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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Daniel Coble, Circuit Court Judge
Case No.: 2025-CP-40-06986

Appellate Case No. 2026-000774

Brandi Barnett and Kevin Rubink,.....Plaintiffs,

v.

Luke Shealey, Brian Shealey, and Shealey Law Firm, LLC,.....Defendants,

of which Brandi Barnett is the Appellant and Luke Shealey is the..... Respondent.

RESPONDENT'S INITIAL BRIEF

COPELAND, STAIR, VALZ & LOVELL, LLP

This 10th day of August, 2026.

s/Douglas W. MacKelcan

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court correctly dismissed Appellant's Complaint against Respondent with prejudice where Appellant failed to file the required expert affidavit under S.C. Code § 15-36-100 and failed to state a claim against Respondent.

II. Whether the trial court correctly dismissed Appellant's Complaint against Respondent with prejudice where the trial court found that the claims asserted against Respondent were frivolous under the Frivolous Proceeding Sanctions Act (hereinafter "the Act"), S.C. Code § 15-36-10.

STATEMENT OF THE CASE

Respondent's Representation of Appellant and Appellant's Fee Dispute Board Complaint

This case arises out of Respondent's representation of Appellant in criminal matters. Appellant had multiple charges pending in both General Sessions and in Magistrates' Court in Georgetown County for failure to stop for a blue light, throwing bodily fluids, resisting arrest, and two (2) counts of assault and battery in the third (3rd) degree. *See* Ashley A. McMahan, Esq.'s June 3, 2025 letter. Appellant initially contacted Respondent about a possible legal malpractice case against an attorney, Marvin Pendarvis, who had settled a civil case of hers without her knowledge or consent. Appellant informed Respondent that he is primarily a criminal attorney and does not handle malpractice cases but that his firm's Of Counsel attorney, Chris Truluck, does. Respondent informed Appellant that he would handle her criminal matters but recommended Appellant consult with Bland and Richter (who was suing Marvin Pendarvis) or contact Mr. Truluck about the malpractice claim and the other civil matters pending. *Id.*

Respondent quoted Appellant \$12,000 for representation in her criminal matters, with \$8,000 due upfront. *See id.* Appellant met Respondent in person to hire him and to bring him

documents related to her case against Marvin Pendarvis. *See* Ashley A. McMahan, Esq.’s June 3, 2025 letter. Appellant retained Respondent for the criminal matters only and for an expungement of a prior conviction for unlawful use of 911. *Id.* The documents Appellant brought to Respondent included the contract Mr. Pendarvis signed agreeing to pay Appellant \$600,000 for settling her civil case without her knowledge. Respondent informed Appellant that law enforcement would be interested in her recordings of Mr. Pendarvis, the contract for the \$600,000, and information about what happened with the \$600,000 because it was likely misappropriated funds from Mr. Pendarvis’s other clients. *Id.* Appellant was not happy about this. Respondent then again noted that if his firm took on a malpractice claim, Mr. Truluck would have to be involved. *Id.* Respondent informed Appellant that he would have to share this information with Mr. Truluck so he could assess the merits of the malpractice case and determine whether his firm was interested in handling the case. *See id.*

Later, Respondent and Mr. Truluck spoke to Appellant on a conference call about her pending matters that urgently needed responses and to discuss whether Respondent’s firm would take on the malpractice case. *See* Ashley A. McMahan, Esq.’s June 3, 2025 letter. On the call, Respondent and Mr. Truluck told Appellant that law enforcement would want to speak to her and she would have to reveal the large payment Mr. Pendarvis made to her. Appellant told them she wanted to keep the issue between her and Mr. Pendarvis private. *Id.* Later, Appellant emailed Respondent with questions about her criminal case and then emailed him to say she was terminating their representation. *Id.* Respondent offered to return \$4,000 of the \$8,000 paid toward Appellant’s retainer. Appellant never responded to the refund offer other than to say reimbursement “will be determined.” *Id.*

