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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Common Pleas Case No.: 2024-CP-08-01894
Appellate Case No.: 2025-001090

Erik Lebkicher, Carissa Lebkicher, and
E. L., a minor child,.....Appellants,

v.

Stephanie Davidson & Drew P.
Finnegan,.....Respondents.

RECORD ON APPEAL

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March 31, 2026

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Erik Lebkicher et al
PLAINTIFF(S)

Stephanie Davidson et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Defendant Stephanie Davidson's Motion to Dismiss Plaintiff's Second Amended Complaint, filed 11/14/2024, and Defendant Drew P. Finnegan's Motion to Dismiss Plaintiff's Second Amended Complaint, filed 11/21/2024, were heard by this court on 2/20/2025. Present at the hearing was Paul Ferrara III on behalf of Plaintiff, Daniel Ranaldo on behalf of Defendant Stephanie Davidson, and Carlisle Allen on behalf of Defendant Drew Finnegan. The court heard testimony from all parties and upon careful consideration of the arguments and submissions by counsel, this court hereby GRANTS Defendants' motions. The court requests Defendants' counsel submit formal proposed orders in a word document to the court within ten (10) days of this order. The court will then review and edit as deemed appropriate.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/25/2025 .

Brett Davidson

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Berkeley Common Pleas

Case Caption: Erik Lebkicher , plaintiff, et al VS Stephanie Davidson , defendant, et al
Case Number: 2024CP0801894
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2025-03-25 11:05:12 page 3 of 3

Erik Lebkicher et al
PLAINTIFF(S)

Stephanie Davidson et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter was before the Court on April 3, 2025 upon Plaintiff Erik Lebkicher's Motion to Alter/Amend. Attorney Paul Ferrara was present on behalf of the Plaintiff. Attorney Dan Ranaldo was present on behalf of Defendant Stephanie Davidson.

After discussion with the parties, the Court determined that this matter is to be continued to another term of Court pending entry of an Order by Judge McCoy on Defendants Motions to Dismiss that were heard on February 20, 2025.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/04/2025 .

Brett Davidson

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Berkeley Common Pleas

Case Caption: Erik Lebkicher , plaintiff, et al VS Stephanie Davidson , defendant, et al
Case Number: 2024CP0801894
Type: Order/Electronic Form 4

And It Is So Ordered!

s/Dale E. Van Slambrook S.C. Circuit Court Judge
#2781

Electronically signed on 2025-04-04 15:24:04 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Erik Lebkicher, Carissa Lebkicher, E.L., a
minor child,

Plaintiffs,

vs.

Stephanie Davidson & Drew P. Finnegan,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2024-CP-08-01894

**ORDER GRANTING DEFENDANT
DAVIDSON'S MOTION TO DISMISS
PLAINTIFFS' SECOND AMENDED
COMPLAINT AND DISMISSING THIS
ACTION WITH PREJUDICE**

THIS MATTER came before this Court on February 20, 2025, pursuant to Defendant Davidson's Motion to Dismiss Plaintiff's Second Amended Complaint, filed on November 14, 2024, and Defendant Finnegan's Motion to Dismiss Plaintiff's Second Amended Complaint, filed on November 21, 2024. Present at the hearing were Paul Ferrera III on behalf of the Plaintiff, Daniel Ranaldo on behalf of Defendant Davidson, and Carlisle Allen on behalf of Defendant Finnegan. After careful review and consideration of the submission of the parties, applicable law, oral arguments, and the reasons set forth below, this Court hereby GRANTS Defendant Davidson's Motion to Dismiss.

BACKGROUND

This matter arises out of a dog bite incident that occurred on July 10, 2021 at the property owned by Stephanie Davidson while Plaintiff Erik Lebkicher was dog sitting for the defendants and plaintiffs' minor child was bitten. USAA issued a homeowner's policy to defendant Davidson and offered payment of the policy limits in settlement of the minor's claim before plaintiffs were represented or this suit filed. Mr. Lebkicher accepted the offer to settle the minor's claim, and USAA remains ready and willing to tender payment of the

policy limits in settlement of the minor's claim and proceed with a court approval hearing. State Farm issued a policy to Defendant Davidson and offered its policy limits to settle which was accepted as well. Plaintiffs retained Paul Ferrera III, Esq. sometime thereafter.

On July 10, 2024, Plaintiffs' counsel filed a Summons and Complaint that, in addition to the minor's claim, included claims on behalf of the minor's parents, plaintiffs Erik Lebkicher and Carissa Lebkicher. Plaintiffs' Summons and Complaint was never served on defendant Davidson. Plaintiffs' counsel did not provide the defense with a courtesy copy of the Summons and Complaint, nor provide any notice that litigation was being instigated.

The statute of limitations expired on July 10, 2024. On July 12, 2024, Plaintiffs' counsel filed an Amended Summons and Complaint which was filed after the statute of limitations expired and never served on defendant Davidson. Plaintiffs' counsel did not provide the defense with a courtesy copy of the Amended Summons and Complaint, nor provide any notice that litigation was being instigated.

On October 17, 2024, Plaintiffs' counsel filed a purported Second Amended Summons and Complaint which was filed after the statute of limitations expired and was served on defendant Davidson on or about October 25, 2024. Defendant Davidson's Motion to Dismiss was filed on November 14, 2024 on the grounds that plaintiffs did not obtain leave of court or consent of defendants to amend their complaint a second time, that process and service of process on defendant Davidson is insufficient, and that this Court lacks jurisdiction over defendant Davidson.

LAW/ANALYSIS

"Civil actions may only be commenced within the periods prescribed in this title

after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute.” S.C. Code Ann. § 15-3-20(A). A civil action is commenced upon the filing of the summons and complaint, *if*:

- (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or
- (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing.

Rule 3, SCRCP (emphasis added). See S.C. Code Ann. § 15-3-20(B).

“A party may amend his pleading *once as a matter of course* at any time before or within 30 days after a responsive pleading is served” Rule 15(a), SCRCP (emphasis added). Other than amending its pleading once as a matter of course, “a party may amend his pleading *only* by leave of court or by written consent of the adverse party” Id. (emphasis added).

In the case before this Court it is undisputed that defendant Davidson was never served with Plaintiffs’ Summons and Complaint, nor had notice of its filing. Plaintiffs’ Summons and Complaint did not “commence” a civil action, nor provide this Court with jurisdiction over Defendant Davidson. It is also undisputed that Plaintiffs’ Amended Summons and Complaint was filed after the expiration of the statute of limitations and never served on Defendant Davidson. Plaintiffs’ Amended Summons and Complaint did not “commence” a civil action, nor provide this Court with jurisdiction over Defendant Davidson. A civil action was never commenced within the statute of limitations.

It is undisputed that Plaintiffs did not obtain leave of court, nor consent of the adverse parties to file its purported Second Amended Summons and Complaint. Plaintiffs’

purported Second Amended Summons and Complaint was not filed within the statute of limitations. Plaintiffs' purported Second Amended Summons and Complaint is void. Plaintiffs' argument that leave of court was not required to file a second amended complaint does not comport with the law as discussed above. Even if leave of court to file a second amended complaint was granted at this time, Plaintiffs failed to commence a civil action within the statute of limitations and the relation back doctrine would not cure this defect.

CONCLUSION

For the foregoing reasons, Plaintiffs' purported Second Amended Complaint is void, Plaintiffs failed to commence a civil action within the statute of limitations, and this Court lacks personal jurisdiction over defendant Davidson. Therefore, this Court GRANTS Defendant Davidson's motion to dismiss Plaintiffs' Second Amended Complaint, and this action shall be dismissed with prejudice. The Clerk is directed to close this case.

AND IT IS SO ORDERED.

-ELECTRONIC SIGNATURE PAGE TO FOLLOW-



Berkeley Common Pleas

Case Caption: Erik Lebkicher , plaintiff, et al VS Stephanie Davidson , defendant, et al
Case Number: 2024CP0801894
Type: Order/Dismissal

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2025-04-10 15:08:55 page 5 of 5

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Erik Lebkicher, Carissa Lebkicher, E.L., a
minor child,

Plaintiff,

v.

Stephanie Davidson & Drew P. Finnegan

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No. 2024-CP-08-01894

**ORDER GRANTING DEFENDANT
FINNEGAN'S MOTION TO DISMISS
SECOND AMENDED COMPLAINT**

THIS MATTER is before the Court on the Motions of Defendants Davidson and Defendant Finnegan seeking the Court to dismiss Plaintiff's Second Amended Complaint. Defendant Davidson filed her Motion to Dismiss on November 14, 2024, and Defendant Finnegan filed his Motion to Dismiss on November 21, 2024. The Court held a hearing on Defendants' respective Motions on February 20, 2025. Attorneys present at the hearing included Paul Ferrara III on behalf of the Plaintiff, Daniel Ranaldo on behalf of Defendant Davidson, and Carlisle Allen on behalf of Defendant Finnegan. After careful review and consideration of the submissions of the parties, applicable law, oral arguments, the extensive record, and for the reasons set forth below, the Court hereby **GRANTS** Defendant Finnegan's Motion to Dismiss.

PROCEDURAL HISTORY

This case encompasses a dog bite accident involving Plaintiffs' minor child on July 10, 2021 at Defendant Davidson's property. Prior to the filing of this action, Defendant Finnegan's homeowner's policy, State Farm, offered its policy limits to settle this claim with Plaintiffs which was accepted by Plaintiffs. Simultaneously, Defendant Davidson's homeowner's policy insurance

carrier, USAA, offered its policy limits to resolve this claim with Plaintiffs. Plaintiffs retained Mr. Ferrara sometime thereafter.

On July 10, 2024, Plaintiffs' counsel filed a Summons and Complaint, which included claims for Plaintiffs Erik and Carissa Lebkicher in addition to the minor's claim. However, this Summons and Complaint was never served on Defendant Davidson or Defendant Finnegan, and the statute of limitations expired the same day.

On July 12, 2024, Plaintiffs' counsel filed an Amended Summons and Complaint, which was never served upon Defendants and the statute of limitations had already expired.

On October 17, 2024, Plaintiffs filed a purported Second Amended Summons and Complaint. Plaintiffs served it upon Defendant Finnegan on October 22, 2024 and Defendant Davidson on October 25, 2024. Again, the statute of limitations had already passed when Plaintiffs filed the purported Second Amended Complaint.

Defendants subsequently filed their respective Motions to Dismiss the purported Second Amended Summons and Complaint.

LAW/ANALYSIS

Rule 3, SCRPC, governs commencement of actions and provides in pertinent part as follows:

- (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or
- (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing.

Rule 3, SCRPC. *See* S.C. Code Ann. § 15-3-20(B).

“A party may amend his pleading *once* as a matter of course at any time before or within 30 days after a responsive pleading is served” Rule 15(a), SCRPC (emphasis added). Thereafter, “a party may amend his pleading *only* by leave of court or by written consent of the

adverse party” *Id.* (emphasis added).

Plaintiffs failed to serve the first Summons and Complaint and the Amended Summons and Complaint upon Defendant Finnegan and Defendant Davidson. Defendant Finnegan did not have knowledge of the lawsuit’s filing as a result of this failure to serve. Plaintiffs’ first and Amended Summons and Complaint never commenced an action as a result of Plaintiffs’ failure to serve the pleadings upon Defendants. Additionally, Plaintiffs filed the Amended Summons and Complaint on July 12, 2024 which occurred after the three-year statute of limitations expired further supporting a failure to commence an action.

The only pleading served upon Defendants was the purported Second Amended Complaint in October 2024. However, the purported Second Amended Complaint was filed after the statute of limitations expired. Rule 15(a), SCRCP only allows a party one opportunity to file an amended complaint without leave of court. *See* Rule 15(a), SCRCP. Here, Plaintiffs filed the purported Second Amended Complaint without leave of Court or consent from Defendants as required by Rule 15(a), SCRCP. Even if the court granted leave to file a second amended complaint, Plaintiffs failed to initiate a civil action within the statute of limitations, and the relation back doctrine cannot remedy this issue. Therefore, Plaintiffs’ Second Amended Complaint is void and shall be dismissed for failure to comply with Rule 15(a), SCRCP.

CONCLUSION

After careful consideration of all the pleadings, filings and extensive record, applicable law, arguments of counsel, and for the reasons set forth above, the Court **GRANTS** Defendant Finnegan’s Motion to Dismiss Plaintiffs’ Second Amended Complaint, and this action shall be dismissed with prejudice.

IT IS SO ORDERED.

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Berkeley Common Pleas

Case Caption: Erik Lebkicher , plaintiff, et al VS Stephanie Davidson , defendant, et al
Case Number: 2024CP0801894
Type: Order/Dismissal

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2025-04-10 15:09:10 page 5 of 5

Erik Lebkicher et al
PLAINTIFF(S)

Stephanie Davidson et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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 Other
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 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Plaintiffs filed a Motion to Reconsider the April 10, 2025 Judgment with this Court on April 19, 2025 which was subsequently amended on April 21, 2025. "The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). This court hereby DENIES Plaintiffs' motion without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRPC; Pollard v. City of Florence, 314 S.C. 397, 401-02, 444 S.E.2d 534, 536 (Ct. App. 1994).

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

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Brett Davidson

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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Berkeley Common Pleas

Case Caption: Erik Lebkicher , plaintiff, et al VS Stephanie Davidson , defendant, et al
Case Number: 2024CP0801894
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2025-05-15 11:08:58 page 3 of 3

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY)	FOR THE NINTH JUDICIAL CIRCUIT
)	
ERIK LEBKICHER,)	CASE NO.: 2024-CP-08-
CARISSA LEBKICHER,)	
E. L., a minor child,)	
)	SUMMONS
Plaintiff,)	
vs.)	
)	
STEPHANIE DAVIDSON,)	
BRETT DAVIDSON,)	
DREW FINNEGAN,)	
)	
Defendant.)	

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to file a copy of your Answer to this Complaint with the Clerk of this Court and to serve a copy of your Answer to this Complaint upon the Plaintiff's attorney, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

Ferrara Law Firm, PLLC

s/Paul B. Ferrara, III
 Paul B. Ferrara, III
 8887 University Blvd.
 North Charleston, SC 29406
 P: (843) 569-5511 / F: (843) 5569-5411
 SC Bar No.: 70511
Paul@FerraraLawFirm.net
 Attorney for Plaintiff

July 9, 2024
 North Charleston, SC

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2024-CP-08-

ERIK LEBKICHER,)
CARISSA LEBKICHER,)
E. L., a minor child,)

Plaintiff,)

vs.)

STEPHANIE DAVIDSON,)
BRETT DAVIDSON,)
DREW FINNEGAN,)

Defendant.)

COMPLAINT

NOW COME PLAINTIFFS, Erik Lebkicher and Carissa Lebkicher, individually and on behalf of E. L. and through their attorney, Paul B. Ferrara, III, complaining of the Defendant, alleges and states as follows:

1. That the Plaintiff, E. L., is a minor under the age of fourteen (14). Plaintiff Erik Lebkicher is the father, natural guardian for the minor child, E. L. That the Plaintiffs are citizens and residents of the County of Dorchester, State of South Carolina.
2. Defendants Stephanie and Brett Davidson are citizens and residents of the County of Dorchester, State of South Carolina.
3. Defendant Drew Finnegan is a citizen and resident of the County of Berkeley, State of South Carolina.
4. That the Defendant Stephanie Davidson resided at 125 Evelyn Joy Drive, Summerville, South Carolina 29483, and is also the owner of the aforementioned property.
5. Plaintiff E. L. brings this action through her Guardian for personal injuries, emotional distress, and damages she suffered. Plaintiff Erik Lebkicher brings this action as the Guardian for E. L., as well as individually to recover for damages and costs incurred as a result of the personal injuries and emotional distress suffered by the minor and loss of companionship that Erik Lebkicher has suffered as a result of the injury to his child.

