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Dec 16 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No.: 2018-CP-10-4083
Appellate Case No.: 2022-001114

Charleston Carriage Works, L.L.C.,

Appellant,

v.

Charleston Animal Society, Ellen Harley and
Charleston Carriage Horse Advocates, LLC,

Respondents.

RETURN TO MOTION TO STRIKE

December 16, 2022

/s/Thomas R. Goldstein
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As authorized by Rule 240(e), *South Carolina Appellate Court Rules*, the Appellant submits the following Return to the Respondents' Motion to Strike Initial Brief:

The Court should deny the Respondents' joint motion to strike portions of Appellant's Brief. First, there is no statute, rule, policy, or precedent for granting an opposing party editorial control of an opponent's brief. The *Appellate Court Rules* provide Respondents an opportunity, if they are "dissatisfied" with Appellant's statements, to provide a counterstatement "of the issues, of the case, or of the standard of review." Rule 208(b)(2) *S. C. Appellate Court Rules*.

Second, the Court of Appeals issues Opinions—not argumentative briefs. This Court does not have the ability to determine if a party's brief contains "irrelevant" material until the case is fully briefed and the parties provide the Court with a Record on Appeal. Likewise, the Court of Appeals has no mechanism to evaluate Respondents' complaint that Appellant "sets out a barrage of facts without any citation to said record." (Respondents' motion at page 4) As set forth in the preceding paragraph, if Appellant states a "fact" not supported by the Record, Respondents should raise that objection in their brief (or at oral argument if oral argument is scheduled), but it is not a ground to demand editorial control over an opponent's brief.

Finally, as set forth more fully in the supporting memorandum (if the Court desires to examine this issue in more depth), it is impossible to construct a procedure to accomplish what the Respondents ask this Court to do. The Respondents raise two broad objections: relevancy and failure to provide citation to the Record. The Court cannot address relevancy until the issues are fully briefed and the parties have filed the Record on Appeal. Likewise, it is impossible for the Court to review a record that has not been provided to determine if Appellant strayed from the Record. (As discussed in the supporting memorandum, if the Court desires further examination of Respondents' complaints, this case comes before the Court on an appeal from the grant of

summary judgment and the lower court's refusal to compel two of the Respondents to turn over discovery material. Judicial review of summary judgment provides the Appellant a liberal view of the facts, a standard of review the Respondents ignore.) The entire process of judicial review will grind to a halt if the Court is called upon to pre-screen litigants' briefs as a condition to judicial review.

Conclusion

The Court should deny the Respondents' Motion to Strike, which borders on being frivolous. The Return stated above is sufficient explanation to demonstrate why the Court should deny the Respondents' Motion to Strike, but, in an abundance of caution, if the Court desires a more detailed analysis of Respondents' allegations, then Appellant provides a supporting memorandum analyzing the Respondents' joint motion with specific references to the Record on Appeal, pertinent caselaw, and facts illuminating Respondents' tactics. Appellant believes the above explanation is sufficient to explain why Respondents' motion should be denied, but provides the supporting Memorandum if, and only if, the Court desires further detail.

Respectfully submitted,

December 16, 2022

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Appellate Case No.: 2022-001114

Charleston Carriage Works, L.L.C.,

Appellant,

v.

Charleston Animal Society, Ellen Harley and
Charleston Carriage Horse Advocates, LLC,

Respondents.

MEMORANDUM IN SUPPORT OF APPELLANT'S
RETURN TO MOTION TO STRIKE

December 16, 2022

/s/Thomas R. Goldstein

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As authorized by Rule 240(e), *South Carolina Appellate Court Rules*, the Appellant submits the following memorandum in support of Appellant’s Return to the Respondents’ Motion to Strike Initial Brief:

