

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEE	)	C/A NO.: 2024-CP-31-00253
	)	
Thomas McElveen, as next friend of O.M.,	)	
a minor child,	)	
	)	
Plaintiff,	)	<b>ORDER DENYING PLAINTIFF'S</b>
	)	<b>MOTION FOR LEAVE TO FILE AN</b>
vs.	)	<b>AMENDED COMPLAINT</b>
	)	
South Carolina Department of Corrections,	)	
	)	
Defendant.	)	
	)	

**RECEIVED**  
**Jan 16 2026**  
**SC Court of Appeals**

This matter is before the Court on Plaintiff Thomas McElveen, as next friend of O.M., a minor child’s (“Plaintiff”) Motion for Leave to File an Amended Complaint. After careful consideration of Plaintiff’s Motion, the Proposed Amended Complaint, the Court’s prior Order, the briefing to date in this case, and the arguments of counsel, the Court respectfully DENIES Plaintiff’s Motion as futile for the reasons set forth in detail below.

**BACKGROUND**

This civil litigation stems from allegations that non-party Abbygale El-Dier (“Mother”) committed abhorrent acts of sexual abuse to her minor child (“O.M.”). Plaintiff alleges that the South Carolina Department of Corrections (“SCDC”) was put on notice by O.M.’s grandfather that non-party SCDC Inmate Jacob Lance had a contraband cell phone and had been contacting Mother via said cell phone. Plaintiff alleges that SCDC confiscated cell phones from Inmate Lance approximately three (3) months after the “tip” or “tips” were made, and the phones revealed a relationship between Inmate Lance and Mother. Additionally, as told by Plaintiff, Inmate Lance used the cell phone to not only contact Mother but to also “direct the sexual abuse” of O.M. Plaintiff alleges that on August 12, 2023, Mother and Inmate Lance were arrested for various

sexual abuse related offenses. Mother's numerous charges remain pending, and Inmate Lance's charges have been marked in the Public Index as nolle prossed.

Absent from the instant civil ligation are both Mother and Inmate Lance as defendants. However, Plaintiff accuses SCDC of being negligent/grossly negligent in prohibiting Inmate Lance from obtaining a contraband cell phone while being housed at Lee Correctional Institution ("LCI"). Plaintiff's theory of the case, in short, is that because Inmate Lance possessed a cell phone, he was able to call and/or text Mother and "direct" Mother to sexually abuse O.M.

SCDC denied liability to Plaintiff and moved to dismiss Plaintiff's Original Complaint for failure to state a claim. Following briefing and an extensive in-person argument, the Court granted SCDC's motion and dismissed the Original Complaint. The Court ruled that no duty existed between O.M. and SCDC, and because of the lack of duty, Plaintiff's negligence/gross negligence claims against SCDC failed as a matter of law. Because of the dispositive nature of the Court's finding, it declined to reach the other arguments raised by SCDC in support of dismissal.

Following this Court's dismissal of the Original Complaint, Plaintiff filed a motion to reconsider pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Contemporaneously therewith, Plaintiff filed a Motion for Leave to file an Amended Complaint pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure. The Court heard argument on both of these motions. On December 1, 2025, the Court issued an Order denying Plaintiff's motion to reconsider. The Court took further time to consider Plaintiff's Motion for Leave to File an Amended Complaint.

### **LEGAL STANDARD**

Rule 15 of the South Carolina Rules of Civil Procedure governs a party's motion for leave to file an amended pleading. Rule 15(a) states, "[A] party may amend his pleading only by leave

of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.” Although it is usually encouraged that leave to amend be “freely given,” *Parker v. Spartanburg Sanitary Sewer District*, 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005), it is well-established that a party’s right to amend is not absolute. *See Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 588 (2019) (“A trial court has discretion to deny a motion to amend if the party opposing the amendment can show a valid reason for denying the motion.”).

When denying motions to amend, courts have considered various factors such as “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by allowance of the amendment, futility of amendment, etc.” *Patton v. Miller*, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017); *see also Patton*, 420 S.C. at 490, 804 S.E.2d at 262 (“Under Rule 15(a), the circuit court should have considered whether the defendants were prejudiced by the amendment, or whether there was some other substantial reason to deny it.”). The decision to grant or deny a Rule 15 motion to amend is within the circuit court’s discretion. *Id.*

When reviewing a plaintiff’s complaint, a court considers whether, “in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524 (Ct. App. 2009). “If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law.” *Madison ex rel. Bryant v. Babcock Center, Inc.*, 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006).

