

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

Appellate Case No. 2017-001330

Kenji Kilgore,

v.

Estate of Samuel Joe Dixon, Samuel E. Dixon,
and Fredda L. Dixon

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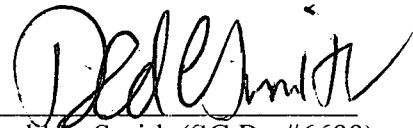
SC Court of Appeals

Appellant,

Respondents.

APPELLANT'S AMENDED RECORD ON APPEAL

Anderson, South Carolina
December 6, 2017



Donald L. Smith (SC Bar#6699)
122 N. Main Street
Anderson, SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

Other Counsel of Record:

Robert E. Davis, Esquire
The WARD Law Firm, PA
223 South Pine Street
P.O. Box 5663
Spartanburg, SC 29304
Attorney for Respondents

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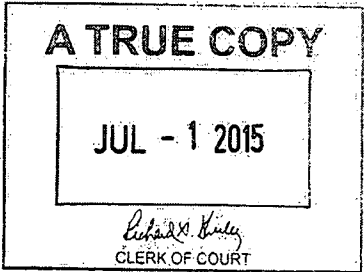
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COMPLAINT

07/1/15

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
 Kenji C. Kilgore,)
)
 Plaintiff,)
)
 vs.)
)
 Estate of Samuel Joe Dixon, Samuel E.)
 Dixon, and Fredda L. Dixon,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 TENTH JUDICIAL CIRCUIT
 Case No. 2015-CP-04-01605
COMPLAINT



Plaintiff would respectfully allege and show unto the Court the following:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is a citizen and resident of Greenwood County, South Carolina.
2. Upon information and belief, the Estate of Samuel Joe Dixon ("Joe Dixon"), is an estate in Anderson County, South Carolina.
3. Upon information and belief, Defendants Samuel E. Dixon ("Samuel Dixon") and Fredda L. Dixon ("Fredda Dixon") are citizens and residents of Anderson County, South Carolina.
4. The Court has jurisdiction over all parties and subject matter raised herein, and venue is proper in Anderson County.

FACTUAL ALLEGATIONS

5. Prior to July 2012, Plaintiff began living in a house at 240 Thompson Road, Starr, SC 29684, in Anderson County.
6. Samuel and Fredda Dixon owned the real estate that Plaintiff rented to live in.

7. Samuel and Fredda Dixon's son Joe Dixon was Plaintiff's roommate at the rented house.

8. On or about July 2, 2012, Joe Dixon shot Plaintiff several times without provocation inside the rented house.

9. As a result of the gunshots, Plaintiff suffered severe injuries to Plaintiff's person.

**FIRST CAUSE OF ACTION AGAINST ESTATE OF JOE DIXON
(Assault)**

10. Plaintiff hereby reiterates and realleges Paragraphs 1-9 as though set forth herein verbatim.

11. Joe Dixon created a reasonable apprehension of immediate harmful or offensive touching in Plaintiff by pointing and presenting a handgun at Plaintiff and shooting him.

12. Joe Dixon's actions were done intentionally.

13. As the direct and proximate result of the aforesaid intentional acts or omissions of Joe Dixon, Plaintiff:

- a. Was painfully injured;
- b. Was subject to the administration of medication;
- c. Was subject to pain, mental anguish, suffering, and discomfort over a period of time;
- d. Has incurred substantial medical bills; and
- e. Has been limited in his participation in recreational activities from which, prior to the accident, he derived a great deal of personal enjoyment and satisfaction.

14. Joe Dixon acted in reckless and wanton disregard for the life and safety of others.

15. Plaintiff is entitled to such actual and consequential damages as an enlightened jury should award.

16. Plaintiff is entitled to damages for loss of enjoyment of life, compensation for limitations to his ability to participate in and derive and derive pleasure from the normal activities of daily life, and his inability to pursue his talents, recreational interest, hobbies, and avocations.

17. Plaintiff is entitled to damages for pain and suffering because of physical discomfort and emotional response to the sensation of pain caused by the injury and mental anguish for shock, fright, emotional upset, and/or humiliation.

**SECOND CAUSE OF ACTION AGAINST ESTATE OF JOE DIXON
(Battery)**

18. Plaintiff hereby reiterates and realleges Paragraphs 1-17 as though set forth herein verbatim.

19. Joe Dixon's shooting of Plaintiff constituted a harmful or offensive touching without consent.

20. Joe Dixon intended to commit the contact when he took several shots at Plaintiff.

21. Joe Dixon's actions were done intentionally.

22. As the direct and proximate result of the aforesaid intentional acts or omissions of Joe Dixon, Plaintiff:

- a. Was painfully injured;
- b. Was subject to the administration of medication;
- c. Was subject to pain, mental anguish, suffering, and discomfort over a period of time;
- d. Has incurred substantial medical bills; and

e. Has been limited in his participation in recreational activities from which, prior to the accident, he derived a great deal of personal enjoyment and satisfaction.

23. Joe Dixon acted in reckless and wanton disregard for the life and safety of others.

24. Plaintiff is entitled to such actual and consequential damages as an enlightened jury should award.

25. Plaintiff is entitled to damages for loss of enjoyment of life, compensation for limitations to his ability to participate in and derive and derive pleasure from the normal activities of daily life, and his inability to pursue his talents, recreational interest, hobbies, and avocations.

26. Plaintiff is entitled to damages for pain and suffering because of physical discomfort and emotional response to the sensation of pain caused by the injury and mental anguish for shock, fright, emotional upset, and/or humiliation.

**FOR A THIRD CAUSE OF ACTION AGAINST SAMUEL E. DIXON AND FREDDA L. DIXON
(Negligence)**

27. Plaintiff hereby reiterates and realleges Paragraphs 1-26 as though set forth herein verbatim.

28. Samuel E. Dixon and Fredda L. Dixon owed Plaintiff a duty to warn him, prior to him moving into their house, of the danger posed by Joe Dixon, their son and his roommate, because of his propensity for violence and erratic behavior.

29. Samuel and Fredda Dixon breached this duty by acting in a careless, negligent, grossly negligent, reckless, and unlawful manner as hereinafter set forth and in the following particulars:

- a. In failing to warn Plaintiff of their son's propensity for violence;
- b. In failing to warn Plaintiff of their son's recent history of erratic behavior prior to the incident; and
- c. In failing to exercise that degree of care which a reasonable and prudent person would have exercised under the same and similar circumstances.

30. As the direct and proximate result of the aforesaid negligent and careless acts or omissions of Samuel and Fredda Dixon, Plaintiff:

- a. Was painfully injured;
- b. Was subject to the administration of medication;
- c. Was subject to pain, mental anguish, suffering, and discomfort over a period of time;
- d. Has incurred substantial medical bills; and
- e. Has been limited in his participation in recreational activities from which, prior to the accident, he derived a great deal of personal enjoyment and satisfaction.

