

**RECEIVED**

**Sep 23 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

The Honorable Shannon M. Phillips, Presiding Circuit Court Judge

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Case No. 2024-000160

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Kaleb Jowers,  
Appellant,

v.

Spartanburg Methodist College,  
Respondent,

---

**RECORD ON APPEAL**

---

G. Lee Cole, Jr., Esq.  
SC Bar Number 100352  
COX & COLE, ATTORNEYS AT LAW  
P.O. Box 315  
Williamston, SC 29697  
Tel. (864) 847-9289  
LeeCole@CoxandCole.com  
Attorney for the Appellant

A. Todd Darwin, Esq.  
SC Bar Number 7032  
HOLCOMBE BOMAR, PA  
P.O. Box 1897  
Spartanburg, SC 29304  
Tel. (864) 594-5300  
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Attorney for the Respondent

## INDEX

Summons and Complaint.....	3
Dorman File Notice.....	8
Acceptance of Service.....	9
Motion to Dismiss.....	10
Return to Motion to Dismiss with Exhibits .....	12
Transcript of Hearing on Motion to Dismiss.....	19
Order Granting Motion to Dismiss .....	30
Motion to Reconsider, Alter, or Amend .....	36
Order Denying Motion to Reconsider, Alter, or Amend .....	38
Certificate of Appellant.....	42

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
 )  
KALEB JOWERS, )  
Plaintiff, )  
 )  
vs. )  
 )  
SPARTANBURG METHODIST COLLEGE, )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
OF THE SEVENTH JUDICIAL CIRCUIT

**SUMMONS**

CASE NUMBER: 2021-CP-42-\_\_\_\_

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or otherwise appear and defend, and to serve a copy of your answer to said Complaint upon the subscriber at his office, 32 E. Main Street, P.O. Box 315, Williamston, South Carolina, 29697, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

**s/ G. Lee Cole, Jr.**  
G. Lee Cole, Jr.  
SC Bar Number 100352  
COX & COLE, ATTORNEYS AT LAW  
Post Office Box 315  
Williamston, South Carolina 29697  
Tel. (864) 847-9289  
Fax (888) 588-3142  
LeeCole@CoxandCole.com

ATTORNEY FOR THE PLAINTIFF

Dated: **09/23/2021**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
 )  
KALEB JOWERS, )  
Plaintiff, )  
vs. )  
SPARTANBURG METHODIST COLLEGE, )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
OF THE SEVENTH JUDICIAL CIRCUIT

**COMPLAINT**  
(Jury Trial Demanded)

CASE NUMBER: 2021-CP-42-\_\_\_\_

The Plaintiff, complaining of the Defendant herein, would respectfully show unto the Court and allege as follows:

1. That the Plaintiff is a citizen and resident of Anderson County, South Carolina.
2. That, upon information and belief, the Defendant is a nonprofit corporation organized under the laws of South Carolina and operating in Spartanburg County, South Carolina.
3. That this Court has jurisdiction over all the parties herein as well as the subject matter hereof, and venue is proper in Spartanburg County.
4. That, at all times relevant herein, the Plaintiff was a student and student-athlete of the Defendant and resided in the Defendant’s student housing.
5. That, at all times relevant herein, the Plaintiff suffered from type 1 diabetes and wore an insulin pump for treatment of the same.
6. That, at all times relevant herein, the Defendant had knowledge of the Plaintiff’s type 1 diabetes and his use of an insulin pump.
7. That, on or about April 11, 2019, while the Plaintiff was in one the Defendant’s classes, the Plaintiff suddenly became unconscious and unresponsive due to hypoglycemia.
8. That, after the Plaintiff became unconscious, some of his fellow students carried him downstairs from the classroom and drove him to Spartanburg Regional Hospital for emergency medical treatment.

