

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Frank Addy, Jr., Circuit Court Judge

Appellate Case No. 2021-000179

RECEIVED

AUG 05 2021

SC Court of Appeals

Daniel Pruitt, Appellant,

v.

Kyle Parker, Pope & Hudgens Attorneys, PA, Respondents.

RECORD ON APPEAL

Daniel W. Pruitt
444 Paula Drive North Apt 401
Dunedin, Florida 34698-1820
(404) 484-6352
Pro Se Appellant

John E. Cuttino, Esq.
1201 Main Street
Columbia, SC 29201
Counsel for the Respondents

Jessica W. Laffitte, Esq.
1201 Main Street
Columbia, SC 29201
Counsel for the Respondents

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Appellant's Complaint

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

DANIEL W PRUITT

PLAINTIFF NAME

444 PAULA DR N APT 401

DUNEDIN FL 34698

ADDRESS

404-484-6352

TELEPHONE

VS

KYLE PARKER AND POPE & HUDGENS ATTORNEYS, P.A.

DEFENDANT NAME

1508 COLLEGE ST - PO BOX 190

NEWBERRY, SC 29108

ADDRESS

803-276-2532

TELEPHONE

CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

SUMMONS & COMPLAINT

I, DANIEL W PRUITT, the plaintiff in this civil action do make the following claims:
POPE & HUDGENS ATTORNEYS, P.A.

1. I believe the defendant, KYLE PARKER AND, is a resident of Newberry County, and resides at 1508 COLLEGE STREET which is within Judge Halfacre / Johnson's magisterial jurisdiction or this complaint is properly filed in Newberry County.

2. I make this complaint on the following:

SEE ENCLOSED ENTITLED "DANIEL PRUITT COMPLAINT"

(Attach supplement if necessary)

3. I believe, because of the above information, that I am entitled to and do request a judgment for \$ 7174.33 and/or other relief as below requested:

PLUS COURT FEES, AND INTEREST IF THE COURT SEES FIT

including any costs resulting in this action.

I state under penalty of perjury that the above is correct and truthful, except those based on information and belief.

3/9/20
DATE


SIGNATURE OF PLAINTIFF (OR HIS ATTORNEY)

2. I make this complaint on the following:

On March 10, 2014, I signed a retainer with Mr. Kyle Parker of Pope, Hudgens Attorneys in a probate matter. The background of the case was as follows: For the past twenty years I had been my uncle's, Lubuster Sartor, personal representative. After he passed away at age 90 from the effects of dementia, prostate cancer and heart and lung conditions I looked for his will. His will was kept in a personal safe in his home and when I accessed the safe the will was missing with only the envelope it came in remaining in the safe. His live-in friend and caregiver, Mary Hair, stated that my uncle had created a new will just before his death leaving everything to her, excluding all his family members, two nephews and three nieces. I requested a copy of the alleged new will from Ms. Hair and her lawyer, Mr. Pyatt, but neither party would produce this new will or give me any background information on its origin. These were the circumstances which I explained to Mr. Parker when I engaged him to represent me.

In late March, Mr. Parker probated my uncle's previous will from 1995, using a copy that I had of my uncle's last known will. That April, the alleged new will entered probate by Mr. Pyatt on behalf of Ms. Hair. The drastic differences between the will that had been given to me by my uncle and this new will as well as his state of mind leading up to his death left me convinced that this new will was not his doing. In a hand written letter dated October 5, 2014, responding to a request for a family tree, I, in addition, documented my criticisms of this alleged will to Mr. Parker.

There were five main concerns. Namely, he replaced me as his personal representative of the last twenty years with Mary Hair, a person he and I knew to be illiterate. Two, my uncle's signature was not his very familiar John Hancock. Three, his assets passed from Mary Hair to her niece, Lisa Boyd, excluding all of his family. Four, the will's second witness was the sister, Bessie Williamson, of my uncle's friend and caregiver, Mary Hair. Finally, the lawyer, Mr. Pyatt, who drew up the new will, was also the first witness to it and two months later in January of 2015 I noted that in the estate accounting document filed in probate that the Pyatt Law Firm LLC received the last dollar of my uncle's estate, a balance of \$4,300.

I thought this matter was pretty open and shut. It looked like fraud to me. As the months wore on after hiring Mr. Parker, I complained to Mr. Parker about the lack of progress. Mr. Parker's frequent refrain was that these things take time. In July of 2016, a Summary hearing was held, which we subsequently lost. I was extremely disappointed not in that we lost, but that Mr. Parker did not bring to the court's attention any of my concerns. I came in to town the day before the hearing to discuss the case with Mr. Parker. He never found the time to meet with me. In the hearing, he established only that my uncle's doctors via affidavits declared that my uncle at the time of the writing of the will probably did not know what he was signing. There was no mention of any of my concerns regarding the will itself. I learned later that Summary judgments are a defensive tactic and would have never given me the result- throw this alleged will out- that I was looking for. Mr. Parker never communicated that to me. I repeatedly asked Mr. Parker about Mr. Pyatt's obvious conflict of interest and he always defended Mr. Pyatt and blamed Ms. Hair's family for the issues.

That was the turning point in my relationship with Mr. Parker. I realized that there was an extreme lack of communication and information sharing and that I would give Mr. Parker one last chance to show a substantial improvement in the progress of this case and getting my issues heard in the court. I suggested

to Mr. Parker that we file a motion to reconsider along the lines of my concerns. I actually wrote it up and emailed it to him. He refused. He basically gave me two options, partition the house giving Mary Hair my uncle's share, then buying it back at auction or go to trial. I chose trial.

However, trial for Mr. Parker began with wanting to do video depositions of my uncle's doctors, allowing Mr. Pyatt to cross examine. We already had their affidavits. This to me seemed redundant and unnecessary, and would provide the opposing side an opportunity to question the doctors and better prepare to rebut their conclusions for trial. I wanted the trial to center around my concerns regarding the alleged will. I wanted affidavits from family and friends, as well as affidavits or testimony from the Amedysis home health nurses that had cared for my uncle on a daily basis. Mr. Parker did not seem to be working on my behalf as he was not moving on my concerns nor sharing with me legal advice as to why these suggestions were unreasonable.

On August 23, 2016, after receiving a settlement offer from lawyer Pyatt I wrote, "Kyle, this whole episode has been a colossal waste of money. We have a less than moral attorney using SC law to steal property. I simply want the judge to know all that I know. How do we do that prior to going to trial? How about me filing an affidavit with that information or similar? I have no interest in settling. It's win or they steal."

In a note on August 24, lawyer Parker responded, "You are dealing with some scruples-less people for sure; however, I don't think Mr. Pyatt is one of them. He's simply doing his job."

On September 2, I wrote, "Kyle, Mr. Pyatt charged my uncle's estate \$4300(see Accounting form dated 1/29/15 filed with probate court). Is it possible to get a breakout of that expense? It certainly appears that my uncle didn't pay him anything until after his death? I shared a banking account with my uncle at First Community until I closed it at his death. He had \$683.52 applied to funeral expense then and \$6722.50 in liquid assets less than a year later (Ms. Mary's money?). The lion's share going to Mr.' Pyatt's law firm down to the last penny. We need to take the kid gloves off. Mr. Pyatt is part of the problem. We can't negotiate with him like he's an honest broker. We ought to let him know that he's putting his career in jeopardy. I'll settle right now for my legal expenses and the real property. If not I want the real property, expenses, the fees charged to my uncle's estate and rent from the time of my uncle's death and all personal affects left behind and disbarment or jail." Lawyer Parker did not respond.

On November 11, 2016, I sent an email to Mr. Parker asking the question, "At what point does Mr. Pyatt become a witness instead of an attorney? Won't he need a lawyer other than himself to do the cross?" There was no response. The next day I wrote "If Mr. Pyatt won't be allowed to depose the doctors in our case at trial, why did Judge Nobles allow him to represent the estate in the Summary hearing? It seems inconsistent to me. Is that possibly grounds for dismissal or at least a reason to file that motion to reconsider?" Again there was no response. A week goes by, still, no response. I called his office leaving a voice mail, no response. Another week goes by, I then call the probate court. Their advice was to keep trying to reach him.

On December 6, 2016, over three weeks without a response I wrote, "Mr. Pyatt can't depose the doctors. I haven't heard but I assume because of that he shouldn't have been allowed to represent the estate at the Summary hearing. See note below. Does it follow that his settlement offer, etc., should also have been

returned? It seems that we could have gotten this guy to step aside years ago. He is suspect as I've mentioned. When Mr. Pyatt witnessed that will it put him in bed with the other side. I haven't heard from you. Do I need to go directly to Judge Nobles for answers?"

Mr. Parker's response that very same day surprised me. There was no mention of the previous unanswered emails. There was no mention of the unreturned phone call. There was no mention of the almost four week gap between emails, between correspondences. He wrote, "Dan, we can move to have Mr. Pyatt disqualified, and can do so prior to deposing the doctors if that is what you want..." I emailed back, "I wish you had told me why my previous emails and phone call went unanswered. It's been three weeks on the emails and over two since I left a voicemail to call me..." His response on December 7, 2016, "Also, Dan, I believe I did respond to your earlier emails, however, I just learned this morning that we are having an issue of some unexplained sort with our email system. Glad to know you've gotten the last few." Even if I believed there had been an email issue, I had also left a voicemail two weeks earlier to call me regarding this issue. There was no mention of that. Even now it seemed he was avoiding answering the questions my previous emails proposed. I had stumbled onto an issue he didn't want to discuss. Namely, why he had never proposed disqualifying lawyer Pyatt.

Things went severely downhill from here. I responded on December 11, 2016, "More crap, I've had enough. Nearly three years of being turned out of our family home by a scruples-less lawyer Pyatt who wrote, witnessed and was allowed to defend his own will. He's been sanctioned twice. Coincident with nearly three years of foot dragging, non-zealous representation for his client, but an uncomfortably high regard for lawyer Pyatt by lawyer Parker. I've lost confidence in lawyer Parker and Pope & Hudgens. Return your fees, \$6,674.33 and I'll seek new counsel."

In a lengthy response lawyer Parker concluded on December 12, 2016, "My advice would be to stick it out AND TAKE MY ADVICE ABOUT TRIAL STRATEGY if you intend to go to trial. If you cannot do that and would like to obtain other counsel, please confirm that so that I can ask the court to be relieved from the representation." I responded on December 14, 2016, "And the crap continues. Kyle, we'll never know what the direction this case may have taken or will take. You disqualified yourself in my eyes by not disqualifying or even suggesting that we might disqualify the sole person that gave this case a legal standing, lawyer Pyatt. It seems you were more interested in proving to me that this case was not open and shut. {...} I think in trying to show me that this case was not open and shut you've sufficiently mucked it up. I'd think you'd want to get out from under it and me. I just need my money back. If you didn't disqualify lawyer Pyatt what else haven't you done or have done to further your agenda?"

I concluded, "After three years I don't think Judge Nobles has any clue about what's going on in this case. Before the Summary hearing I showed you a list of things I wanted put on the record. The same things I've been saying for three years. You didn't even comment nor would you later file them in a motion to reconsider. Return your fees and I'll find counsel that will tell her these things."

Later that day Mr. Parker concluded another lengthy note, "It is clear that we've had a breakdown in the attorney-client relationship. I will move for the court to allow me to withdraw as your counsel. I simply cannot represent you if you will not take my advice." I responded, "It's clear that we've had a breakdown. shouldn't have said crap how does obfuscation sound? I can't get past that you didn't even suggest

whether a good idea or not that we remove lawyer Pyatt on day one. He defeated our petition not Ms. Hair. Ms. Mary Hair can't read or write. What does she do without Pyatt? We don't know. Maybe the right thing."

I continued, "Shouldn't I have had final say on whether lawyer Pyatt goes or stays. Explain that to me. I won't agree to any motion for withdrawal or dismissal without a return of your fees. I'd love to tell my side to the judge. From the beginning I wanted our property back and the expenses to contest. You've got to tell me it's possible to disqualify Mr. Pyatt."

I concluded, "Other than that I see this as an opportunity to clear the air. Each time you asked me for a payment I paid it. I have never complained about your fees till now. I do complain now. You a competent lawyer as described below refused to tell me that it suggests a problem for lawyer Pyatt to write, witness and defend his own will. That suggests to me an unknown that can't be quantified with dollars. Return your fees."

On January 31, 2017 the motion to withdraw was granted by judge Nobles. I didn't get the opportunity to tell my side. But I did get the case files. It contained an internal Pope & Hudgens memo dated November 20, 2013 to Mr. Parker. [A copy of the memo is attached.] The Subject: "Lubuster Sartor of 1211 Brown Chapel Rd., Newberry SC." It stated, "Our client, James Bookman, called and said that Mr. Sartor is disabled and unable to get out. He wants to change his will (we did not prepare his present will). James asked if one of our attorneys could go to his home about this. I understand that Mr. Sartor has dementia but is oftentimes of sound mind." It goes on, "James' contact number is 924-4692. He works late at Georgia-Pacific but returns voicemail messages if he misses calls. He mentioned that he has some paperwork that he can fax here."

What's going on here? What was that paperwork he wanted to fax? I do know that the subject of this memo is my uncle and it took place nearly four months before I engaged Mr. Parker to represent me. I do know also that James Bookman is Ms. Mary Hair's brother, again, she is my uncle's friend and caregiver. I was never informed that Mr. Parker was approached to write this fraudulent will. I never signed any waiver of conflicts nor do I believe Mr. Bookman did either. I always thought that lawyer Parker could win this case at any time, that he dragged his feet to improve his bottom-line and to show me that these things take time. I'm no longer sure of that. At trial lawyer Pyatt said that James Bookman found him through a mutual friend. Was a Pope & Hudgens attorney involved? Does that inform why lawyer Parker never suggested to me the removal of lawyer Pyatt as an offensive tactic, why he always defended lawyer Pyatt? Did my own lawyer refer Ms. Hair's family to the lawyer who would help steal my family's property? None of this was ever communicated to me in any form and I would have never hired Mr. Parker knowing his potential relationship with the Hair family.

