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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Daniel Coble, Circuit Court Judge

Appellate Case No. 2026-000736

Kenneth B. Loveless,Appellant,
v.

Kevin Scully, Edward K. White, Flora E. "Beth" Hutchison,
Michael Montgomery and Beatrice Dennis-White, Respondents.

**INITIAL BRIEF OF APPELLANT AS TO
RESPONDENT KEVIN SCULLY**

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STATEMENT OF ISSUES OF APPEAL

- I. Is the trial court's Order in error because it improperly concludes that dismissal of the other Defendants as to the civil conspiracy cause of action necessarily shields Scully from liability?
- II. Is the trial court's Order in error because the Second Amended Complaint pleads facts sufficient to establish a claim for civil conspiracy?
- III. Did the trial court err in failing to deem Scully's admission to the Request to Admit as admitted?
- IV. Did the trial court err in denying Loveless' Motion to Compel a second deposition of Scully?

STATEMENT OF THE CASE

The instant appeal arises from several orders dismissing a tort action against Respondent Kevin Scully (“Scully”) and several other Respondents who were added to the action by a Second Amended Complaint.¹ This brief only addresses issues as to Respondent Scully.

Appellant Kenneth Loveless’ (hereinafter “Loveless”) filed suit against Scully for defamation on March 14, 2022. (Complaint). Loveless filed a Motion to Amend Complaint on November 17, 2023, seeking to add causes of action against Scully for conspiracy and outrage based on information discovered following Scully’s deposition on October 21, 2023.² (Motion to Amend Complaint). The trial court granted Loveless’ Motion to Amend Complaint to add causes of action for civil conspiracy and outrage against Defendant Scully on January 23, 2024 (Order Granting Motion to Amend), and Loveless filed the Amended Complaint of January 31, 2024. (Amended Complaint).

On November 15, 2024, Loveless filed a motion to amend the complaint in this matter for a second time, seeking to add Edward K. White (“White”), Elizabeth “Beth” Hutchison (“Hutchison”), and Michael Montgomery (“Montgomery”) as defendants to the instant action for their role in the conspiracy against Loveless. Additionally, Loveless filed a Supplemental Motion for Second Amended Complaint on January 20, 2025, seeking to add Beatrice Dennis-White

¹ The trial court issued three orders of dismissal, each of which addressed different defendants. Appellant filed three Notices of Appeal. The Court of Appeals consolidated the appeals, and required one Record on Appeal. (Letter dated March 25, 2026). This brief addresses Respondent Kevin Scully (“Scully”). Separate briefs are filed as to Respondents Edward K. White (“White”), Flora E. “Beth” Hutchison (“Hutchison”), Beatrice Dennis-White (“Dennis-White”), and Michael Montgomery (“Montgomery”). Since the grounds relating to Michael Montgomery (“Montgomery”) are different from the grounds affecting Respondents White and Hutchison, a separate appellant’s brief is filed as to Montgomery.

² At that point, Scully’s deposition only concerned matters related to the defamation cause of action pending at that time.

(“Dennis-White”) as an additional defendant in this matter based on evidence supporting her participation in the conspiracy revealed through supplemental discovery produced by Scully on November 21, 2024. (Supplemental Motion to Amend). The trial court granted Loveless’s Motion for Second Amended Complaint pursuant to Order issued July 25, 2025. (Order 7.25.2025).

On August 8, 2025, Loveless filed the Second Amended Complaint. (Second Amended Complaint 8.8.2025). No new claims were asserted against Scully by the Second Amended Complaint. Thereafter, Scully filed a Motion to Dismiss or Strike pursuant to Rules 8, 12(b)(6), and 12(f), SCRCF. (Scully MTD 9.8.2025).

Loveless served Requests for Admission on Scully and the other defendants on September 9, 2025. (RTA to Scully 9.9.2025). Additionally, on September 9, 2025, Loveless filed a Motion to Compel a second deposition of Scully after Scully refused Loveless’ request for a second deposition following the filing of the Second Amended Complaint. (MTC Second Depo 9.9.2025). After receiving no response from Scully to the Requests for Admission, Loveless filed a Motion to Deem Matters Admitted on October 29, 2025. (MDA 10.29.2025).