9. That, at no time while the Plaintiff was experiencing this emergency medical event, did any employee or agent of the Defendant render any aid or assistance to the Plaintiff or offer or attempt to render any aid or assistance to the Plaintiff.
10. That, at no time while the Plaintiff was experiencing this emergency medical event, did any employee or agent of the Defendant call 911 or otherwise contact Spartanburg County Emergency Medical Services to assist the Plaintiff.
11. That, at no time while the Plaintiff was experiencing this emergency medical event, did any of its Campus Police Officers or other Department of Campus Safety personnel render any aid or assistance to the Plaintiff or offer or attempt to render any aid or assistance to the Plaintiff.
12. That the Defendant owed the Plaintiff nondelegable duties of reasonable care for his health and safety.
13. That the Defendant, by and through its agents and employees, negligently, grossly negligently, carelessly, recklessly, willfully, and wantonly breached the duties of due care owed by it to the Plaintiff in one or more of the following ways:
  - a. By failing and omitting to exercise ordinary care in protecting his health and safety as a student;
  - b. By failing to render aid or assistance to the Plaintiff or offer or attempt to render any aid or assistance to the Plaintiff while he was experiencing an emergency medical event;
  - c. By failing to call 911 or otherwise contact Spartanburg County Emergency Medical Services to assist the Plaintiff while he was experiencing an emergency medical event;
  - d. By its Campus Police Officers or other Department of Campus Safety personnel failing to render any aid or assistance to the Plaintiff or offer or attempt to render any

- aid or assistance to the Plaintiff while he was experiencing an emergency medical event;
- e. By allowing untrained students to provide aid and assistance to the Plaintiff and to drive the Plaintiff to the hospital while he was experiencing an emergency medical event;
  - f. By failing to follow its established policies and procedures for handling emergency medical events experienced by students as it relates to the Plaintiff;
  - g. By failing to implement sufficient policies and procedures to reasonably protect the health and safety of its students and to the Plaintiff specifically;
  - h. By failing and omitting to take any precautions of a reasonable nature to protect the Plaintiff from the dangers of experiencing an emergency medical event without any aid or assistance from any of its agents or employees;
  - i. By failing to consider the health safety of its students and the Plaintiff specifically;
  - j. By failing and omitting to exercise due care for the health and safety of its students, and the Plaintiff specifically, under the circumstances prevailing and existing at said time and place;
  - k. By failing to properly train its employees and agents in a reasonable manner;
  - l. By failing to hire and retain employees and agents competent to render aid or assistance to its students, and to the Plaintiff specifically, in an emergency medical situation.
  - m. By failing to exercise the degree of care and caution that a reasonable and prudent person would have exercised under the circumstances then and there prevailing;
  - n. By any such other manner that the Plaintiff may become aware of through discovery and trial.
14. That as a result of one or more of the negligent, grossly negligent, careless, reckless, willful, and wanton acts or omissions of the Defendant complained above, by and through its agents

and employees who were at all times set forth acting within the course and scope of their agency relationship; or by reason of agency and/or employment and/or contractual or other relationship, and as a direct and proximate result thereof, the Plaintiff suffered injuries and pain, suffered mentally and emotionally, and has been subjected to public embarrassment and humiliation, suffered loss of income, incurred substantial medical expenses, ultimately had to withdraw from school and incur student loan debt, and has otherwise been injured and suffered damages.

15. That the Plaintiff is informed and believes that he is entitled to actual damages, compensatory damages, special damages, exemplary damages, and punitive damages against the Defendant in an amount to be determined by a jury or other trier of fact in this matter.

WHEREFORE, the Plaintiff prays for the following relief against the Defendant:

1. For a judgment in favor of the Plaintiff against the Defendant, for actual damages, compensatory damages, special damages, exemplary damages, punitive damages, and the costs of this action, in an amount to be determined by a jury or other trier of fact in this matter, together with prejudgment interest and post-judgment interest as allowed by law.
2. For any such further relief as this Court deems just and proper.

**s/ G. Lee Cole, Jr.**

G. Lee Cole, Jr.  
SC Bar Number 100352  
COX & COLE, ATTORNEYS AT LAW  
Post Office Box 315  
Williamston, South Carolina 29697  
Tel. (864) 847-9289  
Fax (888) 588-3142  
LeeCole@CoxandCole.com

ATTORNEY FOR THE PLAINTIFF

Dated: 09/23/2021

**THE PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF Spartanburg )  
 )  
 )  
 )  
 )  
 )

IN THE COURT OF COMMON PLEAS

**2021CP4203180**

DORMANT FILE NOTICE  
(No Proof of Service)

Gregory Lee Cole Jr.  
PO Box 315  
Williamston, SC 29697

Kaleb Jowers VS Spartanburg Methodist College

Rule 5(d) of the South Carolina Rules of Civil Procedure states:

Filing. All papers required to be served upon a party except as provided in Rule 26(g)(1), shall be filed with the court within five (5) days after service thereof. The summons and complaint shall be filed before service. Proof of service shall be filed within ten (10) days after service of the summons and complaint. Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party. Upon failure of a party to file other pleadings, motions or papers, the court may permit filing or proceed as though the same had not been served.

