THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM MCCORMICK COUNTY
Court of Common Pleas

The Honorable J. Cordell Maddox Jr., Circuit Judge
The Honorable Debra R. McCaslin, Circuit Judge

Case No. 2019-002018

R. Jay Lagroon, Appellant,

v.

Crystal Suggs and Scott Suggs, Respondents.

JOINT INITIAL BRIEF OF RESPONDENTS

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I. WHETHER THE CIRCUIT COURT ERRED IN DISMISSING PLAINTIFF'S CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS WHERE PLAINTIFF FAILED TO PLEAD FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

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III. WHETHER THE CIRCUIT COURT ERRED IN GRANTING THE SUGGS' MOTION TO COMPEL AFTER PLAINTIFF'S REPEATED DISCOVERY VIOLATIONS.

STATEMENT OF CASE

Plaintiff Robert Jay Lagroon ("Lagroon") commenced this case by filing a summons and complaint June 16, 2017, against Defendants Crystal and Scott Suggs and later serving them ("the Suggs," "Ms. Suggs," and "Mr. Suggs"). (Summons and Complaint.) His complaint alleged causes of action for intentional infliction of emotional stress and civil conspiracy. (Complaint pp. 2-3.) The Suggs each responded by filing motions to dismiss pursuant to Rule 12(b)(6), SCRCP. (Suggs' First Motions to Dismiss dated August 15 and 16, 2017.) The circuit court originally held

a hearing October 16, 2017, on these motions to dismiss. Circuit Court Judge R. Lawton McIntosh continued the hearing when Lagroon informed the Court at the call of the case that he could not proceed because he was under the influence of prescription drugs. (Form 4 dated November 6, 2017.)

On January 30, 2018, Lagroon filed an amended complaint against the Suggs without obtaining leave of court or consent of the Suggs. (Amended Complaint.) The amended complaint contained causes of action for intentional and negligent infliction of emotional stress, civil conspiracy, and trespass after notice. (Amended Complaint pp. 3-7.) Lagroon then filed a motion to amend February 13, 2018. (Plaintiff's Motion to Alter or Amend.) The Suggs then filed second motions to dismiss this amended complaint. (Suggs' Second Motions to Dismiss dated February 20 and 21, 2018.) The circuit court held a hearing on these pending motions February 26, 2018. Following this hearing, Circuit Court Judge J. Cordell Maddox Jr. issued an order dated April 3, 2019, that granted Lagroon's motion to amend the complaint. (Order dated April 3, 2019, ¶ 6.) This order also granted the Suggs' motions to dismiss for failure to plead facts sufficient to state a cause of action for intentional infliction of emotional distress and civil conspiracy. (Order dated April 3, 2019, ¶¶ 7-8.) The order allowed Lagroon to proceed on his cause of action for trespass after notice (Order dated April 3, 2019, ¶ 9.)

The Suggs then filed answers in which they made specific denials and raised the affirmative defenses of the statute of limitations and waiver. (Answers of the Suggs.) On April 22, 2019, Lagroon filed a motion to set aside the order. (Motion to Set Aside Order.) The Court denied this motion to set aside the order with an order dated November 18, 2019. (Order Denying Plaintiff's Motion to Set Aside Order.) On December 2, 2019, Lagroon served a notice of appeal of this order on all parties. (Notice of Appeal filed December 3, 2018.)

The Suggs each served Interrogatories and Requests to Produce on Lagroon on June 25 and 27, 2019. (Defendant Scott Suggs' Interrogatories to Plaintiff, Defendant Scott Suggs' Request to Produce to Plaintiff, Defendant Crystal Suggs' Interrogatories to Plaintiff, and Defendant Crystal Suggs' Request to Produce to Plaintiff.) Mr. Suggs also served a notice of deposition on Lagroon on June 25, 2019, with the deposition scheduled for August 27, 2019, at the McCormick County Courthouse. (Notice of Deposition of Plaintiff.) On August 13, 2019, the Suggs filed a joint motion to compel Lagroon's discovery responses and his appearance at the deposition as Lagroon had not responded to the discovery requests and had sent emails saying he could not appear at the deposition. (Defendants' Joint Motion to Compel Plaintiff's Discovery Responses and Attendance at a Deposition.) On August 16, 2019, the Suggs received unsigned discovery responses from Lagroon with a certificate of service saying the responses were sent August 6, 2019. (First Answers to Interrogatories of the Defendant Scott Suggs and First Production of Request to Produce of Defendant Scott Suggs.) Lagroon did not appear at his properly noticed deposition August 27, 2019, despite the Suggs, both counsel for the Suggs, a court reporter, and court personnel being present for the deposition. (Statement of Non-Appearance for the Deposition of Robert Jay Lagroon.)

