

**TWENTY-FIFTH JUDICIAL CIRCUIT
OF VIRGINIA**



W. CHAPMAN GOODWIN
CHIEF JUDGE
AUGUSTA COUNTY COURTHOUSE
P.O. BOX 689
STAUNTON, VIRGINIA 24402-0689
540-245-5014
FAX 540-245-5296

COUNTIES
ALLEGHANY, AUGUSTA, BATH,
BOTETOURT, CRAIG, HIGHLAND, ROCKBRIDGE

CITIES
BUENA VISTA, CLIFTON FORGE, COVINGTON,
LEXINGTON, STAUNTON AND WAYNESBORO

PAUL A. DRYER
JUDGE
540-245-5324
FAX 540-245-5296

ANNE F. REED
JUDGE
540-245-5324
FAX 540-245-5296

January 13, 2023

J. Michael Sharman, Esquire
Commonwealth Law Offices, P.C.
246 East Davis Street, Suite 200
Culpepper, VA 22701

Counsel for Plaintiff

Juliet Bates, Esquire
Bates Law PLLC
13 West Beverley Street, Suite D
Staunton, VA 24401

Counsel for Defendant

Re: *KS v. Todd Leslie Puckett*
Case No. CL21001618-00

Dear Counsel:

On April 5, 2022, Todd Leslie Puckett (hereinafter "Counter-Plaintiff") filed a Counterclaim against K.S. (hereinafter "Counter-Defendant"). In the Counterclaim Counter-Plaintiff asserts one count of abuse of process, arguing that Counter-Defendant has improper motivations in filing her pleadings.

In support of his allegations, Counter-Plaintiff argues that Counter-Defendant has committed an abuse of process by: (1) filing a Motion to Intervene on November 1, 2021, in the divorce action between Counter-Plaintiff and Tamara Senger (hereinafter "Ms. Senger"), Counter-Defendant's mother, without citing relevant authority permitting such intervention, (2) serving a Petition for Pretrial Attachment of Counter-Plaintiff's assets related to the divorce action and settlement of Betty Puckett's (hereinafter "Counter-Plaintiff's mother") estate alleging that Counter-Plaintiff was divesting himself of assets in anticipation of trial but failed to file the Petition with this Court,

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(3) making false representations that she is entitled to all assets owned by Counter-Plaintiff, and (4) taking these actions with the improper motivation of intimidating Counter-Plaintiff into accepting a less favorable settlement in the divorce action involving Ms. Senger, causing Counter-Plaintiff to expend additional funds on attorney fees, and gaining an advantage for her mother in her divorce suit.

Overall, Counter-Plaintiff asserts that the actions taken by Counter-Defendant have caused Counter-Plaintiff to expend greater than necessary funds on legal fees and have had the effect of causing his attorney-in-fact to be intimidated and unwilling to make expenditures toward Counter-Plaintiff's legitimate and regular needs, which have caused the Counter-Plaintiff financial loss.

This letter opinion addresses Counter-Defendant's Demurrer to Counter-Plaintiff's Counterclaim. The Court heard oral arguments on January 4, 2023 and took the matter under advisement. For the reasons provided herein, the Court holds as follows: Counter-Defendant's **Demurrer is sustained**.

I. Background

On August 18, 2022, Counter-Defendant filed a Demurrer to Counter-Plaintiff's Counterclaim. Counter-Defendant asserts that Counter-Plaintiff has failed to state a cause of action for abuse of process, arguing that Counter-Plaintiff failed to meet the burden of establishing that Counter-Defendant (i) has an ulterior purpose and (ii) a specific act in the use of process was not proper in the regular prosecution of the proceedings. Counter-Defendant asserts that the Counterclaim fails as a matter of law because the Counter-Defendant's filings qualify as a regular use of process, and as a result cannot constitute as an abuse of process even if it was influenced by an improper motive.

Furthermore, Counter-Defendant argues that Counter-Plaintiff generally failed to allege: (1) that there was any use of process that was not proper in the regular prosecution of the proceedings, (2) that any particular process was abused or misused, (3) that there was any wrongful use of a process, (4) that there was any wrongful use of process after the filing of the lawsuit, and (5) that there was any misuse of individual legal procedures. Counter-Defendant asserts that because the Counter-Plaintiff has failed to establish a claim of abuse of process, the Court should dismiss the Counter-Plaintiff's Counterclaim with prejudice.

Counter-Plaintiff submitted a response on December 15, 2022.¹ Counter-Plaintiff agrees with Counter-Defendant's assertion that Counter-Plaintiff must establish (i) the existence of an ulterior purpose and (ii) an act in the use of the process not proper in the regular prosecution of proceedings. Counter-Plaintiff further asserts that the basis of the abuse of process claim is: (1) that the Motion to Intervene was filed without citation of any relevant authority permitting the intervention, (2) that the unfiled petition was served on parties including the Commissioner of Accounts in the county where Counter-Plaintiff's mother's estate is subject to administration and that the petition contained explicit allegations of fraud committed by Counter-Plaintiff, and (3) the

¹Counter-Plaintiff incorrectly asserts that Counter-Defendant is requesting the Counterclaim to be dismissed without prejudice.

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timing of motions filed in this action compared with the actions of Ms. Senger in the divorce proceedings show that Ms. Senger and Counter-Defendant were acting with an improper purpose in an effort to increase Counter-Plaintiff's legal costs and intimidate him.

