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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2025-000221

Franklin J. Boyles, Appellant,

vs.

C and C Masonry, Inc.,
Juneau Construction Company, LLC, and
University of South Carolina, Respondents.

FINAL BRIEF OF RESPONDENT UNIVERSITY OF SOUTH CAROLINA

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

TABLE OF AUTHORITIES

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

Respondent University of South Carolina [USC] accepts the "Statement of Issues on Appeal" identified by the Appellant, Franklin J. Boyles, in his brief, and it respectfully presents them as follows:

I. The trial court did not err in its February 24, 2025 order by holding that Boyles' claims against USC were time-barred, nor did it err by holding that equitable tolling did not salvage his claims against USC.

II. The trial court did not err in its February 24, 2025 order by dismissing Boyles' claim against USC for intentional infliction of emotional distress based on *Gore v. Dorchester County Sheriff's Office*, 900 S.E.2d 428, 439 (S.C. 2024).

III. The doctrine of joint and several liability does not require that USC remain in this action.

STATEMENT OF THE CASE

Boyles filed his summons complaint on September 25, 2024, and he identified USC as the third and final defendant. (R. pp. 25 – 39).

After asserting a claim for "Negligence" in his first cause of action against USC's co-Defendants, C and C Masonry, Inc. and Juneau Construction Company, LLC (R. pp. 30 – 32), Boyles asserted a separate claim for "Negligence" against USC in his second cause of action. (R. pp. 32 – 34).

Boyles did not identify USC as a defendant in his third cause of action (R. pp. 35 – 37), but in his fourth cause of action, the Plaintiff asserted a claim of "Intentional Infliction of Emotional Distress" against USC and its two (2) co-Defendants. (R. pp. 37 – 38).

Before setting forth his four (4) causes of action, only two (2) of which involved USC, Boyles offered the following factual allegations in his pleading (R. pp. 26 – 28):

> The underlying accident that is the subject matter of this lawsuit occurred at the premises of USC at 1315 Whaley Street, Richland County, Columbia, South Carolina ("University of SC – Campus Village").

> …
> [Boyles] was an employee of Island Masonry Construction (hereinafter "Island Masonry") located at 301 McCullough Drive, Suite 400, Charlotte, North Carolina 28262 and an address at 10169 Forest Landing Drive, Charlotte, North Carolina which upon information and belief, is the subcontractor of C and C, licensed to do business in South Carolina.
>
> Juneau and Cand C are part of a massive four-building student housing complex construction ("USC Campus Project") for USC at the University of SC – Campus Village.
>
> USC owns the construction site property, the University of SC – Campus Village.
>
> On or about **September 13, 2022**, [Boyles] worked as a forklift operator with Island Masonry at the University of SC – Campus Village.
>
> …
>
> On **September 13, 2022**, at the time of the incident, [Boyles] was operating a forklift on the North side of Building 4 on the construction site at the University of SC – Campus Village for the USC Campus Project.
>
> At the relevant time and place, the forklift tripped over and fell to the ground while [Boyles] lowered a mason box to the ground from a mast climber scaffold positioned just beneath the roof awning of the building.
>
> At that time, the forklift was positioned on a temporary base – a pile of sand. While [Boyles] was operating the forklift, the front right outrigger of the forklift began to sink into the unstable soft sand, causing a shift in balance and a sudden loss of stability, resulting in the forklift tipping to the right and overturning.
>
> Despite [Boyles] using safety measures, including seatbelt and stabilizer pads, the force and sudden movement caused by the overturning forklift were so severe that [Boyles] was thrown from his seated position, resulting in a forceful fall on the ground.
>
> The impact and the force of the fall were significant, resulting in substantial and serious injuries to the [Boyles].

[emphasis supplied].

Given the chronology involving the date upon which Boyles sustained his injuries (i.e., September 13, 2022) and the date upon which he filed his action (i.e., September 25, 2024), USC moved under South Carolina Rule of Civil Procedure [SCRCP] 12(b)(6) on October 31, 2025 to

dismiss the two (2) causes of action Boyles asserted against it on the grounds that the applicable statute of limitations from S.C. Code Ann. § 15-78-110 (1976) barred them.

