STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
THE HONORABLE JEAN HOEFER TOAL

Appellate Case No. 2023-000145

Kenneth B. Loveless, ... Appellant,

v.

Lesley Ann Stiles a/k/a Leslie Lou Stiles, ... Respondent.

FINAL BRIEF OF APPELLANT

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III. Did the Cour err in finding the Stiles' statements are privileged under the First Amendment to the U.S. Constitution?

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STATEMENT OF THE CASE

This matter was initiated by Appellant Kenneth Loveless' (hereinafter "Loveless") filing of a Summons and Complaint against Respondent Leslie Stiles (hereinafter "Respondent") for defamation on March 16, 2022. (R. pp. 35-44). The complaint alleged, in pertinent part, that Respondent defamed Loveless by posting and voluntarily publishing defamatory statements concerning Loveless in a Facebook group of which Respondent was the administrator and therefore had the ability to censor what appeared on the Facebook group page. (*Id*.). Respondent filed and Answer and counterclaimed against Loveless for abuse of process on April 13, 2022. (R. pp. 45-54). On April 26, 2022, Loveless filed his answer to Respondent's counterclaim along with a motion to dismiss the counterclaim pursuant to Rule 12(b)(6), SCRCP and a motion to bifurcate the counterclaim pursuant to Rule 42(b), SCRCP. (R. pp. 55-58). Respondent filed a motion for judgment on the pleadings pursuant to Rule 12(c), SCRCP on May 10, 2022, asserting that she is entitled to judgment because she is immune from suit under the Communications Decency Act, and because her statements are privileged by the First Amendment. (R. pp. 59-60).

In May 2022, several motions were filed in this action pertaining to discovery issues. After serving subpoenas on several individuals on or about April 14, 2022, Respondent subsequently filed a motion for rule to show cause and a motion to compel as to those third parties on May 11, 2022. (R. pp. 61-97). Loveless then filed a motion for protective order or confidentiality order on May 27, 2022, seeking to prevent Respondent from engaging in discovery not related to the legal or factual issues in dispute in the matter. (R. pp. 98-123). Respondent filed a motion to compel discovery, deem matters admitted, and for sanctions against Loveless on May 27, 2022. (R. pp. 124-176).

Respondent also issued subpoenas to Lexington-Richland School District Five in this matter. In responding to the subpoenas, counsel for District 5 asserted attorney-client privilege to certain documents requested by Respondent, to which Respondent filed a motion to overrule District 5's claims of privilege on June 27, 2022. (R. pp. 177-207). On July 14, 2022, Loveless filed a motion to quash Respondent's subpoena to Contract Construction, Inc. to again prevent Respondent from engaging in discovery unrelated to the defamation action. (R. pp. 208-235).

On August 19, 2022, the South Carolina Press Association ("SCPA") filed a motion to intervene and an accompanying memorandum in support of its motion. (R. pp. 236-240). In response, Loveless filed his objection to the SCPA's motion to intervene on August 26, 2022. (R. p. 241).

Respondent filed an Omnibus Memorandum of Law on November 28, 2022, ahead of the motions hearing set for the motions pending up to that point, including Respondent's motions to compel and for judgment on the pleadings. (R. pp. 242-603). A motions hearing was held on December 2, 2022, before the Honorable Jean Toal.[1] Following the hearing, Justice Toal issued an order granting Respondent's motion on December 21, 2022 (R. pp. 3-11), and on December 22, 2022, Justice Toal issued an order granting Respondent's motion for judgment on the pleadings. (R. pp. 12-22). Loveless filed a timely motion to reconsider the court's order granting the motion for judgment on the pleadings on January 3, 2023. (R. pp. 604-607). On January 10, 2023, Justice Toal filed an order denying Loveless' motion to reconsider the order. (R. pp. 23-24). Loveless timely served his Notice of Appeal on January 27, 2023 of four (4) orders:

[1] This was the first motion hearing held in the action. Nothing in the record reveals why there was a lengthy delay in having the motions heard. As a result of the lengthy delay, Justice Toal seemed to attribute the delay as an unwillingness on Loveless' part to participate in discovery when that was simply not true.

1. Order granting Defendant's Motion to Compel, Deem Matters Admitted and for Sanctions filed December 21, 2022.[2]
2. Order Granting Defendant's Motion for Judgement on the Pleadings filed December 22, 2022
3. Order Denying Plaintiff's Motion to Reconsider filed January 10, 2023.
4. Form 4 Order dated January 12, 2023 (ruling on multiple motions)

This appeal follows.

