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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
RESPONDENTS EDWARD K. WHITE
AND FLORA E. "BETH" HUTCHISON**

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STATEMENT OF ISSUES ON APPEAL

- I. Is the court's order in error as to the statute of limitations because it improperly overrules the order of another circuit court judge?
- II. Did the trial court err in granting a nonexistent Motion to Dismiss?
- III. Did the trial court err in concluding that the action against White and Hutchison was barred by the doctrines of legislative immunity, statute of limitations and "basic pleading standards?"

STATEMENT OF THE CASE

This is an appeal 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 respondents Edward K. White (“White”), Flora E. “Beth” Hutchison (“Hutchison”)

Appellant Kenneth Loveless (“Loveless”) filed this libel action against Respondent Kevin Scully (“Scully”) 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. (Motion to Amend Complaint 11.17.2023). 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. (Second Motion to Amend 11.15.2024).

After Loveless sought permission to file the Second Amended Complaint, White and Hutchison filed motions to intervene in the existing action, which was then pending only as to Scully. (Motion to Intervene 12.2.2024). Both argued that they had standing to intervene because the proposed Second Amended Complaint was “improperly and unlawfully” attempting to add

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 Respondents Edward. K. White (“White”) and Flora E. “Beth” Hutchison (“Hutchison”). Separate briefs are filed as to Respondents Beatrice Dennis-White (“Dennis-White”), Kevin Scully (“Scully”) and Michael Montgomery (“Montgomery”). Since the grounds relating to Michael Montgomery (“Montgomery”) are, at least in part, different from the grounds affecting Respondents White and Hutchison, a separate appellant’s brief is filed as to Montgomery.

them as defendants. *Id.* White and Hutchison fully briefed their grounds for asserting they should not be made parties to the action, arguing *inter alia*, that the statute of limitations barred them from being added as Defendants. (Response 1.23.2025).

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 their intervention in the action, both White and Hutchison thoroughly argued that the amendment was futile because the statute of limitations barred an action against them. 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.

White and Hutchison filed a Motion to Reconsider which was denied (Motion dated 7.29.2025; Order dated 8.26.2025). After both were served with the Second Amended Complaint, White and Hutchison moved to dismiss the Second Amended Complaint, alleging only that the Second Amended Complaint was premature because their 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

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).

White and Hutchison 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 their memoranda, White and Hutchison argued they were protected by legislative immunity and the statute of limitations and that the Second Amended Complaint did not properly plead civil conspiracy or outrage. *Id.*

At the hearing on all motions, Loveless pointed out that there was no pending Motion to Dismiss raising the issues argued in White and Hutchison's memorandum. (Tr. P. 44, lines 19-23; P. 45, lines 24-25). Loveless also briefed and argued the substantive issues raised in White and Hutchison's memorandum, even though those issues were not properly raised by motion. (KL filing 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 White and Hutchison, making express rulings on the statute of limitations, legislative immunity, and other issues, 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).

STANDARD OF REVIEW

The orders on appeal raised claims for civil conspiracy, libel,³ 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).

³ While the Second Amended Complaint included Defendants White and Hutchison in the First Cause of Action (for libel), Loveless withdrew the First Cause of Action in the Second Amended Complaint as to White and Hutchison at the hearing. (Tr. P. 17, Lines 15-20).

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 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 court’s order is in error as to the statute of limitations because it improperly overrules the order of another circuit court judge.

White and Hutchison argued both before and after intervention that Loveless’ claims against them were barred by the statute of limitations, among other grounds. (Filing 2.15.2024; filing 1.23.2025; filing 7.29.2025). The McCutchen Order expressly denied these arguments and

expressly ordered that the statute of limitations could be raised after discovery had occurred. There was and is no appeal of the McCutchen Order.

This trial court's order granting White and Hutchison's Motion to Dismiss is in error because it directly overrules the previous order of another circuit court judge issued in the same case. "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). The trial judge's Order granting White and Hutchison's Motion to Dismiss makes numerous rulings that set aside the McCutchen order granting Loveless' Motion for Second Amended Complaint, which is legal 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 rule that one circuit court judge cannot overrule a prior circuit court judge on the same matter is almost without exception. *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 340 S.E.2d 546 (1985). In articulating the rule in 1880, the South Carolina Supreme Court said, "all authorities agree as to the general doctrine "that the decision of one judge is not subject to be reviewed by another." *Steele v. Charlotte*, 14 S.C. 324 (SC 1880).⁴ "This rule results from the nature of the

⁴ "The Court of Common Pleas is a unity, although its jurisdiction is administered by a number of judges who are, in some sense, the exponents of the court. When one of these judges makes a decision upon the merits of a matter within his jurisdiction, that is not merely the personal opinion of the judge, but a judgment of the Court of Common Pleas, which exhausts the power of the court upon that subject and must stand until reversed or set aside in the manner prescribed by law. There is no appeal from one Circuit court judge to another. All are of equal dignity and have the same right to pronounce the judgments of the court. One Circuit judge upon the same state of facts, has no power to change, alter or reverse a decision of a brother judge of the same Circuit. Otherwise, there would be no end to litigation. No one could tell where it would stop. Nothing could be considered as finally adjudged, and all rights of person and property would be set afloat. This rule results from the nature of the case and well-established principles. Its propriety is so obvious that it has not been thought necessary to enforce it by constitutional prohibition or express enactment, but for the sake of symmetry and convenience in practice it has been embodied in our 61st Rule of the Circuit Courts, which declares that " if any application for an order be made to any judge, and such order be

case and well-established principles. Its propriety is so obvious that it has not been thought necessary to enforce it by constitutional prohibition or express enactment, but for the sake of symmetry and convenience it has been embodied” by court rule.”⁵ *Id.* 14 S.C. at 329.

