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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Circuit Court Judge

Case No. 2018-CP-10-03929

Appellate Case No. 2025-001689

John Doe, ... Appellant,

v.

Bishop of Charleston, a Corporation Sole, and
the Bishop of the Diocese of Charleston, in his official capacity, ... Respondents,

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STATEMENT OF THE ISSUE ON APPEAL

Whether the circuit court properly granted summary judgment in favor of Respondents based upon the statute of limitations and Appellant's failure to submit sufficient evidence to delay the commencement of the statute of limitations based upon *Moriarty v. Garden Sanctuary Church of God.*

STATEMENT OF THE CASE

Appellant filed this action against the Diocese of Charleston and "the Bishop of the Diocese of Charleston, in his official capacity"[1] in August, 2018. He alleged he suffered sexual abuse by two lay teachers at his school, Sacred Heart School, in Charleston. The Diocese timely answered the Amended Complaint. Pursuant to the circuit court's scheduling order, discovery closed October 15, 2019, and the deadline for filing dispositive motions was October 30, 2019. Respondents filed separate motions for summary judgment based upon the absence of any genuine issue of material fact regarding: (1) the defense of common law charitable immunity; (2) the defense of the statute of limitations; and (3) the defense of *res judicata*. (Motions for Summary Judgment - R. __)

In November of 2019, the circuit court called a hearing on all pending motions for December 12, 2019. Prior to that hearing, Appellant filed nothing in opposition to Respondents' dispositive motions – no deposition testimony, no discovery, no affidavits, and no briefing on the legal issues raised by Respondents' motions. The circuit court heard oral argument on Respondents' dispositive motions based on charitable immunity, the statute of limitations, and the *res judicata* effect of the 2007 class action settlement. On January 9, 2020, the circuit court granted Respondents' summary judgment motion based solely on charitable immunity. (Order R. ___) Appellant appealed that judgment, which the South Carolina Supreme Court ultimately reversed in *Doe v. Bishop of Charleston*, 445 S.C. 31, 911 S.E.2d 323 (2025). In that decision, the Supreme Court held that all negligence-based torts were barred by the common law doctrine of charitable immunity, but that charitable immunity did not apply to intentional torts of the charitable

[1] The only proper legal entity is Bishop of Charleston, a Corporation Sole, an entity chartered by the General Assembly in 1880.

organization.[2] Importantly, Respondents can only be liable for their own intentional torts, not the intentional torts of an alleged abuser.[3] Contrary to Appellant's assertion, the Supreme Court did not "specifically reject" Respondents' defense of the statute of limitations. Rather, the Court "decline[d] to address any alternate sustaining ground for summary judgment and remand[ed] Appellant's claims to the trial court."[4]

On remand, the circuit court considered Respondents' dispositive motion based upon the statute of limitations and Appellant's failure to present the requisite objectively verifiable corroborating evidence regarding both the fact of his abuse and his repressed memory to toll the statute of limitations pursuant to *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000).[5] The parties submitted supplemental briefing for the circuit court's consideration. (Respondents' Supplemental Brief, R. ___ and Appellant's Supplemental Brief R. ___). In their supplemental brief, Respondents also urged the circuit court to grant summary judgment in their favor based upon a number of additional and alternate grounds:

- That Appellant's negligence claims were barred by common law charitable immunity and the Supreme Court's holding in *Doe v. Bishop of Charleston*. (Supplemental Memorandum, R. ___-___)

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[2] *Doe*, 445 S.C. at 32, 911 S.E.2d at 323-24.

[3] Under the doctrine of *respondeat superior*, an employer may be held liable for the torts of its employees. However, the employees' actions must be "reasonably necessary to accomplish the purpose of the servant's employment" and "done in furtherance of the master's business." *Wade v. Berkeley Cty.*, 330 S.C. 311, 319, 498 S.E.2d 684, 688 (Ct. App. 1998).

[4] *Doe*, 445 S.C. at 34, 911 S.E.2d at 324.

