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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Courtney Clyburn Pope, Circuit Court Judge
Case No. 2024-CP-02-00187

Appellate Case No. 2024-001206

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 whom Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club and Invited, are Respondents.

REPLY TO RETURN TO PETITION FOR REHEARING

The Respondents Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club and Invited (collectively, "Respondents"), submit a brief reply to Appellants' Return to Petition for Rehearing. Respectfully, the Court should grant the petition for rehearing and reconsider its decision.

DISCUSSION

Rehearing is appropriate for two primary reasons. First, the Court leaned much too heavily on *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 826 S.E.2d 585 (2019), in affording Appellants a chance to amend in every instance. Second, in performing its own futility analysis, the Court reached an incorrect conclusion and, in doing so, made some inaccurate statements of the law. Although the Court's decision is unpublished, these inaccurate statements will materially hamper Respondents' arguments below should the case be remanded. Accordingly, Respondents respectfully request the Court grant rehearing.

I. *Skydive*

The circumstances in *Skydive* created a unique and very specific situation in which the plaintiff was essentially trapped by the finality of the circuit court's order; there were no grounds for a legitimate argument to be made as to the merits of the Rule 12(b)(6) ruling; plaintiff could not file a Rule 59(e) motion; the timeline to file an appeal could not be tolled; and plaintiff was prevented from litigating a motion to amend the complaint. *Skydive v. Horry Cty.*, 426 S.C. at 181, 826 S.E.2d at 588. It was plaintiff's inability to litigate its claims and the timeline constraints of an appeal that prevented plaintiff from litigating a motion to amend the complaint that concerned our Supreme Court. *Skydive* is not, as Appellants perceive it to be, a golden parachute for plaintiffs to have unlimited "mulligans" by filing limitless amended complaints every time a motion to dismiss is filed. If that was the intention of the *Skydive* Court, there would be no need for Rule

15(a) or Rule 59(e) and complaints would be continuously amended to rectify any deficiencies. Furthermore, *Skydive* does not require all requests to amend a complaint be granted. The circuit court still has the discretion to deny a request for an amended complaint if an amendment would be futile.

Here, the circumstances of this case deviate from *Skydive* because Appellants were not prevented from filing a motion to amend their complaint, they simply chose not to. Appellants filed a Rule 59(e) motion which tolled the timeline for an appeal; however, Appellants did not agree that their complaint was deficient and made the decision not to file a motion to amend the complaint.

Appellants' interpretation of *Skydive* as a golden parachute to provide safety from dismissal based solely on the fact that they were unable to amend their complaint is not the appropriate interpretation of *Skydive* and the Court must not overly rely on *Skydive*. Instead, the Court must turn to the futility analysis.

Respectfully, a petition for rehearing in this case should be granted because of the Court's inaccurate statements of law in the futility analysis of its Order. Respondent provides a brief reply to each of Appellants' arguments concerning futility below.

II. Negligence

In its Opinion, the Court held that allowing Appellants to amend their negligence claim would not be clearly futile. Unpublished Op. 2026-UP-401. As the Court correctly recognized, a negligence claim requires a plaintiff to establish four elements: (1) a duty owed to the plaintiff by the defendant; (2) a breach of that duty by the defendant; (3) that the defendant's breach was an actual and proximate cause of the plaintiff's alleged harm; and (4) that the plaintiff suffered injury or damages. *Id.* In addressing the second element, the Court concluded that whether Respondents

voluntarily undertook a duty to Appellants to stop the complained-of conduct "was a question of fact." *Id.*

Respondents respectfully disagree that the existence of any voluntary undertaking presents a factual question on the allegations before the Court. But even if Appellants adequately alleged a voluntary undertaking sufficient to establish a duty, the existence of a duty addresses only one of the four elements of their negligence claim. Appellants must still plead facts establishing the remaining elements, including damages cognizable under South Carolina negligence law. It is this latter requirement that the Court's Opinion overlooks.

