THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Ninth Judicial Circuit

The Honorable George M. McFaddin, Jr., Circuit Court Judge

Case No. 2024-CP-10-04530
Appellate Case No. 2025-001313

Scott R. Mannetta.....Appellant

v.

Jack Sinclaire .....Respondent

INITIAL BRIEF OF RESPONDENT

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2. **DID THE TRIAL COURT PROPERLY FIND THAT APPELLANT IS REQUIRED TO FILE AN EXPERT AFFIDAVIT TO SUPPORT A LEGAL MALPRACTICE CLAIM BECAUSE THE CLAIMS ARE OUTSIDE THE COMMON KNOWLEDGE EXCEPTION?**

STATEMENT OF THE CASE

On September 10, 2024, Appellant Scott Mannetta ("Appellant") brought this action *pro se* alleging legal malpractice against Respondent Jack Sinclaire ("Respondent") for serving as counsel for Appellant's son. On October 4, 2024, Respondent answered via a motion to dismiss requesting the circuit court dismiss the Appellant's case because no attorney-client relationship ever existed between Respondent and Appellant, and therefore his claims fail as a matter of law. On October 7, 2024, Appellant moved for leave to amend and filed a response opposing Respondent's motion to dismiss. Respondent argued no amendment of Appellant's Complaint would cure the legal defects as Respondent was never in an attorney-client relationship with the Appellant, and therefore Appellant cannot satisfy the first element of a legal malpractice claim. Respondent further argued that Appellant has no standing to bring a legal malpractice claim because he was never in privity with the Respondent.

After hearing oral arguments, the circuit court issued an order dated April 4, 2025, agreeing with Respondent, and found that Respondent owed no duty to Appellant as there was no attorney-client relationship, and that Appellant failed to comply with S.C. Code Ann. § 15-36-100, which requires Appellant to file an expert affidavit with his Complaint. Appellant never filed an expert affidavit as required by statute[1]. The circuit court dismissed the Appellant's complaint and this appeal followed.

STANDARD OF REVIEW

"On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court." *Santos v. Harris Inv. Holdings, LLC*, 439

[1] Appellant states in his brief that he filed a "curative affidavit". No expert affidavit was ever submitted to the trial court.

S.C. 214, 218, 886 S.E.2d 483, 485 (Ct. App. 2023) (*quoting Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009)). "That standard 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.'" *Id.* (*quoting Hager v. McCabe, Trotter & Beverly, P.C.*, 435 S.C. 740, 746, 869 S.E.2d 886, 889 (Ct. App. 2022)). "If the facts and inferences would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper." *Id.* at 219, 886 S.E.2d at 485 (*quoting Hager*, 435 S.C. at 746, 869 S.E.2d at 889).

FACTS

Respondent was appointed as counsel for Appellant's son, the allegedly incapacitated individual, Jake Mannetta ("Jake") in the guardianship dispute originating from the Charleston County Probate Court[2]. The matter went on for about two years until the probate court determined that Dana Mannetta, the mother of Jake Mannetta and ex-wife of Appellant, should be the sole limited guardian. (*See* Order Granting Motion to Dismiss at 1-2; *See* Tr. at 8:14-20). Following this guardianship decision, Appellant filed a motion to reconsider the guardianship decision. (*See* Tr. at 14:7-10). This was denied by the probate court. (*See* Tr. at 14:10-12).

Appellant then filed suit against his son's attorney (the Respondent) alleging legal malpractice for the representation of the son during the guardianship matter. (*See* Complaint and Exhibits; *See* Order Granting Motion to Dismiss at 1-2). Respondent answered via motion

[2] *Jake Mannetta, a ward, Dana Mannetta v. Jake Mannetta, an alleged incapacitated individual and Scott Mannetta, next of kin,* 2022-GC-10-00078. Appellant was the respondent in that dispute. (*See* Tr. at 8:8-13). (*See* Complaint and exhibits; *See* Order Granting Motion to Dismiss at 1-2). The Probate Court was tasked with determining who should serve as Jake Mannetta's guardian given the contentious relationship between his parents – the appellant and his ex-wife.

to dismiss and with a motion for a protective order staying discovery. (*See* Motion to Dismiss and Memorandum). Appellant filed a response to the motion to dismiss, opposing the same, and moved for leave to amend his complaint. (*See* Appellant's Motion to Amend).