When a valid verified claim is properly filed per the requirements of S.C. Code Ann. § 15-78-80 (1976), the South Carolina Tort Claims Act [SCTCA] extends the statute of limitations from two (2) years to three (3) years from the date of loss. *See Joubert v. S.C. Dep't of Soc. Servs.*, 534 S.E.2d 1, 6 (S.C. Ct. App. 2000) (citing § 15-78-110). If, however, a verified claim is not filed per the requirements of § 15-78-80, the statute of limitations remains two (2) years from the date of loss. *Id.* If made, a verified claim must be filed within "one year of the date of loss …" *See* § 15-78-80(d). "Filing" is accomplished by "receipt" of the verified claim, if sent by certified mail. *See* § 15-78-80(c). Filing may also be accomplished by otherwise serving a verified claim by "compliance with the provisions of law relating to service of process." *Id*.

As the trial court observed in its February 24, 2025 order (R. p. 5), the record reveals not just that Boyles failed to timely file a verified claim against USC, but that he never filed a verified claim against USC. As the trial court observed in the same order (Id.), Boyles admitted as much in his November 18, 2024 response to USC's October 31, 2024 motion to dismiss, as well as during the February 3, 2025 hearing.[1]

Therefore, the trial court correctly concluded that the applicable statute of limitations from § 15-78-110 was two (2) years after the date of loss on September 13, 2022, and it also correctly found that Boyles filed his complaint on September 25, 2024, nearly two (2) weeks *after* the two (2) year statute of limitations expired on September 13, 2024.

[1] As explained in USC's designation of matter to be included in the record on appeal, USC's counsel received an email on April 25, 2025 from the Court Reporter Section at South Carolina Court Administration advising him that it was unable to produce the transcript of the hearing on USC's October 31, 2024 motion to dismiss conducted by the trial court on February 3, 2025. In its April 25, 2025 email, the Court Reporter Section advised that the February 3, 2025 hearing held by the trial court was not captured on record.

PROCEDURAL HISTORY

After Boyles filed his summons and complaint on September 25, 2024, in which he identified USC as the third and final defendant, USC moved under SCRCP 12(b)(6) on October 31, 2024, in lieu of filing an answer to Boyles' complaint, to dismiss the claims Boyles asserted against it in the second and fourth causes of action of his complaint. (R. pp. 40 – 46).

On November 18, 2024, Boyles filed his response in opposition to USC's motion to dismiss the claims he asserted against it in the second and fourth causes of action of his complaint. (R. pp. 47 – 55).

Boyles included three (3) exhibits in support of his November 18, 2024 response in opposition: (1) a copy of the opinion issued by United States District Judge Margaret Seymour in in *Gee Gary v. S.C. Dep't of Corr.*, 2011 WL 2746307 (D.S.C. Jul. 14, 2011) (R. pp. 85 – 86); (2) copies of electronic mail messages beginning August 22, 2024 and ending August 28, 2024 between his counsel and Henry J. White, Esquire, USC's Deputy General Counsel (R. p. 87); and (3) copies of electronic mail messages beginning August 19, 2024 and ending September 12, 2024 between his counsel and Marty G. Quirk, Esquire of Quick & Quirk, LLC, who then represented one of USC's co-defendants, Juneau Construction Company, LLC. (R. pp. 88 – 89).

On December 6, 2024, Boyles filed an additional response in opposition to USC's motion to dismiss the claims he asserted against it in the second and fourth causes of action of his complaint. (R. pp. 56 – 74).