6. Plaintiff Carissa Lebkicher also seeks to recover damages and costs incurred as a result of the personal injuries and emotional distress suffered by the minor and the loss of companionship she has suffered as a result of the injury to her child.

**FOR A FIRST CAUSE OF ACTION
(Negligence)**

7. That on July 10, 2021, Plaintiff E. L. was at Defendant Stephanie Davidson's home at 125 Evelyn Joy Drive, Summerville, South Carolina 29483.
8. That E. L. was attacked in the course of dog-sitting Defendant Drew Finnegan's dog in Defendant Stephanie Davidson's home.
9. That it is alleged and believed that the owner of the dog that attacked the minor child Plaintiff is Defendant Drew Finnegan and that the Defendants, Stephanie and Brett Davidson, knew or should have known that this dangerous animal was being kept on the property.
10. That Plaintiff E. L.'s injuries caused her enormous pain, suffering, and scarring that forced her to undergo medical and psychological treatment.
11. That the Plaintiffs are informed and believe that the Defendants Stephanie Davidson and Drew Finnegan acted negligently, grossly negligent, carelessly, and recklessly in one or more of the following ways:
 - a. In creating a hazardous condition by the ownership of a vicious dog, as outlined in Section 47-3-10 of the South Carolina Code of Laws 1976; and
 - b. In failing to warn neighboring property owners of the dog's vicious tendency.
12. That Defendant Stephanie Davidson, as property owner, and Defendant Drew Finnegan, herein knew or reasonably should have known of the dangerous condition they created by allowing their neighbors to care for the vicious dog without taking proper action as land and pet owners, to prevent the foreseeable harm to the Plaintiffs.
13. Defendant Stephanie Davidson had the right to control the activities of the other Defendants upon the property owned by her and negligently failed to do so, additionally owing a duty to the non-trespassory Plaintiffs.
14. That as a direct and proximate result of the aforementioned negligent, grossly negligent, careless, and reckless acts of the Defendants herein, the Plaintiff minor child suffered

damage in that she sustained physical injuries, facial lacerations, medical and pharmaceutical expenses, has endured grievous pain and suffering, scarring, and has experienced severe emotional distress, anxiety, as well as mental anguish.

15. That said actions and or inactions have resulted in medical and psychological expenses incurred by the Plaintiffs Erik and Carissa Lebkicher for their minor child, as well as the loss of consortium and companionship the Plaintiffs had previously enjoyed.
16. That the injuries are of a serious, permanent, and disabling nature and require past and future medical attention, all as a direct and proximate result of Defendants' negligence, gross negligence, carelessness, and recklessness.

**FOR A SECOND CAUSE OF ACTION
(Strict Liability)**

17. Plaintiffs reallege Paragraphs 1 through 15 as if fully set out herein verbatim.
18. Plaintiffs are informed and believe Defendant Drew Finnegan is the owner of the dog that directly and proximately caused the injuries to Plaintiff E. L.
19. Plaintiffs are informed and believe that Defendant Stephanie Davidson is the owner of the property at 125 Evelyn Joy Drive, Summerville, SC 29483, and said property was under her control such that the dog which directly and proximately caused said injuries to Plaintiff E. L. was allowed to occupy her home.
20. Plaintiffs are informed and believe that the Defendants owed a duty to Plaintiffs and others to ensure injuries of this nature do not occur and that it was through their negligence that the injuries complained of did occur.
21. That the Defendants are, upon knowledge of prior vicious tendencies, are strictly liable without regard to fault for the injuries and damages caused by Defendant Finnegan's dog as described herein.
22. That the Defendants' actions as described in Paragraphs 1 through 20 were willful, wanton, or reckless; and the Plaintiffs are seeking punitive damages to be determined by the trier of fact.

**FOR A THIRD CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)**

23. Plaintiffs reallege Paragraphs 1 through 21 as if fully set out herein verbatim.
24. In addition to physical injuries, the Plaintiffs suffered severe emotional distress as a direct and foreseeable result of the Defendants' negligence.
25. Plaintiffs were within the zone of danger at the time of the attack, facing imminent risk of physical harm due to Defendant's actions.
26. Plaintiffs Erik and Carissa have a child-parent relationship with the victim of the dog bite.
27. The emotional distress experienced by the Plaintiffs is severe and has significantly impacted Plaintiff's daily life, evidenced by Plaintiff's severe emotional distress, including but not limited to persistent anxiety, fear of dogs, and post-traumatic stress symptoms.
28. Plaintiffs seek compensatory damages for pain and suffering, including emotional distress, in an amount to be determined at trial.

WHEREFORE, Plaintiffs pray for judgment against the Defendants, jointly and severally, in an amount to be determined by the trier of fact and for such other and further relief as this Court may deem just and proper.

FERRARA LAW FIRM, PLLC,

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Attorney for Plaintiff

July 9, 2024
North Charleston, SC

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY)	CASE NO.: 2024-CP-08-01894
)	
ERIK LEBKICHER,)	
CARISSA LEBKICHER,)	
E. L., a minor child,)	
)	
)	(AMENDED) SUMMONS
Plaintiff,)	
vs.)	
)	
STEPHANIE DAVIDSON,)	
BRETT DAVIDSON,)	
DREW FINNEGAN,)	
)	
Defendant.)	

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to file a copy of your Answer to this Complaint with the Clerk of this Court and to serve a copy of your Answer to this Complaint upon the Plaintiff's attorney, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

Ferrara Law Firm, PLLC

s/Paul B. Ferrara, III
 Paul B. Ferrara, III
 8887 University Blvd.
 North Charleston, SC 29406
 P: (843) 569-5511 / F: (843) 5569-5411
 SC Bar No.: 70511
Paul@FerraraLawFirm.net
 Attorney for Plaintiff

July 12, 2024
 North Charleston, SC

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

ERIK LEBKICHER,)
CARISSA LEBKICHER,)
E. L., a minor child,)

Plaintiff,)

vs.)

STEPHANIE DAVIDSON,)
BRETT DAVIDSON,)
DREW FINNEGAN,)

Defendant.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2024-CP-08-01894

**(AMENDED) COMPLAINT
(Jury Trial Demanded)**

NOW COME PLAINTIFFS, Erik Lebkicher and Carissa Lebkicher, individually and on behalf of E. L. and through their attorney, Paul B. Ferrara, III, complaining of the Defendant, alleges and states as follows:

1. That the Plaintiff, E. L., is a minor under the age of fourteen (14). Plaintiff Erik Lebkicher is the father, natural guardian for the minor child, E. L. That the Plaintiffs are citizens and residents of the County of Dorchester, State of South Carolina.
2. Defendants Stephanie and Brett Davidson are citizens and residents of the County of Dorchester, State of South Carolina.
3. Defendant Drew Finnegan is a citizen and resident of the County of Berkeley, State of South Carolina.
4. That the Defendant Stephanie Davidson resided at 125 Evelyn Joy Drive, Summerville, South Carolina 29483, and is also the owner of the aforementioned property.
5. Plaintiff E. L. brings this action through her Guardian for personal injuries, emotional distress, and damages she suffered. Plaintiff Erik Lebkicher brings this action as the Guardian for E. L., as well as individually to recover for damages and costs incurred as a result of the personal injuries and emotional distress suffered by the minor and loss of companionship that Erik Lebkicher has suffered as a result of the injury to his child.
6. Plaintiff Carissa Lebkicher also seeks to recover damages and costs incurred as a result of the personal injuries and emotional distress suffered by the minor and the loss of companionship she has suffered as a result of the injury to her child.

**FOR A FIRST CAUSE OF ACTION
(Negligence)**

7. Plaintiffs reallege Paragraphs 1 through 6 as if fully set out herein verbatim.
8. That on July 10, 2021, Plaintiff Elliana Lebkicher was at Defendant Stephanie Davidson's home at 125 Evelyn Joy Drive, Summerville, South Carolina 29483.
9. That E. L. was attacked in the course of dog-sitting Defendant Drew Finnegan's dog in Defendant Stephanie Davidson's home.
10. Plaintiffs are informed and believe that the Defendants' owed a duty to Plaintiffs and others to ensure injuries of this nature do not occur and that it was through all Defendants' negligence that the injuries complained of all Plaintiffs did occur.
11. That it is alleged and believed that the owner of the dog that attacked the minor child Plaintiff is Defendant Drew Finnegan and that the Defendants, Stephanie and Brett Davidson, knew or should have known that this dangerous animal was being kept on the property.
12. That Plaintiff Elliana Lebkicher's injuries caused her enormous pain, suffering, and scarring that forced her to undergo medical and psychological treatment.
13. That the Plaintiffs are informed and believe that the Defendants Stephanie Davidson and Drew Finnegan breached said duty and acted negligently, grossly negligent, carelessly, and recklessly in one or more of the following ways:
 - a. In creating a hazardous condition by the ownership of a vicious dog, as outlined in Section 47-3-10 of the South Carolina Code of Laws 1976; and
 - b. In failing to warn neighboring property owners of the dog's vicious tendency.
14. That Defendant Stephanie Davidson, as property owner, and Defendant Drew Finnegan, herein knew or reasonably should have known of the dangerous condition they created by allowing their neighbors to care for the vicious dog without taking proper action as land and pet owners, to prevent the foreseeable harm to the Plaintiffs.
15. Defendant Stephanie Davidson had the right to control the activities of the other Defendants upon the property owned by her and negligently failed to do so, additionally owing a duty to the non-trespassory Plaintiffs.
16. That as a direct and proximate result of the aforementioned negligent, grossly negligent, careless, and reckless acts of the Defendants herein, the Plaintiff minor child suffered

damage in that she sustained physical injuries, facial lacerations, medical and pharmaceutical expenses, has endured grievous pain and suffering, scarring, and has experienced severe emotional distress, anxiety, as well as mental anguish.

17. That said actions and or inactions have resulted in medical and psychological expenses incurred by the Plaintiffs Erik and Carissa Lebkicher for their minor child, as well as the loss of consortium and companionship the Plaintiffs had previously enjoyed.
18. That the injuries are of a serious, permanent, and disabling nature and require past and future medical attention, all as a direct and proximate result of Defendants' negligence, gross negligence, carelessness, and recklessness.

**FOR A SECOND CAUSE OF ACTION
(Strict Liability)**

19. Plaintiffs reallege Paragraphs 1 through 18 as if fully set out herein verbatim.
20. Plaintiffs are informed and believe Defendant Drew Finnegan is the owner of the dog that directly and proximately caused the injuries to Plaintiff E. L.
21. Plaintiffs are informed and believe that Defendant Stephanie Davidson is the owner of the property at 125 Evelyn Joy Drive, Summerville, SC 29483, and said property was under her control such that the dog which directly and proximately caused said injuries to Plaintiff Elliana Lebkicher was allowed to occupy her home.
22. Defendants owed a duty to Plaintiffs and others to ensure injuries of this nature do not occur and that it was through their negligence that the injuries complained of did occur.
23. That the Defendants are, upon knowledge of prior vicious tendencies, are strictly liable without regard to fault for the injuries and damages caused by Defendant Finnegan's dog as described herein.
24. That the Defendants' actions as described in Paragraphs 1 through 25 were willful, wanton, or reckless; and the Plaintiffs are seeking punitive damages to be determined by the trier of fact.

**FOR A THIRD CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)**

25. Plaintiffs reallege Paragraphs 1 through 24 as if fully set out herein verbatim.
26. Defendants owed a duty of care to the Plaintiffs which was breached their negligent, reckless, and willful conduct.
27. The damages suffered by Plaintiff's were proximately caused by Defendants.
28. In addition to physical injuries, the Plaintiffs suffered severe emotional distress as a direct and foreseeable result of the Defendants' negligence.
29. Plaintiffs were within the zone of danger at the time of the attack, facing imminent risk of physical harm due to Defendant's actions.
30. Plaintiffs Erik and Carissa have a child-parent relationship with the victim of the dog bite.
31. The emotional distress experienced by the Plaintiffs is severe and has significantly impacted Plaintiffs daily lives, evidenced by Plaintiff's severe emotional distress, including but not limited to persistent anxiety from watching their daughter suffer, fear of dogs, and post-traumatic stress symptoms.
32. Plaintiffs seek compensatory damages for actual pain and suffering, including current and future emotional distress, plus punitive damages, in an amount to be determined at a trial by jury.

WHEREFORE, Plaintiffs pray for judgment against the Defendants, jointly and severally, in an amount to be determined by a jury trial and for such other and further relief as this Court may deem just and proper.

FERRARA LAW FIRM, PLLC,

By: /s Paul B. Ferrara, III
PAUL B. FERRARA, III
SC Bar No.: 70511
8887 Old University Blvd.
North Charleston, SC 29406
T: (843) 569-5511
F: (843) 569-5411
paul@ferraralawfirm.net
Attorney for Plaintiff

July 12, 2024
North Charleston, SC

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
)
)
ERIK LEBKICHER,)
CARISSA LEBKICHER,)
E. L., a minor child,)
)
Plaintiffs,)
vs.)
)
STEPHANIE DAVIDSON &,)
DREW P. FINNEGAN,)
)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2024-CP-08-01894

SECOND AMENDED SUMMONS

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to file a copy of your Answer to this Complaint with the Clerk of this Court and to serve a copy of your Answer to this Complaint upon the Plaintiff's attorney, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

October 16, 2024
North Charleston, SC

Ferrara Law Firm, PLLC
s/Paul B. Ferrara, III
Paul B. Ferrara, III
8887 University Blvd.
North Charleston, SC 29406
P: (843) 569-5511 / F: (843) 5569-5411
SC Bar No.: 70511
Paul@FerraraLawFirm.net
Attorney for Plaintiffs

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
ERIK LEBKICHER,)
CARISSA LEBKICHER,)
E. L., a minor child,)
)
Plaintiffs,)
vs.)
)
STEPHANIE DAVIDSON &,)
DREW P. FINNEGAN,)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2024-CP-08-01894

**SECOND AMENDED
COMPLAINT
(Jury Trial Demanded)**

NOW COME PLAINTIFFS, Erik Lebkicher and Carissa Lebkicher, individually and on behalf of E. L. and through their attorney, Paul B. Ferrara, III, complaining of the Defendant, alleges and states as follows:

1. That the Plaintiff, E. L., is a minor under the age of fourteen (14). Plaintiff Erik Lebkicher is the father, natural guardian for the minor child, E. L. That the Plaintiffs are citizens and residents of the County of Dorchester, State of South Carolina.
2. Defendant Stephanie Davidson is a citizen and resident of the County of Dorchester, State of South Carolina.
3. Defendant Drew Finnegan is a citizen and resident of the County of Berkeley, State of South Carolina.
4. That the Defendant Stephanie Davidson resided at 125 Evelyn Joy Drive, Summerville, South Carolina 29483, and is also the owner of the aforementioned property.
5. Plaintiff E. L. brings this action through her Guardian for personal injuries, emotional distress, and damages she suffered. Plaintiff Erik Lebkicher brings this action as the Guardian for E. L., as well as individually to recover for damages and costs incurred as a result of the personal injuries and emotional distress suffered by the minor and loss of companionship that Erik Lebkicher has suffered as a result of the injury to his child.
6. Plaintiff Carissa Lebkicher also seeks to recover damages and costs incurred as a result of the personal injuries and emotional distress suffered by the minor and the loss of companionship she has suffered as a result of the injury to her child.

