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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen Mullen, Circuit Judge
Marvin H. Dukes, III, Master-In-Equity

APPEAL CASE No. 2011-204367
Circuit Court Case No. 2011-CP-07-02546

OLESYA MATYUSHEVSKY, CITIZENS OPPOSING DOMESTIC ABUSE, CHRISTINE VARG and LILING SUN ..... **Respondents**

v.

JOSEPH C. SUN ..... **Appellant**

PETITION FOR REHEARING

JOSEPH C. SUN, Appellant pro se
P. O. Box 151
Bluffton, SC 29910
843-226-8788

J. Sam Scoville, Esq.
P.O. Drawer 1107
Beaufort, SC 29901

Jackson H. Daniel, III, Esq.
40 Calhoun Street, Suite 400
Charleston, SC 29401

TABLE OF CONTENTS

TABLE OF AUTHORITIES

MEMORANDUM IN SUPPORT

Appellant Joseph Sun pursuant to Rule 221(a), SCACR, respectfully requests the court for a rehearing in this appeal case and submits that in affirming the judgment of the circuit court, this court has overlooked the followings:

(1) Appellant is a 67 year old Asian American, retired on Social Security, who has only a small check from the government every month as his only income. He is not a lawyer, does not have the funds to hire one to represent him at the circuit court or this court. He can only do the best he can to prepare and file all necessary legal documents himself.

Appellant has always been a law-abiding family man. In 2010, Appellant had been falsely arrested numerous times by the respondents who lodged fabricated charges against him, and was incarcerated in and out of jail most of that year after which all charges were *nolle prosequi* or acquitted. Appellant's home was burglarized several times admittedly by Respondent LiLing aided and abetted by other respondents and numerous valuables were destroyed, stolen or removed. Appellant was made homeless for 18 months by the respondents' wrongful acts and had to rent apartments for temporary residence. His 90 year old mother could not tolerate the numerous threats and harassments from these respondents who insisted unless they get money from her, they would subpoena her to court from Canada. The old lady had to give them $75,000, but slipped, fell and died several months later. Appellant had lost practically everything and is now trying to rebuild his life in his retirement. The court may have overlooked that this is not a harassing lawsuit, but a lawsuit in distress. Appellant has no other legal remedy.

(2) All the respondents in this case are represented by big law firms who have been successful in converting Appellant's lawsuit seeking recovery of damages into an action which they claim

involving only issues in the divorce, and convincing the circuit court and this court that jurisdiction rests in the Family Court, when nothing in S.C. Code Ann. § 63-3-530(A) would allow the Family Court jurisdiction to litigate the aforesaid matter. The Beaufort County Family Court had already refused to entertain certain incidents alleged in the complaint during the pendency of the divorce. Respondent Citizens Opposing Domestic Abuse (hereinafter CODA) was supposed to be a non-profit organization helping women who were abused by their spouses therefore might appear to be innocent and that accusations against it or its employees were presumed incredible. Appellant was not allowed to prove that this is a case of exception to the majority of their "noble deeds."[1] He is only asking for an opportunity to prove.

(3) As cited by the court in its unpublished opinion, pursuant to Rule 220(c), SCACR, the court "may affirm any ruling, order, decision or judgment upon any ground appearing in the Record on appeal." Those grounds are most likely the insufficiency of the pleadings that are subject to dismissal. The court also cited Rule 12(b)(6), SCRCP (providing a circuit court may dismiss a complaint when the defendant demonstrates the plaintiff's complaint fails to allege facts sufficient to constitute a cause of action). Appellant admits that his pleadings were not well written at the time, not to a professional standard. Appellant asks the court to heed to the United States Supreme Court's holding in *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976), where "As the Court unanimously held in *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30

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[1] There is evidence that in 2011, Respondent Varg had written email to Appellant using phony ID calling Appellant a boll weevil, evidence showing Respondent Matyushesky had told Appellant on the phone when Appellant was pro se in 2009 that she did not want her client to know what she filed when asked about the counterclaim for divorce, and evidence that she intentionally used a wrong Certified receipt at the temporary hearing to coverup the service of notice of temporary hearing was done the day before the hearing. The Certified Mail Receipt of one day prior was disclosed by Counsel Baker in a separate federal case.

involving only issues of the divorce and removing the custody matter and that it [illegible] jurisdiction in the Family Court, citing to S.C. Code Ann. § 63-3-530(A) [illegible] the Family Court jurisdiction to litigate the other said matters. The Beaufort County Family Court had already refused to entertain certain incidents alleged in the complaint during the pendency of the divorce. Respondent Citizens Opposing Domestic Abuse (hereinafter "CODA") was supposed to be a non-profit organization helping women who were abused by their spouses therefore might appear to be innocent and that accusations against it or its employees were presumed [illegible]. Appellant was not allowed to prove that this is a case of exception to the majority of such "noble bodies." He is only asking for an opportunity to prove.