## ANALYSIS

Our case law sets forth several different reasons for why amendment of a pleading may be denied. Here, the Court, after careful review and consideration, denies Plaintiff's Motion because the Proposed Amended Complaint would be futile. *See Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010) (Although leave to amend should generally be 'freely given,' . . . it may be denied where the proposed amendment would be futile."). In *Skydive*, the South Carolina Supreme Court explained that a circuit court is charged with reviewing a Proposed Amended Complaint to determine whether such amendment would be futile. 426 S.C. at 183, 826 S.E.2d at 589. If so, the Proposed Amended Complaint cannot be allowed.

Here, the Court has applied the requisite analysis to the Proposed Amended Complaint and finds the amendment to be futile. Although Plaintiff vaguely alleges in his Motion (without specific guidance to the Court) that the Proposed Amended Complaint fixes the problems that plagued the Original Complaint, the Court has endeavored in its review of the Proposed Amended Complaint to find such "fixes," and concludes that Plaintiff is mistaken. The new allegations do nothing to change the analysis and fall short of manufacturing a duty recognized under South Carolina law between SCDC and O.M. where none exists.

In the Proposed Amended Complaint, Plaintiff discusses, predominately, the same set of general facts set forth in the Original Complaint. However, Plaintiff has included other allegations such as:

- Allegations about the problems SCDC has had with prohibiting inmates from obtaining contraband cell phones and the problems that contraband cell phones can impose.
- Allegations about SCDC employees committing criminal acts with respect to bringing in and disseminating contraband and being criminally charged for doing so.

- Allegations about SCDC not adhering to its contraband policies.
- Allegations that SCDC knew or should have known that if it confiscated contraband cell phones, other SCDC employees would commit criminal acts and bring more phones.
- Allegations about Inmate Lance being a known “dangerous individual that posed a substantial risk of serious harm to other individuals.”
- Allegations about Inmate Lance using a cell phone and “calling, harassing, and threatening [Mother] and her family.”
- Allegations about Mother, Emily El-Dier (O.M.’s aunt), Laura El-Dier (O.M.’s grandmother), and David El-Dier (O.M.’s grandfather) contacting SCDC “several times” to inform SCDC that Inmate Lance was using contraband cell phones to “call [Mother] at all hours of the day to harass, yell, and threaten her and her family.”
- Allegations that David El-Dier contacted an SCDC employee to tell SCDC that Mother was currently on the phone with Inmate Lance and that the employee allegedly told him that SCDC did not have the “man power” to confiscate the contraband cell phone.

(Proposed Amended Complaint).

Although the Court appreciates Plaintiff’s efforts to correct the prior deficiencies in the Original Complaint through his submission of the Proposed Amended Complaint, the problem does not exist in Plaintiff’s drafting, but rather, the problem is more fundamental because no duty recognized under South Carolina law exists between SCDC and O.M. in this situation. Whether via the Original Complaint or via the Proposed Amended Complaint, Plaintiff asks this Court to stretch the limits of liability to hold SCDC liable to O.M. for the criminal actions of Mother, when Mother is not a person SCDC had a legal duty to control. For example, in the Original Complaint, Plaintiff alleged that SCDC was negligent in allowing Inmate Lance to acquire a contraband cell

phone, where in turn Inmate Lance contacted Mother, where in turn Mother committed sexual assault on O.M., purportedly at Inmate Lance's direction. Similarly, in the Amended Complaint, Plaintiff is alleging that SCDC was negligent in supervising its employees, where in turn the employees' criminal acts allowed Inmate Lance to obtain and keep a cell phone, where in turn Inmate Lance was able to call Mother and "harass" and "threaten" her and her family, where in turn Mother was purportedly convinced by Inmate Lance to commit sexual assault on O.M.

This is not a case in which an SCDC inmate assaulted someone. Rather, this is a case in which a mother, outside of SCDC's control, chose to sexually assault her own daughter. Not only does O.M., who is one-step removed from any actions of the inmate, not have a cause of action against SCDC, but Plaintiff's own mother would not even have a cause of action against SCDC stemming from the contacts she directly received from the inmate. *See K.S. by and through Seeger v. Richland Sch. Dist. Two*, 445 S.C. 111, 912 S.E.2d 240 (2025) (explaining the law in South Carolina does not allow recovery of damages for mental suffering in the absence of bodily injury). The fact that Plaintiff is attempting to reach even further down a chain of events to attempt to assign blame to SCDC is noteworthy, and it highlights that this Court did not err in dismissing the Original Complaint and is not erring in declining to allow amendment.