II. Relevant Law

a. Demurrer

The purpose of a demurrer is to test whether a plaintiff's pleading states a cause of action upon which relief can be granted. Va. Code § 8.01-273(A). "A demurrer accepts as true all facts properly pled, as well as reasonable inferences from those facts." *Steward v. Holland Family Props., LLC*, 284 Va. 282, 286 (2012). However, a demurrer does not admit any "inferences or conclusions from facts not stated." *Arlington Yellow Cab Co. v. Transportation, Inc.*, 207 Va. 313, 319 (1966). "A demurrer admits the truth of all properly pleaded material facts. All reasonable factual inferences fairly and justly drawn from the facts alleged must be considered in aid of the pleading." *Fox v. Curtis*, 236 Va. 69, 71 (1988). Furthermore, in order to survive a demurrer a pleading must be made with "sufficient definiteness to enable the court to find the existence of a legal basis for its judgment." *Eagle Harbor, L.L.C. v. Isle of Wight County*, 271 Va. 603, 611 (2006).

b. Abuse of Process

In establishing a cause of action for abuse of process, a plaintiff must show, "(1) the existence of an ulterior purpose; and (2) an act in the use of the process not proper in the regular prosecution of the proceedings." *Donohoe Const. Co. v. Mount Vernon Assocs.*, 235 Va. 531, 539 (1988); *Eubank v. Thomas*, 300 Va. 201, 210 (2021).

Abuse of process is defined as "'the malicious misuse or misapplication of that process to accomplish some purpose not warranted or commanded by the writ...it is the malicious perversion of a regularly issued process whereby a result not lawfully or properly attainable under it is secured.'" *Glidewell v. Murray-Lacy & Co.*, 124 Va. 563, 570 (1919). Within this context process refers to specific legal procedures enforced by a judicial authority. *Eubank v. Thomas*, 300 Va. 201, 209–11 (2021).² However, "[a] legitimate use of process to its authorized conclusion, even when carried out with bad intention, is not a malicious abuse of that process." *Donohoe Constr. Co.*, 235 Va. 531, 540 (1988).

III. Analysis

Demurrers test "the legal sufficiency of facts alleged in pleadings, not the strength of proof." *Glazebrook v. Board of Supervisors of Spotsylvania Co.*, 266 Va. 550, 554 (2003). "All demurrers

² Noting "[t]he filing of a lawsuit qualifies as a regular use of process and cannot constitute abuse of process, even if the filing was influenced by an ulterior motive Instead, abuse of process claims arise when litigants misuse individual legal procedures, such as discovery, subpoenas, and attachment, after a lawsuit has been filed." *Eubank v. Thomas*, 300 Va. 201, 209–11 (2021) (Quoting *Advanced Constr. Corp. v. Pilecki*, 901 A.2d 189, 197 (Me. 2006)).

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shall be in writing and shall state specifically the grounds on which the demurrant concludes that the pleading is insufficient at law. No grounds other than those stated specifically in the demurrer shall be considered by the court.” Va. Code § 8.01-273(A). The trial court accepts as true all properly pleaded facts and “all inferences fairly drawn from those facts.” *Collett v. Cordovana*, 290 Va. 139, 144 (2015). But the factual allegations “must be made with sufficient definiteness to enable the court to find the existence of a legal basis for its judgment.” *A.H. by next friends C.H. v. Church of God in Christ, Inc.*, 297 Va. 604, 613 (2019).

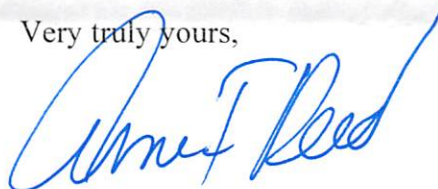
Here, Counter-Plaintiff’s Counterclaim simply lists a factual recitation of the nature of filings in his divorce action. Counter-Plaintiff alludes to Counter-Defendant’s improper motivations in filing her pleading, however, he fails to state how a specific process was not proper in the regular prosecution of the proceedings and fails to assert any specific factual assertions beyond the filings themselves. Additionally, Counter-Plaintiff suggests that Counter-Defendant and Ms. Senger are coordinating their claims in order to intimidate him and impose a monetary burden without alleging any specific factual conduct beyond the legal filings themselves in support of that assertion. However, even if Counter-Plaintiff sufficiently established that there was an improper motivation, that alone does not establish abuse of process as long as the process at issue was utilized within the regular course of proceedings in a proper manner.

As a result, due to the general nature of the allegations of abuse of process within the Counterclaim, Counter-Plaintiff fails to state any claim in a definite and certain manner. While both sides have litigated their positions in an aggressive manner, both Counter-Plaintiff and Counter-Defendant have used legal filings to attempt to protect their interests. The success or failure of those attempts alone, in and of itself, is insufficient to establish an abuse of process.

IV. Conclusion

Counter-Defendant’s Demurrer is **sustained**, and Counter-Plaintiff’s Counterclaim is **dismissed with prejudice**. The Court respectfully requests Mr. Sharman to prepare an order consistent with this letter opinion and circulate the same for entry.

Very truly yours,



Anne F. Reed
Circuit Court Judge

cc: Honorable R. Steven Landes, Clerk of Court

TWENTY-FIFTH JUDICIAL CIRCUIT

JUDGE

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P. O. BOX 689

STAUNTON, VA 24402-0689

JAN 20 2023



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J. Michael Sharman, Esquire
Commonwealth Law Offices, P.C.
246 East Davis Street, Suite 200
Culpepper, VA 22701

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