

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Richland County
Court of Common Pleas

Patrick C. Fant, III, Circuit Court Judge

Appellate Case No. 2025-000614
Civil Action No. 2024-CP-40-00827

Kellum W. Allen..... Respondent,

v.

Ann Marie Watson..... Appellant

INITIAL REPLY BRIEF OF APPELLANT

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ARGUMENT

I. Appellant has preserved all of her issues on appeal.

Respondent (“Attorney Allen”) alleges Appellant (“Ann Marie”) failed to preserve any public policy grounds for proving a public interest. He refers specifically to two arguments: (a) That Attorney Allen’s actions have reduced the public’s confidence in the South Carolina justice system and the South Carolina Bar and (b) That Attorney Allen’s actions affect the public interest because they are violations of the South Carolina Rules of Professional Conduct and not merely violations of common law fiduciary duties.

a. Confidence in the justice system:

Appellant raised the issue of confidence in the justice system in ¶ 66 of her Amended Answer and Counterclaims. She also raised it on Page 17 of her Opposition to Plaintiff’s Motions. And she raised it on Page 2 of her motion to reconsider.

b. Violations of the Rules of Professional Conduct as evidence that those actions affect the public interest.

Appellant raised that issue in ¶ 67 of her Amended Answer and Counterclaims. Ann Marie’s expert witness, Desa Ballard, raised it in ¶ 42 of her affidavit. Ann Marie raised it on Page 17 of her Opposition to Plaintiff’s Motions. Opposing counsel discussed it on Page 20 of the transcript from the hearing. Ann Marie raised it again on Page 5 of her Motion to Reconsider.

II. Appellant has alleged facts showing that this transaction affects the public interest.

The argument that generalized allegations of potential for repetition are insufficient to withstand dismissal does not apply here. Ann Marie pointed out that Attorney Allen committed virtually the same conduct once before, that he owns land nearby, and that he still has clients to prey on.

We do not know how more specific Ann Marie can be than to allege Attorney Allen's actions are capable of repetition than when she alleges he continues to practice law in South Carolina, represents naïve, uninformed, and trusting clients, owns property with other relatives in Richland County, and remains willing to conduct business with those relatives and clients. This is far more specific than the language found in *Turner v. Kellet*, 426 S.C. 42, 824 S.E.2d 466 (Ct. App. 2019), where the court stated the only evidence supporting a claim of capability of repetition was that the actor was still alive and engaged in the same business.

III. Appellant has alleged she was a current client of Attorney Allen.

Respondent argues that as a matter of law his representation of Ann Marie ended with her divorce decree, citing *Shannon v. Shannon*, 292 S.C. 112, 355 S.E.2d 4 (Ct. App. 1987).

Convincing the court of this is of the utmost importance to Attorney Allen because he knows that in many states, agreements between an attorney and his current client must meet both general contract requirements and the special requirements of professional ethics. *See*, for example, *Tax Authority, Inc. v. Jackson Hewitt, Inc.*, 187 N.J. 4, 898 A.2d 512 (2006); *Hodges v. Reasonover*, 103 So.3d. 1069 (La. 2012); *Calvert v. Mayberry*, 2019 CO 23, 440 P.3d 424 (Colo. 2019); *Sheppard, Mullin, Richter & Hampton, LLP v. J-M Mfg. Co., Inc.*, 6 Cal.5th 59, 425 P.3d 1 (2018); *LK Operating, LLC v. Collection Grp., LLC*, 181 Wn.2d 48, 331 P.3d 1147 (2014).

Attorney Allen's position that his representation ended with her divorce decree ignores the fact that Ann Marie alleged in ¶¶ 9(e) and (f) of her Amended Answer and Counterclaims that Attorney Allen, "while serving as [her] domestic relations lawyer," encouraged her to execute and deliver the Land Option without informing her of numerous facts about the transaction and his involvement in it. These same sorts of allegations are also found in ¶ 15. Paragraph 37 incorporates

those allegations into her counterclaims, and she repeats the allegation that she was his client in ¶¶ 40, 41, 54, and 61 of her Amended Answer and Counterclaims.

On a motion to dismiss, the Court must view the allegations of the Amended Answer and Counterclaim in the light most favorable to the counterclaiming defendant. If the facts alleged and the inferences reasonably deducible from those facts would entitle the counterclaiming defendant to relief under any theory of the case, dismissal is improper. *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 732 S.E.2d 876 (2012).

The “the inferences reasonably deducible from those facts” are actually laid out in the affidavit and exhibits Ann Marie submitted in support of her motion for partial summary judgment.

There she avers that Attorney Allen was her family court lawyer when he manipulated her into entering into a person business transaction with him (Watson Aff. ¶ 2) and remained her lawyer until October 2022.

She avers that her divorce was final in 2017. (Aff. ¶ 16).

