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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 REPLY BRIEF AS TO
RESPONDENTS
EDWARD WHITE, FLORA E. "BETH" HUTCHISON AND
MICHAEL MONTGOMERY**

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

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ARGUMENT

In Reply to Respondents White, Hutchison and Montgomery, Loveless (“Loveless”) makes the following points.

I. Conspiracy to defame is a recognized cause of action in South Carolina.

Analysis of this appeal should be drawn from the South Carolina Supreme Court’s 2021 decision in *Paradis v. Charleston County School District*, which clarified the law of conspiracy. In its decision the South Carolina Supreme Court described, first as a hypothetical, and then as a description of Paradis’s claim, the *exact* type of action that has been brought by Loveless:

If one defendant who did not personally commit defamatory acts conspired with another who did defame the plaintiff, the legal elements the plaintiff must establish in a defamation case—along with the legal requirements for conspiracy—guide the court and the jury in deciding whether the conspirator should also be liable for defamation.

Paradis, 433 S.C. 562, 579, 861 S.E.2d 774, 783 (2021) (concurrence by Justice Few).¹

As the Second Amended Complaint sets forth,² Respondents White, Hutchison and Montgomery are alleged to have been conspirators with Dennis-White and Scully, with Scully being the conspirator who published defamatory statements about Loveless online, but did so as part of the conspiracy³.

¹ Justice Few concurred in part and dissented in part. At the same citation, Justice Few tied the parallel directly to Paradis’s claim: “We need not imagine how a defamation claim could unfold; we can turn to the plaintiff’s allegations in this case.”

² For example, in paragraphs 4 – 8, 13 – 15.

³ This is a separate claim from the direct claim of defamation asserted against White and Hutchison in the Second Amended Complaint, which was withdrawn on the hearing on the (nonexistent) Motion to Dismiss.

Conspiracy law in South Carolina has few precedents of the elaborate and intentional scale alleged in the Second Amended Complaint, and the various detailed overt acts taken to damage Loveless. Thankfully the behaviors are relatively unusual conduct in South Carolina. It is not often that various individuals combine their bad behavior over years to defame a fellow citizen, but as *Paradis* shows, Loveless's claims in this appeal are well within South Carolina law, and he is entitled to have the full process the law entitles to test his claims.

II. The trial court's order is in direct contravention to Judge McCutchen's order. The pleading for conspiracy is properly pleaded.

- a. Discovery rule and concealment issues preclude disposition on a motion to dismiss, as Judge McCutchen recognized.

Rule 8(c), SCRCP, requires a party to set forth his or her affirmative defenses "in pleading to a preceding pleading." Rule 7(a), SCRCP, specifically lists which filings constitute a "pleading." Judge McCutchen's order was precise in noting that the Respondents could state their affirmative defenses in a "responsive pleading." Trying to expand Judge McCutchen's order to cover the Respondents' failure to file a proper motion to dismiss, Respondents argue, incorrectly that a motion to dismiss—had they made one at all—is a "responsive pleading" as contemplated by Judge McCutchen's order. (RIB, p. 9, n. 3). In fact, a motion to dismiss is not a "responsive pleading." *Bowers v. Robinson*, 311 S.C. 412, 414, 429 S.E.2d 799, 800 (1993) (motion to dismiss is not a "responsive pleading" required by SCRCP 15).⁴ An Answer, not a motion, is a "responsive

⁴ The same has long been true under the Federal Rules of Civil Procedure:

The motion to dismiss was not a responsive pleading for the purpose of Rule 15(a), and thus plaintiff could still amend without leave of the court after the motion to dismiss had been made. 3 Moore, Federal Practice (2d ed.) ¶ 15.07[2] at 851-52; 6 Wright, Federal Practice and Procedure §§ 1475, 1483.

Smith v. Blackledge, 451 F.2d 1201, 1203 n. 2 (4th Cir. 1971).

pleading” for setting out affirmative defenses, as SCRCF 7(a) and 8(c) state and as Judge McCutchen understood and required.⁵

The problems with Judge Coble’s order are much more fundamental than the technical rules of pleading, or whether an affirmative defense can properly be submitted to the court via a [never filed] motion to dismiss *when facts are disputed by the defendants*. Even if we assume Respondents had filed a motion to dismiss stating affirmative defenses (rather than merely alluding to affirmative defenses in a memorandum filed in support of a motion that the pleading was “premature”), and even if we further assume Judge McCutchen had not expressly denied that motion, Judge Coble made an error of law by ignoring Judge McCutchen’s order and dismissing the Second Amended Complaint because discovery was mandated. (McCutchen Order at p. 9; e.g., Second Amended Complaint at ¶¶ 4-8, 13 - 15, 52, 80, 88, 100),⁶ *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 340 S.E.2d 546 (1986) requires reversal.

