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SC Court of Appeals

The South Carolina Court of Appeals

Joel Ndunda, Appellant,

v.

Brandi Pfeil, LP-A, Crisis Intervention Employee, individually and officially; Caitlin McGarty, Crisis Intervention Employee, individually and officially; South Carolina Department of Behavioral and Developmental Disabilities, Office of Mental Health; and Charleston Dorchester Mental Health Center, Defendants,

of which Brandi Pfeil, Caitlin McGarty, and Charleston Dorchester Mental Health Center are the Respondents.

Appellate Case No. 2026-000211

The Honorable Eugene P. Warr, Jr.

Charleston County

Trial Court Case No. 2025CP1003621

APPELLANT'S MOTION FOR SUMMARY REVERSAL AND VACATUR OF THE ORDER OF DISMISSAL ON THE GROUND OF EXTRINSIC FRAUD ON THE

TRIBUNAL OR, IN THE ALTERNATIVE, TO SUPPLEMENT THE RECORD PURSUANT TO RULE 212, SCACR

INTRODUCTION

Appellant Joel Ndunda, appearing pro se, respectfully moves this Court for summary reversal and vacatur of the Order Granting Defendants' Motion to Dismiss Plaintiff's Complaint with Prejudice, signed October 31, 2025, and entered on the court's docket November 3, 2025 (the "Order"). The ground for this motion is extrinsic fraud on the tribunal. The Order was procured by Respondents' counsel through a pattern of affirmative misrepresentation to the trial court: four documents asserting that a Probate Court Order of Detention existed and authorized Appellant's detention, culminating in a proposed order drafted by counsel and submitted for judicial signature while counsel was in possession of their clients' complete medical records — the same files whose records custodian has now certified the foundational document for any such order was never executed. No court has adjudicated the fraud evidence on its merits. The evidence is in the record before this Court.

Appellant does not request that this Court act on this motion before Respondents file their initial brief; Appellant requests that it be considered alongside the merits of the appeal and decided at whatever time this Court deems appropriate. Summary reversal and vacatur are warranted because the only factual predicate for every immunity ruling; the existence of a lawful detention order, has been certified absent by the admitting facility's own custodian and cannot be resurrected on remand. In the alternative, Appellant requests an order under Rule 212, SCACR, directing Respondents to produce the M-130 Affidavit and the Probate Court Order of Detention or to certify their non-existence.

FACTUAL BACKGROUND

I. THE ORDER RESTS ENTIRELY ON COUNSEL'S REPRESENTATIONS ABOUT A DOCUMENT THAT DOES NOT EXIST.

The Order, drafted by Respondents' counsel, signed October 31, 2025, and entered November 3, 2025, contains three findings that each presuppose a lawful Probate Court Order of Detention: "there was a facially valid order from the probate court" (Order at 11); "the probate court ordered that Plaintiff be involuntarily detained" (Order at 6); and Respondents' statements were made "in effectuating a lawful order of the probate court" (Order at 12). Every immunity doctrine applied in the Order, quasi-judicial immunity, discretionary immunity, qualified privilege, and Argoe protection — rests on one or more of these three findings. Without a lawful Probate Court Order of Detention, not one immunity ruling in the Order has a factual foundation.

The M-130 Affidavit for Emergency Detention is the mandatory written affidavit under oath required by S.C. Code § 44-17-410(1) as the condition precedent to any lawful emergency psychiatric admission. Without it, no affidavit is forwarded to the Probate Court; without forwarding, the Probate Court has no jurisdictional basis to act; and without jurisdiction, no Order of Detention can lawfully issue. MUSC's records custodian has certified the complete absence of any M-130 from Appellant's records for May 1–2, 2025. (Mot. to Reinstate, Ex. B.) The Charleston County Probate Court clerk has verbally confirmed that no Order of Detention for Joel Ndunda exists in the Probate Court's records for those dates.

