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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

Hon. William C. McMaster III, Circuit Court Judge

Case Nos. 2022-CP-10-04031
2019-CP-10-05892
2018-CP-10-05802

Consolidated as Appellate Case No.: 2026-000191

John Doe 305, Julie McDonald, and Richard McDonald, Appellants,

v.

Lawrence E. Richter, Jr., David K. Haller, Richter and Haller, LLC, and The Bishop of Charleston a corporation Sole, Defendants,

AND

Jane Doe 304, Appellant,

v.

Lawrence E. Richter, Jr., David K. Haller, Richter and Haller, LLC, and The Bishop of Charleston a corporation Sole, and Robert E. Guglielmone, Bishop of Charleston, Defendants,

AND

Robert Chimento, Appellant,

v.

Lawrence E. Richter, Jr., David K. Haller, Richter and Haller, LLC, and The Bishop of Charleston a corporation Sole, and Robert E. Guglielmone, Bishop of Charleston, Defendants,

of which Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC are the Respondents

FINAL JOINT BRIEF OF RESPONDENTS LAWRENCE E. RICHTER, JR., DAVID K. HALLER, AND RICHTER AND HALLER, LLC

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STATEMENT OF THE CASE

The Appellants' brief contains an "Introduction" comprised entirely of argument, and a Statement of the Case containing various other disputed matters. Therefore, Respondents Lawrence E. Richter, Jr., David K. Haller, and Richter & Haller, LLC ("Respondents") have included their own Statement of the Case and Statement of Facts. *See* Rule 208(b)(2), SCACR.

Robert Chimento

Mr. Chimento filed his action on December 6, 2018, asserting causes of action against Respondents for legal malpractice and against The Bishop of Charleston a Corporation Sole, and Robert E. Guglielmone, Bishop Of Charleston (collectively, "the Bishop") for aiding and abetting breach of fiduciary duty. (Compl., C/A No. 2018-CP-10-05802, filed December 6, 2018, R. p. 248.) While he alleged he was sexually abused by a priest of the Diocese of Charleston between 1973 and 1975, the record contains no indication he asserted any claim against that priest, the Diocese, or the Bishop for those injuries.

Chimento further alleged he was a non-resident of South Carolina and an absent class member in the underlying class action. (Compl. ¶¶ 1, 11, and 12, R. pp. 248, 250.) He alleged the Lawyer Defendants "(a) pled a class action in 2005, (b) settled that class action in 2006, and (c) sought, and obtained, class certification in 2007 by a South Carolina court as part of that class action. The classes defined in that action included a class of individuals who were sexually abused by persons employed by the Bishop of Charleston." (Compl. ¶ 13; R. p. 250.)

Chimento alleged he was an absent class member to whom the Lawyer Defendants "assumed" fiduciary duties "[i]n pleading the class action, as a matter of law[.]" (Compl. ¶ 15; R. pp. 250-51.) He also alleged his claims depended on the outcome of a then-pending appeal, Appellate Case No. 2017-001996, in which other plaintiffs sought reversal of an order granting summary judgment to the Respondents on identical legal malpractice claims brought on behalf of ten other individuals. Id. In that appeal, the Court of Appeals affirmed the summary judgment order *per curiam* on March 3, 2021. (Opinion in Appellate Case No. 2017-001996, R. pp. 238-41.)

Chimento served his complaint on the Respondents on April 2, 2019. On May 1, 2019, Respondent Haller moved to dismiss based upon Judge Nicholson's order and Chimento's failure to satisfy the expert affidavit requirement in S.C. Code Ann. § 15-36-100 (Law Co-op 1976, as amended). (Haller Motion to Dismiss, May 1, 2019, R. pp. 265-93.) Haller attached Judge Nicholson's August 11, 2017 order and the notice of appeal to the motion as exhibits. Respondents Richter and Richter & Haller, LLC served their motion to dismiss on identical grounds the same day. (Richter Motion to Dismiss served May 1, 2019, and filed May 3, 2019; R. pp. 294-317.)

On September 24, 2019, the Court scheduled the Defendants' motions for a hearing to take place on October 30, 2019. On October 27, 2019, Chimento filed a memorandum opposing the Defendants' motions to dismiss. (R. pp. 320-48.) He also filed a December 2018 expert affidavit from Michael Virzi together with the 2016 affidavit from Mr. Virzi that was omitted when the complaint was filed originally. (R. pp. 330-42.) Chimento also filed an August 31, 2007 Order entered in the underlying class action cases. (R. pp. 343-48.)

In his memorandum Chimento argued,

> Richter, Haller, and their firm were class counsel for a 2007 class action settlement. Complaint ¶ 12. The plaintiff was an absent member of that class, as he resided out of state, Complaint ¶ 1, where there was no advertising made of the class action. As noted above in Complaint ¶ 16, the lawyer defendants voluntarily assumed fiduciary duties to the plaintiff and other absent members of the class. See generally, Complaint ¶¶ 15 to 19.

(Pl. Memo. Opp. at 2, October 27, 2019; R. p. 321.)

The October 30, 2019, hearing proceeded as scheduled before Judge Bentley Price. However, before Judge Price ruled on the motions, the Supreme Court issued an Order appointing the Honorable J. Derham Cole to preside over the remaining proceedings in this case. (Order Appointing Judge Cole, April 19, 2021; R. p. 63.)

Jane Doe 304

Jane Doe 304 filed her action on November 10, 2019, asserting a single cause of action against the Respondents for "professional negligence…breach of fiduciary duty, imposed or assumed." (Compl., C/A No 2019-CP-10-05892, R. p. 733.) Like Chimento, she included a second cause of action against the Diocese for aiding and abetting breach of fiduciary duty. (R. pp. 747-749.)

Jane Doe 304 did not file an expert affidavit with her complaint. Instead, she alleged,

> Pursuant to S.C. Code § 15-36-100, this complaint will be timely amended to include an affidavit such as has already been provided in similar cases specifying the various negligent acts or omissions of the Richter defendants, and the factual basis of the negligent acts or omissions of the Richter defendants which constitute the breach of fiduciary duty.

(Compl. ¶ 52, R. p. 745.)

On December 9, 2019, the Diocese defendants, The Bishop of Charleston A Corporation Sole, and Robert E. Guglielmone, Bishop of Charleston ("Diocese Defendants") removed the case to federal court. (Notice of Removal filed December 9, 2019, in C/A No. 2019-CP-10-05892, R. p. 750.)

On December 23, 2019, Jane Doe 304 filed an amended complaint with a twelve-page affidavit from Michael Virzi. (Amended Complaint with exhibit, C/A No. 2:19-cv-03409-RMG, December 23, 2019; R. pp. 753-82.)

On February 20, 2020, the case was remanded back to state court. (Text Order to Remand, C/A No. 2:19-cv-03409-RMG, February 20, 2020; R. pp. 30-31.)

Jane Doe 304 then filed a second amended complaint on February 27, 2020, in which she asserted the same single cause of action against the Respondents for "professional negligence…breach of fiduciary duty, imposed or assumed," as well as the cause of action against the Diocese Defendants for aiding and abetting breach of fiduciary duty. (Second Am. Compl. at 14-15, C/A No 2019-CP-10-05892, R. pp. 783-800.) In that amended pleading, Jane Doe 304 alleged she "was sexually abused multiple times over a three-year period, 1959 to 1962, by Frederick Hopwood," a priest of the Diocese of Charleston. (Compl. ¶ 1, R. p. 783.) However, the pleading included no indication she asserted any claim against the Diocese for those injuries.

She served the second amended complaint on Richter, individually, and Richter & Haller by process server on March 6, 2020. (Affidavit of Service as to Richter filed March 23, 2020, C/A No 2019-CP-10-05892, R. p. 3629; Affidavit of Service as to Richter & Haller filed March 23, 2020, C/A No 2019-CP-10-05892, R. p. 3630.)

On March 18, 2020, Haller filed a motion to dismiss. (Mot. to Dismiss, C/A No 2019-CP-10-05892, March 18, 2020; R. pp. 813-40.)

On April 6, 2020, Richter and Richter & Haller moved to dismiss. (Mot. to Dismiss, C/A No 2019-CP-10-05892, April 6, 2020; R. pp. 841-42.)

Because Jane Doe 304 alleged her claims depended on the then-pending appeal from the order granting the Respondents summary judgment in eight prior, similar malpractice cases, Jane Doe 304 and the Respondents submitted a joint motion to stay the case on June 3, 2020. The joint motion submitted by Appellants Jane Doe 304 and the Respondents cited in part "the similarity of issues presented in this case and a series of cases currently pending before the Court of Appeals on appeal from a grant of summary judgment in favor of all defendants, bearing the name John Doe 2, et al. v. Bishop of Charleston, et al., Appellate Case No. 2017-001996." (Joint Motion to Stay Case, C/A No 2019-CP-10-05892, June 3, 2020; R. pp. 843-44.) The joint motion further provided, "The moving parties believe that staying this case pending a final appellate decision will serve the interests of preserving judicial resources and efficiency, as any decision resulting from the appeal will have a significant effect on the issues in this case." Id. The circuit court granted the motion and entered an order staying the case on June 8, 2020. (Order, C/A No 2019-CP-10-05892, June 8, 2020; R. pp. 32-33.)