1. Return to Respondents’ “Background” Statement.

The Respondents’ “Background” grossly understates the case on appeal. (By coincidence, the Respondents’ unprecedented Motion to Strike coincides with oral argument before the Supreme Court in *Garrard v. Charleston County School Dist*, Appellate Case Number 2020-000605 on December 14, 2022. There, the Respondent School District argued that calling someone a racist is protected speech under the fair reporting privilege so long as it is couched as an opinion.¹ The issues in *Garrard* and this case overlap, the term “animal abuser” being substituted for “racist”—except that calling the plaintiff an “animal abuser” is an accusation of criminal conduct, a *per se* defamatory statement. See plaintiff’s affidavit quoted on page 12 below. Our Supreme Court will resolve the dueling characterizations as to whether “opinion” is not actionable, but in the meantime, it is not the Respondents’ prerogative to minimize the Appellant’s claim by pretending it is nothing more than a disagreement over seven sentences just as it is not the Respondents’ prerogative to dictate how Appellant frames its brief. One important distinction between *Garrard* and this case is that here, none of the Respondents here are “media defendants.” They are registered charities (and a principal of a charity). Despite distorting both facts and law to imply Appellant’s case involves nothing more than seven allegedly opinion statements to characterize Appellant’s case as frivolous, it is noteworthy that Respondents for the first time

¹ The U.S. Supreme Court rejected the “opinion” defense in *Milkovich v. Lorain Journal Co.*, 497 U.S. 1. 110 S. Ct. 2695, 111 L.Ed.2d 1 (1990): “It is worthy of note that at common law, even the privilege of fair comment did not extend to ‘a false statement of fact, whether it was expressly stated or implied from an expression of opinion.’ Restatement (Second) of Torts § 577, Comment a (1977).” Appellant covers this principle in its brief at pages 42-43.

finally concede that Big John “fell” and did not “collapse.” Appellant is grateful for this concession, which has been a long time coming.

The Respondents grossly mischaracterize the case by asserting the legal issues are circumscribed by the seven italicized statements and nothing else, which is like saying the Hindenburg was a zeppelin. There is more to the story. A convenient summary of the Appellant’s story is contained in the 26 specific instances of defamatory/conspiratorial conduct identified in Appellant’s initial brief at pages 45-47.

In this Return to Respondents’ Joint Motion to Strike,² Appellant makes two indisputable points. First, assuming *arguendo* that Respondents’ seven italicized statements came anywhere close to describing accurately the totality of Appellant’s case, six of the seven are demonstrably false. Appellant demonstrates the falsity in his numerous affidavits in the Record on Appeal, and these affidavits are discussed in detail in the opening brief. This Return includes a short excerpt quoted below, which demonstrates Respondents improperly edit the facts. Second, the Respondents ignore the overwhelming evidence of Respondents’ joint effort to destroy the Appellant. These efforts include such strategies as invoking disciplinary proceedings against Appellant’s lawyer, moving against Appellant’s veterinarian’s license, and making spurious complaints about the Appellant. (See #26 on the list identified in the preceding paragraph.) The Respondents’ amalgamated conspiracy is discussed extensively in Appellant’s brief and supported by numerous references to a copious record.

Thus, the Respondents’ joint effort to enlist the Court’s assistance in expurgating the Appellant’s brief is just the latest in a long line of coordinated attacks. The *Rules of Appellate Procedure* do not provide a mechanism for the Court of Appeals or the Supreme Court to edit

² The fact that the Respondents act in concert reinforces Appellant’s allegation of amalgamation.

briefs, and the Respondents' effort to drag the Court into a drafting controversy demonstrates procedural chutzpah. The Respondents' arrogance in demanding to limit Appellant's arguments displays again their effort to use their superior financial resources to weaponize court procedure to waste the Court's time and wear down the Appellant with dilatory tactics.

If the Respondents are dissatisfied with Appellant's statement of facts, the *Appellate Court Rules* allow the Respondents to propose a counterstatement of facts in their briefs, Rule 209(b)(2), *S. C. Appellate Court Rules*. These Rules do not infuse Respondents with authority to dictate Appellant's composition. If Appellant misuses court process, the *Appellate Court Rules* provides Respondents with a remedy. See Rule 269 "Frivolous Appeals, Petitions, Motions, or Returns." Under this rule, the Court can "impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require." Respondents give this Rule a wide berth because they know they cannot dictate to Appellant how to draft its brief. Looking at the Respondents' putative objections in the light most favorable to them, they ask that a few of Appellant's statements be moved from the introductory portion of the brief to the argument section of the brief, a fly-speck allegation that wastes the Court's time and forces a financially disadvantaged litigant to address dilatory conduct.

