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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

THE HONORABLE DANIEL COBLE, CIRCUIT COURT JUDGE

Case No. 2026-00736

Kenneth B. Loveless, Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT BEATRICE DENNIS-WHITE

s/ Robert M. Peele, III
Robert M. Peele, III, Bar No. 77569
E-Mail: RPeele@TurnerPadget.com
Turner Padget Graham & Laney P.A.
1901 Main Street
Suite 900
Columbia, South Carolina 29201
Telephone: (803) 254-2200
Fax: (803) 799-3957

Dated: July 29, 2026

**Attorney for Respondent Beatrice
Dennis-White**

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STATEMENT OF ISSUES OF APPEAL

- I. Whether the trial court properly dismissed the claims against Dennis-White where the statute of limitations defense was raised in Dennis-White's intervention filings, and her Answer, and was fully argued at the motions hearing before the trial court.
- II. Whether the trial court correctly interpreted the Second Amended Complaint in concluding that Appellant's civil conspiracy and outrage claims against Dennis-White are based on conduct occurring on or prior to September 14, 2020, rendering those claims time-barred.
- III. Whether the trial court's order constitutes an independent adjudication on a motion to dismiss following service of the Second Amended Complaint, rather than an improper overruling of another circuit court judge's prior order.

STATEMENT OF THE CASE

Respondent Beatrice Dennis-White (“Dennis-White”) disputes Appellant’s Statement of the Case and provides the following statement of the case.

Appellant Kenneth Loveless (“Loveless”) initiated this action by filing a Summons and Complaint against Kevin Scully for defamation on March 14, 2022, alleging that Scully published a series of libelous statements about Loveless on social media during 2020 and that those statements were read and republished by numerous individuals, including, among others, Dennis-White (Summons and Complaint, Mar. 14, 2022). On January 31, 2024, Loveless filed an Amended Summons and Complaint against Scully alone, again asserting libel per se based on the same category of social media statements (Amended Summons and Complaint, Jan. 31, 2024).

While the action against Scully was pending, Loveless separately filed a lengthy Complaint in the United States District Court on May 12, 2023, asserting a claim under 42 U.S.C. § 1983 against four defendants, three of whom were former members of the Lexington-Richland School District Five Board of Trustees, including Edward K. White, Dennis-White’s husband (Order Granting Plaintiff’s Motion to Amend Complaint, July 25, 2025, at 1). On October 25, 2023, Loveless amended that federal complaint to add claims for civil conspiracy and outrage against those defendants (Order Granting Plaintiff’s Motion to Amend Complaint, July 25, 2025, at 1). On September 20, 2024, the United States District Court dismissed the § 1983 claim with prejudice and dismissed the conspiracy and outrage claims without prejudice, tolling the limitations period on those claims for thirty days following dismissal pursuant to 28 U.S.C. § 1367(d) (Order Granting Plaintiff’s Motion to Amend Complaint, July 25, 2025, at 1-2). Loveless did not refile those claims in state court within that thirty-day window (Order Granting Plaintiff’s Motion to Amend Complaint, July 25, 2025, at 2).

On November 15, 2024, Loveless filed a Motion for Second Amended Complaint under Rule 15(a), SCRCPP, seeking to add Edward White, Flora E. “Beth” Hutchison, and Michael Montgomery as defendants in the Scully action and to assert the previously dismissed conspiracy and outrage claims against them (Motion for Second Amended Complaint, Nov. 15, 2024); the proposed pleading attached to that motion was fifteen pages long and contained sixty-four paragraphs (Dennis-White’s Supplemental Addendum to Motion to Dismiss, Oct. 10, 2025, ¶ 2). On December 2, 2024, Edward White, Hutchison, and Montgomery moved to intervene to oppose the proposed amendment as time-barred (Form 4 Order, Mar. 22, 2025, at 1).

On December 23, 2024, before Dennis-White had even been named as a proposed defendant, Loveless’s counsel served her with a deposition subpoena and document request commanding her appearance on January 8, 2025 (Motion to Quash Subpoena Directed to Bea White, Dec. 23, 2024, at 1). Because Dennis-White was, at that time, only the spouse of a proposed defendant and no claim had yet been permitted against her personally, she moved for a protective order and/or to quash the subpoena as unduly burdensome and premature (Motion to Quash Subpoena Directed to Bea White, Dec. 23, 2024, at 3-4).

