

AB

THE STATE OF SOUTH CAROLINA

RECEIVED

In The Court of Appeals

JUN 01 2016

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No.: 2015-001754

James Chaffin and Marietta Chaffin,

Appellants,

v.

Richland County Sheriff's Department, Deputy Brian Metz,  
Investigator Roy Livingston, Tallie and Devra Lackey, Individually  
and as the parents to minor Miranga G.,

Respondents.

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA  
 COUNTY OF RICHLAND  
 IN THE COURT OF COMMON PLEAS  
 James Chaffin

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014-CP-40-2209  
 Richland County Sheriff's Department

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other Dismissed without prejudice
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : Plaintiff's Motion to Reconsider is Denied

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge *Leah* Judge Code 2164 Date July 14, 2015

**For Clerk of Court Office Use Only**

This judgment was entered on the 21 day of July, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 21 day of July, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Aimee Zmroczek

Derek Shoemake

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court *Jeanette W McBride*



STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4002209

James Chaffin  
Marietta Chaffin  
PLAINTIFF(S)

Richland County Sheriffs Department  
Brian Metz  
DEFENDANT(S)

Submitted by: \_\_\_\_\_ Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.  
Additional Information for the Clerk : Defendant Tallie Lackey's motion to Dismiss is GRANTED. Order to Follow.

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge Ken Hod Judge Code 2164 Date July 21, 2014

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 24 day of July, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Aimee Jendrzejewski Zmroczek

William H. Davidson II

John S. Simmons

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court Jeanette W. McBride

NOTICE OF MOTION SCHEDULING

July 01, 2014



**Motion "MDISMS - Motion to Dismiss" for Case: 2014CP4002209 - James Chaffin , plaintiff, et al vs Richland County Sheriffs Department , defendant, et al has been added to the following Motions Roster:**

**705 - MOTION ROSTER JULY 21, 2014 COURTROOM 2-E**

**This hearing of this motion has been scheduled for 7/21/2014 at 11:00 AM.**

The above referenced case is scheduled for a Motion Hearing before Judge Robert E. Hood. in Courtroom 2-E. The Plaintiff's Attorney is to notify the Defendant in writing of the time and date of all Default and Damages Hearings. All requests for continuances must be in writing with a \$25.00 filing fee and received by the Chief Administrative Judge prior to the hearing. A request for a continuance does not guarantee that a case will be continued. Please notify the Court in writing if the Motions are resolved prior to the hearing. Please file any briefs or memorandum the Wednesday before the week of the hearing. ALL ATTORNEYS MUST SEND A PROPOSED ORDER OR MEMORANDUM OF LAW BY Wednesday, July 16, 2014 FOR THE MOTION HEARING THAT IS BEING HEARD ON HARD COPY AND DISK: OR IT CAN BE SENT BY EMAIL TO rhoodlc@sccourts.org.

Mail Notice To:

Aimee Jendrzejewski Zmroczek  
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Columbia, SC 29211

Court Info:

Richland County Common Pleas  
Richland County Judicial Center  
1701 Main Street  
Columbia, SC 29201-9201

Judge L. Casey Manning  
Chief Administrative Judge  
Fifth Judicial Circuit

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
 COUNTY OF RICHLAND ) FIFTH JUDICIAL CIRCUIT

James Chaffin and Marietta Chaffin, ) Civil Action No. 2014-CP-400-2209  
 )  
 Plaintiffs, )

v. )

Richland County Sheriff's Department, )  
 Deputy Brian Metz, Investigator Roy )  
 Livingston, Tallie and Devra Lackey, )  
 individually and as the Parents to Minor )  
 Miranda Gray, )  
 Defendants. )

**MEMORANDUM IN SUPPORT OF  
 MOTION TO DISMISS BY  
 DEFENDANTS TALLIE AND  
 DEVRA LACKEY**

RICHLAND COUNTY  
 FILED  
 2015 JUN 11 PM 4:13  
 JENNIFER M. HOBBS  
 CLERK OF COURT

Defendants Tallie Lackey (“Tal”) and Devra Lackey (“Devra”) (collectively “the Lackeys”) submit this Memorandum in support of their Motion to Dismiss filed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. As discussed more fully below, each of the claims brought by Plaintiffs James Chaffin (“Chaffin”) and Marietta Chaffin (“Mrs. Chaffin”) (collectively “Plaintiffs”) against the Lackey Defendants have failed to state facts sufficient to constitute a cause of action.