2. Respondent's Request that the Briefing Schedule Be Held in Temporary Abeyance.

On November 11, 2022, Appellant filed its initial 66-page brief along with a motion on November 14, 2022, for leave to allow the brief to be filed as submitted because it might exceed the 50-page limit. (As set forth above, it is unclear whether the Initial Brief exceeds the page limitation because—as Respondents point out—the matter before the Court is on appeal from the entry of **four** distinct adverse Orders, and therefore, one can interpret the *Rules of Appellate Procedure* to allow a 200-page brief (50 x 4, or 200). However, respectful of the Court's workload,

and for additional salutary benefits of simplicity, convenience, and judicial economy, Appellant addressed all four Orders in a single brief. Appellant’s November 14, 2022 application to exceed the 50-page limitation, about which the parties consulted prior to filing, Appellant made clear it had no objection to the Respondent’s being afforded additional time because the parties do not know if the Court will accept the brief as filed or require that it be shortened. (And, as addressed below, in light of the Respondents’ assertion that Appellant did not properly address its second cause of action, Appellant will move the Court for leave to make a minor editing change to the Initial Brief to address this charge.) Appellant believes it is reasonable to expect the pending November 14th motion for leave to file a 66-page brief will afford Respondents additional time to respond under Rule 240(b), especially now that Respondents’ motion seeks to dismiss part of Appellant’s brief. Either way, the Appellant made clear to opposing counsel that he does not object to Respondents being afforded additional time.³

Finally, the Respondents’ allegation that Appellant did not appeal an adverse decision dismissing Appellant’s second cause of action (violation of civil rights) is not supported by either the record or the Initial Brief. As set forth above, it is unclear if the page limitations on Appellant’s brief are 50 pages or 200 pages because four distinct Orders are being appealed. Respondents state in their Motion to Strike that Appellant plead a cause of action for “Violation of Civil Rights under Article I, § 3, South Carolina Constitution—Gross Negligence, Recklessness.” (Motion at page 3). The Appellant’s Initial Brief demonstrates the dismissal of all of plaintiff’s causes of action is fully discussed, but to address the Respondents’ concern and quiet the controversy, Appellant will

³ The Court and parties always benefit from pre-filing consultation as required in circuit court. Not only would consultation get the parties on the same page regarding deadlines, but also consultation might narrow issues before the Court. For example, the Respondents’ Motion to Strike is grounded first on relevancy, but then switches up to allege the Appellant fails to cite to the record. It cannot be both. Which is it? For judicial economy, Appellant addresses relevancy and citation to the record together.

file a motion with the Court seeking leave to make an editorial adjustment to the heading of Argument 3 on page 50 to make clear that Appellant is addressing the dismissal of its second cause of action along with the others since the analysis is based on the same evidence and the same law. In short, the Respondents attempt to short-circuit judicial review raising fly-speck objections, but there is no provision in the *Rules of Appellate Procedure* authorizing an opposing party to dictate how Appellant drafts his brief, and it is a waste of limited judicial resources to ask an appellate court to monitor briefs.

- 3. Respondents' Allegations that Appellant's Brief Contains Improper Statements.**
 - A. The appeal is governed by the summary judgment standard.**
 - B. The Respondents made no effort to examine the record to determine if factual statements are contained in the record.**
 - C. Respondent does not get to declare what is or is not relevant.**

- A. The appeal is governed by the summary judgment standard.**

Even though this case involves appeals from four distinct and separate Orders, the overarching legal error is that the Master-in-Equity granted summary judgment across the board, and the standard of review is the same for each cause of action. The Court of Appeals reviews the grant of summary judgment *de novo*, and in doing so, the Appellant is not only entitled to have all the facts construed in its favor, but also all the inferences reasonably deducible therefrom. Thus, when the Respondents flyspeck Appellant's brief, for example on page 3, by complaining that Appellant included facts in the Statement of Case, they are, once again, ignoring the summary judgment standard where procedure and facts fuse in a standard that allows Appellant the benefit of any doubt as to facts and inferences. Picking this fight, demonstrates again Respondent's superior financial ability to weaponize court procedure as they have done throughout, including taking aim at Appellant's lawyer, veterinarian, and the Respondent. They ignore that on appeal

from summary judgment, the Appellant has all the facts and the inferences deducible from them construed in its favor.

