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S.C. SUPREME COURT

**STATE OF SOUTH CAROLINA
In the Supreme Court**

**APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas**

The Honorable Brian M. Gibbons, Circuit Judge

Appellate Case No. 2026-000959

George William Rauton, III,

Petitioner,

v.

Patsy R. Lightle,

Respondent.

Respondent's Brief

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STATEMENT OF ISSUES ON APPEAL

- I. The Court of Appeals correctly declined to address Petitioner's arguments regarding the sufficiency of the Complaint under Rule 12(b)(6), where the Circuit Court did not rule on the existence of the tort of intentional interference with inheritance; Petitioner failed to seek a ruling from the Circuit Court; and Petitioner failed to ask the Court of Appeals or this Court to recognize the tort; and has failed to ask this Court to do so.

STATEMENT OF THE CASE

This action was commenced by the filing of a Summons and Complaint on April 21, 2022. [A. 13-16] Respondent appeared and timely filed a motion to dismiss pursuant to Rule 12(b)(3) and (6) or, alternatively, to transfer venue. [A. 17-19] Respondent also filed an affidavit supporting her motion to dismiss or transfer as to the improper venue. [A. 20-21]

A hearing was scheduled for January 30, 2023. Petitioner filed a memorandum opposing Respondent's motion on January 28, 2023, and Respondent filed a reply to Petitioner's memorandum on January 30, 2023. [A. 22-29]

After hearing the motion, the Honorable Brian M. Gibbons issued an Order granting the motion to dismiss under Rule 12(b)(6) and determining the matters relating to venue to be moot. [A. 1-2] The Circuit Court subsequently entered a detailed Order setting out its ruling and rationale. [A. 3-9] Petitioner timely moved to reconsider the Orders, which were denied by Order dated March 3, 2023. [A. 10-11]

Petitioner subsequently appealed to the Court of Appeals, which affirmed the dismissal in Op. No. 2026-UP-027 (January 26, 2026). [A. 91] Petitioner filed a Petition for Rehearing, which was denied by Order of the Court of Appeals on March 18, 2026. [A. 93-97]

Petitioner then petitioned this Court for a Writ of Certiorari, which was granted on August 12, 2026.

STATEMENT OF FACTS

The sole cause of action alleged in this case is for "intentional interference with inheritance," which, as addressed below, has not been recognized by the Courts of South Carolina. Respondent admits that the Statement of Facts in Petitioner's brief contains all factual allegations set out in the Complaint (misidentified as "the counterclaim" in

Petitioner's brief). [A. 11-19] Because the case was dismissed pursuant to Rule 12(b)(6), *South Carolina Rules of Civil Procedure*, all allegations in the Complaint must be taken as true.

STANDARD OF REVIEW

"In deciding a motion to dismiss pursuant to 12(b)(6), SCRPC, the trial court should consider only the allegations set forth on the face of the plaintiff's complaint." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). "A 12(b)(6)[, SCRPC] motion should not be granted if 'facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.' " *Id.* (quoting *Stiles v. Onorato* , 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Id.*

ARGUMENT

- I. The Court of Appeals correctly declined to address Petitioner's arguments regarding the sufficiency of the Complaint under Rule 12(b)(6), where the Circuit Court did not rule on the existence of the tort of intentional interference with inheritance; Petitioner failed to seek a ruling from the Circuit Court; and Petitioner failed to ask the Court of Appeals or this Court to recognize the tort; and has failed to ask this Court to do so.**

Petitioner raises only one issue in his Brief: that the Court of Appeals erred in declining to review his argument that the scant and general allegations in the Complaint were sufficient to support his sole cause of action, where that cause of action has not been recognized in South Carolina and where Petitioner has failed to ask any Court to recognize it.¹

¹ Petitioner does not set forth his granular arguments below in his Brief to this Court. To the extent this Court considers those arguments, Respondent incorporates her responsive arguments as set out in Respondent's Brief. [A. 70-82]

As the late former Chief Judge Alex M. Sanders noted, “[a]ppellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.” *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 331 fn4, 730 S.E.2d 282, 286 (2012), citing *Langley v. Boyter*, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct.App.1984), *rev’d on other grounds*, 286 S.C. 85, 332 S.E.2d 100 (1985). Respondent submits that Petitioner’s failure to seek recognition of tortious interference with inheritance moots the consideration of his arguments raised below. The Court of Appeals could not have considered the sufficiency of Petitioner’s allegations to support a cause of action which does not exist.

The elements of intentional interference with inheritance have been addressed by South Carolina Courts, even though they have not yet recognized the cause of action:

[4] We have adopted the closely analogous tort of intentional interference with prospective contractual relations. *Crandall Corp. v. Navistar Int’l Transp. Corp.* 302 S.C. 265, 395 S.E. 2d 179, *see also Allen v. Hall*, 328 Or. 276, 974 P.2d 199 (1999) (intentional interference with inheritance closely analogous to intentional interference with economic relations). Most jurisdictions adopting the tort of intentional interference with inheritance have required the plaintiff to prove the following elements: (1) the existence of an expectancy (2) an intentional interference with that expectancy through tortious conduct (3) a reasonable certainty that the expectancy would have been realized but for the interference and (4) damages. *See, e.g., Nemeth v. Banhalmi*, 99 Ill. App. 3d 493, 55 Ill. Dec.14, 425 N.E. 2d 1187 (1981); *Morrill v. Morrill*, 712 A. 2d 1039(Me.1998); *Doughty v. Morris* 117 N.M. 284, 871 P. 2d 380(Ct.App.1994); *Firestone v. Galbreath*, 67 Ohio St. 3d 87, 616 N.E.2d 202 (1993); *Wickert v. Burggraf*, 214 Wis. 2D 426, 570 N.W. 2D 889(1997); *see also* Restatement (Second) of Torts § 774B (1979).

Douglass ex rel. Louthian v. Boyce, 344 S.C. 5, 542 S.E.2d 715 (2001).

As noted by Petitioner, Respondent agreed in the Circuit Court that this Court would eventually recognize the tort; however, the parties’ mutual expectation did not effect the creation of new law. The Circuit Court did not make a ruling on whether the tort exists or

should be recognized, and Petitioner did not seek such a ruling in his Rule 59(e) motion below. [A.] That issue was therefore not preserved for review by the Court of Appeals. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to *and ruled upon* by the trial judge" [emphasis supplied]).

Even if Petitioner's failure to seek a ruling from the Circuit Court or the Court of Appeals would not preclude this Court's consideration of the issue, Petitioner does not ask this Court to do so and does not offer any authority on which this Court could rely in doing so. Petitioner has arrived at the doorstep of State's highest Court, asking for water but carrying only a sieve.

While this Court may have granted the writ of certiorari in this matter with the expectation that Petitioner would argue for the recognition of tortious interference with inheritance and confirmation of the elements of that tort, Petitioner's brief appears to only ask this Court to reverse and remand the matter to the Court of Appeals to consider whether the facts alleged in his Complaint are sufficient to support a hypothetical tort.

While Respondent deeply respects this Court's authority to form the common law, Petitioner has placed this Court in the position of either having to *sua sponte* change the law of this State or to remand the matter for further litigation of a hypothetical tort. Respondent submits that this Court should not grant either form of relief where Petitioner has failed to supply the proper tools for the Court to do so.

CONCLUSION

For the foregoing reasons, Respondent submits that this Court should affirm the Orders appealed from or, in light of Petitioner's failure to seek this Court's recognition of

intentional interference with inheritance, to dismiss the writ of certiorari as improvidently granted and bring this matter to an end.

Respectfully submitted,

s/Adam T. Silvernail

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