In memorializing the common law rule, the Supreme Court acknowledged that there “are circumstances under which the Court of Common Pleas will allow its own decisions to be assailed and set aside in its own courts. . . . The court will not change its own orders (except they are merely administrative) without a direct proceeding to set aside one order and substitute another for good cause; and the fact that one of the judges may differ in judgment upon the subject, from the judge who made the order complained of, is not of itself regarded as sufficient cause.” *Id.*, 14 S.C. at 329.

The Supreme Court noted in *Steele* that the earlier circuit court decision “will only be reviewed *upon a new state of facts arising after the decision.*” *Id.* 14 S.C. at 330. (emphasis in original).

The rule articulated in 1880 has remained unchanged, but case law has developed narrowing this rule as it relates to summary judgment. Multiple appellate opinions clarify that a successive summary judgment motion is not barred if additional information becomes available through discovery and is considered on a successive summary judgment motion. *Smith v.*

refused, in whole or in part, or be granted conditionally, or on terms, no subsequent application upon the same state of facts, shall be made to any other judge; and if upon such subsequent application, any order be made, it shall be revoked (emphasis added) *Id. supra.*, 14 S.C. 329-330.

⁵ The court rule referenced in *Steele* was former Rule 61 of the Circuit Court rules, which was repealed by implication in 1985 when the South Carolina Rules of Civil Procedure were adopted and all statutes which governed procedure in the circuit courts were repealed. 1985 Act No. 100. This occurred at the same time constitutional amendments were ratified to vest exclusive jurisdiction in the Supreme Court to govern practice and procedure in the state courts. 1985 Act #0008 (effective February 26, 1985).

Breedlove, 661 S.E.2d 67, 377 S.C. 415 (S.C. 2008) (citing *Dorrell v. S.C. Dept. of Transp.*, 361 S.C. 312, 325, 605 S.E.2d 12, 19 (2004)).

This is entirely consistent with the *Steele* court’s holding that “a new state of facts arising after the decision” does, in fact, permit a successive hearing by a different circuit court judge.

The rule has been strictly applied by the appellate courts uniformly, and to the exact circumstance presented here. In *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 340 S.E.2d 546 (1986), the first circuit court judge permitted an amended complaint to be filed and served. The case resulted in a mistrial, and a second circuit court judge vacated the amended complaint, ruling that the amendment should not have been permitted. The South Carolina Supreme Court reversed and “remanded for a new trial under the amended complaint.” 287 S.C. at 604, 340 S.E.2d AT 547.

The rule “can be a difficult one to apply.” *Rice v. Doe*, 442 S.C. 160, 164, 898 S.E.2d 127 (2023). In *Steele*, the Supreme Court set forth the only recognized exceptions to the general rule. “One circuit court judge has the authority to make a different ruling than a prior judge in some circumstances.” *Id.* 287 S.C. at 165. The court identified “class certification orders,” and “pretrial rulings on evidentiary issues are subject to change by the trial judge,” and offered general guidance.⁶ *Id.*

“If a prior ruling addresses a substantive point of law, or if nothing of significance has changed, the second circuit court judge should consider the previous judge’s ruling to be final. . . . “A motion once heard and decided fully [may] be reviewed *upon a new state of facts arising after*

⁶ With reference to the evidentiary rulings at trial, the Court said “[i]f the trial judge is different from the trial judge who ruled on the pretrial motion, the trial judge has an obligation to hear the arguments as to why the ruling during trial should be different from the pretrial ruling.” *Rice, supra.*, 442 S.C. 165.

the decision[,] . . . such as to make a new case as . . . newly discovered evidence, or that the ground of the order has been reviewed.” *Rice v. Doe*, 166 S.C. at 166-167, *citing Steele v. Charlotte, C & A.Ry.Co*, 14 S.C. at 330 (emphasis in original).

The *Rice*⁷ opinion specifically references the *Enoree Baptist Church* case, which is the same circumstances presented here. Here, the McCutchen Order granted the motion to allow the Second Amended Complaint and expressly ruled that the statute of limitations defense could be raised by the new defendants again *after discovery*. (Order 7.25.25). The trial court judge, fully aware of the McCutchen Order, ignored it. No additional facts existed, or could they, since no discovery had occurred during the period of time between the McCutchen Order and the hearing before the trial court judge.

The standard which governed the trial court judge’s consideration of the (nonexistent) motion to dismiss⁸ required that he solely consider the factual allegations of the Second Amended Complaint and no evidentiary matter. “In deciding whether the trial court properly granted the motion to dismiss, this Court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief.” *Flateau v. Harrelson*, 584 S.E.2d 413, 415 (S.C. App. 2003). “If the facts and inferences drawn from the facts alleged in complaint, viewed in the light most favorable to the plaintiff would entitle the plaintiff to relief on any theory, the grant of a motion to dismiss for failure to state a claim is improper.” *Spence v. Spence*, 368 S.C. at 116, 628 S.E.2d at 874.

⁷ In *Rice*, after providing guidance and analysis of the rule prohibiting a second circuit court judge from overruling a prior circuit court judge, the Supreme did not rule on that issue, finding a different issue dispositive of the appeal. *Rice, supra.*, 441.S.C. 166.

⁸ Loveless does not acknowledge that White and Hutchison made a proper motion to dismiss, as argued *infra*. At Issue Two.

As a result, the facts before the trial court judge were exactly the same as the facts before Judge McCutchen. No new facts existed. That point was made clear to the trial court judge at the hearing. “We don’t have one additional fact, not one, since Judge McCutchen’s order has been issued.”⁹ (Tr. P. 43, lines 17-19; P. 44, lines 15-18).