On February 2, 2026, Loveless filed a Memorandum in opposition to the motions to dismiss filed by Scully and the other defendants. (MIO 2.2.2026). The same day, Scully filed several Memoranda in opposition to Loveless’ pending motions against Scully and in support of his motion to dismiss. (Scully MIO to MTC 2.2.2026; Scully MIO to MDA 2.2.2026; Scully MIS MTD 2.2.2026). Scully also filed a Memorandum asserting that his non-response to Loveless’ Requests for Admission supported entry of an order deeming the Requests admitted. (Memo re MDA 2.2.2026).

A hearing on the pending motions was held before Judge Daniel Coble on February 3, 2026. Following the hearing, on February 9, 2025, Judge Coble issued a Form 4 Order dismissing

the civil conspiracy cause of action as to Scully and the other defendants, leaving the defamation and outrage claims pending against Scully. (Form 4 Order 2.9.2025). The Order also denied Loveless' Motion to Deem Matters Admitted and his Motion to Compel a second deposition of Scully. (Id.). Thereafter, Judge Coble issued a formal order on February 25, 2026, partially dismissing the Second Amended Complaint and denying Loveless's motions as to Scully. (Partial Dismissal Order 2.25.2026).

On March 9, 2026, Loveless filed a Motion to Reconsider the trial court's order as to Scully, which was denied by order issued on March 16, 2026. (MTR Scully 3.9.2026; Form 4 Order 3.16.2026). On March 24, 2026, Loveless timely filed a Notice of Appeal from which this appeal arises. (Scully NOA 3.24.2026).

FACTUAL BACKGROUND

On or about March 14, 2022, Loveless filed the instant lawsuit against Scully for defamation in his individual capacity as a citizen and resident of the State of South Carolina, based in part on statements Scully posted on the public Facebook group "Deep Dive Into D5," and similar Facebook groups. (Complaint 3.14.2022).

Loveless filed a Motion to Amend Complaint on or about November 17, 2023, seeking to add causes of action against Defendant Scully for conspiracy and outrage based on information discovered since the filing of this lawsuit. (Motion to Amend 11.17.2023). Specifically, Loveless discovered during the course of this litigation that Scully was involved in a conspiracy with at least two other individuals, including Edward K. White ("White") and Elizabeth "Beth" Hutchison ("Hutchison"), to damage or destroy Loveless' reputation and to otherwise cause him damages. (*Id.*). Evidence supporting Scully's involvement in the conspiracy was revealed through emails

between Respondents White and Hutchison that were produced in response to Loveless's FOIA request to Scully's employer the United States Department of Agriculture and direct discovery requests to Scully. (*Id.*). While a USDA FOIA request resulted in a redacted version of an email, Scully produced an unredacted version of the email chain at his deposition in this matter which occurred on October 21, 2022, giving Loveless the first clue about the scope of the conspiracy in which Scully was an active participant, along with White and Hutchison. (*Id.*). The trial court granted Loveless's Motion to Amend to add a conspiracy cause of action against Defendant Scully on January 23, 2024. (Order Granting Motion to Amend).

Second Amendment to State Action

On November 15, 2024, Loveless filed a motion to amend the complaint in this matter for a second time, seeking to add White, Hutchison, and Montgomery as defendants to the instant action for their role in the conspiracy against Loveless. (Second Motion to Amend 11.15.2024).

Additionally, Loveless filed a Supplemental Motion for Second Amended Complaint on January 20, 2025, seeking to add Beatrice Dennis-White (hereinafter "Dennis-White") as an additional Defendant in this matter based on evidence supporting her participation in the conspiracy revealed through supplemental discovery produced by Scully on November 21, 2024. (Supp. Motion for Second Amended Complaint). This Court granted Loveless's Motion for Second Amended Complaint pursuant to Order issued July 25, 2025. (Order 7.25.2025).

STANDARD OF REVIEW

On appeal from the dismissal of an action pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court." *Riddle v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). That standard requires the Court to construe the complaint in a light most

favorable to the nonmovant and determine if the “facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.” *Id.* (quoting *Williams v Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001)). In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint. *Spence v Spence*, 368 S.C. 106, 116, 268 S.E.2d 869, 874 (2006). The motion cannot be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case.” *Dye v Gainey*, 320 S.C. 65, 67, 463 S.E.2d 97 (Ct. App. 1995).