John Doe 305, Julie McDonald, and Richard McDonald

John Doe 305, Julie McDonald, and Richard McDonald (collectively, "the McDonald Appellants") filed a summons and complaint in the circuit court on August 30, 2022, against the Respondents and The Bishop of Charleston a Corporation Sole ("the Bishop"). (Complaint, C/A No. 2022-CP-10-04031; R. p. 1108.) They alleged John Doe 305 was an absent class member born before August 30, 1980, who was sexually abused as a minor by a priest of the Diocese and who has never asserted a claim against the Diocese. (Compl. ¶¶ 6-8, R. pp. 1112-13.) They also alleged that John Doe 305 did not learn about the class action until November 2019 because the notice plan for the class action settlement was narrowed from a nationwide plan to "eliminate[] any notice in the state where John Doe 305 resided." (Compl. ¶ 10, R. p. 1113.) While the complaint included a variety of causes of action, it did not include any claim against the Diocese for the sexual abuse John Doe 305 alleged.

The McDonalds participated in the class action settlement in 2007 and 2008, over fourteen years before filing the complaint. Id. at ¶ 9. They alleged that "within three years of this filing the McDonalds first learned of information class counsel fraudulently concealed from them before charging them a fee class counsel was not authorized by any order to charge." Id. Nearly two years prior to filing their complaint, the McDonald Appellants had filed a petition in the original jurisdiction of the Supreme Court of South Carolina which had been denied, as well as motions in the underlying class action cases. (See Petition for Original Jurisdiction, October 20, 2020, R. pp. 845-945; Order of Supreme Court Denying Petition, April 19, 2021, R. pp. 63-64; Order of Supreme Court, June 15, 2021, R. pp. 65-66; Order of Supreme Court, September 10, 2025, R. pp. 77-78; McDonald Mot. to Intervene, August 29, 2022, R. p. 2385; Letter from Meyers to Judge Taylor, November 16, 2022, R. pp. 3659-60; Order, March 24, 2023, R. pp. 192-96.) None of their prior filings were successful. Id.

In their complaint, the McDonald Appellants asserted causes of action for (i) declaratory judgment, (ii) legal malpractice, (iii) aiding and abetting breach of fiduciary duty, (iv) civil conspiracy, conversion, accounting and disgorgement, and (v) breach of contract. (Compl., C/A No. 2022-CP-10-04031, August 30, 2022; R. pp. 1110-44.) The McDonald Appellants never served the lawsuit on any of the named defendants.

On September 2, 2022, the defendant Bishop removed the case to federal court. (Notice of Removal filed September 2, 2022, in C/A No. 2022-CP-10-04031, Appendix p. 1.) The District

Court remanded the case back to the circuit court on June 12, 2023. (Order Remanding Case, C/A No. 2:22-cv-02940-RMG, June 12, 2023, R. p. 67.)

Following remand, the McDonald Appellants did not serve the lawsuit on any of the named defendants.

On August 30, 2023, Appellants' counsel wrote counsel for Richter:

> Judge Gergel remanded this case to Circuit Court on June 12.
>
> Mr. Dukes has a motion to dismiss pending which was filed shortly after the remand.
>
> No other party has made a responsive pleading, but all parties made an appearance in federal court in response to the removal motion.
>
> A motion for default may be in order as to those parties who have made no responsive pleading to the Summons and Complaint.
>
> If by email sent to me not later than September 4 you will acknowledge on behalf of each of your clients acceptance of the attached originally filed summons and complaint, I am glad to extend to October 4 your time to file a responsive pleading.
>
> Mr. Dukes, of course, has made a responsive pleading so has no obligation to respond further at this time.

(E-mail from Meyers to Bruner, August 30, 2023, R. p. 3631.) Two days later, counsel for Richter wrote:

> I have had a chance to dig into this, and here is what I see. The summons and complaint were never served on the lawyer defendants. After the case was removed to federal court, we filed a motion to remand and a motion to dismiss.
>
> If it is in fact your position that now, after the case has been remanded to state court, the lawyer defendants are in default, then I ask you to provide me the date you believe their time to respond began to run. That should be easy enough to provide in short order.
>
> Respectfully, it is our position that if, as you contend, the filings in federal court are now of no moment, then the failure to serve the summons means the circuit court has no personal jurisdiction over the lawyer defendants. Moreover, the failure to serve the summons and complaint either within the three-year statute of limitations (which has expired according to the allegations in the complaint) or

> within 120 days of the date of filing as required by Rule 3, SCRCP, and by statute means the action has not been "commenced" with regard to the lawyer defendants.
>
> Based upon the issue you raise and the threat of default proceedings, we filed a motion to dismiss today that raises the failure to serve the summons as well as other issues raised in the motion filed in the District Court.
>
> Because the summons was never served, I did not receive any email from the clerk, so I'm not sure what email you're referring to.
>
> With regard to a scheduling order, I have no problem accommodating Rich's plans this Fall. However, I'm not sure I can commit to anything until the motions to dismiss are heard.
>
> I look forward to hearing from you.

(E-mail from Bruner to Meyers, September 1, 2023, R. p. 3632.) In their motion to dismiss filed September 1, 2023, Richter and Richter & Haller raised the insufficiency of service and the resulting lack of jurisdiction, among other Rule 12(b) grounds. (Mot. to Dismiss, September 1, 2023, R. p. 1417.) Four days later, Haller moved for dismissal on the same grounds. (Mot. to Dismiss, September 5, 2023, R. p. 1789.)

<u>Consolidated Proceedings</u>

On June 1, 2022, Chimento and Jane Doe 304 filed a twenty-three-page memorandum in opposition to the motions to dismiss along with 275 pages of exhibits, which included affidavits, letters, transcript excerpts, and other materials outside of the complaint. (Plaintiffs' Consolidated Memorandum Opp. Defendants' Motions, June 1, 2022; R. pp. 349-647.) In their brief, they argued their claims "arise out of the conduct of a class action lawsuit" where "[t]he [Lawyer Defendants] and their firm were class counsel." (Pl.'s Consolidated Memorandum Opp. Defendants' Motions, June 1, 2022, at 2, R. p. 350.)

On April 30, 2024, Chimento and Jane Doe 304 filed a Notice of Supplemental Authority in opposition to the Respondents' motions together with fifty-nine pages of exhibits. (Notice of Supplemental Authority, R. pp. 648-712.)

On September 10, 2025, the Supreme Court reassigned all three actions to Judge McMaster, (Order Appointing Judge McMaster, R. pp. 77-78.), who promptly scheduled a motions hearing for October 7, 2025. Prior to the hearing, the Respondents and the Appellants submitted additional briefing and other materials, including the record from the underlying class action cases, from prior lawsuits attorney Meyers had filed against Richter & Haller, and from various appeals filed in this litigation, including the record from the appeal of the August 2017 order granting Richter & Haller summary judgment. (See, e.g., Objection to Class Settlement, filed by Meyers, February 2, 2007, R. pp. 2330-2338; Tr. of Hearing, March 9, 2007, R. pp. 3156-3340; Motion to Alter or Amend, August 6, 2007, R. pp. 2347-63; Memorandum in Support of Motion to Alter or Amend, August 22, 2007, R. pp. 2364-66; Tr. of Hearing, January 29, 2009, R. pp. 3434-3577; Order on Lawyer Defendants' Motions for Summary Judgment, filed August 11, 2017, R. pp. 217-37; Opinion of S.C. Court of Appeals, March 3, 2021, in Appellate Case No. 2017-001996, R. pp. 238-40; Order of S.C. Supreme Court, April 19, 2021, in Appellate Case No. 2020-001415, R. p. 63; Order of S.C. Supreme Court, June 15, 2021, in Appellate Case No. 2020-001415, R. p. 65; Order of S.C. Supreme Court, August 6, 2021, in Appellate Case No. 2021-000668, R. p. 242; Order of S.C. Court of Appeals, October 25, 2021, in Appellate Case No. 2017-001996, R. p. 244; Order of S.C. Supreme Court, January 11, 2022, in Appellate Case No. 2021-001525, R. p. 246.)

On October 2, 2025, the McDonald Appellants filed a memorandum in opposition to the Respondents' motions to dismiss with additional materials, including nine exhibits. (R. pp. 1791-1822.) The following day, the Respondents filed a supplemental memorandum in support of their motions to dismiss. (Appendix pp. 4-46.)

At the October 7, 2025 hearing, counsel for the parties appeared in person and argued the Respondents' motions. The Court noted the materials the Respondents had provided (R. p. 3101, line 13 - p. 3102, line 1; R. p. 3102, lines 7-10; R. p. 3153, line 3 - p. 3154, line 14.), and both sides presented oral arguments based on the complaint and additional materials submitted. For example, arguments on behalf of the Respondents included the following,

- "I implore, your Honor, to read in detail the August 11, 2017 order granting summary judgment to the lawyer defendants." (R. p. 3107, lines 2-4);

- "We have transcripts of these [class action settlement] hearings. This was not done behind closed doors in the conference room. The transcripts of these hearings we've provided many of the transcripts to your Honor, and -- and I want your Honor to read those to see the work that Judge Goodstein put into this -- this settlement and approving it and ensuring it was fair." (R. p. 3107, lines 18-23);

- "Judge Nicholson rejected that in his well-reasoned decision. And I will note that on appeal in a per curiam decision, the Court of Appeals rejected the arguments to -- to overturn Judge Nicholson's order. In particular – in particular, the Court of Appeals affirmed that order based on the lack of a proximate cause." (R. p. 3109, lines 8-13);

- Facts surrounding the March 2009 Orders of the Supreme Court and of the Class Action Court (R. p. 3140, line 2 – p. 3141, line 14); and

- "With the Court's permission, I -- I may look back in that folder and make sure all these transcripts are, in fact, uploaded, if that's okay with plaintiff's counsel." (R. p. 3153, lines 17-20).

