

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS
THE HONORABLE B. ALEX HYMAN
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2026-000708
CIVIL ACTION NO. 2025-CP-26-06721

Joseph N. Grate,

APPELLANT,

v.

David A. Anderson, James J. Winebrake, Coastal Carolina University,

RESPONDENTS.

INITIAL BRIEF OF RESPONDENT DAVID A. ANDERSON

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COUNTER-STATEMENT OF ISSUES ON APPEAL

I. Whether the Circuit Court properly granted Respondent David A. Anderson's Motion to Dismiss where the Complaint failed under Rules 8 and 12 of the South Carolina Rules of Civil Procedure and all possible claims arose out of Anderson's representation of defendants in a prior lawsuit for which he is entitled to immunity.

COUNTER-STATEMENT OF THE CASE

Appellant Joseph N. Grate filed the underlying civil action in Horry County, naming as defendants David A. Anderson, James J. Winebrake, and Coastal Carolina University (“CCU”). *See* Compl., Civil Action No. 2025-CP-26-06721 (Horry County Ct. of Comm. Pls) (filed Feb. 10, 2025) (**R.** ____). Grate’s Complaint names Anderson as a defendant on the basis that Anderson advised Winebrake and CCU—described in the Complaint as Anderson’s clients—and somehow blocked Grate’s access to CCU. *Id.*

This matter is related to another case already pending before the Court in Appellate Case No. 2025-001787 and Civil Action No. 2025-CP-22-00606 (Georgetown County Ct. of Comm. Pl.) (*Grate I*). In *Grate I*, Grate sued a number of individuals and CCU relative to his desire to attend CCU. Anderson represented, as counsel, the defendants in *Grate I*. Transcript of February 4, 2026 Hearing at 32:8-33:24 (**R.** ____). *Grate I* was dismissed.¹ As a result of that representation, Anderson was sued in the case underlying this appeal, and as such, has been sued only in his capacity as an attorney for the defendants in *Grate I*. Compl. at 2-3 (**R.** ____).

The facts in Grate’s Complaint allege that he is eligible to attend CCU, has been enrolled at CCU for several semesters, submitted complaints as to “Health, Safety, Welfare” to CCU, SLED, and the Director of the Federal Bureau of Investigation. Compl. at 1 (**R.** ____). Grate alleged he sought to register for online classes due to an unsafe campus environment, but is being blocked from registration. Compl. at 2. (**R.** ____). Grate further claims he is being blocked due to an “account deficit of more than \$4,000” and that these actions “adversely impact Plaintiff’s status regarding Top-Secret and Q-Clearances; plus affecting his Professional

¹ While issues related to *Grate I* were raised before Judge Hyman at the hearing that occurred in this case, the materials from *Grate I*, both before this Court and the lower court, are items of which this Court can take judicial notice. *See* Rule 201, SCRE.

Multistate and National Certification status.” *Id.* The substantive allegations of the underlying Complaint as to Anderson are as follows:

1. As a Student, Plaintiff has experienced and is experiencing harassment at CCU, with respect to Registration, Enrollment, Financial Status; condoned by Defendant Winebreak, with assistance from Defendant Anderson.
3. Defendants are blocking Plaintiff access to registering at CCU.
4. Defendant Anderson, advised his Co-Defendants, his Clients, in a manner that promotes the blocking of Plaintiff's lawful access to CCU.
5. Defendants are in violation of Plaintiff's rights as a Student and as a Citizen to free access to Education, pursuant to all State and Federally granted rights thereto.

Compl. at 2-3 (**R.** ____).

Anderson is not employed by CCU, and had no role in the underlying fact pattern set forth above. Anderson filed a Motion to Dismiss, asserting that he was being sued for acts taken in his capacity as a retained attorney for the defendants in *Grate I*. See Motion to Dismiss, Civil Action No. 2025-CP-26-06721 (filed Sept. 23, 2025) (**R.** ____). Grate also filed a Motion for Summary Judgment. After a hearing on those pending motions, a Form 4 Order was issued granting the relief sought by CCU, Winebrake, and Anderson, and denying Grate's Motion for Summary Judgment. Order, Civil Action No. 2025-CP-26-06721 (entered February 6, 2026) (**R.** ____). The dismissals were finalized via formal written order entered on February 10, 2026. Order, Civil Action No. 2025-CP-26-06721 (entered February 10, 2026) (**R.** ____).

This appeal followed, with Grate serving his Notice of Appeal on March 9, 2026.

