

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Daniel M. Coble, Circuit Judge

Appellate Case No. 2026-000736

RECEIVED

Sep 11 2026

SC Court of Appeals

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 KEVIN SCULLY

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STATEMENT OF ISSUES

- I. Has the Appellant made the required showing of reversible error here, where the circuit judge dismissed the Appellant's civil conspiracy claim on two independent grounds, each of which is supported by the record?**
- II. Does the two-issue rule preclude any potential reversal?**
- III. Where the Appellant was the party that chose to take an early deposition of Respondent Scully and the Appellant was the party that later brought new issues into the case, was it an abuse of discretion for the circuit judge to deny Appellant's motion to compel a second deposition?**
- IV. Where the Appellant has obtained the admissions he sought and yet moved for an unnecessary order and sought attorneys' fees and costs where no discovery rule had been violated, was it an abuse of discretion for the circuit judge to deny Appellant's motion?**

STATEMENT OF THE CASE

This is an appeal by plaintiff Kenneth B. Loveless (“Loveless”) of an order that partially dismissed his complaint against this Respondent, Kevin Scully (“Scully”), and denied Loveless’ motions to deem certain matters admitted and to take a second deposition of Scully. (R. pp. ____; order partially dismissing second amended complaint, etc.) Loveless is a local politician who was a school board member at the time this case was commenced and lost his reelection bid while it has been pending. (R. pp. ____; summons and complaint; deposition of Loveless.) All allegations in the case concern Loveless’ status as a school board member and the statements of others, including Scully, about whether he ought to serve in such a role. (R. pp. ____; summons and complaint; deposition of Loveless.)

Loveless first brought suit against Scully in 2022, asserting only a libel claim, conducted written discovery, and took Scully’s deposition early in the case. (R. pp. ____; complaint; motion compel second deposition of Scully.) In 2024, Loveless amended his complaint to add a cause of action for civil conspiracy with Edward K. White (“Ed White”) and Flora E. “Beth” Hutchison and a cause of action for outrage, otherwise known as intentional infliction of emotional distress. (R. pp. ____; amended complaint.) With new issues in the case, Loveless sought new discovery, in response to which Scully produced new documents that he had not previously produced. (R. pp. ____; motion to compel second deposition of Scully; memorandum in opposition to motion to compel second deposition of Scully; transcript of Feb. 3, 2026, hearing.)

Meanwhile, in October of 2023, Loveless brought a federal district court action against Ed White, Hutchison, Michael Cates, and Michael Montgomery, claiming their violation of his civil rights and White, Hutchison, and Montgomery’s perpetuation of a civil conspiracy,

including with Scully, against Loveless. (R. pp. ____; order dismissing federal action.) The district court dismissed that action on September 20, 2024. (R. pp. ____; order dismissing federal action.) The order permitted Loveless to file an action asserting his state law claims against those same defendants, subject to a federal statutory time limitation of 30 days following the federal dismissal in which the state court action might be filed. (R. pp. ____; order dismissing federal action.) That time period expired on October 20, 2024, without Loveless having filed such a state court action.

On November 15, 2024, Loveless filed a motion to amend his complaint a second time in the instant case, the one had had brought against Scully, to add Ed White, Hutchison, and Montgomery as defendants. (R. pp. ____; motion for second amended complaint.) On January 20, 2025, Loveless filed supplemental motion to amend, seeking to add Ed White's wife, Beatrice Dennis-White, as a defendant along with the others. (R. pp. ____; supplemental motion for second amended complaint.) Though vigorously opposed by the proposed additional defendants, the motion(s) to amend resulted in an order granting Loveless leave to amend and add these parties, and Loveless filed his second amended complaint on August 8, 2025. (R. pp. ____; order granting leave for second amended complaint; second amended complaint.)

The second amended complaint asserted the same libel, civil conspiracy, and outrage claims as the first, with the latter two claims being asserted also against the added defendants. (R. pp. ____; second amended complaint.)

All defendants moved to dismiss the second amended complaint, with Scully also moving to strike on the grounds that Loveless' deposition testimony and a decision of the State Ethics Commission established the truth of statements that Loveless claimed were defamatory.

(R. pp. ____; Scully's motion to dismiss or strike second amended complaint; other motions to dismiss second amended complaint.)

On September 9, 2025, Loveless filed a motion seeking for the court to compel Scully to sit for a second deposition in this case. (R. pp. ____; motion to compel second deposition of Scully.)

