STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Kenneth Loveless, Plaintiff, -vs- Kevin Scully, Edward K. White, Flora E. "Beth" Hutchison, Michael Montgomery, and Beatrice Dennis-White, Defendants.	FIFTH JUDICIAL CIRCUIT COURT OF COMMON PLEAS CIVIL ACTION NO.: 2022-CP-40-01307 **ORDER GRANTING MOTION TO DISMISS OF DEFENDANTS WHITE, HUTCHISON, AND MONTGOMERY**

THIS MATTER came before the Court on February 3, 2026, on several motions in the above-captioned matter, including the Motion to Dismiss of Defendants Edward K. White, Flora E. "Beth" Hutchison, and Michael Montgomery (collectively the "Defendants"). In their motion, Defendants request that this Court dismiss Plaintiff's "Second Amended Complaint" filed on August 8, 2025, pursuant to Rule 12(b)(6), SCRCP.

Following review of pleadings filed by all parties, appropriate authorities, and the oral argument provided by all parties, this Court GRANTS the Defendants' Motion to Dismiss, and also orders that pending discovery motions involving these Defendants are either moot or have already been withdrawn by Plaintiff.

PROCEDURAL BACKGROUND

This case has a long history. In 2022, Plaintiff initially brought it as a state court complaint against Kevin Scully. Plaintiff requested permission to file a Second Amended Complaint ("SAC") in the matter on November 15, 2024, specifically requesting to add the three Defendants referenced above (White, Hutchison, and Montgomery) as additional parties, and raising claims

against them for Civil Conspiracy and Outrage. As set forth in greater detail below, Plaintiff has earlier attempted to bring these claims in U.S. District Court, and they were dismissed without prejudice.

Defendants opposed Plaintiff's motion, and following extensive briefing and oral argument, the Court granted Plaintiff's motion on July 25, 2025. Shortly thereafter, on July 29, 2025, Defendants filed their Motion to Reconsider under Rule 59(e), SCRCP.

While the Motion to Reconsider was pending, Plaintiff filed his Second Amended Complaint with the Court on August 8, 2025, which the Defendants moved to dismiss on August 11, 2025. After the Court denied Defendants' Motion to Reconsider on August 26, 2025, Defendants filed a supplemental memorandum of law in support of their pending Motion to Dismiss.

PLAINTIFF'S SECOND AMENDED COMPLAINT

A. PLAINTIFF'S PREVIOUS FEDERAL CASE.

On October 25, 2023, Plaintiff filed an Amended Complaint in the U.S. District Court for the District of South Carolina, Case No. 3:23-cv-02001-MGL, against Edward K. White, Flora E. "Beth" Hutchinson, and Michael Montgomery, asserting for the first time claims for Conspiracy and Outrage against them in addition to a claim under 42 U.S.C. § 1983. Plaintiff based his claim on actions allegedly taken by White, Hutchinson, and Montgomery on or before September 14, 2020, at a School Board meeting that Plaintiff described as a "retaliatory attack" and a "dog and pony show."

On September 20, 2024, the U.S. District Court dismissed Plaintiff's claim under 42 U.S.C. § 1983 with prejudice. The Court also dismissed the Conspiracy and Outrage claims without prejudice, noting that – pursuant to 28 U.S.C. § 1367(d) – "the period of limitations for these

remaining shall be tolled while the claims are pending and for a period of 30 days after they are dismissed, unless State law provides for a longer tolling period."

Plaintiff did not refile any claims in state court within the period described by 28 U.S.C. § 1367(d). Rather, on November 15, 2024, Plaintiff filed a "Motion for Second Amended Complaint" under Rule 15(a), SCRCP, seeking to add White, Hutchinson, and Montgomery as additional defendants to this action and bring causes of action against them for Conspiracy and Outrage.

B. PLAINTIFF'S ALLEGATIONS.

Plaintiff was an elected Board Member of School District Five of Lexington and Richland Counties from November 2018 to November 2022, when he lost his bid for reelection. (Second Amended Complaint, or "SAC," ⁋ 1). While serving as a School Board member, Plaintiff investigated a school construction project and, on March 24, 2020, delivered a "detailed report" to then-Superintendent Christina Melton detailing his concerns. (SAC, ⁋ 19). Plaintiff alleges that this report prompted Defendants to prepare materials to "discredit [Plaintiff] and dispute his concerns," culminating in a Board meeting on September 14, 2020, at which Defendants "attacked" Plaintiff's credibility. (SAC, ⁋⁋ 20-48).