Boyles included three (3) exhibits in support of his December 6, 2024 additional response in opposition: (1) copies of electronic mail messages beginning July 31, 2024 and ending September 9, 2024 between his counsel and representatives of Hedrick Gardner Kincheloe & Garafalo, L.L.P. regarding the production of Boyles' personnel records and a 30(b)(6) witness

deposition (R. pp. 58 – 62); (2) a letter dated August 12, 2024 from Boyles' counsel to representatives of several entities, including USC, associated with the service of a Form 27 Subpoena in a matter pending before the South Carolina Workers' Compensation Commission and styled as Franklin J. Boyles vs. Island Masonry Construction, WCC File Number 2216656 (R. pp. 63 – 68); and (3) copies of electronic mail messages between his counsel and Mr. Quirk and between his counsel and Mr. White. (R. pp. 69 – 74).

On February 3, 2025, the Honorable Jocelyn Newman, the presiding circuit court judge, conducted a hearing regarding USC's motion to dismiss the claims he asserted against it in the second and fourth causes of action of his complaint, and as reflected by the Form 4 Order she issued February 4, 2025, Judge Newman granted USC's motion. (R. pp. 22 – 24).

On February 24, 2025, Judge Newman issued her order granting USC's motion under SCRCP 12(b)(6) to dismiss Boyles' two (2) causes of action against it. (R. pp. 11 – 21). By her order, Judge Newman dismissed with prejudice Boyles' two (2) causes of action against USC. (R. p. 20).

Boyles filed his notice of appeal with this Court on March 5, 2025, and he asserted that Judge Newman improperly granted USC's motion "on a legal issue and question of law."

STANDARD OF REVIEW

In *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 648 S.E.2d 295, 298 (S.C. Ct. App. 2007), this Court observed that "[u]pon review of a dismissal of an action pursuant to [SCRCP 12(b)(6)], the appellate court applies the same standard of review implemented by the trial court."

This Court, in *Ashley River Properties I, LLC, Id.,* articulated the following standard of review actions dismissed under SCRCP 12(b)(6):

> Under [SCRCP 12(b)(6)], a defendant may move for dismissal based on a failure to state facts sufficient to constitute a cause of action. … **A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court.** "Generally, in considering [an SCRCP 12(b)(6)] motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." … "A motion to dismiss under [SCRCP] 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case." … In deciding whether the trial court properly granted the motion to dismiss, this court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. … [citations omitted and emphasis supplied].

Where the alleged facts and inferences reasonably deducible therefrom, in the light most favorable to the plaintiff, do not state any valid claim for relief, dismissal is appropriate. *See Doe v. Marion*, 645 S.E.2d 245, 247 (S.C. 2007).

ARGUMENT

I. THE TRIAL COURT DID NOT ERR BY HOLDING THAT BOYLES' CLAIMS AGAINST USC WERE TIME-BARRED, NOR DID IT ERR BY HOLDING THAT EQUITABLE TOLLING DID NOT SALVAGE HIS CLAIMS AGAINST USC

Boyles began his first argument by quoting and citing a number of authorities addressing the doctrine of equitable tolling (Brief, pp. 8 – 9), and he asserted as follows (Id., pp. 9 – 10):

> In this case, the trial court erroneously concluded that [Boyles'] claims were time-barred and that equitable tolling did not apply. The trial court selectively relied on language from [*Pelzer v. State,* 662 S.E.2d 618 (S.C. Ct. App. 2008] and failed to consider the full scope of equitable tolling jurisprudence. The trial [c]ourt focused on the principle that equitable tolling applies mainly if the Defendant actively misled the Plaintiff about the cause of action or prevented Plaintiff from asserting his or her rights. Relying on the above language, the trial court found "that [Boyles] did not allege any wrongdoing by USC in his November 18, 2024 response." [R. p. 16].

> The trial court incorrectly concluded that [Boyles] was required to establish misconduct by USC to warrant equitable tolling. The [trial court's February 24, 2025 order] specifically states that "nothing in the record supports any allegation of wrongdoing by USC such that USC actively misled [Boyles] about his two (2) causes of action against it or that USC prevented [Boyles] in some extraordinary way from asserting his right to file them." [R. p. 16]. This reasoning is legally flawed. Under *Pelzer*, *supra*, active misconduct by the defendant is not a necessary condition for equitable tolling. It is only one among several circumstances under which equitable tolling may be applied. Extraordinary circumstances that prevent a plaintiff from asserting their rights are sufficient to apply equitable tolling.