The record establishes that the trial court judge knew certain issues were precluded from his consideration by the McCutchen Order. At the hearing, the trial court judge sought to find a way to distinguish the McCutchen Order. “[W]had did he mean by, ‘They can be heard at a later time. . .’” (Tr. P. 52, lines 8-9). “[I]t was a motion to amend. . . which is a different standard.” (Tr. P. 52, lines 9-12). “[H]e could have said ‘I’m going to go ahead and consider it, and whether I let you amend it or not and just hear it all at once’ or ‘I’m going to do the Rule 15, the lower standard, and then y’all do the Rule 12 or later 56, whatever it may be.’ Is that a possibility of what he did at that hearing?” (Tr. P. 52, lines 18-23).

Loveless’ counsel agreed that might be what the McCutchen Order was trying to do but also pointed out that White and Hutchison didn’t leave it at that; instead, they filed factual information and argument in their motion to reconsider that addressed the statute of limitations. (Tr. P. 52, line 24 – p. 53, line 15). “So whether he wanted to punt or not, he wasn’t allowed to. These parties were granted the right to intervene specifically so they could argue against the amendment on all these same grounds that they’re arguing to you today.” *Id.*

After looking for a way to distinguish the McCutchen Order, the trial court judge ignored the McCutchen order completely. (Form 4 Order 2.9.2026; Formal order 2.17.2026).

⁹ At the time of the hearing, Loveless’ counsel incorrectly recalled that the McCutchen order addressed only the statute of limitations defense, and erroneously argued that the McCutchen order also addressed legislative immunity. (Tr. P. 44, lines 12-13; P. 47, lines 14-16).

Trial court judge's order granting White and Hutchison's (unfiled) motion to dismiss on the grounds of statute of limitations must be vacated.

2. The trial court erred in granting a nonexistent Motion to Dismiss.

At the hearing on the motions by all Respondents, Loveless' counsel expressly pointed out that the existing motion by White and Hutchison raised a single ground: the Second Amended Complaint was filed and served prematurely. (Tr. P. 44, line 19 – p. 45, line 9). Loveless also pointed out that all arguments setting forth grounds for a motion were set forth only in various memoranda filed by White and Hutchison. (Tr p. 46, lines 1-4). At the time of the hearing from which the order on appeal arose, no motion to dismiss was pending at all.

Rule 7(b)(1), SCRCP, requires that a motion state with particularity the grounds for a motion. South Carolina appellate courts have provided an elastic interpretation of Rule 7(b)(1) and have consistently held that a technical application of the particularity requirements of Rule 7(b)(1) SCRCP can be avoided unless prejudice is shown. *Camp v. Camp*, 386 S.C. 571, 689 S.E.2d 634, 637 (2010) (“By requiring notice to the court . . . rule 7(b)(1) advances the policies of reducing prejudice to either party and assuring that ‘the court can comprehend the basis of the motion and deal with it fairly.’” (citations omitted); *Nexstar Media Grp. Inc. v. Davis Roofing Grp, LLC*, 431 S.C. 593, 601, 848 S.E.2d 597 (Ct.App. 2020) (“The particularity requirement ‘is to be read flexibly in ‘recognition of the peculiar circumstances of the case.’”); *Lucey v. Meyer*, 401 S.C. 122, 132, 736 S.E.2d 274 (Ct.App. 2012) (“When the trial court is able to discern the relief requested, ‘[i]t is the substance of the requested relief that matters ‘regardless of the form in which the request for relief was framed.’”). *See also Chastain v. Hiltabidle*, 381 S.C. 508, 517, 673 S.E.2d 826 (Ct.App. 2009) (“As a general rule, a party must establish prejudice as the result

of an other's failure to comply with Rule 7(b)(1), SCRCP.''). None of those rulings addressed the complete absence of a motion.

White and Hutchison filed a motion to dismiss on a single ground: the Second Amended Complaint was premature because their motion for reconsideration remained pending. (Motion to Dismiss 8.11.2025). The pending motion for reconsideration was denied, and the pending motion became moot. (Form 4 - 8.26.2025). No new motion to dismiss was ever filed. Therefore, at the time Trial court judge heard the motions on February 3, 2026, there was no motion to dismiss pending. The parties filed memoranda in support and in opposition of dismissal. To make matters worse, White and Hutchison raised new grounds which had *never* been raised by motion to dismiss.

This is not a situation in which the motion to dismiss contained a clerical error by citing the wrong rule or statute. This is a situation in which no motion to dismiss was pending *at all*. Only the memoranda addressed any legal basis for dismissal of the action, which cannot excuse the absence of a motion.

This defect cannot be considered a procedural defect that is subject to a harmless-error standard or a prejudice standard. Otherwise, a circuit court judge could effectuate a dismissal on his own motion at any time.

Appeals are unknown at common law. *Turner v. Joseph Walker School District No. 9*, 215 S.C. 472, 56 S.E.2d 243 (1949); *Whipper v. Talbird*, 82 S.C. 1, 10 S.E. 578 (1890). *See also McCullough v. McCullough*, 242 S.C 108,110, 130 S.E.2d 77,78 (1963) ("The right of appeal is a matter of grace and is not an inherent or vested right."). Loveless has properly raised this issue at all stages of this matter and this issue is properly preserved.

3. The trial court erred in concluding that the action against White and Hutchison was barred by the doctrines of legislative immunity, statute of limitations and “basic pleading standards.”