Stiles' counterclaim remains pending at the trial court level, but on information and belief, the trial court proceedings are stayed by the pendency of this appeal, because Stiles' claim for abuse of process necessarily depends on the final outcome of this appeal.

FACTUAL BACKGROUND

Appellant Kenneth Loveless began serving as a member of the board of trustees for Lexington-Richland School District Five (hereinafter "District 5") when he was elected to the board in November 2018.[3] Loveless brought this action for defamation against Respondent Leslie Stiles in his individual capacity as a citizen and resident of the State of South Carolina, and not in his official capacity as an elected member of the board. (R. pp. 35-44).

Respondent created a Facebook group named "Deep Dive into D5" (hereinafter "Deep Dive") on or about October 5, 2020, for which Respondent served as the page administrator. (R. p. 37, ¶8). It is believed that Respondent created this page for the purpose of airing her grievances

[2] Some of the orders that are appealed would be orders from interlocutory orders, but since the Order Granting Judgement on the Pleadings is a final order, the otherwise interlocutory orders are subject to immediate appeal as adjunct appeals to the final order. S.C. Code §14-3-330.

[3] Loveless continued to serve as a board member until losing his re-election bid following the November 2022 general election.

about decisions made by the school board and administration. (R. p. 98).[4] In creating the Deep Dive Facebook group, Respondent represented to the public that "[a]ll information posted is a result of much research and analysis…" (R. p. 37, ¶8). As administrator of Deep Dive, Respondent had the authority and responsibility to create and delete posts, send messages, respond to and delete comments and posts on the page, and remove and ban people from the page. (*Id*. at ¶10). She voluntarily warranted the accuracy of the information posted on the Facebook Page, warranting it was "a result of much research and analysis."

During her tenure as administrator of the Deep Dive page, Respondent published, approved, and endorsed posts[5] to the page that contained false and defamatory statements about Loveless despite representing that all information posted to the page was factual and derived from much research and analysis. (*Id*. at ¶12). The defamatory posts that Respondent published to Deep Dive not only included statements and posts from third parties, but also included defamatory posts which were authored by the Respondent herself. (*Id*. at ¶9).

Loveless brought this action for defamation and libel *per se* against the Respondent on March 16, 2022, alleging that Respondent voluntarily posted defamatory statements on the Deep Dive page made by herself and others, and that as administrator of the page, she ratified and

[4] Recall, the COVID breakout in March 2020 brought out lunatics on all sides, many of whom appeared at school board meetings lobbying for whatever political position they had regarding masks and whether school should be open so children could learn or teachers could stay home and still get paid. The social media firestorm, however, was not limited to protecting children and/or teachers. Loveless became a target of Respondent and others based on a false narrative perpetuated by certain individuals, in the press and on social media about whether he was using his board position for personal profit. No one knew that Loveless served without compensation on the school board and his work for the district was not only NOT for his financial benefit, his work FOR the Board was *pro bono*.

[5] By way of omission, Respondent also allowed clearly defamatory statements posted to the Facebook page to remain on the Page, thereby abandoning her responsibility as Administrator of the Page and her personal "warranty" that everything that appeared on the page was the "result of much research and analysis."

endorsed these defamatory statements by failing to uphold her duty to monitor the page. (R. pp. 35-44).

A hearing on Respondent's motion for judgment on the pleadings was held before Justice Jean Toal on December 2, 2022, during which the Respondent argued that she was immune from liability pursuant to 47 U.S.C. § 230(c)(1) of the Communications Decency Act. (R. pp. 59-60). As set forth above, the trial court granted Respondent's motion for judgment on the pleadings and denied Loveless' motion to reconsider its order. Loveless subsequently filed this appeal.

On the same date, Justice Toal heard and granted Stiles' motion to deem matters admitted based on what she concluded were insufficient answers and objections by Loveless to the Requests to Admit. (R. pp. 12-22). The merits of this order are also the subject of this appeal.

