

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

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Appellate Case No. 2019-001501

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James John Todd Kincannon,

Appellant,

v.

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

Respondents.

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**APPELLANT'S FINAL BRIEF**

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**RECEIVED**

**Oct 30 2020**

**SC Court of Appeals**

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## STATEMENT OF ISSUES ON APPEAL

- 1. Did the circuit court err by allowing Respondents—despite Appellant’s timely objection—to support their Rule 12(b)(6) motion with two improper filings submitted less than two days before the hearing: a memorandum of law that presented numerous arguments entirely unrelated to Respondents’ two-paragraph, single-issue motion to dismiss and a supporting affidavit that was both improper and untimely, both of which the circuit court relied on extensively in fashioning its order dismissing Appellant’s complaint with prejudice pursuant to Rule 12(b)(6)?**
- 2. Did the circuit court err by relying on materials outside the record in the order dismissing Appellant’s complaint pursuant to Rule 12(b)(6) and failing to provide Appellant with an opportunity to respond to “judicially noticed” materials as required by Rule 201, SCORE?**
- 3. Did the circuit court err by dismissing Appellant’s complaint due to alleged pleading errors *with prejudice* and concomitantly refusing to grant Appellant leave to submit an amended complaint seeking to cure the alleged pleading defects cited in the circuit court’s order of dismissal, an amendment that would not have prejudiced Respondents and therefore should have been allowed pursuant to Rule 15 and common law?**
- 4. Did the circuit court err by failing to rule on Appellant’s timely motion for recusal and, accordingly, continuing to issue rulings on substantive matters in the case during the pendency of Appellant’s motion for recusal?**
- 5. Did the circuit court make additional errors of varying severity including completely misapprehending the nature of several of Appellant’s causes of action and the facts actually alleged in the complaint itself, which led to the circuit court erroneously dismissing several of Appellant’s causes of actions for reasons which have nothing to do with what Appellant actually pleaded in the complaint?**

## **STATEMENT OF THE CASE**

On March 21, 2019, Appellant filed a complaint against Respondents in the Lexington County Court of Common Pleas alleging abuse of process and related causes of action. The complaint was promptly served on all Respondents by the Lexington County Sheriff's Department. Respondents filed a Rule 12(b)(6) motion to dismiss on April 23, 2019. Both parties filed memoranda of law shortly before the hearing and Respondents additionally submitted an affidavit in support of their Rule 12(b)(6) motion, which Appellant objected to as untimely and improper. Appellant also objected to the memorandum of law filed by Respondents on the grounds that it included numerous arguments that had no relationship to the single-issue motion to dismiss Respondents had filed. The circuit court heard arguments on the motion to dismiss on May 29, 2019 and granted the motion by order filed July 2, 2019. Appellant timely moved for reconsideration. The circuit court summarily denied Appellant's motion for reconsideration by order filed July 30, 2019.

## **STANDARD OF REVIEW**

This case involves an appeal from an order dismissing a complaint with prejudice pursuant to Rule 12(b)(6), SCRPC and an order denying a motion for reconsideration of the dismissal order. All issues before the court on appeal appear to be questions of law. The standard of review applicable to questions of law is de novo. Town of Summerville v. City of North Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

## ARGUMENTS

### I.

**The circuit court erred by improperly allowing Respondents—despite Appellant’s timely objection—to support their Rule 12(b)(6) motion with two improper filings submitted less than two days before the hearing: a memorandum of law that presented numerous arguments entirely unrelated to Respondents’ two-paragraph, single-issue motion to dismiss and a supporting affidavit that was both improper and untimely, both of which the circuit court relied on extensively in fashioning its order dismissing Appellant’s complaint with prejudice pursuant to Rule 12(b)(6).**

#### *A. Respondents’ Improper Memorandum of Law*

Less than two business days before the hearing on Respondents’ Rule 12(b)(6) motion, Respondents submitted a memorandum of law to the circuit court in support of their two-paragraph, single-issue Rule 12(b)(6) motion to dismiss. See generally Respondents’ Memorandum in Support (R. 56-61). The memorandum argues numerous points of law entirely unrelated to Respondents’ simple and straightforward motion to dismiss, which is reproduced in its entirety as follows:

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 [sic] that the Plaintiff was charged Criminal Domestic Violence by a Solicitor in the Lexington County Solicitors’ Office.[sic<sup>1</sup>] The Defendants are not in control of the actions of the Lexington County Solicitors’ Office, and the

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<sup>1</sup> There is no such thing as the “Lexington County Solicitors’ Office.” There is an Eleventh Circuit Solicitors’ Office which has jurisdiction over Lexington County, but Appellant’s complaint makes no reference to it. The criminal prosecution at issue in this case was handled entirely by the Lexington County Sheriff’s Office, which is referenced in Appellant’s complaint.

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.

See Respondents' Motion to Dismiss at 1 (R. 54).

Despite the simplicity of Respondents' single-issue motion to dismiss, the memorandum of law submitted by Respondents less than two days before the hearing contains all sorts of arguments on points of law entirely unrelated to the single "prosecutorial control" ground advanced in the motion to dismiss itself. See generally Respondents' Memorandum in Support (R. 56-61). Respondents' memorandum in support is a "kitchen sink" filing that makes every argument to dismiss Appellant's complaint that Respondents' could think of, practically all of which are entirely unrelated to the motion to dismiss itself. For example, Respondents' memorandum of law contains arguments about pleading insufficiency with respect to Appellant's causes of action that have *absolutely nothing to do* with the "prosecutorial control" ground in the motion to dismiss itself. See Respondents' Memorandum in Support at 3-6 (R. 58-61).<sup>2</sup> These arguments are entirely unrelated to the motion to dismiss itself and therefore cannot be properly included in a supporting memorandum of law filed less than two days before the hearing consistent with constitutional due process and the

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<sup>2</sup> By way of example, Respondents' memorandum contains an argument related to the Omnibus Adult Protection Adult Act to the effect that Appellant has "not alleged facts to show he was a vulnerable adult." See Respondents' Memorandum in Support at 6 (R. 61). That plainly has nothing whatsoever to do with the "prosecutorial control" argument advanced in Respondents' motion to dismiss and could not properly be included in a supporting memorandum. Practically all of Respondents' memorandum in support is like this—the arguments submitted in support of the motion to dismiss have absolutely no relationship whatsoever to the single ground raised in the motion to dismiss.