II. THE FOUR-DOCUMENT PATTERN OF MISREPRESENTATION TO THE TRIBUNAL.

Across four documents, Respondents' counsel represented that a Probate Court Order of Detention existed and authorized Appellant's detention. Each representation was made while counsel was in possession of their clients' complete medical file, the same file whose records custodian has certified that the foundational document does not exist. The representations escalated in legal consequence:

1. Motion to Dismiss, July 25, 2025: "Plaintiff in this matter was transported and/or committed to MUSC ER by an Order of Detention by the Charleston County Probate Court."
2. Memorandum in Support, October 7, 2025: Respondents relied on the detention order as the predicate for every immunity and privilege defense, describing the commitment as "subsequent approval by the probate court." (Defs.' Mem. Supp. at 7.)
3. Oral Argument (Transcript), October 9, 2025: Counsel made two separate representations that an authorizing Probate Court Order existed: "It's undisputed in this case that there was a Probate Court Order affecting that in this case" (Tr. 5:24–25); and in rebuttal: "Obviously, there is a court order in this that committed him to MUSC. That disposes of multiple claims." (Tr. 27:10–15.) In the same argument, counsel acknowledged possession of the underlying records: "our own records obviously have plenty of information about what was done in the assessment," while telling the court that material was "not in the purview of the court at this time." (Tr. 25:11–14.)
4. Proposed Order of Dismissal, October 29, 2025 — submitted two days after Appellant filed a flash-drive audio recording of the oral argument as an exhibit (file-stamped October 27, 2025) capturing counsel's misrepresentation, and while the Emergency Motion for

Sanctions remained pending: drafted findings that “there was a facially valid order from the probate court” (pg. 11); “the probate court ordered that Plaintiff be involuntarily detained” (pg. 6); and statements were made “in effectuating a lawful order of the probate court” (pg. 12). Each finding was submitted for the trial court’s signature without disclosure of the medical file in counsel’s possession that contradicted it.

The trial court signed the proposed order two days after submission and entered it five days after submission, in reliance on counsel’s representations as officers of the court. The Emergency Motion for Sanctions was never addressed. The audio evidence was never examined. No court at any level has adjudicated the fraud evidence on its merits.

III. THE FALSE JURISDICTIONAL DISCLAIMER IMMUNIZED THE FRAUD EVIDENCE FROM JUDICIAL REVIEW.

The Order states: “This Court is aware that the Plaintiff filed an ‘Emergency Motion’ after the hearing… This Court did not retain jurisdiction of this case and therefore will not make any ruling as to this ‘Emergency Motion.’” (Order at 17.) This disclaimer is factually false as a matter of law. Appellant’s prior filings referenced October 31, 2025, the date the Order was signed electronically; upon review of the court’s docket, the Order was file-stamped and entered November 3, 2025, at 10:03 a.m. The distinction is material. A trial court retains jurisdiction until it enters a final order; not before. The Emergency Motion for Sanctions was filed October 21, 2025; the Order was not entered until November 3, 2025. For those thirteen days the trial court retained full jurisdiction over this case and over the pending Emergency Motion. The disclaimer rests on a premise the dates in the record contradict. Its functional consequence was to immunize the fraud evidence from judicial review: the Order, drafted by the party against whom the fraud evidence was directed, disclaimed the very jurisdiction that would have permitted adjudicating it. A false jurisdictional disclaimer embedded in a proposed order drafted by the beneficiary of that disclaimer is itself an element of the extrinsic fraud on the tribunal.

The timeline further establishes that the fraud evidence was before the trial court and was foreclosed from adjudication by the manner of the Order's entry. Appellant filed a flash-drive audio recording of the October 9, 2025 oral argument as an exhibit, file-stamped October 27, 2025, capturing counsel's representations verbatim. No transcript of the oral argument had been ordered, produced, or was available during the trial-court proceedings; the transcript now in the appellate record was produced later, for this appeal. Thus, at the operative time, the evidence of counsel's misrepresentations before the trial court was the audio recording, which Appellant timely placed on the record. Respondents submitted their Proposed Order two days later, on October 29, 2025; it was signed October 31 and entered November 3 — without any hearing on the Emergency Motion and without the court examining the audio evidence then in its possession. The transcript now confirms what the audio captured, but at the time the Order was entered, the fraud evidence had been presented and left unadjudicated.