Dennis-White was not named as a proposed defendant in this action until January 20, 2025. (Supplemental Motion for Second Amended Complaint, Jan. 20, 2025); the accompanying footnote acknowledged that “New Defendant Beatrice Dennis-White is named for the first time in this motion.” (Supplemental Motion for Second Amended Complaint, Jan. 20, 2025, at 1 n.1). The proposed pleading had by then grown to thirty-six pages and one hundred four paragraphs (Dennis-White’s Supplemental Addendum to Motion to Dismiss, Oct. 10, 2025, ¶ 5).

On March 4, 2025, Dennis-White's counsel of record was substituted, by consent, from Nelson Mullins Riley & Scarborough, LLP to Turner Padgett Graham & Laney, P.A. (Consent Withdrawal and Substitution of Counsel, Mar. 4, 2025).

On May 13, 2025, Dennis-White filed a Motion to Intervene under Rule 24, SCRCP, and a memorandum in opposition to the Supplemental Motion for Second Amended Complaint (Bea White's Motion to Intervene, May 13, 2025). Dennis-White argued that amendment to add her as a defendant would be futile because the three-year statute of limitations for civil conspiracy and outrage had already run. (Bea White's Motion to Intervene, May 13, 2025, at 6).

Following a hearing on May 19, 2025, at which the trial court considered the pending motions to intervene, the motions to amend, and Dennis-White's motion to quash, Circuit Court Judge Charles J. McCutchen issued an order on July 25, 2025, granting intervention to Dennis-White, Edward White, Hutchison, and Montgomery; granting Loveless leave to file the Second Amended Complaint under Rule 15(a) and (c), SCRCP; finding the motion to quash moot; and expressly declining to reach the statute of limitations or attorney-client privilege issues as he believed deciding those issues would be premature (Order Granting Plaintiff's Motions to Amend Complaint, July 25, 2025, at 1, 9-10). Judge McCutchen stated that it 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," and that "Defendants are free to assert their claims and defenses in their respective pleadings." (Order Granting Plaintiff's Motions to Amend Complaint, July 25, 2025, at 9).

On July 29, 2025, Dennis-White timely moved for reconsideration under Rule 59(e), SCRCP, adopting the arguments raised the same day by Edward White, Hutchison, and Montgomery in their own motion for reconsideration, and separately emphasizing that the three-

year limitations period for outrage and civil conspiracy resolved whether she could properly be added as a defendant (Bea White’s Motion for Reconsideration, July 29, 2025).

While that motion remained pending, Loveless filed the Second Amended Complaint on August 8, 2025—now forty-five pages and one hundred twenty-four paragraphs—naming Dennis-White as a defendant and asserting causes of action for libel (as to Scully, Edward White, and Hutchison only), civil conspiracy (as to all defendants), and outrage (as to all defendants) (Second Amended Complaint, Aug. 8, 2025).

On August 12, 2025, Dennis-White moved to dismiss the Second Amended Complaint under Rule 12(b)(1) and/or 12(b)(6), SCRPC, arguing, among other things, that the filing was premature because her Rule 59(e) motion remained undecided (Bea White’s Motion to Dismiss, Aug. 12, 2025). *See Hudson v. Hudson*, 290 S.C. 215, 216, 349 S.E.2d 341, 342 (1986). Judge McCutchen denied Dennis-White’s motion for reconsideration on August 26, 2025 (Dennis-White’s Supplemental Addendum to Motion to Dismiss, Oct. 10, 2025, ¶ 9).

On September 5, 2025, Dennis-White answered the Second Amended Complaint, denying virtually every substantive allegation directed against her and asserting numerous affirmative defenses, including that Loveless’s claims are barred by the statute of limitations and by Rule 15, SCRPC, as well as defenses grounded in the First Amendment, common-law privilege, truth, opinion, and rhetorical hyperbole (Bea White Answer, Sept. 5, 2025).

Because Loveless had by then filed three successive versions of the “Second Amended Complaint”—a sixty-four-paragraph version attached to the November 15, 2024 motion, a one hundred four-paragraph version filed January 20, 2025, and a one hundred twenty-four-paragraph version filed August 8, 2025 (Dennis-White’s Supplemental Addendum to Motion to Dismiss, Oct. 10, 2025, ¶¶ 2, 5, 8)—Dennis-White filed a Supplemental Addendum to her Motion to

Dismiss on October 10, 2025, explaining that her September 5, 2025 Answer had inadvertently responded to the August 8, 2025 version rather than the version Judge McCutchen's order had authorized, and asking that the Answer be stricken while expressly preserving every ground raised in her Motion to Dismiss (Dennis-White's Supplemental Addendum to Motion to Dismiss, Oct. 10, 2025, ¶¶ 10, 12-14).