In its February 24, 2025 order, the trial court observed as follows (R. pp. 15 – 16):

> [Boyles] … recognized in his November 18, 2024 response that "equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use." *See Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 687 S.E.2d 29, 33 (S.C. 2009) and *Ross v. Ross*, 715 S.E.2d 359, 361 (S.C. Ct. App. 2011) (*quoting Hooper*).
>
> [Boyles], however, relied on [*Pelzer*] to support his invocation of equitable tolling, and he provided the following passage from *Pelzer* to support his assertion, *Id.* at 620 – 21:
>
> Equitable tolling has been deemed available where —
>
> — extraordinary circumstances prevented the plaintiff from filing despite his or her diligence.
> — the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or **the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass**.
> — the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim.
>
> [emphasis supplied].

The trial court recognized in its February 24, 2025 order that Boyles omitted from his November 18, 2024 response in opposition to USC's October 31, 2024 motion the following passage from *Pelzer*, *Id.* at 621, in which this Court recognized as follows (R. p. 16):

> It has been held that **equitable tolling applies *principally* if the plaintiff is actively misled by the defendant about the cause of action or is**

> **prevented in some extraordinary way from asserting his or her rights**. However, it has also been held that the equitable tolling doctrine does not require wrongful conduct on the part of the defendant, such as fraud or misrepresentation. [italicized and bold emphasis supplied].

Given the above-quoted passage from this Court's decision in *Pelzer*, the trial court correctly found as follows in its February 24, 2025 order (R. p. 16):

> The Court finds that [Boyles] did not allege any wrongdoing by USC in his November 18, 2024 response. Even if he had so alleged, the Court finds that nothing in the record supports any allegation of wrongdoing by USC such that USC actively misled [Boyles] about his two (2) causes of action against it or that USC prevented [him] in some extraordinary way from asserting his right to file them.

Returning to his argument to this Court, Boyles described the purported extraordinary circumstances that caused him to admittedly file his claims against USC after the expiration of the applicable limitations period, none of which resulted from any action or inaction on USC's behalf (Brief, pp. 10 – 11):

> The record demonstrates that extraordinary circumstances prevented [Boyles] from filing his claims within the statutory period. The complaint was filed just 12 days after the statute of limitations expired. The delay occurred due to the complex nature of the legal relationships among the various entities at the project site. [Boyles] was employed by a subcontractor of a contractor working on USC's property, creating layered legal obligations. It took time to determine the proper party to be sued, which required careful legal analysis of USC's role and liability. This complexity constitutes exceptional circumstances that justify equitable tolling. Only a short delay occurred in this case. This underscores [Boyles'] intent to comply with the deadline, warranting equitable tolling.

Frankly but respectfully stated, Boyles knew or should have known on September 13, 2022, given his above-quoted explanation, that USC was a potential defendant in his action, and his excuses for failing to comply with the applicable limitations period ring hollow.

Perhaps realizing the discordant note struck by his litany of excuses, Boyles fully turned his figurative guns on USC. After seemingly going out of his way to assert that USC did nothing

to induce, trick, mislead, or prevent him in some extraordinary way from complying with the applicable filing deadline, Boyles did just that in the following passage in his brief to this Court (Brief, p. 11):

> [Boyles] pursued a workers' compensation claim after the September 13, 2022 forklift accident. This required obtaining documentation from USC. On August 12, 2024, [Boyles'] counsel subpoenaed USC for relevant materials. **USC provided responsive materials on August 23, 2024, leaving Appellant with only 22 days to assess, analyze, and act upon the newly obtained information. The compressed timeline resulting *from USC's delayed disclosure* created an extraordinary circumstance that prevented [Boyles] from filing his claims in a timely manner**. The situations involving delays in obtaining necessary information may justify equitable tolling, particularly when such information is within the Respondents' control. [italicized and bold emphasis supplied].

