

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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**SC Court of Appeals**

APPEAL FROM CHARLESTON COUNTY  
COURT OF COMMON PLEAS  
THE HONORABLE BENJAMIN H. CULBERTSON  
CIRCUIT COURT JUDGE

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APPELLATE CASE NO. 2025-002176  
CIVIL ACTION NO. 2025-CP-10-01024

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Teqyah Campbell and Lamona Armstrong, as parent and  
Legal Guardian of R.C., a minor,

**APPELLANTS,**

versus

City of Isle of Palms and Isle of Palms Police Dept.,

**RESPONDENTS.**

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**INITIAL RESPONDENTS' BRIEF**

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**Isle of Palms Police Dept.**

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## COUNTERSTATEMENT OF ISSUES ON APPEAL

- I. The City did not owe a common law duty to protect Appellants from the criminal actions of a third person where in carrying out the governmental function of police protection, the City only owed a duty to the public at large and not to any one individual.
  
- II. The City is immune from liability pursuant to the exceptions to the waiver of immunity under the South Carolina Tort Claims Act providing that a governmental entity is not liable for loss resulting from (1) the failure to provide [or] the method of providing police or fire protection; and (2) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons.
  - A. The custodial immunity exception to the waiver of immunity does not apply to the facts of this case where neither the victims nor the gunman were students, patients, prisoners, inmates, or clients of the City; therefore, its gross negligence standard is not read into the subsections under which the City is immune from liability.
  
  - B. The maintenance of public property exception to the waiver of immunity does not create potential liability of the City because the City is entitled to absolute immunity under separate and independent provisions of the South Carolina Tort Claims Act.
  
- III. The Trial Court did not abuse its discretion in denying Appellants' Rule 59(e) motion for reconsideration based upon newly discovered evidence where (1) the evidence was available prior to the Trial Court's ruling on the motion to dismiss; and (2) the evidence does not alter the City's entitlement to dismissal as a matter of law based upon the lack of duty and the immunities of the South Carolina Tort Claims Act.
  
- IV. Appellants are not entitled to amend the complaint where any amendment would be futile.
  
- V. Interlocutory rulings by trial courts in separate cases did not prevent dismissal of Appellants' complaint against the City in this case.

## COUNTERSTATEMENT OF THE CASE

This action arises out of claims by Appellants that they were injured by a high school student when the student discharged his firearm into a crowd on a public beach on the Isle of Palms. On February 24, 2025, Appellants Teqyah Campbell and Lamona Armstrong, as parent and Legal Guardian of R.C., a minor, filed a complaint in the Court of Common Pleas for Charleston County against Respondents, the City of Isle of Palms (the “City”) and the Isle of Palms Police Dept. (the “Police Department”). [R.pp. \_\_\_; Compl.] Appellants alleged a single cause of action for negligence and gross negligence against the City and the Police Department arising out of the purported failure to protect Appellants. [R.pp. \_\_\_; *Id.* at ¶¶ 22-28.]

On March 28, 2025, the City and the Police Department filed a motion to dismiss in lieu of an answer asserting, among other things, (1) the Police Department should be dismissed because it is not a legally recognized entity capable of being sued; (2) the City is immune from suit under the protections and immunities afforded to it under the South Carolina Tort Claims Act, S.C. CODE ANN. § 15-78-10 *et seq.*, including subsection 15-78-60(6) which provides immunity for the failure to provide or the method of providing police protection and subsection 15-78-60(20) which provides immunity for the criminal actions of third persons; and (3) Appellants failed to state a recognizable cause of action. [R.pp. \_\_\_; Mtn. to Dismiss.] The City and the Police Department filed a supporting memorandum in support of their motion to dismiss on July 30, 2025. [R.pp. \_\_\_; Memo.] Appellants filed an memorandum in opposition on August 1, 2025. [R.pp. \_\_\_; Opp. Memo.]

The motion to dismiss was heard before The Honorable Benjamin H. Culbertson on August 4, 2025. [R.pp. \_\_\_; Tr.] The Trial Court granted the motion to dismiss on

August 11, 2025, finding that S.C. CODE ANN. § 15-78-60(20) which provides 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 actions of third persons” barred Appellants’ action against the City and the Police Department. [R.pp. \_\_\_; Order.]

Appellants moved to reconsider the Trial Court’s order pursuant to Rule 59(e), SCRCR on August 13, 2025. [R.pp. \_\_\_; Mtn. to Reconsider.] The City and the Police Department submitted a response on September 18, 2025. [R.pp. \_\_\_; Response.] The Trial Court denied the motion to reconsider on September 30, 2025. [R.pp. \_\_\_; Form 4.] Appellants filed and served their appeal to this Court on or about October 27, 2025.

### **COUNTERSTATEMENT OF FACTS**

The alleged facts are set forth in the complaint filed by Appellants. Appellants’ claims are based upon injuries sustained by Teqyah and R.C. on April 7, 2023 after a high school student discharged a firearm into a crowd on the public beach at the Isle of Palms.

