

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY  
CIRCUIT COURT

THE HONORABLE J. DERHAM COLE  
CASE NO.: 2010-CP-42-5527

RECEIVED  
OCT 03 2012  
SC COURT OF APPEALS

Launeil Sanders, .....Appellant

vs.

Janneth E. Sanders, Spartanburg County, and Burts, Turner and Rhodes, c/o  
Richard Rhodes, .....Respondents

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RESPONDENTS FINAL BRIEF ON BEHALF OF  
JANNETH E. SANDERS AND BURTS, TURNER AND RHODES,  
C/O RICHARD RHODES

---

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**ISSUE ON APPEAL**

1. Whether the Circuit Court erred in granting the Respondents' Motion to Dismiss the Appellant's Complaint.

## STATEMENT OF THE CASE

This is an appeal from an Order of the Circuit Court, which granted the Respondents' Motion to Dismiss the Appellant's Complaint. The case history is as follows:

- October 4, 2010: Respondent Janneth Sanders, through her attorneys (Respondents Richard H. Rhodes and Burts Turner & Rhodes), filed a Summons and Complaint in the Spartanburg County Family Court, seeking among other things a Decree of Separate Maintenance from the Appellant [Reference being made to Case No.: 2010-DR-42-2870]. An Amended Complaint was filed October 19, 2010, which sought the same relief.
- October 15, 2010: Appellant filed the present case in the Court of Common Pleas. In the Complaint, the Appellant alleged legal malpractice and wrongdoing on the part of the Respondents for filing an action in Family Court.
- November 3, 2010: Respondents Richard H. Rhodes and Burts Turner & Rhodes filed an Answer to the Appellant's Complaint.
- November 3, 2010: In addition to filing an Answer, Respondents Richard H. Rhodes and Burts Turner & Rhodes filed a Motion to Dismiss the Appellant's Complaint.
- January 25, 2011: The parties presented arguments to the Honorable J. Derham Cole on the Respondents' Motion to Dismiss.
- January 28, 2011: Judge Cole signed a Form 4 Order, granting the Respondents' Motion to Dismiss.

This appeal has ensued.

## STATEMENT OF THE FACTS

This case arises out of a Family Court action that was filed by Respondent Janneth Sanders [Ms. Sanders]. Ms. Sanders, through her attorneys, Respondent Richard H. Rhodes [Mr. Rhodes] and Respondent Burts Turner & Rhodes [Burts Law Firm], filed a Summons and Complaint in the Spartanburg County Family Court on October 4, 2010. In the Complaint, she sought, among other things, a Decree of Separate Maintenance from the Appellant [Mr. Sanders]. Mr. Sanders elected to proceed in the Family Court matter *pro se*.

In response to the filing in Family Court, Mr. Sanders filed an action in the Court of Common Pleas on October 15, 2010. Ms. Sanders, Spartanburg County, the Burts Law Firm and Mr. Rhodes were named as Defendants. Mr. Sanders alleged that the Family Court filing was frivolous, fraudulent and corrupt. More specifically, he alleged that neither Ms. Sanders, nor her attorneys had the right to file an action in Family Court because there was no statutory ground for a divorce under S.C. Code Ann. §20-3-10 (1976, as amended). In this action, Mr. Sanders sought the following relief:

- (a) For the Court to impose sanctions against Mr. Rhodes and the Burts Law Firm;
- (b) For the Court to compel the Spartanburg County Clerk of Court to establish new procedures to ensure compliance with South Carolina law;
- (c) For the Court to compel Burts Turner & Rhodes and Mr. Rhodes to reimburse Ms. Sanders' (Appellant's wife) attorney fees;
- (d) For the Court to intervene and enjoin the Family Court from continuing with the Family Court litigation;
- (e) For the Court to establish a trust fund, to be funded in the amount of \$580,000.00 by Spartanburg County and the Burts Law Firm;
- (f) For the Court to award damages of \$1,500,000.00 for emotional distress as a result of the Family Court proceedings and alleged legal malpractice; and

- (g) For the Court to award \$13,500,000.00 in punitive damages.

