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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 MICHAEL MONTGOMERY**

Desa Ballard (S.C. Bar No. 498)
Haley Hubbard (S.C. Bar No. 103195)
BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
haley@desaballard.com
ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case.....	2
Standard of Review	5
Argument	6
1. THE TRIAL JUDGE ERRED IN GRANTING DISMISSAL TO MONTGOMERY IN THE ABSENCE OF A MOTION TO DISMISS	6
2. THE TRIAL JUDGE ERRED IN OVERRULING THE MCCUTCHEN ORDER AS TO THE STATUTE OF LIMITATIONS ISSUE	8
3. THE TRIAL JUDGE ERRED IN DETERMINING THAT THE CLAIMS AGAINST MONTGOMERY WERE NOT PROPERLY PLEADED.....	8
4. THE TRIAL JUDGE ERRED IN GRANTING DISMISSAL TO MONTGOMERY ON THE BASIS OF LAWYER IMMUNITY	12
5. THE TRIAL JUDGE ERRED IN RULING THAT ALL CLAIMS AGAINST MONTGOMERY WERE BARRED BY THE STATUTE OF LIMITATIONS.....	13
Conclusion	13

TABLE OF AUTHORITIES

CASES

<i>Camp v. Camp</i> , 386 S.C. 571, 689 SE.2d 634 (2010).	7
<i>Citizens for Quality Rural Living Inc. v. Greenville County Planning Commission et al.</i> , 426 S.C. 97, 102, 825 S.E.2d 721, 724 (Ct.App. 2019).....	5
<i>Culler v. Blue Ridge Elec. Coop. Inc.</i> , 309 S.C. 243, 422 S.E.2d 91 (1992).	5
<i>Freemantle v. Preston et al.</i> , 398 S.C. 186, 728, 728 S.E.2d 40 (2012).	5
<i>Menezes v. Ross</i> , 403 S.C. 522, 744 S.E.2d 178 (2013).	5
<i>Milliken & Co. v. Morin</i> , 399 S.C. 23, 731 S.E.2d 288 (2012).	5
<i>Plyler v. Burns</i> , 373 S.C. 637, 647 S.E.2d 188 (2007).	13
<i>Riddle v. Morris</i> , 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009).	5
<i>Sloan Constr. Co. v. Southco Grassing, Inc.</i> , 77 S.C. 108, 113, 659 S.E.2d 158, 161 (2008).	5
<i>Stiles v. Ornato</i> , 318 S.C. 297, 457 S.E.2d 601 (1995).	9,12
<i>Toussaint v. Ham</i> , 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987).	13

OTHER AUTHORITIES

Rule 12(b)(6), SCRCF	5,9
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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in granting dismissal to Montgomery in the absence of a motion to dismiss?
2. Did the trial judge err in overruling the McCutchen Order as to the statute of limitations issue?
3. Did the trial judge err in determining that the claims against Montgomery were not properly pleaded?
4. Did the trial judge err in granting dismissal to Montgomery on the basis of lawyer immunity?
5. Did the trial judge err in ruling that all claims against Montgomery were barred by the statute of limitations?

STATEMENT OF THE CASE

This is an appeal from orders of the trial court which dismissed the Second Amended Complaint as against Respondent Michael Montgomery (“Montgomery”).

Appellant Kenneth B. Loveless (“Loveless”) filed suit against Kevin Scully (“Scully”) in 2022 for defamation. (Complaint 3.14.2022). Loveless received permission to amend the complaint to assert an additional cause of action against Scully for conspiracy. (Motion to Amend 11.17.2023; Order 1.23.2024). Subsequently, Loveless sought and obtained permission to amend the complaint a second time to add additional defendants, including Montgomery, for conspiracy and other causes of action.¹ (Second Motion to Amend 11.15.2024; Order 7.25.2025). Before the motion to add Montgomery was granted, Montgomery sought to intervene in the action and to argue against the Second Amended Complaint. (Motion to Intervene 12.2.2024; Response of Intervenors 1.23.2025). Montgomery fully briefed his grounds for asserting that he should not be made a party to the action, arguing *inter alia*, that the statute of limitations, legislative immunity, and attorney-client privilege barred him from being added as a defendant. (Response of Intervenors 1.23.2025).

