

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Janice Meusel and Adam Meusel, Appellants,

v.

Woodside Plantation Property Owners' Association, Inc.,
Woodside Plantation Country Club, Inc. d/b/a Woodside
Country Club, and Invited, Defendants,

of which Woodside Plantation Country Club, Inc. d/b/a
Woodside Country Club, and Invited are the
Respondents.

Appellate Case No. 2024-001206

Appeal From Aiken County
Courtney Clyburn Pope, Circuit Court Judge

Unpublished Opinion No. 2026-UP-401
Submitted March 1, 2026 – Filed August 5, 2026

REVERSED AND REMANDED

Andrew Sims Radeker, of Radeker Law, P.A., of
Columbia, for Appellants.

Daniel Clifton Plyler and Rachel Elizabeth Lee, of Smith
Robinson, of Columbia, for Respondents.

PER CURIAM: Janice and Adam Meusel (the Meusels) appeal the circuit court's order granting Respondents' Rule 12(b)(6), SCRCP, motion to dismiss for failure to allege facts sufficient to establish a claim for negligence, intentional infliction of emotional distress (IIED), and a violation of the South Carolina Unfair Trade Practices Act (SCUTPA).¹ The Meusels argue they pled facts sufficient to constitute a cause of action to survive dismissal, and if not, the circuit court erred in dismissing their complaint with prejudice instead of giving them the opportunity to amend their complaint. We reverse and remand.

We hold the circuit court erred when it granted Respondents' motion to dismiss with prejudice. *See Doe v. Bishop of Charleston*, 407 S.C. 128, 134, 754 S.E.2d 494, 497 (2014) ("When reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court."); *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006) ("In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief."); *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019) ("Rule 12(b)(6) permits the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim."); *id.* at 182, 826 S.E.2d at 589 ("A court's decision to deny a motion to amend should not be based on the court's perception of the merits of an amended complaint. In rare cases, however, a trial court may deny a motion to amend *if the amendment would be clearly futile.*" (emphasis added) (citation omitted)). Allowing the Meusels to amend their complaint would not be clearly futile; thus, the circuit court erred by failing to give the Meusels an opportunity to amend their complaint. We address each of the Meusels' claims in turn.

A. Negligence

Allowing the Meusels to amend their negligence claim would not be clearly futile.

In an action alleging negligence, a plaintiff must show (1) the defendant owed a duty of care to the plaintiff, (2) the defendant breached the duty by a negligent act or omission, (3) the defendant's breach was an actual and

¹ South Carolina Unfair Trade Practices Act, § 39-5-10, *et seq.* (2023, Supp. 2025).

proximate cause of the plaintiff's injury, and (4) the plaintiff suffered injury or damages.

Wright v. PRG Real Est. Mgm't, Inc., 426 S.C. 202, 212, 826 S.E.2d 285, 290 (2019). "While there is generally no duty to act under the common law, a duty to use due care may arise where an act is voluntarily undertaken." *Id.* (quoting *Vaughan v. Town of Lyman*, 370 S.C. 436, 446, 635 S.E.2d 631, 637 (2006)).

The question of whether such a duty arises in a given case may depend on the existence of particular facts. Where there are factual issues regarding whether the defendant was in fact a volunteer, the existence of a duty becomes a mixed question of law and fact to be resolved by the fact finder.

Id. (quoting *Vaughan*, 370 S.C. at 446-47, 494 S.E.2d at 637).

The Meusels allege golfers using Respondents' facilities engaged in numerous deliberate and unwarranted trespasses on the Meusels's property and used racial slurs and insults against them. As a result of the golfers' conduct, the Meusels allege they suffered damages, including anger, anxiety, depression, severe emotional distress, and diminished property value. The Meusels allege they contacted Respondents, who voluntarily undertook a duty to stop the offending behavior, but then failed to do so.

Whether Respondents did voluntarily undertake a duty to the Meusels is a question of fact, which is the subject of the parties' discovery efforts. Although our jurisprudence is influenced by the Restatement, our courts have yet to adopt a physical harm requirement to establish a negligence claim. *See id.* at 213, 826 S.E.2d at 290 ("The recognition of a voluntarily assumed duty in South Carolina jurisprudence is rooted in section 323 of the Restatement (Second) of Torts (1965)"); *id.* at 213, 826 S.E.2d at 291 ("One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for *physical harm* resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care *increases the risk of such harm*, or (b) the harm is suffered *because of the other's reliance upon the undertaking*" (emphasis added) (quoting Restatement (Second) of Torts (1965)); *see also Hurst v. Sandy*, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997) (reversing

grant of summary judgment on a negligence claim that was based upon a voluntary undertaking in a construction defect case when there was no allegation the plaintiffs suffered any personal injury). Therefore, the Meusels need not allege that they suffered physical harm to show a duty arising from a voluntary undertaking.

Respondents rely on *Doe 2 v. Citadel* to support their argument that the Meusels failed to plead sufficient facts to survive a motion to dismiss by failing to allege Respondents' actions or inactions led to increased harm. 421 S.C. 140, 147, 805 S.E.2d 578, 582 (Ct. App. 2017) (affirming the trial court's grant of summary judgment on a negligence claim when the harm only continued instead of increasing after the defendant was alleged to have voluntarily undertaken a duty). *Doe 2* was affirmed after the claim was dismissed at the *summary judgment* phase. *Id.* at 142, 805 S.E.2d at 579. The Meusels' complaint alleges that Respondents "expressly undertook a duty to stop the offending behavior and control the actions of those who have been doing it." The Meusels could plead Respondents' failure to exercise care increased the risk of harm. The matter of properly pleading the Meusels' alleged damages can be addressed if an opportunity to amend the complaint is permitted. Because allowing the Meusels to amend their complaint as to this issue would not be clearly futile, we hold the circuit court erred in dismissing the negligence claim at this stage.

