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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appellate Case No. 2025-002132

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bryan Doby, Circuit Court Judge

Cynthia Veronese
Appellant

v.

Jarrel Wigger, and Wigger Law Firm, Inc.
Respondents

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err and abuse his discretion by issuing an order of dismissal with prejudice due to a technicality under Rule 12(b)(6), improperly including as true facts in the order of dismissal the defendants' false statements which were contrary to the facts of the Amended Complaint, but excluding factual and legal conclusions to allow the reader to follow the legal reasoning behind such a prejudicial decision?
2. Did the trial judge demonstrate bias against the plaintiff, violate due process and abuse his discretion by denying her an opportunity to be heard before dismissing her complaint with prejudice?
3. Did the trial judge commit an error and abuse of discretion by failing to address the allegations and evidence of fraud and fraud upon the Court presented by the plaintiff against the defendants before dismissing the plaintiff's case?
4. Did the trial judge err by failing to consider matters outside the pleadings that were presented and not excluded during a motion under Rule 12(b)(6), without converting the motion into one for Summary Judgment under Rule 56, and allowing time for both parties to prepare for an evidentiary hearing on the allegations of fraud by defendants?
5. Did the trial judge commit an error and abuse of discretion by not intervening when the defendants' attorney made three false statements during the hearing on their motions to dismiss, despite the plaintiff's protests, and allowed the false statements to become part of the decision?

STATEMENT OF THE CASE

On April 14, 2025, Appellant, Cynthia Veronese (“Veronese”), filed a Summons and Complaint in the Court of Common Pleas for Charleston County, South Carolina, claiming professional negligence (Diligence, Conflict of Interest, and Terminating Representation) against Respondents Jarrel Wigger, and Wigger Law Firm, Inc., whose error in neglecting her case for more than eight months caused financial losses to Veronese in a personal injury/assault and battery lawsuit that she intended to file.

On May 13, 2025, the Respondents submitted their Answer and Motion to Dismiss under Rule 12(b)(6) (failure to state a cause of action) and Statute 15-36-100 (failure to file an expert affidavit).

On June 2, 2025, the Appellant filed an Amended Complaint, alleging extrinsic fraud and fraud upon the Court in the defendants’ responses in their answer to the original complaint.

On July 2, 2025, the Respondents filed an Answer to Amended Complaint and a Motion to Dismiss the Amended Complaint pursuant to South Carolina Rules of Civil Procedure Rule 12(b)(6) and also SC Code of Laws 15-36-100.

On August 25, 2025, the Honorable Bryan Doby heard arguments on the Motions to Dismiss, and by order entered August 25, 2025, the Judge granted the Motion to Dismiss “without prejudice”. On September 8, 2025, Judge Doby filed a final order of dismissal, at this time “with prejudice”, including in the order false facts obtained from the Defendants’ Answers which were contrary to the facts of the Amended Complaint, and excluding findings of fact or conclusions of law to support the change. On September 12, 2025, the plaintiff filed a Motion for Reconsideration 59 (e). By Form 4 dated September 17, 2025, the Motion for Reconsideration was denied. This appeal followed.

STANDARD OF REVIEW

A ruling on a motion to dismiss a claim pursuant to Rule 12(b)(6), SCRCF, 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. 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.

"Questions of law may be decided with no particular deference to the trial court." *Wiegand v. US Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011).

“When matters outside the pleadings are presented and not excluded by the court on a motion under Rule 12(b)(6), the motion must be treated as one for summary judgment under Rule 56.” *Samara v. United States* (C.C.A.2d, 1942) 129 F.(2d) 594, cert. den. (1942) 317 U.S. 686; *Boro Hall Corp. v. General Motors Corp.* (C.C.A.2d, 1942) 124 F.(2d) 822, cert. den. (1943) 317 U.S. 695. See also *Kithcart v. Metropolitan Life Ins. Co.* (C.C.A.8th, 1945) 150 F.(2d) 997, aff'g 62 F.Supp. 93.

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).

STATUTE. Section 15-36-100. Complaint in actions for damages alleging professional negligence; contemporaneous affidavit of expert specifying negligent act or omission. SC Code § 15-36-100:

(B) Except as provided in Section 15-79-125, in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G), [in this case (G)(2) attorneys at law], the plaintiff must file as part of the complaint 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.

(C)(1) The contemporaneous filing requirement of subsection (B) 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. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. Upon motion, the trial court, after hearing and for good cause, may extend the time as the court determines justice requires. If an affidavit is not filed within the period specified in this subsection or as extended by the trial court and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim.

STATEMENT OF FACTS

On April 14, 2025, Appellant, Cynthia Veronese (“Veronese”), filed a Summons and Complaint in the Court of Common Pleas for Charleston County, South Carolina, claiming professional negligence (Diligence, Conflict of Interest, and Terminating Representation) against Respondents Jarrel Wigger, and Wigger Law Firm, Inc. (Amended Complaint, Para. #6), whose errors caused financial losses to Veronese in a personal injury/assault and battery lawsuit that she intended to file. In fact, they represented her from August 14, 2021 to April 19, 2022, but, without performing any work on her case for over 8 months and without any prior notice, the Defendants terminated the Plaintiff’s representation and billed her \$35 for the entire period they pursued her case, demonstrating that no investigation was conducted. This created a conflict of interest, because the Defendants prioritized the interests of the defendant – rather than their client’s (the Plaintiff) - by dropping her case too close to the statutory deadline and by failing to take reasonable steps to protect their client’s legal position, such as providing her with reasonable advance notice and allowing her time to retain new counsel. By treating the case of their client with such disregard, Defendants consequently impaired the ability of the Plaintiff to obtain effective representation by new counsel. (Amended Complaint, Paras. 7-8). The Plaintiff filed the underlying claim “pro se” and was able to settle her case in the District Court, but, the Defendants’ negligence, which was contrary to the interests of their client, resulted in substantial pecuniary harm and damages to the Plaintiff, as she had to settle her case for a lesser amount because she did not have an attorney to protect her interests. Furthermore, due to Defendants’ negligence, the Plaintiff’s rights for emotional distress (actual) damages along with her underlying claim could not be protected because, upon termination of representation, the Defendants failed to take reasonable steps to protect the Plaintiff’s position, such as allowing her

time to hire new counsel.(Amended Complaint, Paras. 9, 12, 13). The Veronese Complaint alleged facts showing that the Respondents were negligent in pursuing Veronese's claim, and that one or more of the negligent actions or related omissions caused her substantial financial losses.

On May 13, 2025, the Respondents submitted an Answer and a Motion to Dismiss under Rule 12(b)(6), containing a significant number of inaccurate statements.

On June 2, 2025, the Appellant filed an Amended Complaint, alleging extrinsic fraud and fraud upon the Court through the defendants' responses in their answer to the original complaint.

On July 2, 2025, the Respondents filed an Answer to Amended Complaint repeating the same false allegations and misrepresentations as in their initial Answer rather than addressing these, and filed a Motion to Dismiss the Amended Complaint pursuant to South Carolina Rules of Civil Procedure Rule 12(b)(6) (failure to state a cause of action) and also SC Code of Laws 15-36-100 (failure to file an expert affidavit).