**FOR A FIRST CAUSE OF ACTION
(Negligence)**

7. Plaintiffs reallege Paragraphs 1 through 6 as if fully set out herein verbatim.
8. That on July 10, 2021, Plaintiff Elliana Lebkicher was at Defendant Stephanie Davidson's home at 125 Evelyn Joy Drive, Summerville, South Carolina 29483.
9. That E. L. was attacked in the course of dog-sitting Defendant Drew Finnegan's dog in Defendant Stephanie Davidson's home.
10. Plaintiffs are informed and believe that the Defendants' owed a duty to Plaintiffs and others to ensure injuries of this nature do not occur and that it was through all Defendants' negligence that the injuries complained of all Plaintiffs did occur.
11. That it is alleged and believed that the owner of the dog that attacked the minor child Plaintiff is Defendant Drew Finnegan and that the Defendant Stephanie Davidson knew or should have known that this dangerous animal was being kept on the property.
12. That Plaintiff Elliana Lebkicher's injuries caused her enormous pain, suffering, and scarring that forced her to undergo medical and psychological treatment.
13. That the Plaintiffs are informed and believe that the Defendants Stephanie Davidson and Drew Finnegan breached said duty and acted negligently, grossly negligent, carelessly, and recklessly in one or more of the following ways:
 - a. In creating a hazardous condition by the ownership of a vicious dog, as outlined in Section 47-3-10 of the South Carolina Code of Laws 1976; and
 - b. In failing to warn Erik Lebkicher of the dog's vicious tendency.
14. That Defendant Stephanie Davidson, as property owner, and Defendant Drew Finnegan, herein knew or reasonably should have known of the dangerous condition they created by allowing their neighbors to care for the vicious dog without taking proper action as land and pet owners, to prevent the foreseeable harm to the Plaintiffs.
15. Defendant Stephanie Davidson had the right to control the activities of the other Defendants upon the property owned by her and negligently failed to do so, additionally owing a duty to the non-trespassory Plaintiffs.
16. That as a direct and proximate result of the aforementioned negligent, grossly negligent, careless, and reckless acts of the Defendants herein, the Plaintiff minor child has and will continue to suffer damage in that she sustained physical injuries, facial lacerations,

medical and pharmaceutical expenses, has endured grievous pain and suffering, scarring, and has experienced severe emotional distress, anxiety, as well as mental anguish, including future medical care, future pain and suffering, and future psychological damages.

17. That said actions and or inactions have resulted conscious pain and suffering, medical and psychological damage, incurred by the Plaintiff E.L. a minor child.
18. That the damages are injuries of a serious, permanent, and disabling nature and require past and future medical attention, all as a direct and proximate result of Defendants' negligence, gross negligence, carelessness, and recklessness.

**FOR A SECOND CAUSE OF ACTION
(Strict Liability)**

19. Plaintiffs reallege Paragraphs 1 through 18 as if fully set out herein verbatim.
20. Plaintiffs are informed and believe Defendant Drew Finnegan is the owner of the dog that directly and proximately caused the injuries to Plaintiff E. L.
21. Plaintiffs are informed and believe that Defendant Stephanie Davidson is the owner of the property at 125 Evelyn Joy Drive, Summerville, SC 29483, and said property was under her control such that the dog which directly and proximately caused said injuries to Plaintiff Elliana Leblicher was allowed to occupy her home.
22. Defendants owed a duty to Plaintiffs and others to ensure injuries of this nature do not occur and that it was through their negligence that the injuries complained of did occur.
23. That the Defendants are, upon knowledge of prior vicious tendencies, are strictly liable without regard to fault for the injuries and damages caused by Defendant Finnegan's dog as described herein.
24. That the Defendants' actions as described in Paragraphs 1 through 23 were willful, wanton, or reckless and Plaintiffs suffered damages and injuries of a serious, permanent, and disabling nature and require past, current, and future medical attention, all as a direct and proximate result of Defendants' wanton conduct; and the Plaintiffs are seeking punitive damages against all Defendants to be determined by the trier of fact.

**FOR A THIRD CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)**

25. Plaintiffs reallege Paragraphs 1 through 24 as if fully set out herein verbatim.
26. Defendants owed a duty of care to the Plaintiffs which was breached their negligent, reckless, and willful conduct.
27. The damages suffered by Plaintiff's were proximately caused by Defendants.
28. In addition to physical injuries, the Plaintiffs suffered severe emotional distress as a direct and foreseeable result of the Defendants' negligence.
29. Plaintiffs were within close proximity to the accident at the time of the attack, facing imminent risk of physical harm due to Defendant's actions.
30. Plaintiffs Erik and Carissa have a child-parent relationship with the victim of the dog bite.
31. The emotional distress experienced by the Plaintiffs is severe and has significantly impacted Plaintiffs daily lives, evidenced by Plaintiffs severe emotional distress, including but not limited to persistent anxiety from watching their daughter suffer at the time of the attack and thereafter their daughter's fear of dogs, and post-traumatic stress symptoms.
32. That the Defendants' actions as described in Paragraphs 1 through 31 were willful, wanton, or reckless and Plaintiffs suffered damages and injuries of a serious, permanent, and disabling nature and require past, present and future medical attention, all as a direct and proximate result of Defendants' reckless and wanton conduct; and the Plaintiffs are seeking punitive damages against all Defendants to be determined by the trier of fact.

WHEREFORE, Plaintiffs pray for judgment against the Defendants, jointly and severally, in an amount to be determined by a jury trial and for such other and further relief as this Court may deem just and proper.

FERRARA LAW FIRM, PLLC,

By: /s Paul B. Ferrara, III

PAUL B. FERRARA, III

SC Bar No.: 70511

8887 Old University Blvd.

North Charleston, SC 29406

T: (843) 569-5511

F: (843) 569-5411

paul@ferraralawfirm.net

October 16, 2024

North Charleston, SC

Attorney for Plaintiffs

Affidavit of Process Server

IN THE COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR BERKELEY COUNTY, SOUTH CAROLINA
(NAME OF COURT/COUNTY)

ERIK LEBKICHER, CARISSA LEBKICHER, E. L., a minor child
VS.

STEPHANIE DAVIDSON &, DREW P. FINNEGAN

CASE NUMBER 2024-CP-08-01894

I George Pittas-Giroux being first duly sworn, depose and say: that I am over the age of 18 years and not a party to the action, and that within the boundaries of the state where service was affected, I was authorized by law to perform said service.

Service: I served Drew P. Finnegan, with SECOND AMENDED SUMMONS and SECOND AMENDED COMPLAINT by leaving with Drew P. Finnegan

AT

RESIDENCE

2930 Clearwater Dr Mount Pleasant, SC 29466
Address City / State

BUSINESS

Address City / State

On 10-22-24 8:00 PM
Date Time

Inquired if subject was a member of the U.S. Military and was informed, they are not.

Manner of Service:

- Personal:** By personally delivering copies to the person being served.
- Substituted at Residence:** By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of 18 and explaining the general nature of the papers.
- Substituted at Business:** By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.
- Posting:** By posting copies in a conspicuous manner to the front door of the person/entity being served.
- Non-Service:** After due search, careful inquiry and diligent attempts at the address(es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):
 - Unknown at Address; Moved, Left no Forwarding; Service Cancelled by Litigant; Unable to Serve in Timely Fashion;
 - Address Does Not Exist

Other:

Comments:

Service Attempts: Service was attempted on (Date/Time): (1) (2) (3) (4)

Description: Age:50s Sex:M Race:White Height:5'10
Weight:260 lbs Hair:Brown

George Pittas-Giroux
SIGNATURE OF PROCESS SERVER

SUBSCRIBED AND SWORN to before me this 28 day of October, 2024.

Proved to me based on satisfactory evidence to be the person(s) who appeared before me.

[Signature]
SIGNATURE OF NOTARY PUBLIC

NOTARY PUBLIC for the state of SOUTH CAROLINA

My Commission Expires 9-13-2033

ELECTRONICALLY FILED - 2025 Feb 20 11:56 AM - BERKELEY - COMMON PLEAS - CASE#2024CP0801894

Affidavit of Process Server

IN THE COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR BERKELEY COUNTY, SOUTH CAROLINA
(NAME OF COURT/COUNTY)

ERIK LEBKICHER, CARISSA LEBKICHER, E. L., a minor child

VS.

STEPHANIE DAVIDSON &, DREW P. FINNEGAN

CASE NUMBER 2024-CP-08-01894

I Johnathan C. Hitopoulos being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was affected, I was authorized by law to perform said service.

Service: I served Stephanie Davidson, with SECOND AMENDED SUMMONS and SECOND AMENDED COMPLAINT by leaving with Stephanie Davidson

AT

RESIDENCE

2930 Clearwater Dr Mount Pleasant, SC 29466
Address City / State

BUSINESS

Address City / State

On 10-25-24 9:50 AM
Date Time

Inquired if subject was a member of the U.S. Military and was informed, they are not.

Manner of Service:

Personal: By personally delivering copies to the person being served.

Substituted at Residence: By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of 18 and explaining the general nature of the papers.

Substituted at Business: By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.

Posting: By posting copies in a conspicuous manner to the front door of the person/entity being served.

Non-Service: After due search, careful inquiry and diligent attempts at the address(es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

Unknown at Address; Moved, Left no Forwarding; Service Cancelled by Litigant; Unable to Serve in Timely Fashion; Address Does Not Exist

Other:

Comments:

Service Attempts: Service was attempted on (Date/Time): (1)10-22 7:15pm(2)10-23 6:00pm (3)10-24 4:30pm (4)

Description: Age:40s Sex:F Race:White Height:5'7
Weight:160 lbs Hair:Brown


SIGNATURE OF PROCESS SERVER

SUBSCRIBED AND SWORN to before me this 29th day of October, 2024.

Proved to me based on satisfactory evidence to be the person(s) who appeared before me.


SIGNATURE OF NOTARY PUBLIC

NOTARY PUBLIC for the state of SOUTH CAROLINA

My Commission Expires 5/9/34

ELECTRONICALLY FILED - 2025 Feb 20 11:56 AM - BERKELEY - COMMON PLEAS - CASE#2024CP0801894

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Erik Lebkicher, Carissa Lebkicher, E.L., a
minor child,

Plaintiffs,

vs.

Stephanie Davidson & Drew P. Finnegan,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2024-CP-08-01894

**NOTICE OF MOTION AND MOTION TO
DISMISS PLAINTIFF'S SECOND
AMENDED COMPLAINT**

The Defendant, improperly named Stephanie Davidson, through her undersigned attorneys, will move before the Presiding Judge of the Court of Common Pleas at the Berkeley County Courthouse, for an Order dismissing Plaintiff's Second Amended Complaint and dismissing the above captioned case. This Motion is based on the pleadings in this case, Rule 12 and Rule 15 of the South Carolina Rules of Civil Procedure, on such law and argument as is appropriate, and is made on the grounds that Plaintiffs did not obtain leave of court, or consent of defendants, to amend their complaint a second time as required by Rule 15, SCRPC. Based on plaintiffs' failure to comply with Rule 15, SCRPC, process and service of process of Plaintiff's Second Amended Complaint upon defendant is insufficient and this Court lacks jurisdiction over the defendant.

[SIGNATURE ON FOLLOWING PAGE]

CLAWSON and STAUBES, LLC

s/Daniel Ranaldo

Daniel P. Ranaldo

Bar No.: 102562

126 Seven Farms Drive, Suite 200

Charleston, South Carolina 29492-8144

Phone: (843) 577-2026

Fax: (843) 722-2867

Email: dranaldo@cslaw.com

Attorney for Defendant Stephanie Finnegan.

Charleston, South Carolina

November 14, 2024

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

ERIK LEBKICHER, CARISSA
LEBKICHER, and E.L., a minor child,

Plaintiffs,

vs.

STEPHANIE DAVIDSON & DREW P.
FINNEGAN,

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No. 2024-CP-08-01894

**DEFENDANT FINNEGAN'S
NOTICE OF MOTION AND MOTION TO
DISMISS PLAINTIFFS' SECOND
AMENDED COMPLAINT**

Defendant Drew P. Finnegan (“Defendant Finnegan”), through his undersigned counsel, will move before the Presiding Judge of the Court of Common Pleas at the Berkeley County Courthouse for an Order dismissing Plaintiffs’ Second Amended Complaint and dismissing the above-captioned case. This Motion is based on the pleadings in this case, Rule 12 and Rule 15 of the South Carolina Rules of Civil Procedure, such law and argument as is appropriate, and is made on the grounds that Plaintiffs did not obtain leave of court, or consent of Defendants to amend their Complaint a second time as required by Rule 15, SCRCP. Based on Plaintiffs’ failure to comply with Rule 15, SCRCP, process and service of process of Plaintiffs’ Second Amended Complaint upon this Defendant is insufficient and this Court lacks jurisdiction over this Defendant.

[Signature page to follow]

HAYNSWORTH SINKLER BOYD, P.A.

By: s/ Adam N. Yount

Adam N. Yount (SC Bar # 76342)

Carlisle Allen (SC Bar# 104605)

134 Meeting STREET, 3rd Floor

P.O. box 340 (29402)

Charleston, SOUTH CAROLINA 29401

ayount@hsblawfirm.com

callen@hsblawfirm.com

Attorneys for Defendant Drew P. Finnegan

November 21, 2024

Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
)
ERIK LEBKICHER,)
CARISSA LEBKICHER,)
E. L., a minor child,)
)
Plaintiffs,)
vs.)
)
STEPHANIE DAVIDSON &,)
DREW P. FINNEGAN,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2024-CP-08-01894

**MEMORANDUM IN
OPPOSITION DEFENDANTS’
MOTIONS TO DISMISS**

NOW COME PLAINTIFFS, Erik Lebkicher and Carissa Lebkicher, individually and on behalf of E.L., through their attorney, Paul B. Ferrara, III, respectfully submitting this Memorandum in Opposition to the Defendants’ Motions to Dismiss. The Defendants’ motions to dismiss the Plaintiffs’ Second Amended Complaint should be denied because the amendments were properly made to address procedural issues, including the correction of the minor Plaintiff’s name and the case file number. No answer or responsive pleading had been filed at the time of the amendment and there is no prejudice to the Defendants. The Supreme Court has emphasized that courts should permit amendments unless they result in undue prejudice or undue delay. See *Foggie v. CSX Transp., Inc.*, 313 S.C. 98, 431 S.E.2d 587 (1993); *Duncan v. CRS Serrine Eng’rs, Inc.*, 337 S.C. 537, 524 S.E.2d 115 (1999). Given the preference for resolving cases on their merits, dismissal would be an extreme and unwarranted remedy where an amendment could simply be permitted *nunc pro tunc*.

Plaintiffs have complied with South Carolina Rule of Civil Procedure (“SCRCP”) 15, and no prejudice has been shown by Defendants as a result of these procedural corrections.