A hearing on all pending motions, including Dennis-White's Motion to Dismiss, was held before Judge Daniel Coble on February 3, 2026 (Form 4 Judgment, Feb. 9, 2026, at 1). On February 25, 2026, Judge Coble granted the motion and dismissed the action against Dennis-White with prejudice (Order Granting Defendant Beatrice Dennis-White's Motion to Dismiss, Feb. 25, 2026, at 1, 4). Applying the discovery rule articulated in *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 787 S.E.2d 485 (2016), Judge Coble held that the Second Amended Complaint confirms on its face that the civil conspiracy and outrage claims against Dennis-White are grounded in "retaliatory attacks" occurring on or before September 14, 2020; that the three-year limitations period therefore began running no later than that date and expired September 14, 2023; and that Loveless did not seek to add Dennis-White as a defendant until January 20, 2025—more than a year after the limitations period had already expired (Order Granting Defendant Beatrice Dennis-White's Motion to Dismiss, Feb. 25, 2026, at 3-4).

Loveless timely moved for reconsideration under Rule 59(e), SCRCp, on March 9, 2026 (Order Denying Plaintiff's Motion for Reconsideration, Mar. 16, 2026, at 1). On March 16, 2026, Judge Coble denied that motion, finding no material fact or principle of law that had been overlooked or disregarded (Order Denying Plaintiff's Motion for Reconsideration, Mar. 16, 2026, at 1). Loveless filed his Notice of Appeal on March 24, 2026, appealing both the February 25,

2026 dismissal order and the March 16, 2026 order denying reconsideration (Notice of Appeal, Mar. 24, 2026, at 1).

FACTUAL BACKGROUND

Dennis-White denies the substance of Appellant's allegations in their entirety. The timing of the conduct the Second Amended Complaint attributes to her is nonetheless central to the disposition below and is summarized here.

The Second Amended Complaint alleges that "[i]n the summer of 2020," Hutchison, Edward White, and Dennis-White recruited Scully into an existing conspiracy against Loveless (Second Amended Complaint ¶ 22). The specific communications the Second Amended Complaint attributes to Dennis-White are each dated in the summer and early fall of 2020: an August 13, 2020 email titled "Take down by Arlene" (Second Amended Complaint ¶ 28); an August 16, 2020 email titled "Hate site fight" (Second Amended Complaint ¶ 29); a September 10, 2020 email describing the upcoming Board meeting as "a very revealing meeting" (Second Amended Complaint ¶ 37); and additional September 10, 2020 emails coordinating publicity for that meeting (Second Amended Complaint ¶¶ 38, 40). The Second Amended Complaint alleges that the central event giving rise to Loveless's claims—a public "attack" on Loveless at a School Board meeting, followed by a press release—occurred on September 14 and 15, 2020 (Second Amended Complaint ¶¶ 47-48, 58).

The Second Amended Complaint also contains allegations that "Defendant Ms. White maintained a pivotal, behind-the-curtain role, obtaining control as the Moderator of the OneD5 Facebook page" (Second Amended Complaint ¶ 52); "Ms. White... took on the task of promoting the Facebook page" (Second Amended Complaint ¶ 53); "Dennis-White among those who 'liked' a 2022 Facebook post" (Second Amended Complaint ¶ 56); a September 17, 2020 email allegedly

from "Defendant Ms. White" to Scully (Second Amended Complaint ¶ 63); an ethics complaint allegedly "a direct and proximate result of the conspiracy led by... Ms. White" (Second Amended Complaint ¶ 68); and Dennis-White allegedly "encouraged Defendant Scully to run for school board" in 2022 (Second Amended Complaint ¶ 73).

Even accepting these allegations as true, they describe continuations of the same 2020 conspiracy and do not constitute new, independently actionable overt acts that restart the limitations period.

Dennis-White was not named as a proposed defendant in this action until January 20, 2025 (Supplemental Motion for Second Amended Complaint, Jan. 20, 2025)—more than four years after the September 14, 2020 events the Second Amended Complaint identifies as the origin of her alleged involvement (Second Amended Complaint ¶¶ 47-51), and more than sixteen months after the three-year limitations period for civil conspiracy and outrage expired on September 14, 2023.