Appellant then submitted a complaint to the South Carolina Resolution of Fee Disputes Board (the “Fee Disputes Board”) regarding Respondent’s representation of her. *See* Order Dismissing Appellant’s Notice of Appeal entered February 25, 2026 in Case No. 2025-CP-40-04675; *see generally* Compl. Allegedly, Appellant’s main issue with Respondent seems to be that when he referred her to Mr. Truluck, Respondent disclosed background information related to her finances, i.e., that she had received money from Mr. Pendarvis. *See* Ashley A. McMahan, Esq.’s June 3, 2025 letter. The attorney who investigated this claim for the Fees Disputes Board, Ashley A. McMahan, noted that Appellant “had gotten that money from Marvin Pendarvis and both [Respondent] and Mr. Truluck had expressed concerns to her that she may have to pay that back.” *Id.* Appellant “was very suspicious and angry when talking” to Ms. McMahan. *Id.* Ms. McMahan noted Appellant’s behavior toward her staff was consistent with the paranoid and suspicious behavior Appellant exhibited toward Respondent and Mr. Truluck once they reiterated she was going to need to account for the \$600,000 payment to Mr. Pendarvis. *Id.*

The Fee Disputes Board’s Decision

The Fee Disputes Board reviewed the parties’ submissions and spoke with the parties and the two other attorneys who handled matters related to Appellant’s cases. *See* Paul A. Meding, Esq.’s June 5, 2025 letter; *see also* Ashley A. McMahan, Esq.’s June 3, 2025 letter. Ms. McMahan determined that the \$12,000 fee charged by Respondent was reasonable considering the factors outlined in Rule 1.5(a) of the South Carolina Rules of Professional Conduct. *See* Ashley A. McMahan, Esq.’s June 3, 2025 letter. Respondent and his staff expended 21.3 hours of time and effort on Appellant’s representation to resolve her pending criminal issues. *Id.* As a result, the Fee Disputes Board ordered Respondent to return \$875.00 of the \$8,000 collected towards the retainer to Appellant. *Id.* Appellant appealed the Fee Disputes Board’s decision. The trial court affirmed

the Fee Disputes Board's decision. *See* Order Dismissing Appellant's Notice of Appeal entered February 25, 2026 in Case No. 2025-CP-40-04675.

Procedural History

On October 10, 2025, Appellant, *pro se*, filed her Complaint with non-party Kevin Rubink. *See* Compl. The Complaint alleges causes of action for civil conspiracy, fraud and fraud in the inducement, breach of trust with fraudulent intent, unjust enrichment/restitution, breach of contract w/ fraudulent act, equitable estoppel, and declaratory judgment. *Id.* at pp. 3-4. Appellant alleges that Respondent “coerce[d] [Appellant] into believing she had no choice but to retain [Respondent] under duress,” “divulged confidential information to his civil counterpart, Attorney Chris Truluck, in hopes of persuading [Appellant] to hire him to prosecute a civil case on her behalf,” and that Respondent “lied, threatened, and extorted [Appellant] while neglecting [his] contractual duties.” *Id.* at ¶ 45, 48-49.

On October 23, 2025, Respondent filed his Motion to Dismiss. *See* Defendants' Motion to Dismiss filed on October 23, 2025. On November 7, 2025, Appellant filed a response in opposition to Respondent's Motion to Dismiss and moved for sanctions and other relief against the defendants and their counsel. *See* Plaintiffs' Response in Opposition to Defendants' Motion to Dismiss and Motion for Sanctions and Fraud on the Court filed November 7, 2025. The trial court held a hearing on the Respondent's Motion to Dismiss on February 4, 2026. Appellant appeared *pro se*, and the undersigned counsel appeared on behalf of Respondent. After hearing all arguments made by the parties, the trial court took the matter under advisement. *See* MTD Hearing Tr. at p. 9:25-17:20; Form 4 Order entered February 6, 2026. The trial court then found that “[a]fter careful consideration of all arguments presented by Defendants in their written motion, the Motion to Dismiss [was] GRANTED with prejudice,” and directed Respondent to submit a more formal

order pursuant to Rule 5(b)(3), SCRCP. *See* Form 4 Order entered February 6, 2026. On February 25, 2026, the trial court entered the Order Granting Defendants’ Motion to Dismiss Plaintiffs’ Complaint. *See* Order Granting Defendants’ Motion to Dismiss Plaintiffs’ Complaint. This appeal followed.

STANDARD OF REVIEW

In reviewing a motion to dismiss, an appellate court applies the same standard of review as the trial court. *See Carolina Park Associates, LLC v. Marino*, 400 S.C. 1, 6, 732 S.E.2d 876 (2012) (citing *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245 (2007)). In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. If the complaint states a valid claim for relief, dismissal is improper. *Id.* “Questions of law may be decided with no particular deference to the trial court.” *Wiegand v. U.S. Auto. Ass’n*, 391 S.C. 159, 163, 705 S.E.2d 432 (2011).