On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. *U.S.A.A. Property and Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 661 S.E.2d 791 (2008)

Under this standard, it is frivolous to draw a distinction between facts or ambiguities or conclusions and inferences because no matter what they are, the non-moving party receives the benefit of any doubt. Under this standard, the lines between them blur, and it is a waste of the Court's time and oppressive to the Appellant to argue that a statement on page 5 or 6 of the Appellant's brief is more properly stated on page 9. The Respondents cannot force Appellant to adopt **their** formulation of the facts, and it is not surprising that Respondents fail to provide a single citation holding otherwise.

B. The Respondents are not permitted to declare which facts are relevant by way of preemptory motion and made no effort to examine the record to determine if factual statements are supported by the record.

The Respondents' flyspecking continues in their unsupported assertions that Appellant's facts are "irrelevant" and/or not supported by the record. (Logically, it cannot be both. If a statement is "irrelevant," then it is of no consequence that it is found in the record. On the other hand, if it is found in the record, then Respondent cannot simply declare certain facts "irrelevant" because the Court makes that call, not the Respondent. Parties do not dictate evidentiary rulings, and, as set forth above, on appeal from the grant of summary judgment, Appellant gets the benefit of all doubts. Relevancy is a legal position Respondents can assert at trial, not in a pre-trial maneuver either to limit the Court's review of the entry of summary judgment or to provide cover for the Respondents' failure to turn over discovery.

To be fair, the Respondents can be forgiven for forgetting important facts contained in the record because the record in this case is already swollen beyond what is necessary or desirable at summary judgment. The record, despite its size, however, remains materially incomplete since Ellen Harley and her putative charity have, to date, successfully flouted the rules on discovery. However, the record as it exists refutes the Respondent's allegations.

For example on page 4, the Respondents cite Ellen Harley's part time residence status as "irrelevant," but as several affidavits in the record attest, her status as a part-time resident plays a significant role in this case, first because a jury might view her commitment to carriage horse "advocacy" is pretext, and second that the same jury might find a Martha's Vineyard resident's constant complaint about temperature might be relative. See February 25, 2020, affidavit of Broderick Christoff, page 7:

Temperature is relative. Ms. Harley, a part-time resident of Charleston, who spends time at her home in Edgartown, Massachusetts on Martha's Vineyard, probably believes summer in Charleston is "extreme." Likewise, Martha's Vineyard winter temperatures would feel extreme to me. Charging me with subjecting our horses to inhumane treatment is not relative. She slanders me to encourage donations.

Likewise, the Respondents' allegation that Appellant mischaracterizes Charleston Animal Society as a "quasi-governmental agency" is shockingly disingenuous. The Record demonstrates abundant evidence that the Charleston Animal Society functions as a quasi-governmental agency. Charleston County provides \$175,000.00 a month to the Animal Society and provided the land and the building on which and from which it operates. See Exhibit 5 to affidavit of Joe Elmore, § 1.12: "In consideration of the above-mentioned covenants of the Society, the County agrees to pay the Society a yearly fee as determined by Charleston County Council ("Yearly Fee")." It gets additional funding from other municipalities, and it is a prodigious fundraiser, much of which was done at Appellant's expense by portraying Big John's "collapse" as being the result of "inhumane"

