

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

John Doe #1, individually, and now over the age of eighteen (18), and James Roe #1 and Jane Roe #1, as the parents and natural guardians, individually, and as the parents and natural guardians of John Doe #1 while he was under the age of eighteen (18),

Civil Action No. 2024-CP-46-03171

Plaintiffs,

MOTION TO DISMISS OF DEFENDANTS MORNINGSTAR FELLOWSHIP CHURCH, RICHARD JOYNER, DAVID YARNES, AND DOUGLAS LEE

v.

Morningstar Fellowship Church, Richard Joyner, David Yarnes, Douglass Lee, Erickson Lee, Chase Portello, and unidentified defendants James Smith 1-10,

Defendants.

TO: THE PLAINTIFFS AND THEIR ATTORNEYS, S. RANDALL HOOD, ESQUIRE AND CHAD A. MCGOWAN, ESQUIRE

YOU WILL PLEASE TAKE NOTICE that Defendants Morningstar Fellowship Church, Richard Joyner, David Yarnes (incorrectly referenced in the Complaint as “David Yarnes”) and Douglas Lee (incorrectly referenced in the Complaint as “Douglass Lee”) (collectively, “these Defendants”), through their undersigned counsel, hereby move for dismissal of this action as against them, in whole or in part, pursuant to Rules 12(b)(1) and 12(b)(6), SCRPC. In support of this motion, these Defendants would show the following.

1. One or more of the causes of action asserted against these Defendants may be barred by the ecclesiastical doctrine. See, e.g., Pearson v. Church of God, 325 S.C. 45, 52, 478 S.E.2d 849, 853 (1996) (“[C]ourts may not engage in resolving disputes as to religious law, principle, doctrine, discipline, custom, or administration[.]”).
2. The cause of action for civil conspiracy should be dismissed because it fails to allege that these Defendants committed an unlawful act or committed a lawful act by unlawful means and because it merely reiterates

and/or summarizes the allegations of the Complaint's other causes of action and labels them as a conspiracy. *See, e.g., Paradis v. Charleston Cty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021) (“[A] plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff.”); *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 611, 538 S.E.2d 15, 31 (Ct. App. 2000) (“Because [the Plaintiffs] merely realleged the prior acts complained of in [their] other causes of action as a conspiracy action but failed to plead additional acts in furtherance of the conspiracy, [they are] not entitled to maintain [their] conspiracy cause of action.”).

3. Restatement (Second) of Torts § 323 does not create a separate cause of action, but rather serves as a potential basis for finding that a defendant owed a duty to a plaintiff. The Complaint's third cause of action (violation of Restatement of Torts 323) is thus not a discrete claim, but rather an assertion regarding the source of a duty purportedly owed to the Plaintiffs, which is an element of the Complaint's first cause of action (negligence, gross negligence, and recklessness). Accordingly, the third cause of action should be dismissed.
4. To the extent the Complaint's fifth cause of action asserts a claim for reckless infliction of emotional distress, it should be dismissed because such a claim is not recognized in South Carolina. *See, e.g., Awkard v. Rammelsberg*, No. 4:17-cv-01542-RBH-KDW, 2018 U.S. Dist. LEXIS 168067, at *32 n.13 (D.S.C. Mar. 13, 2018) (“South Carolina does not recognize the tort of Reckless Infliction of Emotional Distress.”); *Smith v. Blanton*, No. 8:09-cv-00789-HFF-BHH, 2009 U.S. Dist. LEXIS 34819, at *7 (D.S.C. Apr. 16, 2009) (“[A]ssuming Plaintiff is attempting to assert a claim for reckless infliction of emotional distress rather than intentional infliction, such claim must also be dismissed because the state of South Carolina does not recognize the tort of reckless infliction of emotional distress.”) (citation omitted); *Hernandez-Martinez v. Pyatt*, No. 6:07-cv-01036-GRA-WMC, 2007 U.S. Dist. LEXIS 102436, at *14 (D.S.C. Dec. 7, 2007) (“[I]f the plaintiff's complaint is construed to assert a claim for reckless infliction of emotional distress rather than intentional infliction, such claim must also be dismissed because the state of South Carolina does not recognize the tort of reckless infliction of emotional distress.”) (citation omitted).
5. South Carolina law does not recognize a separate and independent cause of action for “necessaries,” which are simply elements of damage potentially recoverable under other causes of action. Accordingly, the Complaint's sixth cause of action should be dismissed.

This motion is supported by the pleadings in this action, any memoranda or affidavits which may be submitted, all applicable statutes and case authority, the applicable Rules of Civil Procedure, and such other evidence and authority as the court deems it appropriate to consider.

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, the undersigned counsel certifies that there is no duty of consultation on a motion to dismiss and that, in any event, on information and belief a consultation would serve no useful purpose.

s/Curtis W. Dowling

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