**SUMMARY OF THE CASE**

Chaffin was arrested for sexually abusing the Lackey’s daughter in 2007, although prosecutors ultimately decided not to go forward with the case. In the present civil action, Chaffin and his wife allege various causes of action not only against the Lackeys – the parents of Chaffin’s victim – but also against the Richland County Sheriff’s Department, and various law enforcement officers.

Plaintiffs' allegations<sup>1</sup> against the Lackeys fail for the following reasons:

- The false imprisonment claim (Third Cause of Action) is time-barred as Chaffin was released from custody more than seven years ago. Alternatively, the false imprisonment claim fails because the Lackeys did not imprison Chaffin.
- The malicious prosecution allegation (Fifth Cause of Action) fails because the Complaint shows that a judicial proceeding was not instituted by the Lackeys or at their insistence.
- The defamation causes of action (Sixth and Seventh Causes of Action) are untimely as the alleged defamatory statements were made more than seven years ago. In the alternative, the Lackeys are protected as their statements were made to law enforcement officials.
- The abuse of process claim (Ninth Cause of Action) is without merit because the Complaint shows that the Lackeys never used process nor committed any overt act.
- The loss of consortium claim (Tenth Cause of Action) fails because Plaintiffs have failed to adequately allege any wrongdoing by the Lackeys. Additionally, the claim is time-barred as more than seven years have passed since Mrs. Chaffin's cause of action began to accrue.

#### RELEVANT FACTUAL ALLEGATIONS

On January 8, 2007, the Lackeys' daughter<sup>2</sup> – who at the time was a minor – revealed to her therapist of nearly seven months that Defendant Chaffin had sexually abused her. Pls.' Compl. at ¶ 7. After the daughter's therapist notified police, members of the Richland County Sheriff's Department ("RCSD") interviewed the daughter and her mother, Devra. *Id.* at ¶¶ 8–9. In the course of the interviews, the daughter revealed the details of her sexual assault allegations and Devra provided investigators with a condom

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<sup>1</sup> Plaintiffs alleged nine causes of action against all Defendants, though Plaintiffs skipped from "Third" to "Fifth" in identifying their causes of action. Only the Third, Fifth, Sixth, Seventh, Ninth and Tenth Causes of Action are applicable to the Lackeys.

<sup>2</sup> Plaintiffs' Complaint does not name the Lackeys' daughter, who is now of majority age, as a Defendant nor has she been served in this action. However, the arguments herein would apply equally to her.

believed to be used by Chaffin, though Plaintiffs allege that later DNA results did not link him to the condom. *Id.* at ¶¶ 11–15, 23. Investigators also interviewed the daughter’s therapist. *Id.* at ¶ 10.

On February 15, 2007, RCSD investigators obtained a warrant charging Chaffin with Criminal Sexual Conduct with a Minor, and on March 9, 2007, investigators did in fact arrest him. *Id.* at ¶¶ 16–17. Chaffin was ultimately released from custody on March 13, 2007. *Id.* at ¶ 20. According to Plaintiffs’ Complaint, the Richland County Solicitor’s Office ultimately dismissed the charges against Chaffin on September 5, 2012. *Id.* at ¶ 24.

#### **STANDARD OF REVIEW**

A complaint is subject to dismissal under South Carolina Rule of Civil Procedure 12(b)(6) when the complaint “fail[s] to state facts sufficient to constitute a cause of action.” Rule 12(b)(6), SCRPC. According to the South Carolina Supreme Court, dismissal under Rule 12(b)(6) is thus appropriate if the facts alleged and inferences reasonably deducible from them, viewed in the light most favorable to the plaintiff, do not entitle the plaintiff to relief on any theory or show that the claim is outside the applicable statute of limitations. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007); *Brown v. Leverette*, 291 S.C. 364, 367, 353 S.E.2d 697, 699 (1987). 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. *Flateau v. Harrelson*, 355 S.C. 197, 201–02, 584 S.E.2d 413, 415 (Ct. App. 2003).

## DISCUSSION

As discussed more thoroughly below, each of Plaintiffs' claims against the Lackeys should be dismissed.

### I. False Imprisonment Claim is Time-Barred and Without Merit

Plaintiffs' Third Cause of Action for false imprisonment is plainly time-barred and also fails on its face.

To prevail on a claim for false imprisonment, a plaintiff must establish the following: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful. *Gist v. Berkeley County Sheriff's Dep't*, 336 S.C. 611, 618, 521 S.E.2d 163, 167 (Ct. App. 1999).

