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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

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 RESPONDENTS WHITE, HUTCHISON, AND MONTGOMERY

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

SC Codes

Statutes

Rules

Articles

STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT PROPERLY CONSIDER RESPONDENTS' ARGUMENT IN SUPPORT OF THEIR MOTION TO DISMISS UNDER RULE 12(B)(6), SCRCP?

II. DID THE TRIAL COURT PROPERLY GRANT RESPONDENTS' MOTION TO DISMISS UNDER RULE 12(B)(6), SCRCP?

A. DID THE TRIAL COURT PROPERLY DISMISS APPELLANT'S CLAIMS ON GROUNDS OF LEGISLATIVE IMMUNITY?

B. DID THE TRIAL COURT PROPERLY DISMISS APPELLANT'S CLAIMS ON GROUNDS OF ATTORNEY-CLIENT PRIVILEGE AS TO RESPONDENT MONTGOMERY?

C. DID THE TRIAL COURT PROPERLY FIND THAT APPELLANT'S CLAIMS WERE BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS?

D. DID THE TRIAL COURT PROPERLY FIND THAT APPELLANT FAILED TO MEET THE BASIC PLEADING STANDARDS REQUIRED TO STATE ANY OF HIS CLAIMS?

STATEMENT OF THE CASE

This case has a long history. In 2022, Appellant initially brought it as a state court complaint against Kevin Scully.

At the same time, Appellant had brought a separate claim in the U.S. District Court for the District of South Carolina, Case No. 3:23-cv-02001-MGL, under 42 U.S.C. § 1983 against former School Board members Edward K. White and Flora E. "Beth" Hutchison, and Board attorney Michael Montgomery ("Respondents"). Appellant based his claim on actions allegedly taken by White, Hutchinson, and Montgomery on or before September 14, 2020, at a School Board meeting that Appellant described as a "retaliatory attack" and a "dog and pony show." At that meeting, Appellant, White, and Hutchison were serving as elected School Board members, and Montgomery served as the Board's attorney.

On October 25, 2023, Appellant filed an Amended Complaint against White, Hutchison, and Montgomery, asserting for the first time claims for Conspiracy and Outrage against them, in addition to a claim under 42 U.S.C. § 1983.

On September 20, 2024, the U.S. District Court dismissed Appellant's claim under 42 U.S.C. § 1983 with prejudice. The Court also dismissed the Conspiracy and Outrage claims without prejudice, noting that – pursuant to 28 U.S.C. § 1367(d) – "the period of limitations for these remaining shall be tolled while the claims are pending and for a period of 30 days after they are dismissed, unless State law provides for a longer tolling period."

Appellant did not refile any claims in state court within the period described by 28 U.S.C. § 1367(d). Rather, on November 15, 2024, Appellant filed a "Motion for Second Amended Complaint" under Rule 15(a), SCRCP, seeking to (1) add White, Hutchison, and Montgomery as additional defendants to this action and (2) bring causes of action against them for Conspiracy and Outrage.

Respondents opposed Appellant's motion, and following extensive briefing and oral argument, the Court granted Appellant's motion on July 25, 2025 under Rule 15, SCRCP. The Court did not make any ruling under Rule 12(b)(6), SCRCP, as no such motion was before it. The Court's Order further stated that the "civil conspiracy and outrage claims…relate back to the October 25, 2023, filing of Plaintiff's Amended Complaint in the federal action, which sought to add the claims for Conspiracy and Outrage." (***Order of July 25, 2025, p.*** *7*). The Court otherwise made "no determination or finding as to when each cause of action arose or was otherwise discoverable by Plaintiff, nor will this Court make a determination or finding as to the application of attorney-client privilege to any defendant. Likewise, this Court will not preclude any defenses or claims of privilege [that] any of the existing or new defendants may assert in their responsive pleadings as it relates to each individual claim against each defendant." (***Order of July 25, 2025, pp. 9-10***).

Shortly thereafter, on July 29, 2025, Respondents filed their Motion to Reconsider under Rule 59(e), SCRCP. While the Motion to Reconsider was pending, Appellant filed his Second Amended Complaint with the Court on August 8, 2025, which the Respondents moved to dismiss on August 11, 2025.[1]

Prior to the Court's conducting a hearing on the Respondent's Motion to Dismiss, the Court denied Respondents' Motion to Reconsider on August 26, 2025.

[1] The Court initially scheduled the Motion to Dismiss to be heard on November 4. 2025. Appellant's counsel requested a continuance of that hearing, which the Court granted on October 31, 2025. The Court rescheduled the hearing on the Motion to Dismiss to February 3, 2026.

