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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
Ninth Judicial Circuit

The Honorable Jennifer B. McCoy, Circuit Court Judge

Case No. 2024-CP-10-04891
Appellate Case No. 2026-000351

Janet L. Frisco.....Appellant

v.

Futeral and Nelson, LLC.....Respondent

INITIAL BRIEF OF RESPONDENT

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COUNTER STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court properly found that the judicial proceedings privilege barred Appellant's claims seeking damages for alleged statements made in the course of litigation.

2. Whether the trial court properly found that the attorney immunity doctrine barred Appellant's claims.

3. Whether the trial court properly found that Appellant was collaterally estopped from relitigating whether she had made false statements regarding a pet shelter.

4. Whether the trial court properly found that Appellant's claim for "Abuse of Process/Extrinsic Fraud Pursuant to Rule 60(b)(3), SCRCP" was not properly brought under that Rule.

STATEMENT OF THE CASE

Factual Background

This is a retaliatory lawsuit brought by pro se Appellant Janet Frisco ("Appellant") against an opposing law firm, Futeral & Nelson, LLC ("Respondent"), which filed a lawsuit against her on behalf of its client, Pet Helpers, Inc. ("Pet Helpers"), a local Charleston pet shelter. The underlying lawsuit was filed as *Pet Helpers, Inc. v. Janet Frisco*, Case Number 2021-CP-10-02682, on June 09, 2021 ("the Underlying Lawsuit").

The Underlying Lawsuit arose after Appellant repeatedly asserted as a matter of fact that Respondent's client, Pet Helpers, staged the adoption of a dog and then secretly killed it. Appellant had previously put her dog, "Toby," up for adoption voluntarily with Pet Helpers in 2021. (R. pp. _, Def's MSJ, Exhibit B). Pet Helpers is a 'no kill'/ 'no euthanasia' shelter that rehomes pets in the Charleston area. Pet Helpers renamed the dog to "Slim Jim," and it was legally adopted shortly thereafter. Pet Helpers then posted a picture of his adoption on social media. (R. pp. _, Def's MSJ, Exhibit C).

Appellant then began harassing Pet Helpers online and at their local store, threatening to bring "God's Army" to Pet Helpers' place of business to get the dog back. (R. p. _, Def's MSJ, Exhibit D, Aff. of Susko, ¶ 9). She further threatened to "light up the internet" with claims about Pet Helpers' treatment of the dog. (R. pp. _, Def's MSJ, Exhibit E). As a result of Appellant's threats, Pet Helpers contacted the City of Charleston Police Department, and the Police Department advised it to keep its facility doors locked for a day. (R. p. _, Def's MSJ, Exhibit D, Aff. of Susko, ¶ 12).

Appellant also engaged in an extensive smear campaign, including publishing numerous social media posts and videos, protesting in front of Pet Helpers, and claiming as a matter of fact

in various forums that (1) Pet Helpers killed the dog Appellant put up for adoption; (2) Pet Helpers euthanized animals in the shelter; (3) Pet Helpers is cruel to animals; and (4) Pet Helpers staged the dog's adoption. (R. pp. _, Def's MSJ, Exhibit F). These statements were found to be defamatory in the Underlying Lawsuit, a finding this Court affirmed.[1] (R. pp. _, Def's MSJ, Exhibits F and G). Pet Helpers, through its attorney, Stephan Futeral with Respondent Futeral & Nelson, filed a lawsuit seeking damages for slander/libel as well as a permanent restraining order. (R. pp. _, Complaint in Underlying Lawsuit). A protracted legal battle ensued in the Underlying Lawsuit which resulted in Pet Helpers obtaining a permanent restraining order, multiple awards of sanctions, Plaintiff being placed in jail for civil contempt of court for violating the restraining orders,[2] and the trial court finding Plaintiff liable to Pet Helpers for libel, slander *per se*, and malicious prosecution. The permanent restraining order prevents Plaintiff from making disparaging statements against Pet Helpers and its legal counsel regarding the litigation and the dog. (R. pp. _, Def's MSJ, Exhibit F).

