

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
G. Thomas Cooper, Jr., Circuit Court Judge

**RECEIVED**

OCT 20 2014

**SC Court of Appeals**

Appellate Case No. 2014-001416

Reverend Dr. Reginald Byrden, Pastor of Gill Creek Baptist Church, Appellant,

v.

Gill Creek Baptist Church, Kenneth Worthy, Dorothy Fulwood, Willie Grier, Jr., Ceasar Leysath, III, David Jacobs, Julia Harrell, Roscoe Bush, Evelyn Moore, And Gloria Pryor (Acting in their Official Capacities as Deacons and in their Individual Capacities). Barbara Brown, Laverne Sanders, Chris Moore, Sandra Hines, Donald Worthy, Inez Bush, Ron Tillman, Oretha Young, Bobbie Martin, Charles Berry, and Sharon Grier (Acting in their Official Capacities as Trustees and in their Individual Capacities) and Donald Worthy (Acting in His Official Capacity as Treasurer and in His Individual Capacity) and Charles Greene (Acting in His Official Capacity as Assistant Treasurer and in His Individual Capacity), Defendants,

Of Whom Kenneth Worthy, Dorothy Fulwood, Willie Grier, Jr., Ceasar Leysath, III, David Jacobs, Julia Harrell, Roscoe Bush, Evelyn Moore, And Gloria Pryor (Acting in their Official Capacities as Deacons and in their Individual Capacities), Barbara Brown, Laverne Sanders, Chris Moore, Sandra Hines, Donald Worthy, Inez Bush, Ron Tillman, Oretha Young, Bobbie Martin, Charles Berry, and Sharon Grier (Acting in their Official Capacities as Trustees and in their Individual Capacities) and Donald Worthy (Acting in His Official Capacity as Treasurer and in His Individual Capacity) and Charles Greene (Acting in His Official Capacity as Assistant Treasurer and in His Individual Capacity) are Respondents.

INITIAL BRIEF OF RESPONDENTS

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## **STATEMENT OF ISSUES ON APPEAL**

- I. WHETHER THE CIRCUIT COURT PROPERLY DISMISSED APPELLANT'S CAUSE OF ACTION FOR CIVIL CONSPIRACY AGAINST THE INDIVIDUAL DEFENDANTS BECAUSE APPELLANT IMPERMISSIBLY BASED THE CONSPIRACY CLAIM ON THE SAME ALLEGATIONS THAT PURPORTEDLY SUPPORTED OTHER CLAIMS IN THE COMPLAINT.
  
- II. WHETHER THE CIRCUIT COURT PROPERLY DISMISSED APPELLANT'S CAUSE OF ACTION FOR CIVIL CONSPIRACY AGAINST THE INDIVIDUAL DEFENDANTS BECAUSE APPELLANT FAILED TO PLEAD SPECIAL DAMAGES RELATED TO THE ALLEGED CONSPIRACY
  
- III. WHETHER THE CIRCUIT COURT PROPERLY DISMISSED APPELLANT'S CAUSE OF ACTION FOR CIVIL CONSPIRACY WITH PREJUDICE.

## STATEMENT OF THE CASE

Reverend Reginald Byrden (Appellant) filed his Summons and Complaint on October 25, 2013, asserting claims against Gill Creek Baptist Church and 22 individuals<sup>1</sup> who held positions with the church for: (1) breach of contract; (2) breach of contract with fraudulent intent; (3) civil conspiracy; (4) defamation; (5) intentional infliction of emotional distress (“outrage”); and (6) negligent infliction of emotional distress. (“Complaint”). Defendants filed an Answer on November 19, 2013. (“Answer”). On December 31, 2013, Defendants filed an Amended Answer and Motion to Substitute Counsel and to Dismiss the Causes of Action Alleging Intentional Infliction of Emotional Distress and Negligent Infliction of Emotional Distress.<sup>2</sup> (“Motion to Dismiss”).

Defendants filed a Memorandum in Support of Their Motion to Substitute Counsel and Dismiss on April 18, 2014 (“Def. Memo in Support”), and Appellant filed his Memorandum in Opposition on April 21, 2014 (“Pl. Memo in Opposition”). The matter was heard before Judge G. Thomas Cooper, Jr. on April 21, 2014. Defendants filed their Reply Memorandum in support of the motion on April 30, 2014. (“Def. Reply Memo”). On April 22, 2014, Judge Cooper granted Defendants’ Motion to Substitute Counsel, and on May 14, 2014, Judge Cooper filed the Order Dismissing Plaintiff’s Causes of Action for Civil Conspiracy and Negative Infliction of Emotional Distress as Against All Defendants (“Order of Dismissal”). Appellant’s cause of action for civil conspiracy was dismissed because (1) Appellant did not identify a single “overt action done in furtherance of the conspiracy that caused him injury or damage” and (2)

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<sup>1</sup> The individual defendants are the Respondents herein.

