

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Weldon Boyd,

Plaintiff,

vs.

Mark B. Tinsley,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTEENTH JUDICIAL CIRCUIT

C/A#: 2025-CP-26-08617

**DEFENDANT MARK TINSLEY'S NOTICE
OF MOTION AND MOTION TO DISMISS**

TO: DESA BALLARD, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE THAT, Defendant Mark Tinsley, by and through his undersigned counsel, hereby moves for an Order dismissing Plaintiff Weldon Boyd's Summons and Complaint pursuant to Rule 12(b)(6) and Rule 12(b)(8), SCRCP, S.C. Code Ann. § 15-53-70 et. seq., the doctrine of ripeness and justiciability, and any other grounds that are set forth within this Motion. For the reasons set forth herein, Plaintiff's Complaint seeking declaratory judgment relief should be dismissed.

Plaintiff brings this action seeking equitable relief¹, including but not limited to a declaratory judgment, finding, and determining "that [Tinsley] has intentionally engaged in conduct prejudicial to the interests of justice by manufacturing, disseminating and perpetuating a false narrative through manipulative use of media outlets which has permanently harmed [Plaintiff's] ability to obtain a fair trial in the courts of this state in any related civil or criminal matter." A mere cursory review of the Complaint demonstrates the absurdity of Plaintiff's

¹ Plaintiff goes to great lengths to "waive" any claim to legal relief and limit the relief to the equitable side of the court. However, at the same time the Complaint improperly demands a jury trial in the caption. Plaintiff is not entitled to a jury trial on matters in equity. This is another demonstration of how poorly drafted and ill-conceived the Complaint in this matter is.

sensationalized and mischaracterized factual allegations, of which there are too many. However, beyond the petty and ridiculous averments in the Complaint, Plaintiff's core argument appears to be that Tinsley's advocacy for his own clients, including the pursuit of justice regarding the shooting through legal means and publicity efforts, has perverted the pursuit of justice. Yet, Plaintiff fails to provide, nor can he, any sound legal theory to support his self-serving allegations. Rather, it is categorically apparent that Plaintiff's Complaint is not only sour grapes, it is an attempt at an end around the wrongful death lawsuit filed by Tinsley on behalf of the Estate of Scott Spivey and any hypothetical criminal charges that may be filed against Plaintiff.

Plaintiff not only takes issue with Tinsley's advocacy for justice and the lawful means by which he does so, he also apparently believes that the Horry County Police Department, members of the South Carolina General Assembly, and the Attorney General's Office are complicit in this manufactured scheme to publicize and manipulate the facts and investigation of the shooting. In light of such flagrant allegations of misconduct yet such nebulous claims for relief, it is indeed worth asking who is really motivated by their own "personal purposes of establishing and/or increase [their] celebrity status."

Be that as it may, this Complaint is not only frivolous for the aforementioned reasons and others, it is legally defective for numerous reasons as well, and should be dismissed.

1. First, Plaintiff seeks a declaratory judgment that "Tinsley has intentionally and wrongfully frustrated the interests of justice such that Boyd cannot receive a fair adjudication in the courts of this state in any related matter[.]" However, the court may refuse to render declaratory judgment where the remedy is invoked to try issues or determine the validity of defenses in pending cases. *Wessinger v. Rauch*, 288 S.C. 157, 160, 341 S.E.2d 643, 644 (Ct. App. 1986). Despite the misleading pleading and pursuit of an improper defendant, Plaintiff is using

this declaratory judgment action against Tinsley, who has at all times relevant represented the Estate of Scott Spivey and the Spivey Family, to circumvent the existing litigation against him pending in this very venue. Indeed, Plaintiff could transform this improper action into a proper legal motion² in the pending wrongful death lawsuit and any hypothetical criminal action. Plaintiff and his undersigned counsel cannot egregiously and improperly sue a litigant's attorney as a party simply to avoid Rule 12. This is not the purpose of a declaratory judgment suit and as such, this case should be dismissed pursuant to Rule 12(b)(8), SCRCP.