Appellants allege that the beach on the Isle of Palms is public property for which the City<sup>1</sup> is responsible for the security and supervision thereof. [R.p. \_\_\_; Compl., ¶¶ 9-10.] Appellants contend the City long had actual notice of “Senior Skip Day,” a tradition that occurs every year on the public beach of the Isle of Palms in which senior students from surrounding high schools skip school for the day and travel to the beach to congregate and party in large groups. [R.p. \_\_\_; *Id.* at ¶ 11.] Appellants further contend the City had

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<sup>1</sup> In the motion to dismiss, the Police Department argued that it was not a legally recognized entity that is capable of being sued separately from the City itself. [R.pp. \_\_\_; \_\_\_; Mtn to Dismiss; Memo., pp. 2-3.] While the Trial Court did not make any ruling on this ground, Appellants conceded that the Police Department is not a legally recognized entity capable of being sued [R.p. \_\_\_; Opp. Memo., p. 3] and do not make any arguments against the Police Department separately in their Appellants’ Brief. Therefore, Respondents will only refer to the City in their responsive arguments.

actual notice that during “Senior Skip Day,” large groups of senior students would “illegally drink alcohol, consume illegal drugs, become violent, and use guns on the public beach of Isle of Palms[.]” [R.pp. \_\_\_; Id. at ¶ 12.]

More specific to the events at issue, Appellants allege that on or before April 7, 2023, the City received actual notice that “Senior Skip Day” would once again occur on the public beach at Isle of Palms on April 7, 2023. [R.p. \_\_\_; Id. at ¶ 13.] The City received notice of this large gathering of teenagers through concerned parents, other members of the public, and social media. [R.p. \_\_\_; Id.]

According to Appellants, the City increased police presence on the public beach on April 7, 2023 but “did not provide enough police to control and disperse the growing crowd” and “allowed the crowd to grow out of control.” [R.pp. \_\_\_; Id. at ¶¶ 14-15.] Appellants allege the City did not increase their own personnel to respond to the crowd of teenagers on the public beach and instead contacted surrounding law enforcement agencies such as the Charleston County Sheriff’s Department and the Mount Pleasant Police Department for assistance, with those agencies being unable to assist. [R.p. \_\_\_; Id. at ¶ 16.]

Appellants allege that the crowd became “so large and unruly with intoxicated students that crime and violence ensued” while the City purportedly failed to respond. [R.pp. \_\_\_; Id. at ¶ 17.] The City allegedly continued to fail to disperse the crowd or adequately control the teenagers after several fights broke out throughout the day. [R.p. \_\_\_; Id.] Appellants contend that despite notice that the high school students and groups participating in “Senior Skip Day” were “drinking alcohol, doing drugs, fighting, and had access to firearms in a mass gathering,” the City “failed to supervise the students, failed to

restrict access to the beach, failed to control and respond in a reasonable time to the growing and violent crowd, and failed to supervise, warn, and protect the innocent beachgoers.” [R.p. \_\_\_; *Id.* at ¶ 18.]

On April 7, 2023, Appellants Teqyah and R.C. were enjoying a day at the beach on the Isle of Palms. [R.p. \_\_\_; *Id.* at ¶ 19.] Appellants contend that as a result of the City’s failure to timely respond to “Senior Skip Day” and failure to supervise, protect, and control the students, a high school student participating in “Senior Skip Day, Davion Bobby Del’Shawn Singleton (hereinafter “Singleton”), discharged his firearm, injuring several people, including Teqyah and R.C. [R.pp. \_\_\_; *Id.* at ¶ 20.] Public records show that following the incident, Singleton was charged with five counts of attempted murder. [R.p. \_\_\_; Order, p. 2.]

Appellants brought a cause of action for negligence and gross negligence against the City and alleged that their damages were the result of the City’s failure to (1) provide protection; (2) supervise, control and disperse the crowd; (3) warn; (4) have appropriate policies and protocols in place and adhere to applicable policies and procedures to provide for the safety and wellbeing of the Appellants; and (5) train its personnel to ensure safety and protection of the general public and Appellants. [R.pp. \_\_\_; *Id.* at ¶ 26.]

### **STANDARD OF REVIEW**

On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court.” *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). The appellate court is required to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and reasonably deducible inferences in the complaint would entitle the plaintiff to relief on any theory of

the case. Id. The court may sustain the dismissal when the facts alleged in the complaint do not support relief under any theory of law. Flateau v. Harrelson, 355 S.C. 197, 202, 584 S.E.2d 413, 416 (Ct. App. 2003).

### ARGUMENT

**I. The City did not owe a common law duty to protect Appellants from the criminal actions of a third person where in carrying out the governmental function of police protection, the City only owed a duty to the public at large and not to any one individual.**

The foundation of Appellants' claims against the City is the alleged failure to provide an adequate police presence to control, supervise, and disperse crowds during the "Senior Skip Day" on April 7, 2023. Under South Carolina law, it has long been established that police only owe a duty to the public at large and not to any individual unless some special circumstance exists. Appellants' claims arise only from purported duties owed by the City to the public. As such, because Appellants cannot show that the City owed any duty to them individually, their negligence and gross negligence claims fail as a matter of law.<sup>2</sup>

In order to prove negligence, a plaintiff must show: "(1) defendant owes a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) plaintiff suffered an injury or damages." Doe v. Marion, 373 S.C. 390, 400, 645 S.E.2d

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<sup>2</sup> While the Trial Court did not rule upon this ground in granting the motion to dismiss, "[t]he appellate court may affirm any ruling, order, decision, or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR; see also I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 419, 527 S.E.2d 716, 723 (2000) (holding "respondent. . . may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court").