STANDARD OF REVIEW

In reviewing a motion for judgment on the pleadings, the appellate court "applies the same standard of reviewed implemented by the circuit court*." Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 122, 634 S.E.2d 5, 7 (Ct. App. 2006). When considering such a motion, "the court must regard all properly pleaded factual allegations as admitted. *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1990). When considering a motion for judgment on the pleadings, "a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever." *Id*. "On review of the motion, the court may not consider matters outside the pleadings." *Falk v. Sadler*, 341 S.C. 281, 533 S.E.2d 530 (Ct. App. 2000) (citing *Firemen's Ins. Co. v. Cincinnati Ins. Co.*, 302 S.C. 234, 394 S.E.2d 855 (Ct. App. 1990). That would necessarily include information presented to the Court on other motions that were heard on the same date, but which could not be considered in adjudicating the motion for judgment on the pleadings.

The law in South Carolina is clear that "a judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment*." Brown v. United Insurance Company of America*, 268 S.C. 254, 233 S.E.2d 298 (1977). "A judgment on the pleadings is considered to be a drastic procedure by our courts." *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1990) (citing *U.S. Casualty Company v. Hiers*, 233 S.C. 333, 104 S.E.2d 561 (1958)).

Regarding the standard of review in considering the trial court's decision on Respondent's motion to deem matters admitted, "a trial court judge's rulings on discovery matters will not be disturbed by an appellate court absent a clear abuse of discretion." *Hollman v. Woolfson*, 384 S.C. 571, 577, 683 S.E.2d 495, 498 (2009) (citing *Dunn v. Dunn*, 298 S.C.499, 381 S.E.2d 734 (1989)). "An 'abuse of discretion' may be found by this Court where the appellant shows that the conclusion reached by the lower court was without reasonable factual support, resulted in prejudice to the right of appellant, and therefore, amounted to an error of law." *Dunn*, 298 S.C.499, 381 S.E.2d 734 (1989).

ARGUMENT

I. THE TRIAL COURT ERRED IN CONSIDERING MATERIAL OUTSIDE THE FACTS ALLEGED IN THE COMPLAINT IN REACHING ITS DECISION TO GRANT STILES'S MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO RULE 12(C), SCRCP.

In granting the Respondent's motion for judgment on the pleadings, the trial court relied on the factual recitation presented and the defenses and arguments raised by the Respondent in her Omnibus Memo of Law. This was an error of law as the trial court is constrained to review only the allegations contained in the complaint when ruling on a motion for judgment on the pleadings pursuant to Rule 12(c), SCRCP, as is this Court when reviewing the appeal.

When determining whether to grant a Rule 12(c) motion, our courts have looked solely to the four corners of the complaint—not to other pleadings. "A complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever." *Falk v. Sadler*, 341 S.C. 281, 287, 533 S.E.2d 350, 353 (Ct. App. 2000). "The court must take all well pleaded factual allegations in the Complaint as true." *Id*. "Pleadings in a case should be construed liberally so that substantial justice is done between the parties." *Id*.

In *Falk v. Sadler*, Falk filed a complaint against Sadler asserting causes of action concerning her actions as a Guardian *ad Litem* for negligence, breach of fiduciary duty, and malicious use or abuse of legal process. *Falk* at 285. The trial court granted Sadler's motion for judgment on the pleadings and dismissed the case. On appeal, this Court looked to the four corners of the complaint and held that the complaint properly alleged facts that, if true, could result in a possible finding for Falk. *Id*.

In *Diminich v. 2001 Enterprises*, Diminich filed a complaint alleging breach of express and implied covenants to quit enjoyment of leased premises. 292 S.C. 141, 355 S.E.2d 275 (Ct. App.

1987). The trial court granted the defendant's motion for judgment on the pleadings, and on appeal, this Court found that the judgment was improper because "on motions for judgment on the pleadings, the allegations of the complaint must be considered by the court as admitted." *Id*. In both *Falk* and *Diminich*, the Court relied on the complaint when determining whether a judgment on the pleadings pursuant to Rule 12(c), SCRCP is proper.

Here, the trial court extensively relied on Respondent's Omnibus Memo of Law in considering the motion for judgment on the pleadings, which told a lengthy story well beyond the pleadings and included numerous newspaper articles published by The State Newspaper which themselves contained false facts. During the hearing on the motion, counsel for Loveless explicitly objected to the trial court considering the memorandum in any way because it included matters and information outside of the complaint. (R. p. 891, line 21-p. 892, line 1). The Respondent's memorandum included a recitation of facts that contained information not contained in the complaint in addition to multiple exhibits that were not a part of the complaint and could not be considered in judgment on the pleadings. (R. pp. 242-603). However, it is clear from the trial court's order that it considered information that went well beyond the facts as alleged in the complaint, which is improper under the standard of review. For those reasons, the court erred in granting the Respondent's motion for judgment on the pleadings and the order must be reversed.