I am asking for the return of all lawyer fees in the amount of \$7,174.33 plus interest. The lack of communication, the ineffective assistance of counsel, and the obvious conflict of interest makes this case of attorney misconduct egregious and the return of all fees justified.

Supplements to Appellant's Complaint

STATE OF SOUTH CAROLINA)
)
 COUNTY OF: NEWBERRY)
)
 IN THE MATTER OF)
 LUBUSTER BROWN SARTOR)
 (Decedent))

IN THE PROBATE COURT

ACCOUNTING

CASE NUMBER: 2014-ES36-0084

FINAL
 INTERIM # _____

The undersigned Personal Representative(s) submits this accounting, which covers the period from FEBRUARY 19, 2014 through JANUARY 30, 2015.

The documentation on the following page(s) of this form sets forth a complete accounting for the period specified, which is summarized as follows:

Beginning Balance from Inventory(ies) or prior Interim Accounting, if applicable	-0-
Plus: Receipts (Rent, Refunds, Dividends, Interest, etc.)	\$6,722.50
Subtotal	\$6,722.50
Less: Disbursements and Distributions	\$6,722.50
Ending Balance	-0-

The Personal Representative(s) declares that this account has been examined and that its contents represent a correct statement of all receipts and disbursements and are true to the best knowledge and belief of the Personal Representative(s).

SWORN to before me this 20th day of JANUARY, 2015
William L. Smith
 Notary Public for South Carolina
 My Commission Expires: 10/6/2015

Signature: Mary B. Hair
 Print Name: MARY B. HAIR
 Address: 1211 BROWN CHAPEL ROAD
NEWBERRY, SC 29108
 Telephone (Work): _____
 (Home): (803) 321-9723
 (Cell): _____
 Email: _____

Co-Personal Representative Signature: _____
 Print Name: _____
 Address: _____
 Telephone (Work): _____
 (Home): _____
 (Cell): _____
 Email: _____

Wednesday, February 1, 2017 at 12:05:51 PM Eastern Standard Time

Subject: Re: Lettter of reconsideration estate of Lubuster Sartor
Date: Thursday, October 6, 2016 at 6:52:23 PM Eastern Daylight Time
From: Kyle Parker
To: DANIEL PRUITT

Received; though I'm in NY so it'll be Monday before I can get back to you.

Sent from Kyle B. Parker's iPhone

On Oct 6, 2016, at 5:36 PM, DANIEL PRUITT <danwpruitt@bellsouth.net> wrote:

Kyle, I don't have my mother's birth certificate. No problem I don't want to go in that direction anyway. I want Judge Nobles to see the affidavits, mine, my brother's, the visiting nurse's and the family friend. Let's get them in front of her. I didn't get a reponse from you but I believe the visiting nurse is with Amedisys. See my previous note(iphone).
- 'Thx, DAN

On Tue, 9/6/16, Kyle <kparker@popeandhudgens.com> wrote:

Subject: Re: Lettter of reconsideration estate of Lubuster Sartor
To: "DANIEL PRUITT" <danwpruitt@bellsouth.net>
Date: Tuesday, September 6, 2016, 8:41 AM

I
agree. Let me know how I can help find her.
From: DANIEL PRUITT
Reply-To:
DANIEL PRUITT
Date: Tuesday, September
6, 2016 at 8:01 AM
To: Kyle
Subject:
Re: Lettter of reconsideration estate of Lubuster
Sartor

Kyle,
there was a visiting nurse who was either on call or visited my uncle weekly. If we can find her she may paint the best picture of my uncle's state at the time of this alleged will better than Dr. Bradberry even.
Thanks,
DAN

On Friday, September
2, 2016 12:17 PM, DANIEL PRUITT <danwpruitt@bellsouth.net>
wrote:

Kyle,
Mr Pyatt charged my uncle's estate \$4300(see Accounting form dated 1/29/15 filed with probate court). Is it

possible to get a breakout of that expense? It certainly appears that my uncle didn't pay him anything until after his death? I shared a banking account with my uncle at First Community until I closed it at his death. He had \$683.52 applied to funeral expense then and \$6722.50 in liquid assets less than a year later(Ms Mary's money?). The lion's share going to Mr Pyatt's law firm down to the last penny. We need to take the kid gloves off. Mr Pyatt is part of the problem. We can't negotiate with him like he's an honest broker. We ought to let him know that he's putting his career in jeopardy. I'll settle right now for my legal expenses and the real property. If not I want the real property, expenses, the fees charged to my uncle's estate and rent from the time of my uncle's death and all personal affects left behind and disbarment or jail.

Thanks,
DAN

On Friday, August 26,
2016 11:21 AM, DANIEL PRUITT <danwpruitt@bellsouth.net>
wrote:

Kyle,
I've asked my brother, David, to file an affidavit based on the letter he wrote to you. In particular the paragraph on his last visit with my uncle four months before his death and two months before the alleged will. My bedridden uncle didn't recognize him and had to be told by Ms Mary that it was his nephew David before him. Two short months later he is supposed to have retained Mr Pyatt to rewrite his will carving out all family members and me as his personal representative since 1995. I don't doubt that my uncle didn't have a better day or two down the road but he didn't have the capacity to hire Mr Pyatt in 2012 when he was up and about. He was a child in a man's body even then. Mr Pyatt knows as well that we can't prove a negative. He can't be an honest broker.

Thanks,
DAN

On Thursday, August
25, 2016 11:43 AM, DANIEL PRUITT <danwpruitt@bellsouth.net>
wrote:

Kyle, my
grandfather was from Union. I don't remember my grandmother's birth county but it wasn't Newberry. My grandfather came to Newberry to minister at

Brown Chapel church. They purchased the home near the church in 1922. They would have had one son, S.B. at the time. My uncle and mother came along in 1923 and 1925 respectively. I would guess they married circa 1915.

This would have been my grandfather's second marriage.

My family

has a long history in the community, the church and the local cemetery. My uncle would have never broke n the connection to all this by giving away the centerpiece, our home. This is the background information I want the judge to ponder when she makes her decision, hence my letter or affidavit. And of course we must include my uncle's problematic signature, Ms Mary's inability to handle the responsibilities of being personal representative, Lisa Boyd's indirect connection to my uncle as Ms Mary's educational arm, and the suspect witnesses, Lisa boyd's mother and Mr. Pyatt.

I'd

prefer you spend your time getting these affidavits in front of the judge. I have nothing at all to give to Mr Pyatt in the way of a settlement. I would personally endorse disbarment proceedings but nothing short of a letter of complaint to the South Carolina Bar Association.will do.

Thanks,

DAN

On Wednesday, August
24, 2016 8:52 AM, Kyle <kparker@popeandhudgens.com>
wrote:

All will contests are expensive and time consuming. Your's is no different. You are dealing with some scruples-less people for sure; however, I don't think Mr. Pyatt is one of them. He's simply doing his job. We can't change the law. It is what it is. We just have to prove (at trial) that your uncle didn't know what he was doing, which seems doable. he have witnessed your uncle's signature on that will, I can't say for certain. It could be that what you say about him saying yes to the question of whether he was leaving everything to Ms. Hare is exactly what he did with Mr. Pyatt and when Pyatt doesn't know anything else about your uncle, it makes sense that he would leave everything to his live-in, girlfriend/caregiver. From a guy who does more wills than I can count, that happens all the time. Maybe Pyatt was in on it, but I doubt it. He wouldn't risk his license to practice law over at most a couple hundred bucks, at least, in my opinion., and, Pyatt has always been a straight shooter in all of my other dealings with him.

As to
your question, I can file an affidavit for you. It
doesn't mean the judge will read it. The only way she
gets this information in a way that actually has any effect
is at trial.

When

did you say that your grandfather and grandmother got
married (approximately)? And did they get married in
Newberry County or somewhere else? I've given the
records a cursory look and did not see but one Sartor and he
was a Frank marrying a Clara. If we can prove that your
grandfather had more children than that referenced in the
deed to your Uncle Tom, then we may have other avenues to
achieve what we want. Also, please look for your
mother's birth certificate. If you do not find it,
please give me her full legal name, birthdate, and a social
if at all possible. We will ask the vital records office
to give us a copy (though this may take some time and will
of course come with a small fee).

Kyle B.

ParkerPope & Hudgens, P.A.1508
College StreetP.O. Box 190 Newberry,
South Carolina
29108803-276-2532803-276-8684
(fax)

From: Daniel Pruitt

Date:

Tuesday, August 23, 2016 at 8:27 PM

To: Kyle

Cc:

Tara Morris

Subject: Re: Lettter of
reconsideration estate of Lubuster Sartor

Kyle, this whole
episode has been a colossal waste of money. We have a less
than moral attorney using SC law to steal property. I
simply want the judge to know all that I know. How do we
do that prior to going to trial? How about me filing an
affidavit with that information or similar? I have no
interest in settling. It's win or they
steal. Thanks, Dan

Sent from my
iPhone

On Aug 23, 2016, at 12:13

PM, Kyle <kparker@popeandhudgens.com>
wrote:

Some of it is important;
some of it is not (at least as far as what the court must
decide), AND, all of it is something you will be able to
(and according to the judge, must) say to the judge at the
trial and not on a motion to reconsider. I would not

recommend you spend money on filing a motion to reconsider.
It would be a futile effort and a waste of your money.

Ms. Hare's
attorney sent a settlement offer today. I am forwarding it
to you. Please call me when you have received
it.

Kyle B. ParkerPope &
Hudgens, P.A.1508 College StreetP.O.
Box 190 Newberry, South Carolina
29108803-276-2532803-276-8684
(fax)

From: DANIEL PRUITT
Reply-To:
DANIEL PRUITT
Date: Tuesday, August 16,
2016 at 1:53 PM
To: Kyle, Tara Morris
Subject:
Lettter of reconsideration estate of Lubuster .
Sartor

Kyle, see attached for your comments
and inclusion in the motion for reconsideration. Looking
forward to your thoughts.Thanks,
DAN

Tuesday, January 31, 2017 at 8:51:32 AM Eastern Standard Time

Subject: Re: Sartor estate video deposition?

Date: Friday, November 11, 2016 at 11:43:19 AM Eastern Standard Time

From: Daniel Pruitt

To: Kyle

Good. Question, at what point does Mr Pyatt become a witness instead of an attorney? Won't he need a lawyer other than himself to do the cross? Let's get her done. Thx

Sent from my iPhone

On Nov 11, 2016, at 10:59 AM, Kyle <kparker@popeandhudgetts.com> wrote:

The deposition will be where I ask questions and Mr. Pyatt asks questions (cross examination). They are usually shorter than trial testimony (and therefore less expensive) and the rules of court allow us to use them instead of having to worry about dealing with juggling the court's, the doctors, the parties' and the lawyer's schedules to arrange a trial.

On 11/11/16, 10:36 AM, "Daniel Pruitt" <danwpruitt@bellsouth.net> wrote:

On second thought Video deposition is that in lieu of the Doctor being a witness at trial. If so how can mr Pyatt cross examine a video? I certainly wouldn't want to pay for both unless it's absolutely necessary. Being a lay person I assume the video deposition would just augment the doctors affidavits. Unless we're talking about not having to go to trial I'm not sure about the need for a deposition. Let's discuss.

Sent from my iPhone

On Nov 9, 2016, at 5:52 PM, Kyle <kparker@popeandhudgetts.com> wrote:

We'll subpoena the records for your uncle. I will otherwise look into the best way to get the doctor's testimony. It's probably through a video deposition.

On 11/9/16, 10:59 AM, "Daniel Pruitt" <danwpruitt@bellsouth.net> wrote:

Kyle, just left voice mail. Let's go to trial. Only piece missing is the nurse. I believe she worked for Amadisys, Newberry office. They wouldn't give me any info without court authorization. Pls follow up. See previous email for phone number.

Thx DAN

Sent from my iPhone

Tuesday, January 31, 2017 at 8:50 AM Eastern Standard Time

Subject: Re: Mr Pyatt as witness
Date: Wednesday, December 21, 2016 at 2:01:33 PM Eastern Standard Time
From: Daniel Pruitt
To: Kyle
CC: Tara Morris, Dan W Pruitt

Kyle, please send complete case file(Estate of Tom Sartor, #14-444) including any attorney notes, etc. to my attention as soon as reasonably possible. I assume the terms of our agreement will be included if not already in the mail. Thx.

Sent from my iPhone

On Dec 15, 2016, at 9:51 AM, Kyle <kparker@popeandhugdens.com> wrote:

Dan, I've explained all of this to you over and over again, and yet you continue to seem to think I'm making this up or something. I have never refused to tell you anything. It's unfortunate that you say such a thing. I've been telling you for nearly 3 years what you needed to do to resolve this; yet, at every turn, you have refused this advice. For what reason, I cannot discern. I have been telling you that you need to show her that she won't end up with the entire title to the house even if she wins. THAT would make her think about how much she really wants to fight you. But, again, you would not take that advice, and she, therefore, has nothing to lose from fighting you to the end. This is, of course, where you find yourself. Again, your doing.

