

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2026-001686

RECEIVED

Sep 30 2026

SC Court of Appeals

Weldon Boyd,Appellant,

v.

Mark TinsleyRespondent.

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case.....	2
Standard of Review	12
Argument	13
I. AFTER PERMITTING AN ORDER FROM A SEPARATE MATTER OUTSIDE THE PLEADINGS TO BE CONSIDERED ON MOTION TO DISMISS, DID THE TRIAL COURT ERR IN FAILING TO CONVERT THE MOTION TO DISMISS INTO ONE FOR SUMMARY JUDGMENT, THUS FAILING TO PROVIDE THE PLAINTIFF THE PROCEDURAL PROTECTIONS OF DISCOVERY, AS REQUIRED BY SCRCP 56.....	13
II. DID THE TRIAL COURT ERR IN FAILING TO ACCEPT AS TRUE THE COMPLAINT’S ALLEGATIONS OF INTENT, WHICH HAD BEEN ALLEGED AS REQUIRED IN SCRCP 9(B)?.....	15
III. DID THE TRIAL COURT ERR IN CONSIDERING FOR ANY PURPOSE THE ORDER FROM A SEPARATE CASE, WHICH WAS NOT A FINAL ORDER WITH PRECLUSIVE FACTUAL EFFECT S.C. CODE § 16-11-410, EVEN IF DEFENDANT HAD BEEN A PARTY TO THE IRRELEVANT ORDER?	17
IV. DID THE TRIAL COURT ERR IN DENYING THE MOTION TO STRIKE THE ORDER FROM THE SEPARATE MATTER (S.C. CODE §16-11-410), AN ERROR WHICH, HAD IT NOT BEEN MADE, WOULD HAVE EXCLUDED THE ORDER FROM THE SEPARATE MATTER FROM BEING CONSIDERED WITH THE MOTION TO DISMISS?	20
V. DID THE TRIAL COURT ERR IN CONSIDERING NOVEL ISSUES OF LAW WHEN (A) NO RESPONSIVE PLEADING HAD YET ASSERTED THE AFFIRMATIVE DEFENSE (OR ANYTHING ELSE) AND (B) WHEN THE TRIAL COURT FAILED TO ACCEPT THE ALLEGATIONS OF THE COMPLAINT AS TRUE?	22

VI. DID THE TRIAL COURT ERR IN IGNORING THE REQUEST FOR EQUITABLE RELIEF AND INSTEAD TREATING THIS CASE AS AN ORDINARY CIVIL CASE AS IF FOR DAMAGES?	29
--	----

Conclusion	34
------------------	----

TABLE OF AUTHORITIES

CASES

<i>Baird v. Charleston County</i> , 333 S.C. 519, 527, 511 S.E.2d 69, 73 (S.C. 1999).	12
<i>Bergstrom v. Palmetto Health Alliance</i> , 358 S.C. 388, 395, 596 S.E.2d 42, 45 (S.C. 2004).	3
<i>Burns v. Clayton</i> , 237 S.C. 316, 117 S.E.2d 300 (1960).	24
<i>Charleston County School Dist. v. Harrell</i> , 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011).	3,12
<i>Chestnut v. AVX Corp.</i> , 413 S.C. 224, 227, 776 S.E.2d 82, 84 (2015).	22
<i>Central Hudson Gas & Elect. Corp. v. Public Serv. Comm'n of N.Y.</i> , 447 U.S. 557, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980).	28
<i>Coastal States Bank v. Hanover Homes of S.C., LLC</i> , 408 S.C. 510, 517, 759 S.E.2d 152, 156 (Ct. App. 2014).	24
<i>Crescent Homes SC, LLC v. CJN, LLC</i> , 445 S.C. 164, 182, 912 S.E.2d 389, 398 (Ct. App. 2024).	29
<i>Doe v. Bishop of Charleston</i> , 407 S.C. 128, 134 n. 2, 754 S.E.2d 494, 497 n.2 (2014).	6,12
<i>Doe v. Marion</i> , 373 S.C. 390, 395, 645 S.E.2d 245, 248 (2007).	12,13,15
<i>Flateau v. Harrelson</i> , 355 S.C. 197, 201-202, 584 S.E.2d 413, 415 (Ct. App. 2003).	12
<i>Gaar v. N. Myrtle Beach Realty Co.</i> , 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986).	9,11
<i>Gentile v. State Bar of Nevada</i> , 501 U.S. 1030, 1043, 111 S. Ct. 2720, 2728 (1991).	25,26
<i>Hager v. McCabe, Trotter & Beverly, P.C.</i> , 435 S.C. 740, 746, 869 S.E.2d 886, 889 (Ct. App. 2022).	34
<i>Heffernan v. Hunter</i> , 189 F.3d 405, 413 (3 rd Cir. 1999).	11
<i>HHHunt Corp. v. Town of Lexington</i> , 389 S.C. 623, 699 S.E.2d 699 (Ct. App. 2010).	16

<i>Hunt v. Mortgage Electronic Registration,</i> 522 F. Supp. 2d 749, 758 (D.S.C. 2007).....	9
<i>In re Nolan,</i> 419 S.C. 169, 796 S.E. 2d 841 (2017).	24
<i>In re Sloan,</i> 429 S.C. 124, 838 S.E. 2d 499 (2019).	24
<i>Judy v. Judy,</i> 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct. App. 2009).....	9
<i>Milliken & Co. v. Morin,</i> 386 S.C. 1, 8, 685 S.E.2d 828, 832 (Ct.App.2009).....	30
<i>Morrow Crane Co. v. T.R. Tucker Constr. Co.,</i> 96 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct.App.1988.	15
<i>Moore v. Greens Grocery, LLC,</i> 2026 WL 1674974 (June 10, 2026).	4,6,13,21
<i>Palmer v. State,</i> 427 S.C. 36, 43, 829 S.E.2d 255, 259 (Ct. App. 2019).....	22
<i>Russell v. City of Columbia,</i> 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991).	13
<i>Sharps v. Sharps,</i> 342 S.C. 71, 79, 535 S.E.2d 913, 917 (2000).	12,20
<i>Stanley Smith & Sons, Inc. v. Dumas,</i> 315 S.C. 30, 33, 431 S.E.2d 595, 596 (Ct. App. 1993).....	6
<i>State v. Dennis,</i> 47 S.C. 323, 327, 926 S.E.2d 250, 252 (2026).	6,18,19
<i>State v. Duncan,</i> 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011).	17
<i>State v. Heyward</i> 432 S.C. 296, 318, 852 S.E.2d 452, 463 (Ct. App. 2020).....	12,20
<i>Stiles v. Onorato,</i> 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995).	10,23,33,34
<i>Toussaint v. Ham,</i> 292 S.C. 415, 357 S.E.2d 8 (1987).	3
<i>Town of Summerville v. City of North Charleston,</i> 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).	12
<i>Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Office,</i> 46 S.C. 158, 165, 551 S.E.2d 263, 267 (2001).	22

<i>Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue</i> , 342 S.C. 34, 38–39, 535 S.E.2d 642, 644–45 (2000).	28
<i>Wessinger v. Rauch</i> , 288 S.C. 157, 158–59, 341 S.E.2d 643, 644 (Ct. App. 1986).....	31

STATUTES

S.C. Code § 16-11-410.....	1,17,20,21,22
S.C. Code § 16-16-10.....	32

OTHER AUTHORITIES

Rule 8, SCRCP.....	10
Rule 8(c), SCRCP	3,23,24
Rule 9(a), SCRCP	2,10,17,27,33
Rule 9(b), SCRCP	1,9,10,15,16,17,24,26,28,32
Rule 12, SCRCP.....	10
Rule 12(b)(6), SCRCP	2,4,5,6,7,14,15,16,22,23,26,28,32
Rule 12(b)(8), SCRCP	2,8,9,32
Rule 12(f), SCRCP.....	27
Rule 26, SCRCP.....	24
Rule 56, SCRCP.....	1,5,13,14,28
Rule 56(c), SCRCP	5
Rule 201, SCRE	21, 22
Rule 201(b), SCRE	6,21
Rule 407, SCACR, Rule 3.6	25,28,29,31,33
Rule 407, SCACR, Rule 3.6 (c).....	25
46 Am.Jur.2d Judgments § 73.....	12