Court records indicate that the Summons and Complaint in the above referenced action was filed on September 23, 2021, with the Spartanburg County Clerk of Court. No proof of service has been filed since that time and the Clerk of Court has requested that this action be dismissed.

Please respond within ten (10) days from the date of this letter with the appropriate motion or Affidavit of Service. This case will be dismissed pursuant to South Carolina Rule of Civil Procedure 5(d) if you do not timely respond. **If you have questions please contact Maribel Martinez, ADR Coordinator, at (864) 596-3967 or by email at [mmartinez@spartanburgcounty.org](mailto:mmartinez@spartanburgcounty.org).**

*Sent to Attorney(s) of Record: 4-21-22*

**Gregory Lee Cole Jr.** via electronically

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
 )  
KALEB JOWERS, )  
Plaintiff, )  
 )  
vs. )  
 )  
SPARTANBURG METHODIST COLLEGE, )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
OF THE SEVENTH JUDICIAL CIRCUIT

**ACCEPTANCE OF SERVICE**

CASE NUMBER: 2021-CP-42-03180

The undersigned attorney for the Defendant, Spartanburg Methodist College, hereby certifies that he has accepted service of the Summons and Complaint in this matter on behalf of the Defendant on May 4, 2022.

**s/ A. Todd Darwin**  
A. Todd Darwin  
SC Bar No. 7032  
Holcombe Bomar, P.A.  
P.O. Box 1897  
Spartanburg, SC 29304  
(864) 594-5300  
tdarwin@holcombebomar.com

ATTORNEY FOR THE DEFENDANT

Dated: 05/04/2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	CASE NUMBER: 2021-CP-42-03180
	)	
Kaleb Jowers,	)	
	)	
Plaintiff,	)	
	)	<b>DEFENDANT’S MOTION TO DISMISS</b>
v.	)	<b>PURSUANT TO RULES 4, 8, and</b>
	)	<b>12(b)(5), SCRPC</b>
Spartanburg Methodist College,	)	
	)	
Defendant.	)	
_____	)	

**TO: G. LEE COLE, JR., ESQUIRE, ATTORNEY FOR PLAINTIFF:**

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for Defendant Spartanburg Methodist College, will move before the presiding Judge of the Court of Common Pleas for Spartanburg County, at the Spartanburg County Courthouse, or at such place or in such manner as shall be designated by the Court and set forth in a notice of hearing, for an Order dismissing this lawsuit pursuant to Rules 4, 8, and 12(b)(5), inasmuch as the Plaintiff failed to properly serve the Summons and Complaint before the expiration of the applicable statute of limitations.

Although not required under Rule 11, SCRPC, the undersigned communicated with Plaintiff’s counsel prior to filing this motion.

Wherefore, Defendant’s counsel respectfully requests that this Court dismiss the Plaintiff’s lawsuit with prejudice.

This motion is made pursuant to the South Carolina Rules of Civil Procedure and any other statutory and/or common law authority as may apply, as well as any Affidavit(s) or memoranda as may be filed in support hereof.