31. Samuel and Fredda Dixon acted in reckless and wanton disregard for the life and safety of others.

32. Plaintiff is entitled to such actual and consequential damages as an enlightened jury should award.

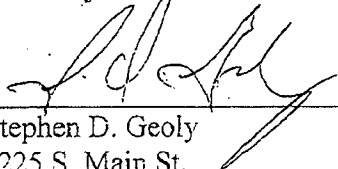
33. Plaintiff is entitled to damages for loss of enjoyment of life, compensation for limitations to his ability to participate in and derive and derive pleasure from the normal activities of daily life, and his inability to pursue his talents, recreational interest, hobbies, and avocations.

34. Plaintiff is entitled to damages for pain and suffering because of physical discomfort and emotional response to the sensation of pain caused by the injury and mental anguish for shock, fright, emotional upset, and/or humiliation.

WHEREFORE, Plaintiff prays for the following relief:

1. For actual, incidental, consequential, special, and punitive damages such as should be awarded by a jury at the trial of this case;
2. For a trial by jury;
3. For costs and legal fees; and
4. For such other and further relief as the Court deems just, equitable, and proper.

THE GEOLY LAW FIRM
Attorney for Plaintiff



Stephen D. Geoly
1225 S. Main St.
Greenwood, SC 29646
(864)223-3352
Fax (864)223-3400

Greenwood, South Carolina

July 4, 2015

ANSWER

11/09/15



STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
OF ANDERSON COUNTY
C. A. NO.: 2015-CP-04-01605

Kenji C. Kilgore,)
)
Plaintiff,)

**DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT**

vs.)

Estate of Samuel Joe Dixon, Samuel E.)
Dixon, and Fredda L. Dixon,)
)
Defendants.)

(JURY TRIAL DEMANDED)

Samuel E. Dixon and Fredda L. Dixon, Defendants, answering the Complaint, will show this Court that:

1. All allegations not expressly admitted, modified, or explained are denied.
2. Defendants lack sufficient information to admit or deny the allegations contained in paragraphs 1, 2, 4, and 9.
3. Defendants admit paragraph 3.
4. Defendants deny paragraphs 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, and 34.
5. In response to paragraphs 10, 18, and 27, Defendants reallege and incorporate in this paragraph the relevant and consistent allegations and responses contained in this Answer.

FOR A FIRST DEFENSE

6. Defendants reallege and incorporate in this paragraph the relevant and consistent allegations and responses contained in the preceding paragraphs of this Answer.

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ANDERSON SC
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7. Plaintiff's action against the Defendants should be dismissed for failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE

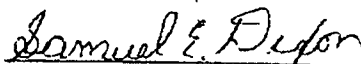
8. Defendants reallege and incorporate in this paragraph the relevant and consistent allegations and responses contained in the preceding paragraphs of this Answer.
9. Plaintiff's action against the Defendants is barred by the doctrine of self-defense.

FOR A THIRD DEFENSE

10. Defendants reallege and incorporate in this paragraph the relevant and consistent allegations and responses contained in the preceding paragraphs of this Answer.
11. Any injuries and damages sustained by Plaintiff were due to and proximately caused by the negligence, carelessness, and recklessness of Plaintiff. As a result, Plaintiff should be barred from any recovery against Defendants in this action.

WHEREFORE, the Defendants ask this Court to issue an order dismissing the Complaint with prejudice, awarding the Defendants the cost incurred in defending this matter, and such other further relief as this Court deems just and proper.

Respectfully submitted, /



Samuel E. Dixon

Pro Se

230 Thompson Road
Anderson, South Carolina 29624
864-296-4948

NOV
Dated: ~~October~~ 9 2015
Anderson, South Carolina

MOTION TO DISMISS

03/04/16

ENTERED
7/29

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)
Kenji C. Kilgore,)
)
)
Plaintiff,)
)
)
vs.)
)
Estate of Samuel Joe Dixon,)
Samuel E. Dixon, and)
Fredda L. Dixon,)
)
)
Defendants)
)

IN THE COURT OF COMMON PLEAS

(Jury Trial Demanded)

MOTION TO DISMISS
SAMUEL E. DIXON AND FREDDA L. DIXON
C/A#: 2015-CP-04-1605

Samuel E. Dixon and Fredda L. Dixon move to dismiss the Complaint against them for failure to state a cause of action upon which relief can be granted.

THE WARD LAW FIRM, P.A.
Attorneys for Defendants Samuel E. Dixon
and Fredda L. Dixon



Robert E. Davis
233 South Pine Street
P. O. Box 5663
Spartanburg, South Carolina 29304
(864) 591-2369
(864) 585-3090 (facsimile)

2/29, 2016.

FILED-CLERK'S OFFICE
ANDERSON, SC
2016 MAR -4 AM 8:30
COMMON PLEAS AND
GENERAL SESSION

BRIEF IN SUPPORT OF
MOTION TO DISMISS

04/28/16

COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON	)	(Jury Trial Demanded)
)	
Kenji C. Kilgore,)	
)	
Plaintiff,)	
	)	BRIEF IN SUPPORT OF MOTION TO DISMISS
vs.	)	SAMUEL E. DIXON AND FREDDA L. DIXON
)	
Estate of Samuel Joe Dixon,	)	C/A#: 2015-CP-04-1605
Samuel E. Dixon, and)	
Fredda L. Dixon,)	
)	
Defendants)	
)	

Samuel E. Dixon and Fredda L. Dixon move to dismiss the Complaint against them for failure to state a cause of action upon which relief can be granted. South Carolina does not recognize any duty that Samuel E. Dixon and Fredda L. Dixon owed to Plaintiff that would entitle Plaintiff to recover against them. This Court, therefore, should dismiss Samuel E. Dixon and Fredda L. Dixon from this action as a matter of law.

Facts Alleged In the Complaint

In the Complaint, Plaintiff alleges:

1. Prior to July 2012, Plaintiff began living in a house at 240 Thompson Road, Starr, SC 29684 in Anderson County. (Paragraph 5)
2. Samuel and Fredda Dixon owned the real estate that Plaintiff rented to live in. (Paragraph 6)
3. Samuel and Fredda Dixon's son Joe Dixon was Plaintiff's roommate at the rented house. (Paragraph 7)
4. On or about July 2, 2012, Joe Dixon shot Plaintiff inside the rented house by the

criminal acts of a third party. (Paragraph 20).

5. Joe Dixon intentionally shot Plaintiff. (Paragraphs 12 & 21)

Standard of Review

Pursuant to Rule 12(b)(6), SCRCP, a trial court must dismiss a claim when the pleadings, taken in the light most favorable to the plaintiff, fail to allege facts to constitute a cause of action. See James F. Flanagan, South Carolina Civil Procedure 101 (3d. ed. 2010). A Rule 12(b)(6) motion tests the legal sufficiency of the allegations in the pleading. Id. “All well pleaded allegations are taken as true but not conclusions of law, and not necessarily inferences drawn by the plaintiff from the facts.” Id. at 102. Whether a duty exists as a necessary element in a negligence action is a question of law for the trial court. Skinner v. South Carolina Dept. of Trans., 383 S.C. 520, 523, 681 S.E.2d 871, 873 (2009).