Even if Judge Coble’s order hadn’t improperly overruled Judge McCutchen, Judge Coble’s order would be reversible on the merits, both for failing to construe the Second Amended Complaint in the light most favorable to Loveless, and for failing to accept the allegations as true for purposes of the supposed motion to dismiss.

⁵ As noted in Loveless’ appellant’s initial briefs, the only motion filed by White, Hutchison and Montgomery objected to the Second Amended Complaint as being “premature.” Loveless disputed that any of the Respondents made a proper motion to dismiss on any other ground and Judge Coble ignored it.

⁶ Also, factual issues as to concealment and estoppel as to statute of limitations issues require discovery for the issues to be properly examined by any court. E.g., Second Amended Complaint at, e.g., ¶ 14, 52, 88, 100 as to information produced by defendants only in late 2024. Other factual allegations about overt acts in furtherance are set out in the Appellant’s brief as to White and Hutchison at pp. 15 – 20, and as to Montgomery in the initial brief as to Montgomery at pp. 9-11. Accepting as true the allegations of conduct that extended beyond every defendant’s school board service requires discovery so as to parse what is and what is not a legislative role.

Factual allegations of the Respondents' concealment of certain evidence demonstrating their participation in the conspiracy bear on the statute of limitations issues. E.g., *True v. Monteith*, 327 S.C. 116, 119, 489 S.E.2d 615, 616 (1997) (claim permitted 19 years after client discovered attorney had concealed his conflict of interest); *Grillo v. Speedrite Products, Inc.*, 340 S.C. 498, 532 S.E.2d 1 (Ct. App. 2000) (summary judgment improper when facts were in dispute about when injury accrued). Discovery into those issues is required before they can be properly assessed.

In short, when the discovery rule applies, it requires a more searching factual inquiry into when Loveless "should have known" the role of each of Respondents White, Hutchison, and Montgomery in the elaborate effort to damage Loveless. Neither Judge Coble's order nor any of Respondents' arguments confront those concealment issues. Accepting as true the facts of concealment set forth in the Second Amended Complaint, a factual record must be developed before a court can properly assess whether Loveless could reasonably have discovered each Respondent's involvement. The order of dismissal by Judge Coble should be reversed because he erred in failing to accept as true the allegations of the Second Amended Complaint as to the concealment by Scully and the allegations demonstrating the involvement of White, Hutchison and Montgomery.

Those concealment issues were appreciated by Judge McCutcheon, when he approved amending the complaint and rejected as premature the statute of limitations and other affirmative defenses. Judge Coble's error is not solely his failing to appreciate what was apparent to Judge McCutchen. When the discovery rule is involved, facts must be assessed, and only after a factual record is developed can the discovery rule be properly assessed. When those facts are in dispute,

“[t]he jury must resolve conflicting evidence as to whether a claimant knew or should have known he had a cause of action.” *Maier v. Tietex Corp.*, 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998).

Loveless is entitled to a developed record which includes Answers which state any affirmative defenses (for which Respondents have the burden of proof), Loveless’ reply to any affirmative defenses, and discovery on those affirmative defenses. Only after discovery is motion practice or trial a proper way to resolve any such complex affirmative defenses.

- b. In addressing a motion that had not been properly raised, the trial court did not comply with *Camp v. Camp*.

In their brief, Respondents cite to, and quote from, *Camp v. Camp*, 386 S.C. 571, 575-576, 689 S.E.2d 634, 636-637 (2010), but then ignore that Judge Coble failed to comply with the very language Respondents quote as the standard for handling their lack of a proper written motion. (RIB, pp. 7-8). Judge Coble erred as a matter of law, and that the error prejudices Loveless.

In *Camp v. Camp*, 386 S.C. 571, 575, 689 S.E.2d 634, 636 (2010), the Supreme Court set out the proper consideration for the court when a party tries to argue a ground that had not been properly presented to the court by a written motion, as required by SCRCP 7(b). The pertinent part is this portion:

[W]hen 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.’” “The particularity requirement should not be applied in an overly technical fashion when the purpose behind the rule is not jeopardized.”

Id. (footnotes and citations omitted). Judge Coble did not follow this procedure, and failed to perform the prejudice analysis, which should have included, but did not include, consideration of the conflicting order issued by Judge McCutchen.

As noted above, Judge McCutchen had already determined that discovery was needed to properly assess the statute of limitations issues:

it would be premature for the Court to make a determination on when each cause of action arose, 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.