C. PLAINTIFF'S CURRENT CLAIMS.

Plaintiff's Second Amended Complaint contains two (2) causes of action against Defendants.[1] The Second Cause of Action is for Civil Conspiracy, and the Third Cause of Action

[1] Plaintiff also attempted to include a defamation claim against White and Hutchison in the Second Amended Complaint, even though Plaintiff did not request, nor did he receive, permission of the Court to assert these claims. At the hearing, Plaintiff's counsel admitted that the claims were not proper and requested to dismiss them. As such, the defamation claims against White and Hutchison are dismissed with prejudice.

is for "Outrage," more often entitled a claim for Intentional Infliction of Emotional Distress ("IIED").

COURT'S ORDER

I. EACH OF PLAINTIFF'S CLAIMS ARE BARRED BY LEGISLATIVE IMMUNITY, AND ARE ALSO BARRED BY IMMUNITY RELATED TO THE ATTORNEY-CLIENT RELATIONSHIP.

A. LEGISLATIVE IMMUNITY.

The U.S. Supreme Court has held that state and regional legislators are entitled to absolute immunity from liability for their legislative activities. *Bogan v. Scott-Harris*, 523 U.S. 44, 49, 118 S. Ct. 966, 970, 140 L. Ed. 2d 79 (1998).

> Whether an act is legislative turns on the nature of the act, rather than on the motive or intent of the official performing it. The privilege of absolute immunity "would be of little value if [legislators] could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives."

Id. at 54, 118 S. Ct. at 973 (citations omitted). Further, because legislators generally cannot perform their legislative roles without the assistance of aides, legislative immunity extends to the agents of legislators. *Gravel v. United States*, 408 U.S. 606, 616-17, 92 S.Ct. 2614, 33 L.Ed.2d 583 (1972). Lower courts have extended that premise to find that even legislative employees in administrative roles can be entitled to legislative immunity. *See Nat'l Ass'n of Social Workers v. Harwood*, 69 F.3d 622, 625 (1st Cir. 1995) (finding legislative immunity protected Rhode Island House of Representatives Door Keeper).

Actions are "legislative" when they are "integral steps in the legislative process." *Id*. at 55, 118 S. Ct. at 973 (voting on an ordinance, preparing a budget, and signing an ordinance into law are all "legislative acts" protected by absolute immunity). For instance, local elected board members have absolute legislative immunity when they discipline another member. *Chase v. Senate of Virginia*, 539 F. Supp. 3d 562, 570 (E.D. Va. 2021) (citing *Whitener v. McWatters*, 112

F.3d 740, 741 (4th Cir. 1997)). The Fourth Circuit has also found that "[s]peaking before a legislative body is ... a type of legislative activity to which absolute immunity applies." *Kensington Volunteer Fire Dep't, Inc. v. Montgomery Cnty., Md.*, 684 F.3d 462, 471 (4th Cir. 2012); *Myers v. Town of Colmar Manor*, 457 F. Supp. 3d 480, 492 (D. Md. 2020).

The Court finds that the former Board Members speaking at a School Board meeting on a matter related to the construction of school buildings, or preparing for such a meeting, are engaged in quintessential "legislative acts." The Fourth Circuit has held that local county board members discussing and voting on a zoning matter at a board meeting were protected by legislative immunity, even where "the defendant members of the Council met with a number of their constituents [prior to the board meeting] who had selfish interests in the passage of the zoning ordinance and were influenced in their vote as a result of the meetings." *Bruce v. Riddle*, 631 F.2d 272, 279 (4th Cir. 1980).

To the extent Plaintiff believes that the Defendants engaged in a "personal attack" against him during the discussion that took place at the School Board meeting on September 14, 2020, Plaintiff's reliance on the "personal" nature of the Defendants' speech dooms his claim. The U.S. Supreme Court has held that "motive" is of no consequence in determining whether a legislator is entitled to absolute immunity from liability for their legislative activities. *Bogan*, 523 U.S. at 49, 118 S. Ct. at 970.

> Whether an act is legislative turns on the nature of the act, **rather than on the motive or intent of the official performing it**. The privilege of absolute immunity "would be of little value if [legislators] could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives."

Id. at 54, 118 S. Ct. at 973 (citations omitted) (emphasis added).