As argued above, White and Hutchison filed a single motion to dismiss, citing one ground: the Second Amended Complaint was premature because their motion to reconsider was still pending. (MTD 8.11.2025). After the motion to reconsider was denied, no supplemental or new motion to dismiss was filed. The trial judge’s subsequent “dismissal” of all claims against them was based solely on a memorandum, which cited grounds not raised by proper motion. (Form 4 8.26.2025).¹⁰ Therefore, since the order on appeal was issued in the absence of a motion to dismiss raising the statute of limitations defense, legislative immunity, or defective pleadings, the order should be reversed.

Substantively, if a motion to dismiss had been filed, the trial court’s role would have been to consider only the content of the Second Amended Complaint, and to construe all well pleaded allegations as true. “A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case.” See *Gentry v. Yonce*, 337 S.C. 1, 522 S.E.2d 137 (1999); *Stiles*, 318 S.C. at 300, 457 S.E.2d at 602-03; see also *Baird*, 333 S.C. at 527, 511 S.E.2d at 73 (if the facts and inferences drawn from the facts alleged on the complaint would entitle the plaintiff to relief on any theory, the grant of a motion to dismiss for failure to state a claim is improper). “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 true.” *Doe v. Bishop of Charleston*,

¹⁰ As noted in Issue Two, the South Carolina appellate courts have often overlooked an improper citation of a rule in a motion in order to affirm a trial court’s ruling as to a pleading error in the trial court. However, no appellate court of which Loveless is aware has ever *dispensed* with the requirement for filing a motion as a condition of a motion being granted. *German Evangelical Lutheran Church of Charleston v. City of Charleston*, 352 S.C. 600, 576 S.E.2d 150 (2003) (“*expressio unius est exclusion alterius*”).

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)). “In deciding whether the trial court properly granted the motion to dismiss, this Court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief.” *Flateau v. Harrelson*, 584 S.E.2d 413, 415 (S.C. App. 2003). “If the facts and inferences drawn from the facts alleged in complaint, viewed in the light most favorable to the plaintiff would entitle the plaintiff to relief on any theory, the grant of a motion to dismiss for failure to state a claim is improper.” *Spence v. Spence*, 368 S.C. at 116, 628 S.E.2d at 874.

Had the trial court construed the allegations of the Second Amended Complaint according to the applicable standard, it is apparent that the motion could not have been granted. Each of the grounds on which Trial court judge granted the motion to dismiss is discussed separately.

STATUTE OF LIMITATIONS

The trial court judge ruled two times on the nonexistent motion to dismiss by White and Hutchison. Initially, a Form 4 order was issued on all motions heard on February 3, 2026 saying they were under advisement. (Form 4, 2.9.2026). As to the issue presented here, the order stated, “the court also heard motions for Defendant White’s, Hutchison’s . . . Motions to Dismiss.” *Id.* “[T]he claims are barred by the applicable statute of limitations.” *Id.* The more formal order stated, “Plaintiff’s claims are barred by the applicable statute of limitations.” (Order 2.17.2026 p. 8). “Amazingly, . . . this argument runs directly counter to the well-established . . . law concerning the accrual of causes of action and their applicable statute of limitations.” *Id.* p. 9. The trial court judge’s rationale seems to be that the acts upon which liability was based all occurred on or before September 14, 2020.

The Second Amended Complaint, the allegations of which have to be considered as true, clearly state otherwise:

- “Most of this occurred in 2020. . . [h]owever the conspiracy continued uninterrupted through 2021, 2022, 2023, 2024 and continues at present.” (Second Amended Complaint ¶ 15).
- “Most of this started in 2020, but the conspiracy has continued uninterrupted and continues at present.” (¶ 17)
- “White frequently used his ed.white@nelsonmullins.com email in carrying out the conspiracy. . . which continues at this time.” (¶22, fn. 5)
- “White, Hutchison . . . acted with actual malice. . . during 2020 and thereafter.” (¶33).
- “On September 15, 2020, . . . White and Hutchison worked together to create a press release . . . about Loveless.” (¶¶ 58, 59, 60, 61, 62)
- “On February 2, 2021, . . . White . . . asked to include on the agenda ‘financial relationship of Ken Loveless with a vendor. . .’” (¶64).
- “On March 24, 2021. . . written by Beth Hutchison. . . accused Loveless of coordinating and conducting an unlawful Board meeting. . .’time to send . . . Loveless packing. . .’” (¶66).
- “The SEC complaint [filed on February 17, 2021] was a direct and proximate result of the conspiracy led by White, Hutchison. . . The SEC proceedings continue at this time. . .” (¶68, fn. 7).
- “Defendant White filed an affidavit . . . on February 11, 2022. . . primarily targeting Loveless. . .” (¶69).
- “Hutchison . . . began raising funds in May 2021 to fund the lawsuit. . .” (¶ 70)
- “. . . Hutchison continued the attacks of Loveless on July 16, 2021. . . when she emailed . . . [names] and asked for the group. . . to republish . . . in furtherance of the conspiracy.” (¶72).
- “In 2022. . . White and Hutchison encouraged . . . to run for the school board. . . directed Scully on how to proceed. . . in furtherance of the conspiracy against Loveless.” (¶73).
- “Once elected to the Board in 2022, Defendant Scully has used his status. . . to continue to slander and defame Loveless, all in furtherance of the Defendants’ conspiracy against Loveless.” (¶74).
- “. . . Hutchison texted Scully on February 27, 2023. . . [t]his is an embarrassment by . . . Loveless. . . Please attach this article to the minutes to begin the process of getting the record straight.” (¶76).
- “On February 27, 2023 in furtherance of the continuing conspiracy against Loveless, . . . Hutchison texted . . . Scully . . . ‘it would be wise for the district to pull it from the website. . .’” (¶77).