245, 250 (2007). “In a negligence action, [t]he court must determine, as a matter of law, whether the law recognizes a particular duty.” Repko v. Cty. of Georgetown, 424 S.C. 494, 500, 818 S.E.2d 743, 747 (2018) (internal citation omitted). “Absent a legally recognized duty, the defendant in a negligence action is entitled to a judgment as matter of law.” Cole v. Boy Scouts of Am., 397 S.C. 247, 251, 725 S.E.2d 476, 478 (2011). “Whether a duty exists is a question of law for the Court.” Skinner v. S.C. Dep't of Transp., 383 S.C. 520, 523, 681 S.E.2d 871, 873 (2009).

“Generally, there is no common law duty to act. An affirmative legal duty, however, may be created by statute, contract, status, property interest, or some other special circumstance.” Wyatt v. Fowler, 326 S.C. 97, 101, 484 S.E.2d 590, 592 (1997).

As relevant to the claims asserted by Appellants, the South Carolina Supreme Court has recognized that “the police owe a duty to the public at large and not to any individual.” Wyatt, 326 S.C. at 101, 484 S.E.2d at 592; see also Washington v. Lexington Cty. Jail, 337 S.C. 400, 405-06, 523 S.E.2d 204, 207 (Ct. App. 1999) (observing police officers owe a duty generally to society rather than to any one individual and thus those who maintain custody of prisoners or inmates do so for the protection of the public and are not liable to individuals for damages caused by an escaped inmate); Flores v. Dalman, 502 N.W.2d 725, 729 (Mich. Ct. App. 1993) (“A police officer's duty to preserve the peace is owed to the public at large, not to any one individual.”).

The cornerstone of Appellants’ lawsuit against the City is its purported failure to provide adequate police protection and control for the “Senior Skip Day” occurring on the public beach at the Isle of Palms. Appellants have made no allegations against the City separate and apart from its governmental function of providing police protection to the

public. Under South Carolina precedent, the City does not owe a legal duty to Appellants individually for the claims alleged in the complaint. As such, Appellants cannot as a matter of law maintain any claim for negligence or gross negligence against the City.

In their complaint and in filings before the Trial Court, Appellants argued the City owed common law duties through their “voluntary undertaking, special relationships, and special circumstances.” [R.pp. \_\_\_; \_\_\_; Compl., ¶ 23; Opp. Memo., pp. 9-12.]

South Carolina law is clear that “[t]here is no general duty to control the conduct of another or to warn a third person or potential victim of danger.” Edwards v. Lexington Cty. Sheriff's Dep't, 386 S.C. 285, 291, 688 S.E.2d 125, 128 (2010). There are five exceptions to this rule: “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.” Id.

The factual underpinnings of Appellants’ complaint do not give rise to any of these five exceptions. Appellants’ conclusory pleading that such exceptions exist to impose a duty on the City are not sufficient to establish a duty where the facts alleged do not support any exception to the general rule of no duty. See Collins Holding Corp. v. Wausau Underwriters Ins. Co., 379 S.C. 573, 577, 666 S.E.2d 897, 899 (2008) (“In examining the complaint, a court must look beyond the labels describing the acts to the acts themselves which form the basis of the claim[.]”); Vestry & Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., 356 S.C. 202, 207, 588 S.E.2d 136, 138 (Ct. App. 2003) (observing courts must look to factual allegations underlying a claim irrespective of the labels given).

Appellants do not allege any statute that imposes a duty upon the City. [R.p. \_\_\_; Opp. Memo., p. 9.] In addition, Appellants have not alleged any facts showing any special relationship between the City and either Appellants, as victims, or Singleton, as the gunman. The facts of the complaint only show that Appellants and Singleton were members of the general public on the beach at the Isle of Palms the day of the incident. The City had no relationship with either except as their status as members of the general public. There are no allegations that transformed Appellants or the gunman from general citizens into objects of special concern. Appellants did not allege the City had knowledge of a danger to Appellants that was different from others on the beach.

Furthermore, the facts of the complaint do not show that the City created the risk. The City did not sponsor the event or invite the public to the event. [See R.p. \_\_\_; Compl., ¶ 13 (depicting social media post advertising event).] The allegations of the complaint are that the City failed to respond to the crowd on the beach – not that the City created it.

Finally, while Appellants contended before the Trial Court that the City voluntarily undertook a duty, the City, in increasing police presence on the beach that day, merely engaged in the governmental function of providing police protection which, as set forth above, is a duty owed to the public at large and not to any one individual. The City is not alleged to have undertaken any duty to specifically protect Appellants.

Moreover, “[o]ne who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other’s person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other’s

reliance upon the undertaking.” Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 136, 638 S.E.2d 650, 657 (2006) (quoting RESTATEMENT (SECOND) OF TORTS § 323 (1965)).

Neither condition for imposing liability for one who voluntarily renders services to another is alleged in the complaint. The allegations that the City did not provide enough police to control and disperse the crowd on April 7, 2023 did not cause any increase of the risk of harm that was not already present in the crowd. Additionally, the complaint does not allege facts showing that the harm suffered by Appellants was because of their reliance upon any undertaking by the City.