A. <u>Loveless' complaint sufficiently pled a cause of action for defamation to survive a motion for judgment on the pleadings.</u>

The trial court further erred in granting Respondent's motion for judgment on the pleadings because Loveless' complaint properly pled and set forth sufficient facts to establish a cause of action for defamation against the Respondent. To maintain a defamation claim, "a plaintiff must prove: (1) a false and defamatory statement was made; (2) the unprivileged statement was

published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable regardless of harm or the publication of the statement caused special harm." *Garrard v. Charleston Cnty. Sch. Dist.*, 429 S.C. 170, 838 S.E.2d 698 (S.C. App. 2019) (quoting *West v. Morehead*, 396 S.C. 1, 7, 720 S.E.2d 495, 498 (Ct. App. 2011)); *Erickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006); *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002).

When considering a motion for judgment on the pleadings, "a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever." *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1990). Additionally, the court is required to treat all well-pleaded facts in the complaint as true. *Id*. When the complaint is properly considered and all allegations are assumed to be true, Loveless' complaint sufficiently established a cause of action for defamation for which Loveless was entitled to relief. Accordingly, the trial court erred in granting Respondent's motion for judgment on the pleadings and dismissing this defamation action.

II. THE TRIAL COURT ERRED IN FINDING THAT STILES IS IMMUNE FROM SUIT UNDER THE COMMUNICATIONS DECENCY ACT.

The trial court found that the Respondent is immune from civil liability under 47 U.S.C. § 230(c)(1) of the Communications Decency Act, however this was an error of law as "protection under §230(c)(1) extends only to bar certain claims imposing liability for specific information that *another party provided*." *Henderson v. The Source for Pub. Data, L.P.*, 21-1678, 1, 3 (4th Cir. 2022) (emphasis added).

47 U.S.C. § 230(c)(1) provides that "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information

content provider." An information content provider is defined as "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service." 47 U.S.C. § 230(f)(3). In granting Respondent's motion for judgment on the pleadings, the trial court agreed that Respondent was an information content provider who could not be treated as the publisher or speaker of information provided by another Facebook user, and therefore could not be held responsible under 47 U.S.C. § 230(c)(1) for the statements of other users. (Order Granting Motion for Judgment on Pleadings). The trial court's finding is flawed because, as alleged in the complaint, the Respondent's liability is not solely based on statements by other parties that she republished and specifically includes her own common law warranty as to the truth of the statements which appeared on the page, as "result of much research and analysis…" as well as her own defamatory statements about Loveless that she posted to the Deep Dive Page. (R. p. 37, ¶9; R. p. 606, ¶16).

In *Henderson v. The Source for Pub. Data*, Henderson brought claims against Public Data for violating the Fair Credit Reporting Act. 21-1678, 1, 3 (4th Cir. 2022). Public Data asserted that the claims were precluded by 47 U.S.C. § 230(c)(1) and moved for judgment on the pleadings, which was granted by the district court. Id. On appeal to the Fourth Circuit, the Court specifically dealt with the protection provided by 47 U.S.C. § 230(c)(1). *Id*. The Court found that Public Data was not immune under 47 U.S.C. § 230(c)(1) because the offending information underlying Henderson's claim that was published by Public Data was not solely provided by another information content provider. *Id*.

In the instant matter, Loveless not only alleged that the Respondent published false and defamatory statements about Loveless to the Deep Dive page that originated from other individuals, but that Respondent also posted defamatory statements to the page that she authored

herself. (R. p. 37-41 ¶¶ 9, 15-16; *See also*, R. p. 879). In fact, each of the statements listed in Paragraph 15 of the Complaint are alleged to have been authored by the Respondent. (R. pp. 38-39¶ 15). Using the analysis from *Henderson*, the proper conclusion to be drawn from reviewing the complaint and the relevant pleadings was that the defamatory and false information that was published, ratified, and endorsed by the Respondent was not solely provided by another party or information content provider. As such, the trial court erred in finding that the Respondent is immune from liability under 47 U.S.C. § 230(c)(1).

A. The trial court erred in rejecting Loveless' argument that Respondent voluntarily undertook a duty to provide factual and accurate information on the Deep Dive page.