South Carolina Rules of Civil Procedure, which require that motions “state with particularity the grounds therefor.” Rule 7(b)(1), SCRCPP.

Courts plainly cannot allow parties to evade the requirements of Rule 7(b)(1) and the ten-day motion filing requirement of Rule 6(d), SCRCPP by filing simple motions arguing a single point of law, then radically expanding their arguments with a memorandum of law submitted on the eve of the hearing. Permitting parties to act in this manner not only subverts Rules 6(d) and 7(b)(1) of the South Carolina Rules of Civil Procedure—it also violates the constitutional due process rights of parties responding to such arguments by denying them a full and fair opportunity to respond to motions filed by their opponents. This is particularly true where a memorandum is filed less than two days before a hearing—in that situation, the opposing party is not only denied the ten days to respond to the motion guaranteed by Rule 6(d), but the party is also placed in the situation of preparing and filing something on a de facto emergency basis despite the absence of any emergency. That is problematic for all litigants but especially problematic for a disabled pro se litigant like Appellant, and it cannot be permitted by South Carolina courts without violating the due process protections of both the state and federal constitutions.

Appellant timely objected and moved to strike the portions of Respondents’ memorandum of law that argue points unrelated to Respondents’ motion to dismiss. See Transcript at p. 13 l. 13 to p. 14 l. 10 (R. 47-48) and Appellant’s Amended Memorandum in Opposition at 8-12 (R. 110-114). The circuit court did not rule on Appellant’s objection and motion to strike (see

generally Order of Dismissal (R. 1-10)) and Appellant properly preserved these issues by timely moving for reconsideration of that particular issue. See Appellant's Motion for Reconsideration at 1-2 (R. 118-119). The circuit court denied Appellant's Motion for Reconsideration by way of a summary order that did not specifically address Appellant's arguments relating to the impropriety of Respondents' memorandum of law. See generally Order Denying Reconsideration (R. 11-12).

The circuit court's error was plainly harmful to Appellant. Every legally meaningful part of the order dismissing Appellant's complaint includes arguments and other material gleaned from the improper portions of Respondents' memorandum of law that have absolutely no relationship to Respondents' motion to dismiss itself. Compare Respondents' Memorandum in Support (R. 56-61) with Order of Dismissal (R. 1-10). There is no way to separate the untainted parts of the circuit court's dismissal order from the unaffected parts. The only solution is for the Court of Appeals to vacate the order of dismissal and remand the case to the Lexington County Circuit Court with instructions to sustain Appellant's objection to the improper portions of Respondents' memorandum of law, hear Respondents' motion to dismiss anew, and consider only the motion to dismiss itself and any new supporting memorandum Respondents might file that contains no improper argument outside the scope of their motion.<sup>3</sup>

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<sup>3</sup> As also explained in this brief, the Court of Appeals should also direct the Lexington County Circuit Court to sustain Appellant's objection to the improper and untimely supporting affidavit filed by Respondents in support of their motion to dismiss.

*B. Respondents' Improper and Untimely Supporting Affidavit*

Along with their improper memorandum of law served and filed on the eve of the hearing, Respondents also submitted an improper and indisputably untimely affidavit in support of their motion to dismiss. See generally Respondents' Supporting Affidavit (R. 62-90). Appellant raised a timely objection to Respondents' supporting affidavit orally at the hearing (see Transcript at p. 12 l. 24 to p. 13 l. 11 (R. 46-47)) and by way of a written objection and motion to strike submitted to the Court at the hearing. See Plaintiff's Amended Memorandum in Opposition at 12-14 (R. 114-116). Appellant's objection was based on two points of black letter South Carolina law: Rule 12(b)(6) motions cannot be supported by affidavits except in rare situations inapplicable to this case (see Brown v. Leverette, 291 S.C. 364, 367, 353 S.E.2d 697, 698-99 (1987) and, further, Respondents' affidavit was untimely because it was not served along with the motion at least ten days prior to the hearing. In fact, it was served and filed less than two days before the hearing in clear violation of Rules 6(d) and 7(b)(1), SCRPC.

Just as the circuit court failed to rule on Appellant's timely objections to Respondents' memorandum of law, the circuit court also did not rule on Appellant's objection to the affidavit at the hearing or in the order granting Respondents' motion to dismiss. See generally Transcript (R. 35-53) and Order of Dismissal (R. 1-10). Appellant properly preserved the issue for appellate consideration by timely moving for reconsideration of the Order of Dismissal and again objecting to, and moving to strike, Respondent's improper and untimely

affidavit supporting their Rule 12(b)(6) motion. See Appellant’s Motion for Reconsideration and Additional Relief at 2 (119). Appellant timely moved for reconsideration (see generally Appellant’s Motion for Reconsideration (R. 118-129)), and the circuit court summarily denied Appellant’s Motion for Reconsideration without a hearing. See Order Denying Reconsideration at 1 (R. 11). The circuit court did not address the affidavit issue in the one-paragraph order summarily denying reconsideration. Id.

The circuit court plainly erred by failing to rule on Appellant’s objection and motion to strike Respondents’ untimely affidavit supporting their Rule 12(b)(6) motion. The circuit court obviously had a fundamental duty to rule on the objection, and crystal clear South Carolina law required the circuit court to sustain Appellant’s objection and strike the affidavit for two independent reasons: (1) Rule 12(b)(6) motions, which necessarily allege only pleading defects, cannot be supported by affidavits per Brown v. Leverette, 291 S.C. 364, 367, 353 S.E.2d 697, 698-99 (1987)<sup>4</sup> and (2) Respondents’ supporting affidavit was untimely because it was served and filed less than two days before the hearing in direct violation of Rules 6(d) and 7(b)(1), SCRPC.

The circuit court’s error was not harmless. The circuit court plainly relied on the improper and untimely affidavit submitted by Respondents in its order dismissing Appellant’s complaint. For example, the order expressly states:

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<sup>4</sup> Courts may consider such affidavits *only* if the court converts the Rule 12(b)(6) motion to a motion for summary judgment *and* grants the opposing party sufficient notice and time to submit counteraffidavits. Brown v. Leverette, 291 S.C. 364, 367, 353 S.E.2d 697, 698-99 (1987). None of that happened in this case. The circuit court did not convert Respondents’ Rule 12(b)(6) motion to a motion for summary judgment and did not give Appellant any time to submit counteraffidavits.