While the Respondents' Motion to Dismiss was pending, they filed a Supplementary Memorandum that addressed the matters in support of their pending Motion to Dismiss on October 6, 2025. Appellant filed his response to the Motion to Dismiss and Supplementary Memorandum on February 2, 2026.

On February 17, 2026, the Court issued an Order granting the Respondents' Motion to Dismiss on the following alternative grounds:

- The Court found that Appellant's claims were barred by Legislative Immunity, noting that (1) the Appellant was suing former Board Members White and Hutchison for engaging in acts that were "quintessentially legislative," and that (2) because Appellant was suing Montgomery for allegedly providing legal advice and gathering information for the Board Member's legislative endeavors, his claim against Montgomery was also barred by "Legislative Immunity." (***Order of February 17, 2026, pp. 4-6***).

- The Court found that Appellant's claims as to Montgomery were barred by attorney-client privilege. Specifically, it found that "[Appellant] has stated conclusory legal assertions that Montgomery allegedly 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." (***Order of February 17, 2026, p. 7***).

- The Court also found that each of Appellant's claims against the Respondents was barred by the applicable Statute of Limitations. Notably, it found that each of the claims accrued on or before October 14, 2020 – and the claims were first filed on October 25, 2023 – the applicable Statutes of Limitations has already expired when the claims were first brought. (***Order of February 17, 2026, p. 8***). Further, the Court noted that the found that the "date when a plaintiff learns of a potential new defendant has **absolutely no bearing** on the timing of a statute of limitations," and that Appellant's argument that he "first discovered" the involvement of the Respondent sometime after September 14, 2020 was contrary to his own pleadings and the record before the Court. (***Order of February 17, 2026, pp. 9-10***).

- Finally, the Court also found that the Second Amended Complaint failed to state claims for civil conspiracy and outrage. With regard to civil conspiracy, Appellant failed to allege "additional acts" in support of the claim, and the Court noted that does not describe a single act taken in furtherance of the alleged civil conspiracy that it is not also alleged in his other causes of action. (***Order of February 17, 2026, p. 12***). With regard to outrage, the Court found that the South Carolina Tort Claims Act barred the claim under S.C. Code

> Ann. § 15-78-30(f), and that Appellant failed in any event to articulate factual allegations that rose to the level of conduct that so was outrageous that it exceeded "all possible bounds of decency" and so "atrocious" it was "utterly intolerable in a civilized community." (***Order of February 17, 2026, pp. 13-17***).

On February 27, 2026, Appellant filed a Motion for Reconsideration, which the Court denied on March 4, 2026.

On March 24, 2026, Appellant filed a Notice of Appeal.[2]

[2] Appellant has filed separate briefs regarding his claims against Respondents White and Hutchison ("Appellant's Initial Brief I") and Respondent Montgomery ("Appellant's Initial Brief II"). Because Judge Coble's Order granting the Motion of Dismiss as to these Respondents was a single Order, Respondents are responding jointly to Appellant's Initial Briefs concerning them.

STANDARD OF REVIEW

Dismissal of an action pursuant to Rule 12(b)(6), SCRCP, is appealable. Upon review, the appellate tribunal applies the same standard of review that was implemented by the trial court. *See O'Laughlin v. Windham,* 330 S.C. 379, 382, 498 S.E.2d 689, 691 (S.C. App. 1998) ("The grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law.") (citing *Stiles v. Onorato,* 318 S.C. 297, 457 S.E.2d 601 (1995)); *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (S.C. App. 2001).

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. Rule 12(b)(6), SCRCP. The trial court's ruling on a Rule 12(b)(6) motion must be bottomed and premised solely upon the allegations set forth by the plaintiff. *Berry v. McLeod,* 328 S.C. 435, 492 S.E.2d 794 (S.C. App. 1997). The question to be considered is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief. *Toussaint v. Ham,* 292 S.C. 415, 357 S.E.2d 8 (1987).

Most courts allow affirmative defenses, such as a statute of limitations defense, to be raised in a motion to dismiss under Rule 12(b)(6) "when there is no disputed issue of fact raised by an affirmative defense, or the facts are completely disclosed on the face of the pleadings, and realistically nothing further can be developed by pretrial discovery or a trial on the issue raised by the defense...." *Spence v. Spence*, 368 S.C. 106, 124, 628 S.E.2d 869, 878 (2006) (citations omitted).

ARGUMENT

I. DID THE TRIAL COURT PROPERLY CONSIDER RESPONDENTS' ARGUMENTS IN SUPPORT OF THEIR MOTION TO DISMISS UNDER RULE 12(B)(6), SCRCP?