STATEMENT OF FACTS

Plaintiffs filed the original complaint on July 10, 2024, within the statute of limitations, alleging claims for personal injuries and emotional distress on behalf of the minor Plaintiff, along with personal claims for loss of companionship by her parents. An amended complaint was filed on July 12, 2024, to address preliminary issues with the pleadings. Subsequently, the Plaintiffs filed a Second Amended Complaint on October 16, 2024, correcting the minor Plaintiff's name and the case number to ensure compliance with procedural requirements. The amendments were not substantive in nature and were made in good faith. Defendants were properly served with 120 days of the original filing. On October 18, 2024, I asked opposing counsel, via email on October 18, 2024, if they would accept service of the amended lawsuit and they both declined. (See attached). On October 22, 2024, the process server timely served the amended lawsuit within the limits of Rule 4. Thereafter, the Defendants filed their respective motions to dismiss, citing Rule 15 and alleging that leave of court or consent from the Defendants was needed and not obtained for the Second Amended Complaint.

ARGUMENT

I. THE AMENDMENTS WERE PROPERLY MADE UNDER RULE 15, SCRCP.

Rule 15(a) of the South Carolina Rules of Civil Procedure governs amendments to pleadings and provides that, “leave shall be freely given when justice so requires and does not prejudice any other party.” Rule 15 SCRCP. This rule embodies a policy favoring resolution of cases on their merits rather than dismissal based on procedural technicalities. See *Patton v. Miller*, 420 S.C. 471, 804 S.E.2d 252 (2017).

The amendments made in the Second Amended Complaint were procedural in nature. The primary changes corrected Plaintiffs' inadvertent failure to properly reflect the minor Plaintiff's

name and updated the case file number to ensure accuracy. Those corrections ensured compliance with court requirements without altering the substantive claims or facts of the case.

A. SOUTH CAROLINA COURTS FAVOR PROCEDURAL AMENDMENTS.

South Carolina courts have consistently held that amendments that do not prejudice the opposing party should be permitted freely. *Armstrong v. Collins*, 366 S.C. 204, 621 S.E.2d 368 (2005). In *Armstrong*, the court emphasized that procedural amendments should not be denied absent clear evidence of prejudice. Here, the Defendants have failed to identify any prejudice resulting from the Plaintiffs' amendments. The corrections merely clarify procedural deficiencies, which ensured the pleadings were in compliance with South Carolina law.

B. HERE, THE AMEDMENTS' TIMING WAS PROPER.

Under Rule 15(a), a party may amend a pleading once as a matter of course if no responsive pleading has been filed. Rule 15(a) SCRCPP. Here, Defendants had not filed a responsive pleading at the time of the Second Amended Complaint. Consequently, Plaintiffs were well within their right to amend their pleading without seeking leave of court. Moreover, even if leave were required, courts routinely grant amendments under these circumstances to allow cases to proceed on their merits. See *Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 732 S.E.2d 395 (2012).

II. DEFENDANTS' CLAIMS OF INSUFFICIENT LEAVE LACK MERIT WHEN LEAVE OF COURT WAS NOT REQUIRED, AND EVEN IF LEAVE OF COURT WAS REQUIRED, IT SHOULD HAVE BEEN GRANTED.

The Defendants argue that Plaintiffs' failure to seek leave of court or obtain their consent renders the Second Amended Complaint invalid. This argument fails for two reasons: 1) leave of

court was not required because no responsive pleading had been filed, and 2) even if required, leave would have been granted under Rule 15's liberal amendment standard.

Under Rule 15(a), a party may amend its pleading, "within 30 days after a responsive pleading is served." Plaintiffs' Second Amended Complaint was proper without leave of court because no responsive pleading was served before the amendments.

Moreover, assuming that leave of court was required, the amendments would have been granted under Rule 15's liberal standard. In *Patton v. Miller*, the South Carolina Supreme Court reiterated that amendments should be allowed unless they result in undue delay or prejudice. *Patton v. Miller*, 420 S.C. 471, 804 S.E.2d 252 (2017). Defendants have made no showing of such prejudice.

III. THE SECOND AMENDED COMPLAINT RELATES BACK UNDER RULE 15(c), SCRPC.

Under Rule 15(c) SCRPC, amendments that arise out of the same conduct, transaction, or occurrence set forth in the original pleading relate back to the original filing date. In *Maybank*, the court held that amendments clarifying procedural deficiencies were permissible under Rule 15(c). *Maybank 2754, LLC v. Zurlo*, 444 S.C. 47, 906 S.E.2d 94 (2024).

The amendments in this case arose from the same facts and claims asserted in the original Complaint. They did not alter the nature of the claims but ensured compliance with procedural requirements. Therefore, the Second Amended Complaint relates back to the original filing date, which preserves the Plaintiffs' claims within the statute of limitations.

IV. DISMISSAL WOULD CONTRADICT SOUTH CAROLINA'S POLICY FAVORING MERIT BASED RESOLUTION.

South Carolina courts have consistently emphasized the importance of resolving cases on their merits. In *Mims*, the Supreme Court reversed dismissal of a complaint based on procedural issues, underscoring the judiciary's preference for substantive adjudication over procedural dismissals. *Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 732 S.E.2d 395 (2012). Dismissing Plaintiffs' claims based on procedural corrections would contradict this policy.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court deny Defendants' motions to dismiss and allow the case to proceed on its merits.

FERRARA LAW FIRM, PLLC,

By: /s/ Paul B. Ferrara, III

PAUL B. FERRARA, III

SC Bar No. 70511

8887 Old University Blvd.

North Charleston, SC 29406

T: (843) 569-5511

F: (843) 569-5411

paul@ferraralawfirm.net

Attorney for Plaintiffs

January 20, 2025
North Charleston, SC



Fw: Stephanie Davidson/024139137001/Lebkicher v. Davidson/ALIS No. Pending (File #: 20232391.000) - Claim No: 024139137-001

From Paul Ferrara <paul@ferraralawfirm.net>
Date Mon 12/2/2024 1:51 PM
To Janel K Ferrara (Other) <janelferrara@me.com>

 2 attachments (6 MB)
filed 2nd amended summons and complaint.pdf; Medical Records.pdf;

USAA policy info

usaa- selene 12104985981

Sincerely,
Paul B. Ferrara, III



8887 Old University Blvd., Ste. 201
N. Charleston, SC 29406
(843) 569-5511 (office)
(843) 569-5411 (fax)

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From: Paul Ferrara <paul@ferraralawfirm.net>

Sent: Friday, October 18, 2024 1:05 PM

To: Dan Ranaldo <dan@cslaw.com>; Paralegal <paralegal@ferraralawfirm.net>; matt@chandlerdudgeon.com <matt@chandlerdudgeon.com>

Cc: janel Ferrara <janel Ferrara@me.com>; b033afb41+matter1531232146@maildrop.clio.com <b033afb41+matter1531232146@maildrop.clio.com>

Subject: Re: Stephanie Davidson/024139137001/Lebkicher v. Davidson/ALIS No. Pending (File #: 20232391.000) - Claim No: 024139137-001

Dan & Matt,

Could each of you please review the attached demands and get back to me? I have added a demand for the father and mother as bystanders. I have medical records and bills to support the bystander/ negligent infliction of emotional distress claims. understand we have an agreement on policy limits regarding Ellie's claim; if I'm incorrect, please advise.

I have protected the statute and will proceed with service if we can't reach a resolution. Additionally, could you please let me know if you will accept service on behalf of your respective clients? The lawsuit has been filed, and the amendment relates back.

May I hear from you prior to my service of the amended complaint?

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From: Dan Ranaldo <dan@cslaw.com>
Sent: Thursday, September 5, 2024 3:46 PM
To: Paul Ferrara <paul@ferraralawfirm.net>; Paralegal <paralegal@ferraralawfirm.net>; matt@chandlerdudgeon.com <matt@chandlerdudgeon.com>
Cc: janel Ferrara <janel Ferrara@me.com>
Subject: Stephanie Davidson/024139137001/Lebkicher v. Davidson/ALIS No. Pending (File #: 20232391.000) - Claim No: 024139137-001

Paul,

Following up on the minor settlement for Elliana Lebkicher. Please provide a status as to moving forward with a structured annuity or conservatorship, and court approval of the minor settlement.

Thank you,



126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144

Daniel P. Ranaldo
Licensed in SC

P: 843.577.2026 Ext. 2288
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STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
)
ERIK LEBKICHER,)
CARISSA LEBKICHER,)
E. L., a minor child,)
)
Plaintiffs,)
vs.)
)
STEPHANIE DAVIDSON &,)
DREW P. FINNEGAN,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2024-CP-08-01894

**MOTION TO AMEND PURSUANT TO
RULE 15(c)**

NOW COME PLAINTIFFS, Erik Lebkicher and Carissa Lebkicher, individually and on behalf of E.L., through their attorney, Paul B. Ferrara, III, respectfully submitting this Plaintiffs Erik Lebkicher, Carissa Lebkicher, and E.L., a minor child, by and through their undersigned counsel, hereby move this Court for an Order allowing leave to amend their Complaint pursuant to Rule 15(c), SCRCP to conform with the filed second amended complaint on file with the Court. Plaintiffs seek leave to amend their Complaint to ensure that the pleadings accurately reflect the claims at issue and to clarify any procedural concerns raised by Defendant Finnegan’s and Davidson’s Motions to Dismiss. Under Rule 15(c), SCRCP, amendments that arise out of the same conduct, transaction, or occurrence as the original pleading relate back to the date of the initial filing, ensuring that Plaintiffs’ claims remain timely and properly before the Court.

This motion is based upon the law as cited in *Jackson v. Doe*, 342 S.C. 552, 537 S.E.2d 567 (Ct. App. 2000) and *Pool v. Pool*, 321 S.C. 84, 467 S.E.2d 753 (Ct. App. 1996) and *Foggie v. CSX Transp., Inc.*, 313 S.C. 98, 431 S.E.2d 587 (1993).

Plaintiffs respectfully request that this Court grant leave to amend their Complaint pursuant to Rule 15(c), SCRCP, and deem the Second Amended Complaint properly filed nunc pro tunc by Order.

February 20, 2025
North Charleston, SC

FERRARA LAW FIRM, PLLC,
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paul@ferraralawfirm.net
Attorney for Plaintiffs

was filed on and served on Defendant within 120 days, in compliance with Rule 3(a), SCRCP. The amendment corrects a misnomer involving minor parties and does not add new claims or alter the substance of the allegations. Thereafter, Defendants filed their respective motions to dismiss, citing Rule 15 and alleging that leave of court or consent from Defendants was needed and not obtained for the Second Amended Complaint.

LEGAL STANDARD

Under Rule 15(a), of the South Carolina Rules of Civil Procedure (SCRCP), “[a] party may amend his pleading once as a matter of course at any time before a responsive pleading is served.” After this, amendments require leave of the court, which “shall be freely given when justice so requires and does not prejudice any other party.”

A misnomer occurs when a party is incorrectly named, but the intended party is apparent and has been properly served. South Carolina courts have held that amendments correcting misnomers should be permitted absent prejudice to the opposing party. *See Griffin v. Capital Cash*, 310 S.C. 288 (1992) (holding that a misnomer does not invalidate a judgment where the correct party was served and suffered no prejudice); *see also Tri-County Ice & Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237 (1991) (finding that a minor clerical error in a party’s name does not affect service or jurisdiction). Here, the correction of minor parties’ names does not prejudice Defendant, as Defendant was timely served and has been aware of the claims.

ARGUMENT

I. Plaintiff Has a Right to Amend Under Rule 15(a), SCRCP.

Correction of a misnomer is proper and should be allowed. The amendment does not introduce new claims or new parties but corrects an inadvertent naming error. South Carolina courts have consistently allowed amendments to correct misnomers when no prejudice results.

Defendant will not be prejudiced with the amendment because Defendant was properly and timely served and had full knowledge of the claims.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's Motion to Amend the Complaint to correct the misnomer of minor parties.

FERRARA LAW FIRM, PLLC,

By: /s/ Paul B. Ferrara, III

PAUL B. FERRARA, III

SC Bar No. 70511

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paul@ferraralawfirm.net

Attorney for Plaintiffs

April 3, 2025
North Charleston, SC

STATE OF SOUTH CAROLINA) COUNTY OF BERKELEY) ERIK LEBKICHER,) CARISSA LEBKICHER,) E. L., a minor child,)) Plaintiffs,) v.)) STEPHANIE DAVIDSON &,) DREW P. FINNEGAN,)) Defendants.) _____)	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT CASE NO.: 2024-CP-08-01894 <p style="text-align: center;">MOTION TO RECONSIDER THE APRIL 10, 2025 JUDGMENT PURSUANT TO RULE 59(e) SCRPC</p>
---	--

Plaintiff respectfully moves the Court to alter or amend its Order of Dismissal with Prejudice under Rule 59(e) of the South Carolina Rules of Civil Procedure. The dismissal results in a six-year-old minor child being forever unable to pursue her claims which resulted from a dog bite to her face. The actions by this Court are contrary to South Carolina Supreme Court’s holding in *Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 346–47, 732 S.E.2d 395, 398–99 (2012) as discussed below.

The record reflects that Plaintiff complied with Rule 3(a), SCRPC, by timely filing the Summons and Complaint, thereby commencing the action. The Defendants were served with service which was also in compliance with Rule 4. These foundational rules—not Rule 15—control the validity and timeliness of the action itself. The Court’s April 10, 2025 Order held that Plaintiff’s “Second Amended Complaint” was not properly before the Court because it was filed without prior leave. However, under a correct reading of Rule 15(a), SCRPC, the Plaintiff was entitled to file and serve one amended complaint, pursuant to Rule 15, as a matter of course. The original July 10, 2024 complaint was revised on July 12, 2024, without the necessity of Rule 15, and became the operative pleading. Thereafter, the October 17, 2024 pleading, which was

authorized per Rule 15(a), was, in function and law, the first valid amendment, and leave of court was not required. The original revised complaint did not require Rule 15 authority¹ and thus the second amended complaint was in fact the first amendment triggered by Rule 15. Rule 15 allowed the filing of the Second Amended Complaint and failure to seek leave does not and should not invalidate the case.

This motion rests on a manifest error of law and causes substantial prejudice to the Plaintiffs, where no delay, bad faith, or actual prejudice was shown, as further discussed below.

I. THE ACTION WAS PROPERLY COMMENCED PER RULE 3(A), RULE 4 & RULE 15 & PURSUANT TO THE SOUTH CAROLINA SUPREME COURT DECISION OF *MIMS v. BABCOCK*.

Here, the original lawsuit was properly commenced with the timely filing of the complaint on July 10, 2024, within the original statute of limitations. Thereafter, two days later, on July 12, 2024, a revised complaint was filed to clarify allegations and no new party or claims were added. This July 12, 2024 complaint superseded the prior filed complaint of July 10, 2024 per *Young v. City of Mount Ranier*, 238 F.3d 567, 572 (4th Cir. 2001)². Rule 15 was not invoked as the complaint did not add, modify or delete claims against a party.³ Thereafter, on October 17, 2024, the clerk of court clocked in an authorized complaint entitled second amended complaint (“SAC”) which removed a Defendant. The amendment was authorized per Rule 15(a) without

¹

limits of Rule 15 and stated “Rule 15, SCRCF, does not allow an existing plaintiff to add a new plaintiff to the case to assert a claim against the defendant. Rule 15(a) only permits an existing plaintiff to add, modify, delete, or change claims against an existing defendant. Rule 15(b) addresses amendments to conform to the evidence presented at trial. Rule 15(c) deals with relation back of amendments.”

