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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Appellate Case No. 2025-002188
Court of Appeals Appellate Case No. 2023-001779

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

v.

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

RESPONDENTS-PETITIONERS' JOINT BRIEF

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INTRODUCTION

Respondents-Petitioners Clawson Fagnoli, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and Brewer Law Firm, LLC (“Respondents-Petitioners”), pursuant to Rule 242(i), SCRAP, respectfully and jointly submit their Brief.

STATEMENT OF ISSUE ON APPEAL

1. Did the Court of Appeals err in holding that the expert affidavit filed by Petitioners-Respondents Andrew Pampu, Amanda Pampu, and John Pampu (“the Pampus”) was timely filed pursuant to South Carolina Code Annotated § 15-36-100?

STATEMENT OF THE CASE

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

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

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

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

On March 2, 2022, the Circuit Court conducted a virtual hearing on Respondents-Petitioners' motions to dismiss. [See Transcript, R. pp. 285-337]. On June 23, 2022, the Circuit Court issued separate orders granting Respondents-Petitioners' respective motions to dismiss and dismissing the Pampus' Second Amended Complaint in its entirety. [See Order Granting Brewer Motion to Dismiss, R. pp. 6-18; *and* Order Granting Clawson Fagnoli Motion to Dismiss, R. pp. 19-30]. In each order, the Circuit Court addressed the timeliness of the Pampus' expert affidavit filed pursuant to § 15-36-100. Specifically, the Circuit Court held in response to the Motion to Dismiss filed by the Brewer Respondents-Petitioners:

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

[Order, R. pp. 7-8]. Similarly, in response to the Motion to Dismiss filed by the Clawson Fagnoli Respondents-Petitioners, the Circuit Court held:

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

[Order, R. p. 26].

Thereafter, on July 5, 2022, the Pampus filed a Motion for Reconsideration. [*See* Motion for Reconsideration, R. pp. 277-84]. On October 23, 2023, the Circuit Court denied the motion. [*See* Order Denying Motion for Reconsideration, R. pp. 1-2].

On November 14, 2023, the Pampus served a Notice of Appeal, seeking to appeal three orders issued by the Circuit Court: (1) June 23, 2022 Order Granting Motion to Dismiss for the Brewer Defendants, (2) June 23, 2022 Order Granting Motion to Dismiss for the Clawson Fargnoli Defendants, and (3) October 23, 2023 Order Denying the Pampus' Motion for Reconsideration and to Alter and/or Amend the two aforementioned orders.

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

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

Opinion at 3.

The Pampus and Respondents-Petitioners each filed Petitions for Rehearing pursuant to Rule 221(a), SCRAP, on August 14, 2025, and August 28, 2025, respectively. The Court of Appeals denied both Petitions for Rehearing on September 29, 2025. Thereafter, the Pampus and Respondents-Petitioners each filed Petitions for Writ of Certiorari pursuant to Rule 242(c), SCRAP, which were granted by Order of this Court dated March 11, 2026.

STANDARD OF REVIEW

“An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRPC.” *Cap. City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 674 S.E.2d 524 (Ct. App. 2009) (citing *Doe v. Marion*, 373 S.C. 390, 393, 645 S.E.2d 245, 246 (2007)). “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Id.* (citing *Plyler v. Burns*, 373 S.C. 637, 643, 647 S.E.2d 188, 191 (2007)). “The trial court’s grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law.” *Id.* (citing *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 277, 648 S.E.2d 295, 297 (Ct. App. 2007)).

ARGUMENT

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

As noted, when the Pampus filed their initial Complaint on March 19, 2021, they did not include the required expert witness affidavit; instead, they alleged that pursuant to § 15-36-100(C)(1), the Complaint was being filed without the required affidavit because there was “a good faith basis to believe the expiration of the statute of limitations is imminent or that the Lawyers may argue that the expiration of the statute of limitations may expire.” [Complaint, R. p. 55, ¶ 103]. The Pampus then amended their Complaint 42 days later to include an expert witness affidavit. [See Amended Complaint, R. pp. 58-86]. However, the Pampus did not allege that, because of time constraints, the expert affidavit could not be prepared in time to file it before the statute of limitations expired on March 21, 2021, until they amended their Complaint a second time on June 16, 2021—almost three months after the statute of limitations expired. [See Second Amended Complaint, R. pp. 129-30, ¶ 103]. The Pampus also claimed that § 15-36-100(E) permitted them to file the Second Amended Complaint to cure the alleged defects. [Second Amended Complaint, R. p. 130, ¶ 103].¹