Following a hearing, Circuit Court Judge Charles J. McCutchen granted Montgomery’s motion to intervene and granted Loveless’ motion to file the Second Amended Complaint

¹ When Loveless sought to add Montgomery as a Defendant, he also sought to add Edward V. White (“White”) and Flora Elizabeth Hutchison (“Hutchison”) as Defendants. (Motion 12.2.2024). Loveless then sought to also add Beatrice Dennis-White (“Dennis-White”) as an additional Defendant. (Motion 1.20.2025). One order was issued granting Loveless permission to add all four (4) new Defendants. (Order 7.25.2025). The trial court later granted dismissal of the Second Amended Complaint as to all four (4) new Defendants and dismissing one of the causes of action (from the first Amended Complaint) as to Scully. Loveless filed three (3) Notices of Appeal, but this Court consolidated the appeals. (Letter 3.25.2026). Because the legal issues as to the four (4) new Defendants are different (except as to White and Hutchison), and because the trial court also dismissed the conspiracy cause of action against the original defendant Scully, four (4) appellant’s briefs are filed: One as to White and Hutchison, one as to Dennis-White; one as to Montgomery and one as to Scully. Per the Court’s letter of March 25, 2026, a single Record on Appeal will be filed.

(“McCutchen Order”), which allowed the addition of Respondents White, Hutchison, Montgomery and Dennis-White as defendants. (Order dated 7.25.2025).

In connection with his intervention in the action, Montgomery thoroughly argued that the amendment was futile because the statute of limitations barred an action against him. 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.

Montgomery filed a Motion to Reconsider which was denied (Motion dated 7.29.2025; Order dated 8.26.2025). After being served with the Second Amended Complaint, Montgomery moved to dismiss the Second Amended Complaint, alleging only that the Second Amended Complaint was premature because his motion to reconsider was still pending. (Motion 8.11.2025). The motion to reconsider was denied. (Order 8.26.2025). No other motion to dismiss was filed by White or Hutchison, and the pending motion to dismiss was then moot.²

Montgomery filed a memorandum supposedly in support of the existing, moot motion to dismiss, but introduced new grounds not set forth in the moot motion to dismiss. (Memorandum filed 10.6.2025). In his memoranda, Montgomery argued they were protected by legislative immunity, the statute of limitations, attorney-client privilege, and that the Second Amended Complaint did not properly plead civil conspiracy or outrage. *Id.*

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

At the hearing on all motions, Loveless pointed out that there was no pending Motion to Dismiss raising the issues argued in Montgomery’s memorandum. (Tr. P. 44, lines 19-23; P. 45, lines 24-25). Loveless also briefed and argued the substantive issues raised in Montgomery’s memorandum, even though those issues were not properly raised by motion. (Loveless MIO MTD 2.2.2026). Loveless also argued and briefed the preclusive effect of the McCutchen order. *Id.* (Tr. P. 43, lines 10-19).

Judge Daniel Coble (“the trial judge”) dismissed the Second Amended Complaint as to Montgomery, making express rulings on the statute of limitations, legislative immunity, and attorney-client privilege, none of which had been raised by proper motion to dismiss. (Form 4 order 2.9.2026; Formal order 2.17.2026). Loveless filed a motion to reconsider, properly raising all grounds set forth in this appeal. (Motion 2.27.26). Loveless’ motion was denied without comment. (Order 3.4.2026).

Per the Second Amended Complaint, Montgomery “was employed, ostensibly through his law firm, as an independent contractor by District Five as an attorney for the School District on a number of different matters, including general consulting. However, his intentional wrongdoing . . . takes his actions outside of the scope of services he was providing to District Five, and he therefore bears personal liability for his wrongful acts as set forth herein. . . none of the acts of Montgomery which are the subject of this action constituted the practice of law.” (Second Amended Complaint ¶ 8).