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 [sic<sup>5</sup>] are not the responsible or legally appropriate method of redressing interpersonal grievances. . . . 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.

Order of Dismissal at 8 (R. 8).

The only possible source of this improper conclusion by the circuit court is the untimely affidavit (R. 62-90) submitted by Respondents in support of their motion to dismiss (R. 54-55). Nothing in Appellant's complaint (R. 14-34) suggests that Appellant is an "obsessive" litigant improperly using the judicial system as a "method of redressing interpersonal grievances," as the order concludes (R. 8). Appellant's complaint contains nothing that would even begin to suggest such a thing. The gravamen of Appellant's complaint is that Respondents improperly hijacked a plea bargain negotiation between Appellant and the Lexington County Sheriff's Office by persuading the prosecutor to demand Appellant make concessions to Respondents in civil litigation entirely unrelated to the criminal matter in exchange for dismissal of the criminal charge against Appellant. That is not "obsessive" or "improper" litigation—it is a perfectly legitimate effort by Appellant to vindicate his fundamental right not to have plea bargain negotiations in a criminal matter extortionately hijacked by

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<sup>5</sup>The circuit court bizarrely concluded that Appellant's ex-wife—Respondent Griffith—is a "third part[y] who may have had some connection to the marital fallout." Obviously this is an error.

Respondents.

The fact that the circuit court included this material in the dismissal order is proof that the circuit court improperly relied on the untimely and improper affidavit submitted by Respondents and requires this court to vacate the dismissal and remand the matter to the Lexington County Circuit Court with instructions to strike the affidavit and rehear the motion to dismiss without consideration of any material within it, none of which is in any way relevant to a Rule 12(b)(6) motion in any event and was submitted to the circuit court by Respondents as part of a naked (and, unfortunately, successful) attempt to improperly prejudice the court against Appellant with respect to this litigation.

## II.

**The circuit court erred by improperly relying on materials outside the record in the order dismissing Appellant’s complaint pursuant to Rule 12(b)(6) and failing to provide Appellant with an opportunity to respond to “judicially noticed” materials as required by Rule 201, SCRE.**

In addition to improperly relying on a memorandum of law containing argument entirely unrelated to the motion to dismiss and improperly relying on an untimely and improper affidavit, the circuit court also erred by improperly relying on three documents cited as “exhibits” in the order of dismissal that are not, and never have been, part of the record below and—despite being identified as “exhibits” in the order of dismissal—were never filed with the clerk by either Respondents or the circuit court judge who issued the order of dismissal. The three “exhibits” are referenced on page 4 (R. 4) of the order of dismissal<sup>6</sup> but were

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<sup>6</sup> The exhibits are preliminary rulings in Appellant’s divorce litigation which involved  
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not attached to the order and, again, are not part of the record below. These documents were not referenced in any of the filings of Respondents or Appellant—they merely appear by reference for the very first time in the circuit court’s Order of Dismissal, never having been referenced in the record by any party or the court, with the circuit court taking “judicial notice” of them without following the proper procedure for taking judicial notice, and despite doing so did not actually attach them to the dismissal order or enter them into the record of the case. See Order of Dismissal at 4 (R. 4). Appellant objected that the circuit court had done this without giving Appellant an opportunity to respond, as required by Rule 201, SCRE, but the circuit court ignored Appellant’s objection and did not allow Appellant an opportunity to respond to the judicial notice. See Appellant’s Motion for Reconsideration at 4 (R. 121); see generally Order Denying Reconsideration (R. 11-12).

Appellant timely raised an objection to the circuit court’s reliance on material outside the record in the dismissal order in Appellant’s motion for reconsideration. See Appellant’s Motion for Reconsideration at 2; 4 (R. 119; 121). The circuit court summarily denied Appellant’s motion for reconsideration. See generally Order Denying Reconsideration (R. 11-12). Appellant therefore properly preserved this issue for appeal.

Obviously, the circuit court erred by considering and referencing materials outside the record in an order granting a Rule 12(b)(6) motion. It is fundamental

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Respondents that were voided by the final order in Appellant’s divorce case and have no relevance whatsoever to Respondents’ Rule 12(b)(6) motion to dismiss.

that a court may only consider materials properly in the record when issuing rulings of any kind. That is the purpose of the record. If Respondents wanted the circuit court to consider the three “exhibits” at issue, they should have properly made them a part of the record before or at the hearing on their Rule 12(b)(6) motion. The circuit court’s error in relying on these outside-the-record materials is obviously not harmless—they are cited as “exhibits” to the dismissal order despite not actually being part of the dismissal order as filed. See generally Order of Dismissal (R. 1-10). If a judge cites exhibits in an order, it means he or she obviously considered them and relied on them in fashioning the order. Because judges cannot rely on materials outside the record when issuing rulings, the circuit court erred by including references to these “exhibits” and the order which relies on them must be vacated.

Even so, if the circuit court had given Appellant an opportunity to respond as required by Rule 201, SCRE and as sought by Appellant in his motion for reconsideration, the circuit court would have learned that these orders were voided by further proceedings in the divorce action and civil litigation in Greenville County that collectively resolved in Appellant’s favor regarding the non-marital property issue at stake in this case. Finally, despite Rule 201, SCRE’s allowance of discretionary judicial notice, basic constitutional due process does not permit a judge to take judicial notice of some matter on his own initiative without giving all parties an opportunity to respond and submit whatever materials they reasonably believe the court should also, in fairness, consider along with the matters that judicial notice was taken of. By refusing Appellant any

opportunity to present his own responsive evidence that would have shown that the outside-the-record orders were voided by further proceedings in those matters, the circuit court not only violated Rule 201, SCRE but also violated Appellant's constitutional due process rights.

