

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2019-001501

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SC Court of Appeals

James John Todd Kincannon,

Appellant,

v.

Ashely Suzanne Griffith,
Moore Taylor Law Firm, P.A.,
Vance Stricklin, and Amber
Fulmer,

Respondents.

RECORD ON APPEAL

Other Counsel of Record:
Ward Bradley
Moore Taylor Law Firm
1700 Sunset Blvd.
West Columbia, SC
Attorney for Respondents

James John Todd Kincannon
216 Jones Avenue
Simpsonville, SC 29681
864-963-4374
ToddKincannon@gmail.com
Appellant Pro Se

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
James John Todd Kincannon,	)	C/A No. 2019-CP-32-01168
	)	
Plaintiff,	)	
vs.	)	ORDER GRANTING
	)	DEFENDANTS' MOTION TO DISMISS
Ashely Suzanne Griffith,	)	
Moore Taylor Law Firm, P.A.,	)	
Vance Stricklin, and Amber Fulmer,	)	
	)	
Defendants.	)	
_____	)	

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 11th 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.

The Honorable Robin B. Stilwell
Presiding Judge
11th 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

Electronically signed on 2019-07-02 11:21:00 page 10 of 10

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
James John Todd Kincannon,	)	ORDER DENYING PLAINTIFF'S
	)	MOTION FOR RECONSIDERATION
Plaintiff,	)	
	)	
vs.	)	
	)	
Ashely Suzanne Griffith, Moore Taylor Law	)	
Firm, P.A., Vance Stricklin, and Amber	)	
Fulmer,	)	
	)	
Defendants.	)	C. A. No.: 2019-CP-32-01168
_____	)	

This matter comes before the Court pursuant to the Plaintiff's Motion to Reconsider the Court's Order Granting Defendants' Motion to Dismiss and for Additional Relief entered on or about July 2, 2019. The Plaintiff's Motion to Reconsider, dated July 22, 2019, was made pursuant to Rules 59(e), 52(b), 60(a), and 60(b) of the South Carolina Rules of Civil Procedure. After having had the opportunity to carefully review the Plaintiff's Motion, this Court elects to respectfully deny the same.

AND IT IS SO ORDERED.

ROBIN B. STILWELL

July 29, 2019
Greenville, South Carolina



Lexington Common Pleas

Case Caption: James John Todd Kincannon VS Ashely Suzanne Griffith

Case Number: 2019CP3201168

Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2019-07-30 09:14:08 page 2 of 2

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

JAMES JOHN TODD KINCANNON,

Plaintiff,

v.

ASHELY SUZANNE GRIFFITH, MOORE
TAYLOR LAW FIRM, P.A., VANCE
STRICKLIN, and AMBER FULMER,

Defendants.

Case No. 2019CP3201168

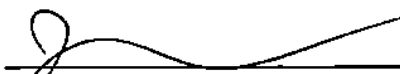
VERIFIED COMPLAINT
(Jury Trial Demanded)

FILED
2019 MAR 21 PM 2:49
CLERK OF COURT
LEXINGTON COUNTY
SOUTH CAROLINA

TO DEFENDANTS ABOVE-NAMED:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the Complaint on the Plaintiff (whose address is below) within thirty days after the service thereof, exclusive of the date of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and a judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,


JAMES JOHN TODD KINCANNON
216 Jones Avenue
Simpsonville, South Carolina 29681
864-963-4374
ToddKincannon@gmail.com
Plaintiff Pro Se

February 23, 2019

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

JAMES JOHN TODD KINCANNON,

Case No.

Plaintiff,

2019 CP3201168

v.

ASHELY SUZANNE GRIFFITH, MOORE
TAYLOR LAW FIRM, P.A., VANCE
STRICKLIN, and AMBER FULMER,

Defendants.

VERIFIED COMPLAINT
(Jury Trial Demanded)

ORIGINAL

LISA M. CONNER
CLERK OF COURT
LEXINGTON, SC

2019 MAR 21 PM 2:49

FILED

PARTIES AND JURISDICTIONAL ALLEGATIONS

1. This is an action for abuse of process, civil conspiracy, trespass on the case, unfair trade practices, negligent supervision, and related torts arising out of a criminal domestic violence prosecution in Lexington County and a civil dispute in Greenville County. The South Carolina Court of Common Pleas has subject matter jurisdiction over these claims, and venue is proper in Lexington County based on the facts of the case.
2. Plaintiff James John Todd Kincannon is a resident of Greenville County.
3. Defendant Ashely Suzanne Griffith is, so far as Plaintiff is aware, a resident of Lexington County.
4. Defendant Moore Taylor Law Firm, P.A. is a professional association organized and existing under the law of the State of South Carolina with a principal place of business in Lexington County.
5. Defendant Vance Stricklin is, upon information and belief, a resident of Lexington County.

6. Defendant Amber Fulmer is, upon information and belief, a resident of Lexington County.

7. Defendants Moore Taylor Law Firm, P.A., Stricklin, and Fulmer are collectively referred to as the "Moore Taylor Defendants" herein.

8. Defendant Griffith is vicariously liable for all conduct of the Moore Taylor Defendants described herein, and Defendant Moore Taylor Law Firm, P.A. is vicariously liable for all conduct of Defendant Vance Stricklin and Defendant Amber Fulmer described herein.

9. All Defendants are jointly and severally liable, both directly as joint tortfeasors and vicariously, for the actionable conduct of one Nicole Howland of the Lexington County Sheriff's Department described herein, as Defendants and Howland willfully acted in concert with respect to these matters. All actionable conduct engaged in by Howland and other agents of the State of South Carolina, including all tortious acts and omissions, was procured by Defendants and engaged in by Howland and/or other agents of the State of South Carolina at the direction of Defendants and with their express approval.

10. The Lexington County Court of Common Pleas has personal jurisdiction over all Defendants based on the facts of the case.

GENERAL FACTUAL ALLEGATIONS

11. On April 6, 2015, Plaintiff was charged with criminal domestic violence by the Lexington County Sheriff's Department arising out of a marital dispute occurring on March 26, 2015 between Plaintiff and Defendant Griffith.

12. Plaintiff vigorously protested that he was innocent at all times and in fact was innocent, as there was (and remains) no evidence whatsoever that he had engaged in any criminal conduct of any kind during the March 26, 2015 marital dispute.

13. Plaintiff accordingly demanded the Lexington County Sheriff's Department drop the criminal domestic violence charge, and eventually Plaintiff's demands appeared to meet with success when Nicole Howland of the Lexington County Sheriff's Department, the prosecutor assigned to the case, offered to drop the criminal domestic violence charge on June 30, 2016.

14. However, Howland's offer was unacceptable because it was unlawfully conditioned upon Plaintiff surrendering his pet golden retriever to Defendant Griffith that was the subject of an entirely unrelated civil dispute between Plaintiff and Defendant Griffith as to the rightful ownership and possession of the animal. That civil dispute had absolutely nothing whatsoever to do with the criminal domestic violence case, having arisen over a year after the commencement of the criminal domestic violence prosecution under circumstance entirely unrelated to any allegations of criminal domestic violence. The civil dispute over the golden retriever was ultimately resolved entirely in Plaintiff's favor by way of a civil declaratory judgment action in the Greenville County Court of Common Pleas.

15. Howland made this unlawful demand after being propositioned by Defendant Griffith and her legal counsel in the civil dispute involving Plaintiff's animal, the Moore Taylor Defendants, in connection with a court appearance in the criminal domestic violence case on June 30, 2016. Howland willingly agreed to attach that unlawful

condition relating to an unrelated civil dispute to the offer to drop the criminal domestic violence charge and did so.

16. Plaintiff rejected Defendants' and Howland's demand that he surrender possession of the animal to Defendant Griffith in exchange for Howland dropping the criminal domestic violence charge against him and instead moved to disqualify Howland for prosecutorial misconduct, a motion which was successful.

17. The new prosecutors appointed in the action bizarrely refused to drop the minor misdemeanor criminal domestic violence charge without conditioning such offer on an illegal requirement that Plaintiff surrender the animal to Defendant Griffith and instead procured Plaintiff's indictment on felony kidnapping and felony criminal domestic violence of a high and aggravated nature charges, then offering to dismiss those charges if Plaintiff would plead guilty to the original minor misdemeanor criminal domestic violence charge. Plaintiff rejected this new offer for multiple reasons, not the least of which was that it required Plaintiff to perjure himself in the plea colloquy by testifying under oath he had committed a crime which he had not committed and for which there was not a single shred of evidence of guilt.

18. As a result, the sole and proximate cause of the continuation of the criminal domestic violence prosecution after June 30, 2016 and the elevation of charges from the minor misdemeanor charge to the two major felony charges was the unlawful conduct of Howland, procured by Defendant Griffith and the Moore Taylor Defendants, which resulted in Howland's lawful and proper offer to drop the bogus criminal domestic violence charge against Plaintiff being unlawfully conditioned on Plaintiff surrendering

his animal to Defendant Griffith to enable her to prevail in the wholly unrelated civil dispute between Plaintiff and Defendant Griffith.

19. Plaintiff has been severely injured by this unlawful and actionable conduct and seeks a recovery of all nominal, compensatory, and punitive damages available under the following causes of action.

FOR THE FIRST CAUSE OF ACTION
ABUSE OF PROCESS

20. The foregoing conduct by Defendants constitutes the tort of abuse of process.

21. Obviously, the sole proper purpose of a criminal prosecution for criminal domestic violence is to secure the criminal conviction of an individual reasonably believed by the State to have committed the crime of criminal domestic violence.

22. It is black letter South Carolina law that using a criminal prosecution as a club to extract concessions from a criminal defendant in an unrelated civil dispute or otherwise gain advantage in an unrelated civil dispute is an abuse of the criminal process, and it is indisputable that Defendants did precisely that in this case. The civil dispute over the animal had absolutely nothing whatsoever to do with the criminal domestic violence case, yet Defendants sought to use the criminal domestic violence prosecution as leverage against Plaintiff in the unrelated civil dispute and did so, conditioning dismissal of the criminal domestic violence charge against Defendant on his agreement to abandon his rights in the civil dispute.

23. Howland admittedly believed the proper outcome of the minor misdemeanor criminal domestic violence prosecution against Plaintiff was that the criminal domestic violence charge be dropped, and her belief in that regard was absolutely correct in light of Plaintiff's obvious innocence. Howland therefore had a legal duty to drop the charge

accordingly without demanding any concessions of any kind from Plaintiff in regards to the unrelated civil dispute over the animal, and Defendant Griffith and the Moore Taylor Defendants had a legal duty not to enlist Howland in their abuse of process scheme by convincing her to condition the dismissal of the criminal domestic violence charge on Plaintiff making concessions to them in the unrelated civil dispute. Defendants' joint conduct was indisputably extortionate and therefore actionable as an abuse of process, and a particularly egregious and malicious abuse of process in light of the facts that Defendants sought to force Plaintiff to surrender possession of an animal to Defendant Griffith that Plaintiff was the rightful legal owner of, as later confirmed in the declaratory judgment litigation in Greenville County involving Plaintiff, Defendant Griffith, and the Moore Taylor Defendants and that Plaintiff was obviously innocent of the criminal domestic violence charge in the first place, as Defendant Griffith had admitted under oath in connection with the initial investigation by the Lexington County Sheriff's Department.¹

24. Further, although actual malice and intent to harm are not elements of abuse of process, their presence in an abuse of process case is typically sufficient to prove that "the use of the process [was] to coerce or extort," the gravamen of the tort of abuse of process. Swicegood v. Lott, 665 S.E.2d 211, 379 S.C. 346 (Ct. App. 2008). That is most

¹ Abuse of process cases often involve situations where the tortfeasor sought to use criminal process to gain an advantage in civil litigation that the tortfeasor should rightfully win, such as using a criminal prosecution for theft solely to leverage the defendant into returning possession of property to the tortfeasor that the tortfeasor is the rightful owner of. This case involves something far worse: a case where the tortfeasors sought to use criminal process to leverage the defendant into surrendering possession of property to the tortfeasors that the tortfeasors had no legal right to possess, which was entirely unrelated to the subject matter of the criminal prosecution, and which was the subject of civil litigation that the tortfeasors rightfully should have lost and ultimately did lose. The egregiously malicious nature of this particular type of abuse of process is not an element of abuse of process—the extortionate conduct is sufficient to give rise to a cause of action regardless of the fundamental "righteousness" of the tortfeasor's cause—but is nonetheless something the jury must consider in determining punitive damages.

certainly the situation here. Each Defendant acted with actual malice and had an intent to harm Plaintiff by using criminal process in an effort to coerce and extort Plaintiff in the civil dispute over the animal despite having actual knowledge at all times that the civil dispute had not the slightest connection whatsoever to the criminal domestic violence prosecution and having sophisticated legal knowledge as to what conditions may and may not be lawfully attached to a prosecutorial offer to dismiss a criminal charge.

25. Defendant Griffith and the Moore Taylor Defendants further had actual knowledge that Plaintiff was innocent of the criminal domestic violence charge and never should have been charged in the first place, and further had actual knowledge that Plaintiff was the lawful owner of the animal and that Defendant Griffith had no good faith claim to the contrary, which Defendants are estopped from denying in light of the litigation result in Greenville County.

FOR THE SECOND CAUSE OF ACTION
CIVIL CONSPIRACY

26. In the highly unlikely situation where the court concludes that some or all of the conduct alleged to be abuse of process is not actionable as such, Plaintiff alternatively pleads a cause of action for civil conspiracy as to such conduct. Defendants obviously and admittedly conspired with respect to the conduct at issue in this case, and such conduct is plainly actionable as civil conspiracy if it is not actionable as abuse of process. Plaintiff seeks all damages available under the tort of civil conspiracy to the extent the court might find that all or part of the abuse of process cause of action should instead be characterized as a civil conspiracy cause of action.

**FOR THE THIRD CAUSE OF ACTION
TRESPASS ON THE CASE**

27. In the highly unlikely situation where the court concludes that some or all of the conduct alleged to be abuse of process or, alternatively, civil conspiracy is not actionable under either theory, Plaintiff alternatively pleads a cause of action for trespass on the case as to such conduct. Defendants conduct is plainly unlawful and if it is not actionable under any named tort it must necessarily be actionable as trespass on the case, the general cause of action for tortious conduct that is not within the ambit of any named tort. Plaintiff seeks all damages available under the general tort of trespass on the case to the extent the court might find that all or part of the conduct complained of herein is outside the ambit of both the primary abuse of process cause of action or the alternative cause of action for civil conspiracy.

**FOR THE FOURTH CAUSE OF ACTION
SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT**

28. Plaintiff further contends and alleges that the particular conduct complained of in this case is an unfair trade practice in violation of the South Carolina Unfair Trade Practices Act.

29. The basis of this claim is that it is black letter law that the only proper client of a South Carolina prosecutorial officer is the Sovereign, the People of the State of South Carolina. South Carolina prosecutorial officers are expressly forbidden by South Carolina law from "moonlighting" as de facto or de jure civil litigators acting on behalf of alleged victims in their cases with the narrow and inapplicable exception of situations where a prosecutor may assist a victim in obtaining restitutionary relief in a bona fide good faith

criminal prosecution, a situation which has absolutely no application to this particular case.

30. The professional prosecution of civil claims on behalf of clients is a trade, and attorney conduct is regulated by the South Carolina Unfair Trade Practices Act. E.g. S.C. Code § 39-5-39 (declaring deceptive attorney advertising conduct to be an unfair trade practice). It is indisputably illegal, and therefore unfair, for criminal prosecutors whose client is the Sovereign to simultaneously engage in the sort of “moonlighting” as civil prosecutors whose client is the alleged victim in a criminal prosecution that Howland engaged in in this case, conduct which was procured by Defendant Griffith and the Moore Taylor Defendants for the obvious reason that procuring such “moonlighting” from Howland was the only possible way Defendant Griffith and the Moore Taylor Defendants could secure possession of the disputed property in this matter, the pet animal. Defendant Griffith and the Moore Taylor Defendants knew that they would be unable to secure possession of the animal through legitimate civil process given the facts and circumstances of the case and therefore sought to illegitimately use criminal process in an effort to obtain an ill-gotten gain in the civil dispute.

31. Making a threat to commence or continue a criminal prosecution solely for advantage in a civil dispute—particularly a civil dispute that is entirely unrelated to the criminal matter—is an illegal, and therefore unfair, litigation practice expressly prohibited by Rule 4.5 of the South Carolina Rules of Professional Conduct (“A lawyer shall not present, participate in presenting, or threaten to present criminal or professional disciplinary charges solely to obtain an advantage in a civil matter.”) Enlisting a prosecutor to abuse his or her office by assisting in this illegal, and therefore unfair,

litigation practice is likewise an illegal, and therefore unfair, litigation practice expressly prohibited by South Carolina decisional law.

32. Defendants, a combination of a civil litigant, her civil litigation counsel, and a prosecutor unlawfully enlisted by them to assist in the civil litigation matter, made, and followed through, on a threat to continue a criminal prosecution solely for advantage in a civil dispute in this case. Defendants, by and through their co-conspirator and ally Howland, offered to drop a criminal domestic violence charge against Plaintiff if Plaintiff would surrender in an entirely unrelated civil dispute with Defendant Griffith that had nothing whatsoever to do with the criminal prosecution, a clear violation of Rule 4.5 of the South Carolina Rules of Professional Conduct and the common law of South Carolina governing the propriety of conduct incident to criminal and civil litigation. When Plaintiff refused the extortionate demand, Defendants unfairly continued the criminal prosecution against Plaintiff not because Defendants honestly thought Plaintiff deserved to be prosecuted for criminal domestic violence but because Plaintiff had declined to surrender an animal to Defendant Griffith and thereby cause the Moore Taylor Defendants to win that particular civil dispute on her behalf even though the dispute over the animal had absolutely no connection whatsoever to the criminal domestic violence matter.

33. The professional practice of civil litigation is a trade, and the disreputable and unlawful practice engaged in by certain civil litigators whereby a prosecutor is enlisted to unethically aid them in the prosecution of a civil claim is patently unfair because it is unlawful, and it is plainly subject to repetition as evidenced by the South Carolina Supreme Court's decision to expressly prohibit such conduct in Rule 4.5 of the South

Carolina Rules of Professional Conduct. Further, various South Carolina reported appellate decisions address and condemn such conduct in bright-line terms in cases where other civil litigators and prosecutors have engaged in the conduct at issue in this case. Accordingly, such conduct is a violation of the South Carolina Unfair Trade Practices Act and is civilly actionable under that Act when it causes harm to an actual or prospective criminal defendant, even if such conduct is also actionable under other causes of action. “The penalties and remedies provided in [the South Carolina Unfair Trade Practices Act] are cumulative of and in addition to other provisions of law” per 2004 Act No. 204, Section 2, informally codified as an editor’s note between S.C. Code § 39-5-38 and S.C. Code § 39-5-39 at www.scstatehouse.gov/code/t39c005.php.

34. Obviously, not every type of abuse of process necessarily constitutes an unfair trade practice that is actionable under the South Carolina Unfair Trade Practices Act. But the particular type of abuse of process at issue in this case—where a prosecutor agrees to serve as a de facto “outside” civil litigation counsel to aid private counsel representing an alleged victim in pressing civil claims against the criminal defendant that are entirely outside the proper ambit of criminal restitution—is an unfair litigation practice expressly prohibited by the Rules of Professional Conduct and clear South Carolina decisional law and is therefore an unfair trade practice as well.

35. Plaintiff asserts this statutory tort cause of action in addition to the common law causes of action pursuant to 2004 Act No. 204, Section 2, supra. To the extent the court may find that Plaintiff must elect between this statutory tort cause of action and one or more of the common law causes of action, Plaintiff will make such election at the proper time.

FOR THE FIFTH CAUSE OF ACTION
NEGLIGENT SUPERVISION

36. Plaintiff additionally asserts claims for negligent, grossly negligent, reckless, or willfully deficient supervision: (1) against Defendant Griffith for failing to adequately supervise her lawful private counsel, the Moore Taylor Defendants, and her unlawful private counsel, Howland, with respect to the civil dispute involving the animal; (2) against Defendant Moore Taylor Law Firm, P.A. for failing to adequately supervise the individual Moore Taylor lawyers involved in this matter and for failing to adequately supervise Howland once she was enlisted as “moonlighting” counsel to assist in the civil dispute involving the animal; (3) against the individual Moore Taylor lawyers for failing to adequately supervise Howland once she was enlisted as “moonlighting” counsel to assist in the civil dispute involving the animal; and (4) against Defendant Stricklin for failing to adequately supervise Defendant Fulmer to whatever extent Defendant Fulmer was primarily responsible for enlisting or subsequently supervising Howland’s conduct in this matter.

37. With the possible exception of Defendant Fulmer,² all Defendants had a duty to supervise Howland in this matter after securing an agreement from her to assist them in the civil dispute with Plaintiff involving the animal, and Defendants Griffith and Moore Taylor Law Firm, P.A. likewise had duties to supervise the individual Moore Taylor

² Plaintiff is informed and believes that Defendants Stricklin and Fulmer acted as joint supervisors of Howland’s involvement in the civil dispute that is the subject of this action, but Plaintiff was not privy to the communications between Defendants Stricklin and Fulmer with Howland and does not know with certainty who did what with respect to enlisting Howland to help with the prosecution of the civil claim against Plaintiff relating to the animal dispute or with respect to supervising Howland in that endeavor. Obviously Howland was under the supervision of one or both of the Moore Taylor lawyers but it is not clear exactly what the relationship was. Should discovery reveal that one of the Moore Taylor lawyers was not responsible for supervising Howland, Plaintiff will drop the negligent supervision claim against that particular Moore Taylor lawyer. Defendant assumes that the only possibility is that Defendant Fulmer might not have been responsible for supervising Howland given Defendant Fulmer’s status as a junior associate working under Defendant Stricklin, a senior partner.

lawyers and law firm staff who performed professional litigation services on behalf of Defendant Griffith, including but not limited to the enlistment and supervision of Howland as de facto outside associated counsel on the civil dispute involving the animal.

38. Every defendant owing a supervisory duty in this matter breached that duty by failing to ensure that Howland's efforts to assist Defendant Griffith and the Moore Taylor Defendants in pressing their civil claim against Plaintiff relating to the animal dispute stayed within the bounds of South Carolina law and did not result in an abuse of process or other tortious, illegal, unethical, or unfair conduct.³ Every defendant owing a supervisory duty in this matter further breached that duty by failing to direct Howland to engage in corrective action once Plaintiff objected to Howland's extortionate demand that he capitulate in the civil dispute involving the animal in exchange for Howland dropping the criminal domestic violence charge against him. Such corrective action would, as a matter of law, have been to direct Howland to drop the criminal domestic violence charge without conditioning such action on Plaintiff's capitulation in the unrelated civil dispute.

