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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court Of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2013-002272
Case No. 2012-CP-40-08310

Linda Campbell, M.D., ... Appellant,

v.

Allen S. Guignard and Ashlin Potterfield, ... Respondents.

INITIAL BRIEF OF RESPONDENT ASHLIN POTTERFIELD

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STATEMENT OF ISSUES ON APPEAL

I. SHOULD APPELLANT'S ARGUMENTS BE DEEMED ABANDONED BECAUSE THEY ARE CONCLUSORY AND LACK CITATION TO AUTHORITY OR RECORD EVIDENCE?

II. IS APPELLANT'S LEGAL MALPRACTICE ACTION BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS BECAUSE IT ACCRUED, AT THE LATEST, ON JULY 23, 2004?

III. HAS APPELLANT FAILED TO SUSTAIN HER BURDEN OF PROVING THE APPLICABLE STATUTE OF LIMITATIONS WAS TOLLED BY MENTAL INCOMPETENCY?

IV. DOES RESPONDENT'S ALLEGED FAILURE TO RETURN APPELLANT'S LEGAL FILE TOLL THE STATUTE OF LIMITATION?

STATEMENT OF THE CASE

Appellant Linda Campbell, M.D., (hereinafter "Campbell") initiated these proceedings with the filing of her Summons and Complaint against Respondents Allen S. Guignard (hereinafter "Guignard") and Ashlin Potterfield (hereinafter "Potterfield") in the Court of Common Pleas for Richland County on December 17, 2012. In her Complaint, Campbell purported to assert a legal malpractice action against Potterfield in connection with her representation of Campbell in marital litigation. In essence, the Complaint alleges Potterfield "failed to adequately represent" Campbell and asserts causes of action against Potterfield for conversion, fraud, breach of contract, and breach of contract accompanied by fraudulent acts. (Compl., ¶¶ 2, 4, 5) In her defense, Potterfield denied the allegations directed against her in the Complaint and asserted substantive defenses, including that Campbell's Complaint was barred by the statute of limitations imposed by S.C. Code Ann. § 15-3-530.

In furtherance of her statute of limitations defense, Potterfield moved for summary judgment via motion filed June 6, 2013. After reviewing briefing and hearing oral argument, the circuit court granted summary judgment on Potterfiled's behalf in an order filed September 24, 2013. (September 24, 2013 Order) In that order, the circuit court rejected Campbell's counter-arguments that her claims are not time barred in light of Potterfield's alleged refusal to return Campbell's file in a timely manner or her alleged incapacity at the time of the events at issue. This appeal followed.

STATEMENT OF THE FACTS

On May 7, 2003, Guignard initiated marital litigation against his wife, Campbell, by filing a complaint in Richland County Family Court. Campbell retained Potterfield, a Columbia attorney who practices primarily in the area of family law, to represent her interests in that proceeding. In connection with that representation, Campbell signed a "Fee Agreement and Acknowledgements" on June 3, 2003. (Campbell Dep., Ex. 11) Potterfield filed an answer and counterclaim on Campbell's behalf on June 11, 2003. (*See* Final Divorce Decree, Campbell Dep., Ex. 14., p. 1)

After mediation on July 1, 2004, Guignard and Campbell executed a "Marital Settlement Agreement" ("the agreement"). (Campbell Dep., Ex. 12) The agreement provided that Guignard would pay Campbell $175,000 "in full settlement and satisfaction of any and all claims of the Wife for an equitable division of marital property." (*Id.*, ¶ 7) Campbell agreed to transfer her undivided one-half interest in the marital residence to Guignard. (*Id.*, ¶ 6) Guignard also agreed to have Campbell's name removed from the note and mortgage or to refinance the debt in his name only. (*Id.*) Guignard further agreed to remove Campbell's name from the mortgage or refinance "as soon as practical but in no event later than four months" unless both parties agreed to an extension. (*Id.*) Both parties initialed each page and signed the document before witnesses.[1]

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[1] Going further, the parties acknowledged that "neither party [entered] into this Agreement as a result of duress or any undue influence. . . ." and that they had "freely, actively, and fully taken part in the negotiations over a reasonable period of time, and each party acknowledge[d] and consider[ed] the Agreement to be fair, just, and equitable under the circumstances." (Campbell Dep., Ex. 12, pp. 1-2) Also of note is the fact that Campbell signed the agreement nearly three weeks prior to final divorce hearing and subsequent execution of paperwork necessary to transfer her interest in the marital home to Guignard.