Argument

Samuel E. Dixon and Fredda L. Dixon owed no duty to Plaintiff for the alleged criminal act of a third party.

I. Samuel E. Dixon and Fredda L. Dixon Owed No Duty As Landlords.

South Carolina does not recognize a duty for landlords to protect tenants from criminal activity. Cramer v. Balcor Property Mgmt., Inc., 312 S.C. 440, 441 S.E.2d 317 (1994).

In Cramer, the Decedent was murdered in her apartment by the criminal act of a third party. Decedent’s Estate brought suit against Decedent’s landlords arguing the landlords owed a duty to protect Decedent/Tenant from the criminal acts of a third party. The United States District Court for the District of South Carolina certified the following question to the South Carolina Supreme Court:

Does a landlord owe a duty to a tenant to provide security in and around a leased premises so as to protect the tenant from criminal activity of third parties?

Id. at 441, 441 S.E.2d at 317. Noting that a “landlord cannot be expected to protect [tenants] against

the wiles of felony any more than the society can always protect them upon the common streets and highways leading to their residence or indeed in their home itself,” the South Carolina Supreme Court failed to recognize such a duty. *Id.* at 443, 441 S.E.2d at 318.

Plaintiff, therefore, cannot make allegations against Samuel E. Dixon and Fredda L. Dixon that they owed any duty arising out the landlord tenant relationship based on the facts alleged in the Complaint. *Id.*

II. Samuel E. Dixon and Fredda L. Dixon Owed No Duty to Warn.

“South Carolina law does not recognize a general duty to warn of the dangerous propensity of others.” *Bishop v. South Carolina Dep’t of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 82 (1998).

In *Roe v. Bibby*, 410 S.C. 287, 763 S.E.2d 645 (Ct.App. 2014), *cert. granted*, the mother of several minors, Roe, brought suit against Bibby, the wife of a man accused of molesting the minors. Bibby was aware that her husband had previously molested a minor, their daughter, in the past. Despite this knowledge and her status as the wife of a child molester, the South Carolina Court of Appeals held that a mere familial relationship is not enough to create any duty to warn. *Id.* at 295-96; 763 S.E.2d at 649-50. For such a duty to exist, there must be an allegation and proof of the ability to monitor, supervise and control an individual’s conduct that is created by statute or a commercial agreement coupled with a specific threat against the victim. *Id.*; *see, e.g., Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007) (assuming special relationship between psychiatrist and patient/injurer); *Faile v. South Carolina Dep’t of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536 (2002) (finding special relationship between Department of Juvenile Justice and dangerous juvenile/injurer over whom it had custody per court order); *Bishop v. South Carolina Dep’t of*

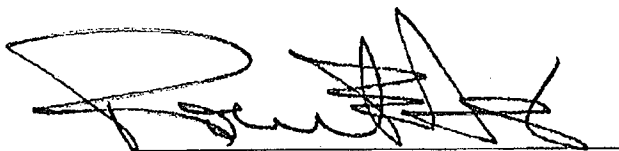
at 86, 502 S.E.2d at 81 (finding special relationship between Department of Mental Health and involuntarily-committed patient/injurer in its custody); Rogers v. S.C. Dep't of Parole & Cmty. Corr., et al., 320 S.C. 253, 464 S.E.2d 330 (1995) (assuming special relationship between state agencies charged with prisoner parole and prisoner/injurer who was being released from custody (but finding no specific threat)).

In this case, there exists no allegations or evidence that would permit such an allegation under Rule 11, SCRCP, that Samuel and Fredda Dixon had the ability to monitor, supervise and control another adult, Joe Dixon, or that any specific threats were made against Plaintiff. Accordingly, Samuel E. Dixon and Fredda L. Dixon are entitled to judgment as a matter of law. Id.

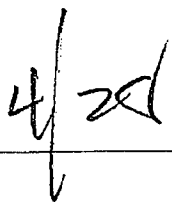
Conclusion

This case should have never been filed against Samuel E. Dixon and Fredda L. Dixon. They cannot be liable to Plaintiff for the allegations in this case. This Court, therefore, should grant their motion to dismiss.

THE WARD LAW FIRM, P.A.
Attorneys for Defendants Samuel E. Dixon
and Fredda L. Dixon



Robert E. Davis
233 South Pine Street
P. O. Box 5663
Spartanburg, South Carolina 29304
(864) 591-2369
(864) 585-3090 (facsimile)

 , 2016.

ORDER

05/02/16

CLERK'S OFFICE CASE NO. 2015-CP-04-1605
 ANDERSON SC

LCB

Kenji C Kilgore

Estate of Samuel Joe Dixon

2016 MAY -2 AM 11: 04

PLAINTIFF(S)

COMMON PLEAS AND
 GENERAL SESSIONS

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. See Page 2 for additional information.
- 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

MOTION CONTINUED TO PERFECT SERVICE

This order ends does not end the case.
 Additional Information for the Clerk :

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 (List amount(s) below)
		\$
		\$
		\$

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

2155
 Judge Code

4-29-16
 Date

ORDER OF MEDIATION

06/07/16

FORM 4

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

FILED-CLERK'S OFFICE
 ANDERSON SC

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2015CP0401605



Kenji C Kilgore

2016 JUN -7 PM 12:33

Estate Of Samuel Joe
 Dixon
 Fredda L Dixon

Samuel E Dixon

COMMON PLEAS AND
 GENERAL SESSIONS

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Kathy M. Hall, ADR Coordinator

Attorney for: Plaintiff Defendant
 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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit);
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRCP; 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:

Mediation shall be completed on or before September 30, 2016. Please see attached correspondence from Robert Eric Davis.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

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 (List amount(s) below)

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.

J. Cordell Maddox, Jr.

Circuit Court Judge – J. Cordell Maddox, Jr.

2131

Judge Code

6/3/16

Date

CPFORM4Cm
 SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

REB

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

Stephen Drew Geoly 1225 S. Main St. Greenwood, SC 29646

Samuel E Dixon 230 Thompson Road Anderson, SC 29624
Robert Eric Davis PO Box 5663 Spartanburg, SC 29304

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Richard A. Shirley

Court Reporter

Richard A. Shirley - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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ANDERSON SC
2016 JUN -7 PM 12:33
COMMON PLEAS AND
GENERAL SESSIONS

LETTER OF PREVIOUS COUNSEL

06/13/16

The State of South Carolina



OFFICE OF THE SOLICITOR
EIGHTH JUDICIAL CIRCUIT



Tel: (864) 942-8824
Fax: (864) 942-8830

Abbeville
Greenwood
Laurens
Newberry

2015CP0401605

DAVID M. STUMBO
SOLICITOR

June 10, 2016

To Whom It May Concern:

Please be advised that Stephen Geoly is the attorney of record on the case of The State of South Carolina v. Ricky Yeldell in Greenwood County General Sessions. This matter is set for jury qualification and selection on Monday, June 13, 2016.