39. Obviously a typical victim in a typical criminal case has no authority to direct a prosecutor to drop the criminal charge, but this is not a typical criminal case and Defendant Griffith is not a typical victim. Defendant Griffith retained civil litigators to assist her in using the criminal case to her advantage in civil litigation, and those civil litigators were obviously able to "capture" the prosecutor in the matter and convince her to do their bidding. A civil litigant who "captures" a prosecutor in this fashion has the

³ Plaintiff cannot conceive of any assistance that Howland could have offered Defendant Griffith and the Moore Taylor Defendants without running afoul of South Carolina law other than quitting her job and going to work as Defendant Griffith's lawful civil counsel in the civil case involving the animal dispute, but even assuming there were less severe ways she could have assisted Defendant Griffith and the Moore Taylor Defendants that would have been within the bounds of South Carolina law, Howland elected not to stay within such boundaries and made this election at the direction and with the approval of Defendant Griffith and the Moore Taylor Defendants.

same duty to supervise the prosecutor that a solicitor would so long as the prosecutor stays captured. See In re Myers, 584 S.E.2d 375, 355 S.C. 1 (2003) (establishing personal duty of direct supervision on persons who supervise criminal prosecutions in the State of South Carolina). The fact that Defendant Griffith and the Moore Taylor Defendants have no legal right to supervise criminal prosecutions in the State of South Carolina is immaterial because in this case, as a factual matter, they endeavored to capture a prosecutor and were successful in doing so. Therefore they had the same supervisory duties as a solicitor, and a solicitor's duty of supervision in that situation would have required the solicitor to direct Howland drop the criminal domestic violence charge against Plaintiff without imposing the unlawful condition after Plaintiff objected to it, and since Howland was obviously willing to do whatever Defendant Griffith and the Moore Taylor Defendants told her to do—even including patently unlawful conduct—it is reasonable to conclude that if such a directive had been sent to her by her unlawful supervisors, Howland would have abided by it and would have dropped the criminal domestic violence charge without seeking to impose the unlawful and extortionate condition on Plaintiff that required him to capitulate to Defendant Griffith and the Moore Taylor Defendants in the unrelated civil dispute involving the animal.

40. Plaintiff contends this common law cause of action is entirely separate from the preceding causes of action and that no election of remedies is required, but should the court find otherwise, Plaintiff will make such election at the proper time.

FOR THE SIXTH CAUSE OF ACTION
SOUTH CAROLINA OMNIBUS ADULT PROTECTION ACT

41. Plaintiff contends that at all times relevant to this matter, Plaintiff qualified as a “vulnerable adult” as that term is used in the South Carolina Omnibus Adult Protection

Act codified at Title 43 Chapter 35 of the South Carolina Code of Laws and that Defendants had actual knowledge of Plaintiff's status in this regard at all times relevant to this matter.

42. Plaintiff contends that the conduct by Defendants complained of herein constitutes psychological abuse in violation of the South Carolina Omnibus Adult Protection Act.

43. Defendants' willful, intentional, reckless, grossly negligent, and negligent tortious conduct complained of herein has actually and proximately caused Plaintiff to suffer fear, humiliation, degradation, agitation, confusion, and other forms of serious emotional, mental, and psychological distress and therefore qualifies as psychological abuse per the definitions section of the South Carolina Omnibus Adult Protection Act codified at S.C. Code § 45-35-10(10).

44. The South Carolina Omnibus Adult Protection Act provides a private right of action sounding in tort for violations thereof and Plaintiff asserts this cause of action against all Defendants.

DAMAGES

45. Plaintiff seeks and is entitled nominal, compensatory, punitive, and treble damages for numerous harms and injuries actually and proximately caused by the tortious conduct of Defendants complained of herein.

46. Plaintiff's damages include but are not necessarily limited to emotional, psychological, reputational, financial, economic, wage loss, credit damage, liberty, and medical expense injuries suffered by Plaintiff proximately caused by Howland's unlawful refusal to drop the criminal domestic violence prosecution against Plaintiff on June 30,

2016 unless Plaintiff agreed to the unlawful condition which required him to surrender to Defendant Griffith and the Moore Taylor Defendants in the unrelated civil dispute regarding the pet animal. Accordingly, all injuries suffered as a result of the continuation of the misdemeanor criminal domestic violence prosecution past June 30, 2016 and the enhancement of charges to felony kidnapping and felony criminal domestic violence are actually and proximately caused by the tortious conduct complained of herein and are recoverable in this action.

47. The specific injuries suffered by Plaintiff are extreme and cannot be alleged with complete particularity because the harm is ongoing due to the ongoing nature of the criminal prosecution and the concomitant uncertainty as to its outcome, duration, or the adverse collateral effects it will continue to have on Plaintiff's life which may be continuations of harms already suffered or which may be entirely new harms Plaintiff cannot predict with certainty at this time. At a minimum Plaintiff is entitled to recover for:

- a. Loss of enjoyment of life associated with the continuation of the criminal prosecution and the enhancement of criminal charges from a minor misdemeanor to two major felonies.
- b. Reputational harm and embarrassment caused by the absence of a favorable resolution of the criminal prosecution and the enhancement of criminal charges from a minor misdemeanor to two major felonies.
- c. Severe psychiatric harm and resulting medical expenses including but not limited to a nervous breakdown in July of 2018 actually and proximately caused by the stress, anxiety, and depression associated with the ongoing criminal

prosecution and the enhancement of criminal charges from a minor misdemeanor to two major felonies.

d. Loss of employment opportunities which caused Plaintiff to lose his home in Columbia, South Carolina due to the inability to pay property taxes and which have caused Plaintiff to face foreclosure of his interest in a second parcel of real property in Colleton County.

e. Restrictions of liberty occasioned by the continuation of the criminal prosecution and the enhancement of criminal charges from a minor misdemeanor to two major felonies, including but not limited to incarceration in the Lexington County Detention Center after the criminal charges were enhanced, involuntary psychiatric hospitalization and a subsequent two-month incarceration in the Greenville County Detention Center after Plaintiff's nervous breakdown in July of 2018, and the various liberty restrictions imposed by the pre-trial release orders in the minor misdemeanor criminal domestic violence prosecution and the felony kidnapping and felony criminal domestic violence prosecution which include but are not limited to outright banishment from Lexington County, where Plaintiff's residence was located, and Richland County and which include terms essentially placing Plaintiff on house arrest and which as a practical matter entirely preclude Plaintiff from all sorts of activities that he previously enjoyed such as traveling to sporting events, going on vacations, and the like.

f. Numerous financial, economic, and credit injuries caused by the inability of Plaintiff to secure employment that would provide meaningful compensation commensurate with his skills in the legal and political industries, employment

which was off-limits to Plaintiff during the pendency of the criminal charges due to the nature of those industries and which is now forever off-limits to Plaintiff for all practical purposes due to the extreme public embarrassment and reputational harm caused by Plaintiff's nervous breakdown in July of 2018.

g. Mental anguish, frustration, and extreme emotional distress associated with Plaintiff's continued (and apparently unending) status as a criminal domestic violence defendant despite being provably innocent of the charges against him.

h. Loss of time and litigation expenses associated with Plaintiff's pro se defense of the criminal domestic violence prosecution coupled with exposure to potential imposition of an attorneys fee judgment against him arising from his decision to enlist the services of a public defender after his nervous breakdown in July of 2018.

i. Loss of his criminal defense attorney (who doubled as his divorce attorney) as a direct result of Defendants' abuse of process, which caused Plaintiff's counsel in those matters to seek to be relieved when Plaintiff made clear he had no intention of capitulating to Defendants' extortionate demands regarding the civil dispute over the animal, which forced Defendant to handle both matters pro se thereafter despite Plaintiff's complete lack of experience in family court litigation and complete lack of desire to represent himself in a criminal matter that had any probability of going to trial.

j. All future injuries, damages, and harms which manifest as a result of the continuation of the felony criminal domestic violence prosecution against Plaintiff, which may even include wrongful conviction and a thirty year prison

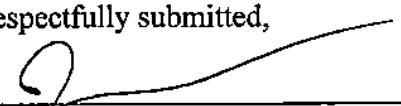
sentence imposed on Plaintiff solely because Plaintiff lawfully declined to submit to the extortionate demands of Howland and Defendant Griffith and the Moore Taylor Defendants in exchange for Howland dropping the minor misdemeanor criminal domestic violence charge on June 30, 2016.

PRAYER FOR RELIEF

48. Plaintiff prays for a jury trial and a judgment awarding all relief available under the causes of action asserted herein and such other and further relief as is equitable and proper, including but not limited to an award of the costs of this action.

Respectfully submitted,

February 23, 2019

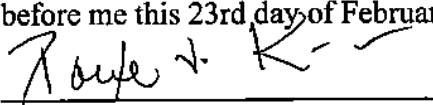

 JAMES JOHN TODD KINCANNON
 216 Jones Avenue
 Simpsonville, South Carolina 29681
 864-963-4374
 ToddKincannon@gmail.com
 Plaintiff Pro Se

VERIFICATION

The undersigned Plaintiff hereby verifies all factual allegations in the foregoing Complaint, having personal knowledge of each, except those expressly stated upon information and belief or implicitly represented as such given the context and as to those matters, Plaintiff is informed and believes them to be true.

Sworn to and subscribed
 before me this 23rd day of February, 2019


 JAMES JOHN TODD KINCANNON


 South Carolina Notary Public
 My Commission Expires: 6/2/25

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

James John Todd Kincannon

Plaintiff(s)

Ashely Suzanne Griffith, Moore Taylor Law Firm,
P.A., Vance Stricklin, and Amber Fulmer

Defendant(s)

Submitted By: James John Todd Kincannon

Address: 216 Jones Ave, Simpsonville SC 29681

IN THE COURT OF COMMON PLEAS

2019 CP 3201168

CIVIL ACTION COVERSHEET

-CP-

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FILED

SC Bar #:

Pro Se

Telephone #:

864-963-4374

Fax #:

Other:

E-mail:

toddkincannon@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
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| <p>Contracts</p> <p>☐ Constructions (100)</p> <p>☐ Debt Collection (110)</p> <p>☐ General (130)</p> <p>☐ Breach of Contract (140)</p> <p>☐ Fraud/Bad Faith (150)</p> <p>☐ Failure to Deliver/Warranty (160)</p> <p>☐ Employment Discrim (170)</p> <p>☐ Employment (180)</p> <p>☐ Other (199) _____</p> | <p>Torts - Professional Malpractice</p> <p>☐ Dental Malpractice (200)</p> <p>☐ Legal Malpractice (210)</p> <p>☐ Medical Malpractice (220)</p> <p>Previous Notice of Intent Case #
20____-NI-_____</p> <p>☐ Notice/ File Med Mal (230)</p> <p>☐ Other (299) _____</p> | <p>Torts - Personal Injury</p> <p>☐ Conversion (310)</p> <p>☐ Motor Vehicle Accident (320)</p> <p>☐ Premises Liability (330)</p> <p>☐ Products Liability (340)</p> <p>☐ Personal Injury (350)</p> <p>☐ Wrongful Death (360)</p> <p>☐ Assault/Battery (370)</p> <p>☐ Slander/Libel (380)</p> <p>☒ Other (399) <u>Abuse of Process</u></p> | <p>Real Property</p> <p>☐ Claim & Delivery (400)</p> <p>☐ Condemnation (410)</p> <p>☐ Foreclosure (420)</p> <p>☐ Mechanic's Lien (430)</p> <p>☐ Partition (440)</p> <p>☐ Possession (450)</p> <p>☐ Building Code Violation (460)</p> <p>☐ Other (499) _____</p> |
| <p>Inmate Petitions</p> <p>☐ PCR (500)</p> <p>☐ Mandamus (520)</p> <p>☐ Habeas Corpus (530)</p> <p>☐ Other (599) _____</p> | <p>Administrative Law/Relief</p> <p>☐ Reinstate Drv. License (800)</p> <p>☐ Judicial Review (810)</p> <p>☐ Relief (820)</p> <p>☐ Permanent Injunction (830)</p> <p>☐ Forfeiture-Petition (840)</p> <p>☐ Forfeiture-Consent Order (850)</p> <p>☐ Other (899) _____</p> | <p>Judgments/Settlements</p> <p>☐ Death Settlement (700)</p> <p>☐ Foreign Judgment (710)</p> <p>☐ Magistrate's Judgment (720)</p> <p>☐ Minor Settlement (730)</p> <p>☐ Transcript Judgment (740)</p> <p>☐ Lis Pendens (750)</p> <p>☐ Transfer of Structured Settlement Payment Rights Application (760)</p> <p>☐ Confession of Judgment (770)</p> <p>☐ Petition for Workers Compensation Settlement Approval (780)</p> <p>☐ Incapacitated Adult Settlement (790)</p> <p>☐ Other (799) _____</p> | <p>Appeals</p> <p>☐ Arbitration (900)</p> <p>☐ Magistrate-Civil (910)</p> <p>☐ Magistrate-Criminal (920)</p> <p>☐ Municipal (930)</p> <p>☐ Probate Court (940)</p> <p>☐ SCDOT (950)</p> <p>☐ Worker's Comp (960)</p> <p>☐ Zoning Board (970)</p> <p>☐ Public Service Comm. (990)</p> <p>☐ Employment Security Comm (991)</p> <p>☐ Other (999) _____</p> |
| <p>Special/Complex /Other</p> <p>☐ Environmental (600)</p> <p>☐ Automobile Arb. (610)</p> <p>☐ Medical (620)</p> <p>☐ Other (699) _____</p> <p>☐ Sexual Predator (510)</p> <p>☐ Permanent Restraining Order (680)</p> <p>☐ Interpleader (690)</p> <p>☐ Pharmaceuticals (630)</p> <p>☐ Unfair Trade Practices (640)</p> <p>☐ Out-of State Depositions (650)</p> <p>☐ Motion to Quash Subpoena in an Out-of-County Action (660)</p> <p>☐ Pre-Suit Discovery (670)</p> | | | |

Submitting Party Signature: _____

Date: 2-23-19

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

State of South Carolina
County of Lexington

Court of Common Pleas

James John Todd Kincannon,	)	
	)	
Plaintiff,	)	Transcript of Record
v.	)	2019-CP-32-1168
	)	
Ashley Suzanne Griffith,	)	
	)	
Defendant.	)	

May 29, 2019
Lexington, South Carolina

B E F O R E:

The Honorable Robin B. Stilwell, Judge.

A P P E A R A N C E S:

John James Todd Kincannon, pro se

James Edward Bradley, Esquire
Attorney for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

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P R O C E E D I N G S

* * *

THE COURT: I'll be happy to hear from you, sir.

MR. BRADLEY: Thanks so much, Judge. Ward Bradley here with my law partner to my left, Vance Stricklin, who has been sitting in this matter; behind me is Amber Fulmer, who is one of the associates at our law firm; Sierra Carini, who is a new lawyer with us, is there. And, also, Ashley Griffith, who has been sued, who we are representing in this matter, is our client.

Finally, our whole law firm has been sued, the Moore Taylor Law Firm. And Stanley Myers is here as a representative of our firm because he's the managing partner in the law firm.

THE COURT: Yes, sir.

MR. BRADLEY: So this lawsuit came out of a divorce in which Mr. Stricklin and Ms. Fulmer represented Ashley Griffith, who is Mr. Kincannon's ex-wife.

In March of 2015, there was a domestic disturbance to which the police were called. Mr. Kincannon was charged with criminal domestic violence as a result of that. After that,

1 Ms. Griffith called our law firm to represent her,
2 which Mr. Stricklin agreed to do. He sent a letter
3 to Mr. Kincannon regarding the situation and the
4 divorce. In response, Mr. Kincannon sent several
5 threatening e-mails, as well as a picture of himself
6 with a gun pointed at his own head.

7 Charter Rivers -- he was -- this was reported
8 to the police. His law license, at some point, was
9 suspended, because he was a member of the Bar, and
10 he was checked into Charter Rivers Hospital for a
11 time. Eventually, he was released. And, at some
12 point, a settlement of the divorce was entered,
13 which was approved by the family court judge.

14 After that, Mr. Kincannon executed his parents'
15 dog with a kitchen knife and proclaimed himself the
16 second coming of Jesus Christ. He also threatened
17 various frivolous lawsuits against his ex-wife,
18 Ms. Griffith, as well as our law firm. In fact, a
19 couple of those were just cancelled yesterday.

20 I don't know if there are any more pending, but
21 this is one of the lawsuits he's filed either
22 against her or against -- I think this is the only
23 one he's filed against our law firm. So we move to
24 dismiss. And, as the Court is aware, for a motion
25 to dismiss, we take the facts alleged in the

1 complaint as true.

2 So here are, basically, the facts as alleged in
3 the complaint: Mr. Kincannon was charged with
4 criminal domestic violence; that he went to criminal
5 court and the prosecutor, Nicole Howland, offered to
6 dismiss those charges if he would return
7 Ms. Griffith's dog, Noodle, to her, and that, at
8 some level, Vance Stricklin told Ms. Howland that
9 Ms. Griffith would cooperate and agree to dismiss
10 the criminal domestic violence charge if the dog was
11 returned.

12 Mr. Kincannon refused to accept that agreement
13 and filed some sort of either complaint or lawsuit
14 against the prosecutor, Ms. Howland. The
15 Solicitor's Office in the 11th Circuit recused
16 itself and the matter was taken up by the Attorney
17 General's Office which elevated the charges to
18 kidnapping and felony criminal domestic violence,
19 where they sit today. That's, basically, the facts,
20 as he alleged them.

21 He's then sued on six claims: Abuse of
22 process, criminal conspiracy, trespass on the case,
23 negligent supervision, violation of the Adult
24 Omnibus Protection Act, and Unfair Trade Practices
25 Act.

1 I'm going to start at the beginning of his
2 complaint and address the abuse of process claims
3 that he's made. The case on abuse of process in
4 criminal proceedings is Johnson vs. Painter. And I
5 have a copy for the Court, if it will make it easier
6 as I go through the case. And I've tagged what I
7 believe are the relevant parts of this case. This
8 is from the Supreme Court.

9 In Mr. Johnson vs. Mr. Painter, Mr. Johnson and
10 Mr. Painter got in a fight and Mr. Johnson was
11 charged with assault and battery. Mr. Painter
12 offered to consent to the solicitor dismissing the
13 charges if Mr. Johnson would pay his medical bills
14 and his lost time of \$2,500. Mr. Johnson didn't
15 agree to do that. He was later found not guilty and
16 sued Mr. Painter for abuse of process for making
17 that offer.

18 He won in the trial court and it was appealed
19 at the Supreme Court which overturned the trial
20 court and said the case should have been thrown out
21 initially. And the reason for it was this: That it
22 is not abuse of process to offer to dismiss -- to
23 cooperate with the solicitor to dismiss a criminal
24 charge.

25 They set forth the elements there on the first

1 tabbed page on the opinion by Judge Gregory. It
2 says: The essential elements of abuse of process
3 are an ulterior purpose and a willful act in the use
4 of process not proper in the regular conduct of the
5 proceeding.

6 So the Supreme Court threw the case out. And,
7 essentially, what they found was, offering to agree
8 to dismiss the charges, if the solicitor would do
9 it, for restitution, essentially, is not a wrongful
10 act. So they even say: We've always looked with
11 favor upon restitution and reconciliation; we see
12 nothing wrong with the attorney calling or the
13 appellate telling him the amount of his
14 out-of-pocket expenses.

15 So, based on the Supreme Court's opinion,
16 offering to consent to dismiss a criminal charge for
17 restitution is not abuse of process, by definition,
18 because it's not a wrongful act.

19 Here, in taking everything Mr. Kincannon
20 alleges as true, the worst that happened here was
21 Ms. Griffith, through her lawyer, Mr. Stricklin,
22 agreed to consent to Ms. Howland dismissing the
23 criminal domestic violence charge if he would return
24 the dog, which he refused to do. So there's no
25 abuse of process because the Supreme Court has said

1 that's not an unlawful act.

2 THE COURT: Okay.

3 MR. BRADLEY: Moving to the second claim, which
4 is criminal -- well, not criminal. Civil
5 conspiracy. The case, really, that sets out the
6 requirements for civil conspiracy is McMillan vs.
7 Ocone Hospital, which I have a copy of here, Judge,
8 if I may approach.

9 THE COURT: Sure.

10 MR. BRADLEY: And what Mr. Kincannon has
11 alleged is that the law firm, its lawyers,
12 essentially -- he hasn't really alleged because he
13 hasn't sued Ms. Howland in his lawsuit. But he's
14 alleged that our law firm and our client conspired
15 against him with a wrongful purpose.

16 And in McMillan vs. Ocone Hospital -- I've got
17 it tagged there -- the Court sets out the elements
18 of civil conspiracy, which is a combination of two
19 or more persons joining for the purpose of injuring
20 or causing special damages to the plaintiff. All
21 right?

22 And then Justice Toal sets forth one of the
23 rules about civil conspiracy that's pretty
24 well-followed. But this case just sets it forth
25 pretty clearly: However, a civil conspiracy cannot

1 exist when the alleged acts arise in the context of
2 a principal-agent relationship because, by virtue of
3 the relationship, such acts do not involve separate
4 entities.

5 So what he's alleged is a conspiracy between
6 the law firm, the lawyers in the law firm, and the
7 client of the law firm, who are all -- the law firm,
8 obviously, is the agent of the client and the
9 lawyers are the agent of the law firm.

10 THE COURT: I got it. You can move on from
11 that now. I understand it.

12 MR. BRADLEY: All right. And --

13 THE COURT: If I hurry up a little bit and rush
14 you along, I hope you take no offense from that.

15 MR. BRADLEY: I've been chewed on by the best,
16 so you can't offend me. But I know there's a
17 courtroom full of people.

18 THE COURT: Yeah.

19 MR. BRADLEY: So -- and then I'll briefly hit
20 the rest of his claims.

21 The next one is trespass on the case, which
22 has, as far as I can tell, not been used in a
23 hundred years in South Carolina, is not recognized.
24 It's an old tort doctrine that was, essentially,
25 sort of a negligence-type doctrine that's not used.

1 And he hasn't even alleged any elements, because I
2 don't know what they are. And that's not a cause of
3 action in South Carolina.

4 The next one is the Unfair Trade Practices Act.
5 He hasn't alleged damage to the public for
6 possibility of repetition because there is none and
7 that's an element of a claim under the Unfair Trade
8 Practices Act. So he can't sue us for that.

9 The fifth claim that he's made is negligent
10 supervision, which is not a cause of action. It's
11 an agency doctrine where you hold one person liable
12 for what another person does. Negligent supervision
13 in itself doesn't create a cause of action, so he
14 can't sue us for negligent supervision; it would
15 just be a way to bring us in for the wrongful acts
16 of someone else we are supposed to supervise.