[5] Prior to the circuit court's ruling on Respondents' dispositive motion, no court had issued an order ruling on the merits of Respondents' defense based on the statute of limitations. Where an appellate court merely remands for further proceedings, the court's action does not preclude a later determination that summary judgment or directed verdict may be appropriate as it does not establish the law of the case. *Falk v. Sadler*, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000) *and* Toal, *Appellate Practice in South Carolina*, at 215.

- That each of Appellant's intentional tort claims failed as a matter of law because there was no evidence that Respondents specifically intended Appellant harm. (*Id.*, R.__ -__)
- That each intentional tort cause of action failed as a matter of law based upon the lack of any admissible evidence regarding the essential elements of Appellant's claims for conspiracy, intentional infliction of emotional distress, and fraudulent concealment. (*Id.*, R __-__).
- That Appellant's contract claims failed as a matter of law. (*Id.,* R __-__)
- That Appellant's claims were barred by the 2007 class action settlement and judgment for the benefit of all victims of sexual abuse who were born prior to July, 1981. (*Id.*, R __-__).[6]

The circuit court heard oral argument from the parties on June 10, 2025. The circuit court granted Respondents' motions July 7, 2025 (R. __) and ruled that:

- Appellant provided no basis for the Court to find that the statute of limitations was tolled.
- Appellant failed to present objectively verifiable corroborating evidence of the fact of his abuse or expert testimony to establish both the abuse and the fact of his repressed memories.
- There was no objective evidence or expert testimony that established when Appellant lost contact with his memories; when Appellant regained access to his memories; or whether the recovered memories were accurate.

[6] These grounds each stand as additional sustaining grounds for the circuit court's judgment, and Respondents incorporate by reference their entire brief submitted to the circuit court prior to the June, 2025 hearing.

The circuit court denied Appellant’s Motion to Reconsider July 25, 2025. This appeal followed.

ARGUMENT

A. Factual Background

Sacred Heart School operated as a ministry of Sacred Heart Parish and of the Roman Catholic Diocese of Charleston. Appellant alleges he was molested by two non-clerical teachers at Sacred Heart School in Charleston in 1970 while he was a student in the seventh grade. Appellant reported the abuse to no one. (Deposition excerpt R. ___) He did not see a doctor or any other health care provider at the time. (Deposition Excerpt R. ___) Appellant presented no evidence of when he repressed his memory or the date upon which his memory was regained. The only evidence presented of the abuse is from Appellant's self-reporting of his memory of the abuse.

Further, Appellant adduced no evidence supporting a chain of circumstances that would serve as objectively verifiable corroborating evidence. Neither teacher was ever convicted of sexual misconduct with a child, nor did either ever confess to abusing Appellant. In fact, one teacher adamantly denied it. (Affidavit R. ___) The other teacher taught for decades in the Summerville public schools, and there is no evidence in the record of any allegation of improper sexual conduct with a minor. This teacher died many years ago. There are no photographs or eye witnesses. There is no evidence that either teacher was ever accused of molesting any child.

Appellant proffered no evidence that the Diocese had knowledge of any specific risk of harm to him. Further, Appellant presented no evidence of any sort that the Diocese specifically intended that harm would befall him at any time.[7]

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[7] Q: Do you think anybody at the Diocese intended for [names of teachers] to harm you?
A: My heart says no. I've never known any bad – bad people in the church . . . (R. ___ Pltf. Depo. 148)

STANDARD OF REVIEW

When reviewing a grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c).[8] In *Kitchen Planners v. LLC v. Friedman*[9] the South Carolina Supreme Court clarified the standard for summary judgment and specifically rejected the notion that plaintiffs are required to show only a "mere scintilla" of evidence to survive summary judgment. The Court held that: "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine" and that "the mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." As Rule 56(c) mandates, the party opposing summary judgment must "do more than simply show that there is some metaphysical doubt as to the material facts' and 'must come forward with 'specific facts showing that there is a *genuine issue for trial.'*"[10]

As the Supreme Court made clear, Rule 56 provides that a party may move, with or without supporting affidavits, for summary judgment in its favor as to all or part of a claim.[11] The trial court must grant the motion "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[12] "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact."[13] "With respect to an issue upon which the nonmoving

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8 *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 354, 650 S.E.2d 68, 70 (2007).

