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SC Court of Appeals

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STATE OF SOUTH CAROLINA)
COUNTY OF MCCORMICK)

Robert Jay Lagroon)
Plaintiff)

Crystal Suggs and Scott Suggs)
Defendants)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Case No. 2017-CP-35-45

ORDER GRANTING PLAINTIFF'S
MOTION TO AMEND, PARTIALLY
GRANTING DEFENDANTS' MOTION
TO DISMISS THE AMENDED
COMPLAINT, AND DENYING
DEFENDANTS' MOTION TO STRIKE

PRESIDING JUDGE:
DATE OF HEARING:
PLAINTIFF'S ATTORNEY:
DEFENDANT CRYSTAL SUGGS'
ATTORNEY:
DEFENDANT SCOTT SUGGS' ATTORNEY:
COURT REPORTER:

J. CORDELL MADDON JR.
FEBRUARY 26, 2018
PRO SE REPRESENT

BILLY J. GARRETT JR.
R. JAMISON TINSLEY JR.
ANGELA P. BERRY

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Pursuant to Defendants' motions to dismiss based upon Rule 12(b)(6), this matter will
be before the court for a hearing on the above-mentioned date. Based upon the pleadings and
arguments presented at the hearing, I hereby make the following:

FINDINGS OF FACT and CONCLUSIONS OF LAW

1. Plaintiff commenced this case by filing a summons and complaint Jan. 16, 2017
and serving Defendants July 21, 2017. This complaint alleged Defendants committed the torts of
intentional infliction of emotional distress and civil conspiracy that caused damage to Plaintiff.

2. Defendants each timely filed motions to dismiss the complaint pursuant to SCRPC
Rule 12(b)(6).

3. On Oct. 16, 2017, the Court continued a hearing regarding Defendants' motions to
dismiss because Plaintiff indicated to the Court that he had taken medications that morning that
would affect his ability to proceed.

4 Plaintiff filed and served Defendants with a copy of an amended complaint Jan. 30, 2018. Plaintiff did not receive Defendants' consent or leave from the Court to amend filed a motion to amend the complaint Feb. 13, 2018. Plaintiff's amended complaint alleges causes of action for "intentional and negligent infliction of emotional stress," civil conspiracy, and trespass after notice.

5 Defendant Scott Suggs filed a motion to dismiss the amended complaint Feb. 20, 2018, and Defendant Crystal Suggs filed a motion to dismiss the amended complaint Feb. 21, 2018. Defendants both alleged Plaintiff's amended complaint failed to plead sufficient facts to state a cause of action and alternatively that the Court should strike Paragraphs 17, 18, 19, and 28 pursuant to SCRCP Rule 12(f).

6 The Court grants Plaintiff's request to file his amended complaint and will consider the amended complaint in making this ruling. Pursuant to Rule 15(a), "leave shall be freely given when justice so requires and does not prejudice any other party." The litigation is in the early stages in this case as Defendants have not yet had to file an answer and no discovery has taken place so Defendants will not be prejudiced by the Court considering the amended complaint in ruling on Defendants' motion.

7 The amended complaint fails to plead sufficient facts to state a cause of action for intentional infliction of emotional distress. Plaintiff bases his intentional infliction of emotional distress cause of action on Defendants allegedly removing his children from Plaintiff's house and taking them to their mother's house where they were exposed to a third-party sexual predator who caused Plaintiff's son to contract a life-threatening disease through sexual interaction. (Amended Complaint ¶¶ 7-10, 14-15.)

Where a plaintiff makes a claim for intentional infliction of emotional distress based on a defendant's actions that injure a third party, the actor will be liable to a plaintiff who witnesses the third-party injury if the actor's intentional or reckless conduct

causes severe emotional distress

(a) to a member of such person's immediate family who is present at the time, whether or not such distress results in bodily harm, or

(b) to any other person who is present at the time, if such distress results in bodily harm.