In response, Appellants' counsel argued, *inter alia*,

- "And we also [briefed] all the questions pretty extensively in the three different cases, and submitted a number of materials to the Court, particularly in the [Chimento and] 304 filings. They were filed jointly. So they appear in each case." (R. p. 3123, lines 1-5);

- "that issue could be addressed conceivable [sic] in the appeal that's going up now from the class action." (R. p. 3125, lines 12-13);

- "they ignored the Supreme Court's order in 2009 to close the class." (R. p. 3125, lines 14-15);

- "and then they reach this agreement to not give any notice to people outside the state." (R. p. 3126, lines 5-6);

- "This is what Judge Nicholson didn't talk. He decided he could ignore the two appellate decisions, Green and Premium Investment, and just focus on one paragraph in one of the complaints in Dorchester County." (R. p. 3127, lines 7-10);

- "So the weakness of Judge Nicholson's theory if the Court adopts it and -- you throw me out, but the weakness of Judge Nicholson's theory is that he didn't work with what the -- how the class was defined, how it was approved by the Court." (R. p. 3127, lines 11-15);

- "That is that in 2013, in response to a motion from class counsel, Judge Dixon, in Dorchester County, determined that the class action, in fact included people from out of state." (R. p. 3127, lines 20-23)

- "But now we have a problem where the class counsels your right for part of the class, totally excluded everybody who lived out state by changing the notice provision from nationwide notice to state-only notice. (R. p. 3129, lines 2-6);

- "I did not plead that in the earliest cases because you have to ignore a couple of Supreme Court cases that impose that as a matter of law. But those have been ignored and -- by Judge Nicholson [and the] Court of Appeals." (R. p. 3132, lines 16-19.)

- "But listen, Judge, this is a very complicated record. These are pretty complicated civil procedure issues turning on very unusual questions of class action practice." (R. p. 3150, lines 8-11.); and

- "Judge, do you want the transcript as a prelude to our sufficiency on the jurisdiction?" (R. p. 3154, lines 3-4).

Following the hearing, the Court took the motions under advisement.

On October 17, 2025, the McDonald Appellants and the Respondents filed supplemental briefs on the issue of insufficiency of service and the resulting lack of jurisdiction. (Resp.'s Supplemental Brief, October 17, 2025, R. pp. 1832-45; McDonald Appellants' Supplemental Brief, October 17, 2025, R. pp. 1846-50.)

The following month, on November 6, 2025, the Court entered a Form 4 Order granting the motions and directing, "Defense counsel is to prepare a formal Order within 10 days." (Form 4 Orders, R. pp. 1, 34, 79.) The Court subsequently extended defense counsel's time to provide the proposed order to permit time for counsel to receive the transcript of the hearing.

On December 5, 2025, the trial court entered its final orders granting Respondents' motions in all three actions. (Orders on Lawyer Defendants' Motions to Dismiss, R. pp. 5-26, 38-59, 83-

91.) The Appellants filed Rule 59 motions, which the Court denied. (Orders Denying Motions to Alter or Amend, R. pp. 27, 60, and 92.)

Appellants served their notice of appeal on January 26, 2026.

ARGUMENT

The Appellants articulate three discrete issues on appeal. The first pertains only to the McDonald Appellants, whose claims were dismissed for lack of jurisdiction based on insufficiency of service of process. The second and third issues pertain only to Mr. Chimento and Jane Doe 304. Despite the issues raised, Chimento and Jane Doe 304 have not challenged other independent grounds for dismissal. The dismissal should be affirmed on those other, independent grounds. Further, the second issue contains no substantive argument and has either been abandoned by Rule or conflated with the third issue. After addressing these issues, Respondents will discuss other ancillary matters included in the Appellants' brief.

I. THE TRIAL COURT CORRECTLY HELD THE RESPONDENTS DID NOT WAIVE SERVICE OF THE SUMMONS AND COMPLAINT THROUGH A VOLUNTARY APPEARANCE IN THE ACTION BROUGHT BY THE MCDONALD APPELLANTS.

The Appellants first argue the trial court erred when it held the Respondents did not waive service by entering a voluntary appearance. As noted above, this is the sole issue on appeal as to the McDonald Appellants, for their action is the only one of the three on appeal which the trial court dismissed based upon the failure to serve the summons and complaint. The Appellants present the issue on appeal as whether the Respondents made a voluntary appearance and whether the trial court erred in dismissing the McDonald Appellants' complaint for lack of service. More precisely, the issue is whether the trial court erred in finding the Respondents did not intentionally waive service of process through a voluntary appearance.

The Appellants contend this Court should apply a de novo standard of review because the issue involves the interpretation of Rule 4(d), SCRCP. However, South Carolina courts have consistently held that a trial court's determinations "regarding validity of service of process are reviewed under an abuse of discretion standard." Graham Law Firm, P.A. v. Makawi, 396 S.C. 290, 294-95, 721 S.E.2d 430, 432 (2012) (citing Clark v. Key, 304 S.C. 497, 500, 405 S.E.2d 599, 601 (1991)). See also Trustgard Ins. Co. v. Full Logistics, Inc., 442 S.C. 485, 505, 900 S.E.2d 448, 459 (Ct. App. 2023) ("The trial court's findings of fact regarding validity of service of process are reviewed under an abuse of discretion standard.") (quoting Makawi, 396 S.C. at 294-95, 721 S.E.2d at 432). Therefore, the proper standard of review is under an abuse of discretion standard, not de novo. "An abuse of discretion occurs when the [circuit court's] ruling is based upon an error of law or, when based on factual conclusions, is without evidentiary support." Trustgard, 442 S.C. at 509, 900 S.E.2d at 461 (internal citations omitted).

It is undisputed in this appeal that the McDonald Appellants filed their action in state court and never attempted service of the summons and complaint. (Opposition to Motion to Dismiss, C/A No. 2022-CP-10-04031, October 2, 2025, at 5, R. p. 1795 ("We agree the summons and complaint were never served on class counsel.").) To overcome that failure, they argue the Respondents waived service through a voluntary appearance.

When determining whether a party has waived service of process, "courts decide on a case by case basis whether a defendant's act demonstrates an intent to submit to the court's jurisdiction." Stearns Bank Nat. Ass'n v. Glenwood Falls, LP, 373 S.C. 331, 338, 644 S.E.2d 793, 796 (Ct. App. 2007). A defendant demonstrating his intent to submit to the state court's jurisdiction amounts to waiver of the right to challenge personal jurisdiction, which requires some evidence the defendant voluntarily and intentionally abandoned that defense. Trustgard Ins., 442 S.C. at 507, 900 S.E.2d at 459 ("Objections to personal jurisdiction, unlike subject matter jurisdiction, are waived unless raised…A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Waiver requires a party to have known of a right and known that right was being abandoned.") (internal quotations and citations omitted).

Appellants argue the Respondents waived service because their motions to dismiss constituted a voluntary appearance, effectively waiving service under Rule 4(d), SCRCP. After conducting a hearing and considering the parties' submissions and arguments, as well as supplemental briefing on the issue following the hearing, the trial court rejected the McDonald Appellants' argument that the Respondents waived service by entering a "voluntary appearance," and it concluded service was insufficient because (i) the summons was never served and (ii) the Respondents did not demonstrate any intent to waive service. (Order, C/A No. 2022-CP-10-04031, at 5-8 (December 5, 2025), R. pp. 87-90.)

The circuit court's ruling not only followed the law but also is supported by the evidence in the record. While Appellants now argue the federal court filings waived service, that was not their position in 2023. Following remand of the case to state court, Appellants' counsel wrote the undersigned on August 30, 2023:

> Judge Gergel remanded this case to Circuit Court on June 12. Mr. Dukes has a motion to dismiss pending which was filed shortly after the remand.
>
> No other party has made a responsive pleading, but all parties made an appearance in federal court in response to the removal motion.
>
> A motion for default may be in order as to those parties who have made no responsive pleading to the Summons and Complaint.
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> If by email sent to me not later than September 4 you will acknowledge on behalf of each of your clients acceptance of the attached originally filed summons and complaint, I am glad to extend to October 4 your time to file a responsive pleading.

(E-mail from Meyers to Bruner, August 30, 2023, R. p. 3631.) Two days later, counsel for Richter & Haller wrote:

> I have had a chance to dig into this, and here is what I see. The summons and complaint were never served on the lawyer defendants. After the case was removed to federal court, we filed a motion to remand and a motion to dismiss.
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> If it is in fact your position that now, after the case has been remanded to state court, the lawyer defendants are in default, then I ask you to provide me the date you believe their time to respond began to run. That should be easy enough to provide in short order.
>
> Respectfully, it is our position that if, as you contend, the filings in federal court are now of no moment, then the failure to serve the summons means the circuit court has no personal jurisdiction over the lawyer defendants. Moreover, the failure to serve the summons and complaint either within the three-year statute of limitations (which has expired according to the allegations in the complaint) or within 120 days of the date of filing as required by Rule 3, SCRCP, and by statute means the action has not been "commenced" with regard to the lawyer defendants. Based upon the issue you raise and the threat of default proceedings, we filed a motion to dismiss today that raises the failure to serve the summons as well as other issues raised in the motion filed in the District Court.
>
> Because the summons was never served, I did not receive any email from the clerk, so I'm not sure what email you're referring to.

