

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No.: 2024-001366

Anthony Wise, ...Petitioner,

v.

Kenneth E. Leap, Newberry Hospital, LLC d/b/a
Newberry County Memorial Hospital, and West
Fraser, Inc., Defendants,

Of Whom, West Fraser, Inc. is Respondent.

**APPENDIX
VOLUME 2 OF 2**

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1 had no control over the hospital and he said he
2 understood that.

3 That's the best I could do with it. I
4 apologize.

5 A You did pretty good.

6 Q Do you -- is that essentially what you
7 remember?

8 A Yeah. I do not remember Hop -- okay.
9 Anytime I say Hop I mean Anthony, okay?

10 Q Sure. I got that.

11 A It's just through years, right. I do not
12 remember him saying that what he -- what he said
13 about -- what did he say about anytime a black man. I
14 don't remember that part of the conversation. I'm not
15 obviously saying it didn't happen because, you know, I
16 mean, that's -- that's Quinton's statement. I'm just
17 saying I do not remember Hop saying that in there.

18 Q Did you learn that George Wilson had said
19 that you had said that -- that Anthony had an
20 infection, an STD?

21 MS. MCCLURKIN: Object to the form.

22 THE WITNESS: I don't remember -- I never
23 heard George Wilson say that.

24 BY MR. PARKER:

25 Q You don't know he said that?

1 A I do not know he said that. I know Keith
2 didn't say that.

3 Q Did you ever know and it was brought to your
4 attention that the other employees, Anthony Wise's
5 co-employees, were teasing him and harassing him about
6 his having an STD?

7 A Through Anthony.

8 Q Only through Anthony?

9 A Through Anthony.

10 Q And he told you that in early November?

11 A It would have been when he -- shortly after
12 he came back to work. I do not remember -- well, the
13 date you said was November 7th, so that would have
14 been the day I took him to the emergency room and all.
15 And he probably was off work for a couple days. I
16 mean, I don't know -- you know, I can't tell you if
17 November 10th was on a Saturday. I mean, he was off
18 work for a couple days and it was after he come back
19 to work is when he started telling me about it.

20 Q Right.

21 A And that's when I got very -- obviously very
22 defensive, like I am now, saying I did not say that
23 stuff.

24 Q Right. But he told you that's what --

25 A That -- that was a rumor mill --

1 Q -- what was being told?

2 A -- or whatever, you know, scuttlebutt,
3 whatever word you want to use for rumor going around.

4 Q And how do you think it got around?

5 MS. MCCLURKIN: Object to the form.

6 THE WITNESS: I have no idea. I -- I don't
7 know.

8 BY MR. PARKER:

9 Q You don't have any -- you can't give us any
10 information that might help us find the source of how
11 that occurred?

12 A No, sir, I cannot.

13 Q If someone falsely accused you of having a
14 sexually transmitted disease, would you think that
15 that would hurt your reputation?

16 A Oh, I'm sure.

17 MS. MCCLURKIN: Object to the form.

18 BY MR. PARKER:

19 Q And if they did that and it became widely
20 circulated, would it cause you emotional distress?

21 MS. MCCLURKIN: Object to the form.

22 THE WITNESS: What does that mean when you
23 do that?

24 MS. MCCLURKIN: I'm just objecting to his
25 question.

1 MR. PARKER: She's just putting it for the
2 record.

3 THE WITNESS: Oh, okay.
4 Cause me, personally?

5 BY MR. PARKER:

6 Q Right, if they --

7 A No, because I -- I'm -- you know, I don't
8 have that demeanor to where I'm going to -- I'm going
9 to fold or whatever you call it.

10 Q It wouldn't bother you?

11 A I would take care of it.

12 Q But how would you take care of it?

13 A Well, I would -- I would -- I would find out
14 where the source came from.

15 Q And do what?

16 A Well, first of all, there was going to be --
17 you know, there was going to be some discussion.

18 Q And what do you mean by that?

19 A I mean, you got to find out, you know -- you
20 know, where the rumor mill started and all that. You
21 know, who started the rumor. Somebody had to start
22 something so you just find that source.

23 Q And are you married?

24 A Am I married?

25 Q Yeah.

1 A Yes.

2 Q And if they told that in front of your wife,
3 would it cause you problems?

4 MS. MCCLURKIN: Object to the form.

5 THE WITNESS: No, because she -- she -- no.

6 No, I mean -- no. No, no.

7 BY MR. PARKER:

8 Q And if the doctor told you that -- said that
9 about you in front of your wife, it wouldn't cause you
10 problems?

11 A If the doctor said that?

12 Q Yes.

13 A Then I'd have to have a talk with the
14 doctor, I guess.

15 Q And --

16 A You know, I'm eight years short of a medical
17 degree so I'm not going to make that determination.
18 What I said about Mr. Wise to Mr. Wilson, again, He
19 has an infection, he got a prescription or he got a
20 prescription because he has an infection, that was it.
21 Cut and dry.

22 Q Well, so the only people that knew about
23 what was said about Mr. Wise were his wife, right,
24 because she was there, she knows what the doctor said?

25 A I don't even know what the doctor said.

1 Q Well, you know what Mr. Wise said the doctor
2 said?

3 A Right.

4 Q So you know what the doctor supposedly said?

5 A Okay.

6 Q Correct?

7 A Okay.

8 Q The other person that knew at the plant was
9 Mr. Russell?

10 A Right.

11 Q And so the information that got disseminated
12 around the plant had to come from one of those -- one
13 of the five people, correct?

14 MS. MCCLURKIN: Object to the form.

15 THE WITNESS: Not necessarily. Anybody can
16 spread a rumor.

17 BY MR. PARKER:

18 Q No, but how could -- they couldn't spread a
19 rumor about the doctor -- what the doctor said about
20 having multiple sex partners unless somebody had said
21 it, correct?

22 MS. MCCLURKIN: Object to the form.

23 THE WITNESS: Anybody can spread a rumor.

24 BY MR. PARKER:

25 Q Well, I mean, they're --

1 A Right. The -- the -- the time of the day
2 this happened, there would have been several people
3 leaving off of shift, okay. And hypothetically they
4 come back that next evening for the shift and find
5 out, okay, yeah, he got a prescription, you know, he
6 has an infection and all. Well, I seen him -- you
7 know, Keith was taking him to the hospital and I seen
8 him holding his groin area, so I could start a rumor.
9 So I can't answer your question the way -- the way it
10 is.

11 Q Well, do you know of anyone who saw you or
12 saw him holding his --

13 A I do not. I just know that time of day
14 you've got the shifts getting off at 6:00 in the
15 morning and so you've got employees coming up and you
16 have to pass -- at our facility you have to pass by
17 the shipping department to go to the employee parking
18 lot, okay. So I can't tell you if -- if somebody --
19 besides somebody in shipping obviously who was working
20 then, you know, who else might have seen me leaving
21 with Anthony. I don't know.

22 Q Well, how would they get the information
23 about him going to the hospital or what the doctor
24 said?

25 MS. MCCLURKIN: Object to the form.

1 THE WITNESS: I don't know.

2 BY MR. PARKER:

3 Q It had to come from --

4 MS. MCCLURKIN: Object to the form.

5 BY MR. PARKER:

6 Q -- didn't it, from the only people that were
7 aware of what the doctor said?

8 A I can't say that. I know I didn't say it,
9 okay. I can't speculate who might have said what. If
10 you asked me what Keith Nelson said, I'll tell you
11 what Keith Nelson said, okay. And that's all I can
12 do. I'm not speculating on anything else. This isn't
13 about speculation.

14 Q We'll agree about that.

15 A Pardon?

16 Q I said, We'll agree about that. It's not
17 about speculation.

18 A Right.

19 Q It's about what was said about Mr. Wise and
20 where it started.

21 A Right. And I'm telling you what I said. I
22 can't say what anyone else said.

23 Q But what I'm asking you is other than the
24 people I named who were told this that we're aware of,
25 who else could it have come from other than one of

1 those people?

2 A I don't know.

3 Q You're not aware of anyone else --

4 A I'm not aware of anyone else.

5 Q You said a week ago you -- excuse me, you
6 met about -- to go over your deposition testimony; is
7 that correct?

8 MS. MCCLURKIN: Object to the form.

9 BY MR. PARKER:

10 Q Is that right? Did you meet with the
11 attorney to go over your deposition testimony, what
12 would be asked of you?

13 A We met.

14 Q How long did you meet?

15 A Twenty minutes, half hour, no longer than
16 that.

17 Q Where was this meeting?

18 A At the -- at the main office of the
19 facility.

20 Q And who was present at the meeting?

21 A Myself and this young lady.

22 Q Anyone else?

23 A No.

24 Q Did you see anybody else and discuss the
25 case with anyone at the facility other than her?

1 A No.

2 Q She was the only one?

3 A She was the only one. I got escorted back
4 to the conference room. And myself and this young
5 lady, we were in the conference room 20 minutes, half
6 hour, whatever. You know, I mean, I didn't sit my
7 dern stopwatch on my cell phone, you know, but
8 somewhere around there, and then -- then I left.

9 Q And insofar as how widespread this rumor
10 about Anthony Wise had become --

11 A I don't need this (indicating).

12 Q -- do you know?

13 A Sir?

14 Q Do you know how widespread that rumor was
15 other than through Anthony?

16 A No.

17 Q No one else said anything to you about it?

18 A No.

19 Q After this lawsuit was filed, did you talk
20 with anyone about it?

21 A (Shakes head.)

22 Q Did anyone tell you that a lawsuit had been
23 filed?

24 A I got a -- last year, I don't remember the
25 month or anything, I had to speak with an attorney via

1 the telephone.

2 Q And who was that attorney?

3 A I don't know. It was set up -- set up
4 through the company and all, and then, you know, I
5 went up and the attorney asked me questions and so I
6 answered the questions. That was via a phone
7 conference. That's when I first realized that, you
8 know, well, something might be happening here.

9 Q You were still working for the company when
10 that occurred?

11 A I was.

12 Q And where did this conversation take place?

13 A In DJ's office.

14 Q And do you know who the attorney was?

15 A I do not even remember the name. It was a
16 male attorney.

17 Q And how many -- how long a discussion about
18 it?

19 A That was probably 15, 20 minutes or so.

20 Q Same kind of questions you had recently?

21 A Uh-huh.

22 Q Same answers?

23 A Same because it's the truth. I mean, you
24 asked. I mean, I raised my right hand, what -- yes,
25 I'm sure a year ago I said the exact same thing.

1 Q Nothing changed?

2 A Nothing changed.

3 MR. PARKER: I don't have any further
4 questions. You might have to answer any they may
5 have for you.

6 EXAMINATION

7 BY MR. HAILE:

8 Q Mr. Nelson, real quick. My name is Shelton
9 Haile. I represent the hospital.

10 A Okay.

11 Q What, if anything, did you hear Dr. Leap say
12 to Mr. Wise in the Emergency Department?

13 A I didn't.

14 Q Nothing?

15 A No.

16 Q Okay.

17 A No. Like I said, I was coming from the --
18 the waiting room. I was going just, you know, I don't
19 know, 45 minutes, hour, you know, just check, see how
20 things are going, you know, progress being made, so on
21 and so forth. And when I come around -- you're
22 familiar with the hospital, right?

23 Q Yes, sir.

24 A Okay. When I come out of the waiting room,
25 they got the little slide things and I -- Anthony was

1 in the second room on the left-hand side which is -- I
2 think might be number six, five or six, whatever. So
3 when I come around the corner, I could hear a male's
4 voice in there, okay. I couldn't hear what was said,
5 I could just hear a male's voice. And then I just
6 stayed out there because I didn't know whether the
7 doctor was in there or whether it might have been a
8 male nurse in there with him, but I know the area we
9 were talking about where the supposed injury happened
10 and I just, you know -- you know, it's not like
11 watching somebody get stitches in their finger, you
12 know what I mean.

13 Q Yeah. And just to clear it up and keep it
14 streamlined --

15 A Right.

16 Q -- you didn't hear Dr. Leap say anything to
17 Mr. Wise in the emergency room?

18 A I did not.

19 MR. HAILE: Okay. That's all I have for
20 you. Thank you.

21 MS. MCCLURKIN: I have a couple of questions
22 for you.

23 EXAMINATION

24 BY MS. MCCLURKIN:

25 Q You were asked some questions by Plaintiff's

1 counsel as to whether you had any ideas as to how the
2 rumor that Dr. Leap made -- allegedly made comments in
3 front of Mr. Wise and his wife about Mr. Wise
4 switching sexual partners. You remember that line of
5 questioning?

6 A Okay.

7 Q Is that clear or do you want me to rephrase
8 it?

9 A Rephrase it.

10 Q Okay. You were asked some questions by
11 Mr. Wise's attorney over here --

12 A Uh-huh.

13 Q -- about if you had any ideas how the rumor
14 got around the mill that Dr. Leap had said in front of
15 Mr. Wise and Mr. Wise's wife --

16 A Uh-huh.

17 Q -- that he had been switching sexual
18 partners.

19 A Uh-huh.

20 Q You remember those questions?

21 A Vaguely.

22 Q Okay. Did you hear Hop -- we're talking
23 about Anthony Wise.

24 A Right.

25 Q Did you hear Hop tell Quinton Wilson about

1 the doctor making those kinds of statements?

2 A I -- I do not remember that. I -- I did not
3 hear that to where I remember hearing it. Does that
4 make any sense? Like, I didn't remember Hop about
5 the, well, I'm a black man so it's got to be sexually.
6 I don't remember him saying that, but it's in a
7 statement so --

8 Q Right.

9 A No, I do not remember -- I do not remember
10 that.

11 Q All right. And in the meeting where Quinton
12 Wilson --

13 A Uh-huh.

14 Q -- and you were there and Hop was there, did
15 Hop say anything about the doctor allegedly saying
16 that he had switched sexual partners, making those
17 comments in front of his wife?

18 A I don't --

19 Q You don't remember?

20 A I don't remember.

21 Q Okay.

22 A No.

23 Q Let me ask you a few questions about this
24 letter.

25 MS. MCCLURKIN: Do you have any exhibit

1 stickers? Just a plain exhibit, plain exhibit
2 sticker.

3 I'll mark this as Exhibit 1 to your
4 deposition so it's in the record.

5 (Exhibit 1, November 17, 2017 Letter of
6 Reprimand, was marked for identification.)

7 BY MS. MCCLURKIN:

8 Q This is the November 17, 2017 letter of
9 reprimand that we were talking about.

10 A Uh-huh.

11 Q Now, I want to make sure that I -- that this
12 is clear. All right. In this first paragraph, okay,
13 second-to-last sentence in the paragraph says: Upon
14 return to the Newberry mill you discussed the medical
15 condition and diagnosis that the physician made
16 regarding Mr. Wise with another hourly employee.
17 Right?

18 A Uh-huh.

19 Q This letter and the conversation and
20 reprimand that you received from Mr. Russell, did you
21 understand that to be the basis of a statement that
22 you made to an hourly employee?

23 A Do what now?

24 Q All right. Let me -- DJ Russell is --

25 A Right.

1 Q -- the manager of the plant, right?

2 A Right, right.

3 Q He's not an hourly employee, right?

4 A Correct.

5 Q All right. This letter and the reprimand
6 and discipline that you received --

7 A Uh-huh.

8 Q -- that's discussed in this letter --

9 A Uh-huh.

10 Q -- did you understand that to be based on
11 anything that you came back and said to Mr. Russell
12 about the statements that Hop -- that you heard Hop
13 make out in the parking lot?

14 A No.

15 Q These -- these concerns that are outlined in
16 this reprimand letter --

17 A Uh-huh.

18 Q -- were about statements that you allegedly
19 made to an hourly employee, right?

20 A Correct.

21 Q And your testimony has been that the -- that
22 only information that you relayed to an hourly
23 employee about the diagnosis in the hospital was to
24 George Wilson, right?

25 A Correct.

1 Q And that was the -- that Hop had an
2 infection and was given a prescription?

3 A Right.

4 Q Okay. In these -- in these one through five
5 that -- or excuse me, one through four that appear in
6 the letter --

7 A Uh-huh.

8 Q -- what does the sentence that precedes one,
9 two, three and four say?

10 A I have the following very serious concerns
11 about your performance.

12 Q Was it presented to you as these are
13 findings that I have made?

14 A No.

15 Q All right. And whether the information that
16 was circulated around the plant was slanderous, in
17 paragraph three --

18 A Uh-huh.

19 Q -- it's been read into the record but I'll
20 read it again, okay. Verbally disclosing medical
21 information about an employee can be considered by the
22 employee as slanderous.

23 Did I read that first sentence of number
24 three correctly?

25 A You did.

1 Q Did Mr. Russell at anytime tell you that he
2 or the company considered the statement that you made,
3 which according to you was that Hop has an infection
4 and got a prescription --

5 A Uh-huh.

6 Q -- was slanderous?

7 A No.

8 Q When you said that -- when you made that
9 statement to George Wilson --

10 A Uh-huh.

11 Q -- did you believe it to be true?

12 A Absolutely. What, the statement?

13 Q The statement that Hop had an infection.

14 A And he got a prescription or he got a
15 prescription because he had an infection --

16 Q Yes, yes.

17 A -- one or the other, yes, absolutely.

18 Q Did you have any reason to believe that
19 George Wilson would go and repeat the statement that
20 you made?

21 A I had no -- no, I -- I had no reason to
22 believe it would be repeated.

23 Q In your mind at the time --

24 A Uh-huh.

25 Q -- was there anything wrong with disclosing

1 the information that you did to George Wilson?

2 A No.

3 Q In you're mind at the time was there
4 anything that was going to cause injury or cause harm
5 to Mr. Wise?

6 A Absolutely not.

7 Q At anytime after disclosing this information
8 to Mr. Wilson --

9 A Uh-huh.

10 Q -- after you told him that Hop had an
11 infection and needed a prescription --

12 A Uh-huh.

13 Q -- or got a prescription --

14 A Uh-huh.

15 Q -- did it occur to you that that information
16 would lead someone to conclude that Hop had contracted
17 a sexually transmitted disease?

18 A No, no. I would -- if I even remotely
19 remotely considered that, I would have never said
20 anything except to Mr. Russell.

21 Q Sitting here --

22 A I mean, just like I said, throughout the
23 years you just -- you know, I've mentioned several
24 employees, you know, sprain, you know, have negative
25 X-rays so -- so I considered all that just routine

1 stuff, you know. Yeah, you got a prescription because
2 of an infection, that's like routine stuff. I -- I
3 never put that together like that.

4 Q You never put the sexual component with the
5 infection?

6 A Absolutely not.

7 Q All right. When you left the hospital --

8 A Uh-huh.

9 Q -- and Hop had been discharged, did you get
10 to the parking lot before Hop or did Hop and his wife
11 get to the parking lot before you?

12 A They -- they would have -- they would have
13 been there because I would have been finishing up with
14 the doctor, getting the prescription paperwork and
15 stuff like that.

16 Q Did you approach Hop and ask him if his wife
17 might have an infection that she could have passed to
18 him?

19 A Absolutely not.

20 Q After Hop told you what the doctor allegedly
21 said to him --

22 A Uh-huh.

23 Q -- in front of his wife about switching
24 sexual partners --

25 A Uh-huh.

1 Q -- at that point did you say, Hop, maybe
2 your wife has an infection?

3 A Absolutely not. No, no.

4 Q Did you see Hop, or Mr. Wise, when you
5 arrived for your deposition today?

6 A Yeah, briefly out in the little lobby kind
7 of area. I asked him about his -- I asked him about
8 his heart. I know he's had some -- you know, like I
9 said, I'm retired now so I don't get to see him every
10 day. But, you know, I mean, many times during the
11 week I would check on him because, you know, I know
12 he's got something going on up there.

13 Q Who greeted who? Did Hop greet you first or
14 did you greet him first?

15 A I probably spoke to him first because I
16 happened to be standing there when he come through the
17 door, so I'm -- I'm sure I seen him before he seen me.

18 Q And what was his reaction?

19 A We -- we talked. I mean, you know -- I
20 mean, he didn't -- he didn't appear that he was ticked
21 off to me or anything. I mean, if I'm ticked off at
22 somebody, I'm not going to sit there and talk to them,
23 I mean, you know. You know, I asked him about his
24 heart and he said he was -- he was doing okay and all
25 that.

1 Q So you exchanged pleasant conversation?

2 A I -- I considered it as such.

3 Q Was it the type of conversation that would
4 be exchanged between someone who believes that you
5 accused his wife of spreading a sexual infection?

6 MR. PARKER: Object to the form of the
7 question.

8 THE WITNESS: You can object all you want.
9 The answer to your -- to your question is it was
10 a very good casual conversation. I didn't feel
11 any anger from Hop or him being ticked off at me
12 or anything like that. It would be a casual
13 conversation you would have with somebody that
14 you've known for a while.

15 BY MS. MCCLURKIN:

16 Q If someone had -- if the roles were reversed
17 and --

18 A Uh-huh.

19 Q -- Hop was accusing you of starting -- being
20 the source of what developed into a rumor about him
21 having an STD --

22 A Uh-huh.

23 Q -- was it the kind of conversation that you
24 just had today with him in the hallway? Was it the
25 kind of conversation that you would have had with

1 somebody who started a rumor -- who you believe
2 started a rumor like that?

3 A No.

4 MR. PARKER: Object to the form of the
5 question.

6 THE WITNESS: No.

7 BY MS. MCCLURKIN:

8 Q The meeting -- you were asked a question --
9 several questions about meeting with me last week.
10 West Fraser -- a company representative summoned you
11 for that meeting, correct?

12 A Yes.

13 Q You were requested by West Fraser to come to
14 that meeting, correct?

15 A Right, right.

16 Q I did not contact you and ask you to come to
17 the meeting, correct?

18 A I never heard you or even seen you until I
19 walked in that conference room that day.

20 Q Okay. And our conversations were limited to
21 the facts and the information related to Anthony
22 Wise's employment and the allegations that he made in
23 this lawsuit?

24 A Correct.

25 Q Mike Shealy -- Mr. Hop -- or excuse me,

1 Mr. Hop. Mr. Wise was assigned to the shipping
2 department when this incident occurred, correct?

3 A Right. He's -- he was like temporary
4 assigned because they needed a forklift driver. You
5 know, for whatever reason, he was in the shipping
6 department, working in the shipping department which
7 he normally doesn't work in.

8 Q His normal department was the kiln
9 department?

10 A Correct.

11 Q And his normal supervisor was Mike Shealy,
12 correct?

13 A Right.

14 Q And during the times that he was assigned to
15 other departments like the shipping department --

16 A Uh-huh.

17 Q -- was -- who was the person who was
18 responsible for keeping up with -- with Mr. Wise's
19 time?

20 A Mr. Shealy.

21 Q And that did not change even though Mr. Wise
22 was assigned to another department?

23 A Not that I'm aware of it didn't change.

24 Q And when you talked to Mr. Shealy about --

25 A Uh-huh.

1 Q -- about this incident, it was for the
2 purpose of communicating to Mr. Shealy that this would
3 affect Hop's hours and how he was going to be
4 compensated and his absences?

5 A Right.

6 MS. MCCLURKIN: Let's go off the record just
7 for one minute. I think --

8 THE WITNESS: We're doing what now?

9 MS. MCCLURKIN: We're going to go off the
10 record just for a minute.

11 THE WITNESS: Okay.

12 MS. MCCLURKIN: And then I think we're
13 probably going to let you go --

14 THE WITNESS: Okay. Good.

15 MS. MCCLURKIN: -- if no one else has
16 questions.

17 THE VIDEOGRAPHER: We're going off the
18 record at 1800 hours 1 minute 45 seconds.

19 (A break was taken.)

20 THE VIDEOGRAPHER: We're going back on the
21 record at 1800 hours 3 minutes 32 seconds to
22 complete this video deposition. We created one
23 media file. Off the record at 18:03:40.

24 (The reading and signing were waived.)

25 (The deposition concluded at 6:03 p.m.)



WARNING LETTER

West Fraser
3287 College Street
Newberry, SC 29108

To: Wesley (Keith) Nelson
From: DJ Russell
Date: November 17, 2017
Subject: **WARNING**

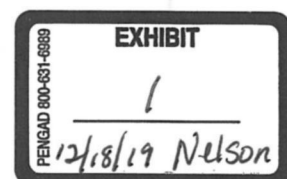
This week I became aware of a serious breach of your responsibilities as the Environmental, Health and Safety Supervisor for the Newberry mill. Anthony Wise, an hourly employee of the mill, was recently involved in an alleged on-the-job accident and subsequently visited a physician as part of our procedure when responding to accidents. You escorted Mr. Wise to the physician. Upon return to the Newberry mill, you discussed the medical condition and diagnosis that the physician made regarding Mr. Wise with another hourly employee. In turn, this information has been communicated throughout the mill.

I have the following very serious concerns about your performance:

1. Employee medical information is protected. This is essential when any medical information is connected or potentially connected with our benefit plans. You have violated this requirement.
2. Information concerning the alleged or actual injury of an employee must remain confidential during an investigation and often after the conclusion of an investigation. Accidents often evolve to lawsuits against the Workers Compensation carrier and/or the Company. You have disclosed information that is part of an on-going investigation to an employee that should not be involved.
3. Verbally disclosing medical information about an employee can be considered by the employee as slanderous. As a representative of West Fraser, your disclosure of this information has put the Company at risk.
4. Discussing medical information with any employee for the sake of conversation is not becoming of a West Fraser salaried employee. It is prohibited. Your judgement was extremely poor and unacceptable.

The casual attitude which you had about revealing this information to another employee has eroded my trust in you to conduct your job and fulfill your responsibilities in a satisfactory manner. This cannot happen again.

ROA-519
APP-523



Your work performance is unsatisfactory. I expect immediate and sustained improvement in your performance. Failure to make immediate and sustained improvement in your performance including ceasing to discuss and reveal inappropriate information about an employee will result in discipline up to and including termination of your employment with the Company.

DJ Russell
Mill Manager
Newberry Operation
West Fraser

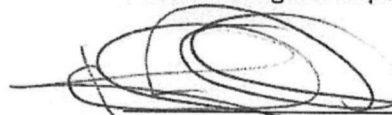
D.J. Russell

cc:

Personnel File

Human Resources – Germantown, TN

I acknowledge receipt of this letter:


Keith Nelson / Date 11/17/17



Deposition of:
George Wilson , Jr.

December 19, 2019

In the Matter of:
**Wise, Anthony Vs. Newberry Hospital,
LLC**

[A. William Roberts, Jr & Assoc.](#)

800-743-3376 | calendar-awr@veritext.com | www.veritext.com

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

ANTHONY WISE,

Plaintiff,

vs.

CASE NO. 2019-CP-36-00103

NEWBERRY HOSPITAL, LLC, d/b/a NEWBERRY COUNTY

MEMORIAL HOSPITAL, WEST FRASER, INC.,

Defendants.

DEPOSITION OF: GEORGE WILSON

DATE: December 19, 2019

TIME: 1:26 PM

LOCATION: Pope Parker Jenkins
1508 College Street
Newberry, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: AMY R. COPE,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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6 Columbia, SC 29201

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8 shaile@richardsonplowden.com

9 (INDEX AT REAR OF TRANSCRIPT)

1

GEORGE WILSON

2

being first duly sworn, testified as follows:

3

EXAMINATION

4

BY MR. PARKER:

5

Q. All right. Would you please state your

6

full name?

7

A. George Wilson, Jr.

8

Q. And Mr. Wilson, what's your address?

9

A. 133 Player Street Extension, Newberry,

10

South Carolina, 29218.

11

Q. And how long have you lived here?

12

A. All my life.

13

Q. Went to school here?

14

A. Yes, sir.

15

Q. And how long have you been working for

16

West Fraser?

17

A. 41 years.

18

Q. Have you worked anywhere else or has

19

that been your only --

20

A. Well, I worked for the City of Newberry

21

when I was younger.

22

Q. So you've been there a long time?

23

A. Yes, sir.

24

Q. What is your job?

25

A. Maintenance/electrical, WQ, which means

1 qualified mill right.

2 Q. You're 41 years, so when are you going
3 to retire?

4 A. Well, I'm going to have to wait until I
5 get those numbers first before I retire.

6 Q. How old are you now?

7 A. 60.

8 Q. You've got a few more years. You going
9 to try to go out at 65?

10 A. I don't want to wait that long.

11 Q. You're going to go out earlier?

12 A. Yes, sir.

13 Q. Try to get to 62. Let me ask you: How
14 long have you known Anthony Wise?

15 A. About the length of time he been
16 working there. I didn't know him before then.

17 Q. You didn't know him before?

18 A. No, sir.

19 Q. And we're here about an event that
20 happened in November of '17, when Anthony got hurt
21 at work and pulled his groin and went to the
22 hospital. Do you recall that?

23 A. See, I didn't never know the detail as
24 to what happened. I was just asked -- one of the
25 employees or a few of the employees asked me is he

1 all right and I didn't even know anything happened.
2 So what happened is I went to the scale house --
3 not the scale house, the shipping department, so I
4 went to see what they wanted. And when I went up
5 there and they asked me how was Anthony doing and I
6 said what happened -- they said something about
7 what happened. I didn't really recall everything
8 that had happened. So at that time, the human
9 resource lady need me to do something, so I went in
10 the office.

11 And I went in the office to see what
12 she wanted and when I came out of the office and I
13 was headed back to shipping, I seen Keith walking
14 across and I seen Keith and I asked, Keith, what
15 happened to Anthony? I said, how was he doing?
16 The only thing he said was that Anthony -- the
17 doctor said he had an infection. And that's all he
18 said. And then when he mentioned that and I
19 stepped back in the shipping department and the
20 guys asked me how is Anthony, I said, well, I just
21 seen Keith and Keith said he had an infection. And
22 I mentioned that and I went on and went to do
23 whatever I need to do.

24 I ended up back to the dry kiln and the
25 guys asked me at the dry kiln how was Anthony doing

1 and I said Keith said that he had an infection, so
2 as to what happened before then, I really don't
3 recall. I didn't go into no detail with nobody
4 because I didn't know.

5 Q. Did you later hear that there were
6 people saying that Anthony had a sexually
7 transmitted disease?

8 A. I heard that from Anthony, nobody else.

9 Q. You heard that people were saying that?

10 A. I heard it from him.

11 Q. That people were saying that about him?

12 A. Yes, sir.

13 Q. He was making a complaint about it?

14 A. I assume that's what he was doing at
15 the time.

16 Q. Did he tell you who was doing it?

17 A. He didn't tell me who said anything, he
18 just said the guys was saying that.

19 Q. Did Mr. Nelson also tell you that
20 Anthony was getting an antibiotic for the
21 infection?

22 A. I don't recall him telling me that. I
23 don't recall him telling me that at all. Like I
24 said, when he mentioned the infection, that was the
25 end of the conversation, as far as Keith is

1 concerned.

2 Q. And you didn't hear any other talk
3 around the plant about Anthony and his having been
4 told that he had some type of sexually transmitted
5 disease?

6 A. Everything I heard about that came from
7 Anthony, I hadn't heard it from anybody else. I
8 don't deal with talk like that, I stay away from
9 talk like that, like I always have done since I
10 been working there.

11 Q. When Anthony talked with you and told
12 you about what people were saying about him, was he
13 upset?

14 A. Oh, yeah, he was upset.

15 Q. He was upset that people were talking
16 about him?

17 A. Yes, sir.

18 Q. And anything else that you know about
19 this, anything?

20 A. No, sir.

21 MR. PARKER: Answer any questions the
22 gentlemen may have for you.

23 EXAMINATION

24 BY MR. HAILE:

25 Q. Mr. Wilson, Shelton Haile, I represent

1 the hospital. You did not go to the hospital with
2 Mr. Wise; did you?

3 A. No, sir.

4 MR. HAILE: That's all I've got. Thank
5 you.

6 EXAMINATION

7 BY MS. MCCLURKIN:

8 Q. Mr. Wilson, when you asked Keith Nelson
9 how Anthony was doing --

10 A. Uh-huh.

11 Q. -- you testified that you asked because
12 you were concerned about Anthony's well-being,
13 right?

14 A. Yes, ma'am.

15 Q. And when Keith answered you and told
16 you that Anthony had an infection, do you think or
17 did it appear to you that Keith had any kind of
18 improper motive in telling you that?

19 A. No, because my father in 1999 had a
20 stroke and from that day on for 15 years he lived
21 after that stroke, Keith always asked me how he was
22 doing. So I can't sit there and say that, you
23 know, he had some ulterior motives because he's
24 always been the type of person that if something
25 happened to somebody's family member, I mean, he

1 asks how they doing. A lot of us do that. I don't
2 see that. I hasn't seen that since I been working
3 there.

4 Q. Describe your working relationship with
5 Anthony. And by that I mean, at the time that this
6 happened, did you work closely together?

7 A. Yeah, we still had a job to do,
8 whenever the dry kiln goes down, after so many
9 months we have to go inside and repair anything,
10 things of that nature. I mean, we did what we had
11 to do as far as that. But as far as the
12 conversation about this situation here, I had got
13 to a point I didn't want to hear anymore because
14 when you keep talking about him now it just get
15 worse. And when you keep listening to things that
16 people say, that just makes things worse and so you
17 don't do anything but upset yourself. So I was
18 trying to encourage him to try to make peace with
19 the situation, but he didn't want to listen that.

20 So I try to avoid talking about it
21 anymore because it was really getting on my nerves
22 because it was always about the same thing and it
23 was always something negative about -- not just
24 this, other negative stuff that he would talk about
25 all the time. So I just got tired of hearing it

1 and I try to avoid the situation because it was
2 just making matters worse.

3 Q. When you say you got tired of hearing
4 it, you mean you got tired of hearing it from
5 Anthony?

6 A. Yeah, not nobody else. I didn't hear
7 nothing from nobody else. I was just hearing it
8 from him.

9 Q. When you asked Keith how Anthony was
10 doing and he answered, about how far away were you
11 standing from Keith?

12 A. It may have been about 20 foot,
13 somewhere along in there.

14 Q. Okay. Do you remember whether anyone
15 was in the area who might have overheard?

16 A. No one was in the area. No one was in
17 the area.

18 MS. MCCLURKIN: I don't have anything
19 else. Thank you for coming.

20 (The witness, after having been advised
21 of his right to read and sign this transcript,
22 waives that right.)

23 (The deposition was concluded at 1:36 PM.)
24
25



Deposition of:
Jeremy I. Neal

December 19, 2019

In the Matter of:
**Wise, Anthony Vs. Newberry Hospital,
LLC**

[A. William Roberts, Jr & Assoc.](#)

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1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF NEWBERRY

3 ANTHONY WISE,

4 Plaintiff,

5 vs.

CASE NO. 2019-CP-36-00103

6 NEWBERRY HOSPITAL, LLC, d/b/a NEWBERRY COUNTY

MEMORIAL HOSPITAL, WEST FRASER, INC.,

7 Defendants.

8
9 DEPOSITION OF: JEREMY NEAL

10 DATE: December 19, 2019

11 TIME: 10:32 AM

12
13 LOCATION: Pope Parker Jenkins
1508 College Street
Newberry, SC

14
15 TAKEN BY: Counsel for the Plaintiff

16
17 REPORTED BY: AMY R. COPE,
Court Reporter

18 A. WILLIAM ROBERTS, JR., & ASSOCIATES

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9 (INDEX AT REAR OF TRANSCRIPT)
10
11
12
13
14
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16
17
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21
22
23
24
25

1

JEREMY NEAL

2

being first duly sworn, testified as follows:

3

EXAMINATION

4

BY MR. PARKER:

5

Q. Please state your full name and

6

address.

7

A. Jeremy Laquan Neal. 5213 Palmetto

8

Point Drive.

9

Q. And that's where?

10

A. Newberry, South Carolina.

11

Q. And where did you grow up?

12

A. Newberry, South Carolina.

13

Q. Lived here your whole life?

14

A. Yes, sir.

15

Q. And do you have family in Newberry

16

County other than yourself?

17

A. Yes, sir.

18

Q. Who is your family, what are their last

19

names?

20

A. Neal, Wicker. Juanita Wicker. Andrew

21

Lee Wicker, he's deceased now. Jimmy Neal.

22

Q. Okay. And how long have you been

23

working at West Fraser?

24

A. Approximately nine years.

25

Q. And what is your job?

1 A. I'm a forklift operator.

2 Q. And have you been the whole time a
3 forklift operator?

4 A. No, sir, I worked at the saw mill. I
5 cut grass. Riding the railcars. Then I worked on
6 the yard.

7 Q. And do you know Anthony Wise?

8 A. Yes, sir.

9 Q. And how long have you known him?

10 A. I want to say maybe about three years
11 or so.

12 Q. Thereabouts?

13 A. At least three years.

14 Q. Okay. And y'all work together?

15 A. Yes, sir, at the dry kiln. That's when
16 I first knew of Anthony Wise when he worked at the
17 dry kiln.

18 Q. We're here today about a lawsuit
19 involving Mr. Wise and because of things that were
20 said about him, about having some disease. Are you
21 aware of that?

22 A. Yes, sir.

23 Q. And when did you learn that there was
24 something going on, people said that Mr. Wise had a
25 disease?

1 A. It was going around the plant site
2 maybe like a day after, two days after.

3 Q. He went to the hospital?

4 A. Yes, sir.

5 Q. You're aware he went to the hospital?

6 A. Yes, sir.

7 Q. And some time thereafter what did you
8 hear?

9 A. I heard he went to the hospital because
10 he had pulled something, if I ain't mistaken. And
11 I think I was off that day, I'm trying to remember.
12 I think I was off -- I was off that day. I had
13 heard that he had went to the emergency room
14 because he had pulled something. And I came back
15 like a day or two later and heard that through the
16 plant site they were saying that, you know, he had
17 HIV.

18 Q. Some kind of sexually transmitted
19 disease?

20 A. Yeah, some kind of sexually transmitted
21 disease.

22 Q. And who did you hear that from, if you
23 recall?

24 A. I don't recall who I heard it from.

25 Q. Was that general talk among employees

1 at the plant?

2 A. Yes, sir. Yes, sir. And he might have
3 said himself too.

4 Q. In other words, somebody accused him of
5 it and he would answer it or something?

6 A. Some -- yes, sir.

7 Q. Was that pretty well general knowledge
8 among the workforce there that they were saying he
9 had some type of sexually transmitted disease?

10 A. Yes, sir. I think it was something
11 like he say/she say type thing. I don't know how
12 it got started or anything.

13 Q. Did he get teased about it?

14 A. From like employees?

15 Q. Yes.

16 A. Yes, sir.

17 Q. Who did you see teasing him about it,
18 if you recall?

19 A. I don't recall, I imagine they didn't
20 mean any harm or anything.

21 Q. Who did you hear it from, if you
22 recall, that he had some type of sexually
23 transmitted disease; who told you about it?

24 A. I don't recall. If I heard it, I
25 probably walked away from it. I really didn't pay

1 no attention because I knew that was a serious
2 matter. I try not to, you know, be in that kind of
3 business.

4 MR. PARKER: I don't have anything
5 further. Thank you.

6 EXAMINATION

7 BY MR. HAILE:

8 Q. Jeremy, I represent the hospital. Just
9 real quick, you didn't go to the hospital with
10 Mr. Wise when he pulled something; did you?

11 A. No, sir.

12 Q. And you didn't hear what the doctor at
13 the hospital said to him?

14 A. No, sir.

15 MR. HAILE: Okay. That's all I've got
16 for you. Thank you.

17 EXAMINATION

18 BY MS. MCCLURKIN:

19 Q. Mr. Neal, did you hear Mr. Wise ever --
20 excuse me, let me start over.

21 Did Mr. Wise ever approach you and
22 begin talking about the STD rumor?

23 A. Maybe, maybe one time I think he was
24 feeling bad because I think like a couple of people
25 might have been jigging at him or something like

1 that. He might have said something about it. He
2 might have said something like, you know, they're
3 saying I got an STD or something like that, and
4 it's not true. Basically that was it.

5 Q. In other words, complaining to you
6 about it?

7 A. Yeah.

8 Q. And repeating the statements that were
9 made about him?

10 MR. PARKER: Object to the form.

11 THE WITNESS: Yeah.

12 BY MS. MCCLURKIN:

13 Q. When you heard these rumors, did it
14 change your opinion of Mr. Wise in any way?

15 A. No, ma'am.

16 Q. Did you ever hear Keith Nelson make the
17 statement that Mr. Wise had an STD?

18 A. No, ma'am. Never heard it.

19 MS. MCCLURKIN: That's it.

20 (The witness, after having been advised
21 of his right to read and sign this transcript,
22 waives that right.)

23 (The deposition was concluded at 10:37 AM.)
24
25



Deposition of:
Dolan J. Russell

December 19, 2019

In the Matter of:
**Wise, Anthony Vs. Newberry Hospital,
LLC**

[A. William Roberts, Jr & Assoc.](#)

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MEMORIAL HOSPITAL, WEST FRASER, INC.,

7 Defendants.

8 DEPOSITION OF: DOLAN J. RUSSELL

9 DATE: December 19, 2019

10 TIME: 11:54 AM

11 LOCATION: Pope Parker Jenkins
12 1508 College Street
13 Newberry, SC

14 TAKEN BY: Counsel for the Plaintiff

15 REPORTED BY: AMY R. COPE,
16 Court Reporter

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10 (INDEX AT REAR OF TRANSCRIPT)
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1 (PLAINTIFF EXHIBIT 1, Handwritten notes
2 titled meeting with Anthony Wise, 11/13/17, was
3 marked for identification.)

4 (PLAINTIFF EXHIBIT 2, Handwritten notes
5 titled meeting with Anthony Wise, 11/17/17, was
6 marked for identification.)

7 (PLAINTIFF EXHIBIT 3, Handwritten notes
8 titled Anthony Wise, 12/4/17, was marked for
9 identification.)

10 (PLAINTIFF EXHIBIT 4, Warning letter to
11 Keith Nelson from DJ Russell, dated 11/17/2017, was
12 marked for identification.)

13 DOLAN J. RUSSELL

14 being first duly sworn, testified as follows:

15 EXAMINATION

16 BY MR. PARKER:

17 Q. Please state your full name.

18 A. Dolan James Russell, Jr.

19 Q. Do you go by DJ?

20 A. Yes, sir, I prefer that, but I'll
21 answer to Dolan. My wife is about the only one
22 that calls me that when she's a little aggravated
23 with me, but I'll go with either one.

24 Q. And what is your address?

25 A. 1146 Pinewood Court, Newberry,

1 South Carolina.

2 Q. And how long have you lived in
3 Newberry?

4 A. April of 2015, so not quite five years.

5 Q. And where are you originally from?

6 A. That would be southeast North Carolina,
7 Lake Waccamaw, North Carolina, which is about 40
8 miles west of Wilmington and 45 miles north of
9 Myrtle Beach in that area.

10 Q. And did you go to college?

11 A. One year.

12 Q. And where was that?

13 A. Southeastern Community College, which
14 is in Whiteville, North Carolina.

15 Q. And how long have you been in the
16 lumber business?

17 A. Two more days will be 36 years.

18 Q. And who has your career been with?

19 A. Federal Paper. International Paper.

20 And now West Fraser and I've worked my whole career
21 at two different mills, the one in Regalwood, which
22 is very close to Wilmington, I spent 31 and a half
23 years. And then I've been here, like I said, I
24 reckon four and a half, going on five.

25 Q. And the -- so your entire work career

1 just about has been in the lumber business, timber,
2 sawmill, type business?

3 A. It has been. I don't -- I started out
4 in 1983 as a utility worker, so my first job in the
5 mill was sweeping the bottom of the sawmill floor
6 and emptying trash cans and I worked my way up to
7 mill manager. So I've done every job in the mill
8 and become an hourly supervisor, then a salary
9 supervisor, and then a superintendent and then a
10 mill manager. So I've had, I like to say, a
11 different career than most mill managers, but it
12 serves me well.

13 Q. So you know what's going on out there?

14 A. Yes, sir. I've run every piece of
15 equipment in the mill and so it helps me. And I
16 love spending time in the mill, I'm not a front
17 office kind of guy.

18 Q. We're here about Anthony Wise's case,
19 as you're aware?

20 A. Yes, sir.

21 Q. And you recall when all that happened?

22 A. Yes, sir.

23 Q. And how did you first learn about this?

24 A. That part I'm not sure about, it was
25 Melody Jepsen, our HR lady, or Quinton Wilson, who

1 is the production superintendent. One of those two
2 made me aware of it, but I'm not entirely certain
3 now which one talked to me about it first.

4 Q. When did you first talk with Keith
5 Nelson about it, if you recall?

6 A. Well, I know Keith talked to me after
7 he took the employee to the doctor. And I cannot
8 say with all certainty exactly what Keith told me
9 that day, other than -- I feel rather certain, you
10 know, he said he had an infection and that it
11 probably wasn't going to be work-related.

12 Q. He has testified, and I don't want to
13 misquote him, but in essence said that he told you
14 about what the doctor said about Mr. Wise having
15 multiple sex partners; do you recall that?

16 A. No, sir.

17 Q. You don't remember him saying that?

18 A. No, sir. There's only one person I've
19 heard that has brought that up in front of my
20 presence.

21 Q. And who was that?

22 A. That was Anthony Wise in a meeting with
23 myself and the regional manager.

24 Q. And he would have been the only one
25 that -- he came to you complaining about it?

1 A. Yes, sir.

2 Q. And I've got -- I'm going to hand you
3 what's been marked as Exhibits 1, 2 and 3, which I
4 assume are your notes. I'm going to ask you if
5 they are, but I'm assuming that they are.

6 A. Yes, sir, that is my poor handwriting.

7 Q. Do you have any notes other than that?

8 A. That I personally made?

9 Q. Or anybody made?

10 A. I think there are some more. I had my
11 administrative manager take notes. The regional
12 manager took notes when he met --

13 MS. MCCLURKIN: He's asking you about,
14 I think, asking you about notes that you made.

15 THE WITNESS: Oh, no, sir.

16 BY MR. PARKER:

17 Q. No, I asked him -- the question was and
18 he answered correctly if he had any other notes,
19 was the question --

20 MS. MCCLURKIN: I apologize.

21 BY MR. PARKER:

22 Q. -- and you said you've got notes from
23 who now?

24 A. Well, there would be -- let's see, I
25 had the administrative manager sit in with me when

1 I met with Anthony, he made notes, I think when I
2 was making notes.

3 Q. What is his name?

4 A. Quan Todd.

5 Q. What's his last name?

6 A. Quan Todd, yes, sir. He's the
7 controller, financial, we call him the
8 administrative manager, he runs the front office.
9 So any time I met with employees, I normally have
10 the HR lady or Quan, who is the administrative
11 manager, sit in with me just strictly for note
12 taking. So I know Quan was present for one of the
13 meetings.

14 Q. Who else do you have notes from?

15 A. We should have some from Peter
16 Preventure, who was the regional manager at the
17 time. He made his separate notes during that
18 meeting. And then I know I have a copy of those.

19 Q. Anybody else?

20 A. And I think I have Quinton Wilson's
21 statements, he made notes I think when he walked in
22 and Keith and Anthony were talking in the EHS
23 building. So I'm sure that those have been
24 provided. I'm trying to remember if there were any
25 other notes. I know I gave everything that I had

1 in my file to --

2 Q. To your attorneys?

3 A. Well, and to our corporate HR, yes,
4 sir.

5 Q. Okay. Let's look at Exhibit 1 there,
6 that's your first note that's dated 11/13/17.

7 A. Yes, sir.

8 Q. And in Exhibit 1, you're recording what
9 Anthony Wise came in and told you or trying -- or
10 your recollection of it, recording your
11 recollection of it?

12 A. Yes, sir.

13 Q. Is that all accurate, as far as you
14 know?

15 A. As far as I can tell most of it is just
16 writing down what Anthony's statements were to me.
17 And then, of course, I answered a few of his
18 questions, it looks like, yes, sir.

19 Q. You're trying to make an accurate
20 representation of what you had been told. I assume
21 you made this note some time contemporaneously with
22 your conversation?

23 A. Most of the time -- well, yeah, almost
24 all of the time when I meet with an employee, I
25 occasionally make notes while I'm talking, but

1 sometimes you miss the message if you're trying to
2 write when someone is talking to you. So this
3 probably occurred right after Anthony walked out,
4 probably within 30, 45 minutes, but I cannot say
5 with 100 percent certainty when I wrote these
6 notes.

7 Q. But it would have been close in time of
8 the conversation?

9 A. Yes, sir.

10 Q. And it says: I told him that I would
11 investigate the situation with Keith and take
12 corrective action. Is that correct?

13 A. Yes, sir.

14 Q. And did you, in fact, do that?

15 A. Yes, sir.

16 Q. What did you do?

17 A. Once I became aware of it, I called
18 Peter Preventure, who at the time was the regional
19 manager, made him aware of what I was told that
20 happened. Peter immediately called Kim Foster, who
21 is a corporate HR representative in our home office
22 in Memphis, Tennessee, and we got on a three-way
23 conference call. So I explained to him what I knew
24 and then we talked about how this investigation
25 needed to proceed and start interviewing and

1 gathering information.

2 Q. And what all did you do?

3 A. I can't remember who all I talked to,
4 to be honest with you now. Well, I'm trying to
5 remember with all certainty and I'm not -- I know
6 Quinton talked to me about what happened, so I told
7 him to write his statement down and turn it into
8 me. I think -- well, I know I talked to Keith.

9 Of course, Anthony had already visited
10 with me. That was probably -- I don't think there
11 was anyone else I talked to about it. I'm trying
12 to remember -- and again, you know, it's been a
13 while --

14 THE WITNESS: -- but did Melody have
15 any notes off -- I'm trying to remember because I
16 can't remember off the top of my head.

17 MS. MCCLURKIN: And I can't answer.

18 THE WITNESS: I know, but I want to
19 speak right. And I'm not sure if I talked to
20 Melody or she sat in one of the meetings. I know
21 that Quan sat in one of the meetings with me, but I
22 think that was pretty much all I talked to.

23 BY MR. PARKER:

24 Q. And Exhibit 2 is some notes that you
25 made on 11/17/17?

1 A. Yes, sir.

2 Q. And you, at that time, recorded your
3 conversation with Anthony or what you recall of it?

4 A. Yes, sir.

5 Q. And in Exhibit 2 it says: I told him
6 that I had investigated the incident and took
7 appropriate action?

8 A. Yes, sir.

9 Q. And I'll talk with you about that in a
10 minute. And the next thing he asked: How he got
11 his name back? And it says: I told him that I
12 couldn't change the past, but could affect the
13 future. Is that correct?

14 A. Yes, sir.

15 Q. Is that what you said?

16 A. Yes, sir.

17 Q. And it says: I told him again that I
18 was sorry for what happened. Did you learn, to the
19 extent to which rumor about Anthony having a
20 sexually transmitted disease, got around your
21 plant, how that happened?

22 A. I never heard about a rumor, other than
23 Anthony himself meeting with me and the regional
24 manager, I think it's in the notes saying -- and
25 I'll say every African-American that has an

1 infection is automatically, it may not be quote,
2 unquote, but has an STD. That's when I heard that
3 for the first time any comments at the plant site,
4 even my salary team and I were discussing it, we do
5 it behind closed doors when we have hourly employee
6 issues, it was never discussed that it was an STD
7 or anything, the employee had a infection, which
8 could have contributed to him getting hurt with the
9 lid on the forklift. No one went there.

10 Q. But as far as you're concerned, you
11 didn't know that was going on at the plant with the
12 rumors?

13 A. No, sir. When Anthony made me aware
14 that it could be going on, then I told him, you let
15 me know and I will take care if anyone is harassing
16 with you, which he never got back to me that he was
17 having issues with any hourly employees or anyone.

18 Q. All right. The Exhibit 3 there is a
19 note you made on 12/4/17?

20 A. Yes, sir.

21 Q. And again, you tried to accurately take
22 down your conversation with Mr. Wise?

23 A. The best I could, yes, sir.

24 Q. Is there anything about that that you
25 would like to add to or change?

1 A. I was just trying to read the bottom
2 part where it's so faint with the printer. Anthony
3 knows for a fact that Keith called people -- okay
4 -- in his office. Oh, yeah, Quan also took notes
5 for me. No, sir, I don't see any reason why I'd
6 change anything that I wrote here in December of
7 2017.

8 Q. Okay. I'm going to next hand you
9 Exhibit 4. Is this a document that you wrote or
10 had written up concerning Mr. Nelson's conduct?

11 A. Yes, sir.

12 Q. And in this document you're
13 reprimanding Mr. Nelson?

14 A. Yes, sir.

15 Q. And what did you reprimand him for?

16 A. For the incident that occurred talking
17 to the hourly employee about another hourly
18 employee. Strictly that and nothing else.

19 Q. And tell me about the details of that.

20 A. Based off of what I heard or what I
21 know from my investigation?

22 Q. Yes.

23 A. Well, Keith told an hourly employee
24 that -- first of all, from what I understand, the
25 hourly employee, which is George, asked Keith how

1 Anthony was doing. And Keith said he's got an
2 infection. And that's pretty much all I know about
3 what occurred out there at the cat -- or outside
4 the office in the handrails.

5 Q. How did you find that out, that that's
6 what had happened?

7 A. Well, I thought I answered that
8 earlier, I'm not sure whether Melody Jepsin told me
9 or Quinton Wilson told me, one of those told me
10 what was going on. But I can't remember if Anthony
11 came to Melody or Quinton called me after walking
12 in when Anthony and Keith were having the meeting
13 in the EHS room. So that part, I'm not 100 percent
14 sure about who told me first.

15 Q. The fact then -- what was wrong with
16 Mr. Nelson doing what he did?

17 A. Well, we don't talk about hourly
18 employees with other hourly employees.

19 Q. About their medical condition?

20 A. Well, anything.

21 Q. But clearly not about their medical
22 condition?

23 A. Anything. Absenteeism, reprimands, we
24 don't discuss that.

25 Q. Is there a company rule that prohibits

1 that?

2 A. Not that I'm aware of. I call it a
3 common sense rule.

4 Q. And other than that, what did -- what
5 did you find in error about Mr. Nelson's conduct in
6 this action?

7 A. That he told another hourly employee
8 that Anthony had an infection.

9 Q. And that was the sum total of it, was
10 there anything else that was in error about what he
11 had done?

12 A. Not to my knowledge.

13 Q. And I assume you called Mr. Nelson in
14 to talk to him about it?

15 A. Yes, sir.

16 Q. And I assume you discussed what's in
17 Exhibit 4?

18 A. Yes, sir.

19 Q. Did he have any questions about it?

20 A. No, sir, not that I recall.

21 Q. Do you recall him saying anything?

22 A. No, sir, the only thing I can recall
23 was it was a short and sweet meeting. We didn't --
24 I read over it with him and covered it with him and
25 I think that was the end of it, to the best of my

1 knowledge.

2 Q. Now, the -- we know that Mr. Nelson
3 took Mr. Wise to the hospital that day on
4 November 7th. And Mr. Wise's wife eventually came
5 in and was there, are you aware of that?

6 A. Yes, sir, but I think she came to the
7 plant site and followed them down there. Again,
8 I'm not 100 percent certain, I believe she was out
9 in the parking lot when Keith and Anthony left,
10 that's just what I remember hearing. I'm not sure
11 I saw it with my own two eyes.

12 Q. But in any event, she was at the
13 hospital, so she potentially knows what was said at
14 the hospital by the doctor about Mr. Wise's
15 condition?

16 MS. MCCLURKIN: Object to the form.

17 THE WITNESS: Yeah, I don't know how to
18 answer that because I wasn't at the hospital.

19 BY MR. PARKER:

20 Q. Well, you don't know what she heard or
21 not?

22 A. No, sir, I don't even know if she was
23 in the room.

24 Q. Exactly. But assuming, she could be
25 one person that could have heard something and then

1 Mr. Nelson would have been one person that could
2 have heard something --

3 MS. MCCLURKIN: Object to the form.

4 BY MR. PARKER:

5 Q. -- Mr. Wise would be one person,
6 correct?

7 A. I don't know how to answer that because
8 I don't know who was in the room.

9 Q. Right, but you know who went to the
10 hospital, correct?

11 A. Yeah, I know Keith took him, yes, sir,
12 I do know that.

13 Q. And you know the wife was there?

14 MS. MCCLURKIN: Object to the form.

15 BY MR. PARKER:

16 Q. Or you believe she was?

17 A. Well, I can say I believe she was, yes,
18 sir.

19 Q. And, of course, Mr. Wise would have
20 been there. And Mr. Nelson says he told you about
21 what the doctor said about -- about Anthony having
22 sex partners, multiple sex partners?

