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SC Court of Appeals

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

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable B. Alex Hyman
Circuit Court Judge

APPELLATE CASE NO. 2026-000708

Joseph N. Grate,

APPELLANT,

v.

David A. Anderson, James J. Winebrake, and
Coastal Carolina University,

RESPONDENTS.

INITIAL BRIEF OF RESPONDENTS JAMES J. WINEBRAKE
AND COASTAL CAROLINA UNIVERSITY

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COUNTER-STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT PROPERLY GRANT RESPONDENTS JAMES J. WINEBRAKE AND COASTAL CAROLINA UNIVERSITY'S MOTION TO DISMISS ON THE GROUNDS THAT APPELLANT FAILED TO PROPERLY SERVE THESE RESPONDENTS, APPELLANT FAILED TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION AGAINST THESE RESPONDENTS, ANOTHER ACTION WAS PENDING BETWEEN THE SAME PARTIES FOR THE SAME CLAIM, AND APPELLANT'S CLAIM FOR PUNITIVE DAMAGES AND INTEREST IS BARRED AS A MATTER OF LAW?**

- II. SHOULD THIS COURT REJECT ANY ANCILLARY ISSUES RAISED BY APPELLANT AS BEING WITHOUT MERIT?**

STATEMENT OF THE CASE

Appellant Joseph N. Grate (“Appellant” or “Grate”) filed this purported tort action on August 27, 2025, arising out of his dissatisfaction with the enrollment and registration process at Respondent Coastal Carolina University (“CCU”). (Compl., ¶¶ (I) 4-12, R. __). Grate claims that he has made several complaints regarding health, safety, and welfare to CCU and one complaint regarding life safety to SLED and the FBI. (*Id.*, ¶¶ (I) 7-10, R. __). Grate further claims that that he is being blocked from registration for online classes at CCU based on the allegedly “erroneous position” that he has an account deficit of more than \$4,000.00. (*Id.*, ¶ (I) 13, R. __). Grate alleges an impact on his “Top-Secret and Q-Clearances” and certain certifications. (*Id.*, ¶ (I) 15, R. __).

Appellant’s Complaint names CCU as a defendant, along with its current president, Respondent James J. Winebrake (“Winebrake”) (together with CCU, the “CCU Respondents”). Appellant also named as a defendant CCU’s outside legal counsel, Respondent David A. Anderson (“Anderson”). Notably, Anderson represents CCU in a parallel lawsuit that Grate filed in Georgetown County. *See Joseph N. Grate v. Michael T. Benson, Linwood Jesse Rouse, Sam Sullivan / Samantha Sullivan, Coastal Carolina University*, Case No. 2025-CP-22-00606 (“*Grate I*”). Appellant filed *Grate I* approximately three months before the instant lawsuit. *Grate I* also includes allegations regarding Appellant’s purported issues with enrollment, registration, and financial status. (*See, e.g., Grate I* Compl., ¶¶ 1, 4, R. __). *Grate I* also names CCU as a defendant, along with its then-president, Michael T. Benson, and two other administrative employees. *Grate I* was dismissed by the circuit court on August 12, 2025. Appellant has appealed the dismissal of *Grate I* to this Court. (*See* S.C. Court of Appeals Case No. 2025-

001787).¹

The instant lawsuit does not delineate a specific cause of action but appears to assert a negligence-based tort claim, seeking a judgment of \$9 million against each individual defendant and \$18 million against CCU, along with interest and punitive damages. (Compl., ¶ (II) 6, R. ____). Anderson moved to dismiss on September 23, 2025. (Motion to Dismiss, R. ____). The CCU Respondents moved to dismiss on September 30, 2025, arguing improper service, failure to state a claim, and the existence of another action pending between the same parties for the same claims. (Motion to Dismiss, R. ____). The CCU Respondents also argued that Grate's claims for interest and punitive damages were barred as a matter of law under the South Carolina Tort Claims Act. Grate filed a motion for summary judgment. The circuit court heard all motions on February 4, 2026. (Transcript, R. ____). On February 6, 2026, the circuit court issued a Form 4 Order, granting Respondents' motions to dismiss and denying Appellant's motion for summary judgment. (Form 4, R. ____). The circuit court entered its formal order on February 10, 2026. (Order, R. ____). This appeal followed.