**HOLCOMBE, BOMAR, P.A.**

/s/ A. Todd Darwin

A. Todd Darwin, SC Bar #7032

Post Office Box 1897

Spartanburg, South Carolina 29304

(864) 594-5300

tdarwin@holcombebomar.com

Attorneys for Defendant

June 3, 2022  
Spartanburg, SC



Even if the Court were to determine that the Defendant did not voluntarily appear in this case on October 7, 2021, Counsel for the Defendant accepted service of the Summons and Complaint on behalf of the Defendant on December 3, 2021. As a courtesy to Mr. Flippin, Counsel for the Plaintiff attempted to contact him by telephone in November 2021, to confirm that he would accept service on behalf of the Defendant. Mr. Flippin replied by e-mail on December 3, 2021, that he would accept service on behalf of the Defendant. A copy of said e-mail is attached as Exhibit B. Counsel for the Plaintiff subsequently failed to send a formal Acceptance of Service form to Mr. Flippin until May 4, 2022. The Defendant's current attorney, A. Todd Darwin, Esq., responded to Counsel for the Plaintiff by e-mail and advised that he would sign the Acceptance of Service, but that same would be dated May 4, 2022. Counsel for the Defendant further advised that it was the Defendant's position that it was not properly served until May 4, 2022.

Counsel for the Plaintiff admits that he should have sent the Acceptance of Service form to Counsel for the Defendant in a timely manner. However, the Defendant, through its attorney, clearly had notice of this action and electronic access to the pleadings on October 7, 2021, and Counsel for the Defendant confirmed, in writing, that he would accept service of the same on December 3, 2021. Thus, the actual date of Acceptance of Service should be considered December 3, 2021. Moreover, the Defendant should be equitably estopped from asserting a statute of limitations defense in this case when it had actual notice of the action and access to the pleadings months before the termination of the statute of limitations.

Based on the arguments herein and any additional arguments that Counsel for the Plaintiff may make at a hearing in this matter, the Plaintiff requests that the Court deny the Defendant's Motion to dismiss.

**RESPECTFULLY SUBMITTED,**

**s/ G. Lee Cole, Jr.**

G. Lee Cole, Jr.  
SC Bar Number 100352  
COX & COLE, ATTORNEYS AT LAW  
Post Office Box 315  
Williamston, South Carolina 29697  
Tel. (864) 847-9289  
Fax (888) 588-3142  
LeeCole@CoxandCole.com

ATTORNEY FOR THE PLAINTIFF

Dated: **10/17/2022**

**EXHIBIT A**

**Certificate of Electronic Notification**

**Recipients**

**Gregory Cole** - Notification transmitted on 10-07-2021 04:53:51 PM.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**NOTICE OF ELECTRONIC FILING [NEF]**

-

**A filing has been submitted to the court RE:** 2021CP4203180

**Official File Stamp:** 10-07-2021 04:53:43 PM

**Court:** CIRCUIT COURT

Common Pleas

Spartanburg

**Case Caption:** Kaleb Jowers VS Spartanburg Methodist College

**Event(s):**

Notice/Notice of Appearance

**Filed by or on behalf of:**

Todd Russell Flippin

This notice was automatically generated by the Court's auto-notification system.

-

**The following people were served electronically:**

Gregory Lee Cole, Jr. for Kaleb Jowers

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

Spartanburg Methodist College

**EXHIBIT B**

Lee Cole &lt;gleecolejr@gmail.com&gt;

**Jowers v. SMC**

Todd Flippin &lt;tflippin@holcombebomar.com&gt;

Fri, Dec 3, 2021 at 11:01 AM

To: "LeeCole@CoxandCole.com" &lt;LeeCole@coxandcole.com&gt;

Cc: Valerie Grohs &lt;vgrohs@holcombebomar.com&gt;, Kip Darwin &lt;kdarwin@holcombebomar.com&gt;, Sandy Johnson &lt;sjohnson@holcombebomar.com&gt;

Lee,

We are authorized to accept service on behalf of SMC. Will you please send an acceptance form? Also, will you please consider granting SMC a 30-day extension of time to file a responsive pleading? Our client is wrapping up the fall semester and the Christmas holidays are upon us.

Thanks for giving this request your consideration. I'm looking forward to working with you on this matter.

Thank you,

Todd

Todd Russell Flippin

**HOLCOMBE BOMAR, P.A.**

101 W. St. John St., Suite 200

Spartanburg, SC 29306

(864)594-5300

(864)594-5323 - *direct*(864)585-3844 - *facsimile*

tflippin@holcombebomar.com

**CONFIDENTIALITY NOTICE:** This email and any attachments with it may contain information that is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. This communication is intended only for the individual(s) or entity named or their authorized agent. If you have received this communication in error, you are not authorized to read, print, copy, retain or disseminate the contents of this email or its attachments, and you should delete all copies of this email and its attachments. If you are

not the named addressee, please immediately notify the sender by email reply or our firm by mail, phone, or fax at the address and numbers shown above. Thank you.