STANDARD OF REVIEW

Under Rule 12(b)(6), SCRPC, a defendant may move for dismissal based on a failure to state facts sufficient to constitute a cause of action. *Fleteau v. Harrelson*, 355 S.C. 201, 584 S.E.2d 413, 415 (Ct. App. 2003) (citing *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999)). A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the Plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). "Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." *Doe v. Marion*, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct. App. 2004), *aff'd* 645 S.E.2d 245, 2007 WL 1321978, *accord Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995); *see also Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987) (noting trial

court must dispose of a motion for failure to state a cause of action based solely upon the allegations set forth on the face of the complaint); *Williams*, 347 S.C. at 233, 553 S.E.2d at 499 (finding trial court’s ruling on 12(b)(6) motion must be bottomed and premised solely upon allegations set forth by Plaintiff).

“Dismissal of an action pursuant to Rule 12(b)(6) is appealable.” *Williams*, 347 S.C. at 233, 553 S.E.2d at 500. Upon review of a dismissal of an action pursuant to Rule 12(b)(6), the appellate court applies the same standard of review implemented by the trial court. *Riddle v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009).

Importantly, however, the statute of limitations is an affirmative defense that may be resolved on a motion to dismiss when the defense is apparent on the face of the complaint. Even construing the complaint liberally, when the allegations themselves reveal that the applicable statute of limitations has expired, dismissal is appropriate. *See generally Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 689 (2006); *Brown, supra*; *Hughes on behalf of Est. of Hughes v. Bank of Am. Nat’l Ass’n*, 442 S.C. 113, 898 S.E.2d 102 (2024); and *Kelsey v. House of Blues Myrtle Beach Rest. Corp.*, No. 2020-000407, 2024 WL 714748 (Ct. App. February 21, 2024).

ARGUMENT

1. The trial court did not err in dismissing the claims against Dennis-White because the statute of limitations defense was properly before the court.

Appellant’s first argument—that the trial court erred because there was no proper motion to dismiss before it—is without merit. The procedural history of this case demonstrates that the statute of limitations defense was thoroughly raised, briefed, and argued before the trial court well in advance of the February 3, 2026 hearing.

First, Dennis-White raised the statute of limitations defense in connection with her motion to intervene, filed before the Second Amended Complaint was even permitted (Bea White’s

Motion to Intervene, May 13, 2025). 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." (Bea White's Motion to Intervene, May 13, 2025, at 6-7). Thus, the defense was asserted from the very inception of Dennis-White's involvement in this case.

Second, Dennis-White filed her Answer to the Second Amended Complaint on September 5, 2025, in which she set forth her defenses (Bea White Answer, Sept. 5, 2025). Under South Carolina law, the statute of limitations is an affirmative defense that may be raised in a responsive pleading, and Dennis-White did so (Bea White Answer, Sept. 5, 2025, ¶¶ 145-146).

Third, Dennis-White filed her motion to dismiss on August 12, 2025 (Bea White's Motion to Dismiss, Aug. 12, 2025), and subsequently supplemented that motion with a supplemental addendum on October 10, 2025 (Dennis-White's Supplemental Addendum to Motion to Dismiss, Oct. 10, 2025). The trial court heard argument on all pending motions at the February 3, 2026 hearing, and the statute of limitations was fully argued before Judge Coble at that time (Form 4 Judgment, Feb. 9, 2026, at 1). Appellant's own brief concedes that the issue was raised at the hearing, acknowledging that "Loveless' counsel raised this issue to the trial court during the motions hearing on February 3, 2026."

Appellant's reliance on the formality of motion practice is misplaced. The purpose of Rule 7(b)(1), SCRCp, is to ensure that a party has notice of the issues to be decided. Here, there can be no claim of surprise or lack of notice. Loveless was on notice from the outset of Dennis-White's participation in this litigation that she asserted the statute of limitations as a bar to his claims. The defense was raised in Dennis-White's intervention papers, her Answer, and was fully argued at the

hearing. Due process requires notice and an opportunity to be heard—both of which Loveless received.

