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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 BEATRICE DENNIS-WHITE**

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STATEMENT OF ISSUES OF APPEAL

- I. Is the trial court's Order of dismissal in error because there was no proper Motion to Dismiss before the trial court?
- II. Is the trial court's Order in error because it improperly states the contents of the Second Amended Complaint?
- III. Is the trial court's Order in error because it improperly overrules the order of another circuit court judge?

STATEMENT OF THE CASE

The instant appeal arises from several orders dismissing a tort action against Defendants who were added to the action by a Second Amended Complaint.¹ This brief only addresses issues as to Respondent Beatrice Dennis-White (“Dennis-White”).

This matter was initiated by Appellant Kenneth Loveless’ (hereinafter “Loveless”) filing of a Summons and Complaint against Respondent Kevin Scully (“Scully”) for defamation on March 14, 2022. (Complaint 3.14.2022). 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. (Motion to Amend Complaint). The trial court granted Loveless’ Motion to Amend Complaint to add causes of action for civil conspiracy and outrage against 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 Respondent Dennis-White as an additional defendant in this matter based on evidence establishing her participation in the

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). Separate briefs are filed as to each order, with two briefs addressing three Respondents. This brief addresses Respondent Beatrice Dennis-White (“Dennis-White”). Separate briefs are filed as to Respondents Edward K. White (“White”), Flora E. “Beth” Hutchison (“Hutchison”), Kevin Scully (“Scully”), and Michael Montgomery (“Montgomery”).

conspiracy revealed through supplemental discovery produced by Scully on November 21, 2024. (Supplemental Motion to Amend).

After Loveless sought permission to file the Second Amended Complaint, Dennis-White filed a motion to intervene in the existing action, which was then pending only as to Scully. (Motion to Intervene and MIS 5.13.2025). Dennis-White argued that she had standing to intervene because the proposed Second Amended Complaint was “improperly and unlawfully” attempting to add her as a defendant. *Id.* Dennis-White fully briefed her grounds for asserting that she should not be made a party to the action, arguing, *inter alia*, that the statute of limitations barred Loveless from adding her as a defendant. (*Id.*).

Following a hearing, Circuit Court Judge Charles J. McCutchen granted White’s and Hutchison’s motion to intervene and granted Loveless’ motion to file the Second Amended Complaint (“McCutchen Order”), which allowed the addition of Respondents White, Hutchison, Montgomery and Dennis-White as defendants. (Order dated 7.25.2025).

In connection with her intervention in the action, Dennis-White thoroughly argued that the amendment was futile because the statute of limitations barred an action against her. Judge McCutchen ruled:

[I]t would be premature for the Court to make a determination of when each cause of action arose [or] when each cause of action was or could be discovered by Plaintiff. . . Defendants are free to assert their claims and defenses in their respective pleadings; once discovery on all those issues have been conducted, Defendants can bring those issues before the Court at that time.

Id. page 9.

Dennis-White filed a Motion to Reconsider which was denied. (Dennis-White MTR 7.29.2025; Dennis-White Order 8.26.2025). On August 8, 2025, Loveless filed the Second Amended Complaint. (Second Amended Complaint 8.8.2025). After being served with the Second Amended Complaint, Dennis-White moved to dismiss the Second Amended Complaint, alleging only that the Second Amended Complaint was premature because her motion to reconsider was still pending. (Dennis-White MTD 8.12.2025). The motion to reconsider was ultimately denied. (Dennis-White Order 8.26.2025). No other motion to dismiss was filed by Dennis-White, and the pending motion to dismiss was then moot.²

On September 5, 2025, Dennis-White filed an Answer to the Second Amended Complaint setting forth a general denial of the allegations. Dennis-White later filed a supplemental addendum to her motion to dismiss on October 10, 2025, purportedly in support of the existing, but now moot, motion to dismiss. (Supplemental Addendum 10.10.2025). In her supplemental addendum, Dennis-White only asserted that she was confused because there were too many versions of the Second Amended Complaint and requested leave to strike her initial Answer and file an Answer to the Second Amended Complaint filed on November 15, 2024. (Id.).