As to disqualifying Mr. Pyatt, as I said yesterday, I was willing to file that motion; I just wasn't sure it was a good idea. If you were to file that motion, Pyatt would be disqualified no question. However, whether he's the lawyer or a witness really only matters at trial, which you have been avoiding until only within the last month or two. Pyatt didn't beat your petition. Your petition is ready to be tried at any time. He, for Ms. Hare, filed an affidavit and argued (correctly) the procedure with regard to summary judgment. That's it, nothing more. It was only after the summary judgment hearing that you have gotten up in arms about Pyatt staying in the case mostly because you think that if he's out as the lawyer, he will also be out as a witness. Again, you're wrong about that. You do have the final say as to everything that happens in your case. I don't have to do it, though, if I do not agree with it (i.e., frivolous motions for reconsideration). I have resisted my urge to withdraw over the fact that you will not take my advice until now. I will not continue with a client that apparently has such contempt for me and clearly has no regard for my advice. You are nice guy; I hate that you've taken the position that you have, but I'm done. You don't have to agree to my motion to be relieved. I'm filing it all the same.

Kyle B. Parker
Pope & Hudgens, P.A.
1508 College Street
P.O. Box 190
Newberry, South Carolina 29108
803-276-2532
803-276-8684 (fax)

On 12/14/16, 2:31 PM, "Daniel Pruitt" <danwpruitt@bellsouth.net> wrote:

It's clear that we've had a breakdown. I shouldn't have said crap how does obfuscation sound? I can't get past that you didn't even suggest whether a good idea or not that we remove lawyer Pyatt on day one. He defeated our Petition not Ms Hair. Ms Mary Hair can't read or write. What does she do without Pyatt? We don't know. Maybe the right thing.

Shouldn't I have had final say on whether lawyer Pyatt goes or stays. Explain that to me. I won't agree to any motion for withdrawal or dismissal without a return of your fees. I'd love to tell my side to the judge. From the beginning I wanted our property back and the expenses to contest. You've got to tell me it's possible to disqualify Mr Pyatt.

Other than that I see this as an opportunity to clear the air. Each time you asked me for a payment I paid it. I have never complained about your fees til now. I do complain now. You a competent lawyer as described below refused to tell me that it suggests a problem for Lawyer Pyatt to write, witness and defend his own will. That suggests to me an unknown that can't be quantified with dollars. Return your fees.

Sent from my iPhone

Page 1 of 5

On Dec 14, 2016, at 12:58 PM, Kyle <kparker@popeandhugdens.com> wrote:
Dan, again, reality bites. That he said "yes" to the question of whether he was going to give the house to Ms. Hare is the problem; how he said it is not important. Now, I believe he was demented at the time he said that, but that would be on you to prove that. However, your attempts to prove he didn't know what he was talking about when he said "yes" doesn't make that evidence go away. In other words, it will already be out there, i.e., the judge will have heard it.

You continue to avoid what I'm telling you; though, now you've concluded that I'm, for some reason, out to get you or ruin your case. Take a step back and think about that rationally. Isn't in my interest to file every motion and depose every doctor/witness and take this thing through trial and appeals if necessary given that our fee agreement requires you to pay me by the hour? I know you're angry that this isn't the easy street you expected (despite what I have consistently told you), but come on, that is seriously ridiculous.

You made mention that I filed the summary judgment motion even though I knew there was nothing to be gained. Again, you fail to grasp the import of what I told you at the time and after. You wanted the case over and did not want to go to trial. So, I filed the motion for summary judgment on the hopes that Ms. Hare wouldn't do what she needed to defeat it and because, if she didn't, you would win AND save the money associated with deposing the doctors and going to trial. If your email below is saying that the fact that I filed the motion for summary judgment somehow damaged your case, nothing could be further from the truth. If anything, the motion's requisite affidavits from the doctors greatly improve your chances of winning because if the doctors now try to weasel out of their statements in the affidavits, they will have to explain whether they were "lying then or lying now", which means, as a practical matter, they won't waffle too much. Again, they said it was more likely than not (the burden of proof) that Mr. Sartor did not have capacity to sign the will. How that would equal mucking anything up, a rational observer would not understand.

Also, you complain that I didn't tell the judge all of the things you had to say at the summary judgment hearing. That too was for a reason, which was explained to you at the time. I wanted the focus of the motion to be on the statements of the doctors. After all, your case is premised on the contention that Mr. Sartor didn't know what he was doing and doctors' opinions, in my experience with this judge, are weighed very heavily, and since the doctors were the only doctors she said treated him and would know about his mental faculties, I knew she would not be able to put any other medical evidence up to create a question of fact. Your statements would have created a "he said-she said" situation which would guarantee that the judge would deny the motion. Google "summary judgment" and "question of fact". Last thing on this score, that Mr. Pyatt witnessed the will in no way affects its validity, legally speaking. So, I know you don't like it and it seems wrong, but, in reality (which, as your lawyer, is where I have to be), it doesn't amount to a hill of beans. The only thing it does mean is that he can, if you were to push it, be disqualified as Ms. Hare's lawyer. As I said last week, I am willing to file that motion; though I'm not sure it's a good idea.

I didn't file the motion to reconsider for the very reasons I explained to you at the time. See my email of November 1, 2016. I will not go back over that again.

I had and have no agenda in this case other than to represent your interest, which I have done. I'm afraid, however, you have not listened (or at least understood) to any of the things I have told you. If your case is mucked up as you say (which it isn't), you have only yourself to blame. After all, I'm the one that has been to school for seven years and practicing primarily probate law in front of that very probate judge for 14 years. I'm sorry that you didn't see fit to take my advice and instead continue hold on to your own misunderstanding of the law and civil procedure.

It is clear that we've had a breakdown in the attorney-client relationship. I will move for the court to allow me to withdraw as your counsel. I simply cannot represent you if you will not take my advice.

Kyle B. Parker

Pope & Hudgens, P.A.

1508 College Street

P.O. Box 190

Newberry, South Carolina 29108

803-276-2532

803-276-8684 (fax)

On 12/14/16, 12:16 PM, "Daniel Pruitt" <danwpruitt@bellsouth.net> wrote:

And the crap continues. Kyle, we'll never know what direction this case may have taken or will take. You disqualified yourself in my eyes by not disqualifying or even suggesting that we might disqualify the sole

person that gave this case legal standing, lawyer Pyatt. It seems you were more interested in proving to me that this case was not open and shut.

My uncle never SAID to anyone that he would "give the home house to Ms Mary." You don't even have that right. Is that on purpose? If so, it's not open and shut? Ms Mary's sister put it to him in the form of a question (undue influence?). On the one occasion that I know about he answered yes and said not a word more. It's not the same. If it had been they would have videotaped the will signing and lawyer Pyatt and Ms Mary's sister would not have been witnesses of record.

I think in trying to show me that this case was not open and shut you've sufficiently mucked it up. I'd think you'd want to get out from under it and me. I just need my money back. If you didn't disqualify lawyer Pyatt what else haven't you done or have done to further your agenda?

I'd like to see the petition for summary hearing. You knew there was nothing to be gained in your petition yet we did it. Then you tell me I'm going to piss the judge off by filing a motion to reconsider, to reconsider evidence that's not yet on record like Mr Pyatt witnessing his own will.

After three years I don't think judge Nobles has any clue what's going on in this case. Before the summary hearing I showed you a list of things I wanted put on the record. The same things I've been saying for three years. You didn't even comment nor would you later file them in a motion to reconsider. Return your fees and I'll find counsel that will tell her these things.

Sent from my iPhone

On Dec 12, 2016, at 11:45 AM, Kyle <kparker@popeandhudgens.com> wrote:

Mr. Pruitt, I'm happy to bow out as your attorney if that is what you want. Though, I would like to say a few things in response to your email. First, all fees were earned according to our agreement. I have spent a lot of time in your case. This is because will contests, particularly those alleging incapacity, are terribly difficult. I was able to procure affidavits from the very doctors Ms. Hare said treated Mr. Sartor, and each doctor actually signed the affidavit saying that it is more likely than not that Mr. Sartor did not have the requisite mental capacity to sign the will. Find another lawyer able to do that.

The case has taken a while for that reason. Also, it was only last month that you decided to "just go to trial". You previously expected this case to be resolved without a trial. You must understand that a trial is the only way this case is resolved short of a settlement, which you have steadfastly resisted. Of course, it is your right to decline settlement. It is not your right, however, to complain when you continue to get bills for attorneys fees. After all, settlement ends the case and therefore the accrual of fees. You have maintained throughout this case that it is so "open and shut" that the other side should just walk away. That doesn't happen in real life. In real life, when Ms. Hare has the allegedly corrupt will probated (meaning it is your burden to show it as invalid) and will have evidence that Mr. Sartor repeatedly said that he was going to give the house to her (you'll recall you told me about this after the summary judgment hearing), Ms. Hare is in a better position.

Remember, Mr. Pyatt may not be right about much, but he is right that even a lunatic can legally sign a will if he, at that time, is experiencing a period of lucidity. All Ms. Hare's lawyer, whoever that may ultimately be, will have to do is ask the doctor's whether they can completely dismiss that Mr. Sartor was lucid at the time he signed this will. They will, of course, say no. After all, anything is possible and even demented people do have their moments. Couple that with the testimony of Mr. Pyatt (because he will testify when you have him disqualified whereas he would be allowed to if you did not), the evidence about repeatedly saying he would leave the house to her, the evidence (though untruthful) that you all were out of state and not around much while Ms. Hare toiled away taking care of him, and it makes for a pretty good case for Ms. Hare. I say this, not because I discount your case or agree with theirs, rather, I do so in order that you have some better idea of what you're up against. As I have said over and over again, your case is not "open and shut". Instead, it's, maybe, a little better than 50/50 IF you assume that the doctors don't waffle.

As to your point about Pyatt, I've never had any more regard for Pyatt than I have for any other lawyer. I barely know the man. I have, however, not been keen to the idea that Mr. Pyatt be removed as Ms. Hare's attorney and for good reason. If he is her attorney at trial, he will not be permitted to testify. If he is not, he will testify, and, because his butt is on the line, he will say, whether he believes it true or not, that Mr. Sartor was very clear about what he wanted and why he wanted, was of a clear mind, and certainly knew what he was doing. All of that is bad for your case; so, it has been and continues to be my opinion that if you can keep that testimony out, you should because I don't know how much weight

the judge will give it.

I appreciate that you are frustrated with the reality that Ms. Hare is actually making a claim to the house and is not just giving up. I understand that it is contrary to your sense of right and wrong, and that the whole idea of the house going to some non-family member is patently absurd in your mind. However, it is reality and she does have a not insignificant chance of winning. Any competent lawyer, who isn't just looking to take your money, would tell you that. Given that, you might reconsider the idea of a settlement.

You hired me to do a job. I've given you results despite the fact you don't see them. In fact, this case could already be over with a reasonable settlement. I've given you advice on how to achieve the desired result and you have dismissed that advice. It should not be important how you arrive at the desired destination (Ms. Hare's claim to the house gone); rather, that you arrive there is and has been my point all along. I continue to believe that showing Ms. Hare that she will not own the house to the exclusion of your family even if she wins (i.e., partition) is the way you bring her around to your way of seeing the case.

My advice would be to stick it out AND TAKE MY ADVICE ABOUT TRIAL STRATEGY if you intend to go to trial. If you cannot do that and would like to obtain other counsel, please confirm that so that I can ask the court to be relieved from the representation.

Kyle B. Parker

Pope & Hudgens, P.A.

1508 College Street

P.O. Box 190

Newberry, South Carolina 29108

803-276-2532

803-276-8684 (fax)

On 12/11/16, 10:16 PM, "Daniel Pruitt" <danwpruitt@bellsouth.net> wrote:

More crap. I've had enough. Nearly three years of being turned out of our family home by a scrupulous lawyer Pyatt who wrote, witnessed and was allowed to defend his own will. He's been sanctioned twice. Coincident with nearly three years of foot dragging, non zealous representation for his client, but an uncomfortably high regard for lawyer Pyatt by lawyer Parker. I've lost confidence in lawyer Parker and Pope & Hudgens. Return your fees, \$6674.33 and I'll seek new counsel.

Sent from my iPhone

On Dec 7, 2016, at 9:41 AM, Kyle <kparker@popeandhudgens.com> wrote:

Also, Dan, I believe I did respond to your earlier emails; however, I just learned this morning that we are having an issue of some unexplained sort with our email system. Glad to know you've gotten the last few.

On 12/6/16, 5:21 PM, "Daniel Pruitt" <danwpruitt@bellsouth.net> wrote:

I wish you had told me why my previous emails and phone call went unanswered. It's been three weeks on the emails and over two since I left a voicemail to call me. I've been searching for the terms of our engagement. Can you forward a copy to me? I'm about to leave town. I'll email you with my thoughts once I'm settled in a day or two. Thx

Sent from my iPhone

On Dec 6, 2016, at 9:34 AM, Kyle <kparker@popeandhudgens.com> wrote:

Dan, we can move to have Mr. Pyatt disqualified, and can do so prior to deposing the doctors if that is what you want. We are still waiting on the home health records. Can you tell me whether your birth certificate indicates who your mother was? I know you don't want to pursue a partition, but if there's going to be another lawyer involved, information about how Mr. Sartor didn't own the whole thing will help them better advise Ms. Hare.

Kyle B. Parker

Pope & Hudgens, P.A.