On August 19, 2025, because an expert witness had explained to the Appellant that "the conflicting narratives between the parties about what actually happened compromised the integrity of the case, and that only a judge's decision on all the allegations could provide a clear account of the facts so that an affidavit from an expert could be issued", the Appellant submitted to the trial Judge, with a copy to the defense counsel, a Motion to Strike portions of the Defendants' Answers, detailing in a clear, concise and substantiated manner the same allegations that appeared more liberally in the Amended Complaint, stating that the Defendants had committed substantive fraud because there were false allegations about core facts of this case in their Answers, and evidence demonstrated that the Respondents were aware that their statements were false before making them to the trial Court, with the apparent intention of influencing the

expert and the Court's decision. The evidence attached to the Motion to Strike mentioned above consists of written communications exchanged between the Plaintiff and the Defendants during the period in which they represented her. The Appellant requested from the trial Judge, by email, a continuance, explaining that a decision made without first analyzing the unreliable facts supporting the Defendant's motions to dismiss, and also without examining how the defendants' false and misleading statements were prejudicing her ability to obtain an affidavit and pursue the case, would not contribute to the proper administration of Justice. The Judge denied continuance and instructed the Appellant to "argue her motion and also request for a continuance at the same hearing" (on the Defendants' motions to dismiss) that was going to take place two days later, on August 21st at 2:30pm, "that way everything would be on the court record".

ARGUMENT

ABUSE OF DISCRETION IN REFUSING CONTINUANCE: The trial judge denied plaintiff's request for a continuance to address the false statements in defendants' answers, which directly impacted her ability to obtain an expert affidavit. A court's refusal to grant a continuance is reviewed for abuse of discretion, and that discretion is abused when the refusal prevents a party from presenting their case effectively. *United States v. 5.1 Acres of Land*, 409 F.3d 1306, 1316 (11th Cir. 2005). "A district court abuses its discretion by denying a continuance when the denial deprives a party of meaningful opportunity to present its case."; *Hynes v. Grumman Aerospace Corp.*, 745 F.2d 1285, 1291 (11th Cir. 1984). "The court has broad discretion in managing its docket, but that discretion is not unlimited and must be exercised to ensure fair adjudication."; *Johnson v. Clark*, 309 S.C. 405, 424 S.E.2d 218 (Ct. App. 1992). "The decision to grant or deny a continuance is within the discretion of the trial court, but that discretion is subject to reversal if abused."

On August 21, 2025, the Plaintiff attended, in person, the hearing held by the same trial Judge, during which she was interrupted by this judge each of the thirteen times (as recorded in the transcript) that she attempted to argue her case and evidence of fraud upon the Court by the Defendants, despite having been instructed by this same Judge to do so.

In addition, as the transcripts will show, during the hearing there was no discussion of any of the facts included in the Amended Complaint, either those relating to negligence, or those relating to the plaintiff's allegations of fraud in the Defendants' responses; nor was there any guidance by the Judge regarding the Plaintiff's right to amend the complaint.

At the beginning of the hearing, **the defense counsel made the first false statement to the Court, central to the case.** Attorney Mr. McCarty said: "He (the Respondent) was approached by Mrs. Veronese about representing her. He reviewed the case and decided not to take it. That is spelled out in the pleadings. That's all I need to say. Her claim from the pleadings seems to be that what he did wrong was that he failed to take her case. Okay? An attorney does not have to take a case. You know, there's no requirement for that. So under 12 (b)(6), we feel like the complaint should be dismissed for *that reason*, for failure to state any claim." (Transcripts, p. 5, lines 11-20). This statement is false. The Amended Complaint does not allege that "what the defendant did wrong was that he failed to take her case". The Plaintiff immediately replied that the Complaint was about the fact that the Defendants took her case, kept it for more than eight months, did not perform any work, and left the case, without saying a word to her, almost at the end of the Statute of Limitations, (Transcripts, p. 6, lines 12-17). This information also appears in the Amended Complaint (para. 8). In addition, the trial Judge confirmed on the record

(Transcript, p. 8, lines 12-14) that he had read the Plaintiff's motion to strike, and the Defendants' fee agreement was attached thereunto (Motion to Strike - Exhibit 1). Therefore, the Judge knew that the Defendant's attorney was not telling the truth, but never challenged him, acting in clear abuse of discretion. When a judge is aware that an attorney is not telling the truth about core facts of a case in court but does not take action, it raises significant ethical and legal concerns, because such behavior undermines the integrity of the judicial process. The judge's failure to intervene had repercussions for the case at hand, leading to an unfavorable and unjust ruling. The legal system relies on the honesty and integrity of those who participate in it, and, when an defendant's attorney acts with dishonesty and the judge fails to address it, the credibility of the entire proceeding is seriously damaged.

As described above, at the beginning of the hearing the defense counsel made a false statement to the Court central to the case. Judge Doby had confirmed on the record that he read the plaintiff's motion to strike before the hearing (Transcripts, p. 8, lines 12-14), therefore he must have been aware that, attached to it, there was clear and convincing evidence of fraud upon the Court through eight false statements in the defendants' answers, and, at that point, the defense counsel verbally introduced for the Court's consideration another false statement, the ninth in this lawsuit (and the case had not even entered the discovery stage yet). During that hearing, the defendants' counsel presented two more false statements that will be discussed below.

The trial judge never excluded the evidence of eight false statements made by the defendants in their answers and presented in the plaintiff's motion to strike, nor excluded the false statements made by the defense counsel while standing in the Courtroom during the hearing (the defendants' false statements that were contested by the plaintiff later appeared in the final order

of dismissal as if they were true facts). When matters outside the pleadings are presented and not excluded by the court on a motion under Rule 12(b)(6), the motion must be treated as one for summary judgment under Rule 56. *Samara v. United States* (C.C.A.2d, 1942) 129 F.(2d) 594, cert. den. (1942) 317 U.S. 686; *Boro Hall Corp. v. General Motors Corp.* (C.C.A.2d, 1942) 124 F.(2d) 822, cert. den. (1943) 317 U.S. 695. See also *Kithcart v. Metropolitan Life Ins. Co.* (C.C.A.8th, 1945) 150 F.(2d) 997, aff'g 62 F.Supp. 93. This means that all parties must be given a reasonable opportunity to present all material that is pertinent to the motion. Judge Doby should have converted the motion to dismiss into one for summary judgement and allowed both parties to argue the evidence of their allegations, and/or compared the defense counsel's untruthful statements against the Amended Complaint, and sanctioned him for the falsehood(s).

Duty to Consider Fraud Allegations Before Summary Judgment Dismissal: When a Rule 12(b)(6) motion must be treated as a Rule 56 motion because matters outside the pleadings were presented, all parties must be given reasonable opportunity to present material pertinent to the motion. This is particularly critical where fraud upon the court is alleged, as such allegations strike at the heart of the judicial process. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) "When a motion for summary judgment is properly made and supported, the opposing party must set forth specific facts showing there is a genuine issue for trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) "The burden of establishing the nonexistence of a genuine issue of material fact rests upon the movant... The non-moving party must then come forward with evidence demonstrating the existence of a genuine issue." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) "Summary judgment is appropriate when the evidence is such that a reasonable jury could not return a verdict for the non-moving party."

Strangely, Judge Doby did not see as a serious ethical and legal violation the fact that the defense counsel made three false statements while standing in his Courtroom and looking directly at him, while the plaintiff protested but was ignored.