These motions were brought before the Honorable George McFaddin on February 28, 2025, for a hearing. (*See* Order Granting Motion to Dismiss at 1). At the hearing, Appellant acknowledged that Respondent's client was Jake, and Jake alone. (*See* Tr. at 9:12-19; 12:12-13). Appellant also acknowledged that his claim against Respondent was a legal malpractice claim. (*See* Tr. at 10:15-17).

The circuit court issued an order on April 4, 2025, dismissing the complaint and finding that Respondent owed no duty to Appellant, and that Appellant failed to comply with the expert affidavit requirements of S.C. Code Ann. § 15-36-100. (*See* Order Granting Motion to Dismiss at 2-4). Appellant filed a motion to reconsider via Rule 59(e), SCRCP, on April 10, 2025. (*See* App. Motion to Reconsider). This was denied via order of the circuit court on April 21, 2025. (*See* Order Denying Motion to Reconsider). The circuit court further declined to allow the Appellant to amend his complaint and submit an expert affidavit. (*See* Order Denying Motion to Reconsider).

Appellant filed his Notice of Appeal on June 30, 2025, more than sixty (60) days past the deadline. Appellant then filed a corrected Notice of Appeal on July 2, 2025, as well as a motion to allow the late filing of his Notice of Appeal. This was opposed by Respondent, but this Court granted Appellant's motion to allow the late filing of his Notice of Appeal on August 22, 2025. On October 31, 2025, Appellant filed a motion and "affidavit" seeking multiple items. This was opposed by Respondent and rejected by this Court via order dated December

3, 2025. Appellant filed his Initial Brief and Designation of Matter on January 5, 2025.[3] Respondent filed a Motion to Dismiss and Stay Briefing Deadlines on January 16, 2026. Respondent's Motion to Dismiss was denied and these briefings followed.

ARGUMENTS

I. RESPONDENT OWED NO DUTY TO APPELLANT, AND THERFORE DISMISSAL WAS PROPER AS APPELLANT'S COMPLAINT FAILS AS A MATTER OF LAW.

The trial court properly dismissed Appellant's complaint because the allegations against Respondent in his capacity as attorney for Appellant's son fail as a matter of law. Further, no amendment would cure these defects.

In South Carolina, an attorney owes no duty and is immune from liability to third parties, absent some independent duty owed to the third party. *Argoe v. Three Rivers Behavioral Center & Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551, 554-55 (2010) ("Because [Attorney] represented Son and not Appellant in the Beaufort Property transaction, the only duty of care arising out of that relationship was owed to Son.")); *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 509 (2006); *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995) (holding that an attorney must have some independent duty to a third party or act in his own personal interest outside of the scope of the representation of a client for an attorney to be liable for civil conspiracy)); *Gaar v. N. Myrtle Beach Realty Co., Inc.,* 287 S.C. 525, 528, 339, S.E.2d 887, 889 (Ct. App. 1986) ("In his professional capacity the attorney is not liable, except to his client and those in privity with his client, for injury allegedly arising out of the performance of his professional activities.")).

[3] To date, the undersigned has not received proper service of Appellant's initial brief. Appellant's certificate of service did not include the undersigned's address, nor did Appellant electronically serve the undersigned or the undersigned's prior counsel.

This rule is not limited to traditional legal malpractice claims but rather applies to a variety of claims that can be used to disguise what is, in reality, a legal malpractice claim. *See Pye*, 369 S.C. at 559-60, 633 S.E.2d at 507 (affirming the dismissal of claims of civil conspiracy and abuse of process against an attorney); *Gaar*, 287 S.C. at 528-29, 339 S.E.2d at 889 (holding that the lawyer owed no duty to the appellant and affirming the dismissal of a claim of malicious prosecution against an attorney); *Argoe* 388 S.C. at 401-04, 679 S.E.2d at 555-57 (holding that the lawyer owed no duty to the appellant and affirming the dismissal of claims of legal malpractice, abuse of process, and IIED against an attorney).