Lagroon filed motions to compel against the Suggs on August 17, 2020, for late discovery responses. (Motions to Compel.) The circuit court scheduled a hearing for August 24, 2020, but it had to be continued and reconvened August 25, 2020. Following that hearing, Circuit Court Judge Debra R. McCaslin issued a Form 4 order dated August 26, 2020, that granted each parties motion to compel. (Form 4 dated August 26, 2021.) The circuit court awarded Lagroon $500.00 in costs against the Suggs and the Suggs $500.00 in costs against Lagroon. (Form 4 dated August 26, 2021.) This order also stayed the case pending a decision from the court of appeals. (Form 4

dated August 26, 2021.) On September 4, 2020, the Suggs filed a joint motion to alter or amend that Form 4. (Defendants' Joint Motion to Alter or Amend.) The Court issued an order dated September 11, 2020, denying this motion. (Order Denying Defendant's Joint Motion to Alter or Amend.) Lagroon filed a motion to reconsider the original Form 4 order on September 16, 2020. (Plaintiff's Motion to Alter or Amend.) The Court issued an additional Form 4 order denying Lagroon's motion to alter or amend. (Form 4 dated September 17, 2020.) Lagroon filed a notice of appeal with the circuit court on October 19, 2020. (Notice of Appeal filed October 19, 2020.) Neither counsel for Ms. Suggs nor Mr. Suggs received a copy of this notice of appeal despite the notice saying it was sent to them.[1]

Lagroon then filed a motion for a complete and correct transcript in which he claimed that the court reporter from the motion to dismiss hearing held February 26, 2018, made an inaccurate transcript so the circuit court should order the court reporter to turn over the tapes from that hearing to Lagroon. (Motion for Complete and Correct Transcript.) On July 19, 2021, the circuit court held a hearing on that motion that Lagroon did not appear at despite receiving proper notice of the hearing. Circuit Judge H. Steven DeBerry IV issued an order dated July 20, 2021, denying Lagroon's motion because Lagroon failed to follow the proper procedure for challenging a transcript. (Order dated July 20, 2021.)

FACTS

Lagroon alleged in his amended complaint that the Suggs conspired with his ex-wife to remove his children from his office in McCormick on June 18, 2014, in the middle of the night.

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[1] Lagroon's notice of appeal claimed it was sent to 212 Oak Ave., Greenwood, SC 29646 for R. Jamison Tinsley Jr., counsel for Mr. Suggs, which is an old address.

(Amended Complaint ¶¶ 1, 8.) He alleged that the Suggs transported these children to his ex-wife in violation of a family court order, and he suffered "immeasurable emotional stress" as a result. (Amended Complaint ¶ 9.) He also claimed that his son was sometime later exposed to disease because of sexual interaction with a sexual predator. (Amended Complaint ¶¶ 9-10.)

Lagroon alleged a cause of action for "intentional and negligent infliction of emotional stress" based off these allegations. (Amended Complaint p. 3.) Lagroon averred that the Suggs were liable to him for causing him intentional infliction of emotional distress by their intentional, reckless, and outrageous conduct in removing the children from his physical custody. (Amended Complaint ¶¶ 12-20.)

Lagroon alleged a second cause of action for civil conspiracy. (Amended Complaint p. 4.) Lagroon averred that the Suggs were liable to him based on entering into a civil conspiracy with his ex-wife, Rebecca Lagroon, to remove the children from him. (Amended Complaint ¶ 22-26.) Lagroon alleged he suffered special damages of loss of consortium, counseling expenses of the children, medical and medication expenses to treat his mental anguish, polygraph fees for his son, and family court attorney's fees as a result of the alleged civil conspiracy. (Amended Complaint ¶ 27.)