1508 College Street

P.O. Box 190

Newberry, South Carolina 29108

803-276-2532

803-276-8684 (fax)

On 12/6/16, 12:19 AM, "Daniel Pruitt" <danwpruitt@bellsouth.net> wrote:
Mr. Pyatt can't depose the doctors. I haven't heard but I assume because of that he shouldn't have been allowed to represent the estate at the Summary hearing. See note below. Does it follow that his settlement offer etc. should also have been returned. It seems that we could have gotten this guy to step aside years ago. He is suspect as I've mentioned. When Mr. Pyatt witnessed that will it put him in bed with the other side. I haven't heard from you. Do I need to go directly to Judge Nobles for answers? Thx
Sent from my iPhone

On Nov 12, 2016, at 1:42 AM, Daniel Pruitt <danwpruitt@bellsouth.net> wrote:
If Mr Pyatt won't be allowed to depose the ~~doctors in his case~~ at trial, why did Judge Nobles allow him to represent the estate in the Summary hearing? It seems inconsistent to me. Is that possibly grounds for dismissal or at least a reason to file that motion to reconsider? Thx.
Sent from my iPhone

Tara Morris

From: Kyle Parker <kparker@popeandhudgens.com>
Sent: Wednesday, November 20, 2013 5:43 PM
To: Tara Morris
Subject: Fw: Lubuster Sartor of 1211 Brown Chapel Rd., Newberry, SC

----- Original Message -----

From: Lynne Grant
To: Kyle Parker
Sent: Wednesday, November 20, 2013 5:22 PM
Subject: Lubuster Sartor of 1211 Brown Chapel Rd., Newberry, SC

Our client, James Bookman, called and said that Mr. Sartor is disabled and unable to get out. He wants to change his will (we did not prepare his present will). James asked if one of our attorneys could go to his home about this. I understand that Mr. Sartor has dementia but is oftentimes of sound mind.

James' contact number is: 924-4692. He works late at Georgia-Pacific but returns voicemail messages if he misses calls. He mentioned that he has some paperwork that he can fax here.

If this email is spam, report it to www.OnlyMyEmail.com

Respondent's Answer

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

2020CV3610100370
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT
ANSWER

Daniel Pruitt
444 Paula Drive North
Apartment 401
Dunedin, FL 34698
(404) 484-6352

PLAINTIFF(S)

Vs

Kyle Parker & Pope & Hudgens Attorneys,
Pa
1508 College Street
Newberry, SC 29108

DEFENDANT(S)

On May 22, 2020 I was served with a Complaint requiring me to answer within thirty days from the date of service. My Answer, which is hereby filed with the Central Court Of Newberry, is as follows:

CHECK ONE:

A. I contest the jurisdiction of the court based on the following: (use additional pages if necessary)

B. I admit everything in the complaint and do not want a trial.

C. I admit that I am responsible, but not for the total amount claimed by the Plaintiff(s) because: (use additional pages if necessary)

D. I deny that I am responsible at all because: (use additional pages if necessary)

SEE ADDITIONAL PAGE ATTACHED

YOU MUST FILE THIS DOCUMENT WITH THE COURT WITHIN THIRTY DAYS

THE DEFENDANT/PLAINTIFF STATES THAT THE INFORMATION CONTAINED IN THIS ANSWER IS TRUE AND CORRECT TO THE BEST OF HIS/HER KNOWLEDGE.

DATED: June 18 2020

John E. Caffina
SIGNATURE OF DEFENDANT(S) (OR ATTORNEY)

IF MORE THAN ONE DEFENDANT, ALL MUST FILE ANSWER

PLEASE RETURN TO:

Central Court Of Newberry
833 Main Street
Newberry, SC 29108
Phone: (803) 321-2144
Fax: (803) 321-2172

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

2020CV3610100370
CIVIL CASE NUMBER

Daniel Pruitt
444 Paula Drive North
Apartment 401
Dunedin, FL 34698
(404) 484-6352

IN THE MAGISTRATE'S COURT
ANSWER

PLAINTIFF(S)

Vs.

Kyle Parker & Pope & Hudgens Attorneys,
PA
1508 College Street
Newberry, SC 29108

DEFENDANT(S)

DEFENSES TO COMPLAINT

1. The Defendants deny any and all allegations of the Complaint which can be construed to allege any acts of omission or commission on the part of the Defendants which resulted in any loss or damage to the Plaintiff.
2. The Complaint fails to state facts sufficient to establish a cognizable cause of action for which relief can be granted, and therefore the action should be dismissed pursuant to SCRPC 12(b)(6).
3. The Plaintiff has failed to institute this action within the time permitted by law, and therefore the Defendants assert the affirmative defense of the statute of limitations as a complete bar to this action.

4. The Plaintiff failed and/or refused to follow or heed the professional recommendations of the Defendants, and therefore the Defendants assert the comparative negligence of the Plaintiff as a complete bar to this action.

GALLIVAN, WHITE, & BOYD, P.A.

BY: 

John E. Cuttino (SC Bar # 1519)

Post Office Box 7368

Columbia, South Carolina 29202

TEL: (803) 724-1714

FAX: (803) 779-1767

jcuttino@gwblawfirm.com

**Attorneys for Defendant Kyle Parker & Pope &
Hudgens Attorneys, PA**

Columbia, South Carolina

June 18, 2020

Respondent's Motion to Dismiss or Alternatively, for Summary Judgment

**STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY**

Daniel Pruitt
444 Paula Drive North
Apartment 401
Dunedin, FL 34698
(404) 484-6352

PLAINTIFF(S)

Vs.

Kyle Parker & Pope & Hudgens Attorneys,
PA
1508 College Street
Newberry, SC 29108

DEFENDANT(S)

**2020CV3610100370
CIVIL CASE NUMBER**

IN THE MAGISTRATE'S COURT

**DEFENDANT'S MOTION TO DISMISS
OR IN THE ALTERNATIVE
MOTION FOR SUMMARY JUDGMENT**

TO: DANIEL PRUITT, PRO SE

Pursuant to Rules 8, 12, and 56 of the South Carolina Rules of Civil Procedure, the Defendants Kyle Parker and Pope & Hudgens, P.A., hereby move the Court for an Order dismissing this action, or in the alternative, granting summary judgment in favor of the Defendants. Specifically, this Motion is based upon the applicable statute(s) of limitations and the Plaintiff's failure to commence this action within the time permitted by law.

This case arises from an attorney-client relationship between the parties. Fundamentally, and as asserted in their Answer, the Defendants adamantly deny any and all allegations against them. They further assert, and are prepared to prove if necessary, that the deterioration of the attorney-client relationship was caused by the Plaintiff's continuing unwillingness to accept and follow the counsel of the Defendants. The Defendants view this action as wholly without merit.

However, the Plaintiff's claim is also fatally flawed by his failure to comply with the statute of limitations. Plaintiff filed his Complaint on or about **May 19, 2020**. Plaintiff's filing was essentially a five (5) page narrative, which did not specify whether Plaintiff is pursuing a cause of action based upon a) breach of contract or b) negligence. Regardless, either cause of action is barred by the applicable statute(s) of limitations.

Per South Carolina Code Ann. § 15-3-530(1), the statute of limitations for a breach of contract is three (3) years. As evidenced by Plaintiff's filing with this Court, the Plaintiff expressed dissatisfaction with the Defendants and in writing demanded the return of legal fees paid to Defendants on at least two (2) separate occasions; on **December 11, 2016** and **December 14, 2016**. If Plaintiff in fact is contending that a contract was breached and that legal fees he had paid should be returned to him as a result of that breach, he has acknowledged that he knew as early as **December 11, 2016** that he had a potential cause of action. Even giving the Plaintiff the benefit of every doubt, Plaintiff knew he had a potential cause of action against Defendants when the Probate Court issued its Order on **February 22, 2017** granting the Defendants' Motion to be relieved as counsel. Nonetheless, Plaintiff did not commence this action until well over three (3) years thereafter on **May 19, 2020**.

Per South Carolina Code Ann. § 15-3-530(5), any cause of action sounding in negligence must likewise be commenced within three (3) years. Plaintiff has not pled the mandatory elements of a professional negligence cause of action as set forth in *Stokes-Craven Holding Corp. vs. Robinson et al.*, 416 S.C. 517, 787 S.E.2d 485 (2016.) However, even assuming this action is one sounding in negligence, the Plaintiff has failed to commence the action within the time allowed by law. All legal malpractice actions must be commenced within three (3) years after a Plaintiff knows, or by the exercise of reasonable diligence should know, that he or she had

a cause of action. See *Stokes-Craven Holding Corp*, cited previously herein. The Probate Court issued its Order relieving the Defendants as counsel on February 22, 2017 based on the Plaintiff's prior expressed dissatisfaction with the Defendants. Thus, the Defendants were no longer counsel of record for the Plaintiff after February 22, 2017, at which time the Plaintiff certainly knew, or should have known, that he had a potential cause of action against the Defendants. Nonetheless, Plaintiff failed to commence any such negligence cause of action for well more than three (3) years thereafter, only filing this action on May 19, 2020.

AND IT IS SO MOVED.

GALLIVAN, WHITE, & BOYD, P.A.

BY: 

John E. Cuttino (SC Bar # 1519)
Post Office Box 7368
Columbia, South Carolina 29202
TEL: (803) 724-1714
FAX: (803) 779-1767
jcuttino@gwblawfirm.com

Attorneys for Defendant Kyle Parker & Pope &
Hudgens, PA

Columbia, South Carolina

June 25 2020

Appellant's Opposition to Respondent's Motion to Dismiss or Alternatively
for Summary Judgment

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE MAGISTRATE'S COURT

Daniel Pruitt
444 Paula Drive North #401
Dunedin, Florida 34698

Plaintiff,

v.

Kyle Parker & Pope & Hudgens Attorneys, PA
1508 College Street
Newberry, South Carolina 29108

Defendants.

Civil Case No.
2020CV3610100370

**OPPOSITION TO DEFENDANTS' MOTION TO
DISMISS OR IN THE ALTERNATIVE MOTION FOR
SUMMARY JUDGMENT**

Plaintiff Daniel Pruitt ("Plaintiff" or "Mr. Pruitt"), pro se, hereby opposes Defendants' Kyle Parker & Pope & Hudgens Attorneys, PA ("Defendants") Motion To Dismiss or in the Alternative Motion for Summary Judgment ("Motion"). As stated in more detail below, Mr. Pruitt has sufficiently plead factual allegations that give rise to a plausible claim of relief in his complaint against the Defendants. Mr. Pruitt has alleged facts which show how Defendants' conflict of interest and negligence have caused sufficient monetary damages and should be presented to the court for judgment in the form of a hearing.

The Defendants' motion is in actuality what is fatally flawed. The Defendants have arbitrarily assigned their own date as to the start of the statute of limitations, which generally is based on the plaintiff's or average reasonable person's belief they have a legal claim. Genera

dissatisfaction does not always lead to a legal claim and therefore the Attorney Kyle Parker, quitting the case does not automatically become the date the statute of limitation begins to run. Also, asking for the return of fees does not necessarily mean the person believes or has evidence to support a legal claim. In this case Mr. Parker quit after three years of accepting legal fees and no contact for several weeks, justifying Mr. Pruitt's warranted request for the return of those fees. But, as is stated below the actual date a legal claim arose was much later than the Defendants' assert. As was explained in the complaint in detail and will be expressed through testimony at court, Mr. Pruitt's main dissatisfaction with Mr. Parker was that he was derelict in getting opposing counsel, who was also a witness in the underlying matter removed. If plaintiff's new counsel had been unsuccessful at disqualifying opposing counsel then a claim here against the Defendants may not have been born. However, Mr. Pruitt's new counsel was able to disqualify the opposing attorney, which changed the course of the matter and was the course Mr. Pruitt had wanted Mr. Parker to consider for three years. This disqualification was granted on April 16, 2018. The Plaintiff submits that this is potentially the date that a reasonable person would be on notice that their first attorney may have committed professional negligence or was in breach of their contract for legal representation. Therefore in filing this claim, Mr. Pruitt, is well within the three (3) year statute of limitations.

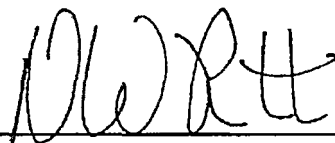
Additionally, Attorney Parker had a clear conflict of interest prior to representing the plaintiff in the underlying matter. Mr. Pruitt was not aware of this conflict until the conclusion of the probate matter, which was in his favor, on July 10, 2019. Similarly, a successful outcome in the probate court with an attorney who communicated with their client, followed their client's wishes and did not waste their client's time while regularly billing, assisted in the

decision to file this claim as Mr. Parker failed in those regards. Therefore, the date the plaintiff successfully won the Probate matter could also be considered the date the statute of limitation begins to run.

Consequently, based on either the April 16, 2018 or July 10, 2019 date the plaintiff as filed this complaint within the requisite three (3) years according to when the plaintiff or a reasonable person knew or should have known there was a valid legal claim. Accordingly on the basis of a failure to comply with the statute of limitations, the Plaintiff asks the court to find the Defendants' Motion to Dismiss or in the Alternative Motion for Summary Judgment shall be denied.

Date: June 30, 2020

Respectfully submitted,



Daniel Pruitt
444 Paula Drive North #401
Dunedin, Florida 34698
404.484.6352
DanWPruitt@BellSouth.net

Magistrate Court Transcript of July 13, 2020

TRANSCRIPT OF MOTION HEARING

July 13, 2020

Newberry Central Court - Magistrate Judge Barry Koon

Judge Koon: How is everybody this morning? Okay. It's July 13 year 2020 approximately 10:00 a.m. reference to civil case # 2020cv3610100370, State of South Carolina County of Newberry, *Daniel Pruitt vs. Kyle Parker and Pope and Hudgens Attorneys PA*. As the bailiff stated my name is Barry Koon. We are here this morning just for a motion hearing. I do want to disclose something for the record. As I stated my name is Barry Koon, I am a magistrate but I'm also a real estate broker and owner of a property here in Lane Properties in Newberry and I have done business with the Pope Parker and Hudgens law firm and I have appeared before Mr. Parker for some closings representing buyers and sellers. Plaintiff do you have any objections of me hearing this motion this morning?

Plaintiff Pruitt: No, I don't.

Judge Koon: No objections?

Plaintiff Pruitt: No objections.

Judge Koon: Okay. Defendant have any objections?