STATEMENT OF ISSUES ON APPEAL

- I. After permitting an order from a separate matter outside the pleadings to be considered on motion to dismiss, did the trial court err in failing to convert the motion to dismiss into one for summary judgment, thus failing to provide the plaintiff the procedural protections of discovery, as required by SCRCP 56?
- II. Did the trial court err in failing to accept as true the complaint's allegations of intent, which had been alleged as required in SCRCP 9(b)?
- III. Did the trial court err in considering for any purpose the order from a separate case, which was not a final Order with preclusive factual effect S.C. Code § 16-11-410, even if defendant had been a party to the irrelevant Order?
- IV. Did the trial court err in denying the motion to strike the order from the separate matter (S.C. Code §16-11-410), an error which, had it not been made, would have excluded the Order from the separate matter from being considered with the motion to dismiss?
- V. Did the trial court err in considering novel issues of law when (a) no responsive pleading had yet asserted the affirmative defense (or anything else) and (b) when the trial court failed to accept the allegations of the complaint as true?
- VI. Did the trial court err in ignoring the request for equitable relief and instead treating this case as an ordinary civil case as if for damages?

STATEMENT OF THE CASE

The appellant, Weldon Boyd (“Boyd”), filed his complaint on November 3, 2025, seeking declarative and other equitable relief as a result of Defendant’s intentional damage to Boyd by Defendant Mark Tinsley (“Defendant”), who perpetuated “a false narrative through manipulative use of media outlets . . . solely for personal publicity and promotion...” (ROA__). Complaint ¶ 89. Defendant is being sued for actions taken “in his individual capacity and for his own purposes, and not as a lawyer to further any client matter.”¹ (ROA__) Complaint p. 1. The Complaint alleged that Defendant was “manufacturing, disseminating and perpetuating a false narrative through manipulative use of media outlets which has permanently harmed Boyd’s ability to obtain a fair trial,” in part by influencing witnesses. (ROA __) Complaint at ¶¶ 55, 67 and 69.

On December 3, 2025, Defendant moved to dismiss under SCRCP 12(b)(6) and 12(b)(8) (Motion to Dismiss) contending:

- (1) The complaint seeks a remedy “to try issues or determine the validity of defenses in a pending case.” (ROA__) Motion at p. 2, ¶ 1.
- (2) That Defendant was an improper defendant. *Id.*
- (3) That Boyd has an adequate remedy at law. Motion at p. 3, ¶ 2.
- (4) That a pending case in which Defendant is counsel provides a proper forum for the issues stated in the complaint. Motion at p. 4, ¶ 3.

¹ Defendant is a lawyer, but no allegation of the complaint allege he acted in his capacity as a lawyer nor did any allegation of the complaint allege that Defendant acted to benefit his client in any way. All allegations against Defendant were against him in his individual capacity, with “specific negative averment” consistent with SCRCP 9(a) as to alleging his individual, not representative, capacity.

- (5) That the complaint alleges issues that are not ripe for adjudication in that they are “hypothetical or abstract.” Motion at p. 4 ¶ 4.
- (6) That the conduct of Defendant alleged in the complaint expressly alleged to have been taken for his own purposes was taken “at all times acting in his representation,” Motion at p. 5 ¶ 5. (An affirmative defense on which Defendant had the burden of pleading and proof).²

On June 1, 2026, Defendant filed a memorandum in support of his motion, to which he appended as an exhibit a March 11, 2026 order by a different judge addressing a factual issue from a separate matter, a case in which Defendant is not a party and which presents different facts than those presented in this case. (ROA __)(Defendant’s Memorandum in Support, with Exhibit). The order submitted by Defendant in connection with the Motion to Dismiss is referred to herein as “order from a separate matter”). On page one of the order from a separate matter, Defendant is identified as one of the counsels for the plaintiff in that action. Defendant is not a party in that separate action. (ROA __).

The complaint does not refer to the separate matter from which the order was issued, except in a temporal reference describing the history of the wrongdoing by Defendant in this case. (ROA __). ¶ __. By including the order from a separate matter as an exhibit in this matter, Defendant

² Any immunity asserted by Defendant in this case would be an affirmative defense, SCRPC 8(c), necessarily raised in a responsive pleading rather than a motion to dismiss. In deciding a motion to dismiss the court is limited to the four corners of the complaint, assumes the allegations are true, and draws all inferences in the light most favorable to the plaintiff. *Charleston County School District v. Harrell*, 393 S.C. 552, 559, 713 S.E.2d 604, 608 (2011); **Error! Main Document Only.** *Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 395, 596 S.E.2d 42, 45 (S.C. 2004). A motion to dismiss should be denied if plaintiff could obtain relief on any theory, even if the court is doubtful of recovery. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987).

improperly introduced evidentiary issues at the motion to dismiss stage and improperly introduced matters outside the pleadings. Prior to the hearing, Boyd filed a Motion to Strike the improper filing. (ROA ____). The motion to strike was not docketed for hearing on the same date as the motion to dismiss. However, the trial court denied the motion to strike from the bench. (ROA ____).

At the June 10, 2026 hearing, neither of the parties nor the Court were aware that the South Carolina Supreme Court would, the same day, issue Opinion 28338 in *Moore v. Greens Grocery, LLC*, 2026 WL 1674974 (June 10, 2026), which considered identical issues: whether to exclude an order in a separate matter to support a motion to dismiss under SCRCP 12(b)(6), and the effect of not excluding it. In a fascinating parallel, the case involved admission of a stand-your-ground order from a criminal case, the significant difference being that there was no objection to the use of the order from that separate case in the civil case.

On June 15, the Court issued a form 4 order (June 15, 2026 form 4 order) consistent with oral rulings announced from the bench during the hearing. (ROA ____). The trial court denied the plaintiff's motion to strike the immunity order and continued various discovery motions. The same day, Boyd filed a motion to reconsider those rulings announced from the bench during the June 10 hearing (ROA ____)(Boyd Motion to Reconsider the June 10 rulings).

Also on June 15, 2026, Mr. Boyd filed a supplemental memorandum calling the trial court's attention to the South Carolina Supreme Court's June 10 decision in *Moore v. Greens Grocery, LLC*, which was dispositive of the issue of Defendant's attempt to introduce the irrelevant order at a Motion to Dismiss hearing. (ROA ____). In a nearly identical procedural posture, the Supreme Court held in *Moore* that considering the order from the other was "outside the pleadings" for

purposes of SCRCP 12(b)(6), and that not excluding it *converted the motion to one for summary judgment under SCRCP 56(c)*. *Moore* at 2026 WL 1674974 at *3 (emphasis added).

On June 18, the Court issued one form 4 order denying the motion to reconsider the oral rulings from the hearing (ROA __)(June 18 form 4 Order as to Motion to Reconsider), and another Form 4 order which granted Mr. Tinsley’s motion to dismiss (ROA __) (June 18 form 4 Order as to Motion to Dismiss). On June 22 the Court issued a superseding Form 4 order to clarify that a formal order as to the motion to dismiss would follow. (ROA __)(June 22 form 4 Order as to Motion to Dismiss).

On July 14, 2026, a formal order was issued, granting Defendant’s motion to dismiss. (ROA __) (July 14 Order, referred to hereafter as the Order). The Order acknowledged that in the Complaint, Defendant was “not sued in his representative capacity as a lawyer, but solely as an individual having acted for his own personal benefit and interests, not as a tactical action in litigation and not in furtherance of any interests of any client,” (ROA __)(Order at p. 1). The Court acknowledged that the complaint was based on Defendant “creat[ing] a knowingly false yet sensational narrative” (ROA __)(Order at p. 2).

Despite those acknowledgments, the Court also concluded, expressly contrary to the allegations of the complaint, that Boyd did not claim the release of false information by Defendant “was improper.”³ (ROA __).

