-100(E). Stated differently, this section allows a plaintiff to cure an alleged defect in the affidavit by amending the affidavit within a certain amount of time. *See id.* It does not permit a plaintiff to cure his failure to file any affidavit at all by amending the pleadings to include an affidavit. *See id.* Accordingly, Appellants’ reliance on § 15-36-100(E) is misplaced.

Next, § 15-36-100(C)(1) provides, in part, that the contemporaneous filing requirement “does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, *because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared.*” § 15-36-100(C)(1) (emphasis added). Simply put, Appellants made no such allegation in their initial Complaint. *See generally* R. pp. 35-56. And they did not cure this defect in their First Amended Complaint. *See generally* R. pp. 57-87. Moreover, allowing Appellants to circumvent the clear requirements of § 15-36-100 would effectively extend the statute of limitations for professional negligence claims, contrary to the public policy behind the statute. Accordingly, the trial court did not err in holding that Appellants’ expert affidavit was untimely as a matter of law, which provided an independent basis to dismiss Appellants’ legal malpractice claims. *See* S.C. Code Ann. § 15-36-100(F) (“If a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation . . .”).

CONCLUSION

Here, Appellants did not comply with S.C. Code Ann. § 15-36-100(C)(1) because they did not allege in their initial Complaint that, due to time constraints, an expert affidavit could not be prepared. The statute requires Appellants to allege this fact. Their failure to do so is fatal to their legal malpractice claims. As a result, the Circuit Court properly dismissed the Second Amended Complaint.

The Supreme Court should issue a writ of certiorari to review the final decision of the Court of Appeals in this case to clarify the interpretation of S.C. Code Ann. § 15-36-100 regarding the timeliness of the required expert affidavit for professional negligence claims in South Carolina.

Respectfully Submitted,

/s/ Emily E. Seaton

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