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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bryan Doby, Circuit Court Judge

Appellate Case No.: 2025-002132

Cynthia Veronese, Appellant,

v.

Jarrel Wigger and Wigger Law Firm, Inc., Respondents.

FINAL BRIEF OF RESPONDENTS

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TABLE OF CONTENTS

Table of Authorities.....2
Statement of Issues on Appeal.....3
Statement of the Case.....3
Facts.....4-5
Arguments.....5-9
Conclusion.....9

TABLE OF AUTHORITIES

CASES

Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).....9

Gentry v. Yonce, 337 S.C. 1, 522 S.E.2d 137 (1999).....6

Patel v. Patel, 359 S.C. 515, 529, 599 S.E.2d 114, 121 (2004).....9

Rowe v. Bon Secours-St. Francis Xavier Hospital, Inc., 2015-UP-288 (S.C. App.....7
June 17, 2015)

Spence v. Cromer, 368 S.C. 106, 628 S.E.2d 869 (S.C. 2006).....8

State Board of Medical Examiners v. Fenwick Hall, Inc., 300 S.C. 274,.....6
387 S.E.2d 458 (1990)

Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 6025 (1995).....6

STATUTES

S.C. Code Ann. § 15-36-100.....3,5,6,7,9

OTHER AUTHORITIES

South Carolina Rules of Civil Procedure, Rules 12(b)(6).....3,5,6,7,9

STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE TRIAL COURT ERRED IN DISMISSING APPELLANT'S CASE PURSUANT TO SOUTH CAROLINA RULES OF CIVIL PROCEDURE, RULE 12(B)(6).
- II. WHETHER THE TRIAL COURT ERRED IN DISMISSING APPELLANT'S CASE FOR FAILURE TO COMPLY WITH THE SOUTH CAROLINA CODE OF LAWS, SECTION 15-36-100.
- III. WHETHER THE TRIAL JUDGE'S ACTIONS IN DISMISSING THE CASE CONSTITUTES AN ABUSE OF DISCRETION.

STATEMENT OF THE CASE

This appeal arises from the Circuit Court's dismissal of Appellant's professional negligence action for failure to state a claim and failure to comply with the mandatory expert affidavit requirement set forth in South Carolina Code Annotated § 15-36-100. (R. pp. 4-6 and R. pp. 7-9) (The underlying action was filed in the Charleston County Court of Common Pleas on April 14, 2025, and can be identified as Civil Action No. 2025-CP-10-2069. The Appellant alleges the Respondents committed malpractice in closing their file and discontinuing representation. The Circuit Court properly dismissed the case because it is not negligence for an attorney to close their file on a case where they find there is no chance of prevailing because it is meritless, when they are on a contingent fee contract and the Circuit Court gave the Plaintiff several continuances to provide an Affidavit, but none has ever been produced. (R. p. 93 lines 23-25 and p. 94, lines 1-2). The Circuit Court properly dismissed the case because Appellant failed to contemporaneously file an expert affidavit with the complaint or even afterwards when given several continuances to do so, and no statutory exception applied. (R. pp. 4-6) (R. p. 96, lines 4-6). The dismissal should be affirmed. (Appellant, as of this date, has still not produced an

Affidavit of Merit, some eleven months after the filing of her initial Complaint and four years after the file was closed).

FACTS

Appellant retained Respondents to look into a potential case. Plaintiff waited for two years from the alleged date of the incident to even contact Defendants' firm. The Plaintiff promised she had a lot of evidence to help prove what she was told would be a difficult case, unless she had more than "he said, she said" evidence. The Defendants contacted the businesses where Plaintiff alleges she was with the alleged perpetrator and the businesses indicated that the events were so remote in time, that no video footage existed, nor were any payment receipts available showing her or the other person were even at the places alleged. The Air BNB the Plaintiff voluntarily went to with the alleged perpetrator denied having any video at all. When the Defendants pressed for any evidence of anything that Plaintiff could show of her even being with the alleged perpetrator, Plaintiff sent text messages stating that she had been drinking awaiting the arrival of her friend, she was drunk and her teeth were purple. She also thanked the other person by text for taking her to her air BNB the next day and apologized for getting so drunk.

Plaintiff was told that without any witness or better information than she had provided, Defendant Wigger Law Firm would be closing her file around the time the associate attorney assigned to her file was leaving the employment of Defendant Wigger Law Firm, in November of 2021. As Defendant Wigger Law Firm brought in a new associate attorney and he was going through the former attorney's files, he refused to even work on the Plaintiff's file and insisted the file should be closed. The Plaintiff's verbal notice the file was being closed was followed up in writing on April 18, 2022, some five months prior to the statute of limitations running.