(E-mail from Bruner to Meyers, September 1, 2023, R. p. 3632.) Appellants never responded to that e-mail. They never pursued default proceedings. They never took any action to cure the failure to serve the summons and complaint.[1] The McDonald Appellants only later changed their position to contend the federal court and state court motions operated to waive service. However, they have never explained how their current position aligns with controlling precedent that the state court was divested of jurisdiction when the case was removed and that upon remand, the circuit court was obligated "to proceed as though no removal had been attempted." Limehouse v. Hulsey, 404 S.C. 93, 112, 744 S.E.2d 566, 577 (2013) ("When the state court resumed jurisdiction, it had a duty 'to proceed as though no removal had been attempted.'") (quoting State v. Columbia

[1] In every other case opposing counsel filed against Richter & Haller, he served the summons and complaint. Due to the tolling effect of the removal as discussed in Limehouse, the McDonald Appellants had until October 12, 2023 to serve the summons and complaint. That was forty-one days after the motion to dismiss was filed. Despite that additional time, they never attempted service.

Ry., Gas & Elec. Co., 112 S.C. 528, 537, 100 S.E. 355, 357 (1919)). Under applicable law, the federal court filings had no impact on the state court action, consistent with Appellants' counsel's August 30, 2023 email and request that Respondents' counsel accept service, because the state court had no jurisdiction while the matter was pending in federal court. To conclude otherwise would contravene the Supreme Court's directive for the circuit court "to proceed as though no removal had been attempted." See id.

The Appellants also argue the Respondents voluntarily appeared and waived service by the filing of their state court motions to dismiss. Those motions, however, were motions to dismiss that joined Rule 12 defenses available to them. Rule 12, SCRCP, expressly permits joinder of those defenses. "A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him." Rule 12(g), SCRCP. Moreover, certain defenses are waived if not joined in the initial Rule 12 motion. Rule 12(h), SCRCP. It defies logic to construe the Rule as permitting—and even requiring—joinder of Rule 12 defenses, and yet to then find that one of the defenses so joined constitutes a voluntary appearance thereby waiving another of the defenses so joined. In contrast, permitting joinder of defenses as expressly provided in the Rule permits the trial court to decide jurisdictional issues like sufficiency of service issues first, then move on to decide the other defenses if necessary. See, e.g., Williams v. Williams, 436 S.C. 550, 596, 873 S.E.2d 785, 810 (Ct. App. 2022) ("Accordingly, the family court erred in not first deciding Husband's motion to dismiss for lack of jurisdiction and not granting him a continuance so that motion could be decided first."). Here, the trial court decided the jurisdictional issue first based on insufficient service and saw no need to reach the other defenses.

Appellants cite a handful of cases in support of their voluntary appearance argument. None of those cases lends any support for this appeal. Appellants rely on Williams, a family court case in which a husband—a nonresident of South Carolina—disputed the court's jurisdiction over him to divide his military retirement while, at the same time, asserting counterclaims in the family court for affirmative relief. Williams, 436 S.C. at 556-57, 873 S.E.2d at 788-89. Sufficiency of service—or the lack of it—was not an issue in that case. Rather, the personal jurisdictional issue in that case involved consent to jurisdiction under the Uniformed Services Former Spouses' Protection Act, which preempted state law for purposes of determining personal jurisdiction. Id. at 561-81, 873 S.E.2d at 791-802. Within that context, the Williams court also examined the extent to which state law governed what constituted "consent" to jurisdiction. As part of its analysis, the Court discussed a 1989 Fourth Circuit decision attempting to reconcile South Carolina law and a 2019 District Court decision. Id. at 588-591, 873 S.E.2d at 806-07 (discussing Dunbar v. Vandermore, 295 S.C. 493, 369 S.E.2d 150 (Ct. App. 1988), Smalls v. Weed, 291 S.C. 258, 353 S.E.2d 154 (Ct. App. 1987), and Revman Int'l, Inc. v. Sel Mfg. Co., No. 7:17-CV-01944-BHH, 2019 U.S. Dist. LEXIS 234142, 2019 WL 10893956, at *8 (D.S.C. Mar. 26, 2019)). Ultimately, the Court held the husband did not waive his right to challenge jurisdiction because he never expressed any intent to consent to the family court's jurisdiction. Williams, 436 S.C. at 594, 873 S.E.2d at 809 ("Here, Husband never explicitly consented to the family court's jurisdiction over his military retirement benefits."); 436 S.C. at 596, 873 S.E.2d at 810 ("Therefore, we find he did not explicitly consent to have his military benefits decided in South Carolina.").

Appellants cite Williams as "finding that by a federal motion seeking relief on a nonjurisdictional ground the party 'submitted itself to the jurisdiction of the [c]ourt,' even when 'filings purport[ed] to reserve the issue of personal jurisdiction.'" (Appellants' Br. at 26.) That "finding" appears nowhere in the Court's decision. The portion of the opinion which the Appellants cite for that proposition is, in fact, the Williams court's discussion of Judge Hendrix's decision in a District Court case, Revman Int'l, in which Judge Hendrix held the nonresident defendant waived any challenge to personal jurisdiction when it filed a Rule 60(b) motion seeking to set aside a judgment. Williams, 436 S.C. at 590, 873 S.E.2d at 807 ("The [Revman] [c]ourt agree[d] that, before [the defendant] filed its motion to vacate the default judgment, [it] had not waived its personal jurisdiction defense through litigation activity.") (quoting Revman Int'l, Inc. v. Sel Mfg. Co., No. 7:17-CV-01944-BHH, 2019 U.S. Dist. LEXIS 234142, 2019 WL 10893956, at *8 (D.S.C. Mar. 26, 2019).) (internal quotations and citations omitted). It was the filing of the Rule 60(b) motion and the request for relief in it that formed the basis of the District Court's finding that waived the personal jurisdiction defense.

Appellants also cite a 1967 family court case, Connell v. Connell, 249 S.C. 162, 153 S.E.2d 396 (1967). Not only was that case decided roughly two decades prior to the adoption of the South Carolina Rules of Civil Procedure, the plaintiff in that case in fact obtained service. Proof of service of process was "attested by a sheriff's certificate of service." Connell v. Connell, 249 S.C. at 164, 153 S.E.2d at 397. The husband claimed service was obtained "by way of trick." Id. The trial court not only rejected that argument but also held the responsive pleading the husband filed was "an answer on the merits and, as such, was a general appearance and was fatal to any jurisdictional objection which [he] attempted to reserve therein." Id. at 166, 153 S.E.2d at 398.

Another case the Appellants cite, Smalls v. Weed, was decided shortly after the adoption of the South Carolina Rules of Civil Procedure. In Smalls, an insured filed suit over the failure to pay on a fire insurance policy. See Smalls v. Weed, 291 S.C. 258, 353 S.E.2d 154 (Ct. App. 1987). The insurance company, Cherokee Insurance Company of Tennessee, was in rehabilitation proceedings in Tennessee. Smalls served the rehabilitator, Weed, who challenged the validity of service by statute and challenged personal jurisdiction under the minimum contacts test. Smalls, 291 S.C. 258, 260, 353 S.E.2d 154, 155. However, Weed also asserted Smalls was "enjoined by the Tennessee court from suing him in South Carolina. Moreover, he further claim[ed] that Smalls [] elected to proceed in Tennessee by filing a claim with the rehabilitator there." Id. The trial court held service of process was proper and that Weed had sufficient contacts with the State. On appeal, the Supreme Court held Weed waived his right to challenge personal jurisdiction because the defenses he raised constituted affirmative relief, to wit, a court order (i) enforcing the Tennessee court's injunction to bar his action, and (ii) holding Smalls had elected to be bound by the Tennessee proceeding. Smalls, 291 S.C. 258, 260-61, 353 S.E.2d 154, 155-56. The Court noted that the adoption of the South Carolina Rules of Civil Procedure "eliminated" special appearances. It further held the two defenses Weed raised "must be presented by a responsive pleading." Smalls, 291 S.C. 258, 261, 353 S.E.2d 154, 156.

Two critical facts distinguish the case at bar from the cases on which the Appellants rely. First, none of those cases involves a plaintiff who failed to take any action to serve the summons or complaint on the defendant. In Williams, the husband challenged personal jurisdiction based on minimum contacts and a federal statute, not lack of service. Williams, 436 S.C. at 555-56, 873 S.E.2d at 788 ("Husband filed a Rule 12(b), SCRCP, motion to dismiss, contending that under 10 U.S.C.A. § 1408(c)(4), the family court did not have jurisdiction to divide his military benefits because he currently lived in North Carolina and had never been a resident or domiciled in South Carolina."). In Connell, the husband was served by the sheriff's department, even if he alleged in his answer that service was accomplished "by way of trick." Connell, 249 S.C. at 164, 153 S.E.2d at 397. In Smalls, the insurance company was served by statute through the Insurance Commissioner. Smalls, 291 S.C. at 260, 353 S.E.2d at 155. In Revman Int'l, the pleadings were served pursuant to the parties' contract which established an alternate method of service. Revman Int'l, 2019 U.S. Dist. LEXIS 234142, *2 ("SEL acknowledges that it received actual notice of the action and that service was made in the manner set forth in a contract signed by both parties, by registered mail, return receipt requested.") In this appeal, however, the Appellants never took any action to serve the summons or complaint. Their attorney acknowledged as much in his August

30, 2023 e-mail when he requested an acceptance of service, and the Appellants concede the fact in the record. (R. pp. 1795, 3631.) Even after the lack of service was brought to the McDonald Appellants' attention and they had time to cure it, the Appellants chose to take no action.