Unchurch v. New York Times Co., 314 S.C. 531, 431 S.E.2d 558, 562 (1993)

In the amended complaint, Plaintiff does not allege he was present when Defendants took his children from him and exposed one of them to a third party who gave the child a sexually transmitted disease. Given that Plaintiff was not present to witness the alleged outrageous conduct of Defendants that injured his children, Plaintiff cannot recover under a theory of intentional emotional distress pursuant to Unchurch.

8. The amended complaint fails to plead sufficient facts to state a cause of action for civil conspiracy. Civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) for the purposes of injuring the plaintiff, and (3) causing the plaintiff special damage.

Hickworth v. Greywood at Hamnett, LLC, 385 S.C. 110, 682 S.E.2d 871, 874 (Cl. App. 2009)

(internal citation omitted)

A claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than reallege other claims within the complaint. Moreover, because the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages must go beyond the damages alleged in other causes of action.

Id. (internal citations omitted)

In Hackworth, the court of appeals affirmed the dismissal of the plaintiff's civil conspiracy claim because the facts alleged to constitute the civil conspiracy were identical to the facts the plaintiff alleged for its claim for breach of contract with fraudulent intent. Id. at ___ 682 S.E.2d at 875. The court of appeals also affirmed the dismissal of the plaintiff's civil conspiracy claim because the plaintiff merely repeated verbatim the same damages in the civil conspiracy as it pleaded in its action for breach of contract accompanied by a fraudulent act. Id. "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.

The amended complaint's civil conspiracy cause of action does not add any further factual allegations different from the trespass and intentional infliction of emotional distress causes of action. The only additional factual allegation pursuant to the civil conspiracy cause of action is that Defendants conspired with a non-party while taking the courses of action that allegedly comprised the intentional infliction of emotional distress and trespass claims. (Complaint ¶¶ 8, 12, 17-26.) While the amended complaint has a paragraph entitled special damages, in actuality the damages allegedly suffered from the civil conspiracy are the same damages allegedly suffered from the other causes of action or damages that are not recoverable in this case. (Complaint ¶ 27.) Plaintiff's alleged special damages are based on mental anguish suffered by Plaintiff; medical expenses for Plaintiff's children, who are not parties to this action; and costs and attorney's fees related to a family court case Plaintiff was involved in with his ex-wife at the time of the allegations contained in the amended complaint. (Id.) The Court hereby dismisses Plaintiff's claim for civil conspiracy because he failed to plead any additional facts beyond the facts that comprise the other causes of action or special damages caused by the civil conspiracy separate from the other damages.

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9 At the hearing, Defendants abandoned their motion to dismiss Plaintiff's claim for trespass so Plaintiff can proceed on this cause of action.

10 The Rules of Civil Procedure are to be liberally construed so Defendants' motions to strike allegations in paragraphs 17-19 and 28 of the amended complaint pursuant to Rule 12(f) is denied.

Wherefore, having fully considered the matters before this Court it is hereby

ORDERED, ADJUDGED AND DECREED Plaintiff's motion to amend the complaint is granted; Defendants' motions to dismiss the amended complaint's claims for intentional infliction of emotional distress and civil conspiracy is granted, and Defendant's motion to strike is denied.

FURTHER ORDERED Defendants shall answer the amended complaint's remaining claim for trespass within fifteen days of the entry of this order pursuant to Rule 12(a), SCRPC.

AND IT IS SO ORDERED!

Judge J. Cordell Maddox Jr.
Circuit Court Judge

May 3, 2019

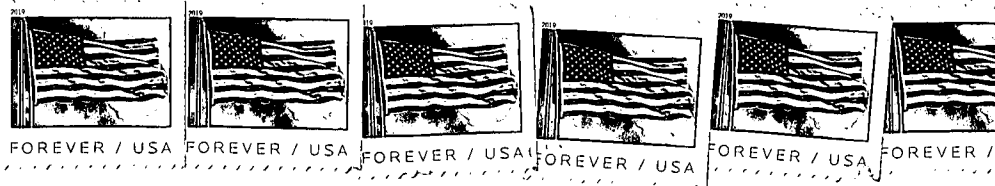
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