B. IIED

Allowing the Meusels to amend their IIED claim would not be clearly futile. *See Bass v. S.C. Dep't. of Soc. Servs.*, 414 S.C. 558, 575, 780 S.E.2d 252, 260-61 (2015) (holding that to recover for IIED, a plaintiff must show "the conduct was so 'extreme and outrageous' so as to exceed 'all possible bounds of decency' and must be regarded as 'atrocious, and utterly intolerable in a civilized community'" (quoting *Argoe v. Three Rivers Behav. Health, L.L.C.*, 392 S.C. 462, 475, 710 S.E.2d 67, 74 (2011))); *Ford v. Hutson*, 276 S.C. 157, 163-66, 276 S.E.2d 776, 779-80 (1981) (holding the trial court did not err in submitting an IIED claim to the jury when the defendant had entered plaintiff's home without permission on multiple occasions and screamed at her, using profanity). Viewing the facts alleged in the light most favorable to the Meusels, the conduct could be as outrageous and extreme as the conduct in *Ford*. *See Benedict Coll. v. Nat'l Credit Sys, Inc.*, 400 S.C. 538, 544, 735 S.E.2d 518, 521 (Ct. App. 2012) ("In evaluating a motion to dismiss pursuant to this rule, the circuit court must view the facts alleged in the complaint and any reasonable inferences to be drawn therefrom in the light most favorable to the plaintiff."). The circuit court is correct that a party may not

establish a prima facie claim for damages with "mere bald assertions." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 358, 650 S.E.2d 68, 72 (2007). However, the complaint alleges specific conduct, akin to the conduct in *Ford*, which appears sufficient at the pleading stage.

Additionally, the record does not reflect that the circuit court sufficiently analyzed attribution of liability to Respondents for the actions of the golfers. The circuit court found that the Meusels' claims were against the golfers, not Respondents. However, the Meusels allege that Respondents voluntarily undertook responsibility for the actions of the golfers. Because the offending conduct continued after the alleged assumption of the voluntary duty, the Meusels allege Respondents are responsible for the golfers' conduct. This is not the theory of liability addressed by the circuit court and it erred to the extent that it failed to consider the assumed responsibility.

C. SCUTPA

Allowing the Meusels to amend their SCUTPA claim would not be clearly futile. A claimant under the SCUTPA must show "(1) the defendant [violated S.C. Code Ann. § 39-5-20 (2023) by engaging] in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006). The SCUTPA specifically states, "'Trade' and 'commerce' shall include the . . . distribution of *any services* and any property, tangible or intangible, . . . and *any* other article, commodity or *thing of value* wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State." S.C. Code Ann. § 39-5-10(b) (2023) (emphasis added). "The statute's use of the words 'shall include' clearly suggests the legislature did not intend to limit 'trade' and 'commerce' to only the listed transactions." *Baker v. Chavis*, 306 S.C. 203, 208-09, 410 S.E.2d 600, 603 (Ct. App. 1991). "[T]he [SC]UTPA 'should be given a liberal construction.'" *McTeer v. Provident Life & Accident Ins.*, 712 F. Supp. 512, 515 (D.S.C. 1989) (quoting *Connolly v. People's Life Ins. Co.*, 294 S.C. 355, 359, 364 S.E.2d 475, 477 (Ct. App. 1988), *rev'd on other grounds*, 299 S.C. 348, 384 S.E.2d 738 (1989)).

As it relates to the Meusels' claim, it is not clear that the Meusels are required to be in contractual privity with Respondents as a matter of law. *See Colleton Preparatory Acad., Inc. v. Hoover Universal, Inc.*, 379 S.C. 181, 196, 666 S.E.2d 247, 255 (2008) ("[T]o hold privity is required before a party may maintain a[n

SC]UTPA action would lead to an absurd result. Such a finding would prohibit [SC]UTPA actions by all remote buyers and competitors, who have traditionally been allowed to proceed under the Act, because there could be no privity."), *overruled on other grounds by Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009). Based on the record here, we cannot "definitively say it would be impossible for [appellants] to succeed with an amended pleading." *Skydive*, 426 S.C. at 192, 826 S.E.2d at 594. Therefore, we hold the circuit court erred when it dismissed the SCUTPA claim without allowing the Meusels an opportunity to amend their complaint.

D. Opportunity to Amend the Complaint

As we stated above, allowing the Meusels to amend their claims would not be clearly futile. Therefore, we hold the circuit court erred when it refused to give the Meusels an opportunity to amend their complaint. *See id.* at 189, 826 S.E.2d at 592 ("Under Rules 12(b)(6) and 15(a), the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted."); *id.* at 182, 826 S.E.2d at 589 ("A court's decision to deny a motion to amend should not be based on the court's perception of the merits of an amended complaint. In rare cases, however, a trial court may deny a motion to amend if the amendment would be clearly futile."); *id.* at 183, 826 S.E.2d at 589 ("We cannot imagine a circumstance in which a trial court should refuse to allow an amendment on the ground of futility without seeing what the amendment would look like.").

Based on the foregoing, we reverse the circuit court's order granting Respondents' motion to dismiss with prejudice and remand for further proceedings.

REVERSED AND REMANDED.

WILLIAMS, C.J., and KONDUROS and VINSON, JJ., concur.