Right to Confront False Testimony in Court: The trial judge's failure to intervene when defense counsel made false statements during the hearing violated not only due process but also the right of a party to confront false testimony presented to the court. When a judge is aware that an attorney is presenting false statements of material fact and fails to take action, it undermines the integrity of the judicial process and denies the opposing party a fair hearing. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50 (1991) "Courts have inherent power to manage their proceedings and to sanction litigants for improper conduct... This includes the power to sanction attorneys who make false statements to the court." *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766 (1980) "Bad faith conduct by an attorney that unnecessarily increases the cost of litigation justifies an award of attorney's fees under the court's inherent power." *In re Kearney*, 342 F.3d 1069, 1072 (8th Cir. 2003) "Courts have the inherent power to discipline attorneys for conduct that obstructs the administration of justice, including making false statements to the court." **South Carolina Supreme Court Case: In re Rule 415, SCACR, 299 S.C. 501, 386 S.E.2d 120 (1989)*. Attorneys have a duty of candor toward the tribunal and cannot knowingly make false statements of fact or law.

In fact, the trial judge rewarded the defense counsel's conduct by asking him to write the final order of dismissal, acting in clear bias and abuse of discretion. Obviously, the final order of dismissal written by the defense counsel was modified from the initial "without prejudice" entered by Judge Doby to "with prejudice," without any plausible explanation; the statements that had already been substantiated by the plaintiff as being false were included in the order as

true facts, and no findings of fact and conclusions of law were cited to allow the reader to follow the legal reasoning behind such a prejudicial decision, and also to allow for a meaningful review by the appellate court.

A dismissal with prejudice due to a curable technicality was improper; it was also a severe sanction, which would have been proper only if the Appellant had acted irresponsibly or in bad faith, or displayed unethical behavior, which did not happen in this case, very much the contrary. Faced with this situation, the Appellant, in spite of having been allowed by the judge to appear via videoconference, undertook a long and expensive international flight from Brazil to Charleston due to the seriousness of the contentions on record. By appearing in person, she wanted the judge to see that she was very serious about her allegations, that she was there to answer any questions he could have for her; and she also wanted to confront the defendants. Unfortunately, she did not have a fair hearing. Each of the thirteen times detailed on the transcript that she tried to raise the issue of the false allegations by defendants, the judge did not allow her to be heard. *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) ("The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review."); *Wilson*, 352 S.C. at 452, 574 S.E.2d at 733 ("[D]ue process is flexible and calls for such procedural protections as the particular situation demands." (alteration in original) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972))); *id.* at 452, 574 S.E.2d at 734 ("Where important decisions turn on questions of fact, due process often requires an opportunity to confront and cross-examine adverse witnesses." (quoting *Brown v. S.C. State Bd. of Educ.*, 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990))); *id.* at 453, 574 S.E.2d at 734 ("Confrontation includes the right to be physically present during the presentation of testimony."); *id.* ("Due process is not violated where a party is

not given the opportunity to confront witnesses so long as there has been a meaningful opportunity to be heard."); *Seabrook v. Knox*, 369 S.C. 191, 197, 631 S.E.2d 907, 910 (2006) ("Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the curable meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." (quoting *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976)));

After thirteen attempts to argue her case which were either interrupted by the judge or left without a response, the plaintiff told the judge that she had not heard him mentioning, not even once, the evidence that she had submitted refuting the defendants' false statements contained in her motion to strike. The judge replied that all he had in front of him were the motions to dismiss. The plaintiff asked if the motion to strike was going to be even looked at, and the judge said that it was not in his roster. Throughout the entire hearing, the judge asked the plaintiff about the expert witness affidavit, and she replied that there was a delay due to the defendants' actions, and that the fraudulent allegations contained in the defendants' answers needed to be removed from the record before an expert could issue an affidavit, but the judge ignored her assertions.

At the end of the hearing, the plaintiff tried to reason with Judge Doby: "-Your Honor, if you dismiss the case, we're never going to get to the motion to strike," meaning that the respondents would never be held accountable for their actions, leading to an unfair outcome and a manifest injustice. The judge answered: "-I don't know what I'm going to do in this case yet," and ended the hearing without a decision.

On August 25, 2025, the trial judge entered the initial order of dismissal “without prejudice” on the grounds that the plaintiff had failed to attach an expert witness affidavit as required by Statute 15-36-100 and that “additional time was already given to allow the plaintiff the opportunity to obtain this statutorily required affidavit”. **The problem with the trial judge’s decision was that it was very likely influenced by the defendants’ attorney second false statement during the hearing (and tenth false statement by defendants and their counsel in this case).** Mr. McCarty stated: “-Due to the fact that she is *pro se*, the judge gave her until now to come up with an affidavit.” (Transcript, p. 5, line 25, p.6, line 1). The plaintiff had received only one 26-day continuance (from one motions term to the next) from the administrative judge, but an administrative judge could not rule on the plaintiff’s allegations of extrinsic fraud and fraud upon the Court through the defendants’ responses in their Answers, which were preventing the plaintiff from obtaining an affidavit. During the hearing, the trial judge verified the previous orders, and confirmed that the case had been briefly continued only once by the administrative judge (Transcript, p. 10, lines 4-23), so he knew that the plaintiff had never received a long continuance, nor disobeyed any court orders.

Equitable Tolling and Extension of Time for Affidavit: While §15-36-100(C)(1) provides a 45-day extension when the statute expires within 10 days, courts have inherent equitable powers to extend deadlines when the failure to comply was caused by the opposing party's misconduct. Defendants' false statements created genuine disputes of material facts that prevented plaintiff from obtaining an affidavit, warranting equitable tolling. *Holland v. Florida*, 560 U.S. 631, 645 (2010). "Equitable tolling is appropriate when a plaintiff has been pursuing his rights diligently but some extraordinary circumstance stood in his way". *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 96 (1990). "Equitable tolling is an appropriate remedy when the opposing party has

engaged in misconduct that prevents the plaintiff from meeting a deadline."; *Brown v. Burns International Security Services*, 357 S.C. 526, 593 S.E.2d 690 (2004). South Carolina courts recognize equitable tolling principles in appropriate circumstances.

As demonstrated in the Amended Complaint and Plaintiff's Motions to Strike and for Reconsideration, the Plaintiff's fraud claims were well-founded and should have survived a motion to dismiss.

The South Carolina Supreme Court reiterated the rule that extrinsic fraud is necessary to set aside a judgment based on fraud in *Chewning v. Ford Motor Company*, 354 S.C. 72, 80, 579 S.E.2d 605, 610 (2003). The Court explained: "Extrinsic fraud is 'fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.'" *Raby Constr., L.L.P. v. Orr*, 358 S.C. 10, 19, 594 S.E.2d 478, 483 (2004) (citing *Chewning v. Ford Motor Co.*, 354 S.C. 72, 81(2003)). Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action." This is what happened in this case.

As demonstrated above, in a discussion initiated by the defense counsel during the hearing on the defendants' motions to dismiss, a false statement was made which was contrary to the factual basis established in the amended complaint, but said counsel wanted the complaint to be improperly dismissed for that false reason under 12 (b)(6). The trial judge was aware that the plaintiff had submitted evidence that the defendants had already been untruthful about core facts of the case eight times. As demonstrated in the evidence attached to the plaintiff's motion to strike, there were genuine disputes as to material facts central to the case, and a documented path

of deceit by defendants and defense counsel which was completely ignored by the judge. *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 285, 543 S.E.2d 563, 566 (Ct. App. 2001). (In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party).

Right to Present Fraud Evidence Before Ruling on Technical Defect: Where fraud allegations are central to the case and directly impact the ability to satisfy procedural requirements, the court must address those allegations before ruling on the procedural defect. To do otherwise allows the wrongdoer to benefit from their own misconduct and renders the procedural rule a shield rather than a sword. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244 (1944) "Courts have the inherent power to set aside judgments obtained through fraud upon the court... This power is necessary to prevent the judicial process from being subverted." *United States v. Throckmorton*, 98 U.S. 61, 65 (1878) "But there is an exception to the general rule... where a judgment is procured by fraud... a court may act upon it to set it aside." *Armstrong v. D.R. Horton, Inc.-South Carolina*, 382 S.C. 215, 674 S.E.2d 735 (2009). South Carolina courts recognize the power to set aside judgments obtained through fraud.