³ As to impropriety, the complaint alleged, for example, that Defendant acted for “his own personal benefit and interests,” not as a client representative (e.g., Complaint ¶ 5), that his actions were “misconduct” (Complaint ¶ 35), “intentional, reckless and willful” (Complaint ¶ 39); that he created “a knowingly false yet sensational narrative” using “non-public material and publicly releasing selective portions to media outlets” (Complaint ¶ 38), making “widespread

At p. 3 the Order took judicial notice of the “order in the wrongful death suit,”⁴ referring to the order in a separate matter. (ROA ____). The Court described the order in a separate matter as somehow relevant to the allegations in this case (Order at p. 3). The trial court’s discussion as to Boyd’s claim of self-defense and immunity in the separate matter are not relevant to this case, which is based solely on Defendant’s dissemination of false and inflammatory “facts.” (Order at p. 3).⁵ The Order did not mention the controlling decision in *Moore v. Greens Grocery, LLC*, but at p. 4 the Order cited *Stanley Smith & Sons, Inc. v. Dumas*, 315 S.C. 30, 33, 431 S.E.2d 595, 596 (Ct. App. 1993) (Court of Appeals took judicial notice of the appellate record in another case) and *Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n. 2, 754 S.E.2d 494, 497 n.2 (2014) (circuit court may take judicial notice of court records when ruling on a 12(b)(6) motion without converting it into one for summary judgment), as well as SCRE 201(b) (judicial notice of facts “not subject to reasonable dispute,” (ROA ____)(Order at p. 4), and federal cases as to judicial notice of public records not converting a motion to dismiss into one for summary judgment. The Order reiterated that the Court had denied Mr. Boyd’s motion to strike the wrongful death order from the record in this action (Order at p. 4).

Despite *Moore v. Greens Grocery, LLC*, 2026 WL 1674974 (2026), which converted a

publication of selective materials obtained through litigation without regard for its non-public nature.” (Complaint ¶ 40).

⁴ The complaint does not mention “the wrongful death suit.” In Paragraph 37 it makes a temporal reference to the filing of a lawsuit to show the order in which events occurred, or to explain mechanisms of wrongful conduct (e.g., Paragraphs 43, 46 and 50), but the complaint does not describe the nature of the separate matter in any way. (ROA ____).

⁵ As discussed below, in this regard the trial court conflated two different things, as the order of which the court took judicial notice ruled on a preliminary evidentiary issue in that separate case, a denial that does not prohibit Boyd from asserting self-defense at trial of that separate case. e.g., *State v. Dennis*, 447 S.C. 323, 327, 926 S.E.2d 250, 252 (2026) (“An immunity hearing under the Act, however, in no way determines the admission of evidence at trial . . .”).

motion to dismiss to a motion for summary judgment after the parties *consented* to the court not excluding an unrelated order attached to a motion to dismiss, and despite the factual disputes on the novel question of law presented in this action, the trial court did *not* convert the Defendant's motion to dismiss into one for summary judgment or afford Boyd any opportunity for discovery. The trial court was unwilling to consider the merits of this action without considering the separate matter, as if the two cases were one. Essentially, the trial court disputed the facts alleged in the complaint.

On the merits, the Court found multiple independent grounds to dismiss the complaint. First, the Court declined to exercise its discretion to consider equitable relief. At page 6, the Order concluded that the request was not ripe. The trial court considered there was “no actual, justiciable controversy” because “the wrongful death suit has not yet been tried,” and (ROA __)(Order at p. 7) because there was “no pending criminal matter” that Boyd had “faced, or been asked to face, the issue of whether an impartial jury may be seated” (*Id.*) in any matter involving Boyd, from which the Court concluded the request was “based upon a hypothetical or abstract dispute and seeks an advisory opinion to theoretically immunize himself from liability or prosecution.” (ROA __)(Order at p. 7). “There is no case or controversy to remedy.” (ROA __) (Order at p. 7).

As a separate and independent ground for dismissal under SCRCP 12(b)(6), the Court found that no equitable relief was needed because Boyd had an adequate remedy at law in the pending wrongful death lawsuit through motion practice “about his ability to receive a fair trial.” (Order at p. 8). The Court considered that any declaratory relief “would improperly constrain the wrongful death action.” (ROA __)(Order at pp. 8 to 9). Again, the trial judge refused to consider

the cases separately, despite them involving different parties and totally different, independent issues.

As a third, independent ground for dismissal, under SCRCP 12(b)(8) rather than SCRCP 2(b)(6), the Court concluded that the request for declaratory relief would “circumvent existing [separate] litigation,” Order at p. 9, finding⁶ that Defendant “has at all times relevant represented the Estate of Scott Spivey and the Spivey Family,” making the request for equitable relief an attempt “to circumvent the existing civil litigation against him.” (ROA __)(Order at p. 9). The Court also found (*Id.*) that motion practice in the wrongful death action was available but had not been pursued. “Accordingly, the Court concludes that the Complaint is not an appropriate vehicle for the relief sought and would, if entertained, risk undermining the orderly adjudication of the [separate] pending proceedings.” (ROA __)(Order at p. 10).

The Court construed this action for declaratory and equitable relief as “improperly su[ing] a litigant’s attorney to gain some perceived advance ‘declaration’ regarding his rights in another pending suit,” (Order at p. 10), since “another action between the same parties in which the same issues” could be adjudicated” (ROA __)(Order at p. 10). Even the Court acknowledged that Defendant was not a party to the wrongful death action. (ROA __)(Order at p. 10 n. 2). The separate relief sought in the two cases did not matter, “given the allegations and ‘Trojan Horse’ relief requested,” (*Id.*), because the Court construed the suit for declaratory relief was “to try issues or determine the validity of defenses in pending cases,” under SCRCP 12(b)(8). The trial judge found “the cases pending in two forums were ‘so interrelated’ that ‘the ends of justice’ were served

⁶ Despite the express allegations of the complaint to the contrary.

by dismissal pursuant to Rule 12(b)(8),” and the action for declaratory and equitable relief in this case “was ‘intended to avoid’ the remedy available in the other forum.” (ROA __)(Order at p. 11).

In footnote 3 on page 11 of its Order, the Court relied on the order from a separate matter when addressing the allegations that Defendant had created a “supposed false narrative,” stating:

This Court finds that Plaintiff is collaterally estopped from relitigating the issue of his complete innocence/lack of fault in in the death of Scott Spivey.

(ROA __). For this conclusion the Court construed *Judy v. Judy*, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct. App. 2009), as applicable, applying estoppel which “prevents a party from *relitigating an issue that was decided* in a previous action.” (Emphasis added). (ROA __). The trial court completely ignored the undisputed allegations that Defendant’s media firestorm had spread false facts about Boyd.

As another independent ground for dismissal, the Court determined (Order at p. 11) that Defendant had immunity as he was “at all times acting within the scope of his representation and with the knowledge of the Spiveys,” finding that the allegations arose from “the performance of his professional activities as an attorney on behalf of and with the knowledge of his client, citing *Hunt v. Mortgage Electronic Registration*, 522 F. Supp. 2d 749, 758 (D.S.C. 2007), and *Gaar v. N. Myrtle Beach Realty Co.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986). (ROA __) This ignores the allegations of the complaint that assert just the opposite, that Defendant was acting for his own personal purposes to increase his celebrity.

The pleading requirements of SCRCP 9(b) are that “intent . . . may be averred generally.” Recognizing the direct conflict with the allegations of intent in the complaint, which alleged (as

required by SCRCP 9(a) as to capacity) that Defendant was *not* acting in any representative capacity (Complaint), the Court concluded those allegations of the complaint “were without merit, even under our liberal pleading standards.” Order at p. 12. The court listed from the complaint (at Order pp. 12 to 13) various allegations of Defendant’s personal, not representative, intent associated with his false statements to media, but the Court dismissed those allegations as not being “facts” which the court was required to accept as true, or construe in the light most favorable to Boyd, but inexplicably as “propositions of law” (Order at p. 13), which could be disregarded under the pleading standards of Rules 8 and 12, SCRCP (Order at p. 13). The Order does not refer to the pleading requirements of either SCRCP 9(a) (directly applicable to how capacity is to be pleaded), or to SCRCP 9(b) (directly applicable to how intent is to be pleaded).