Second, the Respondents never asserted any counterclaim, motion to set aside a judgment, motion to enforce an injunction, or other affirmative relief like the parties in the cases the appellants cite. See, e.g. Williams, 436 S.C. at 557, 873 S.E.2d at 789 ("[T]he family court issued an order finding Husband consented to the family court's jurisdiction through his affirmative actions—specifically, that he filed an answer and counterclaim and appeared and participated in the temporary hearing."). They sought dismissal not through a responsive pleading on the merits, but rather only pursuant to Rule 12(b) defenses. Under the South Carolina Rules of Civil Procedure, joinder of multiple Rule 12(b) defenses is permitted pursuant to Rule 12(g) to allow trial courts to decide jurisdictional issues like sufficiency of service issues first, then move on to determine the other defenses if necessary. See, e.g., Williams, 436 S.C. at 596, 873 S.E.2d at 810 ("Accordingly, the family court erred in not first deciding Husband's motion to dismiss for lack of jurisdiction and not granting him a continuance so that motion could be decided first."). Nowhere in their brief do the Appellants acknowledge the express language in Rule 12(g); they also fail to discuss controlling precedent.

Notably, the Appellants do not acknowledge the controlling precedent in Makawi or Trustgard. They do, however, acknowledge Stearns Bank, which provides guidance for determining whether a defendant has waived service of process through a voluntary appearance. In that case, within the context of a Rule 60(b)(4) motion to vacate a judgment entered based upon insufficient service, the Court discussed the very language in Rule 4(d) on which the Appellants rely: "Voluntary appearance by defendant is equivalent to personal service." Stearns Bank, 373 S.C. at 337, 644 S.E.2d at 796 (quoting Rule 4(d), SCRCP). The Court reasoned,

> The critical issue…is whether the master erred in finding Glenwood Falls made a voluntary appearance. "The term 'appearance' is used particularly to signify or designate the overt act by which one against whom suit has been commenced submits himself to the court's jurisdiction." 4 Am.Jur.2d Appearance § 1 (1995). "An appearance may be expressly made by formal written or oral declaration, or record entry, or it may be implied from some act done with the intention of appearing and submitting to the court's jurisdiction." Id. No specific act constitutes an appearance, as "a defendant may choose to come into court with trumpets, or quietly by the back door." Stephens v. Ringling, 102 S.C. 333, 342, 86 S.E. 683, 685 (1915). Accordingly, courts decide on a case by case basis whether a defendant's act demonstrates an intent to submit to the court's jurisdiction.
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> Here, the master found the November 9 letter from Glenwood Falls' attorney, Cisa, to DC Development's attorney demonstrated an intent to submit to the court's jurisdiction and, therefore, constituted a voluntary appearance. The master cited Petty v. Weyerhaeuser Company, 272 S.C. 282, 251 S.E.2d 735 (1979), for the proposition that a letter from one attorney to another may constitute a voluntary appearance.

Stearns Bank, 373 S.C. at 338, 644 S.E.2d at 796-97. On appeal, the Court affirmed because a letter from the attorney for the party in default "announce[d] his representation…without reservation but also expresse[d] an intent to reach the merits of the case, especially when he wr[o]te[] 'for DC Development, Inc., to recover any money in this action, my opinion is that Glenwood Falls, LP needs to assert a claim over and against the architects and engineers who designed this project.'" 373 S.C. at 341, 644 S.E.2d at 798. "Moreover, the November 9 letter contains *not the slightest hint of a desire to challenge service of process*. Based on the record before us, we hold the master did not err in finding the November 9 letter was a voluntary appearance by Glenwood Falls." Id. (emphasis added). Based on those facts, the Court held the trial court did not abuse its discretion in finding that Glenwood Falls waived service through a voluntary appearance. Id.

The facts of this case stand in stark contrast. On August 30, 2023, Appellants' counsel wrote that Appellants Richter and Richter & Haller were in default for not having filed any response in the state court action, while also requesting acceptance of service. (R. p. 3631.) The response two days later challenged sufficiency of service and notified Appellants' counsel that a motion to that effect had been filed on behalf of Richter and Richter & Haller. (R. p. 3632.) Haller filed a similar motion immediately afterward. (R. p. 1789.) Those Rule 12 motions joined defenses under Rules 12(b)(2), (5), and (6)[2] defenses as specifically permitted under the Rule. These facts support the trial court's finding that the Respondents did not waive service through a voluntary appearance.

Trustgard was decided the year after Williams. In that case, an insurance company intervened and challenged sufficiency of service on a company it insured. The Court again applied an abuse of discretion standard of review, and it reasoned,

> The circuit court found Fuller's service was supported by his communications with Trustgard's and Full Logistics' legal teams; the record reflects that prior to the hearing held by Judge Miller on the motion to vacate and/or set aside default judgment, Fuller had informed Burchstead as well as Rupert's investigator that he had been personally served. While we recognize the record also contains evidence to support the position that Fuller himself was not served, because the evidence is conflicting, we will defer to the circuit court. Accordingly, the circuit court did not abuse its discretion in finding based on Fuller's testimony Full Logistics was served.

442 S.C. at 507, 900 S.E.2d at 459-60.

Here, the McDonald Appellants admit they never made any attempt to serve the summons and complaint on the Respondents. The evidence in the record, including communications between counsel and the phrasing in the Respondents' Rule 12(b) motion, support the trial court's finding of fact that the Respondents "did not demonstrate any intent to submit to the jurisdiction

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[2] Regardless of whether the motion referenced Rule 12(b)(2), Rule 12(b)(5), or both, the motion unmistakably challenged the McDonald Appellants' failure to serve the summons and complaint. The circuit court analyzed that exact issue, and Appellants suffered no prejudice from the manner in which the defense was styled. South Carolina courts look to the substance of a Rule 12 motion, not merely the label attached to it. Christian v. Healy, 435 S.C. 507, 510–11, 868 S.E.2d 403, 405 (Ct. App. 2021).

of the state court." (Order of Dismissal at 6, R. p. 88.) Furthermore, the ruling is not controlled by any error of law. This Court should affirm.

II. THE TRIAL COURT'S HOLDING THAT THE RESPONDENTS OWED NO PROFESSIONAL OBLIGATIONS TO CHIMENTO OR JANE DOE 304 UPON PLEADING A CLASS ACTION NOTWITHSTANDING THE HOLDING IN PREMIUM INVESTMENT.

As noted above, the second issue on appeal applies only to the actions brought by Chimento and by Jane Doe 304. The Appellants' brief contains no substantive argument, only a heading.

Rule 208(b)(1)(E) requires that an appellant's brief "be divided into as many parts as there are issues to be argued. At the head of each part, the particular issue to be addressed shall be set forth in distinctive type, *followed by discussion and citations of authority*." Rule 208(b)(1)(E), SCACR (emphasis added). This Court has repeatedly held that issues raised by nothing more than a heading or a conclusory statement without supporting argument or authority are deemed abandoned. See Ellie, Inc. v. Miccichi, 358 S.C. 78, 99, 594 S.E.2d 485, 496 (Ct. App. 2004) ("Numerous cases have held that where an issue is not argued within the body of the brief but is only a short conclusory statement, it is abandoned on appeal.") (citing Glasscock, Inc. v. United States Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001); R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 437, 540 S.E.2d 113, 120 (Ct. App. 2000); and Welch v. Epstein, 342 S.C. 279, 288 n.1, 536 S.E.2d 408, 412 n.1 (Ct. App. 2000)).

In their brief, the Appellants include no separate discussion, analysis, or citation to authority for this issue on appeal. They arguably abandoned the issue because their effort falls short of the requirements of Rule 208(b)(1)(E) and the well-established case law of this Court. At a minimum, the Appellants have conflated or merged the second and third issues on appeal, leaving only two distinct issues on appeal.

III. THE TRIAL COURT DID NOT ERR IN DISMISSING CHIMENTO'S AND JANE DOE 304'S CLAIMS FOR BREACH OF FIDUCIARY DUTY AND BREACH OF ATTORNEY-CLIENT DUTIES

The Appellants argue the trial court erred in dismissing the causes of action for breach of fiduciary duty and breach of attorney-client duties (i.e., legal malpractice) brought by Chimento and Jane Doe 304. This Court should affirm for the reasons set forth below.

A. Two-Issue Rule and The Law of the Case

As an initial matter, this Court should affirm the circuit court's orders under the two issue rule. While the Appellants focus on Premium Investment and alleged duties owed to absent class members, they do not assign error to the circuit court's other, independent grounds for dismissing Chimento's and Jane Doe 304's claims. They do not seek review of the dismissal pursuant to the doctrine of judicial estoppel based upon (i) their allegations that their claims "overtly depend[] on the outcome of an appeal presently pending in the South Carolina Court of Appeals," (Compl. ¶ 15, C/A No. 2018-CP-10-5802; Second Am. Compl. ¶ 21, C/A No. 2019-CP-10-5892), and (ii) the Respondents having prevailed in that appeal when this Court affirmed Judge Nicholson's summary judgment order per curiam. Appellants also do not seek review of the circuit court's holding that even viewing the parties' submissions in the light most favorable to them, Chimento and Jane Doe 304 failed to articulate damages proximately caused by the alleged legal malpractice. (Order on Lawyer Defendants' Motions to Dismiss, at 19-20, C/A No. 2018-CP-10-5802, R. pp. 23-24; Order on Lawyer Defendants' Motions to Dismiss, at 19-20, C/A No. 2019-CP-10-5892, R. pp. 56-57.)

"Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case." Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010); see also Thompson v. Killian, 447 S.C. 177, 195, 924 S.E.2d 606, 616 (2025) (quoting Jones, supra, and citing Anderson v. S.C. Dep't of Highways & Pub. Transp., 322 S.C. 417, 420 n.1, 472 S.E.2d 253, 255 n.1 (1996)). See also Rule 220(c), SCACR.

Because the Appellants have not assigned error to the circuit court's other independent grounds for dismissing Chimento's and Jane Doe 304's claims, those rulings are the law of the case, and this Court should affirm the dismissal of their claims.

B. The Circuit Court Correctly Held the Respondents Owed No Attorney-Client or Fiduciary Duty to Chimento or Jane Doe 304.

The Appellants argue the circuit court erred when it found there was no attorney-client or fiduciary relationship between the Respondents and Chimento and Jane Doe 304. They base their contention on misinterpretations of two cases and a theory that the Respondents voluntarily undertook to represent Chimento and Jane Doe 304. As set forth in more detail below, Premium Investment involved constructive certification and fiduciary principles in a very different procedural context. That case did not involve Rule 23, SCRCP, which had not yet even been adopted, nor did it involve a class action pled, certified, settled, and administered with active oversight from the circuit court pursuant to Rule 23. In addition, Doe v. Bishop was about the preclusive effect of a class settlement on absent class members, not malpractice liability against class counsel.

For the reasons set forth below, this Court should affirm.

1. Standard of Review

The circuit court converted the motion to dismiss into one for summary judgment when it considered the additional materials submitted by the parties. Rule 12 authorizes a circuit court to convert a Rule 12(b) motion into a motion for summary judgment so long as all parties are provided a "reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Rule 12(b), SCRCP. "When reviewing a grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." Hansson v. Scalise Builders of S.C., 374 S.C. 352, 354, 650 S.E.2d 68, 70 (2007). Under Rule 56(c), summary judgment must be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

2. The Circuit Court Properly Rejected Appellants' Arguments Regarding Premium Investment and Doe v. Bishop.

According to the Appellants' brief, this appeal and another appeal, Appellate Case No. 2023-00720, are based on their interpretation of two cases, Premium Investment Corp. v. Green, 283 S.C. 464, 324 S.E.2d 72 (Ct. App. 1984), and Doe v. Bishop, 407 S.C. 128, 754 S.E.2d 494 (2014). They argue their "legal malpractice and breach of fiduciary duty claims now on appeal rest on the exact foundations recognized in Doe v. Bishop and Premium Investment Corp. v. Green—lack of notice, inadequate representation, and breach of both fiduciary duty and (as to the McDonald appellants) breach of duty to actual class member clients." (Apps.' Br. at 3.) There are several problems with the Appellants' logic.

The Appellants continue to advance an interpretation of Premium Investment that has been repeatedly rejected and fails to acknowledge the impact of the adoption of Rule 23, SCRCP, which supplies the modern procedural framework for pleading, certification, notice, court supervision, and protection of absent class members in class actions. They contend Premium Investment imposes fiduciary and attorney-client duties upon attorneys, including the Respondents in the underlying cases, immediately upon the filing of the class action complaint and that those duties extended to every absent class member regardless of certification, representation, notice, or any attorney-client relationship. Like the other courts before it, the circuit court correctly rejected that interpretation of Premium Investment. In essence, the Appellants ask this Court to convert a case discussing the obligations of class representatives and counsel in the context of an uncertified class into a sweeping rule creating a legal malpractice cause of action in favor of every person who later claims to have fallen within the scope of a proposed class definition. Nothing in Premium Investment supports such a result. The Appellants do not attempt to reconcile the holding from Premium Investment with the later-adopted Rule 23, SCRCP, nor do they even acknowledge that the underlying class actions in this case were pled, certified, noticed, and administered pursuant to Rule 23, SCRCP, with court approval every step of the way. Instead, they treat Premium Investment as creating an attorney-client relationship as a matter of law between class counsel and every alleged class member immediately upon filing a complaint, notwithstanding the adoption of Rule 23. Premium Investment says no such thing, nor does it relieve Chimento or Jane Doe 304 from the burden of proving the existence of an attorney-client relationship as part of their legal malpractice claim. See RFT Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2012).

Here, Circuit Judge McMaster properly reconciled Premium Investment with the later-adopted Rule 23. South Carolina courts apply well-established principles of harmonious construction when interpreting related authorities. When provisions—or in this case, pre-rule precedent and a subsequently enacted court rule—address the same subject matter, they should be read together and reconciled, if reasonably possible, to produce a single, harmonious result that gives effect to both. See, e.g., Joiner ex rel. Rivas v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000) (statutory provisions dealing with the same subject must be construed together); TNS Mills, Inc. v. S.C. Dep't of Revenue, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) ("In construing statutory language, the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect"). Court rules do not operate in a vacuum; they are interpreted in light of the common law and prior decisions they codify, supplement, or supersede. Where reasonable, pre-rule case law and the rule itself should be harmonized to effectuate the Supreme Court's intent in adopting the rule, promote consistency, and avoid unnecessary conflict.

Judge McMaster applied these principles when he held,

> Premium Investment Corp. stands for the proposition that where there is a class that has not been formally certified (like the formal certification contemplated in Rule 23, SCRCP), a lawyer's and a class representative's duties to absent class members arise with the constructive certification of the class. Premium Investment Corp. is in line with the majority rule that an attorney-client relationship does not arise between absent class members and class counsel until class certification. Since its adoption in 1985, Rule 23(a) has required specific prerequisites to certification and pursuit of a class action, while Premium Investment Corp., which predates Rule 23, allows for constructive certification.

(Order on Lawyer Defendants' Motions to Dismiss, at 14, C/A No. 2018-CP-10-5802, R. p. 18; Order on Lawyer Defendants' Motions to Dismiss, at 14-15, C/A No. 2019-CP-10-5892, R. pp. 51-52.) This reasoning does not render class counsel "at liberty to abuse the interests of their absent class members," as Appellants argue (Appellants' Br. at 35), for Rule 23 contemplates active administration by the circuit court, as was the case in the underlying class action here. Instead, Judge McMaster's reasoning followed well-established principles of harmonious construction, and it fell squarely in line with Judge Nicholson's reasoning in the order granting summary judgment that this Court previously affirmed per curiam. (Order on Lawyer Defendants' Motions for Summary Judgment, August 11, 2017, at 13-15, R. pp. 229-31; Opinion filed March 3, 2021 in Appellate Case Number 2017-001996, R. pp. 238-40.) It also was consistent with Professor Freeman's Ethics Watch article the Appellants cite, which while not governing precedent, did point out the potential risk posed by constructive certification of a class under Premium Investment when Rule 23, SCRCP is not followed.

The circuit court properly rejected the Appellants' interpretation of the case, and that ruling should be affirmed.

The Appellants also misconstrue Doe v. Bishop, 407 S.C. 128, 754 S.E.2d 494 (2014). In that case, Appellants' counsel represented four individuals who claimed they never received notice of the 2007 class action settlement.[3] In 2009, those individuals brought their abuse claims against The Bishop of Charleston, A Corporation Sole, and The Bishop of The Diocese of Charleston, in His Official Capacity. Doe, 407 S.C. at 133, 754 S.E.2d at 497. The trial court held the claims were barred by the 2007 class action settlement and dismissed them. Id. On appeal, the Supreme Court reversed, reasoning that under Hospitality Management,[4] absent class members might not be barred by the "ordinarily preclusive effect of a conclusive class action suit." 407 S.C. at 138-39, 754 S.E.2d at 499-500. "Specifically, before absent class members can be finally bound by the resolution of the class action suit, they are entitled to a limited review on the issues whether sufficient notice was given to putative class members and whether class members had adequate representation." 407 S.C. at 138, 754 S.E.2d at 499.

In the action at bar, the Appellants seize upon the Court's use of the phrase "adequate representation," suggesting that it means representation of the class by the Respondents. It does not. The phrase pertains to representation by named class representative(s) and to limitations on the Full Faith and Credit Clause imposed by the Due Process Clause as articulated by the Supreme Court of the United States in Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 805, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985). See Doe v. Bishop, 407 S.C.128,139 n.3, 754 S.E.2d at 500 n.3 ("We note

[3] Importantly, while Mr. Meyers argued in that case about a "collusive settlement" that was entered in 2006, the Supreme Court held the settlement was entered "[i]n 2007." Doe v. Bishop, 407 S.C. at 133.

[4] Hospitality Management Associates, Inc. v. Shell Oil Co., 356 S.C. 644, 660, 591 S.E.2d 611, 619 (2004).

that Hospitality was decided in light of deference due to judgments from other states' courts under the Full Faith and Credit clause of the United States Constitution."); and Hospitality Management, 356 S.C. at 654, 591 S.E.2d at 616 ("Finally, the Due Process Clause of course requires that the named plaintiff at all times adequately represent the interests of the absent class members.") (citing Shutts, 472 U.S. at 812).

Following remand of that case, neither the Appellants nor their counsel requested the limited collateral review the Supreme Court directed. It was class counsel that requested the limited collateral review. After conducting his limited collateral review, Judge Nicholson held the 2007 class action settlement did not preclude claims of absent class members "who (1) did not receive actual notice and (2) lived outside of the areas in which the notice was published." (Order on Limited Collateral Review, R. p. 216.)

