



Introduction

There are no winners in contested litigation, particularly in the family court context. Of course, rulings are made, and in these four cases, four decisions in my client's favor can be counted. But a focus on favorable outcomes misses the harsh reality of the process. This litigation is heartbreaking and difficult for the parties. It is unfortunate that Mr. Brumbach finds himself in this situation.

My sympathy for Mr. Brumbach's circumstance, however, does not justify his abusive behavior in the appellate courts nor the allegations raised in his complaint to this Commission. A party's emotion surrounding their own case does not reflect the quality or character of my advocacy.

Underlying this matter that Mr. Brumbach now complains, are Mr. Brumbach's four separate emergency appellate cases—the final as a *pro se* litigant. All four filings sought *identical relief* over the course of nine months from *same* temporary family court order. Such behavior was tactical, abusive, and intentionally drained my client's finances. A review of these four separate emergency appellate matters demonstrates I have been a professional and zealous advocate. Moreover, a plain reading of these materials highlights that no aspect of my advocacy was personal as Mr. Brumbach now asserts. Mr. Brumbach is frustrated that his repeated attempts to subject his former spouse to costly appellate filings did not reverse the family court's decision. That is something neither this Commission nor I can change.

Background

From August 2022 through June 2023, I was retained on four separate occasions to serve as emergency appellate counsel for Ms. Heather Gallagher in relation to *one* temporary order addressing relocation in *Gallagher v. Brumbach*.¹ 2021-DR-40-1319 (pending in Richland County and scheduled for an August 2023 trial). My representation included responding to Mr. Brumbach's two supersedeas filings, his request for a writ of mandamus, and his *pro se* request for a common law writ in the original jurisdiction of the Supreme Court.

In an appellate capacity, I typically am brought into a family law case when an emergency appeal is filed—known as a petition for supersedeas or stay. By way of background, a supersedeas provides a party with an avenue to seek emergency recourse following a lower court's ruling on the ground that an appellate court must act immediately to ensure the case does not become moot or to prevent harm or a miscarriage of justice. These filings are used sparingly given their gravity and the significant appellate costs associated with them.

¹ In the family court context, a temporary order serves as a place holder during the life of a pending matter before a trial. A temporary order can be modified and it is not unusual to have two to three temporary orders during a case if there is a change of circumstances or if the parties engage in hotly contested litigation.

In August 2022, Mr. Brumbach filed a supersedeas petition with the Court of Appeals. *Gallagher v. Brumbach*, Appellate Case No. 2022-001166. I was retained by Ms. Gallagher to file a return for which she paid attorney's fees and costs. **Exhibit A**. In the return, I provided the Court of Appeals with a detailed account of the factual and procedural history of the underlying litigation—the same facts that were ultimately utilized throughout all four appellate cases, including the one Mr. Brumbach now takes issue with—and detailed how the family court would likely be affirmed following full appellate briefing and oral argument. Notably, the return also notified the Court that Mr. Brumbach did not provide a key element of the family court's ruling: thirteen pages of detailed instructions on how the temporary order should be drafted. Said another way, Mr. Brumbach's filing did not tell the Court of Appeals that a more formal order was being drafted by counsel for the family court's review and execution. The Court of Appeals ruled in my client's favor—denying Mr. Brumbach's petition. *Gallagher v. Brumbach*, Appellate Case No. 2022-001166, Order filed August 26, 2022 (**Exhibit B**).

Following the Court of Appeals' denial of Mr. Brumbach's first supersedeas petition, trial counsel for both parties drafted a proposed temporary order. In total, the drafting, circulating, and editing process took twenty-five days. Once in agreement, counsel provided the family court judge, the Honorable Monet Pincus, with the proposed order. After just *two business days*, on Thursday, September 8, 2022, Mr. Brumbach filed a separate action seeking a writ of mandamus with the Supreme Court—asking our state's highest court to intervene and direct Judge Pincus to sign the order. *See Brumbach v. Pincus*, Appellate Case No. 2022-001248, filing in the Supreme Court's original jurisdiction. For reference, a writ of mandamus is an extraordinary writ used in the rarest circumstances and is considered an extreme course of action.

As a result of this filing, Ms. Gallagher again retained my services to respond. Two days after Mr. Brumbach filed his mandamus request, I filed a return on behalf of Ms. Gallagher on Saturday, September 10, 2022. **Exhibit C**. On Monday, September 12, 2022, Judge Pincus issued the temporary order. Mr. Brumbach moved to withdraw his mandamus request before the Supreme Court ruled on the matter. **Exhibit D**. While no order on the merits was issued, Mr. Brumbach for a second time caused my client to accrue emergency attorney's fees and costs.

Once in possession of the temporary order, Mr. Brumbach sought a second supersedeas in the Court of Appeals. Ms. Gallagher again retained me. While I reduced my fees out of consideration for Ms. Gallagher's situation, she still paid thousands of dollars for emergency appellate representation. The Court of Appeals again ruled in my client's favor and denied Mr. Brumbach's request. *See Gallagher v. Brumbach*, Appellate Case No. 2022-001166, Order filed November 3, 2022, **Exhibit E**.

Roughly six months passed with no further appellate filings. Then on April 25, 2023, Mr. Brumbach filed a separate action at the Supreme Court through a common law writ in which he sought review of *the same temporary order*. Shockingly, Mr. Brumbach personally served Ms. Gallagher's trial counsel. Absent from the service by email were his well-respected attorneys, Bruce Bannister and Ashby Jones. Ms. Gallagher's trial counsel immediately contacted Mr.