When the judge initially dismissed the plaintiff's case without prejudice, he ignored the plaintiff's right to amend her complaint after a dismissal without prejudice and placed an enormous weight on a technicality (lack of affidavit), which could have been easily cured if he had ruled on the defendants and defense counsel's false statements that were preventing the plaintiff from obtaining an affidavit. The principle supported by the judiciary's approach to legal proceedings has always been to focus on achieving justice rather than merely adhering to procedural rules. Courts have the discretion to relax compliance with procedural rules when it is

necessary to ensure a fair hearing and to allow all parties to present their arguments. This approach is supported by the principle that technicalities should not serve as a basis for decisions, as the ultimate goal is to provide justice. *16 Jade Street, LLC v. R. Design Constr. Co., LLC*, 398 S.C. 338, 343, 728 S.E.2d 448, 450 (2012) (emphasis added). (“Any ambiguity in a statute must be resolved in favor of a just, equitable, and beneficial operation of the law.” *Sweat*, 386 S.C. at 350, 688 at 575). *Kiriakides v. UA Communications, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994). (If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect). *Id.*

Technical Defects Should Not Override Substantive Justice: The principle that courts should construe rules liberally to achieve substantial justice is particularly compelling where the technical defect is curable and arises from the opposing party's misconduct. A dismissal with prejudice for failing to attach an affidavit, where the affidavit could have been obtained but for defendants' fraud, constitutes a manifest injustice. *Foman v. Davis*, 371 U.S. 178, 182 (1962). "Rules of civil procedure should be liberally construed to do substantial justice... Lower courts should err on the side of allowing amendment when it is possible to do so. *United States v. Hohri*, 782 F.2d 227, 239 (D.C. Cir. 1986). "Procedural rules are not ends in themselves, but means to the end of achieving substantial justice." *16 Jade Street, LLC v. R. Design Constr. Co., LLC*, 398 S.C. 338, 343, 728 S.E.2d 448, 450 (2012). "Any ambiguity in a statute must be resolved in favor of a just, equitable, and beneficial operation of the law."

The judge gave a lot of weight to a technicality but ignored fraud upon the Court by the defendants and defense counsel, in clear abuse of discretion, bias in favor of the defendants and defense counsel and against the plaintiff, and an error of law. In lieu of dismissing the

defendants' motions to dismiss, the trial judge dismissed the plaintiff's complaint and requested the defense counsel to write the final order for him.

Instead of being sanctioned for making three false statements to the Court during the hearing and eight substantiated false statements in the pleadings, the defense counsel was rewarded by the judge for his behavior, and the plaintiff was unfairly sanctioned with a dismissal with prejudice, a manifest injustice. Repeated, knowingly false allegations by the defendants and defense counsel should have been viewed by the Court as a deliberate attempt, in bad-faith, to subvert the process of ascertaining the truth, triggering severe sanctions. The legal system should have looked at *intent* to deceive, which constitutes a severe violation of ethical, professional, and procedural rules, but, instead, importance was placed on a technicality, in clear error of law. Attorneys are officers of the court with a duty of candor, and cannot knowingly present false evidence or make false statements of material fact.

Sanctions for False Statements by Attorneys: Attorneys are officers of the court with a duty of candor. When an attorney knowingly makes false statements of material fact, they should be sanctioned, not rewarded with a favorable order. The trial judge's failure to sanction defense counsel for false statements, and instead allowing that counsel to draft the order, suggests a breakdown of the court's duty to maintain ethical standards. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991). "Courts have inherent power to impose sanctions for bad faith conduct, including the power to disbar attorneys from practice before the court." *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 765 (1980). "Bad faith conduct by an attorney that unnecessarily increases the cost of litigation justifies the imposition of sanctions." *South Carolina Rules of Professional Conduct, Rule 3.3*: "A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal."

On September 5, 2025, worried about the defense counsel unethical attitude during the hearing, about the unfairness demonstrated by the judge towards her and afraid of an even worse outcome, the plaintiff asked the Court if she could review the final order for accurateness and fairness before it was signed. However, the judge ignored her, and the draft order was submitted by the defense counsel directly to the judge, who signed and filed it before the plaintiff could read it. On September 8, 2025, the judge filed the final order of dismissal, this time “with prejudice” and, to her dismay, the plaintiff observed that the judge had ignored some of her allegations of fraud by the defendants, which were never ruled on by the Court, and appeared in the final order of dismissal as if they were true facts.

Appearance of Impropriety Standard: The trial judge's actions—allowing defense counsel to draft the final order, ignoring evidence of false statements, repeatedly interrupting the plaintiff, and including defense allegations as true facts in the order—create an appearance of partiality that undermines confidence in the judicial process. The appearance of impropriety is as damaging as actual bias. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860-61 (1988). "The due process Clause requires not only actual impartiality but also the appearance of impartiality... The appearance of bias is as damaging to public confidence as actual bias." *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813, 822-23 (1986). "Even when a judge has no personal stake in the outcome, due process may be violated if there is an appearance of bias." *In re Cauthen*, 361 S.C. 424, 605 S.E.2d 535 (2004). South Carolina recognizes the importance of avoiding even the appearance of impropriety in judicial proceedings.

ARGUMENT

FAILURE TO MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW

The trial judge did not provide support with findings of fact and conclusions of law for this harsh ruling, as is necessary in actions tried without a jury, mainly in a dismissal with prejudice that ignores evidence of fraud by defendants. According to Rules 52 (a) and 41 (b) of the South Carolina Rules of Civil Procedure, in this situation the court must specifically find the facts and state its conclusions separately, and these findings must be included in the judgment or an opinion memorandum of decision. Clear findings of fact and conclusions of law allow the reader to follow the legal reasoning behind a decision and “allow[s] meaningful review by the appellate courts”. *Friday Invs., LLC v. Bally Total Fitness of the Mid-Atl., Inc.*, 370 N.C. 235, 240–41 (2017) (cleaned up); accord *Jones v. Murdock*, 20 N.C. App. 746, 747 (1974).

Rule 52(a) of the South Carolina Rules of Civil Procedure requires courts trying actions without a jury to find the facts specially and state conclusions of law separately. The judgment must include these findings or reference an opinion memorandum. The trial court's failure to provide findings of fact and conclusions of law when dismissing a professional negligence claim with prejudice constitutes reversible error. *Anderson v. Bessemer City*, 470 U.S. 564, 573 (1985) "The trial court must make findings of fact and conclusions of law sufficient to permit meaningful appellate review." Findings of fact and conclusions of law are essential to explain the court's reasoning and allow for appellate review. (South Carolina Rules of Civil Procedure, Rule 52(a); *Jones v. Murdock*, 20 N.C. App. 746, 747 (1974) (as cited in brief).

The starting point should have been the trial judge's ruling on the allegations of fraud by defendants and their counsel after allowing the plaintiff to be heard, because the true facts of the case needed to come to light before a fair ruling could be issued; but unfortunately the plaintiff never had her day in Court.