¹ This Court may take judicial notice of the filings in *Grate I*. See Rule 201, SCRE; *Wise v. Wise*, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011) ("A court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records"); *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984).. This is different from allowing Grate to include material in the record on appeal that was not submitted to the circuit court in this case or in *Grate I*. To the extent he intends to do so, the CCU Respondents maintain their continuing objection to the same, as raised in the motion to strike filed May 29, 2026.

STANDARD OF REVIEW

The CCU Respondents moved to dismiss under Rules 12(b)(5), 12(b)(6), and 12(b)(8) of the South Carolina Rules of Civil Procedure. Generally, “[i]n reviewing a motion to dismiss, [the appellate court] applies the same standard of review as the [circuit court].” *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 6, 732 S.E.2d 876, 878 (2012).

Rule 12(b)(5), SCRCP, governs the dismissal of a lawsuit due to “insufficiency of service of process.” “Rule 12(b)(5) is the proper vehicle for challenging both the mode of delivery or the lack of delivery of the summons and complaint.” *Unisun Ins. v. Hawkins*, 342 S.C. 537, 543, 537 S.E.2d 559, 562 (Ct. App. 2000) (internal quotations omitted). With regard to service, “[t]he trial court’s findings of fact regarding validity of service of process are reviewed under an abuse of discretion standard.” *Christian v. Healy*, 435 S.C. 507, 510, 868 S.E.2d 403, 405 (Ct. App. 2021).

Rule 12(b)(6), SCRCP, allows a defendant to file a motion to dismiss for “failure to state a claim upon which relief can be granted.” “Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint.” *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 277-78, 648 S.E.2d 295, 298 (Ct. App. 2007) (internal citations omitted). “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.” *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct. App. 2010).

Rule 12(b)(8), SCRCP, provides a basis for dismissal when “another action is pending between the same parties for the same claim.” “While [the appellate court] utilize[s] the same standard of review as the circuit court in scrutinizing the application of Rule 12(b)(8), each of the

components of the rule are determined as a matter of law and thus [the appellate court] appl[ies] a de novo standard of review to the grant or denial of this motion.” *Cap. City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009).

The CCU Respondents also moved to dismiss and/or strike Grate’s request for interest and punitive damages. Rule 12(f), SCRPC, provides that a Court may strike from any pleading any “redundant, immaterial, impertinent or scandalous matter.” “A motion to strike under Rule 12(f), SCRPC, which challenges a theory of recovery in the complaint, is in the nature of a motion to dismiss under Rule 12(b)(6), SCRPC.” *Grazia v. S.C. State Plastering, LLC*, 390 S.C. 562, 567, 703 S.E.2d 197, 199 (2010). As noted above, in reviewing such motions, the appellate court applies the same standard as the circuit court.

ARGUMENT

I. THE CIRCUIT COURT’S ORDER SHOULD BE AFFIRMED BECAUSE APPELLANT FAILED TO PROPERLY SERVE THE CCU RESPONDENTS, FAILED TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION AGAINST THE CCU RESPONDENTS, ALREADY HAS ANOTHER ACTION PENDING AGAINST CCU AND ITS PRESIDENT, AND OTHERWISE CANNOT PURSUE THE RECOVERY OF PUNITIVE DAMAGES AND INTEREST.

The circuit court properly found that Appellant’s case against the CCU Respondents fails for three independent reasons, any one of which is sufficient for affirmation. Additionally, the circuit court correctly found that Appellant cannot recover punitive damages and interest as a matter of law.

A. Appellant’s Case Was Properly Dismissed Due to Insufficient Service of Process Under Rule 12(b)(5), SCRCP.

Appellant failed to properly serve the CCU Respondents. In his brief, Appellant appears to argue that service was accomplished via certified mail on all Respondents and that CCU was subject to such service as a “corporation.” Appellant’s argument is misplaced.

1. Appellant did not establish proper service on Winebrake.

Appellant’s brief does not specifically address service upon Winebrake, but Grate apparently contends he was adequately served by certified mail. Service by certified mail requires that it be sent “return receipt requested and delivery restricted to the addressee.” Rule 4(d)(8), SCRCP. Grate’s “proof of service” does not state that his certified mailing was sent in the prescribed manner. (R. __). Regardless, Rule 4(d)(8) states that service is effective “upon the date of delivery as shown on the return receipt.” The record contains no return receipt. Accordingly, Plaintiff has not shown proper service on Winebrake. *See Christian v. Healy*, 435 S.C. 507, 511, 868 S.E.2d 403, 405 (Ct. App. 2021) (affirming dismissal under Rule 12(b)(5) where party claiming service by certified mail failed to produce return receipt).

