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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.

APPELLANT BRANDI N. BARNETT'S REPLY BRIEF

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PRELIMINARY STATEMENT

Respondent correctly observes that claim characterization turns on substance, not label. Blanchard held that section 15-36-100 does not impose a same-profession affiant requirement under subsection (A)(3), that subsection (C)(1) does not automatically dismiss otherwise valid non-negligence claims merely because a professional-negligence affidavit is deficient, and that claims whose pleaded particulars are negligence in substance remain governed by the statute. Appellant relies on those verified holdings. Her proposed application here is narrower than a universal claim-by-claim remand rule: the Court should not use a single malpractice label as a substitute for deciding whether any pleaded theory is both (1) legally viable under ordinary pleading rules and (2) actually grounded in professional negligence.

Respondent's own brief identifies claims for civil conspiracy, fraud and fraud in the inducement, breach of trust with fraudulent intent, unjust enrichment/restitution, breach of contract with fraudulent act, equitable estoppel, and declaratory judgment. Resp. Br. pp. 4-5. It also quotes Complaint paragraphs 45 and 48-49, which allege coercion in obtaining the engagement, disclosure of information to Attorney Chris Truluck, and alleged lying, threats, and extortion while contractual duties were being performed. Resp. Br. p. 4. Those allegations are not automatically equivalent to negligent legal performance merely because the defendant is a lawyer. Whether any count ultimately survives, however, remains subject to its own elements, Rule 9(b) where fraud is alleged, causation, damages, Cowart, and Rule 12(b)(6). The Fee Disputes Board, sanctions, and confidentiality issues likewise require careful limits. Appellant does not ask this Court to revisit the Board's $875 determination or the separate judgment in Case No. 2025-CP-40-04675. She does not challenge paragraph 16's Rubink-only prefiling injunction as though it applied to her. And she does not seek a standalone appellate ruling on the February 4 oral redaction request that the February 25 order did not expressly decide. The Reply addresses only the dismissal and any operative adverse determination actually applicable to Barnett.

A Rule 12(b)(6) dismissal is reviewed under the same standard applied by the circuit court. If the facts alleged and reasonable inferences, viewed favorably to the plaintiff, would entitle the plaintiff to relief on any theory, dismissal is improper. Carolina Park Assocs., LLC v. Marino, 400 S.C. 1, 6, 732 S.E.2d 876, 879 (2012).

ARGUMENT

I. BLANCHARD'S VERIFIED HOLDINGS REQUIRE SUBSTANCE, NOT LABELS; APPELLANT'S PROPOSED APPLICATION REMAINS SUBJECT TO ORDINARY PLEADING RULES

Respondent argues the Complaint is, in substance, legal malpractice and therefore subject to section 15-36-100. Resp. Br. pp. 8-10. Appellant agrees that labels do not control. H&H of Johnston looks to the nature of the alleged conduct and the capacity in which the lawyer acted; a contract label did not avoid section 15-36-100 where the complained-of advice constituted the practice of law. 405 S.C. at 474-75, 748 S.E.2d at 74-75.

Blanchard adds two points material here. First, it rejected a construction of subsection 15-36-100(C)(1) that would dismiss a complaint as a whole merely because the professional-negligence affidavit requirement was unmet; otherwise valid non-negligence claims are not automatically dismissed on that basis. Second, the Court treated contract and warranty theories as subject to the statute when their pleaded particulars were grounded in negligence. Blanchard, Op. No. 28312, section III.C. Appellant therefore asks this Court to apply the same substance-over-label logic to the actual allegations in this record, without suggesting that Blanchard itself created a universal remand rule for every mixed pleading.

A. The record-supported allegations show why the statutory and ordinary pleading inquiries must remain distinct.

Respondent's brief supplies the only exact Complaint paragraph pins necessary for this Reply. It quotes paragraph 45 as alleging that Respondent coerced Barnett into believing she had no choice but to retain him under duress; paragraph 48 as alleging that he divulged confidential information to Attorney Chris Truluck in hopes of persuading Barnett to retain Truluck for a civil matter; and paragraph 49 as alleging that Respondent lied, threatened, and extorted Barnett while neglecting contractual duties. Resp. Br. p. 4; Compl. paras. 45, 48-49.