The Honorable John M. Rucker, Family Court Judge for the Fifth Judicial Circuit, held a final hearing on July 23, 2004. The parties were granted a divorce *a vincula matrimonii* on the grounds of one year's separation without cohabitation. Judge Rucker took sworn testimony from the parties "regarding the issue of divorce and the approval of the settlement agreement." (Campbell Dep., Ex. 14, p. 2) There were no children of this marriage. (*Id.*) The court approved the agreement of July 1, 2004, and incorporated it into the final order, with the specific finding by Judge Rucker that "[t]he agreement was reached, without threat or coercion, and as a result of mediation." (*Id.*, p. 3, ¶ 8) The final divorce decree was signed by Judge Rucker on July 26, and filed August 11, 2004. After the final hearing, and on the same day, Campbell signed a General Warranty Deed before a South Carolina Notary Public in which she conveyed all of her right, title and interest in the marital residence to Guignard. (*See* Campbell Dep., Ex. 16)

More than eight years later, on December 17, 2012, Campbell filed her Complaint against Guignard and Potterfield. In her Complaint, Campbell purports to assert causes of action against Potterfield for conversion, fraud, breach of contract, and breach of contract accompanied by fraudulent acts.[2] Although no cause of action was specifically titled "legal malpractice," the Complaint alleges Potterfield is an attorney, that Potterfield undertook the legal representation of Campbell in the marital litigation instituted by Guignard, and that Potterfield "failed to adequately represent" Campbell. (Compl., ¶¶ 2,

[2] In his Order entered July 12, 2013, Judge Hood dismissed the remainder of Campbell's claims against Guignard, including her claim for breach of contract accompanied by fraudulent acts, on the basis that those claims stemmed from a contract relating to property involved in a divorce proceeding. As such, Judge Hood concluded those claims fall under the exclusive subject matter jurisdiction of the family court. (July 12, 2013 Order, p. 3) (citing *Hammer v. Hammer*, 399 S.C. 100, 730 S.E.2d 874 (Ct. App. 2012). The circuit court reached a similar conclusion with regard to Campbell's breach of contract claim directed against Potterfield.

4, 5) In tacit recognition that her Complaint alleged professional negligence against an attorney, Campbell attached the affidavit of Robert W. Rushing, an attorney, as required by S.C. Code Ann. § 15-36-100 (contemporaneous affidavit of expert specifying negligent act or omission).

In her Answer, Potterfield denied the allegations directed against her and asserted numerous substantive defenses including, *inter alia*, that Campbell's claims against her are barred by the applicable statute of limitations. (Answer, ¶ 23). Thereafter, on July 6, 2013, Potterfield moved for summary judgment on the basis that all causes of action asserted against her by Campbell are barred by the three-year statute of limitations codified at S.C. Code Ann. § 15-3-530. Potterfield's motion was supported by numerous exhibits and a memorandum of law. In her memorandum, Campbell asserted her claims are not time barred in light of Potterfield's alleged refusal to return Campbell's file in a timely manner and given her alleged incapacity at the time of the events giving rise to her claims. Finding neither argument persuasive, the circuit court concluded no genuine issue of material fact existed for trial and, therefore, granted summary judgment to Potterfield.