As the administrator of the Deep Dive Facebook group, Respondent represented to the public and other members of the group through the group description that "[a]ll information posted is a result of much research and analysis…" (R. p. 37, ¶ 8), and based on this representation, Respondent voluntarily undertook a duty to provide factual and accurate information on the Deep Dive page, including those defamatory posts made by others that she allowed to remain visible on the page. However, as set forth in the complaint, Respondent failed to monitor and delete defamatory posts from the page and in failing to do so, Respondent ratified and endorsed the false and defamatory statement of others by allowing them to remain on the page. (R. pp. 39-41, ¶ 16). Section 230(e)(3) states that "nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section."

It Is well established under South Carolina common law doctrine that once a person voluntarily undertakes an act, he or she must act with due care. *Vaughan v. Town of Lyman*, 370 S.C. 436, 635 S.E.2d 631 (2006) ("While there is generally no duty to act under the common law, a duty to use care may arise where an act is voluntarily undertaken."); *Russell v. City of Columbia*,

305 S.C. 86, 89, 406 S.E.2d 338,339 (1991). This state law doctrine is not inconsistent with 47 U.S.C. § 230, thus liability based on a "voluntary undertaking" theory is not exempted by the CDA.

The trial court found that this "undertaking theory" was not a legally meaningful distinction under 47 U.S.C. § 230 and caselaw applying the statute. (R. pp. 12-22). In reaching this conclusion, the trial court's analysis of the caselaw applying 47 U.S.C. § 230, specifically *Zeran v. Am. Online, Inc*. and *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, is fundamentally flawed as the trial court failed to consider the key distinction in the instant matter: the fact that the Respondent's liability is based on her own defamatory statements as well as the statements of others as well as her common law warranty as to the validity of the statements made on the page.

In its order, the trial court compares Loveless' undertaking theory to those theories asserted in *Zeran* and *Nemet*, finding that Loveless's allegations are indistinguishable. (R. pp. 12-22). In *Zeran*, the plaintiff sued AOL alleging that AOL failed to remove defamatory statements posted by an unidentified third party, refused to post retractions of those statements, and failed to screen for similar postings thereafter. *Zeran*, 129 F.3d 327(4th Cir. 1997). Zeran argued that AOL acted as a "distributor" as opposed to a "publisher" under the CDA, and thus was not immune from liability. *Id*. The Fourth Circuit rejected this theory and found that § 230 "plainly immunizes computer service providers like AOL from liability for information that originates from third parties." *Id*.

In *Nemet*, the plaintiff car dealership brought suit against Consumeraffairs.com for defamation for false and defamatory postings on its website which were posted by third parties. *Nemet*, 591 F.3d 250 (4th Cir. 2009). The plaintiff asserted that Consumeraffairs.com was not

immune from liability under 47 U.S.C. § 230 because the website solicited the consumer complaints posted to the website and contacted the consumers to help them draft or revise their complaints. *Id*. The Court rejected this theory finding that the plaintiff had failed to establish that Consumeraffairs.com was the actual author of the defamatory posts, and determining that the defendant website was not an information content provider subject to liability under § 230. *Id*.

Loveless' defamation claim and theory of liability under the CDA are markedly different from those advanced in *Zeran* and *Nemet*. In both cases, both of the plaintiffs brought suit against the defendants based *solely* on the defamatory statements posted to their platforms by third parties. Here, Loveless has specifically alleged that Respondent posted false and defamatory statements to the Deep Dive page that originated and were authored by the Respondent herself. (R. pp. 37-41, ¶¶ 9, 15-16; *See also*, R. p. 879). While Loveless has also alleged that Respondent republished defamatory statements made by other individuals, it is not this allegation alone that forms the basis for liability in this matter. It is that, coupled with Respondent's voluntary undertaking of the common law duty to ensure that all information on the Deep Dive page was factual and verified which forms the basis for Respondent's liability. This voluntary undertaking theory is absolutely distinguishable from those theories set forth in *Zeran* and *Nemet* and is not preempted by 47 U.S.C. § 230. Accordingly, the trial court erred in rejecting this theory.

III. THE TRIAL COURT ERRED IN FINDING THAT STILES'S STATEMENTS ARE PRIVILEGED UNDER THE FIRST AMENDMENT TO THE U.S. CONSTITUTION.

