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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Honorable Edgar W. Dickson

Appellate Case No. 2023-001779

Andrew Pampu; Amanda Pampu; and John Pampu, Petitioners-Respondents,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.;
Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and
BREWER LAW FIRM, LLC, Respondents-Petitioners.

**PETITIONERS-RESPONDENTS' RETURN
TO RESPONDENTS-PETITIONERS'
PETITION FOR WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

- I. Did the Court of Appeals correctly hold that the Petitioners-Respondents' expert affidavit was timely under S.C. CODE ANN. § 15-36-100(C)(1)?

- II. Does the Court of Appeals' application of § 15-36-100(C)(1) to the pleadings in this case constitute a "special and important reason" justifying certiorari when there is no split of authority, recurring question of substantial public importance, or deviation from settled statutory text?

ARGUMENTS

Petitioners-Respondents Andrew, Amanda, and John Pampu ("the Pampus") respectfully submit this Return and request that the Court deny the Petition for Writ of Certiorari filed on behalf of Respondents-Petitioners CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and BREWER LAW FIRM, LLC ("the Lawyers"). The Court of Appeals correctly applied S.C. CODE ANN. § 15-36-100 and the Rule 12(b)(6) standard to the expert affidavit analysis, and no "special and important reasons" warrant this Court's discretionary review.

The issues raised in the Lawyers' Petition are fact-specific and confined to the Court of Appeals' application of clear statutory text to the particular pleadings of this case, rather than demonstrating any novel, recurring, or unsettled question of law or public importance that would merit this Court's review. Certiorari review under Rule 242(b), SCACR, is reserved for exceptional cases with far-reaching consequences, not for case-specific error correction, and this case neither introduces a new doctrine nor implicates any unresolved precedent or split of authority.

I. The Court of Appeals correctly held that the expert affidavit was timely under § 15-36-100(C)(1).

The Court of Appeals held the Pampus’ expert affidavit “was timely filed and sufficient,” reasoning that (1) the original complaint cited § 15-36-100(C)(1) and stated Appellants would file an amended complaint with the affidavit within forty-five days, (2) an amended complaint with the expert affidavit was filed within the forty-five day requirement, and (3) the second amended complaint explained why the affidavit could not be prepared before limitations expired due to time constraints. The Court of Appeals correctly concluded that these allegations “adequately met section 15-36-100(C)(1)’s exception to the filing requirement.” Pampu v. Clawson Fargnoli, LLC, Unpublished Op. No. 2025-UP-272, 2025 WL 2158945 @ 3 (S.C. Ct. App. 2025). This determination tracks the statute’s text allowing an exception when “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.” Id. Section 15-36-100(B) requires a contemporaneous expert affidavit in legal malpractice actions, while § 15-36-100(C)(1) creates an exception where the period of limitation will expire within ten days of filing and, because of time constraints, the plaintiff alleges an expert affidavit could not be prepared. The Court of Appeals’ application of these textually stated conditions to the pleadings—recognizing the timely invocation of § 15-36-100(C)(1) in the original complaint and the time-constraint allegation as set out in the second amended complaint—reflects a faithful construction of the statute’s plain language. Id.

The record confirms that the Pampus filed the initial complaint on March 19, 2021; alleged the § 15-36-100(C)(1) exception in that pleading; filed the expert affidavit with the amended complaint *forty-two days* later; and later alleged specific time constraints tied to the imminent expiration of limitations. *See* Complaint, R. pp. 36-56; R. p. 55, ¶ 103; Amended Complaint, R. pp. 58-78, and Expert Affidavit by Justin Dillon, Esq., R. pp. 79-87; and Second Amended

Complaint, R. pp. 110-141, and R. pp. 129, ¶ 103. Further, the Court of Appeals’ holding is consistent with the statutory framework distinguishing between: (a) the contemporaneous affidavit requirement and its explicit ten-day/time-constraint exception in § 15-36-100(C)(1), and (b) the separate curative mechanism for affidavit sufficiency in § 15-36-100(E), which the trial court invoked but which the Court of Appeals deemed unnecessary to sustain timeliness under the (C)(1) exception. Id. Finally, § 15-36-100(F) confirms dismissal after limitations only where a plaintiff “fails to file an affidavit as required,” a condition the Court of Appeals found unmet because the statutory exception applied and the Pampus filed the affidavit within the period the Court of Appeals recognized as permissible under § 15-36-100(C)(1). Id.

The Lawyers’ contrary position depends on slicing the pleadings to insist that only the initial complaint may contain the time-constraint allegation and to disregard the combined pleadings record the Court of Appeals relied upon. But the Court of Appeals identified all pleadings—the original, amended complaint, and the second amended complaint—and found the exception “adequately met,” which is a straightforward application of § 15-36-100(C)(1) to the operative allegations.