2. Appellant did not establish proper service on CCU.

Appellant's argument as to CCU appears to rest on the incorrect assumption that CCU is a private corporation. Grate cites to CCU's enabling legislation as a "body corporate and politic" for the proposition that it may "sue and be sued by the corporate name." *See* S.C. Code Ann. § 59-136-130. While it is true that CCU may sue and be sued in its own name, this does not change the fact that CCU is a state governmental agency. *See* S.C. Code Ann. § 59-136-100 (establishing CCU as an "institution of higher learning of the State of South Carolina"); S.C. Code Ann. § 59-136-110 (providing that the board of trustees shall be appointed by the General Assembly and the Governor); S.C. Code Ann. § 15-78-30(a) (defining "agency" for purposes of the South Carolina Tort Claims Act to include "a state-supported governmental . . . school, college, university, or technical college) (emphasis added).

As a state agency, CCU must be served under Rule 4(d)(5), SCRCP (state officer or agency). Rule 4(d)(5) requires, *inter alia*, "delivering a copy of the summons and complaint to such officer or agency." Grate claims that CCU was served by certified mail under Rule 4(d)(8), SCRCP. Rule 4(d)(8), however, only extends to those defendants covered by Rules 4(d)(1) (competent individuals) and 4(d)(3) (corporations and partnerships). It does not extend to defendants covered by Rule 4(d)(5) (state officer or agency). Accordingly, service by certified mail is insufficient as to CCU.

Further, as noted above, service under Rule 4(d)(8) must be sent "return receipt requested and delivery restricted to the addressee" and is effective "upon the date of delivery as shown on the return receipt." Appellant has not shown that a certified mailing was sent in the required manner and has not filed any return receipt. Accordingly, Plaintiff has not established service on CCU even if it could be served by certified mail. *See Christian*, 435 S.C.

at 511, 868 S.E.2d at 405. Accordingly, the circuit court properly dismissed the Complaint under Rule 12(b)(5) and should be affirmed.²

B. Appellant's Case Was Properly Dismissed Due to the Failure to State a Claim under Rule 12(b)(6), SCRPC.

The circuit court properly concluded that the Complaint fails to state the elements of any discernable cause of action against the CCU Defendants. Rule 8(a)(2), SCRPC, requires a plaintiff to set forth a “short and plain statement showing that [he is] entitled to relief.” The Complaint in this case, however, reflects nothing more than scattershot factual allegations and unfounded legal conclusions.

Appellant's brief offers no meaningful clarification of his intentions, though he appears to take issue with the application of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.* (the “SCTCA”) and goes on to list – without any legal authority – what he perceives to be the duty of Winebrake as President of CCU. (Appellant's brief, pp. 6, 9). Grate is plainly wrong to the extent he challenges the applicability of the SCTCA and offers nothing to overcome the circuit court's sound reasoning with regard to the absence of a legal duty.

First, as noted above, the SCTCA squarely applies to cases involving torts against state-supported universities such as CCU. S.C. Code Ann. § 15-78-30(a) of the SCTCA defines “agency” to mean the “state-supported governmental . . . school, college, university, or technical college, which employs the employee whose act or omission gives rise to a claim under this

² In the section labeled “improper service,” Appellant's brief states that “CCU delegated all legal matters to Defendants Anderson.” To the extent this conclusory statement could be construed as arguing that service on Anderson was somehow service on CCU, it is without merit. Anderson represents CCU in *Grate I*, not in this action. Either way, service upon an attorney for a party is only effective for pleadings and papers “subsequent to service of the original summons and complaint.” See Rule 5(b)(1), SCRPC. In any event, Appellant offers insufficient support for this position to be considered on appeal. See *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) (noting that “short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review”).

chapter.” (emphasis added). S.C. Code Ann. § 15-78-30(e) defines “state” to mean South Carolina and any of its “agencies . . . instrumentalities . . . and institutions, including state-supported governmental schools, colleges, universities, and technical colleges.” (emphasis added). Under S.C. Code Ann. § 15-78-40, “[t]he State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained [in the SCTCA].” Grate cites no law to the contrary, nor can he, as the applicability of the SCTCA to this case is beyond cavil. *See, e.g., Martin v. Clemson Univ.*, 654 F. Supp. 2d 410, 426 (D.S.C. 2009) (noting that the “SCTCA specifically defines Clemson (and all other state-supported colleges and universities) as the ‘State’ and a ‘state agency’”).