Those allegations identify alleged intentional acts, but this Reply does not overstate what follows. Paragraph 45, standing alone as quoted by Respondent, does not establish all elements of common-law fraud. Paragraph 48 identifies an alleged disclosure, but Rule 1.6 does not itself create a private damages cause of action, and Appellant does not ask the Court to invent one. Paragraph 49 uses fraud-related language, but a fraud theory remains subject to Rule 9(b) and the substantive elements of fraud. The significance of the quoted paragraphs is therefore limited but important: they demonstrate why section 15-36-100 cannot itself answer every ordinary pleading question simply by relabeling the entire Complaint as malpractice.

B. Fraud-based theories remain subject to Rule 9(b), and Appellant does not ask the Court to excuse missing elements.

South Carolina Rule 9(b) requires the circumstances constituting fraud to be stated with particularity. Common-law fraud requires a representation, falsity, materiality, knowledge or reckless disregard, intent that the representation be acted upon, the hearer's ignorance, reliance, a right to rely, and consequent and proximate injury. See Schnellmann v. Roettger, 373 S.C. 379, 382, 645 S.E.2d 239, 241 (2007). Appellant therefore does not present fraud or fraudulent inducement as an automatic surviving claim merely because the Complaint used intentional language. If the Complaint lacks those particulars, the proper ground is ordinary pleading insufficiency, not the absence of a professional-negligence affidavit.

The same restraint applies to breach of contract accompanied by a fraudulent act. That cause requires a breach of contract, fraudulent intent relating to the breach, and a fraudulent act accompanying the breach. Conner v. City of Forest Acres, 348 S.C. 454, 465-66, 560 S.E.2d 606, 612 (2002). Respondent's brief confirms the engagement terms and a later $4,000 refund offer, Resp. Br. pp. 2-4, but this Reply does not transform that offer into a new contract or admission. Any contract-based theory survives only if the actual Complaint pleads an enforceable contractual undertaking, breach, and the additional elements required by South Carolina law without depending on proof of negligent legal performance.

C. The narrow appellate point is that section 15-36-100 and Rule 12(b)(6) do different work.

Appellant does not contend that classification as non-negligence immunizes a count from Rule 12(b)(6). Nor does she ask the Court to revive a claim whose elements, causation, or damages were not adequately pleaded. Her point is narrower: Blanchard rejected automatic dismissal of otherwise valid non-negligence claims merely because the professional-negligence affidavit requirement is unmet. A theory that fails Rule 9(b), fails its substantive elements, duplicates the Fee Board dispute under Cowart, or otherwise fails Rule 12(b)(6) may be affirmed on that ground. But section 15-36-100 should not operate as a categorical substitute for those separate analyses.

The common-knowledge exception remains only a secondary safeguard. Section 15-36-100(C)(2) addresses a pleaded specification of negligence that lies within ordinary common knowledge and experience. See Brouwer v. Sisters of Charity Providence Hosps., 409 S.C. 514, 521-22, 763 S.E.2d 200, 204 (2014). Appellant does not contend that legal strategy or complex professional judgment falls within that exception. She relies on it only for genuinely ordinary factual matters, such as whether a communication was made or what an identified document says.

II. THE FEE DISPUTE MATERIAL IS USED ONLY BECAUSE THE APPEALED ORDER AND RESPONDENT RELY ON IT; APPELLANT DOES NOT SEEK A COLLATERAL APPEAL OF THE BOARD DECISION

Respondent argues that Fee Disputes Board matters are unpreserved or amount to a collateral appeal. Resp. Br. pp. 6-8. Appellant does not seek review in this appeal of the Board's June 5, 2025 determination, the $875 award, or the judgment entered in Case No. 2025-CP-40-04675. Those matters are relevant only to the extent the February 25 order relied upon the fee proceeding in characterizing this civil action as duplicative or frivolous, or Respondent relies on those materials in defending that judgment.