17 And, finally, the last claim is a violation of
18 the Adult Omnibus Criminal -- not criminal.
19 Vulnerable Adult Protection Act, which there's no
20 indication he was a vulnerable adult in this
21 situation or that we did anything that would violate
22 that act. The allegation is, just as I said to you,
23 which was the abuse of process by, essentially,
24 agreeing to consent to the solicitor dismissing the
25 case if he would return Ms. Griffith's dog, which he

1 never did. So that can't be a violation of the
2 Adult Omnibus Protection Act.

3 So that's the argument quickly. I know there's
4 a courtroom full of people. I'm happy to answer
5 questions. I do have an affidavit from
6 Mr. Stricklin that fills in the background facts
7 which I would like to present to the Court.

8 THE COURT: Mr. Kincannon, you have received a
9 copy of that as well?

10 MR. KINCANNON: I have, Your Honor. And I'll
11 object to it when it's my turn to talk.

12 THE COURT: All right. Good enough.

13 MR. BRADLEY: And that's our argument and why
14 we believe the lawsuit should be dismissed, Judge.

15 THE COURT: All right. Thank you.

16 Mr. Kincannon, I'll be happy to hear from you,
17 sir.

18 MR. KINCANNON: May it please the Court, Your
19 Honor? Good morning. May I hand up my amended
20 memorandum?

21 THE COURT: Yes, sir.

22 MR. KINCANNON: And that also has the Broadmoor
23 case with it.

24 Your Honor, first off, the -- a threshold
25 matter comes up -- and it's the affidavit. I've

1 objected to the affidavit being filed which
2 establishes matters outside the four corners of the
3 complaint. This is a motion to dismiss. It's a
4 vanilla Rule 12(b)(6) motion. Affidavits in support
5 of those are not typically proper. And this
6 affidavit was not served until less than two full
7 business days before this motion hearing today.

8 And the Rule (6)(d) says that there's a ten-day
9 rule and that affidavits have to be filed with the
10 motion. This was not, so I would object to the
11 affidavit being considered by the Court.

12 THE COURT: Okay.

13 MR. KINCANNON: I would also object to all of
14 Mr. Bradley's arguments beyond the prosecutorial
15 argument because they're not part of his motion.
16 His motion only advances one ground. It advances
17 the ground that because they aren't in control of
18 what the prosecutor does, they can't be held liable
19 for abuse of process. That's all the motion says.

20 On this other stuff about civil conspiracy,
21 Unfair Trade Practices Act and all that, that first
22 appeared in their memorandum in support of their
23 motion. It's not in their motion. And that
24 memorandum was first served the same time as that
25 affidavit, which was less than two days before the

1 hearing.

2 So I would object to any dismissal on the
3 grounds, anything apart from what's actually in
4 their motion. I have no problem whatsoever and they
5 have every right to make those motion -- make those
6 all as part of a Rule (12)(c) or 12 (h)(3) motion
7 later in the proceedings. But I haven't had an
8 opportunity to prepare a memorandum in response to
9 anything other than the two-one section of their
10 memorandum, which is the only thing in their motion.

11 So, that being said, I would ask the Court for
12 an opportunity -- and if the Court goes ahead and
13 grants anything beyond that, I would just ask for an
14 opportunity to amend my complaint rather than be
15 dismissed with prejudice at the get-go, because I
16 believe I can amend the complaint to cure a lot of
17 what they complain about in Sections 2, 3, 4, 5, and
18 6, everything beyond what was in their motion.

19 THE COURT: Okay.

20 MR. KINCANNON: As far as the abuse of process
21 argument, the case of Broadmoor Apartments vs. --
22 Charleston vs. Horwitz, which I've handed up --

23 THE COURT: Yes, sir.

24 MR. KINCANNON: -- says that -- their argument
25 in their motion is that because they don't control

1 what the prosecutor does, they can't be held liable
2 for a prosecutor's abuse of criminal process.
3 Broadmoor shoots that down.

4 In the Broadmoor case, the Supreme Court said,
5 quite plainly, that a private party can be held
6 liable for abuse of criminal process if the private
7 party -- and that lia- -- because liability of abuse
8 of process extends to all who knowingly participate,
9 aid, or abet in the abuse. That's what the case
10 says. It goes on to say: Those who advise or
11 consent to the unlawful acts or subsequently ratify
12 them are liable as joint tortfeasors.

13 So Mr. Bradley has already admitted in his
14 argument that the four corners of the complaint do
15 allege that Mr. Stricklin and Ms. Griffith and the
16 entire corps of defendants consented to what the
17 prosecutor did; that they went with the prosecutor,
18 the prosecutor -- I'm not sure who proposed what.

19 But there was this agreement between them that
20 this plea offer would be extended in a criminal
21 domestic violence matter and that the plea offer
22 would have connected to it an attached condition
23 that the plea offer would only be given if I would
24 surrender this dog, which was a completely unrelated
25 matter, completely unrelated civil matter.

1 So the offer that was made -- and this is how
2 we distinguish the Johnson case. The offer that was
3 made in the criminal case was, we'll dismiss this
4 criminal domestic violence matter if you surrender
5 in this totally unrelated civil matter. And that's
6 critical because the Johnson case talks about
7 restitution.

8 Another critically important distinguishing
9 factor with the Johnson case is that the lawyer for
10 the criminal defendant is who reached out to the
11 lawyer for the victim and proposed this deal.
12 That's the -- the uncontradicted testimony at trial
13 was that Respondent's attorney, who was the person
14 who got sued for abuse of process, who was counsel
15 for Mr. Johnson, a criminal, telephoned Appellant
16 while -- so the under- -- this is about restitution,
17 is what this case is about.

18 My case has absolutely nothing to do with
19 restitution. The civil dispute over the dog had
20 absolutely nothing to do with the criminal domestic
21 violence matter. They were two totally unrelated
22 matters. It would be no different from me offering
23 to drop a criminal charge against you for stealing
24 something of mine if you would invest \$10,000 in my
25 business. Totally separate; totally unrelated.

1 The policy in South Carolina looking with favor
2 upon restitution doesn't apply in a case where
3 there's no restitution. Surrender of the dog in a
4 civil proceeding was not restitutionary; it is,
5 therefore, completely outside Johnson vs. Painter.
6 And I can plead that with more specificity, if need
7 be, in an amended complaint, but I don't think
8 that's necessary.

9 The Broadmoor vs. Horwitz case couldn't be
10 clearer on the points with regard to -- that all a
11 private party has to do is consent, aid, abet. It,
12 essentially, creates a separate aiding and abetting
13 tort for abuse of process. That's what I've
14 pleaded.

15 I have pleaded that Mr. Stricklin,
16 Ms. Griffith, and Ms. Fulmer, and the firm, they
17 procured this abuse of process by the prosecutor.
18 And I think they've, basically, admitted that here
19 in oral argument.

20 So I would think that argue -- alleging that
21 they've procured an abuse of process is good enough
22 to constitute the aiding and abetting. So my
23 memorandum sets this all out in detail. And, again,
24 all I'd ask is that if you do decide that any of
25 their arguments have merit, give me an opportunity

1 to amend my pleadings before I get thrown out just
2 like one of the prior guys sitting -- I would ask
3 the same thing, Your Honor.

4 THE COURT: All right. This is what I'm going
5 to ask y'all to do, if you would, please: I want
6 y'all to send me, each, proposed orders setting
7 forth your respective positions and what you would
8 have the Court order pursuant to your positions.
9 And I'll ask each of you what you think is an
10 appropriate amount of time.

11 MR. BRADLEY: We can have it done within ten
12 days, Judge.

13 MR. KINCANNON: That's fine with me, too, if it
14 works for Ward.

15 THE COURT: All right. So send me proposed
16 orders within ten days. And send them to me, if you
17 will, please, in Word format --

18 MR. KINCANNON: Yes, sir.

19 THE COURT: -- and I'll review and sign it.
20 Thank you very much. Y'all have a great day.

21 MR. KINCANNON: Thank you, Your Honor.

22 MR. BRADLEY: Thank you for your time, Judge.

23 -- END OF TRANSCRIPT OF RECORD --

24

25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Lexington County, South Carolina, on the 29th of May, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 13, 2019

s/ *Bethanie K. Creppon*Bethanie K. Creppon
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
James John Todd Kincannon,	)	C/A No. 2019-CP-32-01168
	)	
Plaintiff,	)	
vs.	)	DEFENDANTS' MOTION TO DISMISS
	)	
Ashely Suzanne Griffith,	)	
Moore Taylor Law Firm, P.A.,	)	
Vance Stricklin, and Amber Fulmer,	)	
	)	
Defendants.	)	
_____	)	

YOU WILL PLEASE TAKE NOTICE that the Defendants move to dismiss the allegations of this Complaint as they fail to state a claim upon which relief may be granted. In particular, the Complaint alleges claims for Abuse of Process, Civil Conspiracy, Trespass on the Case, South Carolina Unfair Trade Practices Act, Negligent Supervision, and the South Carolina Omnibus Adult Protection Act. All these claims center upon the factual allegations in the Complaint that 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.

With this in mind, the Defendants move that this matter be dismissed with Prejudice.

[Signature Page Attached]

Respectfully submitted,

s/James Edward Bradley
James Edward Bradley, S.C. Bar # 66130
Moore Taylor Law Firm, P.A.
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160 (office)
(803) 791-8410 (fax)
ward@mttlaw.com
Attorney for the Defendants

West Columbia, South Carolina

April 23, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
James John Todd Kincannon,	)	C/A No. 2019-CP-32-01168
	)	
Plaintiff,	)	
vs.	)	MEMORANDUM IN SUPPORT OF
	)	DEFENDANTS' MOTION TO DISMISS
Ashely Suzanne Griffith,	)	
Moore Taylor Law Firm, P.A.,	)	
Vance Stricklin, and Amber Fulmer,	)	
	)	
Defendants.	)	
_____	)	

Defendants Ashely Suzanne Griffith (hereinafter “Griffith”), Moore Taylor Law Firm, P.A. (hereinafter “Moore Taylor”), Vance Stricklin (hereinafter “Attorney Stricklin”), and Amber Fulmer (hereinafter “Attorney Fulmer”) respectfully submit this Memorandum in Support of its Motion to Dismiss.

I. STATEMENT OF FACTS

On April 6, 2015, the Lexington County Solicitor’s Office charged Plaintiff with criminal domestic violence arising out of an assault that occurred on March 26, 2015. On September 1, 2015, Griffith filed for divorce from Plaintiff in Lexington County Family Court. The next day, the Honorable W. Greg Seigler granted Griffith an Ex Parte Restraining Order against Plaintiff. Griffith hired Attorney Stricklin and Attorney Fulmer to represent her in the divorce. Attorney Stricklin and Attorney Fulmer are employed as attorneys at Moore Taylor. Plaintiff has asserted multiple causes of action against Griffith, Moore Taylor, Attorney Stricklin, and Attorney Fulmer, which, for the reasons discussed herein, should be dismissed.

II. DISCUSSION

Defendants are entitled to dismissal of Plaintiff's Complaint because each of Plaintiff's individual causes of action fail to present a claim upon which relief can be granted, and, accordingly, should be dismissed pursuant to rule 12(b)(6), SCRCP.

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.*

Here, Plaintiff has failed to sufficiently allege that he was charged with criminal domestic violence for an ulterior purpose or that Defendants charged him. In fact, the 11th Circuit Solicitors Office charged Mr. Kincannon with criminal domestic violence after police were called to resolve a domestic dispute that arose between Kincannon and Griffith. (see Compl. ¶11). The Solicitor charged Kincannon with criminal domestic violence five months before Griffith sought a divorce and over a year before the civil dispute over Griffith's dog. Kincannon was later indicted for felony

kidnapping and felony criminal domestic violence of a high and aggravated nature. (Compl., ¶17). The charges are still pending. Thus, neither Ms. Griffith nor her lawyers had control or involved in the Solicitor's decision to pursue the criminal domestic violence charges. 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.

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.

In *Hackworth*, the Court held that the civil conspiracy counterclaim should be dismissed because Defendant repeated verbatim the same allegations and damages in its civil conspiracy claim as were alleged in its claim for breach of contract accompanied by a fraudulent act. *Id.*

Here, Kincannon has relied on the allegations contained in his cause of action for abuse of process. Specifically he alleges as follows: “Plaintiff alternatively pleads a cause of action for civil conspiracy as to such conduct” without informing Defendants of what acts have been committed in furtherance of the alleged conspiracy they are being accused of. (Compl. ¶27). Moreover, he “seeks all damages available under the tort of civil conspiracy” without identifying any special damages that have been caused as a result of the alleged civil conspiracy. (Compl. ¶27). In addition, Mr. Kincannon has sued his former wife and her lawyers for essentially being engaged in a domestic lawsuit. This is an attorney-client relationship required at law for the purpose of representing a client and not a wrongful conspiracy. Therefore, Mr. Kincannon’s claim of civil conspiracy should be dismissed.

C. Trespass on the Case

Trespass on the case is no longer recognize 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).

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.*

The acts Mr. Kincannon alleges are appropriate within an attorney client relationship. Mr. Kincannon has not plead that the same kind of actions occurred in the past. Mr. Kincannon’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. Thus, there is no impact on the public interest, and this claim should be dismissed.

In addition, Mr. Kincannon has not alleged any actual damage as a result of the alleged unfair trade practice violation or any of the claims in the complaint. Because Mr. Kincannon has not alleged an impact on the public interest or any actual damage, the claim should be dismissed as a matter of law.

E. Negligent Supervision

In *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), a claim of negligent supervision against a law firm hinges on whether or not the law firm owed a duty. 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. In fact, they represented his wife in the divorce. Kincannon was not their client. As a result, Mr. Kincannon has no basis to sue Moore Taylor, Attorney Stricklin or Attorney Fulmer in negligence because they owe him not duty.

Further, Kincannon'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. Kincannon 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. Neither Moore Taylor, Attorney Stricklin, Attorney Fulmer, nor Griffith had a duty or the ability to supervise the solicitor in Kincannon's criminal domestic violence prosecution. Thus, his argument is wholly unsupported and should be dismissed.

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).

Todd Kincannon is a law school graduate and was a lawyer until the Supreme Court suspended his license. He has not alleged facts to show he was a vulnerable adult. If he is in fact incompetent, then he does not have standing to bring claims without a guardian. Mr. Kincannon cannot claim to simultaneously be a vulnerable adult and be able to make legal claims on his own. Thus, his claim should be dismissed because he is not a vulnerable adult. If he is incompetent, the Court should appoint a guardian to decide on his behalf whether this lawsuit should go forward.

III. CONCLUSION

In his Complaint, Plaintiff has failed to set forth any cause of action upon which relief can be granted. Therefore, for the reasons discussed herein, in Defendants’ Motion to Dismiss, and through arguments put forth in the hearing of this matter, Defendants are entitled to a complete dismissal of Plaintiff’s Complaint.

MOORE TAYLOR LAW FIRM, P.A.

By: s/James Edward Bradley
 James Edward Bradley, SC Bar # 66130
 P.O. Box 5709
 West Columbia, SC 29171
 (803) 796-9160
 ward@mttlaw.com

West Columbia, South Carolina
 May 24, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
James John Todd Kincannon,	)	C/A No. 2019-CP-32-01168
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	C. VANCE STRICKLIN, JR.
Ashely Suzanne Griffith,	)	
Moore Taylor Law Firm, P.A., Vance	)	
Stricklin, and Amber Fulmer	)	
	)	
Defendants.	)	

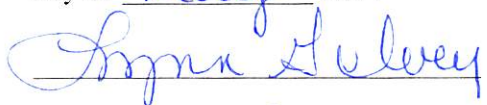
1. My name is C. Vance Stricklin, Jr. I am over the age of 18 and otherwise qualified to give sworn testimony in court.
2. I am a lawyer at the Moore Taylor Law Firm where I have practiced for over twenty years.
3. I focus my practice on domestic law in particular.
4. I was involved in the divorce between James John Todd Kincannon and Ashely Suzanne Griffith.
5. Mr. Kincannon has a history of acting in unpredictable, irrational, and malicious ways concerning his relationship with Ms. Griffith and his divorce.
6. Mr. Kincannon has been licensed as a lawyer in the past. It is my understanding that as a result of his behavior/conduct, his license has been suspended by the Bar.
7. Mr. Kincannon has repeatedly threatened both Ms. Griffith and me with malicious and repeated lawsuits. As an example, I enclose a copy of an email he sent to me at the time he filed this lawsuit threatening multiple abuse of process lawsuits and additional lawsuits. A copy of this email is attached as Exhibit A to this Affidavit.
8. In addition, on July 4, 2018, Mr. Kincannon sent another email threatening to file seventeen lawsuits against our client and our firm over the ensuing two years. A copy of this document is attached as Exhibit B to this Affidavit.
9. It is my understanding that Mr. Kincannon was arrested on criminal domestic violence charges on April 7, 2015. A copy of the Public Index reflecting this arrest is attached as Exhibit C to this Affidavit. It is my understanding that these charges are still pending against him. In fact, it is my understanding that they are now being prosecuted by the South Carolina Attorney General's office.

10. After Mr. Kincannon was charged with criminal domestic violence, his wife Ashely Griffith hired our law firm to represent her in a divorce. I sent a letter to Mr. Kincannon indicating that I was representing Ms. Griffith and desired to reach an amicable agreement regarding their impending divorce. In response to this letter I received an email attached as Exhibit D to this Affidavit. This email calls his wife a slut and indicates that he is planning to kill himself. It also accuses our law firm of unethical conduct. The email indicates that he hopes Ms. Griffith and I die a miserable, horrible death. The email had attached two photos of Mr. Kincannon with a pistol pointed at his own head. A copy of these photos are attached as Exhibit E to this Affidavit.
11. I am aware that Mr. Kincannon has been licensed to practice law in the past. I do not know the full details of his license suspension, but I am aware that the South Carolina Supreme Court suspended his license on August 28, 2015. I attach a copy of that order as Exhibit F to this Affidavit. Following Mr. Kincannon's suicide threats and emails, I made an ex parte motion for a restraining order on September 2, 2015. This order was issued by the Court on September 2, 2015. A copy of this restraining order is attached as Exhibit G to this Affidavit.
12. Mr. Kincannon was, at some point in September, institutionalized at Three Rivers Behavioral facility for some amount of time. It is my understanding that he was released at some point in September.
13. In May of 2016, Mr. Kincannon took Ms. Griffith's dog. Mr. Kincannon was ultimately ordered by the South Carolina Court of Appeals to return the dog. Mr. Kincannon never did return the dog. The parties eventually entered into a decree of divorce which allowed Mr. Kincannon to keep the dog. A copy of the divorce decree is attached as Exhibit H to this Affidavit.
14. Mr. Kincannon has continued to behave in irrational, violent and malicious ways. In fact, on July 26, 2018, I am informed and believe Mr. Kincannon executed his parent's dog with a kitchen knife. He stated to the arresting officer that he had to sacrifice the dog and that he was the second coming of Christ and received a command from God to do so. A copy of the incident report reflecting Mr. Kincannon's behavior is attached as Exhibit I to this Affidavit.
15. There is absolutely no merit to the claims made by Mr. Kincannon in this lawsuit and I believe this lawsuit is solely brought to harass his ex-wife, our law firm and me. I have never threatened criminal prosecution for a civil purpose. I have merely represented Ms. Griffith throughout these proceedings in the way that I believe were within the rules of ethics, within the law, and appropriate for my job as a family practice lawyer. We ultimately resolved the case with an agreement.

FURTHER AFFIANT SAYETH NAUGHT.


C. Vance Stricklin, Jr., Esquire

SWORN to before me this 24th
day of May 2019

 (SEAL)

LYNN G. IVEY

Printed name of Notary

Notary Public for the State of South Carolina

My Commission Expires: January 8, 2023

Kendra M. Vaughn

From: Todd K <toddkincannon@gmail.com>
Sent: Monday, February 25, 2019 4:08 PM
To: Jake Moore; Vance Stricklin; Amber C. Fulmer
Subject: Ashely S. Griffith vs. James John Kincannon RE: Family Law- Divorce: Filing of Kincannon v. Griffith, Moore Taylor, Stricklin & Fulmer
Attachments: Kincannon v. Griffith Moore Taylor Stricklin Fulmer Initial Filing.pdf

To the Moore Taylor Law Firm, P.A. c/o Jake Moore Sr., Vance Stricklin, and Amber Fulmer:

Please find attached a courtesy copy of a summons and complaint against you that has been submitted for filing to the Lexington County Clerk of Court. After I receive a date-stamped copy back in the mail, I will serve the same on each of you as you are defendants in the matter along with your former or perhaps current client Ashely S. Griffith.

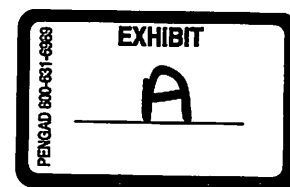
Please transmit a copy of the attached to all insurance carriers which may owe all or any of you a duty of defense or indemnification and please advise as to the most convenient way for my process server to make service upon you. Please also advise if you continue to represent Ms. Griffith and, if so, please advise as to the most convenient way for my process server to make service upon her as well.

Please let your carrier know that my initial demand is \$20 million but that I will make a demand within coverage limits if they are lower (provided, of course, that they are not unreasonably low). That may seem high but this is an open-and-shut abuse of process case and the damages are extraordinarily high given the circumstances, so I don't think that demand is out of bounds. Hard to say what a jury would value two+ years of dealing with a felony kidnapping and CDVHAN case that exists solely as a result of your abuse of process in the misdemeanor CDV case described in the lawsuit, but I'm betting it's not a low number.

Sincerely,
 J. Todd Kincannon

P.S. This is the first of multiple abuse of process/malicious prosecution actions I will file and prosecute arising out of Ms. Griffith's and your firm's conduct in and related to the divorce action and related matters. I will of course provide you with additional lawsuits as I finish preparing them and submit them for filing to the clerk's office.

P.P.S. Please forgive the absence of signatures on the attached copies. My scanner is presently on the fritz. These documents are identical to the signed documents submitted for filing.



Kendra M. Vaughn

From: Todd K <toddkincannon@gmail.com>
Sent: Wednesday, July 4, 2018 3:44 PM
To: Vance Stricklin; Amber C. Fulmer; Jake Moore
Subject: Ashely S. Griffith vs. James John Kincannon RE: Family Law- Divorce: Mercury Funding LLC v. Estate of Croft - Representation of Ashely Griffith

Vance, Amber, and Jake:

Do you represent Ashely Griffith in Mercury Funding LLC v. Estate of Croft? We are codefendants in that action, a quiet title case by the people who bought the marital residence at the tax deed sale. Has she been served yet?