23 A. No, sir, that's not what Keith told me.

24 Q. I understand you don't remember that,
25 but that was essentially his testimony. So if

1 that's included, then the people who would have
2 known what was said at the hospital are obviously
3 the doctor, Mr. Wise, Mrs. Wise, Keith Nelson, and
4 then he said he told you.

5 MS. MCCLURKIN: Object to the form.

6 BY MR. PARKER:

7 Q. So how did it get around the plant, if
8 you know and your investigation shows it, that in
9 fact that he had been told that he had multiple sex
10 partners and had an STD?

11 MS. MCCLURKIN: Object to the form.

12 BY MR. PARKER:

13 Q. Do you know how it got around the
14 plant?

15 A. No, sir, I do not.

16 Q. Do you know anybody, other than the
17 people I mentioned who could have been a source for
18 it getting around the plant?

19 A. Other than Keith; is that your
20 question?

21 Q. No, including Keith, was there anybody
22 other than them, including Keith, how it could have
23 gotten around the plant?

24 A. So you want me to speculate how it may
25 have?

1 Q. If you know. If you have any evidence
2 or have any --

3 A. No, I don't have any evidence. I mean,
4 Keith told George, so to me that could be the only
5 two people that could talk about it, right? As far
6 as my knowledge, who al knew about the incident
7 and, of course, Anthony.

8 Q. And so you don't know what, in fact,
9 Keith told George? We know what he said he told
10 him.

11 A. Yes, sir, that's all I know.

12 Q. But that would certainly be -- did you
13 believe that to be the source of the rumors?

14 MS. MCCLURKIN: Object to the form.

15 THE WITNESS: I --

16 BY MR. PARKER:

17 Q. You can answer it. That's a legal
18 thing she's objecting to. So her objection is
19 preserved and you can go ahead and answer.

20 A. But -- I know, but I feel like some of
21 the questions that you're asking me, you're wanting
22 me to speculate and I don't think it's right for me
23 to speculate. I thought we said we weren't going
24 to do that in here.

25 Q. Well, it depends upon whether -- I ask

1 you about speculation. It may not be admissible in
2 court, but what is your speculation?

3 MS. MCCLURKIN: No. No. No. I'm
4 going to instruct my witness, I don't want you to
5 speculate. You're under oath --

6 THE WITNESS: I know, that's what I
7 thought --

8 MS. MCCLURKIN: -- you need to testify
9 to things that you have personal knowledge of and
10 testify accurately.

11 THE WITNESS: So the only thing that I
12 do know is that Keith told me that he told George
13 that Anthony had an infection. I can say that with
14 all certainty. Now, how anything else got spread
15 in the mill, I cannot say with all certainty how
16 that might have occurred, if that did happen.

17 BY MR. PARKER:

18 Q. Now, she has instructed you not to
19 answer, I think that's an error --

20 MS. MCCLURKIN: No --

21 BY MR. PARKER:

22 Q. -- we will take that up later --

23 MS. MCCLURKIN: -- I instruct him not
24 to speculate.

25 MR. PARKER: Well, the answer(sic) was

1 what is your speculation -- was the question what
2 is your speculation?

3 THE WITNESS: Well, I just said what I
4 know.

5 BY MR. PARKER:

6 Q. That's what you know --

7 A. Right.

8 Q. -- but earlier we were talking and you
9 said do you want me to speculate --

10 A. Yeah, but I don't know.

11 Q. You don't know?

12 A. I don't know.

13 Q. You have no opinion about how this got
14 around the plant as it did?

15 A. No, sir, I wasn't aware of it going
16 around the plant because no one ever reported any
17 such incidents to me as far as it going around the
18 plant, harassing Anthony. So as far as I'm
19 concerned, it didn't go around the plant because
20 nobody came back to me and said there were issues
21 in the plant with that going around.

22 Q. Now, we've had several of your
23 employees come in this morning to testify about
24 what they heard. And they've obviously testified
25 that it was going around the plant. But you were

1 not aware of it?

2 A. No, sir.

3 MR. PARKER: Answer any questions they
4 may have for you.

5 EXAMINATION

6 BY MR. HAILE:

7 Q. Mr. Russell, just a few questions. I'm
8 Shelton Haile and I represent the hospital that's
9 also been sued in this case. If you'll take a look
10 at what's been marked as Exhibit 1, these are your
11 notes from a November 13th, 2017, meeting with
12 Mr. Wise, correct?

13 A. Yes, sir.

14 Q. You probably testified to this and I
15 just missed it, so let me ask you again: Who else
16 was present for this meeting, you, Mr. Wise and who
17 else?

18 A. That I do not remember.

19 Q. Would there have been at least one
20 other person present for the meeting?

21 A. I typically try to do that, sir, but to
22 tell you, you know, in this case if Anthony just
23 walked in because I have an open-door policy and
24 anybody can come there. And I was not expecting or
25 aware, depending on how the staffing was in the

1 front office, the only thing I would say is I would
2 have to look through the other documents and see if
3 anyone else took notes on that date to say if
4 anyone else was in the meeting with me, I just
5 can't recall.

6 Q. Is it fair to say your usual practice
7 is to have at least have one witness present when
8 you meet with an hourly employee?

9 A. Yes, sir, that has been my practice as
10 it has changed over the years, yes, sir. It used
11 to not be that way, but it has gotten like that
12 over a period of time, yes, sir.

13 Q. As of November 13th, 2017, was that
14 your usual practice?

15 A. Yes, sir.

16 Q. All right. Take a look at the
17 statement, pretty much in the middle and I'm going
18 to read it to you, let me know if I read it
19 correctly, quote, Anthony said the doctor was a
20 quack and showed racism, end quote. Did I read
21 that correctly?

22 A. Yes, sir.

23 Q. Do you recall those statements being
24 made in the meeting?

25 A. I do.

1 Q. Who was Anthony referring to when he
2 said the doctor was a quack and showed racism?

3 A. The only doctor that I know is the
4 doctor that saw him at the -- I reckon that would
5 be at the hospital.

6 Q. Okay. And you weren't at the hospital,
7 correct?

8 A. Oh, no, sir.

9 Q. With Anthony?

10 A. No, sir.

11 MR. HAILE: That's all I have for you.
12 Thank you.

13 MS. MCCLURKIN: No questions.

14 MR. PARKER: I've got a couple more.

15 (PLAINTIFF EXHIBIT 5, Handwritten notes
16 dated 12/4/17, was marked for identification.)

17 BY MR. PARKER:

18 Q. And Exhibit 5 is some notes that was
19 taken by someone, other than yourself, but it
20 mentions you. And tell us what that is, if you
21 know?

22 A. Well, I mean, that was obviously
23 someone sitting in with me taking notes.

24 Q. And that was what my next question was
25 going to be, who that someone was?

1 MS. MCCLURKIN: Well, it --

2 THE WITNESS: It doesn't have -- I
3 thought the original might have had his name on it.
4 The printer quality is pretty bad there, I can't
5 see it.

6 BY MR. PARKER:

7 Q. I'm going to attach this to it. This
8 is the front page that I'm going to attach to it.

9 A. Okay, so that was Quan Todd where he
10 noted at the top the three people present at the
11 meeting was Quan, DJ, and Anthony. So these are
12 Quan's notes.

13 Q. Okay. And those would be the notes
14 that you talked about earlier that he would have
15 been in there taking?

16 A. He was strictly there as a note taker,
17 he didn't talk, didn't say anything, I just asked
18 him to take notes.

19 Q. Let me see Exhibit 5 a minute and I
20 might have a question -- let me let you read over
21 it first. I believe that would be Exhibit 3, which
22 is 12/4, that would have been on the same date; is
23 that correct?

24 A. Okay, when I first looked at it I
25 thought it was 12/11. Again, the print quality is

1 poor. It does look like it's 12/4, yes, sir.

2 Q. And that would be his -- Exhibit 5 is
3 Mr. Todd's notes of your meeting. And then your
4 summary of it would be Exhibit 3; is that correct?

5 A. It looks like it, yes, sir.

6 Q. Let me see that a minute now. Did you
7 have a chance to read over it?

8 A. I did.

9 Q. And there's a bullet point that says,
10 will not give DJ names of employees bothering with
11 him. And I assume that would be that Anthony Wise
12 would not give you the names of the people that
13 were bothering him?

14 A. Yes, sir. And whether it was in that
15 meeting or a different meeting, he said if I talked
16 to them, it would just make matters worse. So I
17 would assume -- again, that's dangerous, but I
18 would assume that's why Anthony would not
19 supposedly give us any names if someone was
20 harassing him.

21 Q. And Anthony was concerned about Keith
22 disobeying the HIPAA laws?

23 A. He mentioned that.

24 Q. And it mentions that he had concerns
25 with his mom being upset about the diagnosis due to

1 the fact she's 82 years old. So he's telling you
2 that somehow this had gotten back to his mother?

3 A. I don't know what that means. I don't
4 know if Anthony told him or someone else told his
5 mother, I don't know that.

6 Q. But Mr. Todd wrote down and I'm
7 reading --

8 A. Exactly what Anthony --

9 Q. -- first word that said with his mom
10 being upset about the diagnosis due to her being
11 82 years old.

12 A. Yes, sir, when we take notes in a
13 meeting like that, we try to write down exactly
14 what the employee says. To the best of our
15 ability. And Quan was writing while he was
16 talking, so the notes may be briefer or bullet
17 points, but Quan was doing that while Anthony was
18 talking.

19 Q. Anything that you see in Exhibit 5
20 that's not accurate?

21 A. No, sir, it looked like Quan wrote down
22 everything that he said.

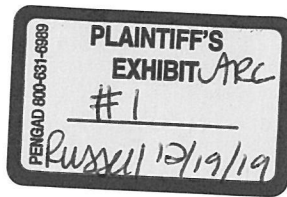
23 MR. PARKER: I don't think I have
24 anything further. Thank you.

25 MR. HAILE: No more questions.

1 MS. MCCLURKIN: No questions.

2 (The witness, after having been advised
3 of his right to read and sign this transcript,
4 waives that right.)

5 (The deposition was concluded at 12:27 PM.)
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Meeting with Anthony Wise

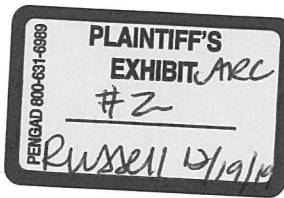
11/13/17

Anthony came to my office to discuss the incident he was involved in with checking the oil. He was upset how it was handled. Keith Nelson took him to doctor to get checked out. Anthony was out of work and when he returned he had employees at the mill telling him he had a STD. He said that Keith Nelson told George Wilson that he had a infection and STD and was given a antibiotic. He was upset that got out in the mill. He was also unhappy how the doctor at the Newbury ER handled his case. He said the doctor asked him in front of Anthony's wife about how many sexual partners he had. Anthony said the doctor was a quack and showed racism. Anthony said that every black man that goes to the doctor that they assume they have a STD. I told him that I didn't have any knowledge of this. He also told me that he went to his personal doctor and he told him that it was work related and he had a infection in his prostate. I told him that I would investigate the situation with Keith and take corrective action. Anthony asked me how he could get his name back. I told him I was sorry for what happened. I discussed with him that he had gotten hurt two times since I was here (2 1/2 years). He said that everyone got hurt while working. I told him I disagreed with that statement. I told him that both incidents involved incorrect body placement and he needed to be ~~more~~ aware of his surroundings.

D-089002

for RUSSELL

Meeting with Anthony Wise



11/17/17

I called Anthony to my office to discuss what we talked about Monday 11/13/17. He told me that we had ruined his good name. People looked at him now that he was a horrible person. I told him that I had investigated the incident and took appropriate action. He asked how that got his name back. I told him that I couldn't change the past but could affect the future. I told him again that I was sorry for what happened. He said that he was going to do what he had to do and that I had done what I had to do. He shook my hand and walked out the office. I told him to come see me if anyone harassed him or picked on him going forward.

Of Russell

Anthony Wise 12/4/17 12:53 pm



Problems with other employees picking on you. Doesn't want to deal with it. Thinks it will make it worse.

It has now got back to his momma. Last 3 days pay None is much. He needs satisfaction. ~~Has~~ thrown a monkey wrench in my marriage.

* Wants a meeting with Pat and me.

On medication to keep him calm.

Anthony said it was a HIPAA violation.

What are we going to do about before Anthony makes his next step. (Wants a answer to this question) (we settle or not can settle)

Anthony thinks we are taking it as a joke.

Anthony knows for a fact that certain called people in his office to tell them about Anthony and his and asked them not to tell anybody.

Quan Todd also took notes for me.

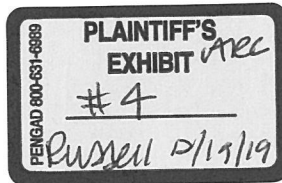
Cf. Russell



West Fraser

West Fraser
3287 College Street
Newberry, SC 29108

To: Wesley (Keith) Nelson
From: DJ Russell
Date: November 17, 2017
Subject: **WARNING**



Page 1 of 2

WARNING LETTER

This week I became aware of a serious breach of your responsibilities as the Environmental, Health and Safety Supervisor for the Newberry mill. Anthony Wise, an hourly employee of the mill, was recently involved in an alleged on-the-job accident and subsequently visited a physician as part of our procedure when responding to accidents. You escorted Mr. Wise to the physician. Upon return to the Newberry mill, you discussed the medical condition and diagnosis that the physician made regarding Mr. Wise with another hourly employee. In turn, this information has been communicated throughout the mill.

I have the following very serious concerns about your performance:

1. Employee medical information is protected. This is essential when any medical information is connected or potentially connected with our benefit plans. You have violated this requirement.
2. Information concerning the alleged or actual injury of an employee must remain confidential during an investigation and often after the conclusion of an investigation. Accidents often evolve to lawsuits against the Workers Compensation carrier and/or the Company. You have disclosed information that is part of an on-going investigation to an employee that should not be involved.
3. Verbally disclosing medical information about an employee can be considered by the employee as slanderous. As a representative of West Fraser, your disclosure of this information has put the Company at risk.
4. Discussing medical information with any employee for the sake of conversation is not becoming of a West Fraser salaried employee. It is prohibited. Your judgement was extremely poor and unacceptable.

The casual attitude which you had about revealing this information to another employee has eroded my trust in you to conduct your job and fulfill your responsibilities in a satisfactory manner. This cannot happen again.

D-000091

ROA-577
APP-581

Your work performance is unsatisfactory. I expect immediate and sustained improvement in your performance. Failure to make immediate and sustained improvement in your performance including ceasing to discuss and reveal inappropriate information about an employee will result in discipline up to and including termination of your employment with the Company.

DJ Russell
Mill Manager
Newberry Operation
West Fraser

D.J. Russell

cc:
Personnel File
Human Resources – Germantown, TN

I acknowledge receipt of this letter:

[Signature] 11/17/17
Keith Nelson / Date

Notes from Meeting with Anthony Wise

Newberry

12/11/2017

Attending: Peter Provencher, DJ Russell, Anthony Wise

DJ and I met with Anthony on 12/11 in the early pm.

The meeting was requested by Anthony.

This is regarding Anthony's alleged workers comp incident and subsequent claim about information getting out into the mill.

I told Anthony that we were meeting as per his request.

I stated to Anthony:

1. The investigation regarding this incident was raised to an appropriate level in West Fraser and that the investigation was completed.
2. Appropriate action was taken.
3. West Fraser considers this matter to be closed out.

Anthony said: so you're not going to do anything about what I am having to endure in the mill.

I repeated to Anthony that, appropriate action was taken and that West Fraser considers this matter to be closed.

I thanked Anthony for meeting with us and shook his hand.

Meeting ended.

Peter Provencher



Hop & DS

Quinn, DS, Anthony

12/19/17

- Last talk was with DS concerning info put on ~~the~~ Anthony about his medical diagnosis.
- Dr has given Anthony's medication to address anxiety.
- Will ~~not~~ not give DS names of employees bathing with him.
- Information has been circled back to his mother about the rumors about him.
- Wants to sit with DS, Peter, & others to try and dismiss claims and clear his name. Working has become depressing for Anthony.
- Concern w/ Keith disobeying HIPAA laws and is wondering what the next step of this issue. ~~that~~
- Anthony posed the question "What will the company do about this?"
- Would like to talk to Peter, DS, Melody & whoever else.
- Concerns with his mom being upset about the diagnosis due to her being 82 yrs old.

D-000003

Reith has called people to his office to discuss Anthony's medication and diagnosis

DS will not give Anthony an answer about what West Fraser can do to resolve this issue or he's planning on moving forward through courts

(contin.)
DS will talk to others and work on it as quickly as possible to see what WF will do.



Deposition of:
Anthony I. Byrd , Sr.

December 19, 2019

In the Matter of:
**Wise, Anthony Vs. Newberry Hospital,
LLC**

[A. William Roberts, Jr & Assoc.](#)

800-743-3376 | calendar-awr@veritext.com | www.veritext.com

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

ANTHONY WISE,

Plaintiff,

vs.

CASE NO. 2019-CP-36-00103

NEWBERRY HOSPITAL, LLC, d/b/a NEWBERRY COUNTY

MEMORIAL HOSPITAL, WEST FRASER, INC.,

Defendants.

DEPOSITION OF: ANTHONY BYRD

DATE: December 19, 2019

TIME: 10:58 AM

LOCATION: Pope Parker Jenkins
1508 College Street
Newberry, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: AMY R. COPE,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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ANTHONY BYRD

being first duly sworn, testified as follows:

EXAMINATION

BY MR. PARKER:

Q. Please state your full name.

A. Anthony L. Byrd, Sr.

Q. And where do you live, Mr. Byrd?

A. 118 Henry Road, Newberry,
South Carolina.

Q. And how long have you lived in
Newberry?

A. All my life.

Q. And you work for West Fraser?

A. Yes, sir.

Q. And have been for how long?

A. It will be eight years July coming up.

Q. And what's your job?

A. Forklift operator.

Q. And do you know Anthony Wise?

A. Yes.

Q. And y'all have been working together
for several years?

A. About a good four years.

Q. And do you remember back in '17,
November of '17, there was talk around the plant

1 about Mr. Wise?

2 A. Yes.

3 Q. And what was that talk?

4 A. It was just other coworkers joking
5 around.

6 Q. Joking around about him having some
7 kind of disease?

8 A. It was something to that nature, yes.

9 Q. And what kind of disease did he
10 supposedly have, what did he have?

11 A. All I heard was STD or something like
12 that.

13 Q. And do you remember who you heard it
14 from?

15 A. I was getting ready to drink my coffee
16 and smoke a cigarette getting ready for work and
17 there was several people that work with me that --
18 they wasn't talking to me, I just heard them
19 talking.

20 Q. You overheard them?

21 A. Yeah.

22 Q. Do you remember who that was?

23 A. I can remember the one of them that
24 ain't here, ain't working there no more.

25 Q. And who was that?

1 A. I think I think his name was CJ, him
2 and I think maybe another fellow named William.

3 Q. Is that CJ Dudley?

4 A. Yeah.

5 Q. And another guy named William?

6 A. I think that guy up in shipping now.

7 Q. And he's still working?

8 A. Yeah.

9 Q. And did you hear others talk about it
10 at the plant after that?

11 A. It was just that one occasion.

12 Q. And did you talk with Mr. Wise about
13 it?

14 A. No, sir.

15 MR. PARKER: I don't think I have
16 anything else. Thank you.

17 EXAMINATION

18 BY MR. HAILE:

19 Q. Mr. Byrd, I represent the hospital.
20 You didn't go to the hospital with Mr. Wise, did
21 you?

22 A. No, sir.

23 Q. You don't know what the doctor said or
24 didn't say to him; do you?

25 A. No, sir.

1 MR. HAILE: Okay. That's all I've got.

2 MS. MCCLURKIN: No questions.

3 (The witness, after having been advised
4 of his right to read and sign this transcript,
5 waives that right.)

6 (The deposition was concluded at 11:00 AM.)

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Deposition of:
Raphael Maybin

December 19, 2019

In the Matter of:
**Wise, Anthony Vs. Newberry Hospital,
LLC**

[A. William Roberts, Jr & Assoc.](#)

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

ANTHONY WISE,

Plaintiff,

vs.

CASE NO. 2019-CP-36-00103

NEWBERRY HOSPITAL, LLC, d/b/a NEWBERRY COUNTY

MEMORIAL HOSPITAL, WEST FRASER, INC.,

Defendants.

DEPOSITION OF: RAPHAEL MAYBIN

DATE: December 19, 2019

TIME: 10:03 AM

LOCATION: Pope Parker Jenkins
1508 College Street
Newberry, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: AMY R. COPE,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1

RAPHAEL MAYBIN

2

being first duly sworn, testified as follows:

3

EXAMINATION

4

BY MR. PARKER:

5

Q. Please state your full name.

6

A. Raphael Maybin.

7

Q. Mr. Maybin, where do you live?

8

A. In Newberry. 651 Apple Lane, Newberry,

9

South Carolina.

10

Q. And how long have you been here?

11

A. 34 years. All my life.

12

Q. You were raised here --

13

A. Yeah.

14

Q. -- this is part of your community? Who

15

are some of your relatives here in the county?

16

A. Do I have to name all of them?

17

Q. Just give me the last names.

18

A. Kin to the Maybins, the Grays, Subers.

19

Q. Big family?

20

A. Yeah, pretty much.

21

Q. And did you graduate high school here

22

in Newberry?

23

A. Yeah, 2003.

24

Q. Which year?

25

A. 2003.

1 Q. Okay. And how long have you been
2 working for West Fraser?

3 A. 12 years. It will be 13 years in
4 February.

5 Q. You haven't had many other jobs than
6 this then?

7 A. No.

8 Q. And what do you do?

9 A. I'm a lead man at the kilns, the dry
10 kilns.

11 Q. And do you work with Anthony Wise?

12 A. Yeah.

13 Q. And have for how long, several years?

14 A. I think he been here about three or
15 four years, something like that.

16 Q. And I guess you've been made aware of
17 what we're doing here today, what this is about?

18 A. Right. Yeah.

19 Q. What do you know about the case?

20 A. Nothing. As far as I know he's suing
21 about the hospital about what was said.

22 Q. About them saying that he had a
23 sexually transmitted disease?

24 A. Yeah, something like that.

25 Q. And how did you find out about it?

1 A. It was just talk among guys and people
2 just heard about it.

3 Q. That was talked about in the plant
4 after this occurred?

5 A. Yes. Right.

6 Q. And that's at the time it occurred,
7 about that time or do you know?

8 A. I guess it was weeks -- a week after it
9 happened, I reckon, something like that.

10 Q. Now, what were you told?

11 A. That he had some kind of infection. It
12 was supposed to be like sexual disease or something
13 like that.

14 Q. And do you recall who told you that?

15 A. No.

16 Q. Mr. Wise said that you had asked him if
17 he had gotten his penicillin shot that day; do you
18 recall that?

19 A. Uh-uh.

20 MS. MCCLURKIN: You have to say no for
21 the record.

22 THE WITNESS: Oh, no.

23 BY MR. PARKER:

24 Q. Do you know whether you asked him or
25 not?

1 A. I don't recall that.

2 Q. Did you know that penicillin would be
3 something to treat sexually transmitted disease?

4 A. Yeah.

5 MS. MCCLURKIN: Object to the form.

6 BY MR. PARKER:

7 Q. So you were aware of that?

8 A. I'm aware of that.

9 Q. And have you had any discussion with
10 Mr. Wise about this, about this matter?

11 A. About the whole thing?

12 Q. What was said about him?

13 A. Well, yeah. Like I said, once he got
14 back from, I guess, the kiln or whatever he had
15 going on, he came back to work and I guess he heard
16 the rumors going on about it. And he was talking
17 to see what I heard and he was going around to
18 everybody else to see what they heard and I guess
19 he was upset about it.

20 Q. Would you have been upset about it?

21 A. Yeah, pretty much, yeah.

22 Q. Are you married?

23 A. Yes, sir.

24 Q. I assume if your wife got wind of it,
25 you would be particularly upset?

1 A. Right. Yeah.

2 Q. Have you talked with anyone at
3 management -- in management about it, did anybody
4 ask you about it?

5 A. Uh-uh.

6 MADAME COURT REPORTER: Is that a no?

7 THE WITNESS: No, I'm sorry, no.

8 MR. PARKER: I think that's all I have.
9 If you'll answer any questions that any of these
10 other people may have for you.

11 EXAMINATION

12 BY MR. HAILE:

13 Q. You didn't go to the hospital with
14 Mr. Wise, did you?

15 A. No.

16 Q. You have no idea what Dr. Liep may have
17 said or not said to Mr. Wise; did you?

18 A. No.

19 MR. HAILE: I don't have any further
20 questions. Thank you.

21 EXAMINATION

22 BY MS. MCCLURKIN:

23 Q. Mr. Maybin, you heard Mr. Wise talking
24 about things that the doctor said as far as him
25 having an STD, correct?

1 A. Yes, he had said that. I mean, he
2 was --

3 Q. Did you --

4 A. -- he was saying that the doctor said
5 something in front of Keith and it was about some
6 kind of infection. And that's how I guess where
7 the hospital came involved in.

8 Q. And Mr. Hopp said these things to you?

9 A. Yes.

10 Q. Did you hear Mr. Hopp say similar
11 things to other people at the mill?

12 A. Yes.

13 Q. When you heard the rumor about Mr. Wise
14 having a sexually transmitted disease, did that in
15 any way change your opinion of him?

16 A. No.

17 Q. Did you believe that it was true?

18 A. No, I mean, that's his business. I
19 mean, I ain't think nothing else about it.

20 MS. MCCLURKIN: Thanks. Nothing
21 further.

22 (The witness, after having been advised
23 of his right to read and sign this transcript,
24 waives that right.)

25 (The deposition was concluded at 10:08 AM.)



Deposition of:
Joseph Praylow
December 19, 2019

In the Matter of:
**Wise, Anthony Vs. Newberry Hospital,
LLC**

[A. William Roberts, Jr & Assoc.](#)
800-743-3376 | calendar-awr@veritext.com | www.veritext.com

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

ANTHONY WISE,

Plaintiff,

vs.

CASE NO. 2019-CP-36-00103

NEWBERRY HOSPITAL, LLC, d/b/a NEWBERRY COUNTY

MEMORIAL HOSPITAL, WEST FRASER, INC.,

Defendants.

DEPOSITION OF: JOSEPH PRAYLOW

DATE: December 19, 2019

TIME: 10:20 AM

LOCATION: Pope Parker Jenkins
1508 College Street
Newberry, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: AMY R. COPE,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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JOSEPH PRAYLOW

being first duly sworn, testified as follows:

EXAMINATION

BY MR. PARKER:

Q. Please state your full name.

A. My full name is Joseph Praylow.

Q. And you live where?

A. I live at 6893 St. Luke Church Road in
Prosperity.

Q. And that's in Newberry County?

A. Yes, sir.

Q. Do you have family in Newberry County
with a name other than Praylow?

A. Yes, Caldwell.

Q. Any other names that come to mind?

A. Caldwell, Pitts, and Hellers.

Q. Did you grow in Newberry?

A. No, sir.

Q. Where did you grow up?

A. In Newark, New Jersey.

Q. And you had family here so you moved
back?

A. Yes, that's correct.

Q. How long have you been working for West
Fraser?

1 A. 30 years.

2 Q. And what is your job?

3 A. I'm a lead kiln burner.

4 Q. And you must not have had any other
5 jobs because you're fairly young, you've been
6 working practically your whole adult life.

7 A. I might look young.

8 Q. Well, how old are you, we'll ask you
9 that?

10 A. 52.

11 Q. Well, that's young. It's relative,
12 right?

13 A. Yeah.

14 Q. So you went to work there at 22?

15 A. That's correct.

16 Q. And your job has been the same or
17 different things?

18 A. No different. Different things.
19 Different positions.

20 Q. And do you work with Anthony Wise?

21 A. Yes, sir.

22 Q. And have since he's been there?

23 A. Yes, sir.

24 Q. And in November of '17, did you hear
25 anything about Mr. Wise at work?

1 A. November 17th(sic), let me see, I might
2 have came back to work. I might have come back to
3 work the 19th, maybe.

4 Q. Excuse me, November --

5 A. If the incident happened --

6 Q. -- November the 7th of 2017.

7 A. -- if it happened -- are you talking
8 about the day it happened?

9 Q. The day he went to the hospital.

10 A. I wasn't there.

11 Q. And when did you come back to work?

12 A. I don't know. Was that on a Friday?

13 Q. I'm not sure.

14 A. I'm not sure either.

15 Q. But in any event, when you got back to
16 work did you hear anything about Anthony?

17 A. Yes, it was hearsay.

18 Q. And what did you hear?

19 A. That he had got hurt.

20 Q. Did you hear anything about him having
21 any kind of disease?

22 A. That was going around the plant when I
23 got back.

24 Q. And what exactly was said about that?

25 A. They just said he had -- they were

1 saying, oh, he got the man disease. Man disease,
2 that's all.

3 Q. And you're talking about a sexually
4 transmitted disease, is what you understood it to
5 mean?

6 A. Yeah.

7 Q. And who did you hear it from, if you
8 know?

9 A. Just certain people around the plant,
10 it wasn't just one individual.

11 Q. Do you remember any of them that you
12 talked to or they told you that?

13 A. I know they was talking in the kiln
14 room and that was like guys that work with me.

15 Q. And who was that?

16 A. Anthony Wise -- no, Anthony Cannon.
17 Who else was it? I know Hopp had told me himself
18 and a couple of more guys was in there. Who else
19 was in there?

20 Q. How about Mr. Maybin, did you hear
21 him --

22 A. No. No. No. No. I didn't hear him
23 say anything.

24 Q. And how about Anthony Byrd?

25 A. No, not Anthony Byrd. I heard it from

1 Anthony Cannon.

2 Q. Okay. Anybody else you can recall?

3 A. I'm trying to think, that's a long time
4 ago. Who else was in there? Who work with Amp?
5 See, we changed shifts over and the guys who came
6 over on the next shift, that's who I heard it from.
7 Amp and Robert -- Robert, Robert.

8 Q. What's Robert's last name?

9 A. Robert, man, he don't no longer work
10 there anymore. His name was Robert. He was
11 another lead. So them guys that works on a
12 separate shift, different shift, that's who I heard
13 it from when they came in.

14 Q. And he came in and he told you that
15 Anthony --

16 A. They see Amp -- they see Hopp, who we
17 call Hopp, he was on first shift with us. So when
18 they came in, they was all talking about it with
19 Hopp.

20 Q. Were they teasing him about it?

21 A. Yeah.

22 Q. They were teasing him about, as you
23 said, having a man disease?

24 A. Yeah, just messing with him.

25 Q. And it would have been the people that

1 were coming on as you were leaving?

2 A. Yes.

3 Q. Did it seem like this upset Mr. Wise?

4 A. Yes.

5 Q. He was hurt by it?

6 A. Yeah.

7 Q. Embarrassed by it?

8 A. A little.

9 MR. PARKER: I don't think I have
10 anything else. Thank you. They may have something
11 for you.

12 EXAMINATION

13 BY MR. HAILE:

14 Q. Mr. Praylow, I represent the hospital.
15 Just a couple of questions. You obviously did not
16 go to the hospital with Mr. Wise when this
17 happened, right?

18 A. No, I didn't.

19 Q. And I'm assuming that you have no idea
20 what the doctor at the hospital said or didn't say
21 to Mr. Wise?

22 A. No, that's correct.

23 Q. And you obviously didn't hear it?

24 A. No, I didn't hear it.

25 MR. HAILE: That's all I've got for

1	you.

EXAMINATION

3 BY MS. MCCLURKIN:

4 Q. Mr. Praylow, just a couple of
5 questions. You heard Anthony Wise talk about the
6 rumors about him having an STD, right?

7 A. Yes, I did.

8 Q. Did you hear him talk about that with
9 you personally?

10	A. Yes.

11 Q. Did you hear him talk about it with
12 other people at the mill?

13 A. The guys when they was messing with
14 them, yes, he talked back to them.

15 Q. But did you hear Hopp initiate
16 conversations about it with other people?

17	A.	No.

18 Q. And when you heard this rumor that was
19 going around, did that change your opinion of
20 Mr. Wise in any way?

21	A.	No.

22 Q. Did you believe that rumor was true?

23	A. Not at all.

24 MS. MCCLURKIN: Okay. Thank you.

25	Nothing further.

1 (The witness, after having been advised
2 of his right to read and sign this transcript,
3 waives that right.)

4 (The deposition was concluded at 10:26 AM.)
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Deposition of:
Julian Harry Shelton

December 19, 2019

In the Matter of:
**Wise, Anthony Vs. Newberry Hospital,
LLC**

[A. William Roberts, Jr & Assoc.](#)

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

ANTHONY WISE,

Plaintiff,

vs.

CASE NO. 2019-CP-36-00103

NEWBERRY HOSPITAL, LLC, d/b/a NEWBERRY COUNTY

MEMORIAL HOSPITAL, WEST FRASER, INC.,

Defendants.

DEPOSITION OF: HARRY SHELTON

DATE: December 19, 2019

TIME: 1:52 PM

LOCATION: Pope Parker Jenkins
1508 College Street
Newberry, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: AMY R. COPE,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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7 (803) 771-4400

8 shaile@richardsonplowden.com

9 (INDEX AT REAR OF TRANSCRIPT)

1

HARRY SHELTON

2

being first duly sworn, testified as follows:

3

EXAMINATION

4

BY MR. PARKER:

5

Q. I'm going to ask you some questions and
6 you're under oath now, so you -- this will just
7 take a minute or two and we'll get this over with.
8 Please state your full name.

9

A. Julian Harry Shelton.

10

Q. And your address?

11

A. 1563 Osner Road, Newberry, South
12 Carolina.

13

Q. And how long have you lived in
14 Newberry?

15

A. Approximately 30 years.

16

Q. And you're a little older than 30, I
17 would say --

18

A. Yes, sir.

19

Q. -- but where else did you live?

20

A. Fairfield.

21

Q. And how long have you worked for the
22 sawmill?

23

A. 15 years.

24

Q. And prior to that, what did you do?

25

A. I worked construction.

1 Q. Here in Newberry or somewhere else?

2 A. Some in Newberry, some in Alabama.

3 Q. And do you have any family in Newberry?

4 A. Yes, sir.

5 Q. And other than your immediate family,
6 who have you got?

7 A. I got nieces.

8 Q. And are their family names, last names?

9 A. Colemans, I got a sister that's Coleman
10 too.

11 Q. Coleman?

12 A. Yes, sir.

13 Q. Anybody else, what's the other one's
14 last name?

15 A. Well, I got a cousin here, Kaufman,
16 nephew.

17 Q. Okay. And at work you know Anthony
18 Wise?

19 A. Yes, sir.

20 Q. And do you recall back in November when
21 he had pulled his groin and something happened at
22 work and he had to go to the hospital?

23 A. Yes, sir.

24 Q. Do you remember what was said about
25 that at the plant afterwards?

1 A. It was said he had some kind of
2 disease.

3 Q. Was it said that he had a sexually
4 transmitted disease?

5 A. Yes, sir.

6 Q. And where did you hear that from?

7 A. I hear it from Ervin Farrow and CJ
8 Dudley talking about it.

9 Q. And they said he had somehow gotten a
10 sexually transmitted disease that he had been to
11 the doctor for?

12 A. Yeah.

13 Q. Was that pretty well all over the plant
14 at that time?

15 A. Yeah, it was gossip.

16 Q. And did you talk with Anthony about it?

17 A. Yeah, we talked about it.

18 Q. And he told you it wasn't true?

19 A. Yes, sir.

20 Q. And did people tease him about it?

21 A. Yes, sir.

22 Q. What did you hear people saying about
23 it to him?

24 A. Well, the same like you just said, he
25 had a transmitted sexual disease.

1 Q. Did they say he had the clap?

2 A. No.

3 Q. You didn't never hear that?

4 A. No, I didn't hear that one.

5 Q. Do you know what the clap is?

6 A. I heard of it.

7 Q. I think we probably all have heard of
8 it, but we don't want to know anybody that's got
9 it, right?

10 A. No, sir.

11 Q. Do you know anything else about this,
12 about what effect this has had on Anthony or
13 anything?

14 A. He told me that it was aggravating at
15 work because I was teasing him about it. And he
16 said it had got back to his momma and his wife and,
17 you know, he was upset about it, so I stopped
18 joking about it.

19 MR. PARKER: Answer any questions that
20 Mr. Shelton may have for you.

21 EXAMINATION

22 BY MR. HAILE:

23 Q. Mr. Shelton, my name is Shelton Haile.
24 I don't know if we're cousins or what, we have the
25 same name, so we'll see. I represent the hospital.

1 You didn't go with Mr. Wise to the hospital the day
2 he got hurt at work; did you?

3 A. No, sir.

4 MR. HAILE: That's all I wanted to
5 know. Thank you.

6 MS. MCCLURKIN: I don't have any
7 questions.

8 (The witness, after having been advised
9 of his right to read and sign this transcript,
10 waives that right.)

11 (The deposition was concluded at 1:56 PM.)
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Deposition of:
Michael J. Shealy

December 19, 2019

In the Matter of:
**Wise, Anthony Vs. Newberry Hospital,
LLC**

[A. William Roberts, Jr & Assoc.](#)

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

ANTHONY WISE,

Plaintiff,

vs.

CASE NO. 2019-CP-36-00103

NEWBERRY HOSPITAL, LLC, d/b/a NEWBERRY COUNTY

MEMORIAL HOSPITAL, WEST FRASER, INC.,

Defendants.

DEPOSITION OF: MIKE SHEALY

DATE: December 19, 2019

TIME: 11:18 AM

LOCATION: Pope Parker Jenkins
1508 College Street
Newberry, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: AMY R. COPE,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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7 (803) 771-4400

8 shaile@richardsonplowden.com

9 (INDEX AT REAR OF TRANSCRIPT)

1

MIKE SHEALY

2

being first duly sworn, testified as follows:

3

EXAMINATION

4

BY MR. PARKER:

5

Q. Please state your full name.

6

A. Michael James Shealy.

7

Q. And your address?

8

A. 863 Old Jolly Street Road, Prosperity,

9

South Carolina.

10

Q. And how long have you lived in

11

Prosperity?

12

A. All my life, 65 years.

13

Q. You're 65 years young now. Are you

14

about ready to retire?

15

A. Yes, sir.

16

Q. When you going to do that?

17

A. 31st of January.

18

Q. Congratulations. What are you going to

19

do then?

20

A. I farm, so I got plenty of little

21

projects to do.

22

Q. Plenty to do?

23

A. Yes, sir.

24

Q. Okay. Good. Well, I'm going to ask

25

you some questions about Anthony Wise, this case

1 we're here about. Do you know about the case about
2 the fact that he's brought a suit because he was
3 slandered by saying he had a sexually transmitted
4 disease. Do you know that it's going on?

5 A. Yes, sir.

6 Q. And what do you know about the case?

7 A. Very little.

8 Q. Did you hear people talking about it?

9 A. Not really.

10 Q. You didn't hear anybody saying that he
11 had a sexually transmitted disease?

12 A. Not come out and say that, no, sir.

13 Q. Did you hear Mr. Nelson, Keith Nelson,
14 say anything about it?

15 A. No, sir.

16 Q. Then -- did you ever talk with Keith
17 Nelson about it?

18 A. Yes, sir. I was Anthony's direct
19 supervisor at the time and he called me in and told
20 me that he had an infection and may be out, you
21 know, some time because I do his time.

22 Q. Keith Nelson told you that?

23 A. Yes, sir.

24 Q. Did he tell you what kind of infection
25 he had?

1 A. No, sir.

2 Q. Did you ever learn what kind of
3 infection he had?

4 A. Not what he had, no, sir.

5 Q. Did you ever hear anybody around the
6 plant saying that he had a sexually transmitted
7 disease?

8 A. Well, it could have been something
9 floating, but no, sir.

10 Q. Did you hear people saying that,
11 floating that?

12 A. No, sir, not really.

13 Q. But did you know they were, there was
14 talk around the plant?

15 A. I heard there was talk, but I try to
16 stay away from it.

17 Q. Do you recall anybody involved in that
18 talk?

19 A. No, sir.

20 Q. And do you still work with Mr. Wise?

21 A. Oh, yeah.

22 Q. Are you his supervisor?

23 A. Yeah, he works second shift with us --
24 well, for me.

25 Q. Do you know anything else about this?

1 A. Not really.

2 MR. PARKER: Well, we appreciate you
3 coming. Thank you.

4 EXAMINATION

5 BY MR. HAILE:

6 Q. Mr. Shealy, real quick, I represent the
7 hospital. You didn't go to the hospital with
8 Mr. Wise when he got hurt; did you?

9 A. No, sir.

10 Q. You don't have any idea what the doctor
11 said or didn't say to him; do you?

12 A. No, sir.

13 MR. HAILE: Okay. That's all I've got.
14 Thank you.

15 EXAMINATION

16 BY MS. MCCLURKIN:

17 Q. Let me just ask one question. You've
18 known Mr. Wise for quite a long time, right?

19 A. Yes, sir -- yes, ma'am.

20 Q. You worked together before at Georgia
21 Pacific; is that right?

22 A. That's right.

23 Q. And the rumors that were floating
24 around that you may have heard about this STD and
25 if Mr. Wise had it, did that change your opinion of

1 Mr. Wise in any way?

2 A. No.

3 MS. MCCLURKIN: Thanks. You're free to
4 go.

5 (The witness, after having been advised
6 of his right to read and sign this transcript,
7 waives that right.)

8 (The deposition was concluded at 11:21 AM.)
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Transcript of the
Deposition of

Pauline Wise

6/16/2020

Wise v. Newberry Hospital, et al.
2019-CP-36-00103

COPY

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Phone: 803.749.8100

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Email: Depos@southernreporting.net

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
ANTHONY WISE,	)	
	)	CASE NO. 2019-CP-36-00103
PLAINTIFF,	)	
	)	DEPOSITION
VS.	)	
	)	OF
NEWBERRY HOSPITAL, D/B/A	)	
NEWBERRY COUNTY MEMORIAL	)	PAULINE WISE
HOSPITAL AND WEST FRASER,	)	
INC.,	)	
	)	
DEFENDANTS.	)	
_____	)	

THE DEPOSITION OF PAULINE WISE WAS TAKEN
BEFORE SUESAN L. RICHARDSON, A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 9:58
A.M., TUESDAY, JUNE 16, 2020, AT THE LAW OFFICE AT THE LAW
OFFICES OF PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK,
P.A., 101 HAMPTON STREET, EAST, HAMPTON, SOUTH CAROLINA.

REPORTED BY
SUESAN L. RICHARDSON

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AND

Christopher B. Major, Esquire
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Haynsworth, Sinkler & Boyd
Greenville, South Carolina 29601

AND

Representing Newberry Hospital
d/b/a Newberry County Memorial Hospital
Shelton W. Haile, Esquire
[REMOTE VIA ZOOM]
Richardson, Plowden & Robinson, P.A.
Columbia, South Carolina 29202

ALSO PRESENT:

Mr. Anthony Wise

INDEX

STIPULATIONS.....	3
DIRECT EXAMINATION BY MR. HAILE.....	3
CROSS-EXAMINATION BY MS. MCCLURKIN.....	43
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EXHIBITS

NO EXHIBITS WERE MARKED FOR THIS DEPOSITION.

*DIGITALLY RECORDED AUDIO RETAINED FOR TWELVE (12) MONTHS
FROM DATE OF CERTIFICATION.

1 STIPULATIONS

2 The deposition of PAULINE WISE is taken in
3 accordance with provisions of the circuit court rules
4 for the purpose of discovery or for use as evidence, or
5 for both purposes, and all questions as notice are
6 waived.

7 It is stipulated that all objections will be
8 reserved until the time of trial, with the exception of
9 objections as to the form of the question.

10 It is stipulated that the witness WAIVES the
11 reading and the signing of the deposition.

12 - - - -

13 PAULINE WISE, having first been duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. HAILE:

17 Q Mrs. Wise, good morning. My name is Shelton Haile. I
18 represent Newberry County Memorial Hospital in the
19 lawsuit that your husband has filed. And he listed you
20 as one of his witnesses in some documents that the
21 parties sent back and forth. So we wanted to take your
22 deposition to find out what you know and what you might
23 say if we get to a trial on this case, okay?

24 A Okay.

25 Q I'm taking your deposition via Zoom. I hope we don't

1 have any technical difficulties. But if we do, if you
2 can't hear me for some reason, or if the video locks
3 up, or just anything happens, please let me know and
4 we'll try to fix that. I want to make sure that you
5 hear and understand my questions as best you can before
6 you answer, okay?

7 A Okay.

8 Q A few things we need to go over pursuant to our rules
9 of court of South Carolina. If you have any questions
10 or issues during your deposition, you need to direct
11 your questions to the lawyer asking you the deposition
12 questions at the time. Do you understand that?

13 A Okay.

14 Q So in other words, you and your husband's attorney
15 can't take a time out and go discuss strategy in the
16 hallway during the deposition once your deposition has
17 started, with certain exceptions. Do you understand
18 that?

19 A Yes.

20 Q Okay. I guess, I should ask you here towards the
21 beginning, is Mr. Parker your lawyer for purposes of
22 this lawsuit or just your husband's lawyer, or do you
23 know?

24 A I don't know.

25 Q Okay. If you need to take a break at any time for any

1 reason or no reason at all, just let me know, and I'll
2 be glad to accommodate you. I'm not trying to make you
3 any more uncomfortable than you already are or test
4 your endurance, so if you just need to take a break,
5 let me know, okay?

6 A I will, thank you.

7 Q What is your date of birth?

8 A April 22nd, 1955.

9 Q Where were you born?

10 A In Columbia, South Carolina.

11 Q Have you lived around here your whole life?

12 A In Columbia? Yes.

13 Q In and around Columbia? Yeah, okay. What is your full
14 name?

15 A Pauline Cheyenne Wise.

16 Q How do you spell your middle name?

17 A C-H-E-Y-E-N-N-E.

18 Q Can you see me on a video screen?

19 A Yes, I can.

20 Q Okay. I ask that because I'm going to be looking this
21 way. I've got another computer monitor set up over
22 here with some notes on it.

23 A Uh-huh (affirmative).

24 Q So I didn't want you to think I was just staring off
25 into space instead of looking at you, and I'm not being

1 rude by doing that. I'm just looking at my notes over
2 here, so.

3 A Okay.

4 Q If that was going to distract you, I wanted you to
5 understand what I was doing. What is your Social
6 Security number, and if Mr. Parker is your attorney, we
7 can handle that however he wants to; we can put it all
8 on the record, or just the last four on the record, or
9 none of it on the record. It doesn't matter to me.

10 MR. PARKER: Let's just put it the last four.

11 MR. HAILE: Okay.

12 Q What is your Social Security number, ma'am.

13 A 7360.

14 Q You give me your whole number, but the court reporter
15 will only put the last four numbers --

16 A X --

17 Q -- on the deposition transcript.

18 A You ready? It's XXX-XX-7360.

19 Q Got it. Thank you.

20 A Uh-huh (affirmative).

21 Q Are you married?

22 A Yes.

23 Q What's your husband's name?

24 A Anthony Wise.

25 Q Is this your first marriage?

1 A My second.

2 Q Uh-huh (affirmative). What is your first husband's

3 name?

4 A Gregory Boothe.

5 Q Do you know the dates of that marriage?

6 A I am not good with dates of marriage. Of that one, no.

7 Q Ball -- ballpark is fine. Just get as close as you

8 can.

9 A Let me see, my son was born in '84. Oh, my God. Greg

10 is 37. I don't -- all I could tell you is I was

11 married to him for 15 years.

12 Q Okay.

13 A Okay.

14 Q Can you give me a decade? Like when do you -- what

15 decade did that marriage --

16 A The 80s.

17 Q What were the grounds for the divorce?

18 A What was the grounds for the -- he didn't want to be

19 married to me anymore.

20 Q You got one child from that marriage?

21 A Yes.

22 Q What is that child's name?

23 A Gregory T., Tayhome, Boothe.

24 Q How old is he?

25 A Thirty-seven.

1 Q Where does he live now?

2 A Texas. San Antonio, Texas.

3 Q To your knowledge, does he know anything about this
4 lawsuit that your current husband has filed?

5 A Yes, I told him somewhat of it.

6 Q Okay. Other than you telling him what the lawsuit's
7 about, does he have any first-hand knowledge, or has he
8 talked to Mr. Wise about this case as far as you know?

9 A No.

10 Q Do he and Mr. Wise have any type of relationship?

11 A My son was military, and no, he would -- when he came
12 to visit, it wasn't for that long, and no, he don't
13 know anything of it.

14 Q Okay. When did you and Mr. Wise get married?

15 A Oh, my God. 1993? 1993.

16 Q Okay. Do you have any children with Mr. Wise?

17 A No.

18 Q Your son is your one and only child?

19 A No, I have a daughter.

20 Q Okay. Who is her father?

21 A Her father is Willie Driver.

22 Q You were not married to Mr. Driver at any point?

23 A No, I was not.

24 Q Okay. How old is your daughter?

25 A My daughter is 45.

1 Q What is her name and where does she live?

2 A Her name is Nakia, N-A-K-I-A, Felder, F-E-L-D-E-R, and
3 she lives in Charlotte, North Carolina.

4 Q Okay. So the same type of questions I asked about your
5 son. Does she have any real knowledge of this case as
6 far as you know?

7 A No.

8 Q Okay. Since you and Mr. Wise have been married in 1993
9 or so, have you all ever separated?

10 A No.

11 Q And I've -- just because of the nature of this lawsuit,
12 I've got to ask you some uncomfortable questions, and I
13 apologize for that, but I wouldn't be doing my job if I
14 didn't. So I don't want you to think I'm harassing you
15 or picking on you, it's just because of what this
16 lawsuit's about that I feel like I need to ask you
17 these things. Have you ever had any extramarital
18 affairs during your marriage to Mr. Wise?

19 A No.

20 Q Has Mr. Wise ever had any extramarital affairs during
21 your marriage?

22 A No. Not that I know of.

23 Q Do you have any relatives by blood or marriage who live
24 in Newberry County?

25 A By marriage, yes.

1 Q Okay. What are the last names of your relatives in
2 Newberry?
3 A Wise.
4 Q Any others?
5 A Wise.
6 Q Okay. There may not be. I just want to make sure I
7 cover it.
8 A Oh, okay.
9 Q Okay. All right. And you and your husband, where do
10 y'all live? Was it around Irmo; is that right?
11 A Yes.
12 Q Harbison area?
13 A Yes.
14 Q Okay. So, is that Lexington or Richland County --
15 A [Crosstalk.] It's Richland.
16 Q -- [inaudible] close there?
17 A Richland.
18 Q Richland, okay. What's your address?
19 A 148 Whitwood, W-H-I-T-W-O-O-D, Circle. You need the
20 zip code?
21 Q How long have you -- yes, ma'am, zip code --
22 A 29212.
23 Q How long have y'all lived there?
24 A Oh, goodness.
25 Q Ballpark's fine if you don't know the exact date.

- 1 A About six/seven years.
- 2 Q Okay. What do you do for a living?
- 3 A I -- I'm a -- I work at Lowes Home Improvement
- 4 Warehouse, retail.
- 5 Q What's your job at Lowe's?
- 6 A I'm the receiving clerk.
- 7 Q Which store?
- 8 A Harbison.
- 9 Q How long have you worked there at Lowes?
- 10 A Twenty-six years.
- 11 Q All right. Where'd you go to high school?
- 12 A C.A. Johnson.
- 13 Q Did you graduate?
- 14 A Yes, I did.
- 15 Q Did you go to any college or technical schools --
- 16 A I went to --
- 17 Q -- after graduating from high school?
- 18 A Midlands Tech.
- 19 Q Did you graduate from Midlands Tech?
- 20 A No, I didn't.
- 21 Q What'd you study at Midlands Tech?
- 22 A Machine Shop.
- 23 Q Have you ever been in the military?
- 24 A No.
- 25 Q Are you a member of any churches or groups or clubs or

1 organizations who operate up in Newberry County?

2 A No. No.

3 Q I'm not saying you should be. I'm just trying to
4 figure out [inaudible] --

5 A [Crosstalk] Okay. There's no worries.

6 Q Yeah. We just want to know what connections you have
7 to Newberry County so that if we get to a trial and
8 have to pick a jury, we'll be able to identify people
9 who might know you, might have worked with you, might
10 have done social things with you, etcetera. Have you
11 ever been arrested?

12 A Yeah.

13 Q Okay. How many times?

14 A One.

15 Q All right. When was that?

16 A Let me see, '73? It was in the 70s.

17 Q What happened?

18 A Actually, it was in -- it might was in the 60s. It was
19 -- it was a liquor law violation.

20 Q Okay. What happened? Did you just pay a fine or --

21 A Yeah, paid a fine.

22 Q -- something like that? Okay.

23 A Uh-huh (affirmative).

24 Q And that's your only arrest? That's the only blip on
25 the radar?

1 A Yes, there are no --

2 Q Okay. Have you ever filed any lawsuits against
3 anybody?

4 A No.

5 Q Have you ever had a lawsuit filed against you?

6 A I don't know.

7 Q And I'm not counting divorces, so anything other than
8 --

9 A No.

10 Q -- family court or a divorce. Okay. Have you reviewed
11 any records, you know, medical records, notes, anything
12 like that relating to this lawsuit?

13 A I don't understand. Reviewed medical records? You
14 froze.

15 [Technical Interruption.]

16 THE COURT REPORTER: Mr. Haille, you're cutting in
17 and out. Are you there? Oh, Lord.

18 MR. PARKER: We lost him.

19 THE COURT REPORTER: Yeah, we lost him. He
20 started cutting out and then --

21 MR. PARKER: Uh-huh (affirmative). Bad signal.

22 [Technical Interruption.]

23 THE COURT REPORTER: Can you hear us now?

24 MR. HAILLE: I can hear you, and I can see you.

25 So the screen went black and your screen froze but

1 looks like it's okay.

2 A Okay. Could you repeat the question?

3 Q Yes, ma'am.

4 MR. HAILE: Madame Court Reporter, are you ready
5 to go?

6 THE COURT REPORTER: Yeah, I'm ready.

7 MR. HAILE: Okay.

8 Q I think I was asking you if you've looked at any of
9 your husband's medical records relating to the
10 allegations in this case, either the Newberry County
11 Memorial Hospital records, or if you went to see any
12 providers or got any treatment after this happened?
13 Have you looked at any of his records or reviewed them?

14 A No.

15 Q Okay. Have you made any notes about the allegations in
16 this case or kept any diaries or calendars, anything
17 like that?

18 A No.

19 Q Okay. Other than your -- [technical interruption] --
20 your son, your daughter, your husband, have you talked
21 to anyone about the allegations that are being made in
22 this lawsuit?

23 A You asked did I talk to anyone about the lawsuit?

24 Q Other than your husband and your -- [technical
25 interruption] --

1 THE COURT REPORTER: Mr. Haille, you keep going
2 out.

3 Q -- have you discussed this with any --

4 MR. HAILE: Yes, I'm going to -- I'm going to say
5 it might be on your end because I see Anne Laurie and
6 Chris in live time, but on your end things are kind of
7 pausing and --

8 THE COURT REPORTER: It says the network bandwidth
9 is low. [To Mr. Parker:] Do you know anything about
10 that?

11 MR. PARKER: I have no idea.

12 THE COURT REPORTER: I'm on the network from the
13 Murdaugh firm and it's just saying that the network is
14 low. Can you hear her now? Can you hear me now?