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 claims for civil conspiracy and outrage as to Dennis-White. (Form 4 Order 2.9.2025). The Thereafter, Judge Coble issued a formal order on February 25, 2026, specifically dismissing the claims against Dennis-White based on the statute of limitations. (Dennis-White Order 2.25.2026).

² Judge McCutchen denied the motion for reconsideration on August 26, 2025, after Loveless filed and served the Second Amended Complaint. (Dennis-White Order 8.26.2025).

On March 9, 2026, Loveless filed a Motion to Reconsider the trial court’s order as to Dennis-White, which was denied by order issued on March 16, 2026. (MTR Dennis-White 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. (Dennis-White NOA 3.24.2026).

FACTUAL BACKGROUND

Appellant Loveless began serving as a member of the board of trustees for Lexington-Richland School District Five (hereinafter “District 5”) when he was elected to the board in November 2018.³ 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 White and Hutchison, to damage or destroy Loveless’ reputation and to otherwise cause him damages. (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).

³ Loveless continued to serve as a board member until the November 2022 general election.

Loveless filed the Amended Complaint on January 31, 2024, specifically alleging that Scully conspired with White, Hutchison, and others to damage his reputation and standing within District 5 and the community. (Amended Complaint 1.31.2024).

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). This motion came after the dismissal of the federal case on September 20, 2024, in which the federal district court dismissed Loveless' state law claims for civil conspiracy and outrage without prejudice, thus providing him leave to refile those causes of action and after additional production by defendant Scully on November 21, 2024. (Order of United States District Court Judge Mary Lewis dated September 20, 2024, Case No. 3:23-cv-02001-MGL (ECF 63)).

Additionally, Loveless filed a Supplemental Motion for Second Amended Complaint on January 20, 2025, seeking to add 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). The trial 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).

ARGUMENT

1. The trial judge erred in granting dismissal to Dennis-White in the absence of a motion to dismiss.

Loveless filed and served the Second Amended Complaint on August 8, 2025. (Second Amended Complaint). Dennis-White filed one motion to dismiss on August 12, 2025, arguing only that the filing and service of the Second Amended Complaint was “premature” because her motion to reconsider the trial court’s granting of Loveless’ motion for second amended complaint was still pending. (Dennis-White MTD 8.12.2025). On August 26, 2025, Dennis-White’s motion to reconsider was denied. (Dennis-White Order 8.26.2025). The filed motion to dismiss then became moot.

Dennis-White did not file another motion to dismiss, rather, she filed a supplemental addendum to the moot motion dismiss which only asserted that there were too many versions of the Second Amended Complaint and requested leave to strike her initial Answer and file an Answer to the Second Amended Complaint filed on November 15, 2024. (Supp. Addendum 10.10.2025).

The trial court's order dismissed Loveless' claims against Dennis-White, finding that the claims were barred by the statute of limitations. (Dennis-White Order 2.25.2026). Neither the mooted motion to dismiss nor the supplemental addendum raised the statute of limitations as a defense or a ground for dismissal of the Second Amended Complaint. (Dennis-White MTD 8.12.2025; Supp. Addendum 10.10.2025). Loveless' counsel raised this issue to the trial court during the motions hearing on February 3, 2026. (Tr. P. 44, lines 17 – p. 45, lines 7). Since Dennis-White did not seek dismissal based on the statute of limitations, it was error to grant dismissal on a ground not raised by proper motion.

Rule 7(a)(1), SCRCP, requires issues to be raised by motion “which, unless made during a hearing or trial in open court...shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.” Dennis-White made no motion to dismiss on the statute of limitation, so the order granting a motion that was never made is clear error. The judge may not supply a ground to dismiss an action when no motion was made seeking relief on that ground. See *Pittman Mortgage Co. v. Edwards*, 327 S.C. 72, 77, 488 S.E.2d 335, 338 (1997) (“absent an amendment of the pleading or implied consent to consider relief not requested in the pleadings” it is error to award relief on a ground not set forth in the pleadings). While a motion is technically not a “pleading,” the same point applies.