If you have any questions or comments, please do not hesitate to call.

Sincerely,

C. Lance Sheek
Assistant Solicitor

FILED-CLERK'S OFFICE
ANDERSON SC
2016 JUN 13 AM 9:48
COMMON PLEAS AND
GENERAL SESSIONS

MOTION TO COMPEL SETTLEMENT

11/07/16

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON	)	(Jury Trial Demanded)
)	
Kenji C. Kilgore,)	
)	
Plaintiff,	)	MOTION TO COMPEL SETTLEMENT
)	
vs.)	
	)	C/A#: 2015-CP-04-1605
Estate of Samuel Joe Dixon,)	
Samuel E. Dixon, and)	
Fredda L. Dixon,)	
)	
Defendants.)	
)	

Defendants move to compel a settlement reached and reported to the Court in August 2016. Samuel E. Dixon and Fredda L. Dixon moved in February 2016 to have the claims against them dismissed for failure to state a cause of action upon which relief can be granted. A hearing was set on April 29, 2016 before Judge McIntosh, and Plaintiff's counsel failed to appear due to a lack of notice. The hearing was rescheduled and notice provided to Plaintiff's counsel of record. Before the hearing was conducted, however, Plaintiff's counsel and the undersigned entered into settlement negotiations. As confirmed by the attached letter of August 3, 2016, the parties agreed to "a settlement amount of \$1,250 in exchange for a receipt and release of Defendants and a dismissal with prejudice of all claims in the case." Defendants complied with the terms of the settlement and a check was sent to Plaintiff along with a Receipt and Release and Stipulation of Dismissal on August 9, 2016. Furthermore, this Court was notified that the hearing on the motion filed in February was no longer necessary, and the hearing was removed from the docket. Plaintiff, however, has failed to return the Release and Dismissal. Defendants request that this Court compel settlement, dismiss this case with prejudice, note on the record that all claims against Defendants arising out of

Plaintiff's Complaint are released, and award attorney's fees and costs for having to file this Motion. In the alternative, Defendants request a dismissal of this case pursuant to the Motion previously filed and award attorney's fees and costs.

THE WARD LAW FIRM, P.A.
Attorneys for Defendants

s/Robert E. Davis
Robert E. Davis
233 South Pine Street
P. O. Box 5663
Spartanburg, South Carolina 29304
(864) 591-2369
(864) 585-3090 (facsimile)

Dated: November 7, 2016.

ORDER OF DISMISSAL

01/24/17

On or about November 7, 2016, a Motion to Compel Settlement was filed as an alternative to the previous defense motion. The Motion alleges that on or about August 9, 2016, a settlement check, release, and stipulation of dismissal was sent to Plaintiff's attorney. None of the settlement documents or the settlement check were returned by Plaintiff. By letter to the Court, it was requested that both motions be scheduled for a hearing.

On December 22, 2016, the clerk of court scheduled a hearing on the pending motions and notice was given to all counsel of record. The hearing was set for January 23, 2017, at 11:00.

On January 19, 2017, Attorney Davis wrote the Court and all attorneys of record that he desired for the hearing in this case to go forward for January 23, 2017, but he was also scheduled for a jury trial in the Anderson Court of Common Pleas for a term also beginning on January 23, 2017. Attorney Davis advised that his case was second for trial, and he needed to appear for a roster meeting and jury qualification with Judge Hocker. Attorney Davis indicated that he would appear for the hearing in this case once he obtained permission from Judge Hocker following jury qualification.

On January 23, 2017, Attorney Davis appeared before me shortly before 11:00 for the hearing on this case. He had previously been present for the roster meeting and jury qualification before Judge Hocker. No attorneys appeared for Plaintiff. This Court delayed the hearing while counsel of record for Plaintiff were attempted to be contacted. After a delay and verifying with the clerk of court that Plaintiff's counsel were notified of the hearing, this Court moved forward with hearing.

Standard of Review

Pursuant to Rule 12(b)(6), SCRCP, a trial court must dismiss a claim when the pleadings,

taken in the light most favorable to the plaintiff, fail to allege facts to constitute a cause of action. See James F. Flanagan, South Carolina Civil Procedure 101 (3d. ed. 2010). A Rule 12(b)(6) motion tests the legal sufficiency of the allegations in the pleading. Id. "All well pleaded allegations are taken as true but not conclusions of law, and not necessarily inferences drawn by the plaintiff from the facts." Id. at 102. Whether a duty exists as a necessary element in a negligence action is a question of law for the trial court. Skinner v. South Carolina Dept. of Trans., 383 S.C. 520, 523, 681 S.E.2d 871, 873 (2009).

Facts Alleged In the Complaint

In the Complaint, Plaintiff alleges:

1. Prior to July 2012, Plaintiff began living in a house at 240 Thompson Road, Starr, SC 29684 in Anderson County.
2. Samuel and Fredda Dixon owned the real estate that Plaintiff rented to live in.
3. Samuel and Fredda Dixon's son Joe Dixon was Plaintiff's roommate at the rented house.
4. On or about July 2, 2012, Joe Dixon shot Plaintiff inside the rented house by the criminal acts of a third party.
5. Joe Dixon intentionally shot Plaintiff.

Dismissal of Samuel and Fredda Dixon

Samuel E. Dixon and Fredda L. Dixon argue they owed no duty to Plaintiff for the alleged criminal act of a third party. I agree.

I. Samuel E. Dixon and Fredda L. Dixon Owed No Duty As Landlords.

South Carolina does not recognize a duty for landlords to protect tenants from criminal

activity. Cramer v. Balcor Property Mgmt., Inc., 312 S.C. 440, 441 S.E.2d 317 (1994).

In Cramer, the Decedent was murdered in her apartment by the criminal act of a third party. Decedent's Estate brought suit against Decedent's landlords arguing the landlords owed a duty to protect Decedent/Tenant from the criminal acts of a third party. The United States District Court for the District of South Carolina certified the following question to the South Carolina Supreme Court:

Does a landlord owe a duty to a tenant to provide security in and around a leased premises so as to protect the tenant from criminal activity of third parties?

Id. at 441, 441 S.E.2d at 317. Noting that a "landlord cannot be expected to protect [tenants] against the wiles of felony any more than the society can always protect them upon the common streets and highways leading to their residence or indeed in their home itself," the South Carolina Supreme Court failed to recognize such a duty. Id. at 443, 441 S.E.2d at 318.

Plaintiff, therefore, cannot make allegations against Samuel E. Dixon and Fredda L. Dixon that they owed any duty arising out the landlord tenant relationship based on the facts alleged in the Complaint. Id.

