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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
The Honorable S. Bryan Doby, Circuit Court Judge

Lower Court Case No. 2025-CP-10-02069
Appellate Case No. 2025-002132

Cynthia Veronese, ... Appellant,

v.

Jarrel Wigger and Wigger Law Firm, Inc., ... Respondents.

REPLY BRIEF OF APPELLANT

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REPLY ARGUMENT

The Appellant submits this Reply Brief to address the misrepresentations and factual errors contained in Respondents' Initial Brief. The Respondents were unable to refute the detailed arguments presented in the Appellant's Initial Brief, instead dismissing them as "rantings and ravings." Moreover, the Respondents reiterated previously disputed facts and improperly included contested facts as well as new false statements in their brief. Their defense relies on mischaracterizations of the record and fails to address the substantive claims of error.

I. RESPONSE TO RESPONDENTS' ARGUMENT REGARDING RULE 12(b)(6): THE COMPLAINT STATED JUSTICIABLE CLAIMS

Respondents argue that dismissal was proper because the Appellant failed to present justiciable issues in her Complaint. This mischaracterizes the record.

The Appellant filed a Complaint alleging professional negligence against Respondents, specifically claiming violations of the Rules of Professional Conduct regarding Diligence, Conflict of Interest, and Terminating Representation. The Complaint alleged that Respondents' errors caused financial losses in a personal injury/assault and battery lawsuit that Appellant intended to file. **(R. pp. 15, ¶¶ 6-8).**

Specifically, the Complaint alleged that Respondents represented Appellant from August 14, 2021 to April 19, 2022, but performed no work on her case for over eight months. Without prior notice, Respondents terminated Appellant's representation on April 19, 2022—over two months before the statutory deadline—and billed her $35 for the entire period, demonstrating no investigation was conducted. **(R. p. 15, ¶ 8).**

This created a conflict of interest because Respondents prioritized the interests of the potential defendant rather than their client by dropping the case too close to the statutory deadline and failing to take reasonable steps to protect Appellant's legal position, such as providing reasonable

advance notice to allow retention of new counsel. By treating Appellant's case with such disregard, Respondents impaired her ability to obtain effective representation by new counsel. **(R. pp. 15-16, ¶ 8).**

The Complaint therefore alleged facts showing negligence and resulting damages. Under Rule 12(b)(6), the complaint must be construed in the light most favorable to the nonmovant. The trial court erred by not applying this standard. **(R. pp. 7-8).**

II. RESPONSE TO RESPONDENTS' ARGUMENT REGARDING § 15-36-100: RESPONDENTS MISREPRESENT THE RECORD

Respondents misrepresent the record in several material respects:

A. The "Several Continuances" Claim Is False

Respondents claim the Circuit Court "gave the Plaintiff several continuances to provide an Affidavit." **(Respondents' Brief, p. 8, item II, line 6).** This is false. Appellant received only a single 26-day continuance (from one motions term to the next, 7/25/25 to 8/21/25) from an administrative judge—who could not adjudicate her allegations of fraud upon the Court (Order for Continuance of July 7, 2025, **R. pp. 1-3**). No extension of any kind was granted by the Circuit Court.

B. The Timeline Is Misrepresented

Respondents claim Appellant has had "eleven months" to produce an affidavit. **(Respondents' Brief, p. 8, item II)** The Complaint was filed on April 14, 2025 **(R. p. 110)** and dismissed with prejudice approximately four months later. **(R. pp. 7-8).** The dismissal has been appealed. Appellant has no obligation to seek additional time for a Complaint that was wrongly dismissed with prejudice.

C. The Dismissal With Prejudice Was Improper

Even if dismissal was warranted under § 15-36-100, dismissal with prejudice was improper. Under § 15-36-100(C)(1), when a plaintiff fails to file the required affidavit, the proper remedy is dismissal without prejudice, allowing the plaintiff an opportunity to refile with the required affidavit. The trial court's dismissal with prejudice exceeded the statutory authorization.

(Appellant's Initial Brief, p. 4, (C) (1)).

III. RESPONSE TO RESPONDENTS' ARGUMENT REGARDING ABUSE OF DISCRETION: THE RECORD DEMONSTRATES CLEAR ABUSE

The trial judge's actions constitute clear abuse of discretion:

A. The Judge Repeatedly Interrupted Appellant

On August 21, 2025, Appellant attended a hearing in person. As the transcript will show, the trial judge interrupted Appellant thirteen times when she attempted to argue her case and present evidence of fraud upon the Court by Respondents—despite having instructed her to do so **(R. p. 95, lines 9-14, 17-24; R. p. 96, lines 24-25; R. p. 98, lines 4-5, 14-15; R. p. 99, lines 13-14; R. p. 101, lines 13, 15; R. p. 102, lines 6, 13; R. p. 104, line 10; R. p. 106, line 18; R. p. 107, lines 19-20, 23-24; R. p. 108, lines 5-6).**