Only in limited and unique circumstances have the courts of this State found that law enforcement owed a common law duty to control the conduct of another or to warn a third person or potential victim of danger. In Edwards v. Lexington Cty. Sheriff's Dep't, the South Carolina Supreme Court imposed a duty of care on a county and its sheriff's department because it found the entities created a risk of injury to the appellant. 386 S.C. 285, 293–94, 688 S.E.2d 125, 129–30 (2010). In that case, the appellant, a domestic violence victim, sued the respondents, the county and department, after she was attacked by her ex-boyfriend in a magistrate's court bond revocation hearing in which no security was provided. Id. at 287–88, 688 S.E.2d at 127. An employee of the sheriff's department, who was aware of the ex-boyfriend's multiple bond violations and threats against the appellant, requested to schedule the bond revocation hearing, where the ex-boyfriend subsequently attacked the appellant. Id. at 288, 688 S.E.2d at 127. Despite being aware of the appellant's fear of her ex-boyfriend, the respondents strongly encouraged the appellant to be present at the bond revocation hearing. Id. at 293, 688 S.E.2d at 130.

The Supreme Court found the respondents could not claim a lack of knowledge of the ex-boyfriend's violent tendencies towards the appellant because the respondents were seeking to revoke his bond for his failing to obey a no-contact order, which was issued in response to his violent actions. Id. The court found the respondents “created a situation they knew or should have known posed a substantial risk of injury to [the appellant],” and given their knowledge of the ex-boyfriend's demonstrated threats against the appellant, the respondents owed the appellant a duty of care. Id. at 294, 688 S.E.2d at 130. Importantly, the court noted the county and the sheriff’s department only owed the appellant a duty “solely as a result of the unique facts” of the case. Id. at 293, 688 S.E.2d at 130.

In Edwards, the county and the sheriff’s department created the hazardous circumstances and invited the appellant to the dangerous situation. The City did not create the hazardous circumstances on the beach at the Isle of Palms on April 7, 2023 and did not invite Appellants to the situation.

There are no unique factors alleged in the complaint which extend the City’s duty owed to the general public to Appellants individually. The police only owe a duty to the public at large, and Appellants’ complaint does not allege (1) any voluntarily undertaking by the City outside of its general duty to the public as police, (2) any special relationship with the victims or the assailant, or (3) any other special circumstances which warrant imposing a common law duty of care to support a negligence and gross negligence claim against the City. Accordingly, the dismissal of Appellants’ complaint can be affirmed for failure to state a claim pursuant to Rule 12(b)(6), SCRPC.

**II. The City is immune from liability pursuant to the exceptions to the waiver of immunity under the South Carolina Tort Claims Act providing that a governmental entity is not liable for loss resulting from (1) the failure to provide [or] the method of providing police or fire protection; and (2) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons.**

Even if the City owed a duty to Appellants, the City is immune from liability under the South Carolina Tort Claims Act, S.C. CODE ANN. § 15-78-10 *et seq.* The Tort Claims Act governs all tort claims in South Carolina against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. See *Murphy v. Richland Mem'l Hosp.*, 317 S.C. 560, 562, 455 S.E.2d 688, 689 (1995); *Wells v. City of Lynchburg*, 331 S.C. 296, 302, 501 S.E.2d 746, 749 (Ct. App. 1998); S.C. CODE ANN. § 15-78-20(b) (“The remedy provided by [the Tort Claims Act] is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b).”); S.C. CODE ANN. § 15-78-70(a) (“[The Tort Claims Act] constitutes the exclusive remedy for any tort committed by an employee of a governmental entity.”). “The provisions of [the Act] establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be *liberally construed* in favor of limiting the liability of the State.” S.C. CODE ANN. § 15-78-20(f) (emphasis added).

In this case, Appellants’ claims against the City invoke the provisions and immunities of the Tort Claims Act. The Act defines “governmental entity” as “the State and its political subdivisions.” See S.C. CODE ANN. § 15-78-30(d). The term “political subdivision” under the Act includes municipalities. § 15-78-30(h). Thus, the City as a municipality is a governmental entity subject to the Tort Claims Act.

While the Tort Claims Act provides that the State, its agencies, political subdivisions, and other governmental entities are “liable for their own torts in the same manner and to the same extent as a private individual under like circumstances,” the Act also provides certain limitations and exceptions to liability. S.C. CODE ANN. §§ 15-78-40, -60. In particular, governmental entities are not liable for “loss” resulting from:

(6) civil disobedience, riot, insurrection, or rebellion or the failure to provide [or]<sup>3</sup> the method of providing police or fire protection; and

(20) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons.

S.C. CODE ANN. §§ 15-78-60(6), and (20). “Loss” is defined in the Act as “bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.” S.C. CODE ANN. § 15-78-30(f).

Appellants’ claims against the City for the “loss” resulting after a high school student discharged his firearm into the crowd on a public beach falls within the above enumerated exceptions to the waiver of governmental immunity; therefore, the City is immune from Appellants’ claims for negligence and gross negligence.

The Trial Court determined the City was immune from suit under subsection 15-78-60(20) which provides the governmental entity is not liable for a “loss” resulting from

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<sup>3</sup> S.C. CODE ANN. § 15-78-60(6) reads “civil disobedience, riot, insurrection, or rebellion or the failure to provide the method of providing police or fire protection.” This Court concluded that the admission of the word “or” between “provide” and “the method” was a scrivener’s error. Wells v. City of Lynchburg, 331 S.C. 296, 303-04, 501 S.E.2d 746, 750 (Ct. App. 1998).