Additionally, the Court affirmatively found the complaint did not allege, as *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995) required, “sufficient facts to remove [the attorney] from the ambit [of the general rule of immunity],” (Order at p. 13, brackets in the Court’s Order), for failing to allege “in what manner [the attorney] acted outside his role as the plaintiff’s attorney.” (Order at p. 13). The Court found “no such allegations” (Order at p. 14) that rose “to the quality of bad faith so required by *Stiles* and its progeny to pierce the shield of immunity [Defendant] enjoys in his representation,” (*Id.*), because even “mixed motives” such as “enhancing their reputation by aggressive representation [of their clients]” (Order at p. 14, brackets in the Court’s Order) did not remove the conduct from the agency relationship with the clients, citing *Heffernan v. Hunter*, 189 F.3d 405, 413 (3rd Cir. 1999). The Court observed that Defendant

denied⁷ he had “any motive other than zealously advocating for his client,” and the Court dismissed the complaint, erroneously concluding the “enhanced reputation and mixed motives are the only ‘allegations’ which Plaintiff claims as a basis for bringing this suit,” citing *Gaar* and *Stiles*. (Order at p. 14).

On Friday, July 24, 2026, Mr. Boyd submitted a detailed motion to alter or amend (July 24 Motion to Reconsider), which was denied by a Form 4 order on Tuesday, July 28 (July 28 Order).

On Thursday, July 30, 2026, the plaintiff noticed this appeal from the various orders of the Court (Notice of Appeal), specifically:

- (a) Verbal orders stated on the record on June 10, 2026, denying the Motion to Strike,
- (b) Form 4 order of June 18, 2026, denying the plaintiff’s Motion to Reconsider the order as to the Motion to Strike,
- (c) Form 4 order of June 18, 2026 granting the Motion to Dismiss,
- (d) Form 4 order of June 22, 2026, granting the Motion to Dismiss,
- (e) Form 4 order of June 22, 2026, denying the plaintiff’s Motion to Reconsider as to the Motion to Strike,⁸
- (f) Order of July 14, 2026, granting the Motion to Dismiss, and
- (g) Form 4 order of July 28, 2026, denying the Motion to Reconsider as to the Motion to Dismiss.

⁷ Defendant has not “denied” anything in the complaint, because he has not filed any responsive pleadings, illustrating the bizarre rationale of the trial judge on a motion to dismiss standard, even affirmatively granting legal relief to Defendant which was not sought.

⁸ The Form 4 order stated that a formal order was to follow but only the Form 4 order was filed.

STANDARD OF REVIEW

A motion to strike is reviewed for abuse of discretion. *State v. Heyward*, 432 S.C. 296, 318, 852 S.E.2d 452, 463 (Ct. App. 2020), *aff'd as modified*, 441 S.C. 484, 895 S.E.2d 658 (2023). “An abuse of discretion occurs if the court's ruling is controlled by an error of law” *Sharps v. Sharps*, 342 S.C. 71, 79, 535 S.E.2d 913, 917 (2000).

Review from an order granting a motion to dismiss, is *de novo*, *Doe v. Bishop of Charleston*, 407 S.C. 128, 134–35, 754 S.E.2d 494, 497–98 (2014),⁹ with the appellate court applying the same standard as the trial court. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). “In deciding whether the trial court properly granted the motion to dismiss, this Court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. *Flateau v. Harrelson*, 355 S.C. 197, 201-202, 584 S.E.2d 413, 415 (Ct. App. 2003). The appellate court is required to accept the well pleaded facts as true and “the trial court must base its ruling solely upon allegations set forth on the face of the complaint,” with the motion to be denied “if the facts alleged and inferences therefrom would entitle the plaintiff to any relief on any theory.” *Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (S.C. 1999). “[P]leadings in a case should be construed liberally so that substantial justice is done between the parties. Further, a judgment on the pleadings is considered to be a drastic procedure by our

⁹ “When reviewing a motion to dismiss for failure to state facts sufficient to constitute a cause of action, the pleadings must be construed liberally, and all well pled facts must be presumed true. *Charleston County School Dist. v. Harrell*, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011). However, the interpretation of a judgment is a question of law for the court. 46 Am.Jur.2d Judgments § 73. Questions of law are reviewed *de novo*. *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

courts.”¹⁰ *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991) (citation omitted). The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 248 (2007).

Going outside the pleadings and incorporating an immunity order from another action converts the motion to dismiss to a motion for summary judgment. *Moore v. Greens Grocery, LLC*, ___ S.C. ___, ___ S.E.2d ___, 2026 WL 1674974 at *3.

ARGUMENT

Initially, the appellate court must view two procedural issues and one substantive issue, each of which reflects the considerable depth of the trial judge’s errors of law, and which readily show why his Order should be reversed and the case remanded.

I. AFTER NOT EXCLUDING A MATTER OUTSIDE THE PLEADINGS, THE TRIAL COURT ERRED IN FAILING TO CONVERT THE MOTION TO DISMISS INTO ONE FOR SUMMARY JUDGMENT, THUS FAILING TO PROVIDE THE PLAINTIFF THE PROCEDURAL PROTECTIONS OF DISCOVERY, AS REQUIRED BY SCRPC 56.

This error affects every aspect of each of the six rationales used by the trial judge to dismiss the complaint.

The trial court’s Order ignored a controlling Supreme Court decision about the effect of incorporating an order from a separate case when addressing a motion to dismiss. In *Moore v. Greens Grocery, LLC*, ___ S.C. ___, ___ S.E.2d ___, 2026 WL 1674974 (2026), the Supreme Court ruled that going outside the pleadings when considering a motion to dismiss, and not

¹⁰ This was not even a motion for judgment on the pleadings, it was a motion to dismiss, with no responsive pleading having been filed.

excluding an immunity order from other litigation, *even when the parties had consented*, required that “the motion [to dismiss] *shall* be treated as one for summary judgment and disposed of as provided in Rule 56.” 2026 WL 1674974 at *3 (emphasis added).

SCRCP Rule 12(b), of course, requires that when a 12(b)(6) motion is converted to a motion for summary judgment as provided by SCRCP 56, that “all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 56.”

It is undisputable that the trial court did not afford Boyd any opportunity, let alone “reasonable opportunity,” to do discovery so as to present materials pertinent to a motion which addressed the merits and for which many facts were in dispute. At p. 3 the trial judge concluded, directly contrary to *Moore*, that he could consider the order from a separate case in his decision on the motion without converting the motion to dismiss to one for summary judgment. More on this below. The trial judge’s order disagreed with the well-pleaded facts in the complaint on the basis of an order from the separate matter, which was indisputably outside the complaint.

As noted above, the Supreme Court decided *Moore* June 10, 2026, the same day Defendant’s motion to dismiss was argued before the trial judge. Five days after the hearing, while the trial judge had the motion to dismiss under advisement, Boyd called the court’s attention to *Moore* by supplemental memorandum, submitted on June 15, 2026. (ROA ____). Given the trial judge’s intentional disregard of *Moore*, a precedent directly on point, the order should be reversed

and the case remanded for further proceedings, with instructions to permit the plaintiff discovery on issues pertinent to the motion¹¹ before the merits are addressed.

II. THE TRIAL COURT ERRED IN FAILING TO ACCEPT AS TRUE THE COMPLAINT’S ALLEGATIONS OF INTENT, WHICH HAD BEEN ALLEGED AS REQUIRED IN SCRCP 9(B).

This is another error of law by the trial judge, so fundamental an error that it requires reversal of his order granting the motion to dismiss and affects each of the six grounds for dismissal.

As noted above, in evaluating an appeal from an order granting a motion under SCRCP 12(b)(6), the appellate court reviews the record *de novo*, using the same standard as the trial court. The appellate court “must presume all well pled facts to be true.” *Morrow Crane Co. v. T.R. Tucker Constr. Co.*, 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct.App.1988). Nor should a court dismiss a complaint merely because the court doubts the plaintiff will prevail in the action. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 248 (2007).

At pages 12 and 13 of the trial judge’s Order he went to elaborate, and plainly erroneous, lengths to disregard the factual allegations of the complaint as to Defendant’s personal intent in disseminating to media sources various false and non-public information obtained through discovery so as to create and broadly disseminate a false, but sensational narrative to further Defendant’s own celebrity status. (ROA __).