<sup>2</sup> Defendants withdrew their motion to dismiss the defamation claim on April 18, 2014.

“[Appellant] failed to specifically list what special damages were caused by the alleged conspiracy.” (Order of Dismissal, p. 6).

Appellant filed a Motion for Reconsideration on May 28, 2014. That motion was denied on June 6, 2014 by Judge Cooper’s Order. This appeal followed.

#### **STATEMENT OF THE FACTS**

Gill Creek Baptist Church, which is located on Cushman Drive in Columbia, South Carolina, formerly employed Appellant as a pastor. (Complaint ¶¶ 2, 5). According to the Complaint, the individually-named Defendants served the Church as employees, trustees, administrators, deacons, and/or members of the congregation.

Some of the individually-named Defendants purportedly accused Appellant of engaging in “an alleged extramarital sexual relationship and physical assault of a member of the community.” (Complaint ¶ 7). Some of the individually-named Defendants asked Appellant to resign from his position as pastor as a result of the sexual relationship and physical assault, but Appellant refused to do so. (Complaint ¶¶ 8, 9, 10).

After Appellant refused to resign from his position, some of the individually-named Defendants allegedly “conspired to terminate [Appellant’s] employment” by meeting and discussing the situation. (Complaint ¶¶ 11, 12, 13, 14). On or around July 29, 2013, some of the individually-named Defendants allegedly “conspired to and did in fact cause [Appellant] to be suspended from his employment” for ninety (90) days. (Complaint ¶ 14). The Church later terminated Appellant’s employment in October 2013. (Complaint ¶ 18).

Appellant alleges that Defendants’ purported actions caused him pain and suffering, mental anguish and distress, and emotional and physical distress and injuries—

all of which allegedly arose out of and in the course of Appellant's employment with Gill Creek. (Complaint ¶¶ 35, 44, 48, 54, 55).

### ARGUMENT

This appeal presents a question of law, and it is therefore reviewed de novo. *Town of Summerville v. City of Charleston*, 378 S.C 107, 110, 662 S.E.2d 40, 41 (2008). "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." *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). To state a valid claim for relief, the complaint must "inform[] the defendant of the ultimate facts supporting *each element of the cause of action*." *Moore v. City of Columbia*, 284 S.C. 278, 283, 326 S.E.2d 157, 160 (1985) (applying demurrer standard) (emphasis added). Further, "legal conclusions cannot be substituted for ultimate facts." *Stroud v. Riddle*, 260 S.C. 99, 103, 194 S.E.2d 235, 237 (1973). A defendant is entitled to dismissal where the plaintiff fails to state facts sufficient to constitute a legal cause of action within the four corners of the complaint. *See* S.C. R. Civ. P. 12(b)(6).

#### **The Circuit Court Properly Dismissed Appellant's Cause of Action for Civil Conspiracy Against the Individual Defendants Because Appellant Impermissibly Based the Conspiracy Claim on the Same Allegations that Purportedly Supported Other Claims in the Complaint**

The Court should affirm the circuit court's decision to dismiss Appellant's civil conspiracy claim with prejudice because Appellant has not alleged that Respondents engaged in overt acts in furtherance of the conspiracy separate and independent from acts that purportedly support other claims in the Complaint.

A civil conspiracy “is a combination of two or more parties joined for the purpose of injuring the plaintiff and thereby causing him special damage.” *Future Group, II v. Nationsbank*, 324 S.C. 89, 101, 478 S.E.2d 45, 51 (1998). The “conspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators, and other circumstances.” *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987).