Appellant argues that the "trial court erred in granting a nonexistent Motion to Dismiss." He purports to base this assertion on the fact that Respondents' initial Motion to Dismiss stated that its Motion for Reconsideration of the Order granting Appellant's Motion to Amend had not yet been ruled upon.

Appellant is apparently heedless to the laws and decisions implementing Rule 7(b)(1), SCRCP, and refuses to acknowledge (1) that Respondents' Motion to Dismiss was timely filed, (2) that prior to the Court issuing a ruling on the Motion to Dismiss, Respondents filed a Supplementary Memorandum on October 6, 2025, setting forth at great length the defenses that ultimately supported the Court's Order for dismissal, (3) that Appellant was fully aware of these defenses and underlying arguments for nearly five months between the date that the Respondents filed the Supplementary Memorandum and the date of the hearing on the Motion to Dismiss on February 3, 2026, (4) that Appellant filed a full 20-page response on February 2, 2026, to the Respondents' Motion to Dismiss and Supplementary Memorandum, (5) that Appellant had a full and fair opportunity to argue against the Respondents' Motion to Dismiss and Supplementary Memorandum at the hearing on February 3, 2026, and (6) that Appellant could and did file a full 13-page Motion for Reconsideration on February 27, 2026. It is absolutely clear that Appellant was fully aware of the arguments raised by the Respondents, had ample opportunity to respond to these arguments, and in fact did so.

In *Camp v. Camp*, 386 S.C. 571, 689 S.E.2d 634 (2010), our Supreme Court observed as follows:

> Rule 7(b)(1), SCRCP, requires that motions "shall state with particularity the grounds therefor, and shall set forth the relief or order sought." The particularity requirement "is to be read flexibly in 'recognition of the peculiar circumstances of the case.'" *Cambridge Plating Co., Inc. v. Napco, Inc.,* 85 F.3d 752, 760 (1st Cir. 1996) (quoting *Registration Control Sys., Inc. v. Compusystems, Inc.,* 922 F.2d 805, 808 (Fed.Cir. 1990)). "By requiring notice to the court and the opposing party of the basis for the motion, 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.'" *Calderon v. Kansas Dept. of Soc. and Rehab. Servs.,* 181 F.3d 1180, 1186 (10th Cir.1999) (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1192, at 42 (2d ed.1990)). Therefore, when a motion is challenged for a lack of particularity, the court should ask "whether any party is prejudiced by a lack of particularity or 'whether the court can comprehend the basis for the motion and deal with it fairly.'" *Registration Control,* 922 F.2d at 807–08 (quoting 5 Wright & Miller, *Federal Practice and Procedure* § 1192, at 42). "The particularity requirement should not be applied in an overly technical fashion when the purpose behind the rule is not jeopardized." *Andreas v. Volkswagen of Am., Inc.,* 336 F.3d 789, 793 (8th Cir.2003) (citations omitted).

Camp, 386 S.C. at 575-76, 689 S.E.2d at 636-37 ("When neither party is prejudiced and the court is able to deal fairly with a motion for reconsideration, applying an overly technical reading of the rules does not serve the purpose of Rule 7(b)(1), SCRCP"); *see also Nexstar Media Grp., Inc. v. Davis Roofing Grp., LLC*, 431 S.C. 593, 601, 848 S.E.2d 597, 601 (S.C. App. 2020) (finding that "Nexstar and Mahoney were well-equipped to understand and respond to Davis Roofing's motion to reconsider because the issue asserted was addressed repeatedly at trial and the parties were not prejudiced by the general nature of the motion."); *Lucey v. Meyer*, 401 S.C. 122, 133, 736 S.E.2d 274, 280 (S.C. App. 2012) ("Acknowledging the flexibility of the particularity requirement, we find the court fairly addressed the motion as a Rule 59(e) motion for reconsideration."); *Kincannon v. Griffith*, 2023 WL 2156736, at *1 (S.C. App. Feb. 22, 2023) ("We further hold Respondents' motion to dismiss sufficiently alleged that Kincannon failed to state a claim regarding the causes of action in his complaint, and the circuit court was able to comprehend the motion and deal with it appropriately. *See* Rule 7(b)(1), SCRCP…").

Further, Appellant has not, and cannot, argue from the record that Respondents' Motion to Dismiss was ruled upon in any fashion until after the Court heard from all parties at the hearing on February 3, 2026, and can show no prejudice. Appellant's argument that Respondents' Motion to Dismiss was "moot" is without any foundation, as no Court ever found it to be moot.