Because the SCTCA applies to this matter, the circuit court properly found that Winebrake is entitled to summary dismissal as an individual defendant. Under the SCTCA, a plaintiff shall name “only the agency or political subdivision for which the employee was acting.” S.C. Code Ann. § 15-78-70(c) (emphasis added); *see also* S.C. Code Ann. § 15-78-70(a) (“An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable . . .”). Here, Grate’s claim against Winebrake centers on the allegation that he was “negligent in his duties and responsibilities” as the president of CCU. (Compl., ¶ (II) 2, R.__). The Complaint names Winebrake only because he is the current president of CCU.³ (*Id.*, ¶ (I) 5, R.__). Appellant’s brief does not offer any substantive opposition to this point. Accordingly, the circuit court’s dismissal of Winebrake should be affirmed. *See Flateau v. Harrelson*, 355 S.C. 197, 204-06, 584 S.E.2d 413, 417 (Ct. App. 2003)

³ Indeed, the allegations neither expressly nor discernably arise from events that occurred during the time Winebrake was present (July 7, 2025-present).

(“The remedy mandated in the Act is legal action initiated against the governmental entity rather than the individual governmental employee”); *State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011) (“An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority”).

Second, to the extent Grate purports to bring a negligence claim against CCU, the circuit court correctly found that no legal duty exists to support such a claim. It is axiomatic that a plaintiff pursuing negligence must establish the following elements: “(1) that defendant owed a plaintiff a duty of care; (2) that by some act or omission, defendant breached that duty; and (3) that as a proximate result of the breach, the plaintiff suffered damage.” *Oulla v. Velazques*, 427 S.C. 428, 439, 831 S.E.2d 450, 455 (Ct. App. 2019). “The court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law.” *Id.*; see also *Hendricks v. Clemson Univ.*, 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003) (“The determination of the existence of a duty is solely the responsibility of the court”).

Appellant points to nothing that would overcome his failure to identify a legally cognizable duty in this case. In his brief, Grate generally contends that the president of a university has duty to foster a supportive environment, manage daily operations, and provide leadership and direction. (Appellant’s brief, p. 9). Grate cites no authority, however, for the proposition that these general responsibilities somehow give rise to a duty of care that would support an action against CCU for money damages based on the alleged “non-action” of a university president. See *Montgomery Holdings, LLC v. Merlo*, 447 S.C. 502, 521, 928 S.E.2d 746, 756 (Ct. App. 2026) (concluding that an argument consisting of a sentence with no citation to authority would be considered abandoned on appeal). In reality, no such duty exists at

common law, or otherwise. *See generally Hendricks*, 353 S.C. at 458, 578 S.E.2d at 715 (reviewing the law applicable to duties in the educational context and “recognizing a duty flowing from advisors to students is not required by any precedent and would be unwise, considering the great potential for embroiling schools in litigation that such recognition would create”). Accordingly, the circuit court properly dismissed this case under Rule 12(b)(6) and should be affirmed.

C. Appellant’s Case Was Properly Dismissed as a Duplicative Action Under Rule 12(b)(8), SCRCP.

The circuit court properly applied Rule 12(b)(8) as an additional basis for dismissing Appellant’s Complaint. Rule 12(b)(8), SCRCP, provides for dismissal when “another action is pending between the same parties for the same claim.” “To prevail on a motion to dismiss pursuant to Rule 12(b)(8), the movant must show that the actions in question are between the same parties in their same capacities.” *Cricket Cove*, 390 S.C. at 322, 701 S.E.2d at 44.

Here, Grate filed the instant case against CCU on August 27, 2023 – just three months after filing *Grate I* against CCU on May 27, 2023. (Compl. in *Grate I*, R. __). The public record establishes that *Grate I* is a case between Appellant and CCU in their same capacities as the present case. While Grate named the current university president in the instant action and the prior president in *Grate I* (along with other employees), the individuals are improper defendants under the SCTCA. Regardless, they are named as administrators of CCU in both cases, and both cases center on Grate’s alleged issues with his enrollment, registration, and financial status. (Compl. in *Grate I*, R. __). Grate has not demonstrated otherwise.

At the hearing on this matter, the circuit court gave Grate every opportunity to opine as to any specific differences between the claims in the two cases. In response, Grate baldly asserted that the two cases were different and refused to provide any specifics. (Transcript, pp. 16-20, R.

___). In short, rather than offering any substantive argument, Grate chose to rely upon an “objection” to any consideration of *Grate I*, even though that is the only way to evaluate an argument under Rule 12(b)(8):

THE COURT: And I guess what I’m asking you is what are the differences between that case and this case?