IV. RESPONDENTS' SILENCE ON THE MUSC CERTIFICATION CONFIRMS THE FRAUD.

Appellant's Motion to Reinstate, filed April 10, 2026, attached the MUSC custodian certification as Exhibit B and placed Respondents on direct written notice that the foundational document for their entire defense had been certified absent by the admitting facility's own records custodian. Respondents filed no return. This Court reinstated the appeal May 6, 2026. Under Rule 240(e), SCACR, this Court may treat that silence as consent to the facts stated in the reinstated motion, including the certified absence of the M-130. A party that obtained dismissal of every claim on the strength of representations about a document, and then says nothing when that document's foundational predicate is certified absent by the admitting facility, has conceded the central factual issue in this appeal.

Respondents subsequently filed a motion for extension of time on June 18, 2026, more than two months after the MUSC custodian certification was placed on the record, citing only "work-related and other time commitments." That motion contained no reference to the M-130 certification, no explanation for the prior representations, and no production of either document. The extension was granted. Respondents have now had several months since the detention and over two months since written notice of the certification to produce the M-130 or the Probate Court Order. They have produced neither.

ARGUMENT

I. SOUTH CAROLINA COURTS HAVE INHERENT AUTHORITY TO VACATE JUDGMENTS PROCURED BY EXTRINSIC FRAUD ON THE TRIBUNAL, AND THAT AUTHORITY IS NOT SUBJECT TO ANY TIME BAR.

Courts possess inherent authority to vacate judgments obtained by fraud upon the tribunal, independent of the Rules of Civil Procedure and exercisable at any stage of the proceedings. Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 246 (1944) ("every element of the fraud here disclosed demands the exercise of the historic power of equity to set aside fraudulently begotten judgments"). South Carolina has independently and repeatedly recognized this authority. There is no time limitation when a party seeks to set aside a judgment due to fraud upon the court. Chewning v. Ford Motor Co., 354 S.C. 72, 80, 579 S.E.2d 605, 609–

10 (2003). The power is rooted in the court's obligation to protect the integrity of its own processes, and a litigant who has been defrauded need not establish prejudice, because fraud upon the court is an affront to the administration of justice itself. Id.

Fraud upon the court is "that species of fraud which does, or attempts to, subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases." Chewning, 354 S.C. at 80, 579 S.E.2d at 609. Where the fraud is committed by an attorney, an officer of the court, the South Carolina Supreme Court has held that it constitutes extrinsic fraud warranting vacatur. That is precisely the character of the fraud presented here: the misrepresentations to the tribunal were made by counsel of record, in filed documents, in oral argument, and in proposed findings drafted for judicial signature. This authority is not confined to any single procedural vehicle. While the governing South Carolina cases arose on motions under Rule 60(b), SCRCP, or in independent actions, the substantive standard for what constitutes extrinsic fraud is identical regardless of the vehicle, and the appellate court's inherent power to vacate a judgment procured by fraud on the tribunal is independent of the Rules of Civil Procedure. Hazel-Atlas itself was an exercise of that power by an appellate court. 322 U.S. at 245–46.

II. THE FRAUD IS EXTRINSIC UNDER CONTROLLING SOUTH CAROLINA LAW, NOT INTRINSIC.

South Carolina maintains a distinction between intrinsic and extrinsic fraud, and equitable relief from a judgment is available for extrinsic fraud. Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard," such 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." Chewning, 354 S.C. at 80–81, 579 S.E.2d at 610. The controlling distinction is the defrauded party's ability to discover the fraud during the litigation. The fraud here was self-concealing: confirming the order of detainment and the M-130's absence required not mere access to records but a custodian's certification that the mandatory statutory affidavit was absent from the complete file, a certification Appellant obtained only after the litigation, through a chain of inquiry the trial-court posture would not have prompted.