The appealed order states that Barnett's civil complaint was duplicative of Fee Disputes Board Claim No. 2025JAN08. Order para. 7. The February 4 transcript confirms that the fee/refund controversy was presented to the circuit court. Barnett told the court that the Board had identified a Rule 1.5 issue and that Respondent had offered to refund half the fee. Tr. p. 5, ll. 7-12. Later, she explained that Respondent had said he would return half and that she went to the Board for help. Tr. p. 16, ll. 21-25 through p. 17, l. 1.

Accordingly, Respondent's collateral-appeal argument addresses relief Appellant does not request. The Board history is used only to test the appealed order's duplicativeness rationale and any operative finding that Barnett proceeded without a nonfrivolous factual or legal basis.

III. COWART IS A MATERIAL LIMIT: FEE-BASED THEORIES CANNOT BE REPACKAGED, AND THIS REPLY DOES NOT SEEK DOUBLE RECOVERY

Cowart v. Poore, 337 S.C. 359, 523 S.E.2d 182 (Ct. App. 1999), held that a former client could not relitigate the same fee dispute under different theories where the later claims arose from the same fee-dispute facts and threatened double recovery for a single wrong. Id. at 364-65, 523 S.E.2d at 185. Appellant accepts that obstacle rather than minimizing it.

Appellant therefore does not seek a second determination of the Board-fixed $875 refund, a recalculation of the fee, enforcement of the unaccepted $4,000 offer as though it were automatically a binding settlement, or double recovery for the same fee injury. To the extent any count in 06986 merely repackages the fee dispute under a different label, Cowart may constrain or defeat that count.

Rule 416 reinforces the same boundary. Rule 9 places the fee dispute within the Board's exclusive jurisdiction upon the client's consent, and Rule 19 makes the final Board determination binding as to that dispute. Rule 2 separately contemplates referral of alleged misconduct other than fee reasonableness. That distinction does not create a new civil claim, but it confirms that the Board's jurisdiction over the fee amount and a court's analysis of some other independently pleaded civil wrong are not necessarily the same inquiry.

The present record, as summarized in Respondent's brief, does not identify quantified non-fee damages or a standalone non-fee civil cause of action for Complaint paragraph 48. Appellant therefore does not rely on the disclosure allegation as an independent damages claim. She uses it only to rebut the categorical duplicative/professional-negligence and related frivolousness characterization, and only insofar as the allegation is incorporated into an independently pleaded count that otherwise satisfies its own elements, causation, damages, preservation, and Rule 12(b)(6). Rule 1.6 remains background only and is not asserted as a source of civil liability.

IV. THE RUBINK-ONLY PREFILING INJUNCTION IS NOT CHALLENGED; ANY OPERATIVE SANCTION OR FRIVOLOUSNESS DETERMINATION AGAINST BARNETT MUST REST ON HER OWN CONDUCT AND RECORD

Appellant agrees that paragraph 16's prefiling injunction is directed to Kevin Rubink, not Barnett, and she seeks no appellate relief from that restriction. Her challenge extends only to any operative frivolousness or sanction determination that the February 25 order actually applies to Barnett. To the extent collective language concerning 'Plaintiffs' creates no sanction or other adverse disposition against Barnett, no separate relief from rhetoric alone is necessary. Paragraphs 9, 13, 14, and 15 use collective language concerning 'Plaintiffs,' while the transcript records Respondent's counsel telling the circuit court that the preexisting gatekeeper ground 'only applies to Mr. Rubink.' Tr. p. 11, ll. 1-2. The order's litigation-history discussion is directed to Rubink; it does not identify comparable abusive-filing history for Barnett.

If any sanction or operative frivolousness determination is applied to Barnett, section 15-36-10 requires a person-specific basis. Subsection (C)(2) provides that unless the court finds by a preponderance of the evidence that the attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, that person shall not be sanctioned. Subsection (J) further excludes litigation for which the attorney or pro se litigant establishes a nonfrivolous basis, including a good-faith argument for extension, modification, or reversal of existing law.