ARGUMENT

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *Baughman v. Am. Telephone & Telegraph Co.*, 306 S.C. 101, 114-115, 410 S.E.2d 537, 545 (1991). The party seeking summary judgment bears the "initial responsibility of demonstrating the absence of a genuine issue of material fact." *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)). Once this initial burden has been met, the party opposing summary judgment must, under Rule 56(e), "'do more than simply show that there is some metaphysical doubt as to the material facts' but must come forward with 'specific facts showing that there is a genuine issue for trial.'" *Id.* (quoting Rule 56(e), SCRCP; *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986)). "Indeed, Rule 56(e) specifically prohibits the nonmoving party from resting upon the mere allegations or denials of its pleadings." *Id.* (citing *Moody v. McLellan*, 295 S.C. 157, 367 S.E.2d 449 (Ct. App. 1988) (additional citation omitted)).

In determining the appropriateness of granting summary judgment, the Court is not "required to single out some one morsel of evidence . . . to create an issue of fact that is not genuine." *Englert, Inc. v. Netherlands Ins. Co.*, 315 S.C. 300, 302, 433 S.E.2d 871, 873 (Ct. App. 1993) (quoting *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984)). Where a defendant establishes an entitlement to judgment as a matter of law, the court must grant summary judgment. *Humana Hospital-Bayside v. Lightle*, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991) ("Where the plaintiff relies solely upon the pleadings,

files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law.") (citation omitted); *Dyer v. Moss*, 284 S.C. 208, 210-211, 325 S.E.2d 69, 70 (Ct. App. 1985). An appellate court reviews the grant of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP. *Carter v. Standard Fire Insurance Co.*, ___ S.C. ___, 753 S.E.2d 515, 517 (2013) (quoting *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002)).

DISCUSSION

Campbell's Initial Brief correctly describes this action as one involving "alleged legal malpractice." (Initial Br., first unnumbered page) What she has failed to do, however, is provide this court or the lower tribunal with any salient facts that support the malpractice claim or her argument that the applicable statute of limitation should be tolled. Indeed, her arguments on these points are so devoid of factual or legal support, this Court should consider her arguments and issues abandoned. In the alternative, the Court should affirm the circuit court's conclusion that no issue of material fact exists for trial and that Potterfield is entitled to judgment as a matter of law.

I. APPELLANT'S ARGUMENTS SHOULD BE DEEMED ABANDONED BECAUSE THEY ARE CONCLUSORY AND LACK CITATION TO AUTHORITY OR RECORD EVIDENCE.

Campbell's arguments are conclusory, lack citation to supporting authority or record evidence, and should, therefore, be deemed abandoned. *Cole v. South Carolina Electric and Gas Co.*, 355 S.C. 183, 196, 584 S.E.2d 405, 412 (Ct. App. 2003) ("We decline to consider this argument because Cole's argument is not supported with citations

to authority, and it is so conclusory as to be an abandonment of this issue on appeal.") (additional citations omitted). Campbell raises three arguments on appeal, yet devotes a scant four pages to arguing those issues to the Court. Going further, Campbell's cursory arguments are devoid of any meaningful record citations or reference to any evidence that would support her claims that Potterfield owed her a continuing duty or committed malpractice, or that she suffered from any mental incompetency sufficient to toll the statute of limitations.

II. APPELLANT'S LEGAL MALPRACTICE ACTION IS BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS BECAUSE IT ACCRUED, AT THE LATEST, ON JULY 23, 2004.

The three year limitation of actions imposed by Section 15-3-530 applies to claims for legal malpractice. *Epstein v. Brown*, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005); *Kelley v. Logan, Jolley, & Smith, LLP,* 383 S.C. 626, 632, 682 S.E.2d 1, 4 (Ct. App. 2009); *Binkley v. Burry*, 352 S.C. 286, 296, 573 S.E.2d 838, 844 (Ct. App. 2002). Although there is no cause of action specifically entitled "legal malpractice" in Campbell's Complaint, the allegations against Potterfield clearly arise from her representation of Campbell in the marital litigation brought by Guignard.