Appellant is undisputably not the client of Respondent. It is clear that Appellant's claims against Respondent are *solely* based Respondent's representation of Appellant. Aside from Appellant's admissions of such, the damages claimed by Appellant are what *Appellant* allegedly suffered as damages resulting from the alleged legal malpractice.

Appellant was appointed to represent the allegedly incapacitated individual, Jake Mannetta, and Jake Mannetta alone. In fact, Appellant admitted this at the hearing on Respondent's motion to dismiss: "This case is about [Respondent], who had a professional and ethical duty to zealously represent *his client, my son Jake Manneta*." (*See* Tr. at 9:16-19). Furthermore, Appellant admitted in his Rule 59(e), SCRCP, motion that there was no attorney-client relationship between Appellant and Respondent: "The Court also determined that no attorney-client relationship existed between Plaintiff and Defendant. While that may technically be true . . ." (*See* App. Rule 59(e), Motion, No. 2, pg. 2-3.).[4] Thus, there is no dispute: Appellant was not the client of Respondent. Respondent owed no duty to Appellant, and dismissal was proper. *Pye*, 369 S.C. at 564, 633 S.E.2d at 509; *Stiles*, 318 S.C. at 300, 457 S.E.2d at 602; *Gaar,* 287 S.C. at 528, 339, S.E.2d at 889; *Argoe*

[4] Appellant also concedes in his initial brief that Respondent was appointed to represent Jake Mannetta. *See* App. Initial Br. Filed January 6, 2026, at pg. 2.

v. Three Rivers Behavioral Center & Psychiatric Solutions, 388 S.C. 394, 697 S.E.2d 551, 554-55 ("Because [Attorney] represented Son and not Appellant in the Beaufort Property transaction, the only duty of care arising out of that relationship was owed to Son."). Furthermore, Appellant has failed to identify any actions that were taken outside of Respondent's representation of Jake Mannetta in his professional capacity. *See Stiles*, 318 S.C. at 300, 457 S.E.2d at 602; *Gaar,* 287 S.C. at 528, 339, S.E.2d at 889. Appellant failed to state *any* claim against Respondent, and the circuit court properly dismissed his complaint.

Finally, Appellant has failed to set forth *any* argument regarding what duty (or duties) were specifically owed to *Appellant*. For these reasons, Appellant has abandoned this argument on appeal, and this Court should affirm the decision of the circuit court. *See* Rule 208(b), SCACR (stating that an issue must be set forth in a statement and argument for appellate review of an issue to occur); *Woodson v. DLI Props. LLC*, 406 S.C. 517, 529 n.11, 753 S.E.2d 428, 434 (2014) ("We find Petitioners have abandoned the negligent misrepresentation claim by failing to set forth an argument on the issue in their brief."); *see also Biales v. Young*, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) (stating that a party's failure to argue an issue constitutes abandonment of the issue and precludes consideration on appeal). Therefore, the circuit court properly ruled that Appellant's Complaint should be dismissed because Appellant does not have standing to bring a legal malpractice case against Respondent, Mr. Sinclaire for his representation of Appellant's son in a guardianship dispute.

For these reasons, dismissal of Appellant's claims was proper, and this Court should affirm the order of the circuit court.

II. APPELLANT FAILED TO COMPLY WITH S.C. CODE ANN. § 15-36-100, AND DISMISSAL WAS PROPER AS NO AMENDMENT WOULD CURE THE LEGAL DEFECTS IN APPELLANT'S COMPLAINT.

Appellant failed to comply with the statutory requirement to file an expert affidavit in a legal malpractice case. Further, dismissal was proper because no amendment would cure the defects in Appellant's Complaint because Respondent did not represent Appellant. Appellant states in his brief that he filed a curative affidavit. This is not so as Appellant relied on the common knowledge exception in his response to Respondent's Motion to Dismiss. (*See* Appellant's Motion to Amend).

S.C. Code Ann. § 15-36-100(B) provides that:

> 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) . . . 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.