With respect to the damages element, the Court concluded that "our courts have yet to adopt a physical harm requirement to establish a negligence claim." *Id.* That conclusion was the basis for Respondents' Petition for Rehearing. As Respondents explained, "even assuming—without conceding—that" Respondents voluntarily undertook a duty to Appellants, "that would not abrogate" the requirement that a negligence plaintiff establish cognizable physical harm. Pet. for Rehearing p. 3. Respondents supported that argument with recent South Carolina Supreme Court precedent recognizing that "South Carolina law has long allowed a negligence plaintiff to recover for emotional harm in cases where the *plaintiff has also suffered physical harm.*" *Id.* at 2 (quoting *K.S. ex rel. Seeger v. Richland Sch. Dist. Two*, 445 S.C. 111, 120, 912 S.E.2d 240, 244–45 (2025)). Significantly, Appellants' Return to the Petition for Rehearing does not dispute this principle, nor could it. Ret to Pet. p. 5-6. Instead, Appellants argue that the Court cannot definitively conclude that they could not plead physical harm in an amended complaint. *Id.* at 5.

Respondents do not dispute that Appellants could theoretically attempt, if permitted to amend, to allege some form of physical harm. But that possibility does not resolve the legal question presented by Respondents' Petition for Rehearing. The Court's Opinion expressly

concluded that "our courts have yet to adopt a physical harm requirement to establish a negligence claim." Unpublished Op. 2026-UP-401. That conclusion is erroneous insofar as Appellants seek to recover emotional damages based on negligence without alleging the physical harm required under South Carolina law. *K.S*, 445 S.C. at 120, 912 S.E.2d at 244-45. Whether Appellants could cure that deficiency through some hypothetical future pleading does not cure the legal error underlying the Court's Opinion.

Accordingly, the Court's Opinion should be reconsidered because its analysis of the governing law was incorrect. The possibility that Appellants might be able to allege additional facts does not supply a basis for leaving an erroneous statement of South Carolina law undisturbed. Rehearing therefore remains warranted notwithstanding Appellants' assertion that they might be able to satisfy the physical harm requirement through a future amendment.

III. IIED

In the Court's opinion, it asserts that the circuit court found that the Appellants' claims were against the golfers not the Respondents but that the circuit court erred "to the extent that it failed to consider the assumed responsibility" of the Respondents for the golfers' conduct. Unpublished Op. 2026-UP-401. Respectfully, this is not the standard for which the Court should analyze Appellants' intentional infliction of emotional distress ("IIED") claims.

First, even if Respondents voluntarily undertook a responsibility for the actions of the golfers, which they did not, the conduct of the golfers would need to have been "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 society." *Argoe v. Three Rivers Behavioral Health, LLC*, 392 S.C. 462, 475, 710 S.E.2d 67, 74 (2011); *see also Ford v. Huston*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981). The Court found that "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.*" Unpublished Op. 2026-UP-401. Further, the Court found that the compliant "alleges specific conduct, akin to the conduct in *Ford*." However, the conduct in *Ford* is different from the conduct alleged in the Appellants' complaint. Specifically, in *Ford*, an IIED claim was submitted to the jury "when the *defendant* entered plaintiff's home without permission on multiple occasions and screamed at her, using profanity." *Ford*, 276 S.C. 163-66, 276 S.E.2d 779-80 (emphasis added). Here, the complaint asserts that there were "members of the club and the HOA" that "sustained a campaign of racist harassment" against Appellants. Complt. ¶ 16. But this was not the conduct of the Respondents, and it was not the conduct of the unnamed golfers. The Court is pulling the IIED claim over members of the country club, which may or may not be the golfers for which Appellants alleged Respondents took voluntary responsibility for. IIED has always been reserved for extreme and outrageous conduct that shocks the conscious and this is simply not one of those situations that IIED is intended to protect against.

