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May 29 2026

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS
THE HONORABLE B. ALEX HYMAN
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2026-000708
CIVIL ACTION NO. 2025-CP-26-06721

Joseph N. Grate,

APPELLANT,

v.

David A. Anderson, James J. Winebrake, Coastal Carolina University,
Respondents,

RESPONDENTS.

**RESPONDENTS' JOINT MOTION TO STRIKE APPELLANT'S DESIGNATION
OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL AND TO
STAY DEADLINE FOR FILING OF THE RESPONDENTS' INITIAL BRIEFS
AND DESIGNATIONS OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL**

Respondents David A. Anderson, James J. Winebrake, and Coastal Carolina University (collectively, "Respondents") move to strike matters designated in Appellant Joseph N. Grate's Designation of Matter to be Included in the Record on Appeal on the basis that certain items designated therein were not presented to the circuit court below.

Respondents further request a stay of any deadline for Respondents' Initial Briefs pending the Court's decision on this Motion until thirty (30) days after service and proper filing of Designations by Appellant.

Appellant served Respondents with a copy of a Motion for Leave to File Matters to be Included along with a document entitled “Matters to be Included” via U.S. Certified Mail dated May 12, 2026.¹ The Court accepted that filing by Order dated May 21, 2026.

The purported Designations improperly include matters that were not before the circuit court. During the hearing on the motions from which this appeal arises, the only materials provided to the Court by Appellant appear to have been a proof of service already filed with the Court on September 15, 2025.² Relatedly, the Public Index for the underlying matter, Civil Action No. 2025-CP-26-06721, reflects that Appellant’s only filings prior to the hearing from which this appeal flows were the Summons and Complaint, Proof of Service, and a Motion for Summary Judgment, with affidavit and exhibits. Appellant’s purported Designation includes a number of documents not before the Court during the hearing or submitted prior, including the following: (8) U.S. Certified Mail Documents and (9) with purported materials from “CASE No. 2025-CP-00606” including emails, text messages, complaint letter, and course evaluation. *See* Ex. A.

Rule 209(b) requires the Designation to include matters only properly included in the Record on Appeal as set forth in Rule 210(c). Rule 210(c) plainly states: “The Record shall not, however, include matter which was not presented to the lower court or

¹ *See* C-Track Entry dated May 18, 2026.

² *See* Transcript of February 4, 2026 Hearing at 13:4-7 (attached as **Exhibit A**).

tribunal.” As set forth above, the purported Designation includes material not presented to the circuit court at or before the hearing.³

Accordingly, Respondents respectfully request this Court to strike the matters designated by Appellant which were not presented to the circuit court and require Appellant to designate and include in the Record on Appeal only that material presented to the circuit court, as required by Rule 210(c) of the South Carolina Appellate Court Rules. For clarity, Appellant should be required to identify documents designated by reference to filing date with the circuit court. Respondents further request this Court hold this matter in abeyance pending service and filing of a proper Designation and set the filing deadline for Respondents’ Initial Briefs and Designations for 30 days after the filing of a proper Designation by Appellant.

³ The Designation is also defective in that it is unclear as to what is being designated in its list of documents. Rule 209(b), SCACR (“The Designation must clearly identify what the party desires to have included in the Record on Appeal . . .”).

Respectfully submitted,

s/ Ashwin R. Sanzgiri

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Winebrake and Coastal Carolina University*

May 29, 2026

EXHIBIT A

Transcript of February 4, 2026 Hearing

1 STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**

2 COUNTY OF HORRY CASE NO.:2025-CP-26-06721

3

4

5

February 4, 2026

6

BEFORE: The Honorable Alex Hyman

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JOSEPH N. GRATE,

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Plaintiff,

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vs.

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DAVID A. ANDERSON, et al.,

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Defendants.

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APPEARANCES:

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Joseph N. Grate
Appearing Pro Se

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Eleanor White, Esq.
Appearing for Defendant/David Anderson

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21

Nelson Chandler, Esq.
Appearing for Defendants James J.
Winebrake and Coastal Carolina University

22

23

24

Stenographer: Natalie Dahl, RPR
SC Official Court Reporter

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2
3 NOTE: Pursuant to Rule 607 (H)(1)(B), SCACR "A
4 Court REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER
5 PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED
6 TRANSCRIPT." All requests for a copy of the
7 enclosed transcript shall be sent to:
8 ndahl@sccourts.org

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17 **INDEX**

Description	Page
(NONE)	

18
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20
21 **EXHIBITS**

22 (NONE)

23
24
25 **Transcript Legend**

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
Phonetic (ph)	Indicates a phonetic word
(Inaudible)	Indicates word(s) are not discernable due to audio recording quality
(sic)	Word(s) said but may be incorrect

1 **P R O C E E D I N G S**

2 THE COURT: Grate versus Anderson. I think I
3 have this as No. 8, No. 9, and No. 10. Motion to
4 dismiss under various 12(b), and another motion to
5 dismiss.

6 Okay. Let's see. As far as plaintiff,
7 Mr. Grate?

8 MR. GRATE: Yes, sir.

9 THE COURT: Good morning. How are you?

10 MR. GRATE: Fine. Thank you. How about
11 yourself?

12 THE COURT: All right.

13 And who do we have here for the defense?

14 MS. WHITE: Your Honor, Eleanor White on
15 behalf of David Anderson.

16 THE COURT: Yes, ma'am. I think that's No.
17 10.

18 MR. CHANDLER: Your Honor, I'm Nelson
19 Chandler on behalf of James J. Winebrake and
20 Coastal Carolina University.

21 THE COURT: The first motion I have is the
22 Defendants James J. Winebrake and Coastal Carolina
23 University's motion to dismiss, so that will be the
24 first one we'll hear.