- “. . . Hutchison was intent in continuing to defame and harm Loveless . . . [o]n March 8, 2023, . . . Hutchison requested . . . made these public requests. . . in furtherance of the conspiracy to defame Loveless through harm to his reputation. . .” (§78).
- “. . . Hutchison continued . . . to feed information to Scully and his attorney to damage Loveless, well into 2023.” (§79).
- “September 15, 2020 . . . White and . . . Hutchison. . . to further an overarching conspiracy led by . . . White [and] Hutchison. . . to . . . tell falsehoods about Loveless for the purpose of damaging his name and reputation. . . publication. . .” (§108).
- “. . . press release authored by . . . White. . . and Hutchison was a substantial and motivating event in the continuing conspiracy . . .” (§111).
- “. . . press release . . . falsely accused and propagated the vicious lie that Loveless. . . published by . . . White. . . and Hutchison. . .” (§112).

Contrary to the trial judge’s orders, the Second Amended Complaint clearly alleges specific facts that show the conspiracy continued for years, well after the September 14, 2020 school board meeting. These are not conclusory statements. These are specific facts, with dates, continuing well into 2024 and to the time the Second Amended Complaint was filed. No explanation was given by the trial court judge for ignoring these specific factual allegations.

LEGISLATIVE IMMUNITY

Similarly, the trial court judge dismissed all claims against White and Hutchison, concluding that all of their acts in furtherance of the conspiracy were protected by legislative immunity (despite the temporal references discussed above). The trial court judge’s orders were similarly cryptic on this issue. “The Court finds that the claims are barred by legislative immunity.” (2.9.2026 order p. 2). White and Hutchison “are accused of preparing to speak on an issue at the School Board meeting, and speaking at the meeting.” The trial court judge described the unspecified acts as “quintessential ‘legislative acts.’ (2.17.2026 order p. 5).

The trial court judge ignored Loveless’ arguments that White and Hutchinson’s acts were unrelated to Board matters, involved their conduct both before and after the Board meeting, involved third parties, and the multiple acts for years afterwards and did not address anything that

was a part of the legislative process.¹¹ (2.02.2026 MIO MTD, pp. 6-9; Tr. P. 46:8 – 47:13). Moreover, the trial court judge ignored the specific allegations of the Second Amended Complaint, not even mentioning any of them.

Loveless also argued that the defense of legislative immunity was an affirmative defense which must be raised and proven by the party claiming its benefit. (Tr. P. 44, Lines 15-23). This argument was also ignored by the trial judge.

The Second Amended Complaint contained the following allegations regarding acts of White and Hutchison, all of which must be deemed to be true at the motion to dismiss stage, and most of which could not have been part of a legislative process:

- “This is not an action based in negligence; rather it addresses intentional misconduct in the form of . . . conspiracy. . . initiated by White. . . and Hutchison against Loveless . . .” (§13).
- “. . . White . . . and Hutchison conspired . . . with the express purpose of defaming and damaging Loveless. . . the conspiracy continued uninterrupted through 2021, 2022, 2023 and 2024 and continues at present.” (§16).
- “[T]he remaining defendants conspired and collaborated with . . . a conspiracy aimed at defaming Loveless, actively assisting in the dissemination of these harmful statements. Most of this started in 2020. . . but has continued uninterrupted and continues at present.” (§17).
- “White and Hutchison. . . were included in the secret meetings . . . and they participated in the endeavor to discredit Loveless and dispute his concerns.” (§ 20).
- “Hutchison [and] White . . . recruited the participation of . . . Scully in the existing conspiracy that shared as its primary objectives to cause damage and the infliction of harm upon Loveless, the embarrassment of Loveless and the degradation of his reputation, as well as intentional interference with Loveless’ role as a member of the . . . Board (Hutchison email . . . White email to Scully . . .) (§22).
- “. . . [T]he conspiracy included . . . members White. . . Hutchison. . . and co-conspirators . . . DiNicola, . . . Mensch. . .” (§23).
- “. . . White . . . had already successfully removed a prior member of the Board . . . and had aggressively litigated the removal of that Board member all the way to the South Carolina

¹¹ Loveless pointed out that nothing at the September 14, 2020 Board meeting addressed the topic at which White and Hutchison attacked Loveless personally, and nothing was on the agenda for that date that required the discussion. (2.02.2026 MIO MTD, pp. 6-9)

Supreme Court. Having successfully removed one Board member, White and his coconspirators set their sights on Loveless. . .” (§23, fn. 3).

