

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
Doyet A. Early, Circuit Court Judge

Appellate Case No. 2019-000648  
Civil Action No. 2018-CP-40-02425

**RECEIVED**  
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SC Court of Appeals

Jefferson Davis, Jr..... Appellant,

v.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reams, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Dept. of Revenue, South Carolina Dept. of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40..... Respondents.

**INITIAL BRIEF OF RESPONDENT RANDY PAGE**

Geoffrey K. Chambers, Esquire  
CPERL Group  
411 Walnut Street  
Number 10646  
Green Cove Springs, FL 32043  
Phone: 864-508-0899  
Geoffrey@CPERLgroup.com

*Attorney for Respondent Randy Page*

November 8, 2019

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## Counter-Statement of Issues on Appeal

1. Whether the trial court properly dismissed Appellant Jefferson Davis' ("Appellant") claims against Randy Page (Respondent) where Appellant violated the trial court's Amended Order by failing to file and serve the Amended Complaint in accordance with the Amended Order?
2. Whether the Trial Court properly dismissed Appellant's claims against Respondent Page with prejudice (instead of without prejudice) when Appellant was given an opportunity to amend his complaint with instructions from the Court on how to correct deficiencies with his complaint, and Appellant failed to comply with the Court's order allowing amendment by failing to timely file the Amended Complaint, failing to timely serve the Amended Complaint, failing to address the corrections to deficiencies requested in the Trial Court's order and failing to state any new facts in his amended complaint or post dismissal pleadings that would further support his deficient causes of action?
3. Was the dismissal of the claims against Respondent Page supported by the additional sustaining ground that the claims against Respondent Page are fatally deficient?
4. Whether the trial court also properly dismissed Appellant's claims against Respondent where the Amended Complaint fails to assert claims upon which relief can be granted because the Amended Complaint fails to make any factual allegations in support of any such claims against Respondent Page?

## Statement of the Case

In the interest of economy, Respondent Randy Page incorporates by reference the Statement of the Case found in the brief of co-Respondents Cato Institute and Howard S. Rich to supplement the below identification of parties and date of filing a Motion to Dismiss.

Respondent Randy Page is a resident of Greenville, SC who works in the administration of Bob Jones University. Respondent Page manages the public relations of Bob Jones University and was recently named to the University President's Cabinet as Chief of Staff.

Respondent Page was named as a defendant in this case in the untimely filed and served First Amended Complaint. Respondent Page received a copy of the Summons and Complaint in his mailbox on Monday December 10<sup>th</sup> or Tuesday December 11<sup>th</sup>. No one was home at the time the Summons and Complaint was delivered in the mail. No other attempt at service on Respondent Page was made by Appellant.

On December 21, 2018, Respondent Page served and filed a Motion to Dismiss the Amended Complaint, pursuant to South Carolina Rules of Civil Procedure 8(a), 12(b)(5), 12(b)(6) and 12(b)(7). (*See* Dec. 21, 2018 Mot. to Dismiss, at 1.) Respondent Page supported this Motion with a Memorandum in Support of Motion to Dismiss on February 11, 2019. Respondent Page argued, *inter alia*, that Plaintiff did not amend the original Complaint to include facts supporting its causes of action. Additionally, Respondent Page argued that Plaintiff failed to properly serve within the 15 days permitted by the Amended Order as Respondent Page was never properly served. (*See* Page Mem. Supp. Mot. to Dismiss, at 4 n.3)

## Standards of Review

The trial court dismissed Plaintiff's claims against Respondent Randy Page for failing to comply with Judge Benjamin's October 30, 2018 Amended Order. The interpretation of an order is a question of law that is reviewed *de novo*. *Doe v. Bishop of Charleston*, 407 S.C. 128, 134, 754 S.E.2d 494, 498 (2014); *Ex parte TLC Laser Eye Centers, LLC*, 404 S.C. 385, 392, 745 S.E.2d 105, 109 (2013); *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