A trial court’s “ruling on discovery matters will not be disturbed by an appellate court absent clear abuse of discretion.” *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989). “The burden is upon the party appealing from the order to demonstrate the trial court abused its discretion.” *Id.* An 'abuse of discretion' may be found by this Court where the appellant shows that the conclusion reached by the lower court was without reasonable factual support, resulted in prejudice to the right of appellant, and, therefore, amounted to an error of law." *Id.*

ARGUMENT

I. The Trial Court’s Order is in Error Because it Improperly Concludes that the dismissal of the other Defendants’ as to the Civil Conspiracy Cause of Action necessarily requires the dismissal of Defendant Scully.

In dismissing Loveless’ civil conspiracy claim against Scully, the trial court’s order first notes that the individuals with whom Scully is alleged to have conspired have been dismissed from the action, rationalizing “it does not appear possible that Defendant Scully could have been in an actionable civil conspiracy with people the court has determined as a matter of law are not liable

on the Plaintiff's civil conspiracy claim.” (Partial Dismissal Order 2.25.26). Scully did not seek dismissal on this ground.³ Rather, the trial judge raised this basis for dismissal *sua sponte*.

The trial court's reasoning appears to rest on the premise that Scully cannot be held liable in the absence of the other alleged conspirators as parties to this action. However, it has never been a requirement of South Carolina law that a plaintiff sue every tortfeasor who harmed him. *Slatton v. Slatton*, 289 S.C. 128, 345 S.E.2d 248 (1986) (discussing necessary parties). South Carolina law specifically contemplates that only a single tortfeasor can be sued for the wrong committed. The entire body of case law relating to joint contribution among tortfeasors recognizes this circumstance. S.C. Code § 15-38-40(D) (enacted 1988). In fact, the statute was enacted for the specific purpose to “ameliorate the unfairness vested on all joint tortfeasors by the common law's prohibition against contribution”. *Id.* 368 S.C. 143, *citing Southeastern*, 313 S.C. at 470, 443 S.E.2d at 397.

The absence of other joint tortfeasors does not defeat Loveless' claim against Scully. Loveless' claim against Scully for civil conspiracy was first brought into this action by the Amended Complaint dated January 31, 2024. (Amended Complaint). While the Amended Complaint identified multiple conspirators, Scully was the only named defendant at that time.⁴ Scully answered the Amended Complaint on February 15, 2024, and raised no defenses to the civil conspiracy cause of action other than a general denial. (Scully Answer, 2.15.2024). Only upon the filing of the Second Amended Complaint were other individuals made defendants to this action.

³ Scully made no motion challenging the sufficiency of the conspiracy cause of action as to the First Amendment, nor the Second. In his memorandum filed February 2, 2026, Scully did argue “no civil conspiracy is pled here” but by then he had waived the issue by not raising it following the First Amended Complaint and the only basis raised in the Motion to Dismiss the second Amended Complaint related to the dismissal of White, Hutchison and Montgomery in a separate action.

⁴ Civil conspiracy claims were then pending against White, Hutchison, and Montgomery in a separate action, and those defendants could not have been added to this action at that time. *Loveless v. White et al.*, Case No. 3:23-cv-02001-MGL (USDC-SC).

Therefore, the trial court's dismissal of the other defendants has no bearing at all on the viability of the civil conspiracy claim against Scully.

The Second Amended Complaint plainly alleges that the conspiracy involved numerous participants, only some of whom were named as defendants in this action. (Second Amended Complaint, ¶¶ 15, 17, 23, 27-28, 35-36, 42, 45). There is no requirement that all members of a conspiracy be sued, thus even with the other defendants being dismissed, the civil conspiracy claim against Scully remains viable.

Just because other tortfeasors have successfully advanced a procedural device, like the statute of limitations, to prevent liability, other tortfeasors do not become suddenly insulated from their own liability. *See Capco of Summerville Inc. v. J. H. Gayle Construction Company Inc.*, 368 S.C. 137, 628 S.E.2d 38 (2006) (discussing the procedural nature of a statute of limitations defense). Indeed, when other tortfeasors have attempted to benefit from the plaintiff's release of one tortfeasor, the law is clear that does not occur unless the release specifically anticipates release of all tortfeasors. *Ecclesiastes Production Ministries v. Outparcel Associates, LLC*, 374 S.C. 483, 6449 S.E.2d 494 (Ct. App. 2007).

The trial court erred in determining that the dismissal of the other defendants necessarily required the dismissal of the civil conspiracy claim against Scully when that is not required by South Carolina law, and for that reason, the order of the trial court must be reversed.