The Plaintiff had some attorneys contact Defendant Wigger Law Firm indicating Plaintiff's evidence for the case was with Wigger Law Firm and they could contact the Defendants for all of the evidence – which what little there was, was actually bad for her, and apparently none of those attorneys wanted to take her case. Apparently though, the Plaintiff did file her own case. It is evident that when a law firm agrees to look into a case on a contingency basis and finds it lacking, they do not have to remain in the alleged case and have every right to close the case, especially when they have received nothing in the way of helpful proof from the Plaintiff for the alleged case, or any payment. It would actually violate Defendants' ethical obligations to knowingly file a case they felt they could not prove – a meritless case. The Appellant has provided nothing but her own rantings declaring that an attorney has to file a case just because they agreed to look into it.

The Appellant's instant suit was filed almost three years after her file was closed. (R. pp. 110-116). Appellant filed her lawsuit without the statutorily required Expert Witness Affidavit, pursuant to South Carolina Code 15-36-100. Appellant was provided with multiple opportunities to supplement her Complaint with an Affidavit of Merit and failed to do so. (R. pp. 1-3 and pp. 4-6). As of this date, some eleven months after filing her initial Complaint and now four years after Respondents closed the file, Plaintiff continues to request more time to find an expert. (R. pp. 1-3). The Respondents filed a Motion to Dismiss based on her failure and for failure to state a claim upon which relief could be granted, pursuant to the South Carolina Rules of Civil Procedure, Rule 12(b)(6). (R. pp. 10-12). This appeal followed.

ARGUMENTS

- I. BECAUSE THE COURT DISMISSED THE PLAINTIFF'S COMPLAINT FOR FAILURE TO SHOW JUSTICIBLE ISSUES, DISMISSAL OF THE CASE WAS PROPER UNDER SCRCP, RULE 12(B)(6).**

In South Carolina, dismissal under Rule 12(b)(6) is proper when the complaint fails to state facts sufficient to constitute a cause of action – that is, when no justiciable issue is presented. Neither the Plaintiff's Complaint, nor her Amended Complaint set forth any facts, that if taken as true, would entitle the Appellant to relief. *Gentry v. Yonce*, 337 S.C. 1, 522 S.E.2d 137 (1999); *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 6025 (1995). "The Ruling on a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the Complaint." *State Board of Medical Examiners v. Fenwick Hall, Inc.*, 300 S.C. 274, 387 S.E.2d 458 (1990) Plaintiff is not entitled to relief under any cognizable legal theory. Dismissal is also proper where no duty exists. Just because Defendants agree to review Plaintiff's case doesn't mean they are stuck with filing a meritless claim. Plaintiff has paid for nothing and if Defendants feel there is no case, nothing prevents them from exiting the case. To rule otherwise would cause Plaintiff attorneys to refuse to review and investigate cases. To make attorneys file cases they feel are meritless or can not be proven would make them commit an ethical violation by filing a meritless case. (R. pp. 28-38).

"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 [circuit] court. That standard requires the [c]ourt 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." (internal citations and quotation marks omitted)); § 15-36-100 (governing the filing requirements for complaints alleging professional negligence); § 15-36-100(B) (**requiring a plaintiff alleging professional negligence to submit with his complaint an expert witness affidavit that "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) (allowing a plaintiff additional time to file an expert affidavit after filing his complaint: forty-five days or as extended by the circuit court upon motion); *id.* ("If an affidavit is not filed within the period specified in this subsection or as extended by the [circuit] 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."). *Rowe v. Bon Secours-St. Francis Xavier Hospital, Inc.*, 2015-UP-288 (S.C. App. June 17, 2015).

The Appellant's Complaint and Amended Complaint consist of argumentary and conclusory allegations unsupported by facts. (R. pp. 13-27 and pp. 110-116). The Appellant was not able to show any facts on which a cause of action is supported against the Respondents; therefore, dismissal was appropriate.

II. BECAUSE THE APPELLANT FAILED TO FILE AN EXPERT WITNESS AFFIDAVIT CONTEMPORANEOUSLY WITH HER COMPLAINT PURSUANT TO THE SOUTH CAROLINA CODE OF LAWS, SECTION 15-36-100, DISMISSAL OF HER CLAIM WAS PROPER. EVEN IF APPELLANT WAS NOT REQUIRED TO COMPLY WITH THE RULE, SHE HAS NOW HAD 11 MONTHS TO PRODUCE AN AFFIDAVIT OF MERIT AND HAS NOT DONE SO.