Loveless has already argued *in seriatim* in his appellant's brief as to White and Hutchison the legal basis that relief granted without the pendency of a motion requesting that relief is legal error. (Initial Appellant's Brief/White Hutchison, Issue 2). For expediency, Loveless incorporates by reference here that portion of his separate Appellant's Brief/White Hutchison, Issue 2.

To that, Loveless also cites to the dissenting opinion of Justice Waller in *Camp v. Camp*, 386 S.C. 571, 689 SE.2d 634 (2010). The Supreme Court affirmed the grant of a motion to dismiss

which did not state “with particularity” the grounds for the motion. In Justice Waller’s dissent, he quoted federal law and said, “Although the appellant had later filed a brief in support the motion. . . ‘if a party could file a skeleton motion and later fill it in, the purpose of the . . . limitation would be defeated.’”. *Id.* 386 S.C, at 577. Justice Waller disagreed with the majority that a “skeletal motion is proper.” He said, “I believe this effectively vitiates the plain (and relatively undemanding) requirements of the applicable rules of civil procedure.” *Id.*

Dennis-White did not file a “skeletal” motion to dismiss. After her existing motion to reconsider was denied, Dennis-White filed nothing else, except a supplemental addendum which failed to raise any additional grounds for dismissal. It does, as Justice Waller said, defeat the requirements for motion practice to allow a memorandum to cure deficiencies of a legitimate motion.

2. The trial court’s order is in error because it improperly states the contents of the Second Amended Complaint.

The trial court’s order granting the motion to dismiss as to Dennis-White misstates the contents of the Second Amended Complaint. Specifically, trial court’s order states that “Plaintiff’s Second Amended Complaint confirms that the alleged “civil conspiracy” and “outrage” claims are based on the alleged “retaliatory attacks” of the Intervenor’s that occurred on, or prior to, September 14, 2020. (Dennis-White Order 2.25.2026, referencing ¶¶ 20-38 of the Second Amended Complaint.).

However, the Second Amended Complaint specifically alleges multiple actions by Dennis-White and the impacts of her actions well after that date, all of which are continued steps in the civil conspiracy and establish damages sustained by Loveless well after September 14, 2020.

- 51. “On information and belief, after the September 14, 2020 attack was launched, Defendant Ms. White soon commandeered OneD5 . . .” and continued to pursue the conspiracy.”
- 52. “Throughout the ongoing conspiracy, Defendant Ms. White maintained a pivotal, behind-the-curtain role, obtaining control as the Moderator of the OneD5 Facebook page. . . “
- 53. “. . . Ms. White . . . took on the task of promoting the Facebook page for OneD5. . .”
- 55. “. . . One D5 Facebook page[] played a crucial role in the ongoing conspiracy involving the Defendants. . . serving as key platforms for disseminating false and misleading information about Loveless. . .”⁴
- 56. “. . .[i]n 2022, . . . There were 11 thumbs up “likes” to Laurene Mensch’s post including Defendant Ms. White. . .”
- 63. “Days after the attack on Loveless, on September 17, 2020, Defendant Ms. White sent an email to Defendant Scully. . . saying “don’t we need to kick off the . . . campaign maybe after this article rolls out with support of the honorable candidates not the ones who have ties to a board member with questionable ethics.”
- 68. “. . . an official ethics complaint against Loveless on February 17, 2021. . . a direct and proximate result of the conspiracy led by . . . Ms. White. . .”
- 73. “In 2022, Defendant[] Ms. White. . . encouraged Defendant Scully to run for school board. . . Scully’s candidacy for School Board . . . was at least in part in furtherance of the conspiracy against Loveless.”
- 75. “Emails between Ms. White and Defendant Scully reflect that from the beginning of Scully’s service on the District 5 Board” setting forth additional steps in the conspiracy beginning in November, 2022.