¹¹ Reversal is required no matter how the court disposes of the appeal as to the orders denying the plaintiff’s Motion to Strike, a decision that affects only mildly the scope of the discovery which Boyd should be permitted, not whether discovery should be permitted at all.

Defendant's own *undisputed* goal of achieving and/or perpetuating celebrity status has nothing to do with the representation of any client.

To avoid accepting the allegations of the complaint as true, as the Rules of Civil Procedure require, the trial judge determined the allegations of intent were "unsupported propositions of law" (Order of July 14, 2026 at p. 13).¹²

SCRCP 9(b) sets out explicitly how facts about a "condition of mind," such as intent, is to be pleaded. The trial judge makes no reference to SCRCP 9(b). Allegations of Defendant's intent are not propositions of law, but factual allegations, as SCRCP 9(b) explicitly states: "intent . . . ***and other condition of mind of a person may be averred generally***" (emphasis added). The trial judge's plainly erroneous contortion to try to transform factual allegations of intent into propositions of law is flatly contradicted by the directive in SCRCP 9(b) about how intent is to be alleged in a complaint. Allegations of intent, clearly factual inquiries, are not remotely comparable to allegations of a legal concept, such as duty.

The trial judge's order rests on this plain error of law, as it underlies the Court's entire analysis of every issue. The trial court erred in imposing on Boyd a pleading criterion not only not required by SCRCP 9(b), but a criterion in direct contradiction of the manner in which SCRCP

¹² Order at p. 13: "A plaintiff "cannot transform an unsupported proposition of law into a statement of fact" to avoid dismissal under Rule 12(b)(6)," citing *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 699 S.E.2d 699 (Ct. App. 2010). However, *HHHunt* articulated that point when construing a complaint's allegations about *duty*, undisputedly a proposition of law. 389 S.C. at 635, 699 S.E.2d at 705 (construing "duty to provide wastewater services under either section 208 or the South Carolina Pollution Control Act.").

9(b) requires that matters of intent be alleged. Instead of accepting the allegations of the complaint as true for purposes of the motion, the trial judge disagreed with them factually.

Similarly, the Order ignored the “specific negative averment” of capacity required by SCRCP 9(a).

The trial judge’s order granting Defendant’s motion to dismiss should be reversed.

III. THE TRIAL COURT ERRED IN CONSIDERING FOR ANY PURPOSE THE ORDER FROM A SEPARATE CASE, WHICH WAS NOT A FINAL ORDER WITH PRECLUSIVE FACTUAL EFFECT, S.C. CODE § 16-11-410, EVEN IF DEFENDANT HAD BEEN A PARTY TO THE IRRELEVANT ORDER

It is not possible to overstate how deeply the trial judge erred in construing the order from the separate case in ruling on Defendant’s Motion to Dismiss, a depth of error which shows why an order from a separate case should not be considered when deciding a Motion to Dismiss if any party objects to its consideration.¹³

The trial judge’s order erroneously treats the order from a separate matter as a final order. That order from the separate matter is not final on any subject, even on the subject of self-defense, and that has been the law in South Carolina for not less than fifteen years. The order in the separate matter is an “independent proceeding” designed to determine only whether a defendant is entitled to immunity from prosecution. *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). The order decides one thing only: does the separate proceedings terminate (due to immunity), or does the proceeding continue?

¹³ In fairness to the trial judge, Defense counsel encouraged this error by presenting the order from the separate matter as if it made a number of “findings” about what the immunity order “found” to be “true” and “not true.” E.g., Transcript of Hearing at pp. 7 to 10. But the trial judge was required to independently assess the hyperbolic argument of counsel.

The order in the separate matter has no preclusive effect. This was reiterated as recently as January, 2026, when the South Carolina Supreme Court explained it comprehensively in *State v. Dennis*, 447 S.C. 323, 327, 926 S.E.2d 250, 252 (2026), a case considering whether a mistrial entitled a criminal defendant to a second immunity hearing:

An immunity hearing under the Act, however, ***in no way determines the admission of evidence at trial***, nor does it impact the factfinder's determination of whether the State has established the defendant's guilt beyond a reasonable doubt.

(emphasis added).

The trial judge ignored that the order in the separate matter has no preclusive effect, even in the same case in which it was issued - on a claim of self-defense at a subsequent trial. The law could not be more clear on this point, yet it was entirely ignored by the trial judge, who bought into the Defendant's argument the order in the separate matter had preclusive effect, which he applied as to Boyd. The law says just the opposite:

When the circuit court denies immunity under the Act, the parties are still left in the same position regarding how they can conduct themselves or present their case at trial. Indeed, ***no evidence has been conclusively excluded or admitted; no argument has been foreclosed or permitted***; and the defendant may, if he chooses to, present the same self-defense claim he did at the immunity hearing, or he may not.

State v. Dennis, 447 S.C. 323, 333, 926 S.E.2d 250, 255 (2026) (emphasis added).

[T]here is nothing decided at an immunity hearing that will later dictate how the parties may or may not conduct themselves at trial. For instance, if immunity is denied, a defendant can freely present or abandon his or her self-defense claim at trial without limitation. See State v. Cervantes-Pavon, 426 S.C. 442, 451, 827 S.E.2d 564, 569 (2019) ("Of course, at the conclusion of any given hearing, if the circuit court determines the movant has not met his burden of proof as to immunity, the case will go trial, and the issue of self-

defense may—depending upon the evidence presented at trial—be presented to the trial jury.”). Further, ***the Act in no way precludes the parties from altering the arguments or evidence presented at the immunity hearing to better fit the strategies adopted at trial.*** Cf. *Council v. State*, 380 S.C. 159, 175, 670 S.E.2d 356, 364 (2008) (emphasizing that, in the context of death penalty cases, it is not inconsistent for trial counsel to argue during the guilt phase of trial that the defendant was not the actual perpetrator of the crime but then present mitigating evidence during the penalty phase of trial). If anything, the evidence presented at trial will often part company with the evidence previously presented at the immunity hearing. The incongruence between the evidence presented at the immunity hearing versus the trial further aligns with the fact that immunity hearings are held months, if not years before, a defendant’s trial, often in front of circuit court judges who may not ultimately preside over the defendant’s trial.

State v. Dennis, 447 S.C. 323, 332 - 333, 926 S.E.2d 250, 255 (2026) (emphases added).

If the order in the separate matter has no preclusive effect in the action in which it was issued, it certainly cannot have preclusive effect in THIS matter. The depth of the trial judge’s misunderstanding of the order from a separate case is encapsulated both as to his error on the merits (what the order from the separate matter decided) as well as his error on an immunity order’s procedural role (the effect of the order from the separate matter on subsequent proceedings, in that very case). The trial judge erred not only because he considered the order from the separate matter as a final ruling (when it is not) but also because he considered it as a basis to impose preclusive effect on Boyd in this independent action.

The trial judge erroneously ruled that the order from the separate matter:

collaterally estopped [him, error one]¹⁴ from relitigating [error

¹⁴ Reflecting that the trial judge misunderstood the order from the separate matter to have been a final determination, when it was not. Estoppel does not apply from that order ***even in the case in which it was issued***, as *State v. Dennis* makes clear. 447 S.C. 323, 926 S.E.2d 250 (2026).

two]¹⁵ the issue of his complete innocence/lack of fault [error three]¹⁶ in the death of Scott Spivey based on the March 11 Order in the wrongful death lawsuit.

Order at p. 11, n. 3.

The trial judge's entire order rests on his misconstruction of the order from the separate matter as he reflects that misunderstanding beginning with his first mention of it, at p. 3 of his Order, and reiterates that error throughout. That fundamental error affects each of the six grounds the trial judge cited as the basis to dismiss the complaint.

The trial judge's order is astonishingly irresponsible as to the order from the separate matter and should be summarily reversed and the case remanded.

IV. THE TRIAL COURT ERRED IN DENYING THE MOTION TO STRIKE THE ORDER FROM THE SEPARATE MATTER (S.C. CODE § 16-11-410), AN ERROR WHICH, HAD IT NOT BEEN MADE, WOULD HAVE EXCLUDED THE ORDER FROM THE SEPARATE MATTER FROM BEING CONSIDERED WITH THE MOTION TO DISMISS.