conditions. Joe Elmore admitted to Dr. Miller that he publishes extreme or misleading statements because “it is the only way I can get people to listen.” (See Appellant’s brief at page 24 and 39, quoting Record on Appeal.) The Charleston Animal Society’s status as a quasi-governmental entity—and a charity—is a material fact that is relevant to every aspect of the case, a “fact” emphasized by the Order under review because it misapplied *Atlanta Humane Society* case to justify throwing the plaintiff out of court. The Master-in-Equity relied upon *Atlanta Humane Soc. v. Mills*, 274 Ga. App. 159, 618 S.E.2d 18 (Ga. Ct. App. 2005) for the proposition that even a single interview can make a plaintiff a “limited public figure.” (Order under review at page 10) However, the Georgia Court of Appeals held that Atlanta Humane Society could not bring an action for defamation because it is a quasi-governmental entity. The Master-in-Equity called for the parties to submit proposed Orders, and the Master-in-Equity accepted Respondents’ submission. Therefore, since counsel prepared the Master-in-Equity’s Orders under review, it is beyond astonishing that that the Charleston Animal Society relies on the *Atlanta Humane Society* case while simultaneously contending Respondents statuses as quasi-governmental and/or charities are “irrelevant.” It is inconsequential now who is right and who is wrong because the characterization of the Animal Society as a quasi-governmental entity/charity is a trial issue, and it is not Respondents’ prerogative to dictate how Appellant composes its argument or what adjectives it chooses to describe entities. Once again, Respondents ignore that the parties are at the summary judgment stage. The Respondents’ objection is doubly dilatory because the defendants are “charities,” and therefore the distinction between “charity,” which is statutorily prohibited from disseminating misleading information or a “quasi-governmental agency,” or both, does not shed light on whether the Appellant has or has not created a genuine issue of material fact, which is the issue before the Court.

Regarding the fact of Elmore's trip to the Virgin Islands, his affidavit reveals that he used to live in the Virgin Islands from 1996 until 2002 (Elmore affidavit, Exhibit 1 at page 2), so flying there with teams of people to "rescue" a few dogs and cats sheds light on Respondents methods for fundraising fraud. In short, Charleston Animal Society needs donations to cover its expenses to fly back and forth to the Virgin Islands because \$21,000,000.00 is not sufficient. (Elmore affidavit, Exhibit 6, page 4) The record is replete with evidence of Respondents deliberately misrepresenting facts to induce donations and as charities are statutorily prohibited from publishing misleading information. § 33-56-120, S. C. Code, ann. They are not permitted to declare what is or is not relevant in an appeal, which makes this entire exercise frivolous.

Next, Respondent complains that Appellant improperly explains the difference between animal welfare organizations and animal rights organizations: "The distinction between 'animal welfare' and 'animal rights' organizations is totally irrelevant to this appeal." (Motion at page 4) Once again, Respondents claim a prerogative to dictate Appellant's arguments, which it does not possess. The record demonstrates there is an equine welfare organization in Charleston: L.E.A.R.N. (Livestock & Equine Awareness Rescue Network), and the representatives of L.E.A.R.N. are on the Appellants' witness list for a reason. The Respondents unnecessarily burden the workload of the Court and oppress the Appellant by claiming a privilege they do not control; to wit, deciding for the Court what is or is not relevant. Fraudsters typically cast themselves as the hero of the story, without which fraudulent fundraising is impossible. For example, Charleston Animal Society cannot fundraise by telling potential donors they are down to their last 25 million dollars and its director's base salary is only \$273,000.00. The unintended irony of the Respondent's Motion to Strike is that it calls attention to their misrepresentations and arrogance. The distinction between "animal rights" and "animal welfare" runs throughout this case, starting

with the complaint, and it is not the Respondents' prerogative to demand the Appellant to use only Respondent approved vocabulary. The distinction between the two types of organizations is discussed throughout the Record on Appeal, tying up not only the Respondents' manner of fraud, but also demonstrating how the fundraising fraud works:

Here is an example of how Ms. Harley perpetrates her fraud: She publishes a video of Big John on the ground, and she asserts that he "collapsed" from exhaustion. Almost immediately, a third party would post a comment and correct her by saying, "no, Big John is fine; he was not hurt." Ms. Harley then responds by deleting that comment and banning that person from further posting. In other words, she carefully controls the narrative to escalate the anger and the viciousness of outraged third parties who she falsely informs they are seeing a video of a horse worked to death. Everyone knows that free speech does not mean we can shout "FIRE!" in a crowded theater, but that is exactly what she does through social media.

The examples of Harley's and Charleston Carriage Horse Advocates' published lies could fill up a volume. I will give the Court just a few examples. Here is a typical post from May 20, 2017, Charleston Carriage Horse Advocates Home Page:

Did you know that (despite a mandatory 15-minute break between tours) animals are permitted to work eight consecutive hours connected to wagons [footnote omitted] OR ten hours with a ninety-minute break in a 24-hour period? How would you feel pulling that much weight around with limited breaks? [footnote omitted]

Here is Charleston Carriage Horse Advocates on February 28, 2018, alleging animal "abuse," which is a crime:

It's not an option to give up, who will speak for the oppressed and abused if you don't? Advocates and change makers will always have obstacles they are empowering.