The statute of limitations for false imprisonment in South Carolina is two years. S.C. Code Ann. § 15-3-550 (Supp. 2002). According to at least one South Carolina Supreme Court case, the limitations period begins to run at the time of the false imprisonment. *Miller v. Dickert*, 259 S.C. 1, 3, 190 S.E.2d 459, 460 (1972). However, in a more recent albeit unpublished case from the South Carolina Court of Appeals, the court stated that “[w]e embrace the rule adopted by other jurisdictions that the statute of limitations for false imprisonment begins to run when the plaintiff is released following an arrest.” *Canzater v. City of Columbia*, Op. No. 2004-UP-054 (S.C. Ct. App. Filed Jan. 22, 2004). Certainly, the rule in *Canzater* embodies the majority approach. *See* 8 S.C. Jur. False Imprisonment § 17 (noting that it is generally held that accrual commences upon release from confinement); *Campbell v. Hyatt Regency*, 388 S.E.2d 341, 342 (Ga. Ct. App. 1989) (“An action for false imprisonment ‘must be brought within two years of its accrual . . . which is from the release from imprisonment.’ ”); M.C. Dransfield, *When*

*Statute of Limitations Begins to Run Against Action for False Imprisonment or False Arrest*, 49 A.L.R.2d 922 (1956) (stating the general rule is that the statute of limitations for false imprisonment “begins to run from the termination of the imprisonment and not from the time when the proceedings under which the plaintiff’s arrest occurred ended . . .”).

Here, Plaintiffs run afoul of the statute of limitations. As Plaintiffs themselves state, Chaffin was arrested on March 9, 2007, and released from custody on March 13, 2007. Pls.’ Compl. at ¶¶ 17, 20. Applying either the statute of limitations invoked in *Miller* or the more plaintiff-friendly majority rule explained in *Canzater*, when Plaintiffs filed their Complaint on April 4, 2014, it is was more than seven years after Plaintiffs cause of action began to accrue and more than five years after the statute of limitations had run.

Even if Plaintiffs’ false imprisonment claim were not time-barred, it would fail on its face. By the Complaint’s own factual allegations, the Lackey Defendants did not imprison Chaffin. As the Complaint alleges, Devra (and her daughter) merely provided statements and potential evidence to law enforcement officers after being contacted by those law enforcement officers. Pls.’ Compl. at ¶¶ 8, 14–15. While a party need not physically restrain a defendant to be liable for false imprisonment, South Carolina law makes clear that a defendant must create the false imprisonment. *See Jones by Robinson v. Winn-Dixie Greenville, Inc.*, 318 S.C. 171, 175, 456 S.E.2d 429, 432 (Ct. App. 1995). There is simply no support under South Carolina law for the proposition that responding to a police officer constitutes false imprisonment.

## II. Claim for Malicious Prosecution Fails to State Sufficient Facts

Plaintiffs' Fifth Cause of Action fails to allege sufficient facts to state a cognizable malicious prosecution claim against the Lackeys.

"[T]o maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage." *Parrott v. Plowden Motor Co.*, 246 S.C. 318, 321, 143 S.E.2d 607, 608 (1965); see also *Eaves v. Broad River Elec. Co-op., Inc.*, 277 S.C. 475, 477, 289 S.E.2d 414, 415 (1982).

When viewing the facts alleged in the Complaint, Plaintiffs simply fail to make any showing of the second element for malicious prosecution. It appears undisputed that the Lackeys themselves did not institute criminal proceedings, as they are private citizens. Further, when looking at the scant factual allegations against the Lackeys, there is simply no allegation that criminal proceedings were instituted at their insistence. By Plaintiffs' own admissions, after the daughter discussed Chaffin's abuse with her therapist, Devra responded to interview questions from investigators and provided possible evidence she had in her possession. Pls.' Compl. at ¶¶ 7-8, 11-14. At no point does the Complaint allege or imply that the Lackey Defendants insisted on criminal charges. As the South Carolina Supreme Court has explained, in order to maintain an action for malicious prosecution, "it must be shown that [a defendant] was affirmatively active in instigating or participating in the prosecution." *Gibson v. Brown*, 245 S.C. 547, 550, 141 S.E.2d 653, 654 (1965).

### III. Defamation Causes of Action are Time-Barred and Without Merit

Plaintiffs' Sixth and Seventh Causes of Action allege defamation and defamation *per se* against the Lackeys. Both of these defamation claims are outside of the statute of limitations and, alternatively, fail on their face.