In considering a motion to dismiss under Rule 12(b)(6), the circuit court must base its ruling solely on the allegations set forth in the complaint, and the question is whether, in the light most favorable to the plaintiff and with every doubt resolved in her behalf, the complaint states any valid claim for relief. Other than referring to the lack of an expert witness affidavit, the order of dismissal in this case refers exclusively to statements included in answers by the defendants, which are at odds with the factual basis established in the amended complaint: in other words, the judge not only failed to rule on the allegations of fraud but also allowed the opposing party's unsupported and untruthful assertions to infect the final order of dismissal.

The Appellant is aware that she should not discuss contested topics in this brief, but, in this case, contested topics appear in the final order of dismissal as if they were true facts. The Appellant is aware that the Court of Appeals does not conduct fact finding, but, in this case, the order of dismissal with prejudice was based on false facts, as demonstrated in the evidence attached to the plaintiff's motion to strike and reiterated in her motion for reconsideration, and the evidence was never considered or was excluded by the trial judge, so that the plaintiff never had her day in Court. In her Motion for Reconsideration 59(e), the Plaintiff asked the trial judge again for a ruling on the false allegations by defendants and attached clear and convincing evidence, but her request was ignored when her motion was denied. Therefore, she respectfully requests this Appellate Court to consider the following analysis about all the statements contained in the order of dismissal:

1. *"A hearing was held on August 21, 2025, on the defendants' motion to dismiss the plaintiff's complaint."* A hearing was held on August 21, 2025, on the defendants' motion to dismiss the plaintiff's complaint under Rule 12(b)(6). The judge had instructed

the plaintiff via email to argue her motion to strike during this hearing but interrupted her each of the thirteen times that she attempted to discuss the evidence of fraud in the defendants answers, therefore she never had her day in Court. In addition, it is improper to include factual allegations obtained outside of the complaint in an order of dismissal on a motion to dismiss, Rule 12(b)(6). The standard for a Rule 12(b)(6) motion is that the court must accept all of the plaintiff's factual allegations as true. Therefore, allegations that are not part of the complaint should not be included in the decision.

When matters outside the pleadings are presented to and not excluded by the court during a motion under Rule 12(b)(6), the motion must be treated as one for summary judgment under Rule 56. *Samara v. United States* (C.C.A.2d, 1942) 129 F.(2d) 594, cert. den. (1942) 317 U.S. 686; *Boro Hall Corp. v. General Motors Corp.* (C.C.A.2d, 1942) 124 F.(2d) 822, cert. den. (1943) 317 U.S. 695. See also *Kithcart v. Metropolitan Life Ins. Co.* (C.C.A.8th, 1945) 150 F.(2d) 997, aff'g 62 F.Supp. 93.

This means that all parties must be given a reasonable opportunity to present all material that is pertinent to the motion. In this situation, there was not a single statement in the order of dismissal referring to the plaintiff's Complaint. All that was included were the defendants' untrue allegations, making the judge's bias in favor of the defendants very clear, and calling into question the validity of the order of dismissal.

2. *"The Plaintiff retained the Defendants regarding a claim of sexual harassment."* The plaintiff retained the defendants regarding a claim of sexual assault. This error does not affect the outcome of the case, but it clearly shows the disrespect towards the plaintiff by the defendants, defense counsel, and also by the judge, who refused to correct it when she

pointed it out to him in her motion for reconsideration (Motion for Reconsideration – p.2, para.3).

3. *“The Defendants investigated the claim and determined that they would not pursue the case.”* The Amended Complaint stated: “Without doing any work on her claim for almost 9 months and without any warning, Defendants terminated Plaintiff’s representation, and presented to her a \$35 invoice for the entire period they kept her case, referring solely to the fee for opening her client file (\$35 was the total amount charged), which demonstrates that no investigation was conducted, and that the standard of care was breached and a conflict of interest was created because the Defendants placed the interests of the defendant in the underlying claim of their client (the Plaintiff) above their client’s own interests. If an investigation had been conducted, there would have been costs involved, and the final bill presented to the Plaintiff would not have been just \$35 for the fee to open her file; and she would not have suffered harm.” (Amended Complaint – para. 8). There is no evidence in their Answers that the defendants investigated the case. In an unfair and untruthful attempt to demonstrate that they had investigated the case, the Respondents accused the plaintiff of withholding evidence from the night of the assault, and attached to their Answer to the Amended Complaint (para. 29) text messages that were extremely painful and prejudicial to the plaintiff along with a false explanation that this evidence was obtained from the plaintiff later in the process: according to the defendants, when Mr. Wigger 'pressed her' for it. In fact this evidence had been provided to Mr. Wigger before he accepted her case.

The plaintiff contested the assertions above in her Amended Complaint (para. 15), and also attached to her Motion to Strike and to her Motion for Reconsideration (Exhibit 9)

an email that Defendant Wigger sent to her, demonstrating very clearly that he had been informed of said text messages before accepting her case. The plaintiff needed this prejudicial evidence based on a false argument from the defendants to be stricken from the records in order to obtain an affidavit, but the trial judge ignored her request.

4. *“The Defendants closed the Plaintiff’s file verbally, and then followed with a written letter dated April 18, 2022”.*

The Amended Complaint states very clearly: “Without doing any work on her claim for almost 9 months and without any warning, the Defendants terminated the Plaintiff’s representation.” The Plaintiff resides in South Florida, and divides her time between South Florida and Brazil, where she cares for her 96-year-old mother. If the defendants had closed the plaintiff’s file verbally, there would be a record of the long distance phone call; but the defendants never mentioned having proof of that call because it never took place. Therefore this statement should not have appeared in the final order of dismissal because it was never substantiated. Besides it was not part of the Amended Complaint. In addition, **during the hearing, the defendant’s attorney made his third untruthful statement and eleventh for the defendants in this case.** He said that the plaintiff was notified in November of 2021 that the defendants were not going to take her case (Transcript, p. 14, lines 22-24), when, in fact, their fee agreement was attached as Exhibit 1 to the plaintiff’s motion to strike. In their Answers, the defendants stated that the first associate attorney assigned to her file gave the Plaintiff verbal notice that he was leaving the firm in November of 2021 and that the Wigger Law Firm was closing her file before he left. The problem is that both statements are false. If the associate attorney had told the plaintiff that he was leaving the firm in November of 2021, he would not have

been able to sign the first demand letter on November 16, 2021 and the second one two months later, on January 18, 2022. **The plaintiff complained to the judge about the defense counsel’s false statements, and repeated that the defendants overwhelming pattern of deception prevented her from obtaining an affidavit, but the judge silenced her with a “Thank you, ma’am”** (Transcript, p. 16, lines 1-10), acting in clear bias, and abuse of discretion. Also, as mentioned in the Amended Complaint, the defendants sent the termination letter dated April 18, 2022 to the wrong address (Amended Complaint, para.19).