The crux of Campbell's assertions against Potterfield regards the disposition of the marital residence in the divorce. Campbell testified in her deposition she did not want to give up the house and did not understand she had agreed at the mediation to convey her undivided half interest to her husband. (Campbell Dep., p. 85, lines 6-10) She said she was "shocked" when Potterfield told her she did not have the house. (*Id.*, p. 92, line 5 – p. 93, line 12) Campbell also testified she complained to Potterfield about this after the mediation, but Potterfield told her there was nothing that could be done. (*Id.*, p. 88,

line 13 – p. 89, line 17)

Campbell participated in the final hearing before Judge Rucker on July 23, 2004, in which the settlement agreement was incorporated into the final decree. (Campbell Dep., p. 96, lines 3-24) She claimed that Potterfield instructed her she had to answer "yes" to all of the judge's questions. "What I understood was I had to answer yes to every question and that … everything had been decided back on July the 1st and there was nothing I could do." (*Id.*, p. 96, lines 12-15) She acknowledged she received a copy of the divorce decree shortly after the hearing, but she "didn't read it." (*Id.*, p. 97, lines 6-25)

Campbell acknowledged signing and initialing the Marital Settlement Agreement in which she agreed to convey the house. (Campbell Dep., p. 83, line 7 – p. 84, line 21) She acknowledged signing the general warranty deed, but protested, "I didn't want to do this." (*Id.*, p. 101, lines 2-3) She claimed she "had no choice." (*Id.*, p. 101, line 11) Nevertheless, it is clear she understood what she was doing: "Yeah, I did sign it. But, I mean, I was devastated. Devastated that I was having to sign that." (*Id.*, p. 101, lines 21-23) She testified, "I walked out of that divorce [hearing] knowing I had to find a house to live in." (*Id.*, p. 98, lines 2-3)

"[T]he statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct." *Epstein*, 363 S.C. at 376, 610 S.E.2d at 818; S.C. Code Ann. § 15-3-535.

> The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another

> party might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed.

Mitchell v. Holler, 311 S.C. 406, 409, 429 S.E.2d 793, 795 (1993) (quoting *Snell v. Columbia Gun Exchange, Inc.*, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981)); *Berry v. McLeod*, 328 S.C. 435, 445, 492 S.E.2d 794, 799 (Ct. App. 1997) (quoting *Mitchell*, at 409, 429 S.E. 2d at 795); *Epstein*, 363 S.C. at 376, 610 S.E.2d at 818 (quoting *Berry*, at 445, 492 S.E.2d at 799).

The test of whether a person should have known the operative facts is objective, rather than subjective. *Burgess v. American Cancer Society*, 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct. App. 1989). The discovery rule focuses on "whether the complaining party acquired knowledge of any existing facts 'sufficient to put the party on inquiry which, if developed, will disclose the alleged fraud.'" *Id.* at 185, 386 S.E.2d 798, 799 (quoting *Walter J. Klein Co. v. Kneece*, 239 S.C. 478, 123 S.E.2d 870 (1962)). An individual on inquiry or constructive notice is held to be on notice of the contents of documents filed in conformity with statutory law, which an inquiry would have revealed. *Id.*

Here, Campbell claims she did not understand she had agreed to sell her interest in the house, though she acknowledged signing the Marital Settlement Agreement to that effect on July 1, 2004. She complains that Potterfield told her she had no choice but to comply with that agreement, but she knew she was passing her interest to her husband when she signed the deed after the court hearing on July 23, 2004. And she certainly appreciated that she no longer had a house when she had to find a new residence. Much of what she complains of as damages in this litigation is related to the fact that she gave

up the house, a fact of which she was admittedly aware at the conclusion of her divorce proceedings.