For these reasons, Appellant's argument that the "trial court erred in granting a nonexistent Motion to Dismiss" is utterly baseless and should be dismissed.[3]

II. DID THE TRIAL COURT PROPERLY GRANT RESPONDENTS' MOTION TO DISMISS UNDER RULE 12(B)(6), SCRCP?

A. DID THE TRIAL COURT PROPERLY DISMISS APPELLANT'S CLAIMS ON GROUNDS OF LEGISLATIVE IMMUNITY?

The baselessness of Appellant's argument regarding legislative immunity is captured in his statement that "[n]othing in the Second Amended Complaint alleges the dates on which White and/or Hutchison served as elected officials." (***Appellant's Initial Brief I, p. 21***). Such a claim is ludicrous. Materially, Appellant unambiguously alleged that White and Hutchison were serving as Board Members during the so-called "retaliatory attack" and "dog-and-pony show" that occurred on September 14, 2020, and that Montgomery assisted them with their efforts at the Board Meeting. (***Second Amended Complaint, pp. 40-41***). The sole-called "retaliatory

[3] In this regard, Appellant's argument that, in ruling on a Motion to Dismiss under Rule 12(b)(6), SCRCP, Judge Coble "overruled" Judge McCutchen's earlier order under Rule 15, SCRCP, is especially difficult to comprehend. Appellant's argument that Judge McCutchen's earlier order effectively denied the Respondents' Motion to Dismiss – by requiring the parties to complete discovery prior to raising their defenses – is non-sensical. The Respondents had not even filed their Motion to Dismiss until after Judge McCutchen issued his Order on Appellant's Motion to Amend. Indeed, Judge McCutchen expressly stated that "this Court will not preclude any defenses or claims of privilege [that] any of the existing or new defendants may assert in their responsive pleadings as it relates to each individual claim against each defendant." (***Order of July 25, 2025, p. 10***) (emphasis added). A "responsive pleading" includes a motion filed under Rule 12, SCRCP.

attack" and "dog-and-pony show" that occurred on September 14, 2020 was the central event detailed in the Second and Third Causes of Action in Appellant's Second Amended Complaint (***Second Amended Complaint, pp. 36-44***).

In any event, in its Order, the Court was quite clear and accurate that the U.S. Supreme Court has held that state and regional legislators are entitled to absolute immunity from liability for their legislative activities. *Bogan v. Scott-Harris*, 523 U.S. 44, 49, 118 S. Ct. 966, 970, 140 L. Ed. 2d 79 (1998).

> Whether an act is legislative turns on the nature of the act, rather than on the motive or intent of the official performing it. The privilege of absolute immunity "would be of little value if [legislators] could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives."

Id. at 54, 118 S. Ct. at 973 (citations omitted). The Court also correctly pointed out that, because legislators generally cannot perform their legislative roles without the assistance of aides, legislative immunity extends to the agents of legislators, *Gravel v. United States*, 408 U.S. 606, 616-17, 92 S.Ct. 2614, 33 L.Ed.2d 583 (1972), and that lower courts have extended that premise to find that even legislative employees in administrative roles can be entitled to legislative immunity. *See Nat'l Ass'n of Social Workers v. Harwood*, 69 F.3d 622, 625 (1st Cir. 1995) (finding legislative immunity protected Rhode Island House of Representatives Door Keeper).

Actions are "legislative" when they are "integral steps in the legislative process." *Id*. at 55, 118 S. Ct. at 973 (voting on an ordinance, preparing a budget, and signing an ordinance into law are all "legislative acts" protected by absolute immunity). For instance, local elected board members have absolute legislative immunity when they discipline another member. *Chase v. Senate of Virginia*, 539 F. Supp. 3d 562, 570 (E.D. Va. 2021) (citing *Whitener v. McWatters*, 112 F.3d 740, 741 (4th Cir. 1997)). The Fourth Circuit has also found that "[s]peaking before a legislative body is ... a type of legislative activity to which absolute immunity applies." *Kensington Volunteer Fire Dep't, Inc. v. Montgomery Cnty., Md.*, 684 F.3d 462, 471 (4th Cir. 2012); *Myers v. Town of Colmar Manor*, 457 F. Supp. 3d 480, 492 (D. Md. 2020).