II. Samuel E. Dixon and Fredda L. Dixon Owed No Duty to Warn.

"South Carolina law does not recognize a general duty to warn of the dangerous propensity of others." Bishop v. South Carolina Dep't of Mental Health, 331 S.C. 79, 86, 502 S.E.2d 78, 82 (1998).

In Roe v. Bibby, 410 S.C. 287, 763 S.E.2d 645 (Ct.App. 2014), *cert. granted*, the mother of several minors, Roe, brought suit against Bibby, the wife of a man accused of molesting the minors. Bibby was aware that her husband had previously molested a minor, their daughter, in the

past. Despite this knowledge and her status as the wife of a child molester, the South Carolina Court of Appeals held that a mere familial relationship is not enough to create any duty to warn. Id. at 295-96; 763 S.E.2d at 649-50. For such a duty to exist, there must be an allegation and proof of the ability to monitor, supervise and control an individual's conduct that is created by statute or a commercial agreement coupled with a specific threat against the victim. Id.; see, e.g., Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007) (assuming special relationship between psychiatrist and patient/injurer); Faile v. South Carolina Dep't of Juvenile Justice, 350 S.C. 315, 566 S.E.2d 536 (2002) (finding special relationship between Department of Juvenile Justice and dangerous juvenile/injurer over whom it had custody per court order); Bishop v. South Carolina Dep't of Mental Health, 331 S.C. at 86, 502 S.E.2d at 81 (finding special relationship between Department of Mental Health and involuntarily-committed patient/injurer in its custody); Rogers v. S.C. Dep't of Parole & Cmty. Corr., et al., 320 S.C. 253, 464 S.E.2d 330 (1995) (assuming special relationship between state agencies charged with prisoner parole and prisoner/injurer who was being released from custody (but finding no specific threat)).

In this case, there exists no allegations that Samuel and Fredda Dixon had the ability to monitor, supervise and control another adult, Joe Dixon, or that any specific threats were made against Plaintiff. Accordingly, Samuel E. Dixon and Fredda L. Dixon are entitled to judgment as a matter of law. Id.

Dismissal of The Estate of Samuel Joe Dixon

This Court also finds that no action has been commenced against the Estate of Samuel Joe Dixon within the time required by law.

Samuel Joe Dixon died on July 7, 2012. An Estate was opened with Anderson County

Probate Court under case number 2012ES0400758. According to the Probate Court files, an affidavit of notice of creditors was published for the Estate of Samuel Joe Dixon in the News-Chronicle on August 1, 8, and 15, 2012. A final accounting for the Estate of Samuel Joe Dixon was signed on February 3, 2015 and the Estate closed. There is no evidence that Plaintiff ever presented a claim to the Estate of Samuel Joe Dixon pursuant to the times required by S.C. Code Ann. §§ 62-3-801 & 62-3-803. Furthermore, there is no evidence that any service took place on the Estate of Samuel Joe Dixon, which would properly commence an action, pursuant to Rule 4, SCRCP, or S.C. Code Ann. § 15-5-530.

Accordingly, the claims against the Estate of Samuel Joe Dixon are time barred.

IT IS THEREFORE ORDERED that this case is DISMISSED WITH PREJUDICE.



Anderson Common Pleas

Case Caption: Kenji C Kilgore VS Estate Of Samuel Joe Dixon , defendant, et al
Case Number: 2015CP0401605
Type: Order/Dismissal

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2017-01-24 16:15:10 page 7 of 7

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MOTION FOR RECONSIDERATION

02/02/17

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
Kenji C. Kilgore,)	
Plaintiff,	)	MOTION FOR RECONSIDERATION
)	
vs.)	
Estate of Samuel Joe Dixon,)	
Samuel E. Dixon, and	)	C/A#: 2015-CP-04-1605
Fredda L. Dixon,)	
Defendants)	
)	

Pursuant to the Rule 59(E) of the South Carolina Rules on Civil Procedure, Plaintiff Kilgore files this Motion to Reconsider the Order of this Court, dated January 23, 2017. In support of which, Plaintiff presents the following:

INTRODUCTION

Plaintiff filed this action for the tortious injuries that he suffered when Samuel Joe Dixon shot him five times. Plaintiff named Mr. Dixon and his parents, Samuel E. Dixon and Fredda L. Dixon, as tortfeasors. It was, and remains, Plaintiff's contention that Joe Dixon was mentally ill and that is the reason that he was shot. It is also his contention that Mr. and Mrs. Dixon were aware of the volatile mental state overwhelming their son, yet they did nothing to warn Mr. Kilgore of his condition.

STANDARD OF REVIEW

A motion under Rule 59(e) has long been viewed as a "motion for reconsideration" despite the absence of those words from the rule. Consequently, a party is usually allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992) *as cited in Elam v. South Carolina Department of Transportation*, 361 S.C. 9 (2004), 602 S.E.2d 772 (SC: South Carolina). A party may wish to file such a motion when he believes the court has

misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

Id.

Plaintiff reiterates that his causes of action against Defendants are sufficiently stated.

ARGUMENTS

In order to establish a cause of action in negligence, three essential elements must be proven: (1) duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. Rickborn v. Liberty Life Ins. Co., 321 S.C. 291, 468 S.E.2d 292 (1996).

In Doe v. Batson, The Court of Appeals discussed two possible sources of liability for the parent of an adult child residing in the home: (1) a duty to warn arising from a special relationship or circumstance, and (2) a duty to warn based on premises liability.

Contrary to Defendants' assertions, they have a duty to warn Plaintiff of the danger posed by their son, Joe Dixon, considering that they know of his violent tendencies. In fact, instead of informing Plaintiff of their son's recent history of erratic behavior, they even allowed their son to be Plaintiff's roommate.

While it is true that under South Carolina law, there is no general duty to control the conduct of another or to warn a third person or potential victim of danger. Faile v. South Carolina Dep't of Juvenile Justice, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002); Rogers v. South Carolina Dep't of Parole & Cmty Corr., 320 S.C. 253, 464 S.E.2d 330 (1995); Rayfield v. South Carolina Dep't of Corr., 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988). An exception to this rule was enumerated in the case of Faile, which states:

We recognize five exceptions to this rule: 1) where the defendant has a special relationship to the victim; 2) where the defendant has a special relationship to the injurer; 3) where the defendant voluntarily undertakes a duty; 4) where the defendant negligently or intentionally creates the risk; and 5) where a statute imposes a duty on the defendant. *See generally*, Hubbard & Felix, *The South Carolina Law of Torts* 57-72 (1990). *Id.*

This case would fall under the second exception, since Defendants Samuel and Fredda were the parents of Joe. This parental relationship between the Defendants and the injurer, charges the defendants with the ability to control, supervise, and control their son who lived on their property. In fact, they were aware of the difficulties that their son was facing. They told Plaintiff they thought that their son was “doing better”. Mr. and Mrs. Dixon had notice of his mental issues, as well as his volatile temper. Hence, he moved back to their property from his own home on First Avenue, where he had lived with his wife and children.