II. The Trial Court Erred in Dismissing the Civil Conspiracy Cause of Action When the Second Amended Complaint Pleads Sufficient Facts to Support a Claim for Civil Conspiracy.

The trial court erred in dismissing Loveless' civil conspiracy claim against Scully when the Second Amended Complaint sufficiently pleads factual allegations supporting (1) the combination

or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the Plaintiff. *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021) (*Paradis* also confirmed the elimination of any requirement for pleading of special damages in a civil conspiracy action).

The trial court's Order specifically finds that the Second Amended Complaint fails to plead damages as a proximate result of the Defendants' conspiracy. (Partial Dismissal Order, p. 3).⁵ In actions for civil conspiracy, "the gravamen of the tort is the damage resulting to the plaintiff from an overt act done pursuant to a common design." *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91,95 (Ct. App. 1989). Loveless has alleged that Scully and other individuals engaged in a conspiracy for the intended purpose of harming Loveless by planning and executing a retaliatory attack against him which was launched during the September 14, 2020 School Board meeting, and initiating a defamatory campaign against Loveless to damage his reputation. (Second Amended Complaint, ¶¶ 15, 22, 100). There are sufficient facts within the Second Amended Complaint to establish that Loveless was damaged by multiple overt acts executed by Scully, the Respondents, and other individuals as part of their conspiracy against Loveless.

The Second Amended Complaint is replete with factual allegations establishing that Loveless was in fact harmed and sustained damages as a direct result of the conspiracy including, but not limited to, the following:

- Paragraph 48: To ensure the false accusation was unmistakably clear and was further and more widely publicized beyond the September 14, 2020 incident, Defendants White, Hutchison, Ms. White and Scully authored and issued a press

⁵ The trial court's order declines to address the other elements of civil conspiracy and whether the Second Amended Complaint pleads sufficient facts to support those elements, therefore this discussion is limited to the element of damages.

release in their individual capacities, further propagating the false claim that Loveless was involved in a school construction project with District 5.

- Paragraph 55: Defendant Scully admitted under oath that he maintained his role as Administrator on OneD5 until Laurene Mensch assumed the position after he declared candidacy for school board. Both the Deep Dive Into D5 and One D5 Facebook pages played a crucial role in the ongoing conspiracy involving the Defendants and their co-conspirators, serving as key platforms for disseminating false and misleading information about Loveless. A notable example of the conspiracy's malicious efforts is the baseless rumor that Loveless had leveraged his position on the District Five School Board to secure a \$1.25 million dollar school construction subcontract for his own company from District Five. This allegation is entirely false and was known to be false when Defendants generated and perpetuated the false narrative.
- Paragraph 59: The press release quoted Defendant Ed White as stating "I am appalled by Mr. Loveless' actions...he has turned his board seat into a money-making enterprise..." Defendant White and others intended and accomplished the false public narrative that Loveless had obtained a construction contract with the School District using his seat on the District 5 Board. Hundreds and perhaps thousands of public media posts since the press release was issued have falsely accused Loveless of having a construction contract with the School District of which he was a trustee...Loveless' reputation and standing in the community has never recovered from Defendants' publication and perpetuation of this intentional falsehood.
- Paragraph 68: On information and belief, the conspiracy prompted co-conspirator Kim Imbrascio Benson, a Hutchison protégé, to file an office ethics complaint against Loveless on February 17, 2021, with the South Carolina Ethics Commission. This complaint was an intended product of the successful conspiracy by Defendants and co-conspirators to push the false narrative that Loveless had an unlawful construction contract with District Five...Benson's filing of the SEC complaint is concrete evidence that Defendants' lies and falsehoods about Loveless had their intended effect.
- Paragraph 74: Once elected to the Board in 2022, Defendant Scully has used his status as a District Five Board member to continue to slander and defame Loveless, all in furtherance of the Defendants' conspiracy against Loveless.
- Paragraph 114: As a direct and proximate result of the conspiracy and publication of the false press release, Loveless was subjected to public ridicule, humiliation, false and defamatory statements, all premised on statements by Defendants Scully, White, Hutchison, Montgomery and others that the State Ethics Commission had

officially advised Loveless to recuse himself as a result of his company having a subcontract with Contract Construction, Inc., which was false.