It is, therefore, wholly unsurprising that the Court found that former Board Members speaking at a School Board meeting on a matter related to the construction of school buildings, or preparing for such a meeting, were engaged in quintessential "legislative acts." The Court properly noted that the Fourth Circuit has held that local county board members discussing and voting on a zoning matter at a board meeting were protected by legislative immunity, even where "the defendant members of the Council met with a number of their constituents [prior to the board meeting] who had selfish interests in the passage of the zoning ordinance and were influenced in their vote as a result of the meetings." *Bruce v. Riddle*, 631 F.2d 272, 279 (4th Cir. 1980).[4]

Finally, the Court properly rejected Appellant's argument that Montgomery was not entitled to legislative immunity because "he participated in and helped facilitate the retaliatory attack on Loveless" but was not himself a Board member. Legislative immunity extends to the agents of legislators. *Gravel*, 408 U.S. at 616-17; *Harwood*, 69 F.3d at 625. Given Plaintiff's own allegations that Defendant Montgomery assisted the Board with legal advice and "gathering information" concerning the matters raised in Plaintiff's letter of March 24, 2020, which purportedly assisted the Board members with their "attack" on September 14, 2020, it is clear that Defendant Montgomery is also entitled to legislative immunity. *Kness v. City of Kenosha, Wis.*, 669 F. Supp. 1484, 1490 (E.D. Wis. 1987) ("The Mayor's presiding over the council and the City Attorney's drafting of the ordinance are activities immune from suit…").

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[4] Appellant has abandoned his arguments based on the alleged "personal motives" of the Respondents, as well as the alleged "administrative" nature of the actions of the Respondents.

B. <u>DID THE TRIAL COURT PROPERLY DISMISS APPELLANT'S CLAIMS ON GROUNDS OF ATTORNEY-CLIENT PRIVILEGE AS TO RESPONDENT MONTGOMERY?</u>

Appellant's arguments regarding the dismissal of claims against Montgomery due to the attorney-client privilege are doomed because (1) the Court correctly reviewed the Second Amended Complaint and concluded that Appellant's assertion that Montgomery acted outside the scope of his role as an attorney was not a factual allegation but a conclusory legal allegation, which the Court need not credit or assume to be true, and (2) the Court correctly relied on *Stiles v. Onorato*, 318 S.C. 297, 298, 457 S.E.2d 601, 602 (1995).

Appellant's conclusory legal assertion that Montgomery acted outside the scope of his role as an attorney is just that – a conclusory legal assertion that, unlike an assertion of fact, does not deserve to be credited. A motion under Rule 12, SCRCP, requires that a Court accept well pleaded facts in the complaint, but does not require a Court to accept an unsupported conclusion which is contrary to the admitted facts, or conclusions of law asserted by the plaintiff. *Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 425, 559 S.E.2d 362, 365 (S.C. App. 2001); *Charleston County Sch. Dist. v. S.C. State Ports Auth.,* 283 S.C. 48, 50, 320 S.E.2d 727, 729 (S.C. App. 1984) ("A demurrer admits the facts well pleaded in the complaint but does not admit the inferences drawn by the plaintiff from the facts, nor does it admit conclusions of law.").

Further, Appellant's argument that Judge Coble somehow misquoted *Stiles* is simply wrong. Judge Coble cited *Stiles* at length, and accurately, explaining that a court **must** dismiss a complaint that alleges the attorney acted within his scope, or in this case, relied only on conclusory allegations otherwise:

> Nowhere in the complaint does Onorato allege in what manner Bowen acted outside his role as Stiles' attorney nor does he allege that Bowen breached some independent duty owed to Onorato. Therefore, on the face of his complaint, the only reasonable inference is that Bowen was acting at all times in his capacity as Stiles'

> attorney. Under *Gaar*, Bowen is immune for any activities taken in his professional capacity. Accordingly, under *Gaar,* Onorato's complaint was fatally deficient and Bowen's Rule 12(b)(6) motion was properly granted.

Stiles, 318 S.C. at 300, 457 S.E.2d at 603.

As with his allegations regarding other Respondents, Appellant's allegations against Montgomery amount to an incomprehensible mishmash of conclusory assertions that, in the end, failed to state a complaint for a number of reasons, and with regard to Montgomery, these reasons properly included attorney-client privilege.

C. **DID THE TRIAL COURT PROPERLY FIND THAT APPELLANT'S CLAIMS WERE BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS?**

As an initial matter, the applicable statute of limitations applicable to the claims brought against the Respondents is two (2) years under the S.C Tort Claims Act. The statute of limitations for claims of Conspiracy or Outrage (or Intentional Infliction of Emotional Distress) is ordinarily three (3) years. However, to the extent that White, Hutchinson, and Montgomery were either officials or agents of the School Board of Trustees for Lexington-Richland District Five, they are covered by the South Carolina Tort Claims Act (the "Act"), and for that reason, the statute of limitations for each of these claims is two (2) years. S.C. Code Ann. § 15-78-110; *Flateau v. Harrelson*, 355 S.C. 197, 208, 584 S.E.2d 413, 419 (S.C. App. 2003); *Young v. S.C. Dep't of Corr.*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (S.C. App. 1999).