Objectively, Campbell knew she relinquished her interest in the house on July 23, 2004. She blamed Potterfield for requiring her to make this transfer. These circumstances would put a person "of common knowledge and experience on notice" of a claimed violation of her rights, and that she may have a claim against someone. Thus, the three year limitation of actions began to run, at the latest, on July 23, 2004. Her Complaint, filed more than eight years later on December 17, 2012, is time barred. The circuit court order granting summary judgment on this basis should be affirmed.

III. APPELLANT HAS FAILED TO SUSTAIN HER BURDEN OF PROVING THE APPLICABLE STATUTE OF LIMITATIONS WAS TOLLED BY MENTAL INCOMPETENCY.

On July 24, 2013, in apparent opposition to this motion, Campbell filed the July 23, 2013 Affidavit of Alberto J. Gonzalez, M.D. (Affidavit of Alberto J. Gonzalez, M.D.)[3] Dr. Gonzalez is a psychiatrist with whom she began treating in 2009. (Campbell Dep., p. 110, line 11 – p. 111, line 11) In his affidavit, Dr. Gonzalez asserts he is familiar with "the circumstances attending her divorce," that she was "emotionally imbalanced" during that time "to the point of being unable to understand and process what was going on," that she was not able to look after her own interests, and was thus "taken advantage of at a particular low point in her life." (Gonzalez Aff.) A brief review of the record belies these contentions and militates in favor of affirmance of the grant summary judgment in Potterfield's favor.

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[3] This affidavit is identical to the unsworn statement of Dr. Gonzalez, dated March 27, 2013. (March 27, 2013 Gonzalez Statement)

Gonzalez's Affidavit ostensibly supports Campbell's contention that the statute of limitations should be tolled by reason of mental or emotional stress. However, Dr. Gonzalez's Affidavit is unpersuasive inasmuch as that contention is belied by the record evidence presented in this case, is self-serving, and does not create any genuine issue of material fact. At the outset on this point, it must be emphasized that a party claiming the statute of limitations has been tolled bears the burden of proof. *Hooper v. Ebenezer Senior Services and Rehabilitation Center*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009); *Ross v. Ross*, 394 S.C. 261, 265, 715 S.E.2d 359, 361 (Ct. App. 2011) (citing *Hooper*); *Kimmer v. Wright*, 396 S.C. 53, 62, 719 S.E.2d 265, 270 (Ct. App. 2011) (citing *Hooper*).

Next, South Carolina statutory law recognizes only two instances in which the statute of limitations may be tolled: minority and insanity. S.C. Code Ann. § 15-3-40. The statute provides that the period within which the action must be brought cannot be extended by more than five years by any disability, or in any case longer than one year after the disability ceases. *Id.* While "insanity" is not defined in the statute, the court in *Wiggins v. Edwards*, 314 S.C. 126, 442 S.E.2d 169 (1994) applied the following rule:

> Insanity or mental incompetency that tolls the statute of limitations consists of a mental condition which precludes understanding the nature or effects of one's acts, an incapacity to manage one's affairs, an inability to understand or protect one's rights, because of an over-all inability to function in society, or the mental condition is such as to require care in a hospital.

Id. at 129, 442 S.E.2d at 170. Further, Section 15-3-50 provides, "[n]o person shall avail himself of a disability unless it existed when his right of action accrued."

The record in this case conclusively establishes Campbell was not "insane," within the meaning of the tolling statute, in July 2004. For example, Campbell is a physician. She obtained her Doctor of Medicine degree from the Medical University of

South Carolina in 1988. Prior to that, she earned bachelors and masters degrees in nursing. She was board certified in internal medicine in August 1999, and recertified in October 2011. In 2004, she was employed as a physician at Metabolic Medical Centers of Columbia. (See curriculum vitae, Campbell Dep., Ex. 1) That year, she earned $129,442 as a physician, working 24-28 hours a week. (Campbell Dep., Ex. 2)