On the same day that he filed the motion to compel a second deposition, Loveless served a round of requests to admit on all the defendants. (R. pp. ____; requests to admit filed with motions on October 29, 2025.) Of those requests to admit, the ones served on Scully only sought authentication of documents. (R. pp. ____; requests to admit to Defendant Scully.) Scully did not serve answers to those requests to admit.

On October 29, 2025, Loveless filed a motion seeking not just to deem the requests to Scully admitted but also for attorneys' fees and costs, reading as follows:

Scully has made no effort, to admit or deny Requests to Admit 1 through 13. His blatant refusal to answer even the most basic Requests, those seeking only to authenticate emails and messages to which he was a party, demonstrates a pattern of bad faith. This behavior indicates that Scully intends to be a difficult and obstreperous litigant, aiming to complicate and prolong this litigation unnecessarily. Loveless respectfully urges the Court to put an end to these tactics and to deem Requests 1 through 13 admitted.

Alternatively, the Court should issue an order requiring Scully to thoroughly review and research his emails and text messages to provide adequate responses to the Requests. Furthermore, Scully should be ordered to pay Loveless' reasonable attorney fees incurred in seeking compliance with basic obligations in this matter. Scully is required to comply with discovery obligations.

Loveless expressly reserves the right to submit an affidavit of attorney's fees following the hearing of this motion.

(R. pp. ____; motion to deem requests to Scully admitted.) The motion lacked any statement concerning pre-motion consultation as contemplated by Rule 11, SCRCP. (R. pp. ____; motion to deem requests to Scully admitted.)

These motions came before the court at a hearing on February 3, 2026. (R. pp. ____; order partially dismissing second amended complaint.) At the hearing, Loveless’ main opposition to Scully’s motion to dismiss or strike was that earlier denials of dispositive motions Scully had made precluded Scully from moving for the dismissal of the second amended complaint. (R. pp. ____; transcript of Feb. 3 hearing.) At the hearing, Loveless’ contention on the motion to compel a second deposition of Scully was that Scully had made the issues in the case change. (R. pp. ____; transcript of Feb. 3 hearing.) At the hearing, Loveless’ argument in favor of his motion to deem the requests admitted and be awarded attorneys’ fees and costs was that “the rules” require the court to enter an order deeming requests under Rule 36, SCRCP, admitted in these circumstances. (R. pp. ____; transcript of Feb. 3 hearing.)

The trial court dismissed the second amended complaint as to the added defendants on legislative immunity and statute of limitations grounds. (R. pp. ____; orders dismissing other defendants.) The court also issued the appealed order that partially granted and partially denied Scully’s motion to strike and dismiss, dismissing the civil conspiracy claim, denied Loveless’ motion to take a second deposition of Scully, and denied Loveless’ motion to deem the requests to Scully admitted and make Scully pay attorneys’ fees and costs. (R. pp. ____; order partially dismissing second amended complaint.)

Loveless moved to reconsider. (R. pp. ____; motion to reconsider as to Scully.) The circuit judge denied that motion. (R. pp. ____; order denying motion as to Scully.)

This appeal followed.

STANDARDS OF REVIEW

“In 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.” Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (citation omitted). The ruling on a motion to dismiss for failure to state facts sufficient to constitute a cause of action must be based solely upon the allegations set forth in the pleading. Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601 (1995). In deciding a 12(b)(6) motion, a court deems all of the complaint’s well pled factual allegations as true for the purposes of deciding the motion; however, conclusions of law and other summary, conclusory allegations stated in the complaint are not deemed admitted for the motion’s purposes. See Fields v. The Melrose Ltd. Partnership, 312 S.C. 102, 104, 439 S.E.2d 283, 284 (Ct. App. 1993); Carolina Winds Owners Ass’n. v. Joe Harden Builder, 297 S.C. 73, 76, 374 S.E.2d 897, 899 (Ct. App. 1988). “The motion cannot be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case.” Dye v. Gainey, 320 S.C. 65, 67-68, 463 S.E.2d 97, 98-99 (Ct. App. 1995).

“A trial court's ruling on a discovery matter will not be disturbed on appeal except where there is an abuse of discretion” and “the burden is upon the party appealing from the order to demonstrate the trial court abused its discretion.” Owens v. Stirling, 438 S.C. 352, 882 S.E.2d 858 (2023).