15 MR. HAILLE: I can hear now. If it keeps -- if it
16 keeps happening, we can maybe just convert to
17 telephone.

18 THE COURT REPORTER: Okay.

19 MR. HAILLE: But we'll keep trying a little
20 longer.

21 THE COURT REPORTER: Okay. I'm ready.

22 Q Ms. Wise, I can't even remember what I was asking you.
23 If -- I think I was asking you if you've talked to any
24 body other than your husband, your son and your
25 daughter about this case?

1 A No, not about the case.

2 Q Okay. Have you talked to anyone other than your
3 husband, son and daughter about the underlying
4 allegations that caused this lawsuit to be filed?

5 A Have I talked to anyone about the allegations of what
6 the doctor said?

7 Q What the doctor said or what happened at the mill, any
8 of that stuff.

9 A Let me see who I talk -- I talked with -- oh, I have
10 been, I talked to my daughter and my son.

11 Q Yeah, other than --

12 A Than them?

13 Q -- your daughter, your son and your husband?

14 A I don't remember. I might have talked to my niece. I
15 do have a niece. My -- I talk to my niece.

16 Q Okay. What's her name?

17 A Latina Morris.

18 Q Okay. What did you and your niece talk about?

19 A Just the allegation of what was said, because what was
20 said, it really bothered me.

21 Q What was said at the hospital, you mean?

22 A Yes.

23 Q Okay. What did you and your daughter talk about?

24 A What was said.

25 Q Okay. What did you and your son talk about?

1 A What was said.

2 Q Are there any other family members or friends that
3 you've talked about what was said with?

4 A Well, my sister. My sister is -- my sister's down
5 here, and I spoke with my sister and my niece and my
6 children.

7 Q What is your sister's name?

8 A My sister name is Jeanua, J-E-A-N-U-A, Penny.

9 Q Where does she live?

10 A She's in Columbia.

11 Q What's her last name? I didn't mean to interrupt you.

12 A Penny, P-E-N-N-Y.

13 Q What did you and your sister talk about?

14 A We talked about, from what the doctor has said, that my
15 husband possibly could be having other sexual partners.

16 Q Okay.

17 A What the doctor said, so, yeah.

18 Q Do you have any medical training in your background?

19 A No.

20 Q Did you and your husband decide together to file this
21 lawsuit, or is that a decision that he made on his own?

22 A That was a decision he made on his own.

23 Q Okay. Are you on any kind of social media?

24 A Yes, I'm on Facebook.

25 Q All right. Do you go by something other than your name

1 on Facebook?

2 A No.

3 Q So if we typed in Pauline Wise, Columbia SC, we should
4 be able to find your Facebook page?

5 A Yes.

6 Q Do you know the date of the -- that this alleged
7 incident or these statements at the hospital happened?

8 A No, I do not.

9 Q Okay. Based on what I've seen, it looks like it was
10 November 7th, 2017. Does that sound about right to
11 you?

12 A Yes, it should be. Yeah.

13 Q Prior to November 7th, 2017, did you and Mr. Wise have
14 any marital problems or issues?

15 A As for? I'm not understanding.

16 Q Anything. Were there trust problems, was anybody
17 suspicious of the other --

18 A No.

19 Q -- cheating, anything like that?

20 A No.

21 Q Okay. Prior to November 7th, 2017, had you ever been
22 diagnosed with a sexually transmitted disease?

23 A No.

24 Q Had your husband, to your knowledge?

25 A No.

1 Q Prior to November 7th, 2017, how would you describe
2 your husband's physical health? What kind of shape was
3 he in? Did he have any problems or illnesses that
4 caused him trouble?

5 A As for? I mean, what kind of problems or illnesses are
6 you talking about?

7 Q I'm not talking about common cold or the flu, anything
8 like that. Just chronic diseases or aches and pains;
9 you know, anything physically that caused him trouble?

10 A My husband had suffered from neuropathy. He had
11 neuropathy prior to that.

12 Q Tell me a little bit about the neuropathy. When did
13 that start? What caused it? What problems did it
14 cause?

15 A Well, we were going to the beach, and we went to get a
16 foot massage. Well, we went to get -- I went to get a
17 pedicure rather, and he was getting a pedicure. And we
18 went down to the beach and his feet started hurting.
19 And ever since then his feet was messed up.

20 Q So I met Mr. Wise probably six months ago. I didn't
21 have him pegged as the kind of guy who would get a
22 pedicure. So did he --

23 A Yes, he -- well, that was the first and last.

24 Q You don't know, do you? Yeah. Okay. Other than that
25 neuropathy, are you aware of anything that --

1 physically that's bothered your husband kind of on a
2 chronic basis, ongoing basis?

3 A Not really. I --

4 Q Okay. And again, I'm not saying there should be, I'm
5 just asking the questions --

6 A Oh, okay.

7 Q -- to get information.

8 A No, the neuropathy was the one that really was brought,
9 you know, to my attention a lot.

10 Q Okay. Same kinds of questions about your husband's
11 mental or emotional health. Did he have any problems
12 that you were aware of before November 7th, 2017?

13 A No. He was -- he was fine.

14 Q Okay. In the time that you've been married to
15 Mr. Wise, has he ever made any complaints or filed any
16 lawsuits against any of his other employers?

17 A That's it. That one, right? West Fraser -- not West
18 Fraser. What's the name of that place? Oh, my God.
19 Georgia Pacific?

20 Q Okay. Tell me about that.

21 A I'm being honest with you, I really don't remember. I
22 think it was unlawful firing. I don't quite remember.

23 Q So that's pretty much all you know about that one?

24 A Yes.

25 Q Okay. Were there any others that you're aware of? Any

1 other lawsuits or claims he's made against people?

2 A Ah, Norbord.

3 Q Spell that.

4 A N-O-R-B-O-R-D.

5 Q Okay. Tell me about that.

6 A What was that? Unlawful firing? Unlawful firing.

7 Q For either of those, against Georgia Pacific or
8 Norbord, do you know what the underlying allegations
9 were? I mean, was it age discrimination, race
10 discrimination, something else, or do you know?

11 A Well, with Georgia Pacific, they fired him while he was
12 in the hospital. He didn't -- it was something about
13 coming to work and he -- we told him that he was in the
14 hospital.

15 Q Okay. What was he in the hospital for; do you
16 remember?

17 A Oh, I got -- yeah. It was that -- his heart.
18 Something about his heart. That's when his heart
19 started messing up.

20 Q Okay.

21 A He had to get a, what is it, a catheter? A heart cath.
22 Like this thing that you put in your thigh or whatever,
23 yeah.

24 Q Okay. What about the Norbord claim or lawsuit, do you
25 know what was going on there?

1 A What was going on? I forgot. I don't remember.

2 Q Okay. Let's talk about the day in question. And I'm -
3 - I hope I've got the date right. I'm going to keep
4 saying November 7th, 2017. How did you find out that
5 something had happened?

6 A I got a call from his job telling me --

7 Q Who called you?

8 A I think it was Keith or somebody in the office called
9 me. I'm not sure. They called me and told me that
10 something had happened to my husband. And I left work
11 and had to get up to Newberry Hospital. And when I got
12 there, I found out -- I found that he was hurting. He
13 was in great pain. And, I asked him what happened. He
14 told me he lift some part of a fork -- was it forklift?
15 A forklift. It was the back of it or the -- I -- some
16 part of the forklift that he lift, and it messed up his
17 testicles really bad.

18 Q Well, what do you remember about that conversation with
19 Keith or whoever it was who called you from the plant?
20 Do you remember the details of what they told you?

21 A They told me that Ant was sick and to meet them -- they
22 were going to take him to Newberry Hospital.

23 Q And you were at work at the time; is that right?

24 A Yes.

25 Q Do you remember about what time it was when you got

1 that call?

2 A Oh, my goodness. About 7:30/8:00 o'clock. Between
3 those hours.

4 Q So what happened at your work? Did you have to go tell
5 your supervisor that you needed to leave, or did you
6 just leave? What happened?

7 A No, no, no, I always -- I let them know that I had to
8 go.

9 Q Okay.

10 A And I left work and got to the hospital. I called my
11 sister-in-law, whereas I can see if she could get there
12 before me because nobody went into detail as for what
13 was, you know, what had happened to him. So I wanted
14 somebody there with him. But she was not able to make
15 it, so I got up there.

16 Q How long did it take you to get from the Lowes on
17 Harbison to Newberry County Memorial Hospital?

18 A It all depends on how fast I'm driving. I didn't get a
19 ticket that day. It was about 45 minutes and --
20 because traffic was kind of bad.

21 Q What happened when you got to the hospital?

22 A I found my husband laying out in the hallway, in the
23 emergency area. And, you know, he was in pain. I
24 asked him what had happened, and he said that he would
25 lifted a part of the forklift and hurt himself.

1 Q Was anybody there with your husband when you got to the
2 hospital?

3 A Keith was there.

4 Q Did you already know Keith?

5 A Not per se, you know, not -- you know, I've -- I've
6 seen -- I've seen him when he go to the hospital, you
7 know. Well, I just seen him at the hospital that day.

8 Q Okay. But you didn't know him before that day?

9 A I don't know if I had met Keith before that day. No,
10 not unless it was the hospital.

11 Q Okay. Did you and Keith talk when you got to the
12 hospital?

13 A Yes, I asked him what happened.

14 Q What did he tell you?

15 A That he was just telling me that Anthony was hurt. He
16 said that he lift something, and then he was hurt.

17 Q What happened next?

18 A Then I sat there, and I was going back and forth
19 because Anthony was hurt and I was trying to figure out
20 what was going on. And, then finally, afterwards --
21 because every time something happened, Keith was in
22 there with me and he would go out and come back and go
23 out. And so I was trying to find out from Keith
24 exactly what happened or what, you know, why did it
25 happen like that, you know, because he told me, he said

1 he lift something, you know, the -- that heavy metal of
2 -- on that forklift. And when the doctor finally got
3 there, and said what he said, that just alarmed me for
4 him to say something like that.

5 Q When you say Keith was going in and out --

6 A He would come in the room --

7 Q -- tell me --

8 A -- I'm sorry -- he would come in the room, he would
9 come back there to check on Anthony, and then he'll
10 walk back out, then he'll come back in again and walk
11 back out. He was just coming in and out.

12 Q Okay. How long were you at the hospital with your
13 husband before the doctor came in?

14 A Oh, my God. Probably about 30 or 45 minutes, maybe an
15 hour.

16 Q Can you describe the doctor? What did he look like?
17 Or was it a he or a she? I shouldn't assume.

18 A It was a he --

19 Q Okay.

20 A -- and -- oh, my God. I can't tell you if he was short
21 or tall. All I can tell you is that -- let's see, I'm
22 not sure what nationality -- what he was. He wasn't
23 black, he wasn't white, he was -- he was a man with
24 dark hair, and, you know, that's all I can tell you.

25 Q All right. So you said he was not black and not white?

1 A No, he was not a white -- he was -- oh, my God. I was
2 going to say if he's Indian, Asian - well, he's not
3 Asian. I don't think he was Asian. He was more of
4 Indian. India. Yeah. I'm not sure.

5 Q So as best you can tell Indian or Asian?

6 A Yeah. Well, I would say more of an Indian descent, not
7 Asian.

8 Q Okay. And is this the doctor who made the statement
9 that y'all are upset about?

10 A Yes.

11 Q So when the doctor came in the room, tell me what
12 happened.

13 A The doctor came in the room and he looked at my
14 husband's exam and he asked the nurse and everybody
15 what had been done with him, you know, as far as blood
16 work, urine or whatever. And then he says -- he -- he
17 said he was going to check that. I think he went back
18 out the room, came back in afterwards, and said it
19 seemed -- he said -- no, he said somebody been having
20 more than one sexual partner.

21 Q All right. So let me stop you right there because I
22 want to make sure I get it as best I can. Is that
23 exactly what the doctor said?

24 A Yes.

25 Q Okay. Say it again, please, as best you can --

1 A He said --

2 Q -- verbatim what the doctor said.

3 A The doctor said that it was as if someone had more than

4 one sexual partner. Someone had more than sexual -- I

5 mean, more than one sexual partner.

6 Q Where was the doctor in the room when he made that

7 statement?

8 A He was standing by my husband.

9 Q At the bed?

10 A Yes.

11 Q Who was in the room?

12 A It was me, Keith, a nurse, and some other people that

13 was standing around for some odd reason.

14 Q Was this a room with a door on it, or was it one of

15 those rooms with curtains that go around it?

16 A Yeah, with the curtains. With the curtains.

17 Q Okay. Was it curtains on all sides or just one side,

18 or do you remember?

19 A I don't really -- the curtains technically was on all

20 sides.

21 Q Okay. So you husband was in the bed, right --

22 A Yes.

23 Q -- when this statement was made?

24 A Uh-huh (affirmative).

25 Q That's a yes?

1 A Yes.

2 Q Okay. I just --- I have to make sure --

3 A Oh, no worries.

4 Q -- you say yes or not for the --

5 A Okay.

6 Q -- court reporter. I wasn't being rude.

7 A No.

8 Q We just need to make sure we don't have to guess with

9 uh-huh or unh-unh --

10 A Yes, I do understand.

11 Q I should have told you that at the beginning. All

12 right. So, your husband was in the bed. Where were

13 you?

14 A I was on the other side of the bed.

15 Q Of the bed?

16 A Yes.

17 Q Okay. Where was Keith?

18 A Keith was at the foot of the bed.

19 Q How many nurses were in the room?

20 A One.

21 Q And was that a man or a woman?

22 A It was a lady.

23 Q Okay. Do you remember what she looked like?

24 A No, she was white.

25 Q Where was she standing? Where was she?

1 A She was over on the -- like in the middle -- the feet
2 -- the foot part of the bed at the middle.

3 Q And then you said there was some other people in there;
4 is that right?

5 A Exactly. They were -- I didn't say in there. They
6 were -- the curtain was open.

7 Q Okay.

8 A Yes.

9 Q So the curtain was open, and they were what, just kind
10 of hanging --

11 A They were -- exactly, they were around there and it was
12 like more of the personnel, the nurses or people that
13 were standing there.

14 THE COURT REPORTER: Ms. Wise, make sure you wait
15 for him to finish a question.

16 THE DEPONENT: Oh, I'm sorry.

17 THE COURT REPORTER: Okay? And then you can
18 answer.

19 THE DEPONENT: Okay.

20 Q Can you say with any certainty who heard what the
21 doctor said?

22 A Well, I heard it.

23 Q Okay.

24 A I know Keith heard it.

25 Q How do you --

1 A And -

2 Q -- how do you know Keith heard it?

3 A I mean, he was standing there, and the doctor did not

4 whisper it. He actually said it.

5 Q Okay. Who else heard it that you know of?

6 A The nurse heard it.

7 Q Did you talk to the nurse about that statement that the

8 doctor made?

9 A No, I was -- I did not.

10 Q Okay. Did you talk to Keith about that statement the

11 doctor made?

12 A Keith left the room right after that.

13 Q Okay. Did you ever talk to Keith about the statement

14 the doctor made, that it looked like somebody had had

15 more than one sexual partner?

16 A No, I did not.

17 Q Did the doctor say anything other than the statement

18 you've attributed to him?

19 A I'm sorry, I don't --

20 Q While the doctor was in the room with your husband, did

21 he say other than -- anything other than it looks like

22 somebody's had more than one sexual partner?

23 A That was it. After he said that, that was it.

24 Q Okay. So the doctor made that statement and then left

25 the room?

1 A Well, to be honest with you, I left the room.

2 Q Okay. Where'd you go?

3 A I went out.

4 Q Outside or just out of the room?

5 A I went out of the room.

6 Q Why?

7 A Because I was devastated for a doctor who -- to have

8 said that.

9 Q How long did you stay out of the room before you went

10 back in?

11 A Not very long. About five minutes.

12 Q When you went back in, was the doctor still there?

13 A No.

14 Q Did you ever talk to that doctor again?

15 A No, I did not.

16 Q What were you feeling and thinking when you heard the

17 doctor make the statement?

18 A I was feeling that I was betrayed because for a doctor

19 to say that. I felt like I was hurt, and then I had to

20 actually think about it because I -- it just make me

21 feel some kind of way, as for my husband, and our trust

22 that we had. That had never came up before. It has

23 been no question of how we were as partners. That's my

24 husband in life. So, yeah, I felt some kind of way.

25 Q Do you have any question in your mind now that your

1 husband has ever been unfaithful to you?

2 A Since then -- well, I never had before, but now, you
3 know, everything just triggers that. It starts that.
4 It upsets me.

5 Q So how have -- how have things changed with your
6 marriage because of this statement the doctor made?

7 A Well, since that, we have had a lot of arguments, and
8 the trust is gone somewhat, and we're trying to
9 rebuild.

10 Q Do you know what your husband was diagnosed with in the
11 emergency department on November 7th?

12 A No. It was -- oh, my God. Oh, my God. It was
13 something -- it was something with his testicles. I
14 forgot the name. I don't know the name.

15 Q Do you know if it was an infection or not?

16 A He -- yeah, I -- yeah -- I -- I don't know.

17 Q I just want to make sure I'm clear and understand. Did
18 you hear the doctor say anything other than someone has
19 had more than one sexual partner to your husband?

20 A Well, when he first came in there, the first time that
21 he was in there, he asked the nurse did they take his
22 vitals, and I guess, blood, urine. And, when he came
23 back, he said that someone had more than one sexual
24 partner.

25 Q Okay.

1 A Has been with more than one sexual partner.

2 Q And after that, you left the room and you didn't hear
3 the doctor say anything else, right?

4 A Yes. Yes.

5 Q Did you have any conversations with your husband about
6 anything else the doctor might have said to him, after
7 you left the room?

8 A Yes, I did. I asked him what, you know, why would the
9 doctor say something like that.

10 Q All right. Tell me about those conversations.

11 A Well, my husband was in pain by then, and I let it go
12 for a moment. I just asked the question why would a
13 doctor say something like that.

14 Q Once you came back into your husband's room in the
15 emergency department, what happened after that?

16 A Well, we got ready to go. We got ready to go. I went
17 outside and -- well, I went out. Afterwards I came
18 back in, and they were getting Anthony ready to go
19 home, and I was letting Keith know that, you know, I'd
20 take him home, and we went to the pharmacist and got
21 his medicine, and basically that was it. We went home.

22 Q So were you and your husband in one -- in your vehicle
23 and Keith was in his own vehicle when y'all left the
24 hospital?

25 A Yes.

1 Q Okay.

2 A Yeah, and Keith --

3 Q And --

4 A -- oh, I'm sorry.

5 Q No, you go ahead.

6 A Well, Keith told us to follow him to the pharmacy
7 because they had some kind of company card to get his
8 medicine on.

9 Q Did y'all go through the drive-thru at the pharmacy, or
10 did you go inside to get the medicine?

11 A We went inside. Well, Keith went inside. Anthony
12 stayed in the car. And I went inside with him to get
13 the medicine.

14 Q So did Keith pay for the medicine with the company
15 card?

16 A Yes.

17 Q And would Keith have found out what the medicine was by
18 paying for it with the company card?

19 A I don't know what -- I don't know what Keith would
20 found out what it was. I -- like I said, he shouldn't
21 know what it was. I don't know what Keith found out.
22 All I know is that, you know, he paid for it with the
23 card, and, you know, he came back to the car and gave
24 Anthony the medicine.

25 Q But you went inside with Keith, correct?

1 A Yes, I did.

2 Q Okay. What medicine was it?

3 A I don't know.

4 Q What pharmacy was it?

5 A It was CVS.

6 Q Where?

7 A Newberry.

8 Q Near Newberry?

9 A Newberry.

10 Q Okay. What happened after you left the pharmacy?

11 Y'all went home.

12 A Yes.

13 Q Keith went back to the plant, you assume, or the mill?

14 A I assume he did, but we went home.

15 Q All right. What happened after that?

16 A Well, my husband was resting because he took his

17 medicine and he was resting. And, basically, that was

18 it. When they told him he had to -- it was so many, I

19 think was two or three days that he was off on, and

20 that's it.

21 Q Okay. Did you and your husband have any more

22 conversations about the statement the doctor made about

23 multiple sexual partners after you got home?

24 A Yes, we did.

25 Q Tell me about those.

1 A Well, I wanted to know why would the doctor say that,
2 and I asked had he had any sexual relationships with
3 anybody. And I was told no. But I still wanted to
4 know why would the doctor say that. And so, I must
5 admit, I drilled him and drilled him and argued and
6 fussed and hollered and screamed because it really
7 bothered me.

8 Q Did you ever ask the doctor why he made that statement?

9 A No, I did not ask the doctor because the doctor -- we
10 had a lot of people that was in there, and I was not
11 going to ask him in front of Keith, and the doctor, he
12 was going around to different people, I gather, because
13 it was as if the hospital -- I mean, the emergency area
14 was rather full that day.

15 Q After November 7th, 2017, did you ever talk to anybody
16 from West Fraser about what happened at the hospital or
17 what was said at the hospital?

18 A No.

19 Q Have you read your husband's deposition?

20 A No.

21 Q He told us that at the plant or at the mill, you know,
22 people were teasing him and making fun of him about
23 what happened.

24 A Yes, he told --

25 Q Did you know anything about that?

1 A Yes, he told me that too. It -- when he went back to
2 work, he told me that they were saying that he had some
3 kind of nasty man disease, and, you know, he was very
4 offended because he says, you know, it was just making
5 both of us look like we were some nasty, disgusting
6 people.

7 Q How long did that go on? How long did your husband
8 tell you that --

9 A It went on for a while.

10 Q Okay.

11 A Because he would go to the restroom and he said that
12 his co-workers did not want to go in there behind him
13 because they said that he had some kind of disease.

14 Q Do you have any memory if that went on for a couple
15 weeks, couple months, longer, or can you --

16 A I can only say it was like a month or so.

17 Q Okay. And all of this information was coming from your
18 husband, correct?

19 A Yes.

20 Q Okay. You didn't go up to the mill or call anybody up
21 there and find out what was going on, you just relied
22 on him for the information?

23 A Yes.

24 Q Okay. Did you or your husband have to get any
25 counseling because of what the doctor said at the

1 hospital?

2 A I went to my doctor and talked to her, and I had to get
3 on some depression medicine. But I was on it before,
4 but they had upped the dosage.

5 Q Okay. Who is your doctor?

6 A Doctor -- oh, my God. Dr. Joseph Gabriel.

7 Q Okay. What was the medication that you had the dosage
8 increased on?

9 A Fluoxetine.

10 Q Say it again, please?

11 A It's Fluoxetine. Fluoxetine.

12 Q Okay. When did you start taking that? You said you
13 were already on it.

14 A Well, I started taking it for work because I had a lot
15 of stuff going on at work. So, it was probably about,
16 oh, a year or two prior.

17 Q What kind of stuff did you have going on at work?

18 A Oh, moving around. I was in management, and stress,
19 get along with people, trying to get along with people
20 and stuff like that. It was major distress.

21 Q Okay. Are you still taking that medication today?

22 A Oh, yes.

23 Q Are you at the same dose, or has the dose gone up or
24 down since November 2017?

25 A Well, it went up with what was going on with my --

1 well, with my husband, but it's the same. It's going -
2 - the doctor said I won't have to take it as much, but
3 I take it every day.

4 Q Okay. I'm still -- I'm confused about the dose. Is
5 the dose back down to what it was before your husband
6 went to the hospital?

7 A No. It's still the same. It's -- it's -- back is up.

8 Q It's still --

9 A It's up.

10 Q All right. What is your dose; do you know?

11 A No.

12 Q You take one pill a day?

13 A Yes.

14 Q Other than that, have you had to get any treatment or
15 counseling because of what this doctor said at the
16 hospital?

17 A No, I did not.

18 Q Has your husband gotten any treatment or counseling
19 because of what the doctor said at the hospital, that
20 you know of?

21 A No, not -- no, I don't know.

22 Q Have you ever talked to another medical professional
23 who was critical of what this doctor at Newberry County
24 Memorial Hospital said to your husband?

25 A No.

1 Q What, if anything, has your husband said to you about
2 the doctor at Newberry County Memorial Hospital? Has
3 he called him any names or said bad things about him,
4 anything like that?

5 A He said that he lied.

6 Q Okay. Anything else?

7 A No, that's it.

8 Q Okay. Have you said anything bad about this doctor at
9 the hospital?

10 A No.

11 Q When you've talked to your family about what happened,
12 what have you told them?

13 A Do you want me to say those words?

14 Q Yes, ma'am.

15 A I told them that the doctor said that Anthony might
16 have been messing around, and I don't know what to do,
17 and I was just -- I was stressed out, and I wanted a
18 divorce, I wanted to leave, stuff like that.

19 Q As we -- as we sit here today, are you satisfied in
20 your mind that your husband has been faithful to you
21 and never cheated on you?

22 A I would never know that. I -- right now I'm trying to
23 regain trust.

24 Q And that's all because of this statement that the
25 doctor made?

1 A Yes.

2 Q Do you know if your husband actually had a sexually
3 transmitted disease or not?

4 A I'm -- huh? He had a sexually transmitted disease?

5 Q No, I'm asking you --

6 A Oh, oh, no.

7 Q -- [technical interruption] if he even had one.

8 A No.

9 Q Okay. Well, one of the things that your husband has
10 alleged in this lawsuit is that damage has been done to
11 his reputation. To your knowledge, has he lost any
12 work or any jobs because of this statement the doctor
13 made?

14 A He still works at West Fraser. But his respect --

15 Q Okay.

16 A -- the respectability is -- I don't know how -- how
17 that goes there.

18 Q Okay. To your knowledge, have you and your husband
19 lost any friends because of what this doctor allegedly
20 said?

21 A Well, from what I told my sister and my niece, they are
22 a little -- they, you know, they love him but they --
23 I'm their aunt and sister, so, it took a bearing on the
24 family.

25 Q Has anyone told you that they think less of you or your

1 husband because of what this doctor allegedly said?

2 A Well, they said that, you know, if he had -- you know,
3 if he had a disease -- if he -- why would the doctor --
4 they wanted to know why would the doctor say that. It
5 was all in why the doctor actually said something like
6 that. And, it's just what the doctor said.

7 Q If we get to a trial in this case, is there anything
8 that you're going to tell the jury that you haven't
9 told me today --

10 MR. PARKER: Object to form --

11 Q -- about what happened?

12 MR. PARKER: -- of the question.

13 Q Hello?

14 MR. PARKER: I object to the form of the question.

15 MR. HAILE: Okay. Well, let -- let me finish it
16 and then you can certainly object to the form of the
17 question.

18 MR. PARKER: Well, I object to the form you've
19 done so far.

20 MR. HAILE: Okay.

21 MR. PARKER: I'm teasing you.

22 MR. HAILE: That's fine. I don't care.

23 Q Ms. Wise, when we get to the trial in this case, is
24 there anything that you're going to tell a jury about
25 what happened to your husband or how it has affected

1 you and your husband's marriage that you haven't told
2 me today?

3 A Well, you know, I will tell a trial or a jury or
4 whatever that this has really took a toll on my
5 marriage. And now I'm looking over my shoulder, the
6 trust is gone, and I always trusted my husband. We
7 never had no doubt of anything when it came down to
8 things like this before the doctor to actually come out
9 and say that my husband was doing something or having
10 sex with somebody else. That took a toll on my
11 marriage, and it hurts. It really hurts.

12 Q I am -- I'm going to take a break from asking you
13 questions, and let these other lawyers ask you some
14 questions, and I may have some when we circle back
15 around. But I appreciate your time this morning. I
16 know it's not easy to talk about, and I'm sorry that
17 they were difficult questions, but I hope you
18 understand that's just part of my job and what I need
19 to do. So, thank you for your time.

20 A Okay.

21 CROSS-EXAMINATION

22 BY MS. MCCLURKIN

23 Q Mrs. Wise, I represent West Fraser. I have a couple
24 questions. I'm going to try not to repeat the
25 questions that were already asked. But if I do, it's

1 because I'm not sure I understood what you -- what you
2 said. So, give me a little bit of leeway there, if you
3 don't mind. Did you understand Dr. Leek's statement
4 about changing sexual partners to mean that he had
5 determined that your husband had a sexually transmitted
6 disease?

7 A Yes.

8 Q Do you know whether there was any testing done at the
9 hospital that day to determine whether your husband had
10 a sexually transmitted disease?

11 A From what I understand, there was only a urine and a
12 blood test done.

13 Q Do you know whether either of those tests were trying
14 to detect whether your husband had an STD?

15 A No, I don't.

16 Q Okay. Do you have -- and what is your understanding
17 sitting here today as to whether your husband did have
18 an STD on that date?

19 A What is my understanding?

20 Q Yes.

21 A Not understanding what you're asking me.

22 Q Okay. Let me rephrase it. Do you believe, sitting
23 here today, that on November 7, 2017, your husband did
24 in fact have an STD?

25 A Did I -- after the doctor said that? I was not sure.

1 Q And sitting --

2 A I did not know. But with a doctor stating that, I
3 assumed yes.

4 Q And at some point -- and at some point did your
5 understanding change?

6 A Are you talking about now, from then to now?

7 Q Yes.

8 A Okay. Yeah because we are trying to rebuild our
9 marriage. We're trying to rebuild trust.

10 Q So at the time, on the date of the incident, based on
11 Dr. Leek's statement, you assumed that your husband had
12 a sexually transmitted disease, right?

13 A From what the doctor says, yes.

14 Q And then, after that, did that change at some point?

15 A After what the doctor said?

16 Q After what the doctor said, when you initially assumed
17 that your husband might have had an STD, did you later
18 learn that that was not true?

19 A Yes.

20 Q And, about how long after the day that you were in the
21 hospital did you learn that your husband did not have
22 an STD?

23 A My husband's doctor informed him he did not have a STD.

24 Q Okay. Is that how you learned that your husband did
25 not have an STD, it's based on your husband's doctor?

1 A Well, I didn't run the test on him. Yes, from the
2 doctor. I did not run the test, so only from the
3 doctor.

4 Q I'm sorry, you broke up a little bit.

5 A I did not have the capabilities to run any tests for
6 STDs, so it was from his doctor. The doctor -- his
7 doctor told me --

8 Q Okay. Is that Dr. Hudson?

9 A -- told him. Well, yes. His doctor told him. He told
10 me.

11 Q Okay. And do you know about how much time passed from
12 the time that you were in the hospital until you saw --
13 or until your husband saw Dr. Hudson?

14 A No.

15 Q Do you have a judgment as to whether it was a couple of
16 weeks, months?

17 A A couple of days, but probably a day or so because he
18 went to make sure. But I can't tell you exactly what
19 day or what time.

20 Q Did you accompany your husband to the appointment with
21 Dr. Hudson?

22 A No, I did not.

23 Q Do you normally attend doctors' appointments with your
24 husband?

25 A Sometimes.

1 Q Do you know how many times your husband saw Dr. Hudson
2 as a result of this incident?

3 A No, I do not.

4 Q Okay. Did you accompany him to any of the doctors'
5 appointments with Dr. Hudson as a result of the injury
6 that he received at West Fraser?

7 A I did go at one point. Yes, I went once.

8 Q And was that -- that was related to -- to this
9 incident?

10 A No -- well, I'm not -- I'm not sure.

11 Q Okay. And, I'm saying this incident, but for the
12 record, I'm referring to the injuries that we have been
13 talking about to your husband's groin area and
14 testicles.

15 A Uh-huh (affirmative).

16 Q So, do you know whether you went with him to see
17 Dr. Hudson about any of that?

18 A No.

19 Q How did you learn that Dr. Hudson performed a test to
20 determine whether your husband had an STD?

21 A My husband told me.

22 Q Did he ever show you any written test results?

23 A Yes.

24 Q Okay. Were those in records that belonged to Dr.
25 Hudson?

1 A Yeah.

2 Q Do you know whether he ever show -- your husband showed
3 those records to anyone else?

4 A No, I don't know.

5 Q I may jump around a little. I think you answered how
6 long it took you to drive from your job at Lowes to the
7 hospital, but I'm not sure I remember what you said.
8 So, I'm going to ask you again. How long did it take
9 you to get from Lowes to the hospital on the date of
10 the incident?

11 A Forty-five minutes to an hour.

12 Q And, when you arrived at the hospital, you had to wait
13 some additional time before your husband saw the
14 doctor, right?

15 A Yes.

16 Q And did you only see the doctor just one time when he
17 made the statement, or did you see him -- did he come
18 back multiple times?

19 A I saw him twice.

20 Q Was the first time when you saw him take the urine and
21 blood for sampling?

22 A Well, I -- he did not take the -- he asked the nurse
23 did they get the sampling -- the blood and the urine.

24 Q And that was the first time that you saw the doctor?

25 A Right, yes.

1 Q And then he came back a second time and that's when he
2 made the statement?

3 A Exactly.

4 Q Okay. Did you see Keith talk to the doctor?

5 A No.

6 Q Did you see Keith talking to any nurses?

7 A I seen -- yes, Keith was talking to every -- well, he
8 was talking to, I can't say if they were nurses, but
9 hospital personnel.

10 Q Were you able to hear what they were discussing?

11 A What do you mean hear? I was not --

12 Q You said --

13 A I was not focused on Keith at that time.

14 Q Okay. So you don't know what Keith was discussing with
15 the hospital personnel?

16 A I don't know what Keith was discussing. Well, Keith
17 told -- as we walked out, Keith was telling me that he
18 had talked to the hospital personnel about Anthony.

19 Q Did he tell you what he discussed?

20 A Not in so many words.

21 Q So other than Keith telling you that he had talked to
22 hospital personnel about your husband, you don't know
23 specifically what he talked to them about?

24 A Specifically, what he was talking about? No, all I can
25 tell you is Keith talked to the nurses -- I mean,

1 hospital personnel, and when we talked outside, because
2 I had went outside with Keith at one point, and he was
3 telling me that -- talking about Anthony's testicles.

4 Q Keith was talking to you about Anthony's --

5 A Anthony's --

6 Q -- testicles?

7 A Yeah because he said they was swollen. He said he
8 don't understand -- he said something about he didn't
9 understand how they get that swollen, you know, what's
10 going on.

11 Q Did he say -- did Keith say anything else to you about
12 your husband's condition?

13 A No.

14 Q You said you went outside with Keith at some point.
15 Can you tell me more about that?

16 A Just when I decided to get some air and clear my head.
17 Went outside to get some air to clear my head, Keith
18 was outside. He was down -- down somewhere in the area
19 smoking. He walked up there toward me and he was -- he
20 said that -- because every time I would see him, he was
21 talking to a nurse, one of the hospital personnel, the
22 receptionist or a nurse, or -- well, hospital
23 personnel, and Keith, he was on the phone. He said he
24 had to tell them what was going on. Tell West Fraser
25 what was going on with Anthony, but keep --

1 Q Was this --

2 A -- them informed.

3 Q -- was this before or after the doctor had made his
4 statement?

5 A This was after. It was after.

6 Q Okay. Did you actually see Keith make a phone call to
7 West Fraser?

8 [Cell phone rings.]

9 A I'm sorry? What, you mean look on his phone to see if
10 it's going to West Fraser? Because I don't know the
11 number.

12 Q No, and I'm sorry, there was some interference. I'm
13 not sure you're hearing it on your end, but I think
14 what you said is that, when you walked outside with
15 Keith --

16 A He told --

17 Q -- that --

18 A -- okay, go ahead. I'm sorry.

19 Q Well, you repeat your answer because I don't think I
20 heard it. I -- like I said --

21 A Keith told me --

22 Q -- there was some interference.

23 A -- he had to keep West Fraser informed of what was
24 going on.

25 Q Okay.

1 A But I did not --

2 Q And --

3 A -- see him dial the number, I mean, punch in the
4 numbers or dial the number. He told me he had to keep
5 West Fraser informed. He called the guy's name. I'm
6 not sure who it is or what's going on because the
7 company has to know what's going, you know, wanted to
8 know what was going on.

9 Q Okay. And did you actually hear Keith have any
10 conversation with somebody about what was going on; I
11 mean, over the phone when you're standing outside?

12 A No.

13 Q Okay. So you can't offer any testimony about anything
14 that Keith may have told anyone at West Fraser about
15 your husband's condition?

16 A I'm sorry, I can't tell nobody what now?

17 Q I think that you said that you never heard Keith
18 actually talking to anyone about your husband's
19 condition. And so I asked you the question, 'So you
20 can't offer any testimony about anything that Keith may
21 have told anyone at West Fraser about your husband's
22 condition.'

23 A Well, see I'm not understanding what you're saying
24 because you're asking me did I hear Keith talk to
25 someone at West Fraser. And I told you what Keith had

1 told me, that he was keeping West Fraser informed of
2 what was going on. That's what he told me --

3 Q Correct, but you never actually --

4 A -- he had to do.

5 Q -- heard the conversations between Keith and West
6 Fraser?

7 A No, I did not.

8 Q Okay. What was your relationship with your husband's
9 mother?

10 A Oh, it was great.

11 Q Did you ever talk to her about this incident?

12 A No.

13 Q Do you have -- do you know whether she was aware of the
14 incident?

15 A What, you mean talking about the one -- I'm sorry, the
16 incident from which he hurt himself up there?

17 Q No, I'm -- thank you, I need to be more clear. Did you
18 ever talk to your husband's mother about the things
19 that the doctor had said?

20 A No. No.

21 Q Do you know whether she was aware of what the doctor
22 said?

23 A No. Unh-uh (negative).

24 Q And my question is based on what you believe today. Do
25 you believe that the doctor's statements are true?

1 A Right now, no.

2 Q Can you explain then why you continue to have trust
3 issues with your husband?

4 A Because for what the doctor said.

5 Q Even though you don't believe that the statements are
6 true?

7 A During that time -- you're asking -- okay, you're kind
8 of confusing me. You said, do I believe right now what
9 the doctor said was true?

10 Q Yes.

11 A It wasn't true because the -- well, his doctor gave --
12 gave proof that it was not true.

13 Q And, when you got that proof from Dr. Hudson, and it
14 was confirmed that the doctor in the Newberry Hospital,
15 that his statements weren't true, so help me understand
16 then why you continue today to have trust issues.

17 A Because of what the doctor said. And, I'm sorry, I'm
18 this lady that, if someone puts something that
19 negative, especially a professional, a doctor, that
20 something happened with my husband, I believed it, and
21 I went on a limb and I believed it. I have been
22 tracking my husband. I have done things to him and
23 that is not good. I did that because of what a doctor
24 said.

25 Q Tell me about when your husband was discharged from the

1 hospital. How did you leave the room? Did you walk
2 out with him together?
3 A Yes, we walked out together.
4 Q Was anyone else with you walking out?
5 A Keith was there.
6 Q And was there anyone else?
7 A Of course, the person who was pushing the wheelchair.
8 Q Okay, so your husband, he was taken out in a
9 wheelchair.
10 A Yes.
11 Q So the hospital worker that was pushing the wheelchair,
12 you, your husband, and Keith, is that everyone who
13 walked out of the hospital with you that day?
14 A Yes.
15 Q And did you have any conversation with Keith as you
16 were exiting the hospital?
17 A Yes. Keith said that he's going to the pharmacy to get
18 the medicine and asked that we follow him to the
19 pharmacy.
20 Q Okay, and then when you got outside the hospital, did
21 you go to your car?
22 A Yes.
23 Q And did -- was your husband, was he sitting -- did he
24 stay at the entrance in his wheelchair and wait for you
25 to come pick him up?

1 A Yes.

2 Q Where was Keith at that point? Did he also go to his
3 vehicle?

4 A Keith went to his vehicle and told us to meet him at
5 the pharmacy.

6 Q [Technical Interruption.]

7 THE COURT REPORTER: It's saying your Internet
8 connection is -- can you hear us now? Well, there it
9 goes again. We were doing so good.

10 [Technical Interruption.]

11 Q I don't -- I think what I was asking you is when you
12 left the hospital that day and you went to your
13 vehicle, did Keith also walk to his vehicle at the same
14 time?

15 A Yes.

16 Q And, was the only person who remained with your husband
17 at the entrance sidewalk the hospital personnel who was
18 pushing his wheelchair?

19 A Yes.

20 Q On the morning of the accident, you said that you
21 received a call from someone at West Fraser to let you
22 know that your husband had been injured.

23 A Uh-huh (affirmative). Yes.

24 Q Do you know whether that person was Keith or someone
25 else at West Fraser, or do you remember?

1 A I don't remember.

2 Q Did they tell you anything else, other than your
3 husband had been injured?

4 A That I need to get to the hospital.

5 Q Did they tell you anything else about his injury?

6 A No.

7 Q Do you remember whether you received a phone call from
8 your husband prior to going to the hospital?

9 A Did he call? Prior to going to the hospital?

10 Q Yes. After you were notified by someone at West Fraser
11 that your husband had been injured, did you get a call
12 from your husband before getting to the hospital?

13 A Oh, yes. He calls -- well, he -- he called and told me
14 not to drive recklessly trying to get up the road.
15 That I don't need to get hurt. And he's okay. That
16 he'll be okay.

17 Q Do you hear me?

18 A Yes, I can hear you now.

19 Q Okay. Did he say anything else, other than to tell you
20 not to drive recklessly?

21 A And he's -- he'll be okay. That he's okay.

22 Q Okay. I think that's all the questions I have.

23 MS. MCCLURKIN: Shelton, you may have others, and
24 I'll look over my notes in case he does, and then I'll
25 -- I'll confirm that if you'll just give me a minute.

1 MR. HAILE: Johnny, do you have any?

2 MR. PARKER: None.

3 MR. HAILE: I don't have any more either.

4 MS. MCCLURKIN: Okay. Can I just take a -- just
5 two minutes?

6 MR. HAILLE: Yeah.

7 THE COURT REPORTER: All right.

8 MS. MCCLURKIN: Okay.

9 Q Mrs. Wise, do you recall telling Keith that your
10 husband wasn't returning to work?

11 A Yes.

12 Q When did you -- when did you have that -- when did you
13 make that statement to him?

14 A In the pharmacy. I told him he was not going to return
15 to work today.

16 Q Okay. And when -- did you discuss anything else with
17 Keith when you were in the pharmacy?

18 A Medicine? He was just telling me about the medicine
19 and that he had the company card.

20 Q Okay. Did Keith receive a written prescription for the
21 medicine that your husband was taking?

22 A I'm not sure if they called it in or wrote it out. I
23 think it was written.

24 Q Okay. And, you -- your husband waited in your car
25 while you and Keith went into the pharmacy to get the

1 prescription filled, right?

2 A Yes.

3 Q And, tell me everything you remember about what you
4 discussed with Keith while you were waiting on the
5 prescription to get filled.

6 A That he had the company card, and he says -- he asked
7 me was Anthony going back to work today -- that day,
8 and I told him no, he would not be back to work that
9 day. And --

10 Q And is that everything that you discussed that you can
11 remember?

12 A We walked out. He went to the car, gave Anthony the
13 medicine, and that was it.

14 Q Okay. So you and Keith didn't have any discussion
15 about your husband's diagnosis or his condition, other
16 than that while you were in the pharmacy?

17 A That's it.

18 Q Thank you. I don't have anything else.

19 MR. HAILLE: Nothing else from me.

20 MR. PARKER: Okay. Thank you, that's it.

21 THE COURT REPORTER: Thank you.

22 MR. PARKER: All right, goodbye, everyone. Have a
23 nice day.

24 WHEREUPON, THERE BEING NO FURTHER QUESTIONS, THE
25 DEPOSITION IS CONCLUDED 11:24 A.M.

1 THE DEPONENT WAIVES THE READING AND SIGNING OF THE
2 DEPOSITION.

3
4 (*This transcript may contain quoted material.
5 Such material is reproduced as read or quoted by the
6 speaker.)

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Anthony Wise W/C Incident

On Tuesday, Nov. 7, 2017, Anthony's F/L he was operating had a broken latch that caused him pain when he jerked it to open. He was in pain and asked for immediate medical care. He did not want to wait until 9 AM for the Co. doctor's office to open, so Keith Nelson took Anthony to the E/R.

Upon Keith's return to the office, he told us what the E/R doctor had told Keith, informing him that he suspected that Anthony had a 'long worded' infection that has several possibilities of origin (including past sexual history) and prescribed an antibiotic, Epididymo-orchitis hydrocele. Anthony did not return to work that day but did go to his personal physician the following day. He was also upset that the E/R doctor had asked him about his sex partners in front of his wife (who apparently he called to meet him at the hospital.)

Anthony called the following day & reported that his doctor had put him out of work for the rest of the week -to RTW on Monday 11/20. He wanted to know about his missed pay while he was out. I explained that he was out of work due to his personal physician, not a company doctor. He told me more than one time, you know I got hurt at work & now I'm getting shafted out of pay. We walked through him contacting The Hartford for STD. They would deny it since he would say he was out for a work related incident. The next day, he called again on the same line. I suggested that we could have him seen by our Co. physician but he thinks he is a 'quack' from the last injury he had. I explained if he needed to be seen by another doctor, he would need to go through him for a referral.

On Monday, 11/20, Anthony RTW and brought his medical paperwork from his physician. I reviewed it after he left the office which shows he received antibiotics, pain meds and an anti-inflammatory. The diagnosis did not show anything related to an injury. Again, he was still not happy about the lack of pay. I explained to him that if he called The Hartford for STD, I would write a letter that stated his absence was not due to a W/C issue so that STD could pay after a three day waiting period. He didn't agree to that and has not contacted The Hartford as of today. Anthony also told me that when he came back to work that several stories had been circulating about his condition and he didn't appreciate it. DJ & I discussed it trying to remember if anyone had been around the office and could have overheard what was said. We asked Keith and he stated he told Anthony's direct supervisor in the shipping office that he had an infection.

On Wed. Nov, 15th, Anthony came back to office once again & told me that people were talking about him and he was a 64 year old man who didn't have an STD. He said that Keith had been the one to say something and he was upset. I told him I certainly understood and he could discuss it with Keith when Keith returned from an out of town class on Thursday 11/16.

Melody H. Jepsen 11/17/17

From: Morgan, Grenville D. (Doc) Law Clerk (Mariana Outten) <gmorganlc@sccourts.org>
Sent: Monday, August 23, 2021 9:32 AM
To: Matthews, Steve <smatthews@hsblawfirm.com>
Cc: Anne Laurie McClurkin <AMcClurkin@maynardcooper.com>; Major, Chris <cmajor@hsblawfirm.com>;
shaile@richardsonplowden.com; zhayden@richardsonplowden.com; jparker@pmped.com; jcarrigg@carrigglaw.com
Subject: RE: Wise v. Newberry County Memorial Hospital, et al. -- C/A No. 2019-CP-36-00103

Good morning everyone,

Judge Morgan learned that a Motion to Amend was filed by the Plaintiff after the summary judgment hearing. He would like for you to brief the issue on what effect that has on ruling on the summary judgment motion. He is aware that the case is on a roster and would therefore like to have the issue briefed by Wednesday. If you need until Thursday, that is fine.

Anna Outten

Law Clerk to The Honorable G.D. Morgan
Resident Circuit Judge, 13th Circuit
305 E. North Street
Greenville, SC 29601
Cell: (843)-817-4416

PMPED

PETERS | MURDAUGH | PARKER | ELTZROTH | DETRICK

ATTORNEYS AT LAW

September 1, 2021

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Elizabeth P. Folk
Clerk of Court
1226 Coll
P.O. Drawer 10
Newberry, South Carolina 29108

Re: *Anthony Wise v. Newberry Hospital, et al*
Civil Action No.: 2019-CP-36-00103

Dear Ms. Folk

Enclosed please find for filing in the above-entitled matter the certificate of technical failure or technical difficulties for the depositions transcripts mailed to you on August 31, 2021 of:

Anthony L. Byrd, Sr, Raphael Maybin, Keith Nelson, Joseph Praylow, Julian Harry Shelton, Dolan J. Russell, George Wilson, Anthony Wise and Pauline Wise.

With kind regards, I am

Sincerely,



John E. Parker.

JEP/cc

Cc: Anne Laurie McClurkin- via email only.
Christopher Major- via email only.
John Carrigg- via email only.

Phone 803.943.2111 | jparker@pmped.com
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Hampton | Ridgeland | Walterboro | Charleston

ROA-693
APP-697

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

ANTHONY WISE

Plaintiff,

vs.

NEWBERRY HOSPITAL, LLC D/B/A
NEWBERRY COUNTY MEMORIAL
HOSPITAL AND WEST FRASER, INC.,

Defendant.

IN THE COURT OF COMMON PLEAS
8th JUDICIAL CIRCUIT

**CERTIFICATE OF TECHNICAL FAILURE
OR TECHNICAL DIFFICULTIES**

Case No.: 2019-CP-36-00103

Pursuant to the *South Carolina Electronic Filing Policies and Guidelines*, John E. Parker, Attorney for the plaintiff, seeks to file the attached Depositions Transcripts by a Traditional Filing Method/Alternative Method of Submission based on the inability to Electronically File the document. The inability to Electronically File the document was caused by:

- ☐ An announced Technical Failure of the Electronic Filing System;
- ☐ A technical difficulty that prevented the successful E-Filing of this document, which is described in detail below, including a statement certifying compliance with Section 9(d) of the Policies and Guidelines: ;
- ☐ A Repeated Technical Difficulty, which is described in detail below, including a statement certifying compliance with Section 9(f) of the Policies and Guidelines: ; or
- ☒ The document is excluded from the requirement that it be E-Filed in accordance with Section 2(d) of the Policies and Guidelines.

I have served or will serve this notice and the attached correspondence on all parties to this action by the following means: email

I declare under penalty of perjury that the foregoing is true and correct.

S/John E. Parker
Attorney for Plaintiff
Address: P.O Box 457
Hampton, SC 29924
Phone: 803-943-2111
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RECEIVED
Dec 15 2021
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Civil Action No.: 2019-CP-36-00103

Anthony Wise, ...Appellant,

-v-

Kenneth E. Leap, Newberry Hospital, LLC d/b/a
Newberry County Memorial Hospital, and West
Fraser, Inc., Defendants,

Of Whom, West Fraser, Inc. is Respondent.

NOTICE OF APPEAL

PLEASE take notice that Anthony Wise (“Appellant”), pursuant to Rule 203, SCACR, appeals the following Orders of the Honorable G.D. Morgan, Jr.: one signed October 8, 2021 and filed October 11, 2021, granting Defendant West Fraser, Inc.’s Motion for Summary Judgment (Exhibit A), and another signed and filed November 23, 2021, denying Plaintiff Anthony Wise’s Motion for Reconsideration (Exhibit B).

Appellant received written notice of entry of the Order denying Plaintiff’s Motion for Reconsideration on November 23, 2021. This Notice is timely filed. A copy of the Orders appealed are attached to this Notice.

ROA-695
APP-699

Respectfully submitted,

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

December 15, 2021
Hampton, South Carolina

By: 

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Attorneys for Respondent

RECEIVED

Dec 15 2021

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Civil Action No.: 2019-CP-36-00103

Anthony Wise, ...Appellant,

-v-

Kenneth E. Leap, Newberry Hospital, LLC d/b/a
Newberry County Memorial Hospital, and West
Fraser, Inc., Defendants,

Of Whom, West Fraser, Inc. is Respondent.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Notice of Appeal has been served upon the following counsel of record by emailing a copy of the same, this 15th day of December 2021.

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ROA-697
APP-701

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& DETRICK, P.A.

By: _____

December 15, 2021
Hampton, South Carolina

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December 15, 2021

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The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, SC 29211-1629

RECEIVED

Dec 15 2021

SC Court of Appeals

Re: *Anthony Wise v. Newberry Hospital, et al*
Civil Action No.: 2019-CP-36-00103

Dear Ms. Kitchings:

Enclosed for filing, please find the original of the Notice of Appeal in the above-referenced case. We are e-mailing the Notice of Appeal for filing and no additional copies are being provided. If additional copies are requested, please let us know. Also, our check in the amount of \$250.00 will go out in today's mail for the filing fee.

By copy of this letter, I am serving all counsel of record with a copy of the same.

If you have any questions, please let us know.

With kind regards, I am

Sincerely,



John E. Parker Jr.

JAY/cc

Cc: Christopher B. Major, Esquire.

Anne Laurie McClurkin, Esquire

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Hampton | Ridgeland | Walterboro |

ROA-699
APP-703

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Jun 30 2022

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No.: 2021-001463

Anthony Wise Appellant,

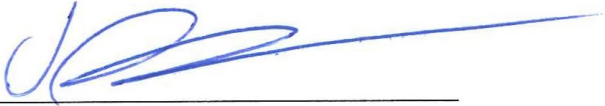
-v-

Kenneth E. Leap, Newberry Hospital, LLC d/b/a
Newberry County Memorial Hospital, and West
Fraser, Inc., Defendants,

Of Whom, West Fraser, Inc. is Respondent.

CERTIFICATE OF COUNSEL

The Undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

By: 

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ATTORNEYS FOR APPELLANT

June 30 2022

ROA-700
APP-704

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Jul 07 2022

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No.: 2021-001463

Anthony Wise Appellant,

-v-

Kenneth E. Leap, Newberry Hospital, LLC d/b/a
Newberry County Memorial Hospital, and West
Fraser, Inc., Defendants,

Of Whom, West Fraser, Inc. is Respondent.

SUPPLEMENTAL RECORD ON APPEAL

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ANTHONY WISE,

Plaintiff,

V.

KEITH E. LEAP, et al.

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2019-CP-36-00103

DEFENDANT WEST FRASER, INC.'S
MOTION FOR SUMMARY JUDGMENT

EXHIBIT 1

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY C/A No.: 2019-CP-36-00103

ANTHONY WISE,

Plaintiff,

v.

KENNETH E. LEAP, NEWBERRY
HOSPITAL, LLC D/B/A NEWBERRY
COUNTY MEMORIAL HOSPITAL and
WEST FRASER, INC.,
Defendants.

VIDEOTAPED

DEPOSITION OF: ANTHONY WISE
DATE: December 18, 2019
TIME: 9:44 a.m.
LOCATION: Pope Parker Jenkins, P.A.
 1508 College Street
 Newberry, South Carolina
TAKEN BY: ATTORNEYS FOR DEFENDANT
 WEST FRASER, INC.

REPORTED BY: MICHELLE BAKER LEE,
 Certified Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Asheville, NC
(828) 123-9876

EXHIBIT

1

1 long hours again.

2 Q All right. Anything -- but did -- but he
3 encouraged you to apply for employment, right?

4 A Yes.

5 Q Did he say anything else about West Fraser?

6 A I don't recall because, like I said, a lot
7 done happened since then and I -- I don't get to talk
8 to him no more.

9 Q There's nothing else, though, that you can
10 recall Mr. Fields saying about coming to work at West
11 Fraser?

12 A No, not -- not right off, no.

13 Q And at the time or around that time, did
14 Mr. Fields hold a supervisor position with West
15 Fraser?

16 A Yes.

17 Q All right. And you were offered and you
18 accepted employment with West Fraser beginning in --
19 beginning on March 23, 2015, right?

20 A Yes.

21 Q And started out in the forklift operator
22 position, correct?

23 A Correct.

24 Q And who were your supervisors that you were
25 working with then?

1 were going to -- that you were floating from
2 department to department --

3 A Uh-huh.

4 Q -- were you still -- was your assignment
5 still in the kiln department but you were being loaned
6 out to these other departments?

7 A Yes, I suppose so.

8 Q So your permanent assignment was still in
9 the kiln but you were being temporarily, you know,
10 reassigned to these other departments?

11 A Yeah, I was being jerked around basically.
12 That's what it boiled down to.

13 Q But it was your understanding that those
14 assignments were supposed to be temporary?

15 A Honestly, I don't know. All they done
16 wanted me to do is go work here, work there, and all
17 around.

18 Q And if the managers of these various
19 departments, Chuck Price in shipping or Quinton Wilson
20 over the planer mill, if they testify that it was Mike
21 Shealy in the kiln department who remained responsible
22 for keeping up with your -- your time sheets, do you
23 have any information to dispute that?

24 A I'm just telling you what they were telling
25 me when I asked about my hours. Now, if I go in there

1 always there.