The Burts Law Firm and Mr. Rhodes Answered the Complaint, making reference to the pleadings filed in the Family Court, and specifically making reference to the Family Court Complaint, which sought a Decree of Separate Maintenance, not a divorce. In addition to denying most of Mr. Sanders' allegations, the Respondents asserted the following affirmative defenses:

- (a) Rule 12(b)(1), SCRCPP – Exclusive jurisdiction of the Family Court to hear and decide the matters raised in Mr. Sanders' Complaint pursuant to S.C. Code Ann. §63-3-530(A)(2) (1976, as amended);
- (b) Rule 12(b)(6), SCRCPP – Failure of Mr. Sanders to plead facts sufficient to constitute a cause of action;
- (c) Rule 12(b)(8), SCRCPP – An action involving the matters contained in the Complaint was already pending in Family Court;
- (d) Res Judicata;
- (e) Lack of Ripeness; Lack of Standing; Speculative Damages;
- (f) Failure of Mr. Sanders to file an affidavit of an expert pursuant to S.C. Code Ann. §15-36-100(B) (1976, as amended); and
- (g) South Carolina Frivolous Civil Proceedings Sanctions Act [S.C. Code Ann. §15-36-10, et seq.].

The Burts Law Firm and Mr. Rhodes filed a Motion to Dismiss Mr. Sanders' Complaint based on the affirmative defenses asserted in the Answer. A hearing was held before the Honorable J. Derham Cole on January 25, 2011. After hearing arguments of the parties and considering the applicable statutory and case law, Judge Cole granted the Motion to Dismiss on the following grounds:

- (a) An attorney-client relationship is necessary to maintain an action for attorney malpractice (citing Hall v. Fedor, 349 S.C. 169 (Ct. App. 2002));

- (b) In professional negligence cases, an affidavit from a qualified expert is required to accompany the Complaint (citing S.C. Code Ann. §15-36-100);
- (c) The Supreme Court is vested with the sole authority to regulate the practice of law (citing Article V, S.C. Constitution); and
- (d) The Family Court has the exclusive jurisdiction to hear and determine actions relating to marital litigation and matters related thereto (citing S.C. Code Ann. §63-3-530).

### 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), SCRCP. Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 926, 74 S.E.2d 524 (Ct. App. 2009) (citing Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007)). In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. Id. 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, 645, 647 S.E.2d 188, 192 (2007)).

In considering a motion to dismiss pursuant to Rule 12(b)(1), SCRCP, the question of subject matter jurisdiction is a question of law for the court. Chew v. Newsome Chevrolet, Inc., 315 S.C. 102, 104, 431 S.E.2d 631 (Ct.App.1993) (citing Bargesser v. Coleman Co., 230 S.C. 562, 96 S.E.2d 825 (1957)). The Court of Appeals can decide questions of law with no deference to the trial court. Catawba Indian Tribe of S.C. v. State of South Carolina, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007).

In the case at bar, it is respectfully submitted that the Circuit Court correctly applied the law in deciding to dismiss the Appellant's Complaint.

## ARGUMENT

The Appellant filed this appeal out of mere disagreement with the Circuit Court's decision to grant the Respondents' Motion to Dismiss.

### **I. Failure to Assert Legal Authority; Abandonment of Arguments**

The issues on appeal have not been clearly set forth in the Appellant's Initial Brief, and the Appellant has not cited legal precedent to support his arguments on appeal. It is respectfully submitted that the Appellant's arguments are conclusory and lack supporting authority and should, therefore, be deemed abandoned. Cole v. South Carolina Electric and Gas Co., 355 S.C. 183, 196, 584 S.E.2d 405, 412 (Ct. App. 2003) ("We decline to consider this argument because Cole's argument is not supported with citations to authority, and it is so conclusory as to be an abandonment of this issue on appeal."); First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994); see Glasscock, Inc. v. United States Fid. & Guar. Co., 348 S.C. 76, 557 S.E.2d 689 (Ct.App.2001) (short, conclusory arguments unsupported by authority are deemed abandoned).