ARGUMENT

I. Loveless has missed the point when it comes to the inability of Scully to be in a civil conspiracy with those who cannot be in a civil conspiracy with him.

Loveless makes one argument on appeal about the propriety of the trial court’s determination that the added defendants’ inability as a matter of law to be in the claimed civil conspiracy with Scully. Loveless contends that the trial court based its decision on an idea that

joint tortfeasors have to be parties to an action and their absence means the action must be dismissed against the named alleged tortfeasor.

Loveless has misread the appealed order. (R. pp. ____; order partially dismissing second amended complaint.) Judge Coble did not rely for his decision on any idea about joint tortfeasors being parties or not. (R. pp. ____; order partially dismissing second amended complaint.) As to this point, rather, the appealed order decides that a civil conspiracy claim will not lie against Scully because “it does not appear possible that Defendant Scully could have been in an actionable civil conspiracy with people the court has determined as a matter of law are not liable on the Plaintiff’s civil conspiracy claim.” (R. pp. ____; order partially dismissing second amended complaint.) This decision did not rest solely on a statute of limitations dismissal but also on other defendants’ dismissal for reasons of legislative immunity. (R. pp. ____; order partially dismissing second amended complaint.) It was not the presence or absence of these other supposed tortfeasors as parties that drove the court’s decision; rather, it was their inability as a matter of law to be in the alleged conspiracy. (R. pp. ____; order partially dismissing second amended complaint.) Loveless does not address this in his brief as to Scully.

Loveless argues with a straw man. He contends Judge Coble committed error because Judge Coble concluded that the absence of the other defendants from the case made the civil conspiracy claim against Scully nonviable – but that is not what Judge Coble concluded and not what his order states. (R. pp. ____; order partially dismissing second amended complaint.) The only one who has mentioned anything about the absence of ostensible joint tortfeasors is Loveless, not the court. (R. pp. ____; order partially dismissing second amended complaint; motion to reconsider as to Scully.) What drove the court’s decision is that liability of the other

claimed civil conspirators was decided against Loveless as a matter of law – on more than just statute of limitations grounds. (R. pp. ____; order partially dismissing second amended complaint.)

Loveless has not shown reversible error.

II. Loveless has attempted to fill the damages gap with allegations that do not supply the existence of proximately caused damages.

“[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.” Paradis v. Charleston Cnty. Sch. Dist., 433 S.C. 562, 861 S.E.2d 774, 780 (2021). The trial court here determined that the second amended complaint failed to make factual allegations from which a reasonable inference may be drawn that Loveless suffered any damages as a result of the conspiracy he claims. (R. pp. ____; order partially dismissing second amended complaint.)

As the trial court found, the second amended complaint lacks allegations of facts indicating that the claimed conspiracy actually damaged Loveless. (R. pp. ____; order partially dismissing second amended complaint; second amended complaint.) It does contain a conclusory allegation that he suffered “public ridicule” and “humiliation” as a result of the “press release” document being created, but there are no facts pled that would support that. (R. pp. ____; Second Amended Complaint ¶ 114.) Further, it does not make sense, in light of the rest of the pleading, to think there are facts to support that conclusory allegation. There are no allegations that any media outlet published the press release or used anything from it in any article, news story, editorial, or anything else. (R. pp. ____; Second Amended Complaint.) Based on what is and is not pled in the second amended complaint, the press release could not

have caused Loveless to be ridiculed and humiliated by the public because the public was never provided with the press release or any of its contents. (R. pp. ____; Second Amended Complaint.) The second amended complaint alleges no facts by which the public might have become aware of the press release or the statements that Loveless dislikes in it. Loveless may be entitled to reasonable inferences, but he is not entitled to unreasonable ones. See Fields, 312 S.C. at 104; Carolina Winds, 297 S.C. at 76.

And so Loveless scours his pleading for some other indication that he suffered any damages as a result of the claimed conspiracy. He has not found any. Let us go down the list Loveless has made:

- Paragraph 48: This is simply an allegation that the press release was issued, and the rest of the pleading clarifies that issuance was to media outlets, not to the public.
- Paragraph 55: This is an allegation that the ostensible conspiracy distributed false information through a Facebook group, not any allegation that this harmed Loveless.
- Paragraph 59: Loveless alleges that unidentified people have made numerous “public media posts” making what he claims are false accusations against him, but missing are allegations causally linking any claimed conspiratorial conduct to why those third persons made those posts.
- Paragraph 68: Nothing is pled in this paragraph to the effect that Loveless suffered damages as a result of anything the claimed conspiracy did. It is at best an allegation that the conspiracy “prompted” – not caused – the filing of an ethics commission complaint against Loveless. Loveless offers no legal

support for the idea that the existence of a legal proceeding is damages, and he does not allege in this paragraph some harm befell him.