- “. . . White participated in the conspiracy from his office . . . and frequently used his ed.white@nelsonmullins.com email in carrying out the conspiracy. . . all of the later litigation reflect different parts of the same conspiracy, headed by White . . . and Hutchison.” (§23 fn. 5).
- “. . . it was the intent of . . . White . . . to repurpose to promote and support. . . and opponent of Loveless’s in 2022. . .” (§25).
- “It became sport among . . . the community to take aim at Loveless. . . and co-conspirators were happy to make the target of the outrage of parents and others within the District.” (§26, fn. 6).
- “. . . White emailed, from ed.white@nelsonmullins.com to co-conspirator . . . Alsup. . . a forecast of the co-conspirators’ plan to attack Loveless with a ‘public’ disclosure ‘the next time we discuss Elementary 12. . . the coconspirator’s plan was to falsely accuse Loveless of having a conflict of interest through a non-existent contract . . .” (§30).
- “. . . White rented a UPS box . . . in the name of ‘District Five Forward’. . . transmitted. . . fake newspaper intentionally contained derogatory information about Loveless, who was not then a candidate for public office” . . . home address and his office email ed.white@nelsonmullins.com. . .” (§34).
- “White sent an email to . . . Tige Watts from ed.white@nelsonmullins.com . . . For the political committee. . . I am really thinking that the committee needs to send out a tabloid. . . to reveal what . . . Loveless . . . is doing. . .” (§35).
- “Defendant White and his law firm . . . made political contributions to . . . Cates. . . whose cooperating they hoped to engage . . . Contract Construction. . . actively involved in the conspiracy against Loveless . . . also donated. . . to Cates. . .” (§36).
- “Many of the co-conspirators who organized the September 14, 2020 attack on Loveless subsequently became clients of Nelson Mullins in multiple actions adverse to Loveless. . . (§41).
- “Cates emailed . . . saying . . . I will not have Board members making their own presentations. . . aware that actively involved in coordinating the presentation . . . by White Hutchison. . . paving the way for the . . . assault on Loveless.” (§42)
- “White . . . planned and masterminded the attack with . . . Hutchison. . . Cates, Neal and Greg Hughes. . .” falsely accused Loveless of having a secret subcontract . . . White made multiple false statements at the meeting and afterward. . . White’s feigned surprise . . . was the ringleader of the attack and planned the attack with his co-conspirators well in advance.” (§47).
- “White, Hutchison . . . authored and issued a press release in their individual capacities, further propagating the false claim that Loveless was involved . . .” (§48).
- “. . . following the . . . attack. . . consulted with . . . White’s law partner James Burns. . . which took more than two hours. . . cemented the Defendants’ . . . plans to . . . launch a

complaint against Loveless with the State Ethics Commission.” (§50).

- “. . . White and . . . Hutchison[,] relied on . . . Scully for technical expertise. . . White, Hutchison. . . intended to appear uninvolved in the conspiracy. . .” (§52).
- “. . . [O]n September 15, 2020. . . White and Hutchison worked together to create a press release which contained false statements concerning Loveless. As they passed drafts back and forth. . . included a proposed title . . . that stated ‘. . . Loveless. . . enriches himself with a \$1.25 million school contract.’ The statement was false. . .” (§58).
- “. . . press release quoted . . . white as stating ‘I am appalled by . . . Loveless’ actions . . . he has turned his board seat into a money-making enterprise. . . knew that was untrue but did everything . . . to perpetuate the falsehood. . .” (§59)
- “. . . White, Hutchison . . . obtained a list of media contacts to whom the press release. . . was issued by . . . Hutchison. . . White also asked political consultant Tige Watts to review the press release before it was issued. . .” (§60).
- “. . . White directed that the subtitle to the press release be called ‘an ethics violation.’ . . . lie was born, perpetuated even today, that Loveless had violated ethics law . . .” (§61).
- “. . . Hutchison specifically labeled a draft of the press release as not being an official publication of the District. . . clearly not acting in her official capacity . . . and is not entitled to immunity of any kind. . . she always had a personal motive to harm Loveless. Her acts were not as School Board member but solely in her individual capacity.” (§62).
- “On February 2, 2021. . . White emailed . . . White’s next step in the larger conspiracy to try to force Loveless off the . . . Board. . . complained about . . . Loveless ‘pontificating’ at a Board meeting. . .” (§64).
- “On March 24, 2021, in a continuation of the ongoing conspiracy to harm Loveless. . . photos appeared . . . written by . . . Hutchison. . . included the false accusation . . . Loveless . . . illegal board meeting. . . accused Loveless . . . conducting an unlawful . . . meeting. It concluded by stating that it was time ‘to send . . . Loveless packing.’” (§66).
- “. . . a Hutchison protégé. . . to file an ethics complaint against Loveless . . . on February 17, 2021. . . intended product of the successful conspiracy . . . concrete evidence that Defendants’ lies and falsehoods about Loveless had their intended effect. . . continue at t his time. . .” (§68).
- “. . . White and Hutchison. . . generated . . . July 23, 2021. . . alleging . . .to continue to damage Loveless. . .White file an affidavit under oath on February 11, 2022 that contained multiple falsehoods, primarily targeted Loveless. . . demonstrably false.” (§69).
- “To fund . . . Hutchison served as [a] volunteer[] Hutchison . . . founded the organization. . .” (§70).
- “. . . Hutchison continued the attacks of Loveless on July 16, 2021. . . when she emailed . . . ‘Loveless demands more media attention’. . . in furtherance of the on-going conspiracy.” (§72).
- “In 2022. . . White and Hutchison . . . directed Scully on how to proceed. . . ways to continue to defame Loveless. . . in furtherance of the conspiracy against Loveless . . . White assisted

. . . financially . . . in multiple indirect ways. . .” (§73).

- “. . . 2022 . . . Scully . . . to continue to slander and defame Loveless, all in furtherance of the Defendant’s conspiracy against Loveless. . . testifying . . . April 23, 2025 . . .” (§74).
- “. . . Hutchison texted Scully on February 27, 2023 . . . begin the process of getting the record straight. If you need advice on how to do that at a mtg. call me.” (§76).
- “. . . Hutchison was intent in continuing to defame and Harm Loveless . . . on March 8, 2023, . . . Hutchison. . . made these public requests . . . in furtherance of the conspiracy to defame Loveless . . . completely false.” (§78).
- “. . . Hutchison continued . . . feed information . . . to damage Loveless, well into 2023.” (§79).
- “. . . September 15, 2020. . . White and Hutchison. . . designed to further an overarching conspiracy led by . . . White, Hutchison. . . to unlawfully tell falsehoods for Loveless for the purpose of damaging his name and reputation and crippling . . .” (§108).
- “. . . press release authored by . . . White . . . and Hutchison was a substantial and motivating event in the continuing conspiracy and attack that had been launched . . . September 14, 2020.” (§111).
- “. . . press release . . . falsely accused. . . vicious lie that . . . Loveless’ construction company had signed a \$1.25 million dollar . . . project with District 5. . . published by . . . White . . . and Hutchison, falsely led readers to the conclusion that Loveless had taken money from the . . . District while he sat on their . . . board.” (§112).