I N D E X

Page No.

Exhibits.....3

Proceedings.....4

Certificate of the Court Reporter.....11

I N D E XE X H I B I T S

There were no exhibits entered during this hearing.

P R O C E E D I N G S

(Whereupon, the hearing began around  
9:11 a.m.)

THE COURT: Next, I have Case Number 2021-CP-42-03180,  
Kaleb Jowers versus Spartanburg Methodist College. This  
is Defendant's motion to dismiss. I have Todd Darwin  
representing the defendant and Lee Cole representing the  
plaintiff. Can you gentlemen hear me?

MR. COLE: Yes, Your Honor.

THE COURT: Would you mind turning your video on?

MR. COLE: Yes, Your Honor.

THE COURT: Mr. Cole, I can see and hear you. Mr.  
Darwin, are you there?

MR. DARWIN: I am, Your Honor.

THE COURT: Very good. Mr. Darwin, this is your motion?

MR. DARWIN: It is, Your Honor.

THE COURT: Whenever you're ready.

MR. DARWIN: Thank you. May it please the Court. And  
Mr. Cole and I have communicated about this case, Your  
Honor. I'm going to go through a timeline that explains  
kind of the circumstances and why I felt compelled to  
file the motion and that I know Mr. Cole filed his  
response earlier this afternoon.

So, again, may it please the Court. On April the  
11th of 2019, according to the complaint, the plaintiff

1 claims that he suffered an event while a student -- a  
2 diabetic event while a student at Spartanburg Methodist  
3 College. Your Honor, he then filed the lawsuit claiming  
4 gross negligence.

5 On September the 23rd of 2021, Todd Flippin, who was  
6 one of my law partners who formally had this case, filed  
7 just an electronic notice of appearance with the court.  
8 On October the 7th of 2021 and November 23rd of 2021, he  
9 and Mr. Cole spoke about the lawsuit. December -- so  
10 after that, Todd sent a request to our client to see if  
11 we were authorized to accept service. We were.

12 So on December 3rd of 2021, Mr. Flippin gave Mr.  
13 Cole -- sent him an email, said we're -- which is  
14 attached as Exhibit B to Mr. Cole's return filed today.  
15 It says, "Hey. We're authorized to accept service.  
16 Please send an acceptance of service." That never  
17 occurred, Your Honor. So -- and to this date or before  
18 the expiration of the statute of limitations in April of  
19 this year, a copy of the summons and complaint was never  
20 sent to Mr. Flippin or to this law firm. So he had it on  
21 his calendar, Your Honor.

22 On April the 19th of this year, Mr. Flippin, again,  
23 contacted our client contact at SMC asking if he had been  
24 served with anything. Our client said, "No," which is  
25 confirmed by April 21st of 2022 when the Clerk of Court's

1 office, Your Honor, -- and I have a copy if you need it.  
2 It's in the -- it's obviously in the court filings --  
3 sent a dormant file notice that said, "Pursuant to Rule  
4 5D, there's been no proof of service filed, so the Clerk  
5 of Court has requested that this case be dismissed."

6           Thereafter -- a couple of weeks after that on May  
7 the 4th, Mr. Cole sent an email to Mr. Flippin in our  
8 office saying, "Hey. Will you accept service?" The case  
9 was reassigned to me within the firm two days later on  
10 May 6, and I -- I reached out to Mr. Cole and told him,  
11 "Hey. You can file the acceptance of service with my  
12 name dated May the 4th of 2022, but I can't allow it to  
13 go backdated, because . . ." And I explained to Mr. Cole  
14 everything I just explained to Your Honor, the timeline  
15 of what we had gone through. We had advised our client  
16 that the case was over, because we had never been  
17 formally served with it.