I am going to assert cross claim against Ms. Griffith for willfully failing to pay the taxes and thereby causing the house to be lost to the tax man even though she knew I was indigent, unemployed, and unemployable due to her conduct incident to the initiation of the divorce.

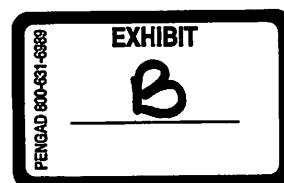
I intend to sue for negligence and various other things, and seek punitives too. The total value of the claim against the ever-suable Ms. Griffith is probably \$150,000. Of course Moore Taylor is actually liable for that due to malpractice but you all will lie to her and tell her that you didn't commit malpractice, which is hilarious but I don't care because I'll get a receiver appointed once I win and get him to sue you if she won't.

Let me know if you guys are still representing her. This is the first action of what will be 17 cases as I presently have it charted over the next two and half years in a string of litigation I like to call "The Kincannon Strikes Back." Although I don't intend to lose at the end like Darth Vader did because I'm not going to suddenly feel pangs of love where your client is concerned and let her beat me. This litigation Death Star is fully armed and operational and by the time we get to court on any of this I'll be "Judge Kincannon," which is hilarious.

You guys might want to cut down on the tortious conduct incident to litigation or else we will literally be litigating Kincannon v. Griffith cases for the rest of our lives. That's fine with me because I find all of this incredibly entertaining but I get the feeling your client doesn't enjoy it as much as I do. But that's what she gets for hiring divorce lawyers who thought it was a good idea to play hardball with a lawyer in a divorce case and apparently have no idea that a tort called "abuse of process" exists or how the elections of remedies doctrine in breach-of-settlement-agreement cases works. I look forward to teaching Litigation Misconduct Claims 501 to Vance and Amber over the next few years, because God knows somebody needs to before they end up getting disbarred. Be thankful that all I want is your carrier's money and your client to experience homelessness and don't care to nail your law licenses up on my wall as trophies because that would keep you from earning money that I could take in my lawsuits against you, some of which will be way outside your coverages and which I won't settle as part of any insurance defense settlement because an insurance carrier shouldn't have to pay me for your intentional tortious conduct until you're judgment proof.

So, to sum up, do I mail the cross claim to you people or to Ms. Griffith directly or to some other sucker she's found to represent her?

Sincerely,
 J. Todd Kincannon



P.S. Ms. Griffith should sue the bejesus out of Moore Taylor for malpractice committed by Vance and Amber, but Jake has snowed her into thinking they didn't screw anything up. I strongly recommend for your sakes you get your carrier involved right now and let the carrier talk to me about how to settle all this. It will make your lives a lot easier. Your client is a pathological liar and she will turn on you the second she realizes that Vance and Amber actually did royally screw up the divorce case and commit all kinds of torts against me that I can sue her for but not you, but that she can sue you for for indemnification. I don't know why you people think that's not going to happen. I have nothing better to do while I'm sitting around waiting for my coronation as Greenville County Probate Judge than to sue your client for things you people did (and in some cases, that she did) because you gave her horrendously bad advice that caused her to be far worse off than she would have been with no lawyers at all. I got a far better deal for your client as her divorce lawyer than you did, and you set her up for a decade of litigation misery and destitution when she could have had a third of a million dollars just to leave me and my dog in peace. It will cost more for her to defend all the lawsuits I'm going to file against her than she has, and all of them are perfectly legitimate and I don't care if I ever get a dime. All I care about is denying her her ill gotten gains and ruining her credit and getting judgments against her that tell the true story of what happened in all these cases so that when a fellow I'm on good terms with named Mike Pence nominates me for the Fourth Circuit in ten years I can explain to the Senate Judiciary Committee why I'm not actually a dognapping kidnapping wifebeater, I just married a pathological liar who had shitty lawyers who thought committing litigation-misconduct torts against a lawyer who wrote the book on suing people for bad things their lawyers do was a good idea.

P.P.S. You people should know that I sue people for bad things their lawyers do. That's why David Thomas wanted me to help him with all his foreclosure defense cases. This isn't exactly news to the Moore Taylor Law Firm, and yet having actual knowledge of precisely the type of litigation skill set I bring to the table, you nonetheless represented my estranged wife in a divorce and did all the things to me that David Thomas regularly associated me to assist him in suing bank plaintiffs for after their lawyers did the same kinds of things. And I mean the EXACT same kinds of things--denial of the existence of settlement agreements reached on a pro se basis party to party prior to the initiation of litigation, an unfair trade practice that I am probably the only lawyer in South Carolina that knows how to sue people for. Your carrier is going to love that. Your divorce action was a wrongful foreclosure action dressed up as a divorce action and you did all the same things that bank lawyers do that end up regretting when I show up. You and your client will regret them too soon enough--I suspect it'll be sometime around lawsuit #4 of 17 that she turns on you, probably October or so. You get the October surprise even though I'm the candidate for public office.



Lexington County Eleventh Judicial Circuit Public Index



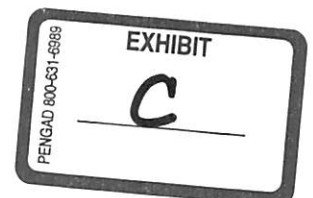
[Lexington County Home Page](#)
[South Carolina Judicial Department Home Page](#)
[SC.GOV Home Page](#)

Switch View

The State of South Carolina VS James John Todd Kincannon					
Case Number:	2015A3210200544	Court Agency:	Irmo Magistrate Court	Filed Date:	07/24/2015
Case Type:	Criminal	Case Sub Type:			
Status:	Pre-Trial Conference	Assigned Judge:	Adams, Rebecca L.	Disposition Judge:	
Disposition:					
Disposition Date:		Date Received:		Arrest Date:	04/07/2015
Law Enf. Case:	15005471	True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:		Waiver Date:	
Probation Case:					

Case Parties	Charges	Sentencing	Associated Cases	Actions	Financials	Bonds
Name	Charge Code - Charge Description	Original Charge Code - Original Charge		Disposition Date		
Kincannon, James John Todd	2671-Domestic / Criminal Domestic Violence	2671-Domestic / Criminal Domestic Violence				

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Kendra M. Vaughn

From: Todd Kincannon <todd@thekincannonfirm.com>
Sent: Thursday, August 27, 2015 3:09 PM
To: Vance Stricklin
Cc: Ashely
Subject: Ashely S. Griffith vs. James John Kincannon RE: Family Law- Divorce: Divorce Matters

Vance,

I am in receipt of the letter you had "hand delivered" to me (illegally) on August 25, 2015. You and my slut of a soon-to-be-ex-wife are welcome to make whatever demands you wish. I have no intention of giving my wife an easy out for what all she has done. She has ruined my life intentionally and all I care about at this point is killing myself in a way that will cause her the most pain possible.

By the way, I failed to explain that your law firm is filled with unethical conduct and that I once had a legal malpractice case against Moore & Taylor that I decided not to pursue because you all once retained me as associated counsel on case retained by David Thomas.

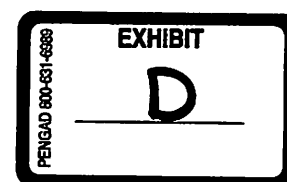
I no longer care about all that. I hope you all are happy with causing my suicide. I hope my wife is especially happy with it. All I want to do is die. And you are the reason why.

Do not contact me about this. Do not call emergency services about it. If I see someone pull up in my yard with sirens on, I will blow my brains out. Be aware of this as your proceed.

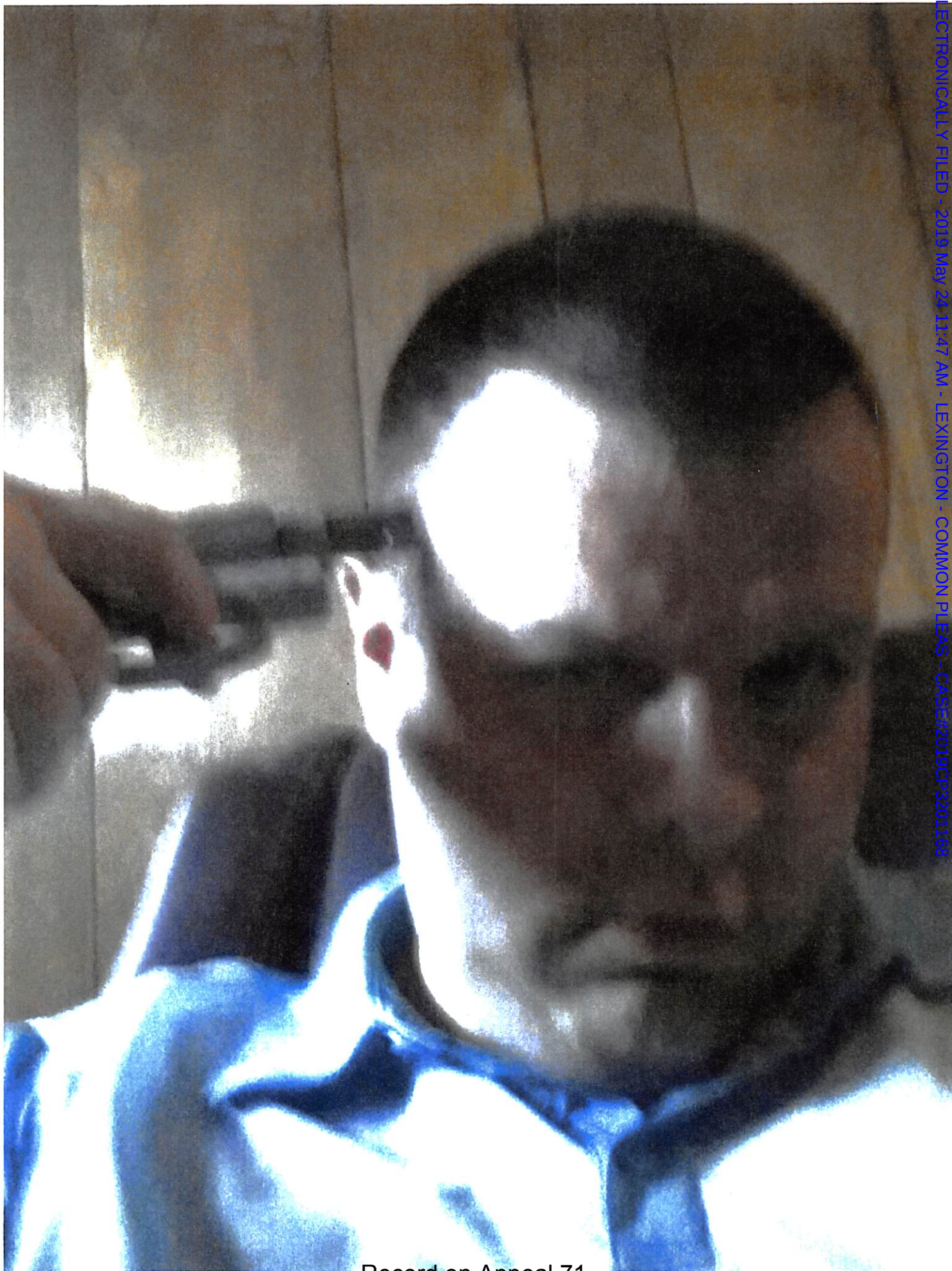
I hope my client Andy Rice sues the hell out of you for committing malpractice that injured him. And I honestly hope that every single one of you burns in eternal hellfire. Including my wife.

Should I someone survive my imminent suicide attempt, this is a directive to you not to contact me under any circumstances. I hope you and my wife die miserable, horrible deaths, but in the event you do not, I want nothing more than for both of you to leave me alone.

Sincerely,
Todd Kincannon







2015-08-28-01

The Supreme Court of South Carolina

In the Matter of J. Todd Kincannon, Respondent.

Appellate Case No. 2015-001824

ORDER

The Office of Disciplinary Counsel asks this Court to issue an order transferring respondent to Incapacity inactive status pursuant to Rule 28, RLDE, Rule 413, SCACR, or in the alternative, placing respondent on interim suspension pursuant to Rule 17, RLDE, Rule 413, SCACR. The petition also seeks appointment of the Receiver pursuant to Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients.

IT IS ORDERED that respondent's license to practice law in this state is suspended and respondent is transferred to incapacity inactive status until further order of this Court.

IT IS FURTHER ORDERED that Peyre Thomas Lumpkin, Esquire, Receiver, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain. Mr. Lumpkin shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Lumpkin may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain that are necessary to effectuate this appointment.

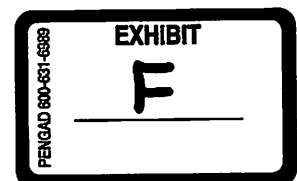
This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that the Receiver, Peyre Thomas Lumpkin, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that the Receiver, Peyre Thomas Lumpkin, Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Lumpkin's office.

Mr. Lumpkin's appointment shall be for a period of no longer than nine months unless an extension of the period of appointment is requested.

s/Jean H. Toal C.J.

Columbia, South Carolina
August 28, 2015



COPY

STATE OF SOUTH CAROLINA

FILED

IN THE FAMILY COURT

COUNTY OF LEXINGTON

2015 SEP -2

FOR THE ELEVENTH JUDICIAL CIRCUIT

Ashely S. Griffith,

ETHA A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Plaintiff,

vs.

James John Kincannon,

Defendant,

EX PARTE RESTRAINING ORDER**2015DR3202268**

Case No.: 15-DR-32-_____

This matter is before the Court on motion of the Plaintiff seeking an Ex Parte Order a Restraining Order from the Defendant. Based on the motion and Affidavit of the Plaintiff presented to the Court, the Court finds that it is appropriate that the Plaintiff be granted an Ex Parte Restraining Order against the Defendant.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

- A. The Defendant is hereby prohibiting^{ing} from directly or indirectly contacting, harassing, threatening, bothering, intimidating, molesting, or otherwise interfering with the Plaintiff at any time and in any manner;
- B. The Defendant is prohibited from coming on to the premises of the Plaintiff's residence and place of employment;
- C. The Defendant is prohibited from possessing a firearm; and
- D. The Defendant is strictly instructed to only contact the Plaintiff's attorney regarding issues related to this matter and that all communications must be in a civil and non-threatening manner. The Defendant is further instructed all communications with the Plaintiff's attorney must be done by United States Mail First Class.

(signature block on the following page)



FILED

2015 SEP -2 AM 8:01

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

S/ W. GREG SEIGLER

PRESIDING JUDGE
FAMILY COURT - ELEVENTH CIRCUIT

IT IS SO ORDERED.

Lexington, South Carolina
September 1st, 2015

15-DL-32-2268

COPY

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Ashely S. Griffith,)

Plaintiff,)

vs.)

James John Todd Kincannon,)

Defendant)

IN THE FAMILY COURT
FOR THE ELEVENTH JUDICIAL CIRCUIT**DECREE OF DIVORCE AND ORDER
APPROVING AGREEMENT**

C.A. No. 2015-DR-32-2268

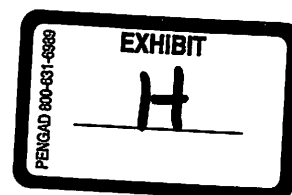
Date of Hearing:
Presiding Judge:
Plaintiff's Attorneys:January 24, 2017
Peter R. Nuessle
C. Vance Stricklin, Jr.
Amber C. Fulmer
Pro Se
Carole ShealyDefendant's Attorney:
Court Reporter:FILED
CLERK OF COURT
M. SC

2017 MAR -1 PM 4:22

FILED

This action was filed by Plaintiff (hereinafter also referred to as "Wife") on September 1, 2015. An Ex Parte Restraining Order was issued on September 2, 2015. The affidavit of service that was filed indicates Defendant (hereinafter also referred to as "Husband") was served personally with the pleadings and the Restraining Order on September 4, 2015. Husband did not serve an Answer.

This matter is currently before this Court for a final merits hearing. Notice of the hearing was properly served upon Husband. Wife was present at the hearing along with her attorneys C. Vance Stricklin, Jr. and Amber C. Fulmer. Husband was also present, but was not represented by counsel. Husband indicated he did not desire counsel and wished to proceed with the hearing *pro se*. Upon inquiring into Husband's education, life skills, and his desire to proceed without counsel, I find and conclude the Husband is capable of representing himself and should be

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allowed to proceed *pro se*.

The Court then proceeded with the hearing. After the direct and cross examination of two of the Plaintiff's witnesses, the Court recessed to allow the parties the opportunity to discuss a potential settlement. The parties then advised the Court they had reached a full agreement as to all issues present before the Court, except the issue of divorce, which rests within the sole discretion of the Family Court, and desired to orally recite the terms of the agreement on the record. Thereafter, the Court reconvened and the terms of the parties' agreement were placed on the record.

I find the parties agreement as placed on the record and reduced herein below to writing is as follows:

AGREEMENT

A. The parties' agree the Court has personal and subject matter jurisdiction over this action and of the parties. Venue is proper in the Lexington County Family Court.

B. The parties' agree each shall waive alimony and spousal support from the other. The parties' agree this is a permanent and irrevocable waiver of alimony and spousal support.

C. Husband agrees the residence where Wife resides at 306 Springwalk Lane, West Columbia, South Carolina 29169 is Wife's separate non-marital property. Husband agrees Wife has legal title to this residence.

D. Wife agrees Husband is entitled to whatever interest he may have in the residence located at 200 Townes Road, Columbia, South Carolina 29210. The parties are not acknowledging there is an interest in the residence, but are acknowledging that should such interest exist, Husband is entitled to the interest in this residence.

E. The parties' agree each shall keep the personal property currently in his or her

PKC

possession and control. The parties' agree the dog Noodle is non-marital property and this Court has no jurisdiction to award the dog to either party. The parties' are not agreeing as to the ownership of Noodle; however, Husband agrees that if he is incapacitated unable to care for Noodle for an extended period of time, Wife shall have the first right to care for Noodle.

F. The parties' agree each shall have the ownership and possession of the vehicle currently in his or her possession. Husband's vehicle is a Nissan Pathfinder, and Wife previously owned a BMW but has since traded that vehicle in for a GMC Terrain. Each party shall be responsible for any liabilities and expenses related to his or her vehicle such as the payments, taxes, repairs, maintenance, and the like, and shall hold the other harmless and indemnify the other from the same.

G. The parties agree that each shall retain the ownership of his or her own checking, savings, investment, retirement, or other account titled in his or her name, free and clear of any claim or interest by the other. Each party waives any interest he or she may have in the other party's checking, savings, investment, retirement, or other account titled in the name of the other party.

H. Each party shall be responsible for the debt in his or her name. Each party agrees they shall indemnify and hold the other harmless of any liability related to the debts retained by him or her. The parties acknowledge they have no joint debts.

I. The parties agree each shall be responsible for his or her own health, dental, and vision insurance. Each party shall be responsible for his or her own non-covered and non-reimbursed medical, dental, vision, and other healthcare related expenses incurred during this litigation and in the future.

J. Husband agrees he shall be placed under a permanent injunction prohibiting

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Husband from directly contacting, threatening, harassing, molesting, bothering, intimidating, or otherwise interfering with Wife at any time or place. This prohibition does not preclude Husband from legal process service on Wife.

K. Husband agrees he shall be responsible for \$23,000.00 toward Wife's attorney's fees and costs incurred in this matter. Husband agrees this \$23,000.00 shall be reduced to a judgment against him.

L. Wife agrees to dismiss her pending Rule to Show Cause and Complaint for Contempt. Husband acknowledges he has filed a number of items with this Court and the South Carolina Court of Appeals. Husband acknowledges that whatever items he filed with the Family Court and South Carolina Court of Appeals shall be dismissed.

M. The parties agree that if the Court approved the parties' agreement, Wife would amend her Complaint to seek a divorce based on one year's continuous separation, and Husband would consent and waive his statutory response time.

Based upon the agreement of the parties as recited above and the record before me, I make the following Findings of Fact and Conclusions of Law and Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Wife is a citizen and resident of Lexington County, South Carolina, and has been so in excess of three (3) months prior to the commencement of this action.
2. Husband was a citizen and resident of Lexington County, South Carolina, and had been so in excess of three (3) months prior to the commencement of this action. Husband currently resides in Greenville County.
3. The parties last resided together as wife and husband in Lexington County, South Carolina.

PK

4. The parties are currently wife and husband, having been married to each other on February 6, 2013. The parties had a formal wedding ceremony in a church on April 6, 2013. There are no children of the marriage and none are expected.

5. As agreed upon by the parties and recited above, this Court has jurisdiction of the parties and subject matter herein. Venue is proper in Lexington County, South Carolina.

6. I find and conclude Wife made a motion to supplement her pleadings to request a divorce on the grounds of one year's continuous separation without cohabitation. Husband waived his response time and joined in the Wife's requested relief. Wife testified the parties' separated on or about August 26, 2015. Wife testified the parties had remained separate and apart since that time without intervening cohabitation. I find Wife's testimony was fully corroborated by her corroborating witness. Based upon the testimony and the record before me, I find and conclude Wife is entitled to a divorce, a vinculo matrimonii from the Husband based upon one year's continuous separation without intervening cohabitation.

7. I find and conclude there has been no collusion between the parties for the purpose of obtaining a divorce.

8. I find that all other matters arising between the parties as a result of the marriage, except the issues of divorce, have been resolved by the parties' agreement as recited on the record and reduced to writing herein above. Both parties were separately examined under oath as to the terms of the agreement and circumstances surrounding its negotiation. It was clearly established that:

- (a) They had been successful in reaching an agreement resolving all of the issues of their marriage;
- (b) The agreement recited on the record and reduced to writing herein above was their agreement;

- (c) Each party entered into the agreement freely and voluntarily;
- (d) Each party stated neither was threatened, forced, or coerced into entering in this agreement;
- (e) Each party understood all terms of the agreement;
- (f) The agreement as recited on the record and reduced to writing herein above reflects the entire agreement between them;
- (g) Each party participated in the negotiation of the agreement;
- (h) Neither party had any questions about the agreement they desired to ask the Court or counsel;
- (i) Each party had sufficient information regarding the other's finances, income, assets, and debts at the time they entered into this agreement;
- (j) Each party provided truthful information regarding his or her own finances, income, assets and debts to the other party;
- (k) Neither party was under the influence of any drugs, intoxicants, or medications that would affect their judgment at the time they entered into this agreement;
- (l) Wife testified she was satisfied with the services provided by her attorneys, her attorneys had done everything she had asked them to do, and her attorneys had discussed all aspects of the agreement with her;
- (m) Husband testified he understood he was not represented by Mr. Stricklin, Ms. Fulmer, or the Moore Taylor Law Firm, P.A. Husband testified he did not have any complaints against Wife's attorneys or their firm;
- (n) Each party had ample time to speak with a CPA or financial advisor regarding the tax consequences or financial implications of the agreement, had they so desired;
- (o) Each party understood that the agreement regarding the division of property and debts was permanent, and if approved by the Court, cannot be changed in the future;
- (p) Each party understood a waiver of alimony is permanent and neither could come back before the Court at any time in the future to request alimony;
- (q) Each party understood they were giving up their right to a trial where they could have been allowed to present witnesses and other information to support

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their requests, and each party affirmatively stated they were waiving their right to trial;

- (r) Each party believes the agreement was in their his or her best interests and the best interests of their spouse;
- (s) Based on all the circumstances surrounding the negotiation of the agreement, they believed it to be fair and equitable to themselves and the other party;
- (t) Each party testified they would be able to comply with all terms of the agreement;
- (u) Each party understood once the agreement is approved, it would be enforceable through the Court's contempt powers which means that either party could be fined, sentenced to a jail term and/or ordered to perform community service if found in contempt of the agreement; and
- (v) Each party desired to have the Court approve the agreement and make it an Order of the Court.