(3) As cited by the court in its unpublished opinion pursuant to Rule 220(b), SCACR, the court "may affirm any ruling, order, decision or judgment upon any ground appearing in the Record on appeal." These grounds are most likely the insufficiency of the pleadings [illegible]. The court also cited Rule 12(b)(6), SCRCP (providing a court may dismiss a complaint when the defendant demonstrates the plaintiff's complaint fails to allege facts sufficient to constitute a cause of action). Appellant admits that his pleadings were not well written at the time, not to a professional standard. Appellant asks the court to hold to the United States Supreme Court's holding in *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976), where the Supreme Court unanimously held in *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30

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[1] There is evidence that in 2011, Respondent Vang had written email to Appellant using phony ID calling Appellant a devil, evidence showing Respondent Malyshesky had told Appellant on the phone when Appellant was [illegible] in 2009 that she did not want her client to know what she lied when asked about the counterclaim for divorce, and evidence that she intentionally used a wrong Certified receipt at the temporary hearing to cover up the service of notice of temporary hearing was done the day before the hearing. The Certified Mail Receipt of one day prior was disclosed by Counsel Baker in a separate federal case.

L.Ed.2d 652 (1972), a pro se complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears " 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' " Id., at 520-521, 92 S.Ct. at 596, quoting *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)." Appellant submits that the court overlooked that the complaint or amended complaint in the within circuit court case should not be dismissed, based on the aforesaid doctrine. Appellant has stated several valid claims which could entitle him to relief.

(4) Albeit inartfully done in his complaint, Appellant in summary, alleges that Respondent LiLing after signing a prenuptial agreement and after several years of marriage, pretentiously and fraudulently misrepresented to Appellant and his parents that she would be a good wife and in law, thereby gaining trust and access to Appellant's family private business. The truth was LiLing was already writing and seeing a younger man met on the internet. She then used false pretense of domestic abuse and sought legal assistance at Respondent CODA where respondents Matyushesky and Varg conspired with LiLing, at a Family Court hearing used a warranty deed altered by respondent LiLing and a false Certified Mail Receipt to cause Appellant to be evicted from his mother's house. Though may be insufficient to a professional standard, Appellant alleged in his complaint, Paragraph (7), (R.p.61, line 22) and in his Amended Complaint, Paragraph (6), (R.p.85, line 22) that Respondent LiLing and he signed a prenuptial agreement before marriage. In Paragraph (27), (R.p.68, line 1) of the complaint and Paragraph (28) (R.p.93, line10) of Amended Complaint, Appellant alleged that the respondents broke in his home in another nearby town, destroyed the Sentry Safe and stole numerous valuables including the original prenuptial agreement. A copy of the Prenuptial was already filed in the Divorce Case No. 2009-DR-07-

00628. Respondent's breach of the prenuptial agreement had caused Appellant to suffer damages on the unnecessary rents and expenses he had to pay for rooms and apartment for the next 18 months. In its affirmance, this court overlooked that the Family court had no jurisdiction to determine damages and injury suffered by the Appellant, and that Respondent presented "Judicial Notice" at the hearing which supported Appellant's allegations of her break in and theft.

(5) As alleged in aforesaid Paragraphs (27) and (28), of his complaint (R.p.68&93), the respondents allegedly conspired to break in Appellant's home (separate from the marital) and destroyed his safe and stole all the valuables, again in breach of the prenuptial agreement. Because some, but not all, wrongful acts committed by the respondents occurred during the pendency of the divorce, both the circuit court and this court overlooked the issue of breach of prenuptial agreement and ruled that "the family court has exclusive jurisdiction to hear and determine actions for settlement of all legal and equitable rights of the parties in the action." citing *Appeal of Sexton*, 298 S.C. 359, 360, 380 S.E.2d 832,833 (1989). This court has overlooked that the cited case is irrelevant and inapplicable in the within appeal as Appellant is not seeking the determination of "whether the Family Court has subject matter jurisdiction to equitably apportion property owned by a third party" which was the issue on the cited case. Appellant was only suing for damages and injury on which Family Court had no subject matter jurisdiction. Appellant cited *Thompson v. Ballentine,* 298 S.C. 289, 379 S.E.2d 896 (1989) on Page 15 of his Amended Final Brief and Page 3 of his Amended Reply Brief where the South Carolina Supreme Court held that "The family court are courts of limited jurisdiction, as provided by S.C. Code Ann. § 20-7-420 (1976), ... nor did it have jurisdiction to award damages." In its opinion, this court overlooked that authority.