Construing the allegations of the Second Amended Complaint as true, as is required at this stage of the proceedings, it is clear that specific factual allegations set forth actions by both White and Hutchison far beyond any role they played as members of a school board, and continued well past any term of membership in public office that might exist.

Part of the difficulty in addressing this issue on a motion to dismiss is that the burden of establishing legislative immunity is on the parties who assert it as a defense. In his opposition to the nonexistent motion to dismiss, Loveless argued that the issue of legislative immunity was an affirmative defense for which White and Hutchison bore the burden of proof, and which could not be considered until an answer raising the defense had been filed. (Tr. P. 44, Lines 15-23).

It is undisputed that the defense of legislative immunity is an affirmative defense that must be raised by answer and on which the party asserting it has the burden of proof. “Dismissal under

Rule 12(b)(6) is seldom appropriate when the defense of immunity is pleaded. In such cases the court must determine whether the public official acted within the scope of his discretionary authority.” *Freemantle v. Preston*, 398 S.C. 186, 196, 728 S.E2d. 40 (2012) (quoting *Jensen v. S.C. Dep’t of Soc. Servs.*, 297 S.C. 323, 333, 377 S.E.2d 102, 108 (Ct. App. 1988)).

Nothing in the Second Amended Complaint alleges the dates on which White and/or Hutchison served as elected officials. That is an issue they have to raise by affirmative defense and provide proof to establish they are entitled to legislative immunity. *Frazier v. Badger*, 361 S.C. 94, 603 S.E.2d 587 (2004). They have not done that.

Moreover, the specific allegations of the Second Amended Complaint make clear that the events that occurred during a board meeting on September 14, 2020 were only a part of the factual premise upon which the claims for liability against White and Hutchison were based. The specific allegations set forth acts by White and Hutchison both before and after that meeting, and completely unrelated to it. Trial court judge erroneously concluded the events of September 14, 2020 were the sole basis for the claims against White and Hutchison, so it is evident Trial court judge ignored the specific factual allegations of the complaint set forth above – all of them.

Legislative immunity requires an in-depth analysis of each step performed by a public official, including an inquiry into who else was involved, to determine the “critical question” of “whether the action at issue was undertaken ‘within the legislative sphere.’” 2013 Op. S.C. Atty. Gen. (June 19, 2013) (citing *Williams v. Johnson*, 596 F.Supp.2d 107, 113 (D.C.D.C. 2009). (cited in 2013 Op. S.C. Atty. Gen. (June 19, 2013))

In *Williams*, the District Court reviewed numerous United States Supreme Court cases which focus on legislative immunity and pointed out that legislative immunity does not protect against activities that are “political in nature” rather than legislative. “. . .[T]he Supreme Court’s

decisions have made clear that not all conduct relating to the legislative process is protected... Certain activities that are ‘political in nature rather than legislative’ are not covered. . .”. *Id.* 596 F.Supp. at 114, *citing United States v. Brewster*, 408 U.S. 501, 512, 92 S.Ct. 2531 (1972).

“Although these activities . . . might even ‘be integral to a member’s legislative goals’ they are nonetheless considered ‘political’ and thus beyond” the scope of legislative immunity.” *Id.* 596 F.Supp. at 114-115, *citing United States v. Brewster*, 408 U.S. 501, 512, 92 S.Ct. 2531 (1972).

The trial judge’s ruling threw a blanket over all manner of conduct by White and Hutchison set forth in the Second Amended Complaint and erroneously deemed it all to be protected by legislative immunity, even those acts that occurred well after both White, Hutchison and Loveless had left office. White and Hutchison (and others) were engaged in a long-term, broad and damaging conspiracy against Loveless. This was a personal vendetta against Loveless, as is made clear by the specific allegations of the Second Amended Complaint, all of which were ignored by the trial court judge.

“Legislative immunity does not depend on who carries out the act – or even why – but on what act they carry out.” *Lockaby v. City of Simpsonville*, 440 S.C. 156, 164, 889 S.E.2d 631 (Ct.App. 2023). The allegations of the Second Amended Complaint make clear that the acts of White and Hutchison were broad-based and focused on Loveless well outside any matter related to District Five. The attacks continued after all of them were no longer on the Board for District Five and could not have had anything to do with the legislative process. White and Hutchison attacked Loveless before, during and after September 14, 2020. They also attacked Loveless during a Board meeting on September 14, 2020, but it started before and continued long after.

Moreover, White and Hutchison’s efforts to throw Loveless under the bus of the State Ethics Commission is clearly outside the scope of anything that might have been legislative in

nature. *Williams*, 597 F. Supp. at 114-115 (1972), citing *Jewish War Veterans v. Gates*, 506 F.Supp.2d 30, 54 (D.D.C. 2007)(efforts to “cajole” or “influence” an executive agency in order to influence its conduct is not protected activity). As set forth in the Second Amended Complaint, it is undisputed this occurred.

Legislative immunity is rarely appropriate for Rule 12(b)(6) dismissal. *Jensen v. S. C. Department of Social Services*, 297 S.C. 323, 377 S.E.2d 102 (Ct.App. 1988). “In such cases the court must determine whether the public official acted within the scope of his discretionary authority.” *Freemantle v. Preston*, *supra*. 398 S.C. 186, 196, citing *Jensen v. South Carolina Dep’t of Soc. Servs.*, 297 S.C. at 333. White and Hutchison alleged and proved nothing at the motion to dismiss stage. The trial judge’s ruling that all acts alleged were protected by legislative immunity as a matter of law was legal error and must be reversed.

