

# **Exhibit 1**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
  
James John Todd Kincannon, )  
 )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Ashely Suzanne Griffith, )  
Moore Taylor Law Firm, P.A., )  
Vance Stricklin, and Amber Fulmer, )  
 )  
Defendants. )

IN THE COURT OF COMMON PLEAS

C/A No. 2019-CP-32-01168

**ORDER GRANTING  
DEFENDANTS' MOTION TO DISMISS**

**RECEIVED**

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SC Court of Appeals

**I. INTRODUCTION**

This matter came before the Court on May 29, 2019 pursuant to Defendants' Motion to Dismiss. Plaintiff James John Todd Kincannon ("Kincannon") appeared pro se. James Edward Bradley, Esquire appeared for the defendants. After careful consideration to this matter, the Court grants the Defendants' Motion to Dismiss with Prejudice.

**II. FACTS**

On April 6, 2015, the Lexington County Solicitor's Office charged Plaintiff with criminal domestic violence arising out of an assault on his then wife, Ashley Griffith ("Griffith") that occurred on March 26, 2015. On September 1, 2015, Griffith filed for divorce from Kincannon in Lexington County Family Court. Griffith hired Defendant Vance Stricklin ("Stricklin") and Defendant Amber Fulmer ("Fulmer") to represent her in the divorce. Stricklin and Fulmer are employed as attorneys at the Moore Taylor Law Firm ("Moore Taylor"). The next day, the Honorable W. Greg Seigler granted Griffith an *Ex Parte* Restraining Order against Plaintiff. The Family Court case ended with a hearing on January 24, 2017 at which time the Honorable Peter R. Nuessle approved an agreement between Kincannon and Griffith and granted a divorce to

Griffith. The Decree of Divorce and Order Approving Agreement were issued on February 17, 2017 and filed on March 1, 2017 with the Lexington County Clerk of Court Office.

Two years later, on March 21, 2019, Plaintiff filed a Complaint alleging the following causes of action: abuse of process, civil conspiracy, trespass on the case, unfair trade practices, negligent supervision, and a violation of the South Carolina Omnibus Adult Protection Act. On April 23, 2019, Defendants filed an Answer and Motion to Dismiss with Prejudice. The Defendants moved to dismiss on the following basis: the Plaintiff was charged with Criminal Domestic Violence by a Solicitor in the Lexington County Solicitors' Office; the Defendants are not in control of the actions of the Lexington County Solicitors' Office; and the Defendants cannot be held liable for actions of the Lexington County Solicitors' Office. On May 24, 2019, Defendants filed a Memorandum in Support of their Motion to Dismiss. Subsequently, Plaintiff filed a Memorandum in Opposition to Defendants' Motion to Dismiss on May 29, 2019.

### III. DISCUSSION

Defendants' counsel argue Defendants are entitled to dismissal on all Plaintiffs' causes of action. The Court addresses each one in turn.

#### a. Abuse of Process

To establish a claim for abuse of process, the plaintiff must assert (1) an ulterior purpose, and (2) a willful act in the use of the process not proper in the conduct of the proceeding. *Food Lion, Inc. v. United Food & Commercial Workers Int'l. Union*, 351 S.C. 65, 71, 567 S.E.2d 251, 253 (Ct. App. 2002). "The abuse of process tort provides a remedy for one damaged by another's perversion of a legal procedure for a purpose not intended by the procedure." *Id.* "To sustain a claim for the tort, a party must allege facts sufficient to show not only that the lawsuit was brought for an ulterior purpose, i.e., for collateral reasons, but that willful acts were taken through which

the process was misapplied.” *Id.*: “One who uses a legal process, whether criminal or civil against another *primarily* to accomplish a purpose for which it is not designed, is subject to liability to the other for harm caused by the abuse of process.” *Id.* “The significance of [‘primarily’] is that there is no action for abuse of process when the process is used for the purpose for which it is intended.” *Id.*

The Court finds and rules that Defendants are entitled to dismissal as to the Plaintiff’s cause of action for Abuse of Process on the grounds that: Plaintiff has failed to sufficiently allege that he was charged with criminal domestic violence for an ulterior purpose and Plaintiff’s claims do not establish abuse of process pursuant to *Johnson*.

The 11<sup>th</sup> Circuit Solicitors Office charged Plaintiff with criminal domestic violence five months before Ms. Griffith sought a divorce and over a year before the civil dispute over Griffith’s dog. Plaintiff was later indicted for felony kidnapping and felony criminal domestic violence of a high and aggravated nature. The charges are still pending. There is no evidence in the record that Ms. Griffith nor her lawyers had control or involvement in the Solicitor’s decision to pursue the criminal domestic violence charges against Plaintiff. Thus, Plaintiff has failed to sufficiently allege an ulterior purpose to his criminal domestic violence charge or a willful act as required by South Carolina law. It is also curious to note that there is no contest from any party but that probable cause existed to initiate the prosecution.