Critically, Boyles did not assert before the trial court that USC had somehow prevented him from asserting his rights, and as our Supreme Court recognized in *Holman v. S.C. Education Lottery Commission*, 891 S.E2d 701, 707 (S.C. Ct. App. 2023), *cert. denied* (April 16, 2024), he may not raise this issue for the first time in his appeal to this Court:

> We find this procedural argument is not preserved for appellate review. *See* [*Wilder Corp. v. Wilke*, 497 S.E.2d 731, 733 (S.C. 1998)] ("**It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [circuit court] to be preserved for appellate review**."); *see also* [*I'On, L.L.C. v. Town of Mt. Pleasant*, 526 S.E.2d 716, 724 (S.C. 2000)] ("[T]he losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments."). Appellants never raised this argument to the circuit court in a response to Respondents' motions to reconsider, alter, or amend and they failed to file a [SCRCP] 59(e) motion in response to the circuit court's orders granting Respondents' motions. *See* [*Doe v. Doe*, 634 S.E.2d 51, 55 (S.C. Ct. App. 2006)] ("[W]hen an appellant neither raises an issue at trial nor through a [SCRCP 59(e)] motion, the issue is not preserved for appellate review.");[2] *see also* [*I'On, L.L.C.*, 526 S.E.2d at 724] (**holding that imposing preservation requirements on an appellant "prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity**

[2] Boyles did not file a motion under SCRCP 59(e) with the trial court after it issued its February 24, 2025 order.

> **to prove his case"**). Accordingly, we find this argument is not preserved. [emphasis supplied].

Moreover, Boyles' assertion is contradicted by the record, specifically the admission his counsel made during the February 3, 2025 hearing, which the trial court reflected in its February 24, 2025 order (R. pp. 16 – 17):

> Not only does the record fail to support any allegation of wrongdoing by USC, but **[Boyles'] counsel acknowledged during the February 3, 2025 hearing that USC helpfully provided, in a timely fashion, materials responsive to a subpoena she served in the workers' compensation case the Plaintiff filed after the September 13, 2022 forklift accident in which he was involved**. As reflected on pages 6 and 7 of his November 18, 2024 response, as well as by materials she filed in support of the same, [Boyles] counsel served the workers' compensation case subpoena on USC on August 12, 2024, and USC provided materials responsive to it on August 22, 2024, 22 days before the expiration of the two-year statute of limitations associated with [Boyles'] two (2) causes of action against USC. [emphasis supplied].

Therefore, just as the trial court rejected his invocation of equitable tolling, USC respectfully asserts that Boyles has offered no grounds in his appeal of the trial court's February 24, 2025 order by which this Court should reverse the trial court's ruling.

II. THE TRIAL COURT DID NOT ERR BY DISMISSING BOYLES' CLAIM AGAINST USC FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BASED ON *Gore v. Dorchester County Sheriff's Office*, 900 S.E.2d 428, 439 (S.C. 2024).

Boyles next asserted that the trial court improperly dismissed his claim against USC for intentional infliction of emotional distress [IIED] by misapplying *Gore v. Dorchester County Sheriff's Office*, 900 S.E.2d 428, 439 (S.C. 2024). (Brief, p. 12).

As previously explained, Boyles asserted his IIED claim against USC in his fourth cause of action in which he also included USC's co-Defendants as parties.

Boyles specifically asserted as follows to this Court (Id.):

> [Boyles'] IIED claim is not barred by the SCTCA. **Admittedly, the case *Gore*, *supra*, held that the definition of "loss" under [S.C. Code Ann. § 15-78-30(f)] excludes recovery for IIED against a governmental entity.** However, the trial court failed to consider that [Boyles'] claim involves conduct that falls within the exceptions enumerated in [§ 15-78-70(b)]. Specifically, a governmental entity is not afforded immunity for conduct that amounts to actual fraud, actual malice, or an intent to harm. See [*Skydive Myrtle Beach v. Horry Cty*., 826 S.E.2d 585, 591 (S.C. 2019)]. [emphasis supplied].