9 *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (S.C. 2023). *See also Isaac v. Onion*, ___ S.C. ___, 915 S.E.2d 492 (2025).

10 *Id.* (emphasis added).

11 Rule 56(a), SCRCP.

12 *Id.;* Rule 56(c).

13 *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

party bears the burden of proof, this initial responsibility 'may be discharged by "showing"--that is, pointing out to the [trial] court--that there is an absence of evidence to support the nonmoving party's case.'[14] The moving party need not support its motion with affidavits or other similar materials negating the opponent's claim.[15] Once the moving party carries its initial burden, the opposing party must come forward with admissible evidence of specific facts that show there is a genuine issue of material fact remaining for trial.[16]

I. THE CIRCUIT COURT CORRECTLY HELD THAT APPELLANT'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.

a. Appellant adduced no objectively verifiable corroborating evidence to satisfy the requirements of *Moriarty v. Garden Sanctuary Church of God*.

Appellant's claims are barred by the statute of limitations.[17] His allegations in the Complaint are simply that "[h]is memory was repressed."[18] That allegation is unsupported by any admissible, objectively verifiable, corroborating evidence. Appellant was born May 28, 1957. He turned 18 on May 28, 1975. His claims lapsed no later than May 28, 1978. This action was not filed until August 8, 2018, almost forty years after the statute of limitations expired.

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14 *Id.* (alteration in original) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)).

15 *Id.* (quoting *Celotex*, 477 U.S. at 323); *see also Richardson v. State-Record Co.*, 330 S.C. 562, 499 S.E.2d 822 (Ct. App. 1998).

16 *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545.

17 *See* Timeline (R. __).

18 Am. Compl. ¶16 (R. __).

South Carolina's three-year statute of limitations applies to this case.[19] Pursuant to the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. This standard as to when the limitations period begins to run is objective rather than subjective. Therefore, the statutory period of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto.[20] The South Carolina Supreme Court has interpreted the "exercise of reasonable diligence" to mean that "the injured party must act with some promptness" when on notice of a potential claim.[21] "Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial."[22] It takes very little to start the clock.

In *Moriarty v. Garden Sanctuary Church of God*, the South Carolina Supreme Court held that, under the discovery rule contained in S.C. Code Ann. §15-5-535, a plaintiff who proves he or she suffered from repressed memory syndrome can postpone the start of the limitations period on his or her claim to the date a reasonable person would be on sufficient notice that he or she had

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19 *See* S.C. Code Ann. § 15-3-530(1) and (5) (2005) (providing a three-year statute of limitations for "an action upon a contract, obligation, or liability, express or implied" and "an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law"); *Cline v. J.E. Faulkner Homes, Inc.*, 359 S.C. 367, 371-72, 597 S.E.2d 27, 29 (Ct. App. 2004) (holding the three-year statute of limitations began to run on homeowner's negligence claim when he discovered his newly purchased modular home was damaged during delivery).

20 *Stokes-Craven Holding Corp. v. Robinson,* 416 S.C. at 525-26, 787 S.E.2d at 489-90 (citations and quotations omitted); see also S.C. Code Ann. § 15-3-535 (2005) ("[A]ll actions initiated under Section 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action.").

21 *Dean v. Ruscon Corp.*, 321 S.C. 360, 363-64, 468 S.E.2d 645, 647 (1996).

22 *Id.*

suffered an injury.[23] The person does not have to know who caused his or her injury, only that he or she has suffered an injury. Under the theory of repressed memory syndrome as explained in *Moriarty*, when an event occurs that is horrifically traumatic, the victim will attempt to cope by *completely* shutting the memory out.[24] When a memory is repressed, the person's conscious mind will have no access to the circumstances and specific incidents that were traumatic.[25] Under the theory, repressed memory is not at all like the ordinary process of forgetting bad experiences or a person choosing not to think about them.[26] *Moriarty* did not create an exception to South Carolina's statutory or common law, but rather was a direct application the discovery rule in Section 15-5-535 to this particular psychiatric condition.[27] Also, the question is not whether Appellant himself was on notice by a certain date, but whether the resurfacing memories would have put a reasonable person on sufficient notice for the statute of limitations to commence.[28]