As noted above, a motion to strike is reviewed for abuse of discretion. *State v. Heyward*, 432 S.C. 296, 318, 852 S.E.2d 452, 463 (Ct. App. 2020), *aff'd as modified*, 441 S.C. 484, 895 S.E.2d 658 (2023). "An abuse of discretion occurs if the court's ruling is controlled by an error of law" *Sharps v. Sharps*, 342 S.C. 71, 79, 535 S.E.2d 913, 917 (2000).

¹⁵ Reflecting that the trial judge had not bothered to understand the law that an order under S.C. Code § 16-11-410 is not a final determination of anything.

¹⁶ Reflecting that the trial judge did not understand that order from the separate matter decides nothing as to "innocence/lack of fault," but only whether a person invoking the statute is, or is not, to be given immunity to terminate a proceeding. If not, *the proceeding goes forward. The only consequence* of an immunity order is whether the proceeding in which it is raised terminates or proceeds. The order has no preclusive effect.

The trial judge committed not fewer than four errors of law in denying the Motion to Strike and electing to consider, rather than exclude, the order from the separate matter.

As noted above, it is obvious that the trial judge abused discretion by his gross error of law in misconstruing the nature of what an order issued under S.C. Code § 16-11-410 is, and what it is not. That alone requires reversal. But there are more errors of law that derive from his decision to deny the Motion to Strike, each of which independently supports reversal, and each of which flows from the trial judge's complete misunderstanding of the order from the separate matter.

Already discussed, the trial judge ignored *Moore v. Greens Grocery, LLC*, ___ S.C. ___, ___ S.E.2d ___, 2026 WL 1674974, which should have caused him, once he elected to deny the Motion to Strike, to convert the motion to dismiss to one for summary judgment; which, in turn, should have caused him to afford Boyd a fair opportunity for discovery before the motion was considered, as SCRCP 12(b) provides and *Moore* requires.

Second, based on the trial judge's complete misunderstanding of the order from the separate matter, the trial judge (Order at p. 4) further erred in using SCRE 201(b) to take "judicial notice" of *facts* he deemed "not subject to reasonable dispute." (ROA __). This erroneous legal conclusion as to SCRE 201 led to legal errors three and four simultaneously, each of which also independently requires reversal.

SCRE 201 applies to "only judicial notice of *adjudicative* facts." (emphasis added), SCRE 201(b) itself defines such facts (as those "generally known" and "capable of accurate and ready determination"). The Note to SCRE 201 explains the converse, "legislative facts," which are "the factual grounds on which judges base their opinions." Having committed one error of law by

incorrectly construing that the order from the separate case was in any way factually preclusive (error of law three), the trial judge mistakenly further misconstrued SCRE 201 (error of law four) that the immunity order established facts beyond “reasonable dispute.”

An order under S.C. Code § 16-11-410 does no such thing, as noted above. The trial judge erred in misconstruing both the order from the separate matter and, as a result, SCRE 201 as to his latitude to rely upon, cite to, or incorporate the order from the separate matter as part of the trial judge’s ruling on this case.

The trial judge’s order refusing to strike the order from the separate matter and the order of dismissal should be reversed.

V. THE TRIAL COURT ERRED IN CONSIDERING A NOVEL ISSUE OF LAW WHEN (A) NO RESPONSIVE PLEADING HAD YET ASSERTED THE AFFIRMATIVE DEFENSE (OR ANYTHING ELSE) AND (B) WHEN THE TRIAL COURT FAILED TO ACCEPT THE ALLEGATIONS OF THE COMPLAINT AS TRUE.

Novel questions of law are ordinarily not to be decided on a motion to dismiss. Doing so is appropriate only when certain circumstances, not present in this record, apply.

“[N]ovel questions of law should not ordinarily be resolved on a Rule 12(b)(6) motion.” *Chestnut v. AVX Corp.*, 413 S.C. 224, 227, 776 S.E.2d 82, 84 (2015). “Where, however, the dispute is not as to the underlying facts but as to the interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a motion to dismiss.” *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Office*, 346 S.C. 158, 165, 551 S.E.2d 263, 267 (2001).

Palmer v. State, 427 S.C. 36, 43, 829 S.E.2d 255, 259 (Ct. App. 2019). For example, there are substantial questions of fact as to Defendant’s intent, possibly appropriate to a motion for summary

judgment after discovery (although more likely a jury issue), not to a motion to dismiss where the facts alleged as to intent of the Defendant must be accepted as true.

To the extent a lawyer has immunity, it is when he acts *solely* in his representative capacity. *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995) (attorney not immune if “*in addition to* representing his client, ... [the lawyer] breaches some independent duty to a third person *or acts in his own personal interest*, outside the scope of his representation of the client.”) The trial court plainly erred as a matter of law in applying *Stiles v. Onorato*. Directly contradicting the holding of *Stiles*, as well as the allegations of the complaint, the trial judge concluded that an attorney with “mixed motives” (Order at p. 14), meaning personal motives along with professional motives, had immunity.

The complaint in this matter plainly stated Defendant’s independent duty to Boyd. The trial judge both ignored the factual allegations and disagreed with them, and allowed himself to be persuaded by a non-final order in a separate matter, when the two cases focus on entirely different issues. The trial judge also leaped ahead to address what a responsive pleading would include as an affirmative defense, if the motion to dismiss had not been granted. The ruling on attorney immunity was provided by the trial judge sua sponte and clearly when it was not relevant to the pleadings before the court.

Immunity is an affirmative defense. E.g., SCRCP 8(c).

[A]n affirmative defense ordinarily may not be asserted in a motion to dismiss under Rule 12(b)(6) unless the allegations of the complaint demonstrate the existence of the affirmative defense.

Coastal States Bank v. Hanover Homes of S.C., LLC, 408 S.C. 510, 517, 759 S.E.2d 152, 156 (Ct. App. 2014). No responsive pleading required by SCRCP 8(c) had been filed alleging the affirmative defense ruled on by the trial judge.

The trial judge then compounded his error by rejecting, rather than accepting as true, the allegations the complaint made, which he could not do under SCRCP 9(b), regarding Defendant's intent. The complaint alleges that Defendant used non-public information obtained in discovery¹⁷ (Complaint ¶ 40) to spread for public consumption through media sources a "knowingly false yet sensational narrative," (Complaint ¶ 38), which was alleged to have been done not in his representative capacity but for his own personal reasons (e.g., Complaint at ¶ 38). The trial judge also ignored allegations that one of the effects of Defendant's personal conduct was to influence *witnesses* (Complaint at ¶¶ 55, 67 and 69).

Publicly disseminating information obtained in discovery to advance a "knowingly false narrative" is not permitted of any lawyer. E.g., *In re Sloan*, 429 S.C. 124, 838 S.E. 2d 499 (2019) (3 year suspension for lawyer whose "false narrative" included over \$5,000 of inflated expense account records and 35 hours of false billing records); *In re Nolan*, 419 S.C. 169, 796 S.E. 2d 841 (2017) (public reprimand for lawyer whose "false narrative" included investigators who misrepresented their identities and made secret telephone recordings); *Burns v. Clayton*, 237 S.C.

¹⁷ The scope of evidentiary discovery permitted by SCRCP 26 is much broader than the scope of evidence permitted at trial. Similarly, issues of privilege limit what might otherwise constitute evidence, but which a media source has no obligation to respect. So, when Defendant published entire depositions by publishing links to the transcripts (Complaint ¶ 61), he disclosed information outside the evidentiary protections of the courtroom (Complaint ¶¶ 81, 88). Defendant knew the filter of a court proceeding would not allow public release of all the facts, so he went directly to the media, which has no obligation to Boyd. However, Defendant has an indisputable obligation to Boyd, which he violated repeatedly.