Procedural History

Appellant, acting pro se, filed her complaint against Respondent on September 30, 2024, including no specific causes of action but generally alleging that Respondent made false statements and abused the civil process in the course of the Underlying Lawsuit. (R. pp. _, Appellant's

[1] The Underlying Lawsuit came before this Court as Appellate Case No. 2022-000775. This Court filed its unpublished opinion as *Pet Helpers, Inc. v. Janet L. Frisco*, Unpublished Op. No. 2025-UP-190 (S.C. Ct. App. filed June 11, 2025). (R. pp. _, Def's MSJ, Exhibit G). Appellant petitioned the Supreme Court for a writ of certiorari, which the Supreme Court denied on December 16, 2025. *See* Appellate Case No. 2025-001836.

[2] Appellant was held in contempt for violating the injunction and restraining orders more than eighty times and sentenced to thirty days in jail, purgeable upon payment of sanctions. Appellant spent four days in jail. (R. pp. _, Def's MSJ, Exhibit H).

Complaint). On October 28, 2024, Respondent filed a motion to dismiss in lieu of an answer. R. pp. _, Respondent's Motion to Dismiss). On August 11, 2025, the Honorable Jennifer B. McCoy issued an order providing that Appellant had thirty days to amend her complaint to state a justiciable cause of action and that failure to do so would result in the dismissal of the matter. (R. pp. _, August 11, 2025 Order). Appellant amended her complaint on August 25, 2025, alleging claims for "Libel and Slander" and "Abuse of Civil Process/Extrinsic Fraud Pursuant to Rule 60(b)(3) SCRCP." (R. pp. _, Appellant's Amended Complaint). Respondent answered Appellant's Amended Complaint on September 9, 2025, denying liability. (R. pp. _, Respondent's Answer to Appellant's Amended Complaint).

On September 10, 2025, Respondent moved for summary judgment. (R. pp. _, Respondent's Motion for summary Judgment). On February 11, 2026, the Honorable Jennifer B. McCoy issues an order granting Respondent's motion for summary judgment, finding (1) that Appellant's claims were barred by the judicial proceedings privilege (2) that Plaintiff's claims were barred by the attorney immunity doctrine pursuant to this Court's ruling in *Gaar v. N. Myrtle Beach Realty Co.*, 287 S.C. 525, 339 S.E.2d 887 (Ct. App. 1986); (3) that Appellant is collaterally estopped from relitigating whether she made false statements regarding Pet Helpers as a matter of law; (4) that Plaintiff's second cause of action, which appeared to be a motion pursuant to Rule 60(b)(3), SCRCP, was both improper and untimely; and (5) that no additional discovery could salvage Appellant's claims. (R. pp. _, Order granting Summary Judgment). The court also found that Appellant's claims as a whole were frivolous. (R. p. _, Order Granting Summary Judgment, p. 8). Appellant filed her notice of appeal on February 13, 2026.[3] (R. pp. _, Notice of Appeal).

[3] For the Court's information, the same day Judge McCoy issued her order granting Respondent's motion for summary judgment, Appellant also filed a complaint with the United States District Court against Respondent and the "Charleston County Court of Common Pleas" (among others),

STANDARD OF REVIEW

Under Rule 56, SCRCP, a court must grant a moving party summary judgment if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *See* Rule 56(c), SCRCP. A party opposing a motion for summary judgment may not rely upon mere allegations but must set forth specific facts showing that there is a genuine issue for trial. *See* Rule 56(e), SCRCP. Additionally, "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463-64, 892 S.E.2d 297, 301 (2023) (quoting *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)).