Defendant: No sir

Judge Koon: Okay. I've read the Complaint. I've read the Answer, but like I said we're just here this morning for a motion hearing. Since the motion was presented by the Defendant, I'm gonna let them present their side first and then let you respond. Okay, sir?

Judge Koon: Alright, if you just state your name and proceed please

Defendant Attorney Cuttino: Yes sir. My name is John Cuttino. C-U-T-T-I-N-O. Counsel for the Defendant Pope Hudgens Firm. Your honor, do you have a rule about whether I need to have a mask on or not?

Judge Koon: You know, I'm okay with it as long as y'all are okay with it. I mean I think he's far enough away from ya. If he takes his mask off, y'all okay? I'm fine. You can take it off.

Defendant Attorney Cuttino: I'll get over here (*unintelligible*) I'll get over here.

Judge Koon: You okay. Take it off. Take it off.

Defendant Attorney Cuttino: In addition to muzzling me, it's hot in here.

Judge Koon: Well, I understand. I understand.

Defendant Attorney Cuttino: I appreciate you letting me out of that thing. Thank you. Your honor, let me you have the motion you've read. I want to, if you would be so kind as to give me a couple o minutes to paint the whole picture for you

Judge Koon: please, please

Defendant Attorney Cuttino: - context __ so you'll see the full landscape of this. In thi circumstance, the background your honor is that Mr. Pruitt retained Defendant's law firm and Mr. Parker in 2014 to handle a probate court matter. Throughout the course of that representation, Mr. Pruitt had some very definite ideas about frankly how to lawyer the case, how the case ought to be handled, certain things that should be done. Mr. Parker disagreed; they had a difference of opinion. Mr. Pruitt feelings were (*unintelligible*) pretty strong and he was continuing to ask that certain things be done which in the professional judgment of Mr. Parker didn't need to be done, or wouldn't have made any difference. Mr. Parker and his firm ultimately moved to withdraw, to be relieved as counsel. The probate court granted that motion. I think the motion was filed in January of 2017 and was granted I think in early February 2017. My understanding is that Mr. Pruitt did not consent to that motion. He drove up here from Florida and was present but didn't consent to it, nonetheless it was granted. The case that's before the court now is asking essentially for a refund. It's a refund case. Mr. Pruitt wants the money back that he paid to this law firm. And for some reasons that I will delineate for you here later, we believe this case should be dismissed in its entirety today because even if it goes to trial, it's not going to be successful for these following reasons: Number one, Mr. Pruitt has plead this as a legal malpractice case which it's not. I'll hand up some law to you but one of the ... the law in South Carolina is very specific about what has to be plead and proven in a legal malpractice case. This case is very unusual in that Mr. Parker won his case after this law firm was relieved as counsel. Mr. Parker, Mr Pruitt got another lawyer and ultimately succeeded in his case. So this is not a circumstance where he lost the case that his lawyer handling because

Judge Koon: Can you explain to how he was relieved but he still won

Defendant Attorney Cuttino: - Mr Pruitt

Judge Koon: - I'm talking about Mr. Parker, you said Mr. Parker was still representing him.

Defendant Attorney Cuttino: No sir

Judge Koon: Okay.

Defendant Attorney Cuttino: - Mr. Parker was relieved as counsel and I may have misspoke. Mr. Pruitt went and got another lawyer in Columbia and they pursued the same case and Mr. Pruitt won that case. He prevailed. So there was no better result to be had. Mr. Pruitt prevailed in his case. The typical malpractice case is where a client loses a case because of an error or professional negligence on the part of a lawyer. That didn't happen here. He went on to win his

case. So just briefly let me articulate the 4 elements that are required and I have got a copy of the case law I can hand up to the court.

Judge Koon: and you have a copy for Mr. Pruitt

Defendant Attorney Cuttino: I do.

Judge Koon: Thank you.

Defendant Attorney Cuttino: This is the case of *Holmes v. Haynsworth, Haynsworth*. On page 52 of that case it says that in order to establish a legal malpractice claim, a claimant must rely on expert testimony to establish both the standard of care and deviation by the Defendant from such standard, I'll get to that in a minute, but the claimant must prove the existence of a client attorney relationship, which certainly existed here at one time, a breach of duty by the attorney, damage to the client, and proximate cause of the Plaintiffs damages by the breach. It says furthermore Claimant is required to demonstrate that he or she most probably would have been successful in the underlying suit if the attorney had not committed the alleged malpractice. Well in the underlying suit here, he won. He was not going to be perhaps be successful, he won his case. So no better outcome was possible. Second reason that this is not a viable legal malpractice case Your Honor is the statute of limitations. And in that regards, the case of *Stokes Craven*, I'll hand a copy up to you

Judge Koon: Thank you.

Defendant Attorney Cuttino: - Yes sir. Page 28 says all legal malpractice actions must be commenced within 3 years after the Claimant knew, or by the exercise of reasonable diligence that should have known, that he or she had a cause of action and claimant seeking recover for a legal mal claim is constrained by 2 constants; filing the claim within the statute of limitations and 2, establishing the 4 requisite elements of his or her claim. As you will see as what was attached to Mr. Pruitt's complaint, he was complaining in December of 2016 early December 2016, asking for his money back. There is prior emails that I'm sure are attached to the complaint where he is taking issue with some of Mr. Pruitt's advice and basically left(?) him not to follow that advice, challenging that advice. So if that was the case and Mr. Pruitt believed that his lawyer wasn't doing the right thing, not acting with the due standard of care, he was certainly articulating that in writing as early as December 2016. That's important your honor because this lawsuit was not filed until May 2020 which is almost 6 months later, after that 3 year statute of limitations. More importantly Your Honor in terms of the possibility or the argument that this is a professional malpractice claim, even if the statute of limitations is met even if by some chance the court believes that was correct, this is a case that cannot be proved by the requisite testimony. The case law that I just handed up to you is that expert testimony is required just like in a medical malpractice case, a person can't come in and say a patient can't come in and say my doctor committed malpractice on me, they have to have another qualified doctor to testify about the standard of care, about the breach of the standard, and about what resulted from that breach and it's the same in a legal mal case. So even if it was a legitimate professional negligence case bought within the statute, which we say it wasn't, it's still due on the day we're having a summary judgment motion and this would be the day that Mr. Pruitt would come forward with

some expert testimony to get it past summary judgment. What we really believe this case is Your Honor, is a request for a refund case, it's a breach of contract case. For the reasons I just set forth it's not a professional negligence case that is viable at all or provable, but if it's a breach of contract case we still have a statute of limitations issue because according to the documents and according to the Complaint that's been submitted. Mr. Pruitt again in early December 2016 was saying give me my money back, refund my money. This lawsuit was not brought until May 19, 2020 and that is well past the 3 year statute of limitations for a plain breach of contract case. Not even to mention that if we got into the proof Mr. Pruitt would have to prove, that through expert testimony, that he got nothing of any value for the money he spent. We have all the bills, Mr. Pruitt just wants his money back from this law firm and regardless of whether there's any merit to that which we think there's not, that breach of contract case was not brought until looks like to me 3 years and 5 months after, 6 months, after he first knew he wanted his money back, made that demand so he missed the statute of limitation by 6 months.

Judge Koon: Thank you sir. Mr. Pruitt at this time it's your opportunity to respond. Since he's pro se I'm going kinda give him a bit more latitude.

Unidentified speaker: sure

Judge Koon: Okay. It's your opportunity argue why the court should not this morning dismiss the case for the reasons that were argued by the Defendants attorney. Okay.

Plaintiff Pruitt: Okay. Thank you sir.

Judge Koon: Yes sir.

Plaintiff Pruitt: My name is Daniel Pruitt. I'm actually a retired IBM systems engineer so I'm not legal expert.

Judge Koon: Well I've looked at your paperwork and you've done very well, filing.

Plaintiff Pruitt: Thank you. I have some experts in the family but it's not (*unintelligible*) the expert not me. Start off by saying that I had done no definite ideas about or I had definite ideas and actually I had no definite ideas about this case because I was actually looking for Mr. Parker to, relied on Mr. Parker for all of these expertise. You know, I came to him, he said that he was an expert, well not an expert but an experienced lawyer in probate matters, knew the judge, he knew the system and had 14 years' worth of experience. So you know initially I relied on Mr. Parker for you know his expertise So you know I'm here today you know not so much to

Judge Koon: Well let the court kind of assist you here.

Plaintiff Pruitt: Yes.

Judge Koon: What we're here for today is they've made a motion to dismiss and I take it the main reasons they're dismissing is: one you have no grounds for malpractice, but two I think the main issue is that the statute of limitations had expired the 3 years as per law.

Unidentified Speaker: Correct

Judge Koon: Correct?

Unidentified speaker: Yes sir.

Judge Koon: So if you could address those two issues that's pretty much what we're here for this morning.

Plaintiff Pruitt: Okay.

Judge Koon: But it's your day in court & I'm going to let you say whatever you want to say

Plaintiff Pruitt: You know I they brought up the Stokes Craven (*unintelligible*) This was the (*unintelligible*) you know back in 2006 you know car buyer Stokes, Stokes Craven. Car buyer you know sues the dealership car dealership loses the trial and are forced to pay actual damages. Car dealership hires new counsel, all right, and appeals and loses again in 2010. In 2010 the car dealership decides to sue the old counsel, 2006 counselor counsel for legal malpractice. The circuit judge the circuit court actually grants summary judgment stating case is beyond statute of limitations, 3 years based on the date of verdict of 2006. The car dealership appeals to the Supreme Court in 2015, the Supreme Court overturns this summary judgment or overrules and basically states each case is different and in this case it was wholly appropriate that the Defendant did not fully realize that harm done until their case was finally determined on appeal. So they say that each case is different, so there's no you know set there's no way you know sit back and say that this started you know Mr. Parker left you know my employ or some specific time you know that we requested that he return my money you know. At that time I was dissatisfied with ,you know what he had done for me over the two years (*unintelligible*) which was absolutely not much so you know and you know in the heat of the moment I sit back and say hey (*unintelligible*) but I want my money back, this was all I was saying to him. And then and this is email exchange not even face-to-face all right and I think I said I think you mucked this up, and you know personally I thought he was pretty soft skinned for a lawyer sit back and take that. You know I said hey well you're not following my advice so right I got to go. So you know given this Stokes Supreme Court ruling for the Stokes Craven (*unintelligible*) Corporation you know I think that each case is absolutely different that that the clock should start not on a specific issue not when I start requesting money, but when I knew that something was wrong with his representation of me on the you know the legal matter. I actually didn't find that out until this year February going back through myself, I found a legal memo that actually stated that Mr. Parker was you know conflicted you know the people I'm fighting against are home (*unintelligible*) right, his whole Hudgens is representing the brothers of this lady and so I see this memo and say something is terribly wrong here and that's when I started to pursue so if the clocks going to start anywhere I think it should start there February of this year.

Judge Koon: Okay.

Plaintiff Pruitt: so we've still got three years.

Judge Koon: Okay well. Anything else you want to add.

Plaintiff Pruitt: No that's, I need some water

Judge Koon: I'm sorry I don't have any, I wish I did sir. I'm going to address this in twofold. I'm going to address the malpractice first then we're going to go back to the statute of limitations okay. First of all I'm going to rule in favor of the Defendants motion, there's no malpractice. So what we have the only thing we have to rule today is the statute of limitations. Okay. To make is your argument is your statute of limitations should start in February and there arguing that it starts at some earlier time. Okay. Everybody understand where we're at? Okay. And I'm going to give each party an opportunity to reiterate their point on the statute of limitations. Counselor

Defendant Attorney Cuttino: So we're talking about the statute of limitations as to a breach of contract action.

Judge Koon: Yes, sir

Defendant Attorney Cuttino: Well

Judge Koon: Because you're wanting your money back which is a breach of contract

Plaintiff Pruitt: Yes.

Judge Koon: Yes. Go ahead sir, I'm sorry.

Defendant Attorney Cuttino: Yes sir. I'm gathering my thoughts here. Two things, only two things I can think of to say here. It's undisputed that Mr. Pruitt was demanding his money back in early December 2016. I think there are two emails that are articulated in my motion I think it's the 11th and the 14th, where on two different occasions at least he says I want a refund ... well you want a refund for a certain reason if you would have just said that you wanted a refund because he was dissatisfied with this firm's performance of the contract, that seems to me to be clear notice that he had a cause of action right then he, if he's saying that he wants his money back, because I don't think you've done me right that's not a high level legal assessment. That's when, you know, you think you're entitled to your money back and you ask for it and demand it. The second thing is in terms of him, if it's relevant to the court looking at whatever he says he saw that made him think that there was some conflict. The testimony will be, and we can introduce you a document that he received his file materials, he received his file materials, in February of 2017. He got his file materials back from Pope and Hudgens February I believe 17, 2017 if the judge would like to see that (*unintelligible*)letter I'm happy (*unintelligible*) it to you, but three years from that would, and the two December claims requesting a basically a refund because of a breach of contract performance, would seem to me that that is clearly where the statute of limitations starts.

Judge Koon: That's fine at this point sir. Mr. Pruitt would you please respond to the court on the statute of limitations and and he made a statement that you received your file materials February 17, 2017 is that in dispute?

Plaintiff Pruitt: That is not in dispute

Judge Koon: Okay you don't have to provide that document he stated that's fine. Okay now go back to what you were stating earlier why you felt like the statute of limitations does not apply to this case

Plaintiff Pruitt - *(unintelligible)*

Judge Koon: Okay.

Plaintiff Pruitt: *(Unintelligible)* again it's based on the Supreme Court ruling in the Stokes Craven case where they actually say that the court's decision is that case *(unintelligible)* be the client knowledge of the *(unintelligible)*

Judge Koon: - I'm sorry. *(Train passes by magistrate's office and drowns out speakers)* That reminds me every time we have a Christmas parade in Prosperity the train comes through and I have to stop the parade. If you don't mind for a minute, okay I think he's through blowing. Go ahead sir, I'm sorry.