9. The record reflects that the parties have had the opportunity to exchange financial information, and have otherwise satisfied themselves that they know enough of each other's financial situation including earnings, needs, obligations, and assets to make intelligent decisions regarding the financial aspects of this case. Accordingly, I find each party was familiar with the income, expenses, debts and assets of the other.

10. After having conducted examinations of both parties, I find and conclude that both Husband and Wife appeared sincere, honest and truthful in the representations made under oath and that neither party was under the influence of alcohol nor was either's judgment impaired by drugs or other substances. Each entered into this Agreement freely, knowingly, voluntarily, and without threats or coercion. This Court thereafter independently reviewed the details of this Agreement which I specifically find to be fair, equitable, reasonable and in the best interests of the parties. Forsythe v. Forsythe, 290 S.C. 253, 349 S.E.2d 405, (Ct. App. 1986). Accordingly, I find that I should approve, adopt, merge and incorporate this Agreement as part of

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the Order of this Court.

ORDER

Accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that:

A. Wife is awarded a divorce, a vinculo matrimonii, from Husband on the ground of one year's continuous separation without cohabitation;

B. the parties' agreement as recited on the record and reduced to writing above, is hereby approved, confirmed, merged and incorporated into this Order by this Court, thereby rendering it the Order of the Court, and either party violating the terms and conditions of this Order shall be subject to the contempt sanctions of this Court; and

IT IS SO ORDERED.

PK

Aiken, South Carolina

February 13, 2017

[Signature]
PETER R. NUESSLE, PRESIDING JUDGE
FAMILY COURT - ELEVENTH CIRCUIT

AGENCY I.D.
SCO230500SIMPSONVILLE POLICE DEPARTMENT
INCIDENT REPORT

CASE NUMBER

05-18-015031

NCIC

INQ. ENTD.

E V E N T	INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM						
	1. 990 - DISTURBANCE/ COMPLAINT CALL		☒ YES ☐ NO	☐ YES ☐ NO	20		☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Org. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.						
	2. 90M - MENTAL PERSON / EPC		☒ YES ☐ NO	☐ YES ☐ NO	20								
	3. OR - ILL TREATMENT OF ANIMALS		☒ YES ☐ NO	☐ YES ☐ NO	20								
I N C I D E N T	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)					ZIP CODE	WEAPON TYPE						
	216 JONES AVE, SIMPSONVILLE SC					29881							
	INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK		LOCATION NO.					
	07/26/2018	0100		07/26/2018	0132	DISPATCH DATE/TIME 24 HR. CLOCK DISPATCH DATE/TIME 07/26/2018 0134 TIME ARRIVED 0137 DEPART. TIME 0430		A					
C O M P L A I N A N T	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE		
	KINCANNON, JAMES CHARLES		PA		☒ SOU	W	M	62	N				
	ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.						
	216 JONES AVE		SIMPSONVILLE		SC	29881-2339	A						
V I C T I M	VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE		
	KINCANNON, ROXIE TODD				☒ SOU	W	F	65	N				
	HEIGHT		WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	5-0		100	BRO	BRO								
# 1	ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.						
	216 JONES AVE		SIMPSONVILLE		SC	29881-2339	A						
	VISIBLE INJURY (VICT. 1) ☐ YES ☒ NO EXPLAIN --												
	VICTIM (NO. 1) USING: ALCOHOL: ☐ YES ☒ NO ☐ UNK. DRUGS: ☐ YES ☒ NO ☐ UNK.												
S U B J E C T	☐ TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED J - This Jurisdiction S - State O - Out of State U - Unknown												
	☒ SUSPECT		SUBJECT NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
	☐ RUNAWAY		KINCANNON, JAMES JOHN TODD		W	M	37	N		5-10	220	BRO	
	☐ WANTED		FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.										
# 1	☐ WARRANT		ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.					
	☐ ARREST		216 JONES AVE		SIMPSONVILLE	SC	29881	A					
	☐ JAIL		SUBJECT (NO. 1) USING: ALCOHOL: ☐ YES ☐ NO ☒ UNK.		ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST				
	☐ SUMMONS		DRUGS: ☐ YES ☐ NO ☒ UNK. TYPE:		TOTAL # ARRESTED 0		07/26/2018 0100						
N A R R A T I V E	Offenses:												
	DISTURBANCE/ COMPLAINT CALL												
	MENTAL PERSON / EPC												
	ILL TREATMENT OF ANIMALS												
On July 26, 2018 at approximately 0134, I, Inv. Weibel was dispatched to 216 Jones Ave. In reference to a disturbance.													

Date Entered: 07/26/2018 03:59:21 AM		Last Modified: 07/27/2018 04:05:42 PM		JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	
Print Date:							
P R O P E R T Y	TYPE (GROUP)					TOTAL VALUE	
	Burned						
	Count/Forged						
	Dest./Damaged						
	Recovered						
	Seized						
A D M I N I S T	SUBJECT IDENTIFIED	☒ YES ☐ NO	SUBJECT LOCATED	☒ YES ☐ NO	☒ ACTIVE ☐ ADM. CLOSED	☐ ARRESTED UNDER 18	☐ EX-CLEAR UNDER 18
	REASON FOR EXCEPTIONAL CLEARANCE:	1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY					
	REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER
	INV J WEIBEL	07/26/2018	406	CPL N DOWNING		07/26/2018	B2
	FOLLOW-UP INVESTIGATION OFFICER						
	☐ YES ☐ NO INV J WEIBEL					07/26/2018	

EXHIBIT

H

PENAD 800-631-6989

AGENCY I.D.
SC0230500

SIMPSONVILLE POLICE DEPARTMENT
SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER
0,5,-1,8-0,1,5,0,3,1

NOIC
INC. ENTD.

☐ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☒ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY

PAGE 1

V I C T I M S S U B J E C T O V E R F L O W I N G	☐ COMPLAINT	NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
	☒ VICTIM # 002	SOCIETY/PUBLIC		#1	#2	#3	J	S	O	U			
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ RUNAWAY	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE				
	☐ WANTED						A	H	B				
	☐ WARRANT												
	☐ ARREST	VICTIM NO. 002 VISIBLE INJURY: ☒ NO ☐ YES		VICTIM USING ALCOHOL: ☒ NO ☐ YES ☐ UNK.		TWO-MAN VEH. ☐ DETECTIVE/SPLASH ☐ ALONE							
	☐ JAIL	EXPLAIN:		DRUGS: ☒ NO ☐ YES TYPE:		UNK. ☐ ONE-MAN VEH. ☐ OTHER		ASSISTED					
	☐ SUMMONS	☐ SUBJECT NO. _____ USING ALCOHOL: ☐ NO ☐ YES											
	☐	USING DRUGS: ☐ NO ☐ YES TYPE:				UNKNOWN							
N A R R A T I V E													
						JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY			JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY				

A D M I N I S T	SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☒ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY									
	REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	
	INV J WEIBEL		07/26/2018		406		CPL N DOWNING		07/26/2018	
							FOLLOW-UP INVESTIGATION OFFICER ☐ YES ☐ NO INV J WEIBEL		07/26/2018	

INCIDENT REPORT SUPPLEMENTAL

Page #: 1

Case Number: 05-18-015031

Officer: 00387 DOWNING, N

Date Entered/Changed: 07/26/2018

Reviewer: 00255

Review Date: 07/26/2018

DETAILED STATEMENT OF INVESTIGATION: On the above listed date, I responded to 216 Jones Ave in reference to assisting Inv. Weibel (Unit 406). I arrived on scene and was directed to obtain digital still images of the inside of the residence.

I then obtained digital still images of the residence.

Inside of the residence I observed a deceased medium sized brown and black in color dog lying on its left side in a large amount of suspect blood. I observed the left side of the dog, the side facing upward, to have several suspect puncture marks with dried suspect blood around the punctures. I observed suspect blood on a kitchen cabinet as well as suspected blood on two kitchen drawers above the kitchen cabinet. I observed what appeared to be fecal matter behind the deceased dog.

I observed two knives located in the kitchen sink. I observed one knife to have a black in color handle and one knife to have a brown in color handle.

I then secured and took possession of, at Inv. Weibel's request, both the knife with the black handle and the knife with the brown handle, located in the kitchen sink. Upon arrival both knives were placed into a secured temporary storage locker in property and evidence. The digital still images were placed onto two separate CD's. One copy of the CD was placed with the original copy of the report and the other CD was also placed into a secured locker in property and evidence.

No further action was taken.

INCIDENT REPORT SUPPLEMENTAL

Page #: 1

Case Number: 05-18-015031

Officer: 00294 WEIBEL, J

Date Entered/Changed: 07/26/2018

Reviewer: 00387

Review Date: 07/26/2018

DETAILED STATEMENT OF INVESTIGATION: On July 26, 2018 at approximately 0134, I, Inv. Weibel was dispatched to 216 Jones Ave. in reference to a disturbance.

Simpsonville Dispatch explained that Jim Kincannon had contacted the Simpsonville Police Department because his wife, Roxie Kincannon, was in fear for her safety and locked herself in the bathroom. While en route, I did contact Roxie Kincannon, who advised that she was absolutely terrified of Todd because he had killed one of their dogs with his bare hands.

When I arrived on scene, I pulled up toward the house with my bright lights on and spotlight on the house. At that time, I did contact Todd Kincannon utilizing a house line [REDACTED]. When I advised him that I was outside, he began to explain that he had to "sacrifice the dog" on the phone. At that time, I asked him to exit the residence. He explained that he would and shortly after, exited the residence. Once he was outside, I observed Mr. Kincannon to be covered in blood and what appeared to be dog hair. At that time, he told me that he killed a dog. When I asked him why he killed the dog, he stated "I told you I think, I mean I know I'm the second coming of Christ and I got a command from God to do it".

Once other units arrived on scene, I did leave Mr. Kincannon in their observation. I did enter the residence in the attempt to secure the safety of Roxie Kincannon. Once inside, I did call Ms. Kincannon via cell phone and advised her that it was safe for her to come out. Once I entered the residence, I did locate a deceased dog in the kitchen that appeared to have suffered numerous stab wounds and was laying in a large pool of blood. The dog appeared to have defecated during the fight.

At that time, as Ms. Kincannon was exiting her bedroom, I did advise her that a dog was in fact deceased. At that time, she did walk right past me and into the kitchen. As I made entry, I did enter the kitchen to evaluate the extent of the carnage. Ms. Kincannon did ask to go outside, at which time I asked her if we could secure the remaining three (3) dogs in her room so that we could take pictures of the scene. Before she came outside, I advised Ms. Kincannon to calm down and not enflame the situation.

At that time, she was speaking with her husband, Jim Kincannon on the phone and I exited the residence. At that time, Mr. Kincannon held up his hands and proclaimed "this is a sign man". He explained that he wanted to speak with me. While we were talking, he stated "the last time you saw me, you didn't recognize me, I'm Jesus, I'm not making it up. I have a sign. I'm about to get crucified in the media. The reason I killed the dog is this, it's real simple, ... I'm sorry, I think y'all are going to have to take me to the Psych Institution, I get that. But I'll tell you from a legal stand point you know, it's in the State Constitution that God is a sovereign and I honestly think he told me to do it". Mr. Kincannon stated that he wanted to show us the sign and held up his hands to show his wrists. At that time, I was advised that Jim Kincannon wanted to speak with me directly. I did stop away and speak with him via cell phone.

When I returned, he was talking about going to a Psychological Institution but didn't want to go to Spring Brook. At that time, I did advise him that we would be going to Greenville Memorial Hospital to get a psychological evaluation. Numerous times he advised that he wanted to pray. After praying, he advised that he was supposed to go to the place in Lexington, Three Rivers. He stated that Spring Brook was hell and Three Rivers was heaven. At that time, I did request Simpsonville Dispatch to call for an ambulance. As I returned, Mr. Kincannon and I began talking about going to Greenville Memorial Hospital (GMH). When Mr. Kincannon found out that he was going to GMH, he began to argue about a law stating that I had to take him to Three Rivers. I advised him that I was not going to take him to Three Rivers and that I was taking him to GMH. At that time, while he was protesting, I did tell him that if I had to, I was going to take him into my Emergency Protective Custody. He advised, while protesting, please do it. He advised that he wasn't going to fight me, at which time he advised that he prayed about it and was told to tell me to take him to Heaven. When I asked Mr. Kincannon if he wanted an ambulance to take him or for me to take him, he requested that I do. Shortly after, due to my past experiences with Mr. Kincannon, the rapport I have with him, and the fact that he was calm, I did opt to cancel Greenville County Emergency Medical Services (GCEMS). At that time, I felt it was clear and understood that Mr. Kincannon was now in my Emergency Protective Custody. I did request that he be taken inside and be cleaned up a bit and then dressed.

Before he was escorted inside, Mr. Kincannon became upset and then requested that we, the Simpsonville Police Department, take possession of his dog, Noodle. He was then escorted inside by Pfc. Davis (Bravo 3) to change. At that time, I began to speak with Ms. Kincannon about the fact that Mr. Kincannon needed psychological help.

At that time, Cpl. Downing (Bravo 2) arrived on scene to take photographs on the scene. Once Mr. Kincannon and Pfc. Davis exited the residence, I confirmed that he had his wallet on his person with his ID. Once that was confirmed, I did have Pfc. Davis search Mr. Kincannon for any weapons, to which there were none. I did place him in two (2) sets of handcuffs behind his back. We then walked into the residence and I pointed him to the room that the dogs were in. He then opened the door and Noodle exited the room and we placed him on a leash. At that time, I did secure the dog. He asked me to make sure the dog went to his preacher. I did remind him that we would take his dog into our custody

INCIDENT REPORT SUPPLEMENTAL

Page #: 2

Case Number: 05-18-015031

Officer: 00294 WEIBEL, J

Date Entered/Changed: 07/26/2018

Reviewer: 00387

Review Date: 07/26/2018

and release him to his father, Jim Kincannon. I did then escort Mr. Kincannon out to my vehicle. When I opened the door, he asked if he could ride up front with me. I advised him that he had to ride in back, but that I would move the handcuffs from the rear to the front. He was then placed into the rear of my patrol car, with the seatbelt on. Once Mr. Kincannon was in the rear of my patrol car, Pfc. Davis advised me that both Roxie and Jim Kincannon explained that they didn't want the dog to go to the kennel and that they would hold the dog as the dog as been in their custody. I did agree that the dog could stay at the Kincannon residence.

While on the way to GMH, my in-car camera was activated and my body camera was activated to record what Mr. Kincannon was saying.

While en route to GMH, I did request Simpsonville Dispatch to contact GMH and request that we be allowed to enter the Emergency Room for the psychological evaluation.

Once at GMH, I was met by Security Officer Booker, who escorted us to C-Pod Emergency Room. Once in the ER, we were escorted to a room. I did speak with Intake nurse Khadijah T. After a short time, we met with Dr. Aubry Bryant, who began the evaluation process. After he was evaluated, Mr. Kincannon was transferred to their custody after some time. I asked for a copy of the "white sheet" and was advised that the hospital didn't provide copies of such. Once custody was transferred, I did exit the hospital.

I have not secured a warrant for Mr. Kincannon's arrest yet, due to wanting to confer with the Greenville County Solicitor's Office, based on Mr. Kincannon's mental state.

This case is active. Nothing follows.

INCIDENT REPORT SUPPLEMENTAL

Page #: 1

Case Number: 05-18-015031

Officer: 00294 WEIBEL, J

Date Entered/Changed: 07/26/2018

Reviewer: 00387

Review Date: 07/26/2018

DETAILED STATEMENT OF INVESTIGATION: On July 26, 2018 I, Inv. Weibel did contact the Greenville County Solicitors Office in reference to this case. I spoke with Law Enforcement Liaison Brian Moroney, and explained that situation to him. I did explain what Mr. Kincannon had done with his hands, the knives, and that he proclaimed himself to be the second coming of Jesus Christ.

At that time, Mr. Moroney did advise me that South Carolina Statute 47-01-0040B (Ill Treatment of Animals) would be an appropriate charge and that the Greenville County Solicitor's Office would be willing to prosecute the case. At that time, I did contact Judge Feld and advised her of the case, as well as the criminal charge I was seeking. She advised me that she would be willing to sign the warrant into service on Friday (July 26, 2018). A copy of the report will be attached to the warrant and left in the judges box in the squad room.

I did make contact with Jim Kincannon. While speaking with him, he did advise me that Greenville Memorial Hospital did commit Todd for a mental health evaluation for an unknown amount of time. I did advise Mr. Kincannon that I did speak with the Greenville County Solicitors Office and a Judge and advised him that I would be seeking a warrant for his son's arrest upon his release from the mental health clinic. He stated that he understood.

When I asked Mr. Kincannon how his wife, Roxie, was doing, he advised me that she is still very upset. I did explain to Mr. Kincannon that due to the fact that they owned Bailey, a brown and black Beagle/Cattle dog mix, who was approximately ten (10) years old, they were to be considered victims. I did explain that I completed a Victim Notification Information (VNI) Form and advised that I would need Ms. Kincannon to sign it. Mr. Kincannon advised that due to a lack of sleep, as well as the trauma she endured, to not bother Ms. Kincannon this evening. I advised Mr. Kincannon that the VNI was complete and that it was currently at the Simpsonville Police Department and would need to be picked up. He stated that he understood.

Mr. Kincannon advised he would call me to set up a time to pick up the VNI.

Nothing follows.

INCIDENT REPORT SUPPLEMENTAL

Page #: 1

Case Number: 05-18-015031

Officer: 00392 CARSON, J

Date Entered/Changed: 07/27/2018

Reviewer: 00387

Review Date: 07/27/2018

DETAILED STATEMENT OF INVESTIGATION: On July 26, 2018, I, PTL Carson, responded to 216 Jones Ave as a backup unit for INV. Weibel (Unit # 406), in reference to a disturbance in the City of Simpsonville, Greenville County, South Carolina.

Upon arrival, I observed a white male sitting on the porch steps, shirtless, and blood resonating on his hands, legs, and torso. There was also a cut on the suspects hand, which was also covered in hair. INV. Weibel identified the individual as Todd Kincannon, as INV. Weibel has dealt with the individual in the past. I, PTL Carson, heard Mr. Kincannon state that he had heard from God that an animal needed to be sacrificed for the good of mankind. Mr. Kincannon stated that every 1,000 years Jesus needs a sacrifice and blood must be spilt. Mr. Kincannon also advised that to his knowledge, only once has the sacrifice ever been a human. Mr. Kincannon stated that God told him to sacrifice the dog belonging to his mother, Roxie Kincannon. Ms. Kincannon did advise that Mr. Kincannon's dog, a large golden retriever, was in her bedroom with the door shut, as she was afraid that Mr. Kincannon might try to hurt that dog as well. Mr. Kincannon stated that he would never hurt his personal dog and he was afraid that Mr. Kincannon would hurt his dog in retaliation for him killing hers. Mr. Kincannon was adamant about getting his personal dog to his pastor as he feared for its safety.

INV. Weibel advised Mr. Kincannon that he was going to be taken to Greenville Memorial Hospital for a psychological evaluation. At first, Mr. Kincannon was hesitant, and only wanted to be transported to Three Rivers Behavioral Health, located in Lexington, South Carolina. However, INV. Weibel stated that at this time, that was not an option. PFC. Davis took Mr. Kincannon back into the residence to wash the blood off of his body and to have him properly dressed. INV. Weibel advised me to make sure there were photographs taken of the entire interior of the residence and that CPL. Downing (Unit # Bravo 2) was on his way to the scene.

I entered the premises of the residence with CPL. Downing, where we observed a brown in color medium sized dog lying on the kitchen floor in a puddle of blood with various entry wounds. There were two medium sized knives placed into the kitchen sink. I observed blood stains and dog hair on both knives. PFC. Davis and Mr. Kincannon emerged from Mr. Kincannon's room inside the residence. Mr. Kincannon continued to advise responding officers that he wanted one of us to take his dog for safe keeping. Mr. Kincannon's golden retriever was placed onto a leash and Mr. Kincannon was advised that responding officers would take care of the dog.

At this time, Mr. Kincannon was placed into Emergency Protective Custody by INV. Weibel, handcuffed behind the back, double locked, and checked for proper fit. Mr. Kincannon was then placed into the backseat of INV. Weibel's patrol vehicle, to await being transported to GME. PFC. Davis informed INV. Weibel that the city kennel could not accommodate the large dog, as there was not enough room. PFC. Davis also stated that Ms. Kincannon would allow the dog to stay at 216 Jones Ave and no harm would come to it. INV. Weibel cleared the scene and transported Mr. Kincannon to GME, and the dog was placed into the custody of Ms. Kincannon.

Ms. Kincannon did advise responding officers that her husband, Jim, and a family friend were on the way back to the residence and that they would take care of moving the deceased animal. Units cleared and returned to service. Nothing follows.

This incident was recorded via Body Worn Camera.

ELECTRONICALLY FILED - 2019 May 24 11:47 AM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201168

INCIDENT REPORT SUPPLEMENTAL

Page #: 1

Case Number: 05-18-015031

Officer: 00363 BYRD, S

Date Entered/Changed: 07/27/2018

Reviewer:

Review Date:

DETAILED STATEMENT OF INVESTIGATION: On 07/27/2018, I received a phone call from Inv. Weibel. Weibel stated that the Attorney General stated that they were going to set no bond on KinCannon and asked if I could do a Notification of Patient Release form. I contacted GMH to see what room KinCannon was in, to which they stated E-55. Judge Feld arrived to sign the form. I then faxed the form to GMH [REDACTED].

Nothing further.