The Second Amended Complaint alleges multiple acts of wrongful conduct by Montgomery. (Second Amended Complaint ¶¶ 13, 15, 19, 20-21, 23, 31, 37, 42, 45-47, 50, 57, 68, 97-100, 102, 105, 106, 108, 114-116, 117, and 121.). Per Paragraph 8, all of the acts set forth in the remaining paragraphs were “outside the scope of services he was providing to District Five”

and “none of the acts of Montgomery which are the subject of this action constituted the practice of law.” As noted below, all of these facts have to be assumed to be true at a motion to dismiss hearing.

STANDARD OF REVIEW

The orders on appeal raised claims for civil conspiracy, libel, and outrage, all of which are matters of law. *Culler v. Blue Ridge Elec. Coop. Inc.*, 309 S.C. 243, 422 S.E.2d 91 (1992) (a tort action is generally an action at law, unless equitable relief is sought).

However, the scope of review on motions to dismiss, which involves no findings of fact at all, must necessarily be based on review for legal error since no factual issues are involved. *Citizens for Quality Rural Living Inc. v. Greenville County Planning Commission et al.*, 426 S.C. 97, 102, 825 S.E.2d 721, 724 (Ct.App. 2019) (“As to questions of law, this court’s standard of review is *de novo*.”).

An appellate court reviews questions of law *de novo*. “This Court undertakes a *de novo* review of all issues of law, and is free to decide matters of law with no particular deference to the trial court.” *Menezes v. Ross*, 403 S.C. 522, 744 S.E.2d 178 (2013). *See also Milliken & Co. v. Morin*, 399 S.C. 23, 731 S.E.2d 288 (2012). “We review questions of law *de novo*, with no deference to trial courts.” *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

On appeal from the dismissal of a case 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). “If the facts alleged and inferences deducible therefrom would entitle the plaintiff to any relief, then dismissal under Rule 12(b)(6) is improper,” *Freemantle v. Preston et al.*, 398 S.C. 186, 728, 728 S.E.2d 40 (2012), citing *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 113, 659 S.E.2d 158, 161 (2008).

ARGUMENT

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

Loveless filed and served the Second Amended Complaint on August 8, 2025. (Second Amended Complaint). Montgomery (in conjunction with White and Hutchison) filed one motion to dismiss on August 11, 2025, arguing only that the filing and service of the Second Amended Complaint was “premature” because he (as well as White and Hutchison) had filed a motion to reconsider the order allowing the Second Amended Complaint. (Motion 8.11.2025). On August 26, 2025, Montgomery’s motion to reconsider was denied. (Order 8.26.2025 – Party of 3). The filed motion to dismiss then became moot.

Montgomery did not file another motion to dismiss, nor did he seek to amend his moot motion to dismiss. Instead, a roster was issued on January 13, 2026 scheduling the moot motion to dismiss (filed on 8.11.2025) for hearing. (Roster 1.23.2026).

Montgomery (along with White and Hutchison) filed a memorandum arguing issues of law that were not embraced by the moot motion to dismiss. (Memo 10.6.2025). In the Form 4 order filed February 9, 2026, the trial judge ruled that the claims against Montgomery were barred by legislative immunity, statute of limitations, and “the attorney-client relationship.” (Form 4 2.9.2026). The mooted motion to dismiss did not include any of these bases as a ground for dismissal of the Second Amended Complaint.

During the hearing on February 3, 2026, Loveless’ counsel argued there was no motion to dismiss raising any of the issues that were being argued by the newly-added Defendants. (Tr. P. 44, lines 17 – p. 45, lines 7). The trial court’s Form 4 order and the more formal order both ignored this argument. (Form 4 - 2.9.2026; Order 2.17.2026)

Counsel also argued that none of those issues could be raised on a motion to dismiss, because each had to be raised by affirmative defense. (Tr. P. 46, line 24 – p. 47, line 11; p. 50, lines 19-24; p. 51, 5-15). Again, these arguments were ignored. (Form 4, 2-9-2026; Order 2.17.2026).