18           Your Honor, just a couple of things -- so that's the  
19 timeline. And then I filed the motion on June the 3rd.  
20 So again, there's never been any communication that I see  
21 in my file -- Mr. Cole can correct you if I'm wrong --  
22 where there was ever a filed copy of the summons and  
23 complaint sent to either Mr. Flippin or this law firm.  
24 The fact that he says or argues that we put a notice of  
25 appearance in, waived anything under Rule 4D, that

1 doesn't -- that doesn't -- because we've gotten a little  
2 laxer (as spoken) with the electronic filing and the way  
3 things go, that still doesn't take the place of actually  
4 serving the summons and complaint.

5 The cases I've seen where a notice -- where the  
6 notice of appearance has been deemed to have waived any  
7 service of the summons and complaint, only occurs -- from  
8 what I've seen, Your Honor -- after the summons and  
9 complaint have actually attempted to be served. Those  
10 cases say that what -- this person wasn't authorized, but  
11 then a lawyer said, hey, I'm representing the defendant.  
12 That didn't happen in this case, because we were never  
13 served with the summons and complaint. The college got  
14 notice that a lawsuit had been filed, got us involved.  
15 That's the only thing that happened in this case, Your  
16 Honor.

17 So for that -- for those reasons, I'd say the  
18 summons and complaint were never served under the rules.  
19 The statute of limitations has now expired, and this case  
20 should be dismissed. Thank you.

21 THE COURT: Mr. Cole?

22 MR. COLE: Thank, Your Honor. May it please the Court.  
23 And I apologize, Your Honor. I'm in my car. I was  
24 coming from another hearing today. However, I did file a  
25 return today and emailed it to the Court as well. And

1 it's outlining my position in this case, Your Honor.

2 And basically, we -- I do agree with the timeline as  
3 far as Mr. Darwin set forth; however, it's my position  
4 that in October of 2021 when Mr. Darwin's partner filed  
5 the notice of appearance in this case that he did appear  
6 pursuant to Rule 4. And I have a -- an old case, Your  
7 Honor, but it's never been overturned. It's Stephens v.  
8 Ringling, and it's at 102 S.C. 333, that says that a --  
9 "Anything that a party does that shows their intent to  
10 appear in a case, is an appearance, and it does not have  
11 to be a formal written document." However, in this case,  
12 the notice of appearance was a formal, electronic written  
13 document that was filed by Counsel for the defendant  
14 showing that the defendant was aware of the case when the  
15 defendant's attorney filed that notice of appearance.

16 He then had access to the summons and complaint in  
17 the case, and then subsequently after I saw that and as a  
18 courtesy to move the case forward, I spoke to Mr. Flippin  
19 about the -- doing a formal acceptance of service,  
20 because that is my normal practice. And he agreed to do  
21 that by email, and that was in December of 2021, again,  
22 before the summons and -- before the statute of  
23 limitations ran on this case. And he accepted at that  
24 time, so I would -- even if the Court doesn't think or  
25 doesn't rule that the -- the appearance electronically is

1 an appearance pursuant to Rule 4, then I think that he  
2 accepted service on the date that he said he would accept  
3 service by email that's attached into -- in the -- in my  
4 return.

5 And I -- I admit to the Court and I apologize to the  
6 Court and I've already apologized to Opposing Counsel on  
7 this for the delay from the time that I sent that. We  
8 had that email communication in December until May when I  
9 actually sent the formal acceptance of service notice. I  
10 agree that -- that I was negligent in doing that, and I  
11 should have done that more quickly. And it was something  
12 that just got -- the -- got on my desk and got the -- got  
13 my radars crossed. It's not an excuse, but it's -- we  
14 should have got that done quicker.

15 However, I do believe, in this matter, that because  
16 they had notice of it, they had access to the pleadings,  
17 they filed an appearance in the case, that all that taken  
18 together that this case should not be dismissed. And if  
19 -- as far as for my delay in filing proper documents, I  
20 think the Court has other remedies other than dismissal  
21 if the Court would choose to do so; such as, sanctions,  
22 and I would certainly understand that. So, basically,  
23 for all of those things, I would ask that the case not be  
24 dismissed at this time.

25 THE COURT: Mr. Darwin, anything else?

1 MR. DARWIN: Your Honor, other than -- very briefly.  
2 Again, notice in access to the pleadings, we all have  
3 that now in state court and in federal court. That's not  
4 a substitution for proper service under the rules. So  
5 that's the only thing I would reiterate, Your Honor.