Defendant argues that Joe Dixon had not made specific threats against Plaintiff and, therefore, does not fall under the exception. But, the rationale behind this line of cases is an individual does not have a duty to protect the public from speculative harm from a dangerous individual within his control. However, where the custodian knows of a specific, credible threat from a person in their care the injury is no longer speculative in nature. The recognized reckless, unstable behavior exhibited by Joe Dixon prior to the shooting, was something of which his parents were aware.

CONCLUSION

It is undisputed that Joe Dixon was suffering from mental difficulties. His parents knew it. They expressed their appreciation that Mr. Kilgore has moved in with him because they believed their son was doing better. Mr. Kilgore did not know what that meant.

He was not aware of what had precipitated said comment. Had Joe been depressed due to his divorce? Was he drinking excessively when he was alone? Was he using illicit drugs excessively? Mr. Kilgore was not privy to the meaning of this statement.

He had no idea to what degree Joe was suffering. Clearly, if he would have been aware of the truth, he would not have put himself in harm's way. Kenji Kilgore was shot five times by his friend, for a reason that he will never know. Joe's suffering finally got the best of him following the tragedy, when he took his own life.

Little discovery has been conducted in this matter. Plaintiff believes that discovery will provide the Court with the necessary evidence to allow him to have his day in Court. However, "the paucity of the record makes it impossible...to determine the merits" of Kenji's argument. Doe v. Batson, 338 S.C. 291, 525 S.E.2d 909 (Ct.App. 1999). Whether the Dixons had a duty to Mr. Kilgore will be ferreted out with the completion of the aforementioned discovery. Plaintiff prays for the Court to reconsider the prejudicial dismissal of his claim.

s/Donald L. Smith
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attorneydonaldsmith@gmail.com

Anderson, South Carolina
February 2, 2017.

RESPONDENT'S BRIEF AND MEMORANDUM
IN OPPOSITION TO THE MOTION FOR
RECONSIDERATION

02/08/17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON	)	(Jury Trial Demanded)
)	
Kenji C. Kilgore,)	
)	
Plaintiff,	)	BRIEF IN OPPOSITION TO MOTION TO
	)	RECONSIDER
vs.)	
)	
Estate of Samuel Joe Dixon,	)	C/A#: 2015-CP-04-1605
Samuel E. Dixon, and)	
Fredda L. Dixon,)	
)	
Defendants)	
)	

This Court should deny Plaintiff's Motion to Reconsider the Dismissal of Samuel E. Dixon and Fredda L. Dixon as a matter of law.¹ In the Order of Dismissal, this Court correctly considered the allegations contained in the Complaint pursuant to Rule 12(b)(6), SCRPC. This Court properly found Samuel E. Dixon and Fredda L. Dixon owed no duty to Plaintiff based on what was alleged in the Complaint. Nothing has changed.

Nineteen months after filing the Complaint and after the statute of limitations has long expired, Plaintiff has dreamed up allegations in a Motion to Reconsider that do not appear anywhere in the Complaint.² For the first time ever in the Motion to Reconsider, Plaintiff hypothesizes that Samuel Joe Dixon (the alleged shooter) was mentally ill. However, the words "mentally ill" do not appear anywhere in the Complaint. Furthermore, and supporting the decision to dismiss the

¹ Plaintiff does not raise any issues with the dismissal of The Estate of Samuel Joe Dixon. It is, therefore, presumed that Plaintiff concedes to that dismissal.

² Samuel E. Dixon and Fredda L. Dixon would also challenge whether Plaintiff could have even made such allegations in the Complaint and comply with Rule 11, SCRPC.

Complaint even more, the Complaint contains no allegation that Samuel E. Dixon and Fredda L. Dixon knew or should have known of any “mental illness.”

Plaintiff’s wild arguments in a Motion to Reconsider that do not appear in the Complaint do not entitle Plaintiff to any relief. This Court properly viewed this matter pursuant to Rule 12(b)(6), SCRCPP, which tests the legal sufficiency of the allegations in the pleading. See James F. Flanagan, South Carolina Civil Procedure 100-101 (3d. ed. 2010). Plaintiff’s Complaint was and remains deficient because it does not raise any duty owed by Samuel E. Dixon and Fredda L. Dixon to Plaintiff. Roe v. Bibby, 410 S.C. 287, 763 S.E.2d 645 (Ct.App. 2014), *cert. granted*.

Plaintiff improperly cites a South Carolina Court of Appeals decision of Doe v. Batson as creating “two possible sources of liability for the parent of an adult child residing in the home: (1) a duty to warn arising from a special relationship or circumstance, and (2) a duty to warn based on premises liability.”³ **What Plaintiff does not inform this Court, however, is that The South Carolina Supreme Court specifically vacated the South Carolina Court of Appeals decision on the exact same quotation given by Plaintiff. Doe ex rel. Doe v. Batson, 345 S.C. 316, 323, 548 S.E.2d 854, 858-59 (2001).** After citing the exact sentence quoted by Plaintiff, the South Carolina Supreme Court said, “We vacate those portions of the of the Court of Appeals’ opinion suggesting potential sources of liability in this case.” Id.

The South Carolina Supreme Court decision in Doe, however, illustrates precisely that Plaintiff’s Complaint was deficient as a matter of law. When Doe was attempting to create some

³ Although Plaintiff did not include a citation in the brief, Plaintiff did specifically refer to the South Carolina Court of Appeals decision in Doe v. Batson, 338 S.C. 291, 296, 525 S.E.2d 909, 911 (Ct. App. 1999), *aff’d in part, vacated in part sub nom. Doe ex rel. Doe v. Batson*, 345 S.C. 316, 548 S.E.2d 854 (2001).

liability against Batson, Doe made the following specific allegations:

Doe's complaint against Batson alleged that Donald lived in Batson's home from 1991 to 1995, during which time he brought boys between the ages of ten and eighteen to Batson's home for the purpose of molesting them. Doe alleged that Batson was home on numerous of these occasions and that she knew, or should have known, that her son had young boys in his bed and had deviant sexual propensities. Doe alleged that Batson's failure to warn the boys' parents was negligent, willful, and wanton, demonstrated a reckless disregard for the rights, safety, and well-being of the young boys who were abused by her son, and that but for Batson's failure to warn the boys and their parents, the boys would not have been molested.

Id. at 318, 548 S.E.2d at 855. Not only did Plaintiff fail to make any of the specific allegations contained in Doe but Plaintiff could not under Rule 11, SCRCP, because Plaintiff and the alleged shooter did not live in the same house as Samuel E. Dixon and Fredda L. Dixon. Accordingly, the difference between the Complaint against Batson and the Complaint filed by Plaintiff actually proves that Plaintiff's Complaint was deficient as a matter of law.