² An amended complaint not only replaces the original complaint and supersedes the original but also renders the prior complaint void. (“As a general rule, an amended pleading ordinarily supersedes the original and renders it of no legal effect.”) (citation and internal quotation marks omitted). See *Young v. City of Mount Ranier*, 238 F.3d 567, 572 (4th Cir. 2001)

³ The South Carolina Supreme Court has held that the trial court, when considering Rule 15 amendments, as cited in *Pool v. Pool*, 329 S.C. 324 (1998), should allow an amendment so long as no new claims or defenses are asserted.

leave. Further, this amended action was served within 120 days of the original filing date of the complaint. Additionally, the claims in the SAC related back to the same conduct, transaction, or occurrence under Rule 15(c) SCRCP and this pleading related back to the original filing of July 10, 2025. *See Hiers by Hiers v. Mullens*, 310 S.C. 63, 65, 425 S.E.2d 57, 59 (Ct. App. 1992)(Rule 15(c) allows relation back of an amendment to the original filing date.); *see, e.g., Mahoney v. Padula*, 427 S.C. 532, 537, 832 S.E.2d 219, 222 (2019) (explaining commencement under Rule 3(a)); *In re Estate of Weeks*, 329 S.C. 251, 256, 495 S.E.2d 454, 457 (Ct. App. 1997) (noting that proper commencement and service confer jurisdiction and preserve claims). Thus, the facts of this case and the plain language of Rule 15 allowed for the SAC without leave of the court and was authorized.

In *Mims v. Babcock Center, Inc.*,⁴ the South Carolina Supreme Court reversed the Court of Appeals order that affirmed the trial court's Order that an unauthorized amended complaint was a nullity. The Supreme Court made clear that the failure to serve an original complaint does not preclude later amendment or preclude jurisdiction where the action was properly commenced under Rule 3(a), pursuant to an amendment clocked in by the clerk. *Id.* Ultimately, in *Mims*, the South Carolina Supreme Court reversed the Court of Appeals order that affirmed dismissal of an unauthorized amended complaint, served outside the 120 days of filing, and declare it to be a nullity. The Supreme Court decision established that once a lawsuit is commenced, an amendment can be authorized at any time before a responsive pleading has been filed, even if leave was not requested, as Rule 15 motions should be liberally granted. Moreover, the prejudice to parties per Rule 15 is especially lacking when the Defendants were aware of the lawsuit within the commencement period and as such the court should allow the claims to

⁴ 399 S.C. 341, 346–47, 732 S.E.2d 395, 398–99 (2012).

proceed on the merits. The South Carolina Supreme Court decision in *Mims* is directly on point and should control this court's decision.

Here, this case involves a minor who timely filed her suit and amended without leave, according to the Court's April 10, 2025 Orders. However, Plaintiffs gave notice of the amended complaint to the Defendant's prior to the 120 day expiration, like *Mims*. Specifically, Plaintiff's counsel notified both Defense counsel on October 18, 2024, the statute of limitations was protected with the original filing and there was an amended complaint, attached the SAC to the email, and asked if they would accept service. (See Exhibit "A"). Neither party replied and service of the SAC was properly served on both Defendants on October 22, 2024 and October 24, 2024 as evidenced by the affidavits of service in the Court's file. The Court in *Mims* stated that an unauthorized amended complaint did not render the action a nullity because the Defendants had noticed within the 120 days of the filing and it was properly commenced. Additionally, the Court in *Mims* noted that the claim was of a disabled person and that statute of limitations was tolled due to the disability. Plaintiff, in this case, is a minor child and those same facts and circumstances exist in this case and should control the Court's holding in this case. To eclipse the claims in this case would be a travesty of justice and violative of the South Carolina Constitution.

II. THE PENDING RULE 15 MOTION SHOULD BE HEARD AND THE RELATION BACK DOCTRINE APPLIES BECAUSE PLAINTIFFS SOUGHT TO CLARIFY IDENTITIES AND CLAIMS THAT AROSE FROM THE SAME TRANSACTION.

On February 20, 2025, prior to hearing the motion to dismiss, Plaintiff filed a motion to amend and sought a nunc pro tunc order to cure the alleged defects asserted by the Defendants. This motion was timely and complied with Rule 15 as no responsive pleadings had been filed by the Defendants. Pursuant to Rule 15, the Second Amended Complaint should have been

considered properly filed, given the facts and procedural history, as justice so requires. Further, there was no prejudice to the Defendants, who had actual notice within the limitations period, as discussed above, through their insurers, who offered policy-limits settlements prior to the filing.

Additionally, the correction of a party's name, where the proper party received notice and was the intended defendant, constitutes a misnomer, not a misidentification. Rule 15 Misnomers are curable and do not defeat jurisdiction. *See Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992). The facts here clearly support that Defendants had notice, suffered no prejudice, and understood the claims against them. Rule 15 should allow the SAC.

III. THE PENDING MOTION TO AMEND SUPPORTS AN ORDER ALLOWING A LATE AMENDMENT PER RULE 15.

Plaintiffs filed a Motion to Amend, dated February 20, 2025, as discussed prior which was timely before the Court. It is well-settled that a motion to dismiss under Rule 12(b) is not a “responsive pleading” within the meaning of Rule 15. *See Berry v. McLeod*, 328 S.C. 435, 441, 492 S.E.2d 794, 797 (Ct. App. 1997) (“A Rule 12(b)(6), SCRCPP, motion to dismiss is not a responsive pleading within the meaning of Rule 15(a), SCRCPP.”); *see also Skydive Myrtle Beach, Inc. v. Horry Cty.*, 426 S.C. 175, 197, 826 S.E.2d 585, 596 (Ct. App. 2019) (amendment as a matter of course permitted before a responsive pleading is served). Further, the SAC clarified clerical issues and added no new parties or causes of action. Under Rule 15(c), SCRCPP, these amendments relate back to the original complaint as they arose from the same conduct, transaction, or occurrence. *See Jackson v. Doe*, 342 S.C. 552, 556, 537 S.E.2d 567, 569 (Ct. App. 2000). Justice required the grant of leave to allow the amendment.

Here, as no responsive pleading had been filed or served at the time, Plaintiffs retained the right to amend without leave of Court to merely correct allegations of the first amended

complaint. Thus, the filing of the SAC was proper, and the pending Motion to Amend should have been granted to allow the amendment to relate back to the original filing date.

IV. SKYDIVE MYRTLE BEACH INC., V. HORRY COUNTY AND RULE 15 ALLOW THE FILING AND SERVICE OF THE SAC WITH A NUNC PRO TUNC ORDER.

Rule 15 allows this court to grant an amendment when justice so requires. In this matter, the Defendants have requested the Court to hold that Rule 15 is allowed to frustrate a valid claim by the Plaintiff because the SAC was not authorized by the Defendants nor prior order of the court. Albeit, Rule 15(a) authorized the amendment for the reasons set forth above. However, the U.S. Supreme Court and South Carolina Court of Appeals have consistently held that procedural irregularities should not frustrate a valid claim.

In *Foman v. Davis*, 371 U.S. 178 (1962), the United States Supreme Court emphasized that leave to amend should be freely given when justice so requires and should not be denied absent undue delay, bad faith, or prejudice. Similarly, in *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006), the Fourth Circuit warned against using Rule 15 as a procedural weapon to prevent adjudication on the merits. The South Carolina Court of Appeals further echoed this in *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 198, 826 S.E.2d 585, 597 (Ct. App. 2019), emphasizing that procedural rules should facilitate, not frustrate, resolution on the merits.

The use of Rule 15 as a procedural bar in these circumstances is manifestly unjust and legally unsound. To do otherwise is a clear-cut abuse of discretion. The trial court should issue a nunc pro tunc order allowing the amendment which will authorize the filing and service of SAC.

V. DISMISSAL WITH PREJUDICE WAS INAPPROPRIATE WHERE THE COURT FOUND A TECHNICAL VIOLATION SUBJECT TO CURE.

Dismissal with prejudice is a harsh remedy and should only be granted where a party has acted in bad faith, where prejudice is clear, or where amendment would be futile. *See Armstrong*

v. Collins, 366 S.C. 204, 214–17, 621 S.E.2d 368, 374–75 (Ct. App. 2005). Even if the Court found procedural missteps, Plaintiffs nonetheless timely moved for leave to amend. The parties appeared before Judge Van Slambrook to hear the motion to amend in this case on April 3, 2025; however, he continued the motion because the matter was before your honor. Plaintiffs respectfully submit that dismissal with prejudice was not warranted in this matter and ask that the action be reinstated to permit resolution on the merits.

VI. Relief Requested

For the foregoing reasons, Plaintiff respectfully requests that the Court:

1. Vacate its Order of Dismissal;
2. Accept the Second Amended Complaint nunc pro tunc as filed, or in the alternative; or
3. Allow an Amended Complaint to be filed per Rule 15(a).

Respectfully submitted,

FERRARA LAW FIRM, PLLC,

By: /s/ Paul B. Ferrara, III
PAUL B. FERRARA, III
SC Bar No. 70511
8887 Old University Blvd.
North Charleston, SC 29406
T: (843) 569-5511/ F: (843) 569-5411
paul@ferraralawfirm.net
Attorney for the Plaintiffs

April 17, 2025
North Charleston, SC

Outlook

Re: Stephanie Davidson/024139137001/Lebkicher v. Davidson/ALIS No. Pending (File #: 20232391.000) - Claim No: 024139137-001

From Paul Ferrara <paul@ferraralawfirm.net>

Date Fri 10/18/2024 1:05 PM

To Dan Ranaldo <dan@cslaw.com>; Paralegal <paralegal@ferraralawfirm.net>;
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Dan & Matt,

Could each of you please review the attached demands and get back to me? I have added a demand for the father and mother as bystanders. I have medical records and bills to support the bystander/ negligent infliction of emotional distress claims. understand we have an agreement on policy limits regarding Ellie's claim; if I'm incorrect, please advise.

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Sincerely,
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Following up on the minor settlement for Elliana Lebkicher. Please provide a status as to moving forward with a structured annuity or conservatorship, and court approval of the minor settlement.

Thank you,

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STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
ERIK LEBKICHER,)
CARISSA LEBKICHER,)
E. L., a minor child,)
)
Plaintiffs,)
v.)
)
STEPHANIE DAVIDSON &,)
DREW P. FINNEGAN,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2024-CP-08-01894

**AMENDED MOTION TO
RECONSIDER THE APRIL 10,
2025 JUDGMENT PURSUANT
TO RULE 59(e), SCRPC**

Plaintiffs respectfully move the Court to reconsider both of the April 10, 2025 Orders of Dismissals with Prejudice under Rule 59(e) of the South Carolina Rules of Civil Procedure. The dismissals result in a six-year-old minor child being forever unable to pursue her claims which arose from a dog bite to her face. The actions by this Court are contrary to South Carolina Supreme Court’s holding in *Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 346–47, 732 S.E.2d 395, 398–99 (2012) as discussed below.

The record reflects that Plaintiffs complied with Rule 3(a), SCRPC, by timely filing the Summons and Complaint, thereby commencing the action. The Defendants were served with service which was also in compliance with Rule 4. These foundational rules—not Rule 15—control the validity and timeliness of the action itself. The Court’s April 10, 2025 Orders held that Plaintiffs’ “Second Amended Complaint” was not properly before the Court because it was filed without prior leave. However, under a correct reading of Rule 15(a), SCRPC, the Plaintiffs were entitled to file and serve one amended complaint, pursuant to Rule 15, as a matter of course. The original July 10, 2024 complaint was revised on July 12, 2024, without the necessity of Rule 15, and became the operative pleading. Thereafter, the October 17, 2024 pleading, which was

authorized per Rule 15(a), was, in function and law, the first valid amendment, and leave of court was not required. The original revised complaint did not require Rule 15 authority and thus the second amended complaint was, in effect, the first valid amendment triggered by Rule 15.¹ Rule 15 allowed the filing of the Second Amended Complaint and failure to seek leave does not and should not invalidate the case.

This motion rests on a manifest error of law and causes substantial prejudice to the Plaintiffs, where no delay, bad faith, or actual prejudice was shown, as further discussed below.

I. THE ACTION WAS PROPERLY COMMENCED PURSUANT RULE 3(a), 4 AND 15 AND THE SOUTH CAROLINA SUPREME COURT’S DECISION IN MIMS v. BABCOCK CENTER, INC..

Here, the original lawsuit was properly commenced with the timely filing of the complaint on July 10, 2024, within the original statute of limitations. Thereafter, two days later, on July 12, 2024, a revised complaint was filed to clarify allegations and no new party or claims were added. This July 12, 2024 complaint superseded the prior filed complaint of July 10, 2024 per *Young v. City of Mount Ranier*, 238 F.3d 567, 572 (4th Cir. 2001).² Rule 15 was not invoked as the complaint did not add, modify or delete claims against a party.³ Thereafter, on October 17, 2024, the clerk of court clocked in an authorized complaint entitled second amended complaint (“SAC”) which removed a Defendant. The amendment was authorized per Rule 15(a) without leave. Further, this amended action was served within 120 days of the original filing date of the

¹ The Court of Appeals explained in *Valentine v. Davis*, 319 S.C. 169, 173, 460 S.E.2d 218, 220 (Ct. App. 1995), the limits of Rule 15 and stated “Rule 15, SCRCF, does not allow an existing plaintiff to add a new plaintiff to the case to assert a claim against the defendant. Rule 15(a) only permits an existing plaintiff to add, modify, delete, or change claims against an existing defendant. Rule 15(b) addresses amendments to conform to the evidence presented at trial. Rule 15(c) deals with relation back of amendments.”

² An amended complaint not only replaces the original complaint and supersedes the original but also renders the prior complaint void. (“As a general rule, an amended pleading ordinarily supersedes the original and renders it of no legal effect.”) (citation and internal quotation marks omitted). See *Young v. City of Mount Ranier*, 238 F.3d 567, 572 (4th Cir. 2001).

³ The South Carolina Supreme Court has held that the trial court, when considering Rule 15 amendments, as cited in *Pool v. Pool*, 329 S.C. 324 (1998), should allow an amendment so long as no new claims or defenses are asserted.

complaint. Additionally, the claims in the SAC related back to the same conduct, transaction, or occurrence under Rule 15(c) SCRCF and this pleading related back to the original filing of July 10, 2024. *See Hiers by Hiers v. Mullens*, 310 S.C. 63, 65, 425 S.E.2d 57, 59 (Ct. App. 1992)(Rule 15(c) allows relation back of an amendment to the original filing date.); *see, e.g., Mahoney v. Padula*, 427 S.C. 532, 537, 832 S.E.2d 219, 222 (2019) (explaining commencement under Rule 3(a)); *In re Estate of Weeks*, 329 S.C. 251, 256, 495 S.E.2d 454, 457 (Ct. App. 1997) (noting that proper commencement and service confer jurisdiction and preserve claims). Thus, the facts of this case and the plain language of Rule 15 allowed for the SAC without leave of the court and was authorized.