### **II. Asserted Errors by Circuit Court**

The Appellant's brief asserts various alleged error on the part of the Circuit Court. For clarity, these arguments will be addressed in the order raised in the Appellant's Initial Brief:

#### **A. Respondent Janneth Sanders Default**

The Appellant asserts error in the Court's decision to grant the Respondents' Motion to Dismiss because Respondent Janneth Sanders was in default. Mr. Sanders argued at the hearing that Ms. Sanders was in default. The issue of default, however, was not contained in the Circuit Court's Order. Additionally, no Rule 59(e) motion to alter or amend was filed with the Court to

preserve this issue for appeal. Where the Circuit Court fails to explicitly rule on a party's argument of an issue, and the party fails to make a Rule 59(e) motion, the issue is not properly preserved for review by the Court of Appeals. Flavor-Inn, Inc. v. NNCB Nat. Bank of South Carolina, 309 S.C. 508, 424 S.E.2d 534 (Ct. App. 1992).

The Respondents respectfully submit that this issue should not be considered by the Court, as it was not properly preserved for appeal. The Respondents also submit that Respondent Sanders' default is of no significance. The Complaint filed by the Appellant is an attempt to allege legal malpractice. Respondents Burts Law Firm and Mr. Rhodes timely answered the Complaint. The only affirmative relief sought by the Appellant with respect to Ms. Sanders was an order enjoining her from taking further action in Family Court. The Circuit Court lacks the subject matter jurisdiction to issue such an order. S.C. Code Ann. §63-3-530(A). Therefore, the Appellant's argument is without merit.

**B. Required Mediation**

The Appellant asserts that the Court erred in dismissing his Complaint prior to having a "mediation hearing." The Respondents are unaware of any such requirement.

**C. Grounds for Separate Maintenance**

The Appellant makes a conclusory argument that the Family Court action filed by Mr. Rhodes was frivolous, as there was no ground for a divorce. The Respondents respectfully make reference to the Complaint filed October 4, 2010 and the Amended Complaint filed October 19, 2010. Neither of these Complaints contained a request for a divorce. Instead, Ms. Sanders sought a Decree of Separate Maintenance.

South Carolina clearly recognizes that a spouse does not need grounds that would merit a divorce in order to receive separate maintenance. Theisen v. Theisen, 394 S.C. 434, 716 S.E.2d 271 (2011) (citing Machado v. Machado, 220 S.C. 90, 103, 66 S.E.2d 629, 635 (1951)). The decision of whether to grant separate maintenance is solely left to the discretion of the Family Court. There was nothing about the Family Court filing that was frivolous or sanctionable. Therefore, it is respectfully submitted that this issue is without merit.

**D. Legal Malpractice / Sanctions**

The Respondent attempts to claim legal malpractice for the filing of a Complaint in Family Court that requests a Decree of Separate Maintenance, when there is no statutory ground for a divorce. The merits of this claim have already been addressed in this brief, and also by this Court in Theisen, *supra*. The Appellant cannot prevail on his claim as a matter of law.

The Circuit Court correctly held that an attorney-client relationship is necessary to maintain an action for attorney malpractice. Hall v. Fedor, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002). The Appellant was not represented by the Respondents. Rather, the Respondents represented the Appellant's wife in a Family Court matter.

The Circuit Court correctly held that in professional negligence cases, such as legal malpractice, an affidavit of a qualified expert must accompany the filing of the Complaint. S.C. Code Ann. §15-36-100. No such affidavit was filed or presented in this case.

The Appellant's claim for legal malpractice is without merit. The Circuit Court dismissed the Appellant's case on proper legal grounds, and no valid argument has been presented by the Appellant to have the Circuit Court's Order reversed.

**E. Res Judicata / Issue from 1990 in North Carolina**

The Appellant mentions the occurrence of some events in North Carolina back in 1990 where he allegedly lost his children. He states that suit has been filed in the U.S. Federal Court multiple times, but he has apparently not been given any relief. Based on the Appellant's assertions, it appears that some decision has been made in another tribunal, in which case *res judicata* would be applicable. A final judgment on the merits of an action precludes the parties or their privies from re-litigating issues that were or could have been raised in that action. Federated Dept. Stores, Inc. v. Moitie, 452 U.S. 394, 101 S.Ct. 2424 (citing Commissioner v. Sunnen, 333 U.S. 591, 597, 68 S.Ct. 715, 719, (1948)).

No allegations have been made to link these alleged events with the Respondents, and the Respondents do not know the relief sought by the Appellant. At the very least, the Appellant has failed to establish the necessary causal link to impose liability on any of the Respondents.