Moriarty involved a claim by a woman in her early twenties who claimed to have repressed and suddenly recovered memories of having been molested at a day care facility when she was between ages three and five. In their decision regarding application of the discovery rule, both the South Carolina Supreme Court and Court of Appeals expressed deep concerns regarding repressed memory syndrome in their decisions[29] As both Courts acknowledged, the theory of repressed memory syndrome was, at the time, highly controversial among psychiatrists and psychologists – as the Supreme Court noted, there was no consensus among the psychological, medical, or legal

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[23] *Moriarty v. Garden Sanctuary Church of God*, 334 S.C. 150, 157-58, 511 S.E.2d 699, 703 (Ct. App. 1999) "*Moriarty I" and Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 330, 534 S.E.2d 672, 677 (2000) "*Moriarty II"*.

[24] *Moriarty I*, 334 S.C. at 157-58, 511 S.E.2d at 703.

[25] *Id.*, 344 S.C. at 158, 511 S.E.2d at 703.

[26] *Id.*, 344 S.C. at 158, 511 S.E.2d at 703.

[27] *Moriarty II*, 341 S.C. at 334, 534 S.E.2d at 679.

[28] *Id.*

[29] *Moriarty II*, 341 S.C. at 333, 534 S.E.2d at 678.

communities regarding the validity of the theory of repressed memory.[30] Critically, both Courts likewise acknowledged "the horrific possibility of false accusations" and that objectively verifiable corroborating evidence is required because of "the disagreement among the psychological and medical communities about the validity of repressed memory syndrome, the danger a plaintiff's memories could be faked or implanted during therapy, and the desire that a plaintiff not have the ability to control the running of the statute of limitations solely by allegations whose only support is contained within the plaintiff's mind."[31] Because of these concerns, the South Carolina Supreme Court required that a plaintiff claiming that repressed memory syndrome should delay the commencement of the statute of limitations must present both at the summary judgment stage and at trial: (1) independently verifiable objective evidence that corroborates a repressed memory claim and (2) expert testimony to prove both the abuse and the fact of the repressed memories.[32] The Supreme Court concluded its decision by saying: "We express no opinion on the merits of Moriarty's claim or on the validity of repressed memory syndrome as it may apply in her case. We reverse the grant of summary judgment to Church and remand this case for further proceedings consistent with this opinion."[33]

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[30] *Moriarty II*, 341 S.C. at 330, 534 S.E.2d at 677.

[31] *Moriarty II*, 341 S.C. at 335-36, 534 S.E.2d at 680, *citing Roe v. Doe*, 28 F.3d at 408-09 (suggesting that corroborative evidence of abuse and repressed memory should be required) (Hall, J., concurring); *Olsen v. Hooley*, 865 P.2d 1345, 1349-50 (Utah 1993) (requiring corroborating evidence because of concerns about the reliability of memory in general and revived memories in particular, and the difficulty of defending against claims of revived memories of sexual abuse long past); *S.V.*, 933 S.W.2d at 7-15 (discovery rule applies in repressed memory case only when claim is "inherently undiscoverable" and "objectively verifiable" through corroborating evidence; court assumed plaintiff's injury was inherently undiscoverable, but rejected application of discovery rule because she offered no corroborating evidence).

[32] *Moriarty II*, 341 S.C. at 336, 534 S.E. 2d at 678.

[33] *Moriarty II*, 341 S.C. at 340, 534 S.E.2d at 680.

The *Moriarty* Courts held that the a plaintiff must introduce admissible, independently verifiable, objective corroborating evidence that substantiates the claim of abuse by submitting: (1) an admission by the abuser; (2) a criminal conviction; (3) documented medical history of childhood sexual abuse; (4) contemporaneous records or written statements of the abuser, such as diaries or letters; (5) photographs or recordings of the abuse; (6) an objective eyewitness's account; (7) evidence the abuser had sexually abused others; or (8) proof of a chain of facts and circumstances having sufficient probative force to produce a reasonable and probable conclusion that sexual abuse occurred.[34] This independently verifiable objective corroborating evidence is a prerequisite for tolling the statute of limitations during the time of repression.