Plaintiff Pruitt: So again this is a Supreme Court decision of the Stokes Craven *(unintelligible)* but the determining factor the Supreme Court of the State of South Carolina the *(unintelligible)* knowledge of the injury you know so I'm saying to you that I didn't realize I was injured until February of this year. Right and

Judge Koon: Explain that.

Plaintiff Pruitt: Well it goes back to that memo we had actually gone through this case. I had gotten a new attorney right which was a difficult process after picking up the pieces from you know what was going on, well we picked up the pieces and went in a completely different direction than what we had done with Mr. Parker and ended up winning the case. Right. So I'm sitting at home looking at the case file that I have now right, and I find this memo right, and it's addressed to Mr. Parker right, and it says our client James Bookman who is the sister of the lady that was you know trying to take my property or take the family property, you know the lady that I was you know was the opposing who Mr. Parker and I opposed the three years that we were together right, this is her brother right. And he's you know on this memo, he's calling Parker Hudgens law firm looking for an attorney to change my Uncle's will right, and you know I didn't see you know I had this but I didn't read this until then and says our client James Bookman. So you know I went two years you know in a situation you know

Judge Koon: Let me clarify it for myself okay so you're stating that you picked up your file on the date that we all agreed upon

Plaintiff Pruitt: Well

Judge Koon: And that was in there but you hadn't read it

Plaintiff Pruitt: I picked up the file and took it to new counsel

Judge Koon: Okay.

Plaintiff Pruitt: Right and it comes back to me after this case is completed or semi-completed, so I picked it up and am looking through this stuff again.

Judge Koon: So you picked up the file you go through didn't review it and you took it to your new attorney?

Plaintiff Pruitt: Right.

Judge Koon: Then your case , you won, you got the file back you're sitting at home reading it and that's when you see it

Plaintiff Pruitt: That's when I see it.

Judge Koon: Gotcha ya.

Plaintiff Pruitt: Right.

Judge Koon: Okay. Anything else?

Plaintiff Pruitt: So again this is coming from that decision from Stokes Craven that's right here in South Carolina , you know the car dealership okay, and they said that they actually had a summary judgment against them in circuit court and they overruled it saying that the process should not start, you know, until the client knows that he's been injured and I didn't know I'd been injured until February

Judge Koon: Thank you so much. Anything else from the Defendant?

Defendant Attorney Cuttino: You honor, just a couple of points. Mr. Pruitt, he just talked about Stokes Craven. Stokes Craven was a malpractice case and the court's already ruled that there is not a cause of action; malpractice Stokes Craven wouldn't apply. Number two, in Stokes Craven unlike this case, the point I made early on the client in the Stokes Craven case lost the underlying trials a couple, or the underlying suits, a couple of times. Mr. Pruitt has never lost his case. He won his underlying case. That's one reason why this is not a malpractice case

Judge Koon: In which we're already ruled on that

Defendant Attorney Cuttino: Yes sir, and the conflict issue or whatever, I don't think it's relevant to the breach of contract issue, but again what a layperson sees as a conflict does not

(unintelligible) that's why these cases require expert testimony. So back to the statute of limitations on breach of contract certainly, Mr. Pruitt had the opportunity to review his file when he took possession of it in February 2017 and could have ... that would have been the exercise of reasonable diligence and he did not do that and he brought this case 6 months after the statute of limitations.

Judge Koon: Thank you very much. Anything else you want to state Mr. Pruitt?

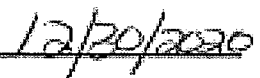
Plaintiff Pruitt: In the Stokes case again it it seems to me the summary judgment in that case. You know. In the case that was actually you know they lost a couple of (unintelligible) 2006 lost on appeal. Right? Then they decided to say, hey well my attorney you know in 2006 we could've won that case but they screwed it up you know, and they went back and legal malpractice against those attorney

Judge Koon: Okay.

Plaintiff Pruitt: and the Supreme Court comes back and says, you know, I mean court is court and comes back and says, hey you know you know the circuit court had thrown it out, ruled for the summary judgment and the Supreme Court came back and said no, that we overruled that the hurt shouldn't start until they know that you know they've been injured right. And you know for a layperson to say that its responsible for a layperson to go through pleadings, paperwork I mean stuff that he relies on his lawyer for you know I (unintelligible) trying to find a new counsel (unintelligible) pleadings, what are the ... I'm shipping these things around ... **(TAPE ENDS HERE AS PRUITT IS STILL SPEAKING).**

ATTEST: I, the undersigned Amber Miller-Osborne, am employed as a legal secretary by the law firm of Gallivan White and Boyd, P.A. in Columbia, South Carolina. In that capacity, I have listened to the tape recording of this Motions hearing of July 13, 2020, and this transcript of that tape recording was typed verbatim by me, to the best of my ability to hear and understand the words spoken by all present.





Magistrate Court Order of July 17, 2020

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

2020CV3610100370
CIVIL CASE NUMBER

Daniel Pruitt
444 Paula Drive North
Apartment 401
Dunedin, FL 34698
(404) 484-6352

Plaintiff,

vs.

Kyle Parker & Pope & Hudgens Attorneys, PA
1508 College Street
Newberry, SC 29108

Defendants.

IN THE MAGISTRATE'S COURT

ORDER

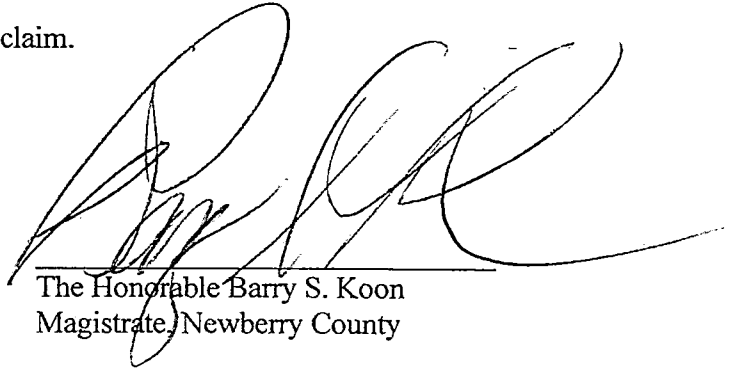
This matter came before the Court on Monday, July 13, 2020, upon the Defendants' Motion to Dismiss/Motion for Summary Judgment. Present at the hearing were the Plaintiff Daniel Pruitt, pro se; John E. Cuttino, attorney for the Defendants; Defendant Kyle Parker, and attorney Chad Jenkins of the Defendant Pope and Hudgens, P.A.

After a full and careful consideration of the facts, the applicable law, and the oral arguments of pro se Plaintiff Daniel Pruitt and counsel for the Defendants, this Court hereby finds and hereby ORDERS as follows:

The Plaintiff has not established a cause of action for professional negligence/legal malpractice as to the Defendants, as per the requirements set forth in *Hall vs. Fedor*, 349 S.C.169, 561 S.E.2d 654 (2002); *Holmes vs. Haynesworth Sinkler Boyd, P.A.*, 408 S.C. 620, 760 S.E.2d 399 (2014); and *Stokes-Craven Holding Corp. v Robinson et al*, 416 SC 517, 787 S.E.2d 485 (2016). Accordingly, the Defendants' Motion is hereby **GRANTED** as to this claim.

Further, construing the Plaintiff's Complaint liberally and in the light most favorable to the Plaintiff, the Complaint can also be read as asserting a cause of action for breach of contract. The Plaintiff's filed Complaint and the attachments thereto, together with his admissions on the record at the hearing, establishes that a) Plaintiff first demanded the return of legal fees and costs paid to the Defendants on December 11, 2016 and, b) Plaintiff took possession of his file from the Defendants in early February 2017. However, Plaintiff did not commence this action until the filing of his Complaint with this Court on May 19, 2020, which is more than three (3) years and five (5) months after first demanding a return of his legal fees and costs, and more than three (3) years and three (3) months after taking possession of his file. S.C. Code 15-3-530 (5) sets forth a three (3) year statute of limitations for a breach of contract action. Accordingly, the Defendants' Motion is hereby **GRANTED** as to any breach of contract claim.

AND IT IS SO ORDERED.



The Honorable Barry S. Koon
Magistrate, Newberry County

7-17, 2020

Newberry, South Carolina

Notice of Civil Appeal

**STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS**

Daniel Pruitt
444 Paula Drive North #401
Dunedin, Florida 34698

Plaintiff,

v.

Kyle Parker & Pope & Hudgens Attorneys, PA
1508 College Street
Newberry, South Carolina 29108

Defendants.

Common Pleas Case No.

Civil Case No.
2020CV3610100370

NOTICE OF CIVIL APPEAL

The plaintiff, Daniel Pruitt, hereby gives notice of appeal from the judgment of the magistrate's court in the above action, to the Circuit Court of Common Pleas, in the County of Newberry.

This notice of appeal is made subsequent to personal notice of the judgment which was received on the 17th day of July, 2020.

The appellant's exceptions to the judgment of the magistrate are set forth as follows: First, through Mr. Pruitt's Opposition to the Motion to Dismiss and testimony at the July 13, 2020 hearing on said motion Mr. Pruitt does in fact lay out facts and evidence to establish the cause of action for professional negligence/legal malpractice as to the Defendants, as per the requirements set forth in *Hall vs. Fedor, 349 S.C. 169, 561 S.E.2d 654 (2002)*;

Holmes vs. Haynesworth Sinkler Boyd, P.A., 408 S.C. 620, 760 S.E.2d 399 (2014); and *Stokes-Craven Holding Corp. vs. Robinson et al*, 416 SC 517, 787 S.E.2d 485 (2016).

In *Stokes-Craven Holding Corp. vs. Robinson et al*, the court reiterates the necessary elements that a plaintiff in a legal malpractice suit must prove: (1) the existence of an attorney-client relationship; (2) a breach of duty by the attorney; (3) damage to the client; and (4) proximate cause of the plaintiff's damages by the breach. *McNair v. Rainsford*, 330 S.C. 332, 499 S.E.2d 488 (Ct.App. 1998); *Smith v. Haynesworth, Marion, McKay & Geurard*, 322 S.C. 433, 472 S.E.2d 612 (1996); *Henkel v. Winn*, 346 S.C. 14, 550 S.E.2d 577 (Ct.App.2001), *cert. denied*. The defendants in argument or by motion did not explicitly state how the plaintiff had not established a cause of action for legal malpractice nor did the magistrate in their order determining that the cause of action was not established state which element was missing or inadequate. Therefore, the plaintiff will explain each element as it relates to this matter and the facts that support each element, which are contained in the initial complaint and would have been presented in detail at trial.

First is the existence of an attorney-client relationship. The relationship was established through a signed retainer agreement, regular payments and correspondence of a legal nature. The existence of this relationship is not in dispute by the defendants in fact the defendants' state that the assigned attorney Mr. Parker quit, therefore abruptly ending the mutually understood duty. Second is the breach of that duty. In the circumstances of the underlying matter at the heart was an attorney for the opposing side that wrote a fraudulent will, signed said will as a witness, received thousands of dollars from the deceased estate, and then was representing the personal representative and sole heir to that will in probate court. In three years as plaintiffs' counsel, Mr. Parker failed to have the opposing attorney removed, which Mr. Pruitt's new

attorney successfully accomplished in several months. Removal of opposing counsel changed the course of the matter and within months the fraudulent will was thrown out and Mr. Pruitt was appointed the personal representative as he had been for the deceased for decades. Mr. Parker's communication with his client was extremely poor and prior to quitting had gone several weeks without speaking to his client at all. Instead of focusing on removal of opposing counsel, Mr. Parker fixated on what other attorneys would deem defense tactics such as filing for summary judgment, proposing to depose the deceased's doctors, knowing they would be unable to testify to the lucidity of the deceased at the time the fraudulent will was signed and finally strongly suggesting apportioning the property, paying the other side and hoping to buy the property back at the auction block. Probably the most insidious breach was an email accidentally placed in Mr. Pruitt's file stating that the heir to the fraudulent will's brother had come to Kyle Parker & Pope & Hudgens Attorneys, PA to seek a lawyer to write the fraudulent will. The email refers to the brother as "our client." This conflict of interest was never disclosed to Mr. Pruitt and in hind sight casts a cloud over the tactics chosen by Mr. Parker and begs the question as to which client's interest Mr. Parker's actions were geared towards. There are a number of ways in which the defendants' breached their duty to Mr. Pruitt and Mr. Pruitt has emails and first hand testimony to prove this malpractice at trial. Third is the damage to the client, which is shown by three years of payments made to the defendants for work which consistently harmed his case and benefited the opposing side. Also as this was a probate matter, involving both personal and real property, there was no way to safeguard the property during the three years this matter was neglected by the defendants. The fourth element requires the plaintiff to show the approximate causation of the client's damages by the breach. In this case, not removing opposing counsel as the client wished lengthened the underlying matter by years and

increased the cost exponentially. The most logical way to show the defendants were the approximate cause is to show that had the client's wishes been followed the underlying matter would have concluded successfully. In this regard, the new attorney successfully removed the opposing counsel and won the underlying matter in less than a year in comparison to the three years the defendants had the case and made no progress costing the plaintiff both time, money and a loss of property. As stated in detail above, Mr. Pruitt has sufficiently plead factual allegations that give rise to a plausible claim of relief in his complaint against the Defendants. Mr. Pruitt has alleged facts which show how Defendants' conflict of interest and malpractice have caused sufficient monetary damages and should be presented to the court for judgment in the form of a hearing. In a light most favorable to the plaintiff, it is evident that there is a multitude of evidence to support each element of legal malpractice which should allow the plaintiff to have his day in court.