25 I then have Mr. Anderson's motion to dismiss.

1 And then I have Mr. Grate's motion for summary
2 judgment.

3 So that being said, Counsel, happy to hear
4 from you.

5 MR. NELSON: Thank you, Judge. As I said,
6 Nelson Chandler --

7 THE COURT: Yes, sir.

8 MR. GRATE: Your Honor, I don't know how you
9 -- how this is done, but I think my motion is the
10 first motion.

11 THE COURT: On my list I have the first
12 motion is....

13 MR. CHANDLER: Your Honor, we filed our
14 motion on September 30th of 2025.

15 MS. WHITE: And, Your Honor, my motion was
16 filed on September 23rd, and Mr. Grate filed, you
17 know, about a month after that.

18 THE COURT: The first motion I have on the
19 roster is the motion to dismiss pursuant to 12(b).

20 So, Mr. Grate, as far as that, that is the
21 first one we hear, okay.

22 MR. GRATE: Thank you, sir.

23 THE COURT: Okay. Yes, sir. Sorry about
24 that.

25 MR. NELSON: Your Honor, as mentioned, Nelson

1 Chandler. I represent Coastal Carolina and its
2 current president, that's James Winebrake. And
3 just to give the Court some background, briefly,
4 Mr. Grate has another action pending that he filed
5 against Coastal Carolina and its then-president,
6 the predecessor to Mr. Winebrake --

7 THE COURT: Mr. Benson?

8 MR. CHANDLER: Yeah, earlier this year. And
9 that case, as far as we can tell, makes allegations
10 similar to this case. It went before Judge
11 Culbertson, who granted a motion to dismiss, and it
12 is currently on appeal.

13 Now, my understanding is that Mr. Grate is
14 still pursuing that case on appeal. And while that
15 case was pending, Mr. Grate filed this lawsuit, not
16 only against Coastal and it's now president,
17 Winebrake, who came onboard during the pendencies
18 of these two cases, but also, unfortunately,
19 against Mr. Anderson, who is the attorney for
20 Coastal Carolina in the other litigation. And so
21 he's also presented today with a motion to dismiss.
22 So that's the background, Your Honor. So we've got
23 two cases. The other was filed in Georgetown
24 County, and this one is in Horry County.

25 Your Honor, the -- our motion to dismiss

1 raises four distinct grounds under 12(b)(5),
2 12(b)(6), 12(b)(8) and 12(f). Your Honor,
3 plaintiff's -- the first ground, Your Honor, is
4 under 12(b)(f) for insufficiency of service of
5 process. Your Honor, it's our position that our
6 clients -- my clients have not been sufficiently
7 served at this time. In order to serve an
8 individual, you have to serve them personally or at
9 their place of abode or, alternatively, by
10 certified mail, return receipt requested, and
11 restricted -- delivery restricted to the addressee,
12 and that's established by showing a return receipt
13 signed by the individual to be served. And
14 Mr. Grate has not satisfied either of those as to
15 President Winebrake, so he has not been properly
16 served.

17 As to Coastal Carolina University, Your
18 Honor, it's a state agency, and to serve a state
19 agency, you've got to serve the Attorney General,
20 and you have to deliver a copy to the agency.
21 Mr. Grate has served the Attorney General, but he
22 has not delivered a copy personally to the agency,
23 which in this case is CCU.

24 So our first argument, Your Honor, is that
25 the case should be dismissed for insufficiency of

1 service of process under 12(b)(5).

2 Secondly, Your Honor, under Rule 12(b)(6),
3 Mr. Grate has not stated facts sufficient to state
4 a cause of action. I'm sure he can speak to his
5 claims when it's his time to address his motion,
6 but we are unable to discern any cause of action
7 that is cognizable under South Carolina law from
8 the complaint.

9 Mr. Grate raises a variety of complaints of a
10 factual nature about various issues of safety,
11 alleged harassment, inability to register for
12 courses, and those types of things, but we don't
13 see from the complaint any elements of a cause of
14 action that we can recognize. So we don't think
15 that the allegations are sufficient under Rule 8,
16 and he hasn't stated a claim under -- as a matter
17 of law.

18 Your Honor, he does reference -- he
19 references negligence in the complaint. And so if
20 you consider a tort action -- I think he's asked
21 for \$38 million in damages, so if you look at this
22 as a tort action, then we're under the Tort Claims
23 Act. To bring a negligence cause of action, as the
24 Court knows, you have to plead the four elements of
25 negligence: Duty, breach of duty, proximate cause,

1 and damages. And, here, there is no recognizable
2 legal duty that would be owed to Mr. Grate on any
3 facts alleged; otherwise, his claims would be
4 barred by the Tort Claims Act. So that is our
5 motion under 12(b)(6). There is no -- insufficient
6 facts to state a cause of action.

7 Additionally, as to President Winebrake,
8 under 15-78-70 of the Tort Claims Act, an
9 individual is not a proper party to a lawsuit when
10 the agency is sued. So to the extent there can be
11 any claim, it would only be against Coastal
12 Carolina, and certainly not against President
13 Winebrake in his individual capacity. So Mr.
14 Winebrake should be dismissed on that additional
15 ground.

16 Your Honor, third, the third argument we have
17 is under 12(b)(8), which is a unique rule in the
18 South Carolina rules that doesn't exist in the
19 federal rules, that provides that dismissal is
20 appropriate when the movement can show that the
21 actions and questions are between the same parties,
22 in their same capacities, on the same claims, as
23 another case.

24 Our position in this case is Mr. Grate is not
25 entitled to have these dual actions going

1 simultaneously. He's continuing to pursue the
2 other action, and that should be where he raises
3 and addresses all of his claims, and he's not
4 entitled to have a second action against Coastal
5 Carolina alleging what we perceive to be arising
6 out of the same generalized, you know, allegations.