316, 117 S.E.2d 300 (1960) (indefinite suspension for lawyer whose “false narrative” included procuring affidavits from four witnesses whom he paid to claim each had *witnessed* a fatal car/truck collision when each had only an obstructed view and had only *heard* it).¹⁸

The fair trial problems of litigating a case in the media, rather than a courtroom, go beyond the only thing the trial judge considered: the process of selecting a jury (Order at pp. 8 and 9). It was none of the trial judge’s concern how a trial judge in the separate matter might select a jury. The trial judge erred repeatedly treated this case as if it had to be considered as part of the separate case. This case has nothing to do with the separate case; nor can the results in this case be governed by the order from the separate case; nor can any equitable relief in this case as to extrajudicial statements by the Defendant bind any party in the separate case.

“An attorney’s duties do not begin inside the courtroom door,” *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1043, 111 S. Ct. 2720, 2728 (1991), but neither is he *supposed to be* a rogue agent, pursuing his own interests. Ethics Rule 3.6, SCACR 407, governs Trial Publicity, and the rule prohibits a lawyer from making extrajudicial statements except under certain, limited circumstances: “to protect a client from the substantial undue prejudicial effect of recent publicity. Ethics Rule 3.6(c), SCACR 407.¹⁹ A lawyer has a narrow permission to communicate with media

¹⁸ When the South Carolina Supreme Court disciplines lawyers for perpetuating a false narrative in representing a client, the Supreme Court is independently recognizing an independent duty to the opposing litigant harmed by the false narrative. Since the Supreme Court recognizes the duty Defendant owes to Boyd, it was error for the trial judge to ignore that duty in adjudicating the motion to dismiss. Boyd does not ask for Defendant to be disciplined. He seeks equitable relief for the malicious and prejudicial conduct of the Defendant which has irreparably harmed Boyd. The trial judge shut that door and would not even consider the possibility that Defendant owed, or had breached, any duty to Boyd.

¹⁹ Those were the circumstances presented to the Supreme Court reviewing discipline of a lawyer by the Nevada Bar in *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1043, 111 S. Ct. 2720, 2728 (1991). Gentile, a criminal defense lawyer, had made modest public statements to defend his client after what Mr. Gentile regarded as (and the Court

sources to protect his or her client, not to affirmatively create a “knowingly false yet sensational narrative.” E.g., Complaint at ¶ 38. No lawyer is permitted to use false statements. It violates South Carolina’s lawyer’s oath to do so.²⁰ Equitable relief must follow with a remedy.

The trial judge erred by giving no consideration to the factual allegations of the complaint as to Defendant’s intent, other than to reject those allegations, construing them (erroneously) as “propositions of law.” (Order at p. 13), rather than as factual allegations of intent which on a motion under SCRCP 12(b)(6). The allegations of the complaint had to be accepted as true; the trial judge had no authority to disagree with the allegations. SCRCP 9(b) states that intent “may be averred generally,” confirming both that intent is a factual matter (despite the trial judge here falsely deferring the allegations as “legal”) and that the allegations in the complaint conformed to SCRCP 9(b).

The complaint alleges that Defendant’s corrupt communications were intended to, and designed to, promote himself solely. The only permissible public comment under Rule 3.6, SCACR 407 narrowly permits extrajudicial statements by a lawyer. That narrow latitude permits a lawyer only to defend a client if others have made unduly prejudicial publicity against that client.

agreed was) unfair pre-trial publicity by the prosecutor and police which had disparaged Mr. Gentile’s client when he was charged. At trial, Mr. Gentile’s client was acquitted of all charges and the Supreme Court overturned Mr. Gentile’s discipline by the state Bar.

²⁰ Since 2003 the lawyer’s oath has included the following paragraphs:

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also *in all written and oral communications*;

I will employ for the purpose of maintaining the causes confided to me only such means as are consistent with trust and honor and the principles of professionalism, and will *never seek to mislead an opposing party, the judge or jury by a false statement of fact or law*

If the order from the separate matter can be considered at all, Defendant's client in the wrongful death action was, and is, an estate. The record contains no publicity, and none is claimed, which had occurred as to the Spivey estate which required that Defendant disseminate a "knowingly false yet sensational narrative" (Complaint ¶ 38), to respond to, and to protect the estate from, undue publicity by others. The Complaint alleges that Defendant's "knowingly false" speech to have been undertaken "for the purpose of self-aggrandizement and his own celebrity." (ROA ____). Complaint ¶ 43.

The trial judge erred in not even recognizing the novel questions of law, let alone correctly interpreting that novel issue in all of its alleged dimensions, and he abused his discretion by the error of law in construing the order from the separate matter as preclusive. To summarize, the trial judge made the following errors of law:

- (a) Denying Boyd's motion to strike the order from the separate case (Motion to Strike under SCRCP 12(f));
- (b) Ignoring the requirement from *Moore* (noted above) that once he elected to consider the order from the separate matter, the motion to dismiss was properly converted to one for summary judgment, which in turn required procedural protections for Boyd in the form of an opportunity for discovery, which the trial judge did not provide;
- (c) Considering the order from the separate matter (as noted above) as establishing preclusive facts and conclusions of law when, as a matter of law, it does neither;
- (d) Ignoring SCRCP 9(a) in assessing the "specific negative averment" of capacity in the Complaint,

- (e) Ignoring SCRCP 9(b) in assessing the allegations of intent in the Complaint, and dismissing those allegations, also erroneously, as conclusions of law;
- (f) Failing to accept as true and in the light most favorable to Boyd the factual allegations of the complaint (as noted above); and
- (g) making fact-based determinations which were construed *against* Boyd, rather than in his favor, as required by each of SCRCP 9(b), 12(b)(6) and SCRCP 56.

“Knowingly false” speech lacks even any First Amendment protection.²¹ While this case is not about First Amendment protections needed to protect speech from governmental intrusion, Boyd’s competing private interest is in being shielded from false facts publicly disseminated by anyone, certainly one who is an attorney who is held to a much higher standard than the news media of which Defendant made great use. Defendant’s speech merits no deference or protection. The speech alleged is well outside a lawyer’s narrow latitude for extrajudicial trial publicity that is permitted by Rule 3.6, SCACR 407, and is a proper consideration for a trial court. The trial judge committed multiple errors of law in interpreting the allegations of the complaint, the motion to dismiss, and the immunity order. His order of dismissal should be reversed.

²¹ *Video Gaming Consultants, Inc. v. S.C. Dep’t of Revenue*, 342 S.C. 34, 38–39, 535 S.E.2d 642, 644–45 (2000), citing, *Central Hudson Gas & Elect. Corp. v. Public Serv. Comm’n of N.Y.*, 447 U.S. 557, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980) (the test for determining the constitutionality of regulations and restrictions on commercial speech starts with speech that “is neither misleading nor related to unlawful activity.” *Central Hudson* at 447 U.S. 564, 100 S.Ct. 2350.

VI. THE TRIAL JUDGE ERRED IN DECLINING TO CONSIDER, EQUITABLE RELIEF.

The trial judge's order reflects a multitude of errors of law in interpreting the acts of the "Media Genius Lawyer" (ROA __)(Complaint ¶ 71) Defendant, and failing to allow the matter to proceed for the equitable relief requested.

Ripeness. At page 6, the trial judge erred in concluding Boyd's complaint was not "an actual, justiciable controversy" because "the wrongful death suit has not yet been tried." The error of law rests in the trial judge's belief that Boyd is seeking relief in any action other than this one. The trial judge's ripeness analysis wrongfully concludes that the "ripeness" will turn on "whether an impartial jury may be seated" in a different case. (ROA __). Order at p. 7. In fact, the damage incurred by Boyd occurred regardless of whether any other litigation exists or not. Defendant's false but sensational narrative impacts what witnesses will testify to should there be collateral proceedings.

If those matters did not pose a "real and substantial controversy"²² then Rule 3.6, SCACR 407 would not exist. Defendant's efforts have already irreparably damaged Boyd. There is nothing speculative about it. The issues were ripe even before this lawsuit was filed.

At page 7 of his order, the trial judge erred in concluding that the complaint seeks an "advisory opinion," so there is no "case or controversy to remedy." (ROA __). This error rests on two errors of law: first, the same base as the trial judge's erroneous view of ripeness, although

²² *Crescent Homes SC, LLC v. CJN, LLC*, 445 S.C. 164, 182, 912 S.E.2d 389, 398 (Ct. App. 2024), reh'g denied (Mar. 12, 2025).

even the trial judge did not pretend that Boyd has not been damaged by Defendant's media firestorm. Most significant is the trial judge's erroneous conclusion that this separate litigation, with separate parties in separate capacities, has any preclusive impact on the separate matter or any other action *other than to permit all parties a fair proceeding*.