- Paragraph 74: This is an allegation that Scully has made false and defamatory statements about Loveless, not that Loveless suffered some harm because of them.
- Paragraph 114: This is the paragraph in the second amended complaint that Judge Coble's order spoke to as the closest the pleading comes to alleging damages. As Judge Coble observed, this is a conclusory allegation of causation, and the second amended complaint is missing factual allegations that would make it reasonable to infer public ridicule and humiliation flowed from the existence of a document the public was never shown. The mere existence of "defamatory statements" as alleged in the paragraph does not speak to whether the plaintiff has suffered any damages because of them. (R. pp. ____; order partially dismissing second amended complaint; second amended complaint.)
- Paragraph 115: This is an allegation that Facebook groups contained numerous "falsehoods about Loveless," not that they caused Loveless any harm.
- Paragraph 116: "The unlawful conspiracy against Loveless has caused Loveless irreparable and permanent harm personally and professionally and in the social community." This is the very essence of the kind of conclusory allegation that courts are not to take as true when analyzing a motion to dismiss. See Fields, 312 S.C. at 104; Carolina Winds, 297 S.C. at 76. No facts are alleged; just a conclusion that, in light of what is and is not *factually* stated in the second amended complaint, does not make sense.

(Loveless' Appellant's Brief as to Respondent Scully; R. pp. ____; second amended complaint.)

Even if some civil conspiracy existed, it is not actionable unless it proximately caused Loveless to suffer damages. Paradis, 861 S.E.2d at 780. Allegations of fact from which a reasonable reader could conclude Loveless was *harmed* as the direct and proximate result of any conspiracy are conspicuously absent from his pleading, even on its second go-round.

Loveless has not shown reversible error.

III. Discovery rulings are not appealable, typically, and the instant case is no exception.

Discovery orders are, usually, not appealable. Orders on discovery matters “are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right.” Grosshuesch v. Cramer, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008); accord Hamm v. S.C. Pub. Serv. Comm’n, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994). Further, as discussed below, Loveless is not aggrieved in the appellate law sense under Rule 201, SCACR, and he is not “aggrieved” in any broader sense by Judge Coble’s rulings on his discovery-related motions. Scully does not understand how an appeal of them would lie here. The discovery rulings did not affect any decision on the merits. (R. pp. ____; order partially dismissing second amended complaint.)

IV. The record does not show departure by the court from any legal requirements when it comes to requests to admit, and Loveless has the admissions he sought.

Loveless’ appeal on the requests to admit issue is much ado about nothing. The circuit court did not deviate from any legal requirements in making its decision to deny a motion that sought to sanction Scully for giving Loveless the admissions Loveless sought.

Rule 36(a), SCRCP, provides that, when a request to admit is served, the matter requested to be admitted “is admitted unless, within 30 days after service of the request, . . . the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter[.]” Loveless has the admissions he sought from Scully. No order is required to make those already existing admissions into admissions. Id. Scully has not violated any discovery rule in this regard. Loveless asked the trial court to deem already-admitted matters admitted. Id. There was nothing for the court to address, other than perhaps Loveless’ lack of Rule 11 consultation and meanspirited, unfounded attacks on Scully. (R. pp. ____; motion to deem requests to Scully admitted.)

Loveless has not shown he is aggrieved, much less that Judge Coble committed an abuse of discretion.

V. The court is never required to order the second deposition of a party, and Judge Coble appropriately exercised his discretion in denying that request.

In the subsection of the rule titled “Limitations,” Rule 30, SCRCP, expressly limits the number of depositions to one per deponent, absent consent or the showing of good cause. “The deposition of any party or witness may only be taken one time in any case except by agreement of the parties through their counsel or by order of the court for good cause shown.” Rule 30(a)(2), SCRCP. “Under Rule 30(a)(2), SCRCP, a witness’s deposition may only be taken one time in any case ‘except by agreement of the parties . . . or by order of the court for good cause shown.’” Paschal v. Causey, 306 S.C. 206, 210 n. 2, 420 S.E.2d 863, 866 n. 2 (Ct. App. 1992).