Bannister and Ms. Jones pursuant to our professional rules of conduct. **Exhibit F.** At that time, counsel, including myself, learned that Mr. Brumbach was proceeding in this latest appellate action *pro se* while retaining Mr. Bannister and Ms. Jones in the underlying trial matters. *Id.*

As a result, and for the fourth time, Ms. Gallagher retained me to serve as appellate counsel in the common law writ matter. I once again gave her a reduced rate, but she still paid thousands of dollars for my services.

While Mr. Brumbach filed a lengthy common law writ petition asserting numerous constitutional arguments, addressing the merits of those issues was simply unwarranted. South Carolina has long-recognized that a party may not utilize hybrid representation—one cannot have counsel and choose to operate separately from that counsel in a *pro se* capacity.

Accordingly, on May 3, 2023, I filed a motion to dismiss Mr. Brumbach’s common law writ petition. **Exhibit G.** In so doing, I also requested sanctions due to his unwarranted and repetitive appellate filings. Filing four different appellate cases on one temporary order far exceeds appropriate advocacy, and my client was entitled to seek redress for her ex-husband’s abusive litigation behavior. A plain reading of the motion to dismiss demonstrates a neutral resuscitation of the factual and procedural history, along with the basis for dismissal and sanctions. *Id.*

After filing with the Supreme Court, I immediately provided Mr. Brumbach’s counsel with a courtesy copy since they were not counsel of record in this matter. **Exhibit H.** As part of that correspondence, I advised Mr. Brumbach’s counsel, “[t]his is the first time I’ve asked for sanctions in my 13 years of practice[,] and I absolutely hate that this most recent *pro se* filing brought us to this moment.” *Id.* (italics added).

A response to the motion to dismiss was due Monday, May 15, 2023. On Friday, May 12, 2023, Mr. Brumbach sent an email to the Supreme Court seeking an extension for additional time. **Exhibit I.** I did not object to his request for additional time nor did I take issue with his improper email request—failing to file a motion as required by the appellate court rules.

Mr. Brumbach filed a lengthy return. No reply was filed—a fact Mr. Brumbach now takes great issue with. *See* Brumbach Affidavit (“I responded to her filing pointing out to the court what I stated [referencing facts he did not agree with]. Ms. Harrison did not even file a reply brief attempting to justify her misconduct, presumably because there was no justification.”). Having clerked in both of South Carolina’s appellate courts, as well as serving as lead appellate counsel in more than sixty appeals, I know reply briefs for motions should be utilized for very limited purposes—they are not appropriate for he said/she said exchanges. After reviewing Mr. Brumbach’s filing, I did not believe a reply was warranted. Mr. Brumbach had an opportunity to raise his concerns, as did my client. The issue was squarely before the Supreme Court, which was all that was needed.

The Supreme Court denied Mr. Brumbach’s common law writ on its merits, not on the grounds raised in the motion to dismiss. **Exhibit J.** This is significant because the Supreme Court

decided to review the substantive merits of Mr. Brumbach's filing instead of merely looking at the procedural hybrid representation deficiency. In so doing, the Court found Mr. Brumbach's substantive arguments did not rise to the level of an extraordinary circumstance as required for a common law writ. Because the Supreme Court decided to address the common law request (and without requesting a merits-based reply filing from Ms. Gallagher), the motion to dismiss became moot. The Court also denied my request for sanctions. This was not surprising given the Supreme Court's rare issuance of sanctions. The sanctions request, however, was a reasonable one given Mr. Brumbach's appellate strategy.

On October 23, 2023, I learned Mr. Brumbach had filed a complaint with the Commission regarding my candidacy. He alleges that I do not "understand appellate law" and characterized my filing as "screed" and a "fiery personal attack" against him. Specifically, he asserts that the motion to dismiss was "an unhinged character assassination instead of a legal brief." He further suggests "at least one of the 'facts' she asserted in her character assignment" included a fact that my client said was a guess. In sum, Mr. Brumbach expressly contends that I am unethical.

Discussion

A review of Mr. Brumbach's affidavit suggests his accusations arise from the fact that I sought sanctions on behalf of my client. My decision to seek sanctions was based on Mr. Brumbach's strategic and abusive tactics of filing four separate appellate matters from one temporary order—two of which sought extraordinary writs in our Supreme Court. Mr. Brumbach was abusing the appellate court system and intentionally draining Ms. Gallagher's resources. This was especially bothersome since he has the education and training to write his own materials. My client does not. Mr. Brumbach readily admits in his affidavit that he proceeded *pro se* to save money. This is an option my client simply does not have as she seeks to shield herself from Mr. Brumbach's behavior.

By repeatedly filing successive appellate matters, Mr. Brumbach was effectively limiting my client's ability to proceed to trial. Such behavior should not be condoned, much less instituted by a member of the South Carolina Bar. Mr. Brumbach had multiple opportunities to be heard by our appellate courts, and the final filing for common law writ far exceeded the parameters of appellate practice when dealing with a temporary order. Based on my experience, I believe that seeking relief from this behavior was proper in June 2023 and I would make the same determination today.

While Mr. Brumbach argues I made this litigation personal and attacked him, the filings in this case reveal his accusation lacks merit. I have been a zealous advocate for my client; my arguments have been direct, to the point, appropriate, and supported by the applicable rules and legal authorities. Only relevant material was included in the motion to dismiss (and in the three other filings). While Mr. Brumbach suggests I used some fact that was only his former wife's belief, he fails to directly specify the infraction. Moreover, he forgets the posture of this case. Because no trial has occurred, I properly relied on affidavits provided by the parties, evidence

submitted at a temporary hearing, deposition testimony, and the hearing transcript. Mr. Brumbach's former spouse has the right to experienced appellate counsel, and it is her right to defend herself against his successive filings. I am proud to have had the opportunity to work for her on these four matters.

Conclusion

I look forward to answering any questions the Commission may have about my representation. In the interim, if the Commission or Staff need any other information, please do not hesitate to contact me.