ELECTRONICALLY FILED - 2019 May 24 11:47 AM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201168

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	
JAMES JOHN TODD KINCANNON,	Case No. 2019-CP-32-1168
Plaintiff,	
v.	PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS
ASHELY SUZANNE GRIFFITH, MOORE TAYLOR LAW FIRM, P.A., VANCE STRICKLIN, and AMBER FULMER,	
Defendants.	

Plaintiff respectfully submits the following memorandum in opposition to Defendants' Motion to Dismiss filed April 23, 2019.

EXECUTIVE SUMMARY

Defendants' Motion to Dismiss must be denied pursuant to the holding in Broadmoor Apartments of Charleston v. Horwitz, 306 S.C. 482, 413 S.E.2d 9 (1991), in which the Supreme Court held that "liability for an abuse of process extends to all who knowingly participate, aid, or abet in the abuse." Id. at 486. "Those who advise or consent to the unlawful acts, or subsequently ratify them, are liable as joint tortfeasors [in an abuse of process action]. Id.

Plaintiff's Verified Complaint plainly alleges that each Defendant knowingly participated in, aided, and abetted the abuse of the plea bargain process by the prosecutor employed by the Lexington County Sheriff's Department. The fact that none of the Defendants had any legal right to exercise "control" over criminal prosecution decisions made by the prosecutor is irrelevant per the Broadmoor holding. All that is necessary to qualify Defendants as joint tortfeasors with respect to the abuse of criminal process

alleged in the Verified Complaint is knowingly participating in, aiding, abetting, advising, consenting, or subsequently ratifying an abuse of process, regardless of who actually performs the act or has the legal right to perform the act. Plaintiff has alleged in the Verified Complaint that each Defendant knowingly participated in, aided, abetted, advised, consented, and/or subsequently ratified an act constituting abuse of process. Defendants' Motion to Dismiss must therefore be denied per the holding in Broadmoor.

If at the conclusion of discovery there exists no direct or circumstantial evidence that Defendants knowingly participated in, aided, abetted, advised, consented to, or subsequently ratified an act constituting abuse of process, whether performed by the Lexington County Sheriff's Department prosecutor or by some other person, then Defendants will be entitled to summary judgment on the abuse of process cause of action and perhaps the remaining causes of action. But Defendants cannot prevail on a Rule 12(b)(6) motion or other type of demurrer because Plaintiff's Verified Complaint adequately sets out factual allegations in support of Plaintiff's position that each Defendant knowingly participated in, aided, abetted, advised, consented to, or subsequently ratified an act constituting abuse of process. The Broadmoor case is crystal clear on these matters.

RULE 12(b)(6) STANDARD

Defendants' Motion to Dismiss is based exclusively on the contention that the Complaint "fail[s] to state a claim upon which relief may be granted." See Motion to Dismiss at 1. This motion therefore falls entirely under Rule 12(b)(6), SCRPC. When considering a Rule 12(b)(6) motion, the Court must assume as true all well-pleaded factual allegations in the Complaint. Defendants' Motion to Dismiss does not allege that

any of the factual allegations in the Complaint are *not* well-pleaded, therefore all factual allegations in the Complaint must be assumed true for the purpose of the Court's consideration of Defendants' motion. The Court must "construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431 (2009).

ANALYSIS AS TO ABUSE OF PROCESS CAUSE OF ACTION

Defendants' Motion to Dismiss Plaintiff's abuse of process cause of action must be denied pursuant to the holding in Broadmoor Apartments of Charleston v. Horwitz, 306 S.C. 482, 413 S.E.2d 9 (1991). Defendants contend that the abuse of process claim must be dismissed because the particular abuse of process principally at issue in this case involved a prosecutor employed by the Lexington County Sheriff's Department¹ refusing to dismiss a criminal domestic violence charge against Plaintiff unless Plaintiff agreed to surrender to Defendants in a civil dispute regarding the possession of a pet animal that had no relationship whatsoever to the criminal domestic violence matter. Defendants' position is that because they "are not in control of the actions" of the Lexington County Sheriff's Department prosecutor, they are immune from liability for abuses of process the prosecutor committed at their behest, with their consent and approval, and for their benefit. This is not the law of South Carolina, as the Supreme Court held in the Broadmoor case.

¹ Defendants' motion incorrectly refers to the Lexington County Sheriff's Department prosecutor as a Lexington County Solicitor's Office solicitor. The Eleventh Circuit Solicitor's Office has had no involvement in the criminal domestic violence matter. As of June 30, 2016, the CDV matter was being prosecuted by a lawyer employed as a prosecutor by the Lexington County Sheriff's Department and has thereafter been prosecuted by the South Carolina Attorney General's Office after the LCSD prosecutor consented to disqualification due to the misconduct referenced in the Verified Complaint in August 2016.

Addressing the issue of aiding-and-abetting liability in abuse of process cases, the Supreme Court held as follows in Broadmoor:

There are two essential elements required for an abuse of process action: (1) an ulterior purpose, and (2) a willful act in the use of the process not proper in the regular conduct of the proceedings. Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 153 S.E. (2d) 693 (1967). As a general rule, liability for an abuse of process extends to all who knowingly participate, aid, or abet in the abuse. See generally 1 Am. Jur. (2d), Abuse of Process § 17; 72 C.J.S. Process § 112. Those who advise or consent to the unlawful acts, or subsequently ratify them, are liable as joint tortfeasors. See, e.g. Woodring v. Jennings State Bank, 603 F. Supp. 1060 (D. Neb. 1985); Alexander v. Unification Church, 634 F. (2d) 673 (2d Cir.1980); Ingo v. Koch, 127 F. (2d) 667 (2d Cir.1942). Where there is any evidence of aiding or abetting, the question is one for the jury. McGann v. Allen, 105 Conn. 177, 134 A. 810 (1926); See also Ingo v. Koch, *supra*; Lambert v. Bruton, 127 Me. 510, 144 A. 864 (1929). As was stated by the Supreme Judicial Court of Massachusetts in 1887:

The principle is general, and is applicable to all kinds of abuses outside of the proper service of lawful process, whether civil or criminal, that for every such wrong there is a remedy, not only against the officer whose duty it is to protect the person under arrest, but also against all others who united with him in inflicting the injury.

Wood v. Bailey, 144 Mass. 365, 11 N.E. 567, 576 (1887).

South Carolina law is clear: a private party who knowingly participates in, aids, abets, advises, consents to, or subsequently ratifies an act constituting abuse of process is liable for abuse of process even if he did not personally commit the act. “The hand of one is the hand of all” is fully applicable to abuse of process cases per Broadmoor, and Plaintiff’s Verified Complaint is replete with well-pleaded factual allegations asserting that Defendants and the prosecutorial officer who committed the principal abuse of process (and later prosecutorial officers who ratified it) all acted in concert with one another and would all be proper defendants in an abuse of process action, including each and every one of the named Defendants.

Plaintiff's Complaint alleges with specificity that the instant Defendants procured the prosecutorial officer's abuse of criminal process and related tortious conduct directed at Plaintiff in connection with the prosecutorial officer's attempt to dismiss the criminal domestic violence charge (so long as Plaintiff agreed to the extortionate condition regarding the unrelated civil dispute) and are therefore liable for it as joint tortfeasors, which is plainly proper under Broadmoor. The Complaint could not be clearer with respect to these factual allegations. Paragraph 9 of the Complaint is directed at this matter and states, in no uncertain terms:

All Defendants are jointly and severally liable, both directly as joint tortfeasors and vicariously, for the actionable conduct of one Nicole Howland of the Lexington County Sheriff's Department described herein, as Defendants and Howland willfully acted in concert with respect to these matters. All actionable conduct engaged in by Howland and other agents of the State of South Carolina, including all tortious acts and omissions, was procured by Defendants and engaged in by Howland and/or other agents of the State of South Carolina at the direction of Defendants and with their express approval.

Verified Complaint at 2, ¶ 9.

Paragraph 15 of the Complaint also plainly alleges, as a matter of fact, that Defendants propositioned the prosecutorial officer to attach the improperly extortionate demand relating to the civil dispute to her offer to discontinue the criminal domestic violence prosecution:

Howland [the prosecutorial officer] made this unlawful demand after being propositioned by Defendant Griffith and her legal counsel in the civil dispute involving Plaintiff's animal, the Moore Taylor Defendants, in connection with a court appearance in the criminal domestic violence case on June 30, 2016. Howland willingly agreed to attach that unlawful condition relating to an unrelated civil dispute to the offer to drop the criminal domestic violence charge and did so.

Verified Complaint at 3-4, ¶ 15.

The Complaint further contains a well-pleaded factual allegation in Paragraph 18 that Defendants' act in procuring the prosecutorial officer's misconduct is the sole and proximate cause of the continuation of the criminal domestic violence prosecution beyond June 30, 2016 (an allegation which is plainly correct given the indisputable facts of the case) and, therefore, is the sole and proximate cause of the injuries Plaintiff seeks to recover damages for in this action:

[T]he sole and proximate cause of the continuation of the criminal domestic violence prosecution after June 30, 2016 and the elevation of charges from the minor misdemeanor charge to the two major felony charges was the unlawful conduct of Howland, procured by Defendant Griffith and the Moore Taylor Defendants, which resulted in Howland's lawful and proper offer to drop the bogus criminal domestic violence charge against Plaintiff being unlawfully conditioned on Plaintiff surrendering his animal to Defendant Griffith to enable her to prevail in the wholly unrelated civil dispute between Plaintiff and Defendant Griffith.

Verified Complaint at 4-5, ¶ 18.

In light of Broadmoor, Plaintiff's Verified Complaint plainly states facts sufficient to constitute a cause of action for abuse of process against each Defendant. Plaintiff's allegations clearly meet any conceivable standard for alleging liability for abuse of process based on a "hand of one, hand of all" theory pursuant to Broadmoor.

ANALYSIS AS TO REMAINING CAUSES OF ACTION

Defendants also contend, in their motion to dismiss, that their "lack of prosecutorial control" theory should doom the remaining causes of action in Plaintiff's Verified Complaint but cite no authority in support of the proposition (nor did they cite any authority in support of the proposition with respect to the abuse of process claim). Plaintiff contends that because the remaining causes of action, are either related to, derivative of, or functionally similar to the abuse of process cause of action, the

Broadmoor rule of “hand of one, hand of all” liability necessarily ought to apply to them as well as a basic matter of legal logic, and that is certainly in keeping with basic principles of tort law and joint tortfeasor liability. Accordingly, Plaintiff respectfully request the Court deny Defendants’ Motion to Dismiss with respect to the remaining causes of action in the Verified Complaint.

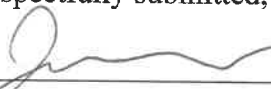
OPPORTUNITY TO AMEND COMPLAINT

Plaintiff was served with the Answer and Counterclaim and Motion to Dismiss on May 9, 2019, meaning Plaintiff has until June 10, 2019 to amend the Verified Complaint as a matter of right pursuant to Rule 15, SCRCP. Should the Court conclude that Plaintiff has not adequately pleaded Broadmoor-style “hand of one, hand of all” liability with respect to the abuse of process claim or find some other defect with regard to the remaining causes of action, Plaintiff respectfully requests the Court issue its ruling on the matter prior to June 10, 2019 to afford Plaintiff the opportunity to amend the Verified Complaint as a matter of right to cure any pleading defects the Court identifies.

CONCLUSION

Defendants’ Motion to Dismiss must be denied because Plaintiff has pleaded all that is necessary to state facts sufficient to constitute a cause of action for abuse of process under Broadmoor, supra. The remaining causes of action, being functionally similar to the abuse of process claim, ought to be governed by Broadmoor as well. Defendants’ contention that a private party cannot be sued for abuse of process committed by a prosecutor in league with the private party is plainly wrong per the clear holding of the Broadmoor case, a copy of which is attached to this memorandum for the Court’s review and consideration.

Respectfully submitted,



JAMES JOHN TODD KINCANNON
216 Jones Avenue
Simpsonville, South Carolina 29681
864-963-4374
ToddKincannon@gmail.com
Plaintiff Pro Se

May 21, 2019

CERTIFICATE OF SERVICE

The undersigned Plaintiff hereby certifies service by first class mail on the date below indicated in accordance with Rule 5, SCRPC on all Defendants by and through their counsel of record, Ward Bradley of the Moore Taylor Law Firm, P.A., at the correct mailing address listed for Mr. Bradley and his firm.



JAMES JOHN TODD KINCANNON

May 21, 2019

306 S.C. 482 (1991)

413 S.E.2d 9

**BROADMOOR APARTMENTS OF CHARLESTON, a South Carolina Limited Partnership,
and Town and Campus International, Inc., Respondents/Appellants**

v.

**Lanny HORWITZ, Max Schlopy and Berkeley Square Associates, Inc.,
Appellants/Respondents.**

23529

Supreme Court of South Carolina.

Heard April 23, 1991.

Decided December 16, 1991.

Rehearing Denied February 4, 1992.

483 *483 *William R. Phipps, Bethea, Jordan and Griffin, P.A.*, Hilton Head, for appellants-respondents Horwitz and Berkeley Square Associates, Inc.

T. Reeve Sams, Levin, Sams & Grimsley, Beaufort, for appellant-respondent Schlopy.

Richard S. Rosen and Karen E. McCormick, Rosen, Rosen & Hagood, Charleston, and *Joab Dowling, Jr., Dowling, Sanders, Dukes, Svalina & Williams, P.A.*, Beaufort, for respondents-appellants.

Heard April 23, 1991;

Decided December 16, 1991.

Rehearing Denied February 4, 1992.

CHANDLER, Justice:

Respondents-Appellants, Broadmoor Apartments and Town and Campus International (Broadmoor), instituted suit against Appellants-Respondents, Lanny Horwitz, Berkeley Square Associates, and Max Schlopy, alleging (1) slander of title and (2) abuse of process. The trial court, by directed verdict, dismissed the slander of title action; on abuse of process, Broadmoor was awarded \$750,000. All parties appeal.

We affirm.

484 *484 **FACTUAL BACKGROUND**

Town and Campus, as General Partner of Broadmoor, entered into negotiations with Max Schlopy for the purchase of Broadmoor's 305-unit apartment complex in Charleston, South Carolina. On July 2, 1983, Schlopy executed a contract to purchase the complex for \$7,400,000. The required \$75,000 deposit was subsequently reduced to \$50,000 by agreement. Thereafter, Schlopy was contacted on two occasions by Broadmoor's agent, Richard Zitzman, requesting the \$50,000 down payment. When it was not received,

Zitzman wrote Schlopy on October 18, 1983, advising that Broadmoor would no longer entertain the offer to purchase. Meanwhile, and unbeknownst to Zitzman, Schlopy had written a letter on October 17, 1983, requesting the deposit be reduced to \$25,000. Upon receipt of this letter, Zitzman replied on October 25, 1983, advising that \$25,000 was unacceptable.

Schlopy *never* made the required \$50,000 deposit. Nevertheless, on October 28, 1983, he purported to assign his "Contract of Sale" to Berkeley Square Realty Associates, Lanny Horwitz, President.^[1] The assignment included the following:

... the Contract of Sale is valid and binding and that the Assignor and Seller have agreed that the deposit to be paid under the contract has been reduced to ... \$25,000 ... [to] be paid by Assignee promptly upon consummation of the within assignment.

It also reserved a 10% interest to Schlopy. A "consent" provision contained in the assignment was never signed by Broadmoor.

Thereafter, Horwitz wrote to Broadmoor, advising of the assignment from Schlopy. Prior to this letter, Broadmoor had had no dealings with Horwitz or Berkeley Square.

Under the terms of the original contract, Schlopy had the right to assign his interest, without Broadmoor's consent, *only* if a corporation known as Marc Equity^[2] was a partner of the assignee.

485 *485 When Schlopy and Horwitz learned that Broadmoor refused to consent to the assignment, they, belatedly, on November 2, 1983, purported to comply with the terms of the original contract by naming Marc Equity a corporate partner.

Thereafter, on November 6, 1983, Horwitz brought three potential investors to inspect the apartment complex, and was "thrown off" the premises by the on-site manager. On November 7, 1983, Horwitz issued a \$50,000 draft to cover the deposit; however, the bank account on which the draft was drawn had a balance of \$10. On November 9, 1983, Horwitz wrote to a limited partner of Broadmoor, Cameron Todd, advising of Berkeley's intent to file a lis pendens to enjoin sale of the property.

On November 10, the lis pendens was filed, followed by a summons and complaint seeking specific performance.

In April, 1985, the lis pendens and specific performance actions were resolved in Broadmoor's favor. The trial court held (1) that Schlopy had no enforceable contract to assign and (2) that neither Schlopy nor Berkeley had made the required \$50,000 deposit.

Thereafter, Broadmoor sued Schlopy, Horwitz and Berkeley, for slander of title and abuse of process. The slander of title action, by directed verdict, was dismissed; the abuse of process action resulted in a jury verdict of \$750,000.

ISSUE

Were Schlopy, Horwitz and Berkeley entitled to a directed verdict on the abuse of process claim?^[3]

DISCUSSION

In reviewing the denial of a motion for directed verdict, this Court must consider the evidence and all reasonable inferences in the light most favorable to the opposing party. We may not pass upon the veracity of witnesses or determine the case according to what we believe is the weight of the evidence. Graham v. Whitaker, 282 S.C. 393, 321 S.E. (2d) 40 (1984); Godfrey v. Little River Fishing Fleet, 302 S.C. 426, 396 S.E. (2d) 828 (1990). If there is any evidence tending to prove *486 the allegations of the complaint, the motion must be denied. Godfrey, supra.

There are two essential elements required for an abuse of process action: (1) an ulterior purpose, and (2) a willful act in the use of the process not proper in the regular conduct of the proceedings. Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 153 S.E. (2d) 693 (1967). As a general rule, liability for an abuse of process extends to all who knowingly participate, aid, or abet in the abuse. See generally 1 Am. Jur. (2d), *Abuse of Process* § 17; 72 C.J.S. *Process* § 112. Those who advise or consent to the unlawful acts, or subsequently ratify them, are liable as joint tortfeasors. See, e.g. Woodring v. Jennings State Bank, 603 F. Supp. 1060 (D. Neb. 1985); Alexander v. Unification Church, 634 F. (2d) 673 (2d Cir.1980); Ingo v. Koch, 127 F. (2d) 667 (2d Cir.1942). Where there is any evidence of aiding or abetting, the question is one for the jury. McGann v. Allen, 105 Conn. 177, 134 A. 810 (1926); See also Ingo v. Koch, supra; Lambert v. Bruton, 127 Me. 510, 144 A. 864 (1929). As was stated by the Supreme Judicial Court of Massachusetts in 1887:

The principle is general, and is applicable to all kinds of abuses outside of the proper service of lawful process, whether civil or criminal, that for every such wrong there is a remedy, not only against the officer whose duty it is to protect the person under arrest, but also against all others who may united with him in inflicting the injury.

Wood v. Bailey, 144 Mass. 365, 11 N.E. 567, 576 (1887).

Adverting to the record before us, we hold that the trial court properly submitted abuse of process to the jury.

In addition to the factual background previously set forth, Horwitz testified that he never had a loan commitment from a bank to purchase the property. Additionally, he admitted that, prior to the assignment, he was aware of Broadmoor's October 18 letter to Schlopy rejecting the offer of purchase. Moreover, despite Horwitz's "unwilling[ness] to put the deposit with the brokers as called for under the contract," (Tr. p. 738), Berkeley moved in July, 1984, to enforce a purported settlement agreement.^[4] Lastly, *487 bank records revealed that Berkeley at no time had sufficient funds in its bank account to pay the \$50,000 downpayment.

We find ample evidence from which the jury could infer that Berkeley and its president, Horwitz, willfully abused the process, with the ulterior purpose of preventing a sale to third parties in hopes of obtaining financial backing with which to purchase the property at an advantageous price.

Regarding Schlopy, he "assigned" the contract to Berkeley, notwithstanding Broadmoor's rejection of his offer. He then advised Horwitz that he "thought [filing a lis pendens] was a good idea." Further, during the pendency of the lawsuit, he filed an affidavit on Berkeley's behalf, erroneously listing Marc Equity as the assignor and stating "as soon as Mr. Zitzman received my October 17 letter [suggesting a \$25,000 deposit] he told me by telephone that the information was satisfactory and the parties would proceed to fulfill the terms of the contract..." Nothing in the record supports this affidavit. To the contrary, Mr. Zitzman had explicitly rejected Schlopy's request that the required deposit be reduced from \$50,000 to \$25,000.

Finally, Schlopy's participation is demonstrated by his retention of a 10% interest under the assignment, and his statement to a Broadmoor agent that, although not a party, he was involved in the lawsuit by virtue of his entitlement to commissions.

Under these facts, the issue of whether Schlopy aided, abetted or consented to the abuse of process was for the jury. Accordingly, the court correctly denied the directed verdict motion.

The remaining exceptions are affirmed pursuant to Rule 23: Kolb v. Nash, 245 S.C. 25, 138 S.E. (2d) 417 (1964) (Schlopy's exceptions 8, 13, 17 through 20 and 28); Jones v. Hamm, 253 S.C. 283, 170 S.E. (2d) 206 (1969) (Schlopy's exceptions 1 through 3); Hofer v. St. Clair, 298 S.C. 503, 381 S.E. (2d) 736 (1989), Joyner v. St. Matthews Builders, 263 S.C. 136, 208 S.E. (2d) 48 (1974), Winburn v. Minnesota Mutual Life Ins. Co., 261 S.C. 568, 201 S.E. (2d) 372 (1973) (Berkeley/Horwitz' exceptions 2 and 3, Schlopy's exceptions 4, 5, 6, 7, 9 through 12, and 14 through 16); Godfrey v. Little River Fishing Fleet, 302 S.C. 426, 396 S.E. (2d) 828 (1990), King v. Daniel International *488 Crop., 278 S.C. 350, 296 S.E. (2d) 335 (1982) (Schlopy's exceptions 26, 29; Berkeley/Horwitz' exceptions 4, 5).

Affirmed.

GREGORY, C.J., and HARWELL, FINNEY and TOAL, JJ., concur.

[1] The assignment was drafted by Horwitz, an attorney, with knowledge of Zitzman's letter to Schlopy advising that Broadmoor would "no longer entertain his offer to purchase" as no deposit had been received. Schlopy is also an attorney, engaged primarily in real estate practice.

[2] Marc Equity was a corporation with which Schlopy was engaged in numerous joint ventures. It was dissolved in 1984.

[3] In its brief, Broadmoor urges affirmance of the verdict in the abuse of process action, or, *alternatively*, it requests the award be upheld on the ground that directed verdict was improper in the slander action. In light of our affirmance, we do not address Broadmoor's exceptions.

[4] The trial court ruled that no settlement had been reached.

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STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

JAMES JOHN TODD KINCANNON,

Plaintiff,

v.