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 plan (and relatively undemanding) requirements of the applicable rules of civil procedure." *Id.*

Montgomery did not file a "skeletal" motion to dismiss. After his existing motion to reconsider was denied, Montgomery filed nothing else, except legal memoranda. The roster made clear that the only motion scheduled for hearing was the one that was already moot. (Roster dated 1/23/2026). 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 judge erred in overruling the McCutchen Order as to the statute of limitations issue.

Before and after Montgomery's motion to intervene was granted, Montgomery thoroughly argued multiple issues, including his contention that claims against him were barred by the statute of limitations. (Motion to Intervene 12.2.2024; Response of Intervenors 1.23.2025; Order 7.25.2025; Motion to Reconsider 7.29.2025).

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.

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.

3. The trial judge erred in determining that the claims against Montgomery were not properly pleaded.

The Second Amended Complaint asserted two causes of action against Montgomery: civil conspiracy and outrage. Since the trial judge's order of dismissal combined his rulings as to Montgomery into a single order (with White and Hutchison), it's somewhat difficult to determine the alleged pleading insufficiencies he found as to Montgomery. The trial judge ruled:

Plaintiff has stated conclusory legal assertions that Montgomery acted outside the scope of his professional duties, but the Second Amended Complaint is wholly

lacking in any factual assertion that Montgomery acted outside the scope of his representation in any regard.³

(Order 2.17.2026 p. 7).

In support of the order, the trial judge cited *Stiles v. Ornato*, 318 S.C. 297, 457 S.E.2d 601 (1995), and stated “the court **must** dismiss a complaint that alleges the attorney acted within his scope.” Order p.7 (emphasis in order, but not in cited case). The case actually says: “The ruling on a Rule 12(b)(6) motion to dismiss **must** be based solely upon the allegations set forth on the face of the complaint.” *Id.*, 457 S.E.2d at 603 (emphasis added). It is true that is the proper standard for what should have been considered by the trial judge.

The Second Amended Complaint goes into great detail reciting specific facts which the trial judge described as “wholly lacking” detail.

8. “. . . Defendant Montgomery was employed, ostensibly through his law firm, as an independent contractor . . . his intentional wrongdoing as set forth herein takes his actions outside the scope of services he was providing to District Five, and he therefore bears personal liability for his wrongful acts as set forth herein. . . none of the acts of Montgomery . . . constituted the practice of law.”

13. “. . . ongoing conspiracy initiated by . . . White, Ms. White and Hutchison . . . which Defendant[] Montgomery joined.”

15. “. . . Defendants . . ., Montgomery conspired with Scully with the express purpose of defaming and damaging Loveless. . . Most of this occurred in 2020, when Loveless was not a candidate. . . the conspiracy continued uninterrupted through 2021, 2022, 2023, 2024 and continues at present.”

17. “. . . the remaining Defendants conspired and collaborated with and assisted Scully in a conspiracy. . . actively assisting in the dissemination of these harmful statements. Most of this started in 2020, when Loveless was not a candidate. . . the conspiracy has continued uninterrupted and continues at present.”

19. “Montgomery’s billing records detail the elaborate planning in which he engaged, coordinating with Contract Construction, the general contractor, and the architects who were actually performing the work, to create data to dispute Loveless’ concerns. Montgomery provided copies of Loveless’ report and attachments to the contractor and

³ This citation is in that portion of the order that deals with “attorney-client” privilege. (Order 2.17.2026 p. 7).

architect and coordinated plans for them to provide District Five with information that disputed Loveless' concerns. . . Montgomery had negotiated the contracts with Contract Construction and the architect, and had a vested interest in discrediting Loveless and disputing his concerns."