- Paragraph 115: As a direct and proximate result of the conspiracy and the attack by Defendants Scully White, Ms. White, Hutchison, Montgomery and others against Loveless, both Defendant Scully and Lesley Anne Stiles's community Facebook pages, Deep Dive into D5 and OneD5, were riddled with falsehoods about Loveless, questioning his honesty, accusing him of abusing and mistreating women, and denigrating him in every way possible.
- Paragraph 116: The unlawful conspiracy against Loveless has caused Loveless irreparable and permanent harm personally and professionally and in the social community.

When considered in a light most favorable to Loveless and accepted as true as required under the 12(b)(6) standard, the facts alleged in the Second Amended Complaint and inferences drawn therefrom clearly establish that the combined actions of Scully and the other Respondents, through their conspiracy, proximately resulted in Loveless being harmed by defamation across social media and the community, damage to Loveless's reputation, and the initiation of legal proceedings against him based on the false narrative created by the Respondents' conspiracy.

The trial court's order incorrectly concludes that the press release disseminated by the Respondents could not have caused Loveless to be ridiculed or humiliated. (Partial Dismissal Order, p. 4). The Second Amended Complaint plainly alleges that the Respondents created a false narrative which originated from the September 14, 2020 retaliatory attack. (Second Amended Complaint ¶ 47). Following the retaliatory attack, Scully, along with Respondents White and Hutchison drafted a press release, continuing to advance this false narrative, and Scully obtained a list of media contacts to whom the press release was issued. (Id., at ¶¶ 48, 58, 60-61, 108-109). Subsequently, Loveless became the topic of multiple public Facebook groups where Facebook users and group administrators defamed him and spread falsehoods about Loveless questioning his honesty, ethics, and character which stemmed directly from the attack during the School Board

meeting on September 14, 2020. (Id., at ¶¶ 112, 114-115). Additionally, the false narrative lodged by the Respondents during the retaliatory attack led Kim Benson to file a complaint against Loveless with the State Ethics Commission, basing her complaint on the issues raised during the Respondents' conspiratorial attack on Loveless. (Id., at ¶ 68).

Loveless' damage can be clearly traced back to the false narrative that was first spawned during the retaliatory attack and further spread through the press release drafted by Scully, White, and Hutchison. Thus, there is a reasonable inference that the content of the press release was disseminated to the public by Scully and the other Respondents themselves, the media contacts they obtained through Scully, and social media, which ultimately caused Loveless to sustain damage to his personal and professional reputation. (Id., at ¶116). Accordingly, the trial court erred in dismissing the civil conspiracy cause of action for failure to plead facts to support damages.

III. The Trial Court Erred in Failing to Deem Defendant Scully's admission to the Request to Admit as Admitted.

The trial court misapplied Rule 36(a), SCRPC, by failing to deem the Request to Admit as admitted. Although the court found that Respondent intentionally failed to respond, the decision appears to be based on Scully's deliberate conduct not being done in bad faith because it is permitted under Rule 36, SCRPC. In refusing to apply the rule as written, the court reached a result that is inconsistent with the plain language of Rule 36(a) and South Carolina precedent governing a party's failure to respond to Requests for Admission. This misapplication of the law amounts to an abuse of discretion.

In reviewing matters concerning Rule 36, South Carolina courts have consistently held that a party's "failure to respond to requests for admissions renders any matter listed in the request conclusively admitted for trial." *Nexstar Media Group, Inc. v. Davis Roofing Group, LLC*, 431

S.C. 593, 604, 848 S.E.2d 597, 603 (Ct. App. 2020) (quoting *Scott v. Greenville Housing Authority*, 353 S.C. 639, 652, 579 S.E.2d 151, 154 (Ct. App. 2003)). However, a trial court possesses limited discretion to decline the automatic operation of Rule 36(a), and any such departure must be adequately justified based on the unique circumstances of the case. *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 215, 493 S.E.2d 826, 836 (1997).

The circumstances that have justified a court's departure from Rule 36(a)'s strict application are not present in this case. In *Crestwood*, the Supreme Court affirmed the refusal to deem the Requests for Admission admitted where counsel asserted they had never received them and the record contained no evidence to support otherwise. *Id.* Likewise, in *Nexstar*, the Court of Appeals affirmed the trial court's refusal to deem requests admitted where the responding party was hospitalized at the time of service and opposing counsel was never notified of the request. *Nexstar*, 431 S.C. at 603.