Appellant filed a complaint alleging professional negligence against Respondents, a licensed professional under South Carolina law. However, Appellant failed to file the expert affidavit required by § 15-36-100 at the time of filing the complaint and thereafter with the filing of her Amended Complaint. Respondents moved to dismiss pursuant to Rule 12(b)(6), SCRC, arguing that compliance with §15-36-100 is a mandatory prerequisite to maintaining a professional negligence action. The Common Pleas Court gave Appellant several continuances to file an Affidavit, despite the strict time limitations in the Statute. After briefing and argument,

the circuit court granted Respondents' motion and dismissed the complaint. Appellant now seeks reversal. Section 15-36-100(B) provides that in any action for damages alleging professional negligence, the plaintiff **must** file as part of the complaint an affidavit of an expert witness specifying at least one negligent act or omission. The statute is mandatory. The use of the word "must" reflects legislative intent to create a condition precedent to maintaining the action. Appellant did not file the required affidavit with the complaint, nor anytime thereafter. Therefore, dismissal was proper. Because the affidavit requirement is a statutory condition precedent, noncompliance renders the complaint legally insufficient. South Carolina appellate courts have consistently affirmed dismissal in such circumstances to uphold legislative intent and prevent unsupported professional negligence claims. Allowing the action to proceed without compliance would nullify the statute's gatekeeping function. Plaintiff had continuing opportunities to hire attorneys for over two years from the date of the alleged incident and apparently none took her case, and she had a number of months after she filed suit to continue to find attorneys who provide any testimony that a breach of malpractice had occurred. None have. Since that time, the Plaintiff has had four years to obtain an expert from when she was first notified that Defendant Wigger Law Firm was closing her file and provide an affidavit of such expert to the filed Summons and Complaint in this matter and thus, her failure to do so rightfully resulted in dismissal of her claim. Plaintiff clearly had the time and opportunity to do so and has failed to comply to this day, all the while requesting more time to find an expert.

III. BECAUSE THE APPELLANT FAILED TO PRESENT JUSTICIBLE ISSUES, THERE WAS NOT AN ABUSE OF DISCRETION IN THE DECISION TO DISMISS THE APPELLANT'S CASE.

South Carolina's highest court acknowledged and upheld dismissal where the complaint

failed to state a viable claim, showing no abuse of discretion in dismissing on that basis. *Spence v. Cromer*, 368 S.C. 106, 628 S.E.2d 869 (S.C. 2006). The Circuit Court in this matter did not abuse his discretion in dismissing the Appellant’s case, as the Court, in response to the Appellant’s Rule 59(e) Motion, stated, “Having duly considered the motion to alter or amend of the Plaintiff, this Court has determined that its original Order dated September 8, 2025, is fully supported by the law and the evidence and is hereby ratified and reconfirmed. The motion to alter or amend the earlier Order is therefore DENIED.” (R. pp. 10-112). Additionally, the “Appellant filed a motion to recuse the Court from further jurisdiction in this case. This motion was filed after the Court ruled against her in an earlier Order. The Court denied the appellants motion for recusal. The appellant cannot and should not be allowed the opportunity to argue this matter to another judge simply because she did not agree with the Court’s earlier ruling. Therefore, the motion for recusal is denied.” *Order of September 17, 2025*. (R. pp. 10-12). “An abuse of discretion occurs either when a court is controlled by some error of law, or where the order is based upon findings of fact lacking evidentiary support.” *Patel v. Patel*, 359 S.C. 515, 529, 599 S.E.2d 114, 121 (2004). *See also, Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). None of that is present here.

IV. APPELLANT ATTEMPTS AT THIS LATE DATE TO TURN THIS RULE 12(b)(6) RULING INTO A RULE 56 MOTION.

Appellant attempts to pour information into her brief improperly. While Respondents obviously disagree with these rantings, Respondents do not address the improper submissions and just note the Respondents object to the rantings and ravings of the Appellant that are improper here and not based on factual information.

CONCLUSION

The trial court did not err in granting the Respondents' Motions to Dismiss and dismissing the Appellant's case. The trial court did not abuse its discretion in ordering a dismissal. For these reasons, and due to the Court's lack of error in dismissing this matter, this dismissal should be affirmed and her appeal dismissed.

Respectfully submitted,



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