Campbell testified she was actively seeing patients during the relevant time frame. (Campbell Dep., p. 75, lines 3-8; p. 113, lines 7-12) After the mediation, in which she signed the agreement to transfer her half-interest in the house to Guignard, Campbell testified "I went back to work I saw a couple of patients." (*Id.*, p. 87, lines 20-21) She was treating with a psychiatrist, Dr. Raymond Ackerman, at this time, but he did not advise her to stop practicing medicine. (*Id.*, p. 39, lines 9-13) In fact, Campbell testified that "no doctor ever told me to do that." (*Id.*, p. 41, line 10) Campbell also testified she was under a great deal of stress because her father had suffered a stroke and that she "was focusing on that." (*Id.*, p. 64, lines 13-16) Going further, Campbell stated "I was so focused on taking care of my father. I was so devastated that Allen was divorcing me. . . . And I was so focused on other things that I just couldn't focus on this." (*Id.*, p. 71, lines 15-22) Campbell's father died June 22, 2005. (*Id.*, p. 32, lines 8-9)

Acknowledging the seriousness of stress in having to deal with divorce and a sick parent, these circumstances nevertheless do not constitute a mental condition sufficient to invoke mental disability and toll the statute. In *Wiggins*, plaintiff claimed the statute was tolled because of confusion and disorientation she suffered as a result of injuries sustained in the automobile accident giving rise to the litigation. 314 S.C. at 129, 442 S.E.2d at 170. In affirming summary judgment for the defendant, the court held these

types of conditions do not qualify as "insanity." *Id.*

Further on this point, not only must the insanity exist at the time of the accrual of the cause of action, but there is a five-year limit on this disability. S.C. Code Ann. § 15-3-40(2)(a). In *Harrison v. Bevilacqua*, 354 S.C. 129, 580 S.E.2d 109 (2003), the court interpreted Section 15-3-40 to extend a disability of insanity for a maximum of five years. *Id.* 354 S.C. at 138, 580 S.E.2d at 114. The disability would cease within that time, plus one year, if the insanity ceased. Thus, the outside limit within which a suit must be brought, assuming continuous insanity, is eight years - three years under Section 15-3-530, plus five years under Section 15-3-40.

Campbell filed her Complaint on December 17, 2012, more than eight years and four months after the cause of action accrued. Even making the unlikely assumption that she was insane on July 23, 2004, and that she continued to be insane until July 23, 2012, her suit is still time barred. The record reflects that Campbell was able to manage her affairs and function in society throughout this time. She continued to practice medicine, at several different locations and in different practices, up to the present. She was a speaker at the 2005 Women's Expo with the South Carolina Heart Center. (Curriculum vitae, Campbell Dep., Ex. 1) She earned in excess of $100,000 practicing medicine in 2009 and 2010. (Campbell Dep., Ex. 2) She explored opening her own practice in 2006. (Campbell Dep., p. 32, line 5 – p. 34, line 1) She remarried in 2007, and executed an affidavit in connection with that divorce in April 2010. (*Id.*, p. 105, line 25 – p. 106, line 9; p. 107, line 7 – p. 108, line 6; Campbell Dep., Ex. 17) She renewed her board certification in internal medicine in October 2011. (Curriculum vitae, Campbell Dep., Ex. 1)

Dr. Gonzalez's Affidavit also must be considered in light of his patient records. In response to Potterfield's subpoena and with Campbell's authorization, Dr. Gonzalez produced a copy of his records, which were attached to Potterfield's motion for summary judgment. According to these records, Dr. Gonzalez first saw Campbell as a patient on March 5, 2009, with diagnoses of depression and anxiety. He saw her four more times in 2009, once in 2010, twice in 2011, four times in 2012, and at least four times in 2013. These records do not suggest mental incompetency in 2004 or during the several years that followed. Instead, these records mention her struggles with her son Zachery, who had learning problems, but do not evince mental incapacity on the part of Campbell. (Campbell Dep., p. 89, lines 5-6) In March 2010, Dr. Gonzalez observed that Campbell "had been doing well" and "appears stable."

