

20 May 2020

Alan Nix
1401 Densmore Circle
Mount Pleasant, SC 29466

Judge Cole
180 Magnolia St.
Spartanburg, SC 29306

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MAY 26 2020
SC Court of Appeals

RE: **Need Court Reporter Name** - Appellate Case No. 2020-000676; Alan Nix vs Sloan Law Firm PA and William Sloan v Churchill Park, Churchill Park at Park West, Inc., Churchill Park Homeowners' Association, Inc., David Brown and Catherine Brown.

Judge Cole,

I have included copies of both of them there orders you filed in this case. I can't seem to find that court reporter's name anywhere on your and Earhart's orders, including that place that looks an awful lot like to me it prompts a judge to write the court reporters name.

Obviously, I need the court reporters name so I can unwillingly give even mo money to an employee of South Carolina for transcripts for appeals that clearly were not necessary or proper. Which reminds me, to remind you, and in reality, remind everyone, please please please ensure you properly save and secure every single little scintilla of evidence related to your involvement, and of course any of your associates involvement, in these matters.

As for everything else you have, and haven't done which you should have done which is improper, I've concluded that a reasonable person would just have to conclude at this time, your lack of response and correction means you willingly and knowingly did and didn't do, at the very least, the proper thing.

Best regards,



Alan Nix

cc.

Alan Wilson
Ryan Earhart

Jenny Kitchings
Josh Umbarger

Troy Thames
Kevin Mims

Tonnya Kohn

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO. 2019-CP-10-01496

Alan G. NIX,

SLOAN LAW FIRM, P.A., AND William H. SLOAN,

Plaintiff(s)

Defendant(s)

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other SCRPC 56.
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other

IT IS ORDERED AND ADJUDGED: formal order to follow; **Statement of Judgment by the Court:**

This matter came before this court on **MOTION** of the defendants to **DISMISS** pursuant to *Rule 12(b)*, *SCRPC*, and *S.C. Code § 15-36-100*.

After consideration of the argument of counsel, memoranda submitted, and the applicable statutory and case law, this Court finds that the defendants' **MOTION** should be and **IS** therefore **GRANTED**.

Counsel for the defendants is requested to prepare and submit a proposed order for the court's consideration.

J. Derham Cole, Presiding Judge

This judgment was entered on the _____ day of _____ and a copy mailed first class this _____ day of _____ to attorneys of record or to parties (when appearing pro se) as follows:

Alan G. Nix, Pro Se

Ryan Günther, Esq.

ATTORNEY(S) FOR PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Julie J. Armstrong, CLERK OF COURT

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SC Court of Appeals

ELECTRONICALLY FILED - 2020 Feb 05 3:02 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001496

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ALAN G. NIX,

Plaintiff,

vs.

SLOAN LAW FIRM, P.A. and
WILLIAM H. SLOAN,

Defendants.

IN THE COURT OF COMMON PLEAS,
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2019-CP-10-01496

ORDER GRANTING MOTION
TO DISMISS

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SC Court of Appeals

This matter comes before the Court on Defendants Sloan Law Firm, P.A. and William H. Sloan's (collectively, "Defendants") Motion to Dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, filed on July 31, 2019. A supporting memorandum was filed on December 19, 2019. A hearing was held on January 27, 2020. Present were Alan G. Nix, Plaintiff *pro se*, and counsel for Defendants. After careful consideration of the filings, oral arguments, and review of the record, the Court finds Plaintiff's Complaint fails to state a claim for which relief can be granted. Accordingly, for the reasons set forth herein, Defendants' motion is GRANTED.

BACKGROUND

Plaintiff retained Defendants in December 2014 to represent him in a lien foreclosure matter pending in Charleston County (the "Underlying Case"). (Compl. ¶ 8.) The Underlying Case was called to trial in the Charleston County Master in Equity Court for the two-week term beginning on April 4, 2016. (Compl. ¶ 12.) A roster meeting was held on March 21, 2016, at which Attorney Sloan and counsel for the plaintiff in the Underlying Case agreed to strike the

Underlying Case from the docket pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. (Compl. ¶¶ 16-18.)

Plaintiff alleges Attorney Sloan committed malpractice in various ways, including failing to file the appropriate pleadings (Compl. ¶¶ 21-23, 27-30); failing to prepare a witness list or identify witnesses (Compl. ¶ 24); failing to communicate with opposing counsel (Compl. ¶ 25); failing to discuss with Plaintiff the trial strategy and other unidentified, "normal" preparatory matters (Compl. ¶ 26); and failing to "participate in the 21 March 2016 roster hearing as required and appropriate" (Compl. ¶ 30).

LEGAL STANDARD

"In deciding a motion to dismiss pursuant to 12(b)(6), SCRCPP, the trial court should consider only the allegations set forth on the face of the plaintiff's complaint." Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Id.

ANALYSIS

Plaintiff failed to file the supporting affidavit required by S.C. Code Ann. § 15-36-100.

In an action for damages against an attorney, "the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit." S.C. Code Ann. § 15-36-100(B). If the affidavit is not timely filed, "the complaint is subject to dismissal for failure to state a claim." S.C. Code Ann. § 15-36-100(C)(1). It is undisputed that Plaintiff did not, and has not, filed the required expert affidavit.

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Plaintiff's claim of legal malpractice requires the testimony of an expert to establish a breach of the applicable standard of care. See Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 282, 701 S.E.2d 742, 745 (2010) (holding that plaintiff in a legal malpractice action must generally establish the standard of care by expert testimony). Expert testimony is required to opine whether Attorney Sloan deviated from the standard of care, which is disputed. Additionally, the "common knowledge" exception is inapplicable. See H & H of Johnston, LLC v. Old Republic Nat. Title Ins. Co., 405 S.C. 469, 474, 748 S.E.2d 72, 74 (Ct. App. 2013) (affirming dismissal of claims against attorney pursuant to § 15-36-100 because plaintiff failed to file expert affidavit); Barnes v. Seigler, No. CIV.A. 5:11-1156-MBS, 2012 WL 265409, at *2 (D.S.C. Jan. 30, 2012) (dismissing *pro se* plaintiff's legal malpractice claim for failure to file expert affidavit and holding that for breaches of professional duty arising exercise of legal judgment, more than "common knowledge" is required to evaluate whether his actions violate the standard of care owed by members of his profession).

Plaintiff, who is not a lawyer, alleges Attorney Sloan did not file various pleadings which he should have filed based on Plaintiff's own determination of what Attorney Sloan should have filed, including dispositive motions, a motion for continuance, and an amended answer. (Compl. ¶¶ 20-29). These allegations are of the type contemplated by S.C. Code Ann. § 15-36-100(B). Without expert support to signify how these alleged acts or omissions constitute negligence, the Complaint fails to state a claim.

Based on the foregoing, Plaintiff's Motion to Dismiss is GRANTED.

IT IS SO ORDERED!

[Electronic Signature Follows]

J. Derham Cole
Circuit Court Judge



Charleston Common Pleas

Case Caption: Alan G Nix VS Sloan Law Firm PA

Case Number: 2019CP1001496

Type: Order/Dismissal

IT IS SO ORDERED!

s/J. Derham Cole 2053

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Mount Pleasant, SC 29466

GREENVILLE SC 296

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SC Court of Appeals

JENNY ABBOTT - KITCHINGS

CLERK OF COURT

1220 SENATE ST.

COLUMBIA, SC 29201

29201-433700