B. The Judge Ignored Evidence of False Statements

The trial judge never excluded the evidence of eight false statements made by Respondents in their answers and presented in Appellant's Motion to Strike. **(R. pp. 39-55).** Nor did the judge address the false statements made by defense counsel during the hearing. **(R. p. 93, lines 6-20, 25; R. p. 94, lines 1-2).** These false statements later appeared in the final order of dismissal as if they were true facts. **(R. p. 7).**

C. The Judge Allowed Defense Counsel to Write the Final Order

The trial judge asked defense counsel to write the final order of dismissal **(R. p. 4)**—an extraordinary action that creates an appearance of partiality. The order drafted by defense

counsel was modified from "without prejudice" **(R. p. 4)** to "with prejudice" **(R. p. 7-8)** without explanation, and the statements Appellant had substantiated as false were included as true facts.

D. No Findings of Fact and Conclusions of Law Were Provided

The trial judge did not provide findings of fact and conclusions of law for this harsh ruling, **(R. pp. 7-8)**; as required in actions tried without a jury. Clear findings allow meaningful appellate review. *Friday Investments, LLC v. Bally Total Fitness*, 370 N.C. 235, 240-41 (2017); *Jones v. Murdock*, 20 N.C. App. 746, 747 (1974).

E. The Appearance of Partiality Undermines Confidence in the Process

The trial judge's actions—allowing defense counsel to draft the final order, ignoring evidence of false statements, repeatedly interrupting Appellant, and including defense allegations as true facts in the order—create an appearance of partiality. "The appearance of impropriety is as damaging as actual bias." *Liljeberg v. Health Services Acquisition Corp*., 486 U.S. 847, 860-61 (1988). South Carolina recognizes this principle. *In re Cauthen*, 361 S.C. 424, 605 S.E.2d 535 (2004). **(Canon 3 - R. p. 86, lines 11-13).**

IV. RESPONDENTS' PROCEDURAL OBJECTION: MATTERS OUTSIDE THE PLEADINGS REQUIRE CONVERSION TO RULE 56

When matters outside the pleadings are presented **(R. pp. 39-55)** and not excluded by the court on a motion under Rule 12(b)(6), **(R. p. 107),** the motion must be treated as one for summary judgment under Rule 56. *Samara v. United States*, 129 F.2d 594 (2d Cir. 1942); *Boro Hall Corp. v. General Motors Corp*., 124 F.2d 822 (2d Cir. 1942); *Kithcart v. Metropolitan Life Ins. Co*., 150 F.2d 997 (8th Cir. 1945). The trial judge should have converted the motion to dismiss into one for summary judgment and allowed both parties to present evidence. Instead, the judge rewarded Respondents' conduct by accepting their false statements as true. **(R. pp. 7-8)**.

V. EQUITABLE TOLLING APPLIES DUE TO RESPONDENTS' MISCONDUCT

While § 15-36-100(C)(1) provides a 45-day extension when the statute expires within 10 days, courts have inherent equitable powers to extend deadlines when the failure to comply was caused by the opposing party's misconduct. Respondents' false statements created genuine disputes of material facts that prevented Appellant from obtaining an affidavit, warranting equitable tolling. **(Appellant's Initial Brief, p. 4, (C) (1)).** *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 96 (1990); *Brown v. Burns International Security Services*, 357 S.C. 526, 593 S.E.2d 690 (2004).

VI. RESPONDENTS' DISMISSAL OF APPELLANT'S ARGUMENTS AS "RANTINGS" IS IMPROPER

Respondents characterize Appellant's arguments as "rantings and ravings" **(Respondents' Brief, p. 10, item IV, line 3)** rather than addressing their substance. This is improper. Rule 12(b)(6) requires the court to determine whether the complaint states a claim, not to weigh evidence or make credibility determinations. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 563 n.8 (2007). Appellant's detailed arguments deserve substantive response, not dismissal.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court:

A. REVERSE the circuit court's order dismissing the Amended Complaint with prejudice;

B. REMAND the case to the circuit court with instructions to:

   1. Allow Appellant to present evidence of Respondents' false statements;
   2. Rule on the Motion to Strike and the fraud allegations;
   3. Grant Appellant a reasonable opportunity to obtain an expert affidavit;
   4. Allow Appellant to amend the complaint as needed; and
   5. Conduct a full and fair hearing on the merits;

C. ISSUE such other and further relief as is just and proper under the circumstances;

D. AWARD Appellant her costs incurred in this appeal; and

E. TAKE such other action as this Court deems appropriate to ensure substantial justice is done.