Appellant's sole foundation for his repressed memory claim is through "a chain of facts" that he argues constitutes independently verifiable objective evidence of the abuse. Appellant cited no evidence at all to satisfy his burden under items (1) through (7) above. Appellant contends that: (a) he was a student at a Catholic elementary school; (b) that the teachers he alleges abused him were employed at the school; and (c) anecdotal evidence that sexual abuse of minors historically occurred at Catholic churches and schools. That tenuous line of reasoning does not satisfy Appellant's burden under *Moriarty* to provide independently verifiable objective corroborating evidence in support of his claim. Moreover, Appellant's "chain of facts" rests on irrelevant, speculative, and inadmissible suppositions and speculation. Appellant's claims regarding chain of facts are neither objective, nor independently verifiable. In essence, Appellant seeks to base his claim on an impermissible inference that all adults at Catholic churches and schools must be considered pedophiles simply because they are fulfilling roles with Catholic ministries and

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[34] *Moriarty II*, 341 S.C. at 336, 534 S.E.2d at 680, *quoting Moriarty I*, 334 S.C. at 171, 511 S.E.2d at 710.

operations.[35] Additionally, Appellant's final link in his "chain of facts" is inadmissible under Rule 404(b), SCRE, which would not permit introduction of evidence of the criminal conduct of other people, at other times, in other places, and in other circumstances to constitute independently verifiable, objective evidence of Appellant's claimed abuse.[36]

Quite simply, Appellant failed to submit *any* admissible evidence to corroborate his alleged abuse and repressed memory claim.[37] He failed to comply with his substantial burden to introduce independently verifiable objective evidence of the abuse as required under *Moriarty* to support application of the discovery rule in a repressed memory case. That failure, standing alone merited summary judgment. The circuit court's order should be affirmed.

b. Summary judgment should be affirmed on the additional basis that Appellant failed to adduce admissible expert testimony to establish the fact of his abuse and the facts of his repressed memory.

Appellant also failed to present the required admissible expert testimony pursuant to *Moriarty* to establish the fact of the alleged abuse by the teachers, the fact of the repressed memories, and that those memories were repressed between his 18th birthday – May 28, 1975[38] – until sometime after August 8, 2015 (three years prior to filing the Complaint). There is no expert

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[35] It must be noted that such a blanket unwarranted presupposition by civil courts that all adult Catholics are sexual predators would constitute an irredeemable violation of the First Amendment rights of Catholics to freely exercise their faith, to freely assemble, and minister the Gospel free of government interference. Such a blanket presupposition, specifically directed at Catholics, would be unconstitutional. *See e.g. Employment Division v. Smith*, 494 U.S. 872, 880-1 (1990) (government infringement on free exercise may only be through neutral laws of general applicability). A neutral law of general applicability would necessarily mandate a presumption that every adult who practices any religious faith poses a known and knowable danger of sexually predatory conduct toward all children. That is not and cannot be the law.

[36] *See Moriarty I*, 334 S.C. at 170-171, 511 S.E.2d at 710, *quoting Roe*, 28 F.3d at 408.

[37] In this case, it is not necessary to undertake a probing analysis of the types of corroborating evidence identified in *Moriarty*, as Appellant has not submitted corroborating evidence of any kind.

[38] S.C. Code Ann. § 15-1-320, effective February 6, 1975, changed the age of majority to 18.

testimony in evidence to establish that requirement. Appellant's only evidence is his own words to his therapists – once again, something both *Moriarty I* and *Moriarty II* cautioned against. No testimony pinpointed when Appellant recalled being abused, or when he repressed that memory. There is no admissible expert testimony that would satisfy the requirements set forth in *Moriarty*. There is no admissible expert testimony that Appellant's alleged recovered memories are even accurate.