Sher avers that in 2020, Attorney Allen at her request examined the settlement agreement she and her former husband entered into and advised her accordingly. (Aff. ¶ 18).

She avers that in the spring of 2022, her former husband contacted her, saying she owed him substantial sums from the settlement agreement. (Aff. ¶ 21). She goes on to aver that on April 20, 2022, she asked Attorney Allen to expect a call from her former husband’s attorney and asked if she could put him on retainer. (Aff. ¶ 21).

Exhibit H to her affidavit shows that on May 27, 2022, a representative of the residential tract developer who would be buying the land from Attorney Allen (Mungo Homes) sent an email to Attorney Allen’s real estate agent (Ben Kelly of NAI Columbia) saying he (the Mungo representative) had made a mistake and it now looks like “it will be necessary to buy one or both

parcels owned by Ann Marie Watson. A project this size will need 2 major access points.” Attorney Allen’s agent agreed. (Ex. H to Watson Aff.).

We don’t know if the former husband’s lawyer called Attorney Allen, but we do know that on June 15, the former husband’s lawyer wrote a letter to Attorney Allen demanding that Ann Marie repay him \$42,954.84. At the end of the letter, the lawyer wrote to Attorney Allen, “If you no longer represent Ann Marie Watson, please let me know what as well so I can send a letter directly to her.” (Ex. G to Watson Aff.).

Attorney Allen’s own notes show that on June 21, he and Ann Marie talked on the phone for about 20 minutes and that during that call they discussed whether she actually owed her former husband the money, how she could afford to repay it, and whether she should ask for an increase in child support. Those notes appear to include, “Chuck doesn't want to...,” “Argument: mutual mistake of fact,” and “waiver of all equitable claims.”¹

That very day, Attorney Allen’s agent wrote to Mungo’s representative: “Kellum is related to Ms. Watson and will discuss need for secondary access tonight.” (Ex. J to Watson Aff.).

Attorney Allen and Ann Marie did indeed talk that night. She avers in ¶ 28, they “did not discuss his need for secondary access.” She avers that he called her and asked if she might be interested in selling him one of her three tracts on Lawhorn Road. She avers he said he wanted it “just to have.” She adds what he did NOT tell her, and she adds, “I didn’t need a lawyer because [Attorney Allen] already was my lawyer.” (Aff. ¶ 28).

¹ The sort of issue spotting and legal evaluation that could be expected of a lawyer of Attorney Allen’s education and experience.

On July 5, the former husband's lawyer wrote an email to Attorney Allen regarding "property division overpayment" and "your client's threat of filing an action to increase child support," referring five times to Ann Marie as "your client." (Ex. L to Watson Aff.).

On July 14, Attorney Allen responded, NOT by denying Ann Marie was his client but rather by offering for her to reimburse the former husband in payments commencing September 30. "Ends all equitable division claims, No interest. Own fees. Let me know. Thanks. Kellum." (Ex. M to Watson Aff.) Again, more lawyer talk.

Meanwhile, Attorney Allen's agent reported to Mungo, "It appears we are making good progress on Watson. [Attorney Allen] has discussed with her and should make her an offer to option for 18 months this week." (Ex. N to Watson Aff.).

Attorney Allen received the signed option on August 17. (Ex. Q to Watson Aff.)

At trial we will present documentary evidence of a reminder Attorney Allen sent to Ann Marie on September 20 that her first payment was due on September 30.

Ann Marie avers that in October, they reached an agreement regarding repayment of overpayments her former husband had made. (Aff. ¶ 26). At trial we will show this was on October 18, when Attorney Allen sent Ann Marie a proposed supplemental consent order regarding property division.

Facts like these have led courts all over the country to instruct trial courts not to dismiss claims if the facts alleged and the inferences reasonably deducible from those facts would entitle the counterclaiming defendant to relief under any theory of the case.

For reference, giving legal advice to individuals about divorce, custody, separation, and child support is the practice of law. *State v. Despain*, 319 S.C. 317, 460 S.E.2d 576 (1995).

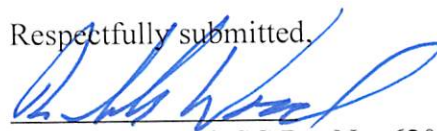
But that's not all. Exhibit P to Ann Marie's affidavit shows Attorney Allen advising her in the middle of all of this, "The Courthouse records indicate [your father] relinquished timber rights some years later. So we're still good." Providing opinions on the state of land titles is the practice of law. *Ex parte Watson*, 356 S.C. 432, 589 S.E.2d 760 (2003).

Ann Marie has alleged Attorney Allen was her lawyer throughout the negotiations for the land option—the kind of client the legal system calls a "current client."

CONCLUSION

The orders of the trial court should be reversed, and the Fourth (UTPA) and Second (Misappropriation of Confidential Information) Counterclaims should be reinstated.

Respectfully submitted,



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