ARGUMENT

I. PLAINTIFF'S CLAIMS ARE BARRED BY THE JUDICIAL PROCEEDINGS PRIVILEGE.

South Carolina has long recognized the common law rule protecting statements offered in the course of judicial proceedings from liability in defamation cases such as this one. *Crowell v. Herring*, 301 S.C. 424, 429, 392 S.E.2d 464, 466-67 (Ct. App. 2001) (citing *Vausse v. Lee*, 1 Hill 197, 2, 351 S.C. 16 Am. Dec. 168 (1833)). Courts have recognized that "South Carolina law is clear that all statements relevant to a matter at issue in a judicial proceeding are entitled to absolute immunity." *Belton v. West Marine, Inc.*, 0:16-3347-TLW-SVH, 2017 U.S. Dist. LEXIS 57455 at 3 (D.S.C. 2017) (emphasis added). Moreover, when an immunity is deemed absolute, it provides absolute immunity from suit, rather than a mere defense of liability. *Id*. at 5 (quoting *Mitchell v.*

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alleging that the handling of her cases violated her civil rights pursuant to 42 U.S.C. § 1983. That case is filed as *Janet Frisco v. Charleston County Court of Common Pleas et al.*, 2:26-cv-00591-RMG-MHC. The Honorable Richard M. Gergel issued an order dismissing the complaint on April 9, 2026. Appellant appealed, and that appeal is currently pending before the United States Court of Appeals for the Fourth Circuit. That appeal is pending before the Fourth Circuit as Case No. 26-1539.

Forsyth, 472 U.S. 511, 526, 105 S. Ct. 2806, 86 L. Ed. 2d 411 (1985)); *see also Hainer v. Am. Med. Intern.*, 328 S.C. 128, 492 S.E.2d 103, 106 (1997) ("[w]hen a communication is absolutely privileged, no action lies for its publication, no matter what the circumstances under which it is published"). Likewise, this privilege extends to statements made in pleadings. *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 23, 567 S.E.2d 881, 893 (Ct. App. 2002) (citing *McKesson & Robbins v. Newsome*, 206 S.C. 269, 33 S.E.2d 585 (1945)). Furthermore, because the privilege is absolute, it protects even statements made with malice. *See Id.* (quoting *Lone v. Brown*, 199 N.J. Super. 420, 489 A.2d 1192, 1195 (N.J. Super Ct. App. Div. 1985)).

The judicial proceedings privilege plainly bars liability for statements made in a complaint. *Crowell* at 429, 392 S.E.2d at 466-67 (Ct. App. 2001) (citing *Vausse v. Lee*, 1 Hill 197, 2, 351 S.C. 16 Am. Dec. 168 (1833) ("[t]he common law rule protecting statements of judges, parties and witnesses **offered in the course of judicial proceedings from a cause of action in defamation is well recognized in this jurisdiction**[]") (emphasis added)); *Pond Place Partners* at 24, 567 S.E.2d at 893 **("[d]efamatory matter contained in pleadings filed according to law in a court having jurisdiction, if relevant and pertinent to the issues in the case, is absolutely privileged**; and it is immaterial that the allegations are false and malicious and are made under a cover and pretense of a wrongful or groundless suit[]") (emphasis added)).

Here, the trial court properly concluded that Appellant's Amended Complaint sought damages in retaliation against Defendant for filing the complaint in the Underlying Lawsuit on behalf of its client. (*See e.g.* R. p. _, Am. Compl. ¶ 14 ("Defendant filed a complaint on behalf of Pet Helpers…which is in itself slander and libel[]")); (R. p. _, Am. Compl. ¶ 17 ("Defendant filed a complaint on behalf of Pet Helpers…in order to aid and abet [Pet Helpers'] fraud of staging an

adoption[]")). Because these actions are absolutely privileged, the trial court correctly found that there was no genuine issue of fact and that Respondent was entitled to judgment as a matter of law.