“an act or omission of a person other than an employee including but not limited to the criminal actions of third persons.” Id. The loss sustained by Appellants resulted after a high school student discharged his firearm. Appellants do not allege that the high school student was an employee of the City. Public records reflect that the high school student was charged with five counts of attempted murder following this incident. Appellants’ “loss” under the Act resulted from the criminal actions of a third person. Under the plain language of subsection 15-78-60(20), the City is entitled to immunity for Appellants’ negligence and gross negligence claims.

Appellants argue subsection 15-78-60(20) does not provide blanket immunity to the City where the criminal act of a third person resulted in Appellants’ “loss” because governmental entities can be liable where their own negligence creates or enhances the risk of third-party criminal conduct. Appellants rely upon Greenville Mem’l Auditorium v. Martin, 301 S.C. 242, 391 S.E.2d 546 (1990) and Woodell by Allen v. Marion Sch. Dist. One, 307 S.C. 297, 414 S.E.2d 794 (Ct. App. 1992). Both of these cases are distinguishable from the facts here.

In Martin, a patron sought damages from the city for injuries received as a result of his being struck by a glass bottle which was thrown by an unknown third party from the balcony of the city auditorium during a rock concert. 301 S.C. at 243, 391 S.E.2d at 547. The city argued it was immune from liability under subsection 15-78-60(20) because the patron’s injuries were caused by the criminal acts of a third person. The court disagreed, finding the patron sought liability against the city for its own conduct in creating a reasonably foreseeable risk of such third party conduct. The city held the concert at its auditorium, but did not adequately secure or maintain its premises during the concert. The

city did not provide enough security guards for the event or provide reserved seating which led to an unruly atmosphere. Id. at 245-47, 391 S.E.2d at 548-49. The city was not immune for its own conduct in creating the risk.

In contrast to Martin, the City did not create the risk at the beach on April 7, 2023. The City did not hold the “Senior Skip Day” as the city held the concert in Martin. No affirmative act by the City created any danger that did not already exist on the public beach that day.

In Woodell, the guardian of a student who was assaulted at school by another student during school hours sued the school district, alleging that the district was grossly negligent in supervising the student and her assailant. The school district argued subsection 15-78–60(20) immunized it from liability for a loss caused by a third party's criminal action. This Court disagreed, noting the complaint did not seek to impose liability upon the school district for the alleged criminal act of the other student, but rather focused on the school district's alleged gross negligence in supervising the student victim and the student assailant. 307 S.C. at 297-98, 414 S.E.2d at 794-95.

In Woodell, the school district had a relationship with both the student victim and the student assailant giving rise to its own duty to supervise, protect, and control the students. Thus, the school district had independent liability separate from the criminal actions of the student assailant. Unlike the school district in Woodell, the City did not have any relationship with the Appellant victims or the high school student who discharged his firearm which could create liability of the City for its own actions.

More significantly, Martin and Woodell are distinguishable from this case for another critical reason even if Appellants’ complaint adequately pleads stand-alone

liability of the City for its alleged failure to supervise, control, and disperse crowds on the beach the day of the incident. In addition to immunity under subsection 15-78-60(20) for the criminal actions of a third person, the City is further entitled to immunity under subsection 15-78-60(6) for “the failure to provide [or] the method of providing police or fire protection.”<sup>4</sup> This immunity was not available to the defendants in Martin and Woodell.

In Huggins v. Metts, 371 S.C. 621, 640 S.E.2d 465 (Ct. App. 2006), the county sheriff’s department responded to a call about a man who was threatening to burn down homes and commit suicide. When the man, armed with butcher knives, continued towards police officers despite commands to stop, officers shot and killed him. After the man’s estate filed suit in federal court, the federal district court granted summary judgment in favor of the police and declined to exercise supplemental jurisdiction over the remaining state claims. Subsequently, a South Carolina circuit court also granted summary judgment in favor of police. Id. at 622-23, 640 S.E.2d at 465-66.

This Court subsequently affirmed the circuit court and held that subsection 15-78-60(6) “specifically exempts the Police from liability concerning the methods which they choose to utilize to provide police protection.” Id. at 624-25, 640 S.E.2d at 467. This Court further found this exemption includes “the preparation and events leading up to the time . . . preceding [the events that give rise to the claim].” Id. at 624, 640 S.E.2d at 467. Additionally, this Court went on to state that “[e]ven were we to accept all of [the estate’s] assertions as true, it would not remove the immunity which the legislature has bestowed on the Police in this situation.” Id. at 624-25, 640 S.E.2d at 467.

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<sup>4</sup> The Trial Court did not rule upon this ground in granting the motion to dismiss, but it may be raised by the City as respondent. Rule 220(c), SCACR; see also I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 419, 527 S.E.2d 716, 723 (2000).

This Court again addressed subsection 15-78-60(6) in Shelley v. S.C. Highway Patrol, 432 S.C. 335, 852 S.E.2d 220 (Ct. App. 2020). In Shelley, the estate of a motorist who was struck and killed in traffic brought survivorship and wrongful death causes of action against the highway patrol, alleging the patrol trooper was grossly negligent in leaving the motorist, who was alleged to be obviously impaired at the time, on the side of the road after the motorist moved his truck out of the roadway. Id. at 338-39, 852 S.E.2d at 221-22.