Plaintiff's Motion fails to address the Roe v. Bibby, 410 S.C. 287, 763 S.E.2d 645 (Ct.App. 2014), *cert. granted*, case and this Court's finding that the Complaint failed to contain "allegations that Samuel and Fredda Dixon had the ability to monitor, supervise and control another adult, Joe Dixon, or that any specific threats were made against Plaintiff." Despite Plaintiff's musings, the law in South Carolina does not create any parental liability for an adult child without "the ability to monitor, supervise and control" the other adult. Id. Plaintiff's failure to address this specific finding and the omission of any allegation of Samuel E. Dixon and Fredda L. Dixon "to monitor, supervise and control" another adult remains the fatal flaw in Plaintiff's case.

Finally, Plaintiff's request for more time to conduct discovery tests the boundaries of good faith. In the nineteen months that this case has been pending, Plaintiff has failed to engage in discovery in any manner. Plaintiff has not served any written discovery, requested depositions, or

even responded to Defendant's written discovery that was served on February 27, 2016. While discovery is not particularly relevant in this Rule 12(b)(6) motion, Plaintiff certainly is not entitled to relief for his own dilatory behavior. See Dawkins v. Fields, 354 S.C. 58, 71, 580 S.E.2d 433, 439-40 (2003).

The bottom line is this Court made the correct legal decision to dismiss Plaintiff's Complaint. The same well-reasoned analysis contained in the Order still applies, and Plaintiff has not and cannot challenge it on any valid legal grounds. This Court, therefore, should deny Plaintiff's Motion to Reconsider.

THE WARD LAW FIRM, P.A.
Attorneys for Defendants Samuel E. Dixon
and Fredda L. Dixon

s/ Robert E. Davis
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February 8, 2017.

TRANSCRIPT OF HEARING

05/05/17

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF ANDERSON)

Kenji Kilgore,)
)
Plaintiff,)
)
v.) Case No. 15-CP-04-01605
)
Estate of Samuel Joe Dixon,)
Samuel E. Dixon and)
Fredda L. Dixon,)
)
Defendants.)

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on May 5th, 2017, before The Honorable R. Lawton McIntosh in the Court of Common Pleas for Anderson County; attended by counsel as follows:

APPEARANCES:

Donald L. Smith, Esq.
122 North Main Street
Anderson, South Carolina 29621
Appearing for Plaintiff

Robert E. Davis., Esq.
WARD LAW FIRM
223 East Pine Street
Spartanburg, South Carolina 29302
Appearing for Defendants

***TRANSCRIBED FOR VIVIAN CROSS,
CIRCUIT COURT REPORTER***

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
P O Box 27145
Greenville, South Carolina 29616
dgarrison@sccourts.org

1 THE COURT: Please be seated. All
2 right, you're the last up for the day. This
3 is Kenji Kilgore versus the Estate of Samuel
4 Joe Dixon, Samuel E. Dixon and Fredda L.
5 Dixon.

6 It appears that previously I granted a
7 Motion to dismiss. The plaintiffs are asking
8 me to reconsider that as to Samuel E. Dixon
9 and Fredda L. Dixon but apparently not as to
10 the Estate. Is that correct, Mr. Smith?

11 MR. SMITH: That's correct.

12 THE COURT: Okay, sir. All right, I'll
13 be glad to hear from you, Mr. Smith.

14 MR. SMITH: Your Honor, may it please
15 the Court. Your Honor, this action stems
16 from a situation where the defendants' son
17 shot Mr. Kilgore, five times.

18 It is our contention that the parents
19 recognized the fragility of their deceased,
20 now-deceased son, and that they told Mr.
21 Kilgore that they were happy that he was
22 there because he apparently was ---

23 THE COURT: Do what now?

24 MR. SMITH: They said that they were
25 happy that Mr. Kilgore was there because

1 they'd noticed that the behavior and the
2 conduct of their son had gotten better,
3 essentially saying that his mental health had
4 gotten better because of Mr. Kilgore's
5 inclusion in his life, having someone there
6 to help and address any problems that he was
7 having. Then all of a sudden he was shot, as
8 I said, five times and that's what our case
9 stems from.

10 It is our contention of course that
11 discovery is necessary in an effort to prove
12 our case. I will say that someone else
13 started this case and then Mr. Davis had a
14 pending Motion, and we haven't done any
15 discovery. The plaintiff would simply ask
16 that he be allowed to do discovery on an
17 expedited basis so as to get the case ready
18 for trial.

19 THE COURT: Let me ask you this.
20 Obviously if you have a summary judgment
21 Motion pending, discovery would be a more
22 relevant inquiry as to the status of that.

23 The Motion to dismiss is just based on
24 the pleadings themselves without any real
25 intention to discovery or the lack thereof.

1 This is a 12(b)(6)?

2 MR. DAVIS: Yes, sir. Yes, sir.

3 THE COURT: Just one second, let me
4 read -- (upon review), all right. We're at
5 the Order, so -- I don't have the Rule in
6 here.

7 I read through your Brief just a minute
8 ago, Mr. Davis, but, uh, -- from a practical
9 standpoint a Motion to dismiss doesn't negate
10 the opportunity for the plaintiff the right
11 to replead; it's a moot point as long as done
12 within the statute of limitations. Under the
13 -- the Estate was beyond the statute of
14 limitations. As to the individual
15 defendants, ---

16 MR. DAVIS: Well, Your Honor, I think
17 the statute is -- I probably need to refresh
18 my recollection but, uh, if you'll bear with
19 it. I think it's expired as to them as well.

20 THE COURT: Well, ---

21 MR. DAVIS: The date was July 2, 2012.
22 So where we are, Your Honor, -- and, again, I
23 am Robbie Davis and I'm here on behalf of my
24 clients, Samuel E. Dixon and Fredda L. Dixon.
25 Your Honor, there is no legal basis to go

1 forward against them. As the Court is well
2 aware, they're nothing more than the parents
3 of the alleged shooter, Joe Dixon, who is now
4 deceased.

5 The Court probably analyzed this case the
6 first time under the case of *Rowe v. Biffy*
7 (phonetic), which was a 2014 case, was that
8 the wife of a man who harmed people who lived
9 together, under the same roof, which we don't
10 have here, would be liable for a duty to warn
11 other people of her husband's tendency to
12 harm. In that case it was the sexual
13 molestation of minors.

14 In that case, it went up and the South
15 Carolina general rule is that there is no
16 general rule to conduct -- to control the
17 conduct of another or to warn a third party
18 victim of danger. They did make an
19 exception, Your Honor, and that exception
20 says that under special relationship
21 exceptions when a defendant has the ability
22 to monitor, supervise and control another and
23 there's a specific threat of harm directed at
24 a specific individual, then potentially there
25 could be a duty to warn. In that case, you

1 know, where you have a husband and wife
2 living together under the same roof, with
3 the husband having committed this sexual
4 molestation in the past, they found that
5 there was no duty to warn.

6 That's not even what we have in this
7 case, Your Honor. We don't have the parents
8 and the son living under the same roof. We
9 don't have any allegations of an exception of
10 an ability to control, monitor, supervise and
11 control, to know of a direct threat of harm.