20. ". . . secret meetings organized by Montgomery . . were far outside Defendant Montgomery's role as legal counsel to the District, although he billed and was paid by the District for his leadership role in the conspiracy."

21. ". . . Montgomery . . . consult[ed] with . . . James Burns, who is listed in Montgomery's bills as 'the former ethics commission chair.' . . to lay the groundwork for a complaint to be filed against Loveless with the State Ethics Commission. . . to Defendant Montgomery with instructions to shut Loveless down. Montgomery's bills detail the months-long planning for a public attack on Loveless. . ."

22. Footnote 3: ". . . White and Montgomery had already successfully removed a prior member of the Board of Trustees. . ."

23. ". . . when Scully was recruited, the conspiracy included established members . . . Montgomery. . ."

26. ". . . toward whom Defendants and their co-conspirators re-directed the hatred that was spewing from the public at this time."

27. ". . . Defendants . . . conspired and assisted Scully for the purpose of defaming and damaging Loveless . . . and seeking his removal from the District Five Board by whatever means."

32. ". . . were made with actual malice, and a clear intent to damage Loveless' reputation. . . , an integral part of the continuing conspiracy involving all named Defendants. . . who collectively sought to harm Loveless and damage. . ."

37. ". . . led by . . . Montgomery. . . announced the upcoming . . . Board meeting. . . 'will be a revealing meeting and [Loveless] will not be happy but the truth will set him free.'"

42. ". . . well aware that Defendant Montgomery . . . actively involved in coordinating the presentation to be made. . ."

45. ". . . Montgomery's billing records . . . detail his participation in and planning. . . to formulate the vicious verbal assault aimed at falsely alleging that Loveless harbored an undisclosed conflict of interest . . ."

46. "Defendant Montgomery was the leader to create and present himself as moderator as the legal expert to lend mock countenance . . . as they played along as if they had no idea this had been planned. . ."

47. “. . . who collaborated with Montgomery. . . Defendant Montgomery arranged for. . . planned and masterminded the attack with . . . Montgomery . . . none of that was true and Defendants knew it. Defendants intentionally attempted to obscure the real facts so as to paint Loveless in as negative light as possible.”

50. “. . . Montgomery again consulted with Defendant White’s law partner James Burns on September 26, 2020. Montgomery’s billing entry for that date . . . two hours, reads “Telephone conference with former Ethics commission chair re: opinions and presentation of same. . . cemented the Defendants’ . . . plans to eventually launch a complaint against Loveless with the State Ethics Commission.”

57. “. . . at 12:09 a.m. on September 15, 2020, to . . . Montgomery. . . responded to . . . Cates at 8:19 a.m. “I really appreciate you. . . I’m always proud to help.”

59. “. . . Defendants knew that was untrue yet did everything in their power to perpetuate the falsehood, which was successful in creating the false belief. . .”

68. Footnote 7: “. . . The SEC complaint was a direct and proximate result of the conspiracy . . . Montgomery, and others. . .” and “Montgomery had earlier laid the groundwork for the SEC complaint through his communications with White’s law partner James Burns.”

80. “In response to this inquiry and the baseless lies perpetuated by . . . Montgomery and others. . . on September 25, 2024. . .”

97. “. . . to Defendant Montgomery to initiate the planned retaliation with the other Defendants. . .”

98. “In concert with one another, Defendants Montgomery. . . gather information to counter the claims. . .”

99. “. . . Montgomery billed District Five for hundreds of hours of time he spent engaging in the conspiracy. . . March of 2021, . . . invoices from Montgomery. . .”

100. “. . . Defendant Montgomery acted in concert with . . . and conspired with private individuals. . . to construct and execute. . . in the billing records of Montgomery and dozens of emails exchanged . . . were produced in this litigation by Scully in November, 2024.”

102. “. . . the ‘team’ as including Montgomery. . . Cates included Defendant Montgomery on his celebratory email. . .”