The trial court granted judgment to the highway patrol on the estate's claims, finding the claims collectively stated a failure to protect and were "derivative of the notion that [the trooper] should have protected [the motorist] from harm." Therefore, the trial court concluded the estate's failure to protect claims were barred under subsection 15-78-60(6) because they dealt with methods of protection. Id. at 340, 852 S.E.2d at 222.

This Court affirmed the trial court's ruling on appeal. This Court observed the estate's allegations of the complaint referenced a failure to protect the motorist. The claims specifically focused on a failure to protect the motorist and a failure to take appropriate action to safeguard the motorist. Further, this Court found the estate's policy violation claims that the trooper failed to properly follow highway patrol policy and that the highway patrol failed to terminate the trooper for his previous failure to follow policy were, in actuality, failure to protect claims because they were "completely intertwined" with the trooper's failure to protect the motorist. Accordingly, this Court held the trial court properly found the estate's claims were precluded by subsection 15-78-60(6). Id. at 344-46, 852 S.E.2d at 224-25.

As in Shelley, Appellants' claims are derived from the notion that the City should

have protected them from the third-party gunman. Appellants specifically alleged that the City was negligent:

- a. In failing to provide the appropriate reasonable and necessary **protection** and care to [Appellants];
- ...
- k. In failing to **protect** [Appellants];
- ...
- o. In failing to properly **protect** [Appellants] and take the proper steps to provide assistance to them when they knew or should have known that they were in such a state that they were unable to protect themselves.

[R.pp. \_\_\_; Compl., ¶ 26 (emphasis added).]

Moreover, the remainder of Appellants' allegations are, in form, allegations of deficient policymaking, training, supervision, and monitoring of individual officers, but they are, in effect, "failure to protect" claims and are similarly derived from the notion that the City failed to provide protection to Appellants. These allegations repeatedly reference a breach of care by the City due to failure to train and lack of adherence to policy to ensure the safety of Appellants and protection of Appellants from harm:

- e. In failing to properly train, monitor and supervise its personnel agents and/or employees so as to **ensure the safety of [Appellants]** when they had proper notice of threats of harm to [Appellants] and unreasonable risk of injury and harm to [Appellants];
- f. In failing to have appropriate policies and protocols in place to **provide for the safety and wellbeing of [Appellants];**
- ...
- h. In failing to properly train, monitor and/or supervise its employees, agents and/or staff **to ensure [Appellants] were protected from harm;**

...

- p. In failing to properly train, supervise and/or monitor its employees, agents, and/or staff, so as **to ensure that the general public (including [Appellants]) were provided with proper care and protection.**

[R.pp.. \_\_\_; Id. (emphasis added).]

Appellants' allegations above are akin to the allegations held by this Court in Shelley to be barred by subsection 15-78-60(6). The sole basis for Appellants' claims in this case is that the City failed to protect them from the criminal actions of a third person. The City's actions the day of incident concern the manner in which the police chose to provide police protection, and subsection 15-78-60(6) immunizes the decisions of law enforcement agencies about whether and how best to protect members of the general public from the criminal activity of third parties.

To find otherwise would invite every crime victim to sue every law enforcement agency and officer with jurisdiction. The intent of the Legislature in enacting subsection (6) was clearly to prevent such claims. Moreover, any doubt as to the intent of the Legislature in enacting this provision or the applicability of the provision in this case should be construed in favor of limiting the liability of the City. See S.C. CODE ANN. § 15-78-20(f) (stating that the governmental immunities provided under the Act "must be liberally construed in favor of limiting the liability of the [government entity]"). For the foregoing reasons, the City is entitled to absolute immunity under subsection 15-78-60(6) for the negligence and gross negligence claims asserted by Appellants.

**A The custodial immunity exception to the waiver of immunity does not apply to the facts of this case where neither the victims nor the gunman were students, patients, prisoners, inmates, or clients of the City; therefore, its gross negligence standard is not read into the subsections under which the City is immune from liability.**

Appellants argue that the gross negligence standard from subsection 15-78-60(25) must be read into the provisions of Section 15-78-60 which afford immunity to the City. Subsection (25) of § 15-78-60 provides that the governmental entity is not liable for loss resulting from “responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner.” § 15-78-60(25).

The custodial immunity in subsection 15-78-60(25) does not apply to the facts alleged in this case and as such, the gross negligence standard should not be incorporated into subsections 15-78-60(6) and (20) upon which the City relies for immunity.

The South Carolina Supreme Court has held that “[w]hen a governmental entity asserts an exception to the waiver of immunity and any other *applicable* exception contains a gross negligence standard, the Court must read the gross negligence standard into all of the exceptions under which the entity seeks immunity.” Plyler v. Burns, 373 S.C. 637, 651, 647 S.E.2d 188, 196 (2007) (emphasis added). The Supreme Court recently emphasized that “the immunity provision containing the gross negligence standard must actually apply to the case before it can be read into another immunity provision.” Repko v. Cty. of Georgetown, 424 S.C. 494, 504, 818 S.E.2d 743, 749 (2018) (emphasis in original). The Supreme Court also rejected the argument that simply because a governmental entity pled an immunity provision containing a gross negligence standard, such gross negligence

standard must be read into all other applicable immunity provisions. *Id.* at 504-06, 818 S.E.2d at 749-50.