Further, Plaintiff also cannot rely on *Alexander v. Holden*, 66 F.3d 62 (4th Cir. 1995), to support his argument that the Defendants' alleged acts were "administrative" rather than "legislative" in nature. *Alexander* involves the decision of a county council to terminate the employment of a specific person by eliminating the funding for her position. Noting that budgetary decisions are generally "legislative" in character, and that employment and personnel decisions are generally "administrative" acts, the Fourth Circuit determined that the "case does not involve the elimination of a position through a Board's preparation of a budget ordinance, but rather the elimination of a particular position's salary, the consolidation of that position with another, and a refusal to hire or reappoint Alexander to the newly created position, thereby effectuating her termination. Consequently, we classify defendants' action as an administrative personnel decision." 66 F.3d at 66-67. As such, the case bears no resemblance to the alleged acts of the Defendants in this case, where they are accused of preparing to speak on an issue at the School Board meeting, and speaking at the meeting. There is no allegation that the Defendants engaged in an administrative personnel decision.

Finally, the Court rejects Plaintiff's argument that Defendant Montgomery is not entitled to legislative immunity because "he participated in and helped facilitate the retaliatory attack on Loveless" but was not himself a Board member. Legislative immunity extends to the agents of legislators. *Gravel,* 408 U.S. at 616-17; *Harwood,* 69 F.3d at 625. Given Plaintiff's own allegations that Defendant Montgomery assisted the Board with legal advice and "gathering information" concerning the matters raised in Plaintiff's letter of March 24, 2020, which purportedly assisted the Board members with their "attack" on September 14, 2020, it is clear that Defendant Montgomery is also entitled to legislative immunity. *Kness v. City of Kenosha, Wis.*, 669 F. Supp.

1484, 1490 (E.D. Wis. 1987) ("The Mayor's presiding over the council and the City Attorney's drafting of the ordinance are activities immune from suit…").

B. ATTORNEY-CLIENT PRIVILEGE.

Defendant Montgomery has the additional defense of acting as an attorney for the District. "[A]n attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client. Accordingly, an attorney who acts in good faith with the authority of his client is not liable to a third party in an action for malicious prosecution." *Stiles v. Onorato*, 318 S.C. 297, 298, 457 S.E.2d 601, 602 (1995) (quoting *Gaar v. N. Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 528-529, 339 S.E.2d 887, 889 (S.C. App. 1986)). Plaintiff has stated conclusory legal assertions that Montgomery allegedly acted outside the scope of his professional duties, but the Second Amended Complaint is wholly lacking in any factual assertion that Montgomery acted outside the scope of his representation in any regard.

In *Stiles*, the South Carolina Supreme Court affirmed dismissal of a lawsuit where one party brought a third-party complaint against the opposing party's attorney. The *Stiles* Court held that the opposing party's attorney cannot be held liable unless the attorney acted outside the scope of his representation to a client. 318 S.C. at 300, 457 S.E.2d at 602. The Court explained that a court **must** dismiss a complaint that alleges the attorney acted within his scope:

> Nowhere in the complaint does Onorato allege in what manner Bowen acted outside his role as Stiles' attorney nor does he allege that Bowen breached some independent duty owed to Onorato. Therefore, on the face of his complaint, the only reasonable inference is that Bowen was acting at all times in his capacity as Stiles' attorney. Under *Gaar*, Bowen is immune for any activities taken in his professional capacity. Accordingly, under *Gaar*, Onorato's complaint was fatally deficient and Bowen's Rule 12(b)(6) motion was properly granted.

Stiles, 318 S.C. at 300, 457 S.E.2d at 603.

II. EACH OF PLAINTIFF'S CLAIMS ARE BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

Plaintiff's claims are barred by the applicable statute of limitations. Plaintiff's Second Amended Complaint confirms that he bases his proposed "civil conspiracy" and "outrage" claims on the alleged acts of the Intervenors that occurred on, or prior to, September 14, 2020. (SAC, ¶¶ 20-38).

The statute of limitations for claims of Conspiracy or Outrage (or Intentional Infliction of Emotional Distress) is ordinarily three (3) years. However, to the extent that White, Hutchinson, and Montgomery were either officials or agents of the School Board of Trustees for Lexington-Richland District Five, they are covered by the South Carolina Tort Claims Act (the "Act"), and for that reason, the statute of limitations for each of these claims is two (2) years. S.C. Code Ann. § 15-78-110; *Flateau v. Harrelson*, 355 S.C. 197, 208, 584 S.E.2d 413, 419 (S.C. App. 2003); *Young v. S.C. Dep't of Corr.*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (S.C. App. 1999).