### III.

**The circuit court erred by improperly dismissing Appellant's complaint due to alleged pleading errors *with prejudice* and concomitantly improperly refusing to grant Appellant leave to submit an amended complaint seeking to cure the alleged pleading defects cited in the circuit court's order of dismissal, an amendment that would not have prejudiced Respondents and therefore should have been allowed pursuant to Rule 15 and common law.**

Even if the circuit court properly concluded that there were pleading defects in Appellant's complaint, the circuit court should not have dismissed the complaint with prejudice but instead should have granted Appellant's timely request for an opportunity to file an amended complaint in an effort to cure whatever pleading defects the court found. Appellant requested permission to file an amended complaint at the hearing in the event the circuit court found any defects in Appellant's pleadings. See Transcript p. 14 ll. 11 – 18 (R. 48). The circuit court did find pleading defects but ignored Appellant's request for an opportunity to amend the complaint and dismissed the complaint with prejudice. See generally Order of Dismissal (R. 1-10).

Appellant preserved this issue for appeal in the motion for reconsideration:

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, SCRCF, 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.

Appellant's Motion for Reconsideration at 4 (R. 121). The circuit court again ignored Appellant's request for an opportunity to amend and summarily denied the motion for reconsideration without addressing Appellant's request for leave to submit an amended complaint. See generally Order Denying Reconsideration (R. 11-12).

The circuit court committed reversible error by refusing to permit Appellant a single opportunity to submit an amended complaint in an attempt to cure the alleged pleading deficiencies the circuit court found in its dismissal order. As this court is well aware, American trial judges who grant dismissals based on pleading deficiencies pursuant to Rule 12(b)(6) or similar procedural rules generally allow the party whose pleading is at issue a single opportunity to respond to an order of dismissal by submit an amended complaint in an effort to cure the pleading deficiencies identified in the order of dismissal. In jurisdictions with a pleading amendment rule similar to Rule 15, SCRCF, an opportunity to amend is granted as a matter of course except in an exceptionally extreme case where there is absolutely no possible way a party could cure the pleading defect identified in the dismissal order.

Allowing a single amendment opportunity is required in this situation by Rule 15, which mandates that trial judges give parties an opportunity to submit amended pleadings whenever the opponent will not be prejudiced by the amendment, and prejudice is practically always absent in a situation where a Rule 12(b)(6) motion is granted at the beginning of the proceedings. It is indisputable

that Respondents would not have been prejudiced by the circuit court allowing Appellant a single opportunity to submit an amended complaint in response to the dismissal order in an effort to cure the alleged pleading defects identified by the circuit court. Accordingly, the circuit court erred by refusing to grant Appellant a short period of time in which to prepare, serve, and file an amended complaint in response to the order of dismissal, whereupon Respondents would be free to file another motion to dismiss if they believed Appellant had failed to cure the pleading defects identified in the order of dismissal.

The practice of allowing a litigant a single opportunity to cure pleading defects identified in a court's dismissal order or similar ruling is so common in American litigation that it, for all practical purposes, a common law right at this point. It is unheard of for an American court to dismiss a complaint pursuant to Rule 12(b)(6) *with prejudice* while simultaneously denying the plaintiff even a single opportunity to amend to cure pleading defects. A drastic dismissal of that nature is proper *only* in an exceptionally rare case where there is *absolutely* no possibility that the plaintiff could cure the pleading defects identified in the dismissal order, and this is not a case of that nature. Appellant believes in good faith that all of the pleading defects found by the circuit court can be remedied with an amended complaint—even those that Appellant does not believe actually are pleading defects.

Based on the foregoing, it is clear the circuit court erred by refusing to even rule on Appellant's request for leave to file an amended complaint and by

simultaneously dismissing the original complaint with prejudice.<sup>7</sup> The circuit court should have granted Appellant's request for leave to amend and allowed Appellant a single opportunity to attempt to cure the alleged pleading errors by way of an amended complaint. Accordingly, the Court of Appeals should remand the case to the Lexington County Circuit Court and direct the circuit court to grant Appellant a short period of time in which to prepare, serve, and file an amended complaint in this matter that seeks to cure the pleading defects referenced in the dismissal order.

Because of the manner in which proceedings occurred in the circuit court, Appellant had absolutely no opportunity to prepare or file a proposed amended complaint seeking to address the alleged pleading defects referenced in the order of dismissal. The case was dismissed with prejudice and reconsideration was denied without the circuit court even considering Appellant's request for leave to file an amended complaint, which Appellant timely requested both at the hearing and in the motion for reconsideration as explained above. To aid the Court of Appeals in its determination of whether Appellant should be granted leave to file an amended complaint, Appellant submits the following information as the major ways in which Appellant would seek to cure all the alleged pleading defects described by the circuit court in the order of dismissal:

1. With respect to the abuse of process cause of action, Appellant would expressly allege that the "process" abused by Respondents was the plea bargain

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<sup>7</sup> If the dismissal had been without prejudice, Appellant would simply have filed a new original complaint that attempted to cure the alleged pleading defects.

negotiation incident to the criminal domestic violence matter and *not* the entirety of the criminal domestic violence matter itself. The circuit court plainly misunderstood that issue in its dismissal order and erroneously dismissed Appellant's abuse of process claim on that basis. See Dismissal Order at 3 (R. 3). Appellant attempted to explain that matter to the circuit court in Appellant's amended memorandum in opposition to Respondents' motion to dismiss and in Appellant's motion for reconsideration but the circuit court made no mention of that fact in the order denying reconsideration. See Appellant's Amended Memorandum at 8 (R. 110) (section entitled "Note Regarding 'Process' as Used in the Complaint"); see Appellant's Motion for Reconsideration at 4-5 (R. 121-122); see generally Order Denying Reconsideration (R. 11-12). Appellant believes that clarifying the "process" that was abused in an amended complaint would fully correct any potential defects with the abuse of process claim.