July 25, 2025 order of Judge McCutchen at p. 9 (emphasis added). Counsel for Mr. Loveless explained to Judge Coble in the February 3, 2026 hearing, there had been “no factual information that [the defendants] put in this record.” (Tr., p. 51, lines 11-14). Judge Coble’s order as to these Respondents conflicts with Judge McCutchen’s order, and Judge Coble has prejudiced Loveless by depriving him of the right Judge McCutchen had granted him: a full factual record on which to address the discovery rule and concealment issues, as discussed *infra*, that apply to the affirmative defenses (statute of limitations, immunity, privilege, issues as to other parties). Respondents simply declare that there is “no prejudice” to Loveless, ignoring that Loveless has been compelled to confront affirmative defenses not properly pleaded and without any of the discovery Judge McCutchen had already ruled Loveless was entitled to before those issues were analyzed. (RIB, p. 9).

By contrast, there is no prejudice to Respondents White, Hutchison, or Montgomery. Each can raise his or her defenses once they include them in a responsive pleading, and after discovery fully fleshes out the factual information that bears on the various affirmative defenses.

III. Assuming the merits of any affirmative defense are properly before the court, facts are needed to properly analyze each affirmative defense: statute of limitations, legislative immunity, and attorney-client privilege.

For the reasons set forth in the initial briefs and above, Judge Coble’s ruling as to each of the affirmative defenses (legislative immunity, statute of limitations, and attorney-client privilege) should be summarily reversed. No motion properly was before Judge Coble, and his ruling conflicted with Judge McCutchen’s 2025 order as to the statute of limitations issue.

Assuming the merits of any of the affirmative defenses are even considered on appeal, as opposed to summarily reversed, Judge Coble’s order as to each should be summarily reversed because for each, a factual record must be developed.

As to legislative immunity, Judge Coble’s analysis (starting at p. 4), and Respondent’s brief (at pp. 9-10), focused on the Second Amended Complaint’s allegation that because a single event, among the many factual details alleged, occurred at a school board meeting in September, 2020, no other analysis is required. The analysis is insufficient, as the Second Amended Complaint also asserts that its allegations “has nothing to do with politics or elected office.” (Second Amended Complaint ¶ 2). As to Respondent White, the Second Amended Complaint alleges that none of the “actions underlying his liability stemmed from his official duties,” and that he resigned from his elected office in 2021 (¶ 4). As to Hutchison, the pleading alleges that her term of elected office

ended in 2020.⁷ (§ 6). The overt events as to the conspiracy among defendants are alleged to have “continued uninterrupted through 2021, 2022, 2023, 2024” and to the present (Second Amended Complaint, § 15).⁸

As to Montgomery, the Second Amended Complaint alleges that he acted outside the scope of his legal services, and none of the actions he is alleged to have taken involving other conspirators⁹ constituted the practice of law, and this has to be accepted as true at this stage. (Second Amended Complaint, § 8). As held in *Stiles v Onorato*, 318 S.C. 297, 299, 457 S.E.2d 601, 602 (S.C. 1995), even if Montgomery had been alleged to have been practicing law, which is disputed, no attorney is “immune for acts taken outside the scope of the professional relationship.” See also, *Stiles v Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (S.C. 1995):

we find that *an attorney may be held liable for conspiracy* where, in addition to representing his client, *he breaches some independent duty to a third person or acts in his own personal interest*, outside the scope of his representation of the client.

(Emphases added). Conceptually, claims against Montgomery for conspiracy are cognizable under South Carolina law, and only when the facts are developed is it proper for the court to analyze the claims for which affirmative defenses have been stated and any reply made in pleading in response to any properly pleaded affirmative defense.

⁷ The timing allegations, accepted as true, contradict the Respondents’ brief at p. 18 that at all times they were “public officials and/or agents.”

⁸ Similarly, at p. 12, Judge Coble’s order concludes that Loveless cannot state a civil conspiracy claim “because of his status as a public official,” ignoring the allegations of the Second Amended Complaint that the events alleged extended into 2024 and (§ 1) that Loveless has been a private citizen since November 2022.

⁹ Detailed in Appellant’s initial brief as to Montgomery at pp. 4 and 9-11.

Judge Coble addressed none of the factual nuances for any of the affirmative defenses he presumed were before him. Each such defense requires factual development, as Judge McCutchen ordered. If the grounds are properly considered on appeal, given Judge McCutchen’s conflicting order, Judge Coble’s order is also properly reversed on each substantive ground for his complete failure to address any of the facts that he was obligated to accept as true, and to construe in the light most favorable to Loveless.