5. *“The Plaintiff waited three years, until April 14, 2025, to file a lawsuit alleging professional negligence, just prior to the running of her statute of limitations to do so. The Plaintiff had three years prior to her filing to retain an expert willing to provide an Affidavit that there was malpractice in closing a file, to file contemporaneously as an attachment to her Summons and Complaint. The Plaintiff failed to do so. The Plaintiff filed her Summons and Complaint against the Defendants without an Affidavit, as required by South Carolina Code 15-36-100.”*

The Amended Complaint distinctly explained: “Pursuant to South Carolina Section 15-36-100(C)(1), the contemporaneous filing requirement of an expert witness affidavit was waived because the statute of limitations expired 10 days from the date the complaint was filed. The Plaintiff is required to supplement the pleadings with an affidavit 45 days after the filing.” The plaintiff filed her complaint alleging professional negligence within the Statute of Limitations, and the delay in providing an affidavit was caused by the defendants’ actions. If they had not filed so many false statements and the Court hadn’t ignored them instead of ruling on them, the plaintiff would have an affidavit. Besides

that, the Complaint was not about “*malpractice in closing a file*”. The Complaint stated: “Without performing any work on her case for over 8 months and without any prior notice, the Defendants terminated the Plaintiff’s representation and billed her \$35 for the entire period they pursued her case, demonstrating that no investigation was conducted. This created a conflict of interest, because the Defendants prioritized the interests of the defendant – rather than their client’s (the Plaintiff) - by dropping her case too close to the statutory deadline and by failing to take reasonable steps to protect their client’s legal position, such as providing her with reasonable advance notice and allowing her time to retain new counsel. By treating the case of their client with such disregard, Defendants consequently impaired the ability of the Plaintiff to obtain effective representation by new counsel”. (Amended Complaint, Paras. 7-8).

6. *“Under South Carolina Code, Section 15-36-100, the Plaintiff was required to have an affidavit from an expert in the field of law accompany her complaint for allegations of professional negligence at the time of the filing on April 14, 2025. The Plaintiff failed to do so, and when Defendants filed a Motion to Dismiss, the Plaintiff requested additional time from the Court to obtain an expert and provide the required Affidavit. The Plaintiff was provided additional time (until August 7, 2025) to allow her the opportunity to obtain this statutorily required affidavit. Despite that extension, the Plaintiff has failed to provide the required affidavit as of the time of the hearing. For these reasons, the Plaintiff’s claims are dismissed.”*

As mentioned above, the Amended Complaint distinctly explained: “Pursuant to South Carolina Section 15-36-100(C)(1), the contemporaneous filing requirement of an expert witness affidavit was waived because the statute of limitations expired 10 days from the

date the complaint was filed. Plaintiff is required to supplement the pleadings with an affidavit 45 days after the filing.” The plaintiff filed her complaint alleging professional negligence within the Statute of Limitations, and the delay in providing an affidavit was caused by the defendants’ actions. If the defendants had not filed so many false statements and the Court hadn’t ignored them instead of ruling on them, the plaintiff would have had an affidavit. The Plaintiff was granted by the administrative judge a 26-day continuance, from July 25, 2025 to August 21, 2025 (from one motions term to the next), but the delay in obtaining the affidavit was caused by the defendants’ false statements which needed to be addressed, and the administrative judge could not make a decision on allegations of fraud upon the Court.

7. *“IT IS ORDERED that the causes of action against Defendants Jarrel L. Wigger and Wigger Law Firm, Inc. are hereby dismissed and ended with prejudice, and that the Complaint setting out allegations against these Defendants are hereby dismissed. This Order for Dismissal will end the Plaintiff’s claims; however, the Counterclaims of the Defendants are not impacted by this Order of Dismissal.”*

An order of dismissal with prejudice on a motion to dismiss under Rule 12(b)(6) must not include outside evidence. It should test the sufficiency of the allegations within the “four corners” of the complaint. A violation occurs when the judge relies on statements made by defendants to dispute facts in the complaint, especially when the statements are false and the plaintiff is not allowed to contest them with countervailing evidence during the hearing, in violation of due process.

In addition, a dismissal with prejudice due to a technicality without allowing the plaintiff an opportunity to amend is improper, and the Statute 15-36-100 does not mandate it.

Another question that arises from this situation is whether the trial court erred and abused its discretion in shielding the respondents from potential liability in this case while allowing their Counterclaims against the plaintiff, based on the same unreliable and untruthful account of the facts, to stand – using the vehicle of "discretion" to do so.

ARGUMENT

INEQUITABLE PRESERVATION OF COUNTERCLAIMS

The trial court's decision to preserve defendants' counterclaims while dismissing plaintiff's claims with prejudice creates an inequitable asymmetry that violates fundamental fairness. Defendants are permitted to pursue claims based on the same factual record that was deemed insufficient for plaintiff, while plaintiff is permanently barred from seeking redress. This lopsided result compounds the injustice of the dismissal. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331 (1979) "When mutuality of estoppel is required, one party cannot use defensive collateral estoppel to bar another party from relitigating an issue while simultaneously relitigating that same issue themselves."; *United States v. Stauffer Chemical Co.*, 464 U.S. 165, 173 (1984) "Courts must ensure that litigation does not produce arbitrary and inequitable results that undermine confidence in the judicial system." *Singleton v. S.C. Dep't of Transp.*, 391 S.C. 378, 706 S.E.2d 875 (2011)* South Carolina courts are concerned with fairness and equity in judicial proceedings.

ARGUMENT

A clear error refers to an obvious mistake made in a decision by a trial court that can be grounds for reversing or voiding the decision.

It is an obvious mistake that affects the party's substantial rights and can be grounds for overturning the decision. In this case, the Court's findings were based on blatant errors of fact and law.

An order of dismissal with prejudice on a motion to dismiss under Rule 12(b)(6) must not include outside evidence. It should test the sufficiency of the allegations within the “four corners” of the complaint. A violation occurs when the judge relies on statements made by defendants to dispute facts in the complaint, especially when the statements are false and the plaintiff is not allowed to contest them with countervailing evidence during the hearing, in violation of due process.

If matters outside the pleadings are presented to and not excluded by the Court, the motion must be treated as one for summary judgment under Rule 56, and both parties should be given a “reasonable opportunity to present all the material that was pertinent to the motion”. *Samara v. United States* (C.C.A.2d, 1942) 129 F.(2d) 594, cert. den. (1942) 317 U.S. 686; *Boro Hall Corp. v. General Motors Corp.* (C.C.A.2d, 1942) 124 F.(2d) 822, cert. den. (1943) 317 U.S. 695. See also *Kithcart v. Metropolitan Life Ins. Co.* (C.C.A.8th, 1945) 150 F.(2d) 997, affg 62 F.Supp. 93. Failing to give the plaintiff notice and an opportunity to respond to those new facts violates due process, as the plaintiff has not had the chance to contest them or engage in discovery, and the contested issues were central to the case because they were the reason for the lack of an expert witness affidavit.

A dismissal with prejudice under Rule 12(b)(6) is considered an adjudication on the merits. Such a prejudicial decision based on outside facts without allowing the plaintiff to respond or amend is highly prejudicial, a clear mistake of law, and an abuse of discretion.

Also, a dismissal with prejudice under 12(b)(6) bars future litigation. Such a harsh decision based on improper evidence is a high-level error because it denied the plaintiff her day in Court. In a motion to dismiss under Rule 12(b)(6), the Court should not decide on the facts, mainly when the facts are false and presented by the defendants. The motion is based on the sufficiency of the legal claim rather than the underlying facts. In considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995). The court assumes all allegations in the complaint to be true and draws all inferences in favor of the non-moving party. The focus is on whether the complaint states a claim upon which relief can be granted, not on the fabricated truth of the facts presented by the defendants.

Rule 12(b)(6) Cannot Be Used to Reward Fraud: Rule 12(b)(6) motions test the legal sufficiency of the complaint, not the truth of defendants' affirmative defenses or factual assertions. When a defendant's answer contains false statements that form the basis for dismissal, and the plaintiff is prevented from presenting evidence of those falsehoods, Rule 12(b)(6) is being weaponized to reward misconduct rather than determine whether the complaint states a claim. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 563 n.8 (2007). "Rule 12(b)(6) requires a 'showing' rather than a blanket assertion of entitlement to relief... The motion does not allow a court to weigh evidence or make credibility determinations."; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "The court's inquiry is limited to determining whether the complaint states a plausible claim for relief... It does not permit the court to resolve factual disputes."; *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). "A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."; *Burrie v. Neace*, 303 S.C. 564, 402 S.E.2d 164 (1991).