MR. GRATE: My answer to Your Honor – following my objection to the whole question – I’m saying that it is totally irrelevant. That is not an issue. I understand Your Honor says he has to deal with it because they brought it up. Perhaps the way for Your Honor to deal with it is to just consider my objection on the basis that it is irrelevant, and rule on that fashion. It is irrelevant. I object to them bringing it in.

THE COURT: So I shouldn’t in any way even look at the documents?

MR. GRATE: No, sir. It has nothing to do with this case.

(Transcript, pp. 19-20, R. ___).

In similar fashion on appeal, Appellant’s brief offers no argument – much less citation to legal authority – in response to the circuit court’s dismissal under Rule 12(b)(8). Accordingly, Grate has effectively conceded the issue and waived any challenge to it on appeal. *See Cowburn v. Leventis*, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005) (“In order for an issue to be preserved for appellate review, with few exceptions, it must be raised and ruled upon by the trial judge”); *Glasscock*, 348 S.C. at 81, 557 S.E.2d at 691 (finding that conclusory arguments are abandoned and cannot be made in reply if not addressed in initial briefing); *Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct.App.1993) (“An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court.”) For these reasons, the circuit court properly dismissed this case as a duplicative action under Rule 12(b)(8) and should be affirmed.

D. Appellant’s Prayer for Punitive Damages and Interest Was Properly Dismissed as a Matter of Law.

Though this Court need not reach the issue as the case was properly dismissed in full for each of the foregoing reasons, the circuit court correctly found that Appellant’s claims for punitive damages and interest should be stricken as improper under Rule 12(f), SCRCp, and/or dismissed under Rule 12(b)(6), SCRCp. Claims for punitive damages and interest are barred by the plain language of the SCTCA. Specifically, pursuant to S.C. Code Ann. § 15-78-120(b), “No award for damages under this chapter shall include punitive or exemplary damages or interest prior to judgment.” Grate has offered no meaningful opposition to this argument, nor can he. *See Charleston Cnty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 7, 437 S.E.2d 6, 9 (1993) (recognizing “[n]o punitive damages are recoverable under the State Tort Claims Act”). Accordingly, the order of the circuit court should be affirmed on this ground as well.

II. THIS COURT SHOULD REJECT ANY ANCILLARY ISSUES RAISED BY APPELLANT AS BEING WITHOUT MERIT.

Appellant attempts to raise some ancillary issues in his brief. Grate states that the Court should review the denial of his motion for summary judgment, but he offers neither procedural nor substantive support for its consideration on appeal. Procedurally, “it is well-settled that an order denying summary judgment is never reviewable on appeal” *Click Props., LLC v. Thomas SC Props., LLC*, 445 S.C. 468, 483, 914 S.E.2d 488, 495–96 (Ct. App. 2025), *reh’g denied* (Apr. 10, 2025), *cert. denied* (Sept. 23, 2025); *see also Ballenger v. Bowen*, 313 S.C. 476, 476, 443 S.E.2d 379, 380 (1994) (“This Court has repeatedly held that the denial of summary judgment is not directly appealable”). Accordingly, the denial of Grate’s motion for summary judgment is not the proper subject of appellate review.

In addition to the absence of appealability, Grate’s motion for summary judgment is moot

in light of the grounds for dismissal discussed above. Because the motion to dismiss resolves Grate's case in full, there is nothing further to consider. Regardless, Grate offers no substantive support for his motion. Instead, he merely states that there could be no genuinely controverted matter because Respondents did not file an answer. This contention is wholly without merit. Rule 12, SCRCPP permits or requires the filing of a motion pursuant to Rule 12 in lieu of an answer. *See* Rule 12(b), SCRCPP ("A motion making any of these defenses shall be made before pleading if a further pleading is permitted"). The CCU Respondents filed such a motion, and the case was properly dismissed.

Furthermore, Grate offers no legal support for his position with respect to his motion for summary judgment or any other ancillary issue. On this basis alone, his bare and conclusory arguments merit no further consideration. *See Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008) ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority").

[CONCLUSION AND SIGNATURE BLOCK ON FOLLOWING PAGE]

CONCLUSION

For the reasons set forth above, the CCU Respondents respectfully request that this Court enter an order AFFIRMING the circuit court's order dismissing Appellant's case, with prejudice.

Respectfully submitted,

s/J.W. Nelson Chandler

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