The dismissal of Plaintiff's claims is also supported by the additional sustaining grounds that the Amended Complaint fails to assert claims against Respondent Page upon which relief can be granted because the Amended Complaint fails to make any factual allegations in support of any such claims. In reviewing a trial court's dismissal for failure to state a claim pursuant to Rule 12(b)(6), SCRCPP, an appellate court applies the same standard as the trial court—the pleadings must be construed liberally and all well-pled facts must be presumed true. *See Doe*, 407 S.C. at 134, 754 S.E.2d at 498-99. A claim should be dismissed when the facts alleged in the complaint do not support relief. *Brouwer v. Sisters of Charity Providence Hospital*, 409 S.C. 514, 519, 763 S.E.2d 200, 202 (2014). The prejudicial effect of a dismissal is determined by the trial court's exercise of its discretion, which will be reversed only for an abuse of discretion. *See Berry v. McLeod*, 328 S.C. 435, 449-50, 492 S.E.2d 794, 802 (Ct. App. 1997); *Newman v. Old West, Inc.*, 286 S.C. 394, 334 S.E.2d 275 (1985). An appellate court also employs the same standard of review as the trial court in reviewing the dismissal of a claim pursuant to Rule 12(b)(8), SCRCPP. *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009). “[E]ach of the components of the rule are determined as a matter of law and thus [the appellate court applies] a *de novo* standard of review[.]” *Id.*

## Argument

**I. The trial court properly dismissed Plaintiff's claims against Respondent Page because Appellant failed to file and serve an Amended Complaint within the time permitted by the Amended Order.**

In the interest of economy, Respondent Randy Page incorporates by reference the Arguments found in the brief of co-Respondents Cato Institute and Howard S. Rich.

Respondent Page was never properly served with the Summons and Complaint. An attempt at service was made by Appellant by mailing a copy of the Summons and Complaint to Respondent Page on December 10<sup>th</sup> or 11<sup>th</sup>, 2018. Neither Respondent nor anyone in his family was home at the time the Summons and Complaint were placed in his mailbox. No other attempt at service was made.

Even if a Court were to find the flawed attempt at service on Respondent was adequate, service on December 10<sup>th</sup> or 11<sup>th</sup> does not comply with the timing of service in Judge Benjamin's Order. As a result, dismissal of Defendant Page from this action was proper.

**II. The dismissal of Appellant's claims against Respondent Page is also supported by the additional sustaining ground that the causes of action Appellant attempts to assert are fatally deficient.**

In the interest of economy, Respondent Page incorporates and adopts by reference the Arguments and Conclusion found in the brief filed by Respondents Cato Institute and Howard Rich.

**III. The dismissal of Mr. Davis' claims against Cato Institute and Mr. Rich is also supported by the additional sustaining ground that the causes of action he attempts to assert are fatally deficient.**

In the interest of economy, Repsondent Page incorporates and adopts by reference the Arguments and Conclusion found in the brief of co-Respondents Cato Institute and Howard S. Rich.

**IV. Dismissal of Plaintiff's claims against Respondent Page is further supported by the additional sustaining ground that the Amended Complaint fails to make any factual allegations in support of any claims against Respondent Page.**

“The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.” Rule 220(c), SCACR; *I'on, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) (“Under the present rules, a respondent—the ‘winner’ in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court’s ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.”). Even if the Court finds that Plaintiff complied with the Amended Order’s requirements, this Court should affirm the trial court’s dismissal of Plaintiff’s claims against Respondent Page because the Amended Complaint does not allege any facts to support even a single claim against Respondent Page.

“Rule [of Civil Procedure] 12(b)(6) requires the plaintiff to allege *facts*.” *Paradis v. Charleston County School District*, 424 S.C. 603, 615, 819 S.E.2d 147, 153 (Ct. App. 2018) (emphasis added). Rule 8(a)(2) further requires that those facts be sufficient to show that “the pleader is entitled to relief.” Rule 8(a)(2), SCRCF. “In deciding a motion to dismiss pursuant to 12(b)(6), SCRCF, the trial court should consider only the allegations set forth on the face of the plaintiff’s complaint.” *Paradis*, at 609, 819 S.E.2d at 150 (quoting *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007)). “In deciding whether a claim should be dismissed pursuant to Rule 12(b)(6), SCRCF, th[e] court should consider whether [the plaintiff] has ‘state[d] facts sufficient to constitute a cause of action.’” *Id.* at 609, 819 S.E.2d at 150 (quoting *Gaskins v. S. Farm Bureau Cas. Ins.*, 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App. 2000)). “Rule 12(b)(6), SCRCF, ‘retains the Code Pleading standard . . . rather than the more lenient notice pleading

standard found in the federal rules.”” *Id.* (quoting *Gaskins*, 343 S.C. at 671, 541 S.E.2d at 271. “When a plaintiff states nothing more than legal conclusions, a claim should fail.” *Id.* (citing *Talbott v. Padgett*, 30 S.C. 167, 171, 8 S.E. 845, 847 (1889)). A claim of civil conspiracy requires pleading of an action taken to further the conspiracy. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 682 S.E.2d 871 (Ct. App. 2009).