STANDARD OF REVIEW

“On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court.” *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009).

“In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint.” *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007).² Rule 8 of the South Carolina Rules of Civil Procedure requires a pleading to include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Rule 8, SCRCP. In turn, a motion pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure should be denied only when “facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995); *Brazell v. Windsor*, 384 S.C. 512, 515, 682 S.E.2d 824, 826 (2009).

Where the prerequisites for instituting an action are not met as a matter of law, the granting of a motion to dismiss is proper. *See Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 81, 753 S.E.2d 846, 853 (2014) (granting of motion pursuant to 12(b)(6), SCRCP by Supreme Court in its original jurisdiction due to lack of standing to bring action).

² To the extent Grate attempts to rely on material that was not actually before the circuit court in this matter or *Grate I* and of which no judicial notice could have been taken, which may have been included in his Designation of Matter to Be Included in the Record on Appeal, Anderson maintains the objection raised in the prior Motion to Strike which was denied by this Court by Order on July 31, 2026.

ARGUMENT

I. Grate's Complaint Failed to Comply with Rules 8 and 12 of the South Carolina Rules of Civil Procedure.

As noted above, this appeal stems from a prior lawsuit, *Grate I*, filed by Grate in Georgetown County against Michael T. Benson, Linwood Jesse Rouse, Sam Sullivan, Samantha Sullivan, and Coastal Carolina University. Respondent Anderson was retained, and appeared, in that case as counsel for the *Grate I* Defendants. Transcript of February 4, 2026 Hearing at 32:8-33:24 (**R. ____**). This suit followed mere weeks after Anderson successfully sought dismissal of the *Grate I* lawsuit. Under South Carolina law, however, Grate's underlying Complaint in this case was fatally defective.

Rule 8(a)(2), SCRCP, requires plaintiff to set forth, in his pleading, a "short and plain statement showing that [he was] entitled to relief." Rule 8(a)(2), SCRCP. This requires Plaintiff to plead the ultimate facts which he believes would be proven at trial. *See Doe*, 361 S.C. at 469, 605 S.E.2d at 559. As raised to the circuit court below, there were no facts in the pleadings or otherwise properly before the court that supported any cause of action against Anderson. Grate's Complaint in this case consisted twenty-five paragraphs and a prayer for relief seeking \$36,000,000. Compl. at 2-3 (**R. ____**). Of those paragraphs, only two refer to Anderson specifically and two others refer to "Defendants" collectively. Compl. at 2-3 (**R. ____**). Setting aside the legal failures of such a claim more clearly set forth below, Grate's Complaint includes zero allegations that could relate Anderson—an attorney based in Columbia and not involved in CCU's administration—to administration claims relative to CCU. The circuit court properly recognized that and dismissed this case. February 10 Order at 11-12 (**R. ____**). Likewise, another paragraph claims Anderson "advised his Co-Defendants, his Clients, in a manner that promotes the blocking of Plaintiff's lawful access to CCU." *Id.* This does not create any

inference, even viewed in his favor, of relief. Moreover, the only four paragraphs as to Anderson appear—relative to this action and *Grate I*—entirely unrelated to Grate’s substantive claims against CCU, further indicating there is no basis for relief.

II. Grate’s Complaint, as to Anderson, Was Properly Dismissed as a Matter of South Carolina Law.

Where a plaintiff has set forth facts that could never lead to relief under South Carolina law, the granting of a motion to dismiss is appropriate. *See, e.g., Stiles*, 318 S.C. at 300, 457 S.E.2d at 602. Here, by the very terms of Grate’s pleadings and as addressed before the circuit court, the only claims against Anderson arise out of his representation of the defendants in *Grate*

I. South Carolina law is clear that no liability can arise from that relationship:

In our opinion, the better rule is that an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client. Accordingly, an attorney who acts in good faith with the authority of his client is not liable to a third party in an action for malicious prosecution. *See W.D.G. Inc. v. Mutual Mfg. & Supply Co.*, 5 Ohio Op. (3d) 397 (1976). Such a suit is properly brought against the party to the original action, not the attorney representing him. The attorney normally conducts the litigation solely in his professional capacity. He has no personal interest in the suit. In his professional capacity the attorney is not liable, except to his client and those in privity with his client, for injury allegedly arising out of the performance of his professional activities. *Id.*

Gaar v. N. Myrtle Beach Realty Co., Inc., 287 S.C. 525, 529, 339 S.E.2d 887, 889 (Ct. App. 1986).