II. APPELLANT'S CLAIMS ARE FURTHER BARRED BY THE *GAAR* ATTORNEY IMMUNITY DOCTRINE.

Additionally, South Carolina law is clear that attorneys are immune from liability to third persons arising from the performance of their professional activities on behalf of and with the knowledge of their clients. *Gaar v. N. Myrtle Beach Realty Co.*, 287 S.C. 525, 528, 339 S.E.2d, 887, 889 (Ct. App. 1986); *see also Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995) (likewise holding that attorneys are immune from liability for actions taken in their professional capacity). Accordingly, attorneys can generally only be liable in their professional capacity to their client or those in privity with their client, for injuries alleged to have arisen out of performing their professional activities. *Gaar* at 529, 339 S.E.2d at 889.

Moreover, even if attorneys initiate civil proceedings on their client's behalf without probable cause, they *still* are not liable if they act "primarily for the purpose of aiding [their] client in obtaining a proper adjudication of the client's claim." *Id*. (citing Restatement (Second) of Torts, Section 674 comment d (1975)). This rule protects the crucial public policy consideration that "[a]ttorneys must be free to act and advise their clients without constant fear of harassment from lawsuits." *Id*. (citing *Peck v. Chouteau*, 91 Mo. 138, 3 S.W. 577 (1887)).

Here, the trial court correctly found that there was no genuine issue of fact that Respondent's actions were taken for the purpose of obtaining a proper adjudication of its client's claims. Appellant did not present any evidence to the contrary. Therefore, Appellant's claims thus fit squarely within category that *Gaar* immunizes attorneys from liability for.

For these reasons, there is no genuine issue of material fact that Respondent's actions arose out of its professional activities and for the purpose of obtaining a proper adjudication of its client's

claims. Therefore, the trial court properly found that Respondent is immune from liability as a matter of law.

III. THE TRIAL COURT CORRECTLY CONCLUDED THAT APPELLANT IS COLLATERALLY ESTOPPED FROM RELITIGATING WHETHER SHE MADE FALSE STATEMENTS REGARDING PET HELPERS AS A MATTER OF LAW.

"Under South Carolina law, 'collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.'" *Kunst v. Loree*, 404 S.C. 649, 653, 746 S.E.2d 360, 362 (Ct. App. 2013) (quoting *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009) (internal alterations omitted)). In order for a party to be collaterally estopped from relitigating an issue from a prior lawsuit, the issue must be: "(1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id.* (quoting *Carolina Renewal, Inc.* at 554, 684 S.E.2d at 782).

Here, the trial court in the Underlying Lawsuit directly determined that Plaintiff defamed Defendant's client as a matter of law, which was necessary to support the prior judgment as to the slander and libel claim. To the extent Appellant seeks to use this lawsuit to relitigate whether she made defamatory statements as a matter of law against Respondent's client, the trial court therefore correctly determined that Appellant was collaterally estopped from doing so.

IV. APPELLANT'S SECOND CAUSE OF ACTION, WHICH APPEARS TO BE A MOTION PURSUANT TO RULE 60(B)(3), SCRCP, IS IMPROPER, AND NONETHELESS BARRED BY THE ONE-YEAR TIME LIMITATION CONTAINED IN THE RULE.

Appellant's second cause of action purports to be for "Abuse of Civil Process/Extrinsic Fraud Pursuant to Rule 60 (b)(3) SCRCP." To the extent this purported cause of action is a motion for relief under Rule 60 (b)(3) in a separate matter, that motion is plainly time-barred, as Rule

60(b)(3) makes clear that a motion pursuant to it cannot be made more than one year after the Court entered the order.[4]

To the extent Appellant's second cause of action can be read as a claim for abuse of process, the trial court correctly determined that there is no genuine issue of material fact that Respondent did not file the Underlying Lawsuit on behalf of its client with any ulterior motive or take any improper actions in the proceeding. *See Pallares v. Seinar*, 407 S.C. 359, 370-71, 756 S.E.2d 128, 133 (2014) (citing *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 294, 697 S.E.2d 551 (2010) (explaining the essential elements of an abuse of process claim)). Once again, trial court, affirmed by this Court, determined there was no genuine issue of material fact as to Pet Helpers' claims in the Underlying Lawsuit, and there is no evidence in the Record demonstrating that Respondent had any improper motive in filing the Underlying Lawsuit or in attaining a successful outcome for its client.