“When reviewing a motion to dismiss for failure to state facts sufficient to constitute a cause of action, the pleadings must be construed liberally, and all well pled facts must be presumed

⁴ This allegation does not have a temporal reference in the specific paragraph, but construing the facts set forth in the Second Amended Complaint as true and as liberally as the judge is required to do, and since the Second Amended Complaint alleges Ms. Dennis-White continued to engage in the conspiracy “after September 14, 2020”, these facts prevent dismissal on the basis of the statute of limitations. *Doe v. Bishop of Charleston*, 407 S.C. 128, 754 S.E.2d 494 (2014).

true.” *Doe v. Bishop of Charleston*, 407 S.C. 128, 754 S.E.2d 494 (2014) (Citing *Charleston County School Dist. v. Harrell*, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011)).

As set forth above, the judge erred in concluding that no allegations of Dennis-White’s conspiracy actions occurred after September 14, 2020.

3. The trial court’s order is in error as to the dismissal of claims based upon the statute of limitations because it improperly overrules the order of another circuit court judge.

The trial court’s order granting Dennis-White’s motion to dismiss is in error because it directly overrules the previous order of another circuit court judge. “This State has a long-standing rule that one judge of the same court cannot overrule another.” *Shirley’s Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013); *Tisdale v. Amer. Life Ins. Co.*, 216 S.C. 10, 56 S.E.2d 580 (1950); *Dinkins v. Robbins*, 203 S.C. 199, 26 S.E.2d 689 (1943). In his appellant’s brief as to White and Hutchison, Loveless has included a thorough historical analysis of the undisputed rule that one circuit court judge cannot overrule a prior circuit court judge’s order in the absence of new evidence. (Initial Appellant’s Brief/White Hutchison, Issue 2). Loveless incorporates the entirety of that argument into this brief and does not repeat it here.

The trial court’s order granting Dennis-White’s motion to dismiss makes specific findings that set aside the McCutchen order, which is clear error. *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 340 S.E.2d 546 (1985) (“One Circuit Court Judge does not have the authority to set aside the order of another.”). The McCutchen order specifically declined to make a determination on the statute of limitations. The Order specifically states:

At this point in the proceeding, with discovery in this case being voluminous and ongoing, it would be premature for the Court to make a determination on when each cause of action arose, when each cause of action was or could be discovered by Plaintiff, . . . as to the Civil Conspiracy and Outrage claims. Defendants are free to

assert their claims and defenses in their respective pleadings; once discovery on all those issues have been conducted, Defendants can bring those issues before the Court at that time.

(McCutchen Order 7.25.2025). (Emphasis added).

This included Dennis-White's statute of limitations argument. As discussed earlier, however, Dennis-White did not seek dismissal on the basis of the statute of limitations after the Second Amended Complaint was filed.

In direct contravention of the McCutchen order, the trial court's February 25, 2026, order made the specific finding that each of Loveless' claims against Dennis-White are barred by the applicable statute of limitations prior to discovery being conducted. (Dennis-White Order 2.25.2026). While the McCutchen order allowed Dennis-White and the intervening defendants to raise their defenses and claims of privilege in their responsive pleadings, it required that the parties engage in discovery on those issues before Defendants could bring those issues before the Court. (McCutchen Order). That did not occur. The trial court's order granting a non-existent motion to dismiss raising a statute of limitations defense also reversed Judge McCutchen's express finding that discovery was required before that defense could be considered. (*Id.*).

In granting the motion to permit the Second Amended Complaint, the McCutchen Order expressly ruled that it was inappropriate to address issues related to the statute of limitations at that stage for any of the new Defendants, and the argument could be raised again after discovery had occurred. (Order 7.25.2025). That order was not appealed.

The trial court's order granting Dennis-White's motion to dismiss on the grounds of statute of limitations must be vacated.

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 and outrage claims against Dennis-White.

Respectfully submitted,

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