Section 15-36-100(C)(1) provides, in relevant part, that the contemporaneous filing requirement “does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing **and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared.**” § 15-36-100(C)(1) (emphasis added). Simply put, the Pampus made no such allegation in their initial Complaint. [See *generally* Complaint, R. pp. 36-56]. The

¹ The Court of Appeals did not reference subsection (E) in its opinion and instead held that the Pampus adequately complied with subsection (C)(1). [See Opinion at 3]. The Court of Appeals recently confirmed that subsection (E) is an amendment process and is inapplicable where no affidavit has been filed. See *Shell v. L. Off. of Neil T. Phillips, LLC*, No. 2023-000859, 2026 WL 710206, at *2 n.2 (S.C. Ct. App. Mar. 4, 2026) (unpublished) (“Subsection 15-36-100(E) allows the plaintiff to amend an affidavit that *has already been filed.*”) (emphasis in original).

Court of Appeals effectively applied a substantial compliance standard in holding that the Pampus' expert affidavit was timely filed. [See Opinion at 3 (“We find this **adequately met** section 15-36-100(C)(1)'s exception to the filing requirement.”) (emphasis added)]. However, allowing plaintiffs to circumvent the requirements of § 15-36-100 would effectively extend the statute of limitations for professional negligence claims, contrary to the public policy behind the statute.

In *Grier v. AMISUB of S.C., Inc.*, this Court explained that because it is a statute in derogation of the common law, § 15-36-100 must be “strictly construed.” 397 S.C. 532, 536, 725 S.E.2d 693, 696 (2012) (citing *Epstein v. Coastal Timber Co.*, 393 S.C. 276, 285, 711 S.E.2d 912, 917 (2011)). Accordingly, § 15-36-100 “will not be extended beyond the clear intent of the legislature.” *Id.* (quoting *Crosby v. Glasscock Trucking Co.*, 340 S.C. 626, 628, 532 S.E.2d 856, 857 (2000)) (internal quotation marks omitted). For the same reason the statutory requirement could not be extended in *Grier* to require the expert affidavit to include an expert opinion on proximate cause, the statutory requirement here cannot be extended to allow a plaintiff to file an untimely expert affidavit after the statute of limitations has passed without alleging, in the initial complaint, the language explicitly required by subsection (C)(1).

This Court later analyzed the legislative history of § 15-36-100 in *Ranucci v. Crain*, explaining that the General Assembly added it “so as to establish standards for expert witnesses in professional malpractice actions.” 409 S.C. 493, 501, 763 S.E.2d 189, 193 (2014) (quoting Act No. 32, 2005 S.C. Acts 133). The Chapter 36 title, “South Carolina Frivolous Civil Proceedings Sanctions Act,” further evidences a legislative intent to limit frivolous claims against professionals

by, *inter alia*, implementing the expert affidavit requirements of § 15-36-100. This clear legislative intent supports strict application of the provisions of subsection (C)(1).²

The Circuit Court correctly held that the Pampus' expert affidavit was untimely as a matter of law, which provided an independent basis to dismiss the Pampus' legal malpractice claims. *See* § 15-36-100(F) ("If a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation . . ."). Accordingly, the Court of Appeals erred in reversing the Circuit Court's holding that the affidavit was untimely as a matter of law and that the Pampus' action was not subject to renewal.

CONCLUSION

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

² Our appellate courts have applied strict compliance to bar recovery (or prohibit application of a defense) under other, analogous statutes. *See, e.g., In re Ryan Inv. Co., Inc.*, 335 S.C. 392, 395, 517 S.E.2d 692, 693 (1999) (holding that even actual notice was insufficient to uphold a tax sale pursuant to § 12-51-120 absent strict compliance with the statutory mailing requirements). *See also Moon v. City of Greer*, 348 S.C. 184, 191, 558 S.E.2d 527, 531 (Ct. App. 2002) (holding that appellants' failure to file statutorily required notice with city clerk and clerk of court was an "absolute bar" to action to contest an annexation pursuant to § 5-3-270); *and S.C. Dep't of Consumer Affs. v. Cash Cent. of S.C. LLC*, 435 S.C. 192, 207, 865 S.E.2d 789, 796 (Ct. App. 2021) (holding that a defense of substantial compliance was inapplicable to a supervised lender's statutory obligations under Chapter 37 and therefore did not relieve lender of its obligation to refund excess loan finance charges).

Therefore, Respondents-Petitioners respectfully request that this Court reverse, in part, the final decision of the Court of Appeals and reinstate the Circuit Court's Order dismissing the Pampus' Second Amended Complaint for failure to timely file an expert affidavit pursuant to § 15-36-100.

Respectfully Submitted,

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