The South Carolina Supreme Court has squarely held that an attorney's false representation to the court constitutes extrinsic fraud. In Davis v. Davis, 236 S.C. 277, 281, 113 S.E.2d 819, 821 (1960), counsel retained and did not file the opposing party's answer and then represented to the court that the party was in default. The Court held this "reasonably may be held to have been extrinsic fraud upon her and upon the court," and vacated the judgment, even though the record indicated the misrepresentation was a mistake by counsel and therefore constructive, rather than actual, fraud. Id. Davis sets the threshold: if even an innocent attorney misrepresentation of a procedural fact that deprived a party of a fair adjudication rises to extrinsic fraud warranting vacatur, then the conduct here, a representation about a jurisdictional fact, repeated across four documents, made while counsel possessed the very file whose custodian has certified the foundational document absent, clears that threshold many times over.

The Supreme Court reaffirmed and extended this principle in Chewning, holding that where an attorney embarks on a deliberate scheme to mislead the court, the conduct constitutes extrinsic fraud amounting to fraud on the court, requiring "a showing of conscious wrongdoing — what can properly be characterized as a deliberate scheme to defraud." Chewning, 354 S.C. at 78, 84, 579 S.E.2d at 608, 611. The governing principle originates in Evans v. Gunter, 294 S.C.

525, 529, 366 S.E.2d 44, 46 (Ct. App. 1988), where the Court of Appeals held that an act of fraud that alone would be intrinsic, there, perjury — rises to extrinsic fraud when accompanied by an intentional act or scheme to defraud or mislead the court and deprive the opposing party of the opportunity to be heard. Evans also supplies the definition of fraud upon the court that Chewning adopted: “that species of fraud which does, or attempts to, subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases.” Id. An act of concealment or misrepresentation “coupled with an intentional scheme to defraud the court” justifies setting the judgment aside as extrinsic fraud. Ray v. Ray, 374 S.C. 79, 85, 647 S.E.2d 237, 240 (2007). The South Carolina Supreme Court has identified the dispositive line: “The essential distinction between intrinsic and extrinsic fraud is the ability to discover the fraud.” Id. at 84, 647 S.E.2d at 239. As set forth below, the record establishes both the deliberate scheme and the impossibility of discovery during the litigation.

III. THE RECORD ESTABLISHES A DELIBERATE SCHEME BY COUNSEL TO MISLEAD THE TRIBUNAL.

Four categories of conduct, each established on the existing record, together establish a deliberate scheme rather than isolated error. First, counsel represented across multiple documents, the Motion to Dismiss, the Memorandum in Support, two statements at oral argument (Transcript), and the proposed Order of Dismissal — that a Probate Court Order of Detention existed and was “undisputed,” at all times while in possession of their clients’ complete medical records. (Tr. 5:24–25; 27:10–15.) Counsel expressly acknowledged that possession at oral argument: “our own records obviously have plenty of information about what was done in the assessment." (Tr. 25:11–14.) Those are the same records whose custodian has certified the foundational M-130 affidavit absent. The significance is not that counsel declined to produce the records at the pleading stage — on a Rule 12(b)(6) motion they were not obligated to. It is that, having chosen to affirmatively represent to the tribunal that a Probate Court Order existed, counsel could not simultaneously possess the file that disproved it and disclaim that file as "not in the purview of the court." Counsel had the means to know, and the obligation not to misrepresent, that the predicate they asserted was unsupported. That a party would move to dismiss on the strength of a document it represented as existing, while holding, and acknowledging it held, the records that would establish the document's absence, and while positioned so that the pleading-stage posture relieved it of any duty to produce those records — is itself evidence that the misrepresentation was calculated rather than inadvertent.