In *Mims v. Babcock Center, Inc.*, the South Carolina Supreme Court reversed the Court of Appeals order that affirmed the trial court's Order that an unauthorized amended complaint was a nullity.⁴ The Supreme Court made clear that the failure to serve an original complaint does not preclude later amendment or preclude jurisdiction where the action was properly commenced under Rule 3(a), pursuant to an amendment clocked in by the clerk. *Id.* Ultimately, in *Mims*, the South Carolina Supreme Court reversed the Court of Appeals order that affirmed dismissal of an unauthorized amended complaint, served outside the 120 days of filing, and declared it to be a nullity. The Supreme Court decision established that once a lawsuit is commenced, an amendment can be authorized at any time before a responsive pleading has been filed, even if leave was not requested, as Rule 15 motions should be liberally granted. Moreover, the prejudice to parties per Rule 15 is especially lacking when the Defendants were aware of the lawsuit within the commencement period and as such the court should allow the claims to proceed on the merits. The

⁴ 399 S.C. 341, 346–47, 732 S.E.2d 395, 398–99 (2012).

South Carolina Supreme Court decision in *Mims* is directly on point and should control this court's decision.

Here, this case involves a minor who timely filed her suit and amended without leave, according to the Court's April 10, 2025 Orders. However, Plaintiffs gave notice of the amended complaint to the Defendant's prior to the 120 day expiration, like *Mims*. Specifically, Plaintiffs' counsel notified both Defense counsel on October 18, 2024, the statute of limitations was protected with the original filing and there was an amended complaint, attached the SAC to the email, and asked if they would accept service. (See Exhibit "A"). Neither party replied and service of the SAC was properly served on both Defendants on October 22, 2024 and October 24, 2024 as evidenced by the affidavits of service in the Court's file. The Court in *Mims* stated that an unauthorized amended complaint did not render the action a nullity because the Defendants had noticed within the 120 days of the filing and it was properly commenced. Additionally, the Court in *Mims* noted that the claim was of a disabled person and that statute of limitations was tolled due to the disability. One Plaintiff, in this case, is a minor child and those same facts and circumstances exist in this case and should control the Court's holding in this case. To eclipse the claims in this case would be a travesty of justice and violative of the South Carolina Constitution.

II. THE PENDING RULE 15 MOTION SHOULD BE HEARD AND THE RELATION BACK DOCTRINE APPLIES BECAUSE PLAINTIFFS SOUGHT TO CLARIFY IDENTITIES AND CLAIMS THAT AROSE FROM THE SAME TRANSACTION.

On February 20, 2025, prior to hearing the motion to dismiss, Plaintiffs filed a motion to amend and sought a nunc pro tunc order to cure the alleged defects asserted by the Defendants. This motion was timely and complied with Rule 15 as no responsive pleadings had been filed by the Defendants. Pursuant to Rule 15, the Second Amended Complaint should have been considered properly filed, given the facts and procedural history, as justice so requires. Further, there was no

prejudice to the Defendants, who had actual notice within the limitations period, as discussed above, through their insurers, who offered policy-limits settlements prior to the filing.

Additionally, the correction of a party's name, where the proper party received notice and was the intended defendant, constitutes a misnomer, not a misidentification. Rule 15 Misnomers are curable and do not defeat jurisdiction. *See Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992). The facts here clearly support that Defendants had notice, suffered no prejudice, and understood the claims against them. Rule 15 should allow the SAC.

III. THE PENDING MOTION TO AMEND SUPPORTS AN ORDER ALLOWING A LATE AMENDMENT PER RULE 15.

Plaintiffs filed a Motion to Amend, dated February 20, 2025, as discussed prior which was timely before the Court. It is well-settled that a motion to dismiss under Rule 12(b) is not a “responsive pleading” within the meaning of Rule 15. *See Berry v. McLeod*, 328 S.C. 435, 441, 492 S.E.2d 794, 797 (Ct. App. 1997) (“A Rule 12(b)(6), SCRCPP, motion to dismiss is not a responsive pleading within the meaning of Rule 15(a), SCRCPP.”); *see also Skydive Myrtle Beach, Inc. v. Horry Cty.*, 426 S.C. 175, 197, 826 S.E.2d 585, 596 (Ct. App. 2019) (amendment as a matter of course permitted before a responsive pleading is served). Further, the SAC clarified clerical issues and added no new parties or causes of action. Under Rule 15(c), SCRCPP, these amendments relate back to the original complaint as they arose from the same conduct, transaction, or occurrence. *See Jackson v. Doe*, 342 S.C. 552, 556, 537 S.E.2d 567, 569 (Ct. App. 2000). Justice required the grant of leave to allow the amendment.

Here, as no responsive pleading had been filed or served at the time, Plaintiffs retained the right to amend without leave of Court to merely correct allegations of the first amended complaint. Thus, the filing of the SAC was proper, and the pending Motion to Amend should have been granted to allow the amendment to relate back to the original filing date.

IV. SKYDIVE MYRTLE BEACH INC., V. HORRY COUNTY AND RULE 15 SUPPORT THE ENTRY OF A NUNC PRO TUNC ORDER AUTHORIZING FILING AND SERVICE OF SAC.

Rule 15 allows this court to grant an amendment when justice so requires. In this matter, the Defendants have requested the Court to hold that Rule 15 is allowed to frustrate a valid claim by the Plaintiffs because the SAC was not authorized by the Defendants nor prior order of the court. Albeit, Rule 15(a) authorized the amendment for the reasons set forth above. However, the U.S. Supreme Court and South Carolina Court of Appeals have consistently held that procedural irregularities should not frustrate a valid claim.

In *Foman v. Davis* the United States Supreme Court emphasized that leave to amend should be freely given when justice so requires and should not be denied absent undue delay, bad faith, or prejudice. *See* 371 U.S. 178 (1962). Similarly, in *Laber v. Harvey*, the Fourth Circuit warned against using Rule 15 as a procedural weapon to prevent adjudication on the merits. *See* 438 F.3d 404, 426 (4th Cir. 2006). The South Carolina Court of Appeals further echoed this in *Skydive Myrtle Beach, Inc. v. Horry County* emphasizing that procedural rules should facilitate, not frustrate, resolution on the merits. *See* 426 S.C. 175, 198, 826 S.E.2d 585, 597 (Ct. App. 2019).

The use of Rule 15 as a procedural bar in these circumstances is manifestly unjust and legally unsound. To do otherwise is a clear-cut abuse of discretion. The trial court should issue a nunc pro tunc order allowing the amendment which will authorize the filing and service of SAC.

V. DISMISSAL WITH PREJUDICE WAS INAPPROPRIATE WHERE THE COURT FOUND A TECHNICAL VIOLATION SUBJECT TO CURE.

Dismissal with prejudice is a harsh remedy and should only be granted where a party has acted in bad faith, where prejudice is clear, or where amendment would be futile. *See Armstrong v. Collins*, 366 S.C. 204, 214–17, 621 S.E.2d 368, 374–75 (Ct. App. 2005). Even if the Court found procedural missteps, Plaintiffs nonetheless timely moved for leave to amend. The parties appeared

before Judge Van Slambrook to hear the motion to amend in this case on April 3, 2025; however, he continued the motion because the matter was before your honor. Plaintiffs respectfully submit that dismissal with prejudice was not warranted in this matter and ask that the action be reinstated to permit resolution on the merits.

VI. Relief Requested

For the foregoing reasons, Plaintiffs respectfully requests that the Court:

1. Vacate its Orders of Dismissals;
2. Accept the Second Amended Complaint nunc pro tunc as filed, or in the alternative; or
3. Allow an Amended Complaint to be filed per Rule 15(a).

Respectfully submitted,

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April 21, 2025
North Charleston, SC

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Erik Lebkicher, Carissa Lebkicher, E.L., a
minor child,

Plaintiffs,

vs.

Stephanie Davidson & Drew P. Finnegan,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2024-CP-08-01894

**DEFENDANT DAVIDSON'S REPLY TO
PLAINTIFFS' RULE 59(e) AMENDED
MOTION TO RECONSIDER**

Defendant Stephanie Davidson submits this Reply in opposition to Plaintiffs' Amended Motion to Reconsider this Court's April 10, 2025 ruling and orders granting defendants' respective Motions to Dismiss.

Plaintiffs' Motion for Reconsideration incorrectly states that the minor's claim is forever barred as a result of this Court's order. The statute of limitations as to the minor's claim is tolled. The statute of limitations as to Erik & Carissa Lebkicher's claim has expired. Additionally, USAA remains ready and willing to tender payment of the policy limits in settlement of the minor's claim and proceed with a court approval hearing.

Plaintiffs' Motion for Reconsideration incorrectly states that the *filing* of its July 10, 2024 Complaint commenced an action pursuant to Rule 3(a), SCRCP. As this Court correctly found, it is undisputed that Plaintiffs' July 10, 2024 Complaint was never served on the defendants and did not commence a civil action. Rule 3, SCRCP requires both *filing and service* to commence a civil action. The statute of limitations expired on July 10, 2024.

This Court further correctly found it is undisputed that Plaintiffs' first Amended

Complaint was filed after the expiration of the statute of limitations, on July 12, 2024, and never served on the defendants. As such, Plaintiffs' first Amended Complaint did not commence a civil action.

As this Court correctly determined, neither Plaintiffs' Complaint nor Plaintiffs' first Amended Complaint commenced a civil action. As this Court correctly found, it is undisputed that Plaintiffs' Second Amended Complaint was filed without leave of court or consent of the parties. This Court further found, it is also undisputed that Plaintiffs' Second Amended Complaint was filed after the statute of limitations expired. As this Court correctly determined, even if leave of court were granted to file a second amended complaint, Plaintiffs failed to commence a civil action within the statute of limitations and the relation back doctrine would not cure this defect.

Plaintiffs' Motion for Reconsideration incorrectly states the facts and holding of Mims v. Babcock Ctr., Inc., 399 S.C. 341, 732 S.E.2d 395 (2012). Mims addressed a misinterpretation as to the application of the 120 day "safety net" provision of Rule 3(a), SCRPC and S.C. Code Ann. § 15-3-20. The Court explained "the legislative intent in amending section 15-3-20(B) in 2002 was to provide a safety net for cases where filing of the summons and complaint occurs near the end of the statute of limitations and service is made after the limitations period has run." Id. at 346, 732 S.E.2d at 397. "The statute and the rule, read together, provide that (1) an action is commenced upon filing the summons and complaint, if service is made within the statute of limitations, and (2) if filing but not service is accomplished within the statute of limitations, then service must be made within 120 days of filing." Id. at 346, 732 S.E.2d at 397-98.

The Mims' Court found the 120-day "safety net" was incorrectly applied and

therefore Mims' amended complaint should not have been dismissed. The Court further found, pursuant to Rule 15(a), SCRCP, Mims was allowed to amend her complaint *once as a matter of course* even if the initial complaint was not served. On remand the court of appeals found Mims' amended complaint was timely filed as the statute of limitations had been tolled due to a disability, service was timely, and therefore the amended complaint commenced a civil action. Estate of Mims v. S.C. Dep't of Disabilities & Special Needs, 422 S.C. 388, 395-98, 811 S.E.2d 807, 811-12 (Ct. App. 2017). However, the court noted the amended complaint did not relate back, under Rule 15(c), SCRCP, to the original complaint because the original complaint was never served. The court noted "applying the rule in that way would have the undesirable consequence of permitting litigants to extend the statute of limitations for several of their causes of actions by choosing to wait until the conclusion of their longest statute of limitations to file and serve an amended complaint." Id. at 397 n.5, 811 S.E.2d at 812 n.5.

Here, Plaintiffs' original complaint was never served. Plaintiffs' first amended complaint was filed after expiration of the statute of limitations and never served. Plaintiffs' second amended complaint was filed after expiration of the statute of limitations and without leave of court. Even if leave of court was granted, as Mims notes, the second amended complaint would not relate back as no civil action was ever commenced.

As this Court correctly concluded, plaintiffs failed to commence a civil action within the statute of limitations, and this Court lacks personal jurisdiction over defendant Davidson. This Court's dismissal of the action was proper and defendant respectfully requests plaintiffs' amended motion for reconsideration be denied.

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Charleston, South Carolina
April 23, 2025

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Erik Lebkicher, Carissa Lebkicher, E.L., a
minor child,

Plaintiff,

v.

Stephanie Davidson & Drew P. Finnegan,

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No. 2024-CP-08-01894

**DEFENDANT FINNEGAN’S REPLY TO
PLAINTIFFS’ AMENDED MOTION TO
RECONSIDER APRIL 10, 2025
JUDGMENT PURSUANT TO RULE
59(E), SCRPC**

Defendant Drew P. Finnegan (“Defendant Finnegan”) submits this Reply in Opposition of Plaintiffs’ Amended Motion to Reconsider April 10, 2025 Judgment Pursuant to Rule 59(e), SCRPC (“Motion”). On April 10, 2025, the Honorable Jennifer B. McCoy issued two Orders granting Defendants’ respective Motions to Dismiss Plaintiffs’ Second Amended Complaint with prejudice (“Orders”).

As an initial matter, Plaintiffs incorrectly set forth that the minor child’s claims are barred as a result of the Courts’ Orders. This incident occurred when the minor child was three (3) years old on July 10, 2021. As a matter of law, the minor child’s claims toll when the minor turns eighteen. *See* S.C. Code § 15-3-40(1). Notably, State Farm offered its policy limits to resolve this case on January 18, 2022 which Plaintiffs accepted. Plaintiffs’ argument applies only to the remaining Plaintiffs.

Further, Plaintiffs’ Motion inaccurately claims that the July 10, 2024 Complaint initiated a lawsuit pursuant to Rule 3(a), SCRPC. Rule 3(a), SCRPC, requires both filing *and* service to start a civil action. Plaintiffs failed to serve this Complaint on Defendants indicating an action never

commenced as reflected in this Court's Orders.

Additionally, the statute of limitations expired on July 10, 2024, and Plaintiffs filed its first Amended Complaint on July 12, 2024. Plaintiffs submitted the first Amended Complaint after the statute of limitations expired and never served it upon Defendants. Thus, Plaintiffs did not commence an action with their first Amended Complaint as reflected in this Court's Orders.

Plaintiffs filed a Second Amended Complaint on October 17, 2024. Plaintiffs failed to seek consent of Defendants or leave of Court to amend its Complaint after the expiration of the statute of limitations. Moreover, Plaintiffs failed to commence a civil action before July 10, 2024's expiration of the statute of limitations indicating the relation back doctrine cited in the Motion is a moot argument.

Further, Plaintiffs' interpretation of *Mims v. Babcock Ctr., Inc.* is inaccurate and misplaced. The Supreme Court interpreted S.C. Code Ann. § 15-3-20(B) and Rule 3(a), SCRPC, to mean that an action is commenced upon filing the summons and complaint *if* service is made within the statute of limitations, or if service is made within 120 days of filing when the statute of limitations has expired. The Court emphasized that the legislative intent was to provide a safety net for cases where filing occurs near the end of the statute of limitations and service is made after the limitations period has run. 399 S.C. 341, 732 S.E.2d 395 (2012). The Supreme Court also ruled that Rule 15(a), SCRPC allows the filing and service of an amended complaint within the statute of limitations, without leave of court, even if the original complaint has not been served as long as no responsive pleading has been filed. *See id.*

Here, Plaintiffs argue the 120-day safety net applies to their July 12, 2024 first Amended Complaint and October 17, 2024 Second Amended Complaint. However, Plaintiffs fail to address the fact that their first Amended Complaint and Second Amended Complaint were filed after the

expiration of the statute of limitations. No law cures Plaintiffs' failure to file this action within the statute of limitations. Therefore, Plaintiffs never served their Complaint and failed to file the first Amended Complaint and Second Amended Complaint within the statute of limitations. Therefore, Plaintiffs failed to commence an action.