ARGUMENT

I. The Trial Court’s Sanctions Holding Within its Order is Solely Against Kevin Rubink, Not Appellant

First, the trial court’s Order finding for sanctions is only against non-party Plaintiff Kevin Rubink. The Order explicitly states:

Plaintiff Rubink has evidenced a pattern of abusing the legal process in bringing frivolous proceedings and the potential remains for them to continue that practice unless severe sanctions are levied. As a result, pursuant to S.C. Code § 15-36-10(G)(3), I enjoin Plaintiff Rubink from filing any other suit on his own behalf. If Plaintiff Rubink desires to file a suit for a claim of his own after this Court’s Form 4 Order entered in this case on February 6, 2026, they must have the pleadings signed by an attorney licensed in South Carolina certifying that the filing complies with Rule 11, SCRCP. If the pleading does not comply with this Court’s directive, the Richland

County Clerk of the Court is instructed to reject any filings from Plaintiff.

See Court's Order entered February 25, 2026.

It is clear from the trial court's Order the filing restriction sanction is not imposed on the Appellant. As a result, Appellant's arguments on appeal on this issue are unnecessary, moot, and not ripe for appeal.

II. Appellant Dismissed Her Appeal of the Fee Disputes Board's Decision and, Thus, Any Issues Regarding the Fee Dispute Board's Decision Are Not Preserved for Appeal

It appears that Appellant may be seeking to reverse the trial court's findings on the Fee Disputes Board's final decision, which held that the Fee Disputes Board's final decision, dated June 5, 2025 could not be vacated because none of the circumstances in Rule 426, SCACR, Rule 20(f) applied such that there were no grounds for vacating the Fee Dispute Board's final decision. *See* Order Dismissing Appellant's Notice of Appeal entered February 25, 2026, in Case No. 2025-CP-40-04675, at pp. 4-6. To the extent that Appellant is seeking to appeal or vacate any determination of the Fee Disputes Board's final decision, such an argument is not preserved for appeal as Appellant dismissed her appeal of the trial court's decision on the Fee Disputes Board's final decision. *See* Court of Appeal's Order dismissing Appellate Case No. 2026-000783.

Further, these issues are not preserved for appeal in this case as Appellant's arguments regarding the "related fee dispute matter, 2025-CP-40-04675," were not before the trial court on this matter or brought before the trial court on Respondent's Motion to Dismiss. Specifically, Appellant's argument that the Fee Dispute Board's final decision and the proceeding are evidence of the lack of frivolousness of Appellant's Complaint is not ripe for review.

A great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the importance and absolute necessity of ensuring that all issues and arguments are presented to

the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court.

Elam v. S.C. Dep't of Transp., 361 S.C. 9, 23-24, 602 S.E.2d 772, 779-80 (2004). If an argument is presented to the circuit court but not ruled upon, the litigant is obligated to move for reconsideration to obtain a ruling to preserve the argument for appeal. *Kosciusko v. Parham*, 428 S.C. 481, 506, 836 S.E.2d 362, 375 (Ct. App. 2019).

The preservation requirement is imposed to allow the lower court to rule properly after considering the relevant facts, law, and arguments. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). This Court noted:

The losing party must first try to convince the lower court it is [sic] has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments . . . Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.

Id.

Appellate courts will not reverse a lower court on a ground that was not submitted to the lower court. *Powers v. City of Aiken*, 255 S.C. 115, 117, 177 S.E.2d 370, 371 (1970). After all, the court of appeals is a court of review. *Id.* The purpose of an appeal is to determine whether the lower court did something it should not have done or failed to do something it should have done. *Id.* To accomplish this review purpose, an argument must be sufficiently presented to the lower court so it has an opportunity to rule. *See id.* “An issue may not be raised for the first time in a motion to reconsider.” *Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009).

Here, Appellant's argument that the Fee Dispute Board's proceeding and final decision is evidence of the lack of frivolousness of Appellant's Complaint was not before the trial court. Appellant did not make this argument in opposition to Respondent's Motion to Dismiss or at the hearing on the Respondent's Motion to Dismiss. *See* Plaintiffs' Response in Opposition to Defendants' Motion to Dismiss and Motion for Sanctions and Fraud on the Court filed November 7, 2025; *see also* MTD Hearing Tr. at p. 9:25-17:20. Appellant also did not timely file a motion for reconsideration regarding this argument. Appellant filed a motion for reconsideration with the trial court after she filed this appeal with the Court of Appeals, and the trial court has not heard her motion. Therefore, since the Appellant did not raise her argument to the trial court regarding the Fee Dispute Board's final decision and the proceeding being evidence of the lack of frivolousness, this argument is not preserved for appeal and should not be considered by this Court.