For the reasons set forth in great detail in the Court's Order dismissing the Original Complaint, the Court finds that the Proposed Amended Complaint too fails for lack of legal duty. Of course, there is no duty for an individual to act under the common law. *See Rayfield v. S.C. Dep't of Corrs*, 297 S.C. 95, 100, 374 S.E.2d 910, 913 (Ct. App. 1988). More specifically, "South Carolina does not recognize a general duty to warn a third party or potential victim of danger or to control the conduct of another." *Doe 2 v. Citadel*, 421 S.C. 140, 146, 805 S.E.2d 578, 581 (2017). And of course, there are exceptions to this general rule of no duty. *See Faile v. S.C. Dep't of*

*Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002) (setting forth the following exceptions in which a duty may arise: “1) where the defendant has a special relationship to the victim; 2) where the defendant has a special relationship to the injurer; 3) where the defendant voluntarily undertakes a duty; 4) where the defendant negligently or intentionally creates the risk; and 5) where a statute imposes a duty on the defendant”).

Here, Plaintiff contends the Proposed Amended Complaint now establishes a duty in light of the special relationship between SCDC and the injurer—Inmate Lance. Plaintiff argues this duty between SCDC and O.M. is established through (1) his addition of a supervisory liability theory, (2) the identification of specific SCDC employees involved in the provision of contraband cell phones, and (3) the addition of allegations that other family members called to inform SCDC that Inmate Lance was using a cell phone to “harass” and “threaten” Mother and her family. However, these additions do not save Plaintiff from the bedrock problem.

The **injurer** in this case is Mother, an adult that chose to sexually assault O.M. In order for this legal duty exception to apply, the **injurer** must have a special relationship with the purported **defendant**. See *Faile*, 350 S.C. at 334, 566 S.E.2d at 546. SCDC and Mother simply do not have this relationship, as SCDC does not have any control of the actions of Mother. O.M.’s alleged damages are due to Mother’s sexual abuse. Although Plaintiff has made attempts to demonstrate “a substantial risk of serious harm” existed, *Faile* makes clear that courts are “reluctant to impose the duty to control unless there is an established authority relationship **and** a substantial risk of serious harm.” *Id.* at 339, 566 S.E.2d at 548 (emphasis added). Because no authority relationship existed between SCDC and Mother, the Court need not consider whether Plaintiff sufficiently pled “a substantial risk of serious harm.” Put simply, without the purported

criminal actions of Mother, O.M. would not have been harmed, and there simply is no duty owed to O.M. by SCDC in this scenario.

Accordingly, the Court finds that the Proposed Amended Complaint would be futile in light of there being no duty between SCDC and O.M.

\* \* \*

SCDC raised other grounds in its original motion to dismiss that were not addressed by the Court in light of the dispositive nature of the duty analysis. Here, the Court also agrees with SCDC’s argument raised pursuant to the Tort Claims Act. Specifically, the Court finds that S.C. Code Ann. § 15-78-60(20), which states that a governmental entity is not liable for a loss resulting from “an act or omission of a person other than an employee including but not limited to the criminal acts of third persons,” bars Plaintiff’s claims as alleged against SCDC. Again, Mother is the “third person” who committed criminal acts against O.M. and created the damages for which O.M. now sues SCDC. Accordingly, the Court also finds in the alternative that SCDC is immune from suit in light of this exception to the waiver of sovereign immunity. Again, the Proposed Amended Complaint would be futile.

**CONCLUSION**

Based on the foregoing, the Court DENIES Plaintiff’s Motion for Leave to File an Amended Complaint. The Court has given careful consideration of the Proposed Amended Complaint and finds that amendment would be futile.

**[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]**



## Lee Common Pleas

**Case Caption:** Thomas Mcelveen, As Next Friend Of O.M., A Minor Child VS South Carolina Department Of Corrections  
**Case Number:** 2024CP3100253  
**Type:** Order/Other

So Ordered

s/ R. Kirk Griffin 2768