CONCLUSION

Based on the foregoing, Defendant Finnegan respectfully requests the Court deny Plaintiffs' Amended Motion to Reconsider April 10, 2025 Judgment Pursuant to Rule 59(e), SCRPC as Plaintiffs failed to commence a civil action and this Court's lack of personal jurisdiction over Defendant Finnegan.

Respectfully submitted,

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served within 120 days of filing, consistent with the Supreme Court's directive in Mims. Accordingly, a civil action was properly commenced.

III. Leave of Court Was Not Required Under Rule 15(a), SCRCP.

Plaintiffs were entitled to amend their operative pleading before service of a responsive pleading. As Defendants had not filed an Answer or responsive pleading prior to the motion seeking leave to file the Second Amended Complaint, Rule 15 allows the amendment. The Court of Appeals in Estate of Mims recognized this same principle when holding that an amended complaint filed before service of the original is nevertheless valid under Rule 15(a) and relates back to the original filing.

IV. Relation Back Doctrine Under Rule 15(c) Is Inapplicable Because the Action Was Commenced Upon Service of The Second Amended Complaint.

Defendant relies on *Estate of Mims v. S.C. Dep't of Disabilities & Special Needs*, and particularly Footnote 5 of that opinion, to suggest that Plaintiffs are improperly attempting to revive time-barred claims through an amended pleading. *See* 422 S.C. 388, 393–94, 812 S.E.2d 569, 572–73 (Ct. App. 2017). This reliance is misplaced.

The Estate of Mims court explained that relation back under Rule 15(c), SCRCP, does not apply where the original complaint was never served and, therefore, a civil action was never commenced. *Id.* at 394, 812 S.E.2d at 573 (quoting *Logan v. Cherokee Landscape & Grading Co.*, 389 S.C. 611, 698 S.E.2d 867 (Ct. App. 2010)).

The court noted the potential abuse of relation back if litigants were allowed to wait until the longest statute of limitations expired before serving an amended complaint; however, that concern is not implicated here. *See Logan*, 389 S.C. at 618, 698 S.E.2d at 871 ("One purpose of a statute of limitations is 'to relieve the courts of the burden of trying stale claims when a plaintiff

has slept on his rights.'" (quoting *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996))).

Here, Plaintiffs do not rely on the relation-back doctrine under Rule 15(c). Rather, Plaintiffs properly commenced this action under Rule 3(a), SCRCF, when the Second Amended Complaint was filed and served within 120 days of the original filing, consistent with the South Carolina Supreme Court's holding in *Mims v. Babcock Ctr., Inc.* *Id.* at 397–98, 731 S.E.2d at 343–44 (Pleicones, J., concurring in result). In *Mims*, the Court held that, "An action is commenced upon the filing of the summons and complaint, if service is made within the statute of limitations, and if filing but not service is accomplished within the statute of limitations, then service must be made within 120 days of filing." *Id.* 399 S.C. at 397–98.

The operative complaint here — the Second Amended Complaint — was filed while the minor's claim remained tolled under S.C. Code Ann. § 15-3-40 and was timely served within the 120-day window provided by Rule 3(a). Accordingly, this case presents a straightforward application of *Mims*, not a situation requiring or invoking Rule 15(c) relation-back principles.

In short, Footnote 5 of *Estate of Mims* is irrelevant to the procedural posture of this case, because this action was not commenced through relation back, but rather through timely service of an amended complaint that independently satisfied Rule 3(a)'s requirements.

CONCLUSION

The Second Amended Complaint was the operative pleading, properly filed while the minor's claim was tolled, and served within 120 days, thereby satisfying Rule 3(a), SCRCF, under *Mims*. Plaintiffs respectfully request that this Court vacate the dismissal, and allow Plaintiffs to proceed forward with their claims.

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Here, Plaintiffs timely filed their complaint and properly completed service within the 120-day period, tolling the statute of limitations. Defendant's argument otherwise misconstrues both the record and controlling law.

a. No Requirement for "Amended" Labeling

Rules 3 and 4, SCRCF, do not require a complaint to be labeled "Amended" or "Second Amended" to effectuate valid service. The South Carolina Supreme Court has made clear that the substance of the pleading, not its title, controls. *Mickle v. Blackmon*, 255 S.C. 136, 140; 177 S.E.2d 548, 549 (1970). Here, the Plaintiffs' served complaint was valid and placed Defendants on clear notice within the allowed time even though it was styled second amended complaint despite it being the real 1st amended complaint for Rule 15 purposes. Thus, the sum and substance of the second amended complaint met the minimum requirements for Rule 3

b. Service Satisfied Rule 4 and Due Process

Plaintiffs effected personal service in strict compliance with Rule 4, creating a presumption of proper service. *Moore v. Simpson*, 322 S.C. 518, 473 S.E.2d 64 (Ct. App. 1996).

Even if strict compliance were questioned, service still conferred personal jurisdiction and provided notice, fulfilling its constitutional purposes. *Roche v. Young Bros., Inc.*, 318 S.C. 207, 456 S.E.2d 897 (1995).

II. THE OCTOBER 17, 2024 AMENDMENT WAS THE FIRST SUBSTANTIVE AMENDMENT UNDER RULE 15(A)

Defendant wrongly asserts that Plaintiffs improperly filed their October 17, 2024 Second Amended Complaint without leave of court.

The earlier so-called “First Amended Complaint” involved no substantive changes and was retitled solely at the Clerk’s instruction. Therefore, the October 17 filing — which removed a defendant — constituted the first true amendment, permissible as a matter of right under Rule 15(a) because no responsive pleading had been served. See *Berry v. McLeod*, 328 S.C. 435, 494 S.E.2d 790 (Ct. App. 1997).

Once filed, this operative complaint properly served as the basis for service and commencement under *Mims*.

III. PLAINTIFFS ARE ENTITLED TP AMENDMENT BECAUSE JUSTICE SO REQUIRES AND DEFENDANTS SUFFER NO PREJUDICE.

Rule 15 requires courts to freely grant leave to amend when justice so requires and absent prejudice to the opposing party. *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 826 S.E.2d 585 (2019).

Here, no prejudice exists. Plaintiffs’ amendments did not add new claims or alter the core facts. They merely clarified parties (replacing the minor’s full name with initials and removing a defendant) — changes that enhance accuracy without disadvantaging Defendants. See *Lee v. Bunch*, 373 S.C. 654, 647 S.E.2d 197 (2007). Thus, Plaintiffs’ amendments are fully consistent with the spirit of Rule 15.

IV. ALL AMENDMENTS RELATE BACK UNDER RULE 15(c).

Under Rule 15(c), amendments relate back when they arise from the same conduct, transaction, or occurrence alleged in the original complaint. The Court of Appeals in *Pruitt v. Bowers*, 330 S.C. 48, 499 S.E. 2d 250 (ct. App. 1988) explained that

"Under Rule 15(c), SCRCP, an amendment to a pleading relates back to the date of the original pleading when the claim asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth in the original pleading. The rule is designed to prevent the running of the statute of limitations in circumstances where the original pleading has given fair notice of the general fact situation out of which the claim or defense arises."

The Court held that that if the original pleading gave the defendant fair notice of the transaction or occurrence at issue, any later amendment — even filed after the statute of limitations expires — **relates back** to the original filing date. As a result, the statute of limitations is **not a bar** to the amended claim.

Here, all versions of Plaintiffs' pleadings arose from the same July 10, 2021 incident. Neither the initial nor amended complaints introduced new claims. Thus, the Second Amended Complaint relates back to the original July 10, 2024 filing. Defendant's statute of limitations arguments are without merit.

V. **EQUITY REQUIRES EQUITABLE TOLLING OF THE STATUTE OF LIMITATIONS TO ALLOW SERVICE OF AN AUTHORIZED AMENDED COMPLAINT.**

Even assuming, arguendo, that this Court ultimately concludes the unauthorized Second Amended Complaint superseded the timely, authorized First Amended Complaint, fundamental principles of equity mandate that the statute of limitations be equitably tolled to preserve Plaintiff's claims.

South Carolina law firmly recognizes that equitable tolling is appropriate where external circumstances—not the litigant's own lack of diligence—impede the proper pursuit of legal rights. See *Barton v. South Carolina Dep't of Probation, Parole & Pardon Servs.*, 404 S.C. 395, 399, 745 S.E.2d 110, 112 (2013) ("Equitable tolling is reserved for situations in which external forces, rather than a litigant's lack of diligence, account for the failure to file a timely claim.").

Equitable tolling applies where, as here, the interests of justice so require. *Pelzer v. State*, 379 S.C. 432, 436, 665 S.E.2d 813, 815 (2008).

Plaintiff acted diligently by timely filing the First Amended Complaint, which was authorized and properly before the Court. The later filing of the unauthorized Second Amended Complaint—whether due to procedural error or inadvertence—was not attributable to any willful neglect or bad faith by Plaintiff. The clerk of court allowed the second amended complaint to be filed. This amendment superseded the authorized complaint and apparently vitiated the Plaintiff's claims. This procedural irregularity is precisely the kind of extraordinary circumstance that warrants equitable tolling. See *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 113, 687 S.E.2d 29, 32 (2009) (equitable tolling appropriate where external events prevent timely litigation despite diligence). Moreover, South Carolina courts are clear that equity intervenes to prevent injustice caused by technical errors or procedural missteps. *Sloan v. Greenville County*, 356 S.C. 531, 545, 590 S.E.2d 338, 346 (Ct. App. 2003) ("Equity regards as done that which ought to have been done" and "will intervene to prevent injustice caused by technicalities.").

It would be manifestly unjust to penalize Plaintiff for the supersession of its timely, authorized pleading by a later unauthorized filing, particularly where Plaintiff's diligence is undisputed. Rigid adherence to the statute of limitations under these circumstances would elevate form over substance and contravene settled equitable principles. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) ("Equity abhors forfeiture and will relieve against it where justice requires.").

Accordingly, equity requires that the statute of limitations be tolled from the date of the filing of the authorized First Amended Complaint through any period of procedural confusion

resulting from the unauthorized Second Amended Complaint. Plaintiff respectfully requests that the Court grant Plaintiff's on this ground as well if it deems it just and proper.

CONCLUSION

This case was timely commenced, properly amended, and validly served under the South Carolina Rules of Civil Procedure. The October 17, 2024 complaint was Plaintiffs' first true amendment and was properly filed without leave of court pursuant to Rule 15(a). Defendant's Return is unsupported by law and ignores key procedural facts. Plaintiffs respectfully request that the Court grant their Motion to Reconsider and reinstate the action on its merits. Alternatively, the trial court should grant the Plaintiff's equitable tolling to allow service of the second amended complaint.

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April 28, 2025
North Charleston, SC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Common Pleas Case No.: 2024-CP-08-01894
Appellate Case No.: 2025-

Erik Lebkicher, Carissa Lebkicher, and
E. L., a minor child,.....Appellants,

v.

Stephanie Davidson & Drew P.
Finnegan,.....Respondents.

NOTICE OF APPEAL

Erik Lebkicher, Carissa Lebkicher, and E.L., a minor child, hereby appeal both of the April 10, 2025 Orders of Dismissal with Prejudice entered by the Honorable Jennifer B. McCoy, which dismissed their claims against Stephanie Davidson and Drew P. Finnegan individually. Appellants received written notice of entry for both orders on April 10, 2025. Additionally, Appellants appeal the May 15, 2025 Order of the Honorable Jennifer B. McCoy denying Plaintiffs’ Amended Motion to Reconsider, which was filed on April 21, 2025. Appellants received written notice of entry of this order on May 15, 2025.

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May 29, 2025

Other Counsel of Record:

Daniel Paul Ranaldo – Attorney for Stephanie Davidson

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PROOF OF SERVICE

I certify that I have served a copy of the notice of intent to appeal by emailing a copy to Judge Jennifer B. McCoy at jmccoysc@sccourts.org, and other counsel of record, Daniel Paul Rinaldo, Carlisle Brice Allen, and Adam Noah Yount, at dan@cslaw.com, callen@hsblawfirm.com and ayount@hsblawfirm.com respectively, on May 29, 2025.

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STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

TRANSCRIPT OF RECORD
CASE NO. 2024-CP-08-01894

February 20, 2025

BEFORE: The Honorable Judge Jennifer B. McCoy

Erik Lebkicher,
Plaintiff,

vs.

Stephanie Davidson,
Defendant.

APPEARANCES:

Paul Ferrara, Esq.
Attorney for Plaintiff

Daniel Ranaldo, Esq.
Attorney for Defendant Stephanie Davidson

Carlisle Allen, Esq.
Attorney for Defendant Finnegan

Official Court Reporter/Transcriber
Cynthia D. Weaver

1 (COURT REPORTER'S NOTE: Due to remote platform
2 interruption and audio interference throughout the
3 hearing, those instances are denoted with
4 (inaudible) in the transcript.)

5 P-R-O-C-E-E-D-I-N-G-S

6 THE COURT: All right. Let's see, Eric Lebkicher
7 versus Stephanie Davidson. Two motions pending. Two
8 Motions to Dismiss on behalf of both defendants.

9 MR. RANALDO: Good afternoon, Your Honor. Dan
10 Ranaldo on behalf of a Defendant, Stephanie Davidson.

11 THE COURT: All right. Welcome.

12 MS. ALLEN: And, Your Honor, I'm Carlisle Allen on
13 behalf of Defendant Finnegan.

14 THE COURT: All right. Welcome.

15 I see Mr. Ferrara's name on the screen, are you
16 there, Mr. Ferrara?

17 MR. FERRARA: Yes, Your Honor. For some reason I
18 can't see the video, but can you hear me, Your Honor?

19 THE COURT: Yeah, we can hear you just fine.

20 MR. FERRARA: Okay. Great.

21 THE COURT: All right. Okay. We can proceed, if
22 it's okay with you. So we'll start. I'm happy to hear these
23 in whatever order you all like or we can do it first filed,
24 that's up to y'all.

25 MR. RANALDO: Your Honor, I'm ready to proceed.

1 Dan Ranaldo on behalf of Stephanie Davidson. May
2 it please the Court?

3 Just as way of a little factual background, Your
4 Honor, this matter arises out of a dog bite incident that
5 occurred on July 10, 2021. The incident occurred at the
6 home of my client, Stephanie Davidson. And for the record
7 her name now is Stephanie Finnegan.

8 Mr. Lebkicher, the plaintiff, was babysitting or
9 dogs sitting, Stephanie Davidson and Drew Finnegan's dogs,
10 and he had brought his daughter over and that's when the
11 minor was bitten.

12 USAA issued a homeowner's policy to Stephanie
13 Davidson, and has offered the policy limits of \$300,000. I
14 initially spoke with Mr. Lebkicher before he was represented
15 back in approximately July of 2023, confirmed the settlement
16 agreement between himself and USAA, and just discussed with
17 him briefly that, given the amount of the settlement, court
18 approval would be required. There were some things that he
19 would need to decide on such as perhaps a conservatorship or
20 a structured settlement.

21 And then approximately February of 2024, I became
22 aware that Mr. Ferrara was representing Mr. Lebkicher.
23 Mr. Ferrara had asked us for a copy of the Declaration Page.
24 I provided that to him. I followed up with him several
25 times via voicemail, email, and certified mail. And

1 essentially only received a response on October 18th of 2024
2 when I received an email that he had filed a Second Amended
3 Complaint. And prior to that email, I had no knowledge that
4 any complaint at all had been filed.