This provision of law has been cited by this Court and the supreme court after *Gaar*, with the same holding that is dispositive here. *See Douglass ex rel. Louthian v. Boyce*, 344 S.C. 5, 10, 542 S.E.2d 715, 717 (2001) (“As noted by both the trial judge and the Court of Appeals, an attorney is immune from liability to third persons arising from the attorney’s professional

activities on behalf and with the knowledge of the client, absent an *independent* duty to the third party.”); *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 509 (2006) (same); *Hager v. McCabe, Trotter & Beverly, P.C.*, 435 S.C. 740, 746, 869 S.E.2d 886, 889 (Ct. App. 2022) (affirming 12(b)(6) dismissal of claims against attorneys on same statement of law as *Gaar*). Of course, there is no provision of law that creates an independent duty between defense counsel—which Anderson was in *Grate I*—and a pro se plaintiff.

Regardless of what existed or occurred in *Grate I*, the very face of the pleading in this case explicitly states the claim against Anderson is brought on the basis of his representation, which is barred by South Carolina law. *See* Compl. (R. ____). The immunity described in *Gaar* and other related cases applies here and Grate’s factual allegations, viewed in any light, would never form a cognizable basis for relief under South Carolina law. As such, the circuit court properly dismissed the claims against Anderson.

III. The Issues Raised in Grate’s Brief are Without Merit.

Grate raises a number of other issues in his brief. These issues not preserved, abandoned, and are otherwise without merit. *See Mead v. Beaufort Cnty. Assessor*, 419 S.C. 125, 139, 796 S.E.2d 165, 172–73 (Ct. App. 2016) (“When an appellant provides no legal authority regarding a particular argument, the argument is abandoned and the court can decline to address the merits of the issue.”).

As to arguments regarding his Motion for Summary Judgment, Grate argues nothing more than “The Summary Judgment Motion encompassed elements of the case and given that none of the elements were addressed in any answer, from or by Defendants, thereby constituting any genuine controverted matter, the Summary judgment was warranted, pursuant to the Rules.” As noted in section II above, there was no cognizable claim even stated against Anderson.

Moreover, Grate's argument and filings below relative to this Motion do not specifically address Anderson. Under South Carolina law, this warrants denial of a Motion for Summary Judgment. *See* Rule 56(c), SCRCP.

Grate also argues that "Defendants chose not to provide an answer to the pleading. That decision placed them in a position of non-compliance with procedural process. A defendant shall serve his answer within 30 days after the service of the complaint upon him. Rule 12(a)." However, Rule 12 permits or requires the filing of a motion pursuant to 12(b) in response to a Complaint. *See* Rule 12(b), SCRCP ("A motion making any of these defenses shall be made before pleading if a further pleading is permitted."). That is what occurred here, and as such, this argument is meritless.

Grate further argues that "Defendant Anderson assumed the role of President and Registrar, at a minimum, of CCU. Following the assumption of said, Defendant Anderson neglected to facilitate Plaintiff's registration with CCU, thereby questionably, unethically, at best, blocking Plaintiff from continuing his studied at the university." There is no citation for the proposition that Anderson somehow assumed the role of President or Registrar of CCU. And, nothing in the circuit court's order rules upon this specific contention. *Herring v. Home Depot, Inc.*, 350 S.C. 373, 382, 565 n.9, S.E.2d 773, 777 n.9 (Ct. App. 2002) ("To preserve an issue for review on appeal, a party must raise the issue and obtain a ruling."). Moreover, as noted above in Section II of this Brief, this claim is not cognizable under South Carolina law.

CONCLUSION

For the reasons set forth herein, Respondent David A. Anderson respectfully requests this Court affirm the circuit court's order dismissing Appellant's civil action against him for claims arising out of his prior representation of other defendants in another lawsuit.

Respectfully submitted,

s/ Ashwin R. Sanzgiri

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September 25, 2026

CERTIFICATE OF SERVICE

I, the undersigned, for Respondent David A. Anderson do hereby certify that I have this date served the foregoing **Initial Brief of Respondent David A. Anderson** by serving the same pursuant to Section (d)(1) of the Supreme Court's Amended Order dated April 24, 2024, on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable) and on Appellant Joseph N. Grate by depositing the same in the US Mail:

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A copy of the sent email and mail deposit is enclosed with this Certificate of Service.

s/Sandra Davidson_____

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