Counsel's oral argument did more than assert that an order existed, it affirmatively represented that the entire statutory process had been followed, and placed Respondents' own employees at its origin. Describing the two-step involuntary-commitment procedure, counsel told the court that once the evaluators "determine that he is… a danger to himself or others, which is the case in this case then they will get an Order from the Probate Court which requires the law enforcement to take the individual to the hospital. It's undisputed in this case that there was a Probate Court Order affecting that in this case." (Tr. 5:18–25.) Counsel thus vouched, element by element, for the precise chain that S.C. Code § 44-17-410 requires, a danger determination by Respondents' evaluators, an application to the Probate Court, and a resulting Order of Detention. And then attributed the initiating danger determination to Respondents Pfeil and McGarty themselves. The MUSC custodian's certification establishes that this chain never occurred — the

M-130 that must initiate it is absent — so counsel represented as completed a statutory process the records show was never begun.

Respondents' own contemporaneous records contradict the danger determination counsel represented. The predicate for any lawful emergency detention under § 44-17-410 is a determination that the individual poses a likelihood of serious harm to self or others. Yet Respondents' own clinical records, in the record on appeal, document "Safety Concerns: NONE", "Emergency: NO EMERGENCY", and billed under normal hours on the Clinical Service Note. (Mem. Opp. Mot. Dismiss, Exs. B, C.) A determination of dangerousness sufficient to trigger involuntary emergency detention cannot coexist with the contemporaneous documentation of no safety concerns and no emergency. Counsel's representation that the evaluators found Appellant "a danger to himself or others, which is the case in this case" (Tr. 5:20–21) is contradicted by Respondents' own records, and the danger finding that the represented statutory chain depends upon is unsupported by the documents in counsel's possession.

Counsel further told the court that "the hospital has their own separate evaluation that's separate and apart from the Department of Mental Health." (Tr. 6:1–4.) By drawing that line between the two evaluating entities, counsel foreclosed any suggestion that one entity supplied the authorization the other lacked: neither the South Carolina Department of Mental Health and Behavioral Disabilities evaluation nor MUSC's "separate and apart" evaluation generated the M-130 or the order, as the certification confirms.

Second, counsel did not produce the assessment reports they characterized as justifying the detention, yet represented that such documentation existed and supported their immunity defense, while moving for dismissal with prejudice before any discovery could test that representation. A party that asserts documentary justification, declines to produce it, and seeks to foreclose the proceeding before its absence can be exposed engages in conduct consistent with concealment rather than candor.

Third, counsel cited Frazier v. Badger, 361 S.C. 94, 603 S.E.2d 587 (2004), for a proposition that is the inverse of that decision's holding. Frazier holds that a government employee's conduct falls outside the scope of employment, and is therefore not entitled to governmental immunity — where the conduct is personal and not in furtherance of the employer's business. Counsel invoked Frazier to demand that Appellant prove a "personal versus occupational" motive as a barrier to recovery, while simultaneously supplying that very proof in their own documentation, characterizing the objective as keeping their staff "free from the wrath of disgruntled and litigious patients." That characterization describes a personal, retaliatory interest that, under Frazier's actual holding, defeats immunity rather than establishing it. A correct reading of Frazier was available on the face of the opinion to any attorney who consulted it. The inversion of its holding, paired with counsel's simultaneous authorship of the motive evidence the true holding makes dispositive, supports the inference of conscious wrongdoing required under Chewning.

Fourth, counsel drafted into the proposed Order a jurisdictional disclaimer — "This Court did not retain jurisdiction" — that the dates in the record contradict, and that foreclosed any judicial review of the pending fraud evidence. The Emergency Motion for Sanctions was filed October 21, 2025; the Order was signed October 31 and not entered until November 3, 2025; the trial court retained jurisdiction throughout that period. A false jurisdictional disclaimer, drafted by the beneficiary of that disclaimer and embedded in a proposed order to prevent adjudication of the fraud evidence then pending, is itself an act in furtherance of the scheme. Together these four categories of conduct establish, on the existing record, the intentional scheme to mislead the court that Evans, Chewning, and Ray require — and far exceed the constructive-fraud threshold that sufficed for vacatur in Davis.