In bringing a claim of defamation or defamation *per se*, a Plaintiff must prove the following core elements: (1) a false and defamatory statement by the defendant concerning the plaintiff; (2) an unprivileged communication; (3) fault on the defendant's part in publishing the statement; and (4) either actionability of the statement irrespective of special harm or the existence of special harm to the plaintiff caused by the publication. *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002); *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 518, 506 S.E.2d 497, 506 (1998). Both defamation and defamation *per se* have a two year statute of limitation that begins to run when the defamatory statement is made. S.C. Code Ann. § 15-3-550 (Supp. 2002); *Jones v. City of Folly Beach*, 326 S.C. 360, 367, 483 S.E.2d 770, 774-75 (Ct. App. 1997) (finding that the "date of utterance rule" and not the "discovery rule" applies in defamation actions).

Plaintiffs' defamation causes of action are untimely. As the Complaint shows, the only statements referenced in the Complaint were made in 2007, more than seven years before the Complaint was filed. *See* Pls.' Compl. at ¶¶ 7-8, 10-15, 54. Even if this Court were to apply the discovery rule to Plaintiffs' case, Defendant Chaffin himself became aware of any statements when he was arrested in March 2007. Not even the most labored reading of Plaintiffs' Complaint would make the defamation causes of action timely.

The defamation causes of action also fail on their merits. The Complaint fails to show that the Lackeys did anything more than respond to police officers investigating the daughter's statements to her therapist. Communications and statements made by citizens to police officers or other law enforcement personnel regarding crimes that may have been committed are privileged and do not constitute defamation. *See Bell v. Bank of Abbeville*, 208 S.C. 490, 494, 38 S.E.2d 641, 643 (1946).

**IV. Plaintiffs' Complaint Fails to State Facts to Constitute Abuse of Process**

The factual allegations of Plaintiffs' Ninth Cause of Action fail to give rise to a claim for abuse of process.

A plaintiff alleging abuse of process in South Carolina must assert two essential elements: 1) an "ulterior purpose," and 2) a "willful act in the use of the process not proper in the conduct of the proceeding." *Hainer v. Am. Med. Int'l, Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997). As to the second element, the South Carolina Supreme Court has stated that "[s]ome definite act . . . not authorized by the process or aimed at an object not legitimate in the use of the process is required." *Hainer*, 328 S.C. at 136, 492 S.E.2d at 107 (quoting *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 209, 153 S.E.2d 693, 694 (1967)). Thus, the element comprises three components: 1) a "willful" or overt act 2) "in the use of the process" 3) that is improper because it is either (a) unauthorized or (b) aimed at an illegitimate collateral objective. *Id.*

Put simply, by any reading of Plaintiffs' Complaint, the Lackeys did not use process. Devra and her daughter simply responded to interview questions from investigators and provided possible evidence Devra had in her possession. Pls.' Compl. at ¶¶ 7-8, 11-14. Further, even assuming process was used, the Complaint is bereft of any

supposed overt act committed by the Lackeys. As the South Carolina Supreme Court has explained, “an allegation that a party had a ‘bad motive’ or an ‘ulterior purpose’ in bringing an action, standing alone, is insufficient to sustain an abuse of process claim.” *Pallares v. Seinar*, 407 S.C. 359, 371, 756 S.E.2d 128, 133 (2014) (quoting *D.R. Horton, Inc. v. Wescott Land Co.*, 398 S.C. 528, 551, 730 S.E.2d 340, 352 (Ct. App. 2012)).

**V. Mrs. Chaffin’s Loss of Consortium Claim is Without Merit and Time-Barred**

Plaintiffs’ Tenth Cause of Action – loss of consortium on behalf of Mrs. Chaffin – fails to state facts sufficient to constitute that cause of action and is untimely.

Under South Carolina law, unlike that of some other states, loss of consortium is an independent action, not derivative. *Preer v. Mims*, 323 S.C. 516, 521, 476 S.E.2d 472, 475 (1996). However, wrongful conduct is still required on the part of a defendant. In fact, as the South Carolina Supreme Court has explained, “[g]enerally, a plaintiff spouse’s claim for loss of consortium fails if the impaired spouse’s claim fails, whether the claim is considered separate and independent from the impaired spouse’s claim or derivative in nature.” *Lee v. Bunch*, 373 S.C. 654, 663, 647 S.E.2d 197, 202 (2007) (quoting 41 Am.Jur.2d Husband and Wife § 227 (2007)).