Nevertheless, under either the two- or three-year statute of limitations, because Appellant's claims for Conspiracy and Outrage against White, Hutchinson, and Montgomery "related back" to the filing in U.S. District Court on October 25, 2023, and the claims accrued on October 14, 2020, the statute of limitations had already expired by the time Appellant first brought them in federal court.

Appellant's argument appears mired in his fundamental misunderstanding on the nature of an "accrual" of an action. "Generally, a cause of action accrues under South Carolina law the moment the defendant breaches a duty owed to the plaintiff." *Allwin v. Russ Cooper Assocs., Inc.*, 426 S.C. 1, 12, 825 S.E.2d 707, 713 (S.C. App. 2019). However, under the "discovery rule," as discussed in *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 787 S.E.2d 485 (2016), the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist.

> This standard as to when the limitations period begins to run is *objective* rather than subjective. Therefore, the statutory period of limitations begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto.

Allwin, 426 S.C. at 12–13, 825 S.E.2d at 713 (emphasis in the original).

Notably, the "date when a plaintiff learns of a potential new defendant has **<u>absolutely no bearing</u>** on the timing of a statute of limitations." *Gillman v. City of Beaufort*, 368 S.C. 24, 27–28, 627 S.E.2d 746, 748 (S.C. App. 2006) (emphasis added).

In light of this well-known legal standard, it is indeed amazing that Appellant continues to rely on his self-described "discovery" of the alleged "conspiracy" in later discovery in the *Scully* matter to justify his delay in attempting to bring these claims. As the Court rightly noted, this argument runs directly counter the well-established South Carolina law concerning the accrual of causes of action and their applicable statutes of limitations.

The Court also rightly noted that "[Appellant's] argument would require this Court to turn established South Carolina law directly on its head." (***Order of February 17, 2026, p. 10***). In making his argument, Appellant overlooks the most obvious facet of Second Amended Complaint, that his claims are based on his allegations that Respondents were liable for outrage and civil conspiracy because of their actions allegedly taken on or before September 14, 2020, at the School Board meeting that Appellant described as a "retaliatory attack" and a "dog and pony show." According to his own pleadings, and the pleadings he filed in his federal case, it cannot be disputed that Appellant absolutely knew on September 14, 2020, that Respondents were involved in the very event that forms the very basis of his conspiracy and outrage claims – the so-called "retaliatory attack" on September 14, 2020. Based on his own allegations, the Court correctly concluded that Appellant's claim that he "first discovered" the involvement of the Defendants sometime after September 14, 2020 is contrary to any reasonable reading of Appellant's own allegations. *Joubert v. S.C. Dep't of Soc. Servs.*, 341 S.C. 176, 190, 534 S.E.2d 1, 8 (S.C. App. 2000) (statute of limitations begins to run when the plaintiff should know that he might have a potential claim against another, not when he develops a full-blown theory of recovery).

For this reason alone, Appellant's claims in his "Second Amended Complaint" against the Respondents are barred and his appeal must be dismissed.

D. DID THE TRIAL COURT PROPERLY FIND THAT APPELLANT FAILED TO MEET THE BASIC PLEADING STANDARDS REQUIRED TO STATE ANY OF HIS CLAIMS?

i. CIVIL CONSPIRACY.

The Court correctly found that, to support his civil conspiracy claim, Appellant relied entirely on the allegations that also support his other claims, including his claim for "Outrage." This pleading defect is fatal to Appellant's civil conspiracy claim.

A plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means,[5] (3) together with the commission of an overt act in furtherance of the agreement, and (4)

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[5] In Justice Kittredge's concurrence in *Paradis*, he explained that "[i]t is the second element – to commit an *unlawful act* or a lawful act by *unlawful means* – that restores an objective legal

damages proximately resulting to the plaintiff. *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021) (abolishing the requirement that a plaintiff must plead "special damages" as part of a civil conspiracy claim).

The Court also cited cases standing for the principal that, in order to state a civil conspiracy following the Supreme Court's decision in *Paradis*, a plaintiff must also allege "additional acts" that are independent of the basis of any other of the plaintiff's causes of action.

> Although the *Paradis* court held that special damages are no longer a required element of a civil conspiracy claim in South Carolina, Lang's claim for conspiracy fails on two grounds independent thereof. First, the Magistrate Judge initially recommended dismissal of the conspiracy claim because Plaintiff did not identify concrete acts that are independent of any other alleged wrongdoing. Rather, **Plaintiff based his civil conspiracy claim on the same alleged actions that serve as the basis for his other causes of action**.