IV. THE DUE-DILIGENCE BAR DOES NOT APPLY, AND RESPONDENTS' OWN EXHAUSTION DEFENSE FORECLOSES IT.

Respondents may contend that the fraud was intrinsic because Appellant could have discovered the absent order during the litigation. The controlling test forecloses that contention. "The essential distinction between intrinsic and extrinsic fraud is the ability to discover the fraud." Ray v. Ray, 374 S.C. 79, 84, 647 S.E.2d 237, 239 (2007). Appellant exercised diligence, and the fraud remained self-concealing. Appellant pursued the administrative grievance process to futility, attempted by telephone to reach the Charleston County Probate Court during the litigation, and obtained records of the MUSC visit. Those records were themselves deficient, bearing no signature and no completed evaluation for May 2, 2025, and containing no M-130 affidavit or Order of Detention. Confirming the affidavit's absence required more than access to medical records; it required a custodian's certification as to the complete contents of the mandatory retention file, establishing not merely what the records contain but that a specific statutory document was absent from them. Appellant obtained that certification only after dismissal, in the course of the appeal, and only after the Probate Court clerk explained that, in the absence of an Order of Detention, an M-130 affidavit necessarily had to exist, and directed Appellant back to MUSC's records to locate it. The MUSC records custodian then certified in writing the complete absence of any such document for the relevant dates. Nothing in the trial-court litigation posture would have prompted that specific chain of inquiry, and possession of the deficient visit records alone would not have revealed the statutory affidavit's absence. Just as "concealing assets through an unknown third-party not subject to discovery is extrinsic fraud in that it constitutes conduct or activities outside of the court proceedings which deprive the other party of the opportunity to fully exhibit and try his case," id. at 85, 647 S.E.2d at 240, the concealment here deprived Appellant of the ability to discover, during the litigation, the very fact on which the judgment turned.

Respondents' non-production reinforces that no order exists. As a person subject to a commitment proceeding under this chapter, Appellant had complete access to his medical records relevant to that commitment, S.C. Code § 44-22-110(A), and Respondents had a corresponding duty to maintain and disclose them; the statute permits refusal only for third-party confidential information or a documented physician determination of treatment detriment, § 44-22-110(B) which was not provided, and neither of which applies to a detention order or M-130 affidavit. Appellant requested his records, including any order of detention, and did not receive it. Had a lawful Order of Detention or M-130 affidavit existed, Respondents were statutorily obligated to produce it. Their failure to produce either document, when Appellant was legally entitled to it under § 44-22-110, is consistent only with its non-existence.

Respondents' own procedural posture confirms the point. The exhaustion doctrine on which Respondents relied is, by their own cited authority, "a rule of policy, convenience and discretion, rather than one of law, and is not jurisdictional." (Defs.' Mem. Supp. at 20.) Respondents invoked that non-jurisdictional, discretionary doctrine to fault Appellant for not completing the administrative grievance process, the very process that, as Appellant argued and preserved in his Memorandum in Opposition, was rendered futile by the institution's ratification of the challenged conduct, its assertion of a protocol that did not exist, and the contradictory nature of the grievance process. Respondents thus simultaneously represented to the court that a detention order existed and faulted Appellant for not exhausting the channel through which its absence would have surfaced. Either the administrative process would have revealed the records (in which case the institution's own conduct, not Appellant's diligence, prevented discovery), or no such records ever existed (in which case the representations to the tribunal were false). Each branch establishes extrinsic fraud, not intrinsic. Appellant has at all times proceeded pro se and pursued the records through every channel available to a layperson. Appellant further preserved the fraud issue below: his Emergency Motion for Sanctions, filed October 21, 2025, placed the misrepresentations before the trial court, which never adjudicated them. In any event, fraud upon the court implicates the court's inherent authority and is not subject to ordinary issue-preservation limitations.