Loss of consortium claims are subject to a three-year statute of limitations. *See* S.C. Code Ann. § 15–3–530(5) (2009) (limiting to three years “action[s] for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law, and those provided for in Section 15–3–545 [medical malpractice]”); *Jones v. Wesby*, No. 5:09-CV-2204-MBS, 2010 WL 3420026 (D.S.C. Aug. 26, 2010) (applying South Carolina law and holding that a loss of consortium claim is subject to a three-year statute of limitations); *Anderson v. Short*, 323 S.C. 522, 525, 476 S.E.2d 475,

477 (1996) (applying a three-year statute of limitations to loss of consortium claim). Although loss of consortium is an independent action, the right of action begins to accrue when the spouse first sustains until the loss of the services, society and companionship of the spouse. *Preer*, 323 S.C. at 521, 476 S.E.2d at 475.

First, as discussed herein, Plaintiffs have failed to adequately allege any wrongdoing or a viable cause of action against the Lackeys. Further, the loss of consortium claim states no factual allegations apart from the conduct complained of previously in the Complaint. Pls.' Compl. at ¶¶ 74-77. Therefore, because Plaintiffs have failed to show any wrongdoing on behalf of the Lackeys, Mrs. Chaffin's loss of consortium claim fails. *See Lee*, 373 S.C. at 663, 647 S.E.2d at 202 (explaining that while not derivative, a loss of consortium claim fails if the impaired spouse's claim fails).

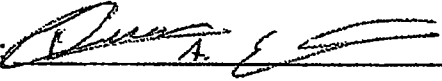
Second, Mrs. Chaffin's claim falls well outside the applicable statute of limitations. Plaintiffs' Complaint makes clear that the injuries to Mrs. Chaffin began upon Chaffin's arrest on March 9, 2007. Thus, more than seven years have passed since her cause of action began to accrue and her claim is time-barred under any possibly applicable statute of limitations.

### CONCLUSION

Based upon the foregoing, Plaintiffs Third, Sixth, Seventh and Tenth causes of action are untimely on their face and, alternatively, fail to allege cognizable causes of action. Moreover, Plaintiffs failed to properly plead or state cognizable claims for malicious prosecution and abuse of process. Therefore, each of Plaintiffs' claims against the Lackeys should be dismissed.

Respectfully submitted,

**SIMMONS LAW FIRM, LLC**

By:  \_\_\_\_\_

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Attorneys for Defendants Tallie and Devra Lackey

June 11, 2014

Certificate of Counsel

---

**RECEIVED**

JUN 01 2016

**SC Court of Appeals**

The undersigned hereby certifies that the Record on Appeal contains additional material proposed to be included by any of the parties and not any other material.

May 31, 2016



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Attorney for Appellants


Certificate of Counsel

---

**RECEIVED**  
JUN 01 2016  
SC Court of Appeals

The undersigned hereby certifies that the Record on Appeal contains additional material proposed to be included by any of the parties and not any other material.

May 31, 2016



---

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Attorney for Appellants

tb

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF RICHLAND ) FIFTH JUDICIAL CIRCUIT

James Chaffin and Marietta Chaffin, ) Civil Action No. 2014-CP-400-2209  
 )

Plaintiffs, )  
 )

v. )  
 )

Richland County Sheriff's Department, )  
Deputy Brian Metz, Investigator Roy )  
Livingston, Tallie and Devra Lackey, )  
individually and as the Parents to Minor )  
Miranda Gray, )

Defendants. )  
 )

CERTIFICATE OF SERVICE

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JUN 01 2016


SC Court of Appeals

2014 JUN 01 PM 4:13  
JEANNET W. MCBRIDE  
C.C. & G.S.  
RICHLAND COUNTY  
FILED

The undersigned employee of Simmons Law Firm, attorneys for the Defendants Tallie and Devra Lackey, do hereby certify that service of the Memorandum in Support of the Motion to Dismiss on Behalf of Defendants Tallie and Devra Lackey, filed in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this 11h day of June, 2014, addressed as follows:

Aimee J. Zmroczek, Esquire  
A.J.Z. Law Firm, LLC  
Post office Box 11961  
Columbia, South Carolina 29211

William H. Davidson, II  
Robert D. Garfield  
Post Office Box 8568  
Columbia, South Carolina 29202

By: 

Derek A. Shoemake