7 Again, he can clarify that if there is some
8 difference that we are not aware of, but as it
9 appears, we have two cases against the same
10 parties, at least as to my clients. Now, my
11 individual client is not in the previous case, but
12 the president is sued in that case as well. So we
13 think the action should be dismissed under Rule
14 12(b)(8).

15 Lastly, Your Honor, under Rule 12(f), we have
16 a motion to strike his claims for punitive damages
17 and interest under the Tort Claims Act 15-78-120,
18 "No award of damages under this Chapter shall
19 include punitive or exemplary damages or interest
20 prior to judgment." So that is an extra argument,
21 Your Honor, that we've just made that he can't
22 proceed against us for punitive damages or interest
23 under the Tort Claims Act.

24 But those are our positions on the motion to
25 dismiss, and we're happy to address any questions

1 that the Court may have, and we're happy to respond
2 Mr. Grate's position.

3 THE COURT: All right. Let's hear from
4 Mr. Grate.

5 Mr. Grate, Counsel has given us four
6 different reasons for why I should dismiss this
7 claim. Let's go one by one. The first is under
8 12(b)(5) for insufficient service of process as to
9 Mr. Winebrake and Coastal Carolina University.

10 MR. GRATE: Thank you, Your Honor, for
11 handling one at a time like this.

12 THE COURT: Yes, sir.

13 MR. GRATE: Thank you very much. First of
14 all, I object to everything he has brought in about
15 another case. It's not pertinent to this case at
16 all. This is a totally separate case. That's the
17 first thing.

18 With respect to service, I think -- I know
19 according to South Carolina law both defendants
20 were properly served. Documents were served on
21 their attorney, and South Carolina does permit one
22 to serve documents on one's attorney.

23 THE COURT: Well, that's if it's agreed upon
24 by the parties. But, as far as this, under the
25 rules, did you serve Mr. Winebrake individually?

1 Do you have a certificate of service?

2 MR. GRATE: I served him, but something very
3 funny happened with that whole situation. However,
4 I think that there is an agreement between the
5 attorney and the defendants based on....

6 THE COURT: Well, the agreement would have to
7 be the attorney telling you that he would accept
8 service on behalf of someone.

9 MR. GRATE: Okay. Thank you, Your Honor.
10 However, the attorney did tell me that he is the
11 attorney for them, for the defendants. I have that
12 in writing from him.

13 THE COURT: Again, stating that somebody is
14 representing somebody does not mean that they will
15 accept service unless they specifically say, I'll
16 be happy to accept service on behalf of my client,
17 which does happen. That happens pretty frequently.

18 MR. GRATE: Okay. Your Honor knows; I do not
19 know. All I know is that I served -- I did serve
20 it on the defendants, but there's a lot of
21 assumptions made over there. So I can assume once
22 the attorney got this information, he advised his
23 -- he advised the defendants to not accept it.

24 THE COURT: Well, the way that you serve
25 Coastal Carolina is that you have to serve the

1 Attorney General, which he has conceded that you
2 did, but that you didn't serve a copy of that
3 pleading to the agency, the agency being Coastal
4 Carolina University.

5 MR. GRATE: Well, I did serve it with them,
6 but like I say, they don't want to acknowledge it
7 by letting the process happen like it's supposed to
8 happen.

9 THE COURT: Well, and that's what I'm asking,
10 because the way that the process is supposed to
11 happen is when you have a certificate of service,
12 you file that certificate of service with the
13 clerk, and that way the court can recognize that as
14 a legal argument that shows that someone was
15 properly served with a summons and complaint.

16 MR. GRATE: You said certificate of service?

17 THE COURT: That is generally how it is done,
18 correct.

19 MR. GRATE: Different from proof of service?

20 THE COURT: Well, proof of service can be a
21 certificate of service.

22 MR. GRATE: Well, I have that, Your Honor.

23 THE COURT: And who is the proof of service
24 through?

25 MR. GRATE: When you say "through," what do

1 you mean?

2 THE COURT: Did you use a process server?

3 MR. GRATE: No, sir. U.S. certified mail.

4 THE COURT: You have that right there?

5 MR. GRATE: Yes, sir.

6 THE COURT: Can I see it? If you will just
7 hand that to the deputy.

8 (A brief pause in the proceedings.)

9 THE COURT: You can go ahead and continue.

10 MR. GRATE: So that should cover the first
11 point, I think, with respect to service.

12 THE COURT: Well, I don't know if it covers
13 it, but you have provided me with something.

14 MR. GRATE: Thank you, sir.

15 THE COURT: Let's go to No. 2 then. That is
16 pursuant to 12(b)(6), noting that Rule 8 requires a
17 short and plain statement of ultimate facts.

18 MR. GRATE: Does Your Honor have a copy of
19 the pleading?

20 THE COURT: I do have it here.

21 MR. GRATE: I think they are very short, and
22 I think they are very concise.

23 THE COURT: Well, short and concise as far as
24 the pleadings doesn't necessarily mean it was
25 properly pled. What he's referring to is that

1 there's a failure to state a claim upon which you
2 can recover. They concede you did use the term
3 "negligence" in it, or "negligent", however, you
4 did not put in your complaint the elements of what
5 that negligence is, meaning a duty that was owed or
6 a breach of that duty.

7 MR. GRATE: I think I did, Your Honor. When
8 I stated that -- Your Honor, please, may I have
9 that exhibit back?

10 THE COURT: Yes.

11 MR. GRATE: Thank you so much.

12 Your Honor, I stated that Coastal Carolina is
13 obligated to permit me to study there. President
14 Winebrake as president of Coastal Carolina
15 University, he has a duty to at least cooperate
16 with and permit students to enter that university
17 to study there. He relinquished that duty. I
18 think he gave it over to Attorney Anderson.
19 Between the two of them, they have not permitted me
20 to study there. They are still blocking me. So
21 they have a duty to me to let me study there.