"In considering a Rule 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint."

If the Court of Appeals agrees with the trial judge that the circuit court properly exercised discretion in dismissing the complaint with prejudice, then this appeal should be denied. If it does not agree, however, and finds that a manifest injustice has occurred (which Appellant believes has), then it should reverse the lower Court's decision.

The standard for a motion to dismiss under Rule 12(b)(6) is whether the complaint contains a "short and plain statement of the claim showing that the pleader is entitled to relief." The 12(b)(6) motion may not be sustained if the facts alleged and inferences therefrom would entitle the plaintiff to any relief on any theory. *Id.* In this situation, the trial judge did not discuss any legal claims from the Amended Complaint before dismissing it with prejudice.

A dismissal with prejudice under Rule 12(b)(6) made on the grounds that the plaintiff failed to provide an affidavit from an expert in the field of law accompany her complaint for allegations of professional negligence while ignoring her allegations of fraud by defendants is considered a plain error and an abuse of discretion. The court's decision to dismiss the complaint without considering the fraud allegations is a violation of the rule and the legal standard. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (S.C. 1999), as the Court placed a tremendous weight on a technicality while ignoring unethical and prejudicial behavior by the defendants and defense counsel, who are Officers of the Court.

Dismissal With Prejudice Should Be Exceptional: Dismissal with prejudice is an extraordinary remedy reserved for cases where it appears to a certainty that no relief can be

granted under any set of facts. It should not be used to sanction technical compliance failures, especially where the plaintiff has demonstrated good faith and the defect is curable. *Foman v. Davis*, 371 U.S. 178, 182 (1962). "A district court may dismiss an action without prejudice but dismissal with prejudice is an extreme sanction that should be used only in exceptional circumstances." *Jackson v. Beech*, 636 F.2d 831, 841-42 (D.C. Cir. 1980). "Dismissal with prejudice is a drastic step that should be taken only in cases of clear abuse of the judicial process." *Small v. Mungo*, 254 S.C. 438, 442-44, 175 S.E.2d 802, 804 (1970). While affirming dismissal for failure to proceed, the court found it should have been dismissed without prejudice.

ARGUMENT

General Rule Allows the Appellant to File and Serve an Amended Complaint.

The primary authority is *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (2006), which stands for the general proposition that "[t]he plaintiff in most cases should be given an opportunity to file and serve an amended complaint" when a complaint is dismissed for failure to state a cause of action under Rule 12(b) (6), SCRPC. *Spence*, 388 S.C. at 129, 628 S.E.2d at 881 (citations omitted).

In fact, the Court acknowledged that the plaintiff should *normally* be given the opportunity to file and serve an amended complaint after dismissal under Rule 12. *Skydive Myrtle Beach, Inc. v. Horry County*, 2017 WL 922465, at *2 (Ct. App. 2017). This is the general rule articulated by the United States Supreme Court and the courts of this jurisdiction in other decisions as well. *See Farnan v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962) (rules of civil procedure should be liberally construed to do substantial justice and lower court erred in denying motion to amend complaint where amendment would have stated alternative theory of

recovery); James F. Flanagan, *South Carolina Civil Procedure*, p. 95 (2d ed. 1996) (stating that a party who loses a motion to dismiss normally is given the right to amend the complaint to cure the defect). Ultimately, however, the trial Court did not allow the Appellant to amend.

Presumption in Favor of Amendment: There is a strong presumption in favor of allowing amendment of pleadings to correct technical defects, particularly when the amendment would state a viable claim and no prejudice would result to the opposing party. This presumption is strongest in cases dismissed for procedural defects rather than substantive deficiencies. *Foman v. Davis*, 371 U.S. 178, 181-182 (1962). "In the absence of any apparent or declared reason—the leave sought should, as the rules require, be 'freely given.'" *Beatty v. Martin Truck Lines*, 748 F.2d 364, 366 (7th Cir. 1984). "The district court should not deny leave to amend unless amendment would be futile or cause prejudice to the opposing party." *Skydive Myrtle Beach, Inc. v. Horry County*, 2017 WL 922465, at 2 (Ct. App. 2017). "The plaintiff in most cases should be given an opportunity to file and serve an amended complaint."

When the plaintiffs complaint is dismissed, but she is not given the opportunity to file and serve an amended complaint (i.e., the dismissal is with prejudice). *Id.*, 388 S.C. at 130,628 S.E.2d at 881-882, the appellate court may modify the lower court's order to find the dismissal is without prejudice - even in its discretion imposing a reasonable time to file and serve an amended complaint after the statute has run. *Id.* Importantly, *Spence* goes on to hold that "an appellate court *should* follow this rule when the plaintiff presents additional factual allegations or different theory of recovery which, taken as true in a well-pleaded complaint, may state a claim upon which relief may be granted (emphasis added)." *Id.*

Here, the Appellant's Complaint against the Defendants was dismissed with prejudice by the Court on a technical defect (lack of expert witness affidavit), after the Appellant was denied her right to be heard and her allegations of fraud by defendants in their Answers were ignored by the trial judge, she was not given the opportunity to file and serve an amended complaint, and the order of dismissal contained only statements contrary to the factual allegations of the amended complaint. Also the judge failed to include in the order findings of fact and conclusions of law to support such a harsh and prejudicial decision. Clear findings of fact and conclusions of law allow the reader to follow the legal reasoning behind a decision and “allow[s] meaningful review by the appellate courts”. *Friday Invs., LLC v. Bally Total Fitness of the Mid-Atl., Inc.*, 370 N.C. 235, 240–41 (2017) (cleaned up); accord *Jones v. Murdock*, 20 N.C. App. 746, 747 (1974). As stated before, the plaintiff’s claims were well-founded and should have survived a motion to dismiss.

No prior decisions (case law) were noted in the ‘order of dismissal with prejudice’ to provide a framework for interpreting and applying legal principles, ensuring that the order was made lawfully and in accordance with established legal standards. Also, the statute 15-36-100 does not mandate dismissal with prejudice. *Small v. Mungo*, 254 S.C. 438, 442--44, 175 S.E.2d 802, 804 (1970) (affirming dismissal of complaint for failure to proceed, but finding it should have been dismissed without prejudice);

The trial Court failed to follow procedure by not allowing the Appellant to be heard and, consequently, by not giving her the opportunity to file and serve a second amended complaint. The trial court refused to allow the amended pleading when a dismissal with prejudice was entered.

From a plain reading of the case law, this scenario favors allowing the filing and service of an amended complaint unless "if it appears to a certainty that no relief can be granted under any set of facts that can be proven in support of its allegations." *Spence*, 398 S.C. at 129,628 S.E.2d at 881; *see also*, *Blackwell v. Burkett*, 2010 WL 10080068 at* 6 (in case involving two of the panel members, explaining that typically a plaintiff is given an opportunity to file and serve an amended complaint; however, "if it appears to a certainty that no relief can be granted under any set of facts that can be proved in support of its allegations" the complaint may be dismissed with prejudice).