6 THE COURT: Well, thank you gentlemen. I will be in  
7 touch shortly.

8 MR. DARWIN: Thank you.

9 MR. COLE: Thank you, Your Honor.

10 (Whereupon, the within hearing was  
11 concluded around 9:22 a.m.)

12 (\*This transcript may contain quoted material.  
13 Such material is reproduced as read or quoted by the  
14 speaker.)

STATE OF SOUTH CAROLINA )

)

CERTIFICATE

COUNTY OF SPARTANBURG )

I, Amber Payne, Court Reporter for the Master-in-Equity Office of Spartanburg County, South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Spartanburg County, South Carolina on October 17th, 2022.

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



Amber J. Payne, CVR

Date: March 4, 2024

Notary public for South Carolina

My commission expires August 12, 2029

**FORM 4**

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

**JUDGMENT IN A CIVIL CASE**

**CASE NO. 2021-CP-24-03180**

Kaleb Jowers,

Spartanburg Methodist College,

PLAINTIFF(S)

DEFENDANT(S)

<b>Submitted by:</b> A. Todd Darwin	<b>Attorney for :</b> <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
-------------------------------------	--

**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: See attached Order

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

<b>INFORMATION FOR THE JUDGMENT INDEX</b>		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$N/A
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: Portion of Red Bird Lane in Landrum, South Carolina, between North Lyles Avenue and North Lee Avenue, bounded on one side by Parcel ID 1-08-010-033.00, and on the other by Parcel ID 1-08-01-048.00.		

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 interest or additional taxable 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.**

\_\_\_\_\_  
**Circuit Court Judge**

\_\_\_\_\_  
**Judge Code**

\_\_\_\_\_  
**Date**

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 2022 and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 2022 to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
G. Lee Cole, Jr., Esq.

\_\_\_\_\_  
Post Office Box 315

\_\_\_\_\_  
Williamston, SC 29697

\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
A. Todd Darwin, Esq.

\_\_\_\_\_  
Post Office Box 1897

\_\_\_\_\_  
Spartanburg, SC 29304

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:**



Mr. Flippin a filed copy of the Summons and Complaint or an Acceptance of Service form. Therefore, Plaintiff's counsel never served the pleadings on SMC's attorney. The three year statute of limitations pursuant to S.C. Code §15-3-350 expired on Plaintiff's claim on April 11, 2022.

On April 21, 2022, the Spartanburg Count Clerk of Court's Office filed a "Dormant File Notice" indicating that since no proof of service had been filed in the case the Clerk of Court was requesting that the case be dismissed pursuant to Rule 5(d), SCRCPP. On May 4, 2022, Plaintiff's counsel contacted Mr. Flippin and advised that he had received a dormant file notice from the Clerk's Office so he was now following up on the Acceptance of Service form, which he attached to the email, which was the first time Plaintiff's counsel had ever sent an Acceptance of Service form to Mr. Flippin, more than three weeks after the statute of limitations had expired. SMC filed its Motion to Dismiss on June 3, 2022.

#### **Legal Standard**

"Proof of service shall be filed within ten (10) days after service of the summons and complaint. Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party." Rule 5(d), SCRCPP. Despite any argument to the contrary, the Plaintiff failed to serve the summons and complaint in this action. While counsel for the Defendant told Plaintiff's counsel that he would accept service of the summons and complaint and requested that he send an acceptance of service form, the fact remains that a filed copy of the summons and complaint was never served on defense counsel.

In the Plaintiff's *Return to Motion to Dismiss* filed on October 17, 2022, Plaintiff's counsel argues that "the Defendant, through its attorney, clearly had notice of this action and electronic access to the pleadings on October 7, 2021." However, I find that having "electronic access to the

pleadings” is not a substitution for proper service of the summons and complaint under the South Carolina Rules of Civil Procedure.

Therefore, I find the summons and complaint were never properly served on the Defendant, and I hereby grant the Defendant’s Motion to Dismiss. This case is hereby dismissed.