22 THE COURT: So you are saying that they have
23 a duty to let you enroll into their school?

24 MR. GRATE: Yes, sir.

25 THE COURT: I see in your complaint that you

1 have said that they are stating that you owe \$4,000
2 in tuition?

3 MR. GRATE: You see that in my complaint,
4 sir?

5 THE COURT: I do.

6 MR. GRATE: Okay. If that's in there -- I
7 don't see it, but -- in the complaint for this
8 summary judgment?

9 THE COURT: No. No. I'm talking about your
10 complaint in general. You put the restriction is
11 based upon the erroneous position that he has an
12 account deficit of more than 4,000.

13 MR. GRATE: What is the question about that,
14 sir?

15 THE COURT: What I'm asking -- you are
16 stating that James J. Winebrake, that somehow he
17 has a duty to let you attend school there?

18 MR. GRATE: Yes, sir. My position is that
19 with him being the president, he has certain
20 duties, you know, in that position. One of them
21 pertains to allowing students to study there,
22 so....

23 THE COURT: So it's your position that the
24 duty is to allow all students to study there?

25 MR. GRATE: Anybody who qualifies and wants

1 to go, I think. And I qualify, so why they
2 blocking me, I don't know. But that is what got us
3 to this point.

4 THE COURT: Well, and, again, your pleadings
5 do not talk about the duty that he owes and the
6 breach of a duty and the damages caused by the
7 duty, the breach of the duty. Those are all
8 elements of negligence.

9 MR. GRATE: When Your Honor puts it that
10 way -- Your Honor is the judge and knows all this
11 legal stuff. I think that I have done that. I
12 think I have satisfied that, but what I think --
13 it's what Your Honor says. But, anyhow, that is my
14 position, that I satisfied it.

15 THE COURT: Okay. All right.

16 Well, let's go to No. 3 then. That's about
17 the other action in Georgetown. I understand you
18 object to that, but it's still a legal argument
19 that they have made that there has been some kind
20 of a filing in Georgetown of a summons and
21 complaint that alleges the similar or same facts.

22 MR. GRATE: Yes, Your Honor. It is a legal
23 argument they made, but, Your Honor, it's totally
24 irrelevant to this issue.

25 THE COURT: Well, tell me the difference.

1 MR. GRATE: The difference is that's a whole
2 set of stuff that happened over there that I don't
3 need to address. The court over there in
4 Georgetown is a whole different set of things that
5 happened over there. This is totally different
6 here. I just have the president of the university
7 and --

8 THE COURT: But am I correct that the one in
9 Georgetown had the former president, Michael
10 Benson?

11 MR. GRATE: You are correct in that, but
12 that's totally irrelevant. That has nothing to do
13 with this case.

14 THE COURT: All right. But you are bringing
15 it against the former president, and also Coastal
16 Carolina --

17 MR. GRATE: No, sir. No, sir. That doesn't
18 appear in this at all. I'm bringing it against the
19 current president and his employer.

20 THE COURT: Okay. And, again, though, but
21 what is different in your pleadings other than
22 James Winebrake versus Michael Benson?

23 MR. GRATE: What is different in them?

24 THE COURT: Uh-huh.

25 MR. GRATE: Your Honor, please, I object.

1 You don't even need to consider that at all.

2 Whatever is in that, is in that.

3 This is what I brought before this court
4 here.

5 THE COURT: I understand that, but what I
6 want you to understand is that when they bring up
7 pursuant to 12(b)(8), that this has been previously
8 adjudicated or is currently being adjudicated in
9 another court, then I have to consider it. I'm
10 forced to. And one thing I do want you to
11 understand, I'm a resident judge for all of the
12 15th Circuit, that means Horry County and
13 Georgetown. So the likelihood of me potentially
14 hearing something about this in Georgetown, that
15 could happen.

16 MR. GRATE: Yes, sir. I appreciate that.

17 THE COURT: So that being said, what I'm
18 asking is: What are the differences other than
19 James Winebrake and Michael Benson?

20 MR. GRATE: Your Honor, please, sir, I
21 understand what you're saying, but what has
22 happened is they have confused the whole issue.
23 They have confused this whole thing. That is a
24 whole different case.

25 What the difference is totally -- the whole

1 thing is totally irrelevant. This is one case.
2 That's a different case altogether. That's taken
3 care of itself -- I mean it's not taken care --
4 it's not appropriate for us to even address that.
5 They brought in some stuff that shouldn't be. I
6 object to all of that.

7 THE COURT: I understand that, but what I'm
8 telling you is I have to address it. If they have
9 made this motion that there is currently a case
10 pending -- I understand it is pending on appeal --
11 that means you have picked your venue for this to
12 be heard, if it's the same thing.

13 MR. GRATE: It's not the same. I'm trying to
14 tell Your Honor it's not the same thing. It's a
15 totally different case.

16 THE COURT: And I guess what I'm asking you
17 is what are the differences between that case and
18 this case?

19 MR. GRATE: My answer to Your Honor --
20 following my objection to the whole question -- I'm
21 saying that it is totally irrelevant. That is not
22 an issue. I understand Your Honor says he has to
23 deal with it because they brought it up. Perhaps
24 the way for Your Honor to deal with it is to just
25 consider my objection on the basis that it is

1 irrelevant, and rule on that fashion. It is
2 irrelevant. I object to them bringing it in.

3 THE COURT: So I shouldn't in any way even
4 look at the documents?

5 MR. GRATE: No, sir. It has nothing to do
6 with this case.

7 THE COURT: Okay. All right.

8 Let's go to 12(f). Let me go back to this.
9 Under the 12(b)(6), one of the things that was
10 argued by defense counsel is that James J.
11 Winebrake, under the Tort Claims Act, cannot be
12 sued individually. Our Tort Claims Act does
13 specifically state that. It would be like if you
14 sued the City of Conway or City of Conway Police
15 Department, and then you also sued the officer.