Here is Charleston Carriage Horse Advocates on December 12, 2018 (replying to a comment that the horses "looked so sad and tortured"):

There are so many reasons, where to begin? Safety. Non-compliance of city ordinances, suspicious record keeping, alarming stories from disgruntled employees, animal abuse. Traffic congestion, cozy City Official relationships, Wagons and not carriages, strong arm tactics (so tedious) stench of urine in the streets and more. What do I approve of? Hard to say.

There is a lot of libel in that post, but it is worth pointing out, the alleged "disgruntled employee" canard is a play lifted straight out of the Animal Rights Playbook examined in detail in the Feld Entertainment case, a case that so upset the presiding judge that he imposed severe sanctions against the ASPCA. Here is the Charleston Carriage Horse Advocates on April 5, 2019:

Take a stand with the horses and mules that pull the heaviest loads and in the most extreme temperatures [footnote omitted] in the U.S. Together, we can effect change in their inhumane working and living conditions.

In the same repost in which the defendants describe us as “inhumane,” a commenter points out that animal abuse is a crime in South Carolina and asks if the defendants have notified the police. The list goes on and on, but each time someone would post a point of view at variance with the Charleston Carriage Horse Advocates, Ellen Harley deletes it and bans the poster, thereby creating a false narrative to cast me in a false light as an animal abuser, animal torturer, rule breaker, and to convict me in the court of social media as guilty of animal cruelty. This has, obviously, inflicted serious financial damages on our company.

It is hard to describe what these defendants have done to me because the viciousness and threatened violence came so often for so long. With the Big John video, at regular intervals, other animal right groups and sites share (repost) the Charleston Carriage Horse Advocates’ video, typically right before a holiday or busy month. This reposting is done with impunity as the law provides no remedy for me against others republishing false information on social media. It is like shouting “FIRE!” in a crowded theater and then broadcasting it. I usually become aware of the reposting when the hateful comments, threats and bad reviews start pouring in. As the result of the millions and millions and millions of “views” of what the defendants led people to believe was a dead or dying horse, we had to hide Big John, install expensive surveillance, arm ourselves, and be constantly on guard. For many weeks, Amber and I barely slept as one of us was always on guard for what we were sure were attacks coming from Animal Rights adherents. We even considered moving out of our house for some period after someone fired shots down our driveway and commenters had identified, named, and posted about us personally. The violence of animal rights activists is well known. Such violence prompted Congress to pass the Animal Enterprise Terrorism Act. What happened to us is the same thing that happened to Feld Entertainment in that case when the A.S.P.C.A. paid witnesses to lie and manufacture evidence of animal cruelty and what happened to the Gibson’s in the Oberlin College case. Following the defendants’ creation of the lie that I worked a horse to “collapse” or exhaustive death, I had to block entire countries from our Facebook page due to the volume of threats and attacks. We spent thousands and thousands of dollars on trying to protect our Internet presence due to the harm caused by these defendants, and, of course, Ms. Harley selected her name, “Charleston Carriage Horse Advocates” to be so close to mine as to cause confusion. Lots of people cancelled tours (the defendants’ ultimate intention), and the defendants did a splendid job of painting me as someone who abuses animals, cheats on regulations, and is unfit to provide horse drawn tours.

Affidavit of Broderick Christoff, February 25, 2020

It is unnecessary to try the case in a Return to a Motion to Strike, but the above quotation is a small part of the Record on Appeal, but it demonstrates that the Appellant provided the trial court with sufficient information to create genuine issues of material facts, and this information includes discussion of the difference between animal rights organizations and animal welfare organizations.

In light of the fact that the Respondents are charities and/or quasi-governmental agencies, which are statutorily precluded from disseminating false and misleading information, the distinction between animal welfare and animal rights organizations is fundamentally foundational to this case.