ASHELY SUZANNE GRIFFITH, MOORE
TAYLOR LAW FIRM, P.A., VANCE
STRICKLIN, and AMBER FULMER,

Defendants.

Case No. 2019-CP-32-1168

**PLAINTIFF'S AMENDED
MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS
AND MEMORANDUM IN SUPPORT OF
ORAL MOTION TO STRIKE UNTIMELY
AFFIDAVIT AND MATERIAL IN
DEFENDANTS' MEMORANDUM IN
SUPPORT ARGUING GROUNDS
OUTSIDE THE MOTION TO DISMISS**

Plaintiff respectfully submits the following amended memorandum in opposition to Defendants' Motion to Dismiss filed April 23, 2019 which supersedes the memorandum in opposition served May 21, 2019 and responds to Defendants' memorandum in support and an affidavit served May 24, 2019. This memorandum also contains argument in support of an oral motion Plaintiff intends to make at the threshold of the hearing on Defendants' Motion to Dismiss to strike and exclude an untimely, improper affidavit of Defendant Stricklin and material in Defendants' memorandum in support of their Motion to Dismiss arguing grounds outside the motion to dismiss and raised for the first time in the supporting memorandum, which was served less than two full business days prior to the hearing on the Motion to Dismiss.

EXECUTIVE SUMMARY

Defendants' Motion to Dismiss must be denied pursuant to the holding in Broadmoor Apartments of Charleston v. Horwitz, 306 S.C. 482, 413 S.E.2d 9 (1991), in which the Supreme Court held that "liability for an abuse of process extends to all who knowingly participate, aid, or abet in the abuse." Id. at 486. "Those who advise or

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consent to the unlawful acts, or subsequently ratify them, are liable as joint tortfeasors [in an abuse of process action]. Id.

Plaintiff's Verified Complaint plainly alleges that each Defendant knowingly participated in, aided, and abetted the abuse of the plea bargain process by the prosecutor employed by the Lexington County Sheriff's Department. The fact that none of the Defendants had any legal right to exercise "control" over criminal prosecution decisions made by the prosecutor is irrelevant per the Broadmoor holding. All that is necessary to qualify Defendants as joint tortfeasors with respect to the abuse of criminal process alleged in the Verified Complaint is knowingly participating in, aiding, abetting, advising, consenting, or subsequently ratifying an abuse of process, regardless of who actually performs the act or has the legal right to perform the act. Plaintiff has alleged in the Verified Complaint that each Defendant knowingly participated in, aided, abetted, advised, consented, and/or subsequently ratified an act constituting abuse of process. Defendants' Motion to Dismiss must therefore be denied per the holding in Broadmoor.

If at the conclusion of discovery there exists no direct or circumstantial evidence that Defendants knowingly participated in, aided, abetted, advised, consented to, or subsequently ratified an act constituting abuse of process, whether performed by the Lexington County Sheriff's Department prosecutor or by some other person, then Defendants will be entitled to summary judgment on the abuse of process cause of action and perhaps the remaining causes of action. But Defendants cannot prevail on a Rule 12(b)(6) motion or other type of demurrer because Plaintiff's Verified Complaint adequately sets out factual allegations in support of Plaintiff's position that each Defendant knowingly participated in, aided, abetted, advised, consented to, or

subsequently ratified an act constituting abuse of process. The Broadmoor case is crystal clear on these matters.

Defendants' remaining grounds for dismissal, asserted for the first time in its memorandum in support and not included in the Motion to Dismiss itself, cannot be heard by the Court at this time because Defendants failed to give Plaintiff proper notice of the grounds upon which the Motion to Dismiss was based in violation of Rules 6(d) and 7(b)(1), SCRCP, which are mandatory in motions practice per Dedes v. Strickland, 414 S.E.2d 134, 307 S.C. 155 (1992) and the notice requirements of the due process clauses of the United States and South Carolina Constitutions.

RULE 12(b)(6) STANDARD

Defendants' Motion to Dismiss is based exclusively on the contention that the Complaint "fail[s] to state a claim upon which relief may be granted." See Motion to Dismiss at 1. This motion therefore falls entirely under Rule 12(b)(6), SCRCP. When considering a Rule 12(b)(6) motion, the Court must assume as true all well-pleaded factual allegations in the Complaint. Defendants' Motion to Dismiss does not allege that any of the factual allegations in the Complaint are *not* well-pleaded, therefore all factual allegations in the Complaint must be assumed true for the purpose of the Court's consideration of Defendants' motion. The Court must "construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431 (2009).

**ANALYSIS AS TO THE SINGLE GROUND ASSERTED IN DEFENDANTS'
MOTION TO DISMISS REGARDING LACK OF CONTROL OF PROSECUTOR**

Defendants' Motion to Dismiss Plaintiff's abuse of process cause of action must be denied pursuant to the holding in Broadmoor Apartments of Charleston v. Horwitz, 306 S.C. 482, 413 S.E.2d 9 (1991). Defendants contend that the abuse of process claim must be dismissed because the particular abuse of process principally at issue in this case involved a prosecutor employed by the Lexington County Sheriff's Department¹ refusing to dismiss a criminal domestic violence charge against Plaintiff unless Plaintiff agreed to surrender to Defendants in a civil dispute regarding the possession of a pet animal that had no relationship whatsoever to the criminal domestic violence matter. Defendants' position is that because they "are not in control of the actions" of the Lexington County Sheriff's Department prosecutor, they are immune from liability for abuses of process the prosecutor committed at their behest, with their consent and approval, and for their benefit. This is not the law of South Carolina, as the Supreme Court held in the Broadmoor case.

Addressing the issue of aiding-and-abetting liability in abuse of process cases, the Supreme Court held as follows in Broadmoor:

There are two essential elements required for an abuse of process action: (1) an ulterior purpose, and (2) a willful act in the use of the process not proper in the regular conduct of the proceedings. Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 153 S.E. (2d) 693 (1967). As a general rule, liability for an abuse of process extends to all who knowingly participate, aid, or abet in the abuse. See generally 1 Am. Jur. (2d), Abuse of Process § 17; 72 C.J.S. Process § 112. Those who advise or consent to

¹ Defendants' motion incorrectly refers to the Lexington County Sheriff's Department prosecutor as a Lexington County Solicitor's Office solicitor. The Eleventh Circuit Solicitor's Office has had no involvement in the criminal domestic violence matter. As of June 30, 2016, the CDV matter was being prosecuted by a lawyer employed as a prosecutor by the Lexington County Sheriff's Department and has thereafter been prosecuted by the South Carolina Attorney General's Office after the LCSD prosecutor consented to disqualification due to the misconduct referenced in the Verified Complaint in August 2016.

the unlawful acts, or subsequently ratify them, are liable as joint tortfeasors. See, e.g. Woodring v. Jennings State Bank, 603 F. Supp. 1060 (D. Neb. 1985); Alexander v. Unification Church, 634 F. (2d) 673 (2d Cir.1980); Ingo v. Koch, 127 F. (2d) 667 (2d Cir.1942). Where there is any evidence of aiding or abetting, the question is one for the jury. McGann v. Allen, 105 Conn. 177, 134 A. 810 (1926); See also Ingo v. Koch, *supra*; Lambert v. Bruton, 127 Me. 510, 144 A. 864 (1929). As was stated by the Supreme Judicial Court of Massachusetts in 1887:

The principle is general, and is applicable to all kinds of abuses outside of the proper service of lawful process, whether civil or criminal, that for every such wrong there is a remedy, not only against the officer whose duty it is to protect the person under arrest, but also against all others who united with him in inflicting the injury.

Wood v. Bailey, 144 Mass. 365, 11 N.E. 567, 576 (1887).

South Carolina law is clear: a private party who knowingly participates in, aids, abets, advises, consents to, or subsequently ratifies an act constituting abuse of process is liable for abuse of process even if he did not personally commit the act. “The hand of one is the hand of all” is fully applicable to abuse of process cases per Broadmoor, and Plaintiff’s Verified Complaint is replete with well-pleaded factual allegations asserting that Defendants and the prosecutorial officer who committed the principal abuse of process (and later prosecutorial officers who ratified it) all acted in concert with one another and would all be proper defendants in an abuse of process action, including each and every one of the named Defendants.

Plaintiff’s Complaint alleges with specificity that the instant Defendants procured the prosecutorial officer’s abuse of criminal process and related tortious conduct directed at Plaintiff in connection with the prosecutorial officer’s attempt to dismiss the criminal domestic violence charge (so long as Plaintiff agreed to the extortionate condition regarding the unrelated civil dispute) and are therefore liable for it as joint tortfeasors,

which is plainly proper under Broadmoor. The Complaint could not be clearer with respect to these factual allegations. Paragraph 9 of the Complaint is directed at this matter and states, in no uncertain terms:

All Defendants are jointly and severally liable, both directly as joint tortfeasors and vicariously, for the actionable conduct of one Nicole Howland of the Lexington County Sheriff's Department described herein, as Defendants and Howland willfully acted in concert with respect to these matters. All actionable conduct engaged in by Howland and other agents of the State of South Carolina, including all tortious acts and omissions, was procured by Defendants and engaged in by Howland and/or other agents of the State of South Carolina at the direction of Defendants and with their express approval.

Verified Complaint at 2, ¶ 9.

Paragraph 15 of the Complaint also plainly alleges, as a matter of fact, that Defendants propositioned the prosecutorial officer to attach the improperly extortionate demand relating to the civil dispute to her offer to discontinue the criminal domestic violence prosecution:

Howland [the prosecutorial officer] made this unlawful demand after being propositioned by Defendant Griffith and her legal counsel in the civil dispute involving Plaintiff's animal, the Moore Taylor Defendants, in connection with a court appearance in the criminal domestic violence case on June 30, 2016. Howland willingly agreed to attach that unlawful condition relating to an unrelated civil dispute to the offer to drop the criminal domestic violence charge and did so.

Verified Complaint at 3-4, ¶ 15.

The Complaint further contains a well-pleaded factual allegation in Paragraph 18 that Defendants' act in procuring the prosecutorial officer's misconduct is the sole and proximate cause of the continuation of the criminal domestic violence prosecution beyond June 30, 2016 (an allegation which is plainly correct given the indisputable facts

of the case) and, therefore, is the sole and proximate cause of the injuries Plaintiff seeks to recover damages for in this action:

[T]he sole and proximate cause of the continuation of the criminal domestic violence prosecution after June 30, 2016 and the elevation of charges from the minor misdemeanor charge to the two major felony charges was the unlawful conduct of Howland, procured by Defendant Griffith and the Moore Taylor Defendants, which resulted in Howland's lawful and proper offer to drop the bogus criminal domestic violence charge against Plaintiff being unlawfully conditioned on Plaintiff surrendering his animal to Defendant Griffith to enable her to prevail in the wholly unrelated civil dispute between Plaintiff and Defendant Griffith.

Verified Complaint at 4-5, ¶ 18.

In light of Broadmoor, Plaintiff's Verified Complaint plainly states facts sufficient to constitute a cause of action for abuse of process against each Defendant. Plaintiff's allegations clearly meet any conceivable standard for alleging liability for abuse of process based on a "hand of one, hand of all" theory pursuant to Broadmoor.

Defendants also contend, in their motion to dismiss, that their "lack of prosecutorial control" theory should doom the remaining causes of action in Plaintiff's Verified Complaint but cite no authority in support of the proposition (nor did they cite any authority in support of the proposition with respect to the abuse of process claim). Plaintiff contends that because the remaining causes of action are either related to, derivative of, or functionally similar to the abuse of process cause of action, the Broadmoor rule of "hand of one, hand of all" liability necessarily ought to apply to them as well as a basic matter of legal logic, and that is certainly in keeping with basic principles of tort law and joint tortfeasor liability. Accordingly, Plaintiff respectfully request the Court deny Defendants' Motion to Dismiss with respect to the remaining causes of action in the Verified Complaint.

NOTE REGARDING “PROCESS” AS USED IN THE COMPLAINT

Defendants’ Motion to Dismiss and supporting memorandum appear to reflect an erroneous belief by Defendants that the “process” Plaintiff claims they abused was the initiation of a misdemeanor criminal domestic violence prosecution against Plaintiff on April 6, 2015. The initiation of that criminal prosecution is not the “process” that Plaintiff claims was abused. The process that Defendants abused was the plea bargaining process which occurred on June 30, 2016. Plaintiff does not seek to recover any damages in this action for the initiation of the misdemeanor criminal domestic violence action against him in 2015. The damages Plaintiff seeks to recover are those occasioned by the *continuation* of the criminal domestic violence prosecution *after* June 30, 2016 after the plea bargaining process failed due to Defendants’ tortious abuse of that plea bargaining process, which consisted of persuading the Lexington County Sheriff’s Department criminal domestic violence prosecutor, Nicole Howland, to attach an illegal condition to her offer to drop the criminal domestic violence charge in exchange for Plaintiff surrendering to Defendants in the unrelated civil dispute over the animal that arose in early 2016, a civil dispute that did not even exist in April of 2015 when the misdemeanor criminal domestic violence prosecution was commenced.

OBJECTION TO ADDITIONAL GROUNDS FOR DISMISSAL FIRST RAISED IN DEFENDANTS’ MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AND ARGUMENT IN SUPPORT OF MOTION TO STRIKE ALL ADDITIONAL GROUNDS

On May 24, 2019, less than two full business days before the hearing on the Motion to Dismiss, Defendants filed and served a memorandum in support of their motion that asserts, for the very first time, numerous grounds for dismissal not raised in the Motion to Dismiss itself. Sections II.B., II.C., II.D., II.E., and II.F. of Defendants’

memorandum in support of their Motion to Dismiss raise and argue grounds for dismissal that are not raised by the Motion to Dismiss itself, and therefore violate Rules 6(d) and 7(b)(1), SCRCP because Plaintiff has not had ten days to prepare a response to the grounds for dismissal raised for the first time in these sections of Defendants' memorandum in support. Allowing Defendants to proceed on grounds outside their Motion to Dismiss, raised for the first time in their supporting memorandum filed and served less than two full business days before the hearing on the Motion to Dismiss, would violate the rules of civil procedure and deny Plaintiff his due process right to adequate notice of the grounds for motions in advance of motion hearings secured by the United States and South Carolina Constitutions.

Rule 7(b)(1), SCRCP, requires that a party making a pre-trial motion like Defendants' make the motion in writing and requires that such writing "shall state with particularity the grounds therefor[.] Rule 7(b)(1), SCRCP. Defendants' Motion to Dismiss states with particularity a single ground: that because Defendants had no legal control over the prosecutor's decision-making in the criminal domestic violence prosecution, they cannot be held liable for abuses of process committed by the prosecutor or for any of the other causes of action asserted in Plaintiff's Verified Complaint and the Complaint must be dismissed in its entirety based solely on the lack-of-prosecutorial--control ground. Defendants' Motion to Dismiss contains no other grounds for dismissal whatsoever.

Defendants' Memorandum in Support, however, contains argument in support of numerous grounds for dismissal of Plaintiff's causes of action other than the abuse of process cause_of action. These additional arguments, entirely unrelated to the

prosecutorial-control ground, appear in Sections II.B., II.C., II.D., II.E., and II.F. of Defendants' memorandum in support of the Motion to Dismiss. Plaintiff had no notice whatsoever that Defendants intended to present these additional grounds for dismissal at the hearing on the Motion to Dismiss until the memorandum was emailed to Plaintiff the afternoon of May 24, 2019, less than two full business days prior to the hearing on the Motion to Dismiss. Plaintiff objects to Defendants' attempt to ambush him with additional grounds for dismissal not included in the Motion to Dismiss itself, which is a violation of Rule 7(b)(1), SCRCP's requirement that all written motions "shall state with particularity the grounds therefor." The only ground stated with particularity in Defendants' written motion is the lack-of-prosecutorial-control ground, and that is the only ground that Plaintiff has had ten days to prepare opposition to as required by Rule 6(d), SCRCP. Therefore, the lack-of-prosecutorial-control ground is the only ground that Defendants can argue at the hearing on their Motion to Dismiss, and the Court must strike the remaining grounds raised for the first time in the memorandum pursuant to Rules 6(d) and 7(b)(1) per Dedes v. Strickland, 414 S.E.2d 134, 307 S.C. 155 (1992) and the notice requirements of the due process clauses of the United States and South Carolina Constitutions.

Defendants will not be prejudiced by the Court's refusal to entertain their additional grounds for 12(b)(6) dismissal at this time because Defendants can raise those grounds later by way of a properly drafted and noticed Rule 12(c) or 12(h) motion. But the Court cannot hear Defendants on these additional grounds at this time because doing so would cause unconstitutional and improper prejudice to Plaintiff's ability to prepare for the hearing on the Motion to Dismiss. The record indicates that Plaintiff fully

prepared a written memorandum regarding the only ground raised in Defendants' Motion to Dismiss and served it on Defendants and transmitted a copy to the Court on May 21, 2019, and Plaintiff has not had time to prepare an additional memorandum or even complete the legal research necessary to the preparation of an additional memorandum in opposition to the numerous additional grounds for dismissal raised for the first time in Defendants' memorandum in support of their Motion to Dismiss first transmitted to Plaintiff on May 24, 2019, less than two full business days prior to the hearing.

The Supreme Court of South Carolina made clear in Dedes v. Strickland, supra, that non-movants are entitled to ten full days to prepare their opposition to written pre-trial dispositive motions, and there are no exceptions to the rule established in Dedes that could possibly apply to the circumstances of this case. Defendants have every right to pursue their additional grounds for dismissal by way of a Rule 12(c) or 12(h) motion but cannot do so by way of the pending Motion to Dismiss because they failed to give Plaintiff due notice of the grounds for dismissal they intended to argue at the hearing until it was far too late to do so. Plaintiff would waive this objection if he had had time to fully research and prepare an opposition to the numerous additional grounds for dismissal simply to avoid causing extra work for the Court and for himself at a future hearing on a Rule 12(c) or 12(h) motion and resolve all issues regarding the sufficiency of his pleading as early as possible in the litigation, but Plaintiff has been entirely unable to fully research and fully prepare a memorandum in opposition to the additional grounds in the less-than-two-full-business-days time period allotted to him by Defendants given their eve-of-hearing service and filing of their memorandum in support of the Motion to Dismiss.

Any favorable ruling for Defendants on the grounds for dismissal appearing for the first time in their memorandum in support would be reversible error per Dedes v. Strickland, *supra*. Therefore the Court must strike these additional grounds without prejudice to Defendants' right to present them at a later time in the context of a Rule 12(c) or Rule 12(h) pre-trial motion.

**OBJECTION TO DEFENDANTS' UNTIMELY AND IMPROPER
AFFIDAVIT FILED IN SUPPORT OF MOTION TO DISMISS AND
ARGUMENT IN SUPPORT OF MOTION TO STRIKE AFFIDAVIT**

On May 24, 2019, less than two full business days before the hearing on the Motion to Dismiss, Defendants filed and served an affidavit of Defendant Vance Stricklin with the apparent intention to rely on the affidavit as a supporting affidavit for Defendants' Motion to Dismiss. Plaintiff objects to the affidavit as untimely because it was not served with the Motion to Dismiss as required by Rule 6(d), SCRCP, leaving Plaintiff with no opportunity to prepare, serve, and file opposing affidavits, and improper because supporting affidavits are generally improper with respect to motions to dismiss arising under Rule 12(b)(6), SCRCP and the affidavit of Defendant Stricklin does not fall within any presently recognized exception to the general rule that 12(b)(6) motions cannot be supported by affidavits because it addresses matters outside the pleadings and, apparently, asks the Court to rule on a disputed issue of material fact: whether Defendant Stricklin engaged in any conduct that would render him liable for abuse of process.

The affidavit is improper because Defendants' Motion to Dismiss is a pure demurrer and asks the Court to rule only that Plaintiff's Verified Complaint fails to allege facts sufficient to constitute the causes of action asserted therein. Defendants' Motion to Dismiss does not include or argue any grounds for summary judgment pursuant to Rule

56, SCRC, and therefore cannot be converted into a motion for summary judgment without violating Plaintiff's due process rights and the rules of civil procedure applicable to motions for summary judgment.

If the affidavit of Defendant Stricklin had been filed and served at the same time as the Motion to Dismiss, rather than on the eve of the hearing, conversion to a motion for summary judgment would be proper so long as the Court gave Plaintiff notice of its intention to treat Defendants' Motion to Dismiss as a motion for summary judgment and gave Plaintiff at least ten additional days to respond to a motion for summary judgment per Brown v. Leverette, 291 S.C. 364, 367, 353 S.E.2d 697, 698-99 (1987). That has not happened—Plaintiff has received no notice from either Defendants or the Court of any intention to treat Defendants' Motion to Dismiss as a motion for summary judgment, and Plaintiff has not had time to prepare an opposition to a motion for summary judgment and has, instead, only had an opportunity to prepare an opposition to a motion to dismiss for failure to state facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6).

Plaintiff has not sought to present any material outside the pleadings to the Court with respect to Defendants' Motion to Dismiss, and Plaintiff objects to Defendants' attempt to do so by way of the untimely affidavit of Defendant Stricklin. Accordingly, Plaintiff respectfully requests the Court strike the affidavit of Defendant Vance Stricklin and exclude it from consideration with respect to Defendants' Motion to Dismiss without prejudice to Defendants' right to resubmit the affidavit in support of a motion for summary judgment that Defendants may choose to make at some future time with proper notice to Plaintiff as required by Rules 6(d), 7(b)(1), and 56 of the South Carolina Rules of Civil Procedure, Dedes v. Strickland, supra, and Brown v. Leverette, supra.

Defendants have invited the Court to commit reversible error by considering the affidavit of Defendant Stricklin in connection with the Motion to Dismiss, and Plaintiff respectfully requests the Court decline that invitation and strike the affidavit without prejudice.

OPPORTUNITY TO AMEND COMPLAINT

Plaintiff was served with the Answer and Counterclaim and Motion to Dismiss on May 9, 2019, meaning Plaintiff has until June 10, 2019 to amend the Verified Complaint as a matter of right pursuant to Rule 15, SCRPC. Should the Court conclude that Plaintiff has not adequately pleaded Broadmoor-style “hand of one, hand of all” liability with respect to the abuse of process claim or find some other defect with regard to the remaining causes of action, Plaintiff respectfully requests the Court issue its ruling on the matter prior to June 10, 2019 to afford Plaintiff the opportunity to amend the Verified Complaint as a matter of right to cure any pleading defects the Court identifies.