16 MR. GRATE: It's a total different situation,
17 Your Honor.

18 THE COURT: Well, the Tort Claims Act doesn't
19 look at that differently.

20 MR. GRATE: Yes, it does, Your Honor.

21 THE COURT: In what way?

22 MR. GRATE: You are talking about a
23 municipality, Conway, a governmental entity.

24 THE COURT: So is Coastal Carolina.

25 MR. GRATE: No, it's not. Not according to

1 the South Carolina legislature. They say it's a
2 corporation.

3 THE COURT: So what you're saying is that
4 Coastal Carolina doesn't fall under the Tort Claims
5 Act?

6 MR. GRATE: That's what I'm saying, Your
7 Honor.

8 THE COURT: So your argument, then, is that
9 James J. Winebrake can be named individually?

10 MR. GRATE: Yes, and Coastal Carolina.

11 THE COURT: Okay. As to 12(f) with punitive
12 damages, I'm assuming that is your same argument
13 there as well, because your argument is it doesn't
14 fall under the Tort Claims Act?

15 MR. GRATE: Yes, Your Honor.

16 THE COURT: Anything else as far as the
17 arguments that have been made by defense counsel?

18 MR. GRATE: Has your Honor enumerated all of
19 them?

20 THE COURT: That was one, two, three, and
21 four. And two had two parts because it dealt with
22 the Tort Claims Act.

23 MR. GRATE: I think I've addressed all of
24 them, I think. If I haven't and somebody brings it
25 up to me, I can address them.

1 THE COURT: All right. Let me hear from Mr.
2 Chandler then in response to your arguments.

3 MR. CHANDLER: Thank you, Judge, briefly.
4 The plaintiff submitted to the Court a certificate
5 of service, but that simply reflects the fact that
6 he contends that he sent various mailings by
7 certified mail. And even if he did that, Your
8 Honor, as to the entity, it is not sufficient
9 because it has to be delivered -- the summons and
10 complaint has to be delivered to the entity or the
11 agency under Rule 12-4(d)(5), and he did not do
12 that.

13 As to the individual, he's conceded that he
14 did not effectuate personal service, so then the
15 question is: Did he send it return receipt
16 requested, delivery restricted to the addressee?
17 And there was no indication from the record that
18 that was done. That Rule 4(d)(8) goes on to say,
19 "Service is effective upon the date of delivery as
20 shown on the return receipt," and there is no
21 return receipt in the record signed by the
22 individual defendant.

23 So, for those reasons, we believe our motion
24 is valid under Rule 12(b)(5).

25 Under Rule 12(b)(6), Your Honor, obviously

1 there is a fundamental difference on the law,
2 insofar as Coastal Carolina is a public university,
3 and as such, it is an agency of the State of South
4 Carolina. And there is lots of case law
5 recognizing Coastal is subject to the Tort Claims
6 Act.

7 So, for that reason, the alleged duty that
8 the plaintiff has articulated with regard to the
9 president is in line with his obligations to the
10 university as a president of the university; and,
11 therefore, it's covered by 15-78-70, which requires
12 the agency or the subdivision, and not the
13 individual, to be sued. Because what he is sued
14 for is what he's doing as his job as the president
15 of the university.

16 Your Honor, Mr. Grate articulated a duty
17 to -- or argued that there is a duty to permit him
18 to study there. Our response to that is even if he
19 had alleged that -- even if he had alleged that in
20 the complaint or even if he did allege in the
21 complaint, there is no duty -- there is no duty at
22 common law for a university to permit anyone who
23 wants to study there, to study there. So that duty
24 doesn't exist under the law.

25 Furthermore, to the extent that the

1 obligation -- even some obligation like that could
2 exist, it would be barred by the Tort Claims Act,
3 because that would be an act of discretion on
4 behalf of the university on whether or not to admit
5 a student. And so the Tort Claims Act would bar
6 even if such a duty did exist.

7 Your Honor, third, on 12(b)(8), we understand
8 the plaintiff's position that you should not
9 consider the Georgetown case. The law is that the
10 Court can take judicial notice of its own records,
11 files, and proceedings for all proper purposes,
12 including facts established in its record.

13 So this Court can take judicial notice of any
14 filings and submissions in any circuit court in the
15 state of South Carolina. So it's important to look
16 at that. And the plaintiff has not articulated in
17 any way in which the claims are different. You
18 have requested that, and he argues that they are
19 different, but he just says they're different. He
20 does not explain or articulate any basis. So,
21 therefore, dismissal is appropriate under 12(b)(8).

22 And under the last round, the Tort Claims Act
23 does apply, which bars the plaintiff from punitive
24 damages.

25 Thank you, Judge.

1 THE COURT: Thank you.

2 Mr. Grate, let's go to your motion for
3 summary judgment.

4 And then, Counsel, we'll hear from you as
5 well.

6 Yes, sir.

7 MR. GRATE: So I have to leave that alone? I
8 can't address any of that again?

9 THE COURT: Well, you were given an
10 opportunity to address the motion that was made.
11 Is there something else you need to add?

12 MR. GRATE: If Your Honor is going to
13 consider what I did present about what he just
14 presented, but he presented twice, I can rebut
15 everything he just said.

16 THE COURT: Well, again, you were given that
17 opportunity before when I asked you questions about
18 each part of this.

19 MR. GRATE: Yes. But he came back with more
20 information. So do I not get a chance to address
21 what he just brought up again?

