

(3) that defendants "Ejuhavna Chisolm and Fairlyn Basden are the cause of Chisolm's [plaintiff] loss of service of his eldest minor daughter[.]"

Pl's. Compl. at 5-6 Chisolm v. Chisolm, et al., 2016-CP-08-0350. Additionally, at the hearing, the plaintiff clarified that the misrepresentation claim in regards to the contractual obligations (#1 above) involved the defendant, Ejuhavna Chisolm, tricking the plaintiff into giving up custody of his children and not abiding by an oral agreement regarding the custody of the plaintiff's children.

Defendants filed a Motion to Dismiss the Plaintiff's complaint with Prejudice pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Mot. to Dismiss with Prejudice Chisolm v. Chisolm, et al., 2016-CP-08-0350.

Standard of Review

A. Rule 12(b)(1), SCRPC

"The proper procedure for raising lack of subject matter jurisdiction prior to trial is to file a motion to dismiss pursuant to Rule 12(b)(1), SCRPC" Posey v. Proper Mold & Engineering, Inc., 378 S.C. 210, 216; 661 S.E.2d 395, 399 (Ct. App. 2008). South Carolina Family Courts "shall have exclusive original jurisdiction and shall be the sole court for initiating action . . . [c]oncerning any child living or found within the geographical limits of its jurisdiction . . . whose custody is the subject of controversy" S.C. Code Ann. § 63-3-510 (A)(1)(e) (Westlaw current through 2016 Act No. 147). Additionally, once a Family Court "has made a child custody determination" it retains "exclusive, continuing jurisdiction over the determination" subject to specific circumstances not applicable to the matter before this court. S.C. Code Ann. § 63-15-332. (Westlaw current through 2016 Act No. 147).



B. Rule 12(b)(6), SCRPC

When ruling on a Rule 12(b)(6) motion, “[a] trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court.” Flateu v. Harrelson, 355 S.C. 197, 201; 584 S.E.2d 413, 415 (Ct. App. 2003). “In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint.” Doe v. Marion, 373 S.C. 390, 395; 645 S.E.2d 245, 247 (2007). “If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper.” Id.

When pleading fraud, “the circumstances constituting fraud . . . shall be stated with particularity.” Rule 9, SCRPC. “Fraud is not presumed, but must be shown by clear, cogent, and convincing evidence.” Ardis v. Cox, 314 S.C. 512, 515; 431 S.E.2d 267, 269 (Ct. App. 1993).

In order to prove fraud, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.

Id. Further, “[w]here the complaint omits allegations on any element of fraud, the trial court should grant the defendant's motion to dismiss the claim.” Id. See also Inman v. Ken Hyatt Chrysler Plymouth, Inc., 294 S.C. 240, 242; 363 S.E.2d 691, 692 (1988) (“It is well-settled that a complaint is fatally defective if it fails to allege all nine elements of fraud.”).

Discussion

A. Rule 12(b)(1), SCRCP

Plaintiff's claims regarding the negligent misrepresentation as to a custody agreement (#1 above), and mental and emotional stress (#2 above) are simply a repackaging of claims previously determined by Order of the Family Court of the Ninth Judicial Circuit, filed March 31, 2015, ordering legal and physical custody of the plaintiff's children to the defendant in this case, Ejuhavna Chisolm. Order for Non-Emergency Removal & Order of Closure South Carolina Dept. of Social Svcs. v. Chisolm, et al. 2015-DR-08-0206. Therefore, this Circuit Court lacks subject matter jurisdiction to consider plaintiff's claims as to these matters.

B. Rule 12(b)(6), SCRCP

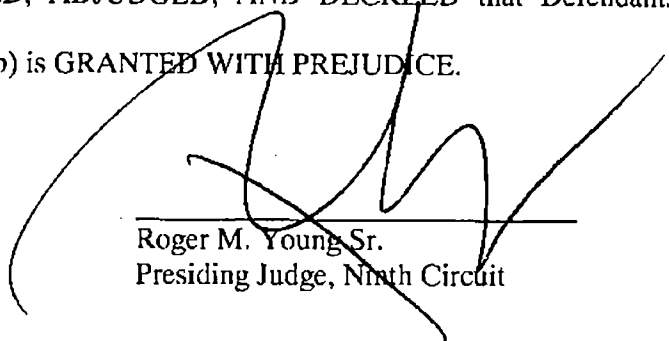
Plaintiff's claim regarding loss of services of his eldest daughter (#3 above) is not a recognized cause of action in South Carolina. Therefore, this claim must be dismissed because the plaintiff has failed to state facts that would entitle the plaintiff to relief.

The last remaining claim is plaintiff's assertion that the defendant, Ejuhavna Chisolm, engaged in fraud, deceit, and misrepresentation in the preparation of plaintiff's state and federal tax returns (#1 above). In reviewing plaintiff's complaint, this Court finds that the plaintiff does not specifically allege the defendant's knowledge of falsity or reckless disregard of its truth or falsity in regards to the defendant's alleged filing system for maximum tax returns. Pl's. Compl. at 2 Chisolm v. Chisolm, et al., 2016-CP-08-0350. Additionally, plaintiff has failed to specifically allege his ignorance of its falsity, or his right to rely on its truth. Therefore, this claim must be dismissed because the plaintiff has failed to state facts that would entitle the plaintiff to relief.

Conclusion

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that Defendants'
Motions to Dismiss pursuant to Rule 12(b) is GRANTED WITH PREJUDICE.

IT IS SO ORDERED.



Roger M. Young Sr.
Presiding Judge, Ninth Circuit

Date: 5/19/16
Moncks Corner, South Carolina.