Collective attribution based on another litigant's history cannot substitute for the statutory inquiry into Barnett's own conduct and basis for proceeding.

Appellant does not contend that section 15-36-10 contains no sanction authority in connection with a Rule 12(b)(6) proceeding. The question is narrower: whether any operative determination against Barnett is supported by statutory authority and findings tied to Barnett's own record.

V. RESPONDENT'S PRESERVATION ARGUMENT DOES NOT MAKE THE PLEADED DISCLOSURE ALLEGATION 'NEW ON APPEAL'; THE UNRESOLVED ORAL REDACTION REQUEST IS NOT PRESENTED FOR A STANDALONE APPELLATE RULING

Respondent's preservation argument combines two distinct matters. First, Respondent's own Statement of the Case acknowledges that Complaint paragraph 48 alleged disclosure of confidential information to Attorney Chris Truluck in connection with an effort to persuade Barnett to retain him for a civil matter. Resp. Br. p. 4. That allegation was before the circuit court when it dismissed the Complaint with prejudice. Appellant does not identify paragraph 48 as a standalone non-fee civil cause of action, rely on Rule 1.6 as creating a freestanding private damages action, or ask this Court to create a new confidentiality tort. It is used only to show what was pleaded below, rebut the categorical duplicative/frivolous characterization, and, if incorporated into an independently pleaded count, only subject to that count's ordinary legal requirements.

Second, at the February 4, 2026 hearing, Appellant separately asked the circuit court to redact publicly accessible material containing banking, personal, and Social Security information. Tr. p. 17, ll. 11-15. Respondent's Initial Brief quotes that request. Resp. Br. pp. 12-13. The transcript therefore establishes that the targeted-redaction concern was raised below.

The preservation posture is different. An issue ordinarily must be raised to and ruled upon by the lower court to be preserved. I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). Where an issue is raised but the trial court fails to rule, the losing party ordinarily must obtain a ruling. Id. The February 25 order does not expressly adjudicate the separate oral targeted-redaction request. Appellant therefore does not ask this Court to treat silence as an adverse ruling or issue a standalone appellate redaction order.

Rule 41.2 separately governs protected identifiers, including Social Security numbers and financial-account information. Rule 416, Rule 21 contains a judicial-proceeding exception to Fee Board confidentiality, while Rule 1.6 addresses professional confidentiality and its exceptions. None of those provisions changes the narrow preservation concession above. Any independently available Rule 41.2 corrective relief remains distinct from the merits of this appeal.

CONCLUSION AND RELIEF REQUESTED

1. reverse the dismissal with prejudice to the extent it rested on a categorical application of section 15-36-100 to otherwise valid non-negligence claims, consistent with Blanchard's verified holdings;
2. to the extent necessary, remand for application of section 15-36-100 and Rule 12(b)(6) to the actual pleaded theories under their governing elements and pleading rules, without treating Blanchard as creating a universal claim-by-claim remand rule;
3. vacate or remand any operative frivolousness or sanction determination actually imposed upon Barnett that cannot be sustained under section 15-36-10 and findings tied to Barnett's own conduct and record; and
4. grant such further relief as is appropriate to effectuate this Court's disposition of the appealed judgment.

Appellant does not seek in this appeal to vacate or recalculate the separate Fee Disputes Board determination, vacate the judgment in Case No. 2025-CP-40-04675, disturb the Rubink-only prefiling injunction, obtain double recovery for the same fee injury, create a freestanding damages cause of action under Rule 1.6, excuse Rule 9(b), or obtain a separate appellate ruling on the unresolved February 4 redaction request.

Respectfully submitted,

s/ Brandi N. Barnett

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CERTIFICATE OF SERVICE

I certify that on August 19, 2026, I served a true and correct copy of this Appellant's Reply Brief upon counsel of record for Respondent by electronic mail at the addresses below, contemporaneously with electronic filing of the same document with the South Carolina Court of Appeals at ctappfilings@sccourts.org.

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