(6) Furthermore, the court overlooked Appellant's citation of *Bailey v. Bailey,* 330 S.C. 326,

498 S.E.2d 891 (1998) on Page 15 of his Amended Final Brief where this court previously held that "property excluded from the marital estate by written contract or antenuptial agreement of the parties is considered non-marital property over which the family court has no jurisdiction. See S.C.Code Ann. § 20-7-473 (Supp.1997) ("The [family] court does not have jurisdiction or authority to apportion nonmarital property."); S.C.Code Ann. § 20-7-473(4) (Supp.1997) (Property excluded from the marital estate by written contract of the parties is considered non-marital property)." *Id.* The within case sought to determine that Respondent LiLing had falsely claimed the two houses and numerous valuables she stole from Appellant to be marital during the divorce proceeding causing damages and injury to the Appellant. In its opinion, this court overlooked the issue on the prenuptial agreement on which only the circuit court had jurisdiction to entertain.

(7) Transcript of the hearing (R.p.131) shows Respondent LiLing presented the Sheriff's Report (R.p.108) as her "evidence outside the pleadings" and her "judicial notice" to the circuit court. Contrary to Respondent's intention, the judicial notice actually showed evidence that there was an unresolved disputed issue of whether the home she broke in and stole numerous items was in violation of the prenuptial agreement (R.p.102). Only the circuit court, not the family court, had jurisdiction on the determination of that issue. Pro se Appellant may have failed to allege clearly and succinctly to a professional standard that respondents' conspiracy of and actual break in and theft of his personal non-marital items were in violation of the prenuptial agreement, his allegations are sufficient pursuant to *Estelle v. Gamble*, supra.

(8) The court overlooked that the circuit court in its court order of November 9, 2011 "analysis" (R.p.11, lines 10-12), already found that Appellant "appears to allege fraud, adultery, forgery, wrongful arrest and incarceration, libel and slander, burglary, theft, trespass and

conspiracy." As Appellant was seeking recovery of damages and injury he had suffered, caused by the respondents' wrong doings, the circuit court already acknowledged Appellant's several causes of action showing allegations were sufficient and that circuit court had jurisdiction.[2] *Thompson v. Ballentine*, supra. Furthermore, as recognized by the circuit court, fraud, libel and slander and conspiracy involved other respondents over whom Family Court had no jurisdiction. The court overlooked that even though Appellant's complaint shows he might have acquiesced to Respondent LiLing's forgery of warranty deed after he was misled by LiLing in believing it was harmless, Respondents' utterance of the forged warranty deed to fraudulently gain possession of the house constituted fraud to a criminal magnitude.

(9) Regarding the dismissal of Respondents Matyushevsky, CODA and Varg from the complaint, the circuit court assumed all acts however malicious and wrongfully committed by these respondents were done "in the performance of their professional activities on behalf of and with the knowledge of their client" therefore, they enjoy immunity pursuant to *Gaar v. N. Myrtle Beach Realty Co.*, 287 S.C. 525, 339 S.E.2d 887 (1986). This court has overlooked that, in *Stiles v. Onorato,* 318 S.C. 297, 457 S.E.2d 601 (1995) the South Carolina Supreme Court held that, "nothing in Gaar renders an attorney immune for acts taken **outside the scope** of the professional relationship." The Supreme Court further made reference to a number of "jurisdictions which recognize that an attorney may be held liable where he acts in bad faith or for his own personal motivations." *Stiles*, at 299. The S.C. Supreme Court further held that "Consistent with Gaar and the above cited cases, we find that an attorney may be held liable for conspiracy where, in addition

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[2] In the deposition in a separate custody case, Respondent LiLing also admitted that after destroying Appellant's safe and stealing numerous items, she gave them to her counsel Matyushesky who kept them up to this date at the office at Respondent CODA

to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client. Accordingly, we hold that the trial court erred in dismissing the complaint on the basis that Gaar provides absolute immunity to an attorney under any and all circumstances." *Stiles*, at 300. In addition, this court overlooked that there was allegations that Respondent Matyushesky committed numerous libel and slander[3], conspired with others to falsely incarcerate Appellant, then to burglarize Appellant's home in violation of the prenuptial agreement, and to extort money from Appellant's ailing mother in Canada and much more, all done as her vendetta against Appellant's accusation and exposure of her wrong doing and bar complaint. Appellant alleges in his complaint and amended complaint that up to this date, all respondents including CODA are still in possession of numerous valuable items they conspired with LiLing to steal from Appellant at the Knowles Island Home and the Bluffton home. The Family Court has no jurisdiction over other respondents or to determine the amount of damages or the whereabouts of the stolen items, only circuit court has that jurisdiction.