2. With respect to the abuse of process cause of action, Appellant would expressly plead that Respondents are sued pursuant to the "hand of one, hand of all" theory of abuse of process causes of action expressed in Broadmoor Apartments of Charleston v. Horwitz, 306 S.C. 482, 413 S.E.2d 9 (1991) so as to remove any doubt as to the factual basis upon which Appellant is suing Respondents for an abuse of process committed incident to a criminal plea bargain in which they were not the prosecutors. Broadmoor and other cases, including the seminal case Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 153 S.E.2d 693 (1967) make clear that Appellant's "hand of one, hand of all" theory is correct and allow private parties to be sued for abuses of process directly

committed by a criminal prosecutor if the private party “participates in, aids, abets, advises, consents to, or subsequently ratifies an act constituting abuse of process.” See Appellant’s Amended Memorandum at 4-7 (R. 106-109). This would prevent the circuit court from misconstruing the nature of Appellant’s abuse of process claim, as obviously happened in this case because the circuit court found that Appellant had sued innocent “third parties” even though Broadmoor clearly holds that Respondents are *not* third parties and are fully amenable to suit for abuse of process under the facts of this case due to the nature of their interactions with the criminal prosecutor, who improperly acted as Respondents’ de facto agent in the plea negotiation. See Order of Dismissal at 8 (R. 8).

3. With respect to the abuse of process claim, Appellant would plead numerous additional facts to fully distinguish this case from Johnson v. Painter, 279 S.C. 390, 307 S.E.2d 860 (1983), a case which involves an entirely different situation where a criminal defendant’s lawyer reached out to the alleged victim and offered to pay restitution in exchange for the alleged victim supporting a termination of the charges, then sued the alleged victim for saying yes. The facts of this case are fully distinguishable because (1) Appellant never reached out to Respondents to offer anything in exchange for Respondents supporting dismissal of the charges; (2) the demand came from Respondents by and through a prosecutor they had co-opted to their cause; and (3) the thing demanded in exchange for dismissal of the criminal charge was not restitutionary and had absolutely no relationship to the criminal matter whatsoever—it involved an

entirely unrelated civil dispute involving non-marital property that had bizarrely cropped up in divorce litigation (despite its non-marital status).

4. Appellant would plead the full history of all adversarial litigation involving himself and Respondents to demonstrate to the circuit court that Appellant is not an “obsessive litigant” and has never committed any impropriety whatsoever in any such litigation. The circuit court is apparently concerned about these matters (see Order of Dismissal at 8 (R. 8)) and Appellant could completely allay those concerns if he had an opportunity to file an amended complaint.

5. Appellant would plead that he eventually prevailed in the non-marital property dispute, contrary to the circuit court’s erroneous findings that the family court (and this Court) ruled against Appellant on those matters. It is true that Appellant lost on that issue during the interlocutory phase of the divorce action but Appellant eventually prevailed in the final order issued by the family court.

6. Appellant would more clearly explain that the civil conspiracy cause of action is *only* asserted in the event that all other causes of action are dismissed and no unnamed or heretofore unrecognized cause of action exists that would allow Appellant to obtain redress for Respondents’ conduct. That should allow Appellant’s case to continue even if all other causes of action are dismissed, since Respondents’ conduct with the prosecutor in the criminal matter plainly constitutes tortious civil conspiracy if it does not qualify as any other tort.

7. Appellant would split the “Trespass on the Case” cause of action into two causes of action entitled “Unnamed but Previously Recognized Tort” and “Previously Unrecognized Tort” and ask the circuit court to proceed on either

theory in the event that all of Appellant's other causes of action fail for some reason. Appellant has a good faith belief that Respondents' conduct with the prosecutor in this matter was or should be tortious under South Carolina law and, frankly, does not care what the tort is called—abuse of process or whatever. Appellant believes he can plead a legitimate case that if Respondents' conduct is not actionable under any currently named tort, it is either actionable as an unnamed tort that has been previously recognized in South Carolina or is actionable under a previously unrecognized tort theory.

8. Appellant would remove the unfair trade practices claim because Appellant believes that recovery under other theories is substantially more likely and simpler as a matter of law.

9. With respect to the negligent supervision theory, Appellant would include additional factual allegations demonstrating that the lawyer defendants in this matter—all Respondents other than Griffith—acted outside the lawful course and scope of their representation with Griffith when they co-opted a prosecutor in a criminal matter to attempt to extort Appellant in connection with a criminal plea bargain process. Criminal and tortious conduct cannot ever be within the proper scope of an attorney-client relationship, so even if the lawyer Respondents thought they were acting as Respondent Griffith's lawyers in the criminal matter, they were not because unlawful conduct cannot be shielded by the attorney-client relationship.

10. With respect to "public policy," which is cited by the circuit court as a basis for dismissing the complaint (see Order of Dismissal at 8 (R. 8)), Appellant

would include substantial material in the complain explaining how public policy supports the causes of action asserted by Appellant and condemns the conduct of Respondents in this case. Obviously, South Carolina public policy does not support alleged victims using extortionate means to extract concessions on unrelated civil disputes from criminal defendants during plea bargain negotiations. Appellant would make all of that crystal clear in an amended complaint.

11. Finally, Appellant would include substantially more facts to “beef up” the complaint which would entirely remove all possible ambiguities as to Appellant’s legal theories and factual allegations that might cause a circuit court judge to erroneously dismiss the case. Appellant honestly believed he had filed a clear complaint that no circuit court judge would dismiss, but apparently that is not the case, but Appellant could easily cure every single additional ambiguity and issue that has cropped up since the original complaint was filed with an amended complaint. If the circuit court still dismissed it, so be it, but at least Appellant would have had a full and fair opportunity to articulate the facts and legal theories underlying his claims in an amended pleading, and obviously Respondents would not be prejudiced by an amendment at this early stage of the proceedings.

#### **IV.**

**The circuit court erred by failing to rule on Appellant’s timely motion for recusal and, accordingly, continuing to issue rulings on substantive matters in the case during the pendency of Appellant’s motion for recusal.**

Upon reviewing the dismissal order, Appellant submitted a motion seeking not only reconsideration but also recusal of the circuit court judge who heard the

matter on several grounds. See Appellant's Motion for Reconsideration and Additional Relief at 5-6 (R. 122-123). The circuit court judge denied the consideration component but did not rule on the judicial disqualification component. The full text of the order is as follows:

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.**

Order Denying Reconsideration at 1 (R. 11).

A careful reading of the order indicates that the circuit court *only* ruled on the reconsideration aspect of Appellant's motion and did not rule on any of the other relief Appellant sought, which included judicial recusal. This was error. The circuit court judge clearly had a duty to rule on the recusal issue before considering the motion for reconsideration. Both due process and common sense require judges facing motions for disqualification to rule on them prior to issuing any further substantive rulings in a matter—especially a final judgment, as is the case here. The result in this case is that the judicial disqualification matter was entirely avoided by the circuit court judge by denying reconsideration without ruling on recusal.