**F. Social Security Benefits**

The Appellant contends that by obtaining a divorce, Ms. Sanders will be losing the Appellant's social security benefits once he passes away. The Appellant's argument is not clear, but it seems that he is attempting to claim damages on Ms. Sanders' behalf, as a result of her decision to separate from the Appellant. In response to this issue, the Respondents would assert the following:

It is well settled law that the existence, causation and amount of damages cannot be left to conjecture, guess or speculation. Gray v. Southern Facilities, Inc., 256 S.C. 558, 183 S.E.2d 438 (1971) (citing Piggy Park Enterprises, Inc. v. Schofield, 251 S.C. 385, 162 S.E.2d 705 (1968)).

Standing to sue is a fundamental requirement for instituting an action. Connor Holdings, LLC v. Cousins, 373 S.C. 816, 44 S.E.2d 58 (2007) (citing Joytime Distribs. & Amusement Co. v. State, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999)). To the extent that Ms. Sanders suffers any loss by not receiving the Appellant's social security benefits when he passes away, the Appellant lacks standing to make a claim on her behalf.

**G. Spartanburg County to Establish Legal Procedures**

The Appellant contends that Spartanburg County should be required to set up procedures that affect the practice of law. The argument is without merit. It is well established in South Carolina that the Supreme Court is vested with the sole authority to regulate the practice of law. Article V, S.C. Constitution.

**H. Motions Dismissed in Family Court**

The Appellant asks this Court to intervene and grant relief for decisions made by the Spartanburg County Family Court after the filing of the Appellant's Complaint in the Court of Common Pleas. These matters were not properly raised before the Circuit Court, and therefore these issues should not be considered on appeal. Further, these issues should not be raised in the Circuit Court, as the Family Court has the exclusive jurisdiction to hear and determine actions relating to marital litigation and matters related thereto. S.C. Code Ann. §63-3-530.

**III. Appellant's Complaint Properly Dismissed**

The Circuit Court properly dismissed the Appellant's Complaint pursuant to the following legal precedent: (A) Hall v. Fedor, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002) (attorney-client relationship is necessary to maintain an action for attorney malpractice); (B) S.C. Code Ann. §15-36-100 (In professional negligence cases, an affidavit from a qualified expert is

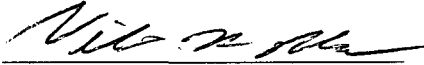
required to accompany the Complaint); (C) Article V, S.C. Constitution (The Supreme Court is vested with the sole authority to regulate the practice of law); and (D) S.C. Code Ann. §63-3-530 (The Family Court has the exclusive jurisdiction to hear and determine actions relating to marital litigation and matters related thereto). In his appeal, the Appellant has not advanced any legal arguments to show error by the Circuit Court. It is therefore respectfully submitted that the Circuit Court's dismissal of the Appellant's Complaint should be affirmed.

CONCLUSION

In light of the foregoing, it is respectfully submitted the decision of the Circuit Court, which dismissed the Appellant's Complaint, should be affirmed.

Respectfully submitted,

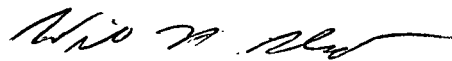
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By:   
William H. Rhodes

September 20, 2012

**CERTIFICATE OF COUNSEL**

This is to certify that the Respondent's Final Brief complies with the South Carolina Appellate Court Rule 211(b).



William H. Rhodes  
Attorney for Janneth E. Sanders and  
Burts Turner & Rhodes c/o Richard H. Rhodes

October 1, 2012

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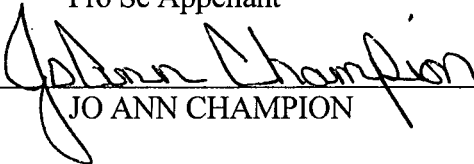
Respondent.

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This is to certify that on the 1<sup>st</sup> day of October, 2012, the undersigned, secretary to William Hardwick Rhodes, Esq., served a copy of the **RESPONDENTS FINAL BRIEF ON BEHALF OF JANNETH SANDERS AND BURTS TURNER AND RHODES, C/O RICHARD RHODES** by depositing a copy of the same into the United States Mail, postage pre-paid and in the correct amount to the following:

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JO ANN CHAMPION

SWORN to before me this 1<sup>st</sup>  
day of October, 2012.

 (SEAL)  
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 8/29/15