III. The Trial Court Properly Dismissed Appellant's Complaint under S.C. Code § 15-36-100 and Rule 12(b)(6), SCRCP

The trial court properly held that Appellant's Complaint was subject to dismissal under S.C. Code § 15-36-100 for her failure to file an expert affidavit with the Complaint and under Rule 12(b)(6), SCRCP for failure to state a claim. First, Appellant failed to file an expert affidavit with the Complaint in support of the allegations contained in the Complaint, as is required pursuant to S.C. Code § 15-36-100. Specifically, S.C. Code § 15-36-100 states, "in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) . . . the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit." *See* S.C. Code Ann. § 15-36-100(C)(1). The statute expressly applies to actions for professional negligence against attorneys. *See id.* § 15-36-100(G)(2). The purpose is to protect

certain South Carolina professionals from “Frivolous Civil Proceedings” unsupported by expert testimony averring the extent and breach of the professional’s standard of care. “[I]f an affidavit is not filed . . . and the defendant against whom the affidavit should have been filed alleges, by motion to dismiss . . . that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim.” *See id.* § 15-36-100(C)(1). As a result, Appellant’s Complaint was properly subject to dismissal by the trial court.

South Carolina Courts have followed the express language contained in S.C. Code § 15-36-100 *et seq.* in finding that professional negligence actions require an expert affidavit filed with the complaint, and that said complaints are subject to dismissal if one is not filed with the complaint. For example, this Court affirmed the trial court’s dismissal of a complaint despite the plaintiff’s characterization of the cause of action as contractual in nature. *See H&H of Johnston, LLC v. Old Republic Nat’l Title Ins. Co.*, 405 S.C. 469, 474, 748 S.E.2d 72, 74 (Ct. App. 2013). This Court examined the specific allegations in the complaint to determine whether they fell within the scope of the practice of law. *Id.* This approach is consistent with the Court’s general discretion to determine the character of an action by its main purpose and broad outline of allegations, even if such a determination is inconsistent with the “intention or characterization of the pleader.” *See Bramlet v. Young*, 229 S.C. 519, 531, 93 S.E.2d 873, 879 (1956) (*citing Steizman v. Guirl*, 202 S.C. 498, 25 S.E.2d 731 (1943)).

While Appellant’s Complaint attempts to circumvent Section 15-36-100 by stating her causes of action are not founded on legal malpractice, the causes of action asserted against Respondent are all based upon the allegation that Respondent negligently represented Appellant and breached his duties to her when acting as her attorney. *See e.g.*, Compl. at ¶¶ 47-49, 58-68, 75-79. As a result, under S.C. Code § 15-36-100, Appellant was required to file an expert affidavit

with her Summons & Complaint, and her failure to do so subjects her Complaint to dismissal. *See* S.C. Code § 15-36-100(C)(1). As a result, the trial court correctly dismissed the Complaint against Respondent, and this Court should uphold the trial court's finding.

Second, Appellant's Complaint fails to allege any facts supporting that any actions or inactions by Respondent caused Appellant damages. *See Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). Rule 12(b)(6), SCRCP, permits a defendant to move for dismissal for a plaintiff's "failure to state facts sufficient to constitute a cause of action." South Carolina Rules of Civil Procedure, Rule 8(a), requires a pleading to contain "a short and plain statement of facts showing that the pleader is entitled to relief." Mere conclusory allegations, however, are insufficient to constitute a cause of action if unsupported by particularized allegations of fact. *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986). Appellant alleges, without any supporting facts or allegations, that Respondent's alleged conduct was "a recurring pattern constituting fraud, grand larceny, breach of trust and professional misconduct under South Carolina law." Here, the Complaint falls short of Rule 8, SCRCP, and only asserts generalizations and conclusory allegations against Respondent, without alleging what Respondent did (or did not do) that caused Appellant's alleged injuries, which are also not factually stated. The Court should therefore deny Appellant's appeal and reaffirm the trial court's Order dismissing the Complaint with prejudice on this additional ground.