Lang v. Furman Univ., 2022 WL 816455, at *1 (D.S.C. Mar. 16, 2022) (emphasis added). Similarly, in the instant case, Appellant's Second Amended Complaint failed to plead any "additional acts" in support of his civil conspiracy claim. Indeed, Appellant's pleading actually requires the court to look to other causes of action to define the nature of his civil conspiracy claim, as the Second Amended Complaint does not describe a single act taken in furtherance of the alleged civil conspiracy that it is not also alleged in his other causes of action. *Doe 9 v. Varsity Brands, LLC*, 2023 WL 4191782, at *18 (D.S.C. June 26, 2023) (where plaintiff "has merely summarized the allegations underlying her other causes of action and repackaged them into a claim for civil

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standard to this cause of action. When the appellate courts of this state approved of an analytical framework that allowed one's personal sense of fairness and right and wrong to be sufficient for a civil conspiracy claim, we created a rudderless cause of action. Justice Few correctly observes that the post-*Todd* sanctioned civil conspiracy claim 'permit[ted] the court and jury to impose liability for lawful, non-tortious conduct based on a court or juror's sense of fairness or responsibility.' I do not construe Justice Few's concurrence as 'abolishing' civil conspiracy. Rather, by restoring the traditional elements of a civil conspiracy claim and overruling *Todd*'s so-called special damages pleading requirement, this Court returns civil conspiracy to its historical roots." *Paradis*, 433 S.C. at 578, 861 S.E.2d at 782 conspiracy," she has not identified "additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in [her] complaint," and thus has failed to state a valid claim for civil conspiracy) (citing *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 682 S.E.2d 871, 875 (S.C. App. 2009), *overruled on other grounds by Paradis*, 861 S.E.2d at 780).

Appellant does not appear to contest these rulings. Instead, he accuses Judge Coble of engaging in "bizarre analysis." Further, in asserting that Judge Coble relied on an "unpublished case from the District Court of South Carolina," Appellant is apparently unaware that other post-*Paradis* rulings have affirmed that a plaintiff must allege "additional acts" separate from other claims in order to state a claim for civil conspiracy. *See, e.g., Charleston CW, LLC v. Charleston Animal Soc'y*, 2025 WL 1250561, at *2 (S.C. App. Apr. 30, 2025) (dismissal affirmed where "the record demonstrates CCW failed to allege conspiratorial conduct distinct from the conduct underpinning its claims for libel, tortious interference with business relations, and civil rights violations"); *R.L. Mlazgar Assocs., Inc. v. HLI Sols., Inc.*, 2025 WL 2224039, at *8–10 (D.S.C. Aug. 5, 2025) ("A plaintiff cannot avoid pleading separate and independent acts in furtherance of the conspiracy by simply couching the conspiracy claim as an alternative to other causes of action asserted in the complaint."); *Cunningham v. Grant*, 2026 WL 384838, at *15 (D.S.C. Jan. 20, 2026), *report and recommendation adopted*, 2026 WL 383495 (D.S.C. Feb. 11, 2026) (same); *Hollinshead v. Bell*, 2025 WL 3035748, at *3 (S.C. App. Oct. 29, 2025) ("we hold Hollinshead failed to put forth sufficient facts to support his civil conspiracy and IIED claims. As to Hollinshead's civil conspiracy claim, he failed to assert facts establishing Respondents acted in furtherance of a conspiracy that were separate and independent from the wrongful acts alleged in the complaint concerning his defamation claim.").

Appellant also appears to miss entirely the point of Judge Coble's citation to *Angus v. Burroughs & Chapin Co.*, 368 S.C. 167, 170, 628 S.E.2d 261, 262 (2006), which held that "[i]n our democratic society, a public official is answerable to the public; members of the public are not third-party interlopers. **Because of [plaintiff's] status as a public official, we conclude his action for civil conspiracy cannot be maintained against any of these defendants**." (emphasis added). Appellant was admittedly an elected public official when his actions accrued in September 2020. In fact, his allegations related directly and unambiguously to his role as a School Board member. Appellant's feigned ignorance of his status as a public official is, ironically, a much better example of "bizarre analysis."

ii. "OUTRAGE."

Candidly, Appellant's arguments concerning his claim for "outrage" or "intentional infliction of emotional distress" (IIED) are particularly difficult to understand.