105. “. . . Montgomery’s planning . . . in furtherance of the ongoing conspiracy. . .

108. “. . . an overarching conspiracy led by . . . Montgomery to tell falsehoods about Loveless for the purpose of damaging his name and reputation. . .”

114. “. . . all premised on statements by . . . Montgomery and others that the State Ethics Commission had advised Loveless to recuse himself. . . which was false.”

(Second Amended Complaint, Paragraphs identified by number above).

In a separate part of the order of February 17, 2026, the trial judge also made brief reference to “basic pleading standards of each of his claims.” (Order 2.17.2026 p. 11). He also erroneously states Loveless’ position as a “public official.”

It is respectfully asserted that the specific acts of Montgomery as to the conspiracy and outrage were laid out in detail in the Second Amended Complaint and the trial judge’s conclusion otherwise is legal error. Loveless again incorporates his argument on these issues as set forth in his Appellant’s Brief as to White and Hutchison, Issue 3.

4. The trial judge erred in granting dismissal to Montgomery on the basis of lawyer immunity.

The trial judge granted dismissal to Montgomery in the Form 4 order based on “the attorney-client relationship.” (Form 4 – 2.9.2026). In the more formal order, the trial judge granted dismissal to Montgomery because he “has the additional defense of acting as an attorney for the District” under the caption “Attorney-Client Privilege.” (Order 2.17.2026). The sole analysis was based on *Stiles v. Onorato*, which, as stated above, is inapplicable here because the allegations specifically state Montgomery was acting outside the scope of his role as an attorney for the District. (Second Amended Complaint ¶ 8). As further discussed, each of the individual acts by Montgomery were based on his own personal conspiracy with Scully, a private citizen, White and Hutchison (who were then Board members) and others.

It is not clear why the trial judge granted a “stand alone” basis for dismissal on the basis of the attorney-client issue, so Loveless has presented this argument both as a “defective pleading” issue and independently. It is clear the ruling was error.

“In deciding a motion to dismiss. . . the trial court should consider only the allegations set forth on the face of the . . . complaint.” *Plyler v. Burns*, 373 S.C. 637, 647 S.E.2d 188 (2007). “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Id.*, citing *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987).

5. The trial judge erred in ruling that all claims against Montgomery were barred by the statute of limitations

The trial court’s order included a blanket general ruling that all claims were “barred by the applicable statute of limitations.” (Order 2.17.2026, p. 8). The trial judge erroneously stated that “the acts . . . occurred on, or prior to, September 14, 2020”. (*Id.*). The trial judge concluded that the statute of limitations against Montgomery (and others) had expired before the first lawsuit against these defendants was filed in United States District Court and the District Court’s ruling “could not resurrect them” and that Loveless’ arguments “turn established South Carolina law directly on its head.” (Order 2.17.2026 p. 9-10).

That sweeping conclusion simply misstates the allegation of the Second Amended Complaint. As pleaded, Montgomery’s actions continued after September 14, 2020. (*See* by way of example only, ¶¶ 16, 17, 21, 23, 57 and 68.) Without the discovery that the McCutchen order required prior to this issue being considered, the Second Amended Complaint only identifies the acts that Loveless can already prove. The ruling on the statute of limitations is legal error.

CONCLUSION

This matter can and should be decided on the basis of the trial judge overruling the McCutchen order. While it is clear that the trial judge went out of his way to rule against Loveless on every conceivable issue, as demonstrated above, all of his rulings were legal error. The trial judge’s orders must be reversed.

Respectfully submitted,

s/ Desa Ballard

Desa Ballard (SC Bar No. 498)

Haley Hubbard (SC Bar No. 103195)

BALLARD & WATSON

226 State Street

West Columbia, South Carolina 29169

Telephone 803.796.9299

Facsimile 803.796.1066

desab@desaballard.com

haley@desaballard.com

ATTORNEYS FOR APPELLANT

July 1, 2026