Here, while the City initially pled subsection 15-78-60(25) as a part of its motion to dismiss [R.p. \_\_\_; Mtn. to Dismiss Memo., p. 6], the Trial Court did not find this subsection was applicable. [R.p. \_\_\_; Order.] And it is not applicable.

Subsection 15-78-60(25) refers to the “responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity” and is “applied in situations where a governmental entity is responsible for the actual physical accountability for the person[.]” *Plyler*, 373 S.C. at 652, 647 S.E.2d at 196. Appellants have not alleged that the victims or the third-party gunman were students, patients, prisoners, inmates, or clients of the City to trigger the application of this subsection. Neither the victims nor the gunman were in the custody or control of the City at any point. Both the victims and the gunman were instead members of the general public.

Therefore, because subsection 15-78-60(25) does not apply to the facts alleged in this case, the gross negligence standard of subsection (25) cannot be read into the immunity afforded to the City under subsections 15-78-60(6) and (20).

**B. The maintenance of public property exception to the waiver of immunity does not create potential liability of the City because the City is entitled to absolute immunity under separate and independent provisions of the South Carolina Tort Claims Act.**

Appellants further argue that dismissal of their complaint was not proper under subsection 15-78-60(16) of the Tort Claims Act. This subsection provides immunity for a loss resulting from “maintenance, security, or supervision of any public property, intended or permitted to be used as a park, playground, or open area for recreational purposes, *unless*

the defect or condition causing a loss is not corrected by the particular governmental entity responsible for maintenance, security, or supervision within a reasonable time after actual notice of the defect or condition.” S.C. CODE ANN. § 15-78-60(16) (emphasis added). In particular, Appellants contend this subsection permits liability when a governmental entity fails to correct a defect or condition of the property within a reasonable time after actual notice.

Appellants’ argument is misplaced. As set forth above, the City is absolutely immune from liability under subsections 15-78-60(6) and (20). Because these subsections grant per se immunity to the City, the Court does not need to reach subsection 15-78-60(16). See Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry, 403 S.C. 623, 634-35, 743 S.E.2d 808, 814 (2013) (rejecting plaintiff’s contention that defendant had not shown entitlement to discretionary immunity under the Tort Claims Act where other exceptions to the waiver of immunity applied to bar claims).

In addition, under subsection 15-78-60(16), a defect or condition of the public property must cause the loss. Appellants’ injuries caused by a discharged firearm are not the result of a defect or condition of the property. Accordingly, subsection 15-78-60(16) does not apply to create potential liability on behalf of the City for the allegations in the complaint.

**III. The Trial Court did not abuse its discretion in denying Appellants’ Rule 59(e) motion for reconsideration based upon newly discovered evidence where (1) the evidence was available prior to the Trial Court’s ruling on the motion to dismiss; and (2) the evidence does not alter the City’s entitlement to dismissal as a matter of law based upon the lack of duty and the immunities of the South Carolina Tort Claims Act.**

Appellants assert the Trial Court abused its discretion in denying their motion to reconsider pursuant to Rule 59(e), SCRCF when it denied Appellants’ motion without

considering newly discovered evidence. Appellants argue that “newly discovered evidence” showing that a City officer received a report of a firearm in the crowd before the shooting but failed to take action required the Trial Court to reinstate Appellants’ action against the City.

The “newly discovered evidence” to which Appellants refer is a witness affidavit of Elijah Yungwirth which was submitted in the case of Dehn v. City of Isle of Palms, No. 2025-CP-10-00179 (S.C. Ct. Com. Pl., Charleston Cty.) on July 17, 2025. [See R.pp. \_\_\_; Yungwirth Aff.] In this affidavit, Mr. Yungwirth avers that he witnessed the crowd on the Isle of Palms beach on April 7, 2023 and was informed by a female who jumped over a railing that she saw a gun in the crowd. Mr. Yungwirth stated he relayed this information to a City police officer. The officer asked Mr. Yungwirth if he personally witnessed the gun in the crowd, and Mr. Yungwirth advised the officer that he had not personally seen a gun. Mr. Yungwirth averred in his affidavit that he did not observe the officer take any action based on the information provided. [R.pp. \_\_\_; Id.]

As an initial matter, the Yungwirth affidavit was filed in the Dehn matter on July 17, 2025, more than two weeks before Appellants filed their opposition to the motion to dismiss on August 1, 2025 and before the hearing on the motion to dismiss held on August 4, 2025. [R.pp. \_\_\_; \_\_\_; \_\_\_; Yungwirth Aff.; Opp. Memo.; Tr.] Therefore, the Yungwirth affidavit was available prior to the Trial Court’s ruling on motion to dismiss and cannot constitute “newly discovered evidence.” The Trial Court therefore did not abuse its discretion in denying Appellants’ Rule 59(e) motion.

Furthermore, the Yungwirth affidavit does not change that the City (1) owed no duty to Appellants; and (2) is immunized for the failure to provide or the method of

providing police protection and for the criminal acts of third persons under S.C. CODE ANN. § 15-78-60(6) and (20). Mr. Yungwirth's claims that he informed a City officer that a female had seen a gun in the crowd only relate to the City's duty to the general public arising out of the governmental function of police protection. Additionally, Mr. Yungwirth's affidavit does not override the immunities afforded to the City under the Tort Claims Act. Specifically, Mr. Yungwirth's testimony relates to the City's alleged failure to provide police protection for which the City is immune from liability under subsection 15-78-60(6). For this additional reason, the Trial Court did not abuse its discretion in denying the Rule 59(e) motion.