In *Hall vs. Fedor*, a plaintiff in a legal malpractice claim is required to prove he "most probably" would have been successful in the underlying litigation if the attorney had not committed the alleged malpractice. By continuing the underlying matter after Mr. Parker quit and winning, Mr. Pruitt was able to ascertain that he would have been successful had Mr. Parker not committed the alleged malpractice. This goes to the heart of the statute of limitations timing in this matter. The court found that the statutes of limitations began to run at the time Mr. Parker quit, but it was not possible for Mr. Pruitt to prove he "most probably" would have been successful in the underlying litigation at that point in time. Therefore as stated below, the statute of limitations should not begin until the success in the underlying matter is evident.

In *Holmes vs. Haynesworth Sinkler Boyd, P.A.*, the court addresses the issue of using expert testimony to establish a legal malpractice claim. Unlike *Holmes*, the plaintiff's case is

quite simple in terms of legality and understanding the claim and given the opportunity at a hearing, Mr. Pruitt and witnesses will layout the malpractice claims “establish both the standard of care and the deviation by the defendant from such standard.”

In *Stokes-Craven Holding Corp. vs. Robinson et al*, the court reiterates the necessary elements of a claim. As stated in more detail below, Mr. Pruitt has sufficiently plead factual allegations that give rise to a plausible claim of relief in his complaint against the Defendants. Mr. Pruitt has alleged facts which show how Defendants’ conflict of interest and negligence have caused sufficient monetary damages and should be presented to the court for judgment in the form of a hearing. In a light most favorable to the plaintiff, it is evident that there is a multitude of evidence to support each element of legal malpractice which should allow the plaintiff to have his day in court.

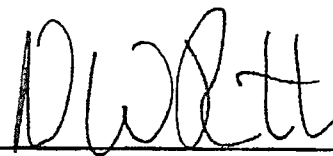
As far as the statute of limitations, relating to either a breach of contract or legal malpractice case the term is three (3) years. Under the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. All actions initiated under Section 15–3–530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action. Thus, a claimant seeking recovery for a legal malpractice claim is constrained by two constants: (1) filing the claim within the statute of limitations, and (2) establishing the four requisite elements of his or her claim. As a result, a claimant must have knowledge of each element of the legal malpractice claim when it is filed. Since a statute of limitations operates on remedies, the limitation period cannot start until the client has a cause of action that has

accrued. This accrual refers to the existence of a legally cognizable cause of action. As evidenced by this case, the key question is when the claimant's cause of action accrues to trigger the running of the three-year statute of limitations. In *Stokes-Craven*, it was found that the statute of limitations for a legal malpractice action may be tolled until resolution on appeal of the underlying case. In that matter the plaintiff expressed his disapproval of counsel on the witness stand during the trial, but the court still found that it was so important to know the outcome of his appeal that they ruled the statute of limitations did not begin until ruling on the appeal four years after the original ruling. In this matter we are asking the court to not start the statute of limitations until the resolution of the underlying matter, which was July 10, 2019. If the claimant immediately sued upon the quitting of Mr. Parker, the court could have easily denied the claim as Mr. Pruitt would not have the knowledge that his course of action would have resulted in a positive outcome for his case. The elements of breach, damages and approximate cause would have been severely lacking of the requisite evidence to support the claim. At the point Mr. Parker quit Mr. Pruitt was displeased and asked for his fees so that he could hire another attorney to finish the case, but this displeasure did not arise to the level of the specific elements for a lawsuit without the specific knowledge that comes with winning his case. In fact Mr. Pruitt's displeasure did not even result in Mr. Parker being fired; Mr. Parker quit. If Mr. Pruitt's new attorney removed the opposing counsel and subsequently lost the case, Mr. Pruitt's theory of malpractice loses steam. As far as the potential conflict of interest, Mr. Pruitt in the middle of a probate matter is required to find a new attorney after his attorney quits, under these circumstances it is entirely possible that a reasonable person would quickly find a new attorney and hand over the thick case file without pouring over each document. Clearly his former attorneys tasked with representing Mr. Pruitt did not go over each document

as they most likely would not have included the email evidence of their conflict of interest in his file. Mr. Pruitt's new attorney did not alert him as to the conflict and it was not until the case concluded and Mr. Pruitt won that he decided to sue his former attorney and in preparing came across that email. In conclusion, Mr. Pruitt's new counsel was able to disqualify the opposing attorney, which changed the course of the matter and was the course Mr. Pruitt had wanted Mr. Parker to consider for three years. This disqualification was granted on April 16, 2018. The Plaintiff submits that this is potentially the date that a reasonable person would be on notice that their first attorney may have committed professional negligence or was in breach of their contract for legal representation. Therefore in filing his claim, Mr. Pruitt, is well within the three (3) year statute of limitations. Accordingly on the basis of a failure to comply with the statute of limitations, the Plaintiff asks the court to find that plaintiff did file his complaint within the statute of limitations based on either the date opposing counsel was removed or the date the underlying matter was concluded successfully.

Date: August 14, 2020

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Pruitt", written over a horizontal line.

Daniel Pruitt
444 Paula Drive North #401
Dunedin, Florida 34698
404.484.6352
DanWPruitt@BellSouth.net

Court of Common Pleas Transcript of January 11, 2021

State of South Carolina)
) Court of Common Pleas
County of Newberry)
) 2020-CP-36-00349

Daniel Pruitt)
)
) Plaintiff)
) vs.) Transcript of Record
))
Kyle Parker, et al)
))
) Defendants)

January 11, 2021
Virtual Hearing, Newberry, South Carolina

B E F O R E:

Honorable Frank R. Addy, Judge

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

Daniel Pruitt, Pro Se
Pro Se

John E. Cuttino, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

1 THE COURT: Okay. We are going to go on the record
2 and today is January the 11th, 2021. And we are
3 addressing a Magistrate's Court appeal, 20-CP-36-349. We
4 are doing this via WebEx. It is 9:52 and we were suppose
5 to start at 9:00 o'clock but due to problems with the
6 server at Court Administration we had to bypass that and
7 we have now started a WebEx hearing. We have Mr. Pruitt
8 here who is the Appellant and the initial Plaintiff in
9 this matter. Mr. Cuttino, I think you are representing
10 the Defendant, Mr. Parker, and his Firm?

11 MR. CUTTINO: Yes, sir.

12 THE COURT: And this is an appeal of the Magistrate
13 Judge Koon's dismissal of basically a legal malpractice
14 and a breach of contract action. I have had a chance to
15 review the file and the transcript which was forwarded to
16 me earlier. Mr. Pruitt, you are the Appellant in this
17 case so basically you get to go first. You understand
18 that obviously at this point, this is simply an issue of
19 law and the Court can only address any legal mistakes or
20 legal errors that Judge Koon made when he dismissed your
21 case. But at this point I am happy to hear anything that
22 you may want to tell me, sir.

23 MR. PRUITT: Okay. Thank you, Your Honor. I am
24 Daniel Pruitt and I think the lower Court erred in
25 granting Defendant's motion to dismiss. And a careful

1 review of my opposition to a motion to dismiss, I found
2 that in my initial claim I did, in fact, lay out facts and
3 evidence to establish the cause of action for professional
4 negligence/legal malpractice and that my complaint was
5 filed within the three year statute of limitation. There
6 are three governing cases in this matter. Hall versus
7 Fedor, requires a plaintiff in a malpractice claim to
8 prove he most probably would have been successful in the
9 underlying litigation if the attorney had not committed
10 the alleged malpractice. In my case, after Mr. Parker
11 quit, I continued on with a new attorney and won the
12 underlying litigation. So I believe had Mr. Parker not
13 committed the alleged malpractice he most probably would
14 have been successful in this, in the underlying
15 litigation. The previous Court found the statute of
16 limitations began to run at the time Mr. Parker quit. But
17 if that's the case it would not be possible to prove I
18 most probably would have been successful. Case law holds
19 that the statute of limitations should not begin until the
20 success in the underlying matter is evident. In this case
21 it is either April 16, 2018 when opposing counsel was
22 removed or July 10th, 2019 when the underlying matter was
23 successfully resolved in my favor. Holmes versus
24 Haynsworth, Sinkler, Boyd addresses the issue of using
25 expert testimony to establish a legal malpractice claim.

1 The Defendants in lower court argue a lack of expert
2 testimony prematurely. Unlike Holmes, my case is quite
3 simple. It is a bench trial, not a jury trial. When
4 given the opportunity at a hearing my witnesses and I will
5 lay out the malpractice claims and as in Holmes establish
6 both the standard of care and the deviation from such
7 standard through expert witnesses or the common knowledge
8 exception. Stokes-Craven Holding Court versus Robinson et
9 al reiterates the necessary elements that a plaintiff in a
10 legal malpractice suit must prove. There are four
11 requirements. I will go through each element since the
12 lower Court Judge's order for dismissal did not explicitly
13 state which element was missing and/or inadequate. First,
14 is the existence of an attorney/client relationship. I
15 don't think this element is in dispute but I do have
16 canceled checks and legal correspondence to prove this
17 element. In addition, the Defendants themselves state
18 that Mr. Parker quit thereby ending the initially
19 understood attorney/client relationship. The second
20 element is the breach of duty by the attorney. There were
21 at least four instances of breaches of the duties based on
22 the attorney/client relationship. One, in three years as
23 my Counsel, Mr. Parker, failed to have the opposing
24 attorney removed from the Probate matter. Something my
25 new attorney managed to do in the first few months of

1 taking the case. In that Probate case the opposing
2 attorney wrote a fraudulent Will, signed said Will as a
3 witness, received fees of thousands of dollars for writing
4 the fraudulent Will from the deceased's Estate and then
5 was representing the personal representative named in the
6 fraudulent Will in Probate Court. The removal of opposing
7 Counsel changed the course of the Probate case. The
8 fraudulent Will was subsequently thrown out and I was
9 appointed Personal Representative of my Uncle's Estate as
10 I had been for the previous 25 years. Two, Mr. Parker's
11 communication with me was extremely poor. Prior to his
12 quitting Mr. Parker had gone nearly a month without
13 responding to an email or returning a voice mail. At his
14 withdraw hearing Mr. Parker offered the Judge a summary of
15 the case to help me find new Counsel. Though I asked on
16 several occasions, he never produced this summary. Three,
17 several of Mr. Parker's tactics better served opposing
18 Counsel rather than me, his own client. First he filed
19 and lost a motion for summary judgment. Second, he
20 proposed -- a video to depose my Uncle's doctors. We
21 already had their affidavits. He knew or should have
22 known that the doctors would be unable to deny my Uncle's
23 lucidity at the exact time the fraudulent Will was
24 purportedly signed. And finally, he strongly suggested
25 apportioning the property by being off the other side and

1 then hoping to buy the property back at auction. Mr.
2 Parker's substandard legal advice, that if followed, may
3 have lost forever my family's homestead including the
4 house that I was born in. Four and lastly, Mr. Parker
5 failed to check for conflicts of interest. An email was
6 inadvertently placed in the file given to me after Mr.
7 Parker quit. It stated that the Heir to the fraudulent
8 Will's brother had called Mr. Parker seeking a lawyer to
9 write the fraudulent Will. The email refers to a brother
10 as, "Our client". This conflict was never disclosed to
11 me. The third requirement of the Stokes opinion is damage
12 to the client. I have three years of canceled checks for
13 payments made to the Defendants for work which
14 consistently on my case and benefits the opposing side.
15 As this was a Probate matter and filed in both real and
16 personal property, there was no way for me to set forth
17 that property during those three lost years. The portion
18 requirement is proximate cause of the Plaintiff's damages
19 by the breach. By not removing opposing Counsel as
20 needed, this lifted the underlying matter by years and
21 increased the overall cost of the matter. My new attorney
22 successfully removed the opposing counsel and made sure of
23 the underlying matter as compared to the three years that
24 the Defendants had the case, make no progress, costing me
25 time, money and a loss of property. As far as the statute

1 of limitations, made to either a breach of contract or a
2 legal malpractice claim, the term is three years. Under
3 the discovery rule, the statute of limitations period
4 commences when the fact and circumstances of the injury
5 would put a person of common knowledge and experience on
6 notice that some claim against another party might exist.
7 All actions initiated under section 15-3-530 must be
8 commenced within three years after the person knew or by
9 the exercise of reasonable diligence should have known
10 that he had a cause of action. Does the Claimant seek
11 recovery for a legal malpractice claim is constrained by
12 two constants. One, establishing the claim within the
13 statute of limitations. And, two, establishing the four
14 requisite elements of his or her claim. As a result, a
15 Claimant must have knowledge of each element of the legal
16 malpractice claim when it is filed. The statute of
17 limitations outbreaks on remedies, the limitation period
18 cannot start until the client has a cause of action that
19 has approved. If it is approved, your first to existence
20 of a legally cognizable cause of action. As evidence by
21 my case, the key question is when the Claimant's cause of
22 action accrues to trigger the running of the three year
23 statute of limitations. In Stokes Craven it was found
24 that the statute of limitations for a legal malpractice
25 action may be tolled until resolution of an appeal of the

1 decision of the underlying case. The Plaintiff in Stokes
2 expressed his disapproval of Counsel on the witness stand
3 during the trial. But the Court still found that it was
4 so important to know the outcome of his appeal that they
5 ruled the statute of limitations should not begin until a
6 ruling on the appeal four years after the original ruling.
7 In this matter, there are only two potential dates the
8 Court should consider when deciding the start of the
9 statute of limitations. April 16th, 2018 when opposing
10 Counsel was removed or July 10th, 2019 when the underlying
11 matter was resolved in the Plaintiff's favor. If I had
12 immediately sued upon the quitting of Mr. Parker the Court
13 could have easily denied the claim. The elements of
14 breach, damages and proximate cause would have been
15 severely lacking the requisite evidence to support a valid
16 claim. When Mr. Parker quit I was displeased and asked
17 that he return my fees in order to hire another attorney
18 to finish the case. But my disapproval did not arise to a
19 level of the specific elements for a lawsuit without the
20 specific knowledge that comes with winning my case. My
21 displeasure did not even result in Mr. Parker being fired.
22 Mr. Parker quit. If my new attorney had removed the
23 opposing Counsel and subsequently lost the case my theory
24 of malpractice loses steam. In conclusion, I believe I
25 have sufficiently pled factual allegations that give rise

1 to a possible claim of relief in my complaint against the
2 Defendants. I ask the Court to find I have alleged facts
3 which show how the Defendants conflict of interest and
4 legal malpractice have caused sufficient monetary damages
5 and to find that I should be allowed to present these
6 facts and argument to the Court for judgment in the form
7 of a trial. I also ask the Court to find that I did file
8 my complaint within the statute of limitations based on
9 either the date opposing Counsel was finally removed on
10 April 16th, 2018 or July 10th, 2019, the date the
11 underlying matter was concluded successfully in my favor.
12 That is all I have. Thank you, Your Honor.