Adequate remedy at law. At page 8 of his order the trial judge concludes that Boyd has no need of equitable relief because he has an adequate remedy at law. (ROA __). This fanciful view imagines that alternative remedy comes in the form not of relief in this litigation but in other litigation, specifically the separate matter, again reflecting the trial judge's errors in (a) conflating this case with the separate matter as his order makes explicit at pages 8 and 9, and (b) in imagining that trial publicity limits apply only to the problem of eventually selecting an impartial jury. As set out above, the allegations of the complaint, which must be accepted as true, state broader fair trial issues than merely selecting a jury at some point in the future in a totally different case, which might never happen.

"An 'adequate' remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity." *Milliken & Co. v. Morin*, 386 S.C. 1, 8, 685 S.E.2d 828, 832 (Ct.App.2009) (internal quotations omitted). Boyd's complaint *expressly waived* any legal remedy. (ROA __). The trial judge ignored that.

In this action there can be no adequate remedy at law because this action seeks only equitable relief. No claim is made which seeks a remedy at law. There is no alternative to equitable relief. The trial judge concedes as much in that his order states, at page 8, that the alternative remedy at law the trial judge imagines is "in the Appropriate Case," not in this action. (ROA __).

Beginning at page 9 of his Order, the trial judge erred by confusing equitable relief sought as to Defendant with trying “issues or determine the validity of defenses in pending cases,” citing *Wessinger v. Rauch*, 288 S.C. 157, 341 S.E.2d 643 (Ct. App. 1986), a case which deferred an equitable claim because another action was pending involving the same parties. *Wessinger v. Rauch*, 288 S.C. 157, 158–59, 341 S.E.2d 643, 644 (Ct. App. 1986) (“Rickard brought a second action against the same parties, seeking the same relief based on essentially the same allegations.”). This is a different case seeking a different remedy involving a different party. The trial judge erred as a matter of law in failing to distinguish Defendant’s personal capacity as a party from that of his estate client in the wrongful death action, a confusion which is perfectly encapsulated in this sentence at p. 9 of his Order:

The Court finds that Plaintiff is attempting to use this declaratory judgment action against Tinsley, who has at all times relevant represented the Estate of Scott Spivey and the Spivey Family, to circumvent the existing civil litigation against him pending in this very venue.

(ROA __). How any relief which bears on false statements by Defendant would “circumvent the existing civil litigation” is erroneously presumed by the trial judge, but is not explained. Apparently, the trial judge views Boyd’s only relief from Defendant’s undisputed wrongful acts is to permit any trial publicity, even actions well in excess of Rule 3.6, SCACR 407, and apply “motion practice” (Order p. 9) not against Defendant, who is the wrongdoer, but against Defendant’s client, who is not the perpetrator of the wrongful conduct nor the beneficiary thereof as clearly explained in the complaint. Defendant’s pursuit is celebrity for himself. How on earth is Boyd to pursue relief about Defendant’s conduct in separate litigation in which Defendant is not a party?

Boyd properly distinguishes between Defendant and his client, a distinction clearly articulated in the complaint that the trial judge was required to accept as true but ignored. Instead, the trial judge concluded that the complaint in this case “is not an appropriate vehicle for the relief sought.” That would “risk undermining” the pending [separate] proceeding. Order at p. 10. This clearly shows the trial judge’s error of law in conflating the two cases under both his SCRCP 12(b)(6) and SCRCP 12(b)(8) analyses, and failing to distinguish that the cases have different parties in different capacities. While conflating the cases, the trial judge, at page 10 of his Order, acknowledges that the parties in the conflated cases are not the same. (ROA __). The trial judge concludes, erroneously, that the parties need not be the same because “Trojan Horse”²³ relief is requested in this action, again without explaining how any ruling in this case could in any way affect the any other litigation.

Beginning at page 11 of his Order, the trial judge erred as a matter of law in *contradicting* the allegations of the complaint to conclude that Defendant “was at all times acting within the scope of his representation and with the knowledge of the Spiveys” in perpetuating his false narrative. (ROA __). As noted above, the trial judge erred as a matter of law in making no mention of SCRCP 9(b) in construing the allegations of Mr. Tinsely’s intent as “without merit, even under our liberal pleading standards,” and on page 13, to claim the allegations that fully comply with SCRCP 9(b) were mere “propositions of law,” which he was at liberty to ignore rather than allegations of fact which must be accepted as true. The trial judge further erred as a matter of law

²³ Boyd can find no legal authority in South Carolina that explains what “Trojan Horse” relief even is, other than statutory references to software, his is likely not what the trial judge had in mind. *See e.g.*, S.C. Code §16-16-10 (computer programs that “are not self-replicating or self-propagating and that are designed to compromise security, consume computer resources, modify, destroy, record, or transmit data. . .”

in construing the complaint as having failed to allege “in what manner” Defendant acted outside of his role as attorney,²⁴ and at page 14 of his Order claimed, “even construing all allegations as true, [did not] rise to the quality of bad faith” required for attorney liability set forth in *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995). The entire analysis was inapplicable to the issues presented.

The trial judge has articulated his astonishing conclusion, that despite Rule 3.6, SCACR 407, a media firestorm that spreads “knowingly false yet sensational narrative” is inherently part of counsel’s duties in litigation. The trial judge tacitly approves Defendant’s media firestorm as a legitimate part of his representation of his client. In other words, as the trial judge see it, every attorney should aspire to, and may perhaps be required to (as part of minimum competence and duty to his client), strive to become, a “Media Genius Lawyer” and to use the media to widely spread unfiltered discovery materials and falsehoods to spread a “knowingly false yet sensational narrative” through extrajudicial statements and liberal use of the media.

The trial judge’s legal analysis is clearly erroneous, and is contrary to the limits placed on attorneys through Rule 3.6, SCACR 407. The trial judge also erred as a matter of law in interpreting the plain language of *Stiles v. Onorato*. The trial judge concluded that “mixed motives” by Defendant does not remove him from the usual immunity a lawyer receives if he is acting in the best interests of his client. *Stiles* itself requires, as noted above, just the opposite: that an attorney may have liability where “*in addition to representing his client*, he breaches some independent

²⁴ The trial judge’s order itself recounts, at pages 12 and 13, that the complaint is quite specific in alleging how Mr. Tinsley acted outside of his representative capacity, making “specific negative averment” as required by SCRCP 9(a). (ROA ____).

duty to a third person or acts in his own personal interest, outside the scope of his representation of the client.” *Stiles v Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (S.C. 1995). See also, *Hager v. McCabe, Trotter & Beverly, P.C.*, 435 S.C. 740, 746, 869 S.E.2d 886, 889 (Ct. App. 2022) (quoting the same portion of *Stiles*).

CONCLUSION

The trial judge’s errors of law are reckless, enormous and widespread throughout his Order dismissing the complaint, and require reversal and remand. If the appellate court wishes to, as the trial judge did, countenance Defendant’s unsavory activities pursued for his own selfish interests, then the court’s protection of Defendant will create its own perpetually harmful “Trojan Horse.” Appellate courts correct errors of law, and should not, as the trial judge did, look the other way as to intentional, false and manipulative use of the media. The trial judge’s multitude of errors, if not remedied, will pave the way for complete abandonment of any expectation that lawyers are held to a higher standard than other citizens not licensed by the State to practice law. That Defendant engaged in the media firestorm is not disputed.²⁵ That it has harmed Boyd is also not disputed. The question presented is whether Defendant’s intentional and wrongful conduct can be declared improper and whether the harm which has occurred is a proper subject for equitable relief.

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²⁵ During argument on the motion, Defendant’s counsel blatantly ridiculed the allegations of wrongdoing against Defendant and responded “so what?” on multiple occasions, admitting Defendant’s misconduct. (ROA ____). Tr. P.14 *et al.*

Respectfully submitted,

s/ Desa Ballard

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