5 The initial complaint was filed July 10th of 2024
6 and not served. The Second Amended -- the First Amended
7 Complaint was filed July 12th of 2024 and not served. And
8 then this Second Amended Complaint was filed July 17th of
9 2024, and ultimately served.

10 Our argument is fairly simple, it's just that Rule
11 15 lays out what's required and that it permits a party to
12 amend its complaint one time as a matter of course. Other
13 than that, a party may amend and the Rule says only by
14 Court -- Court Order -- only by legal court or a written
15 consent of an adverse party which was not obtained here.

16 Therefore, the Second Amended Complaint is void.
17 And that would be the basis of our Motion to Dismiss, having
18 never served the defendant with the Summons and Complaint.
19 We would also argue that the Court lacks jurisdiction over
20 the defendant as well.

21 That is -- that's the basis for our Motion to
22 Dismiss, Your Honor.

23 THE COURT: Okay. Pretty straight forward.

24 Mr. Ferrara do you want to respond?

25 MR. FERRARA: Yes, Your Honor, may it please the

1 Court.

2 Obviously, we would disagree with that reading of
3 Rule 15. And I filed a memorandum, Your Honor, today and I
4 don't know if you had a chance to look at it but -- and I
5 know you've heard this argument many times. But in this
6 situation where a lawsuit was filed but not served and no
7 responsive pleading was filed, the way I read the Rule, Your
8 Honor, and understand the Rule is that an amended lawsuit
9 can be filed as many times within the Statute of
10 Limitations.

11 Now, the reason why the defendant's counsel are
12 trying to argue this is because they're trying to
13 technically create a procedural defect. And I'm
14 respectfully requesting Your Honor to deny this motion
15 because at the moment in time, the statute -- the dog bite
16 in this case, Your Honor, occurred in July of 2020,
17 basically we filed the lawsuit near the Statute of
18 Limitations, Your Honor. And so I was inside of the 120-day
19 Rule as permitted under Rule 4D. But due to the fact that
20 Charleston County was backed up, I couldn't, you know,
21 request leave to amend and still have a motion to be heard
22 in time before Rule 4D closed the door completely, you know
23 the 120-day rule --

24 THE COURT: Yeah, but you can file a motion to --
25 you have to file motion to preserve the issue, though. Of

1 course, you're not -- you don't make judgment calls on if
2 you follow the rules according to how backed up you think
3 the motions docket is.

4 MR. FERRARA: No, no, I understand, Your Honor.
5 But respectfully what I'm saying is, is that the -- if the
6 Statute of Limitations hadn't passed at all there would be
7 no basis for this motion because of Rule 15.

8 Now, what I did do Your Honor was I reached out to
9 both defense attorneys and served -- emailed them a copy of
10 the Summons and Complaint and asked them if they would
11 accept service. I didn't hear anything from them on that,
12 and this is on Second Amended Complaint, Your Honor. And so
13 they are technically trying to say that Rule 15 wasn't
14 followed, but respectfully Rule 15 wasn't -- because no
15 responsive pleading had been filed and no additional
16 allegations, you know, no additional claims were even made
17 Your Honor. The reason for second amendment was to clarify
18 factual allegations in the First Amended Complaint.

19 And so, additionally, Your Honor, of importance is
20 that I've filed a Motion to Amend earlier today under Rule
21 15C. And I know that's not before you, but given the South
22 Carolina, you know, in Mims versus Babcock, favors non
23 dismissal of a complaint based upon procedural issues. I'm
24 respectfully requesting Your Honor to deny the motion.

25 Additionally, in my memorandum, Your Honor,

1 alternatively, Your Honor could issue a nunc pro tunc order
2 for the technical deficiency of -- if Your Honor found that
3 there was a deficiency and still cure that -- cure that
4 amendment. And so respectfully I'm requesting that you deny
5 this motion for those reasons. And additionally note that
6 there's a Motion to Amend under Rule 15C that's pending in
7 this case. And I know that's not before Your Honor, but it
8 is important that it's filed and I don't see, respectfully
9 Your Honor, any reason why that Rule 15 Motion would be
10 denied. So I will respectfully request you to dismiss this
11 motion.

12 THE COURT: Okay. All right. Let me hear back
13 from Mr. Ranaldo, if any.

14 MR. RANALDO: Yes, Your Honor. I mean, I don't
15 think that there's much more to explain about how Rule 15
16 works. I mean, it explicitly states that other than that
17 initial amendment, it requires leave of court or consent of
18 the parties. That was not had in this case. The Second
19 Amended Complaint was filed after the Statute of Limitations
20 had expired and it was not served within 120 days of the
21 expiration of the Statute of Limitations.

22 Additionally, Your Honor, I would point out also
23 is that USAA as the carrier for Stephanie Davidson, has
24 offered the policy limits of the \$300,000 to the minor.

25 MS. ALLEN: And, Your Honor, my motion's exactly

1 the same as Mr. Ranaldo's and I would just like to add that
2 State Farm has also offered their policy limits of a
3 \$100,000 to the minor. And so I think that's why the
4 defendants are a little confused as to what's going on here.
5 And also I'd like to note that, although a motion or a
6 Motion to Amend was filed, it was 13 minutes before this
7 hearing started. So, you know, we certainly had not had a
8 chance or opportunity to see that.

9 THE COURT: Okay. All right.

10 Mr. Ferrara, anything else?

11 MR. FERRARA: Just, Your Honor, the Rule 15 was
12 amended to allow an amendment, you know, to -- as Your
13 Honor's aware, allow an amendment without consent or leave
14 of the court one time.

15 THE COURT: Uh-huh.

16 MR. FERRARA: And obviously we when you're inside
17 of -- when you're inside the statu -- If you don't have a
18 Statute of Limitations problem the -- if you don't have a
19 Statute of Limitations problem, then obviously you can just
20 refile an action with a new case number, no -- no problem
21 there.

22 But in this particular situation, that wasn't --
23 that wasn't available and respectfully, Your Honor, we would
24 ask you to deny this because common sense, understanding
25 Rule 15C would say that the complaint, you know, the

1 relation back rules apply and they still apply, they still
2 apply, even as to the Second Amended Complaint. And there's
3 no prejudice -- I outline this in my memo, Your Honor,
4 there's NO prejudice to the defendants by Your Honor
5 allowing. I know that you're not hearing the amendment at
6 the moment, but, Your Honor, denying the motion, there's no
7 prejudice to the parties. This is just, you know, a
8 technical motion to try to get a dismissal on a procedural
9 issue rather than substantive adjudication and allow the
10 case to proceed forward. Just respectfully request you to
11 deny the motion.

12 THE COURT: All right. I know you keep saying
13 it's technical, I mean, I don't know if the Civil Rules of
14 Procedure are technical, I mean, you know, they're the
15 rules, they say what they say. And so, you know, get back
16 to the service issue, were these folks served? You said you
17 sent an email asking them to accept service and they never
18 wrote you back?

19 MR. FERRARA: Yes. They weren't, you're right,
20 they never wrote me back, Your Honor. And I timely served
21 them, they were served within the 120 days. You know --

22 THE COURT: How? When and how were they served?
23 Tell me about that.

24 MR. FERRARA: They were served, Your Honor, by a
25 private process server. And, let's see, Your Honor, they're

1 on the --

2 THE COURT: They're on file?

3 MR. FERRARA: -- let's see, Your Honor. It is,
4 Your Honor, but I'm going to pull it up for Your Honor and
5 answer your questions.

6 THE COURT: Okay.

7 MR. FERRARA: But it was, if I recall, so they
8 were served on October -- after -- after the attorneys told
9 me, you know, I didn't hear anything back from them, I let
10 them know that I was going to move forward and file. And
11 they were served, if I recall correctly, Your Honor, I think
12 like October -- within a few days of my email. I attached
13 the email that I sent to opposing counsel to my memo. And
14 once I didn't hear back from them, David Laird, a private
15 process server, served them timely within a few days and
16 that was within, you know, within the rules of the original
17 complaint, you know, of the original first complaint.

18 THE COURT: Okay. All right. Anybody else want
19 to respond at all?

20 MR. RANALDO: Your Honor, if I could just briefly
21 add one thing as far as the relation back, that would
22 require something to relate back to, and the suit was never
23 commenced with the initial complaint or the amended
24 complaint that was permitted under Rule 15 as a matter of
25 course, because they those -- neither one of those

1 complaints were ever served, which is what's required by
2 Rule 3.

3 THE COURT: All right. Well, I'll certainly take
4 a look at what's on file and issue a ruling. If I need a
5 formal order, I will direct those parties to do so in the
6 form orders that I issue, okay?

7 MR. RANALDO: Thank you, Your Honor.

8 MR. FERRARA: Thank you.

9 MS. ALLEN: Thank you, Your Honor.

10 THE COURT: Thank you all.

11 END OF REQUESTED PROCEEDINGS

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CERTIFICATE OF TRANSCRIBER

Case Name/Number: Erik Lebkicher, v. Stephanie Davidson,
2024-CP-08-01894

Date of Hearing: February 20, 2025

Court Reporter/Monitor: Webex

I, Cynthia D. Weaver, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither Counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

August 6, 2025

Cynthia D Weaver

Cynthia D. Weaver
Official Court Reporter/Transcriber
State of South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

TRANSCRIPT OF RECORD
CASE NO. 2024-CP-08-01894

April 3, 2025

BEFORE: The Honorable Judge Dale E. Van Slambrook

Erik Lebkicher,
Plaintiff,

vs.

Stephanie Davidson,
Defendant.

APPEARANCES:

Paul Ferrara, Esq.
Attorney for Plaintiff

Daniel Ranaldo, Esq.
Attorney for Defendant

Official Court Reporter/Transcriber
Cynthia D. Weaver

1 (COURT REPORTER'S NOTE: Due to remote platform
2 interruption and audio interference throughout the
3 hearing, those instances are denoted with
4 (inaudible) in the transcript.)

5 P-R-O-C-E-E-D-I-N-G-S

6 THE COURT: All right. We are here on
7 2024-CP-08-01894, Lebkicher versus Davidson.

8 And Mr. Ferrara, this is your motion?

9 MR FERRARA: Yes, Your Honor.

10 THE COURT: Well, let me ask you a procedural
11 question on this one, and maybe you're -- this would be part
12 of what you were going to tell me anyway.

13 There was a motion to dismiss that was granted as
14 to Plaintiff's Second Amended Complaint, there's a Form 4
15 that was issued on that; is that correct?

16 MR FERRARA: Yes, Your Honor.

17 THE COURT: And it indicates that there's an order
18 to follow and it hadn't seen the order yet, or at least it's
19 not in the public index.

20 Did the dismissal of Second Amended Complaint, was
21 that going to address the authority or the ability for the
22 Plaintiff to further amend, did that come out? You see what
23 I'm saying?

24 MR FERRARA: I think it's in that Form 4, Your
25 Honor, that checked box, it says, This order does not end

1 the case, it's at the bottom.

2 THE COURT: Okay.

3 MR FERRARA: That right there with reports the
4 skydive that, Your Honor, is already probably familiar with
5 that basically stipulations of dismissal are without
6 prejudice unless it states otherwise.

7 Now, this is an interesting case, Your Honor, I
8 think before --

9 THE COURT: Before we get to any of the substance
10 of it, shouldn't that order be issued so that there's --
11 whatever is sought to be addressed by Judge McCoy is
12 addressed, because if that order contains language that says
13 it's dismissed and the Plaintiff is given leave to further
14 amend the complaint, then the Motion to Amend is moot, isn't
15 it? Or am I making it too complicated?

16 MR FERRARA: I think you're right, Your Honor,
17 that it could be moot, but also this hearing could also moot
18 that decision and --

19 THE COURT: I don't know what her decision is
20 because I haven't seen the order yet.

21 MR FERRARA: Well --

22 THE COURT: So does this motion need to wait until
23 that order's issued in case it includes that?

24 Did y'all submit proposed orders on that, or is
25 she doing that?

1 MR. RANALDO: Your Honor, we are, the Defendants
2 were instructed to submit orders by tomorrow. So I do
3 believe that this -- this hearing today will be premature
4 because it -- the oral argument and the Defendant's Motion
5 to Dismiss address more than dismissing the Second Amended
6 Complaint. And also that there was no civil action ever
7 commenced for Rule 3, the Statute of Limitations has expired
8 and that was put before Judge McCoy on March 25th. I do
9 believe that will be part of the Form 4. So the checkbox on
10 the Form 4 that it doesn't end the case, it doesn't end it
11 because Judge McCoy has instructed the Defendant's to submit
12 a formal order for her review.

13 THE COURT: Okay. Yeah, I think I need to wait
14 till the form order is issued -- or not the form order, the
15 formal order is issued. Whatever you've submitted, of
16 course, you've submitted it, may or may not be the final
17 result and then whatever the result of that is could
18 certainly be considered or reconsidered or even appealed if
19 it was appropriate at that point in time.

20 I think I'd be stepping into it if I issue any
21 kind of an order about the amendment at this point. So
22 let's do that, let's push this down the road a little bit,
23 get that order out of the way, I'll feel better for closure
24 on it. And if it doesn't say much, well then, you know, it
25 doesn't say much, then we can argue it freshly, but at least

1 this time we're not potentially stepping on another judge's
2 toes, okay?

3 MR. RANALDO: Sure.

4 MR FERRARA: Your Honor, could we just mark the
5 matter continued and then what I will do is if Judge signs
6 the order if they need the case or specifically I'll email
7 Alexis and the Court that that motion is withdrawn.

8 THE COURT: Okay. Well, just do the Form 4
9 indicating that y'all appeared, that the Court determined
10 that need to be continued to the next term of court and just
11 leave it that, okay?

12 MR FERRARA: Thank you, Your Honor.

13 MR. RANALDO: Thank you.

14 THE COURT: Okay. No, thank you all.

15 END OF REQUESTED PROCEEDINGS

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CERTIFICATE OF TRANSCRIBER

Case Name/Number: Erik Lebkicher, v. Stephanie Davidson,
2024-CP-08-01894

Date of Hearing: April 3, 2025

Court Reporter/Monitor: Webex

I, Cynthia D. Weaver, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither Counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

August 6, 2025

Cynthia D Weaver
Cynthia D. Weaver
Official Court Reporter/Transcriber
State of South Carolina

RECEIVED

Apr 03 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Common Pleas Case No.: 2024-CP-08-01894
Appellate Case No.: 2025-001090

Erik Lebkicher, Carissa Lebkicher, and
E. L., a minor child,.....Appellants,

v.

Stephanie Davidson & Drew P.
Finnegan,.....Respondents.

CERTIFICATION BY COUNSEL

Pursuant to Rule 210(c), SCACR, undersigned counsel for Appellant hereby certifies as follows:

1. The foregoing Record on Appeal has been compiled in accordance with the South Carolina Appellate Court Rules.
2. The Record contains true and correct copies of the pleadings, motions, orders, and other documents filed in the Probate Court and Circuit Court which are necessary for determination of the issues raised on appeal.
3. The Record is complete and contains all materials relevant to the issues presented for appellate review to the best of counsel’s knowledge, information, and belief.
4. The documents contained in the Record are arranged in chronological order and correspond to the Index of Record on Appeal.

This certification is made in good faith and in compliance with the South Carolina Appellate Court Rules.

Respectfully submitted this 31st day of March, 2026,

FERRARA LAW FIRM, PLLC

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