22 THE COURT: Let me hear from you.

23 MR. GRATE: Okay. Let me get the first one
24 in my mind about the tort claim. That does not
25 apply here. According to South Carolina law,

1 Title 59-136-130, South Carolina -- Coastal
2 Carolina is a corporation, and it can be -- it can
3 sue and be sued in its corporate name. Okay.

4 So --

5 THE COURT: And what I want you to understand
6 is just because it's a corporation does not
7 necessarily mean that it does not fall within the
8 Tort Claims Act.

9 MR. GRATE: Well, Tort Claims Act, as far as
10 I understand, pertains to governmental entities.
11 That's no governmental entity.

12 THE COURT: Would you agree that Coastal
13 Carolina is a public institution of the State of
14 South Carolina and receives funding from the State
15 of South Carolina?

16 MR. GRATE: It does.

17 THE COURT: Okay. So it's not a private
18 corporation.

19 MR. GRATE: Public or private, the state law
20 says it can be sued -- it can sue and be sued in
21 its corporate name.

22 THE COURT: I'm sure you are aware that
23 Coastal Carolina has a board of trustees that are
24 appointed by the state house and senate and
25 confirmed by the governor? Do you understand that?

1 MR. GRATE: Right. Right. I understand it.

2 THE COURT: And they have to have that as a
3 state agency.

4 MR. GRATE: Whether they have to have it or
5 not, they got it. That's the way it is.

6 THE COURT: Same as University of South
7 Carolina, Clemson, College of Charleston.

8 MR. GRATE: Please, Your Honor, I don't even
9 know this one. But I don't know anything about the
10 other schools. This one, I do know, because the
11 law specifically says what I just said. It's a
12 corporation. It can sue, and be sued, in its own
13 name.

14 THE COURT: Do you have any case law that
15 states that?

16 MR. GRATE: No, sir, I don't have case law
17 that states that, but I have case law -- what the
18 legislature indicated under 59-136-130. That
19 should take care of the whole situation about the
20 tort claim situation, I think.

21 What else did he bring up?

22 With respect to the other case, the case --
23 another case, I object to that being brought in.
24 Your Honor can look at -- anybody can look at it
25 all they want, but there is no way that you can --

1 anybody can bring that case in as related to this
2 case. There is two separate case law (sic)
3 together.

4 What else -- I don't know what else he
5 brought up. Whatever he brought up just now that I
6 don't recall right now to be able to address it.
7 It doesn't matter because I addressed it in my
8 initial -- my initial presentation.

9 THE COURT: All right. Let me go to the next
10 motion, which is your motion, which is a motion for
11 summary judgment. And I'll tell you that a motion
12 for summary judgment, what you are telling the
13 Court is that there is no genuine issue of material
14 fact. That's what Rule 56 -- as far as that
15 summary judgment, that is what you are telling the
16 Court.

17 Now, I will tell you that I have to look at
18 that in the light most favorable to the non-moving
19 party. This would be the non-moving party. So are
20 you telling the Court there is no genuine issue of
21 material fact?

22 MR. GRATE: I'm telling the Court exactly
23 that there is no issue of material fact with
24 respect to this case.

25 THE COURT: Let me hear from you.

1 MR. GRATE: Well, it's essentially what Your
2 Honor just addressed. I'm bringing this issue
3 against Coastal Carolina University for refusing to
4 allow me to register for classes there.

5 Everything -- I tried to register online.
6 Everything is blocked. I couldn't register. So I
7 tried to contact the president by email and asked
8 him to lift whatever blocks are there to allow me
9 to register, and I never heard anything from him.

10 Instead, I heard from his attorney telling me
11 that anything I wanted to do that Coastal Carolina
12 and -- Coastal Carolina are his clients, and
13 anything I want to do with Coastal Carolina, I
14 should go through him. That is what the attorney
15 told me.

16 But -- so neither Coastal Carolina nor the
17 attorney did anything to allow me to go to school,
18 so that's what caused me to bring this action.

19 THE COURT: But, now, in your pleadings, you
20 state that they said you owe \$4,000, that your
21 account was deficient \$4,000.

22 MR. GRATE: Right. And I don't owe \$4,000.
23 I don't owe them any money.

24 THE COURT: So they say you do, and you say
25 you don't?

1 MR. GRATE: I say I don't.

2 THE COURT: Would that be an issue of fact?

3 MR. GRATE: Genuine issue of fact. That's
4 not genuine. If they say that I don't, that's a
5 lie. If they say that I owe this money, I'm saying
6 I don't. They are not -- they can't say that is a
7 genuine issue of fact. No, that's a lie. They
8 know better. They know that I don't owe any money
9 to Coastal Carolina University. I don't have to
10 pay Coastal Carolina University any money.

11 THE COURT: Well, whether or not it's true or
12 not is not for me to decide. That is not what I'm
13 here for. I'm here to decide whether or not there
14 is a genuine issue of material fact, and the fact
15 you state that you don't owe the money, they state
16 that you do, that would seem as if there is a
17 differing of opinions as to what is fact and what
18 is not.

19 MR. GRATE: Thank you, sir.

20 THE COURT: Would you agree with that?

21 MR. GRATE: Thank you, sir. I agree.

22 However, the Court doesn't say -- everybody come to
23 court just for disagreement, but is that a genuine
24 situation? They know they are lying. They know.
25 You know, they know my situation, that I don't have

1 to pay tuition. They know that. So that is not a
2 genuine issue of fact, no.

3 THE COURT: All right.

4 Counsel, I'll hear from you.

5 MS. WHITE: Eleanor White on behalf of David
6 Anderson. I think based on plaintiff's own
7 admissions now about whether or not there is an
8 issue with tuition or not, I think that meets the
9 standard of a genuine issue of material fact in
10 this case. Thank you.