2 And then there's one saying: Daddy, we love
3 you.

4 I'm guessing that's your daughter --

5 A Yes.

6 Q -- right?

7 A Uh-huh.

8 Q All right. I mean, you're not testifying
9 this isn't your information that you posted, are you?

10 A Now, like I said, I might have did post
11 that. I don't know. Like I said, I was thinking
12 about my mama.

13 Q Okay.

14 A And --

15 Q Okay. But -- so I understand you're saying
16 you're not using Facebook presently. But you used it
17 at least through the end of 2018, right?

18 A According to this. And see that -- that --
19 that lady right there (indicating), she works with my
20 wife, Becky.

21 Q All right. Let's talk about what we've been
22 calling the subject incident, so November 7, 2017. At
23 that time you're employed by Westberry working in the
24 shipping department, correct?

25 A Correct.

1 Q All right. Do you remember what time you
2 got to work that day?

3 A I think about 5:45.

4 Q A.m.?

5 A Yes.

6 Q What is the night shift schedule?

7 A 6:00 to 6:00.

8 Q 6:00 p.m. to 6:00 a.m., right?

9 A Right.

10 Q Who -- who else was already in the shipping
11 department when you arrived at work that day?

12 A I think Irving was there.

13 Q Is that his first name?

14 A Yes.

15 Q What's his last name?

16 A Oh, God. I can't tell you right off.

17 Q All right. Anyone else that you can recall
18 who was present at work that day?

19 A Yes, because before -- before the accident
20 or after?

21 Q Before, when you arrived at work.

22 A I think Chuck came in.

23 Q Chuck Price?

24 A Yes. You're just talking about the shipping
25 department or the whole plant site?

1 Q Just the shipping department, the area where
2 you were working.

3 A Every -- I think all the employees were
4 there because we had to clock in before 6:00.

5 Q So any employee who was scheduled to work
6 the day shift in shipping that day would have been
7 either there or arriving shortly --

8 A Right.

9 Q -- at -- when you arrived at 5:45 a.m.?

10 A Right.

11 Q And would the night shift employees be close
12 to coming off of their shift?

13 A Yes.

14 Q Is there anyone other than Irving, whose
15 name you can't recall, and Chuck Price that you
16 specifically remember seeing before the incident
17 occurred?

18 MR. PARKER: What's the question?

19 BY MS. MCCLURKIN:

20 Q Is there anyone other than Irving or Chuck
21 Price that you specifically recall seeing in the
22 shipping department before the incident occurred?

23 A I can't remember.

24 Q Okay. Tell me -- tell me what happened with
25 the incident.

1 A I -- I went out, got my card to check the
2 oil, water, and all the fluids in the forklift. I had
3 reported a week earlier about the hood wouldn't raise
4 up. It have a hydraulic hood on it. You hit a
5 button, the thing's supposed to pop open. It didn't
6 Hop open so I wrote it up. Told the supervisor about
7 it, told maintenance about it, and gave them the card
8 and everything.

9 So that morning I had been -- I tried to
10 lift it up like I had been doing. I had one foot up
11 on one side, one foot down this way, and when I pulled
12 up on it, I felt something give. And I got off and
13 Irving said -- Irving was sitting right there on the
14 other forklift. He say, You all right? No, man,
15 something gave. And by that time I could feel
16 everything swelling up.

17 So I went in there and told Chuck, I said,
18 Chuck, I need to get in the office so I can see what's
19 going on. So I went in the bathroom, they were
20 (indicating by sound). I mean -- what I mean was they
21 was swollen real bad and they were throbbing like a
22 toothache.

23 And he -- I went back and told Chuck, I
24 said, Chuck, I've got to go to the doctor. I'm
25 hurting something terrible. He said, Well, you want

1 me to get somebody? And I said, Yeah, get somebody
2 because I've got to go. He called Steve Johnson.
3 Steve Johnson is -- he was over the dry-in
4 superintendent, if I ain't mistaken. He come up
5 there, and it wasn't long after that I think Quinton
6 come in and --

7 Q Quinton?

8 A Yeah, Quinton Wilson. They gave me an
9 icepack and told me, Put them on. I mean, just,
10 uh-uh. I said, I got to go to doc's. Somebody got to
11 tell me what's going on.

12 They finally got ahold of Keith. Keith come
13 in and he wanted to wait until the company doctor get
14 in the office. I said, Uh-uh, uh-uh, uh-uh. I said,
15 We got to go. We got to go. I got to go. Somebody
16 got to tell me what's going on. I said, These things
17 are killing me. So --

18 Q And let me -- let me stop you and back you
19 up a little bit so we are clear on the record what we
20 talk about.

21 A Okay.

22 Q When you're saying "these things" and the
23 area that was swollen, we're talking about your
24 testicles?

25 A Right.

1 A Yes.

2 Q And then you said Chuck Price called when
3 you came out of the bathroom.

4 A Uh-huh.

5 Q Are you able to walk at this time?

6 A Yeah, I'm walking. I'm wobbling.

7 Q But you're wobbling?

8 A Yeah.

9 Q Are you hunched over?

10 A Yeah.

11 Q So you weren't able to walk upright?

12 A No. When you -- when you -- when that
13 thing -- when it gave, it gave.

14 Q Okay. And I'm just -- I'm trying to
15 understand because I wasn't --

16 A You'd never understand.

17 Q Well --

18 A You're no man.

19 Q -- and there's that, too, so that's why I
20 got to ask you --

21 A I'm sorry.

22 Q -- a few questions. I don't have those and
23 I wasn't there.

24 Was -- when you came out of the bathroom --

25 A Uh-huh/

1 Q -- so you're walking but you're hunched
2 over, right?

3 A Yeah.

4 Q And where are your hands? Are you hands
5 covering --

6 A I'm holding --

7 Q -- your groin area?

8 A I'm holding them, holding them.

9 Q Okay.

10 A And like I told you, they -- they -- they
11 are throbbing and I'm feeling them swelling up.

12 Q All right. And you're in a lot of pain?

13 A Yeah.

14 Q And did anyone offer you a place to sit down
15 or --

16 A Yeah, I went in -- I went in the office and
17 sat down, in the shipping office, sat down.

18 Q Did you sit down in a chair or on a bench
19 or --

20 A I was sitting down in the chair. I kind of
21 leaned back like this here (indicating) and I sat down
22 and I was sitting there holding them. And then, like
23 I said, Quinton and them come in with an icepack and
24 told me to hold that on there, that it would probably
25 take the swelling down. But all that did was make

1 A Yes.

2 Q All right. So the people who came to see
3 you in the office where you were sitting down and
4 holding your testicles in pain --

5 A Uh-huh.

6 Q -- were Steve Johnson, Quinton Wilson --

7 A Uh-huh.

8 Q -- Keith Nelson --

9 A Uh-huh.

10 Q -- and Chuck Price?

11 A Yeah, he was already -- see, he -- Chuck
12 is -- is more or less supervisor over shipping.

13 Q It was his office?

14 A Yes.

15 Q Okay.

16 A Well, we got -- we got more or less to like
17 this, the canteen and all of that little break area
18 all that, and then we got the part where you can fill
19 out bills of lading and all that on one side. But all
20 of it's just one big office.

21 Q Okay. All right. But Chuck Price also
22 would have seen you?

23 A Yeah.

24 Q And Irving saw when -- when this occurred
25 out in -- where were you?

1 A We was out in the yard.

2 Q You were out in the yard?

3 A Uh-huh.

4 Q And did Irving come into the office with
5 you?

6 A I -- I'm not for sure. All I know is told
7 him he had to write a statement.

8 Q They told Irving -- who told Irving?

9 A That's what Chuck was telling him. And
10 upper management told me he had to write a statement
11 to tell what he seen.

12 Q Because there had been an on-the-job
13 accident and potential injury?

14 A Yeah.

15 Q All right. Is Irving an hourly employee?

16 A Yes.

17 Q Do you know if he's still employed by West
18 Fraser?

19 A No, he's not employed by West Fraser
20 anymore.

21 Q Okay. Is that everyone who you recall
22 coming in to see you in the office as you're waiting
23 to be taken to the doctor?

24 A Yes.

25 MS. MCCLURKIN: Let's go off the record for

1 a second.

2 THE VIDEOGRAPHER: Going off the record at
3 12:43.

4 (Conference off the record.)

5 THE VIDEOGRAPHER: We're back on the video
6 record, correcting that we went off at 12:13.
7 We're back on at 12:14.

8 BY MS. MCCLURKIN:

9 Q About what time, if you know, did Mr. Nelson
10 arrive?

11 A It was after. I want to say between 6:30,
12 7:00. Might have been a little later.

13 Q So you weren't on the job very long at all
14 when this incident happened?

15 A No, because you had to check your equipment
16 out before you crank it up or anything.

17 Q Okay. So it's the first work that you tried
18 to perform that day and that's when you were -- you
19 had this incident?

20 A Yeah, it's automatically there.

21 Q Okay. And you think that Keith got there
22 about 6:30 or 6:45 a.m.?

23 A I don't know exact what time it was but I
24 know.

25 Q But approximately?

1 A Yeah.

2 Q That's your best judgment?

3 A Yes.

4 Q And what did Keith say when he arrived?

5 A He wanted to wait on the company doctor to
6 open up. And I told him I couldn't wait. So he ended
7 up taking me to the emergency room.

8 Q And the emergency room was at the Newberry
9 Memorial Hospital, right?

10 A Correct.

11 Q Did he drive you there in his vehicle?

12 A No, I don't think so. I think it was a
13 company vehicle.

14 Q But did -- okay. Did Keith drive you there
15 in the company vehicle?

16 A Yeah, I think so.

17 Q You didn't drive?

18 A No, I didn't drive, uh-uh.

19 Q Was your personal vehicle back at the West
20 Fraser mill?

21 A Yes.

22 Q All right. Tell me what happened when --
23 well, was anyone else in the company vehicle when you
24 and Keith Nelson drove to the emergency room?

25 A No, it just -- just the two of us.

1 Q All right. Did you contact anyone in
2 between leaving West Fraser and going to the emergency
3 room?

4 A I called my wife.

5 Q Anyone else?

6 A No.

7 Q What did you tell your wife?

8 A I told her, I said, Don't come up the road
9 like you're crazy. I said, I'm heading to the
10 hospital. I said, Take your time. I said, I'm all
11 right but I had felt something pull in my groin. I
12 said, You need to come on up and I left it at that.

13 Q And when you said to her, "Don't come up the
14 road like you're crazy," you meant don't -- don't
15 drive unsafely?

16 A Yeah, don't drive fast because she get
17 excited when things happen to me.

18 Q So you said, you know, get here but take
19 your time, right?

20 A Yes.

21 Q Okay. And was she at the hospital when you
22 arrived?

23 A No, she got there a little later.

24 Q Tell me what happened when you arrived at
25 the hospital.

1 A When I got to the hospital, I -- they put me
2 in a little -- they finally got me in a little room.
3 I sat on the outside, they signed me in, and then they
4 put me in one of those little rooms in the back.

5 Q Were you able to walk inside by yourself or
6 did they get a wheelchair or stretcher and help you?

7 A I limped on in there.

8 Q All right. Did Mr. Nelson assist you as you
9 were walking in?

10 A No, I limped in on my own.

11 Q All right. Was he walking next to you?

12 A Yeah, next to me, kind of behind me, or in
13 front of me, I don't know. All I was trying to do was
14 get in.

15 Q And did you and Mr. Nelson have any
16 conversation about -- about the incident prior to
17 getting to the hospital, about what happened?

18 A I told him what happened on the job site.
19 They wanted to know that and I told him what happened
20 on the job site. And that's what -- they finally
21 decided they was going to go ahead and take me to the
22 hospital, the emergency room.

23 Q All right. And on the way to the emergency
24 room, did you and -- did you and Mr. Nelson discuss
25 your injuries?

1 A No, there wasn't nothing to discuss. They
2 were hurting. I didn't want to talk. I just wanted
3 to find out what was going on.

4 Q All right. And so when you got there, you
5 walked into the emergency room and you signed in,
6 right?

7 A Uh-huh.

8 Q And then they eventually put you in an exam
9 room, right?

10 A Right.

11 Q And where did Mr. Nelson go?

12 A At first he was sitting on the outside, and
13 then he started floating around, around in the
14 hospital back in there. He say, I got to go smoke a
15 cigarette, in and out, round through there like that
16 right there (indicating).

17 Q All right. So he wasn't sitting in the exam
18 room with you?

19 A No.

20 Q Okay.

21 A But he ease his way in there peeping through
22 the door like this (indicating).

23 Q Okay. So when you first got to -- into the
24 exam room --

25 A Uh-huh.

1 trying to explain to her why -- what happened and why
2 he was there. And she was saying, I'm here now. So
3 he left.

4 Q How long --

5 A That's --

6 Q Okay.

7 A That's when the doctor came in and he said
8 that they -- we going to run some tests and see what's
9 going on.

10 Q Okay. But before -- you're getting ahead of
11 me so -- and I'm going to let -- we're going to get to
12 all of that. But you said your wife got there. About
13 how long do you think you'd been at the hospital when
14 your wife arrived?

15 A Oh, God. Maybe an hour.

16 Q Had you already seen the doctor?

17 A No.

18 Q Okay. Had you seen the nurse?

19 A The nurse had come in and told me to take my
20 pants off.

21 Q So you'd already seen the nurse but not yet
22 the doctor, right?

23 A Not yet the doctor.

24 Q And was your wife having to drive from --
25 was she at work that day?

1 her saying that, I'm here now.

2 Q Was she saying I'm here now so you can --

3 A Yeah.

4 Q -- go, Mr. Nelson, right?

5 A I guess. I don't know. Like I said --

6 Q Okay.

7 A -- I remember her saying that.

8 Q That's all you can remember from hearing
9 between Mr. Nelson and your wife that day?

10 A Uh-huh.

11 Q And was that conversation in the exam room
12 or was it out in the hallway?

13 A It was -- it was right there in front of me,
14 right -- right in that area.

15 Q Was it in the exam room?

16 A Yeah, right there in the area. What I'm
17 saying is, you don't understand how that exam room's
18 made. It's more or less open. It's not closed.

19 Q But you said it had a door, right?

20 A I don't remember seeing no door.

21 Q Okay.

22 A There might have been one there but I don't
23 remember seeing no door.

24 Q I thought before you said it had a door and
25 it was open?

1 A It got -- it had a doorway but I don't
2 remember seeing no door.

3 Q And do you remember whether there was a
4 curtain or anything to --

5 A If I'm not mistaken here, there was a
6 curtain there. I don't know if it had glass all
7 around it.

8 Q All right. And then did -- Mr. Nelson
9 stayed, right, after your wife got there?

10 A I ain't --

11 Q Well, no, I'm sorry, you said he left,
12 right?

13 A I don't know. I don't know. All I know is
14 I told you I remember her saying that I'm here now.
15 And I don't know whether he stayed because I was
16 turned over on one side sitting there holding my
17 testicals and --

18 Q Okay. And did -- but after she said, I'm
19 here now, you can leave, Mr. Nelson, did --

20 A Wait a minute. Wait a minute now. I don't
21 know if she said you can leave now. All I know is she
22 said that I'm here now.

23 Q Okay. But I think we agreed that it was in
24 the context of your -- you don't need to stay here
25 anymore because I'm here now?

1 MR. PARKER: I object. That wasn't his
2 testimony. That's your testimony.

3 MS. MCCLURKIN: I thought he said --

4 BY MS. MCCLURKIN:

5 Q Do you disagree with that?

6 A I just --

7 Q I thought you already --

8 A I told you that --

9 Q Well, it's in the record.

10 A -- all I heard was that she said that I'm
11 here now. And I wasn't interested in that
12 conversation. You don't understand. When you hurting
13 the way I'm hurting, that's all you can think about.

14 Q All right. And they're standing there in
15 the doorway area having the conversation, right?

16 A Yes, I guess.

17 Q And then after that do you remember whether
18 Mr. Nelson walked away or did he stay there with your
19 wife in the doorway?

20 A I keep telling you, I do not know.

21 Q Okay. And about how long -- well, did
22 anyone else from the hospital come and see you before
23 the doctor got there in between the time your wife
24 arrived and the time that Dr. Leap arrived?

25 A They -- the doctor came in and he said,

1 Well, we're going to take you back there and check you
2 out. So the nurse came in and -- a wheelchair and
3 they wheeled me in the back, put me on I reckon some
4 kind of examining table, and they took X-ray, some
5 kind of test they took and all that.

6 And they wheeled me back out and I was
7 laying there in the bed. While I was laying there in
8 the bed, another little nurse come in with some
9 medication or something. She shot half of that down
10 the sink, and she give me some. It kind of made me
11 woozy and all this. And I'm sitting there, and I
12 asked her, I said, Why did you do that? She said, I
13 don't know. Maybe it looked like it was too much. So
14 she left.

15 And then the doctor come in and he said,
16 Well, we don't see no -- whatever he was saying that
17 caused a hernia and all that. Now, my wife is there
18 and all these people out in the hall and the nurse is
19 in the room. And that fool come out of his mouth and
20 said something about there been a change in sexual
21 partners.

22 Q Who said that?

23 A The doctor.

24 Q Dr. Leap?

25 A Yeah.

1 Q And --

2 A Nelson standing there like this right here
3 (indicating).

4 Q All right. So we're going to break some of
5 this down. So you -- you said that -- because my
6 question was did you see anyone else in between your
7 wife arriving and the doctor arriving, and then you
8 gave this --

9 A This -- this --

10 Q -- this story.

11 A This is what happened.

12 Q Okay. But -- so I'm going to break it down,
13 though. All right. So you went -- they took you to
14 an X-ray room, right?

15 A Yeah.

16 Q And that was -- who was in the X-ray room?
17 The nurse was there?

18 A Yeah.

19 Q All right. Was Dr. Leap there?

20 A No.

21 Q No. Was your wife there?

22 A No, she wasn't back there with me.

23 Q Was doc -- was Keith Nelson there?

24 A Not back there when they're doing the X-ray.
25 Wasn't nobody in there but me and the X-ray

1 technician.

2 Q Okay. And then they -- the X-ray technician
3 or the nurse brought you back to --

4 A That little holding area.

5 Q Okay. And put you where, on the bed?

6 A Back in the bed.

7 Q And who's in the room or the holding area?

8 A My wife was there and then after that, the
9 doctor come in. The nurse come in and give me a shot
10 before the doctor got there. And then he come in and
11 he was trying to explain to me about I didn't have no
12 hernia or nothing, and then this change of sexual
13 partners come out.

14 Q That's when that statement was made?

15 A Yeah.

16 Q All right. The nurse that gave you the
17 shot --

18 A Uh-huh.

19 Q -- you said before she injected you she
20 dumped -- she injected half of it into the sink?

21 A Yeah.

22 Q All right. Do you know what medication that
23 was?

24 A I don't know what it was.

25 Q Was it an antibiotic?

1 we do have -- we do want to get out of here as quickly
2 as possible so --

3 A Okay.

4 Q And your attorney can ask you questions if
5 this is information that needs to be on the record.
6 But I'm going to try to get you to answer my
7 questions.

8 When -- you do not know and don't know
9 sitting here today what the injection was that you
10 were given, right?

11 A No.

12 Q And when Dr. Leap came in after you got the
13 injection, was the nurse in the room?

14 A There was a bunch of people in the room.

15 Q All right. Tell me -- tell me everyone.

16 A I can't tell you everyone because I ain't
17 know everyone.

18 Q Okay. Tell me everyone that you can
19 identify.

20 A My wife was there, the doctor was there,
21 nurse was there, people standing out in the hall. I
22 don't know who them people was. All I know is they
23 worked at the hospital.

24 Q Okay. You've told me everyone that you can
25 identify by name or position, right?

1 A Yeah.

2 Q Okay. And Dr. Leap said -- the first thing
3 he said to you was I don't see anything to cause me to
4 believe that you have a hernia?

5 A Yeah.

6 Q And then the second thing he said to you was
7 what?

8 A Looks like somebody's been changing sexual
9 partner.

10 Q All right. What was the next thing that he
11 said?

12 A He looked at me crazy and I'm looking at
13 him. What else you going to say?

14 Q All right. Did you -- did you have a
15 response to that, to Dr. Leap's statement?

16 A I'm looking at my wife then.

17 Q Did you have a verbal response to Dr. Leap's
18 statement?

19 A No. I'm looking at him like he's damn
20 crazy.

21 Q And you're looking at your wife?

22 A Yeah.

23 Q And did she have a verbal response to Dr.
24 Leap's statement?

25 A No, she's looking at me, too. She's looking

1 at me, I'm looking at her, and then we looked at him.
2 And then that's when we looked at everybody.

3 Q Okay. Nelson was not some -- one of the
4 people that you identified as being in the room. Are
5 you saying now --

6 A Yes, I did.

7 Q -- that he was in the room?

8 A Yes, I did say that.

9 Q Okay.

10 A You weren't listening to me.

11 Q All right. Let me make sure I've got it
12 right. So the people that you can identify by name or
13 position that were in the room when Dr. Leap made this
14 statement were your wife?

15 A Yes.

16 Q Dr. Leap?

17 A Yeah.

18 Q A nurse?

19 A Yes.

20 Q And Keith Nelson?

21 A Yep, and -- and a lot of more people was
22 standing right there in the line of fire and could
23 hear all this.

24 Q But you've now told me everyone you can
25 identify by name or position, right?

1 A Yeah, as far as -- as far as I know.

2 Q All right. And so did -- did Keith Nelson
3 do or say anything in response to what Dr. Leap said?

4 A All I know is after that, they left out and
5 had a conference.

6 Q I'm sorry, what?

7 A They left out and started talking to each
8 other.

9 Q Dr. Leap and Keith Nelson?

10 A Nelson, yeah.

11 Q And did the nurse leave?

12 A I think so.

13 Q And you and your wife stayed alone in the
14 room or the holding area that we've been talking
15 about?

16 A Yeah, with everybody else around like this
17 (indicating).

18 Q And what -- what else -- I mean, what
19 happened after Dr. Leap made this -- or allegedly made
20 this statement about it looks like somebody's been
21 changing sexual partners?

22 A He walked out.

23 Q That was it? That was his diagnosis?
24 That's all he said?

25 A That -- that's all -- after that, that's all

1 Q So in your -- you've already told me about
2 all the statements from Dr. Leap that you can remember
3 that were made in your presence, right?

4 A As far as I can recall at this time.

5 Q And what -- did you get any other treatment
6 from -- or any other testing done other than the
7 X-rays and the shot that you don't know what it was?

8 A Wait --

9 Q I'm sorry. That was a bad question.

10 A Yeah, I know.

11 Q You told me about the nurse gave you a shot
12 and you don't know what medication that was, right?

13 A No, not at -- to be honest with you, not at
14 the time, no, I didn't. But Nelson went back and told
15 them on the job that I got some kind of antibiotic.

16 Q All right. When you got back to the --
17 well, that statement that you just made that
18 Mr. Nelson went back to the job and told someone that
19 you got some kind of antibiotic --

20 A Uh-huh.

21 Q -- is that something that you personally
22 heard?

23 A No, that was something I was personally told
24 from a couple different people and were asked about
25 it.

1 Q CJ Dudley told you that?

2 A Yeah. He talked to Keith personally and
3 Keith was telling him about it.

4 Q All right. So you given me three names. Is
5 there anyone else who's told you that they personally
6 heard Keith Nelson say that you had an STD?

7 A I don't know who all done said what. Like I
8 said, when -- when I got back to work -- I was out of
9 work a week. When I walked back on the plant cite,
10 that's the first thing I heard.

11 Q Right. And I know -- I know there were
12 things that were said to you, but I'm asking you just
13 specifically about the people who told you that Keith
14 Nelson said that you had an STD.

15 A Harry Shelton was telling me that Nelson was
16 telling it, Chuck Price was telling it. And then I
17 had other guys telling me all what they heard from --

18 Q From Keith Nelson?

19 A From all this.

20 Q And --

21 A I'm not -- I'm no -- I can't sit here and
22 say that they heard it directly from him, but it went
23 through that plant like a wild fire.

24 Q Okay. But -- and we're going to get to
25 that, but I think we've got to take a break soon. So

1 everything that -- that you're aware of, right?

2 A Right.

3 Q Did -- after that, after Dr. Leap had left
4 the room, did you get any further treatment or testing
5 while you were at the emergency room?

6 A No. He wrote out a prescription and Nelson
7 had to go fill it and we had to follow him to the
8 drugstore. After he filled the prescription, I went
9 home.

10 Q Was the prescription for an antibiotic?

11 A I can't remember what it was for. All I
12 know is he filled the prescription and I went home.

13 Q Okay. So whatever prescriptions Dr. Leap
14 wrote to you, Mr. Nelson took them to be filed, right?

15 A Right.

16 Q All right. And other than that, did you
17 receive any other treatment other than what you've
18 already told me about while you were at the Newberry
19 emergency room?

20 A No. Not from them no, uh-uh.

21 Q Was it your understanding that you had any
22 type of infection?

23 A Yeah, they said I had an infection, a
24 disease.

25 Q Doctor -- who said that?

1 A That's -- that's the understanding that I
2 got because I'm telling you, Nelson asked me -- well,
3 let's see. Let me tell you how he said it. He said,
4 You reckon your wife got some kind of infection?

5 Q Who said that?

6 A Keith Nelson.

7 Q All right. Did anyone tell you that you had
8 an infection, that you were diagnosed with an
9 infection?

10 A Yep.

11 Q All right. Who was that?

12 A When I got to work that Monday morning.

13 Q Sorry. I'm just limiting it to the hospital
14 right now. While you -- was it your understanding
15 that you had an infection while you -- before you were
16 discharged from the hospital?

17 A Yep, that's what they were saying I had.

18 Q Who did that come from?

19 A It's coming from the doctors and nurse.

20 Q And what exactly do you remember Dr. Leap
21 saying to you about you having an infection?

22 A The way it was put to me and my
23 understanding of it was that I had some kind of STD.
24 That's where that change of sexual partners come into
25 play.

1 Q So your understanding before you left the
2 hospital was that you had been diagnosed with an STD
3 based on Dr. Leap's comment about changing sexual
4 partners?

5 A Yeah, pretty much.

6 Q Okay. And then did Dr. Leap -- did you have
7 any other interaction with him to get your
8 prescriptions or otherwise after that conversation?

9 A No.

10 Q Those prescriptions were provided to
11 Mr. Nelson?

12 A Yes.

13 Q So you didn't see or talk to Dr. Leap again
14 after he left the room after making the comment about
15 the switching of the sexual partners?

16 A No.

17 Q And when is the next -- so at that point
18 after Dr. Leap left, was it you in your room -- you
19 and your wife alone in the room?

20 A Yeah.

21 Q And did you have a conversation with your
22 wife?

23 A Yeah.

24 Q What did you discuss?

25 A Let's get the hell out of here.

1 Q Both of you were in agreement that we need
2 to get the hell out of here?

3 A Uh-huh.

4 Q Yes?

5 A Yes.

6 Q And what was your wife's reaction to what
7 Dr. Leap had said?

8 A Shock.

9 Q And when you said that you both agreed that
10 we need to get the hell out of here, was that because
11 you disagreed with what Dr. Leap had said?

12 A Very much.

13 Q Both of you, you and your wife?

14 A Yes.

15 Q Did either of you believe -- either you or
16 your wife actually believe that you had an STD?

17 A I know I didn't have one, but it -- it
18 doesn't matter whether she believed it, it was put out
19 there in her face and that means a whole heap. She
20 knowed -- she know me and I know her, but yet still it
21 was put in our face and it -- it put doubts in your
22 head. Even though you know better, you still have
23 that thought because you're human. And it's just the
24 bottom line. So when I left there and heard it all
25 night, the next morning I got up and went to my

1 representatives for -- if you're going to make a
2 workers' comp claim, right?

3 A No.

4 Q You don't agree with that?

5 A I don't agree with that.

6 Q All right. When you and your wife -- or
7 excuse me, Mr. Nelson, did he return to the hospital
8 to give you your prescriptions?

9 A No, we followed him to the drugstore.

10 Q Okay. So you all left together to get --

11 A Yeah.

12 Q -- the prescriptions filled?

13 And did Mr. Nelson, when you said -- I think
14 you said he left with Dr. Leap and they had a
15 conversation outside your presence, right?

16 A They had a conversation out there in the
17 hall.

18 Q And --

19 A Look, I could see them but I don't know what
20 they were saying.

21 Q Right. And then did -- did you see
22 Mr. Nelson again before you left to go to the
23 pharmacy?

24 A Yeah. I told you. You're not listening to
25 what I'm saying. I told you he told me that my

1 wife -- maybe my wife got some kind of infection.

2 Q Okay. Where did that conversation take
3 place?

4 A As we were walking out of the hospital.

5 Q So you walked out of the hospital together,
6 right?

7 A Well, he -- he come up behind me and my
8 wife. And my wife went to get the car. And when she
9 walked off, he eased on up beside me and he was
10 telling me that, and I lit into him like a bad habit.

11 Q Did you say anything to him or did he
12 approach you and just make this comment?

13 A He approached me and made that comment.

14 Q So you're waiting on your wife to pull the
15 car up. Are you standing in the parking lot or the
16 hospital sidewalk? Where are you standing?

17 A Sidewalk.

18 Q In the -- near the hospital entrance?

19 A Yeah, the emergency entrance.

20 Q And it's just the two of you --

21 A Yeah.

22 Q -- you and Mr. Nelson?

23 A Uh-huh.

24 Q And what was your demeanor at the time?

25 A You got to be kidding me, ain't you?

1 Q No, it's a genuine question. What were
2 you -- what was your demeanor before Mr. Nelson
3 approached you?

4 A I was trying to get over the initial shock
5 of what was said. And for him to walk up to me and
6 tell me that about my wife, he's lucky I didn't knock
7 all his damn teeth out of his head.

8 Q Had there -- there had been no discussion
9 before that between you and Mr. Nelson about you
10 having an infection?

11 A Right.

12 Q And no discussion between you and Mr. Nelson
13 about anything related to an STD, right?

14 A No, because I didn't get to talk to him
15 until we come out of the hospital, and he eased up
16 behind me and told me that when my wife walked off to
17 go get the car.

18 Q And the first thing he said to you was what?

19 A Maybe your wife's got some kind of
20 infection.

21 Q And what was your response?

22 A You don't want to know.

23 Q I do.

24 A No, you don't.

25 Q I do.

1 A No, you don't.

2 Q All right. I'm going to ask you again.
3 What was your response? And we'll excuse any colorful
4 language. But just for the record, what did you say
5 in response to Mr. Nelson?

6 A You out your mother-fucking mind?

7 Q And what -- what did he say back to you?

8 A He said nothing. Looked at me like I was
9 crazy. Because if I wouldn't have been hurting so
10 bad, as God as my witness, I'd have been in jail.

11 Q What else was -- what other statements, if
12 anything, were exchanged between you and Mr. Nelson?

13 A There wasn't nothing else to say. Well, he
14 did say, Well, I'll come pick you up in the morning
15 and bring you to work. And my wife said, No, the hell
16 you ain't. He ain't coming to no work.

17 Q All right. Before your wife pulled up, did
18 you and Mr. Nelson have any other exchanges?

19 A His exchange was trying to get away from me
20 because I'm -- I'm about to lose all my composure.

21 Q All right. And before you were about to
22 lose all your composure, when did Mr. Nelson invite --
23 or offer to pick you up the next morning and take you
24 to work?

25 A When my wife pulled up.

1 Q And then -- so nothing else was said, and
2 then your wife pulled up and he offered to bring you
3 to work the next morning?

4 A Yeah, he was going to --

5 Q And what did your wife say?

6 A -- come pick me up.

7 He ain't coming to no work.

8 Q All right. And then what happened next?

9 A Well, he went and got the medication and
10 took me home. And I laid --

11 Q You rode with your wife, yeah?

12 A Yeah, I left my vehicle. And I laid there
13 on the chair and suffered all night. And the next
14 morning, I got up and went to the doctor, went to my
15 doctor.

16 Q When you say you left your vehicle, what do
17 you mean?

18 A I left my car at work. I never did return
19 back to the job site. She picked me up and we went
20 from CVS drugs to Columbia.

21 Q So you went to the CVS here in Newberry?

22 A Yes.

23 Q And Mr. Nelson filled your prescription?

24 A Yes.

25 Q Was it two prescriptions?

1 Q And then you went home?

2 A Yes.

3 Q When was the -- how long -- and the next day
4 you went to see your regular doctor, right?

5 A Yes.

6 Q At Lexington Family?

7 A Yes.

8 Q And that was Cynthia Hutson?

9 A Yes.

10 Q And Cynthia Hutson ordered some tests,
11 right?

12 A When? Yeah, she ordered all the tests. And
13 I told her they're saying that I got some kind of STD
14 disease, and she ordered all the tests to prove
15 that -- she told me, she said, Mr. Wise, you ain't got
16 that. You ain't got nothing.

17 Q And is it your understanding that her
18 diagnosis was that you had a -- an infection but not a
19 sexually transmitted infection?

20 A Right.

21 Q And --

22 A It's her understanding that my PS level had
23 risen so high from me straining myself, and that it --
24 it -- I think it's something like she said
25 prostatitis.

1 Q Prostatitis?

2 A Yeah.

3 Q An infection of the prostate --

4 A Yeah.

5 Q -- right?

6 A Yeah.

7 Q So we agree that you did have an infection
8 but it was not sexually transmitted, right?

9 A If prostatitis is an infection, yes, that's
10 what I was diagnosed with. But instead of them
11 treating the accident, all they was thinking about is
12 that -- even all the peoples at the plant are thinking
13 about, A, you've been out doing something. You've got
14 some kind of transmitted disease, sexual transmitted
15 disease. That was broadcast all up in the office.
16 Instead of them putting the file up, they'd be
17 discussing it.

18 Q Did you also -- you had several visits with
19 Cynthia Hutson --

20 A Yes.

21 Q -- about to -- about treating this prostate
22 infection, right?

23 A Yes.

24 Q Did you also see the company's doctor?

25 A No.

1 ankles, legs and all this, but yet still I was telling
2 them this. And before I got with my knees and all
3 this, I was up there running forklift at the planing
4 mill again knowing that I suppose -- didn't supposed
5 to be on it. And I had an attack and they had to rush
6 me from the planer mill down to the emergency room in
7 Richland.

8 Q Okay. And I understand that, I just -- I'm
9 trying to focus my examination to help get us out of
10 here faster.

11 All right. The date that you saw the
12 occupational health center was January 2nd of 2018?

13 A Okay.

14 Q Is that right?

15 A I guess. That's what it says right there.

16 Q All right. And you were provided this
17 document, right?

18 A Yes, I provided one for work.

19 Q So that you could give it back to West
20 Fraser, right?

21 A Yes.

22 Q And the diagnosis said -- that the return to
23 work says is the same as what Cynthia Hutson said, the
24 prostatitis?

25 A Well, see, you don't understand. There was

1 two different -- there was two different diagnosis
2 given. I was given this and another nurse from
3 another company came in and she gave something, also.

4 Q Okay. Let me see if I can streamline that.
5 You had the diagnosis for the prostate infection.
6 That was one thing, right?

7 A Uh-huh.

8 Q And then there was another -- another injury
9 that was the pulled groin, right?

10 A Uh-huh.

11 Q Is that right?

12 A Yeah, I guess so.

13 Q Okay. Is that what you're saying, there
14 were two things?

15 A Yeah.

16 Q Okay. But the occupational health doctor
17 concurred with what Cynthia Hutson said as far as the
18 prostate infection diagnosis --

19 A Yeah.

20 Q -- right?

21 A Yes.

22 Q Okay.

23 A And he also did the groin thing. He gave
24 that to another -- God, I can't remember that lady's
25 name. But when I brought it back to work and

1 A And they wanted -- they wanted her to sign
2 off on it. And I'm pretty sure you've got a copy of
3 the other one somewhere, you just ain't pulled it out
4 from the other -- that it gave to the other doctor --
5 the other doctor gave to the other woman. Same doctor
6 with the pulled groin muscle and all of that.

7 Q Okay. Let's talk about when you came back
8 to work approximate a week after the November 7, 2017
9 incident.

10 A Uh-huh.

11 Q And tell me -- you talked before about some
12 things that were said to you and some things that you
13 heard. Tell me the first person that made a comment
14 to you about the alleged sexually transmitted disease
15 diagnosis.

16 A Chuck Price.

17 Q All right. What did Chuck Price tell you?

18 A Yeah, I heard you had some kind of disease
19 or infection.

20 Q Did he say anything about it being sexually
21 related?

22 A When you work with a bunch of men, that's
23 what they mean. When you say disease, that's what
24 they mean.

25 Q All right. I understand that your testimony

1 is that's what he meant and that's what you understood
2 him to mean. But I'm asking you did he actually say
3 the words sexual?

4 A I can't -- I can't recall but I'm just
5 telling you what he -- what I know he's saying.

6 Q All right. And you said he said I heard you
7 had some kind of disease or infection?

8 A Yes.

9 Q And why do you believe, Mr. Wise, that that
10 meant a sexually transmitted disease?

11 A Because when you a black man, that's all
12 people think that you supposed to do. That's all they
13 think you do. You got to be some kind of little whore
14 or something like that. That's what people expect of
15 you, but I ain't that man.

16 Q Did Chuck Price say or do anything else that
17 caused you to believe that the statement he made was
18 suggesting you had a sexually transmitted infection?

19 A Yeah, because when I handed him the paper, I
20 said, I don't know who's telling all this bullshit,
21 but read this.

22 Q Well, what paper -- because this is -- this
23 is a week after the November 7 incident so --

24 A Yeah, when I -- I had -- I had a statement
25 that I didn't have nothing and I had my whole doctor

1 A Yeah, for right there.

2 Q All right. Did you say the next person you
3 talked to was George Wilson or Bruce?

4 A I talked to Big Bruce.

5 Q Is that Bruce Young?

6 A Yeah.

7 Q All right. What -- what was your
8 conversation with Bruce Young?

9 A I was telling Bruce, Bruce, this SOB's
10 saying that I got clap.

11 Q You said that? You told Bruce that?

12 A Yeah. And Bruce said, Yeah, I heard him say
13 that. And how he had it, he said -- let me get it
14 right now. He said, Oh, man, I know that ain't right.
15 So I just got on the forklift and left. And as I went
16 to the other shop, I run up on George Wilson and he
17 got to ragging me about it and all this. Well, he
18 didn't say nothing about the clap, he's just telling
19 me about Keith there hollering across the parking lot
20 and told him that I had some kind of infection and got
21 an antibiotic and it wasn't due to the accident. And
22 it went on and on and on from there from different
23 people.

24 Q And the conversation that you had with
25 George Wilson, you approached George Wilson, right?

1 A No, he come asked me how I was doing, and --
2 and he told me that.

3 Q And what was your response?

4 A I say, I'm doing all right. And then he --
5 he told me, he said, Yeah, he hollered across the
6 parking lot and told me that. Then after I came and
7 calmed down a little bit, I went to the office.

8 Q And before we finish with George Wilson,
9 George told that you he heard Keith holler across
10 the --

11 A Keith holler across the parking lot and told
12 him that I -- George asked him how I was doing. Keith
13 hollered across the parking lot and said, He -- let's
14 see. He got some antibiotic and he got an infection
15 and it wasn't due to the accident.

16 Q George told you that he asked Keith how you
17 were doing?

18 A Yeah.

19 Q And Keith hollered across the parking lot --

20 A Uh-huh.

21 Q -- that you had an infection --

22 A Yeah.

23 Q -- and got an antibiotic --

24 A Uh-huh.

25 Q -- and it was not related to the accident?

1 A Right.

2 Q George didn't say that Keith said it was
3 sexual in nature? He didn't come out and use those
4 words, right?

5 A No, he -- you know --

6 Q When was -- sorry.

7 A You know, you keep trying to make a point
8 about it ain't sexual in nature. But you don't
9 understand, when mens talk like that, that's what they
10 talking about, sex. They ain't talking about no just
11 plain infection. Don't you know that?

12 Q Well, no, I don't know that but I do
13 understand that that's your testimony. And I'm just
14 trying to distinguish between what you -- what you're
15 saying is assumed and what was said. That's the only
16 purpose of these questions. And that's why I'm trying
17 to be precise --

18 A Yeah.

19 Q -- so that I have it clear in my head.

20 A Okay.

21 MR. PARKER: Let's take a break.

22 THE WITNESS: And --

23 MR. PARKER: Hold on a minute. Let's take a
24 break for a minute and we'll eat our sandwiches.

25 THE WITNESS: Yeah, you're going to ruin my

1 Nelson, is that what you're saying?

2 A Don't you know it's company policy, you
3 can't be speeding people's health information and
4 especially when it's a lie. Wasn't no truth about
5 that.

6 Q Was it true that you got an antibiotic?

7 A Yeah, it's true about an antibiotic but I
8 ain't had no damn -- I had a disease but there wasn't
9 no transmitted disease. The way he was portraying it
10 was that's what it was. In first place, what gave him
11 the right to even open his mouth about that? What
12 right did he have to say anything about it?

13 Q And the statements that Keith said saying
14 that you had an infection and got an antibiotic that
15 wasn't related to the accident --

16 A Uh-huh.

17 Q -- do you believe that it was Keith's
18 intention to suggest that you had a sexually
19 transmitted disease?

20 A I'm going to tell you one more time. When
21 you're in an environment like that and you said
22 infection, disease, what do you think? You got a --
23 you got a bunch of old dirty ass men there. Now, what
24 do you think?

25 Q Well, I think what your testimony has been,

1 But after this situation, I stayed away from him.

2 Q So prior to this you had no controversy or
3 issues with Keith Nelson?

4 A No.

5 Q You guys never had a disagreement?

6 A No, I ain't disagreed with him. I talk to
7 him just like I -- just like I just said, I talk to
8 everybody.

9 Q Did he talk to you?

10 A Yeah, he talked to me. But after this
11 incident, no, I was done.

12 Q All right. And so I'm going to just focus
13 on before this incident. Before this incident were
14 you and Keith friendly at work?

15 A Not friendly. We were just working
16 companions.

17 Q All right. You were cordial at work?

18 A Yeah, he -- he would see me working and
19 he'll come back and speak to me, Hopper. Because the
20 part you don't understand is I'm a go-getter. I do a
21 job. When I say I do a job, I do a job. You know,
22 you've got people that go to work just to be at work
23 for a paycheck. No, I'm there doing a job. I get
24 paid for it so I do it.

25 Q You're a hard worker, right?

1 A Yeah.

2 Q A model employee, right?

3 A Yeah.

4 Q And Keith Nelson knew that, right?

5 A Yeah, everybody there knows that.

6 Q Everybody at West Fraser knew that, right.

7 A Yeah.

8 Q All right. So Keith Nelson never had any
9 beef with you, he never had any reason to criticize
10 you, right?

11 A No.

12 Q And you guys never exchanged any, I don't
13 know, insults or name-calling, nothing like that?

14 A No, no, no, no, no, no, no, uh-uh.

15 Q No bad feelings that you're aware of --

16 A Not --

17 Q -- between you and --

18 A Not --

19 Q -- Keith Nelson?

20 A Not -- not on my part because, like I said,
21 I try to live and let live. I don't be bothering
22 people.

23 Q And you don't have any reason to believe or
24 to testify that before this incident Keith Nelson had
25 any bad feelings towards you, right?

1 A My mama loved her.

2 Q Did they visit or talk regularly?

3 A Yeah.

4 Q Do you know whether Pauline talked to your
5 mom about this incident?

6 A I don't know. She ain't -- she ain't never
7 said anything to me about it.

8 Q Is Keith Nelson the only West Fraser
9 employee that you -- that you assign any fault to with
10 regard to your defamation claim?

11 A Yes. It was his fault and the company.

12 Q And why do you believe it's the company's
13 fault?

14 A He's an agent of the company. Therefore he
15 represents the company. Now, if the company didn't
16 have sense enough to do the right thing, it's their
17 fault. So they just as much to blame as he is.

18 Q And by "the right thing" you're referring to
19 what we already talked about about calling you and
20 your wife in to meet --

21 A The right thing was -- you know, we wouldn't
22 be sitting here if they had terminated him. I
23 wouldn't have had a case.

24 Q All right. Your wife -- you've alluded to
25 this but I haven't really asked you questions about

1 you about those specifically, but those are all of the
2 categories of damages that you're claiming in the
3 lawsuit, right?

4 A Uh-huh.

5 Q Right? Yes?

6 A Yes.

7 Q Okay.

8 A I'm sorry.

9 Q All right. How do you -- how do you claim
10 that your reputation has been affected as a result of
11 the alleged defamation?

12 A You know, it's like I told you earlier, I
13 don't bother nobody. But now people looking at me in
14 a different light. You're a damn cheat, you're no
15 good, you run around on your wife and --

16 Q Who said that to you?

17 A That's -- that's -- that's what I'm -- I'm
18 seeing. You know when -- when people start making
19 their little accusations and all that, it's always
20 something behind it whether you get it or you don't.

21 Q Well, some of these -- some of these people,
22 for instance your co-workers that you identified on
23 Page Number 2 of that same exhibit --

24 A Uh-huh.

25 Q -- you told me that some of them told you

1 that they didn't believe the rumors.

2 A Whether they believe it or not it's out
3 there. It ain't -- whether -- whether -- it's more or
4 less people lie all the time. And which one is easier
5 to believe, the truth or a lie?

6 Q But if, in fact, the person did not believe
7 the rumor --

8 A That's just --

9 Q -- your -- your reputation, at least in
10 their eyes, hasn't been damaged, right?

11 A That's just what they say. That's what they
12 say. You know, they can say anything just like
13 they're likely to come in here and tell you anything
14 now, but that don't necessarily make it true.

15 Q I understand. Is there anyone who has --
16 who has told you -- because I think -- I think you've
17 testified about what you believe people's opinions to
18 be of you now, right?

19 A Yeah.

20 Q That's what you just described.

21 A Uh-huh.

22 Q Is there anyone who has expressed to you
23 that they have a lower opinion of you or of your
24 reputation since hearing the rumors about the STD
25 diagnosis?

1 A Well, let me tell you the one that really
2 matters to me. The one that I live with every day.
3 You know, I have to wake up in the morning and look in
4 her face. And some mornings she have that frown on
5 her face and I know that this is eating at her and
6 what can I say if she knows it's not true but yet
7 still that ain't stopping her from thinking all kind
8 of crazy things.

9 Q Before we move on to -- to your wife, is
10 there -- has anybody, whether at West Fraser or
11 otherwise in the community, has anybody expressed to
12 you that their opinion of you or your reputation is
13 lower because of this incident?

14 A Do you actually believe somebody's going to
15 come to you and say, Well, you know, I got a low
16 opinion of you now?

17 Q So the answer's no?

18 A What I'm saying is that I don't know.

19 Q You don't know --

20 A I don't know -- like I tried to explain to
21 you, I don't know what people think. They can tell
22 you one thing and it'll be a whole different scenario.

23 Q Fair enough, but no one has told you that,
24 right?

25 A Face to face?

1 regardless whether it's true or not. In this case it
2 wasn't true.

3 Q Is that what you believe?

4 A Yeah.

5 Q If you heard that a black man had an
6 infection, would you assume it was a sexual infection?

7 A No, I don't -- I don't like to assume
8 things. When you assume, you make a fool of me and
9 you, so I don't like to assume things.

10 Q So you personally don't believe that and you
11 personally would not assume that, right?

12 A No, I ain't going to assume that. You know,
13 in the first place, I wouldn't even try to think that
14 because I know how I feel about it and it's not a good
15 feeling.

16 Q But nonetheless, you think that the majority
17 of people, whether they're black or white, if they
18 hear that a black man has an infection, they assume
19 it's sexually --

20 MR. PARKER: I object. You're -- again,
21 done the exact same thing. He didn't say what
22 you're saying.

23 MS. MCCLURKIN: I didn't say he testified to
24 it. I'm asking him what he thinks.

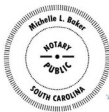
25 MR. PARKER: No, you didn't. You said --

CERTIFICATE OF REPORTER

I, MICHELLE BAKER LEE, Certified Court Reporter and
Notary Public for the State of South Carolina at Large, do
hereby certify:

That the foregoing deposition was taken before me on
the date and at the time and location stated on page 1 of
this transcript; that the deponent was duly sworn to
testify to the truth, the whole truth and nothing but the
truth; that the testimony of the deponent and all
objections made at the time of the examination were
recorded stenographically by me and were thereafter
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I further certify that I am neither related to nor
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affixed my signature this 19th day of January, 2020, at
Taylors, Greenville County, South Carolina.



Michelle Baker Lee
Court Reporter
Notary Public
State of South Carolina at Large
My Commission Expires:
October 29, 2028

ANTHONY WISE,

Plaintiff,

V.

KEITH E. LEAP, et al.

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2019-CP-36-00103

DEFENDANT WEST FRASER, INC.'S
MOTION FOR SUMMARY JUDGMENT

EXHIBIT 2

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY C/A No.: 2019-CP-36-00103

ANTHONY WISE,

Plaintiff,

v.

KENNETH E. LEAP, NEWBERRY
HOSPITAL, LLC D/B/A NEWBERRY
COUNTY MEMORIAL HOSPITAL and
WEST FRASER, INC.,
Defendants.

VIDEOTAPED

DEPOSITION OF: KEITH NELSON
DATE: December 18, 2019
TIME: 4:38 p.m.
LOCATION: Pope Parker Jenkins, P.A.
 1508 College Street
 Newberry, South Carolina 29108
TAKEN BY: ATTORNEYS FOR THE DEFENDANT
 WEST FRASER, INC.

REPORTED BY: MICHELLE BAKER LEE,
 Certified Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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EXHIBIT
2

1 A No. The first probably about two and a half
2 or so years I was in maintenance department. But at
3 the facility itself, though, yes.

4 Q Right. And then you changed from
5 maintenance to what?

6 A Environmental health and safety coordinator.

7 Q And you were that for the rest of your time?

8 A Right, for roughly 20 years, let's say.

9 Q And you work with Anthony Wise, correct?

10 A Right. He's at the facility.

11 Q And how -- how well do you know Anthony? Do
12 you know him fairly well?

13 A I mean, I'm -- you know somebody like that
14 in -- and what I mean like that is an employee there,
15 especially that's on day shift, I mean, you pretty
16 much see them every day.

17 Q Right.

18 A You know, it's -- it's a small facility.

19 Q Yeah, I got you. And we're here about an
20 office visit -- not an office visit, but a visit that
21 you made to the hospital with Anthony to the Newberry
22 Hospital. Do you recall that?

23 A I do.

24 Q And tell me what you recall about that.

25 A Like from the beginning beginning?

1 came in there and then I heard the doctor talking to
2 him in there, in the room. So I didn't enter the
3 room, I stayed out in the hallway, okay.

4 Q Okay.

5 A And it was like a -- because you can hear.
6 I mean, it's just a draw curtain.

7 Q Right.

8 A It was like a release, you know, okay, don't
9 lift so and so, you know, and all that. So when the
10 doctor left, I went to the doctor. I said, Okay, doc,
11 you know, what's going on, you know. And the doctor
12 told me he has -- he has an infection so I gave him a
13 prescription or here's a prescription because he has
14 an infection, something along those lines. And that
15 was myself and the doctor off one on one, okay.

16 And it's pertinent I know this because if it
17 is a workers' comp case, I've got to put that
18 information in the OSHA log and all. Plus, I've got
19 to let our employer at corporate know the diagnosis
20 and all this stuff.

21 Q And the doctor you met with was -- who was
22 the doctor, if you recall?

23 A I don't remember the last name.

24 Q Was it Dr. Keith Leap?

25 A I cannot answer that, sir.

1 Q And --

2 A I mean, I cannot answer that because I don't
3 know, not because I don't want to answer. I just
4 don't remember something from two years ago.

5 Q What kind of infection did the doctor tell
6 you that he had?

7 A He didn't.

8 Q He didn't, he just said he had an infection?

9 A He has an infection.

10 Q And didn't tell you anything about the
11 nature of it?

12 A No, sir.

13 Q Did he --

14 A Not myself, he didn't.

15 Q Who did he tell about the nature --

16 A I -- okay. The next part of the story is,
17 so Anthony got released. So he got a prescription. I
18 had the prescription so I go over there and over to
19 their vehicle, and Anthony is, like, very, very upset.
20 I mean, he's pretty -- pretty ticked off. And Anthony
21 told me that the doctor asked him something along the
22 lines of like multiple sexual partners or something
23 along those lines. That's why Anthony was really
24 upset, okay. I didn't hear any of this. First I
25 heard about it was coming from Anthony himself.

1 Q Right, him telling you what the doctor --

2 A Him telling me what the doctor told him.

3 Q And what exactly, if you would be as
4 specific as you can about that, about what Anthony
5 told you about what the doctor said.

6 A I want to -- again, I want to say like
7 multiple sexual partners or something along those
8 lines.

9 Q And was his wife there when he was saying
10 that?

11 A I'm pretty sure she was right there. Like I
12 say, he was -- he was -- he was pretty doggone ticked
13 off. I mean, after a while, you know, years of
14 knowing somebody, you can tell when they're really
15 pretty ticked off and he was pretty ticked off out
16 there. He was really upset about -- you know,
17 about -- about that.

18 Q And so that was the first you heard of that,
19 you didn't hear the doctor tell that?

20 A I did not.

21 Q When you were there and the doctor -- the
22 doctor was talking to Anthony, was his wife there?

23 A I don't know because the curtain was drawn.
24 I did not go into the room. I was coming up on the
25 room from the visitor's -- what's -- visitor's center,

1 is that what it's called in the hospital? The waiting
2 room area. I was coming, they had the curtain drawn,
3 and I could hear a man's voice in there that I knew
4 was not Anthony's voice, okay.

5 Q So you assumed it was the doctor?

6 A Right. Well, I found out it was the doctor
7 when the doctor come --

8 Q Came out?

9 A -- opened the curtain and came out, and
10 that's when I tracked the doctor down and say, Okay,
11 you know -- you know, what's the diagnosis, you know.
12 I mean, you know, what's going on here.

13 Q And --

14 A And the doctor told me -- that's when he
15 told me, Well, I wrote him a prescription because he
16 has an infection or he has an infection so here's a
17 prescription for him or something along those lines.

18 Q What was the prescription for?

19 A I --

20 Q You don't know?

21 A I have no idea, sir.

22 Q And then did you go to the drugstore with
23 Anthony and his wife to get the prescription filled?

24 A I do not remember that, neither.

25 Q You don't know. Would that be something you

1 would --

2 A That would be something I could do or that
3 could be something that -- that I might not do, and
4 it's all based off whether I have the prescription
5 form from the workers' comp people that -- that will
6 get filled out, okay. Plus, a lot of it has to do
7 with if there was a prior -- like that employee years
8 ago or something had a prior injury because they would
9 already have that employee's information at the CVS.

10 Q All right. When Anthony that morning told
11 you he had a problem and needed -- he thought he
12 needed medical attention, where did he describe the
13 pain that he was having early in that morning?

14 A In his groin-type area.

15 Q And that was the pain the whole time that
16 you were with him that day? Did he have pain in that
17 area the whole time you were with him?

18 A He didn't -- he didn't speak of no other
19 area where he had pain.

20 Q I mean, was it obvious he was in pain?

21 A Oh, he was in pain, yeah. Yeah, he was in
22 pain.

23 Q And you could tell that he was suffering?

24 A He was very uncomfortable.

25 Q And he was that way when he went in the

1 A To the best of my knowledge. I mean,
2 they --

3 Q So they left?

4 A They could have went to Cracker Barrel.

5 Q Right.

6 A I mean, I don't know.

7 Q I got you. They could have gone anywhere?

8 A Right, they -- they left.

9 Q Right.

10 A Okay.

11 Q And then you went back to work?

12 A I did.

13 Q And did you tell anybody at work anything
14 about what had happened at the hospital?

15 A I did.

16 Q And who did you tell about it?

17 A The first person would have been Mr. George
18 Wilson.

19 Q And what did you tell Mr. George Wilson?

20 A I told him pretty -- pretty much what the
21 doctor told me.

22 Q All right. What --

23 A It would either be -- George -- George is a
24 maintenance guy in Anthony's department, okay, a
25 department of probably ten people so they know each

1 other, okay.