This is plain error and, as noted above, is a violation of both constitutional due process and common sense. When a party moves for judicial disqualification,

the process that is due is that the judge at least rule on the matter prior to proceeding further in the case. Even if the Court disagrees with all of Appellant's other assignments of error, the order denying reconsideration must be vacated and the matter remanded to the Lexington County Circuit Court for consideration of the judicial disqualification issue prior to the reconsideration issue.

## V.

**The circuit court made additional errors of varying severity including completely misapprehending the nature of several of Appellant's causes of action and the facts actually alleged in the complaint itself, which led to the circuit court erroneously dismissing several of Appellant's causes of actions for reasons which have nothing to do with what Appellant actually pleaded in the complaint.**

Because Appellant seeks leave to amend his complaint prior to further proceedings in the circuit court, as explained in the prior arguments, it is only necessary for the Court of Appeals to consider these additional matters if the Court intends to deny Appellant leave to amend the complaint. That being said, the circuit court made numerous additional errors—some extremely severe, some less so—in its order of dismissal. The most harmful, and the ones that necessitate reversal, are those which radically misconstrue parts of Appellant's complaint. For all practical purposes, the circuit court dismissed a complaint that Appellant did not file.

### *A. The Circuit Court's Misapprehension of "Process"*

The circuit court plainly did not understand the nature of the "process" that Appellant alleges was abused by Respondents. Appellant does not contend that the entirety of the criminal domestic violence prosecution against him was an

abuse of process committed by Respondents. The specific process that was abused was the plea bargain process itself, not the original charge. Appellant made this clear to the circuit court in his amended memorandum which contains a section heading “Note Regarding ‘Process’ as Used in the Complaint.” See Appellant’s Amended Memorandum at 8 (R. 110). In that section of the memorandum, Appellant carefully explained the nature of the process that was abused—the plea bargain process, not the original criminal charge itself. Nonetheless, the circuit court erroneously found in its order of dismissal that the “process” at issue was the criminal domestic violence charge itself, not the plea bargain process. See Order of Dismissal at 3 (R. 3) (“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 sufficient allege that he was charged with criminal domestic violence for an ulterior purpose[.]”) Appellant never argued that he was charged with criminal domestic violence for an ulterior purpose—Appellant’s claim is that Respondents persuaded the prosecutor to abuse the plea bargain process by demanding that Appellant make concessions to Respondent on entirely unrelated civil disputes incident to a divorce action in exchange for termination of the criminal domestic violence prosecution against him. The circuit court entirely failed to understand Appellant’s argument on this point despite the fact that Appellant expressly explained it in his amended memorandum.

Appellant properly preserved this issue by including it in the motion for reconsideration (see Appellant’s Motion for Reconsideration at 4-5 (R. 121-122)) and again explained to the circuit court that the “process” at issue was the plea

bargain process and not the original criminal charge, but the circuit court nonetheless summarily denied the motion for reconsideration without altering the original dismissal order to correct this error. See generally Order Denying Reconsideration (R. 11-12).

*B. The Circuit Court's Misapplication of Broadmoor and Related Cases*

The circuit court's failure to properly identify the "process" at issue directly led to misapplication of abuse of process precedents, most notably Broadmoor Apartments of Charleston v. Horwitz, 306 S.C. 482, 413 S.E.2d 9 (1991) and Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 153 S.E.2d 693 (1967). If the circuit court had analyzed the conduct of Respondents and the prosecutor alleged in the complaint with respect to the plea bargain process as opposed to the original initiation of the criminal domestic violence charge, which is what Plaintiff intended to plead (and, frankly, did plead) in his complaint, then the circuit court would have come to the conclusion that Appellant properly pleaded a textbook abuse-of-criminal-process claim against Respondents. The facts asserted in the complaint make crystal clear that Respondents secured the assistance of a prosecutor in abusing the plea bargaining process by persuading the prosecutor to demand Appellant make concessions to Respondents in civil litigation regarding non-marital property entirely unrelated to the criminal domestic violence matter. See generally Complaint (R. 14-34). If that is not abuse of criminal process, nothing is—the tort simply does not exist in South Carolina if it cannot be asserted in this case. And the Broadmoor and Huggins cases make crystal clear that Appellant is fully within his rights to sue private parties who

were actively in league with the criminal prosecutor who acted as their de facto agent in the plea bargain process with respect to the improper demand that Appellant make civil concessions to Respondents unrelated to the criminal matter in exchange for termination of the criminal prosecution.

*C. The Circuit Court's Misapplication of Johnson*

The circuit court also misapplied Johnson v. Painter, 279 S.C. 390, 307 S.E.2d 860 (1983) in its dismissal order. The Johnson case plainly stands for the proposition that a victim seeking restitution incident to a plea negotiation does not constitute abuse of process. See generally id. This case has absolutely nothing to do with restitution. If all Respondents had done was ask the prosecutor to demand Appellant make restitution for the criminal domestic violence matter in exchange for dropping the prosecution, then Respondents would have not committed any tort whatsoever and Appellant would not have sued them. That is not what happened and it is certainly not what Appellant alleged in his complaint.

The complaint alleges that Respondents persuaded the prosecutor in the criminal domestic violence matter to offer to drop the criminal domestic violence prosecution in exchange for Appellant surrendering to Respondents in a bizarre and entirely unrelated dispute over non-marital property incident to a divorce action, which had nothing whatsoever to do with the criminal domestic violence matter. See generally Complaint. Johnson plainly does not stand for the proposition that the alleged victim of a crime may utilize the plea bargaining process to extort concessions in unrelated civil disputes from the criminal defendant, and the circuit court plainly erred by holding that Johnson does allow

such conduct. If the circuit court's interpretation of the Johnson case were correct, then there would no longer be a tort of abuse of criminal process in the state of South Carolina, and alleged victims of crimes would be free to co-opt prosecutors in extortionate schemes to use plea bargaining processes to gain advantage in unrelated civil litigation and other matters. That is plainly not the law and the circuit court erred by ruling that it was.

