THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Case Nos.: 2010-CP-10-05520, 2010-CP-10-07233, 2012-CP-10-05559, 2013-CP-10-03733, 2013-CP-10-04175, 2013-CP-10-04176, 2015-CP-10-05486, 2016-CP-10-01632

Consolidated as Appellate Case No.: 2017-001996

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11, John Doe 193, Father Doe 194, John Doe 194, John Doe 245 and Father Doe 245, and John Doe 297, ... Appellants,

v.

The Bishop of Charleston, A Corporation Sole; Robert Gugliemone, The Bishop of Charleston, in his official Capacity; Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official Capacity; Robert J. Baker, former Bishop of Charleston, in his official Capacity; Lawrence E. Richter, Jr.; David K. Haller; and Richter and Haller, LLC, ... Respondents.

JOINT RETURN TO APPELLANTS' PETITION FOR REHEARING

Pursuant to the Court's request of March 17, 2021, Respondents Lawrence E. Richter, Jr., David K. Haller, and Richter & Haller, LLC (the "Attorney Respondents") file this Joint Return to Appellants' Petition for Rehearing.

INTRODUCTION

The Petition for Rehearing should be denied because, as set forth in more detail below, Appellants' arguments merely re-hash issues ably addressed by this Court's Opinion of March 3,

2021 (the "Opinion"). Specifically, Appellants wrongly contend that the Court misapprehended their alternative pleadings against the Attorney Respondents, overlooked the (newly) alleged lack of discovery, and misconstrued Appellants' alleged damages. However, there is no showing that the Court overlooked or misapprehended any of these issues. Rather, as set forth in the Court's Opinion, this Court simply (and correctly) disagreed with Appellants' arguments. Accordingly, there is no basis for rehearing this appeal.

ARGUMENT

Appellants purport to make four arguments in support of the Petition for Rehearing. None have merit as set forth more fully below.

A. As this Court Held, the Appellants' Complaints Unequivocally Allege Alternative Causes of Action, and, by the Plain Terms of Those Pleadings, the Claims Against the Attorney Respondents Were Extinguished by the Trial Court's Order on Limited Collateral Review of the Underlying Class Action.

Appellants contend that the Court erred in construing their complaints as asserting alternative causes of action and in ruling that the trial court's Order on Limited Collateral Review extinguished Appellants' alternative claims against the Attorney Respondents. Appellants' arguments are a smoke screen for at least two reasons.

First, there can be no dispute that Appellants did allege alternative causes of action. As set forth in the Attorney Respondents' brief, Judge Nicholson's Order on Limited Collateral Review, and this Court's Opinion, Appellants stated in their pleadings that their claims against the Attorney Respondents were "irrelevant" if they were not barred by the underlying class action settlement from pursuing claims against the Diocese. (*See, e.g.*, Opinion p. 2; Resp. Br. pp. 16, 35; R. p. 0520, ¶ 23.) Appellants specifically pleaded that their claims against the Attorney Respondents were "irrelevant" (R. p. 0520, ¶ 2) in the event they were not barred by the underlying class action, which is even stronger language than simply calling their claims "alternative." For

Appellants to now argue that they did not plead alternative causes of action when they called the claims against the Attorney Respondents "irrelevant" contradicts the plain language of their own complaints and should not be countenanced.

Second, Appellants' contention that their claims against the Attorney Respondents should survive because alternative claims are allowed *at the pleadings stage* misapprehends this Court's Opinion and the Rules of Civil Procedure. While the Rules of Civil Procedure allow plaintiffs to *plead* alternative claims, it is ultimately the job of the trial court to determine which alternative claims, if any, survive once those claims are factually developed. Here, as noted above, Appellants clearly pleaded substantive sexual abuse claims against the Diocese and, alternatively, legal malpractice claims against the Attorney Respondents *in the event their claims against the Diocese were barred by the underlying class action.* Appellants were not prevented from pleading in the alternative, and Appellants' claims were not dismissed on the pleadings; rather, the claims against the Attorney Respondents were dismissed by the trial court on summary judgment after substantial discovery and development. In its Order on Limited Collateral Review (which was never appealed), the trial court determined, based on the evidence before it, that the underlying class action did not bar Appellants' claims against the Diocese. Accordingly, as this Court held, the alternative claims against the Attorney Respondents were extinguished according to Appellants' own pleadings. Nothing in this Court's Opinion remotely contravenes the Rules of Civil Procedure permitting alternative pleadings, and Appellants' blatant misreading of the Court's Opinion should be summarily rejected.

B. Appellants Did Not Argue There Was Inadequate Discovery and Cannot Raise the Issue for the First Time in a Petition for Rehearing.

Appellants now contend, incorrectly, that the Court overlooked that the trial court granted summary judgment without adequate time for discovery. This argument fails for two independent

reasons. For one, Appellants did not argue in their appellate Brief to this Court that discovery was inadequate, and it is well-settled that an appellant may not raise issues for the first time in a petition for rehearing. *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001).

In addition, the notion that there was inadequate discovery is simply false. The Record on Appeal reflects a portion of the substantial written discovery and depositions that occurred before the trial court granted summary judgment. Moreover, contrary to Appellants' contention in the Petition for Rehearing, many of the cases on appeal were pending for more than seven years before Judge Nicholson bifurcated the claims against the various defendants in 2017. Appellants cannot blame others for failing to take whatever discovery they wished to take during that extended seven-year period. Accordingly, there is no support in the Record for Appellants' new contention that discovery was inadequate, and the Petition should be denied.

C. As this Court Held, Appellants Were Not Damaged by the Attorney Respondents as a Matter of Law Because the Underlying Class Action Did Not Preclude Appellants from Pursuing Claims Against the Diocese.

Appellants contend that the Court erred in concluding that the Attorney Respondents did not proximately cause Appellants damage by simply repeating their prior argument that the Attorney Respondents had a duty to secure relief for them. This issue was fully briefed and argued, and this Court concluded that Appellants "failed to establish damages proximately caused . . . ." (Opinion p.2.) Appellants now provide no cognizable or legally permissible reason to revisit that conclusion, and there is no showing that the Court erred in any way. Rather, it is Appellants, not the Court, who fundamentally misapprehend this issue: the simple fact is that the Attorney Respondents had no effect whatsoever on the Appellants' claims against the Diocese. Accordingly, as the Court held, the Attorney Respondents did not cause—indeed, could not have caused—any damage to Appellants. For this reason as well, Appellants' Petition should be denied.

D. Appellants' Fourth Argument Is Nothing More than a Rehash of Allegations and Arguments that Fail to Support Any Basis to Disturb this Court's Ruling that the Trial Court Correctly Granted Summary Judgment.

Appellants' fourth argument, which is titled "The panel erred in failing to either consider or rule on various issues from the class action record" is nothing more than an uncited hodge-podge of Appellants' bald allegations concerning the underlying class action. While the Attorney Respondents strenuously deny these allegations, all of them—besides being uncited—are defeated by this Court's ruling that Appellants have no damages proximately caused by the Attorney Respondents. As this Court correctly held, without damages proximately caused, a core element of Appellants' claim is lacking, and the Court need not analyze the matter further. Accordingly, the scattered and unsupported allegations contained in Appellants' fourth argument are not pertinent to the Court's ruling and cannot serve as a basis for rehearing the appeal.

CONCLUSION

For the foregoing reasons and those contained in the Attorney Respondents' prior briefing and in the Record on Appeal, Appellants' Petition for Rehearing should be DENIED.

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