Accordingly, there is no genuine issue of material fact as to Appellant's second cause of action, and Respondent's is entitled to judgment as a matter of law.

V. NO ADDITIONAL DISCOVERY COULD SALVAGE PLAINTIFF'S CLAIMS, WHICH ARE PLAINLY BARRED BY SOUTH CAROLINA LAW.

A party opposing summary judgment must demonstrate to the Court "the likelihood that further discovery will uncover additional relevant evidence and that the party is 'not merely engaged in a 'fishing expedition.'" *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (quoting *Baughman v. Am. Tel. and Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991)). Here,

[4] The relevant trial court order in the Underlying Lawsuit is dated May 5, 2022. (R. pp. _, Def's MSJ, Exhibit F). Appellant filed her Complaint in this matter on September 24, 2024 and her Amended Complaint on September 24, 2025. (R. pp. _, Appellant's Complaint and Amended Complaint).

the trial court correctly found that Appellant is unable to demonstrate that any additional discovery could salvage her claims and remove the protection from liability of the various privileges and immunities discussed above, each of which are independently dispositive. Because Respondent is immune from liability and the alleged actions were privileged as a matter of law, no additional discovery could conjure up an issue of fact in this case.

Furthermore, as the trial court found, nearly all conceivable discovery that Appellant could seek concerning Respondent's representation of its client Pet Helpers is protected from discovery by the attorney-client privilege and/or work product doctrine. *See generally Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287, 692 S.E.2d 526 (2010). Because Respondent cannot waive the privilege on behalf of its client, and because it is bound by a duty of confidentiality to its client by Rule 1.6, SCRCP, discovery in this matter regarding the alleged issues raised in Appellant's Amended Complaint is impractical. Therefore, no additional discovery could salvage Appellant's Amended Complaint.

VI. SEVERAL OF APPELLANT'S ARGUMENTS ARE NOT PRESERVED ON APPEAL.

Appellant raises several issues in her statement of issues on appeal that are not preserved for appellate review. Specifically, Appellant raises alleged issues that "Respondent aided and abetted his clients in committing criminal fraud…" (Item B); "the Respondent committed perjury against the Appellant in submitting a manufactured adoption contract to the court…" (Item C); "the lower court intentionally prevented the jury trial that was already on the roster…" (Item D); "the Respondent is guilty of extrinsic fraud…" (Item E). However, the trial court did not rule on these issues, nor did Appellant raise it in a post-trial motion. *See Wardlaw v. S.C. Dep't of Soc. Servs.*, 427 S.C. 197, 205, 829 S.E.2d 718, 722 (Ct. App. 2019) (citing *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (explaining that "for an issue to be preserved for appeal, it

must have been raised to and ruled upon by the lower court")); *Id.* (quoting *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (explaining that a party must file a Rule 59(e), SCRCP motion in order to preserve an issue for appellate review when it was raised, but not ruled on)).[5] Therefore, these issues are not preserved for appeal and Appellant has waived them.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court affirm the order granting its motion for summary judgment.

[*Signature on Following Page*]

[5] Appellant did file a motion entitled "Motion for New Trial (Jury) and Order to Compel Discovery[;]" however, to the extent this motion can be construed as an attempt at a Rule 59(e), SCRCP motion, this was filed *before* the trial court issued its final order granting Respondent's Motion for Summary Judgment. (R. pp. _, Appellant's Motion for New Trial).

This 15th day of July, 2026

Respectfully submitted,

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