Defendants argue that *Johnson v. Painter*, 279 S.C. 390, 307 S.E.2d 860 (S.C. 1983) supports dismissal of the abuse of process action. In *Johnson*, a fight occurred between two parties which resulted in physical injuries to one of the parties. After being acquitted of simple assault and battery, respondent brought a lawsuit against appellant on the basis that it was improper to bring a criminal charge and then seek a monetary gain by offering to drop the charges upon payment of

\$2,500.00. The Court in *Johnson* held: “we have always looked with favor upon restitution and reconciliation. We see nothing wrong with the attorney calling or appellant telling him the amount of his out-of-pocket expenses.” *Id.*

Plaintiff responds that *Johnson* should not apply for the following reasons: (1) *Johnson* is about restitution and (2) in *Johnson* the respondent’s attorney contacted appellant first.

Plaintiff claims Griffith offered to drop the criminal charges if the Plaintiff would return her pet. Although not relevant for their motion, the Defendants deny this claim. As to the immediate issue, even if Griffith was willing to cooperate for a request to dismiss the charges, it would not rise to the level of abuse of process. The *Johnson* case would still apply. The fact that *Johnson* is about restitution and this case is not has no bearing on whether or not Defendants’ actions were appropriate. *Johnson* provides that a Solicitor and a victim may agree to drop charges in exchange for out-of-pocket medical expenses. It is not a far stretch to apply that same premise to a Solicitor and a victim that agree to drop charges in exchange for a pet. Specifically, the Family Court and Court of appeals determined the pet belonged to the victim in 2016. (*see* Interim Temporary Order filed July 1, 2016 attached as Exhibit A; Order on Plaintiff’s Motion for Temporary Relief filed July 26, 2016 attached as Exhibit B; and South Carolina Court of Appeals Order filed September 30, 2016 attached as Exhibit C). Thus, Plaintiff has failed to sufficiently distinguish the alleged facts from the facts of *Johnson* and Defendant is entitled to dismissal as a matter of law.

Additionally, the Court takes judicial notice that the Plaintiff alleges what he deems as an improper offer occurred for a hearing scheduled for June 30, 2016. The Court also takes judicial notice that the Family Court issued an Interim Temporary Order on July 1, 2016 from a June 30, 2016 hearing ordering a return of the pet. (*see* Exhibits A, B, and C). Therefore, the matter

regarding return of a pet was resolved through a Family Court Order, making the resolution of the subject criminal case immaterial.

**b. Civil Conspiracy**

To establish a claim for civil conspiracy, the plaintiff must prove three elements: (1) a combination of two or more persons, (2) for the purpose of injuring plaintiff, and (3) causing plaintiff special damage. *Hackworth v. Greywood at Hammett, LLC*, 335 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009). “In a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim.” *Id.* See *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 292, 278 S.E.2d 607, 611 (1981) (dismissing plaintiff’s civil conspiracy claim because “the civil conspiracy action does no more than incorporate the prior allegations and then allege the existence of a civil conspiracy and pray for damages resulting from the conspiracy. No additional acts in furtherance of the conspiracy [were] plead”). Similarly, “if a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed.” *Id.* at 117.

The Court finds that Plaintiff failed to properly plead civil conspiracy. Plaintiff relied on the allegations contained in his cause of action for abuse of process. Specifically, Plaintiff failed to inform Defendants of what acts have been committed in furtherance of the alleged conspiracy they are being accused of. Moreover, he failed to identify any special damages that have been caused as a result of the alleged civil conspiracy.

In addition, “a civil conspiracy cannot exist when the alleged acts arise in the context of a principal-agent relationship because by virtue of the relationship such acts do not involve separate entities.” *McMillan v. Oconee Memorial Hosp., Inc.*, 367 S.C. 559, 626 S.E.2d 884 (S.C. 2006). Stricklin and Fulmer are agents of Moore Taylor. Therefore, Plaintiff’s claim of civil conspiracy is dismissed as a matter of law.

**c. Trespass on the Case**

Trespass on the case is no longer recognized by the state of State of South Carolina. Trespass on the case has been abolished since 1895. *Michalson v. All*, 43 S.C. 459, 21 S.E. 323 (S.C. 1895).

The Court finds that Defendants are entitled to dismissal as to the Plaintiff’s cause of action for Trespass on the Case.