**IV. Appellants are not entitled to amend the complaint where any amendment would be futile.**

Appellants also contend the Trial Court erred by dismissing the complaint pursuant to Rule 12(b)(6), SCRPC without affording an opportunity to amend. Appellants, however, have offered no conceivable set of facts which could support a duty owed to Appellants or which could remove the case from the immunities afforded under S.C. CODE ANN. § 15-78-60(6) and (20) for the failure to provide or the method of providing police protection and for the criminal actions of third persons. No matter what factual allegations Appellants may assert, the essence of this case remains one for the failure to protect against the criminal activities of third persons for which the City is immune as a matter of law under subsections 15-78-60(6) and (20).

Because any amendment to the complaint is futile, the Trial Court's dismissal of Appellants' negligence and gross negligence claims against the City should be affirmed. See Stokes v. Oconee Cty., 441 S.C. 566, 586, 895 S.E.2d 689, 699-700 (Ct. App. 2023); Santos v. Harris Inv. Holdings, LLC, 439 S.C. 214, 221-22, 886 S.E.2d 483, 486-87 (Ct.

App. 2023) (finding any amendment by plaintiff would have been futile as the entire premise for her complaint did not warrant relief and she failed to allege additional facts in her Rule 59(e) motion to support the allegations in her pleading).

**V. Interlocutory rulings by trial courts in separate cases did not prevent dismissal of Appellants' complaint against the City in this case.**

Finally, Appellants argue the Trial Court's dismissal of their complaint should be reversed because two other trial courts denied the City's motions to dismiss in similar cases and because offensive non-mutual collateral estoppel precludes the City from relitigating issues of Tort Claims Act immunity after other trial courts denied motions to dismiss based upon immunity.

Whether offensive non-mutual collateral estoppel precludes the City from litigating the issue of Tort Claims Act immunity in this case is not preserved for appellate review because Appellants did not raise this argument in their opposition to the motion to dismiss, at the motion to dismiss hearing, or in their motion for reconsideration. [R.pp. \_\_\_; \_\_\_; \_\_\_; Opp. Memo.; Tr.; Mtn. to Reconsider.] See Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (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 trial judge to be preserved for appellate review.").

Offensive non-mutual collateral estoppel also does not preclude the City from litigating either the issue of whether a duty to Appellants exists or Tort Claims Act immunity in this case because Appellants have not met the criteria for the doctrine. Offensive collateral "occurs when a party in a second action seeks to preclude a party from relitigating an issue which was decided in a previous action." S.C. Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc., 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991). The issue

of fact or law must be “actually litigated and determined by a valid and final judgment, [ ] the determination [must be] essential to the judgment, and the determination [must be] conclusive in a subsequent action between the parties . . . .” Id.

Critically, the judgment in the previous action must be final. An order denying a motion to dismiss is not a final judgment and decides nothing as the court may address the issues again in a subsequent motion for summary judgment or directed verdict. See McLendon v. S.C. Dep't of Highways & Pub. Transp., 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 n.2 (1994) (“Like the denial of a motion for summary judgment, the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings.”). Because there are no final orders in the Dehn and Mack cases, the doctrine of offensive non-mutual collateral estoppel did not preclude the City from raising the lack of duty and the immunities of the Tort Claims Act in this case.

Because the trial courts in the Dehn and Mack cases have not yet rendered final judgments, there is no inconsistency. Depending upon the outcome of this appeal, the trial courts in those cases may be well required to grant summary judgment or directed verdict to the City. Reversal of the Trial Court’s dismissal in this case is not required due to either the doctrine of offensive non-mutual collateral estoppel or speculative inconsistency.

**CONCLUSION**

For the reasons set forth herein, the City requests this Court to affirm the Trial Court's dismissal of Appellants' negligence and gross negligence claims with prejudice.

Respectfully submitted,

/s Carmen V. Ganjehsani

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**Attorneys For Respondents  
City of Isle of Palms and  
Isle of Palms Police Dept.**

February 11, 2026.

**RECEIVED**

**Feb 11 2026**

**CERTIFICATE OF SERVICE**

**SC Court of Appeals**

I, the undersigned, attorney for Respondents, City of Isle of Palms and Isle of Palms Police Dept., do hereby certify that I have this date served the foregoing Initial Respondents' Brief, dated February 11, 2026, by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Amended Order dated April 24, 2024, on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

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A copy of the sent email is enclosed with this Certificate of Service.

/s Carmen V. Ganjehsani  
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Date: February 11, 2026.

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Feb 11 2026

SC Court of Appeals

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**Subject:** 2025-002176 Campbell v. City of Isle of Palms et al.  
**Date:** Wednesday, February 11, 2026 4:20:00 PM  
**Attachments:** [2025-002176 Campbell v. IOP \(Initial Respondents" Brief\) \(4053621\).pdf](#)  
[2025-002176 Campbell v. IOP \(DOM\) \(4053250\).pdf](#)

Please find served upon you the Initial Respondents' Brief and Designation of Matter to be Included in the Record on Appeal on behalf of the Respondents the City of Isle of Palms and the Isle of Palms Police Dept.

Thank you,  
Carmen Ganjehsani

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