Further, S.C. Code Ann. § 15-36-100(G) lists attorneys at law as one of the categories of professionals. "[G]enerally, a plaintiff in a legal malpractice action must establish this standard of care by expert testimony." *Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 282, 701 S.E.2d 742, 745 (2010). The "common knowledge" exception is inapplicable to attorneys. *See H&H of Johnston, LLC v. Old Republic Nat'l Title Ins. Co*., 405 S.C. 469, 474, 748 S.E.2d 72, 74 (Ct. App. 2013) ("when a plaintiff asserts a professional negligence claim against an attorney, the plaintiff must file an affidavit of an expert witness in support of the complaint specifying particular negligent acts or omissions of the attorney."); *see also Barnes v. Seigler*, No. CIV.A. 5:11-1156-MBS, 2012 WL 265409, at *2 (D.S.C. Jan. 30, 2012) (dismissing the *pro se* plaintiff's claim for legal malpractice for failing to file an expert affidavit contemporaneously with his complaint).

Here, Appellant did not file an expert affidavit contemporaneously with his complaint as required by S.C. Code Ann. § 15-36-100. Appellant acknowledged the requirement but stated he had been unable to find an expert willing to provide the affidavit in his motion to reconsider. (*See*

App. Rule 59(e), Motion). Further, Appellant states in his brief that he did file a curative affidavit. However, this is false. No curative affidavit was ever filed to the circuit court, and in fact, the circuit court prohibited Appellant from filing an expert affidavit. (*See* Order Denying Motion to Reconsider).

Where legal malpractice is alleged, the standard of care must be established by expert testimony. *See H&H of Johnston, LLC*, 405 S.C. at 474, 748 S.E.2d at 74; *see also Barnes*, No. CIV.A. 5:11-1156-MBS, 2012 WL 265409, at *2. Appellant cited *H&H of Johnston, LLC, v. Old Republic Nat'l Title Ins. Co.*, 405 S.C. 469, 748 S.E.2d 72 (Ct. App 2013), claiming that it supported his proposition that no expert affidavit was required in cases of legal malpractice. Appellant misunderstood or misquoted this case—this case *directly contradicts* Appellant's argument. *See H&H*, 405 S.C. at 474, 748 S.E.2d at 74 (affirming the circuit court's dismissal of the plaintiff's claim against an attorney for failing to provide an affidavit). The failure to contemporaneously file an affidavit is fatal to Appellant's claims against Respondent. Even if the circuit court had allowed the Appellant to amend his Complaint and submit an expert affidavit, his claims still fail as a matter of law because Respondent never had an attorney client relationship with Appellant. Therefore, the circuit court properly dismissed his claims.

III. APPELLANT'S LEGAL MALPRACTICE CAUSE OF ACTION WOULD NEVERTHELESS FAIL FOR MATTER APPEARING IN THE RECORD.

This Court can affirm the ruling of the circuit court for any matter appearing in the record. *See* Rule 220(c), SCCAR. "In order to prevail in a cause of action for legal malpractice, the plaintiff must prove: (1) the existence of an attorney-client relationship; (2) a breach of duty by the attorney; (3) damage to the client; and (4) proximate cause of the client's damages by the breach." *Harris Teeter*, 390 S.C. at 282, 701 S.E.2d at 745.

Appellant admitted that there was no attorney-client relationship between himself and

Respondent—at oral argument before the circuit court and in his filings to this court. Appellant acknowledged that *Jake Mannetta* was the client of Respondent, *not himself*. *See Harris Teeter*, 390 S.C. at 282, 701 S.E.2d at 745. Appellant brought this cause of action *on behalf of himself*—NOT on behalf of Jake Mannetta.[5] Furthermore, Appellant's claims fail as a matter of law because the damages sought by Appellant are *all* related to *Appellant's* damages—*not the client's* damages. Finally, Appellant has failed to show proximate cause of breach of any duty to the client, Appellant's son. *See Harris Teeter*, 390 S.C. at 282, 701 S.E.2d at 745.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the circuit court.

This 23rd day of April, 2026

Respectfully submitted,

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[5] Given the probate court's appointment of Jake's mother as his guardian, it would not even appear that Appellant would have the ability to bring a case on behalf of Jake Mannetta to begin with.