13 THE COURT: Okay. Thank you, Mr. Pruitt. I do want
14 to make -- before I turn to Cuttino, what I was struggling
15 with over the weekend and what I was thinking about, Mr.
16 Pruitt, is basically -- from my review of the record, from
17 my review of the record your breach of contract action and
18 your action, obviously, for legal malpractice are, are
19 interwoven. It's not really possible, I think, to
20 separate the two. And my understanding is you never
21 furnished from the record, it appears that you never
22 furnished an expert affidavit indicating that Mr. Parker
23 was negligent in some way. Am I correct in that?

24 MR. PRUITT: Yes. But, you know, I didn't think an
25 expert affidavit was, you know, necessary until I went to

1 trial.

2 THE COURT: Okay. Mr. Cuttino, let me hear from you,
3 if I could, please, sir.

4 MR. CUTTINO: Yes, sir. Thank you. Good morning,
5 Your Honor. Our position is pretty simple. We do not
6 think Judge Koon made any errors of law on the fact that
7 warrant a reversal of his decision. Let me speak to Mr.
8 Pruitt's position on the statute of limitations. The
9 motion we made before Judge Koon was a motion to dismiss
10 and/or in the alternative the motion for summary judgment.
11 Judge Koon treated it like a motion for summary judgment,
12 excuse me, Your Honor. I have got an automatic light that
13 goes off when I don't move enough in here. And therefore,
14 accepted whatever evidence Mr. Pruitt wanted, wanted to
15 adduce at the trial. There was no evidence of legal
16 malpractice. Maybe he did plead those claims but the
17 statute of limitations is not the issue, is not the main
18 issue. The Court correctly noted that all these cases say
19 that to prove legal malpractice expert testimony is
20 required. In his comments, Mr. Pruitt is quite articulate
21 and obviously knows something about the law. Set forth
22 the four causes of action, the four elements of the causes
23 of action. But those cases also require expert testimony.
24 In his discussion, what may have happened, what would have
25 been the outcome. All of those things are not left for us

1 to just guess at, they require some lawyer or some expert
2 to give an opinion about that and that was lacking at the
3 underlying case and it is lacking now. It would seem to
4 me that if it existed, if it was available it would be
5 from a lawyer who prevailed for Mr. Pruitt in the
6 underlying case. But it is not there and we don't think
7 it ever will be there. But that hearing in front of Judge
8 Koon was the time to produce it. So the statute -- if you
9 look at the order from Judge Koon, he did not rule that
10 the statute of limitations was the ground that he
11 dismissed the malpractice case. It may have been but that
12 is not what the order says. The order talks about the
13 statute of limitations in the context of the breach of
14 contract case. And this is a refund case, Your Honor,
15 this is -- this is, of course Mr. Pruitt is not a lawyer
16 but the Judge -- Judge Koon gave him the benefit of every
17 doubt, I think, and said, well, perhaps there is a breach
18 of contract case arguably plead. But even so the statute
19 of limitations is a real issue there because he was, Mr.
20 Pruitt was demanding his money back as early as December
21 of 2016. This case was not brought until May of 2020,
22 more than three years, five months after he first began
23 asking for his money back. So we don't see any evidence
24 that Judge Koon didn't understand the law, didn't apply
25 the law or did not rule correctly based on what was before

1 him at this summary judgment motion hearing. I would also
2 note that it is always tempting, I think, to give a pro se
3 Plaintiff sort of the benefit of the doubt in some things.
4 But in this case, I think Mr. Pruitt has displayed very
5 well that he has a knowledge of the law and can articulate
6 it and needs no benefit of the doubt. Certainly he was
7 aware of the or could have been aware as he undertook to
8 represent himself of the need for expert testimony. And
9 it did not exist, it does not exist today.

10 THE COURT: Okay. Thank you. Mr. Pruitt, did you
11 want to respond or reply to what Mr. Cuttino said a few
12 moments ago?

13 MR. PRUITT: Yes, I do. As far as expert testimony
14 is concerned. I mentioned earlier and, you know, I
15 mentioned earlier that and I was trying to reference the
16 case and it skips me right now. But this is not a jury
17 trial. This is a bench trial, you know, I would, you
18 know, I assume that, you know, I would be able to present
19 that at trial to the Judge and bring my witnesses and, you
20 know, myself, right, to talk to, you know, expert
21 testimony or as expert, you know, witnesses, at trial, not
22 prior to, you know, not in a motion to dismiss. So it is
23 my understanding that, I mean, and that I would, you know,
24 given the opportunity to go to trial I would bring expert
25 witnesses, right, if needed; or use the common knowledge

1 exception with, you know, with the Judge in a bench trial.
2 And, you know, I don't think, you know, prior to, I think,
3 he is arguing prematurely. I don't think prior to it is
4 necessary to specify that I have an expert witness lined
5 up, I do. But, you know, I don't see where I need to
6 argue that in a motion to dismiss. And as far as the
7 statute of limitations, you know, they argued that the
8 statute should began to run when Mr. Parker quit. You
9 know, I ask the Court to think about what, I, as a
10 reasonable person knew at the time Mr. Parker quit. You
11 know, I did not know about that email which was a conflict
12 of interest. Right, I did not know any of the elements
13 that a Plaintiff must prove in order to facilitate a legal
14 malpractice claim. So, I mean, prior to -- and I filed
15 and as I said earlier and I filed immediately after Mr.
16 Parker quit, I believe that the Court would deny the
17 claim. So, you know, I am asking that, you know, that you
18 take a look and see that I didn't plead factual, I did
19 plead.

20 THE COURT: Okay, anything else, Mr. Pruitt?

21 MR. PRUITT: No, I think I am finished with that.

22 THE COURT: All right. Very good. I do think I
23 understand the issues, anybody else need to say anything
24 about the case, Mr. Cuttino, Mr. Pruitt?

25 MR. CUTTINO: Your Honor, I would just say, say that

1 the record is clear, there was no conflict of interest
2 anywhere close to this issue. I know that is Mr. Pruitt's
3 lay opinion but I have looked at this, there was no
4 conflict in, if there was certainly again, there would
5 have to be expert testimony that, that would indicate that
6 it somehow shaped the outcome. It is worth noting too,
7 that this all, the withdrawal of Mr. Parker and his firm
8 didn't happen in one day. Mr. Pruitt was expressing
9 dissatisfaction with Mr. Parker along the way, they were
10 having a conversation. Mr. Pruitt's testimony would be
11 that Mr. Parker wasn't taking his advice and when a lawyer
12 is faced with that circumstance you can call it quitting
13 but he moved to withdraw. Mr. Pruitt objected to that
14 motion to withdraw, objected to it. And the Court
15 permitted him to withdraw. So those are things that I
16 just offer as data points for the Court, if it is
17 significant to your decision.

18 THE COURT: Okay. I appreciate that, I don't know
19 that it is necessarily germane but I appreciate you
20 offering that up, of course. All right. If there is
21 nothing else, I will take the matter under advisement. I
22 want to look back through some of the pleadings and review
23 the Appellant's, the Appellant's brief again and the order
24 of the Judge since I looked at that last week. Let me
25 look at it again before I rule. Okay. Obviously, any

1 appeal from whatever I decide will need to be filed within
2 the guidelines as set out in the Appellate Court rules.
3 Again, everyone, I apologize for the technical
4 difficulties this morning. I promise you they were not of
5 my doing but I do work for those who were doing it and so
6 I am very sorry that we had so many issues. And maybe we
7 will figure out exactly later today at some point what
8 went wrong. But I will take the matter under advisement
9 and I will get everyone an order just as soon as I can.
10 Okay.

11 MR. CUTTINO: Your Honor, may I mention one thing?

12 THE COURT: Yes, sir.

13 MR. CUTTINO: In the event that you need the audio
14 tape of Judge Koon's proceeding, it was sent to us
15 electronically. So we can send that to you, you will find
16 when you look at the transcript it is just spotty, as best
17 as can be done. But if you want to hear it for yourself
18 we do have that link we can send to you.

19 THE COURT: I appreciate it. I think the transcript,
20 I did see where there was some issues with it being
21 audible but I trust that -- well, if I need it I will let
22 you know. But I think I am probably good.

23 MR. CUTTINO: I just wanted you to know that. Thank
24 you.

25 THE COURT: Thank you. Mr. Pruitt, pleasure to meet

1 you, sir, sorry it is understanding these circumstances
2 but you will be hearing from me as far as I what I decide.
3 Okay, sir.

4 MR. PRUITT: Your Honor, I appreciate and thank you
5 for the, you know, listening.

6 THE COURT: Yes, sir. I am just glad we were able to
7 get it working today. All right. Y'all take care, thank
8 you very much. And Freda, you can stop recording and,
9 Joy, we are going off the record and it is 10:21. Thank
10 you very much.

11 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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CERTIFICATE OF REPORTER

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State of South Carolina)
)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Newberry, South Carolina, Virtual Hearing, on January 11, 2021.

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

March 11, 2021

Joy E. Holston

Joy E. Holston, Court Reporter

My Commission expires: May 2, 2026

Court of Common Pleas Order of January 13, 2021

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020-CP-36-349

DANIEL PRUITT, PLAINTIFF/APPELLANT

KYLE PARKER, ET AL.,
 DEFENDANT/RESPONDENT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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Disposition Type (Check One)

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

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

THIS MATTER CAME BEFORE THE COURT on January 11, 2021 on an appeal from Magistrate Koon's dismissal of Mr. Pruitt's case. The hearing was held via WebEx videoconferencing with Mr. Pruitt appearing pro se and Defendant being represented by John Cuttino. The Court took the matter under advisement so as to review further the pleadings and case law cited by the parties. Based upon a thorough review and after full consideration of the arguments made, the Court finds as follows:

1. As to Mr. Pruitt's cause of action for legal malpractice, Mr. Pruitt failed to file an expert affidavit detailing the specific instances of malpractice committed by Defendants. Furthermore, and more to the point, after Defendants were relieved by the probate court, Mr. Pruitt retained new counsel and was ultimately successful in the underlying litigation. Therefore, per case law he suffered no injury. For these reasons (failure to file an expert affidavit and lack of legally cognizable injury), the Court affirms the dismissal by Judge Koon.
2. To the extent that Mr. Pruitt's complaint could be read alleging a breach of contract, the magistrate correctly dismissed this action as being outside the statute of limitations. The undisputed facts are that the relationship between Mr. Pruitt and Defendants began deteriorating in the fall of 2016. Mr. Pruitt demanded his legal fees be reimbursed on December 11 and 14, 2016, Defendants were ultimately relieved on February 22, 2017, and Mr. Pruitt's case file was given to him by Defendants. The present action was not instituted until May 19, 2020. In his brief, Mr. Pruitt states, "it was not until the case was concluded and Mr. Pruitt won that he decided to sue his former attorney and in preparing came across that email [allegedly establishing malpractice via conflict of interest or breach of contract]." The magistrate was correct that the earliest Mr. Pruitt knew or should have known of any alleged breach

would have been on or about February 22, 2017. Arguably, Mr. Pruitt perhaps should have been on notice as early as December 11, 2016. Regardless, May 19, 2020 is several months beyond when Mr. Pruitt knew or should have known that he had a potential cause of action. Accordingly, the magistrate did not err in dismissing this case for being filed untimely.

For the foregoing reasons, the order of the magistrate is affirmed. Any appeal of this decision must be taken to the South Carolina appellate courts within the timeframe as prescribed by the rules.


Order Information

This order ends does not end the case.

Additional Information for the Clerk :

Complete if judgment requires payment of a sum of money or affects title to real or personal property			
JUDGMENT AGAINST PLAINTIFF:		JUDGMENT AGAINST DEFENDANT:	
Judgment Amount	\$ _____	Judgment Amount	\$ _____
Taxable Costs	\$ _____	Taxable Costs	\$ _____
Attorney's Fees	\$ _____	Attorney's Fees	\$ _____
Interest	\$ _____	Interest	\$ _____
Other:	\$ _____	Other:	\$ _____
Total Amount to be Enrolled:	\$ _____	Total Amount to be Enrolled:	\$ _____
If applicable, describe the property, including tax map information and address, referenced in the order:			

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interests or costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


2159 Jan. 12, 2021

 Circuit Court Judge Judge Code Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20__ and a copy mailed first class this _____ day of _____, 20__ to attorneys of record or to parties (when appearing pro se) as follows:
 Pro Se John E. Cuttino, Esq.

 ATTORNEY(S) FOR THE PLAINTIFF(S)

 ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter: Joy Holston

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Certificate of Appellant

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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SC Court of Appeals

Date: August 3, 2021



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