2 George was up front up at the front office
3 doing work on a gate or a fence or something up there.
4 And I come back, and throughout my 20 years of doing
5 this, I constantly have employees asking if I take an
6 employee somewhere, how are they doing. I mean, it's
7 just human nature. You know, they're -- they're a
8 co-worker.

9 So George asked me, he said, How's Hop? And
10 I said, He's doing fine. He has an infection so he
11 got a prescription, or he's doing fine, he got a
12 prescription because he has an infection. And then
13 that was the end of the conversation with George. And
14 then from there I went to the plant manager and talked
15 to the plant manager behind closed doors.

16 Q And who was that?

17 A DJ Russell.

18 Q What did you tell him?

19 A Pretty much the same thing except I did add
20 to the fact to DJ, being the plant manager, the
21 conversation with Hop out in the parking lot. I said,
22 Hop is very upset because he reported to me that the
23 doctor told -- asked him or told him about the
24 multiple sexual partner thing. But that stayed -- it
25 was myself and the facility manager.

1 Q And what did you tell Mr. Russell when you
2 talked to him specifically?

3 A Pretty much the same thing. You know,
4 when -- when something like -- something like this,
5 you know, you got to talk to the doctor to find out
6 what's going on. So first thing I'm thinking of,
7 okay, when -- when the doctor tells me that is, okay,
8 well, you can't have like an incident happen and then
9 have an infection like an hour and a half later, you
10 know. So my first thought is, okay, this is not
11 workers' comp related. He aggravated some
12 pre-existing condition he had, okay. By lifting the
13 hood or whatever he was doing on the forklift, he
14 strained something, that he had some pre-existing
15 condition.

16 So from a workers' comp perspective, I was
17 very relieved that he had an infection because, you
18 know, I didn't have to go through no reporting to
19 OSHA, so on and so forth. So when I come back from
20 the hospital, I was relieved as far as a workers' comp
21 perspective goes.

22 Q So you knew it wasn't going to be a real
23 workers' comp?

24 A I knew it was not going to be a workers'
25 comp because that's just -- you know, it is what it is

1 but that's just a tremendous amount of paperwork and
2 all that.

3 Q All right. You did not tell George Wilson
4 that Anthony had an infection, an STD, and was given
5 an antibiotic?

6 A Absolutely not. I never used that word or
7 those words or that abbreviation or anything along
8 those lines.

9 Q Did you tell Mr. George Wilson anything it
10 could be from which that could be inferred?

11 A No. The fact -- and I still feel the fact
12 that I says he got a prescription because he has an
13 infection, I was not referring to anything nor did I
14 meant for it to be referred to anything except exactly
15 what I said.

16 Q And you're sure you did not tell George
17 Wilson the part about what Anthony said about having
18 many sexual partners --

19 A I'm absolutely sure.

20 Q -- told him by the doctor? You're
21 absolutely sure the only person you told that to was
22 Mr. Russell?

23 A Right.

24 Q Did it get around the plant that -- that
25 Keith had -- excuse me, Keith, I apologize. That

1 Q Did Mr. Russell at anytime tell you that he
2 or the company considered the statement that you made,
3 which according to you was that Hop has an infection
4 and got a prescription --

5 A Uh-huh.

6 Q -- was slanderous?

7 A No.

8 Q When you said that -- when you made that
9 statement to George Wilson --

10 A Uh-huh.

11 Q -- did you believe it to be true?

12 A Absolutely. What, the statement?

13 Q The statement that Hop had an infection.

14 A And he got a prescription or he got a
15 prescription because he had an infection --

16 Q Yes, yes.

17 A -- one or the other, yes, absolutely.

18 Q Did you have any reason to believe that
19 George Wilson would go and repeat the statement that
20 you made?

21 A I had no -- no, I -- I had no reason to
22 believe it would be repeated.

23 Q In your mind at the time --

24 A Uh-huh.

25 Q -- was there anything wrong with disclosing

1 the information that you did to George Wilson?

2 A No.

3 Q In you're mind at the time was there
4 anything that was going to cause injury or cause harm
5 to Mr. Wise?

6 A Absolutely not.

7 Q At anytime after disclosing this information
8 to Mr. Wilson --

9 A Uh-huh.

10 Q -- after you told him that Hop had an
11 infection and needed a prescription --

12 A Uh-huh.

13 Q -- or got a prescription --

14 A Uh-huh.

15 Q -- did it occur to you that that information
16 would lead someone to conclude that Hop had contracted
17 a sexually transmitted disease?

18 A No, no. I would -- if I even remotely
19 remotely considered that, I would have never said
20 anything except to Mr. Russell.

21 Q Sitting here --

22 A I mean, just like I said, throughout the
23 years you just -- you know, I've mentioned several
24 employees, you know, sprain, you know, have negative
25 X-rays so -- so I considered all that just routine

1 Mr. Hop. Mr. Wise was assigned to the shipping
2 department when this incident occurred, correct?

3 A Right. He's -- he was like temporary
4 assigned because they needed a forklift driver. You
5 know, for whatever reason, he was in the shipping
6 department, working in the shipping department which
7 he normally doesn't work in.

8 Q His normal department was the kiln
9 department?

10 A Correct.

11 Q And his normal supervisor was Mike Shealy,
12 correct?

13 A Right.

14 Q And during the times that he was assigned to
15 other departments like the shipping department --

16 A Uh-huh.

17 Q -- was -- who was the person who was
18 responsible for keeping up with -- with Mr. Wise's
19 time?

20 A Mr. Shealy.

21 Q And that did not change even though Mr. Wise
22 was assigned to another department?

23 A Not that I'm aware of it didn't change.

24 Q And when you talked to Mr. Shealy about --

25 A Uh-huh.

1 Q -- about this incident, it was for the
2 purpose of communicating to Mr. Shealy that this would
3 affect Hop's hours and how he was going to be
4 compensated and his absences?

5 A Right.

6 MS. MCCLURKIN: Let's go off the record just
7 for one minute. I think --

8 THE WITNESS: We're doing what now?

9 MS. MCCLURKIN: We're going to go off the
10 record just for a minute.

11 THE WITNESS: Okay.

12 MS. MCCLURKIN: And then I think we're
13 probably going to let you go --

14 THE WITNESS: Okay. Good.

15 MS. MCCLURKIN: -- if no one else has
16 questions.

17 THE VIDEOGRAPHER: We're going off the
18 record at 1800 hours 1 minute 45 seconds.

19 (A break was taken.)

20 THE VIDEOGRAPHER: We're going back on the
21 record at 1800 hours 3 minutes 32 seconds to
22 complete this video deposition. We created one
23 media file. Off the record at 18:03:40.

24 (The reading and signing were waived.)

25 (The deposition concluded at 6:03 p.m.)

CERTIFICATE OF REPORTER

I, MICHELLE BAKER LEE, Certified Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof. Witness my hand, I have hereunto affixed my signature this 19th day of January, 2020, at Taylors, Greenville County, South Carolina.



Michelle Baker Lee
Court Reporter
Notary Public
State of South Carolina at Large
My Commission Expires:
October 29, 2028

ANTHONY WISE,

Plaintiff,

V.

KEITH E. LEAP, et al.

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2019-CP-36-00103

DEFENDANT WEST FRASER, INC.’S
MOTION FOR SUMMARY JUDGMENT

EXHIBIT 3

Page 1

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

ANTHONY WISE,

Plaintiff,

vs.

CASE NO. 2019-CP-36-00103

NEWBERRY HOSPITAL, LLC, d/b/a NEWBERRY COUNTY

MEMORIAL HOSPITAL, WEST FRASER, INC.,

Defendants.

DEPOSITION OF: ANTHONY CANNON

DATE: December 19, 2019

TIME: 2:17 PM

LOCATION: Pope Parker Jenkins
1508 College Street
Newberry, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: AMY R. COPE,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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EXHIBIT

3

1 November 7th, 2017, and I'm talking about the
2 accident where Mr. Wise was hurt working on a
3 forklift, you were coming off work at the
4 nightshift, right?

5 A. Yes, ma'am.

6 Q. And about what time would that have
7 been?

8 A. We get off at 6:00. So probably about
9 five minutes after 6:00, something like that.

10 Q. And as you're leaving the mill, are
11 other people leaving with you?

12 A. Just me and my lead man at the time.

13 Q. It was just you and your lead man?

14 A. Yeah. Uh-huh.

15 Q. And both of you saw Anthony Wise after
16 he had been injured, right?

17 A. Yes.

18 Q. And could you tell -- did he appear to
19 be in pain?

20 A. Couldn't really tell, but he was
21 holding his self though, so you know...

22 Q. Was he holding himself in his groin
23 area?

24 A. Yes.

25 Q. So it was clear to anyone who saw him

1 where he was hurt?

2 A. Yes.

3 Q. And when your lead man, Robert Johnson,
4 when he cracked the joke, there's nothing wrong
5 with you, you've probably just been with some
6 woman --

7 A. Sorry.

8 Q. -- did -- he made that joke in response
9 to seeing Anthony holding his groin?

10 A. Yes, but they always back and forth at
11 one another. So, you know, I didn't seem to take
12 it serious myself.

13 Q. No, I understand. But my question was:
14 Robert saw Anthony holding his groin and then
15 that's what led him to crack the joke?

16 A. Yes.

17 Q. Did he say it where Anthony could hear
18 him?

19 A. Yeah, I would assume. I mean, he was
20 standing right there with him, I walked off, ma'am.

21 Q. Okay. Did Anthony say anything in
22 response?

23 A. I do not know.

24 MS. MCCLURKIN: Nothing else.

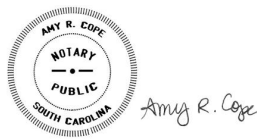
25 MR. PARKER: Thank you so much.

CERTIFICATE OF REPORTER

I, Amy R. Cope, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete
record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 13th day of January,
2020 at Columbia, Richland County, South Carolina.



Amy R. Cope, Court Reporter
My Commission expires
June 14, 2028

Page 1

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

ANTHONY WISE,

Plaintiff,

vs.

CASE NO. 2019-CP-36-00103

NEWBERRY HOSPITAL, LLC, d/b/a NEWBERRY COUNTY

MEMORIAL HOSPITAL, WEST FRASER, INC.,

Defendants.

DEPOSITION OF: GEORGE WILSON

DATE: December 19, 2019

TIME: 1:26 PM

LOCATION: Pope Parker Jenkins
1508 College Street
Newberry, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: AMY R. COPE,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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EXHIBIT

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1 qualified mill right.

2 Q. You're 41 years, so when are you going
3 to retire?

4 A. Well, I'm going to have to wait until I
5 get those numbers first before I retire.

6 Q. How old are you now?

7 A. 60.

8 Q. You've got a few more years. You going
9 to try to go out at 65?

10 A. I don't want to wait that long.

11 Q. You're going to go out earlier?

12 A. Yes, sir.

13 Q. Try to get to 62. Let me ask you: How
14 long have you known Anthony Wise?

15 A. About the length of time he been
16 working there. I didn't know him before then.

17 Q. You didn't know him before?

18 A. No, sir.

19 Q. And we're here about an event that
20 happened in November of '17, when Anthony got hurt
21 at work and pulled his groin and went to the
22 hospital. Do you recall that?

23 A. See, I didn't never know the detail as
24 to what happened. I was just asked -- one of the
25 employees or a few of the employees asked me is he

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1 all right and I didn't even know anything happened.
2 So what happened is I went to the scale house --
3 not the scale house, the shipping department, so I
4 went to see what they wanted. And when I went up
5 there and they asked me how was Anthony doing and I
6 said what happened -- they said something about
7 what happened. I didn't really recall everything
8 that had happened. So at that time, the human
9 resource lady need me to do something, so I went in
10 the office.

11 And I went in the office to see what
12 she wanted and when I came out of the office and I
13 was headed back to shipping, I seen Keith walking
14 across and I seen Keith and I asked, Keith, what
15 happened to Anthony? I said, how was he doing?
16 The only thing he said was that Anthony -- the
17 doctor said he had an infection. And that's all he
18 said. And then when he mentioned that and I
19 stepped back in the shipping department and the
20 guys asked me how is Anthony, I said, well, I just
21 seen Keith and Keith said he had an infection. And
22 I mentioned that and I went on and went to do
23 whatever I need to do.

24 I ended up back to the dry kiln and the
25 guys asked me at the dry kiln how was Anthony doing

1 and I said Keith said that he had an infection, so
2 as to what happened before then, I really don't
3 recall. I didn't go into no detail with nobody
4 because I didn't know.

5 Q. Did you later hear that there were
6 people saying that Anthony had a sexually
7 transmitted disease?

8 A. I heard that from Anthony, nobody else.

9 Q. You heard that people were saying that?

10 A. I heard it from him.

11 Q. That people were saying that about him?

12 A. Yes, sir.

13 Q. He was making a complaint about it?

14 A. I assume that's what he was doing at
15 the time.

16 Q. Did he tell you who was doing it?

17 A. He didn't tell me who said anything, he
18 just said the guys was saying that.

19 Q. Did Mr. Nelson also tell you that
20 Anthony was getting an antibiotic for the
21 infection?

22 A. I don't recall him telling me that. I
23 don't recall him telling me that at all. Like I
24 said, when he mentioned the infection, that was the
25 end of the conversation, as far as Keith is

1 concerned.

2 Q. And you didn't hear any other talk
3 around the plant about Anthony and his having been
4 told that he had some type of sexually transmitted
5 disease?

6 A. Everything I heard about that came from
7 Anthony, I hadn't heard it from anybody else. I
8 don't deal with talk like that, I stay away from
9 talk like that, like I always have done since I
10 been working there.

11 Q. When Anthony talked with you and told
12 you about what people were saying about him, was he
13 upset?

14 A. Oh, yeah, he was upset.

15 Q. He was upset that people were talking
16 about him?

17 A. Yes, sir.

18 Q. And anything else that you know about
19 this, anything?

20 A. No, sir.

21 MR. PARKER: Answer any questions the
22 gentlemen may have for you.

23 EXAMINATION

24 BY MR. HAILE:

25 Q. Mr. Wilson, Shelton Haile, I represent

1 the hospital. You did not go to the hospital with
2 Mr. Wise; did you?

3 A. No, sir.

4 MR. HAILE: That's all I've got. Thank
5 you.

6 EXAMINATION

7 BY MS. MCCLURKIN:

8 Q. Mr. Wilson, when you asked Keith Nelson
9 how Anthony was doing --

10 A. Uh-huh.

11 Q. -- you testified that you asked because
12 you were concerned about Anthony's well-being,
13 right?

14 A. Yes, ma'am.

15 Q. And when Keith answered you and told
16 you that Anthony had an infection, do you think or
17 did it appear to you that Keith had any kind of
18 improper motive in telling you that?

19 A. No, because my father in 1999 had a
20 stroke and from that day on for 15 years he lived
21 after that stroke, Keith always asked me how he was
22 doing. So I can't sit there and say that, you
23 know, he had some ulterior motives because he's
24 always been the type of person that if something
25 happened to somebody's family member, I mean, he

1 asks how they doing. A lot of us do that. I don't
2 see that. I hasn't seen that since I been working
3 there.

4 Q. Describe your working relationship with
5 Anthony. And by that I mean, at the time that this
6 happened, did you work closely together?

7 A. Yeah, we still had a job to do,
8 whenever the dry kiln goes down, after so many
9 months we have to go inside and repair anything,
10 things of that nature. I mean, we did what we had
11 to do as far as that. But as far as the
12 conversation about this situation here, I had got
13 to a point I didn't want to hear anymore because
14 when you keep talking about him now it just get
15 worse. And when you keep listening to things that
16 people say, that just makes things worse and so you
17 don't do anything but upset yourself. So I was
18 trying to encourage him to try to make peace with
19 the situation, but he didn't want to listen that.

20 So I try to avoid talking about it
21 anymore because it was really getting on my nerves
22 because it was always about the same thing and it
23 was always something negative about -- not just
24 this, other negative stuff that he would talk about
25 all the time. So I just got tired of hearing it

1 and I try to avoid the situation because it was
2 just making matters worse.

3 Q. When you say you got tired of hearing
4 it, you mean you got tired of hearing it from
5 Anthony?

6 A. Yeah, not nobody else. I didn't hear
7 nothing from nobody else. I was just hearing it
8 from him.

9 Q. When you asked Keith how Anthony was
10 doing and he answered, about how far away were you
11 standing from Keith?

12 A. It may have been about 20 foot,
13 somewhere along in there.

14 Q. Okay. Do you remember whether anyone
15 was in the area who might have overheard?

16 A. No one was in the area. No one was in
17 the area.

18 MS. MCCLURKIN: I don't have anything
19 else. Thank you for coming.

20 (The witness, after having been advised
21 of his right to read and sign this transcript,
22 waives that right.)

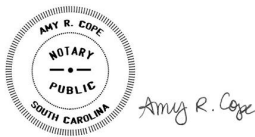
23 (The deposition was concluded at 1:36 PM.)
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I, Amy R. Cope, Court Reporter and
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Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete
record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 12th day of January,
2020 at Columbia, Richland County, South Carolina.



Amy R. Cope, Court Reporter
My Commission expires
June 14, 2028

ANTHONY WISE,

Plaintiff,

V.

KEITH E. LEAP, et al.

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2019-CP-36-00103

DEFENDANT WEST FRASER, INC.'S
MOTION FOR SUMMARY JUDGMENT

EXHIBIT 5

Page 1

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

ANTHONY WISE,

Plaintiff,

vs.

CASE NO. 2019-CP-36-00103

NEWBERRY HOSPITAL, LLC, d/b/a NEWBERRY COUNTY

MEMORIAL HOSPITAL, WEST FRASER, INC.,

Defendants.

DEPOSITION OF: MIKE SHEALY

DATE: December 19, 2019

TIME: 11:18 AM

LOCATION: Pope Parker Jenkins
1508 College Street
Newberry, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: AMY R. COPE,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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EXHIBIT

5

1 we're here about. Do you know about the case about
2 the fact that he's brought a suit because he was
3 slandered by saying he had a sexually transmitted
4 disease. Do you know that it's going on?

5 A. Yes, sir.

6 Q. And what do you know about the case?

7 A. Very little.

8 Q. Did you hear people talking about it?

9 A. Not really.

10 Q. You didn't hear anybody saying that he
11 had a sexually transmitted disease?

12 A. Not come out and say that, no, sir.

13 Q. Did you hear Mr. Nelson, Keith Nelson,
14 say anything about it?

15 A. No, sir.

16 Q. Then -- did you ever talk with Keith
17 Nelson about it?

18 A. Yes, sir. I was Anthony's direct
19 supervisor at the time and he called me in and told
20 me that he had an infection and may be out, you
21 know, some time because I do his time.

22 Q. Keith Nelson told you that?

23 A. Yes, sir.

24 Q. Did he tell you what kind of infection
25 he had?

1 A. No, sir.

2 Q. Did you ever learn what kind of
3 infection he had?

4 A. Not what he had, no, sir.

5 Q. Did you ever hear anybody around the
6 plant saying that he had a sexually transmitted
7 disease?

8 A. Well, it could have been something
9 floating, but no, sir.

10 Q. Did you hear people saying that,
11 floating that?

12 A. No, sir, not really.

13 Q. But did you know they were, there was
14 talk around the plant?

15 A. I heard there was talk, but I try to
16 stay away from it.

17 Q. Do you recall anybody involved in that
18 talk?

19 A. No, sir.

20 Q. And do you still work with Mr. Wise?

21 A. Oh, yeah.

22 Q. Are you his supervisor?

23 A. Yeah, he works second shift with us --
24 well, for me.

25 Q. Do you know anything else about this?

1 A. Not really.

2 MR. PARKER: Well, we appreciate you
3 coming. Thank you.

4 EXAMINATION

5 BY MR. HAILE:

6 Q. Mr. Shealy, real quick, I represent the
7 hospital. You didn't go to the hospital with
8 Mr. Wise when he got hurt; did you?

9 A. No, sir.

10 Q. You don't have any idea what the doctor
11 said or didn't say to him; do you?

12 A. No, sir.

13 MR. HAILE: Okay. That's all I've got.
14 Thank you.

15 EXAMINATION

16 BY MS. MCCLURKIN:

17 Q. Let me just ask one question. You've
18 known Mr. Wise for quite a long time, right?

19 A. Yes, sir -- yes, ma'am.

20 Q. You worked together before at Georgia
21 Pacific; is that right?

22 A. That's right.

23 Q. And the rumors that were floating
24 around that you may have heard about this STD and
25 if Mr. Wise had it, did that change your opinion of

Page 8

1 Mr. Wise in any way?

2 A. No.

3 MS. MCCLURKIN: Thanks. You're free to
4 go.

5 (The witness, after having been advised
6 of his right to read and sign this transcript,
7 waives that right.)

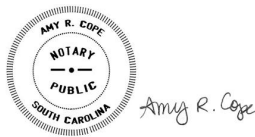
8 (The deposition was concluded at 11:21 AM.)
9
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CERTIFICATE OF REPORTER

I, Amy R. Cope, Court Reporter and
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transcript is a true, accurate, and complete
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I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 12th day of January,
2020 at Columbia, Richland County, South Carolina.



Amy R. Cope, Court Reporter
My Commission expires
June 14, 2028

ANTHONY WISE,

Plaintiff,

V.

KEITH E. LEAP, et al.

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2019-CP-36-00103

DEFENDANT WEST FRASER, INC.’S
MOTION FOR SUMMARY JUDGMENT

EXHIBIT 9

Page 1

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

ANTHONY WISE,

Plaintiff,

vs.

CASE NO. 2019-CP-36-00103

NEWBERRY HOSPITAL, LLC, d/b/a NEWBERRY COUNTY

MEMORIAL HOSPITAL, WEST FRASER, INC.,

Defendants.

DEPOSITION OF: DOLAN J. RUSSELL

DATE: December 19, 2019

TIME: 11:54 AM

LOCATION: Pope Parker Jenkins
1508 College Street
Newberry, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: AMY R. COPE,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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	Asheville, NC	
	(828) 398-1840	

EXHIBIT

9

1 is the production superintendent. One of those two
2 made me aware of it, but I'm not entirely certain
3 now which one talked to me about it first.

4 Q. When did you first talk with Keith
5 Nelson about it, if you recall?

6 A. Well, I know Keith talked to me after
7 he took the employee to the doctor. And I cannot
8 say with all certainty exactly what Keith told me
9 that day, other than -- I feel rather certain, you
10 know, he said he had an infection and that it
11 probably wasn't going to be work-related.

12 Q. He has testified, and I don't want to
13 misquote him, but in essence said that he told you
14 about what the doctor said about Mr. Wise having
15 multiple sex partners; do you recall that?

16 A. No, sir.

17 Q. You don't remember him saying that?

18 A. No, sir. There's only one person I've
19 heard that has brought that up in front of my
20 presence.

21 Q. And who was that?

22 A. That was Anthony Wise in a meeting with
23 myself and the regional manager.

24 Q. And he would have been the only one
25 that -- he came to you complaining about it?

1 A. Yes, sir.

2 Q. And I've got -- I'm going to hand you
3 what's been marked as Exhibits 1, 2 and 3, which I
4 assume are your notes. I'm going to ask you if
5 they are, but I'm assuming that they are.

6 A. Yes, sir, that is my poor handwriting.

7 Q. Do you have any notes other than that?

8 A. That I personally made?

9 Q. Or anybody made?

10 A. I think there are some more. I had my
11 administrative manager take notes. The regional
12 manager took notes when he met --

13 MS. MCCLURKIN: He's asking you about,
14 I think, asking you about notes that you made.

15 THE WITNESS: Oh, no, sir.

16 BY MR. PARKER:

17 Q. No, I asked him -- the question was and
18 he answered correctly if he had any other notes,
19 was the question --

20 MS. MCCLURKIN: I apologize.

21 BY MR. PARKER:

22 Q. -- and you said you've got notes from
23 who now?

24 A. Well, there would be -- let's see, I
25 had the administrative manager sit in with me when

1 A. Yes, sir.

2 Q. And you, at that time, recorded your
3 conversation with Anthony or what you recall of it?

4 A. Yes, sir.

5 Q. And in Exhibit 2 it says: I told him
6 that I had investigated the incident and took
7 appropriate action?

8 A. Yes, sir.

9 Q. And I'll talk with you about that in a
10 minute. And the next thing he asked: How he got
11 his name back? And it says: I told him that I
12 couldn't change the past, but could affect the
13 future. Is that correct?

14 A. Yes, sir.

15 Q. Is that what you said?

16 A. Yes, sir.

17 Q. And it says: I told him again that I
18 was sorry for what happened. Did you learn, to the
19 extent to which rumor about Anthony having a
20 sexually transmitted disease, got around your
21 plant, how that happened?

22 A. I never heard about a rumor, other than
23 Anthony himself meeting with me and the regional
24 manager, I think it's in the notes saying -- and
25 I'll say every African-American that has an

1 infection is automatically, it may not be quote,
2 unquote, but has an STD. That's when I heard that
3 for the first time any comments at the plant site,
4 even my salary team and I were discussing it, we do
5 it behind closed doors when we have hourly employee
6 issues, it was never discussed that it was an STD
7 or anything, the employee had a infection, which
8 could have contributed to him getting hurt with the
9 lid on the forklift. No one went there.

10 Q. But as far as you're concerned, you
11 didn't know that was going on at the plant with the
12 rumors?

13 A. No, sir. When Anthony made me aware
14 that it could be going on, then I told him, you let
15 me know and I will take care if anyone is harassing
16 with you, which he never got back to me that he was
17 having issues with any hourly employees or anyone.

18 Q. All right. The Exhibit 3 there is a
19 note you made on 12/4/17?

20 A. Yes, sir.

21 Q. And again, you tried to accurately take
22 down your conversation with Mr. Wise?

23 A. The best I could, yes, sir.

24 Q. Is there anything about that that you
25 would like to add to or change?

1 A. I was just trying to read the bottom
2 part where it's so faint with the printer. Anthony
3 knows for a fact that Keith called people -- okay
4 -- in his office. Oh, yeah, Quan also took notes
5 for me. No, sir, I don't see any reason why I'd
6 change anything that I wrote here in December of
7 2017.

8 Q. Okay. I'm going to next hand you
9 Exhibit 4. Is this a document that you wrote or
10 had written up concerning Mr. Nelson's conduct?

11 A. Yes, sir.

12 Q. And in this document you're
13 reprimanding Mr. Nelson?

14 A. Yes, sir.

15 Q. And what did you reprimand him for?

16 A. For the incident that occurred talking
17 to the hourly employee about another hourly
18 employee. Strictly that and nothing else.

19 Q. And tell me about the details of that.

20 A. Based off of what I heard or what I
21 know from my investigation?

22 Q. Yes.

23 A. Well, Keith told an hourly employee
24 that -- first of all, from what I understand, the
25 hourly employee, which is George, asked Keith how

1 Anthony was doing. And Keith said he's got an
2 infection. And that's pretty much all I know about
3 what occurred out there at the cat -- or outside
4 the office in the handrails.

5 Q. How did you find that out, that that's
6 what had happened?

7 A. Well, I thought I answered that
8 earlier, I'm not sure whether Melody Jepsin told me
9 or Quinton Wilson told me, one of those told me
10 what was going on. But I can't remember if Anthony
11 came to Melody or Quinton called me after walking
12 in when Anthony and Keith were having the meeting
13 in the EHS room. So that part, I'm not 100 percent
14 sure about who told me first.

15 Q. The fact then -- what was wrong with
16 Mr. Nelson doing what he did?

17 A. Well, we don't talk about hourly
18 employees with other hourly employees.

19 Q. About their medical condition?

20 A. Well, anything.

21 Q. But clearly not about their medical
22 condition?

23 A. Anything. Absenteeism, reprimands, we
24 don't discuss that.

25 Q. Is there a company rule that prohibits

1 that?

2 A. Not that I'm aware of. I call it a
3 common sense rule.

4 Q. And other than that, what did -- what
5 did you find in error about Mr. Nelson's conduct in
6 this action?

7 A. That he told another hourly employee
8 that Anthony had an infection.

9 Q. And that was the sum total of it, was
10 there anything else that was in error about what he
11 had done?

12 A. Not to my knowledge.

13 Q. And I assume you called Mr. Nelson in
14 to talk to him about it?

15 A. Yes, sir.

16 Q. And I assume you discussed what's in
17 Exhibit 4?

18 A. Yes, sir.

19 Q. Did he have any questions about it?

20 A. No, sir, not that I recall.

21 Q. Do you recall him saying anything?

22 A. No, sir, the only thing I can recall
23 was it was a short and sweet meeting. We didn't --
24 I read over it with him and covered it with him and
25 I think that was the end of it, to the best of my

1 knowledge.

2 Q. Now, the -- we know that Mr. Nelson
3 took Mr. Wise to the hospital that day on
4 November 7th. And Mr. Wise's wife eventually came
5 in and was there, are you aware of that?

6 A. Yes, sir, but I think she came to the
7 plant site and followed them down there. Again,
8 I'm not 100 percent certain, I believe she was out
9 in the parking lot when Keith and Anthony left,
10 that's just what I remember hearing. I'm not sure
11 I saw it with my own two eyes.

12 Q. But in any event, she was at the
13 hospital, so she potentially knows what was said at
14 the hospital by the doctor about Mr. Wise's
15 condition?

16 MS. MCCLURKIN: Object to the form.

17 THE WITNESS: Yeah, I don't know how to
18 answer that because I wasn't at the hospital.

19 BY MR. PARKER:

20 Q. Well, you don't know what she heard or
21 not?

22 A. No, sir, I don't even know if she was
23 in the room.

24 Q. Exactly. But assuming, she could be
25 one person that could have heard something and then

1 front office, the only thing I would say is I would
2 have to look through the other documents and see if
3 anyone else took notes on that date to say if
4 anyone else was in the meeting with me, I just
5 can't recall.

6 Q. Is it fair to say your usual practice
7 is to have at least have one witness present when
8 you meet with an hourly employee?

9 A. Yes, sir, that has been my practice as
10 it has changed over the years, yes, sir. It used
11 to not be that way, but it has gotten like that
12 over a period of time, yes, sir.

13 Q. As of November 13th, 2017, was that
14 your usual practice?

15 A. Yes, sir.

16 Q. All right. Take a look at the
17 statement, pretty much in the middle and I'm going
18 to read it to you, let me know if I read it
19 correctly, quote, Anthony said the doctor was a
20 quack and showed racism, end quote. Did I read
21 that correctly?

22 A. Yes, sir.

23 Q. Do you recall those statements being
24 made in the meeting?

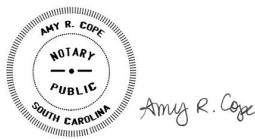
25 A. I do.

CERTIFICATE OF REPORTER

I, Amy R. Cope, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete
record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 12th day of January,
2020 at Columbia, Richland County, South Carolina.



Amy R. Cope, Court Reporter
My Commission expires
June 14, 2028

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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No.: 2021-001463

Anthony Wise Appellant,

-v-

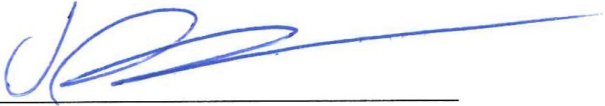
Kenneth E. Leap, Newberry Hospital, LLC d/b/a
Newberry County Memorial Hospital, and West
Fraser, Inc., Defendants,

Of Whom, West Fraser, Inc. is Respondent.

CERTIFICATE OF COUNSEL

The Undersigned hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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SC Court of Appeals

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In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No.: 2021-001463

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-v-

Kenneth E. Leap, Newberry Hospital, LLC d/b/a
Newberry County Memorial Hospital, and West
Fraser, Inc., Defendants,

Of Whom, West Fraser, Inc. is Respondent.

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT ERR IN DETERMINING THAT CIRCUMSTANTIAL EVIDENCE WAS NOT SUFFICIENT TO CREATE A JURY ISSUE AS TO WHETHER KEITH NELSON PUBLISHED STATEMENTS THAT APPELLANT HAD A SEXUALLY TRANSMITTED INFECTION?
- II. DID THE CIRCUIT COURT ERR IN DETERMINING THAT NELSON'S STATEMENTS TO GEORGE WILSON, JR. COULD NOT BE DEFAMATORY BY WAY OF INNUENDO?
- III. DID THE CIRCUIT COURT INAPPROPRIATELY DRAW AN INFERENCE IN CONTRAVENTION OF THE SUMMARY JUDGMENT STANDARD IN DETERMINING THAT THE DEFAMATORY RUMORS COULD NOT HAVE BEEN STARTED BY NELSON?
- IV. DID THE CIRCUIT COURT INAPPROPRIATELY DRAW AN INFERENCE IN CONTRAVENTION OF THE SUMMARY JUDGMENT STANDARD IN DETERMINING THAT THE WARNING LETTER FROM DOLAN J. RUSSELL TO NELSON WAS NOT AN ADMISSION BY RESPONDENT THAT NELSON'S STATEMENTS TO WILSON WERE SLANDEROUS?
- V. DID THE CIRCUIT COURT ERR IN DETERMINING THAT NELSON'S STATEMENTS COULD NOT BE DEFAMATORY BECAUSE THEY WERE "UNDISPUTEDLY TRUE ACCOUNTS" OF APPELLANT'S DIAGNOSIS BY DR. KEITH LEAP?
- VI. DID THE CIRCUIT COURT ERR IN DETERMINING THAT THERE IS NOT A MERE SCINTILLA OF EVIDENCE THAT NELSON'S STATEMENTS EXCEEDED THE QUALIFIED PRIVILEGE?
- VII. DID THE CIRCUIT COURT ERR IN DENYING APPELLANT'S MOTION TO AMEND?

STATEMENT OF THE CASE

This appeal arises from defamatory statements that were made by Keith Nelson, an employee of Respondent West Fraser, Inc., which cascaded into a series of defamatory rumors that ran unabated through Respondent's work force. These statements and rumors followed a workplace injury that involved Appellant Anthony Wise and falsely accused him of having a sexually transmitted infection. Wise filed a Complaint against West Fraser and others on March 7, 2019, in the Newberry County Court of Common Pleas, alleging a cause of action for defamation. (R. pp. 27-29). On June 3, 2019, West Fraser filed its Answer in which it (1) denied its safety director, Keith Nelson, published defamatory statements to other workers, (2) denied that the statements spread through its mill and damaged Wise's reputation, (3) denied that Nelson's statements were defamatory or capable of possessing a defamatory meaning, (4) raised the truth as an affirmative defense, and (5) raised the qualified privilege as an affirmative defense. (R. pp. 31-34).

After discovery, West Fraser filed a Motion for Summary Judgment on June 8, 2021, contending that any statements made by Nelson were true and that Nelson's statements were not defamatory *per se*. (R. pp. 35-56). The motion came up for hearing before the Circuit Court on August 11, 2021, with appearances by counsel for Wise and counsel for West Fraser. (R. pp. 121-151). Following the hearing, on August 17, 2021, Wise filed a Motion to Amend Complaint to add a claim for breach of confidentiality. (R. pp. 83-87). Wise subsequently filed a supporting memorandum, which also contained arguments in opposition to West Fraser's Motion for Summary Judgment, on August 26, 2021. (R. pp. 95-98).

On August 27, 2021, the Circuit Court issued a Form 4 Order granting West Fraser's motion and requesting a proposed order from West Fraser. (R. pp. 3-5). Wise filed a Motion for Reconsideration on September 2, 2021. (R. pp. 100-101). On October 11, 2021, the Circuit Court

issued a formal Order granting West Fraser's motion on the grounds that (1) there was not a jury issue as to whether Nelson's statements were true, (2) Nelson's statements could not be reasonably construed as defamatory by innuendo, (3) Nelson's statements to plant manager Dolan J. Russell were qualifiedly privileged, and (4) Wise's Motion to Amend Complaint was futile and unfairly prejudicial to West Fraser. (R. pp. 6-23).

Wise filed a Memorandum in Support of his Motion for Reconsideration on October 14, 2021, arguing that (1) there was sufficient evidence in the record casting doubt on Nelson's testimony and creating a jury issue as to Nelson's credibility, (2) there was sufficient evidence to reasonably support an inference that Nelson told employees that Wise had a sexually transmitted infection, (3) in the alternative, Wise had adduced facts sufficient to create a jury issue as to whether Nelson's statements were defamatory by innuendo, (4) Nelson's statements were a separate defamatory republication of Dr. Keith Leap's statements, (5) any statements made by Nelson to non-essential employees of West Fraser were not qualifiedly privileged, and (6) the Order inappropriately weighed the merits of Wise's proposed amendment and did not conduct a thorough prejudice analysis. (R. pp. 102-120). In a November 23, 2021, Form 4 Order, the Circuit Court denied Wise's Motion for Reconsideration. (R. pp. 24-26). Wise timely filed his Notice of Appeal on December 15, 2021. (R. pp. 695-699)

STATEMENT OF FACTS

On November 7, 2017, Wise was working for West Fraser at its Newberry facility.¹ After reporting to work, he began to check the fluids in a forklift he would be operating during his shift. (R. p. 253, lines 1-2). When he began to pull up on the hood of the forklift, he felt something "give". (R. p. 253, lines 10-12). Wise was asked by a co-employee if he was ok, to which he responded that

¹ West Fraser is a Canadian forestry company that produces lumber, pulp, and woodchips, amongst other products. West Fraser maintains an operating lumber mill in Newberry.

“something gave”, ostensibly indicating that he had suffered a sprain or some other manner of physical injury. (R. p. 253, lines 13-15). After indicating to his supervisor that he was experiencing pain in his groin, Wise went to a restroom and upon inspection discovered that his testicles were swollen and painful. (R. p. 253, line 19 - p. 255, line 12).

Wise immediately notified West Fraser management that he needed to see a doctor. (R. p. 253, line 23 - p. 254, line 8). Wise was given an icepack to place on his groin area. (R. p. 254, line 8 - p. 257, line 13). During this time, according to Wise and Anthony Cannon’s deposition testimony, at least seven West Fraser employees were aware that Wise was experiencing significant pain in his groin area. (*Id.*; R. p. 439, lines 11-18).² It was obvious that Wise was in pain in his groin area, and that he was very uncomfortable. (R. p. 463, lines 20-24).

Keith Nelson was West Fraser’s Environmental Health and Safety Director in charge of overseeing any medical care employees would receive after they suffered a workplace injury. (R. p. 454, lines 4-6; p. 459, lines 16-20). Nelson took Wise to the emergency room at Newberry County Memorial Hospital (“NCMH”). (R. p. 263, lines 5-18). Wise’s wife, Pauline Wise, arrived at the hospital sometime after Wise and Nelson. (R. p. 264, lines 21-23). While diagnosing Wise, the attending physician, Dr. Keith Leap, made comments that there may have been a change in sexual partners that prompted Wise’s condition. (R. p. 278, line 19-p. 284, line 2). It is disputed whether this comment was made in the presence of Nelson, with Wise and his wife contending that Nelson was present. (R. p. 284, lines 3-23; R. p. 657, lines 3-13). This statement was false and untrue.

In his deposition, Nelson stated that after Dr. Leap left the room, he tracked the doctor down and requested an explanation as to what was really going on, to which Dr. Leap replied that

² Cannon is a forklift operator who works with Wise. (R. p. 436, lines 21-24).

Wise had an “infection” and would need a prescription.³ (R. p. 462, lines 6-17). Wise has confirmed that Nelson left the exam room as Dr. Leap did, and that he could see Nelson speaking to him in the hall but could not hear what they were discussing. (R. p. 302, lines 13-17). Nelson has claimed that he had no idea that anyone could infer any sexual component or innuendo from the fact that Wise had an infection, but this assertion is contradicted by the statement of Melody Jepsen, which documents that Nelson returned to West Fraser from the hospital and informed her and others that Wise had a “long worded infection” that possibly originated from his sexual history, and that the doctor had asked him about his sex partners in front of his wife. (R. p. 512, line 15 - p. 513, line 6; R. p. 691). Nelson also asked Wise if he thought that his wife had some kind of infection as well. (R. p. 298, lines 3-6).

Wise left the hospital with his wife and did not return to work until the next Monday, six days later. (R. p. 298, line 12). Nelson, on the other hand, immediately returned to the Newberry mill. (R. p. 465, lines 11-12). Upon returning to the mill, Nelson saw George Wilson, Jr., an employee and co-worker of Wise. (R. p. 527, lines 11-14). Apparently, by this time word had spread to other employees, like Wilson, that Wise had suffered sudden pain and discomfort in his groin that morning, with the prevailing belief being that he had likely pulled a muscle while lifting something. (R. p. 539, lines 9-14; R. p. 437, lines 2-6; R. p. 654, lines 11-16). According to Wilson and Nelson, Wilson asked Nelson how Wise was doing, to which Nelson claims he merely replied that Wise had an “infection,” supposedly without further explanation. (R. p. 527, lines 15-17; R. p. 466, lines 9-12). Wilson, in turn, claims that he told several other employees only that Wise had an “infection”. (R. p. 527, line 24-p. 528, line 3).

³ A prescription for an antibiotic was provided to Nelson for Wise. (R. p. 459, lines 11-14; p. 492, lines 9-10).

Curiously, under oath Nelson and Wilson both testified as to the contents of this discussion in nearly identical terms, stating that Wilson asked Nelson how Wise was doing, to which the only reply Nelson gave was that Wise had an infection, after which the conversation immediately ceased. Even more curious, no follow up questions were asked by Wilson as to the nature of the infection, given the employees' awareness of the location of Wise's injury, nor were any questions as to the nature of the infection asked of Wilson when he reported Wise's condition to his co-employees. Importantly, at this point, Nelson no longer believed that Wise's condition was related to the workplace incident; his belief was that Wise's infection arose from other circumstances. (R. p. 469, lines 1-11).

As previously noted, Nelson proceeded to the front office, where he informed Jepsen and others that the doctor had told him that Wise had an infection that was possibly sexual in origin, and that the doctor had inquired about multiple sexual partners. (R. p. 691). However, in his deposition, Nelson claimed that the conversation in the front office only took place with facility manager Dolan J. Russell behind closed doors. (R. p. 466, lines 13-25). Nelson testified that he told Russell about the doctor's diagnosis of an infection for which Wise was given a prescription, and he also testified that he informed Russell of the doctor's accusation that Wise had been with multiple sexual partners. (R. p. 466, lines 19-25).

However, Russell has denied that Nelson ever told him anything about Wise's condition being related to multiple sexual partners or a sexually transmitted disease. (R. p. 550, lines 6-16; p. 562, line 20 - p. 563, line 4). According to Russell, the only way a rumor concerning Wise's condition could have made its way into the West Fraser workforce before Wise returned to work was from the aforementioned conversation between Nelson and Wilson, and he did not know exactly what Nelson had told Wilson. (R. p. 56, line 21 - p. 564, line 11). Nelson has also admitted

to telling Wise's supervisor, Mike Shealy, that Wise had an "infection" and would be missing time from work. (R. p. 626, lines 18-23). Shealy was only responsible for keeping up with Wise's time, a task which did not require knowledge of the specifics of Wise's condition. (R. p. 517, line 17 - p. 518, line 5).

Unsurprisingly, in the coming days the rumor that Wise had been diagnosed with a sexually transmitted infection spread throughout West Fraser like wildfire. These rumors started well before Wise returned to work after recovering from his injury. (R. p. 538, line 23 - p. 539, line 2). Upon returning to work six days later, Wise was humiliated and ridiculed by numerous West Fraser employees for having a sexually transmitted infection, despite that this was not in fact what he was suffering from. (R. p. 540, lines 7-15; R. p. 586, line 24 - p. 588, line 8; R. p. 595, line 22 - p. 597, line 8; R. p. 608, lines 16-24; R. p. 618, lines 9-21; R. p. 437, line 9 - p. 438, line 22). No less than six West Fraser employees other than Wise have testified that they heard accusations in the workplace that Wise had a sexually transmitted infection. Somehow, in the days following Wise's departure from work, the discussion around West Fraser concerning Wise's condition transmuted from the belief that he had pulled a muscle into accusations that he had a sexually transmitted infection. And in that intervening period, only one person who was present at NCMH to hear the allegations of Dr. Leap had returned to the West Fraser mill: Keith Nelson.

Wise confronted several of his coworkers in an attempt to find out how the rumor had started. (R. p. 597, lines 9-19; R. p. 541, line 21 - p. 542, line 4; R. p. 610, lines 4-14). Frustrated, Wise went to Russell to inform him of the rumors and mistreatment he was experiencing. (R. p. 553, line 5 - p. 554, line 9). Notes from the meeting document that Wise informed Russell of the conversation between Nelson and Wilson, and that Nelson had told Wilson that Wise had a sexually transmitted infection after returning from NCMH. (R. p. 574). Russell promised Wise

that he would investigate the situation and take corrective action. (R. p. 554, lines 10-15). Russell called West Fraser's regional manager and corporate human resources representative and was advised to investigate the situation. (R. p. 554, line 17 - p. 555, line 1). Four days later, Russell had another meeting with Wise and told him that he had investigated the incident and taken appropriate action. (R. p. 575). Russell had sent a letter to Nelson, reprimanding him and informing him that he had very serious concerns about his conduct. In particular, Russell was concerned that the disclosures made by Nelson to Wilson could have been considered slanderous by Wise, and that his behavior had put West Fraser at risk. (R. pp. 577-578).

STANDARD OF REVIEW

The Circuit Court's Order does not properly apply the summary judgment standard. Rather than construing all inferences in the light most favorable to Wise, the Order's findings inappropriately weigh the evidence and resolve all conclusions in favor of West Fraser. In essence, the Order places a premium on Nelson and Wilson's testimony, ignores direct and circumstantial evidence indicating that Nelson and Wilson's testimony is not credible, and requires Wise to produce direct evidence proving that Nelson specifically told Wilson, verbatim, that Wise had a sexually transmitted infection. This is not what is required by the summary judgment standard and is a clear error of law.

"When reviewing the grant of a summary judgment motion, the appellate court applies the same standard that governs the trial court under Rule 56(c), SCRCp, which provides that summary judgment is proper when there is no genuine issue as to any material fact" *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 524, 787 S.E.2d 485, 489 (2016). "Summary judgment should not be granted even when there is no dispute as to evidentiary facts **if there is dispute as to the conclusion to be drawn from those facts.**" *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000) (emphasis added). Summary judgment is a drastic remedy that should be cautiously granted. *BPS, Inc. v. Worthy*, 362 S.C. 319, 326, 608 S.E.2d 155, 159 (Ct. App. 2005).

“In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006). Once the moving party carries its initial burden, the non-moving party must come forward with specific facts showing that there is a genuine issue for trial. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). “In order to withstand a motion for summary judgment ‘in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a **mere scintilla** of evidence.’” *Fountain v. First Reliance Bank*, 398 S.C. 434, 441, 730 S.E.2d 305, 308 (2012) (emphasis added) (quoting *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330 673 S.E.2d 801, 803 (2009)).

Here, there are many reasonable inferences and conclusions that could be drawn from the facts, including an inference that Nelson told Wilson that Wise had a sexually transmitted infection. In the alternative, even if Nelson only told Wilson that Wise had an “infection,” it could have been defamatory by way of innuendo and by implication under all of the relevant circumstances, when viewed in the light most favorable to Wise.

ARGUMENTS

There are some statements that are clearly defamatory on their face. Statements such as “X is a pedophile” or “Y embezzles money from his clients” do not require much by way of explanation for the impartial observer to understand how damaging they could be to one’s reputation if untrue. Other statements, however, are much more insidious as they may appear harmless when taken out of context. For example, “X is enjoying his honeymoon with Y” seems innocent enough. When construed alongside the fact that X is in fact married to Z, the statement becomes defamatory. Likewise, the statement that “X has an infection” typically only informs the listener that X is sick, and may even elicit sympathy for X. When accompanied by a wink, a raised

eyebrow, or a smirk, it can take on an entirely different meaning and become incredibly harmful to one's good name, depending on the surrounding facts and circumstances. Unfortunately, the above-described scenario is exactly what befell Anthony Wise after he was injured at West Fraser's mill on November 7, 2017.⁴

A plaintiff must prove the following four elements to state a claim for defamation: (1) a false and defamatory statement was made; (2) the unprivileged communication was made to a third party; (3) the publisher was at fault; and (4) actionability irrespective of special harm or the existence of special harm caused by the publication. *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006). In this case, Wise alleges that the defamatory statements, either on their face or by innuendo, concerned the "contraction of a loathsome disease" and "unchastity", making the statements actionable per se. *Goodwin v. Kennedy*, 347 S.C. 30, 36, 552 S.E.2d 319, 322-23 (Ct. App. 2001). Thus, Wise is not required to prove the fault and special harm elements. *Erickson*, 368 S.C. at 465, 629 S.E.2d at 664.

The question of whether a statement is capable of a defamatory meaning involves determining if a statement classifies under either of two categories of defamatory statements:

The defamatory meaning of a message or statement may be obvious on the face of the statement, in which case the statement is defamatory *per se* . . . If the defamatory meaning is not clear unless the hearer knows facts or circumstances not contained in the statement itself, then the statement is defamatory *per quod*. In cases involving defamation *per quod*, the plaintiff must introduce facts extrinsic to the statement itself in order to prove a defamatory meaning.

Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 508-09, 506 S.E.2d 497, 501 (1998). Thus, even if Nelson merely stated that Wise had an infection, it is an issue for the jury to decide as to

⁴ An occupational health doctor determined that Wise did pull a groin muscle while working on the forklift. (R. p. 48).

whether it had a defamatory meaning if Wise can adduce a mere scintilla of extrinsic facts supporting that the hearer could infer from the statement that Wise had a *sexually transmitted* infection.

In essence the Circuit Court's Order finds that (1) Nelson and Wilson's testimony is undisputedly credible and supports that Nelson only told Wilson that Wise had an "infection" in good faith and out of concern for his well-being, and (2) any statements made by Nelson to Wilson were not reasonably susceptible to a defamatory meaning. Additionally, the Circuit Court's Order finds that any statements made by Nelson to plant manager Russell were protected by the qualified privilege.

However, the Court's Order ignores that the evidence supports multiple other inferences and conclusions, including that: (1) despite their testimony indicating otherwise, Nelson told Wilson that Wise had a sexually transmitted infection, (2) even if Nelson only told that Wise had an "infection," for the purposes of summary judgment there is sufficient evidence that this could be defamatory by way of innuendo, (3) there is a genuine dispute of material fact as to whether Nelson was the source of the defamatory rumors, (4) the warning letter written from Russell to Nelson constitutes a mere scintilla of evidence that his statements were defamatory, (5) the repetition of a defamatory statement made by another is in itself defamation, and (6) any statements made by Nelson, Russell, or any other member of management to the West Fraser workforce concerning Wise's condition would not be qualifiedly privileged. Additionally, the Circuit Court erred in denying Wise's Motion to Amend his Complaint.

I. There is Sufficient Evidence in the Record to Create an Issue of Fact, and Reasonably Support the Inference, That Nelson Told Wilson and Others That Wise had a Sexually Transmitted Infection.

The publication of a statement is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community. *Harris v. Tietex International Ltd.*, 417 S.C. 533, 540,

790 S.E.2d 411, 415. (Ct. App. 2016). The evidence in the record gives rise to a reasonable inference that Nelson told Wilson that Wise had a sexually transmitted infection, and that this publication was subsequently spread throughout West Fraser. Nelson and Wilson have denied that any references to a *sexually transmitted* infection were made by Nelson, and that the communication consisted only of the message that Wise had an “infection.” (R. p. 527, lines 15-17; R. p. 466, lines 9-12). Despite this, there is sufficient circumstantial evidence to the contrary to give rise to the inference that Nelson’s testimony is untrue, rendering summary judgment inappropriate.⁵

Prior to leaving West Fraser’s mill to travel to NCMH, a handful of employees were aware that Wise was suffering from a groin injury of some nature. (R. p. 253, line 19 - p. 257, line 13; R. p. 439, lines 11-18). The testimony of several West Fraser employees indicates that the prevailing belief at the time was that Wise had pulled a muscle. (R. p. 539, lines 9-14; R. p. 437, lines 2-6). The only West Fraser employee to accompany Wise to NCMH was Nelson. (R. p. 263, lines 5-18). Upon arriving at NCMH, Nelson learned that Wise had an infection and would need treatment. (R. p. 278, line 19 - p. 284, line 2; R. p. 462, lines 6-17). In the light most favorable to Wise, Nelson also overheard the defamatory allegation that Wise had multiple sexual partners and that the infection may have been sexually transmitted. Nelson then returned to West Fraser, while Wise went home and did not return to work in the next week. (R. p. 512, line 15 - p. 513, line 6; R. p. 691; R. p. 298, lines 3-6).

Upon arriving back to West Fraser, Nelson claims to have only told Wilson that Wise had an “infection.” Nelson claims to have then entered the front office and only told plant manager Russell behind closed doors of the statements made by Dr. Leap. (R. p. 466, lines 13-25). Russell, on the other hand, denies that Nelson ever told him of a sexual component to the injury. (R. p. 550, lines 6-

⁵ It is undisputed that Wise did not in fact have a sexually transmitted infection.

16; p. 562, line 20 - p. 563, line 4). These claims are contradicted by the statement of Jepson, which provides that Nelson returned to the front office and related to Jepson and others that Wise had a “long worded infection” that possibly originated from his sexual history, and that the doctor had asked him about his sex partners in front of his wife.⁶ In accepting Nelson and Wilson’s testimony as true, and requiring Wise to rebut their testimony with direct evidence as to its falsity, while ignoring all of the circumstantial evidence favorable to Wise, the Circuit Court’s Order improperly weighed the evidence and usurped this role from the factfinder.

Before Wise could return to work, the consensus of the employees at West Fraser seems to have shifted from believing he had a pulled muscle to thinking that he had a sexually transmitted infection. This communication was repeated and spread throughout the West Fraser workforce at least four days before Wise ever returned to West Fraser. (R. p. 298, line 12). In the immediate aftermath of these incidents, Russell noted that Wise had learned that Nelson told Wilson that Wise had a sexually transmitted infection. (R. p. 574). Russell subsequently investigated and reprimanded Nelson, informing him that the statements he made about Wise could be considered slanderous by him. (R. pp. 577-578). While Russell’s slander assertion is susceptible to many different interpretations, the Circuit Court should have been confined to resolving its meaning in Wise’s favor. And in the light most favorable to Wise, considering that Russell made this assertion immediately following his investigation, the most reasonable inference is that he made the

⁶ Nelson’s deposition testimony is impeached by several other facts in the record. Nelson also denies having any idea that Wise’s infection could be construed as sexual in nature when he spoke to Wilson, yet Jepson’s statement indicates that Nelson clearly believed it could have been when he initially entered the front office and spoke to her. (R. p. 513, lines 2-6). The credibility of Nelson’s testimony that he only told Wilson that Wise had an “infection”, with no mention that it was sexually transmitted, must be weighed by a jury, and his testimony should not have been accepted by the Circuit Court as undisputed direct evidence on a motion for summary judgment. Additionally, Jepson’s statement is admissible and is not hearsay under Rule 801, SCRE, in that Jepson can testify at trial and be subject to cross-examination concerning the statement.

assertion because he had learned that Nelson communicated untrue, defamatory information to Wilson. This evidence is more than sufficient to create the inference that despite his denials, Nelson told Wilson, and possibly others outside the scope of the qualified privilege, that Wise had a sexually transmitted infection, which was subsequently published by others throughout the West Fraser mill. For these reasons alone, West Fraser's Motion for Summary Judgment should have been denied.