CONCLUSION

Defendants’ Motion to Dismiss must be denied because Plaintiff has pleaded all that is necessary to state facts sufficient to constitute a cause of action for abuse of process under Broadmoor, *supra*. The remaining causes of action, being functionally similar to the abuse of process claim, ought to be governed by Broadmoor as well. Defendants’ contention that a private party cannot be sued for abuse of process committed by a prosecutor in league with the private party is plainly wrong per the clear holding of the Broadmoor case, a copy of which is attached to this memorandum for the Court’s review and consideration. The remaining grounds for dismissal asserted for the first time in Defendants’ supporting memorandum filed on the eve of the hearing, and not

asserted in Defendants' motion itself, cannot serve as the basis for dismissal at this time because they were not included in the motion itself and therefore violate the applicable provisions of Rules 6(d) and 7(b)(1), SCRCR, which require that motions state with specificity all grounds upon which they are based and which require that the opposing party have ten days to prepare for the motion hearing as explained in the Dedes case, supra.

Respectfully submitted,

May 29, 2019



JAMES JOHN TODD KINCANNON
216 Jones Avenue
Simpsonville, South Carolina 29681
864-963-4374
ToddKincannon@gmail.com
Plaintiff Pro Se

CERTIFICATE OF SERVICE

The undersigned Plaintiff hereby certifies service by hand delivery on all Defendants by and through their counsel of record, Ward Bradley of the Moore Taylor Law Firm, P.A., prior to the hearing on Defendants' Motion to Dismiss together with service by email the morning of May 29, 2019.

May 29, 2019



JAMES JOHN TODD KINCANNON

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

JAMES JOHN TODD KINCANNON,

Plaintiff,

v.

ASHELY SUZANNE GRIFFITH, MOORE
TAYLOR LAW FIRM, P.A., VANCE
STRICKLIN, and AMBER FULMER,

Defendants.

Case No. 2019-CP-32-1168

**PLAINTIFF'S MOTION FOR
RECONSIDERATION OF ORDER
GRANTING DEFENDANTS'
MOTION TO DISMISS AND FOR
ADDITIONAL RELIEF**

2019 JUL 25 PM 3:05

FILED

RECONSIDERATION

Plaintiff respectfully submits the following motion for reconsideration of the Courts' Order of Dismissal entered July 2, 2019. Plaintiff received written notice of the entry of the Order of Dismissal on July 10, 2019.¹ This motion is made pursuant to Rules 59(e), 52(b), 60(a), and 60(b), SCRCF and the inherent power of trial courts to reconsider, alter, and amend erroneous prior rulings is based on the following grounds:

1. The Court did not rule on Plaintiff's unopposed objections to grounds for dismissal first appearing in Defendants' memorandum in support of their motion to dismiss, served and filed less than two full business days prior to the hearing, that did not appear in the Motion to Dismiss itself. The Court should have sustained Plaintiff's objections because Plaintiff did not have adequate notice of the additional grounds for dismissal and should have further sustained Plaintiff's objections because Defendants offered no argument in response to Plaintiff's objections. The portions of the Court's order granting Defendants' Motion to Dismiss on these particular grounds violate the

¹ This motion is being served and submitted for filing on July 22, 2019, ten days after July 10, 2019. July 20th was a Saturday and July 21st was a Sunday.

South Carolina Rules of Civil Procedure and unfairly surprised Plaintiff and further violated Plaintiff's federal and state constitutional due process rights.

2. The Court did not rule on Plaintiff's unopposed objection to the Affidavit of Defendant Vance Stricklin yet evidently relied upon portions of it in the dismissal order. The Court should have sustained Plaintiff's objections because the Affidavit in question did not fit within the very narrow grounds for which affidavits may be filed in support of Rule 12(b)(6) motions, because the affidavit was untimely and should have been filed with the Motion to Dismiss itself per the South Carolina Rules of Civil Procedure. Plaintiff was unfairly surprised and had no opportunity to file a counteraffidavit. The Court should have further sustained Plaintiff's objections because Defendants offered no argument in response to Plaintiff's objections. Because the Court improperly relied on this untimely and improper affidavit, the dismissal order must be vacated, the affidavit ruled improper, and the Motion to Dismiss should be reheard without consideration of the untimely and improper affidavit.

3. The dismissal order improperly relies on void temporary orders and appellate proceedings that were later determined to be void for lack of subject matter jurisdiction by the Lexington County Family Court's final order in the divorce proceeding between Plaintiff and Defendant Griffith.

4. The dismissal order improperly relies on Plaintiff's alleged failure to plead that the criminal proceedings against him, referenced in the Complaint, were not instituted without probable cause. The absence of probable cause is not an element of abuse of process nor of any of the other causes of action asserted by Plaintiff and it was error for the Court to consider Plaintiff's "failure" to plead a non-element of his causes of action in

the dismissal order. Further, Plaintiff would plead the absence of probable cause by amendment of the Complaint if the Court would allow amendment of the pleadings, as it must at this stage of the proceedings per Rule 15, SCRCP—the only reason Plaintiff did not include that particular allegation is that it is not an element of any causes of action Plaintiff has asserted and is instead an element of the unpleaded cause of action for malicious prosecution, a claim Plaintiff cannot bring until the conclusion of the criminal case in his favor.

5. The dismissal order improperly relies on public policy in ruling that Plaintiff's Complaint must be dismissed. No South Carolina public policy exists which supports Defendants' conduct in this matter, nor does any South Carolina public policy exist which supports the actions of the criminal prosecution which were procured, aided, abetted, and ratified by Defendants. South Carolina public policy is actually to the contrary: the South Carolina Rules of Professional Conduct and South Carolina criminal and civil law prohibiting blackmail and extortion barred Defendants and their affiliated criminal prosecutor from demanding that Plaintiff surrender to Defendants in an unrelated civil proceeding in exchange for the abandonment of the criminal domestic violence prosecution.

6. The dismissal order is apparently based, in part, on the Court's independent research into the procedural history of Plaintiff's divorce litigation and other civil and criminal litigation, although the order fails to identify which parts of these other cases were relied on by the Court with the exception of the aforementioned void orders in the divorce case which are not and never have been part of the record in the case at bar. This is error, and the conclusions that the Court drew from this apparent review are also error.

The Court concluded, gratuitously, that Plaintiff is an “obsessive” litigant, a conclusion which is improper in a Rule 12(b)(6) dismissal proceeding—which must be based only on the pleading standards of the causes of action asserted—and is also erroneous. 100% of the prior litigation involving Plaintiff and Defendants was instituted by, or at the instance of, Defendants, or reflected a defensive filing by Plaintiff because Defendants had instituted a proceeding in a court without subject matter jurisdiction and Plaintiff responded by instituting a proceeding in the proper court.

7. The Court erred by refusing to grant or even rule on Plaintiff’s request for an opportunity to amend the Complaint to cure any defects the Court might find in its order on Defendants’ Motion to Dismiss. Per Rule 15, SCRC, Plaintiff should have been given an opportunity to amend the Complaint because none of the pleading defects found by the Court in its dismissal order are incurable.

8. The Court erred by considering the void orders from Plaintiff’s divorce case with Defendant Griffith, submitted by email to the Court without permission after the hearing on Defendants’ Motion to Dismiss, without giving Plaintiff an opportunity to respond to that submission by submitting additional information regarding those proceedings and argument which would conclusively demonstrate that the orders submitted by Defendants after the hearing are void for lack of subject matter jurisdiction and entirely irrelevant to the question of whether Plaintiff properly pleaded, or could properly plead after amendment, the abuse of criminal process and other causes of action asserted in the Complaint.

9. The Court erred in its identification of the “process” that Plaintiff alleges Defendants abused. Plaintiff specifically alleges that the “process” abused by Defendants

was the plea bargain process incident to the criminal domestic violence prosecution itself, not the entirety of the criminal domestic violence prosecution. The order incorrectly indicates that Plaintiff alleged the entire criminal domestic violence prosecution was infected by Defendants' alleged abuse of process, an error. The only allegation Plaintiff made in the Complaint, and clarified by way of his amended memorandum in opposition to Defendants' Motion to Dismiss, was that the plea bargain process was abused by Defendants because they convinced the criminal prosecutor in the CDV matter to attach an unlawful condition to the offer to discontinue the CDV prosecution: the condition that Plaintiff surrender to Defendants in a civil matter entirely unrelated to the criminal prosecution in exchange for the offer to drop the CDV prosecution.

10. The Court's factual conclusion that the Eleventh Circuit Solicitor's Office was involved in the prosecution of the criminal domestic violence case is erroneous, as explained in Plaintiff's memoranda.

11. The Court's conclusion that Plaintiff's Complaint fails to state a cause of action for abuse of process is erroneous as explained in the argument and analysis portions of Plaintiff's memoranda, Plaintiff's presentation at the hearing, and Plaintiff's proposed order, all of which are incorporated herein by reference.

12. Because a review of the dismissal order indicates the Presiding Judge evidently had or sua sponte gained personal knowledge of matters relating to the case that are not part of the record and intended to rely on such knowledge in the ruling, the Presiding Judge had a duty to recuse. The Presiding Judge should also recuse at this juncture due to multiple, apparently intentional, violations of Plaintiff's due process rights incident to the consideration of the Rule 12(b)(6) motion filed by Defendants. The record of proceedings

in this matter and the dismissal order itself indicate that the Presiding Judge's ruling was based, in whole or in part, on personal prejudice against the Plaintiff entirely unrelated to the sole issue before the Court, i.e. whether or not Plaintiff's Complaint adequately stated facts sufficient to constitute a cause of action for abuse of process and the other causes of action asserted in the Complaint. The dismissal order in particular indicates that the Presiding Judge considered numerous matters that were entirely improper in the context of the one-issue Rule 12(b)(6), SCRCF motion made by Defendants and the Presiding Judge should vacate the dismissal order and recuse from further proceedings in this matter due to the realistic possibility that future rulings in this case by the Presiding Judge will be tainted by matters outside the record that the Presiding Judge became personally familiar with and, in whole or in part, animated his decision-making process at the Rule 12(b)(6) stage. Plaintiff respectfully submits that non-recusal at this point would violate Plaintiff's rights to a judge whose rulings are untainted by outside-the-record personal research secured by South Carolina common law, the South Carolina Constitution, and the United States Constitution.

13. The Court erred by sua sponte ruling on public policy grounds that Plaintiff's Complaint failed to state a cause of action. Defendants' Motion to Dismiss does not raise public policy grounds as a basis for dismissal and by engrafting a public policy rationale onto the dismissal order, the Court erroneously violated Plaintiff's due process rights to notice and an opportunity to be heard and, unfortunately, became an actual partisan in the case creating and advancing arguments for dismissal not even contemplated by Defendants and not included in their motion. Even if public policy did support dismissal of Plaintiff's Complaint (it does not), it was error for the Court to dismiss on that basis

without even being asked to do so by way of defense motion, and this additionally supports Plaintiff's position that the Presiding Judge lacked impartiality and should have recused.

14. Despite concluding that none of the named causes of action included in Plaintiff's Complaint stated facts sufficient to constitute a cause of action, the dismissal order contains no analysis as to whether or not Defendants' conduct is independently actionable under an unnamed tort theory or heretofore unrecognized theory of actionability under South Carolina law. Defendants' alleged conduct in this matter was plainly unlawful in that Defendants persuaded a criminal prosecutor to violate the South Carolina Rules of Professional Conduct and criminal and civil laws prohibiting blackmail and extortion by the manner in which she conducted a plea bargain negotiation in the criminal prosecution against Plaintiff referenced in the Complaint. A general principle of South Carolina law and equity is that law, equity, and basic principles of due process and equal protection generally do not permit a wrong to exist without a remedy, and the Court's dismissal order in this matter must not only analyze whether the allegations of Plaintiff's Complaint successfully set forth the named causes of action in Plaintiff's Complaint but also whether Defendants' conduct is actionable under South Carolina law despite not falling within any particular heretofore named cause of action. In this regard, Plaintiff notes that the dismissal order appears to express finds that Plaintiff has been harmed by Defendants' conduct yet denies him any opportunity for relief.

ADDITIONAL RELIEF

1. As stated above in part, the Court erroneously granted Defendants' Motion to Dismiss *with prejudice* and failed to rule on Plaintiff's request for an opportunity to

amend the Complaint to cure any pleading defects the Court identified at the Rule 12(b)(6) stage, which is not proper in this case. Rule 15, SCRCP permits pleading amendments whenever the opposing party will not be prejudiced, and it is axiomatic that Defendants will not be prejudiced by the Court giving Plaintiff a single opportunity to prepare, file, and serve an amended the Complaint in this action in an effort to cure the pleading defects found by the Court in the dismissal order.

2. As stated above in part, the Court erred by not offering to recuse, or sua sponte recusing, upon doing outside-the-record research into other litigation involving these parties that was not part of the record in this case and, therefore, not properly before the Court. Certain of the Court's other errors also mandate recusal, such as the apparent intentional denial of Plaintiff's due process rights with respect to the manner in which Defendants' Motion to Dismiss was heard and adjudicated. The Court improperly permitted Defendants to surprise Plaintiff with an untimely and substantively improper memorandum in support, an untimely and substantively improper supporting affidavit, and untimely and improper post-hearing submissions of void interlocutory orders, contradicted by the final order, in the divorce action involving Plaintiff and Defendant Griffith without providing any opportunity for Plaintiff to respond with any countersubmission of record material in the divorce action or argument as to why the void interlocutory orders in the divorce action are entirely irrelevant to the Court's consideration of Defendants' Rule 12(b)(6) motion in this action, which has no substantive connection to the divorce case whatsoever. The Presiding Judge's recusal should also be required by personal prejudice given the various improper findings in the dismissal order which indicate the Presiding Judge's ruling was based in whole or in part

on findings that Plaintiff is an “obsessive” litigant, a finding which is entirely improper in the context of a Rule 12(b)(6) Motion to Dismiss.

3. To whatever extent the Court finds that the South Carolina Rules of Civil Procedure permit the various procedural hijinks by Defendants complained of above, and the Court’s post-hearing research into other cases involving the parties which Plaintiff was given no opportunity to respond to prior to the Court issuing ruling, Plaintiff asks the Court to declare the South Carolina Rules of Civil Procedure unconstitutional under both the state and federal constitutions as applied to these particular matters. Plaintiff asks that this ruling include, but not necessarily be limited to, a finding that it is unconstitutional to permit a civil movant to file a “supporting” memorandum on the eve of a motion hearing that includes grounds for the motion not included in the timely-filed motion itself. If parties can include additional grounds for motions in eve-of-hearing memoranda then the notice-of-motion provisions of the South Carolina Rules of Civil Procedure are dead letters and their application to this particular case unconstitutional under the due process clauses and other provisions of the state and federal constitutions. Plaintiff makes the parallel argument with respect to Defendants’ unauthorized and wholly improper post-hearing submission of void and irrelevant interlocutory orders from the substantively unrelated divorce action involving Plaintiff and Defendant Griffith.

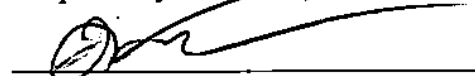
4. To whatever extent there are additional errors in the dismissal order, including but not limited to errors in the findings of fact and conclusions of law supporting dismissal grounds outside Defendants’ one-substantive-sentence Motion to Dismiss, Plaintiff requests additional time to identify such errors and present them to the Court by way of independent motion based on unfair surprise pursuant to Rule 60(b), SCRPC or an

amendment of this motion pursuant to Rule 59(e) and other authority. Rule 60(b), SCRCF establishes a one year time limit for reconsideration motions based on unfair surprise, and Plaintiff asks the Court to conclude that the ten day time limit established by Rule 59(e) and similar rules is unconstitutional under the state and federal constitution as applied to Plaintiff in this case and the Americans with Disabilities Act because of the manner in which the proceedings in this case were held, the numerous and extensive errors in the dismissal order, and Plaintiff's need for additional time over and above the standard rules-based time limits caused by his untreatable attention deficit disorder, which cannot be controlled by prescription medications due to a conflict with Plaintiff's comorbid bipolar disorder which is treated by prescription medications. Plaintiff is perfectly capable of handling all litigation tasks incident to this litigation but not necessarily within the time limitations established by state court rules due to his disability status, and due process and equal protection clauses of the state and federal constitution and the Americans with Disability Act require the Court to grant Plaintiff reasonably brief extensions of time as needed to complete litigation tasks. Plaintiff will be happy to submit verifying documentation of his disability status and medical conditions, with an appropriate protective order, as the Court may require in order to rule on this particular matter.

5. Plaintiff had no meaningful opportunity to be heard on many of the foregoing matters at the hearing on Defendants' Motion to Dismiss. Many of the Court's errors were entirely unforeseeable by Plaintiff at the hearing, and on many others Plaintiff had no meaningful opportunity to be heard because of Defendants' litigation-by-surprise tactics with respect to the untimely and improper memorandum in support and supporting

affidavit. Plaintiff respectfully demands the Court hold a hearing on this Motion for Reconsideration and for Other Relief and not decide the matter solely on written submissions. If the Court does, however, elect to rule based solely on written submissions, Plaintiff demands notice and an opportunity to prepare and file a supporting memorandum, a reply memorandum in response to whatever is submitted by Defendants, and such other material as is appropriate to support this motion prior to the Court's issuance of a ruling without a hearing. This request for hearing and a request for a full and fair opportunity to present Plaintiff's position on this matter is based on the South Carolina Rules of Civil Procedure, South Carolina common and statutory law applicable to these matters, and the state and federal constitutional provisions applicable to these matters, including but not limited to the due process clauses of both constitutions.

Respectfully submitted,



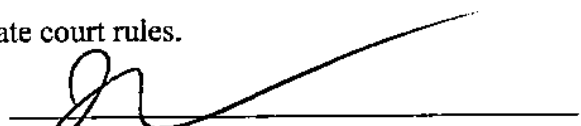
JAMES JOHN TODD KINCANNON
216 Jones Avenue
Simpsonville, South Carolina 29681
864-963-4374
ToddKincannon@gmail.com
Plaintiff Pro Se

July 22, 2019

CERTIFICATE OF SERVICE

The undersigned Plaintiff hereby certifies service by first class mail on the date below indicated in accordance with Rule 5, SCRCF on all Defendants by and through their counsel of record, Ward Bradley of the Moore Taylor Law Firm, P.A., at the correct mailing address listed for Mr. Bradley and his firm. Plaintiff has also sent a copy to the Presiding Judge as required by applicable state court rules.

July 22, 2019



JAMES JOHN TODD KINCANNON

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

ORIGINAL

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

CASE NO.: 2019-CP-32-1168

James John Todd Kincannon,
Plaintiff,

vs.

Ashely Suzanne Griffith et al.,
Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

FILED
JUL 25 PM 3:05
CLERK OF COURT
ELEVENTH JUDICIAL CIRCUIT
SOUTH CAROLINA

Plaintiff's Attorney: James John Todd Kincannon, Bar No. Pro Se Address: 216 Jones Avenue, Simpsonville SC 29681 Phone: 864-963-4374 Fax _____ E-mail: toddkincannon@gmail.com Other: _____		Defendant's Attorney: James "Ward" Bradley, Bar No. _____ Address: Phone: _____ Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion for Reconsideration of Dismissal Order Estimated Time Needed: 30 mins Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☒ Plaintiff / ☐ Defendant 7-22-2019 Date submitted			
SECTION III: Motion Fee ☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☒ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____ ☐ State Agency v. Indigent Party ☐ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRCP)			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2019-001501

James John Todd Kincannon,

Appellant,

v.

Ashely Suzanne Griffith,
Moore Taylor Law Firm, P.A.,
Vance Stricklin, and Amber
Fulmer,

Respondents.

RECEIVED
Sep 14 2020
SC Court of Appeals

**APPELLANT’S RULE 210(g) CERTIFICATION RE
PRODUCTION OF THE RECORD ON APPEAL**

Pursuant to Rule 210(g), SCACR, Appellant hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

NOTE REGARDING “EXHIBITS” CITED BY THE ORDER OF DISMISSAL

Appellant has faithfully reproduced the Order of Dismissal in this Record on Appeal exactly as it was filed with the Lexington County Clerk of Court by the Hon. Robin B. Stilwell. As discussed in the briefs, this Order of Dismissal strangely cites three “exhibits”¹ that are *not*

¹ These “exhibits” are first cited on Page 4 of the Order of Dismissal (which is also Page 4 of the Record on Appeal) and consist of three interlocutory orders from a different case—divorce litigation—involving the parties to this civil Record on Appeal 130

included as attachments to the Order of Dismissal that Judge Stilwell filed with the Lexington County Clerk of Court. Further, these three “exhibits” do not appear anywhere else in the record below in this case. Neither party sought to include them in the record below in this case and Judge Stilwell did not enter them into the record below sua sponte. Accordingly, Appellant has omitted these three “exhibits” from the Record on Appeal since they were never made a part of the record below by any party or by the lower court judge and were not attached to the Order of Dismissal as prepared and filed by the lower court judge.

Appellant raised this issue with the lower court in his Motion for Reconsideration, but the lower court summarily denied the Motion for Reconsideration and took no action to add the “exhibits” to the record below. See Motion for Reconsideration at 8 (Record on Appeal at 125); see also Order Denying Reconsideration at 1 (Record on Appeal at 11). Accordingly, Appellant has included the Order of Dismissal *exactly* as it was filed by the lower court, leading to the strange result that the Order cites three “exhibits” that were never part of the record below and therefore cannot be part of this Record on Appeal per Rule 210(h), SCACR.

September 14, 2020

s/James John Todd Kincannon

Other Counsel of Record:
Ward Bradley
Moore Taylor Law Firm
1700 Sunset Blvd.
West Columbia, SC
Attorney for Respondents

James John Todd Kincannon
216 Jones Avenue
Simpsonville, SC 29681
864-963-4374
ToddKincannon@gmail.com
Appellant Pro Se

action: (1) an interim temporary order in the divorce action dated July 1, 2016; (2) an order on a motion for temporary relief in the divorce action dated July 26, 2016; and (3) an order regarding an interlocutory appeal from the South Carolina Court of Appeals in the divorce action dated September 30, 2016. See Order of Dismissal at 4, *supra*, which appears on Page 4 of the foregoing Record on Appeal. Even though the Order of Dismissal cites these interlocutory orders from divorce litigation as “exhibits,” the Lexington County Court of Common Pleas judge who issued the Order of Dismissal on appeal did not attach them to the Order of Dismissal as exhibits, and no party to this civil action moved to include them in the record below either as exhibits to the Order of Dismissal or in support of any motion or other filing.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2019-001501

James John Todd Kincannon,

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Ashely Suzanne Griffith,
Moore Taylor Law Firm, P.A.,
Vance Stricklin, and Amber
Fulmer,

Respondents.

RECEIVED
Sep 14 2020
SC Court of Appeals

CERTIFICATE OF SERVICE

The undersigned Appellant hereby certifies that he has, on the date below, properly served the foregoing Record on Appeal on opposing counsel.

September 14, 2020

s/James John Todd Kincannon

James John Todd Kincannon
ToddKincannon@gmail.com