V. THE MUSC CERTIFICATION ESTABLISHES THE FRAUD WAS OPERATIVE: EVERY IMMUNITY RULING FALLS SIMULTANEOUSLY.

The operative significance of the MUSC custodian certification is not merely that the Order was factually wrong. It is that the Order was procured by representations about a document whose absence the submitting party had the means to discover and the obligation to disclose. The certification establishes the complete statutory chain of failure:

a. The M-130 was never executed. Without it, admission lacked its statutory condition precedent under S.C. Code § 44-17-410(1). No lawful emergency psychiatric admission occurred.

b. Without the M-130, nothing was forwarded to the Probate Court under § 44-17-410(3). Without forwarding, the Probate Court had no jurisdictional basis to act.

c. Without Probate Court jurisdiction, no Order of Detention could lawfully have issued. The "facially valid order" found in the Order at page 11, drafted by Respondents' counsel, describes a document that does not and could not lawfully exist.

d. Every immunity doctrine depends on the existence of a lawful detention proceeding. Respondents' own immunity authority confirms this. In Argoe v. Three Rivers Behavioral Health, L.L.C., 392 S.C. 462, 710 S.E.2d 67 (2011), the Supreme Court held that a psychiatric facility's conduct was lawful, justified, and qualifiedly privileged precisely because it was undertaken "in accordance with the valid probate court orders" and "confined to that ordered by the probate court." Argoe's every protection is expressly contingent on a valid probate order. Quasi-judicial immunity requires a genuine judicial proceeding; discretionary immunity requires a lawful exercise of authorized discretion; qualified privilege requires a proper occasion. The certified absence of the M-130 — the statutory predicate to any such order — destroys every predicate simultaneously. Argoe therefore defeats the immunity defense rather than supporting it.

Respondents' own representations foreclose the existence of the order their defense requires. At oral argument, counsel asserted that Respondents possess the complete records: "our own records obviously have plenty of information about what was done in the assessment." (Tr. 25:11–14.) The MUSC custodian has certified that those same records contain no M-130 affidavit. A lawful Probate Court Order of Detention cannot exist without the M-130 that must precede it. Respondents' two positions, that they hold the complete records, and that a valid probate order authorized the detention, cannot both be true, because the records they claim to possess in full are certified to lack the one document any such order would have to be built upon. Either Respondents do not in fact possess the complete records, contradicting their representation to the tribunal, or the order never lawfully existed, contradicting the foundation of their entire defense. There is no third possibility.

Remand would not permit Respondents to remedy this deficiency. The M-130 either exists or it does not. Respondents have had every opportunity since the detention, and more than two months since written notice of the custodian's certification, to produce it. They have not. MUSC's custodian has certified it absent from the mandatory retention location. The Probate Court clerk has confirmed no order exists in the Probate Court's records. The fraud was operative; the factual predicate is gone; the immunities fall.

VI. SUMMARY REVERSAL WITH INSTRUCTIONS IS APPROPRIATE — REMAND FOR RECONSIDERATION OF IMMUNITY WOULD BE FUTILE.

Summary reversal is appropriate where the record conclusively establishes that the judgment cannot stand and further proceedings on the same issues would be futile. The established facts on this record are:

1. The M-130, the statutory condition precedent to any lawful emergency admission, is certified absent by the admitting facility's own custodian.
2. The Probate Court Order of Detention, the document upon which every immunity ruling rests, is confirmed absent from the Probate Court's records.
3. Respondents' counsel drafted proposed judicial findings asserting the existence of both documents while in possession of the complete medical file and while fraud evidence was pending.
4. Respondents filed no return when the custodian certification was placed on the record, and this Court may treat that silence as consent under Rule 240(e), SCACR.

5. Respondents subsequently sought and obtained a thirty-day extension of time to file their brief on June 18, 2026, without addressing, producing, or explaining the absence of either document after over two months of written notice.

Without the M-130: no lawful admission; no judicial proceeding for Argoe; no quasi-judicial immunity; no lawful discretion; no proper occasion for qualified privilege. Every immunity ruling collapses on the same certified absence. Remanding for reconsideration of immunity rulings whose only factual predicate has been certified absent would serve no purpose. Reversal with instructions to deny the Motion to Dismiss is the appropriate remedy.