Respondent’s concede that the “discovery rule” applies to the limitations analysis. (RIB, p. 14). As noted above, the Second Amended Complaint alleges overt acts extending each year from 2020 to 2024, with differing degrees of Respondents’ obstruction as to producing information. Paragraph 100 of the Second Amended Complaint alleges production only in November 2024 by Respondent Scully (of emails) and Respondent Montgomery’s (of billing records) that disclosed overt acts in furtherance of the conspiracy.¹⁰

Judge Coble’s order refers to the discovery rule (Order at pp. 3-4) but fails to distinguish what Loveless has now pieced together, with the help of counsel, about the history of the conspiracy versus what he knew at the time of the events alleged. For example, Judge Coble’s order projects what Mr. Loveless “absolutely knew” in 2020, when the Second Amended Complaint alleges Loveless “first discovered” important information in 2024. (Order, p.10). Judge

¹⁰ In addition, Judge Coble makes no mention whatever of the allegations (§§ 14, 52 of the Second Amended Complaint, which must be accepted as true), that Scully was the undisclosed agent of undisclosed principals Respondents White, Dennis-White, and Hutchison, which can also form an independent basis of liability for both principal and agent for the conspiracy committed by either principal or agent. E.g., *Spence v. Spence*, 368 S.C. 106, 126–27, 628 S.E.2d 869, 879–80 (2006); *Little v. Robert G. Lassiter & Co.*, 156 S.C. 286, 153 S.E. 128, 128 (1930); *Builders’ Lumber & Supply Co. v. Cheek*, 139 S.C. 299, 137 S.E. 734, 735 (1927).

Coble erred as a matter of law by assessing “the record before the Court,” (Order at p. 10) when he was obligated to accept the allegations as true.

IV. The trial court’s finding that Loveless relied entirely on the allegations of his other claims to support his civil conspiracy claim is misplaced.

At p. 12 of his order Judge Coble errs as a matter of law, an error Respondents White, Hutchison, and Montgomery argue (RIB, p. 16) that to allege a conspiracy claim “a plaintiff must also allege ‘additional acts’ that are independent of the basis of any other of the plaintiff’s causes of action.” The Respondents claim support for this theory in unreported federal cases and *Hackworth v. Greywood at Hammet, LLC*, 385 S.C. 110, 682 S.E.2d 871, 875 (Ct. App. 2009). The Respondents note (brief at p. 17) that *Hackworth* was overruled by *Paradis*, but erroneously claim *Hackworth* was overruled on other grounds only.

In fact, *Paradis* states plainly the four elements for a civil conspiracy claim,¹¹ which require an overt act in furtherance of the conspiracy but, significantly, does *not* require a fifth element that those overt acts in furtherance be distinct from every other cause of action. *Hackworth* is also overruled in that respect. (In *Paradis* the court stated, “we overrule *Todd* and cases relying on *Todd*,”¹² *Paradis v. Charleston County School District*, 433 S.C. 562, 580, 861 S.E.2d 774, 784 (2021)). This was confirmed in *Griffin v. Giovino*, 446 S.C. 533, 569, 920 S.E.2d 418, 437 (Ct.

¹¹ *Paradis v. Charleston County School District*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021):

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, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff.

¹² Referring to *Todd v. South Carolina Farm Bureau Mutual Insurance Co.*, 276 S.C. 284, 278 S.E.2d 607 (1981). *Hackworth* relied on *Todd* for that “rather than reallege other claims” holding. *Hackworth v. Greywood at Hammett*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009).

App. 2025), where the Court of Appeals affirmed a conspiracy claim when the same facts also supported a different cause of action:

We believe *the same facts* outlined above to support Griffin’s claim for breach of contract accompanied by fraudulent act also support his claim for civil conspiracy.

(Emphasis added). Judge Coble had the benefit of *Griffin v. Giovino*, decided before his order,¹³ and it was an error of law to ignore its plain holding. The pleading requirement for conspiracy is an overt act in furtherance of the agreement to harm, **not** an overt act in furtherance *that is unique to the conspiracy claim*. Judge Coble erred as a matter of law in concluding otherwise and should be summarily reversed.

CONCLUSION

For the reasons set forth above and more fully in the Initial Brief of Appellant, Loveless respectfully requests an Order from this Court reversing Judge Coble’s order of dismissal as to each of Respondent’s White, Hutchison, and Montgomery.

Respectfully submitted,

s/ Desa Ballard

Desa Ballard (SC Bar No. 498)

Haley Hubbard (SC Bar No. 103195)

Law Offices of Desa Ballard

226 State Street

West Columbia, South Carolina 29169

Telephone 803.796.9299

Facsimile 803.796.1066

desab@desaballard.com

haley@desaballard.com

ATTORNEYS FOR APPELLANT

August 20, 2026

¹³ The South Carolina Supreme Court denied *certiorari* in *Griffin* on February 11, 2026 (446 S.C. 533, 920 S.E.2d 418), also prior to Judge Coble’s February 17, 2026 order.