Boyles, however, misquoted the holding from our Supreme Court's decision in *Skydive Myrtle Beach* in this passage from his brief. The *Skydive Myrtle Beach* Court did not hold that "a **governmental *entity*** is not afforded immunity for conduct that amounts to actual fraud, actual malice, or an intent to harm." [italicized and bold emphasis supplied]. Instead, the *Skydive Myrtle Beach* Court held that "[a] **governmental *employee*** is not afforded immunity under the Tort Claims Act for conduct outside the scope of his official duties, or for conduct that amounts to actual fraud, actual malice, or an intent to harm. § 15-78-70(b)." [italicized and bold emphasis supplied]. 826 S.E.2d at 591.

Not only did Boyles misquote *Skydive Myrtle Beach*, but he did not identify a single individual employee of USC as a defendant in his action.

Just as problematically for Boyles is the stark reality that he did not allege any actual fraud, actual malice, or an intent to harm against USC in his fourth cause of action in which he sounded his IIED claim. For that matter, Boyles didn't allege any actual fraud, actual malice, or an intent to harm by USC or its two (2) co-Defendants anywhere in his complaint; these words and phrases simply do not appear in his pleading.

Boyles also assailed the trial court's reliance upon *Gore* as follows (Brief, p. 13):

> The trial court relied on *Gore* to conclude that the SCTCA bars claims for [IIED]. However, *Gore* does not preclude such claims against individual state employees acting outside the scope of their employment or with actual malice. See [*Skydive Myrtle Beach,* 826 S.E.2d at 591]. [Boyles']

> Complaint sufficiently alleged reckless conduct by USC and its agents, warranting further proceedings rather than outright dismissal.

Contrary to his above-quoted argument, Boyles, as explained above, did not allege any actual fraud, actual malice, or an intent to harm by USC in his fourth cause of action, the cause of action in which he sounded his IIED claim.

Boyles also offered the following argument in support of his reliance upon *Gary v. S.C. Dep't of Corr.*, 2011 WL 2746307 (D.S.C. Jul. 14, 2011) (Brief, p. 13):

> The trial court also erred by disregarding persuasive federal authority that has recognized IIED claims against state employees or agents outside the SCTCA. In [*Gary*, 2011 WL 2746307 at *2], the court explicitly held that IIED claims "fall outside the SCTCA." Moreover, in *Smith v. Ozmint*, 394 F.Supp.2d 787, 792 (D.S.C. 2005), the court reaffirmed that governmental employees may be held personally liable for intentional torts committed within the scope of employment. These decisions support Appellant's contention, but the trial Court did not give due weight to these decisions.

Boyles' reliance on *Smith* is completely undone by the reality that he identified no individual employee of USC who purportedly intentionally inflicted emotional distress upon him within the course of the employee's employment. For that matter, as explained above, Boyles did not identify a single individual USC employee as a defendant to his action.

Boyles then focused upon USC's purported reckless, extreme, and outrageous conduct in an effort to salvage his IIED claim (Brief, pp. 13 – 14):

> To establish IIED, a plaintiff must show: (1) intentional or reckless infliction of severe emotional distress; (2) extreme and outrageous conduct; (3) causation; and (4) severe distress. [*Ford v. Hutson*, 276 S.E.2d 776, 778 (1981)].
>
> [Boyles'] complaint alleged that USC knew of the instability of the sand, failed to take corrective action, and exposed workers to severe risks, resulting in a catastrophic accident. USC's failure to provide safe premises for persons lawfully present at its premises particularly when it knows the instability of the sand for supporting heavy machinery constitutes a clear and reckless disregard for the safety of workers and others at the construction site. USC's reckless disregard was the cause for [Boyles']

> injuries resulting in emotional distress. Furthermore, [Boyles'] experiences psychological trauma, including persistent anxiety and depression making it difficult for him to lead a normal life.
>
> Therefore, USC's conduct in disregarding the safety at the construction site was so extreme and outrageous that it exceeded all possible bounds of decency and should have been regarded as atrocious and utterly intolerable in a civilized community. [Boyles] sustained serious injuries that are ongoing and causing psychological trauma as a direct and proximate result of USC's intentional acts and recklessness. [Boyles] is entitled to an award of damages. The emotional trauma from this avoidable incident, combined with [Boyles'] ongoing physical and psychological suffering, meets the threshold for IIED. The trial court did not weigh or assess these allegations under the appropriate standard.