In 2011, Dr. Gonzalez began to make mention of Campbell's financial problems. It was not until June 2012 that Dr. Gonzalez began to question her ability to work, and in September he suggested she apply for disability benefits. These records are in stark contrast to those of 2009 and 2010, which contain no such observations or suggestions. Considering these records, the affidavit of Dr. Gonzalez does not create an issue of fact as to whether Campbell was insane at the time of her divorce from Guignard in 2004. It does not assert that her emotional state was such as to make her unable to function in society, and his own records clearly refute any such contention. He did not begin treating her until 2009, five years after the events at issue. Campbell agreed that Dr. Ackerman, her psychiatrist at the time in question, never advised her to stop practicing medicine. Surely if one is able to earn a living as a physician and care for patients, she is able to understand the implications of a divorce settlement and a deed.

IV. RESPONDENT'S ALLEGED FAILURE TO RETURN APPELLANT'S LEGAL FILE DOES NOT TOLL THE STATUTE OF LIMITATION.

In opposition to the grant of summary judgment by the circuit court, Campbell asserted Potterfield assumed a duty to enforce Guignard's agreement to remove Campbell's name from a mortgage, that she failed to comply with that obligation, and that Campbell could not have known of Potterfield's alleged malfeasance given Potterfield's refusal to surrender Campbell's file in a timely manner. Thus, the argument goes, the statute of limitations should be tolled until such time as Campbell reasonably could have known she had a right of action against her former attorney. Once again, this argument is not supported by the record, and summary judgment is appropriate.

As the circuit court correctly determined, Campbell simply failed to produce record evidence to support her contention that Potterfield assumed a duty or owed a duty to her former client to ensure that Guignard complied with his obligations pursuant to the Settlement Agreement incorporated by reference into the Final Divorce Decree. Instead, it was for Guignard, and not Potterfield, to comply with the terms and conditions imposed upon him by the family court. In like fashion, it was for the family court, and not Potterfield or the circuit court to enforce the terms of the Final Divorce Decree. In any event, Campbell alleges she began requesting her file in September 2010, which is long after the statute of limitations expired. (Comp., ¶ 7) Even more damaging to Campbell's claims in this regard is her own summary of events indicating she attempted to obtain financing to start her own practice in 2006 but was informed by bank personnel that her expense-to-income ratio was "too high." (*See* Campbell Dep., Ex. 2) Surely, such knowledge would place an intelligent person such as Campbell on notice that her name might still be associated with a sizeable residential mortgage, that Guignard had not

complied with his obligations pursuant to the Final Divorce Decree, and impose an obligation upon her (and not Potterfield) to investigate further.

In summary, Campbell's claims against Potterfield are barred by the statute of limitations. Many more than three years have elapsed since the cause of action accrued in 2004. Campbell cannot establish that she was insane, within the meaning of the tolling statute, in 2004, and the Affidavit of Dr. Gonzalez does not create a factual issue in this regard. Even if Campbell could establish some issue with regard to her competency, the record is replete with evidence that she was able to function in society, and to handle her own affairs, during the years after the accrual. Construing the evidence in the light most favorable to Campbell, there simply is no genuine issue as to any material fact concerning the application of the statute of limitations to her claims. Summary judgment was granted to Potterfield on this basis, and that order should be affirmed by this Court.

CONCLUSION

For all of the reasons stated herein, Respondent Ashlin Potterfield submits that the arguments and supporting authority submitted to this Court by Appellant Linda Campbell, M.D., are so conclusory as to be deemed an abandonment of her issues and arguments on appeal. Turning to the merits, Campbell has failed to establish any genuine issue of material fact relating to her allegations of attorney malpractice and has failed to meet her burden to establish that the applicable statute of limitations is tolled by mental incompetence. For all of these reasons, the order of the circuit court granting summary judgment on Respondent Ashlin Potterfield's behalf should be affirmed.

TURNER, PADGET, GRAHAM & LANEY, P.A.

April 16, 2014

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