*D. The Circuit Court's Errors Regarding the Prosecutorial Agency*

Although admittedly minor, it is worth nothing that the circuit court also erred by stating in its ruling that the Eleventh Circuit Solicitor's Office was the prosecutorial agency that prosecuted Appellant for criminal domestic violence. Appellant pleaded no such thing and expressly stated that the prosecutorial agency was the Lexington County Sheriff's Department in the complaint. See Complaint at 3 (R. 16). The only reference to the solicitor's office appeared in Respondents' filings, and Appellant explained to the circuit court that this was incorrect. E.g. Motion for Reconsideration at 5 (R. 122). The circuit court nonetheless refused to correct the error and summarily denied Appellant's motion for reconsideration without addressing the matter. See generally Order Denying Reconsideration (R. 11-12).

Appellant recognizes that this single issue is by no means outcome determinative, but—with all due respect to the circuit court judge—it demonstrates that the circuit court simply did not pay any meaningful amount of attention to Appellant's filings or arguments. The circuit court did not rule on any of Appellant's objections and apparently ignored everything Appellant argued,

even in situations where Appellant was indisputably correct. When a circuit court judge operates in this fashion, obvious but trivial errors often crop up because the judge has for all practical purposes closed his ears to one of the parties before him. Appellant mentions this matter to the Court of Appeals not because it is fundamentally important to the question of reversal but because it demonstrates a pattern and practice by the circuit court judge in this case of simply ignoring the arguments and submissions presented by Appellant regardless of how plainly correct Appellant was on any particular issue.

*E. The Circuit Court's Treatment of Probable Cause as an Element of Abuse of Process*

The circuit court additionally erred by erroneously treating probable cause as an element of abuse of process. See Order of Dismissal at 3 (R. 3) (“It is also curious to note that there is no contest from any party but that probable cause existed to initiate the [criminal domestic violence] prosecution”). The absence of probable cause is not an element of abuse of process—the only elements are (1) an ulterior purpose and (2) a willful act in the use of 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 (Ct. App. 2002) (a case that is curiously cited in the dismissal order itself). The question of whether the process at issue in an abuse of process case issued with probable cause is entirely irrelevant to the abuse of process claim. A perfectly valid process may be the subject of an abuse of process claim if someone perverts that process for a purpose not intended and uses it as an extortionate club to extract concessions

from the target of the process in an unrelated matter. See generally Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 153 S.E.2d 693 (1967) This is black letter law.

It is entirely immaterial to this case whether the criminal domestic violence prosecution against Appellant was initiated with probable cause. It was not, and Appellant is provably innocent, but none of that is relevant to this case. Even if Appellant was entirely guilty of the criminal domestic violence charge, Respondents still committed abuse of process if they did what Appellant alleged in the complaint: Co-opt the prosecutor and exploit the plea bargain process in an extortionate effort to extract concessions from Appellant in an unrelated civil matter in exchange for discontinuation of the prosecution.

The circuit court plainly erred by considering the fact that Appellant did not plead the absence of probable cause in the complaint. Appellant did not do so because Appellant knows the elements of abuse of process, and lack of probable cause is not one of them. It is an element of malicious prosecution, but Appellant did not include a malicious prosecution claim in the complaint—only abuse of process and related claims. The circuit court plainly erred with respect to the probable cause issue and must be reversed accordingly, as Appellant properly preserved this issue for appeal. See Motion for Reconsideration at 2-3 (R. 119-120).

That being said, Appellant would have included an allegation that the criminal domestic violence prosecution was initiated without probable cause—even though it is not necessary—simply to satisfy the circuit court if the circuit

court had permitted Appellant to submit an amended complaint.

*F. The Circuit Court's "Additional Determining Factor"*

In the dismissal order, the circuit court employs an “additional determining factor” in deciding whether or not to grant Respondents’ one-issue Rule 12(b)(6) motion, as follows:

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 [sic<sup>8</sup>] are not the responsible or legally appropriate method of redressing interpersonal grievances. . . . 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.

Order of Dismissal at 8 (R. 8).

The circuit court plainly erred by considering these matters as an “additional determining factor” incident to Respondents’ single-issue Rule 12(b)(6) motion arguing a pleading deficiency in Appellant’s complaint. The question of whether Appellant is an “obsessive” litigant seeking to “redress[] personal grievances” has *absolutely* nothing to do with whether Appellant’s complaint, within its four corners, legally survives a Rule 12(b)(6) motion alleging pleading deficiencies. Appellant’s complaint either states facts sufficient to constitute a cause of action or it does not—Appellant’s personal “obsessiveness” cannot be considered by a court in ruling on a Rule 12(b)(6)

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<sup>8</sup> The circuit court bizarrely concluded that Appellant’s ex-wife—Respondent Griffith—is a “third part[y] who may have had some connection to the marital fallout.” Obviously this is an error.

motion or, frankly, in any other context in ordinary civil litigation.

Individual litigants are often obsessive about litigation involving them, particularly where it involves exceptionally severe matters, as is the case here. Courts cannot punish a litigant merely for being “obsessive” so long as he follows all the rules of court applicable to his case. And the idea that litigants cannot resort to the courts for resolution of personal grievances is as bizarre as it is wrong—if the personal grievance at issue constitutes legally actionable conduct, a tort or breach of contract or similar matter—a private litigant not only has the right to seek redress for that grievance before the courts, he has an obligation to do so. The court’s order suggests that Appellant, instead of coming to court, should have found some other way to injure Respondents for their tortuous conduct outside the judicial system. That is not how things are done in the United States, nor is it how they should be done. Appellant had every right to seek the court’s assistance in vindicating his right to be free from Respondents’ tortuous conduct, and the circuit court’s suggestion to the contrary is inappropriate and bizarre.

It is such a basic proposition of law that a court considering Rule 12(b)(6) motions may not consider the personal motivations and feelings of the litigants that Appellant has been unable to find any authority on the matter. It would appear the circuit court judge in this case is the very first American judge to dismiss a case pursuant to Rule 12(b)(6) by considering a litigant’s personal obsessiveness and feelings as an “additional determining factor” in granting the

dismissal.<sup>9</sup> This Court plainly cannot let that stand and necessarily must reverse the circuit court's ruling because nothing of this nature can be properly considered in connection with a Rule 12(b)(6) motion.