Moreover, the Supreme Court's decision in *Camp v. Camp*, 386 S.C. 571, 689 S.E.2d 634 (2010), supports affirmance here. The majority in *Camp* affirmed the grant of a motion to dismiss that did not state with particularity the grounds for the motion. The Supreme Court held that the particularity requirement of Rule 7(b)(1) is to be read flexibly in recognition of the peculiar circumstances of the case, and that the rule 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. *Camp*, 386 S.C. at 575, 689 S.E.2d at 636. That holding remains the law in South Carolina. Appellant's reliance on Justice Waller's dissent is unavailing, as a dissent carries no precedential weight.

Furthermore, under South Carolina law, a Rule 12(b)(6) motion to dismiss for failure to state facts sufficient to constitute a cause of action may be made orally in open court without a written motion, provided the motion is made during a hearing or trial in open court with a court reporter present. This is expressly permitted by the plain language of Rule 7(b)(1), SCRCP, which carves out a specific exception to the general writing requirement for motions made under those conditions.

South Carolina appellate courts have consistently quoted and applied this rule. In *Chastain v. Hiltabidle*, 381 S.C. 508, 673 S.E.2d 826 (Ct. App. 2009), the Court of Appeals recited the full text of Rule 7(b)(1) and analyzed whether a summary judgment motion complied with its requirements, confirming that the rule's writing requirement and its open court exception are the governing standard for all motions. Similarly, in *M & M Grp., Inc. v. Holmes*, 379 S.C. 468, 666

S.E.2d 262 (Ct. App. 2008), the Court of Appeals again quoted Rule 7(b)(1) in full while analyzing a motion's compliance with the particularity requirement.

Contrary to Appellant's characterization, this is not a case in which the trial court *sua sponte* raised a ground for dismissal. The statute of limitations was the central defense Dennis-White raised from the moment she appeared in this case. The trial court properly considered the defense that was before it and ruled accordingly.

2. The trial court's order correctly states the contents of the Second Amended Complaint and properly concludes that the claims are time-barred.

Appellant contends that the trial court's order misstates the contents of the Second Amended Complaint by finding that the civil conspiracy and outrage claims are based on alleged "retaliatory attacks" that occurred on or prior to September 14, 2020 (Order Granting Defendant Beatrice Dennis-White's Motion to Dismiss, Feb. 25, 2026, at 3-4). This argument fails because a careful examination of the allegations Appellant cites demonstrates that the trial court's characterization is correct.

The paragraphs of the Second Amended Complaint cited by Appellant do not establish actionable conduct by Dennis-White after September 14, 2020 sufficient to survive the statute of limitations. Appellant cites paragraph 51, alleging that "after the September 14, 2020 attack was launched, Defendant Ms. White soon commandeered OneD5." (Second Amended Complaint ¶ 51). This allegation alone does not support any sort of actionable tort sounding in civil conspiracy or outrage; it was simply Dennis-White exercising her First Amendment Rights. The trial court correctly determined that the factual allegations specific to Dennis-White's participation in the alleged conspiracy relate to conduct that occurred on or prior to September 14, 2020 (Order Granting Defendant Beatrice Dennis-White's Motion to Dismiss, Feb. 25, 2026, at 3-4).

Even construing the pleadings liberally, as required by *Doe v. Bishop of Charleston*, 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019), the Second Amended Complaint fails to allege specific, particularized conduct by Dennis-White within the applicable statute of limitations period. General allegations of an "ongoing conspiracy" without specific factual averments of Dennis-White's individual conduct within the limitations period are insufficient to state a cause of action.

Both civil conspiracy and outrage (intentional infliction of emotional distress) claims in South Carolina are governed by a three-year statute of limitations under S.C. Code Ann. § 15-3-530(5), as modified by S.C. Code Ann. § 15-3-535. Under § 15-3-535, the three-year period does not begin to run until the plaintiff knew, or by the exercise of reasonable diligence should have known, that a cause of action existed — this discovery rule is the operative accrual standard for all actions under § 15-3-530(5), including both civil conspiracy and outrage. For civil conspiracy, the cause of action accrues when the plaintiff knew or reasonably should have known of an overt act committed in furtherance of the conspiracy and the resulting damage. South Carolina courts have rejected any continuing accrual or last-overt-act doctrine that would toll or extend the limitations period for civil conspiracy. *Odom v. Campolong*, No. 2023-001000, 2025 WL 2061242 (S.C. Ct. App. July 23, 2025) (unpublished). For outrage, the period similarly runs from when the plaintiff knew or by the exercise of reasonable diligence should have known of the defendant's extreme and outrageous conduct and the resulting cause of action — not from the date the conduct occurred. S.C. Code Ann. § 15-3-535.