11 THE COURT: All right. Anything else you
12 need to add as far as your motion for summary
13 judgment?

14 MR. GRATE: Yes, Your Honor. I don't know
15 this attorney, but she thinks there is a genuine
16 issue of fact. Of course she thinks there is. I
17 think there isn't. Then it is up for what the
18 judge thinks.

19 THE COURT: Well, ultimately, that would be
20 up to what a jury thinks.

21 MR. GRATE: Oh, that's fine. That's better.

22 (A brief pause in the proceedings.)

23 MR. GRATE: Oh, so to finish -- to finish my
24 presentation about this motion --

25 THE COURT: Okay.

1 MR. GRATE: -- then I move for summary
2 judgment.

3 THE COURT: All right.

4 MR. GRATE: Thank you, sir.

5 THE COURT: All right. Ms. White, we'll move
6 to your motion to dismiss as to Defendant David
7 Anderson. Happy to hear from you.

8 MS. WHITE: Good morning. May it please the
9 Court. Like I said, I represent David Anderson.

10 The facts of this case, and the initial case,
11 are based on my client's representation of Coastal
12 Carolina. And in an initial action, my client
13 moved for motion to dismiss. It was ultimately
14 granted by Judge Culbertson. My client prepared
15 the order. The order was entered. Fifteen days
16 later, Mr. Grate filed this action. And as Your
17 Honor is aware, there is well-established case law
18 that an attorney cannot be sued except for by their
19 client or someone in privy with their client for
20 any alleged injury caused by their representation.

21 For these reasons, Your Honor, we would ask
22 for my client's motion to dismiss to be granted,
23 and him to be dismissed with prejudice.

24 Thank you. I'm happy to respond to anything
25 that Mr. Grate may have.

1 THE COURT: Mr. Grate, as to Defendant David
2 Anderson, Counsel has made an argument that as the
3 attorney for Coastal Carolina, case law states he
4 can't be sued unless it was being sued directly by
5 his client. What do you have to say that?

6 MR. GRATE: I have to say that I don't know
7 about that. I don't have that kind of information.
8 She knows, but I don't know. But he stepped in the
9 position of president of Coastal Carolina
10 University or registrar of Coastal Carolina
11 University. He moved out of the position -- out of
12 position as attorney -- or he's doing both, but I'm
13 suing him for what he did in terms of blocking me,
14 or what he didn't do in terms of allowing me to go
15 to school.

16 THE COURT: Ms. White, I understand that
17 Ms. Bailey is the chief counsel for Coastal; is
18 that correct?

19 MS. WHITE: Yes, Your Honor.

20 THE COURT: Is Mr. Anderson, is he a third
21 party or --

22 MS. WHITE: Yes. He works for Richardson
23 Plowden, yes.

24 THE COURT: Got you. Okay.

25 Anything else, Mr. Grate?

1 MR. GRATE: I think I've addressed everything
2 she's brought up. Only thing I can think of that
3 she brought up is that he can't be sued because of
4 his attorney capacity. I don't think there is
5 anything else she brought up.

6 THE COURT: She's referring to standing to
7 sue him, that it would have to be through a client
8 of his for some kind of possible legal malpractice
9 or something like that.

10 Mr. Anderson did not represent you, correct?

11 MR. GRATE: No, he didn't represent me.

12 THE COURT: You're just saying that he, in
13 some form, he stood in position of president or
14 register -- I think is the term you used --

15 MR. GRATE: He took the position when he's
16 telling me I need go through him to go to school,
17 and so he knows what I want to do. He knew I'm
18 trying to register to go to school, but he did
19 nothing to allow me to register. As a matter of
20 fact, he continued the block that the school was
21 putting up. So he stepped into that role. So, you
22 know, I had to bring action against him.

23 THE COURT: But you would admit that now,
24 because you have this case pending, if you wanted
25 to contact Coastal, you would need to go through --

1 more than likely -- through these attorneys. Do
2 you understand that?

3 MR. GRATE: Because I have this particular
4 case pending, the one we're here for today?

5 THE COURT: Right.

6 MR. GRATE: I have to go through, who, now?

7 THE COURT: I'm just asking do you understand
8 that you would need to go through attorneys once
9 there is some kind of litigation or some kind of an
10 issue, once you have been put on notice of that?

11 MR. GRATE: I don't understand that. I have
12 never heard of such a thing. I felt that I could
13 just go ahead and pursue registration the way I
14 usually do.

15 So now you are telling me that I have to go
16 through some attorneys?

17 THE COURT: No.. No. What I'm asking you is
18 -- so right now you have pending litigation against
19 Coastal.

20 MR. GRATE: Right.

21 THE COURT: And I'm assuming that the
22 attorneys have said if you have any questions, to
23 contact them or you would send any pleadings to
24 them, correct, any interrogatories or anything like
25 that?

1 MR. GRATE: Well, I can show you exactly what
2 was said to me.

3 THE COURT: Well, I don't necessarily need
4 that. I'm just simply stating it is my
5 understanding that Mr. Anderson was acting as an
6 attorney on behalf of Coastal Carolina; is that not
7 correct?

8 MR. GRATE: And he assumed the role of the
9 president and the registrar.

10 THE COURT: In what way?

11 MR. GRATE: He's telling me I have to go
12 through him, like you're telling me to go through
13 these people here. He said I had to go through
14 him, right. To register, you go to the registrar's
15 office.

16 THE COURT: But this is after you have been
17 previously denied registering, correct? I think
18 you told the Court a moment ago that you were
19 denied, you then e-mailed the president, who didn't
20 respond, and instead you got a response from the
21 attorney who said to go through him.

22 MR. GRATE: Right. And, in the meantime, I
23 haven't been in school. I haven't been in school
24 all of this time. It's harming me very badly. So
25 now, still, Your Honor is telling me even while

1 this is going on, I still can't go to school. I
2 have to go through some other people in order to
3 try to go to school. I don't think that's correct.