In analyzing whether Respondent's statements were constitutionally privileged, the trial court first erred in determining that Loveless is a public official as a matter of law. (R. pp. 12-22). This determination was an error of law given that Loveless sued Respondent in his individual capacity and not as a member of the board of trustees or any other organization or entity. (R. p. 36,

¶ 1). As pointed out, Loveless' full-time job is a commercial contractor. His voluntary service on the school board was part-time and should be judged on a different standard.

Notwithstanding the trial court's determination that Loveless is a public official, the trial court erred in finding that Loveless failed to plead that Respondent's publication was made with actual malice. Once the court makes a determination that the plaintiff in a defamation action is a public official, "the plaintiff must show proof that the publication was made with 'actual malice' or else the publication is constitutionally privileged." *Garrard v. Charleston Cnty. Sch. Dist.*, 429 S.C. 170, 838 S.E.2d 698 (S.C. App. 2019). "Actual malice in this context has been defined as the publication of an article 'with knowledge that it was false or with reckless disregard of whether it was false or not.'" *Scott v. McCain*, 272 S.C. 198, 250 S.E.2d 118 (1978) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)).

Loveless' complaint specifically alleges that Respondent voluntarily published on the internet numerous defamatory statements "which were intended by [Respondent] in her individual capacity and in her capacity as administrator of the [Deep Dive page] to be consumed by the public…with specific knowledge they were false and/or with a reckless disregard for whether they were false or not." (R. pp.36-37, ¶ 5). Additionally, Loveless alleged that the Respondent "acted with actual malice in publishing, ratifying, and/or endorsing false and defamatory statements about Loveless." (Id., ¶ 15). In its order granting judgment on the pleadings, the trial court held that Loveless was required to plead and prove by clear and convincing evidence that the Respondent's publication was made with actual malice, however this was improper. (R. pp. 12-22). At this stage in the proceedings, Loveless was not required to prove anything, and was only required to plead sufficient facts to constitute an action for defamation, which he did. (*See* R. pp. 36-42).

IV. THE TRIAL JUDGE ERRED IN DEEMING THE REQUESTS TO ADMIT TO BE ADMITTED, ERRONEOUSLY CONCLUDING THAT APPELLANT HAD BEEN OBSTRUCTIONIST IN DISCOVERY. ACTUALLY, HIS OBJECTIONS TO THE RTA WERE PRECISELY PERMITTED UNDER RULE 36.

On April 13, 2022, the Respondent served on Loveless discovery requests including requests to admit. (R. p. 124; R. pp. 139-153). Rule 36, SCRCP requires a party answering requests to admit to set forth a reason for an objection if an objection is made. Rule 36 also requires a denial to "fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder." (*Id*.). Loveless served responses to these discovery requests on May 13, 2022 (R. pp. 171-176), in which he provided complete answers to the requests to admit. While Loveless objected to many of the requests to admit, he clearly stated the reasons for his objections and proceeded to answer the requests despite his objections. (*Id*., R. pp. 173-174). Additionally, Loveless provided detailed denials which more than sufficiently addressed the substance of the requested admission. (*Id*.).

Respondent filed a motion to compel, deem matters admitted, and for sanctions on May 27, 2022, alleging that Loveless' responses failed to fairly respond to the substance of the requests. (R. pp. 124-176). The trial court erroneously deemed all requests to be admitted and held that Loveless' responses to the Requests to Admit were "argumentative,[6] fail[ed] to fairly engage the substance, and incorporate[d] the sort of non-specific 'general' objections that make it impossible to discern what, in fact, has been admitted and what remains in dispute." The trial court's conclusion was in error and reached without reasonable factual support given that Loveless

[6] During the hearing on Respondent's motion, counsel for Loveless acknowledged that one of the responses contained a sarcastic comment by her and took full responsibility for that comment (R. p. 845, lines 19-23), however all responses to the request to admit were made in good faith and in compliance with Rule 36, SCRCP.

provided complete responses to the requests to admit, and Loveless' objections and denials were in compliance with the requirements of Rule 36, SCRCP. For those reasons, the trial court erred in deeming Respondent's requests to admit to be admitted, and its order should be reversed by this Court.

CONCLUSION

For the reasons set forth above, Appellant Kenneth Loveless respectfully requests an order from this Honorable Court reversing the orders of the trial court issued on December 21, 2023 and December 22, 2023, and remanding this case to the Circuit Court to proceed on the merits.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

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