Here, there is no evidence that Respondent failed to receive the Request for Admission, was unable to respond, or was otherwise prevented from complying with the rule, as in *Crestwood* and *Nexstar*. Rather, the record reflects both parties' understanding of Rule 36 and the effect of failing to respond and provides no basis for the trial court's decision to rule otherwise. Indeed, Scully admits he intentionally did not answer the Requests. (Scully Memo Response to RTA 2.2.2026)

The trial court recognized that Scully's failure to respond was intentional, stating that he "chose the easiest and cheapest way" to admit the Requests for Admission by simply not answering them. (Partial Dismissal Order, p. 2). Despite this finding, the court declined to deem the matters admitted based on an absence of bath faith, proving no legally sufficient justification in departing from Rule 36(a)'s strict application. (*Id.*). In doing so, the court erroneously applied the rule to the

facts in this case and reached a result contrary to both parties who were in agreement that the Requests would be deemed admitted for failing to respond. Therefore, the trial court abused its discretion in failing to deem the Request to Admit as admitted.

IV. The Trial Court Erred in Denying Loveless' Motion to Compel a Second Deposition of Defendant Scully.

Although trial courts have broad discretion in managing discovery, an abuse of discretion occurs where the appellant demonstrates that the decision reached by the lower court was without reasonable factual support, resulted in prejudice to the right of appellant, and therefore amounted to an error of law. *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989). In this case, the trial court's ruling is without factual support because it failed to consider whether good cause existed for a second deposition and instead denied the motion by erroneously concluding that Loveless failed to establish prejudice. The trial court overlooked the fact that a second deposition is necessary to explore facts disclosed after Scully's initial deposition and directly relevant to the first amended complaint and the Second Amended Complaint. The trial court's decision resulted in severe prejudice by depriving Loveless of any meaningful opportunity to further develop or support new causes of action added by both amended complaints.

Under Rule 30(a)(2), a party or witness is generally limited to one deposition "except by agreement of the parties through their counsel or by court order for good cause shown." Rule 30(a)(2), SCRPC. Rule 26(b) permits discovery of any non-privileged matter relevant to the claim or defense of the party seeking discovery, and is intended to prevent redundant, excessive, or needless discovery. Rule 26(b), SCRPC. The facts in this case make clear that a second deposition would be neither excessive nor redundant because the civil conspiracy and outrage claims are based on facts that were not disclosed or addressed at the time of the initial deposition.

The Supreme Court of South Carolina has recognized that where an amended complaint introduces new factual matter, additional discovery may be required. See *Baldwin Constr. Co. v. Graham*, 357 S.C. 227, 229, 593 S.E.2d 146, 147 (2004) (discussing that the interjection of the new matter would require additional discovery by respondent including the re-deposing of the petitioners). By contrast, a second deposition is unnecessary where an amended complaint does not introduce new factual issues. See *Stanley v. Kirkpatrick*, 357 S.C. 169, 175, 592 S.E.2d 296, 298 (2004) (holding that following the amended complaint, a second deposition would be unnecessary because the amended claims were grounded in the same operative facts as the original pleading). Furthermore, courts routinely find good cause for a second deposition where new information emerges that could not reasonably have been anticipated at the time of the first deposition. *Kleppinger v. Tex. DOT*, 283 F.R.D. 330, 333 (S.D. Tex. 2012); *Le v. Diligence, Inc.*, 312 F.R.D. 245, 246 (D. Mass. 2015).

Here, Loveless's Second Amended Complaint introduced both a civil conspiracy claim and an outrage claim based on facts that emerged through Scully's late production of documents following the initial deposition. (Second Motion to Amend Complaint; Second Amended Complaint). Because the civil conspiracy and outrage claims rest on factual allegations that were not at issue when Scully's first deposition was taken, the circumstances establish good cause under Rule 30(a)(2). Unlike the facts in *Stanley v. Kirkpatrick*, where additional discovery would merely supplement an already developed record, a second deposition in this case is the only practical means for Loveless to question Scully after the late production of documents and the new allegations they support.

Accordingly, Loveless has established good cause because a second deposition is both necessary and appropriate to further address evidence that resulted in the amended complaint.

Therefore, the trial court abused its discretion because its ruling was without reasonable factual support and resulted in prejudicial error.

CONCLUSION

For the reasons set forth above, Appellant Kenneth Loveless respectfully requests an order from this Honorable Court reversing the order of the trial court as to the dismissal of the civil conspiracy claim against Scully, and the denial of Loveless's Motion to Deem Matters Admitted and Motion to Compel a second deposition of Scully.

Respectfully submitted,

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