The Circuit Court's Order cites *Moody v. McClellan*, 295 S.C. 157, 367 S.E.2d 449 (Ct. App. 1988), to support the proposition that a plaintiff must come forward with direct evidence rebutting a defendant's denial that he made defamatory statements, and that a plaintiff cannot rely on circumstantial evidence to overcome such a denial on a motion for summary judgment. This is not the holding of *Moody*. In *Moody*, the plaintiff contended that his supervisor made four defamatory remarks about him during his employment, which was denied by the supervisor. *Id.* at 163, 367 S.E.2d at 452. However, the plaintiff in *Moody* produced no admissible evidence probative of whether his supervisor actually made the statement. *Id.* The only evidence produced by the plaintiff in *Moody* was the plaintiff's own testimony about other employee's prior statements. *Id.* The court's holding in *Moody* is merely a reiteration of the well-known rule that a non-moving party must come forward with admissible evidence showing there is a genuine issue for trial.

Here, there is an overwhelming amount of admissible circumstantial evidence indicating that the most likely, and only, source for the rumor was Nelson. Wise does not rely solely on his own testimony of what other people told him that Nelson said; rather, the circumstantial evidence, including testimony from Wise's co-employees, indicates that the only possible source of the defamatory communications other than Wise was Nelson. The evidence also indicates that Wise

could not have been the source, as he did not return to work for six days. There is admissible impeachment evidence demonstrating that Nelson's testimony is not credible, and there is additional admissible evidence, when viewed in the light most favorable to Wise, indicating that Russell likely discovered immediately after the incident, in the course of his investigation, that Nelson's communications with Wilson were slanderous. *Moody* is inapposite, and the Circuit Court's Order erroneously relies on the decision to support its finding that there is no factual issue concerning Nelson's communications with Wilson. This error necessitates a reversal of the Order and denial of West Fraser's Motion for Summary Judgment.

II. Even if Nelson only told Wilson that Wise had an infection and needed an antibiotic, there is more than a mere scintilla of extrinsic evidence showing that the statement could be defamatory by way of innuendo.

In the alternative, even if Nelson only stated to Wilson that Wise had an infection, there are facts in the record extrinsic to the statement itself indicating that this statement could be susceptible to a defamatory meaning. The Circuit Court's analysis of whether the statement that Wise had an infection and needed an antibiotic was defamatory is flawed and focuses on irrelevant facts in deciding whether the statement was defamatory by way of innuendo. The Circuit Court's Opinion finds that the statement is not susceptible to a defamatory meaning based on the following grounds: (1) there is no direct evidence rebutting Nelson's testimony that he only stated that Wise had an "infection," (2) Wise discussed the sexually transmitted infection accusations with other West Fraser employees after he returned to work, (3) other employees were aware that Wise had suffered a groin injury before he and Nelson went to NCMH, (4) the warning letter only established that Nelson's actions were contrary to company policy, and (5) Wise's testimony concerning assumptions or stereotypes of black men and sexually transmitted infections is mere conjecture.

Most of these points have no bearing on whether the statement that Wise had an infection and needed antibiotics was defamatory by way of innuendo, and in the light most favorable to Plaintiff, some of these points are extrinsic facts indicating that the statement could have a defamatory meaning. Since it is reasonable under the circumstances for the statement that Wise had an infection to possess multiple meanings, including a defamatory meaning, a jury must decide which view they will take.

To render the defamatory statement actionable, it is not necessary that the false charge be made in a direct, open and positive manner. A mere insinuation is as actionable as a positive assertion if it is false and malicious and the meaning is plain. Statements therefore may be either defamatory on their face, or defamatory by way of innuendo. Innuendo is extrinsic evidence used to prove a statement's defamatory nature. It includes the aid of inducements, colloquialisms, and explanatory circumstances.

Fountain, 398 S.C. at 441-42, 730 S.E.2d at 309.

For example, the statement that "A had a baby" does not have a defamatory meaning obvious from the face of the statement, but it could be defamatory by way of innuendo where the extrinsic fact is that A is unmarried. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 509, 506 S.E.2d 497, 501 (1998). Thus, our courts have found that the statements such as "there was simply no family support to encourage her to continue her education" and "I don't believe I ever called Don Capps a paranoid bastard. I called him a paranoid sonofabitch" are capable of defamatory meanings in light of the extrinsic facts. *See id.*; *Capps v. Watts*, 271 S.C. 276, 246 S.E.2d 606 (1978). It is for a court to decide whether a communication is reasonably capable of conveying a defamatory meaning. *Holtzscheiter*, 332 S.C. at 530, 506 S.E.2d at 512 (Toal, J. concurring). However, if reasonable minds might differ as to whether the statement is capable of a defamatory construction, then the issue must be submitted to the jury. *Id.* at 531, 506 S.E.2d at 513.

There is sufficient extrinsic and explanatory evidence to create a jury issue as to whether Nelson's statement that Wise had an infection and needed antibiotics had a defamatory insinuation. Before he left to go to NCMH, multiple employees, including Nelson, were aware that Wise had an

injury to his groin. In fact, as noted in the Circuit Court's Opinion, one of the employees at the time remarked on whether the injury was related to Wise's sexual relationships. Upon returning, Nelson told Wilson and others that Wise had an "infection." Shortly thereafter, a rumor was being passed between employees of West Fraser that Wise had a sexually transmitted infection, whereas initially, it appeared that the employees believed that Wise had strained a groin muscle. In the light most favorable to Wise, the warning letter sent from Russell to Nelson acknowledges that Nelson's statements were capable of a defamatory meaning, as it recognizes that others, including Wise, could have interpreted Nelson's comments as slanderous insinuations that Wise had a sexually transmitted infection, given the nature and location of his injury, and the workforce's awareness of its circumstances. Within the context of the nature of Wise's injury and the extent to which other employees were aware of it, these facts could reasonably support the conclusion that Nelson's statement to Wilson had a defamatory meaning by way of innuendo. The lack of direct evidence rebutting Nelson's testimony, as well as the fact that Wise discussed the accusations with other employees, are wholly irrelevant to the issue of whether Nelson's statement had a defamatory meaning. On the other hand, the extrinsic facts and explanatory circumstances addressed above create a reasonable inference in the light most favorable to Wise that the statement of Nelson was defamatory in nature and by insinuation.

III. The Circuit Court Inappropriately Determined that the Defamatory Rumors Were not Started by Nelson.

Although the Circuit Court's Order does not make a specific finding that the rumor at West Fraser specifically originated with Wise, it cites to passages from witness testimony creating the appearance that this is the case. To the contrary, almost every witness who acknowledged that Wise spoke to them about the rumors clarified that he did so to try to find out who was spreading

them, and that the conversations happened as a result of the rumor having been previously repeated amongst the West Fraser workforce.

“If a reasonable juror looking at the evidence in the light most favorable to the non-movant could draw more than one inference about a material fact from it, summary judgment must be denied.” *Abdelgheny v. Moody*, 432 S.C. 346, 350, 852 S.E.2d 225, 227 (Ct. App. 2020). Multiple reasonable inferences could be drawn from the testimony of all witnesses who have been deposed in this action as to the source of the rumors concerning Wise. While one inference could be that the rumors originated independently of Nelson, the most reasonable inference is that the rumors began after Nelson returned to West Fraser’s mill and spoke to Wilson, Russell, Jepson, Shealy, and others about what he had observed at NCMH.

The testimony of Wise’s co-employees indicates that the rumors started well before he returned from injury leave.

- A. Well, yeah. Like I said, once he got back from, I guess, the kiln or whatever he had going on, he came back to work and I guess he heard the rumors going on about it. And he was talking to see what I heard and he was going around to everybody else to see what they heard and I guess he was upset about it.

(R. p. 597, lines 9-19).

- Q. Did you hear him talk about it with other people at the mill?
- A. The guys when they was messing with them, yes, he talked back to them.
- Q. But did you hear Hopp initiate conversations about it with other people?
- A. No.

(R. p. 610, lines 4-17).

- Q. And when did you learn that there was something going on, people said that Mr. Wise had a disease?
- A. It was going around the plant site maybe like a day after, two days after.

(R. p. 538, line 23-p. 539, line 2).

Thus, in the light most favorable to Wise, the rumors started well in advance of his return to the mill. The only individual who was present at the hospital to overhear the accusations of Dr. Leap was Nelson, making the inference that he was the origin of the rumors not only reasonable, but probable. This is substantiated by the fact that many West Fraser employees believed that Wise had pulled a muscle prior to Nelson's return to the mill. To the extent that the Circuit Court's Order finds that Wise was the source of the rumor, it is in error and improperly weighs the evidence.

IV. The Warning Letter from Russell to Nelson can be Reasonably Interpreted as an Admission that Nelson's Statements Were Defamatory.

In determining that the warning letter from Russell to Nelson on its face was only an admonishment that Nelson's statements could be considered by Wise, but not by anyone else, as slanderous, the Circuit Court improperly viewed the evidence in the light most favorable to West Fraser. The Circuit Court found that the letter only established that West Fraser considered Nelson's statements inappropriate and contrary to company procedure. However, if the intention of West Fraser had been to inform Nelson that he had violated company policies, the letter would have been confined to stating its purpose in those terms, and only reprimanding Nelson for violating an employee's confidentiality. Instead, plant manager Russell, in the immediate aftermath of his investigation of the incidents giving rise to this action, chose to write, "Verbally disclosing medical information about an employee can be considered by the employee as slanderous." (R. pp. 577-578).

The Circuit Court's interpretation of the letter renders the statement superfluous. Why would Russell have been concerned that Wise could have interpreted the statements as slanderous if they were true? Disseminating an employee's medical information could only be considered by the employee as slanderous if untrue statements had been made in connection with the information.

Only when the disclosed medical information is untrue could it begin to be considered slanderous, thus, West Fraser's admission that the dissemination could be slanderous necessarily entails an inference that Russell discovered Nelson had falsely misconstrued Wise's diagnosis to unprivileged employees. When viewed in concert with the contradicting testimony of Russell and Nelson, the statement of Jepson, and the timing of the origins of the rumor and Wise's return to work, a jury issue is created as to whether Nelson made defamatory statements concerning Wise's condition. The Circuit Court erred in resolving the inferences from the warning letter in West Fraser's favor.

V. Even if Nelson was Only Repeating What he was Told by Dr. Leap, the Communication Could Still Have a Defamatory Construction and is a Separate Defamatory Publication.

The Circuit Court's Order finds that Nelson's statement that Wise had an infection and needed an antibiotic was "undisputedly true," an accurate report of Wise's diagnosis, and not defamatory. However, as explained above, even though Wise was eventually diagnosed with prostatitis, the statement that he had an "infection" is capable of an altogether different, and defamatory, insinuation, given the circumstances under which the publications took place. And even if Nelson was only repeating what he had been told by Dr. Leap, since Dr. Leap's statements could be defamatory by way of innuendo or otherwise, then Nelson's repetition of the statement is also a separate and actionable publication.

"[O]ne who repeats or otherwise republishes defamatory matter is subject to liability as if he had originally published it." Restatement (Second) of Torts § 578 (Am. L. Inst. 1975). "This is true although the speaker accompanies the slander with a statement that it is a rumor only, or designates the name of the author or the original publisher." *Id.* cmt. c. "It would otherwise be too easy for a writer or publisher to defame freely by repeating the defamation of others and defending it as simply an accurate report of what someone else had said." *Gray v. St. Martin's Press, Inc.*, 221 F.3d 243,

250 (1st Cir. 2000). Thus, if Dr. Leap implied to Nelson that Wise suffered a sexually transmitted infection, and Leap's statements to Wise and Nelson concerning an infection were susceptible to a defamatory meaning by way of innuendo or otherwise, then the mere fact that Nelson repeated these statements to Wilson, Russell, Jepson, and Shealy, during which the evidence indicates he likely implied to Wilson and others that Wise had a sexually transmitted infection, does not absolve him of liability. The Court's Opinion contains a clear error in that it assumes that (1) if Nelson only stated that Wise had an infection, then (2) he was only speaking the truth and could not have been insinuating that Wise had a sexually transmitted infection. It should be left to a jury to determine whether Nelson's statement was merely the repetition of a factual diagnosis of prostatitis by Dr. Leap, or whether the statement was defamatory and insinuated that Wise had a sexually transmitted infection.

VI. While any Statements Made by Nelson to Russell Could Have Been Qualifiedly Privileged, any Statements Made by Nelson, Russell, or any Other Member of West Fraser Management in the Presence of Other Members of the Workforce Would Exceed the Scope of the Privilege.

The Circuit Court's Order erroneously states that Plaintiff may only overcome the qualified privilege by demonstrating actual malice. (R. p. 18). In finding that the communications were qualifiedly privileged, the Order ignores that (1) the privilege does not protect communications outside its scope, such as unnecessary communications to employees, (2) there is evidence in the record that the conversation between Russell and Nelson did not take place "behind closed doors," as claimed by Nelson and Russell, and (3) there is evidence in the record that communications to nonessential employees occurred. Thus, Wise may also overcome the privilege by demonstrating that Nelson, Russell, or other West Fraser employees unnecessarily conveyed the defamatory message to others, such as Wilson and Shealy. Wise does not have to overcome the privilege by demonstrating actual malice.

The protection of a qualified privilege may be lost by the manner of its exercise. *Fulton v. Atlantic Coast Line R.R.*, 220 S.C. 287, 67 S.E.2d 425 (1951). In order for a communication to be privileged, the person making it must be careful not to go further than his interests require. *Id.* While communications between officers and employees of a corporation may be qualifiedly privileged, the privilege may clearly be lost by excessive publication or publication to persons not required by the occasion involved, even if they are employees. *See Prentiss v. Nationwide Mut. Ins. Co.*, 256 S.C. 141, 148, 181 S.E.2d 325, 327 (1971); *Abofreka v. Alston Tobacco Co.*, 288 S.C. 122, 125-26, 341 S.E.2d 622, 624-25 (1986). If there are any facts in the record indicating that a publication went beyond what an occasion required, it is for the jury to determine whether the privilege has been abused or exceeded. *Murray v. Holnam, Inc.*, 344 S.C. 129, 141, 542 S.E.2d 743, 749 (Ct. App. 2001). Factual inquiries, such as whether the statement was sent only to the proper parties, are generally left in the hands of the jury to determine whether the privilege was abused. *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 485, 514 S.E.2d 126, 134 (1999).

The Circuit Court's Order bases its finding of qualified privilege on the assumptions that Nelson only told Russell that Wise had an infection in privacy behind closed doors, that Nelson only conveyed to Russell that Wise was upset because Dr. Leap had asked Wise about changing sexual partners, and that this information stayed between Russell and Nelson. However, there is evidence in the record indicating that this is not true. The statement of Melody Jepson indicates that the communications between Nelson and Russell were not made behind closed doors, that others were present for Nelson's report, and that Nelson said the infection was possibly a sexually transmitted disease. (Jepson Statement). Russell has denied that Nelson conveyed to him any information indicating the infection could have been a sexually transmitted infection. Further, any statements to Wilson and Shealy would clearly have exceeded the scope of the privilege, as both are nonessential

employees who did not have the need to know the specifics of Wise's diagnosis in able to perform their respective job functions.

This evidence is contradictory and obviously calls into question the credibility of both Nelson and Russell concerning the occasion on which Nelson made these comments. Further, the circumstantial evidence, when resolved in Wise's favor, demonstrates that at some point before Wise returned to work, the statement that Wise had a sexually transmitted infection was republished to nonessential employees of West Fraser, such as Wilson and Shealy. This is in direct contradiction to the Circuit Court's finding that there is no evidence of an improper manner of publication. Since there is evidence that the Nelson-Russell communication did not occur as claimed by Nelson and Russell, that others were present or received the communication at other times, that Nelson did convey that there was a sexual component to Wise's infection, and that other West Fraser employees learned of the false assertion that Wise had a sexually transmitted infection, it was error for the Circuit Court's Order to find that any communications concerning Wise were privileged on a motion for summary judgment. Since there is a controversy as to the facts, the factfinder must determine whether the privilege was abused or exceeded.

VII. The Circuit Court Erroneously Denied Wise's Motion to Amend Based Upon West Fraser's View of the Merits of the Amendment and Does not Contain an Appropriate Prejudice Analysis.

As a basis for denying Wise's Motion to Amend, the Circuit Court inappropriately weighed the evidence and ruled on the merits of Wise's proposed amendment. This is clearly not the analysis mandated by the South Carolina Rules of Civil Procedure for determining whether a proposed amendment should be granted. Rule 15(a) mandates that "leave shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a), SCRPC. The rule strongly favors amendments, and courts are "encouraged to freely grant leave to amend." *Parker v. Spartanburg*

Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005) (citation omitted). “[U]nless there is a substantial reason to deny leave to amend, the discretion of the [court] is not broad enough to permit denial.” *Forrester v. Smith & Steele Builders, Inc.*, 295 S.C. 504, 507, 369 S.E.2d 156, 158 (Ct. App. 1988) (quoting *Dussouy v. Gulf Coast Investment Corp.*, 660 F.2d 594, 598 (5th Cir. 1981)). The party opposing the motion has the burden of establishing prejudice. *Stanley v. Kirkpatrick*, 357 S.C. 169, 175, 592 S.E.2d 296, 298 (2004).

Wise’s motion is timely and based on the same facts as his original Complaint. Therefore, it should have come as no surprise to West Fraser that he sought to amend the pleadings to add a cause of action seeking damages for the disclosure of his confidential medical information by a member of West Fraser’s management. Rule 15 states that leave to amend the pleadings “shall be freely given when justice so requires and does not prejudice any other party.” Rule 15(a), SCRCPP. “The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it.” *Tanner v. Florence County Treasurer*, 336 S.C. 552, 559, 521 S.E.2d 153, 156 (1999). The Circuit Court found that the motion failed based on the merits of the amended claim, and that the motion was untimely.

South Carolina courts have rejected the arguments provided by West Fraser, and relied upon by the Circuit Court, as grounds for denying a motion to amend. *See Stanley v. Kirkpatrick*, 357 S.C. 169, 592 S.E.2d 296 (2004) (finding that the amendment of a complaint over two years after the incident and after the applicable statute of limitations had passed did not prejudice the nonmoving party where the amendment is related to the facts in the original pleadings and depositions did not have to be retaken); *Parker*, 362 S.C. at 276, 607 S.E.2d at 711 (finding the amendment of an answer on the first day of trial did not prejudice the opposing party because the amendment directly related to the content of the original pleadings).

Wise's Amended Complaint was based on the same facts that were included in his original Complaint. The Complaint included allegations based upon the publication of Wise's confidential medical information, just as Wise's proposed Amended Complaint did. The Amended Complaint arose from the same group of operative facts as the original Complaint. Additionally, West Fraser would have still had an opportunity to conduct further discovery to refute Plaintiff's claims if necessary. The amendment would not have necessitated the retaking of any depositions. West Fraser had adequate notice and ample opportunity to gather further evidence to refute the new claim.

More importantly, Wise's motion furthered the interests of justice. Wise has suffered tremendous humiliation, embarrassment, and damage to his reputation as a result of the events alleged in his Complaint. The Circuit Court's Order does not fully explain how West Fraser would have been deprived of the opportunity to prepare a legal defense rebutting Wise's claims as a result of his proposed amendment of the Complaint. Disapproval of the merits of a new claim does not meet the burden of establishing prejudice as defined by South Carolina courts under Rule 15. *See Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 589 (2019) ("A court's decision to deny a motion to amend should not be based on the court's perception of the merits of an amended complaint.").

CONCLUSION

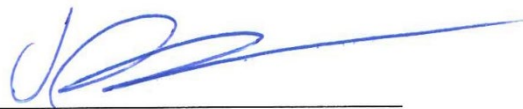
For these and all other reasons previously put forth to the Circuit Court, the Circuit Court's October 11, 2021 Order should be reversed.

[SIGNATURE PAGE FOLLOWS]

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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No.: 2021-001463

Anthony Wise Appellant,

-v-

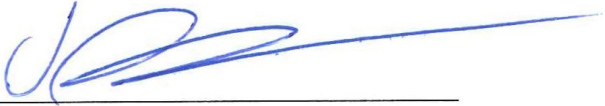
Kenneth E. Leap, Newberry Hospital, LLC d/b/a
Newberry County Memorial Hospital, and West
Fraser, Inc., Defendants,

Of Whom, West Fraser, Inc. is Respondent.

CERTIFICATE OF COUNSEL

The Undersigned hereby certifies that the Appellant's Final Brief complies with Rule
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SC Court of Appeals

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas**

The Honorable G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No.: 2021-001463

Anthony Wise, ...Appellant,

-v-

**Kenneth W. Leap, Newberry Hospital, LLC d/b/a
Newberry County Memorial Hospital, and
West Fraser, Inc.,**

Of Whom, West Fraser, Inc. is Respondent.

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COUNTER-STATEMENT OF ISSUES ON APPEAL

1. Whether Appellant has abandoned appeal of the Circuit Court's November 23, 2021 Order denying Appellant's Motion for Reconsideration by failing to address the Order or identify any alleged error in Appellant's Initial Brief?
2. Whether Appellant's new evidence and arguments not presented to the Circuit Court prior to entering its Order granting summary judgment can properly be considered in determining whether the Circuit Court committed reversible error?
3. Whether the Circuit Court properly entered summary judgment in Respondent's favor on Appellant's defamation claim because Respondent established the substantial truth of the following statement about Appellant: "[h]e's doing fine. He has an infection so he got a prescription"?
4. Whether the Circuit Court properly entered summary judgment in Respondent's favor because it determined the above alleged defamatory statement could not reasonably be construed as defamatory by innuendo?
5. Whether the Circuit Court properly entered summary judgment in Respondent's favor because Appellant failed to produce any evidence to show that communications between Respondent's managers made pursuant to a common business interest exceeded the scope of the qualified privilege?
6. Whether the Circuit Court committed reversible error in determining Appellant's Motion for Leave to Amend the Complaint, which sought to add a claim for breach of an alleged duty of confidentiality based on the same factual allegations as his defamation claim, had no impact on the appropriateness of granting summary judgment on Appellant's defamation claim?

STATEMENT OF THE CASE

This appeal arises from the Circuit Court's Order entered on October 11, 2021 granting Respondent West Fraser's ("West Fraser") Motion for Summary Judgment ("Motion") on Appellant Anthony Wise's ("Wise") sole claim for defamation.

I. Proceedings Below

On March 7, 2019, Wise initiated the underlying action by filing his Complaint asserting a claim for defamation against Newberry County Memorial Hospital ("NCMH"), Dr. Keith Leap ("Dr. Leap"), and West Fraser. (R. pp. 28-30; Compl.) As alleged in his Complaint, Wise was employed by West Fraser and worked at its lumber mill in Newberry, South Carolina. (R. p. 28 (Compl. at ¶4)). On November 7, 2017, Wise was injured while working on a forklift, and West Fraser's Safety Director, Keith Nelson ("Nelson"), drove Wise to NCMH for treatment. (R. p. 28). According to Wise's Complaint, upon arriving at NCMH, Dr. Leap examined Wise and then made the statement, "[l]ooks like somebody's been changing sexual partners. Looks like an STD." (R. p. 29 (Compl. at ¶5)). The Complaint asserted that Dr. Leap's alleged statements defamed Wise by falsely accusing him of having a sexually transmitted disease ("STD"). (R. p. 29). Further, the Complaint alleged that Nelson repeated Dr. Leap's alleged false and defamatory statements to other workers at West Fraser's mill and that West Fraser is liable for Nelson's alleged statements because they were made within the scope of Nelson's employment with West Fraser. (R. p. 29). On June 3, 2019, West Fraser filed its Answer denying the allegations in Wise's Complaint and asserting, among other defenses, that Wise's defamation claim failed because any

statements Nelson made were true; Nelson's statements were made within the scope of a qualified privilege; and Nelson's statements were made in good faith and without malice.¹ (R. p. 32).

Over the next approximately two years, Wise pursued his defamation claim against NCMH and West Fraser and conducted considerable discovery, including taking the depositions of Nelson, West Fraser's Plant Manager, and nine other West Fraser employees. On June 8, 2021, West Fraser filed a Motion for Summary Judgment ("Motion") on the grounds that: (i) the only statements Nelson actually made about Wise were true and therefore not defamatory; (ii) Nelson's statements could not reasonably be construed as defamatory per se because the statements could not reasonably be construed as inferring Wise had an STD; and (iii) Wise's claim for defamation per quod failed because Wise presented no evidence to establish the necessary elements of common law malice or special damages. (R. pp. 35-56).

West Fraser's Motion was set for hearing on August 11, 2021 before the Honorable G.D. Morgan ("Judge Morgan"). (R. pp. 121-151). Wise did not file a written opposition to West Fraser's Motion. During the August 11, 2021 hearing, Wise made oral arguments and offered certain documents in an effort to support that Nelson made alleged defamatory statements about Wise to one of Wise's co-workers, George Wilson ("Wilson"), and alternatively, to West Fraser's Plant Manager, D.J. Russell ("Russell"). (R. p. 133). In reply to Wise's argument concerning statements Nelson made to Russell, West Fraser argued that in addition to being true, any statements made by Nelson, a member of management, to other West Fraser managers pursuant to a common business interest were subject to a qualified privilege, and Wise submitted no evidence to show the privilege was exceeded. (R. p. 147). Following the hearing Wise requested and was

¹ On August 1, 2019, a Consent Order of Dismissal was filed dismissing Dr. Leap as a defendant.

permitted by Judge Morgan to file the complete transcripts of depositions that Wise referenced during the hearing as evidence opposing West Fraser's Motion. (R. p. 693 (Wise Sept. 1, 2021 correspondence to Clerk of Court confirming filing of evidentiary submission opposing summary judgment)).

On August 17, 2021, Wise filed a Motion for Leave to Amend his Complaint seeking to add a new claim for breach of an alleged duty of confidentiality. (R. p. 83). On August 23, 2021, Judge Morgan requested both parties file supplemental briefing addressing what impact, if any, Wise's Motion for Leave to Amend his Complaint had on West Fraser's pending Motion. (R. p. 693; Aug. 23, 2021 email from Hon. Morgan). Accordingly, on August 25, 2021, West Fraser filed its **Supplemental Brief in Support of Summary Judgment demonstrating** that Wise's Motion for Leave to Amend had no impact on West Fraser's Motion because Wise's proposed amendment was unfairly prejudicial and clearly futile because it was based on the same facts as Wise's defamation claim that West Fraser established were wholly lacking in evidentiary support and moreover, failed to state a viable claim under South Carolina law. (R. pp. 88-94). On August 26, 2021, Wise filed his supplemental brief arguing that the proposed amendment to the Complaint stated a viable claim and that Wise's Motion for Leave to Amend was not untimely or unfairly prejudicial to West Fraser. (R. pp. 95-99).

On August 27, 2021, Judge Morgan entered a Form 4 Order granting West Fraser's Motion and entering summary judgment in West Fraser's favor. (R. pp. 3-5). The Form 4 Order instructed West Fraser to prepare a proposed order and thus indicated that a formal order would follow. (R. pp. 3-5). On September 2, 2021, without waiting for the formal order, Wise filed a Motion for Reconsideration pursuant to Rule 59(e), SCRPC, asking Judge Morgan to reconsider his Order

granting summary judgment based on Wise's "belie[f] that the formal order will contain a clear error of law..." (R. pp. 100-101).

On October 11, 2021, Judge Morgan entered the formal Order granting summary judgment to West Fraser. (R. pp. 6-23). Specifically, the Order held that: (i) West Fraser had established the substantial truth of Nelson's statements to Wilson; (ii) Nelson's statements to Wilson could not reasonably be construed as defamatory by innuendo; and (iii) Nelson's statements to West Fraser's Plant Manager Russell were qualifiedly privileged. (R. pp. 6-23). Further, the Order held that Wise's Motion for Leave to Amend the Complaint had no impact on West Fraser's Motion for Summary Judgment because: (i) the proposed amended claim was based on the same facts Judge Morgan had already determined wholly lacked evidentiary support; (ii) the proposed amended claim failed to state a viable claim under South Carolina law; and (iii) the Motion for Leave to Amend was untimely filed and unfairly prejudicial to West Fraser. (R. pp. 20-21).

On October 14, 2021, Wise filed a Memorandum in Support of his Motion for Reconsideration asking Judge Morgan to reconsider the Order granting summary judgment to West Fraser.² (R. pp. 102-120). In support, Wise filed additional exhibits and made arguments that were not submitted or made to Judge Morgan during initial summary judgment briefing, the August 11, 2021 summary judgment hearing, supplemental briefing, or at any time prior to entering his Order granting summary judgment. On November 23, 2021, Judge Morgan entered a Form 4 Order denying Wise's Motion for Reconsideration. (R. pp. 24-26).

II. Wise's Appeal

On December 15, 2021, Wise filed a Notice of Appeal. (R. pp. 695-696). The Notice of

² On October 12, 2021, Wise and NCMH filed a Consent Order of Dismissal dismissing Wise's claims against NCMH.

Appeal states that Wise appeals the Circuit Court's October 11, 2021 Order granting West Fraser's Motion for Summary Judgment and the Circuit Court's November 23, 2021 Order denying Wise's Motion for Reconsideration. (R. pp. 695-696). While the Notice of Appeal purports to appeal both Orders, Wise's Initial Brief makes no argument and identifies no alleged error concerning the Circuit Court's Order denying Wise's Motion for Reconsideration.

STATEMENT OF FACTS

At the outset, and as demonstrated further herein (*see, infra*, at pp. 28-34), Wise's Statement of Facts and other portions of his Initial Brief improperly rely on evidence and arguments not presented to the Circuit Court prior to the entry of its Order granting West Fraser's Motion for Summary Judgment. Wise's improper evidence includes the signed notes, which Wise's brief refers to as a "statement," prepared by Melody Jepson ("Jepson"). (Wise's Final Br. at pp. 5, 12, 13, 18, 20, 22-23). Jepson's notes were not submitted or even mentioned to Judge Morgan in considering whether to grant summary judgment, and Wise's attempt to offer Jepson's notes as evidence supporting that Judge Morgan erred is improper. (*See generally* R. pp. 121-151 (Aug. 11, 2021 Tr.); R. pp. 95-99 (Wise's Memo. in Support of Mot. for Leave to Amend). West Fraser's Statement of Facts first sets forth the facts established by the evidence submitted to the Circuit Court prior to entering its summary judgment Order that are properly considered on appeal and second, addresses the alleged facts Wise contends are established by his newly submitted evidence.³

³ For the reasons discussed in West Fraser's argument, *infra*, at pp. 21-24, Jepson's notes and Wise's other arguments that were not presented to the Circuit Court are not properly considered by this Court. However, even if Wise's improper evidence and new arguments are considered, they still do not establish a genuine factual issue concerning Wise's defamation claim and the Circuit Court's Order should be affirmed.

I. Facts Established to the Circuit Court

A. Wise's November 7, 2017 Workplace Injury

West Fraser is a lumber manufacturer that operates lumber mills in South Carolina, including one located in Newberry, South Carolina. (R. pp. 28). In approximately March 2015, West Fraser hired Wise to work as a forklift operator at its Newberry mill. (R. p. 189, lines 17-23). On November 7, 2017, Wise was assigned to work in the shipping department and arrived at work shortly before his shift was scheduled to begin at 6:00 A.M. (R. p. 250, line 21 – p. 251, line 5). Wise got to the mill at or around the same time as other employees scheduled to work the day shift, which begins at 6:00 A.M. (R. p. 252, lines 3-10). As Wise and other day shift employees were preparing to begin their shift, the night shift employees were finishing and leaving the mill. (R. p. 252, lines 11-13).

Shortly after clocking in on November 7, 2017, Wise began his pre-work inspection of the forklift he would be operating, and as he attempted to raise the hood, he “felt something give . . . [and] could feel everything swelling up.” (R. p. 252, line 24 – p. 253 line 16). As Wise described in his deposition, his testicles were swollen and he was “hurting something terrible.” (R. p. 253, line 17 – p. 254 line 6). A nearby co-worker (identified only as “Irving”) saw the incident and asked Wise if he was okay, to which Wise replied, “[n]o, man, something gave.” (R. p. 252 line 24 – p. 253 line 16). Wise immediately informed his supervisor Chuck Price about his injury and stated that he needed to see a doctor. (R. p. 253, line 23 – p. 254, line 6). Price reported Wise’s injury to Superintendent Steve Johnson (“Johnson”). (R. p. 253, line 23 – p. 254, line 6). Johnson and a senior Superintendent, Quinton Wilson, came to the office where Wise was waiting. (R. p. 254, lines 7-17). They provided Wise with an ice pack for his testicles while they tried to reach West Fraser’s Safety Director, Nelson. (R. p. 254, lines 7-17).

On the date of the incident, Nelson had been employed as West Fraser's Environmental Health and Safety Director ("Safety Director") for more than twenty (20) years. (R. p. 454, lines 4-8). As Safety Director, Nelson was responsible for overseeing all on-the-job injuries, including ensuring employees receive necessary medical care, reporting injuries or diagnoses that are compensable under West Fraser's workers' compensation plan to management, and reporting recordable incidents to the Occupational Safety and Health Administration ("OSHA"). (R. p. 456, line 16 – p. 457, line 4; R. p. 459, lines 16-20).

After learning of the incident Nelson arrived at the mill between approximately 6:30-7:00 A.M. (R. p. 262, lines 9-12). Wise testified that Nelson initially wanted Wise to wait until 8:30 A.M. when West Fraser's occupational health doctor's (i.e., workers' compensation provider) office opened, but Wise told Nelson he could not wait that long. (R. p. 263, lines 4-7). Nelson agreed that Wise needed to go to the emergency room and drove him to NCMH. (R. p. 263, lines 8-21). As Wise and Nelson left the mill, Wise was able to walk but was hunched over in pain, wobbling, and holding his groin area. (R. p. 256, line 5 – p. 257, line 8 (Wise Dep.)).

Other than the four individuals mentioned above (co-worker Irving, Supervisor Price, and Superintendents Johnson and Wilson), Wise testified that he could not recall any other employees he saw as he was waiting to be taken to the hospital. (R. p. 260 line 2 – p. 261 line 24). However, at least one night shift employee testified that he and another employee saw Wise while Wise was waiting for Nelson to arrive. (R. p. 441, lines 15-17 (Anthony Cannon Dep.)). Anthony Cannon ("Cannon") testified that as he and Robert Johnson ("Johnson") were ending their shift, they saw Wise holding his groin and in obvious pain. (R. p. 441, line 18 – p. 442, line 2). Cannon also testified that as they approached Wise, Johnson jokingly said to Wise, "[a]in't nothing wrong with

you, he's probably been with, you know ... [some woman]." (R. p. 439, lines 4-16; R. p. 442, lines 3-20).⁴

B. Wise and Nelson Arrive at the NCMH Emergency Room

On the way to the hospital, Wise called his wife, Pauline Wise ("Mrs. Wise") and asked her to meet him at the hospital. (R. p. 264, lines 1-12 (Wise Dep.)). Mrs. Wise was not there when Wise and Nelson arrived but she got to the hospital a little later. (R. p. 264, lines 21-23). Wise and Nelson walked in to the hospital together and then Wise signed in and was taken to an exam room. (R. p. 264 line 24 – p. 265 line 14). Nelson remained at the hospital but did not accompany Wise to the exam room. (R. p. 266, lines 11-19). Wise testified that Nelson "floated around," walking inside and outside the hospital, periodically coming back and "peeping in" the doorway of the exam room.⁵ (R. p. 266, line 11 – p. 267, line 22). While Wise was waiting to be seen by a doctor, Mrs. Wise arrived at the hospital. (R. p. 273, lines 10-17). Shortly after Mrs. Wise arrived, Dr. Kenneth Leap entered the exam room and informed Wise that "we're going to take you back there and check you out." (R. p. 277, line 21 – p. 278, line 2). An X-ray technician then transported Wise to the X-ray room for an ultrasound. (R. p. 277, line 21 – p. 278, line 5). After the X-rays were taken, Wise returned to the exam room to wait for Dr. Leap, and while Wise was waiting a nurse gave him medication that made him "woozy." (R. p. 278, lines 6-14). Wise testified that he could not recall everyone who was present in the exam room when Dr. Leap returned but said it "was a bunch of people." (R. p. 282, lines 12-14). The individuals Wise

⁴ Cannon and Robert Johnson were leaving the mill at approximately 6:05 A.M. (R. p. 440, line 24 – p. 441, line 9 (Cannon Dep.)). Nelson did not arrive at the mill until 6:30 A.M. or later. (R. p. 262, lines 9-12 (Wise Dep.)). Clearly, nothing Nelson said was related to the sexual joke made by Robert Johnson and vice versa.

⁵ Wise could not recall whether the exam room doorway had a door or curtain closure. (R. p. 275, line 15 – p. 276, line 7).

recalled being present included Mrs. Wise, Nelson, Dr. Leap, and a nurse. (R. p. 284, lines 11-23 (Wise Dep.)).

According to Wise, when Dr. Leap returned to the exam room, he made the following two statements: “I don’t see anything to cause me to believe that you have a hernia,” and “[l]ooks like somebody’s been changing sexual partners.” (R. p. 283, lines 2-9). Wise does not recall Dr. Leap saying anything else before he left the exam room. (R. p. 285, lines 18-22). Wise testified that Nelson left the exam room at the same time as Dr. Leap and that he could see Nelson speaking with Dr. Leap but could not hear what they discussed. (R. p. 302, lines 13-20).

Nelson testified that he talked with Dr. Leap following his examination of Wise to discuss Dr. Leap’s diagnosis. (R. p. 459, lines 8-15). Nelson explained that he needed the information to determine whether Wise had suffered an on-the-job injury for workers’ comp and OSHA reporting purposes.⁶ (R. p. 459, lines 16-20). Nelson testified that Dr. Leap told him that Wise had an infection and that he wrote Wise a prescription which Dr. Leap provided to Nelson. (R. p. 459, lines 8 – 15 (Nelson Dep.); R. p. 299, lines 10-12 (Wise Dep.)). Nelson further testified that Dr. Leap did not describe the nature of Wise’s infection and did not disclose anything further to Nelson about Wise’s condition. (R. p. 460, lines 5-12).

While Nelson was speaking with Dr. Leap, Wise and Mrs. Wise were alone in the exam room. (R. p. 299, lines 17-20). Wise testified that he and his wife were upset by the comment Dr. Leap allegedly made about changing sexual partners and that Mrs. Wise was in shock. (R. p. 299, line 21 – p. 300, line 8). Wise testified that he and Mrs. Wise said to each other, “[l]et’s get the

⁶ To be clear, the laws protecting the disclosure of health-related information (i.e., the HIPAA privacy rule) do not apply to employers who obtain or disclose information related to a workplace injury. 45 C.F.R § 164.512(b)(1)(V). In this context, a provider may release health related information to the patient’s employer or workers’ comp insurer even without patient consent. *See id.*

hell out of here” and prepared to leave. (R. p. 299, line 24 – p. 300, line 12). Wise and Mrs. Wise were planning to follow Nelson to the pharmacy to get Wise’s prescription filled. (R. p. 302, lines 6-9). Nelson testified that he occasionally assists employees with filling prescriptions when the underlying injury may be covered by workers’ comp. (R. p. 462, line 25 – p. 463, line 9).

The next time Wise spoke to Nelson was in the hospital parking lot outside of the emergency room exit as Wise waited on Mrs. Wise to get her car so that she and Wise could follow Nelson to the pharmacy. (R. p. 302, line 21 – p. 303, line 23). According to Wise, he was still trying to get over the “initial shock” of the alleged comment Dr. Leap made about changing sexual partners. (R. p. 304, lines 1-5). Wise testified that Nelson approached him as he was waiting outside and asked him if maybe Mrs. Wise had an infection. (R. p. 304, lines 12-20). Wise responded to Nelson, “[y]ou out of your mother-fucking mind?” (R. p. 305, lines 2-6). Wise testified that at this point Nelson was trying to get away from him because he knew Wise was “about to lose all my composure.” (R. p. 305, lines 17-20). Nelson denies asking Wise if his wife may have had an infection but does agree that Wise was “very upset” and “pretty ticked off” that Dr. Leap allegedly accused Wise of having multiple sexual partners.⁷ (R. p. 461, lines 3-17). Wise testified that following this exchange, he, Mrs. Wise, and Nelson drove in two vehicles to CVS pharmacy to fill Wise’s prescriptions and that Mrs. Wise then drove Wise home. (R. p. 306,

⁷ Nelson testified this is the first time he heard of Dr. Leap’s alleged statement and that he was not in the exam room when Dr. Leap allegedly made the statement to Wise. While Nelson’s and Wise’s recollections differ, this factual dispute is immaterial and has no bearing on any issue before the Court. Additionally, while Wise argues in his Initial Brief that there is a factual dispute concerning whether Nelson was in the exam room and heard the alleged statements by Dr. Leap, this is immaterial because Nelson does not deny hearing about the alleged statements. As Nelson testified, Wise informed Nelson of the statements in the hospital parking lot. The issue of whether Nelson was not in the hospital room to hear them first hand is thus irrelevant to Nelson’s knowledge of the issue. West Fraser’s arguments are based on the truthfulness and privileged status of Nelson’s comments to other plant personnel rather than on any claim that Nelson lacked knowledge. Wise’s argument is a red herring, not evidence of a material factual dispute.

lines 8-24). Wise did not return to work that day or for the next several days. (R. p. 306, lines 16-20; R. p. 310, lines 1-9).

C. Nelson Returns to the Mill

Nelson returned to the mill immediately after leaving the pharmacy. (R. p. 465, lines 11-12 (Nelson Dep.)). He parked his vehicle in the mill parking lot and was walking toward the office when one of Wise's co-workers in the shipping department, George Wilson ("Wilson"), greeted Nelson. (R. p. 465, line 13 – p. 466, line 13). Nelson and Wilson were asked in their depositions to describe exactly what was said during their encounter after Nelson returned to the mill. Nelson testified as follows:

So, George [Wilson] asked me, he said 'How's Hop [referring to Wise's nickname]?' And I said, 'He's doing fine. He has an infection so he got a prescription, or he's doing fine, he got a prescription because he has an infection.' And then that was the end of the conversation with George.

(R. p. 466, lines 9-13).

Wilson's recollection of the conversation was identical to Nelson's in all material respects:

... I seen Keith [Nelson] and I asked, Keith, what happened to Anthony [Wise]? I said, how was he doing? The only thing he said was that Anthony – the doctor said he [Wise] had an infection. And that's all he said. And then when he mentioned that and I stepped back in the shipping department and the guys asked me how is Anthony. I said, well, I just seen Keith and Keith said he has an infection. And I mentioned that and then I went on and went to do whatever I need[ed] to do.

(R. p. 527, lines 13-23).

Wilson testified that prior to seeing Nelson, he had learned from other shipping department employees that Wise had been injured that morning, but contrary to Wise's characterization of the facts, Wilson testified he did not know the details or nature of Wise's injury. (Cf. R. p. 526, line 19 – p. 527, line 23 (Wilson Dep.) *with* Wise's Final Br. at p. 5 (stating word had spread to Wilson that Wise had suffered a groin injury and Wilson believed Wise had pulled a muscle)). Wilson

explained that the only reason he asked Nelson about Wise's condition was because Wilson was genuinely concerned if Wise was okay. (R. p. 530, lines 8-14). Nelson testified that he understood Wilson's reason for asking to be just as Wilson described— a sincere concern about the wellbeing of a co-worker he believed to have been injured on the job. (R. p. 465, line 19 – p. 466, line 8). Nelson explained that the shipping department is a small department with about ten (10) employees. (R. p. 465, line 23 – p. 466, line 1). He testified it is not uncommon for employees to inquire about an employee after a workplace accident occurs and testified, "I mean, it's just human nature." (R. p. 466, lines 4 – 8). No one was in the area where Nelson and Wilson were talking and no one else overheard their conversation. (R. p. 532, lines 14-17 (Wilson Dep.)).

Both Nelson and Wilson testified unequivocally that Nelson never used the term STD or any other word that could imply a sexually-related condition. (R. p. 470, lines 3-8 (Nelson Dep.); R. p. 528, line 19 – p. 529 line 10 (Wilson Dep.)). Nelson also did not tell Wilson about Wise's complaint about Dr. Leap or Dr. Leap's alleged comment that Wise had been changing sexual partners. (R. p. 470, lines 16-19 (Nelson Dep.)). Nelson testified he believed his statements to Wilson that Wise had an infection and received a prescription were true and that it never crossed his mind that anyone would interpret the statements to mean Wise had an STD or to infer anything derogatory about Wise. (R. p. 512, lines 3-20). Nelson further testified that when he told Wilson that Wise had an infection he did not consider himself to be revealing sensitive medical information and did not intend to harm Wise or suggest anything disparaging about him. (R. p. 512, line 3 – p. 513, line 6). Nelson explained that if he thought there was even a possibility that his statement would lead anyone to believe Wise had contracted an STD, he would not have discussed the November 7, 2017 incident with anyone other than plant management. (R. p. 512, lines 15-20).

Likewise, Wilson testified he did not interpret Nelson's statement as suggesting anything sexually related or derogatory or to imply anything beyond the fact that Wise was not injured in an accident and just had some type of infection. In fact, Wilson testified repeatedly that the only person he ever heard mention that Wise had an STD, or rather did not have an STD, was Wise after Wise returned to the mill and complained to Wilson and many other employees about Dr. Leap's alleged comment. (R. p. 528, lines 5-8; R. p. 529, lines 2-10; R. p. 532, lines 3-8). Wilson further testified that Wise talked about Dr. Leap's comment and his alleged STD so often that it became tiresome, and Wilson began avoiding Wise because that was all he talked about. (R. p. 531, line 4 – p. 532, line 8).

D. Wise's Allegations of Defamation

Wise testified that when he returned to work approximately one week after the incident, several co-workers teased him about having an STD. (R. p. 291, line 9 – p. 292, line 23). Wise testified he believes Nelson was the source of the rumor based on the statement Nelson made to Wilson during their conversation in the parking lot. (R. p. 290, lines 6-11; R. p. 427, line 22 – p. 428, line 5). Wise admitted, however, he has no personal knowledge of anything Nelson said about him from the time Nelson returned to the mill on November 7, 2017 and when Wise returned to the mill on or about November 13, 2017 because Wise was not there. (R. p. 289, lines 16-25; R. p. 292, lines 4-10). To the contrary, Wise's knowledge of and his allegations about statements Nelson allegedly made to Wilson is based solely on hearsay (or double hearsay) from co-workers. (R. p. 289, lines 16-25; R. p. 292, lines 7-10). Moreover, even Wise's second-hand knowledge based on conversations he alleges his co-workers overheard and relayed back to Wise do not support that anyone personally heard Nelson state that Wise had an STD or had been changing sexual partners: "I can't sit here and say that they [co-workers] heard it directly from him [Nelson],

but it went through the plant like a wild fire.” (R. p. 292, lines 11 – 23). Wise acknowledged that the statements he was told Nelson made about him stated only that Wise had received an antibiotic and had an infection. (R. p. 289, lines 11-25; R. p. 325, lines 7-23). Nevertheless, according to Wise, stating Wise “has an infection” is the same as stating Wise “has an STD.” (R. p. 326, line 11 – p. 327, line 11; R. p. 344, lines 17-24). Wise explained that because he is a black man, anyone who heard that he had an infection would naturally assume it was a sexually transmitted infection: **“...[w]hen you a black man, that’s all people think that you supposed to do. You got to be some kind of little whore or something like that.”** (R. p. 316, lines 11-14 (emphasis added)). Wise further testified that when a man says infection he means STD because **“when mens [sic] talk like that, that’s what they talking about, sex. They ain’t talking about no just plain infection.”** (R. p. 327, lines 9-11 (emphasis added)).

With regard to his alleged injuries, Wise acknowledged he suffered no monetary loss as a result of the alleged defamatory statements. (R. pp. 66-67 (Plf.’s Resp. to West Fraser’s Interrog. at pp. 9-10, #17)). Instead, Wise’s claimed injuries included only alleged injury to his reputation, privacy interests, and mental anguish he allegedly suffered as a result of the rumors. (R. p. 66 (Plf.’s Resp. to West Fraser’s Interrog. at p. 9, #16)). Wise was unable to explain how the rumors harmed his reputation or identify anyone in the community whose opinion of him changed as a result of the alleged rumors. Wise testified that it was impossible to know what people were really thinking. (R. p. 408, line 9 – p. 410, line 22). Despite Wise’s uncertainty, none of the nine (9) co-workers he identified in his discovery responses as having heard the alleged rumors testified that their opinions of Wise changed or that they believed Wise had an STD. (*See, e.g.*, R. p. 528, lines 5-10 (Wilson Dep.); R. p. 610, lines 4-17 (Praylow Dep.); R. p. 542, lines 13-15 (Neal Dep.); R. p. 599, lines 13-19 (Maybin Dep.); R. p. 628, line 23 – p. 629, line 2 (Shealy Dep.)).

E. Nelson's Statements to Wilson Were True

Wise failed to produce a single witness or other form of admissible evidence to establish Nelson told Wilson that Wise had an STD or that Nelson said anything other than that Wise had an infection and was prescribed an antibiotic. Wise did not dispute that he had an infection and testified that was his understanding when he was discharged from the hospital on November 7, 2017. (R. p. 297, line 21 – p. 298, line 19). Moreover, Wise testified that after leaving the hospital, he saw his primary care physician the following day, and she confirmed he had a prostate infection. (R. p. 308, line 3 – p. 309, line 6). Likewise, when Wise was examined by West Fraser's occupational health physician several weeks later, he concurred Wise had an infection. (R. p. 312, line 11 – p. 313, line 21). Wise also did not dispute he received a prescription for an antibiotic to treat the infection. (R. p. 297 lines 3 – 24; R. p. 344, lines 6-12). The November 7, 2017 medical records produced by the NCMH as well as the records produced by Wise's primary care physician memorializing Wise's follow-up visit with his doctor corroborate that Wise was diagnosed with an infection and prescribed an antibiotic.⁸ (See R. pp. 75-82 (Exs. 7-8 to West Fraser's Mot. for Summ. J.)). Notably, Wise's account of what he heard that Nelson relayed to Wilson (although based on inadmissible hearsay) is consistent with the testimonies of both Nelson and Wilson, the

⁸ The hospital's records reflect that Dr. Leap determined Wise had Epididymitis (inflammation or infection of the epididymis) and prescribed him Doxycycline (antibiotic) as treatment. (R. pp. 77-78 (bates# NCMH ED 9-10 in Ex. 7 to Mot. for Summ. J.)). The records produced by Wise's primary care physician, Dr. Hutson of Lexington Family Practice, show that when Wise was seen by Dr. Hutson the day after he was treated by Dr. Leap (November 8, 2017), Dr. Hutson concurred Wise had Epididymitis and prescribed Wise a different antibiotic, Ciprofloxacin, as treatment. She also ordered additional testing. When Wise returned to see Dr. Hutson two days later, her records state that "**Patient presents with - infection follow up**" and instructed him to continue taking the antibiotic "**to bring down the infection.**" (R. pp. 81-82 (Ex. 8 to Mot. for Summ. J.) (emphasis added)). Dr. Hutson reviewed the results of her testing with Wise and diagnosed him with a combination of infections: Prostatitis (prostate infection), Epididymitis (infection of the epididymis), and Cellulitis (skin infection). (R. p. 82 (Ex. 8 to Mot. for Summ. J.)).

only two individuals with personal knowledge of what Nelson stated to Wilson. (R. p. 315, line 11-24; R. p. 325, line 7 – p. 326, line 15).

F. Nelson's Statements to Russell Were True and Also Privileged

During the August 11, 2021 summary judgment hearing, Wise offered an alternative theory of an alleged defamatory publication based on Nelson's report of the incident to Plant Manager Russell. (R. pp. 142 line 13—p. 143 line 20). After Nelson's conversation with Wilson on the date of the forklift incident, Nelson went to Russell's office to discuss the incident. (R. p. 466, lines 14—25; R. p. 469 lines 1—25). As support for Wise's argument during the summary judgment hearing that Nelson made defamatory statements in the meeting with Russell, Wise's counsel pointed to Nelson's testimony purportedly establishing that Nelson "told Mr. Russell that the doctor had said that he [Wise] had an infection of a sexually transmitted disease" and argued that Nelson's alleged statement to Russell was in and of itself defamatory. (R. pp. 142 line 13—p. 143 line 20).

As an initial matter, Wise's counsel's description during the hearing of what Nelson told Russell is a true statement since Wise alleges Dr. Leap did make this statement. However, a review of Nelson's deposition testimony plainly establishes that what Nelson actually told Russell is that Wise was "very upset" that Dr. Leap asked Wise about changing sexual partners. (R. p. 466, lines 21-24). This also is a true statement since Wise agrees he was upset and "shock[ed]" by Dr. Leap's alleged statement. (R. p. 303, line 24 – p. 304, line 7; R. p. 300, line 1-14. *See also* R. pp. 28-30 (Compl.)).

The purpose and context of Nelson's communication to Russell is significant. Nelson testified that after returning from NCMH he went to Russell's office to discuss Wise's apparent on-the-job injury and whether it would result in a worker's compensation claim. (R. p. 466, lines 14-

25; R. p. 469 line 1—p. 470 line 2). Nelson testified this conversation was held “behind closed doors” in the privacy of Russell’s office. (R. p. 466, lines 9-25). Nelson explained that the purpose of meeting with Russell was to inform Russell that Wise had been diagnosed with an infection and that Nelson did not believe Wise had suffered an on-the-job injury that would be covered by worker’s compensation. (R. p. 469, line 1 – p. 470, line 2) (“you can’t have like an incident happen and then have an infection like an hour and a half later . . . So, from a workers’ comp perspective, I was relieved he [Wise] had an infection because, you know, I didn’t have to go through no reporting to OSHA...”). Nelson testified he also told Russell that Wise was upset about the question Dr. Leap asked him because as the Plant Manager Russell needed to know.⁹ (R. p. 466, lines 18-24). Nelson testified that the conversation with Russell was held in Russell’s private office behind closed doors and that the information they discussed were kept strictly between Nelson as Safety Director and Russell as Plant Manager. (R. p. 466, lines 9—25; R. p. 469, line 1 – p. 470, line 23 (Nelson Dep.)). *See also* R. p. 557, lines 4-6 & R. p. 558, lines 17-18 (Russell Dep.) (testifying any discussion about issues involving an hourly employee is kept between salaried (i.e., management) employees behind closed doors and discussing such issues with other hourly employees is not allowed)). Wise presented no evidence nor even allegation that Nelson’s conversation with Russell was overheard by other employees in the mill or repeated to anyone else at the mill during the summary judgment hearing or any time prior to the Court’s Order granting summary judgment. (*See generally* R. pp. 121-151 (Aug. 11, 2021 Tr.)).

⁹ As Nelson suspected, Wise elevated his informal complaint about Dr. Leap and on the day he returned to work made a formal complaint to Russell and other West Fraser managers about the doctor West Fraser had taken him to for treatment. (R. p. 553, lines 5-18; R. p. 574 (Russell’s Nov. 13, 2017 notes from meeting with Wise)).

G. West Fraser's Response to Wise's Complaints

When Wise returned to work following the forklift incident, he complained to Russell and several other West Fraser managers about Dr. Leap's alleged comments in the emergency room and that a rumor was going around the mill that Wise had an STD that Wise believed started after Nelson's statement to Wilson in the parking lot on the day of the forklift incident. (R. p. 328, line 12 – p. 329, line 17; R. p. 338, line 11 – p. 339, line 14. *See also* R. p. 557, lines 10-17 (Russell Dep.)); R. pp. 574-576 and 580-581 (Russell Dep. Exs. 1-3 & 5)). During their November 13, 2017 meeting, Wise told Russell he was unhappy with how he was treated by the doctor West Fraser took Wise to for treatment (Dr. Leap) and stated the doctor was “a quack and showed racism.” (R. p. 568, lines 16-25; R. p. 574). In another meeting on November 17, 2017, Wise told Russell that the rumor “had ruined his good name.” (R. p. 575). Russell assured Wise he would investigate and take corrective action to address the issue and also encouraged Wise to identify the co-workers who allegedly were teasing him so that Russell could “take care” of it. (R. p. 554, lines 10-13; r. p. 557, lines 10-17). Wise refused to identify anyone. (R. p. 357, line 1 – p. 358, line 4 (Wise Dep.); R. p. 557, lines 10-17 (Russell Dep.)).