(9) In the court's opinion, it cited *Gaar v. N. Myrtle Beach Realty Co.*, 287 S.C. 525, 528-29, 339 S.E.2d 887-89 (1986) where "An attorney is immune from liability to third persons ..... with the knowledge of his client. Accordingly, an attorney who acts in good faith with the authority of his client is not liable to a third party in action for malicious prosecution." The court overlooked that the *Gaar* case gave immunity to attorneys **only** under the conditions of "acting in good faith" and "with the knowledge of his client." Those are genuine issues of material facts to be determined by the jury. Appellant might have failed to specifically allege that Respondent

[3] Calling Appellant a criminal to numerous others based on charges she and her clients fabricated and were all dismissed or acquitted.

Matyushesky acted "outside the scope" of her professional relationship with client LiLing, he alleged several acts of fraud[4], libel and slander and conspiracy to commit burglary against the Appellant. Even without the specific words, those wrongful acts, some criminal in nature should be construed to be outside of professional conduct, bad faith and malicious per se.

(10) The court overlooked Appellant's cited case of *Brazell v. Windsor,* 384 S.C. 512, 682 S.E.2d 824 (2009), Page 17 Amended Final Brief, where the South Carolina Supreme Court held that "If the facts and inferences drawn from the facts alleged in the complaint, viewed in light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. *Gentry v. Yonce,* 337 S.C. 1,5, 522 S.E.2d 137,139 (1999). In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in light most favorable to the plaintiff, states any valid claim for relief. *Id.*" In light most favorable to the Appellant, Respondent LiLing had breached the prenuptial agreement, committed fraud, forgery, burglary, theft, trespass and conspiracy against the Appellant as found by the circuit judge who erroneously ruled that only Family had jurisdiction. Further in light most favorable to the Appellant, Respondents LiLing, Matyushesky, Varg and CODA conspired with one another and other individuals and acted in bad faith, some without the client's knowledge on the numerous malicious wrongful acts against the Appellant causing him damages and injury. The circuit court, not the family, has jurisdiction on Appellant's complaint.

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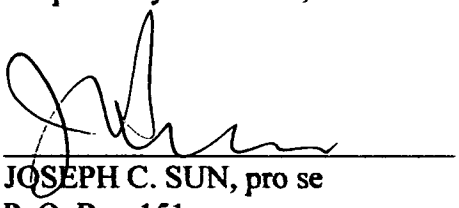
[4] using a false Certified Mail Receipt, a forged warranty deed and coaching her client to steal the car title, all valuables and Prenuptial Agreement by breaking in Appellant's home using grinder and sledge hammer pretentiously claiming the items were marital because the Prenuptial was stolen.

CONCLUSION

For the foregoing reasons, Appellant prays the court pursuant to Rule 221(a), SCACR, for a rehearing in this case or a reconsideration of its opinion of March 18, 2015, and for a reversal of the Orders of the Circuit Court on appeal in this case.

Respectfully submitted,

This 27th day of March, 2015.

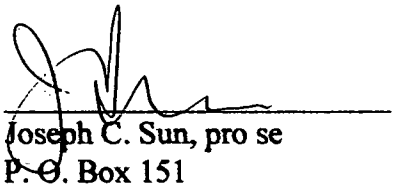


JOSEPH C. SUN, pro se
P. O. Box 151
Bluffton, SC 29910
843-226-8788

PROOF OF SERVICE

I certify that I have this date served the Appellant's Petition for Rehearing on all the Respondents by depositing a copy of same in the U.S. Mail postage prepaid, on March 27, 2015, addressed to their attorneys on record as follows:

J. Sam Scoville, Esq. P.O. Drawer 1107, Beaufort, SC 29901
Jackson H. Daniel, III, Esq. 40 Calhoun Street, Suite 400, Charleston, SC 29401



Joseph C. Sun, pro se
P. O. Box 151
Bluffton, SC 29910
843-226-8788

March 27, 2015
Bluffton, SC 29910