Also relevant to Doe v. Bishop, the absent class member Appellants also argue the Respondents committed legal malpractice by making "overtly false factual representations were made to the class action court, including an 'understanding' that persons who did not receive notice and later 'shows up' would be given the same relief as the class. (Apps.' Br. at 23-24.) Those allegations are rooted in an interpretation of the transcript, the class settlement terms, and the underlying class action court's orders which the Supreme Court has already rejected. In Doe v. Bishop, Appellants' counsel argued on behalf of four other absent class members that they were entitled to the benefit of "the terms of the settlement as to any future claimant notwithstanding the expiration of the claims period." Doe, 407 S.C. at 135-37, 754 S.E.2d at 498-99. They based their argument on language from the class action court's July 30, 2007 order approving the class action settlement (entered following the July 13, 2007 hearing). The Supreme Court rejected that argument based on its interpretation of the record and a subsequent order the class action court entered. The class action court created an "actual notice class" after learning the Diocese had in its records the names of alleged abuse victims, half of whom might not receive notice under the notice plan the court had already approved. Doe, 407 S.C. at 135-37, 754 S.E.2d at 498-99. The Doe appellants in that case, represented by Mr. Meyers, argued they were entitled to the broader protections based on language from the class action court's July 30, 2007 order. The Doe Court held,

> While we agree with appellants regarding the import of the language of the July order, the Dorchester court entered another order related to the settlement on August 31, 2007. It clarified, in relevant part, that
>
> > in the Court's [July 30] Order . . . approving the Class settlement, the Court made reference to the existence of individuals who, according to the Diocese, (1) were potential class members; (2) came forward to the Diocese at some time in the past with their allegations of child sexual abuse; (3) never [***8] resolved their potential claims; and (4) were entitled to receive actual notice of the proposed class settlement pursuant to the agreement of the parties and earlier instructions from this Court (hereinafter referred to as "Actual Notice [**499] Class Members"). The [Respondents] have asked the Court to clarify how the settlement process will treat the Actual Notice Class Members. Accordingly, this Order clarifies and, where in conflict, supersedes the Court's Order of July 30, 2007.
> >
> > Actual Notice Class Members shall have 120 days from receipt of actual notice of the class settlement to present their claims to an Arbitrator in the same manner as provided for in the Settlement and Arbitration Agreement. Actual Notice Class Members who present their claims more than 120days after they receive actual notice of the settlement shall be barred from participation in the settlement process and shall be treated like any other class member [*137] who has failed to timely present a claim to the class settlement fund.
>
> Appellants argue that the August order alters the terms of the settlement only as to Actual Notice Class Members. They contend that, as general class members, they are entitled to be treated under the more generous terms of the July order. We disagree.
>
> The August 2007 order clarifies that the Actual Notice Class Members have 120 days to file claims from the time they receive actual notice, rather than being limited to 120 days from the entry of judgment, as the other (constructive notice) class members were limited under the settlement. It also reiterates that any claimant who fails to present her claim within the 120-day notice period will be "barred from participation in the settlement process . . . like any other class member who had

> failed to timely present a claim to the class settlement fund." This language unambiguously indicates that the 120-day claims period for general class members established in the original settlement remained in place and any seemingly contrary language in the July order was superseded by the August order. Thus, the terms of the July order do not permit appellants to avoid its res judicata effect and that respondents did not waive a statute of limitations defense as to future claimants who failed to come forward within the claims period provided in the settlement.

Doe, 407 S.C. at 136-37, 754 S.E.2d at 498-99.

Neither Chimento nor Jane Doe 304 alleged they were members of the actual notice class. Instead, they alleged they were in the general class like the prior appellants represented by their counsel. Unlike the litigants before them, neither Chimento nor Jane Doe 304 asserted abuse claims against the Diocese. They sought to recover only from class counsel based upon legal malpractice theories premised in allegations that class counsel lied to the class action judge about the ability of absent class members to make a claim later, regardless of whether they were in the Actual Notice Class. There is no interpretation of the record in the underlying class action case that supports that allegation. To the contrary, as the Supreme Court recognized in its 2014 opinion, the class action court clarified on the record that absent class members like Chimento and Jane Doe 304 remained bound by the 120-day claim deadline.

For reasons which remain a mystery, the absent class member Appellants have not sought any limited collateral review, nor have they performed the analysis to determine whether the 2007 class action settlement in fact bars their claims. If they are correct that they were omitted from the class action settlement—either due to lack of notice or inadequate representation of their interests by the class representatives—then the absent class members were not precluded from bringing their claims in the first place. They were in the same position after the settlement as they were before it. As a result, they cannot prove any damage they suffered as a proximate result of any alleged breach by the Respondents.

For these reasons, the Appellants' reliance on Premium Investment and Doe v. Bishop is misplaced. This Court should affirm.

C. Conversion of Motion to Dismiss and Alleged Incomplete Discovery

Appellants argue repeatedly in their brief that the circuit court was bound to accept their allegations as true. (Appellants' Br. at 3, 4, 18, and 36.) First, the Appellants provide no authority requiring a trial court to accept their legal conclusions—such as the existence of a duty—as true. Second, the Appellants overlook the impact of the circuit court having considered the materials submitted by all parties outside the complaints. In its orders, the circuit court noted its ability to convert the motions to dismiss into motions for summary judgment under Rule 12. It also noted the various materials outside the pleadings submitted by all parties and the arguments about those outside materials during the hearing. (R. pp. 11-12, 45.) Rule 12(b), SCRCP, permitted conversion of the motions to dismiss into summary judgment because it afforded the Appellants a "reasonable opportunity to present all material made pertinent to such a motion[s]." Rule 12(b), SCRCP. Thus, under the applicable summary judgment standard, Judge McMaster was not required to accept Chimento's and Jane Doe 304's allegations as true.

The Respondents anticipate the Appellants will argue that, to the extent the orders of dismissal were governed by the summary judgment standard, summary judgment was premature because, the Appellants will argue, no court had permitted "full discovery." The Respondents first note that the Appellants failed to articulate to the circuit court what discovery they were denied that could have produced evidence affecting the outcome of the case. "[T]he nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is 'not merely engaged in a "fishing expedition."'" Guinan v. Tenet Healthsystems of Hilton Head, Inc., 383 S.C. 48, 54, 677 S.E.2d 32, 36 (Ct. App. 2009) (quoting

Dawkins v. Fields, 345 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (in turn quoting Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991))).

The Appellants did not identify any specific documents, witnesses, or categories of information they were prevented from obtaining, nor did they articulate to the circuit court how that information would have created a genuine issue of material fact or otherwise altered the court's ruling. Their conclusory assertions of incomplete discovery are insufficient to warrant reversal. Id. It is also doubtful whether that issue is preserved for appellate review.

Furthermore, more than ample opportunity for discovery has been afforded in this litigation. Appellants' counsel has been pursuing claims against the Respondents since 2008. Prior to that, he also represented objectors to the settlement in the underlying class actions. He also has filed numerous proceedings against the Respondents, including eight prior lawsuits alleging the same legal malpractice theories against the Respondents based upon the same alleged facts, and the parties conducted discovery. Ultimately, those eight prior cases ended in summary judgment in favor of the Respondents, which this Court affirmed on appeal. (Order on Lawyer Defendants' Motions for Summary Judgment, filed August 11, 2017; Opinion filed March 3, 2021 in Appellate Case Number 2017-001996.) Despite having the benefit of nineteen years of records from the various lawsuits and other proceedings in which he has appeared adverse to the Respondents, the Appellants could not articulate a genuine issue of fact, nor could they articulate to the circuit court the discovery which Chimento and Jane Doe 304 were denied that could have, at a minimum, led to evidence creating a triable issue.

IV. ALLEGED JUDICIAL TABOO AND OTHER ANCILLARY MATTERS

Throughout their brief, Appellants distract from the issues on appeal by stating their claims have never been considered on the merits because of what they perceived as a "judicial taboo" surrounding the underlying class action settlement. The record belies their argument.

For nearly two decades, allegations about the class action settlement, notice procedures, fee arrangements, and administration of claims have been repeatedly presented to multiple courts due to the multiple filings by Appellants' counsel. (See, e.g., Objections to Class Settlement, R. p. 2330; Transcript of March 9, 2007, R. p. 3187, line 4 – p. 3188, line 6, and R. p. 3188, line 20 – p. 3203, line 24, and R. p. 3206, line 9 – p. 3207, line 10, and R. p. 3236, line 6 – 24; Objections to Proposed Order Approving Class Settlement, R. p. 2339; Motion to Alter or Amend Order Approving Class Settlement, R. p. 2347; Memorandum Supporting Motion to Alter or Amend Order Approving Settlement, R. p. 2364; Transcript of January 29, 2009, R. p. 3440, line 10 - p. 3444, line 22 (arguing for original class action judge to recuse herself); Petition to Supreme Court by McDonald Appellants, R. p. 845; Motion by McDonald Appellants to Intervene in Class Actions, C/A Nos. 2006-CP-18-01310, -1311, and -1636, R. p. 2385; Response re: Motion for Fairness Hearing and Motion to Appoint New Class Counsel by McDonald Appellants, C/A Nos. 2006-CP-18-01310, -1311, and -1636, R. p. 2387; Complaint filed in 2010-CP-10-5520, R. p. 2403; Complaint filed in 2010-CP-10-7233, R. p. 2477; Complaint filed in 2012-CP-10-5559, R. p. 2556; Complaint filed in 2013-CP-10-3733, R. p. 2631; Complaint filed in 2013-CP-10-4175, R. p. 2725; Complaint filed in 2013-CP-10-4176, R. p. 2825; Complaint filed in 2015-CP-10-5486, R. p. 2924; Complaint filed in 2016-CP-10-1632, R. p. 3017; Complaint filed in 2018-CP-10-05802, R. pp. 248-61; Complaint filed in 2019-CP-10-05892, R. pp. 733-48; and Complaint filed in 2022-CP-10-04031, R. p. 1108.) The settlement was subjected to fairness proceedings, approved by the class action court, and survived subsequent challenges through numerous motions, appeals, collateral proceedings, petitions to the Supreme Court, and numerous other lawsuits. (See e.g., Motion to Certify Classes and for Preliminary Approval of Class Settlement, R. p. 2148; Order Granting Preliminary Approval to Settlement, R. p. 101; Transcript of March 9, 2007 Hearing, R. pp. 3156-3340; Order Relating to Waiver Disclosures by Court, R. p. 113; Transcript of July 13, 2007 Hearing, R. pp. 3341-3373; Order Approving Settlement, R. p. 115; Transcript of August 9, 2007 Hearing, R. pp. 3374-3433; Order Approving Settlement, R. p. 155; Transcript of January 29, 2009 Hearing, R. pp. 3434-3577; Order of South Carolina Supreme Court Denying Petition in Original Jurisdiction in Doe v. Richter et al., R. p. 161; Order of Class Action Court, R. p. 163; Order on Lawyer Defendants' Motions for Summary Judgment, R. p. 217; Order of Court of Appeals, R. pp. 238; Order of Supreme Court, R. p. 63; Order of Court of Appeals, R. p. 244; and Order of Class Action Court, R. p. 192.)