Lagroon also brought a final cause of action for trespass after notice against the Suggs. (Amended Complaint ¶ 28-31.) This cause of action is not relevant to this appeal.

The Suggs denied all of the pertinent facts alleged. (Answers of the Suggs.)

STANDARD OF REVIEW

> Under Rule 12(b)(6), a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most

> favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper.

Brazzell v. Windsor, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009). "Viewing the evidence in favor of the plaintiff, the motion must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case." Chewning v. Ford Motor Co., 346 S.C. 28, 32-33, 550 S.E.2d 584, 586 (Ct. App. 2001).

"On appeal from the granting of a motion under Rule 12(b)(6) ..., the reviewing court may not consider matters outside the pleadings." Carolina Winds v. Joe Harden Builder, 297 S.C. 73, 76, 374 S.E.2d 897, 899 (Ct. App. 1988) (overruled on other grounds).

ARGUMENT

I. THE CIRCUIT COURT PROPERLY DISMISSED LAGROON'S CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BECAUSE LAGROON FAILED TO PLEAD FACTS SUFFICIENT TO STATE A CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

Lagroon failed to plead facts sufficient to constitute a cause of action for intentional infliction of emotional distress because he did not witness the alleged outrageous conduct that injured his son.

The tort of intentional infliction of emotional distress or "outrage" as it is also known requires the plaintiff prove the following elements:

(1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially certain that such distress would result from his conduct;

(2) the defendant's conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community;

(3) the actions of the defendant caused the plaintiff's emotional distress; and

(4) the emotional distress suffered by the plaintiff was severe so that no reasonable person could be expected to endure it.

Hansson v. Scalise Builders of South Carolina, 374 S.C. 352, 357, 650 S.E.2d 68, 70 (2007).

South Carolina limits when a plaintiff can recover for a defendant's conduct that involves a third party. Where a plaintiff makes a claim for intentional infliction of emotional distress based on a defendant's actions that injure a third party, the actor will be liable to a plaintiff who witnesses the third-party injury if the actor's intentional or reckless conduct,

"causes severe emotional distress

(a) to a member of such person's immediate family who is present at the time, whether or not such distress results in bodily harm, or

(b) to any other person who is present at the time, if such distress results in bodily harm."

Upchurch v. New York Times Co., 314 S.C. 531, 431 S.E.2d 558, 562 (1993).

The amended complaint fails to plead facts sufficient to state a cause of action for intentional infliction of emotional distress. Lagroon bases his intentional infliction of emotional distress cause of action on the Suggs allegedly removing his children from his house and taking them to their mother's house. Lagroon further alleges the children were exposed to a third-party sexual predator who caused Plaintiff's son to contract a life-threatening disease through sexual interaction. (Amended Complaint ¶¶ 7-10, 14-15.)

In the amended complaint, Lagroon does not allege he was present when the Suggs allegedly took his children and exposed one of them to a third party who gave the child a sexually transmitted disease. Given that Lagroon was not present to witness the alleged outrageous conduct of the Suggs that injured his children, Lagroon cannot recover under a theory of intentional emotional distress pursuant to Upchurch. Any potential motives that the amended complaint

ascribes to the Suggs are irrelevant because the allegations in the amended complaint fail as a matter of law to constitute a cause of action for intentional infliction of emotional distress.

Further, Lagroon does not allege the Suggs had any control over the third party who inflicted the injury upon Lagroon's son according to the allegations in his amended complaint. The court of appeals should disregard the statement in Lagroon's brief that refers to the results of a polygraph as they are not contained in the amended complaint so they are not to be considered in ruling on a 12(b)(6) motion to dismiss. (Brief of App. p. 8.) See Carolina Winds, 297 S.C. at 76, 374 S.E.2d at 899.

The circuit court, therefore, properly dismissed Lagroon's intentional infliction of emotional distress action.

II. THE CIRCUIT COURT PROPERLY DISMISSED LAGROON'S CAUSE OF ACTION FOR CIVIL CONSPIRACY BECAUSE LAGROON FAILED TO PLEAD FACTS SUFFICIENT TO STATE A CAUSE OF ACTION FOR CIVIL CONSPIRACY.