Having no other information to go on, Russell focused his investigation on Nelson's communication to Wilson and determined it was inappropriate for Nelson (a salaried manager) to share information about Wise's on-the-job injury with Wilson (an hourly employee). (R. p. 559, lines 15-24). Russell explained in his deposition that while West Fraser has no written rule or policy, as a matter of common sense and practice, any personnel matter involving an hourly employee only should be discussed among salaried employees (i.e., management). (R. p. 559, line 15 – p. 560, line 8; R. p. 556, lines 17—p. 557 line 9 (testifying the “salary team” only discusses issues related to hourly employees in private). On November 17, 2017, Russell met with

Nelson to counsel him against discussing personnel matters with hourly employees and provided Nelson with a written letter of reprimand. (R. p. 558, lines 8-18 (Russell Dep.); R. pp. 577-578 (Nov. 17, 2017 reprimand letter)). Russell testified this was the only reason Nelson was reprimanded. (R. p. 558, lines 15-18 (testifying Nelson was reprimanded “[f]or the incident that occurred talking to the hourly employee about another hourly employee. *Strictly that and nothing else.*” (emphasis added))). Despite Wise’s attempts both in the Circuit Court and on appeal to mischaracterize the reprimand letter as an admission that West Fraser considered Nelson’s statements to be defamatory, the letter plainly lists the infractions Nelson was being reprimanded for, none of which include any finding or determination by Russell or West Fraser that Nelson made defamatory statements about Wise. (R. pp. 577-578). The language in the letter that Wise seizes on and insists constitutes an admission includes paragraph number 3, which counsels Nelson for putting West Fraser at risk because “verbally disclosing medical information about an employee can be considered *by the employee* as slanderous.” (R. pp. 577-578 (emphasis added)). This language is parroting Wise’s complaints to Russell and other West Fraser managers stating that the alleged rumor had ruined his good name and threatening litigation. It cannot reasonably be interpreted as an admission that West Fraser believed Nelson’s statements were slanderous.

II. Facts Not Presented to the Circuit Court

As mentioned above, Wise’s Initial Brief improperly relies on evidence and arguments not submitted or even mentioned to the Circuit Court prior to entering its final summary judgment Order. Nonetheless, Wise points to the new evidence, including Jepson’s notes and deposition testimony of Supervisor Mike Shealy (“Shealy”), and urges this Court to find that the Circuit Court erred in holding Wise’s summary judgment evidence failed to identify a genuine issue of material fact. As demonstrated, *infra*, at pp. 28-34, Wise’s attempt to offer new evidence and make new

arguments is fundamentally unfair to the Circuit Court and improper. The South Carolina Appellate Rules and overwhelming case law preclude any consideration of Wise's new evidence and/or arguments, and they should be disregarded in considering Wise's appeal. However, even if this Court is inclined to consider evidence and arguments never presented to the Circuit Court in granting summary judgment, they still do not establish a genuine or material factual issue concerning Wise's defamation claim, and the Circuit Court's summary judgment Order should be affirmed.

A. Jepson's Notes Dated November 17, 2017

Wise filed Jepson's notes for the first time as an attachment to his Motion for Reconsideration filed on October 14, 2021. (R. p. 691 (Wise's Mot. for Reconsideration, Exhibit 4)). Wise testified in his deposition that Jepson is West Fraser's Human Resources ("HR") manager and one of several individuals Wise complained to about the alleged STD rumor. (R. p. 328, lines 12-25). Jepson also was Wise's point of contact for the short-term disability and worker's compensation claim Wise attempted to file following the forklift incident. (*See* R. p. 691 (Jepson's notes)).

Although Wise has been in possession of Jepson's notes since West Fraser produced them in the early stages of discovery on October 8, 2019, Wise did not depose Jepson during discovery. None of the West Fraser employees who were deposed were questioned about Jepson's notes, and her notes were not introduced as exhibits in any deposition taken in the underlying case. Nevertheless, Wise's Initial Brief relies heavily on Jepson's notes as alleged evidence establishing Nelson made defamatory statements about Wise to Jepson. (Wise's Final Br. at pp. 5, 12, 13, 18, 20, 22-23). Specifically, Wise argues that Jepson's notes establish that after Nelson left the

hospital and returned to the mill on November 7, 2017 Nelson told Jepson that Wise had a “ ‘long worded infection’ that possibly originated from his sexual history.” (Wise’s Initial Br. at p. 5).

Wise’s reliance on Jepson’s notes, in addition to being improper, is sorely misplaced for several reasons. As reflected in Jepson’s notes, which are titled “Anthony Wise W/C [worker’s comp] Incident,” Wise provided his medical records to Jepson and had several conversations with Jepson about the forklift incident because she also was involved in investigating whether Wise sustained a compensable on-the-job injury and also was attempting to assist Wise with filing a claim for short term disability benefits. (R. 691 (Jepson notes)). Even assuming Jepson’s notes can be read to state that Nelson told her Wise’s infection could be sexually related, which is a strained and unreasonable interpretation, statements between two managers investigating a potential on-the-job injury for the purposes of determining whether worker’s compensation benefits are owed fall within the qualified privileged. (*See, infra*, at pp. 42-44).

Second, Wise misinterprets and grossly mischaracterizes Jepson’s notes, presumably because he conducted no discovery to ascertain the context or meaning of them. If he had, Wise would have learned the references in Jepson’s notes to “a ‘long worded’ infection that has several possibilities of origin (including past sexual history),” a phrase that notably appears in parentheses, and to Dr. Leap’s diagnosis and treatment prescribed to Wise are not describing statements Nelson made to Jepson on the date of the forklift incident (November 7, 2017). To the contrary, as evidenced by the date Jepson’s notes were signed (November 17, 2017), they are describing information Jepson gathered during her review of Wise’s medical information and alleged on-the-job injury days after the forklift incident. Indeed, the notes discuss events that occurred after Wise had returned to work more than a week after the forklift incident and his complaints to Jepson, Russell, and others about the comments allegedly made by Dr. Leap, the

rumor about him going around the plant, and not receiving worker's compensation benefits. (R. p. 691).

Considering the extensive discovery Wise conducted in the underlying action, if Wise genuinely believed Jepson's notes were the smoking gun evidence Wise argues on appeal, Wise would have included Jepson in the long list of West Fraser employees Wise deposed or at least questioned Russell and the other West Fraser deponents about Jepson's notes. Wise did not find Jepson's notes significant enough to explore them in discovery or to even mention to the Circuit Court in opposing summary judgment, and Jepson's notes are equally insignificant now. West Fraser will not further belabor clarifying Wise's mistaken interpretation of Jepson's notes because the notes were not part of the summary judgment record. They were never presented to or considered by the Circuit Court prior to its entry of summary judgment and they are not properly considered by this Court.

B. Shealy's Deposition Testimony

Wise's Initial Brief also makes new arguments based on the deposition testimony of Wise's supervisor at the time of the forklift incident, Shealy. (Wise Initial Br. at pp. 7, 22) Wise did not mention Shealy's testimony during the summary judgment hearing or include it in the evidentiary materials Wise filed in opposition to summary judgment following the hearing. (*See generally* R. pp. 121-151 (Aug. 11 2021 Hearing Tr.). *See also* R. p. 693 (Sept. 1, 2021 correspondence to Clerk of Court confirming filing of evidentiary submission opposing summary judgment)). Wise's new arguments based on Shealy's testimony were never presented to the Circuit Court prior to entering summary judgment and they are not properly considered by this Court. Even if the new arguments are considered, which they should not be, Shealy's testimony does not demonstrate a

genuine issue of material fact concerning Wise's defamation claim and the Circuit Court's Order should be affirmed.

As Wise's supervisor, Shealy was responsible for scheduling Wise's shifts, entering his time, and reporting attendance for compensation purposes. (R. p. 517, line 11 – p. 518, line 5 (Nelson Dep.)). Nelson testified the only employees he discussed Wise's condition with outside of Wise's presence were Wilson, Plant Manager Russell, and Shealy.¹⁰ (R. p. 465, line 13 – p. 466, line 17; R. p. 485, lines 14-23). Nelson discussed this with Shealy because Shealy needed to know how long Wise would be out for staffing purposes and to accurately record Wise's absences for payroll. (R. p. 485, line 24 – p. 486, line 2; R. p. 517, line 24 – p. 518, line 5).

Shealy testified that all Nelson told him was that Wise had an infection and would be out a couple days. (R. p. 626, lines 16-23). Nelson did not say or communicate anything to Shealy to suggest the infection was sexually related, and Shealy did not know or form a belief as to what type infection Wise had. (R. p. 626, line 24 – p. 627, line 4). There is no evidence nor even allegation that Shealy repeated the statement that Wise had an infection to anyone. Shealy also testified that while he did not recall hearing rumors that the infection was sexually related *if* he heard such a rumor it did not change his opinion of Wise in anyway. (R. p. 626, lines 8-12; R. p. 628, line 23 – p. 629, line 2).

Wise argues that even if Nelson's statement to Shealy was qualifiedly privileged because Shealy needed to know the information as Wise's supervisor, it exceeded the scope of the privilege because Shealy did not need to know that Wise had an infection. (Wise Final Br. at pp. 7, 22).

¹⁰ Nelson also discussed the incident in a meeting with Wise and another West Fraser manager who is second in command at the mill below Russell, Quinton Wilson. (R. p. 485, line 20 – p. 486, line 15). Wise was present for the entire meeting, and there is no allegation that anything said in this meeting was defamatory or the basis for Wise's defamation claim.

Wise contends this establishes a factual issue concerning whether Nelson's statement to Shealy was defamatory. Wise's argument wholly fails. For starters, it is undisputed the statement "Wise has an infection" was true, which ends the analysis since truth is a complete defense to defamation. (*See, infra*, at p. 36). Moreover, it also is undisputed that Shealy did not interpret or understand either at the time Nelson made the statement or thereafter that Nelson's statement inferred that Wise had a sexual infection or suggested anything derogatory about Wise.

While Wise's arguments based on Nelson's statement to Shealy were not presented to the Circuit Court and should be disregarded entirely, even if considered they do not establish a defamatory statement or that summary judgment was improper.

STANDARD OF REVIEW

"An appellate court reviews the granting of summary judgment under the same standard applied by the trial court." *Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998). As the South Carolina Supreme Court has aptly articulated, "[t]he purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

Pursuant to the well-settled standard, in determining whether a genuine factual issue exists, the evidence and all factual inferences drawn from it must be viewed in a light most favorable to the non-moving party. *George*, 345 S.C. at 452, 548 S.E.2d at 874. When a motion for summary judgment is made and supported by such facts as would be admissible in evidence at trial, the non-moving party may not rest upon the mere allegations of his pleadings but must identify specific facts establishing a genuine issue for trial. Rule 56(e), SCRPC. The South Carolina Supreme Court has explained the Rule 56 standards as follows:

[T]he plain language of Rule 56(c) mandates the entry of summary judgment ... against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is entitled to judgment as a matter of law because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Baughman v. Am. Tel. and Tel. Co., 306 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991) (internal quotations omitted).

Where, as here, the underlying action requires proof by a preponderance of the evidence, the non-moving party must submit a "scintilla of evidence" to survive summary judgment. *Lemmons v. Macedonia Water Works, Inc.*, 431 S.C. 186, 199, 330, 847 S.E. 2d 471, 479 (Ct. App. 2020). " '[A] scintilla of evidence is material evidence which, taken as true, would tend to establish the issue in the mind of a *reasonable juror*.' " *Id.* (quoting *Crosby v. Seaboard Air Line Ry.*, 81 S.C. 24, 31, 61 S.E.2d 1064, 1067 (1908)). When a scintilla of evidence is susceptible to only one reasonable inference, no issue of fact arises and the circuit court can decide as a matter of law. *Nat'l Bank v. Barrett of Honea Path*, 174 S.E.2d 581 (1934). "[A]ny evidence, even a scintilla, that is useful to withstand a summary judgment motion must meet the prerequisite of being probative. *Bass vs. Gopal Inc.*, 384 S.C. 238, 246 n.6, 680 S.E.2d 917, 921 n.6 (Ct. App. 2009), *aff'd* 395 S.C. 129, 716 S.E.2d 910 (2011). The circuit court "is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine." *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984). "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a *genuine* issue of fact remaining for trial." *Sims v. Amisub of S.C, Inc.*, 408 S.C. 202, 208, 758 S.E.2d 187, 190-91 (Ct.

App. 2014), *aff'd* 414 S.C. 109, 777 S.E.2d 379 (2015) (emphasis added) (quoting *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004)).

Further, an appellate court “may affirm the grant of summary judgment on any ground found in the record.” *Moore v. Weinberg*, 373 S.C. 209, 229, 644 S.E.2d 740, 750 (Ct. App. 2007). See also Rule 220(c), SCACR (“The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.”)

ARGUMENT

I. Wise Has Abandoned Any Appeal of the Circuit Court’s Order Denying His Motion for Reconsideration.

While Wise’s Notice of Appeal purports to appeal both the Circuit Court’s October 11, 2021 Order granting summary judgment and the November 23, 2021 Order denying Wise’s Motion for Reconsideration, Wise’s Initial Brief makes no argument in support of reversing the Order denying his Motion for Reconsideration. His Initial Brief does not list this as one of the issues on appeal, address the appropriate standard of review applicable to a motion to reconsider, and does not even attempt to identify any error by the Circuit Court in denying his Motion for Reconsideration. Wise has abandoned his attempt to appeal the November 23, 2021 Order. Rule 207(b)(1)(B), SCACR (“[o]rdinarily, no point will be considered which is not set forth in the statement of the issues on appeal.”). See also *Central Realty Corp. v. Allison*, 218 S.C. 435, 451-52, 63 S.E.2d 153, 160 (1951) (where appellant served notice of intent to appeal order but failed to address order in initial brief, Supreme Court considers that issue to have been abandoned; *State v. Hornsby*, 326 S.C. 121, 125, 484 S.E.2d 869, 871 N.1 (1997) (issue not addressed in initial brief is abandoned); *Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct.

App. 1993) (“An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court.”)

II. Wise’s New Evidence and Arguments Not Presented to the Circuit Court Prior to Entering Summary Judgment Are Improper and Should Not Be Considered.

A. Wise’s New Evidence Should Be Disregarded.

South Carolina appellate courts have strictly enforced the rule that only evidence and arguments presented to the lower court in entering its judgment will be considered on appeal. *See Hickman v. Hickman*, 301 S.C. 455, 456-57, 392 S.E.2d 481, 482 (Ct. App. 1990) (rejecting claim raised for the first time in Rule 59 motion and observing the purpose of Rule 59 is not “providing a disappointed suitor with a post-judgment opportunity to argue that which could have been argued pre-judgment.”). *See also Spreeuw v. Barker*, 385 S.C. 45, 68-69, 682 S.E.2d 843, 855 (Ct. App. 2009) (refusing to consider a form that “appears only as an attachment to [party’s] Rule 59(e) motion”); *Jones v. Builders Inv. Grp., LLC*, 415 S.C. 321, 330 n.7, 781 S.E.2d 737, 742 (Ct. App. 2015) (trial court properly refused to consider new evidence at Rule 59(e) hearing and affirming decision granting directed verdict). *Norris v. Ferre*, 315 S.C. 179, 183, 432 S.E.2d 491, 493 (Ct. App. 1993) (denying party’s motion to supplement record with matters not presented to trial judge). *See also Henning v. Kaye*, 307 S.C. 436, 438, 415 S.E.2d 794, 795 (1992) (ordering appellant to serve and file amended brief and designation of matter that comply with appellate rules and reminding appellant the record on appeal shall not contain matters not presented to the trial court).

Wise’s new evidence consists of Jepson’s notes, which Wise refers to in his Designation of Matter as “[w]ritten Statement of Melody H. Jepsen [*sic*], dated November 17, 2017” and in his Initial Brief as “Jepson’s Statement,” and the Deposition Transcript of Mike Shealy dated

December 19, 2019.¹¹ (Wise Designation of Matter at p. 3, ## 22 & 24; Wise Final Br. at pp. 5, 6, 7, 12, 18, 20, 22-23). As plainly evidenced by the summary judgment hearing transcript and Wise's correspondence to the Circuit Court Clerk confirming the filing of Wise's evidentiary submission opposing summary judgment, Wise did not mention Jepson or Shealy to the Circuit Court or file the so-called "Jepson's Statement" or Shealy's transcript with his evidentiary submission opposing summary judgment. (R. pp. 121-151 (Aug. 11, 2021 Hearing Tr.); R. p. 693 (Wise Sept. 1, 2021 correspondence to Clerk of Court confirming filing of evidentiary submission)). To the contrary, the first time Wise made any reference to or argument based on Jepson's notes was in his Memorandum Supporting Motion for Reconsideration filed on October 14, 2021 several days after the Circuit Court entered its final Order granting summary judgment.¹² (R. pp. 103-104 (citing Jepson's notes as Plf.'s Exhibit 4)). Wise's new argument based on an alleged defamatory publication to Shealy was not even raised in Wise's Motion for Reconsideration and was not presented to the Circuit Court at any time. (R. pp. 102-120). Wise cannot use a post-judgment motion to reconsider as a vehicle to introduce evidence into the record that was available to him and not presented to the Circuit Court prior to entering its summary judgment Order. The fact that Wise has attempted to do so in no way allows Jepson's notes or Shealy's deposition to properly be included in the record on appeal.

Further, Jepson's notes should not be considered for the additional reason that they are inadmissible hearsay. A party cannot rely on evidence that would not be admissible at trial to

¹¹ As discussed in the fact section, *supra*, at p. 21, Melody Jepson is West Fraser's local HR Manager at the Newberry mill where Wise was employed. The correct spelling of her last name is "Jepson," not Jepsen.

¹² It is well settled under South Carolina law that a party cannot use a motion to reconsider to present evidence or make arguments that could have been presented prior to the entry of judgment but was not. *Hickman*, 301 S.C. at 456-57, 392 S.E. 2d at 482.

oppose summary judgment. *Hansen v. DHL Labs., Inc.*, 316 S.C. 505, 510, 450 S.E.2d 624, 627 (Ct. App. 1994), *aff'd*, 319 S.C. 79, 459 S.E.2d 850 (1995) (“A genuine issue of fact ... can be created only by evidence which would be admissible at trial.” (citing SCR 56 (e))). In his Initial Brief, Wise asserts in a footnote that “Jepson’s Statement is admissible and is not hearsay under Rule 801, SCRE in that Jepson can testify at trial and be subject to cross-examination concerning the statement.” (Wise Final Br. at p. 13 n.6). Wise’s evidentiary argument, which also was not presented to the Circuit Court, misinterprets Rule 801(d)(2), SCRE. The fact that Jepson could be called to testify and subject to cross-examination on the “statement” does not make it admissible. To the contrary, extrinsic evidence of a witness’s prior statement is not admissible until the witness’s testimony expressly contradicts the prior statement. Rule 801(d)(2), SCRE, Advisory Committee’s Note (“It should be noted that the foundation requirements of Rule 613(b) must be met before extrinsic evidence of a prior inconsistent statement is admissible.”) Moreover, Jepson’s notes are not a “statement” as contemplated by Rule 801(d), and they do not contain the indicia of reliability contemplated by any of the exceptions to the hearsay rule set forth in Rule 803. Rules 801(d) and 803, SCRE. There are obvious discrepancies and ambiguities within Jepson’s notes (e.g., the notes reference dates occurring after the date her notes were signed and include vague references like “he” where it is unclear who the pronoun is identifying).

B. Wise’s New Arguments Should Be Disregarded.

Wise’s Initial Brief relies heavily on several new arguments that were not made to the Circuit Court in opposing summary judgment or at any time prior to entry of the summary judgment Order. “It is well-settled that appellants cannot raise new arguments or change their grounds between trial and appeal.” *Morris v. Anderson Cty*, 349 S.C. 607, 611 n.4, 564 S.E.2d 649, 651 (2002) (where record did not establish statutory arguments made in appeal were raised

or ruled upon by trial court, arguments were not properly raised on appeal) (citing *Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35 (1996)). See also *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (the “purpose of an appeal is to determine whether the trial judge erroneously acted or failed to act and when appellant’s contentions are not presented or passed on by the trial judge, such contentions will not be considered on appeal.”)

Wise’s new arguments include additional theories of a defamatory publication based on:

- (i) the improperly submitted “Jepson Statement” (i.e., Jepson’s notes) (Wise Final Br. at pp. 5-6, 7, 12, 18 & 21-23);
- (ii) testimony concerning statements Nelson made to Shealy (Wise Final Br. at pp. 6-7);
- (iii) that before Nelson returned from the hospital, the alleged “prevailing belief” among mill employees was that Wise had pulled a groin muscle and this later shifted to a “consensus” that Wise had a sexually transmitted infection (Wise Final Br. at pp. 5, 12, 17, 19); and
- (iv) Russell “denies” that Nelson told him Wise was very upset because the emergency room doctor made the comment about Wise changing sexual partners. According to Wise, this alleged discrepancy in the testimony by Nelson and Wilson concerning what they discussed creates an issue for the factfinder. (Wise Final Br. at p. 12).

None of these arguments were made to the Circuit Court prior to entering its summary judgment Order. (R. pp. 121-151). Arguments or evidence that were never presented to the Circuit Court clearly cannot be used to show the Circuit Court erred, and Wise cannot rely on issues raised for the first time on appeal. See *Taylor*, 324 S.C. at 222, 526 S.E.2d at 56); *I'On, L.L.C.*, 338 S.C. at 422, 526 S.E.2d at 724. The new arguments in Wise’s Initial Brief should be disregarded entirely.

Even if Wise’s new arguments are considered, which they should not be, they clearly do not establish the Circuit Court erred since the arguments were not presented to the Circuit Court. Additionally, Wise’s arguments are based on distorted characterizations of the deposition

testimony and other record evidence and otherwise fail to identify a genuine issue of material fact concerning Wise's defamation claim.

For the reasons already discussed, *supra*, at pp. 21-23, neither Jepson's notes nor Nelson's statement to Shealy establish Nelson told them Wise had an STD. Wise's additional new arguments also are unavailing. Wise's argument that the consensus of mill employees shifted from believing he had pulled a groin muscle to believing Wise had an STD misrepresents the record testimony. For starters, none of the individuals who actually heard Nelson's statements knew anything about the nature of Wise's injury or concluded based on Nelson's statements that Wise had a sexually transmitted infection. (R. p. 526, line 19 – p. 527 (Wilson Dep.); R. p. 626, line 24 – p. 627, line 4 (Shealy Dep.)). Likewise, none of the nine co-workers Wise deposed testified he believed Wise had a sexually transmitted infection at any time, and most testified that if they heard the rumor they paid no attention to it and it did not change their opinion of Wise. (*See, e.g.*, R. p. 610, lines 4-17 (Praylow Dep.); R. p. 542, lines 16-18 (Neal Dep.); R. p. 599, lines 13-19 (Maybin Dep.); R. p. 628, line 23 – p. 629, line 2 (Shealy Dep.)). The only testimony Wise identifies to support the alleged "prevailing belief" among employees initially was that Wise pulled a groin muscle is the testimony of two coworkers, Anthony Cannon and Jeremy Neal.¹³ (Wise Final Br. at p. 5). Even if Wise accurately described their testimony, which he does not, two employees hardly establishes a "prevailing belief" among all mill employees. Moreover, Cannon testified that before Wise was even taken to the hospital he overheard a coworker, Robert Johnson, joking

¹³ Wise also cites the deposition of his wife, Pauline Wise, as supporting the "prevailing belief" among mill employees was that Wise pulled a groin. (Wise Final Br. at p. 5). The cited testimony does not even mention a belief that Wise had pulled a groin muscle. In any event, Mrs. Wise was not at the mill on the day of the incident and testified that everything she knew about incidents at the mill, including statements by mill employees, came from Wise. (R. p. 667, lines 17-23).

that Wise's injury was sexually related, and Cannon did not testify that he believed Wise had pulled a groin. (R. p. 439, lines 4-16 (Cannon Dep.)). Neal was not even at the mill on the day of the incident. (R. p. 538, line 23 – p. 539, line 21 (Neal Dep.)). Neal testified he heard Wise "had pulled something" and when he returned to work a day or two later he also heard jokes made that Wise had an STD. (R. p. 538, line 23 – p. 539, line 21). Wise's argument based on the alleged shifting "prevailing belief" among employees, while not properly made to this Court because it was not presented to the Circuit Court, is not supported by the actual testimony. It also is based on pure speculation and is not *evidence* sufficient to withstand summary judgment.

Finally, Wise's misguided reliance on an alleged discrepancy between the testimony of Nelson and Russell concerning what Nelson told Russell misstates the testimony and is equally insufficient to establish a genuine issue of material fact. Wise asserts in his brief that Russell "denies" Nelson told him that Wise was upset by Dr. Leap's alleged comment about Wise changing sexual partners. (Wise Final Br. at pp. 12-13). That is not what Russell testified, and even if it were the testimony does not establish Nelson told Russell or anyone else Wise had an STD. Wise's argument is precisely the type of "vain attempt to create an issue of fact that is not genuine" that South Carolina courts have recognized is insufficient to defeat summary judgment and is utterly unhelpful to Wise's appeal. *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984). Only disputes concerning a *material fact* can avoid summary judgment. Rule 56(c), SCRPC. A factual dispute is material if it might affect the outcome of the case. *Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019).

While Wise contends that a jury should be asked to decide the alleged dispute between Nelson's and Russell's testimony, this is not a *genuine* dispute concerning a *material* fact because regardless of which testimony is accepted as true, the outcome is the same: Wise's claim fails as a

matter of law. Construing Russell's testimony in a light most favorable to Wise, it supports that Nelson did not tell Russell about the doctor's comment. Obviously, if Nelson did not make the statement to Russell this cannot be the basis for Wise's defamation theory, and his claim fails. On the other hand, if Nelson did make the statement to Russell it is qualifiedly privileged (*see, infra*, at pp. 42-44), and Wise's claim still fails. The so-called factual dispute between Russell's and Nelson's testimony is immaterial and fails to create a genuine factual issue.

Notwithstanding the immateriality of Wise's new argument concerning the Nelson-Russell communication, Wise's mischaracterization of Russell's testimony deserves correction. Russell's actual testimony given more than two years after the forklift incident was, "I cannot say with all certainty exactly what Keith [Nelson] told me that day, other than – I feel rather certain, you know, he said he [Wise] had an infection and that it probably wasn't going to be work related." (R. p. 550, lines 7-11). Russell proceeded to testify that he did not recall Nelson mentioning the doctor's comment to Wise about changing sexual partners. (R. p. 550, lines 12-16). Nelson's testimony, which Wise's counsel misquoted in his questioning of Russell, was that Nelson told Russell Wise was "very upset" because the doctor asked Wise about changing sexual partners. (R. p. 466, lines 18-25). The fact that Russell did not recall everything Nelson told him two years later is hardly an unequivocal denial that Nelson relayed the information to Russell.

Wise argues throughout his brief that his improper new evidence and new arguments establish the Circuit Court erred in granting summary judgment. Even if considered, which they should not be, for the reasons demonstrated above, Wise's arguments fail and the Circuit Court's Order should be affirmed.

III. The Circuit Court Correctly Determined Wise’s Defamation Claim Failed as a Matter of Law and Properly Granted Summary Judgment.

A. Defamation – Controlling Law

To prove defamation under South Carolina law, a plaintiff must establish the following elements:

- (1) a false and defamatory statement was made;
- (2) the unprivileged publication was made to a third party;
- (3) the publisher was at fault; and
- (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.

Fountain v. First Reliance Bank, 398 S.C. 434, 441, 730 S.E.2d 305, 309 (2012).

Defamation is classified as either actionable per se or not actionable per se (i.e., defamation per quod.) *Id.* at 442, 730 S.E.2d at 309. Where, as here, the alleged defamation involves slander (as opposed to libel), the statements are actionable per se if they charge the plaintiff with any of the following five acts and/or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession. *Id.* The classification of a statement as actionable per se is significant because in such instance the defendant “ ‘is presumed to have acted with common law malice and the plaintiff is presumed to have suffered general damages.’ ” *Id.* (quoting *Erickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006)). On the other hand, if the statement is not actionable per se, “ ‘the plaintiff must plead and prove both common law malice and special damages.’ ” *Id.* (quoting *Erickson*, 368 S.C. at 465, 629 S.E.2d at 664). In other words, where a statement is actionable per se, the plaintiff is not required to establish elements (3) or (4) to prove defamation. *See id.*

Whether a statement is actionable per se is a question of law for the court to resolve. *Id.*; *Erickson*, 368 S.C. at 465, 629 S.E. 2d at 664. In deciding this question, “[t]he trial court has the duty to determine whether words are reasonably capable of having the defamatory meaning attributed to them by the plaintiff.” 20 S.C. JUR. *LIBEL AND SLANDER* § 19 (May 2021) (citing *Appliance Buyers Credit Corp. v. Baxley*, 241 S.C. 64, 68-69, 127 S.E.2d 8, 9 (1962)). In making this determination, words must be given their plain and popular or ordinary meaning. *Id.* Further, and as the South Carolina Supreme Court has explained, “ ‘[t]he court will not hunt for a forced and strained construction to put on ordinary words, but will construe them fairly, according to their natural and reasonable import and the plain and popular sense in which the average reader naturally understands them.’ ” 20 S.C. JUR. *LIBEL AND SLANDER* § 19 (quoting *Timmons v. News & Press, Inc.*, 232 S.C. 639, 644, 103 S.E.2d 277, 280-81 (1958)); *Hospital Care Corp. v. Commercial Cas. Ins. Co.*, 194 S.C. 370, 379, 9 S.E.2d 796, 800 (1940). While statements that are not defamatory on their face may become actionable considering the context in which they were made or other insinuation or innuendo, the statement’s defamatory meaning must be apparent based on a reasonable construction. *Fountain*, 398 S.C. at 442, 730 S.E.2d at 310. A construction based on “purely conjectural interpretations” is not reasonable and is insufficient to avoid summary judgment. *Id.*

Regardless of whether a statement is actionable per se or per quod, truth is an absolute defense to any defamation claim. *Id.* When the alleged defamatory statements are made by a private figure in a matter of private concern, it is the defendant’s burden of “proving the substantial truth of each of the alleged defamatory statements.” *Kunst v. Loree*, 424 S.C. 24, 41, 817 S.E.2d 295, 303 (2018). If the defendant presents evidence establishing the truth of the statements and there is no conflicting evidence to challenge the truth of the statements, summary judgment is

appropriate. *Fountain*, 398 S.C. at 442, 730 S.E.2d at 310 (even if statements were actionable *per se*, they could not be deemed defamatory because they were unquestionably true; affirming summary judgment for defendant).

B. Summary Judgment Was Properly Granted Because the Circuit Court Correctly Determined West Fraser Established the Substantial Truth of Nelson's Statements to Wilson.¹⁴

The only individuals present during the conversation between Nelson and Wilson were Nelson and Wilson, and they are the only individuals with personal knowledge of Nelson's statements to Wilson. Wise acknowledged in his deposition that he was not present at the time the conversation occurred and aside from rank hearsay (none of which was corroborated by any of the nine co-workers Wise deposed), Wise has no personal knowledge of the exact words Nelson used.¹⁵ (R. p. 292, lines 4-23; Wise Dep. at p. 140 line 4 – 23 (“I don’t know who all done said what. ...I was out of work a week.”)) Clearly, there can be no genuine dispute concerning what Nelson said to Wilson or the conclusions that can be drawn from Nelson's statements when the only two parties to the conversation, Nelson and Wilson, both testified consistently concerning what Nelson said and how it was interpreted.

¹⁴ While the Circuit Court did not make a determination concerning whether Nelson's statement to Shealy was true because this issue was never presented, if evidence of Nelson's statement to Shealy is considered on appeal, the Circuit Court's finding applies equally to the Shealy communication because Nelson's statements to Shealy were nearly identical to his statement to Wilson, i.e., that Wise had an infection.

¹⁵ To be sure, co-worker statements claiming to have heard defamatory statements is not a publication by the employer and cannot be the basis of a defamation claim. *Todd v. Fed. Express Corp.*, 2012 WL 4006595, * 20 (D.S.C. July 16, 2012) (recommending summary judgment for employer on defamation claim) (*Todd v. Fed. Express Corp.*, 2012 WL 4006466 (D.S.C. Sept. 12, 2012 (adopting magistrate's recommendation and granting summary judgment on defamation claim)).

As such, Wise presented no admissible evidence to the Circuit Court, nor could he, to challenge that the only statements Nelson actually made to Wilson were: (i) Wise has an infection, and (ii) Wise received a prescription and/or antibiotic, both of which were true statements. (*See* facts establishing truth, *supra*, at p. 16-17). Statements that are true are not defamatory as a matter of law, and summary judgment was proper for this reason alone. *Fountain*, 398 S.C. at 443-44, 740 S.E.2d at 310 (trial court properly granted summary judgment where plaintiff presented no evidence to contradict truth).

Nevertheless, Wise argues in his Initial Brief that the Circuit Court should have disregarded the testimony by Nelson and Wilson as not credible based on “circumstantial evidence,” none of which was presented to the Circuit Court prior to entering summary judgment with the exception of Russell’s November 17, 2017 letter of reprimand issued to Nelson. (Wise Initial Br. at p. 12-14 (discussing Jepson’s statement, the alleged shift in the “prevailing belief” among employees about Wise’s injury, and alleged discrepancy between Nelson’s and Russell’s testimony). As established above, with the exception of Russell’s reprimand letter, none of Wise’s “circumstantial evidence” should be considered, and regardless, the so-called “evidence” still fails to establish Nelson told anyone Wise had an STD or that the statements Nelson actually made were untrue. (*See, supra*, at pp. 31-34).

Turning to the only piece of evidence presented to the Circuit Court, the reprimand letter, the Circuit Court considered Wise’s argument and properly rejected that the letter could reasonably be understood as an admission that Nelson made slanderous statements:

At best, the letter of reprimand establishes West Fraser considered Nelson’s statements to be inappropriate and contrary to company procedure. It does not support that Nelson’s statements to Wilson implied a defamatory meaning. *See Fountain*, 398 S.C. at 443, 730 S.E.2d at 310 (banker’s testimony that statements were inappropriate and not something a banker should say “falls far short of establishing an implied defamatory meaning.”)

(R. p. 15; Oct. 11, 2021 Or. at p. 10). Wise's argument to this Court based on the reprimand letter advances the same distorted and false characterization of what the letter actually states and incorrectly concludes the Circuit Court improperly weighed the evidence. (Wise Final Br. at p. 13). The plain language in the reprimand letter and Russell's testimony concerning why the letter was issued and what he intended to communicate in the letter demonstrates that Wise's interpretation of the letter is patently unreasonable. In considering summary judgment, the Circuit Court was not required to construe inferences in Wise's favor that are either nonexistent or not reasonable. Wise's argument based on the reprimand letter fails to identify any legitimate error by the Circuit Court.

Wise failed to present sufficient evidence to the Circuit Court to rebut that the statements Nelson actually made were true and he has failed to present sufficient evidence to this Court to rebut the truth of the statements. The Circuit Court's Order entering summary judgment should be affirmed on this ground alone.

C. The Circuit Court Properly Granted Summary Judgment Because It Correctly Determined that Nelson's Statements to Wilson Could Not Reasonably Be Construed as Defamatory by Innuendo.

Wise next argues that even if there is insufficient evidence to support that Nelson actually told Wilson that Wise had an STD, his statements were defamatory by innuendo based on extrinsic evidence, including that multiple employees were aware Wise had suffered an injury to his groin at the time Nelson made the statement to Wilson. (Wise Final Br. at pp. 15, 17). Wise contends that the Circuit Court incorrectly analyzed whether Nelson's statement was reasonably capable of a defamatory meaning and considered irrelevant facts. (Wise Final Br. at pp. 15-16). Wise's point of error misconstrues the Circuit Court's analysis. As set forth in the summary judgment Order, the Circuit Court correctly followed the analysis established by the South Carolina Supreme Court

in *Fountain v. First Reliance Bank*, 398 S.C. 434, 442, 730 S. E. 2d 305, 310 (2012). (R. pp. 11-12; Oct. 11, 2021 Or. at pp. 6-7). Wise completely disregards that there is no evidence that anyone interpreted Nelson’s statement to Wilson, which indisputably was heard only by Wilson, as implying Wise had an STD. The reasonableness of Wise’s contention that the word “infection” used in the context of Nelson’s statement to Wilson could reasonably be construed as implying Wise had a *sexual* infection is belied by Wilson’s understanding of Nelson’s statement. Indeed, in construing the meaning of alleged defamatory words, **“what matters is how those who heard the statement understood it.”** 20 S.C. JUR. *LIBEL AND SLANDER* § 19 (May 2021) (emphasis added). Wilson did not interpret Nelson’s statements as communicating or implying anything of a sexual or defamatory nature and testified the only person he heard relate Wise’s infection to a sexual infection was Wise. (R. p. 528, lines 5-10; Wilson Dep. at p. 7, line 5 – 10). Wise’s argument based on the nature of his injury also is misplaced because Wilson testified he did not know the nature of Wise’s injury when he asked Nelson if Wise was okay (R. p. 526, line 19 – p. 527, line 18; Wilson Dep. at p. 5, line 19 – p. 6, line 18). The only evidence presented to the Circuit Court to support that Nelson’s statements were defamatory by innuendo was Wise’s conjecture about stereotypes about black men and his equally speculative argument that Nelson was the only possible source of the rumor. The Circuit Court considered this evidence and properly declined to adopt Wise’s offensive and racist stereotype, instead construing the common and ordinary meaning of Nelson’s actual statements in the context they were made. The Circuit Court also correctly rejected Wise’s theory that Nelson was the only possible source of the rumor and determined that based on the record as a whole, there were other possible sources and Wise’s speculation was not evidence creating a triable issue.

Wise's remaining arguments offered to identify an alleged error by the Circuit Court in determining Nelson's statements were not defamatory once again rely on new arguments and/or evidence not presented to the Circuit Court. Wise makes the new argument that the visible nature and location of Wise's injury and the workforce's awareness of it are "extrinsic facts" showing that Nelson's statement to Wilson was defamatory by innuendo. (Wise Final Br. at p. 17). As an initial matter, Wise's new argument contradicts his assertion that before Nelson returned from the hospital, "the prevailing belief" among employees was that Wise had pulled a muscle. It also confuses the relevancy of the evidence West Fraser, *not Wise*, offered concerning the visible nature of Wise's injury and the sexual joke made to Wise by a co-worker before he ever left for the hospital. To be sure, in opposing summary judgment to the Circuit Court, Wise's principle argument was that other than Wise, Nelson was the only West Fraser employee who went to the hospital and could have learned of Dr. Leap's alleged comment. (R. pp. 132-133; Aug. 11, 2021 Tr. at pp. 12-13). Thus, according to Wise, since only Nelson returned to the mill for several days following the forklift incident Nelson was the only possible source of the alleged rumor about Wise. (R. pp. 132-133; Aug. 11, 2021 Tr. at pp. 12-13). In response to this argument, West Fraser pointed to evidence establishing a co-worker made comments about Wise's injury being sexually related before Wise was taken to the hospital. (R. p. 148); Aug. 11, 2021 Tr. at p. 28). West Fraser also pointed to testimony by several co-workers and Russell that Wise talked about having, or rather not having, an STD on numerous occasions to numerous employees. (R. p. 147; Aug. 11 Tr. at p. 27). As established by the hearing transcript, this evidence was offered to illustrate the fallacy and speculative nature of Wise's theory that Nelson was the only possible source of the rumor, and this was the precise purpose for which the Circuit Court considered the evidence. (R. p. 14 (citing *Williams v. Lancaster Cty. School Dist.*, 369 S.C. 293, 304, 631 S.E.2d 286, 292 (Ct.

App. 2006) (plaintiffs could not defeat summary judgment where there was no direct evidence that principal told anyone plaintiff was an adulterer and plaintiff's indirect evidence suggesting principal was only possible source of adultery rumor disregarded that other school employees were in the area after married male teacher was found in bathroom with female secretary)). The Circuit Court did not find that Wise was the source of the rumor as Wise asserts in his brief (Wise Final Br. at p. 19).

The evidence of other possible sources of the rumor also was not the basis for the Court's finding that Nelson's statement could not reasonably be construed as defamatory by innuendo. To the contrary, the Circuit Court reviewed the testimony by Nelson and Wilson and correctly concluded that there could be no dispute concerning the conclusions that could be drawn from Nelson's statements to Wilson when the only two parties to the conversation, Nelson and Wilson, both testified consistently concerning what Nelson said and how it was interpreted. Wise urges that reasonable minds could differ concerning the meaning of Nelson's statement to Wilson, but this is just more conjecture, not evidence. Wise has not identified any reversible error committed by the Circuit Court and the Circuit's Order should be affirmed.

D. The Circuit Court Properly Granted Summary Judgment Because It Correctly Held that Nelson's Statements to Russell Were Qualifiedly Privileged and Wise Failed to Present Any Evidence to Show the Privilege Was Exceeded or Abused.

Under South Carolina law, statements that are subject to a qualified privilege, even if defamatory, are not actionable unless the privilege is rebutted. *Fountain*, 398 S.C. at 444, 730 S.E.2d at 310. Communications between agents of the same corporation made in the course of normal business are generally regarded as subject to a qualified privilege. *Conwell v. Spur Co. of Western South Carolina*, 240 S.C. 170, 179, 125 S.E.2d 270, 275 (1962). See also *Bell v. Evening Post Pub. Co.*, 318 S.C. 558, 560, 459 S.E.2d 315, 317 (Ct. App. 1995) (citing *Prentiss v.*

Nationwide Mut. Ins. Co., 256 S.C. 141, 147, 181 S.E.2d 325, 327 (1971)). The elements of a qualified privilege include:

[G]ood faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only. The privilege arises from the necessity of full and unrestricted communication concerning a matter in which the parties have an interest or duty, and is not restricted within any narrow limits.

Bell, 318 S.C. at 560-61, 459 S.E.2d at 317 (quoting *Prentiss*, 256 S.C. at 147, 181 S.E.2d at 327).

Whether an occasion gives rise to a qualified privilege is a question of law for the court to decide.

Fountain, 398 S.C. at 444, 730 S.E.2d at 310; *Wright v. Sparrow*, 298 S.C. 469, 474, 381 S.E.2d 503, 506-07 (Ct. App. 1989). Where an occasion giving rise to a qualified privilege exists, the burden shifts to the plaintiff to show the privilege was abused. *Wright*, 298 S.C. at 474, 381 S.E.2d at 506-07. Further, a statement that is qualifiedly privileged requires the plaintiff to prove the publisher was motivated by actual malice. *Id.*

Based on a nearly identical statement of the law, the Circuit Court held that Nelson's statement to Russell "is the type of communication South Carolina courts have held give rise to a qualified privilege." (R. pp. 18-20). As the Circuit Court explained, Nelson's statements to Russell were made pursuant to his duties as safety director and interest of reporting an employee concern raised during Nelson's response to an apparent on-the-job accident. (Order at p. 14 (citing *Bell*, 318 S.C. at 317, 459 S.E.2d at 560-61 (trial court did not err in finding statements made during employer's investigation of potential harassment claim were protected by qualified privilege); *Wright*, 298 S.C. at 474, 381 S.E.2d at 506-07 (employer's statements made about employee's job performance in meeting to discuss employee's termination were qualifiedly privileged)). During the summary judgment hearing and supplemental briefing, Wise offered no evidence to the Circuit

Court that would tend to show that Nelson's statements to Russell exceeded the scope of the qualified privilege.¹⁶

In support of his appeal, Wise argues that the Circuit Court's Order "erroneously states Plaintiff may only overcome the qualified privilege by demonstrating actual malice." (Wise Initial Br. at p. 21). Quite obviously, that was not stated in the Circuit Court's Order. (R. p. 18). The Order correctly states the showing Wise must make to rebut the qualified privilege, including evidence indicating the privilege was exceeded. (R. pp. 18-19). Wise wholly failed to make any such showing to the Circuit Court. The only evidence Wise points to on appeal in an attempt to rebut the privilege is Wise's new and improper evidence, including Jepson's notes and Nelson's statement to Shealy. (Wise Final Br. at pp. 22-23). Indeed, Wise contends that this evidence, which Wise knows was not presented to the Circuit Court prior to entering summary judgment, somehow is "in direct contradiction to the Circuit Court's finding that there is no evidence of an improper manner of publication." (Wise Final Br. at p. 23). Wise's assertion only highlights the reasons why a party on appeal cannot introduce evidence not presented to the lower court to show the lower court erred. Wise's attempt is highly inappropriate and supremely unfair to the Circuit Court. Additionally, Wise's reliance on Jepson's notes, albeit mischaracterized, and Nelson's statement to Shealy as evidence the privilege was exceeded overlooks that Jepson was the HR manager who shared responsibility for investigating Wise's workplace accident and handling his attempted worker's compensation claim. Even if her notes could be read to state that she discussed Dr. Leap's diagnosis with Nelson, which is a misinterpretation, any such discussion between two managers with a common business interest falls within the qualified privilege. Wise points to no evidence

¹⁶ As West Fraser pointed out during the hearing, Nelson's statements to Russell also were true. (R. p. 149). Wise did not attempt to rebut the truth of Nelson's statements to Russell during the hearing or at any time prior to entry of summary judgment.

that **any** such communication between Nelson and Jepsen was in the presence of other employees or otherwise exceeded the privilege.

Wise's **reliance** on Nelson's statement to Shealy also does not save Wise's defamation claim because it is undisputed that the only statement Nelson made to Shealy was that Wise had an infection which, as already established, was true. Whether a truthful statement falls within the qualified privilege is irrelevant because **truth** is a complete defense to defamation.

Wise has utterly failed to identify any actual point of error in the Circuit Court's finding that Nelson's statements were qualifiedly privileged and Wise **failed** to offer evidence to rebut the privilege. The Circuit Court properly granted summary judgment on this ground and the other grounds West Fraser established. The Circuit Court's Order should be affirmed.

E. The Additional Grounds in West Fraser's Motion for Summary Judgment Provide Further Support for Affirming the Circuit Court's Order.

Pursuant to Rules 208 and 220, West Fraser may request the Court affirm and the Court on its own may affirm the Circuit Court's summary judgment Order based on any ground appearing in the record. SCACR 208 (b)(2), 220(c). In its Motion for Summary Judgment, West Fraser made additional arguments to the Circuit Court establishing fatal flaws in Wise's defamation claim. These included that Wise could not establish the necessary elements of actual malice or special damages, both of which are required to assert a claim for defamation per quod. (R. pp. 54-56). The statements Nelson made to Wilson do not rise to the level of defamation per se because the statements, on their face or based on any reasonable construction, do not suggest Wise had a loathsome disease or committed adultery. See *Fountain*, 398 S.C. at 444, 730 S.E.2d at 309 (discussing categories of defamation per se). As such, it was **incumbent** on Wise to present evidence establishing the additional elements of actual malice and special damages.

“Common law malice under South Carolina defamation law generally ‘means that the defendant was actuated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff, or that the statements were published with such recklessness as to show a conscious indifference toward plaintiff’s rights.’ ” *Tharp v. Media General, Inc.*, 987 F. Supp. 2d 673, 680 (D.S.C. 2013) (quoting *Jones v. Garner*, 250 S.C. 479, 488, 158 S.E.2d 909, 914 (1968)). There is no evidence that Nelson had any desire to harm Wise or that he made his statements with a conscious indifference toward Wise’s rights. To the contrary, Nelson testified that he believed he was simply answering the question of a concerned co-worker and it never occurred to him anyone would infer something sexual or derogatory from his statement. (R. p. 465, line 23 – p. 466, line 8). Wise testified he and Nelson had a good working relationship, there was no history of animosity between them, and they never even had a disagreement. (R. p. 346, line 2 – p. 347, line 25). Additionally, Wilson testified that when Nelson made the statement to him there was no one else around and no one could have overheard the statement. Nelson’s statement. (R. p. 532, lines 12-17). Wise has no evidence to show Nelson’s statements were made with malice.

Wise also has no evidence to establish special damages. Special damages in the defamation context are tangible losses or injury to the plaintiff’s business, occupation, or profession that can be assessed monetarily and result from actual injury to the plaintiff’s reputation. *Kunst*, 424 S.C. at 46 n. 8, 817 S.E. 2d 306 n.8 (citing *Holtzscheiter v. Thompson Newspapers, Inc.*, 332 S.C. 502, 510 n.4, 506 S.E. 2d 497, 502 n.4 (1998)). They are distinct from general damages, which include mental anguish and the type reputational injuries that are incapable of definitive monetary valuation. Wise’s only evidence of damages consisted of general damages. He has not and cannot establish any actual or quantifiable injury to his reputation. In fact, in his sworn interrogatory answers, Wise admitted he had not suffered any monetary loss because of Nelson’s alleged

defamatory statement. (R. pp. 66-67; Wise Resp. to West Fraser's Interrog. at pp. 9-10, #17). Without the presumption of general damages that accompanies statements that are defamatory per se, Wise cannot rely only on alleged general damages and must present evidence of special damages, i.e., tangible loss. Wise's failure to do so is fatal to his defamation claim.

The Circuit Court did not decide the foregoing issues because it determined summary judgment was warranted for the numerous other reasons set forth in its October 11, 2021 Order granting summary judgment. The Circuit Court's Order should be affirmed for those reasons and on the additional grounds set forth above and in West Fraser's Motion for Summary Judgment.

F. The Circuit Court Properly Held Wise's Motion for Leave to Amend and His Proposed Amended Complaint Had No Impact on Whether Summary Judgment Should Be Granted on Wise's Defamation Claim.

The Circuit Court's Order set forth three grounds to support its finding that Wise's Motion for Leave to Amend had no impact on West Fraser's pending Motion for Summary Judgment and should be denied:

- (i) Wise's proposed amended claim was based on the exact same facts as Wise's defamation claim that the Circuit Court already determined were wholly lacking in evidentiary support (i.e., that Nelson allegedly repeated Dr. Leap's statement that Wise had been changing sexual partners, accusing Wise of having an STD and/or committing adultery) and, therefore, allowing the amendment would be futile;
- (ii) Wise's proposed amended claim sought to assert a claim against West Fraser for breach of a duty of confidentiality, a claim that has never been recognized against an employer under South Carolina law, and therefore, allowing the amendment would be futile; and
- (iii) Permitting Wise to amend his Complaint to add a new theory of liability after the case had been pending for 2 ½ years and only 27 days before trial was unfairly prejudicial to West Fraser.

(R. pp. 20-21). The Circuit Court's Order should be affirmed for any one or all of the above reasons.

Wise's appeal challenges only the Circuit Court's analysis of prejudice and does not even attempt to address the additional reasons the Circuit Court determined his proposed amendment was futile and should fail. Wise's proposed claim was clearly futile, in part because it was based on the same factual allegations that the Circuit Court determined were completely lacking in evidentiary support. See *Salvo v. Hewitt, Coleman & Assoc., Inc.*, 274 S.C. 34, 38, 260 S.E. 2d 708, 711 (1979) (where trial court's reasoning in granting summary judgment would have doomed proposed amendment adding alternative theory, outcome of motion to amend was irrelevant). While Wise cites cases supporting that other courts have allowed motions to amend filed under timelines similar to Wise's, those cases did not involve claims that would have been futile. (Wise Initial Br. at pp. 24-25 (citing *Stanley v. Kirkpatrick*, 357 S.C. 169, 592 S.E. 2d 296 (2004) and *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 607 S.E.2d 711)). Indeed, neither *Stanley* nor *Parker* involved amended claims that were futile either because they were based on facts already established as unsupported or because the claim failed to assert a viable cause of action.

Wise asserts, in conclusory fashion, that because his amended claim was based on the same facts as his defamation claim the amendment would not have required additional discovery. However, as established by the authorities cited in the Circuit Court's Order, unfair prejudice can result when a proposed amendment is made shortly before trial and would require legal and factual analysis not already considered by the opposing party or would require the opposing party to introduce different evidence. (R. p. 21; Oct. 11, 2021 Or. at p. 16). See also *Holland ex. Rel. Knox v. Morbark, Inc.*, 407 S.C. 227, 235, 754 S.E.2d 714, 719 (Ct. App. 2014). Unfair prejudice also results where extensive discovery has been conducted and there have been no factual developments to justify the untimely amendment. *Holland*, 407 S.C. at 235, 754 S.E.2d at 719.

The timing of Wise's attempted amendment deprived West Fraser of any opportunity to file a dispositive motion on his purported claim for breach of a duty of confidentiality prior to the quickly approaching trial date. While Wise's amended claim was based on the same unsupported facts as his failed defamation claim, the amended claim was based on a different and novel legal theory that would have required West Fraser to present different evidence and conduct extensive legal research. Indeed, Wise's amended claim raised several new legal issues wholly unrelated to his defamation claim that West Fraser never considered and had no reason to consider, including whether an employer owes a duty of confidentiality to an employee, which no South Carolina Court has ever recognized, and whether any such duty can be breached by disclosing information to another employee. (*See* R. pp. 91-93). These are dispositive issues, none of which practically could have been decided based on the late filing of Wise's amendment, which as the Circuit Court noted was filed after the case had been pending 2 ½ years, 27 days before trial, and with no explanation or reason.

Wise has not established the Circuit Court abused its discretion in determining Wise's proposed amendment was futile, unfairly prejudicial, and wholly irrelevant considering the summary judgment findings. The Circuit Court's Order should be affirmed on any or all of these grounds.

CONCLUSION

Based on the foregoing, Respondent West Fraser respectfully submits that the Circuit Court's Order granting West Fraser's Motion for Summary Judgment should be affirmed in its entirety.

CERTIFICATE OF COMPLIANCE

By signing below, counsel for Respondent hereby certifies that Respondent's Final Brief

complies with Rule 211(b), SCACR.

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Jul 14 2022

SC Court of Appeals

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Jul 11 2022

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No.: 2021-001463

Anthony Wise Appellant,

-v-

Kenneth E. Leap, Newberry Hospital, LLC d/b/a
Newberry County Memorial Hospital, and West
Fraser, Inc., Defendants,

Of Whom, West Fraser, Inc. is Respondent.

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ARGUMENT

In its Initial Brief, Respondent West Fraser goes to considerable lengths to argue the specific facts surrounding what Appellant Anthony Wise has alleged were defamatory statements made by West Fraser's employee Keith Nelson within the course and scope of his employment. In doing so, West Fraser only reinforces Wise's position that the evidence in this case created jury issues as to whether Nelson's statements were false and defamatory, whether his statements were capable of a defamatory meaning, either facially or through innuendo, and whether the statements were qualifiedly privileged. Wise does not wish to rehash his previously made arguments to the Court. The record and arguments of Wise and West Fraser conclusively demonstrate that there is a genuine factual dispute as to the issues before the Court, establishing that the Circuit Court's grant of summary judgment was in error. Wise respectfully submits this Reply Brief for the Court's review to address certain arguments raised by West Fraser for the first time in its Brief.

I. Wise did not abandon his appeal of the Circuit Court's Order denying his Motion for Reconsideration.

West Fraser argues that Wise has abandoned his appeal of the Circuit Court's November 23, 2021 Order denying his Motion for Reconsideration by not making an argument in support of reversing the Order. As explained by both parties in their Initial Briefs, the Circuit Court issued a detailed, seventeen-page formal Order granting West Fraser's Motion for Summary Judgment on October 11, 2021. (R. pp. 6-23). On November 23, 2021, the Circuit Court denied Wise's Motion for Reconsideration in a perfunctory Form 4 Order, which read

The Court has thoroughly reviewed the Plaintiff's Motion for Reconsideration and Memorandum in Support of Motion for Reconsideration, as well as all previously filed submissions and arguments of counsel. Based on that review, the Plaintiff's Motion for Reconsideration is denied.

(R. pp. 24-26). In his Notice of Appeal, Wise clearly stated that he was appealing both the October 11, 2021 Order and the November 23, 2021 Order. (R. p. 695).