Without stating why, Appellant attempts to minimize the Court's reliance on the South Carolina Tort Claims Act. However, even a cursory review of the Order noted that the Respondents were, during the times relevant to the case, public officials and/or agents, and are thus covered under the Act, which **explicitly excludes** losses from "the intentional infliction of emotional harm." S.C. Code § 15-78-30(f); *Gore v. Dorchester Cnty. Sheriff's Off.*, 442 S.C. 438, 443, 900 S.E.2d 423, 426 (2024) ("The bar to recovery for the intentional infliction of emotional distress in section 15-78-30(f) applies to the subset of claims for the reckless infliction of emotional distress."); *Munday v. Beaufort Cnty.*, 2023 WL 2643792, at *9 (D.S.C. Mar. 27, 2023); *Ward v. City of North Myrtle Beach*, 457 F. Supp. 2d 625, 647 (D.S.C. 2006) ("[T]he South Carolina Tort Claims Act excludes the intentional infliction of emotional harm from the definition of 'loss' for which a government may be liable under the Tort Claims Act."); *McDowell v. S.C. Dep't of Pub. Safety*, 2023 WL 3440336, at *3 (D.S.C. Feb. 28, 2023), *report and recommendation adopted*, 2023 WL 3434776 (D.S.C. May 12, 2023) (same); *Densmore v. City of Greenville*, 2011 WL 11733107, at *1 (S.C. App. Mar. 4, 2011) ("The trial court properly granted summary judgment to Respondents on the cause of action for intentional infliction of emotional distress because the South Carolina Tort Claims Act specifically excludes the cause of action.").

Furthermore, the Court correctly found that Appellant simply failed to sufficiently articulate a claim for "intentional infliction of emotional distress." To state a *prima facie* case for an IIED claim, a plaintiff has the burden of showing that the defendant: (1) "intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct," (2) that the conduct was so outrageous it exceeded "all possible bounds of decency" and so "atrocious" it was "utterly intolerable in a civilized community," (3) such actions actually caused plaintiff's emotional distress; and (4) the emotional distress was so severe "no reasonable man could be expected to endure it." *Hansson v. Scalise Builders of S.C.,* 374 S.C. 352, 356-358, 650 S.E.2d 68, 70-71 (2007).

While Appellant argues that the analysis in *Hansson* is appropriate only for summary judgment, South Carolina courts routinely examine pleadings at the stage of a Motion to Dismiss under Rule 12(b)(6) to determine whether a plaintiff has stated factual allegations that, even if true, could meet the high standard of an IIED claim. *Strickland v. Madden,* 323 S.C. 63, 68, 448 S.E.2d 581, 584 (S.C. App. 1994) ("Initially ... the [circuit] court determines whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery, and only where reasonable persons might differ is the question one for the jury.").

More recently, our appellate courts have affirmed numerous instances where the trial court dismissed an IIED at the stage of a Motion to Dismiss under Rule 12(b)(6), SCRCP, either for a failure to state the claim or because the claim was otherwise barred. *See, e.g., Boyles v. C & C Masonry, Inc.*, 2026 WL 1819068, at *2 (S.C. App. June 24, 2026) (granted pursuant to the S.C Tort Claims Act); *Hollinshead v. Bell*, 2025 WL 3035748, at *3 (S.C. App. Oct. 29, 2025) ("We hold Hollinshead's IIED claim also fails as a matter of law because he failed to assert any facts to support a determination that Respondents engaged in intentional or reckless, extreme, and outrageous conduct. In his second amended complaint, Hollinshead asserted without specificity that Respondents' conduct was "so extreme and outrageous as to exceed all possible bounds of decency and was atrocious, and utterly intolerable in a civilized community."); *Beasley v. S.C. Dep't of Soc. Servs.*, 2025 WL 985728, at *1 (S.C. App. Apr. 2, 2025) (dismissal of outrage claim properly granted pursuant to the S.C. Tort Claims Act); *Couram v. Nationwide Mut. Ins. Co*., 2022 WL 9691533, at *3 (S.C. Oct. 5, 2022) ("There is nothing in Couram's allegations that make this an intentional infliction of emotional distress or civil conspiracy case against anybody, particularly these petitioners. Therefore, we reverse the court of appeals and reinstate the Rule 12(b)(6) dismissal order as to petitioners…").

Thus, even in the light most favorable to Appellant, the facts as he has alleged simply do not rise to the level of conduct that was so outrageous it exceeded "all possible bounds of decency" and so "atrocious" it was "utterly intolerable in a civilized community."

For this reason alone, Plaintiff's "outrage" claim is barred and should be dismissed with prejudice.

CONCLUSION

For the reasons stated above, Respondents Edward K. White, Flora E. "Beth" Hutchison, and Michael Montgomery respectfully that this Court DISMISS the petition of Appellant and AFFIRM the decision of the trial court, and any other such relief as the Court deems just and proper.

Dated this 30th day of July, 2026.

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