The trial court correctly ruled that *Gore*, not *Gary*, is dispositive, because our Supreme Court in *Gore*, 900 S.E.2d at 444, ruled as follows:

> The bar to recovery for the intentional infliction of emotional distress in [§] 15-78-30(f) applies to the subset of claims for **the reckless infliction of emotional distress**. [emphasis supplied].

III. THE DOCTRINE OF JOINT AND SEVERAL LIABILITY DOES NOT REQUIRE THAT USC REMAIN IN THIS ACTION

After citing precedent from both the United States Supreme Court and the South Carolina Supreme Court addressing the doctrine of joint and several liability, Boyle argued as follows (Brief, pp. 15 – 16):

> Here, even if it is admitted for argument sake that the trial court had properly found that the statute of limitations had expired for one defendant, it erred in dismissing USC because the defendants in this action are jointly and severally liable for [Boyles'] injuries. Under South Carolina law, joint tortfeasors are equally liable for the plaintiff's damages, and dismissal of one defendant, while allowing claims to proceed against other Defendants, is unjust and prejudicial.
>
> The trial court's order, if not reversed, would allow one culpable defendant to escape liability while the remaining defendants bear the full financial burden of [Boyles'] injuries. Such an outcome is contrary to the principles of equity and fairness, particularly when all defendants share responsibility for the underlying harm. The court's failure to consider joint

> and several liability principles further supports the need for reversal of its Order.
>
> Further, the trial court's dismissal of USC prejudices [Boyles'] ability to recover full compensation for his injuries. Given that all defendants are equally culpable for [Boyles'] injuries, dismissing one defendant while requiring the others to defend the case creates an inequitable result. The piecemeal dismissals of joint tortfeasors can result in undue prejudice and inconsistent verdicts. The claims against multiple defendants should be adjudicated together where liability is intertwined.

Critically, Boyles did not assert before the trial court that the doctrine of joint and several liability requires that USC remain in this action, and he may not raise this issue for the first time in his appeal to this Court. *See Holman, supra.*

In asserting the doctrine of joint and several liability as a potential mechanism by which to salvage his two (2) claims against USC, Boyles neglected to account for the reality that the doctrine would not salvage his negligence claim against USC, because he named USC and only USC as a defendant to his second cause of action, which is the cause of action in which he articulated he claim for negligence against USC. Thus, the doctrine, even under his own flawed application of it, would only salvage his fourth cause of action in which he asserted his IIED claim against USC and its two (2) co-Defendants.

Boyles' flawed application of the doctrine is compounded by his failure to offer any authority whatsoever to support his argument that the doctrine would salvage the IIED claim he asserted against USC in his fourth cause of action. Such authority is elusive, because the doctrine simply does not excuse Boyles' obligation to timely file his pleadings under the applicable limitations period.

CONCLUSION

For all the foregoing reasons, USC respectfully urges this Court to affirm all the rulings articulated by the trial court in its February 24, 2025 order and uphold the trial court's dismissal with prejudice of the claims Boyles asserted against USC in the second and fourth causes of action in his complaint.

In doing so, USC respectfully reminds the Court that under South Carolina Appellate Court Rules 208(b)(2) and 220(c), it may affirm the rulings articulated by the trial court in its February 24, 2025 order "upon any ground(s) appearing in the Record on Appeal."

RESPECTFULLY SUBMITTED:

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PROOF OF SERVICE

I certify that I have served a copy of **RESPONDENT UNIVERSITY OF SOUTH CAROLINA'S FINAL BRIEF** upon the above-named Appellant by email to his counsel and other concerned counsel at the following addresses:

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