IV. Even if preserved, the Trial Court Properly Found that the Appellant's Complaint was Frivolous Under the Frivolous Proceeding Sanctions Act (hereinafter "the Act"), S.C. Code § 15-36-10

If this Court finds that the Appellant's arguments regarding the lack of frivolousness of her Complaint against Respondent are preserved for appeal, the trial court's Order properly concluded that Respondent made the requisite showing that Appellant's Complaint and subsequent filings

were frivolous and unduly burdensome under the Act. The trial court also correctly held that the Appellant's Complaint was duplicative of her complaint filed with the Fee Disputes Board, Claim No. 2025JAN08, which necessitated dismissal of Appellant's Complaint with prejudice. *See* Order entered February 25, 2026, at ¶ 7.

Section 15-36-10(C)(1) of the Act provides, in pertinent part, that after a case has been dismissed, upon request of the prevailing party, the Court shall proceed to determine whether the claim was frivolous. An attorney, party, or *pro se* litigant shall be sanctioned for filing a frivolous pleading if the Court finds the attorney, party, or *pro se* litigant failed to comply with one of the following conditions:

- (i) the person has not read the frivolous pleading, motion, or document;
- (ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
- (iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or
- (iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

See S.C. Code § 15-36-10(A)(4).

Appellant violated the Act by virtue of her attempt to couch a meritless legal malpractice case as a far-reaching conspiracy and fraud claim, among other various claims. Appellant's

Complaint is duplicative of her complaint filed with the Fee Disputes Board. Pursuant to the Rules of Procedure for the South Carolina Resolution of Fee Disputes Board (the “Fee Disputes Board Rules”), Rule 19 provides that “[t]he decision of the Board shall be finding and binding upon the parties and shall be enforced in any court of competent jurisdiction.” The Fee Disputes Board held that Respondent’s fee “was reasonable in light of the factors set forth in Rule 1.5(a)” and that Appellant had no evidence to “dispute that [Respondent’s] office did not work on her case or failed to perform any of the work provided on [Respondent’s] time sheet.” *See* Ashley A. McMahan, Esq.’s June 3, 2025 letter. Despite the Fee Disputes Board’s findings, the Appellant continued to assert claims against Respondent with no factual basis to support them. *See* Order Dismissing Appellant’s Notice of Appeal entered February 25, 2026, in Case No. 2025-CP-40-04675. No reasonable attorney would have pressed such claims without the factual allegations to support said claims. Appellant’s tactics have been dilatory, vexatious (i.e., brought without sufficient grounds), oppressive, and unreasonable. As a result, the trial court properly granted dismissal of her Complaint against Respondent with prejudice and this Court should affirm the trial court’s Order.

V. Appellant’s Confidentiality and Redaction Arguments Are Meritless and Do Not Preclude Dismissal of the Complaint

Finally, Appellant seems to argue that there are “unredacted documents . . . online that the [Fee Disputes Board] submitted to [the court] involving my banking, my personal information, my social and that Respondent “introduced billing records and client-specific materials into public court filings,” which saves her Complaint from dismissal by the Court. *See* Appellant’s Initial Brief at p. 10. However, for the reasons stated above, the Complaint is still subject to dismissal. Additionally, this argument is not alleged in Appellant’s Complaint nor was it presented before the trial court. As a result, this argument is not preserved for appeal. *See Powers*, 255 S.C. at 117; *see also Johnson*, 381 S.C. at 177. At the trial court hearing on Respondent’s Motion to Dismiss,

Appellant only requested “that the court redact that information that that’s [sic] harmful,” which was allegedly “unredacted documents that’s still online that the board submitted to you guys involving my banking, my personal information, my social.” See MTD Hearing Tr. at p. 17:11-15 (emphasis added). Moreover, Rule 21 of the Fee Disputes Board Rules provides that “[a]ll proceedings shall be confidential, except that where a party to a proceeding subsequently resorts to legal proceedings in a court of record to appeal or to enforce the final decision of the Board,” and that “compliance with these Rules concerning appeal or enforcement does not constitute a violation of the confidentiality of the proceeding.” Here, any documents filed by Respondent in connection with his representation of Appellant were in response to Appellant’s appeal of the Fee Disputes Board’s final decision and, therefore, pursuant to Rule 21 of the Fee Disputes Board Rules, such filings were not a breach of any duty owed to Appellant. As a result, the Court should deny Appellant’s appeal and reaffirm the trial court’s Order.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the trial court’s Order dismissing the Appellant’s Complaint against Respondent with prejudice, and for such other and further relief as the Court deems just and proper.

This 10th day of August, 2026.

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