While Appellant asserts that "three doctors testified that Doe suffered from repressed memory of his abuse (App. Brief at 6), either that testimony was inadmissible or was insufficient to satisfy the requirements of *Moriarty*. In any event Appellant's doctors – only one of which was a Ph.D. – relied solely on Appellant's self-reporting – exactly the thing *Moriarty* cautioned against. The testimony in the record does not support Appellant's claims but rather casts further doubt on Appellant's claims. Dr. Sally Duffy, the psychologist Appellant identified as a potential expert, could not identify with any specificity when Appellant may have first recovered the memory of his abuse. Duffy could not establish any timeline for Appellant's claimed recovered memories. Dr. Duffy is the only licensed psychologist who saw Appellant – but she only saw him only once. Even then, the record before the circuit court reflects that:

- She thought that, in 2012, when Appellant moved from Charleston to Greenville without his wife, "that was a huge, huge thing for him." "He started having all kind of problems, couldn't cope and he was overwhelmed." "It was around 2012 he started having some – some blips of memory . . . because he was completely falling apart at that point and he was overwhelmed by emotion." "[T]hat made some kind of sense to me, which was hard because there were so many inconsistencies."[39]

- Dr. Duffy went farther – "But, apparently, I think – I think personally, I think the trigger for him primarily was the overwhelming negative emotions and stress associated with moving to Greenville [in 2012], where he didn't really want to go, and having to live without his wife. . . ."[40]

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[39] Deposition of Sally Duffy, 105-106. (R. ___).
[40] Duffy deposition, 107. (R. ___).

- She could not say when Appellant remembered the abuse:

  Q: But with John Doe, there's no way for us to say when he began, when he remembered the abuse?

  A: No. Like I said, it's my opinion that he started having blips after – with the stress of moving to Greenville.

  Q: In 2012?

  A: In 2012. And, like you said, his wife said something about the surgery [in 1999], so I don't know . . . .[41]

- Dr. Duffy agreed that Therapist Whalen recorded that Appellant mentioned remembering his abuse after heart bypass surgery in 1999.[42]

- Dr. Duffy admitted that she could not differentiate between repression and mere non-reporting "not unless you know them pretty well, not unless you spend a lot of time with them . . . but me, seeing him that one time, it would be hard for me to do." She admitted she could not make that differentiation, "not in a one-shot deal."[43]

Appellant's psychotherapist, Dorothy Whalen, noted regarding Appellant's first session with her on June 27, 2016, that he reported having a history of "sex abuse by neighbor (age 6) and by adults at a Catholic facility a few years later. These memories were repressed until a few years ago when [increased] sx dev (after heart bypass surgery).[44] Appellant's brief appears to treat Ms. Whalen as one of three "doctors" who had diagnosed Appellant with repressed memory syndrome. Yet, Ms. Whalen is not a psychologist or psychiatrist, but a licensed clinical social worker who could not conduct the "thorough clinical evaluation" required before expert testimony could be received under *Moriarty 1*.[45]

Appellant also seems to refer to Jason Flassing, P.A., who managed Appellant's medication as one of the "doctors" who diagnosed Appellant's condition. Flassing's initial psychiatric

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[41] Duffy deposition, 109. (R. ___).

[42] Duffy deposition, 105. (R. ___).

[43] Duffy deposition, 86 - 87 (R. __).

[44] Redacted note of Therapist Dorothy Whalen. (R. ___).

[45] *Moriarty 1*, 334 S.C. at 170-71, 511 S.E.2d at 710.

evaluation documented that Doe's memory was intact, based on "direct observation—him being able to provide a history of events that was accurate." Doe "was able to provide symptoms from the time he was a child." This means that Doe's own psychiatric treatment provider—at the first intake assessment—found his memory functioning normally and documented it in the clinical record. But Mr. Flassing is neither a psychologist nor a psychiatrist – he is a psychiatric physician's assistant who was not qualified as an expert witness and could not make any medical diagnosis nor render any opinion to any degree of medical certainty. While Appellant did not detail his claim of abuse to Flassing, the record reflects that Appellant consistently referred to having been abused by a priest when he was a child.[46]

Additionally, the record further clouds the issue because Appellant's wife testified that he began experiencing severe depression as early as 2000 and 2002. He began crying and entered deep depression in 2010 - 2012 and would only say that he was so ashamed. Depression increased and became unmanageable after the move to Greenville in 2012.[47] Also, the records obtained from the VA Hospital in Greenville note that "[Appellant] was seen by Dr. Thode. States brought up a lot of memories of something that happened in church and that was not good."[48]