A plaintiff cannot establish a civil conspiracy claim merely by pleading, re-alleging, or reciting the same damages that he sought on one or more other causes of action. “[T]he gravamen of the tort is the damage resulting to [the] plaintiff from an overt act done pursuant to a common design.” *Vaught v. Waites*, 300 S.C. 201, 208-09, 387 S.E.2d 91, 95 (Ct. App. 1989). As explained by our supreme court, “Where the particular acts charged as a conspiracy are the same as those relied on as the tortious act or actionable wrong, plaintiff cannot recover damages for such act or wrong, and recover likewise on the conspiracy to do the act or wrong.” *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981) (affirming dismissal of civil conspiracy claim where it merely restated or incorporated allegations from other causes of actions). Where a plaintiff fails to plead additional acts in furtherance of the conspiracy “separate and independent from other wrongful acts alleged in the complaint, . . . the failure to properly plead such acts will merit the dismissal of the claim.” *Hackworth v. Greywood at Hammett, LLC.*, 385 S.C. 110, 115-16, 682 S.E.2d 871, 875 (Ct. App. 2009) (citation omitted); *Lee v. Chesterfield Gen. Hosp., Inc.*, 289 S.C. 6, 10, 344 S.E.2d 379, 382 (Ct. App. 1986) (holding that a successful civil conspiracy claim requires “an overt act pursuant to the combination”).

In this case, as the circuit court found, Appellant failed to point to any action in which the Respondents engaged for the purpose of injuring him and causing him special damage. (Order of Dismissal, p. 6). In Appellant's Initial Brief, he points to a "specific action" alleged in Paragraph 7 of the Complaint and states that the action was "in furtherance of Respondent's conspiracy to deprive Appellant of his employment and to defame him." (Appellant's Brief, p. 14). Even according to Appellant, then, this action was not separate and independent of other wrongs, but an action that gives rise to Appellant's claims for breach of contract and defamation.

Appellant contends that the civil conspiracy action is supported by a different "sequence of events" than the breach of contract action because the breach of contract claim is based on the Respondents acting in their official capacities and the Complaint alleges that the acts in furtherance of the conspiracy were "outside the scope of their Official authority." (Appellant's Brief, p. 15). However, the Complaint does not allege that Respondents engaged in some acts in their official capacities and other acts outside the scope of their authority for the purpose of injuring Appellant. In support of his civil conspiracy action, Appellant alleges that Respondents "devis[ed] a schemed plan to suspend and to terminate [Appellant's] employment in violation of his contractual agreement the Defendant Gill Creek Baptist Church." (Complaint, ¶ 31; *see also* Complaint, ¶¶ 27, 33 (making similar allegations)). In support of his breach of contract claim, Appellant alleged that the same actors, "acting in their Official Capacity[,]" breached [the Church's] employment contract with" Appellant by "suspending him from employment and by calling a vote for his termination and suspension." (Complaint, ¶ 22). Appellant cannot contend that Respondents took action to suspend and terminate

him acting both in their official capacities and outside the scope of their authority. Thus, he cannot set forth a viable claim for civil conspiracy.

**The Circuit Court Properly Dismissed Appellant's Cause of Action for Civil Conspiracy Against the Individual Defendants Because Appellant Failed to Plead Special Damages Related to the Alleged Conspiracy**

Appellant has also failed to allege "special damages" caused by the alleged conspiracy. To prove civil conspiracy, a plaintiff must plead and prove that he suffered "special damages" as a result of the conspiracy. *See Hackworth*, 385 S.C. at 115, 682 S.E.2d 871 at 874 (citing *Sheek v. Lee*, 289 S.C. 327, 345 S.E.2d 496 (1986)) ("Special damages must . . . be specifically alleged in the complaint to avoid surprise to the other party."). Special damages "are those elements of damages that are the natural, but not the necessary or usual, consequence of the defendant's conduct," and they "are not implied at law because they do not necessarily result from the wrong." *Hackworth*, 385 S.C. at 117, 682 S.E.2d at 875. If a "plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of the civil conspiracy claim, their conspiracy claim should be dismissed." *Id*; *see also Vaughn v. Waites*, 300 S.C. 201, 208-09, 387 S.E.2d 91, 95 (Ct. App. 1989) ("The damages sought in the conspiracy cause of action are the same as those sought in the breach of contract cause of action. Because no special damages are alleged aside from the breach of contract damages, we hold the conspiracy action is barred under *Todd*."). (citing *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 278 S.E.2d 607 (1981), *rev'd on other grounds*, 283 S.C. 155, 321 S.E.2d 602 (1984), *quashed in part on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (1985)).