The Lawyers’ suggestion that the Court of Appeals’ ruling “extends” the statute of limitations mischaracterizes the holding; the Court of Appeals correctly applied the statutory exception and did not enlarge the limitations period. The Court of Appeals’ analysis adheres to the statute’s plain language and does not conflict with § 15-36-100(F), which addresses renewal after limitations expiration when a plaintiff fails to file an affidavit “as required”; here, the Court of Appeals found the exception was satisfied, so the filing was “as required” under subsection (C)(1). Id.

The record reflects: (1) initial filing on March 19, 2021; (2) an amended complaint was

filed 42 days later, including the expert affidavit; and (3) the second amended complaint was timely filed specifying that, due to time constraints and an impending limitations deadline, the affidavit could not be prepared prior to expiration. The Court of Appeals relied on these facts to conclude statutory compliance.

Section 15-36-100(C)(1) states only that “the plaintiff alleges that an affidavit of an expert could not be prepared,” and it does not specify when or in which pleading such an allegation must be made; courts may not read into the statute timing or pleading-location requirements the General Assembly did not include. The Court of Appeals implicitly applied this Court’s mandate that when statutory language is plain, courts must apply its terms as written and may not add words under the guise of interpretation. See e.g., Planned Parenthood South Atlantic v. State, 445 S.C. 600, 609-610, 916 S.E.2d 299, 304 (2025); and State v. Grissett, 442 S.C. 183, 187-188, 498 S.E.2d 139, 141 (2024). See also, Rudick v. Rudick, 437 S.C. 270, 275-276, 878 S.E.2d 686, 689 (2022) (courts are not permitted “to engraft an additional requirement onto a [statutory] provision that is otherwise clear on its face.”). Applying those principles, the absence of any textual directive in § 15-36-100(C)(1) about the timing or placement of the plaintiff’s allegation precludes judicially engrafting such requirements.

Likewise, the statute elsewhere demonstrates that when the legislature wished to impose specific timing consequences, it did so expressly—as in § 15-36-100(F), which addresses renewal after the limitations period—confirming by negative implication that § 15-36-100(C)(1) contains no additional timing or pleading-location mandate regarding where the “alleges” must appear. The Court of Appeals implicitly recognized in rejecting the Lawyers’ arguments on this point that reading a contemporaneous-pleading requirement into § 15-36-100(C)(1) would therefore contradict the statute’s plain text and the settled rule that courts cannot extend or modify statutes

beyond their enacted terms.

Because the Court of Appeals applied the text of § 15-36-100(C)(1) to the pleadings and record, the Lawyers identify no conflict in authority or issue of broad public importance warranting certiorari. The Court of Appeals correctly determined that the expert affidavit was submitted in a timely manner pursuant to § 15-36-100(C)(1).

II. No “special and important reason” supports a Writ of Certiorari.

Rule 242(b), SCACR, permits certiorari only where “special and important reasons” exist. Rule 242(b) provides examples of the types of reasons that may justify certiorari review, although these are not exhaustive or controlling. The enumerated considerations include:

1. The presence of novel questions of law.
2. A dissent in the decision of the Court of Appeals.
3. A conflict between the decision of the Court of Appeals and a prior decision of the Supreme Court.
4. Substantial constitutional issues are directly involved.
5. A federal question is included in the case where the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Rule 242(b), SCACR.

The Lawyers’ Petition fails to identify any “special and important reason” under Rule 242(b). It raises no novel questions of law, there was no dissent in the unanimous unpublished decision by the Court of Appeals, no split of authority, no constitutional issues directly involved, no recurring question of substantial public importance, or deviation from settled statutory text. Instead, the Petition advances a record-specific disagreement with the Court of Appeals’ application of § 15-36-100(C)(1) to the pleadings in this case.

A. The absence of precedential, recurring, or public impact issues in the Opinion.

The issues raised in the Petition are fact-specific and confined to the Court of Appeals' application of clear statutory text to the particular pleadings of this case. They do not demonstrate any novel, recurring, or unsettled question of law or public importance that would merit Supreme Court review. Certiorari review under Rule 242(b), SCACR, is reserved for exceptional cases with far-reaching consequences, not for case-specific error correction. This case neither introduces a new doctrine nor implicates any unresolved precedent or split of authority. See Laffitte v. Bridgestone Corp., 381 S.C. 460, 674 S.E.2d 154 (2009) (the Court found exceptional circumstances warranting certiorari to review a discovery order in a products liability case involving a novel question of law and significant public interest). The Court has also clarified that certiorari review is confined to correcting errors of law and does not extend to reviewing findings of fact unless those findings are wholly unsupported by evidence. South Carolina Bd. of Examiners in Optometry v. Cohen, 256 S.C. 13, 180 S.E.2d 650 (1971).