The Second Amended Complaint seeking to add Dennis-White was not filed until January 20, 2025 (Supplemental Motion for Second Amended Complaint, Jan. 20, 2025). The trial court correctly concluded that the Statute of Limitations on Loveless' claims began running on

September 14, 2020 and expired on September 14, 2023. (Order Granting Defendant Beatrice Dennis-White's Motion to Dismiss, Feb. 25, 2026, at 3-4), and the order should be affirmed.

3. The trial court's order does not improperly overrule the order of another circuit court judge.

Appellant's third argument—that Judge Coble's order improperly overrules Judge McCutchen's July 25, 2025 order—fundamentally mischaracterizes the nature of both orders. The long-standing rule that one circuit court judge cannot overrule another, as stated in *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013), and *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 340 S.E.2d 546 (1985), is not implicated here.

Judge McCutchen's order addressed a different question at a different procedural stage. The McCutchen order ruled on Loveless's motion to amend, granting permission to file the Second Amended Complaint (Order Granting Plaintiff's Motions to Amend Complaint, July 25, 2025, at 1, 9). In doing so, Judge McCutchen stated that it was "premature" to determine when each cause of action arose or was discovered, and that "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." (Order Granting Plaintiff's Motions to Amend Complaint, July 25, 2025, at 9).

Judge McCutchen's order did not rule on the merits of the statute of limitations defense (Order Granting Plaintiff's Motions to Amend Complaint, July 25, 2025, at 9-10). Rather, it expressly permitted the defendants to raise their defenses and bring them before the court (Order Granting Plaintiff's Motions to Amend Complaint, July 25, 2025, at 9). That is precisely what Dennis-White did (Bea White Answer, Sept. 5, 2025). Judge Coble's order represents the adjudication of the very defense that Judge McCutchen's order contemplated would be raised and

decided at a later stage (Order Granting Defendant Beatrice Dennis-White's Motion to Dismiss, Feb. 25, 2026).

The two orders address different motions at different procedural stages: Judge McCutchen decided whether to permit the amendment; Judge Coble decided the subsequent motion to dismiss. These are sequential, not conflicting, rulings. A judge who rules on a motion to dismiss after a complaint is filed does not "overrule" a prior judge who permitted the complaint to be filed. The permission to file a complaint does not immunize that complaint from challenge.

Furthermore, Appellant's contention that discovery was required before the statute of limitations defense could be considered is misplaced. The statute of limitations is a legal defense that may be resolved on the face of the pleadings when the complaint itself reveals the claims are time-barred. No discovery is necessary when the dates alleged in the complaint demonstrate, as a matter of law, that the limitations period has expired. Judge Coble properly exercised his authority to rule on the motion to dismiss based on the allegations in the Second Amended Complaint itself.

The case of *Binkley v. Burry*, 352 S.C. 286, 573 S.E.2d 838 (Ct. App. 2002) is illustrative. In *Binkley*, the plaintiffs argued that Judge Hall had effectively reversed Judge Kittredge's prior order on the issue of notice. The Court of Appeals disagreed, finding that the issues before the two judges were easily distinguishable. Judge Kittredge had determined that the homeowners lacked actual or constructive notice of the scope and enforceability of an easement. Judge Hall, by contrast, addressed the separate question of when the homeowners had sufficient notice of the existence of the easement to trigger the statute of limitations for a malpractice claim. Because the two judges addressed fundamentally different legal questions, Judge Hall's ruling did not overrule Judge Kittredge's order.

Appellant's reading of the McCutchen order would effectively prohibit any subsequent judge from ever dismissing a claim on limitations grounds, regardless of how clear the time-bar appears on the face of the complaint. Such a result is contrary to the interests of judicial economy and the orderly administration of justice. The trial court's order should be affirmed.

CONCLUSION

For the reasons set forth above, Respondent Beatrice Dennis-White respectfully requests that this Honorable Court affirm the order of the trial court dismissing the civil conspiracy and outrage claims against Dennis-White.

Respectfully Submitted,

s/ Robert M. Peele, III
Robert M. Peele, III (SC Bar No. 77569)
TURNER PADGET GRAHAM & LANEY, P.A.
1901 Main Street, Suite 900
Columbia, SC 29201
Tel. (803) 254-2200
Fax (803) 799-3957
RPeele@turnerpadget.com

Attorney for Beatrice Dennis-White

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