VII. IN THE ALTERNATIVE, THIS COURT SHOULD DIRECT SUPPLEMENTATION OF THE RECORD PURSUANT TO RULE 212, SCACR.

In the event this Court determines that summary reversal requires further development, Appellant alternatively requests an order pursuant to Rule 212, SCACR. Rule 212(a) provides that "the appellate court may require copies of all or any part of the transcript of proceedings or other matter which was before the lower court or administrative tribunal to be sent up for its inspection and consideration," and Rule 212(b) permits supplementation of the record on appeal. Because the existence of the M-130 Affidavit and the Probate Court Order of Detention is the threshold fact on which every immunity ruling depends, and because the admitting facility's records custodian has certified the M-130's absence, this Court should direct Respondents either to certify and transmit those documents as part of the appellate record within fourteen days, or to certify in a signed statement by counsel of record that the documents do not exist and identify the basis for the prior representations that they did. If Respondents certify non-existence, summary reversal follows as a matter of law. If Respondents produce the documents, their authenticity can be evaluated against the MUSC custodian certification already in the record.

RELIEF REQUESTED

Appellant respectfully requests this Court:

1. SUMMARILY REVERSE the Order Granting Defendants' Motion to Dismiss Plaintiff's Complaint with Prejudice in its entirety on the ground of extrinsic fraud on the tribunal, pursuant to this Court's inherent authority and Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944);
2. VACATE all findings and conclusions in the Order that rest on the premise that Appellant's detention was authorized by a lawful Probate Court Order of Detention, as that premise has been certified false by the admitting facility's own records custodian;
3. REMAND with instructions to the trial court to: (a) deny Respondents' Motion to Dismiss; (b) conduct a hearing on Appellant's Emergency Motion for Sanctions filed October 21, 2025, on its merits; (c) permit the case to proceed to discovery on all claims; and (d) restore the punitive damages claims foreclosed by the dismissal, including those predicated on the reckless indifference standard under Smith v. Wade, 461 U.S. 30 (1983);
4. NOTE in its order, for such action as this Court deems appropriate, the four-document pattern of misrepresentation to the tribunal identified in this motion, each document of which constitutes a potential violation of Rule 3.3(a)(1) of the South Carolina Rules of Professional Conduct; and

5. IN THE ALTERNATIVE, if this Court does not grant summary reversal, direct pursuant to Rule 212, SCACR, that Respondents certify and transmit the M-130 Affidavit and Probate Court Order of Detention within fourteen days, or certify their non-existence in a signed statement by counsel of record identifying the basis for their prior representations that those documents existed; and

6. GRANT such other and further relief as this Court deems just and proper.

CONCLUSION

The Order of Dismissal was procured by a pattern of affirmative misrepresentation to the tribunal: four documents asserting the existence of a Probate Court Order of Detention that MUSC's own records custodian has certified is unsupported by the foundational statutory document any such order would require. Counsel drafted proposed judicial findings asserting that order as an established fact, embedded a false jurisdictional disclaimer foreclosing review of the fraud evidence, and submitted both for signature while in possession of the complete medical file and while fraud evidence was pending before the court. The trial court signed the proposed order in reliance on counsel's representations as officers of the court. No court has ever adjudicated the fraud evidence on its merits.

Hazel-Atlas Glass Co. established that courts have inherent authority and a duty to vacate judgments procured by fraud on the tribunal. The MUSC custodian certification, the Probate Court clerk's confirmation, Respondents' continued silence in the face of both, the June 18, 2026 extension motion that addressed neither document nor the certification, and the false jurisdictional disclaimer that prevented any court from ever examining the fraud evidence together establish that the fraud was operative and that the Order cannot stand. Appellant respectfully requests that this Court exercise its inherent authority to reverse and vacate that Order.

Respectfully submitted,

s/ Joel Ndunda

Joel Ndunda

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Date: July 6th, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, a true and correct copy of the foregoing Motion was served upon counsel for Respondents by first-class United States Mail, postage prepaid, addressed to:

Zachary Meade Kern, Esquire
Brian Lee Quisenberry, Esquire
Stephen Lynwood Brown, Esquire
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Date: July 6th, 2026

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