Under either the two- or three-year statute of limitations, because Plaintiff brought his claims for Conspiracy and Outrage against White, Hutchinson, and Montgomery in U.S. District Court on October 25, 2023, and the claims accrued on October 14, 2020, the statute of limitations had already expired by the time Plaintiff first brought them in federal court.

On September 20, 2024, the U.S. District Court dismissed Plaintiff's claim under 42 U.S.C. § 1983 with prejudice. The U.S. District Court also dismissed the Conspiracy and Outrage claims without prejudice, noting that – pursuant to 28 U.S.C. § 1367(d) – "the period of limitations for these remaining claims shall be tolled while the claims are pending and for a period of 30 days after they are dismissed, unless State law provides for a longer tolling period." [U.S. District Court

Order, NEF Dkt. #63, pp. 12-13]. However, because the statute of limitations had already passed for these claims, the provisions of 28 U.S.C. § 1367(d) could not resurrect them.

> Section 1367(d) is phrased as a tolling provision. It suspends the statute of limitations for two adjacent time periods: while the claim is pending in federal court and for 30 days postdismissal.

Artis v. D.C., 583 U.S. 71, 83, 138 S. Ct. 594, 603, 199 L. Ed. 2d 473 (2018) (describing as an "absurdity" the claim that 1367(d) permits a plaintiff "to refile in state court even if the limitations period on her claim had expired before she filed in federal court").

In any event, Plaintiff did not refile any claims in state court within the period described by 28 U.S.C. § 1367(d). Rather, on November 15, 2024, Plaintiff filed his "Motion for Second Amended Complaint," and on August 8, 2025, Plaintiff filed his "Second Amended Complaint."

Amazingly, Plaintiff relies on his self-described "discovery" of the alleged "conspiracy" in later discovery in the *Scully* matter to justify his delay in attempting to bring these claims. This argument runs directly counter the well-established South Carolina law concerning the accrual of causes of action and their applicable statutes of limitations.

"Generally, a cause of action accrues under South Carolina law the moment the defendant breaches a duty owed to the plaintiff." *Allwin v. Russ Cooper Assocs., Inc*., 426 S.C. 1, 12, 825 S.E.2d 707, 713 (S.C. App. 2019). However, under the "discovery rule," as discussed in *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 787 S.E.2d 485 (2016), the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist.

> This standard as to when the limitations period begins to run is *objective* rather than subjective. Therefore, the statutory period of limitations begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto.

Allwin, 426 S.C. at 12–13, 825 S.E.2d at 713 (emphasis in the original).

Notably, the "date when a plaintiff learns of a potential new defendant has **absolutely no bearing** on the timing of a statute of limitations." *Gillman v. City of Beaufort*, 368 S.C. 24, 27–28, 627 S.E.2d 746, 748 (S.C. App. 2006) (emphasis added).

Respectfully, Plaintiff's argument would require this Court to turn established South Carolina law directly on its head. Plaintiff has claimed that the Defendants were a part of a conspiracy and based his claim on actions allegedly taken by White, Hutchinson, and Montgomery on or before September 14, 2020, at a School Board meeting that Plaintiff has described as a "retaliatory attack" and a "dog and pony show." According to his own pleadings, and the pleadings he filed in his federal case, Plaintiff absolutely knew on September 14, 2020, that Defendants were involved in the very event that forms the very basis of his conspiracy and outrage claims – the so-called "retaliatory attack" on September 14, 2020. His claim that he "first discovered" the involvement of the Defendants sometime after September 14, 2020 is contrary to the record before the Court. *See also Joubert v. S.C. Dep't of Soc. Servs.*, 341 S.C. 176, 190, 534 S.E.2d 1, 8 (S.C. App. 2000) (statute of limitations begins to run when the plaintiff should know that he might have a potential claim against another, not when he develops a full-blown theory of recovery).

For these reasons, Plaintiff's claims in his "Second Amended Complaint" against the Defendants are barred and must be dismissed with prejudice.

III. PLAINTIFF'S CLAIMS ARE BARRED BECAUSE HE HAS FAILED TO MEET THE BASIC PLEADING STANDARDS OF EACH OF HIS CLAIMS.

A. CIVIL CONSPIRACY.

To support his civil conspiracy claim, Plaintiff relies entirely on the allegations that also support his other claims, including his claim for "Outrage." (SAC, ¶¶ 120-121). This is fatal to his civil conspiracy claim.

A plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means,[2] (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff. *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021) (abolishing the requirement that a plaintiff must plead "special damages" as part of a civil conspiracy claim). Also, in order to state a civil conspiracy following the Supreme Court's decision in *Paradis*, a plaintiff must also allege "additional acts" that are independent of the basis of any other of the plaintiff's causes of action.

> Although the *Paradis* court held that special damages are no longer a required element of a civil conspiracy claim in South Carolina, Lang's claim for conspiracy fails on two grounds independent thereof. First, the Magistrate Judge initially recommended dismissal of the conspiracy claim because Plaintiff did not identify concrete acts that are independent of any other alleged wrongdoing. Rather, **Plaintiff based his civil conspiracy claim on the same alleged actions that serve as the basis for his other causes of action**.

[2] In Justice Kittredge's concurrence in *Paradis*, he explained that "[i]t is the second element – to commit an *unlawful act* or a lawful act by *unlawful means* – that restores an objective legal standard to this cause of action. When the appellate courts of this state approved of an analytical framework that allowed one's personal sense of fairness and right and wrong to be sufficient for a civil conspiracy claim, we created a rudderless cause of action. Justice Few correctly observes that the post-*Todd* sanctioned civil conspiracy claim 'permit[ted] the court and jury to impose liability for lawful, non-tortious conduct based on a court or juror's sense of fairness or responsibility.' I do not construe Justice Few's concurrence as 'abolishing' civil conspiracy. Rather, by restoring the traditional elements of a civil conspiracy claim and overruling *Todd*'s so-called special damages pleading requirement, this Court returns civil conspiracy to its historical roots." *Paradis*, 433 S.C. at 578, 861 S.E.2d at 782

Lang v. Furman Univ., 2022 WL 816455, at *1 (D.S.C. Mar. 16, 2022) (emphasis added). Similarly, in the instant case, Plaintiff has failed to plead any "additional acts" in support of his civil conspiracy claim. Indeed, Plaintiff's pleading actually requires the court to look to other causes of action to define the nature of his civil conspiracy claim, as the Amended Complaint does not describe a single act taken in furtherance of the alleged civil conspiracy that it is not also alleged in his other causes of action. *Doe 9 v. Varsity Brands, LLC*, 2023 WL 4191782, at *18 (D.S.C. June 26, 2023) (where plaintiff "has merely summarized the allegations underlying her other causes of action and repackaged them into a claim for civil conspiracy," she has not identified "additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in [her] complaint," and thus has failed to state a valid claim for civil conspiracy) (citing *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 682 S.E.2d 871, 875 (S.C. App. 2009), *overruled on other grounds by Paradis*, 861 S.E.2d at 780).

Furthermore, and perhaps more fundamentally, Plaintiff was an elected official, answerable to the public. "In our democratic society, a public official is answerable to the public; members of the public are not third-party interlopers. **Because of [plaintiff's] status as a public official, we conclude his action for civil conspiracy cannot be maintained against any of these defendants**." *Angus v. Burroughs & Chapin Co.*, 368 S.C. 167, 170, 628 S.E.2d 261, 262 (2006) (emphasis added).

For these reasons, Plaintiff's civil conspiracy claim is barred and must be dismissed with prejudice.

B. "OUTRAGE."

Plaintiff's claim for "outrage" or "intentional infliction of emotional distress" (IIED) against the Defendants is barred by the South Carolina Tort Claims Act (the "Act"). According to

Plaintiff, the Defendants are, or were, public officials and/or agents, and are thus covered under the Act, which **explicitly excludes** losses from "the intentional infliction of emotional harm." S.C. Code § 15-78-30(f); *Gore v. Dorchester Cnty. Sheriff's Off.*, 442 S.C. 438, 443, 900 S.E.2d 423, 426 (2024) ("The bar to recovery for the intentional infliction of emotional distress in section 15-78-30(f) applies to the subset of claims for the reckless infliction of emotional distress."); *Munday v. Beaufort Cnty.*, 2023 WL 2643792, at *9 (D.S.C. Mar. 27, 2023); *Ward v. City of North Myrtle Beach*, 457 F. Supp. 2d 625, 647 (D.S.C. 2006) ("[T]he South Carolina Tort Claims Act excludes the intentional infliction of emotional harm from the definition of 'loss' for which a government may be liable under the Tort Claims Act."); *McDowell v. S.C. Dep't of Pub. Safety*, 2023 WL 3440336, at *3 (D.S.C. Feb. 28, 2023), *report and recommendation adopted,* 2023 WL 3434776 (D.S.C. May 12, 2023) (same); *Densmore v. City of Greenville*, 2011 WL 11733107, at *1 (S.C. App. Mar. 4, 2011) ("The trial court properly granted summary judgment to Respondents on the cause of action for intentional infliction of emotional distress because the South Carolina Tort Claims Act specifically excludes the cause of action.").