After the circuit court entered its order dismissing Lagroon's cause of action for civil conspiracy, the supreme court altered the jurisprudence of civil conspiracy law in South Carolina. In Paradis v. Charleston Cnty. Sch. Dist., the supreme court held "[W]e overrule Todd and cases relying on Todd ... to the extent they impose or appear to impose a requirement of pleading (and proving) special damages." Paradis v. Charleston Cnty. Sch. Dist., Op. No. 28030 (S.C. Sup. Ct. refiled Aug. 18, 2021) (Howard Adv. Sh. No. 28, at 12, 22). The Court further clarified that a plaintiff must prove the following elements to maintain a civil conspiracy action: (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff. Id.

While the circuit court's order dismissing Lagroon's cause of action for civil conspiracy relied upon Lagroon's failure to plead special damages, the court of appeals should still affirm the dismissal based on the allegations of the amended complaint. Lagroon has failed to properly plead that the Suggs committed an unlawful act or a lawful act by unlawful means. His amended complaint alleges that the Suggs took his children to his ex-wife during the pendency of a family court investigation or case. (Amended Complaint ¶¶ 22-27.) He does allege that the Suggs trespassed onto his property during the middle of the night with his ex-wife prior to taking the children. (Amended Complaint ¶¶ 24, 26.) While a trespass could be an unlawful act, Lagroon does not allege this trespass succeeded in completing the conspiracy to take the children so his allegation of trespass does not meet the pleading requirements for civil conspiracy.

The court of appeals, therefore, should affirm the circuit court's dismissal of Lagroon's cause of action for civil conspiracy as the amended complaint failed to plead facts sufficient to constitute a cause of action civil conspiracy.

III. THE CIRCUIT DID NOT ERR IN GRANTING THE SUGGS' MOTION TO COMPEL BASED ON LAGROON'S REPEATED DISCOVERY VIOLATIONS.

A. Lagroon did not properly serve his notice of appeal to the Form 4 order dated September 17, 2020, that denied his motion to reconsider of the discovery order.

The South Carolina Appellate Court Rules require that a party wishing to appeal an order from the court of common pleas serve a notice of appeal on all respondents within thirty days after receipt of written notice of the entry of judgment. Rule 203(b)(1), SCACR. To serve a represented party, the appellant must serve the notice of appeal on the party's attorney. Rule 262(c). If serving the notice of appeal via mail, the document must be deposited into the U.S. Mail addressed to the attorney's last-known address with sufficient postage. Id.

Timely service of the notice of appeal is a jurisdictional requirement for the appellate court to have jurisdiction of an appeal. See Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended...."). "This Court has consistently stated that service of the notice of appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of appeal must be served." Ex Parte Sadisco of Greenville, Inc. v. Greenville Cnty. Bd. of Zonning Appeals, 340 S.C. 57, 59, 530 S.E.2d 383 (2000). "The requirement of service of the notice of appeal is jurisdictional, i.e. if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." Elam v. S.C. Dep't of Transp., 361 S.C. 9, 14, 602 S.E.2d 772 (2004).

Lagroon filed his notice of appeal with the court of appeals and circuit court but did not properly serve his notice of appeal on counsel for the Suggs. While he included a document signed by someone named Kelli Sue Barnett that claimed she served the notice of appeal on both counsel, neither counsel for Ms. Suggs nor Mr. Suggs received the notice of appeal. (Second Notice of Appeal.) The address listed for R. Jamison Tinsley Jr., counsel for Mr. Suggs, is an old address that he had been gone from for more than year in October 2020 so sending a notice to that address did not comply with Rule 262. Lagroon did not serve the second notice of appeal on counsel for either of the Suggs so the court of appeals should dismiss his appeal of the discovery order because the court of appeals lacks jurisdiction to hear that appeal. The fact that Lagroon filed the notice of appeal is immaterial because serving the notice of appeal gives the appellate court jurisdiction of the appeal rather than filing the notice of appeal.

The court of appeals, therefore, should dismiss Lagroon's second appeal for lack of jurisdiction.

B. The circuit court appropriately exercised its discretion in sanctioning Lagroon $500.00 for his repeated discovery violations.