As the circuit court pointed out, Appellant’s Complaint does not specifically list special damages caused by the alleged conspiracy.<sup>3</sup> (Order of Dismissal, p. 6). Nothing in the Complaint or Appellant’s Brief explains how the damages purportedly caused by the civil conspiracy claim (“special damages, . . . pecuniary losses, embarrassment, humiliation, pain and suffering, mental anguish, loss of enjoyment of life, and other non-pecuniary losses,” Complaint ¶ 35, and “lost pay and benefits, humiliation and the loss of standing in the community” Complaint ¶ 34) are substantively different from those allegedly caused by the breach of contract (“loss of income and [being] demeaned in the eyes of his congregation,” Complaint ¶ 23), defamation (“Special Damages, humiliation, shame and disgrace, emotional and physical distress, damaged . . . marital relationship . . . and damaged reputation and professional standing,” Complaint ¶ 44), and intentional infliction of emotional distress (“extreme mental distress, humiliation, anguish, and emotional and physical injuries, as well as economic losses,” Complaint ¶ 48). Thus, the circuit court properly held that Appellant’s civil conspiracy claim failed for failure to properly plead special damages in addition to its other deficiencies. (Order of Dismissal, p. 6)

### **The Circuit Court Properly Dismissed Appellant’s Action With Prejudice**

Appellant should not be allowed to re-plead his civil conspiracy claim because to do so would be futile. Where, on appeal of a 12(b)(6) dismissal, “the plaintiff fails to

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<sup>3</sup> Appellant also distinguishes his civil conspiracy claim on the basis that it seeks an injunctive remedy. (Appellant’s Brief, p. 16; Pl. Memo in Opposition, p. 13). Even if a request for injunction could constitute pleading special damages, which Respondents contend is not the case, an injunction for reinstatement would not be appropriate relief for this claim because (1) individuals defendants acting outside the scope of their authority could not grant an injunction and (2) to grant such an injunction would violate the Establishment Clause of the U.S. Constitution. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694, 704 (2012). (See Def. Reply Memo, p. 5-6).

present additional factual allegations or a different theory of recovery which may give rise to a claim upon which relief may be granted, the appellate court may in its discretion affirm the dismissal of the complaint with prejudice.” *Spence v. Spence*, 368 S.C. 106, 131, 628 S.E.2d 869, 882 (2006). The Court should exercise this discretion where Appellant “merely reiterates the same allegations originally pleaded in [the] complaint,” which are “insufficient to state a cause of action.” *Id.* Because Appellant has failed to set forth additional facts that would give rise to a colorable claim for civil conspiracy, the Court should affirm the dismissal with prejudice.

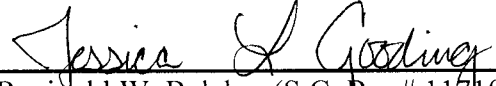
### **CONCLUSION**

WHEREFORE, for each of the foregoing reasons, the Respondents respectfully submit that the circuit court properly dismissed Appellant’s civil conspiracy claim with prejudice and request that this Court affirm the circuit court’s order in full for the reasons stated above, or on any other grounds appearing in the record, as allowed by South Carolina Appellate Court Rule 220(c).

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Respectfully Submitted,

TURNER PADGET GRAHAM & LANEY P.A.

A handwritten signature in cursive script, appearing to read "Jessica L. Gooding", is written over a horizontal line.

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October 20, 2014

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
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v.

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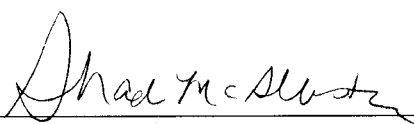
Respondents.

PROOF OF SERVICE

I certify this 20th day of October 2014 that I have served copies of the INITIAL BRIEF OF RESPONDENTS and RESPONDENTS' DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL by mailing same, postage prepaid in the United States mail, addressed to the following:

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October 20, 2014

By:   
\_\_\_\_\_  
Shandi McAllister

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October 20, 2014

## VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

Re: Rev. Reginald Byrden v. Gill Creek Baptist Church, et al.  
Appellate Case No. 2014-001416

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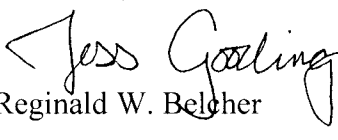
**SC Court of Appeals**

Dear Ms. Kitchings:

Enclosed please find the originals and one copy each of the Initial Brief of Respondents, Respondents' Designation of Matter to be Included in the Record on Appeal, and Proof of Service regarding the above-referenced matter. Please file the original documents and return clocked copies to me via our office courier. By copy of this letter, Appellant's counsel is being served with same. Thank you for your assistance with this matter, and please contact me if you have any questions.

Sincerely,

TURNER, PADGET, GRAHAM & LANEY, P.A.

*for*   
Reginald W. Belcher

RWB:ssm

Enclosures

cc: Donald Gist, Esquire

Aaron V. Wallace, Esquire

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