Appellants' counsel has repeatedly advanced what amount to post hoc objections to the class action settlement through allegations of collusion, fraud, judge-shopping, malpractice, conflicts of interest, inadequate notice, and improper administration in numerous proceedings. Id. Those challenges have come before the original class action court, various other circuit court judges, this Court, and the Supreme Court of South Carolina. Id. All of those courts consistently considered and rejected the challenges.

The existence of adverse rulings does not establish a "judicial taboo." The denial of relief sought does not establish that courts have refused to consider a litigant's arguments. To the contrary, the record in this appeal reflects repeated judicial consideration of the very issues Appellants continue to raise. It is not corruption for the Supreme Court to deny the years of hyperbolic petitions. It is not corruption for an appellate court to affirm a trial court's order granting summary judgment when years of litigation bore no genuine factual dispute creating a triable issue. It is not corruption for a trial court to dismiss claims when plaintiff's counsel fails to serve the summons and complaint—especially when plaintiff's counsel had months to do so after the issue was brought to his attention. (See R. p. 1795 ("We agree the summons and complaint were never served on class counsel."); R. p. 3632 ("The summons and complaint were never served on the lawyer defendants…the failure to serve the summons means the circuit court has no personal jurisdiction over the lawyer defendants…Based upon the issue you raise and the threat of default proceedings, we filed a motion to dismiss today that raises the failure to serve the summons as well as other issues raised in the motion filed in the District Court.") The fact that Appellants and their counsel disagree with the results does not convert those rulings into evidence of a systemic corruption or unwillingness to address their claims.

More fundamentally, the existence or nonexistence of a purported "judicial taboo" is not an issue properly before the Court. Appellate review is confined to determining whether the circuit court committed reversible error in the orders on appeal. Rule 220(c), SCACR. Appellants therefore carry the burden of identifying a preserved legal error in Judge McMaster's orders. They substitute narrative for analysis and argue the prior courts would have reached different conclusions absent corruption or "judicial taboo" instead of demonstrating why the circuit court's legal conclusions concerning duty, causation, damages, service of process, or Rule 23 were incorrect. Appellants simultaneously acknowledge that extensive records, transcripts, orders, motions, prior appeals, and related proceedings exist concerning the matters they seek to revisit. The very volume of litigation and materials surrounding these issues refutes the notion that courts have refused to consider them.

Accordingly, the Appellants' "judicial taboo" argument is an improper attempt to shift the focus of this appeal away from the elements of their causes of action and the actual rulings entered below.

V. ADDITIONAL GROUNDS IN THE RECORD

In addition to the arguments above, this Court should affirm based on other grounds in the record, including the following. <u>See</u> Rules 208(b)(2) & 220(c), SCACR.

A. Chimento's Failure to Comply with Expert Affidavit Requirement

In addition to the arguments above, the dismissal of Chimento's claims should be affirmed because he failed to comply with the statutory expert affidavit requirement in S.C. Code Ann. § 15-36-100. That statute requires that any complaint alleging professional negligence must be accompanied by an affidavit of an expert specifying "at least one negligent act or omission claimed to exist and the factual basis for each claim based on available evidence at the time of the filing of the affidavit." S.C. Code Ann. § 15-36-100(B). Chimento's complaint was accompanied by an affidavit; however, the affidavit failed to specify any negligent act or omission claimed to exist or give the factual basis for each claim. It consisted of six paragraphs. Paragraphs one and two provide Mr. Virzi's background and qualifications. The following paragraphs provide:

> 3. My opinion is based on review of the following documents:
>
>   A. Complaint in the above-captioned case; and
>
>   B. Affidavit of Michael J. Virzi, which I provided in John Doe 297 v. Bishop of Charleston et al., dated March 29, 2016 (attached hereto), and documents identified therein.
>
> 4. I [sic] appears that Plaintiff is a member of the class of plaintiffs identified in a class action brought by Richter Defendants in 2006 and that the duties Richter Defendants assumed and owed to Plaintiff, along with the breaches thereof, are the same as those identified (as to John Doe 297) in paragraphs 7 through 13 of the attached affidavit, which I incorporate herein by reference.
>
> 5. It is my professional opinion that Richter Defendants' conduct as alleged in the Complaint in this case fell below the degree of skill, knowledge and judgment usually possessed and exercised by members of the legal profession in South Carolina, and that they breached duties of competence, diligence, communication, and loyalty to Plaintiff, some of which has been admitted by Defendant Haller in court in 2013 as identified at paragraph 9 of the attached and incorporated Affidavit.
>
> 6. The opinions in this affidavit are given to a reasonable degree of certainty and are specifically based on the evidence listed above and in the attached and incorporated Affidavit. I reserve the right to alter, amend, modify, reduce, or expand these opinions if and when additional information is presented.

(Affidavit of Virzi, December 5, 2018, R. p. 263.) While the affidavit referenced an "attached affidavit" from 2016, the 2016 affidavit was not filed with the complaint. The 2016 affidavit was not filed until October 27, 2019, long after the time allowed by statute. Chimento has provided no explanation why the 2016 affidavit was not filed with his complaint. Consequently, the expert affidavit he filed failed to specify at least one negligent act or omission claimed to exist and provide the factual basis for each claim and, therefore, failed to meet the standard in S.C. Code Ann. § 15-36-100(B). That failure constitutes other grounds in the record justifying affirmance of the circuit court's order in his case.

B. Jane Doe 304's Failure to Comply with Expert Affidavit Requirement

Jane Doe 304 also failed to comply with the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10, *et seq.* When she filed her original complaint, she alleged she would be supplementing her complaint with an expert affidavit. The statute permits an extension of time under certain circumstances:

> The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, *the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit.* Upon motion, the trial court, after hearing and for good cause, may extend the time as the court determines justice requires. *If an affidavit is not filed within the period specified in this subsection or as extended by the trial court and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim.*

S.C. Code Ann. § 15-36-100(C)(1) (emphasis added). While Jane Doe 304 alleged an affidavit would be filed, she never alleged "an affidavit of an expert could not be prepared" as required by the statute. At the hearing, she offered no explanation why the expert affidavit could not have been prepared and filed with her original complaint. Therefore, on its face her complaint failed to include the allegations necessary to invoke the automatic forty-five-day extension. That failure constitutes other grounds in the record justifying affirmance of the circuit court's order in her case.

CONCLUSION

For the reasons set forth above, the Appellants have failed to identify any reversible error the circuit court committed in dismissing their claims. Their failure to challenge all independent bases for dismissing Chimento's and Jane Doe 304's claims compels affirmance of the dismissal of those claims. This Court should affirm the rulings of the circuit court for these and any other reasons appearing in the record.

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September 14, 2026
Columbia, South Carolina

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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

Hon. William C. McMaster III, Circuit Court Judge

Case Nos. 2022-CP-10-04031
2019-CP-10-05892
2018-CP-10-05802

Consolidated as Appellate Case No.: 2026-000191

John Doe 305, Julie McDonald, and Richard McDonald, Appellants,

v.

Lawrence E. Richter, Jr., David K. Haller, Richter and Haller, LLC, and The Bishop of Charleston a corporation Sole, Defendants,

AND

Jane Doe 304, Appellant,

v.

Lawrence E. Richter, Jr., David K. Haller, Richter and Haller, LLC, and The Bishop of Charleston a corporation Sole, and Robert E. Guglielmone, Bishop of Charleston, Defendants,

AND

Robert Chimento, Appellant,

v.

Lawrence E. Richter, Jr., David K. Haller, Richter and Haller, LLC, and The Bishop of Charleston a corporation Sole, and Robert E. Guglielmone, Bishop of Charleston, Defendants,

of which Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC are the Respondents

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Final Joint Brief of Respondents Lawrence E. Richter, Jr., David K. Haller and Richter and Haller, LLC, complies with Rule 211(b), SCACR.

/s/ Benjamin C. Bruner
Benjamin C. Bruner, Esquire