4. Respondent's Allegation of Waiver of Civil Rights Claim

Finally, the Respondents contend that the Appellant waived his right to appeal the summary judgment entered against its second cause of action, its civil rights cause of action, titled "Violation of Plaintiff's Civil Rights under Article I, § 3, South Carolina Constitution Gross Negligence, Recklessness." (Complaint filed July August 17, 2018) Appellant shows that this issue is fully addressed in Appellant's brief at pages 50-51 (Argument 3), but Appellant agrees to file a separate motion with the Court (after consultation), seeking leave to amend the heading on the section from:

3. The Master-in-Equity erred in dismissing the plaintiffs causes of action for conspiracy and intentional interference in business relations because there is overwhelming evidence to support both.

To

3. The Master-in-Equity erred in dismissing the plaintiffs causes of action for conspiracy, intentional interference in business relations, and violation of the Appellant's civil rights because there is overwhelming evidence to support all causes of action.

The Appellant will also seek leave of court to add a supplemental citation to *Dennis v. Sparks*, 449 U.S. 24, 101 S.Ct. 183, 66 L.Ed.2d 185 (1980), for the proposition that citizens can be held accountable for violating the rights of others, which omission was an oversight inadvertently lost in editing the Initial Brief.

The Respondents seek to short circuit the appeals process because they allege they have identified a flaw in pleadings, but technical flaws, even where they exist are never impediments to judicial review:

"When this court comes to construe an exception, it will make its construction as liberal as the language will allow, in order to decide the question involved, unless it is satisfied that the statement

has misled the respondent to his injury.” *McMahan v. Walhalla Light and Power Company*, 102 S.C. 57, 86 S.E. 194; *Zorn v. Crawford*, 252 S.C. 127, 165 S.E.2d 640 (1969)
Toole v. Toole, 260 S.C. 235, 195 S.E.2d 389 (1973)

Conclusion

The Respondents’ joint motion to strike is but another stop on a long line of Respondents’ dilatory and oppressive procedural fencing. Instead of addressing the merits of the case head on or addressing the summary judgment standard, the Respondents deploy hyper technical objections designed to wear down the Appellant to prevent the Court from reaching the merits of the case. The Respondents claim a privilege to dictate Appellant’s brief and want the Court to become something like a super editor deciding how the Appellant frames his appeal. This procedural fencing is another salient example of the Respondents’ refusal to address the legal issues on the merits. As set forth above, the *Rules of Appellate Procedure* provide a mechanism for Respondents to set forth a counter statement of facts if they are dissatisfied with Appellant’s, but they do not possess the prerogative to dictate the Appellant’s brief, and it is not the function of the Court to write briefs for parties.

This Court should deny the motion to strike. Respectfully submitted,

December 16, 2022

/s/Thomas R. Goldstein
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PROOF OF SERVICE

I certify that I have served the Return to Motion to Strike Appellant's Brief (and Memorandum in Support) upon the Charleston Animal Society, Charleston Carriage Horse Advocates and Ellen Harley by depositing a copy of it in the United States Mail (and by providing an electronic copy), postage prepaid on December 16, 2022, addressed to their attorneys of record, Elizabeth Palmer at her office Saxton & Stump at 151 Meeting Street, Suite 350, Charleston, South Carolina 29401 and to Joseph Thompson and Spencer Gill at their office Hall Booth Smith, P.C. at 111 Coleman Boulevard, Mt. Pleasant, S. C. 29464, and to Jenkins Mann at his office, Mann Blake & Jackson at 1901 Main Street, Suite 1205, Columbia, South Carolina 29201.

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Dec 16 2022

SC Court of Appeals

RE: Appellate Case No. 2022-001114
Charleston Carriage Works, LLC v. Charleston Animal Society, *et. al.*

Dear Ms. Kitchings,

I enclose (electronically) the Appellant's Return to Respondents' Joint Motion to Strike along with a supporting memorandum. (I am hopeful the Court can resolve the Motion without being burdened with the supporting memorandum, but I am including it in an abundance of caution in case the Court desires a more detailed response.) I also include a Proof of Service. Please let me know if I need to do anything further to perfect the filing. I thank you in advance. With kind regards I am

Very truly yours,



Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

enclosure: Return to Motion to Strike, Supporting Memorandum, Proof of Service

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