Second, in the Return, Appellants attempt to rely on *McSwain v. Shei*, in support of a recognized principle that vicarious liability applies to IIED. *See generally, McSwain v. Shei*, 304 S.C. 25, 402 S.E.2d 890 (1991). However, that is not the premise of *McSwain* or the recognized law in South Carolina. The court in *McSwain* analyzed whether an injury sustained by an *employee* was a result from IIED by the *employer* or the result of an accident and if the plaintiff proved the four elements of IIED. *Id*. at 28, 402 S.E.2d at 891. *McSwain* does provide that IIED can be a tort against a company for the actions of its employees. (Ret. to Pet. p. 7). However, *McSwain* does not provide that there can be a claim for IIED against an entity for the conduct of *any* third party. It is reiterated throughout South Carolina law regarding IIED that it must be the **conduct of the defendant** that was outrageous enough to cause harm to the plaintiff. Here, the golfers were not

employees of Respondents and their conduct cannot be attributed to Respondents in the same way that the employer in *McSwain* could be held liable for the conduct of its employees.

Accordingly, the Court's Opinion should be reconsidered because its analysis of the governing law for IIED was incorrect and to extend IIED to conduct beyond the *Ford* case would be outrageous and change South Carolina precedent.

IV. SCUTPA

The Court finds that allowing Appellants the opportunity to amend their South Carolina Unfair Trade Practices Act ("SCUTPA") claim would not be clearly futile. Unpublished Op. 2026-UP-401. Respectfully, the Court's opinion incorrectly conflates the absence of contractual privy with the absence of any commercial dealing between Appellants and Respondents and the Court's analysis regarding the futility of the claim is incorrect. A claim for SCUTPA against Respondents in this case is clearly futile.

Respondents are not asserting that there must be contractual privity with Appellants in order for Appellants to bring a SCUTPA claim but that there must have been *a* commercial transaction with Respondents. The record before the Court provides none. Appellants were never purchasers, consumers, competitors, or remote participants in any commercial transaction with Respondents. In order to bring a SCUTPA claim there must have been an unfair or deceptive act "in the conduct of trade or commerce." S.C. Code Ann. § 39-5-20(a). The "act" by Respondents was the alleged "failure to stop golfers from engaging in offensive conduct after allegedly agreeing to do so." Pet for Rehearing p. 7. That does not meet the requirements to bring a claim for violation of SCUTPA. In fact, if this "act" was found to be enough to bring a SCUTPA claim against Respondents, that would open the door to SCUTPA claims against any business owner who attempts to control conduct of others at their business but fails to do so. For instance, if a waiter in

a restaurant tells a patron that they will ask another patron to refrain from using profanity and the patron using profanity ignores the waiter, by the claim brought by Appellant, a patron could bring a SCUTPA claim against the restaurant. Essentially, Appellants are attempting to extend the purpose of SCUTPA to incorporate every action or inaction by a company if it is tangentially related to the business practice of that company. This is not appropriate and not the intention of the SCUTPA. As such, the Court's opinion incorrectly applies South Carolina law as it relates to unfair and deceptive acts in trade and commerce that SCUTPA attempts to prevent. The petition for rehearing must be granted.

CONCLUSION

Based on the foregoing, the petition for rehearing should be granted and the Court should reconsider its decision.

Respectfully submitted,

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October 6, 2026
Columbia, South Carolina

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Of whom Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club and Invited, are..... Respondents.

CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), the undersigned employee of Smith Robinson Holler DuBose and Morgan, LLC, counsel for the Defendant/Respondents Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club and Invited, does hereby certify that service of the **Reply to the Return to Petition for Rehearing** in the above-captioned matter was made upon all counsel of record by email only this the 6th day of October, 2026, as follows:

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s/ Daniel Plyler

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Subject: Meusel v. Woodside Plantation Property Owners" Association, Inc. et al. (2024-001206)
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Good evening,

Attached please find Respondents' Reply to the Return to Petition for Rehearing which will be filed with the Court shortly.

Thank you,
Rachel

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Forward thinking. Results driven.

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