12 When we talk about controlling and
13 monitoring the -- controlling the acts of
14 another, the Court went on to give us some
15 explanation of what they meant by that.
16 Basically what they're talking about is a
17 statutory duty or a commercial duty to --
18 there's never been a case in South Carolina,
19 or any other jurisdiction that I know of,
20 where the parents of someone who has shot
21 another, who was an adult who doesn't even
22 live in your house, is found to be liable for
23 that shooting. It just simply is not the
24 law.

25 We contend that there is nothing about

1 the ability of the parents to control,
2 supervise or monitor the son at the time of
3 the alleged shooting or any specific harm.

4 But it really doesn't matter, because
5 parents just aren't liable for the actions of
6 an adult son. It's not -- there is not one
7 single case where -- if the Court had wanted
8 to say, 'hey, a parent can be liable for an
9 adult son', they could have said that. They
10 didn't.

11 So there is no legal basis to hold these
12 parents in this lawsuit any further.

13 The case that was raised in the Motion to
14 reconsider was a much older case, *Doe v.*
15 *Bounce* (phonetic). What was specifically
16 interesting about that is the part that was
17 raised was vacated. It's not the law in
18 South Carolina.

19 So the law we have is *Rowe v Biffy*. It's
20 not going to allege -- none of the elements
21 required to be alleged have been alleged,
22 they can't be. I would say that under Rule
23 11 that they can't be.

24 The statute of limitations has run.

25 As to any argument about discovery, Your

1 Honor, this case has been pending since July
2 2015.

3 MR. SMITH: I'm not sure about that.

4 MR. DAVIS: Well, the discovery is not
5 an issue. What this Court has done and what
6 this Court should continue to do is say,
7 'these parents don't live with, they don't
8 control, they don't monitor none of what is
9 alleged to have taken place', or even a
10 specific threat of harm. There is no basis
11 to keep them in this lawsuit any longer.
12 There is not a legal basis, there is nothing
13 that has been alleged in the Complaint as a
14 specific basis to do so. This case needs to
15 be dismissed.

16 THE COURT: Mr. Smith?

17 MR. SMITH: May it please the Court.
18 Your Honor, the plaintiff brought this action
19 against the parents of Mr. Dixon due to area
20 of blame. Now, I recognize that normally
21 that would not pass muster.

22 However, in this particular case the
23 parents knew of their son's mental
24 instability and made it a point to tell Mr.
25 Kilgore that his presence was beneficial to

1 their son.

2 I recognize that Mr. Davis is saying that
3 it was not under the same roof, however the
4 trailer that they were residing in, Mr.
5 Kilgore and Mr. Dixon, was right behind the
6 parents' house on the parents' property. He
7 had moved from his house -- when they first
8 got together, he'd moved into the trailer on
9 his parents' property due to his instability,
10 or at least that is our contention.

11 The fact that he was mentally unstable
12 is best seen by the fact that he committed
13 suicide shortly after shooting Mr. Kilgore.

14 They recognized his instability and
15 instead of alerting Mr. Kilgore that was a
16 possibility, they failed to do that.

17 Relating to a dog, and I'll use that as
18 sort of an analogy. But the dog appears
19 fine, everything's is good, and then the dog
20 bites a person, just -- Mr. Dixon, in his
21 mental state, it was such that he wasn't
22 capable of taking care of himself. That's
23 why he moved from his house to his parents'
24 trailer. Because of that, he wasn't making
25 his own decisions. That he shot his friend

1 of many years, then committed suicide days
2 later, uh, at the very least creates a
3 question of whether he was mentally ill or if
4 what he was doing -- if he was -- if his
5 parents were now his keeper, that is our
6 whole allegation, that they knew the problem
7 and they didn't share it with Mr. Kilgore
8 such that Mr. Kilgore would see something,
9 necessarily, upfront. They parents knew
10 that. They did not -- this was all that Mr.
11 Kilgore was shot, unfortunately. And,
12 unfortunately, Mr. Dixon passed soon away
13 thereafter. Which, as I said previously, I
14 think that underscores the fact that he was
15 mentally unstable.

16 MR. DAVIS: Very briefly in response,
17 Your Honor. The allegation of knowledge is
18 simply unbelievable. I believe what they'd
19 have to show is the ability to monitor,
20 supervise and control.

21 Using the dog analogy, which was misused,
22 the master of a dog is able to supervise,
23 monitor and control the dog or are expected
24 to.

25 Parents, there is no legal authority that

1 says parents have the ability to control,
2 supervise or monitor an adult son absent some
3 special Order or something that's out there.
4 So what they are talking about here is way
5 outside the allegations of the pleadings.
6 But even looking at what has been said here
7 today is the allegation that you have a
8 mentally unstable son, mentally ill and
9 mentally unstable, does a parent have a duty
10 just because the son -- I don't think they
11 have.

12 THE COURT: First, this matter is
13 before me on a Motion for reconsideration of
14 my former grant of the 12(b)(6) Motion based
15 on the actual pleadings that were filed in
16 this matter. That's what I am constrained to
17 do, is to analyze my Order as to the initial
18 Complaint that was filed.

19 As to the initial Complaint that was
20 filed and which was dismissed by my Order, it
21 was defective. I don't mean defective, Mr.
22 Kilgore, -- it's just that it didn't have the
23 allegations that the lawyers were looking for
24 under the case law. Therefore, the dismissal
25 stands. It is without prejudice to Mr.

1 Smith, whatever he might be able to do as a
2 result of that Order being granted. So I
3 deny the Motion for reconsideration and let
4 the Order stand. Thank you. We will do a
5 From 4.

6 (HEARING CONCLUDED)
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ORDER DENYING THE
MOTION FOR RECONSIDERATION

05/08/17

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-04-01605

Kenji C. Kilgore

Estate of Samuel Joe Dixon et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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. See Page 2 for additional information.
- 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

PLAINTIFF'S MOTION TO RECONSIDER IS DENIED.

This order ends does not end the case.

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 (List amount(s) below)
		\$
		\$
		\$

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

Judge Code

Date

For Clerk of Court Office Use Only



Anderson Common Pleas

Case Caption: Kenji C Kilgore VS Estate Of Samuel Joe Dixon , defendant, et al
Case Number: 2015CP0401605
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2017-05-08 13:56:24 page 3 of 3

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Certification of Counsel

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

Appellate Case No. 2017-001330

RECEIVED
DEC 11 2017
SC Court of Appeals

Kenji Kilgore,

Appellant,

v.

Estate of Samuel Joe Dixon, Samuel E. Dixon,
and Fredda L. Dixon

Respondents.

**CERTIFICATE OF COUNSEL IN
APPELLANT'S AMENDED RECORD ON APPEAL**

I HEREBY CERTIFY that this Amended Record on Appeal contains all materials proposed to be included by the parties, and not any other material.

December 6, 2017



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