Appellant properly preserved this issue for appeal. See Appellant's Motion for Reconsideration at 6-7 (R. 123-124).

*G. The Circuit Court's Reliance on Knowledge  
of Proceedings Outside the Record*

The circuit court also erred by considering proceedings outside the record that the judge apparently conducted independent personal research into outside of court between the hearing on the Rule 12(b)(6) motion and the issuance of the order of dismissal. Part of the "additional determining factor" was this: "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." Order of Dismissal at 8 (R. 8).

It is plainly improper for a judge to dismiss a case pursuant to Rule 12(b)(6) because he conducted a global review of all litigation involving the parties before him conducted in other courts and involving other matters and has developed a bad taste in his mouth with respect to one of the litigants. Courts cannot punish litigants because they do not approve of how those parties litigated cases that are not before them. That being said, Appellant has not engaged in any sort of litigation impropriety in any other case involving these litigants and no

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<sup>9</sup> Obviously some judge somewhere may have done something like this in the past in a case that did not result in a published appellate opinion or other published case. But Appellant cannot find a single appellate authority involving a situation where a judge dismissed a case pursuant to Rule 12(b)(6) after determining a litigant's personal "obsessiveness" as an "additional determining factor" in dismissing the action.

court has ever found that he did. Even so, it was entirely improper for the circuit court to consider these matters while ruling on a simple one-issue Rule 12(b)(6) motion aimed at an alleged pleading deficiency that has absolutely nothing to do with any other litigation Appellant is or has been involved in.

Nonetheless, if the circuit court had given Appellant a full and fair opportunity to present his side of the litigation story involving Respondents, Appellant would have done so and would have shown that Respondents, not Appellant, are the parties that have abused the judicial system in these particular matters. But the circuit court did not conduct such an inquiry and gave Appellant no opportunity to be heard on these matters prior to ruling that Appellant is, essentially, a troublesome litigant who should have his complaint dismissed because of his troublesomeness as an “additional determining factor.” This Court obviously must reverse the circuit court on this issue.

#### *H. The Circuit Court’s Reliance on Public Policy*

The circuit court also relies on “public policy” in dismissing Appellant’s complaint pursuant to Rule 12(b)(6). Public policy has absolutely nothing to do with whether Appellant has stated facts sufficient to constitute a cause of action for abuse of process or any other cause of action. Neither side argued at any point that public policy has anything to do with this case, and it does not. Either Appellant stated a cause of action for abuse of process etc. or he did not. Public policy is not a proper basis for dismissal in this case and should not have been considered in any fashion by the circuit court. Appellant properly preserved this issue for appeal in his motion for reconsideration. See Appellant’s Motion for

Reconsideration at 6-7 (R. 123-124).

*I. The Circuit Court's Treatment of the Civil Conspiracy Claim*

In the alternative that none of Appellant's causes of action survived dismissal, Appellant pleaded a civil conspiracy cause of action. The circuit court dismissed this cause of action solely because Appellant had pleaded other causes of action, even though the circuit court also dismissed them. This was plain error. If none of Plaintiff's other causes of action survive, civil conspiracy cannot be dismissed on the grounds that Plaintiff has asserted other causes of action seeking the same damages. Likewise, the circuit court refused to even consider Appellant's contention that if Respondents' conduct was not actionable under an abuse of process theory, civil conspiracy theory, or other cause of action Appellant asserted in the complaint, the court should consider whether the conduct is actionable as an unnamed tort or heretofore unrecognized tort. Appellant has every right to ask the circuit court to rule on these matters, but the circuit court did not do so and instead dismissed Appellant's complaint without consideration of whether the plainly improper conduct of Respondents is actionable under any theory other than abuse of process or a related claim, including but not limited to civil conspiracy, an unnamed tort, or a heretofore unrecognized tort. Appellant properly preserved this issue for appeal. See Appellant's Motion for Reconsideration at 7 (R. 124).

## CONCLUSION

With all due respect to the circuit court judge in this matter, the proceedings below were carried out in a fashion that was patently unfair to Appellant. The circuit court flatly ignored Appellant's valid objections to Respondents' improper memorandum of law filed less than two days before the hearing which substantially consisted of arguments entirely unrelated to Respondents' simple one-issue motion to dismiss and caught Appellant entirely off guard. The circuit court flatly ignored Appellant's valid objections to Respondents' equally improper and patently untimely supporting affidavit. The circuit court flatly ignored Appellant's valid objections to the order of dismissal citing "exhibits" that were not in the record and were not even attached to the order itself. The circuit court flatly ignored Appellant's good faith request for leave to file an amended complaint seeking to cure whatever pleading defects the circuit court found in its dismissal order. The circuit court flatly ignored Appellant's legitimate motion for recusal which Appellant felt necessary to file after the overwhelmingly unfair and, frankly, unconstitutional manner in which proceedings were conducted in the case.

There are numerous ways the Court of Appeals might fashion adequate relief in this case, but the simplest is to simply remand the case with instructions to the circuit court to: (1) allow Appellant a single opportunity to file an amended complaint seeking to correct all alleged pleading defects identified in the order of dismissal and (2) direct the circuit court to carefully follow the rules of civil procedure applicable to motions and supporting affidavits in proceedings on any

motion to dismiss Respondents might file. Although the Court of Appeals may certainly choose to rule on additional matters in this case, it is not necessary in order to afford Appellant full relief—allowing Appellant the chance to submit an amended complaint and directing the circuit court to carefully follow the rules of civil procedure regarding motions practice going forward is all that is truly necessary.

That being said, any ruling by the Court of Appeals that corrects or enables the correction of the numerous errors in this case is welcome.

Respectfully submitted,

October 30, 2020

s/James John Todd Kincannon

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Appellant Pro Se

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

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Appellate Case No. 2019-001501

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James John Todd Kincannon,

Appellant,

v.

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

Respondents.

**RECEIVED**  
**Oct 30 2020**  
**SC Court of Appeals**

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**CERTIFICATE OF COUNSEL**

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The undersigned Appellant hereby certifies that this Final Brief complies  
with Rule 211(b), SCACR.

October 30, 2020

s/James John Todd Kincannon

James John Todd Kincannon