4 THE COURT: I'm not telling you that.

5 MR. GRATE: I thought that is what you said.

6 THE COURT: No. No. I'm just asking you --
7 what I was asking you is in regards to
8 communications. It seems as if Mr. Anderson told
9 you that you needed to communicate with him as the
10 attorney for Coastal.

11 MR. GRATE: He did -- he did tell me that,
12 yes. But I don't see that -- I mean, it's for
13 other courts to determine if I need to go through
14 any attorney in order to pursue my education.
15 Follow?

16 The direct ways to go to the registrar's
17 office. If anybody in this whole United States
18 court system is going to tell me I need to go
19 through an attorney in order to go to school, well,
20 I'm open. I'm listening. I don't know.

21 THE COURT: Well, I don't think that is what
22 they are saying. I think there may be a
23 miscommunication with that. It appears that you
24 tried to go directly to the president, and counsel
25 for the school contacted you and said to go through

1 them. This is after you had already been denied
2 registration, correct?

3 MR. GRATE: That might be correct, but what
4 happened -- let me put it into my words.

5 THE COURT: Okay.

6 MR. GRATE: I tried to register at the
7 school. I see I'm blocked, so I contacted the
8 president, asked him to facilitate me to register.
9 He never responded. I think he -- he just dropped
10 out -- AWL as far as his duties. And then next
11 thing I heard was I got this letter from -- e-mail
12 from the attorney telling me not to deal with them,
13 go through him. Well, if he's not the registrar or
14 -- registrar or the president of the university,
15 but still he didn't do anything, so....

16 THE COURT: Okay. All right. Anything else,
17 Mr. Grate?

18 MR. GRATE: I think I've addressed
19 everything. If there is something I haven't
20 addressed, I can address it, I'm sure.

21 THE COURT: Counsel, anything to add?

22 MR. NELSON: Nothing here, Your Honor.

23 THE COURT: Anything?

24 MS. WHITE: Nothing further.

25 THE COURT: Okay. I'll take it under

1 advisement, but I should have a ruling by the end
2 of the week.

3 MR. GRATE: And, in the meantime, since
4 everybody has delivered, I move for judgment on my
5 pleading.

6 THE COURT: No. You have to file that with
7 the court. You have to file that with the clerk of
8 court. But I would wait on doing that prior --
9 until I have ruled on these matters, okay.

10 MR. GRATE: Okay, Your Honor. Thank you so
11 much, Your Honor.

12 So what do I need to do, just wait until I
13 get your ruling, right?

14 THE COURT: Right. I'll issue a ruling.
15 There will be an order that is issued at some
16 point. It may be however I rule on it, that I
17 request an order, and that may take a little bit of
18 time. But once the order is filed, depending on
19 what happens, the parties will have an opportunity
20 at that point to appeal any order that I may issue,
21 okay.

22 MR. GRATE: I hear you, Your Honor, but it is
23 not okay because I'm not in school. So all that
24 time is wasted. I hear you, though. I understand
25 what you're telling me, but it's not okay.

1 THE COURT: Well, like I said, I'll have an
2 order by the end of the week.

3 MR. GRATE: Oh, that's not too bad. Thank
4 you so much.

5 (Whereupon, the hearing for this matter
6 concluded.)

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CERTIFICATE OF REPORTER

1
2 State of South Carolina)

3 County of Horry)
4

5 I, Natalie Dahl, Official Court Reporter for
6 the State of South Carolina, do hereby certify that
7 the foregoing is a true, accurate and complete
8 Transcript of Record of the proceedings had and
9 evidence introduced in the hearing of the captioned
10 case, relative to appeal, in the Court of Common
11 Pleas for Horry County, South Carolina, on the 4th
12 day of January, 2026.

13 I do further certify that I am neither of
14 kin, counsel, nor interest to any party hereto.
15

16 April 2, 2026
17
18

19 _____
Natalie Dahl
20 Registered Professional Reporter
State of South Carolina Official Court Reporter
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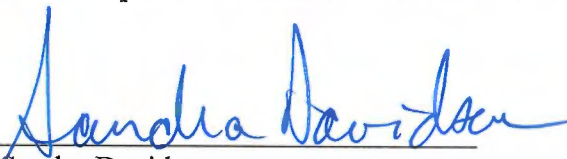
I, the undersigned, for Respondent David A. Anderson do hereby certify that I have this date served the foregoing **JOINT MOTION TO STRIKE APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL AND TO STAY DEADLINE FOR FILING OF THE RESPONDENTS' INITIAL BRIEFS AND DESIGNATIONS OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL** by serving the same pursuant to Section (d)(1) of the Supreme Court's Amended Order dated April 24, 2024, on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable) and on Appellant Joseph N. Grate by depositing the same in the US Mail:

Joseph N. Grate
P.O. Box 1294
Pawley's Island SC 29585

J.W. Nelson Chandler
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Mount Pleasant, SC 29464
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Sandra Davidson
Legal Assistant



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Joseph N. Grate
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RE: *Joseph N. Grate, Appellant v. David A. Anderson, James J. Winebrake, Coastal Carolina University, Respondents*
Appellate Case No. 2026-000708

Dear Mr. Grate:

Please find enclosed and served upon you Respondents' Joint Motion to Strike Appellant's Designation of Matter to be Included in the Record on Appeal and to Stay Deadline for Filing of the Respondents' Initial Briefs and Designations of Matter to be Included in the Record on Appeal in the above-referenced matter which we will be filing with the Court of Appeals later today.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

A blue ink signature of Ashwin R. Sanzgiri.

Ashwin R. Sanzgiri

ARS/skd

cc: J.W. Nelson Chandler, Esq. (via email, w/ enc.)
Carmen V. Ganjehsani (via email, w/ enc.)