**IT IS SO ORDERED.**

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Shannon M. Phillips, Presiding Judge  
Seventh Judicial Circuit  
*Judge’s electronic signature to be applied*



Spartanburg Common Pleas

**Case Caption:** Kaleb Jowers VS Spartanburg Methodist College

**Case Number:** 2021CP4203180

**Type:** Order/Form 4

IT IS SO ORDERED.

s/ Shannon M. Phillips - 3087

Electronically signed on 2022-10-28 14:16:06 page 6 of 6

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
 )  
KALEB JOWERS, )  
Plaintiff, )  
 )  
vs. )  
 )  
SPARTANBURG METHODIST COLLEGE, )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
OF THE SEVENTH JUDICIAL CIRCUIT

**MOTION TO  
RECONSIDER, ALTER, OR AMEND**

CASE NUMBER: 2021-CP-42-03180

TO: A TODD DARWIN, ATTORNEY FOR THE DEFENDANT

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 59(e), SCACR, and other applicable law, the Plaintiff, by and through his undersigned attorney, here moves this Honorable Court to reconsider, alter, or amend its Order Granting Defendant’s Motion to Dismiss, filed October 28, 2022.

This Motion is based on any memoranda that the Plaintiff may file in support hereof, any arguments and evidence presented in any hearing in this mater, and the following:

1. The Defendant is not entitled to a dismissal of this case pursuant to Rules 4, 8, and 12(b)(5), SCRCF.
2. The central assertion of the Defendant in its written motion and its arguments at the hearing in this matter was that the Defendant was not served prior to the expiration of the applicable statute of limitations in this matter, April 11, 2022, or within one hundred twenty (120) days of the filing of the Summons and Complaint, on September 23, 2021, pursuant to S.C. Code Ann. Sec. 15-3-20(B).
3. Service was, however, effective on the Defendant when Counsel for the Defendant electronically filed a Notice of Appearance in this case on October 7, 2021.
4. Alternatively, Counsel for the Defendant effectively accepted service of the pleadings in this matter, pursuant to Rule 4(j), SCRCF, when he e-mailed Counsel for the Plaintiff indicating his willingness to accept service on December 3, 2021.

5. Furthermore, the Defendant should be equitably estopped from asserting a statute of limitations defense due to its representations and actions, through counsel, indicating that it was aware of and participating in this case.
6. Finally, dismissal of this action is not mandatory but only in the discretion of the Court pursuant to Rule 5(d). The Plaintiff would request that the Court not impose the extreme remedy of a dismissal and permanent bar of his claims, and instead, consider other sanctions against Counsel for the Plaintiff for his delays in this matter.

**I SO MOVE.**

**s/ G. Lee Cole, Jr.**

G. Lee Cole, Jr.  
SC Bar Number 100352  
COX & COLE, ATTORNEYS AT LAW  
P.O. Box 315  
Williamston, SC 29697  
Tel. (864) 847-9289  
Fax (888) 588-3142  
LeeCole@CoxandCole.com

ATTORNEY FOR THE PLAINTIFF

Williamston, South Carolina  
Dated: 10/28/2022



		\$
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 interest or additional taxable 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.**  
**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

	3087	01/29/2024
<b>Shannon M. Phillips, Special Circuit Court Judge</b>	<b>Judge Code</b>	<b>Date</b>

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney’s box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

**Gregory Lee Cole, Jr.**  
**P.O. Box 315**  
**Williamson, SC 29697**  
**ATTORNEY FOR THE PLAINTIFF(S)**

**Todd A. Darwin**  
**P.O. Box 1897**  
**Spartanburg, SC 29304**  
**ATTORNEY FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Spartanburg Common Pleas

**Case Caption:** Kaleb Jowers VS Spartanburg Methodist College

**Case Number:** 2021CP4203180

**Type:** Order/Form 4

IT IS SO ORDERED.

s/ Shannon M. Phillips - 3087

Electronically signed on 2024-01-29 16:18:22 page 4 of 4

**RECEIVED**

**Sep 23 2024**

**SC Court of Appeals**

Certificate of Counsel  
\_\_\_\_\_

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.

September 23, 2024

**s/ G. Lee Cole, Jr.**

G. Lee Cole, Jr.

SC Bar Number 100352

COX & COLE, ATTORNEYS AT LAW

P.O. Box 315

Williamston, SC 29697

Tel. (864) 847-9289

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ATTORNEY FOR THE APPELLANT