“BASIC PLEADING STANDARDS”¹²

The trial judge found Loveless’ Second Amended Complaint “failed to meet the basic pleadings standards for each of his claims. However, the trial judge’s rationale fails.

A. Civil Conspiracy

The trial court judge’s ruling stated Loveless failed to plead any “additional acts” in support of his civil conspiracy claim, and makes the incredible statement “Plaintiff’s pleading actually requires the court to look to other causes of action to define the nature of his civil conspiracy claim, as the Amended Complaint (*sic*) does not describe a *single* act taken in furtherance of the alleged civil conspiracy that is not also alleged in his other causes of action,

¹² Order dated 2.17.2026 page 11, Section III.

citing an unpublished case from the District Court of South Carolina. (2.17.2026 Order p. 12)(emphasis in original).

This is unsubstantiated. The acts of White and Hutchison are not solely limited to civil conspiracy or outrage, but are a pattern of continuing, long-term, unlawful conduct against Loveless that took multiple forms. Because the conduct spelled out in the Second Amended Complaint forms the basis for dual claims against White and Hutchison, that does not mean the allegations set forth in one cause of action cannot also apply to both. The trial judge's authority for this bizarre analysis ends with citation to a case that has been overruled.¹³

In order to highlight the woeful analysis of his ruling on the "basic pleading requirements," the trial judge ends his analysis of the civil conspiracy pleading defects with a myopic reference to Loveless' status as a public official, citing *Angus v. Burroughs & Chapin Co.*, 368 S.C. 167, 170, 628 S.E.2d 261, 262 (2006). The trial judge overlooked Paragraph 1 of the Second Amended Complaint. "Loveless is a private citizen. . . Loveless has been a private citizen since November 2022." (Second Amended Complaint p. 1). This also overlooks the trial judge's own statement on Page 3 of his order "when [Loveless] lost his bid for reelection."¹⁴

It is not clear why the trial judge's analysis of basic pleading requirements includes a reference to Loveless as a "public official," which has nothing to do with pleading requirements. Clearly Loveless is a private individual, and the temporal references throughout the Second

¹³ The trial judge cited to *Hackworth v. Greywood at Hammett LLC*, 385 S.C. 110, 682 S.E.2d 871(Ct.App. 2009) with the parenthetical that it was "overruled on other grounds" by *Paradis v. Charleston County School District*, 433 S.C. 562, 861 S.E.2d 774 (2021). The Supreme Court's decision in *Paradis* ruled only on the issue of "special damages" and mentioned nothing about "independent acts" that must be pleaded in a civil conspiracy cause of action. *Paradis* overruled decades of case law that improperly included a requirement for pleading "special damages" and made no ruling on the legal principle employed by the trial judge.

¹⁴ It is not clear where the trial judge got that factual nugget, since it is not stated in the Second Amended Complaint, but it is scattered throughout the legal memos of White and Hutchison. While the trial judge referenced Paragraph 1 of the Second Amended Complaint, Paragraph 1 says nothing about an election or reelection.

Amended Complaint make clear that while White and Hutchison's attacks on Loveless started when he held elected office, they continued long after. The cryptic analysis in *Angus* provides no support for the trial judge's troubled conclusion.

B. Intentional Infliction of Emotional Distress

Again, the trial judge rushed forward with an indisputably erroneous factual conclusion that foreclosed any reasonable inquiry into Loveless' Second Amended Complaint. This time, on page 13 of his order, the trial judge cites to the Tort Claims Act and concludes that White and Hutchison have some protection under the Tort Claims Act. While that is a gigantic leap from barring the action under legislative immunity, the trial judge's conclusion must suffer the same fate.

Then, an even more improbable statement dooms the trial judge's conclusions. "Even if Plaintiff's claim was not barred as a matter of law, he failed to produce evidence sufficient to enable his IIE claim to survive summary judgment." *Id.* This incorrect conclusion is followed by pages of a deep analysis of the standard for resisting summary judgment. *Id.* at pp. 14-17.

This was a motion to dismiss. The analysis the trial judge was required to have employed but did not was whether the allegations of the Second Amended Complaint provide any plausible analysis that would entitle Loveless to proceed. *Skydive Myrtle Beach Inc. v. Horry County*, 426 S.C. 175, 826 S.E.2d 585 (2019); *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987); *Falk v. Sadler*, 341 S.C. 281, 533 S.E.2d 350 (Ct.App. 2000).

Lastly, the trial judge erred on the intentional infliction of emotional distress cause of action, by citing to a heightened burden of proof, and concluding that Loveless evidence is "insufficient to establish that the Defendants' conduct was so outrageous it exceeded 'all possible

bounds of decency’ and so ‘atrocious’ it was ‘utterly intolerable in a civilized society,’ it is also insufficient to establish that her (*sic*) emotional distress was sufficiently ‘severe,’ that no reasonable man could be expected to endure it.” (Order 2.17.2026 at p. 16). Once again, the trial judge reinforced his reliance on a summary judgment standard to dismiss Loveless’ claim for intention infliction of emotional distress.

CONCLUSION

The trial judge appears to have been so intent on dismissing the Second Amended Complaint that he failed to even recognize or identify the proper standard to be applied at a motion to dismiss.

Loveless respectfully urges this Court that the trial judge’s order cannot stand and must be reversed.

Respectfully submitted,

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