This is consistent with the holdings of the cases cited in *Spence*. *Giuliani v. Chuck*, 620 P.2d 733, 737 (Hawaii Ct. App. 1980) (complaint is not subject to dismissal with prejudice unless it appears to a certainty that no relief can be granted under any set of facts that can be proved in support of its allegations); *Barkley v. Good Will Home Assn.*, 495 A.2d 1238 (Me. 1985) (in absence of bad or dilatory motives on the part of plaintiff or undue prejudice to defendant, the trial court abused its discretion by denying the plaintiff an opportunity to amend her complaint after it was dismissed pursuant to Rule 12(b)(6));

It is also consistent with the law cited in the standard for review for Rule 12(b) (6) appeals. *See Wilkinson v. East Cooper Community Hosp.*, 410 S.C. 163, 169-170, 763 S.E.2d 426, 430 (2014) ("On appeal from the dismissal of a case ... an appellate court applies the same standard of review as the trial court . . . which requires the Court to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.").

Finally, it is consistent with a court's obligation is to provide a forum for a fair and just resolution of disputes between parties. *See Williams v. Watkins*, 380 S.C. 319, 327, 681 S.E.2d. 87, 96

(Ct. App. 2009) ("law favors the resolution of disputes based upon all parties having their day in court."); *Hagy v. Pruitt*, 331 S.C. 213, 221, 500 S.E.2d 168, 172 (Ct. App. 2009); *see also* Rule 8(f), SCRCP (all pleadings shall be so construed as to do substantial justice to all parties).

Following *Spence*, therefore, the Circuit Court *should* have applied the rule allowing the service of an amended complaint because the plaintiff presented "additional factual allegations or different theory of recovery which, taken as true in a well-pleaded complaint, may state a claim upon which relief may be granted." *Spence*, 388 S.C. at 130, 628 S.E.2d at 881-882.

At a minimum, the trial Court had to follow *Spence*. Moreover, its discretion under these facts was not absolute. *Spence*, 388 S.C. at 130, 628 S.E.2d at 881-882; *see Davis v. Lunceford*, 279 S.C. at 507, 309 S.E.2d at 793 (Ct. App. 1983) (trial court properly dismissed action in which plaintiff served summons but failed to timely serve complaint, but dismissal with prejudice was improper because such a dismissal is in nature of discontinuance of action and is not an adjudication on the merits; action should have been dismissed without prejudice).

The entire basis for the ruling was based on a technical defect - in other words, a procedural error. A technical defect did not and cannot equate "to a certainty that no relief can be granted under any set of facts that can be proven in support of its allegations." *Spence*, 398 S.C. at 129, 628 S.E.2d at 881; *Blackwell*, 2010 WL 10080068 at * 6. Moreover, this procedural error could have been corrected by amended pleading which the circuit court failed to allow. Here, the case has now been completely dismissed against the Defendants. The Appellant basically has no recourse against the Defendant for the intentional wrongful acts she alleges he committed against her, as Appellant would be denied any opportunity for redress under *res judicata* or collateral estoppel.

Nothing other than an unartful pleading of the amended complaint and/or a technical error was sufficient to grant dismissal with prejudice despite the fact that the case was in its infancy. It is miscarriage of justice for Petitioner not to be able to test its case against them.

A Rule 12(b)(6) motion, as noted above, deals with the allegations on the face of the complaint, which are to be construed in favor of the plaintiff and liberally so. The Appellant made allegations and presented evidence that the Appellees had deceived the court through false facts in the responses to the original complaint and to the Amended Complaint, and that when this happens, "everyone suffers" and it is a matter of public interest as the Respondent and the defense counsel are attorneys, constituting allegations sufficient to state a cause of action for fraud on the court. The judge abused his discretion and violated the plaintiff's rights to due process when he prevented the truth from being revealed by interrupting her thirteen times when she attempted to present her allegations and evidence of fraud against the defendants, and subsequently filed an order of dismissal containing facts contrary to the factual basis established in the amended complaint, dismissing this case on the merits without addressing the issues at hand.

CONCLUSION

Courts often dismiss with prejudice when one of the parties, particularly the plaintiff, has engaged in misconduct, but if the defendants are the ones committing fraud, as happened in this case, this is uncommon, because courts typically punish the fraudulent party, and have a zero tolerance for parties who intentionally make false assertions or tamper with evidence.

The alleged fraud by defendants took place through the responses in their Answer, which were contrary to the facts included in the Amended Complaint, and also through the defense counsel's false statements during the hearing on their motions to dismiss. The evidence of fraud presented by the plaintiff was sound, and should have been sufficient to survive a motion to dismiss. Even more problematic is the fact that the plaintiff requested an oral argument prior to the hearing and the judge granted it, but the hearing proceeded without oral arguments related to the fraud claims or the amended complaint in spite of her thirteen attempts to argue the case that were interrupted by the judge and that are very clear in the transcripts. As a result, plaintiff never had her day in court. This is especially troublesome because plaintiff's complaint was dismissed with prejudice, contrary to the terms of Statute (15-36-100); and there were no other orders that otherwise precluded plaintiff's right to reinstate the original claims against defendants, leading to the conclusion that the judge abused his discretion.

The circuit court's dismissal of the Complaint against the Defendants with prejudice without allowing the plaintiff to be heard was arbitrary and capricious. It (1) failed to explain how the circuit court legally justified such a severe decision, (2) ignored the Plaintiff's allegations of fraud by defendants, clearly abusing its discretion, (3) did not give the Plaintiff a meaningful opportunity to be heard, in violation of her Constitutional rights to due process, and (4) failed to base its ruling solely on the allegations set forth on the face of the complaint, in clear error of law. It is manifestly unfair that the circuit court dismissed the plaintiff's claims with prejudice when there are plausible grounds against the defendants.

WHEREFORE, Appellant respectfully requests that this Court:

- A. REVERSE the circuit court's order dismissing the Amended Complaint with prejudice;
- B. REMAND the case to the circuit court with instructions to:
 - 1. Allow Appellant to present evidence of defendants' false statements;
 - 2. Rule on the Motion to Strike and fraud allegations;
 - 3. Grant Appellant a reasonable opportunity to file an expert affidavit;
 - 4. Allow Appellant to amend the complaint as needed; and
 - 5. Conduct a full and fair hearing on the merits;
- C. ISSUE such other and further relief as is just and proper under the circumstances;
- D. AWARD Appellant her costs and attorneys' fees incurred in this appeal; and
- E. TAKE such other action as this Court deems appropriate to ensure substantial justice is done.

Respectfully submitted,

Cynthia Veronese

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February 17, 2026

WHEREFORE, Appellant respectfully requests that this Court:

A. REVERSE the circuit court's order dismissing the Amended Complaint with prejudice;

B. REMAND the case to the circuit court with instructions to:

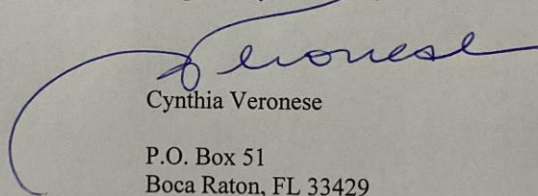
1. Allow Appellant to present evidence of defendants' false statements;
2. Rule on the Motion to Strike and fraud allegations;
3. Grant Appellant a reasonable opportunity to file an expert affidavit;
4. Allow Appellant to amend the complaint as needed; and
5. Conduct a full and fair hearing on the merits;

C. ISSUE such other and further relief as is just and proper under the circumstances;

D. AWARD Appellant her costs and attorneys' fees incurred in this appeal; and

E. TAKE such other action as this Court deems appropriate to ensure substantial justice is done.

Respectfully submitted,



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February 17, 2026

RECEIVED

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