2. For similar reasons, this case should be dismissed pursuant to Rule 12(b)(6), SCRCP, and the common law. First, the equitable relief sought by Plaintiff is not available, and certainly not in this circumventing manner, when there is an adequate remedy at law. *EllisDon Const., Inc. v. Clemson Univ.*, 391 S.C. 552, 555, 707 S.E.2d 399, 401 (2011) (holding that “equity is only available when a party is without an adequate remedy at law”); *see also Carolina Attractions, Inc. v. Courtney*, 287 S.C. 140, 146, 337 S.E.2d 244, 247 (Ct.App.1985) (“[E]quity will not impose an equitable lien where there is an adequate remedy at law.”); *Milliken & Co. v. Morin*, 386 S.C. 1, 8, 685 S.E.2d 828, 832 (Ct. App.2009) (“An ‘adequate’ remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity.” (internal quotations omitted)). As is a theme throughout Plaintiff's sensationalized complaint which lacks any substance, Plaintiff ignores well-established law in an effort to manufacture a self-serving ruling for some future purpose. Our law simply does not allow this and this Complaint should be dismissed because he has an adequate remedy in the wrongful death suit. *See Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 545, 627 S.E.2d 687, 689–90 (2006) (reversing grant of injunction in circuit court were right to appeal arbitrator's

² Of course, Tinsley and the undersigned categorically disputes the validity and merits of any such motion, but procedurally accepts that Plaintiff could make such in the pending wrongful death lawsuit.

award provides an adequate remedy at law, a protection of their rights, and an opportunity to repair any prejudice caused by the alleged improper selection of the neutral arbitrator).

3. Furthermore, declaratory relief should not be used “to try a controversy by piecemeal or to try particular issues without settling the entire controversy” or when “the remedy is invoked merely to try issues or determine the validity of defenses in pending cases.” *Williams Furniture Corp. v. Southern Coatings & Chemical Co.*, 216 S.C. 1 (1949). Plaintiff’s cherry-picked action seeks to use this improper declaratory judgment action to try and obtain a favorable ruling; yet, this very argument, as ridiculous as it is, could be asserted through motions practice (which has not been done to date) in the pending wrongful death lawsuit. Thus, this action should be dismissed as a matter of law as an improper declaratory judgment action pursuant to Rule 12(b)(6), SCRCPP, and S.C. Code Ann. § 15-53-70 et. seq.

4. This matter should be dismissed because it is not ripe. Before a court may render a declaratory judgment, an actual, justiciable controversy must exist. A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute. *Orr v. Clyburn*, [277 S.C. 536], 290 S.E.2d 804 (1982); *Carolina All. for Fair Emp. v. S.C. Dep’t of Lab., Licensing, & Regul.*, 337 S.C. 476, 488, 523 S.E.2d 795, 801 (Ct. App. 1999). Here, this Court can take judicial notice of the fact that the wrongful death suit was filed only last year and is still in the discovery stage. Furthermore, as Plaintiff’s own Complaint alleges, the criminal investigation into the underlying shooting at issue is still undergoing and no criminal charges have been filed to date (and charges may never be filed). There is no pending criminal matter, and certainly no criminal or civil jury trials or adjudication. Thus, Plaintiff’s declaratory judgment action is based upon a hypothetical or abstract dispute, such that dismissal is warranted.

5. This action is improperly brought against Tinsley, whose advocacy statements are not even alleged to have been false, and who was, at all times acting in his representation, with the knowledge of the Spiveys pursuant to *Hunt v. Mortgage Electronic Registration*, 522 F. Supp. 2d 749, 758 (D.S.C. 2007); *Gaar v. N. Myrtle Beach Realty Co.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986); *Hager v. McCabe, Trotter & Beverly, PC*, 435 S.C. 740, 747, 869 S.E.2d 886, 889 (Ct. App. 2022).

This Motion is supported by the pleadings on file with this Court, the pleadings on file with the Horry County Court of Common Pleadings, the laws and statutes of South Carolina, South Carolina's common law, exhibits, and whatever memoranda of law or certified documents that may later be submitted to this Court.

s/John T. Lay, Jr.

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December 3, 2025