Furthermore, Plaintiff has simply failed to sufficiently articulate a claim for "intentional infliction of emotional distress." Even if Plaintiff's claim was not barred as a matter of law, he failed to produce evidence sufficient to enable his IIED claim to survive summary judgment.

To state a *prima facie* case for an IIED claim and avoid summary judgment, a plaintiff has the burden of showing that the defendant: (1) "intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct," (2) that the conduct was so outrageous it exceeded "all possible bounds of decency" and so "atrocious" it was "utterly intolerable in a civilized community," (3) such actions actually caused plaintiff's emotional distress; and (4) the emotional distress was so severe "no reasonable man

could be expected to endure it." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 356-358, 650 S.E.2d 68, 70-71 (2007).

Furthermore, as recognized in *Hansson*, a cause of action for IIED carries a "heightened burden of proof." 374 S.C. at 356, 650 S.E.2d at 71. Accordingly, the "mere scintilla" rule does not apply to this cause of action. Rather, the court must determine whether "reasonable minds could differ as to whether [the] conduct was sufficiently 'outrageous'" and "whether [the] resulting emotional distress was sufficiently 'severe.' " 374 S.C. at 358, 650 S.E.2d at 71–72. This responsibility, which our Supreme Court has called "a significant gatekeeping role in analyzing a defendant's motion for summary judgment," requires the circuit court to determine whether a *prima facie* case has been established. 374 S.C. at 358, 650 S.E.2d at 72; *Strickland v. Madden*, 323 S.C. 63, 68, 448 S.E.2d 581, 584 (S.C. App. 1994) ("Initially ... the [circuit] court determines whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery, and only where reasonable persons might differ is the question one for the jury.").

Here, to the extent one can identify factual allegations that relate to any specific acts by any of the Defendants that relate to Plaintiff's proposed IIED claim, Plaintiff has still failed utterly to set forth factual allegations that meet this demanding standard.

The appellate courts in South Carolina have made it quite clear that conduct must be outrageous and utterly intolerable before an IIED cause of action can be maintained, and have held that this tort will not be allowed to become a "panacea for wounded feelings rather than reprehensible conduct." *See Gattison v. South Carolina State College*, 318 S.C. 148, 456 S.E.2d 414 (S.C. App. 1995) (significant and ongoing humiliations at work not "severe" enough to support IIED claim); *Hawkins v. Greene*, 311 S.C. 88, 91, 427 S.E.2d 692, 694 (S.C. App. 1993) (conduct not "severe" enough to sustain IIED claim where doctor inaccurately told mother that her newborn

baby was dead); *Todd v. South Carolina Farm Bureau Mutual Insurance Company*, 283 S.C. 155, 171, 321 S.E.2d 602, 611 (S.C. App. 1984) *rev'd on other grounds,* 287 S.C. 190, 336 S.E.2d 472 (1985) (fact that an independent contractor – retained by plaintiff's employers to conduct an investigation – lied and also asked Plaintiff to take an illegal voice stress analysis test was not sufficient to establish IIED claim).

In a similar case, the U.S. District Court for the District of South Carolina, applying South Carolina law, ruled that "[r]eporting information about a crime is not sufficiently outrageous to create a jury question" in the context of a claim for intentional infliction of emotional distress, even where the plaintiff was arrested and detained overnight, and where the charges were subsequently dropped. *Richardson v. Rent–A–Center East, Inc*., 2012 WL 171673, at *3 (D.S.C. January 20, 2012). The court reasoned as follows:

> Moreover, Defendant's conduct is not made more reprehensible by the fact that they reported the conduct to the police rather than another private party. The Defendant had reason to believe that the police, as they in fact did, would investigate the report before deciding to make an arrest. Additionally, Plaintiff suffered no physical harm. The court, therefore, finds that Defendant's actions do not "rise to the level of being atrocious and utterly intolerable in a civilized community."