"The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court." Downey v. Dixon, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987). "A trial court's exercise of its discretionary powers with respect to sanctions imposed in discovery matters will be interfered with by the Court of Appeals only if an abuse of discretion has occurred." Karppi v. Greenville Terrazzo Co., 327 S.C. 538, 542, 489 S.E.2d 679, 681 (Ct. App. 1997). "The burden is upon the party appealing ... to demonstrate the trial court abused its discretion." Id. "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Rickerson v. Karl, 412 S.C. 215, 219-20, 770 S.E.2d 767, 770 (Ct. App. 2015).

In the present case, the circuit court's order granted Lagroon's motion to compel against the Suggs and awarded $500.00 in costs. (Form 4 dated August 26, 2020.) It also granted the Suggs' motion to compel against Lagroon and awarded $500.00 in costs (Form 4 dated August 26, 2020.) Each party complained of untimely responses to interrogatories and requests to produce in discovery. (Motions to compel.) The Suggs' motion further complained about Lagroon not appearing at a properly noticed deposition without an order of protection from that deposition. (Defendant's Joint Motion to Compel Plaintiff's Discovery Responses and Attendance at a Deposition.) Mr. Suggs served a notice of deposition on Lagroon on June 25 pursuant to Rule 30, SCRCP. (Defendant's Joint Motion to Compel Plaintiff's Discovery Responses and Attendance at a Deposition.) The Suggs, their counsel, the court reporter, and court personnel appeared at the

scheduled time of August 27 at 10:00 a.m. at the McCormick County Courthouse, but Lagroon did not appear. (Statement of Non-Appearance for the Deposition of Robert Jay Lagroon.)

Mr. Suggs properly served the notice of the deposition on Lagroon, gave sufficient notice of the time of Lagroon's deposition, which was in a proper location within McCormick County where the case was pending. See Rule 30, SCRCP. Lagroon argued to the circuit court and continues to argue on appeal that he should not be sanctioned for missing the deposition because he had to perform an emergency dental operation on a patient. (Brief of Appellant pp. 10-11.) Lagroon waived that argument because he did not file a motion for a protective order prior to the time noticed for his deposition. See Rule 26(c), SCRCP (specifying that a party must file a motion to limit or prevent sought discovery based on good cause shown). Lagroon, instead, made a decision that he could ignore a properly noticed deposition without filing a motion for a protective order from the circuit court.

Furthermore, this discovery order that Lagroon has improperly appealed is not an immediately appealable order because it is interlocutory. See, e.g. Waddell v. Kahdy, 309 S.C. 1, 419 S.E.2d 783 (1992) (holding order requiring a party to submit to a deposition is not immediately appealable).

The court of appeals, therefore, should affirm the circuit court's order compelling discovery against Lagroon and awarding the Suggs $500.00 in costs as a sanction.

CONCLUSION

For the reasons stated above, and any other reasons that appear in the record, the court of appeals should affirm the circuit court's order dismissing Lagroon's causes of action for intentional infliction of emotional distress and civil conspiracy. The court of appeals should also affirm the

circuit court's order granting the Suggs' motion to compel discovery and awarding the Suggs $500.00 in costs from Lagroon.

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This 3rd day of November, 2021.

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SC Court of Appeals

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Crystal Suggs and Scott Suggs, Respondent.

Proof of Service

I certify that I have filed and served the Joint Initial Brief of Respondents and Designation of Matter on the below date by e-mailing a copy to the S.C. Court of Appeals at ctappfilings@sccourts.org and to R. Jay Lagroon at rlagroon63@aol.com and via mail at 791 S.C. Hwy 7, McCormick, SC 29835. This method of service and filing is based upon the Supreme Court's order dated August 25, 2021.

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S.C. Court of Appeals
Via e-mail: ctappfilings@sccourts.org

Re: R. Jay Lagroon v. Crystal Suggs and Scott Suggs – Joint Initial Brief of Respondents and Designation of Matter

Please find attached a copy of the Joint Initial Brief of Respondents and Designation of Matter in the above-referenced matter along with proof of service. I am serving appellant simultaneously via e-mail and U.S. mail.

Thank you for your assistance in this matter.

Yours truly,

R. Jamison Tinsley Jr.

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