**d. Unfair Trade Practices**

“To be actionable under the UTPA, the unfair or deceptive act or practice must have an impact upon the public interest.” *Wogan v. Kunze*, 366 S.C. 583, 607, 623 S.E.2d 107, 120 (Ct. App. 2005) citing *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 269, 536 S.E.2d 399, 407 (Ct. App. 2000). “An impact on the public interest may be shown if the acts or practices have the potential for repetition.” *Id. citing Singleton v. Strokes Motors, Inc.*, 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004). “The potential for repetition may be shown by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence.” *Id.*

Plaintiff failed to allege an impact on the public interest or any actual damage. The acts Plaintiff alleges are appropriate within an attorney client relationship. Plaintiff has not plead that the same kind of actions occurred in the past. Plaintiff’s pleadings show that he was charged with

criminal domestic violence one year before the dispute over the dog began and he was later indicted for two felonies.

The Court finds dismissal is proper because Plaintiff has failed to allege an impact on the public interest or any actual damage.

**e. Negligent Supervision**

A claim of negligent supervision against a law firm hinges on whether or not the law firm owed a duty. *Charleston, S.C. Registry for Golf & Tourism, Inc. v. Young*, 359 S.C. 635, 644-645, 598 S.E.2d 717, 722 (Ct. App. 2004). Generally, the common law imposes no duty to act. *Id.* If the law firm owes no duty then any harm suffered would be irrelevant. *Id.*

Moore Taylor, Attorney Stricklin, and Attorney Fulmer owed no duty to Plaintiff. Moore Taylor, Attorney Stricklin, and Attorney Fulmer represented Plaintiff's wife in the divorce. Plaintiff was not their client. As a result, Plaintiff has no basis to sue Moore Taylor, Attorney Stricklin, or Attorney Fulmer in negligence because they owe him no duty.

Further, Plaintiff's own pleadings admit a victim in a criminal case has no authority to direct a prosecutor to dismiss a criminal charge. He alleges regardless of the lack of duty, Griffith can be liable for supervising the prosecutor when she was the victim. Plaintiff also admits Moore Taylor, Attorney Stricklin, and Attorney Fulmer have no legal duty or ability to supervise a solicitor's prosecution of a criminal case.

The Court finds that neither Moore Taylor, Attorney Stricklin, Attorney Fulmer, nor Griffith had a duty or the ability to supervise the solicitor in Plaintiff's criminal domestic violence prosecution. Thus, Defendants are entitled to dismissal as a matter of law.

**f. South Carolina Omnibus Adult Protection Act**

Pursuant to the South Carolina Omnibus Adult Protection Act, psychological abuse is defined as “deliberately subjecting a vulnerable adult to threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.” S.C. Code Ann. § 43-35-10(10).

Defendants argue that Plaintiff has not alleged facts to show he is a vulnerable adult. Defendants further argue that if Plaintiff is in fact incompetent then he does not have standing to bring claims without a Guardian ad Litem.

The Court finds that Plaintiff has failed to allege facts to show he was a vulnerable adult. Thus, Defendants are entitled to dismissal as a matter of law.

#### IV. CONCLUSION

The Court finds Plaintiff has failed to set forth any cause of action upon which relief can be granted and it is proper to grant the Defendants’ Motion to Dismiss with Prejudice. As an additional determining factor, it is instructive for this Court to state what is obvious to any person who reviews the relevant history of Plaintiff’s litigation, claims, and prosecutions. The Plaintiff is no doubt aggrieved by the circumstances of the dissolution of his marriage. The Court is sensitive to the inexorable effect of obsessive interpersonal passion. However, lawsuits against third parties who may have had some connection to the marital fallout are not the responsible or legally appropriate method of redressing interpersonal grievances. These Defendants, in part, were the Wife’s lawyers who were simply representing her interests in keeping with their prescribed ethical duties. The Plaintiff is flailing about wildly through misplaced litigation to recover something which has been lost. Sadly, the Courts are not the venue for recovering this type of loss or for exacting personal retribution. It is simply contrary to sound public policy to allow this lawsuit, given all attendant and obvious circumstances, to proceed against faultless third parties.

Therefore, for the reasons discussed herein, Defendants are entitled to dismissal as a matter of law.

IT IS SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2019.

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The Honorable Robin B. Stilwell  
Presiding Judge  
11<sup>th</sup> Judicial Circuit



Lexington Common Pleas

**Case Caption:** James John Todd Kincannon VS Ashely Suzanne Griffith  
**Case Number:** 2019CP3201168  
**Type:** Order/Dismissal

So Ordered

s/ Robin B. Stilwell 2158