Id. (citations omitted); *see also Roberts v. City of Forest Acres*, 902 F. Supp. 662, 672 (D.S.C. 1995) (claim for intentional infliction of emotional distress did not survive summary judgment because conduct was "simply was not sufficiently outrageous or intolerable so as to support a reasonable finding of intentional infliction of emotional distress," where National Guardsman was arrested for speeding, became upset when the officer would not accept his excuse, was arrested for disorderly conduct as well as speeding, and charges were eventually dismissed); *Trahey v. Grand Strand Reg'l Med. Ctr./HCA Healthcare, Inc. Parallon*, 2023 WL 2643833, at *5 (D.S.C. Mar. 27, 2023) ("Defendant Hilton's taking of a corrective action, bullying, yelling, harassment, gloating

and investigation of employees as activities insufficient to be so 'extreme and outrageous' so as to exceed 'all possible bounds of decency.'").

Just as Plaintiff's evidence is insufficient to establish that the Defendants' conduct was so outrageous it exceeded "all possible bounds of decency" and so "atrocious" it was "utterly intolerable in a civilized community," it is also insufficient to establish that her emotional distress was sufficiently "severe," such that "no reasonable man could be expected to endure it." *Hansson*, 374 S.C. at 358, 650 S.E.2d at 72. By way of further explanation, our Supreme Court has ruled as follows:

> Under **the heightened standard of proof for emotional distress claims** emphasized in *Ford* [*v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981)], a party cannot establish a *prima facie* claim for damages resulting from a defendant's tortious conduct with mere bald assertions. To permit a plaintiff to legitimately state a cause of action by simply alleging, 'I suffered emotional distress' would be irreconcilable with this Court's development of the law in this area. In the words of Justice Littlejohn, the court must look for something 'more'— in the form of third party witness testimony and other corroborating evidence — in order to make a *prima facie* showing of 'severe' emotional distress.

Hansson, 374 S.C. at 358–59, 650 S.E.2d at 72 (emphasis added). In rejecting Hansson's IIED claim, the Court noted that Hansson's alleged emotional damages rested on his testimony that "he lost sleep at night and that he visited a dentist who told him he appeared to be grinding his teeth in his sleep. He further testified that his condition necessitated a second trip to the dentist and 'a couple hundred dollars' for fillings and a tooth cap." 374 S.C. at 359, 650 S.E.2d at 72. As a matter of law, this kind of emotional damage was insufficiently "severe" to support an IIED claim.

Similarly, in *AJG Holdings LLC v. Dunn*, 392 S.C. 160, 708 S.E.2d 218 (S.C. App. 2011), the appellate court found that summary judgment was properly granted where counterclaim-plaintiffs, the Dunns, testified that Respondents' actions caused high blood pressure and digestive problems, that Mr. Dunn's nerves were "shot" and that he took medication for his high blood

pressure and nervousness, and that Mrs. Dunn had been "emotionally ill" and had lost twenty pounds. 392 S.C. at 169, 708 S.E.2d at 224. The appellate court affirmed the circuit court's determination that the Dunns did not establish a *prima facie* case that their emotional distress was sufficiently severe. 392 S.C. at 171, 708 S.E.2d at 224.

Thus, even in the light most favorable to Plaintiff, the facts as he has alleged simply do not rise to the level of conduct that was so outrageous it exceeded "all possible bounds of decency" and so "atrocious" it was "utterly intolerable in a civilized community."

For this reason alone, Plaintiff's "outrage" claim is barred and should be dismissed with prejudice.

CONCLUSION

For the reasons stated above, I hereby GRANT the Motion to Dismiss of Defendants Edward K. White, Flora E. "Beth" Hutchison, and Michael Montgomery under Rule 12(b)(6), DISMISS each of Plaintiff's claims against them with prejudice, with each side to bear its own costs and fees.

AND IT IS SO ORDERED.

_____
The Honorable Daniel Coble
Presiding Judge
Fifth Judicial Circuit

_____, 2026
Columbia, South Carolina

Richland Common Pleas

Case Caption: Kenneth B Loveless vs Kevin Scully , defendant, et al

Case Number: 2022CP4001307

Type: Order/Dismissal

So Ordered

s/ Daniel Coble, 2774