B. The absence of a dissent or conflict.

The decision below was unanimous, with no dissent in the unpublished Court of Appeals opinion. There is no conflict with any prior South Carolina Supreme Court decision or United States Supreme Court precedent, as required by Rule 242(b). The absence of dissent or conflict highlights the routine nature of the disposition and the lack of any exceptional circumstance warranting certiorari.

C. The Court of Appeals properly applied this Court's statutory construction rules.

The Court of Appeals conducted a detailed analysis by considering all operative pleadings—the initial complaint, amended complaint with affidavit, and second amended complaint—to ensure the statutory exception in § 15-36-100(C)(1) was fully satisfied. This

exemplifies proper judicial caution and fidelity to legislative intent, not overreach or error. The Court adhered to the statute's plain language and the record allegations it cited, demonstrating a thorough and careful application of the law.

D. The lack of any expansion or alteration of law.

The Court of Appeals merely applied the plain language of § 15-36-100(C)(1) as written, declining to insert a timing or pleading-location requirement not present in the statutory text. This approach aligns with established South Carolina's and this Court's interpretive principles, confirming the absence of any expansion or alteration of the law.

E. The Lawyers' Petition mischaracterizes the statutory "extension."

The Lawyers assert a supposed conflict with the statute's "plain language," but the Court of Appeals quoted and applied that language. The Court of Appeals did not extend the statute of limitations but instead recognized and applied the statutory exception. It carefully distinguished between the contemporaneous affidavit rule and its ten-day exception, adhering to the statute's clear provisions. The Court of Appeals' decision was interwoven with the pleadings history in this case; the Lawyers merely seek error correction. That is not a basis for certiorari.

F. Denial of the Petitions for Rehearing reinforces the Court of Appeals' conclusion that its reasoning was appropriate.

Both parties' petitions for rehearing were denied, reflecting the panel's and entire Court of Appeal's confidence in the correctness and routine nature of the disposition. This denial confirms that no ambiguity or exceptional circumstance remained for this Court's review.

G. Further review would undermine judicial efficiency.

Granting certiorari in this record-specific context risks transforming the Supreme Court into an error-correction court for intermediate appellate factual applications. Such a shift would undermine judicial efficiency and contradict the design of Rule 242, which reserves certiorari for

exceptional cases with broader implications.

H. Reasserting absence of cert-worthy error using statutory cross-references.

The Court of Appeals' reasoning is firmly grounded in the textually distinct statutory mechanisms for contemporaneous affidavits, exceptions, and later curative measures. There was nothing erroneous or outlying in applying those provisions as written. The Lawyers' disagreement with the Court of Appeals' application of statutory text does not rise to the level of certiorari-worthy error.

In summary, the Lawyers' Petition does not satisfy the Supreme Court's standards for the discretionary grant of certiorari. The Court of Appeals adhered to the statute's plain language and applied it to case-specific facts without creating a new doctrine or conflicting with existing authority. Rule 242(b) makes clear certiorari is discretionary and reserved for exceptional circumstances, which are not present here.

III. Additional issues resolved by the Court of Appeals further show the absence of cert-worthy error.

The Court of Appeals affirmed in part and reversed in part, addressing the dismissal orders and the timeliness/sufficiency question concerning the expert affidavit, and it denied both sides' rehearing petitions. The Court of Appeals' resolution rested on the pleadings, the statute's text, and the procedural posture, not on any novel legal rule. The trial court's dismissal turned on the absence of an initial time-constraint allegation and on its view that § 15-36-100(E) could not cure a nonfiling; the Court of Appeals corrected that narrow error by applying § 15-36-100(C)(1) to the allegations across the operative pleadings and by recognizing that the Pampus timely invoked the statutory exception. The denial of rehearing further confirms that the Court of Appeals perceived no internal inconsistency or unaddressed issue warranting panel reconsideration. In short, the decision reflects routine statutory application rather than a departure warranting certiorari.

The Pampus have separately sought this Court’s review on distinct issues involving alternative pleading under Rule 8 and misapplication of the Rule 12 standard to standing and contract allegations—matters that, if reviewed, would be presented through Petitioners’ own Petition, not via the Lawyers’ narrow affidavit challenge.

CONCLUSION

The Lawyers have not shown any special and important reason for this Court to grant certiorari. The Court of Appeals correctly applied § 15-36-100(C)(1) to conclude the affidavit was timely and sufficient. The Lawyers’ Petition should be denied.

Respectfully submitted,

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