The Amended Complaint fails to allege even a single fact to support any causes of action against Respondent Randy Page. Respondent Page is mentioned only in the case caption and in the identification of parties. No act is alleged in the Complaint that can be attributed to Respondent Page and no act is pled showing Respondent Page furthered a conspiracy against Appellant.

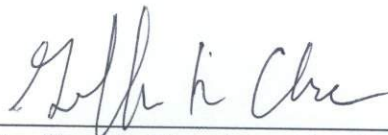
The failure to plead any act or action by Respondent Page or mention Respondent Page beyond identifying parties is sufficient support of the dismissal of the Complaint by the Trial Court.

Dismissal of Respondent Page from this action was proper.

### Conclusion

For the foregoing reasons, this Court should affirm the trial court’s Order dismissing Appellant’s claims against Respondent Randy Page.

Respectfully submitted,



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Geoffrey K. Chambers, Esquire  
CPERL Group  
411 Walnut Street  
Number 10646  
Green Cove Springs, FL 32043  
Phone: 864-508-0899  
Geoffrey@CPERLgroup.com

*Attorney for Respondent Randy Page*

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CERTIFICATE OF SERVICE

I, Geoffrey Chambers, attorney for Respondent Randy Page, do hereby certify that I have served a copy of the foregoing Respondent Randy Page's Initial Brief in connection with the above-referenced case by electronically mailing a copy of the same to the following:

Christopher S. Elliott, Esquire

Michael B. Wren Esquire

Williams J. Farley III, Esquire

Douglas MacKelcan, Esquire

James Goldin, Esquire

Ross C. DuRant, Esquire

Joseph K. Carter, Jr., Esquire

Jason P. Luther, Esquire

Kathy R. Schillaci, Esquire

Benjamin P. Mustian, Esquire

William H. Davidson, Esquire

Kelley S. Cannon, Esquire

Joseph M. McCulloch, Esquire

William Jordan, Esquire


Jennifer F. Nutter, Esquire

Miles Coleman, Esquire

Christopher Daniels, Esquire

Alan Jones, Esquire

And sending a copy by US mail to Jefferson Davis, Jr., Pro Se at 403 McCarter Avenue,  
Greenville, SC 29615

A handwritten signature in cursive script, appearing to read "Geoffrey K. Chambers", written over a horizontal line.

Geoffrey K. Chambers

Asheville, NC

November 8, 2019



# Consumer Protection, Environmental, and Regulatory Law Group, LLC

From the desk of:  
**Geoffrey K. Chambers**  
(864) 508-0899  
geoffrey@CPERLGroup.com

Friday November 8, 2019

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
PO BOX 11629  
Columbia, SC 29211

RE: Jefferson Davis, Jr. v. Ellen Weaver, et al., Appellate Case No. 2019-000648

Dear Ms. Kitchings,

Please find enclosed the original and two copies of the initial brief of Respondent Randy Page. By copy of this letter I am serving the same on the Appellant by US mail. Counsel for other Respondents shall receive notice and service by email.

Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "Geoffrey K. Chambers".

Geoffrey Chambers

CC:

William Davidson  
Joseph McCulloch  
J. Kenneth Carter, Jr.  
Mark Barrow  
Douglas Mackelcan  
Christopher Daniels  
Michael Wren  
William Jordan

Miles Coleman  
Jennifer F. Nutter  
Jason P. Luther  
William Farley  
Kelley Cannon  
Ross Conard Durant  
Martin Driggers  
Jefferson Davis, Jr. *Pro Se Plaintiff*

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CPERL Group, LLC

Office Address | 1201 Main Street | Suite 985 | Columbia, SC 29201

Mailing Address | 411 Walnut Street # 10646 | Green Cove Springs, FL 32043-3443

FL 32043



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Columbia SC 29211