In short, Appellant has not presented any expert testimony of his alleged abuse by the teachers or expert testimony establishing of the timing when he knew or should have known of his injury. The evidence did not support the application of the discovery rule under *Moriarty v. Garden Sanctuary Church of God* to postpone the commencement of the statute of limitations until August 8, 2015 – three years before Appellant filed his complaint. Appellant's inability to satisfy that burden places him in exactly the position that gave both the South Carolina Supreme Court

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[46] Flassing deposition, 9 (R. ___).
[47] Deposition of Mrs. Doe, 20: 21 – 21: 21; 29: 16-22; 48: 13 – 49: 15. (R. ___).
[48] Redacted VAH records, (R. ___).

and Court of Appeals such grave concern – Appellant's own self-reporting of what he says he did and did not remember is the only evidence. The ability to self-bolster otherwise unreliable and unprovable claims is precisely what the *Moriarty* Courts cautioned against.

II. APPELLANTS' GROUNDS FOR SUMMARY JUDGMENT WERE NOT BARRED BY THE LAW OF THE CASE DOCTRINE IN ANY RESPECT.

Respondents' arguments advanced in favor of summary judgment were in no way barred by the law of the case doctrine – which, requires a ruling on a matter that was not appealed.[49] Contrary to Appellant's position, Respondents were not required to obtain a ruling from the circuit court on every issue raised in their summary judgment motions. As the South Carolina Supreme Court noted in *I'On, LLC v. Town of Mt. Pleasant* "it would be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate review. It also could violate the principle that a court usually should refrain from deciding unnecessary questions."[50] As former Chief Justice Toal wrote in *Appellate Practice in South Carolina*, "Accordingly, under *I'On* a party is best served by raising additional sustaining grounds before the trial court; however when the lower court rules in one party's favor, it is not necessary for that party to return to the court and ask for a ruling on remaining issues and arguments in order to preserve those arguments" for use later.[51] It is well-settled that "[t]he appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment. An appellate court may not rely on Rule 220(c), SCACR, when the reason does not appear in the record, or when the court believes it would be unwise or unjust to do so in a particular case. It is within the appellate court's

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[49] *See e.g. Ross v. Med. Univ. of S.C.*, 328 S.C. 51 (1997).
[50] *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716.
[51] Toal, J. *et al.*, *Appellate Practice in South Carolina*, 192 (South Carolina Bar – CLE Division, 2016).

discretion whether to address any additional sustaining grounds."[52]

Nothing required the Supreme Court to rule on Respondents' asserted additional sustaining grounds and the Court's declining to rule means does not mean that such grounds could no longer be raised in motion practice before the circuit court on remand. Respondents have preserved the statute of limitations as a defense throughout this case, just as they have preserved their other available legal defenses.

CONCLUSION

The *Moriarty* Courts imposed the objectively verifiable corroborating evidence and expert testimony requirements in a repressed memory case to guard against the horrific possibility of false accusations. Enforcing those requirements at summary judgment is not harsh — it is the framework the South Carolina Supreme Court deliberately designed to balance access to courts by plaintiffs with protection of defendants in repressed memory cases. The depositions and admissible evidence before the circuit court demonstrate exactly why those safeguards exist. Appellant's own proffered expert could not pinpoint when the memories were forgotten or when the memories were recovered, nor could the expert differentiate repressed memory from ordinary forgetting or non-reporting without a depth of patient interaction she acknowledges she lacked with this individual. Appellant failed to satisfy his burden to establish the elements required to delay the commencement the statute of limitations from 1978 until 2018. Failing that, his claims are barred by South Carolina's statute of limitations, and the circuit court was correct to grant summary judgment on that ground.

The order below should be affirmed.

(Signature page to follow.)

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[52] *I'On*, 338 S.C. at 420, 526 S.E.2d at 723.

Respectfully submitted,

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s/ Richard S. Dukes, Jr.

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