All Loveless offers up in this regard is that Loveless himself added new issues to the case and that Loveless would like to ask some questions about those new issues and about some documents he sought and obtained after the deposition had concluded. If that were good

cause to take someone's deposition more than once, ordinary cases would be littered with depositions being taken multiple times. They are not. Loveless has not shown he will suffer any prejudice if the court does not reverse Judge Coble's decision on this discovery matter and give him the opportunity to take a second bite of the deposition apple. If any of this currently unshown prejudice materializes, that will be a result of Loveless having chosen to change the issues long after Loveless chose to take Scully's deposition. That is not good cause. When one makes a bed, poorly or well, usually the thing to do is lie in it. Loveless made this bed. No one made him take Scully's deposition so early in the case, but he decided to take his one bite at the apple then. Now he regrets his decision. That is not an abuse of discretion by the trial court.

It might be different if *Scully* had added new issues to the case. Here, Loveless added new mud to the water and now runs to the court, saying, "I need a second deposition to see through this mud."

The usual rule, which is that a person's deposition gets taken only once, applies here. Rule 30(a)(2), SCRCP; Paschal, 306 S.C. at 210 n. 2. Loveless has not shown that Judge Coble abused his discretion in denying Loveless an extraordinary opportunity not typically allowed under the governing rule. Rule 30(a)(2), SCRCP.

VI. Loveless' arguments now are different from what they were below and are not preserved for review.

Scully asks that this court review the transcript of the hearing that produced the appealed order. (R. pp. ____; transcript of Feb. 3 hearing.) This court is not likely to see arguments there that are similar enough to what Loveless argues now to be preserved. Some of the appellate arguments were made for the first time in Loveless' motion to reconsider. (R. pp. ____; motion to reconsider as to Scully.) Some are made for the first time now.

To be preserved for appellate review, an argument must have been both raised to and ruled upon by the trial court and not raised for the first time in a motion to reconsider, unless the subject order created the new issue. E.g., Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998); Vespazziani v. McAlister, 307 S.C. 411, 413, 415 S.E.2d 427, 428 (Ct. App. 1992). A party's unpreserved arguments cannot prevail on appeal. E.g., Hatfield v. Hatfield, 327 S.C. 360, 367, 489 S.E.2d 212, 216 (Ct. App. 1997).

At the hearing that resulted in the appealed order, Loveless' main opposition to Scully's motion to dismiss or strike was that earlier denials of dispositive motions Scully had made precluded Scully from moving for the dismissal of the second amended complaint – which is nothing like the arguments Loveless makes now. (R. pp. ____; transcript of Feb. 3 hearing.) At the hearing, Loveless' argued, without anything to support that contention, that Scully had made the issues in the case change and that is why Loveless should get to depose Scully twice. (R. pp. ____; transcript of Feb. 3 hearing.) At the hearing, Loveless' argued that “the rules” require the court to enter an order deeming requests under Rule 36, SCRPC, admitted when they are admitted. (R. pp. ____; transcript of Feb. 3 hearing.)

Loveless cannot succeed on his unpreserved arguments. He is wrong about them, to be sure, but they never get out of the gate.

VII. The effect of the two-issue rule.

“Where a decision is based on two grounds, either of which, independent of the other, is sufficient to support it, it will not be reversed on appeal because one of those grounds is erroneous.” Dwyer v. Tom Jenkins Realty, 289 S.C. 118, 120, 344 S.E.2d 886, 888 (Ct. App. 1986).

Here, the dismissal of the civil conspiracy claim against Scully was grounded in two independent things: 1) legal inability of the other defendants to be in a civil conspiracy with Scully and 2) the absence of pled facts from which one could reasonably infer the claimed conspiracy caused Loveless to suffer damages. (R. pp. ____; order partially dismissing second amended complaint.) Since Loveless does not address the first ground, having mistaken it for something else, Judge Coble's decision would have to be affirmed even if Loveless were right, which he is not, about the second.

Loveless has not shown reversible error here.

CONCLUSION

Loveless has not shown reversible error was committed by the trial court. Judge Coble's order should be affirmed.

Respectfully submitted,

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I certify that I have served the foregoing initial brief on the date given below by
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