Wise has not made any arguments in his Brief specifically addressing the need to reverse the November 23, 2021 Order because every argument he makes as to why the Circuit Court's formal Order granting summary judgment was in error is applicable to the Circuit Court's November 23 Order. The Circuit Court's Form 4 Order does not raise any unique reasons for denying Wise's Motion for Reconsideration and in fact does nothing to explain how the Circuit Court reached its decision. Thus, there are no unique or specific arguments as to why the Circuit Court's November 23 Order is also in error, as it could only have been granted on the same grounds as the Circuit Court's October 11 Order. The reasons Wise has provided for reversing the Circuit Court's October 11 Order are the exact same reasons why the Circuit Court's November 23 Form 4 Order should also be reversed. In order to accept West Fraser's argument that Wise has abandoned his appeal of the November 23 Form 4 Order, the Court would have to completely ignore the substance of Wise's arguments in his Brief, with the endgame of catching Wise in a gotcha moment based on hypertechnical readings of Wise's Brief and the South Carolina Appellate Court Rules. The issues underlying the November 23 Form 4 Order have been adequately raised by Wise on appeal and have been argued in his Brief, precluding West Fraser's argument that he has abandoned his appeal of the Form 4 Order.

II. Issue preservation rules do not require the Court to exclude the statement of Melody Jepson or the deposition transcript of Mike Shealy.

Under South Carolina issue preservation rules, the Court is free to consider the statement of Jepson and the deposition testimony of Shealy if it wishes to do so. First, the evidence is applicable to issues that were raised to and ruled upon by the Circuit Court on West Fraser's

Motion for Summary Judgment and was “thoroughly” reviewed by the Circuit Court prior to issuing its final Order denying Wise’s Motion for Reconsideration. Second, West Fraser raises the issue of whether Wise presented this evidence to the Circuit Court prior to his Motion for Reconsideration as an additional sustaining ground for affirming the Circuit Court’s Orders, but it never raised the issue to the Circuit Court prior to Wise’s Appeal. Thus, the evidence may be considered by the Court in its appellate capacity.

A. **The statement of Melody Jepson was presented to and thoroughly reviewed by the Circuit Court prior to its final decision.**

West Fraser argues that the statement of Melody Jepson should be excluded from consideration by the Court under issue preservation rules because it first appears in the record on Wise’s Motion for Reconsideration. “Preservation rules are intended to ensure that appellate courts review considered decisions of our trial courts and that the issues are not being raised for the first time **on appeal**. Their purpose is not to sabotage attorneys’ efforts to bring issues before the appellate courts” *State v. Jones*, 435 S.C. 138, 145, 866 S.E.2d 558, 561 (2021) (emphasis added).

[A]n over-zealous application of appellate preservation rules denigrates the primary purpose of the judiciary, which is to serve the citizens and the business community of this state by settling disputes and promoting justice As an appellate court, we sit to review decisions of lower courts for error. As such, “it is axiomatic that an issue cannot be raised **for the first time on appeal**.” However, I do not believe it is our place to scour the records before us for the purpose of avoiding issues or, even worse, to play a “gotcha” game with attorneys by showcasing their alleged mistakes, at the expense of their clients. This practice ignores the fact that behind every party name on a caption is a life-blood litigant or criminal defendant that depends on the court system to protect their economic and liberty interests.

Atlantic Coast Builders and Contractors, LLC v. Lewis, 398 S.C. 323, 730 S.E.2d 282 (2012) (Toal, C.J., dissenting) (emphasis added).

“At a minimum, issue preservation requires that an issue be raised to and ruled upon by the [circuit court].” *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011). An issue may be preserved for appellate review when it has been plead, raised to the circuit court, or argued in a Rule 59(e) motion. *Duncan v. CRS Serrine Eng’rs, Inc.*, 337 S.C. 537, 543-44, 524 S.E.2d 115, 119 (Ct. App. 1999). The key is that the issue must have been presented to and passed upon by the trial court for it to be preserved for appeal.

While Defendant has cited numerous authorities for the proposition that an issue or evidence should not be presented for the first time on a motion for reconsideration, none of the cases explicitly state that a trial court does not have discretion to review newly made arguments or overlooked evidence on a motion for reconsideration, or that such issues or arguments are not preserved for appeal once they have been presented to and passed upon by a trial court on reconsideration. If anything, the cited cases only reinforce that an issue or evidence presented to and reviewed by a trial court is preserved for appeal, and that if a trial court refuses to consider evidence presented for the first time on reconsideration then it is not preserved for appeal.

In this case, the Circuit Court was presented with the statement of Jepson and the deposition testimony of Shealy and reviewed this evidence prior to denying Wise’s Motion for Reconsideration. The Jepson statement was attached as an exhibit to Wise’s September 2, 2021 Motion for Reconsideration, and the statement was referenced numerous times throughout the supporting memorandum. (R. pp. 103-104, 109, 116). The Circuit Court’s November 23, 2021 Form 4 Order does not state that the evidence was precluded from review, or that the Circuit Court was refusing to consider the evidence. Instead, the Circuit Court stated it was denying Wise’s motion after it had “thoroughly reviewed” Wise’s memorandum and filed submissions.

Since this evidence was clearly presented to, considered by, and ruled upon by the Circuit Court, it is preserved for the Court's review and should not be excluded from appellate review.

As to the deposition testimony of Mike Shealy, which West Fraser argues that the Court should also ignore, the relevant portions of his deposition testimony relied upon by Wise were also presented to the Circuit Court for its review by West Fraser on West Fraser's Motion for Summary Judgment. (Supp. R. pp. 93-99). Both items of evidence were presented to and considered by the Circuit Court in ruling upon West Fraser's Motion for Summary Judgment and Wise's Motion for Reconsideration, and both were encompassed by Wise's initially raised arguments on the issues of whether Nelson's statements were capable of a defamatory meaning, and whether the statements were qualifiedly privileged. Since the Circuit Court considered this evidence, it may also be considered by this Court on appeal.

B. West Fraser's issue preservation argument is an additional sustaining ground that was not presented to the Circuit Court.

The Circuit Court reviewed Wise's Motion for Reconsideration, including the statement of Melody Jepson, prior to filing its final Order denying Wise's motion. West Fraser did not file a memorandum in opposition or request a hearing on the motion, which was decided without argument. Consequently, West Fraser never argued to the Circuit Court that the Jepson statement could not be considered by the Circuit Court for the first time on a motion for reconsideration, and this proposition does not appear to have been embraced by the Circuit Court in formulating its Order.

While a respondent is free to argue any additional sustaining grounds that appear in the record as provided by Rule 220(c), SCACR, the Court is not required to entertain the additional sustaining ground. An appellate court may not rely on Rule 220(c) when the court believes it

would be “unwise or unjust” to do so in a particular case. *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000).

In clarifying the law, we do not mean to dilute the important principle that all parties should raise all necessary issues and arguments to the lower court and attempt to obtain a ruling. While the current rules do not require the respondent to present an issue to the lower court in order to raise it as an additional sustaining ground, an appellate court is less likely to rely on such a ground when the respondent has failed to present it to the lower court. In such cases, the appellate court likely would perceive it as being unfair or unwise to resolve a case on a ground never mentioned by the respondent prior to appeal. Stated another way, the respondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is likely to ignore it.

Id. at 421, 526 S.E.2d at 724. Since West Fraser never argued prior to appeal that the Circuit Court was precluded from considering the statement on reconsideration, the Court should ignore this argument and review the statement as it relates to Wise’s arguments. Doing so would be fair and just, as the evidence was presented to and considered by the Circuit Court in ruling on Wise’s Motion for Reconsideration.

III. The Jepson statement is an admission by party-opponent under Rule 801(d)(2)(D), SCRE, and not a prior inconsistent statement subject to the foundational requirements of Rule 613(b).

West Fraser also argues that the statement is not admissible as a prior inconsistent statement, and that Wise misinterprets the South Carolina Rules of Evidence in asserting that the statement was admissible evidence that could properly be considered by the Circuit Court on a motion for summary judgment. However, Wise does not assert that the statement is admissible non-hearsay as a prior inconsistent statement, which would impose a prerequisite on the statement’s admissibility under Rule 613(b), SCRE. Instead, Wise asserts that the statement is admissible and was properly before the Circuit Court because it is an admission by party-opponent pursuant to Rule 801(d)(2)(D), SCRE. The statement would be admissible as offered against West Fraser as a statement by West Fraser’s agent concerning a matter within the scope

of the agency or employment. This qualifies the statement as non-hearsay not subject to Rule 613's foundational requirements. The Advisory Committee's Note for Rule 801 specifically provides that "[s]ubsection (D) is consistent with South Carolina law that statements made by an agent in the scope of his authority were admissible." Rule 801(d)(2)(D), SCRE, Advisory Committee's Note (citing *Hunter v. Hyder*, 236 S.C. 378, 114 S.E.2d 493 (1960)). The statement is not an exception to the hearsay rule, it is not hearsay, and therefore is only subject to the standard relevancy and authentication requirements for admissibility. Since West Fraser acknowledges that the notes are authentic, the evidence is admissible and could have been properly considered by the Circuit Court, and by this Court, in reviewing a motion for summary judgment.

IV. Nelson's defamatory statements could be both actionable *per se* and defamatory *per quod*, creating a presumption that he acted with common law malice and that Wise suffered general damages.

As an additional ground for affirming the Circuit Court's Orders, West Fraser argues that Nelson's statements to Wilson and Shealy were at best defamatory *per quod*, and not actionable *per se*, requiring Wise to have produced evidence of actual malice and special damages to survive summary judgment. West Fraser's position is based on a misunderstanding of South Carolina common law defamation principles. Since there is circumstantial evidence supporting that Nelson's statements, either facially or through innuendo, asserted that Wise had a sexually transmitted infection, they were actionable *per se*, and Wise was entitled to a presumption that they were spoken with malice, and that he suffered general damages, making summary judgment inappropriate on these elements of his defamation claim.

The determination of whether a statement is actionable *per se* or not, and whether the statement is defamatory *per se* or defamatory *per quod* are two separate and distinct legal issues.

Slander is actionable *per se* when it charges the plaintiff, either facially or through innuendo, with “(1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one’s business or profession.” *Parrish v. Allison*, 376 S.C. 308, 322, 656 S.E.2d 382, 389 (Ct. App. 2007). Therefore, if a defamatory statement charges the plaintiff with contracting a sexually transmitted infection, the law presumes that the defendant acted with common law malice and that the plaintiff suffered general damages. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 510, 506 S.E.2d 497, 502 (1998). If a slanderous statement does not charge the plaintiff, through implication or otherwise, with conduct that falls into one of the five categories, the statement is not actionable *per se*, and plaintiff must prove common law actual malice and special damages. *Id.* Wise has alleged that Nelson either explicitly or by innuendo stated to Wilson and other West Fraser employees that Wise had contracted a sexually transmitted infection, which is supported by evidence in the record.

A determination of whether a statement is defamatory *per se* or defamatory *per quod* is a separate issue involving a legal distinction that has no bearing on plaintiff’s burden of proof as to malice and damages. A statement is defamatory *per se* if it is obvious on the face of the statement. *Id.* at 321, 656 S.E.2d at 389. A statement is defamatory *per quod* if the statement’s meaning is not clear unless the hearer knows facts or circumstances not contained in the statement itself. *Id.* The issue of whether a statement is one or the other makes no difference as far as the determination of whether the statement is actionable *per se* or not is concerned:

Much confusion arises from defamation law’s use of the term “*per se*” in two different senses. As noted above, there is the question whether the statement is defamatory *per se* or *per quod*. A separate issue is whether the statement is “actionable *per se*” or not. This issue is one of pleading and proof”

Holtzscheiter, 332 S.C. at 509-10, 506 S.E.2d at 501.

West Fraser's argument that the statements are defamatory *per quod*, and therefore Wise must establish the elements of actual malice and special damages, is not supported by South Carolina law. The question of whether Wise must prove actual malice and special damages is resolved by the question of whether the statements are actionable *per se* or not. A statement may be both defamatory *per quod* and actionable *per se* at the same time. Obviously, if Nelson explicitly communicated to West Fraser employees that Wise had a sexually transmitted infection, the statements were both actionable *per se* and defamatory *per se*. On the other hand, if Nelson conveyed to non-privileged West Fraser employees that Wise had a sexually transmitted infection through innuendo and implication, then the statement is still actionable *per se* while also being defamatory *per quod*, as the statement still charges Wise with having contracted a loathsome disease.

West Fraser's assertion that Wise was required on summary judgment to prove both actual malice and special damages is simply not in keeping with South Carolina law, which clearly states that only when a defamation is not actionable *per se* must a plaintiff prove actual malice and special damages. *Id.* Wise has alleged that Nelson published statements asserting that he had a sexually transmitted infection, and there is sufficient evidence in the record upon which a jury could reasonably infer that he did so. As such, the statements are actionable *per se*, and Wise was not required on summary judgment to produce evidence of actual malice or special damages.

V. **The Circuit Court erred in relying on *Williams v. Lancaster County School District* to determine that Wise's claim that the rumors originated from Nelson were speculative.**

The Circuit Court and West Fraser rely on this Court's decision in *Williams v. Lancaster Cty. Sch. Dist.*, 369 S.C. 293, 631 S.E.2d 286 (Ct. App. 2006), to support the argument that

indirect evidence of defamation is too speculative for a plaintiff's claims to survive summary judgment. *Williams* is distinguishable from the facts of Wise's action, and as such should not have been relied on by the Circuit Court in granting summary judgment in this case.

In *Williams*, a high school coach brought a claim for slander against the school district after rumors concerning an alleged relationship he had with a secretary were spread throughout the school community. The facts of *Williams* to a certain extent are similar to those presented by this action, with one very important distinction. The plaintiff in *Williams* was discovered in a locked bathroom with the secretary by the principal and assistant principal of the high school. *Id.* at 297-99, 631 S.E.2d at 289-90. The plaintiff subsequently resigned from the school. *Id.* at 300. Prior to this incident, rumors had begun to circulate around the school that the plaintiff and the secretary were having an affair. *Id.* at 298, 631 S.E.2d at 289.

The plaintiff alleged that the rumors immediately spread throughout the community after the incident, and that the only individuals who had knowledge of the incident were the principal and assistant principal, and that this was indirect evidence of publication. *Id.* at 302, 631 S.E.2d at 291. The Court thought otherwise and affirmed the circuit court's summary judgment order. In doing so, the Court noted that there was no evidence that the principal or vice principal ever published any statements to anyone concerning the plaintiff. *Id.* at 303, 631 S.E.2d at 292. The plaintiff admitted that he had no idea of how the rumor leaked into the school community. *Id.*

The circumstances in this case differ from *Williams* in one key respect: Wise has alleged that Nelson told Wilson that he had a sexually transmitted infection, and evidence in the record not only confirms that Nelson spoke with Wilson, but that he also spoke with Shealy, another non-privileged employee. Further, there is evidence in the record impeaching the credibility of Nelson's claims that he only told the employees that Wise had suffered an "infection", and that

he had no idea how anyone could infer a sexual implication from that fact. These facts readily distinguish this action from *Williams*, and only illustrate why a jury, and not the Circuit Court, should have resolved these issues.

CONCLUSION

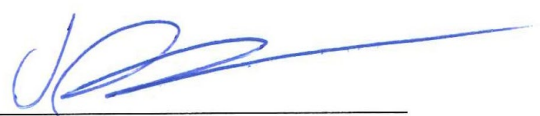
For the foregoing reasons, and those put forth by Appellant in his Brief, he respectfully requests that the Court reverse the October 11, 2021 and November 23, 2021 Orders of the Circuit Court.

Respectfully submitted,

PARKER LAW GROUP, LLP

July 11, 2022
Hampton, South Carolina

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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No.: 2021-001463

Anthony Wise Appellant,

-v-

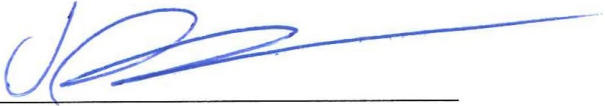
Kenneth E. Leap, Newberry Hospital, LLC d/b/a
Newberry County Memorial Hospital, and West
Fraser, Inc., Defendants,

Of Whom, West Fraser, Inc. is Respondent.

CERTIFICATE OF COUNSEL

The Undersigned hereby certifies that the Appellant's Final Reply Brief complies with
Rule 211(b), SCACR.

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July 11, 2022

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Anthony Wise, Appellant,

v.

Kenneth E. Leap, Newberry Hospital, LLC d/b/a
Newberry County Memorial Hospital and West Fraser,
Inc., Defendants,

Of which West Fraser, Inc. is the Respondent.

Appellate Case No. 2021-001463

Appeal From Newberry County
G. D. Morgan, Jr., Circuit Court Judge

Unpublished Opinion No. 2024-UP-216
Submitted April 1, 2024 – Filed June 20, 2024

AFFIRMED

John W. Carrigg, Jr., of Carrigg Law Firm, of Lexington,
and John E. Parker and John Elliott Parker, Jr., both of
Parker Law Group, LLP, of Hampton, all for Appellant.

Christopher B. Major, of Haynsworth Sinkler Boyd, PA,
of Greenville, and Anne Laurie McClurkin, of Mobile,
AL, both for Respondent.

PER CURIAM: Anthony Wise was working for West Fraser, Inc. (West Fraser) when he appeared to suffer a work-related injury to his groin. West Fraser's safety director escorted Wise to the emergency room. A medical exam revealed that Wise had an unrelated infection for which he was prescribed an antibiotic. This defamation case concerns Wise's claim that the safety director returned to West Fraser and started a chain of rumors that Wise had a sexually transmitted disease.

Wise appeals the circuit court's order granting West Fraser's motion for summary judgment. Wise asserts the following findings were erroneous: (1) West Fraser established that the safety director's statements were true, resulting in an absolute defense to Wise's defamation claim; (2) the safety director's statements could not be reasonably construed as defamatory by innuendo; and (3) the safety director's statements to the plant manager were protected by a qualified privilege. Wise also appeals the circuit court's denial of his request to amend his complaint. We affirm.

"An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56 [of the South Carolina Rules of Civil Procedure]." *Brockbank v. Best Cap. Corp.*, 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000). "Rule 56(c) . . . provides that the moving party is entitled to summary judgment 'if the [evidence before the court] show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023) (alterations in original) (quoting Rule 56(c), SCRCF). "[T]he evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming v. Rose*, 350 S.C. 488, 493–94, 567 S.E.2d 857, 860 (2002).

"Rule 15(a), SCRCF, provides that, if more than thirty days have elapsed from the time a responsive pleading is served, a party may amend his pleading only by leave of court or by written consent of the adverse party." *Stanley v. Kirkpatrick*, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2004). "It is well established that a motion to amend is addressed to the discretion of the trial judge" *Id.* "[L]eave [should] be freely given when justice so requires and [it] does not prejudice the other party." *Id.* "The prejudice Rule 15 envisions is a lack of notice that the new issue is to be tried and a lack of opportunity to refute it." *Id.*

Statements by Other Coworkers

Wise argues that the safety director made defamatory statements to Wise's coworker, the plant manager, Wise's supervisor, and a human resources manager. Any arguments regarding the supervisor and human resources manager are not preserved

for our review. *See S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301–02, 641 S.E.2d 903, 907 (2007) (stating, to preserve an issue for appellate review, "[t]he issue must have been (1) raised to and ruled upon by the [circuit] court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the [circuit] court with sufficient specificity"); *Johnson v. Sonoco Prod. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider."); *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) ("A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.").

Truth as a Defense

We agree with the circuit court's conclusion that Wise's defamation claim fails as a matter of law because the only alleged defamatory statement with support in the record is true. *See Kunst v. Loree*, 424 S.C. 24, 40, 817 S.E.2d 295, 303 (Ct. App. 2018) ("The truth of the matter is a complete defense to an action based on defamation." (quoting *WeSav Fin. Corp. v. Lingefelt*, 316 S.C. 442, 445, 450 S.E.2d 580, 582 (1994) (per curiam))); *Parrish v. Allison*, 376 S.C. 308, 326, 656 S.E.2d 382, 392 (Ct. App. 2007) ("[T]ruth is an affirmative defense as to which the defendant has the burden of pleading and proof . . .").

Wise did not raise a genuine factual dispute suggesting the safety director told Wise's coworker that Wise had a sexually transmitted disease. The coworker and safety director are the only two people with personal knowledge of the pertinent conversation. Their testimonies are nearly identical in recounting that the safety director stated only that Wise *had an infection* and was prescribed an antibiotic. The safety director's and plant manager's testimonies similarly align. This statement—that Wise had an infection—was true. Wise's medical records clearly indicate he had an infection, and we are not aware of any evidence provided by Wise that disproves he had an infection. To the contrary, Wise admits he had an infection. *See Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004) ("[T]he opposing party must come forward with specific facts that show there is a genuine issue of [material] fact remaining for trial.").

There is conflicting testimony as to whether the safety director said more to the plant manager. The safety director testified that he told the plant manager that Wise was upset about a comment the emergency room doctor made after examining Wise. The doctor allegedly implied Wise had been "changing sexual partners." The plant manager, however, could not recall the safety director sharing this information. Nonetheless, assuming in the light most favorable to Wise that the safety director said this to the plant manager, the record indicates that statement was also true.

There is no dispute in the record that Wise himself let other employees know that the doctor's comment upset him.

Given that there is no genuine dispute the statement that Wise had an infection—the only alleged defamatory statement supported by the record—was true, we affirm the circuit court's finding that West Fraser had an absolute defense to Wise's defamation claim. *See Fountain v. First Reliance Bank*, 398 S.C. 434, 442, 730 S.E.2d 305, 309 (2012) (finding an absolute defense to defamation when the "literal meaning" of the statement was true and "there [was] no evidence to the contrary"); *cf. Kunst*, 424 S.C. at 41, 817 S.E.2d at 303 ("We find the circuit court correctly denied [the] motion for JNOV because the parties presented conflicting evidence regarding the truth of the statements, which created a question for the jury.").

Qualified Privilege

Even if the truth defense did not apply to the safety director's alleged comment about why Wise was upset, the conversation between the safety director and the plant manager would fall squarely within the applicable qualified privilege. *See Fountain*, 398 S.C. at 444, 730 S.E.2d at 310 ("One who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused."); *id.* ("The essential elements of a conditionally privileged communication may [. . .] be enumerated as good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only." (internal quotations omitted) (quoting *Manley v. Manley*, 291 S.C. 325, 331, 353 S.E.2d 312, 315 (Ct. App. 1987))); *Conwell v. Spur Oil Co. of W. S.C.*, 240 S.C. 170, 179, 125 S.E.2d 270, 275 (1962) ("It appears to be generally recognized that communications between officers and employees of a corporation . . . are qualifiedly privileged if made in good faith and in the usual course of business.").

It is difficult to see how the conversation between the West Fraser safety director and the West Fraser plant manager could not have been in good faith or in the usual course of business. The safety director claims he told the plant manager the same thing he told Wise's coworker—Wise had an infection and was prescribed an antibiotic. The safety director's role at West Fraser is undisputed—he manages workers' compensation issues. There is no dispute that it would be expected and proper for the safety director to report an injured worker's diagnosis to a plant manager following what appeared to be a work-place accident. Again, we acknowledge that the plant manager could not recall whether the safety director told him about the doctor's alleged "sexual partners" comment. Assuming in the light

most favorable to Wise that the safety director did share this information, it only makes sense that the safety director would disclose to the plant manager any issues or grievances that arose during the course of treatment. This is particularly true when Wise, by his own admission, was extremely upset about the alleged comment.

Wise has the burden to prove any alleged abuse of this qualified privilege. *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999) ("Where the occasion gives rise to a qualified privilege, . . . the burden is on the plaintiff to show actual malice or that the scope of the privilege has been exceeded."). To do so, Wise relies heavily on the "notes" or "statement" of the human resources manager, asserting that the notes show she overheard the safety director deliver this information to the plant manager. As previously addressed, any arguments regarding the human resources manager, including arguments relying on her notes, are not properly before this court and we cannot consider them.

Leave to Amend

We agree with the circuit court that Wise's motion to amend was untimely. As the circuit court explained, Wise filed his written motion to amend twenty-seven days before the scheduled trial date, after the case had been pending for nearly two years, and after the summary judgment hearing. More importantly, we agree that "[Wise's] assertion that the proposed amendment is based on existing evidence and this somehow eliminates the prejudice to West Fraser is unsupported" because "[a]llowing [Wise] to inject a new theory of liability at the eleventh hour after the case ha[d] been pending for approximately [two and a half] years is precisely the type of late notice . . . that is considered unfairly prejudicial." *See Soil & Material Eng'rs, Inc. v. Folly Assocs.*, 293 S.C. 498, 501, 361 S.E.2d 779, 781 (Ct. App. 1987) ("In considering potential prejudice to the opposing party, the court should consider whether the opposing party has had the opportunity to prepare for the issue now being raised formally." (citation omitted)); *Holland ex rel. Knox v. Morbark, Inc.*, 407 S.C. 227, 236, 754 S.E.2d 714, 719 (Ct. App. 2014) (citing *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 510 (4th Cir. 1986) (finding prejudice can result when a proposed amendment is offered shortly before or during trial and raises a new legal theory that would require gathering and analysis of facts not already considered by opposition)).

Conclusion

We understand and do not overlook Wise's basic argument that he was subject to rumors and teasing when he returned to work following a brief absence after this incident, and that, in his view, the safety director is the only person who could have

set these rumors in motion. However, we do not believe this hypothesis is sufficient to rebut sworn testimony from multiple witnesses with personal knowledge of the conversations in question. *See, e.g., Moody v. McClellan*, 295 S.C. 157, 163–64, 367 S.E.2d 449, 452–53 (Ct. App. 1988) (affirming summary judgment against an employee claiming defamation because the employee-claimant had no personal knowledge of the alleged statements and did not offer any "competent evidence" to rebut the coworker's affidavit denying that he made any of the alleged statements).

We need not address any remaining arguments given the controlling issues outlined above. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling it unnecessary for an appellate court to address remaining issues when its resolution of a prior issue is dispositive). Accordingly, the circuit court's grant of summary judgment in favor of West Fraser and the circuit court's denial of Wise's request to amend his complaint are

AFFIRMED.¹

GEATHERS, HEWITT, and VINSON, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

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Jun 27 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No.: 2016-002525

Anthony Wise, ... Appellant,

v.

Kenneth E. Leap, Newberry Hospital, LLC d/b/a
Newberry County Memorial Hospital, and West
Fraser, Inc., Defendants,

Of Whom, West Fraser, Inc. is Respondent.

PETITION FOR REHEARING

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ATTORNEYS FOR APPELLANT

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Appellant moves the Court for Rehearing and/or to Alter its Unpublished Opinion number 2024-UP-216 of June 20, 2024, which affirms the Circuit Court's grant of summary judgment to Respondent, West Fraser, Inc.

Respectfully, the Court's Opinion wholly overlooks and does not address Appellant's argument that a statement made by West Fraser's safety director, Keith Nelson, to Anthony Wise's coworker, George Wilson, was defamatory by way of innuendo and implication, and solely focuses on Respondent's argument, and the Circuit Court's reasoning in its Order, that the words of Nelson's statement were facially true.¹ The Circuit Court's reasoning, and the Opinion's, is erroneous because statements that are defamatory by way of innuendo or implication may very well be true on their face while implying a defamatory, false meaning through the omission or juxtaposition of facts. Since there is evidence in the record creating a genuine dispute as to whether Nelson conveyed a statement to Wilson that could reasonably be interpreted by the recipient as having a defamatory meaning under the circumstances, it was error for the Circuit Court to grant West Fraser's Motion for

¹ In analyzing whether the statement was defamatory by innuendo, the Circuit Court was further in error in that it only viewed testimony in favor of West Fraser indicating that Wise had confronted numerous coworkers concerning the rumors, while ignoring conflicting testimony proving that other employees had spread the rumor, as well as part of the warning letter sent to Nelson, which documents that the information communicated to Wilson by Nelson was the same information that was repeated throughout West Fraser, i.e., that Wise had a sexually transmitted infection. (R. pp. 13-16, 519). The Order even goes as far as to recognize that one coworker had inferred from the injury that Wise had a sexually transmitted infection before he even went to the hospital but then fails to consider this extrinsic evidence as proof that Wilson could have reasonably interpreted Nelson's statement to mean that Wise had a sexually transmitted infection. (R. p. 9).

Summary Judgment solely on the basis of whether Nelson’s statement as described by him was facially true.

South Carolina clearly recognizes that a statement, while not defamatory on its face, may be defamatory by innuendo or implication.² A defamatory inference may even be derived from a factually true, seemingly innocent statement. *Jones v. Garner*, 250 S.C. 479, 484, 158 S.E.2d 909, 912 (1968) (stating that if words are susceptible to two *meanings*, one defamatory and the other innocent, the issue of whether they were defamatory must be left to the jury); *McBride v. Merrell Dow and Pharms. Inc.*, 717 F.2d 1460 (D.D.C. 1983) (stating that a facially true statement could have a defamatory meaning); Restatement (Second) of Torts § 563 cmt. d (Am. L. Inst. 1977) (“[W]ords which alone are innocent may in their context clearly be capable of a defamatory meaning and may be so understood.”). Statements which are technically true on their face, but which by innuendo or implication convey an untrue and defamatory meaning, may constitute defamation. 50 Am. Jur. 2d *Libel and Slander* § 161; see *Jews for Jesus, Inc. v. Rapp*, 997 So.2d 1098, 1108 n.13 (Fla. 2008) (“[I]n a defamation by implication claim, the “matter charged as defamatory” is not the literally true statement, but the false impression given by the juxtaposition or omission of facts. Accordingly, truth remains an available defense to defendants who can prove the *defamatory implication* is true.”).

² While South Carolina recognizes that a statement may be defamatory by innuendo, the modern trend is to recognize the principle as defamation by implication. *Fountain v. First Reliance Bank*, 398 S.C. 434, 441, 730 S.E.2d 305, 309 (2012); *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827-29 (Iowa 2007).

After considering the extrinsic circumstances, if the words used are themselves capable of conveying a defamatory meaning within the context in which they are spoken, a circuit court cannot on summary judgment find otherwise simply because the words themselves can be construed as facially true or non-defamatory:

The District argues that because the statements in Stevens' email could be read as non-defamatory, the trial court should have declared them so and granted JNOV to the District. The District is in essence trying to resurrect the ancient doctrine of *mitior sensus* ("gentler sense"), which held that if words may be construed as either defamatory or not, the court must give them the non-defamatory meaning as a matter of law. *Wardlaw v. Peck*, 282 S.C. 199, 203, 318 S.E.2d 270, 273 (Ct. App. 1984) (discussing doctrine). English courts cast the doctrine off by the early 18th century, and we inherited that common law by the reception statute. *Id.* We have since directly rejected the doctrine, most famously in Judge O'Neill's decision in *Davis v. Johnston*, 18 S.C.L. 579, 579-80 (1832), and most recently in Judge Bell's comprehensive opinion in *Wardlaw*, both of which we reaffirm today. *See generally* Eldredge, The Law of Defamation § 24 at 161 (criticizing the doctrine as "peculiar" and one that would allow defamers to destroy another's reputation and escape liability by phrasing the defamatory statement in such a way that it can also be interpreted as an innocent comment).

Cruce v. Berkeley Cnty. Sch. Dist., 442 S.C. 1, 16, 896 S.E.2d 765, 773 (2024).

Even if the defamatory meaning is not intended, if the defamatory implication is a reasonable construction of the statement's language, given the extrinsic circumstances and context, then the statement can be defamatory. Restatement (Second) of Torts § 563 cmt. c. "The meaning of a communication is that which the recipient correctly, or *mistakenly but reasonably*, understands that it was intended to express." Restatement (Second) of Torts § 563 (emphasis added). Therefore, a statement may have a defamatory and false *meaning* even if the words of the communication itself are facially true.

The usual test applied to determine the meaning of a defamatory utterance is whether it was reasonably understood by the recipient of the communication to have been intended in the defamatory sense When one uses language, *one is held to the construction placed on it by those who hear or read, if that construction is a reasonable one.*

F. Harper, et al., *The Law of Torts* § 5.4 (1986) (emphasis added).

“In determining the meaning of a communication, account is to be taken of *all the circumstances* under which it is made so far as they were known to the recipient.” *Id.* at § 563 cmt. e (emphasis added); *Parrish v. Allison*, 376 S.C. 308, 321, 656 S.E.2d 382, 389 (Ct. App. 2007) (“[T]he trial court may consider not only the statement on its face, but also evidence of any extrinsic facts and circumstances.”). “[T]he decisive question is what the person or persons to whom the communication was published reasonably understood as the meaning intended to be expressed.

Unless the question of what the recipient understood is free from reasonable doubt, *it is for the jury* to determine the meaning and construction of the alleged defamatory language.” *Id.* (citing Restatement (Second) of Torts § 614(2) (Am. L. Inst. 1977)) (emphasis added). The Circuit Court’s Order granting summary judgment and the Court’s Opinion are in error because they do not recognize the distinction between the words of the publication themselves and the defamatory meaning that can implied by those words, and they do not recognize evidence in the record demonstrating that Wilson, and other coworkers of Wise, understood the meaning of Nelson’s statement to be that Wise had a sexually transmitted infection.³ Additionally, the Order and Opinion do not account for the extrinsic facts, the context

³ It is undisputed that Wise in fact did not have a sexually transmitted infection.

under which the statements were made, and what was known to Wilson and Wise's coworkers at the time of Nelson's publication.

To recap, Nelson, upon returning from his visit to Newberry County Memorial Hospital, informed Wilson that Wise had "an infection" and needed antibiotics. Before he left to go the hospital, multiple employees, including Nelson, were aware that Wise had a painful injury to his groin. (R. p. 254, line 8-p. 257, line 13; R. p. 439, lines 11-18). Upon returning, Nelson undisputedly told Wilson at minimum that Wise had an "infection" and would need antibiotics. (R. p. 466, lines 9-12; R. p. 527, lines 15-17). In the light most favorable to Wise, Wilson had previously been made aware of the nature of Wise's injury, and Nelson would have been aware that Wise's coworkers were aware of the location of the injury. (R. p. 526, line 24-p. 527, line 7).

The warning letter from plant manager Dolan J. Russell to Nelson documents that the statement to Wilson was the source of the subsequent rumors amongst the West Fraser workforce:

You escorted Mr. Wise to the physician. Upon return to the Newberry mill, *you discussed the medical condition and diagnosis that the physician made regarding Mr. Wise with another hourly employee. In turn, this information has been communicated throughout the mill* Verbally disclosing medical information about an employee can be considered by the employee as slanderous. As a representative of West Fraser, your disclosure of this information has put the Company at risk.

(R. p. 519) (emphasis added). The rumor being passed between employees of West Fraser, which began before Wise returned to work six days later, was not that Wise had an "infection" but that Wise had a sexually transmitted infection, whereas initially the prevailing belief was that Wise had strained a groin muscle. (R. p. 437,

lines 2-6; R. p. 437, line 9-p. 438, line 22; R. p. 538, line 23-p. 539, line 2; R. p. 539 lines 9-14; R. p. 540, lines 7-15; R. p. 586, line 24-p. 588, line 8; R. p. 595, line 22-p. 597, line 8; R. p. 608, lines 16-24; R. p. 618, lines 9-21; R. p. 654, lines 11-16). Plant manager Russell testified that the only way this rumor concerning Wise's condition could have made its way to West Fraser before Wise returned to work was from the conversation between Nelson and Wilson. (R. p. 563, line 21-p. 564, line 11). Thus, in the light most favorable to Wise, the warning letter recognizes not only that the statement was susceptible to a defamatory meaning, but that the sexually transmitted infection rumor was attributable to the statement of Nelson, which was subsequently republished in some form by Wilson.

When taking into account all of the circumstances, the juxtaposition of Nelson's statement with the fact that it was known to the West Fraser workforce that Wise had suffered a groin injury, in conjunction with the fact that Nelson had overheard statements at the hospital implicating that Wise had contracted a venereal disease, creates an inference that Nelson conveyed and Wilson reasonably understood the *meaning* of Nelson's statement to be that Wise had a sexually transmitted infection.⁴ It also creates reasonable doubt that Nelson had no intentions of conveying that Wise had a sexually transmitted infection. When viewed in the light most favorable to Wise, the evidence, including the warning letter and testimony regarding the nature of the rumors spread amongst the West Fraser employees, also creates a reasonable

⁴ The fact that Wilson then conveyed this information to the workforce at West Fraser, which subsequently framed the infection as being sexually transmitted, serves as further proof that Wilson understood the statement as conveying that Wise had a sexually transmitted infection. (R. p. 290, lines 4-14; R. p. 323, lines 15-23).

inference that a defamatory meaning was subsequently conveyed by Wilson to others at West Fraser. (R. p. 527, line 24-p. 528, line 3). Again, by West Fraser's own admission, "the information" "communicated throughout the mill", which was that Wise had a sexually transmitted infection, was the "information" that Nelson discussed with Wilson. (R. p. 519).

The Court's Opinion never contemplates in the light most favorable to Wise any meaning that could have reasonably been inferred by Wilson or Wise's coworkers from Nelson's statements given the circumstances, or the warning letter's documentation that Wilson subsequently conveyed the rumor to others; it does not engage in any analysis of whether the statement was defamatory by implication; it does not contemplate the warning letter's admission that the rumor's source was Nelson. By taking at face value Nelson and Wilson's testimony and confining its holding to the literal construction of Nelson's admitted statement, the Opinion weighs the evidence in favor of West Fraser and does not resolve inferences in Wise's favor. Clearly, there is sufficient evidence to create a genuine dispute as to whether Nelson conveyed a statement capable of implying a defamatory meaning to Wilson, which is an issue that must be resolved by a jury. *See Parrish*, 376 S.C. at 323, 656 S.E.2d at 390 ("The resolution of conflicting meanings is reserved for the jury."). But even if the Opinion had considered the defamatory implications of Nelson's statement, which it did not, it would still be in error because it does not take into account certain credibility issues with Nelson's testimony.

In his deposition, Nelson was adamant that he never even “remotely considered” that someone could infer that Wise had a sexually transmitted infection from his statement to Wilson:

Q. - did it occur to you that that information would lead someone to conclude that Hop had contracted a sexually transmitted disease?

A. No, no. I would – if I even remotely remotely considered that, I would have never said anything except to Mr. Russell.

Q. Sitting here –

A. I mean, just like I said, throughout the years you just – you know, I’ve mentioned several employees, you know, sprain, you know, have negative X-rays so – so I considered all that just routine stuff, you know. Yeah, you got a prescription because of an infection, that’s like routine stuff. I – I never put that together like that.

Q. You never put the sexual component with the infection?

A. Absolutely not.

(R. p. 512, line 15-p. 513, line 6). However, Nelson was fully aware that others knew before leaving West Fraser about the nature of Wise’s injury and that he was experiencing extreme pain in groin area. (R. p. 253, line 17-p. 261, line 1). Additionally, testimonial evidence in the record indicates that Nelson was in the room with Wise when his doctor informed him that he believed he may have contracted the condition by having extra-marital affairs, and that Nelson had a follow-up private conversation with the doctor. (R. p. 283, line 2-p. 285, line 10; R. p. 657, line 3-p. 660, line 4). Nelson even asked Wise if he had considered that his wife may have given him an infection. (R. p. 298, lines 1-6).

At best, Nelson's assertion that he never imagined a West Fraser employee who was aware of Wise's condition and its location could have inferred a defamatory meaning from his statement is incredibly naïve; the more reasonable inference to be taken from his testimony is that Nelson is being untruthful. This begs the question of why Nelson would take such a position in the first place, and the most likely explanation is that (1) he knew that his statement to Wilson was likely to convey that Wise had in fact been diagnosed with a sexually transmitted infection, or (2) he directly made such an accusation.

While Nelson's intent is not dispositive of whether his statement was capable of possessing a defamatory and false meaning, this evidence clearly creates a dispute for the factfinder as to whether his testimony concerning the defamatory statement is credible, and it should have been a factor considered by the Court in its Opinion.⁵ *See* Restatement (Second) of Torts § 563 cmt. c ("If the defamatory meaning is not intended, it must be a reasonable construction of the language."); *see also* Restatement (Second) of Torts § 580B cmt. b (stating that under the common law position, which is the law of South Carolina regarding private figure defamation, liability will be imposed despite the lack of intent on the part of the defendant). Within the entire context of the extrinsic circumstances, which were known to Nelson, this evidence creates a genuine dispute as to whether Nelson was the source of

⁵ Instead, this evidence would be relevant to the common law malice element of Wise's defamation claim. In this case, there is a presumption that Nelson acted with common law malice. Regardless, the issue of common law malice is not before the Court on appeal.

defamatory rumors concerning Wise, regardless of whether his statement was defamatory on its face or by implication.

Lastly, the Opinion is in error in that it affirms the Circuit Court's decision to deny Wise's Motion to Amend for being untimely. The proposed amendment, which sought to add a cause of action for breach of confidentiality, was based on the same factual allegations of the original Complaint and evidence that was in West Fraser's possession for the entirety of litigation. The Opinion's holding is based on a conclusory assumption that West Fraser would have been prejudiced by the amendment; neither the Opinion nor the Circuit Court's Order conducts a prejudice analysis based on the allegations of the original Complaint and the facts.

The Opinion relies on *Holland ex rel. Knox v. Morbark, Inc.*, 407 S.C. 227, 236, 754 S.E.2d 714, 719 (Ct. App. 2014), which cites *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 510 (4th Cir. 1986) for the proposition that prejudice results when a proposed amendment is offered shortly before or during trial and raises a new legal theory that would require gathering and analysis of facts *not already considered by opposition*. "The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it." *Tanner v. Florence Cnty. Treasurer*, 336 S.C. 552, 559, 521 S.E.2d 153, 156 (1999). Rule 15 states that leave to amend the pleadings "shall be freely given". Rule 15(a), SCRCF. The burden is on the party opposing amendment to prove it would be prejudiced by an amendment. *Harvey v. Strickland*, 350 S.C. 303, 313, 566 S.E.2d 529, 535 (2002).

The genesis of the proposed amendment's new legal theory is that Nelson made an unauthorized disclosure of Wise's diagnosis and treatment, as reported by Wise's physician, to an hourly employee, Wilson. This fact was clearly alleged in the Complaint and is the same fact that is central to Wise's defamation claim. (R. p. 29). The Circuit Court's Order goes so far as to recognize this, but then diverges into the merits of Wise's defamation claim. (R. p. 21). The Circuit Court's Order, and the Opinion, do not adequately explain how West Fraser would have been prevented from defending the merits of the new breach of confidentiality theory when it is undisputed that the new theory is solely based on evidence that had been in West Fraser's possession since the inception of the litigation and was factually pled in Wise's Complaint.

Because the factual allegations of the Complaint were sufficient to support the proposed cause of action, and the details of Nelson's statement to Wilson were thoroughly examined by counsel during Nelson's deposition, and could have been addressed at trial, there could have been no prejudice to West Fraser in the amendment. This Court has found no prejudice in such an amendment, even after a trial has commenced, under similar circumstances. *See Armstrong v. Collins*, 366 S.C. 204, 231, 621 S.E.2d 368, 381-82 (Ct. App. 2005) (finding no prejudice when plaintiff moved to amend complaint to add new theory of liability after close of plaintiff's case when the new cause of action was based entirely on facts pled in the original complaint and the issue was addressed at the trial). Because the Circuit Court's Order did not engage in a meaningful prejudice analysis or explain how West Fraser

would be prejudiced, the Order constitutes an abuse of discretion and should be reversed. *See Patton v. Miller*, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017) (finding that when a circuit court does not explain why a defendant would be prejudiced by an amendment that it constitutes an abuse of discretion).

For the foregoing reasons, the Appellant requests that the Court rehear and alter its Unpublished Opinion and reverse the Circuit Court's Order granting summary judgment to Respondent.

Respectfully submitted,

PARKER LAW GROUP, LLP

June 27, 2024
Hampton, South Carolina

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RECEIVED

Jun 27 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No.: 2016-002525

Anthony Wise, ... Appellant,

v.

Kenneth E. Leap, Newberry Hospital, LLC d/b/a
Newberry County Memorial Hospital, and West
Fraser, Inc., Defendants,

Of Whom, West Fraser, Inc. is Respondent.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing **Appellant's Petition for Rehearing** has been served upon the following counsel of record by emailing a copy of the same this 27th day of June 2024.

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Claudia Cartier

June 27, 2024
Hampton, South Carolina.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Anthony Wise, Appellant,

v.

Kenneth E. Leap, Newberry Hospital, LLC d/b/a
Newberry County Memorial Hospital and West Fraser,
Inc., Defendants,

Of Whom West Fraser, Inc. is the Respondent.

Appellate Case No. 2021-001463

Appeal From Newberry County
G. D. Morgan, Jr., Circuit Court Judge

Unpublished Opinion No. 2024-UP-216
Submitted April 1, 2024 – Filed June 20, 2024
Withdrawn, Substituted, and Refiled July 17, 2024

AFFIRMED

John W. Carrigg, Jr., of Carrigg Law Firm, of Lexington,
and John E. Parker and John Elliott Parker, Jr., both of
Parker Law Group, LLP, of Hampton, all for Appellant.

Christopher B. Major, of Haynsworth Sinkler Boyd, PA,
of Greenville, and Anne Laurie McClurkin, of Mobile,
AL, both for Respondent.

PER CURIAM: Anthony Wise was working for West Fraser, Inc. (West Fraser) when he appeared to suffer a work-related injury to his groin. West Fraser's safety director escorted Wise to the emergency room. A medical exam revealed that Wise had an unrelated infection for which he was prescribed an antibiotic. This defamation case concerns Wise's claim that the safety director returned to West Fraser and started a chain of rumors that Wise had a sexually transmitted disease.

Wise appeals the circuit court's order granting West Fraser's motion for summary judgment. Wise asserts the following findings were erroneous: (1) West Fraser established that the safety director's statements were true, resulting in an absolute defense to Wise's defamation claim; (2) the safety director's statements to the plant manager were protected by a qualified privilege; and (3) the safety director's statements could not be reasonably construed as defamatory by innuendo. Wise also appeals the circuit court's denial of his request to amend his complaint. We affirm.

"An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56 [of the South Carolina Rules of Civil Procedure]." *Brockbank v. Best Cap. Corp.*, 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000). "Rule 56(c) . . . provides that the moving party is entitled to summary judgment 'if the [evidence before the court] show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023) (alterations in original) (quoting Rule 56(c), SCRCF). "[T]he evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming v. Rose*, 350 S.C. 488, 493–94, 567 S.E.2d 857, 860 (2002).

"Rule 15(a), SCRCF, provides that, if more than thirty days have elapsed from the time a responsive pleading is served, a party may amend his pleading only by leave of court or by written consent of the adverse party." *Stanley v. Kirkpatrick*, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2004). "It is well established that a motion to amend is addressed to the discretion of the trial judge" *Id.* "[L]eave [should] be freely given when justice so requires and [it] does not prejudice the other party." *Id.* "The prejudice Rule 15 envisions is a lack of notice that the new issue is to be tried and a lack of opportunity to refute it." *Id.*

Statements by Other Coworkers

Wise argues that the safety director made defamatory statements to Wise's coworker, the plant manager, Wise's supervisor, and a human resources manager. Any arguments regarding the supervisor and human resources manager are not preserved

for our review. *See S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301–02, 641 S.E.2d 903, 907 (2007) (stating, to preserve an issue for appellate review, "[t]he issue must have been (1) raised to and ruled upon by the [circuit] court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the [circuit] court with sufficient specificity"); *Johnson v. Sonoco Prod. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider."); *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) ("A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.").

Truth as a Defense

We agree with the circuit court's conclusion that Wise's defamation claim fails as a matter of law because the only alleged defamatory statement with support in the record is true. *See Kunst v. Loree*, 424 S.C. 24, 40, 817 S.E.2d 295, 303 (Ct. App. 2018) ("The truth of the matter is a complete defense to an action based on defamation." (quoting *WeSav Fin. Corp. v. Lingefelt*, 316 S.C. 442, 445, 450 S.E.2d 580, 582 (1994) (per curiam))); *Parrish v. Allison*, 376 S.C. 308, 326, 656 S.E.2d 382, 392 (Ct. App. 2007) ("[T]ruth is an affirmative defense as to which the defendant has the burden of pleading and proof . . .").

Wise did not raise a genuine factual dispute suggesting the safety director told Wise's coworker that Wise had a sexually transmitted disease. The coworker and safety director are the only two people with personal knowledge of the pertinent conversation. Their testimonies are nearly identical in recounting that the safety director stated only that Wise *had an infection* and was prescribed an antibiotic. The safety director's and plant manager's testimonies similarly align. This statement—that Wise had an infection—was true. Wise's medical records clearly indicate he had an infection, and we are not aware of any evidence provided by Wise that disproves he had an infection. To the contrary, Wise admits he had an infection. *See Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004) ("[T]he opposing party must come forward with specific facts that show there is a genuine issue of [material] fact remaining for trial.").

There is conflicting testimony as to whether the safety director said more to the plant manager. The safety director testified that he told the plant manager that Wise was upset about a comment the emergency room doctor made after examining Wise. The doctor allegedly implied Wise had been "changing sexual partners." The plant manager, however, could not recall the safety director sharing this information. Nonetheless, assuming in the light most favorable to Wise that the safety director said this to the plant manager, the record indicates that statement was also true.

There is no dispute in the record that Wise himself let other employees know that the doctor's comment upset him.

Given that there is no genuine dispute the statement that Wise had an infection—the only alleged defamatory statement supported by the record—was true, we affirm the circuit court's finding that West Fraser had an absolute defense to Wise's defamation claim. *See Fountain v. First Reliance Bank*, 398 S.C. 434, 442, 730 S.E.2d 305, 309 (2012) (finding an absolute defense to defamation when the "literal meaning" of the statement was true and "there [was] no evidence to the contrary"); *cf. Kunst*, 424 S.C. at 41, 817 S.E.2d at 303 ("We find the circuit court correctly denied [the] motion for JNOV because the parties presented conflicting evidence regarding the truth of the statements, which created a question for the jury.").

Qualified Privilege

Even if the truth defense did not apply to the safety director's alleged comment about why Wise was upset, the conversation between the safety director and the plant manager would fall squarely within the applicable qualified privilege. *See Fountain*, 398 S.C. at 444, 730 S.E.2d at 310 ("One who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused."); *id.* ("The essential elements of a conditionally privileged communication may [. . .] be enumerated as good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only." (internal quotations omitted) (quoting *Manley v. Manley*, 291 S.C. 325, 331, 353 S.E.2d 312, 315 (Ct. App. 1987))); *Conwell v. Spur Oil Co. of W. S.C.*, 240 S.C. 170, 179, 125 S.E.2d 270, 275 (1962) ("It appears to be generally recognized that communications between officers and employees of a corporation . . . are qualifiedly privileged if made in good faith and in the usual course of business.").

It is difficult to see how the conversation between the West Fraser safety director and the West Fraser plant manager could not have been in good faith or in the usual course of business. The safety director claims he told the plant manager the same thing he told Wise's coworker—Wise had an infection and was prescribed an antibiotic. The safety director's role at West Fraser is undisputed—he manages workers' compensation issues. There is no dispute that it would be expected and proper for the safety director to report an injured worker's diagnosis to a plant manager following what appeared to be a work-place accident. Again, we acknowledge that the plant manager could not recall whether the safety director told him about the doctor's alleged "sexual partners" comment. Assuming in the light

most favorable to Wise that the safety director did share this information, it only makes sense that the safety director would disclose to the plant manager any issues or grievances that arose during the course of treatment. This is particularly true when Wise, by his own admission, was extremely upset about the alleged comment.

Wise has the burden to prove any alleged abuse of this qualified privilege. *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999) ("Where the occasion gives rise to a qualified privilege, . . . the burden is on the plaintiff to show actual malice or that the scope of the privilege has been exceeded."). To do so, Wise relies heavily on the "notes" or "statement" of the human resources manager, asserting that the notes show she overheard the safety director deliver this information to the plant manager. As previously addressed, any arguments regarding the human resources manager, including arguments relying on her notes, are not properly before this court and we cannot consider them.

Defamation by Innuendo

Wise also argues that, even if the safety director only went so far as to state that Wise had an infection, such a statement could be construed as defamatory by innuendo.

After a scrupulous review of the record, we find this argument is not preserved for our review. Wise never raised an innuendo argument to the circuit court—he did not file any written arguments opposing summary judgment, nor did he make a defamation by innuendo argument at the summary judgment hearing before the circuit court. *See S.C. Dep't of Transp.*, 372 S.C. at 301–02, 641 S.E.2d at 907 (stating, to preserve an issue for appellate review, "[t]he issue must have been (1) raised to and ruled upon by the [circuit] court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the [circuit] court with sufficient specificity"). Wise did raise an innuendo argument in his motion to reconsider; however, this does not negate Wise's failure to raise the argument to the circuit court prior to its ruling on summary judgment. *See Johnson*, 381 S.C. at 177, 672 S.E.2d at 570 ("An issue may not be raised for the first time in a motion to reconsider."); *Hickman*, 301 S.C. at 456, 392 S.E.2d at 482 ("A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.").

Leave to Amend

We agree with the circuit court that Wise's motion to amend was untimely. As the circuit court explained, Wise filed his written motion to amend twenty-seven days before the scheduled trial date, after the case had been pending for nearly two years, and after the summary judgment hearing. More importantly, we agree that "[Wise's]

assertion that the proposed amendment is based on existing evidence and this somehow eliminates the prejudice to West Fraser is unsupported" because "[a]llowing [Wise] to inject a new theory of liability at the eleventh hour after the case ha[d] been pending for approximately [two and a half] years is precisely the type of late notice . . . that is considered unfairly prejudicial." *See Soil & Material Eng'rs, Inc. v. Folly Assocs.*, 293 S.C. 498, 501, 361 S.E.2d 779, 781 (Ct. App. 1987) ("In considering potential prejudice to the opposing party, the court should consider whether the opposing party has had the opportunity to prepare for the issue now being raised formally." (citation omitted)); *Holland ex rel. Knox v. Morbark, Inc.*, 407 S.C. 227, 236, 754 S.E.2d 714, 719 (Ct. App. 2014) (citing *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 510 (4th Cir. 1986) (finding prejudice can result when a proposed amendment is offered shortly before or during trial and raises a new legal theory that would require gathering and analysis of facts not already considered by opposition))).

Conclusion

We understand and do not overlook Wise's basic argument that he was subject to rumors and teasing when he returned to work following a brief absence after this incident, and that, in his view, the safety director is the only person who could have set these rumors in motion. However, we do not believe this hypothesis is sufficient to rebut sworn testimony from multiple witnesses with personal knowledge of the conversations in question. *See, e.g., Moody v. McClellan*, 295 S.C. 157, 163–64, 367 S.E.2d 449, 452–53 (Ct. App. 1988) (affirming summary judgment against an employee claiming defamation because the employee-claimant had no personal knowledge of the alleged statements and did not offer any "competent evidence" to rebut the coworker's affidavit denying that he made any of the alleged statements).

We need not address any remaining arguments given the controlling issues outlined above. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling it unnecessary for an appellate court to address remaining issues when its resolution of a prior issue is dispositive). Accordingly, the circuit court's grant of summary judgment in favor of West Fraser and the circuit court's denial of Wise's request to amend his complaint are

AFFIRMED.¹

GEATHERS, HEWITT, and VINSON, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

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Jul 23 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No.: 2016-002525

Anthony Wise, ... Appellant,

v.

Kenneth E. Leap, Newberry Hospital, LLC d/b/a
Newberry County Memorial Hospital, and West
Fraser, Inc., Defendants,

Of Whom, West Fraser, Inc. is Respondent.

PETITION FOR REHEARING

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ATTORNEYS FOR APPELLANT

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Appellant Anthony Wise moves the Court for Rehearing and/or to Alter its Unpublished Opinion number 2024-UP-216, filed on June 20, 2024, which was withdrawn, substituted, and refiled on July 17, 2024, and affirms the Circuit Court's grant of summary judgment to Respondent, West Fraser, Inc.

After the Court's June 20, 2024 Unpublished Opinion was filed, Wise petitioned the Court for rehearing on the basis that it wholly overlooked and did not address Wise's argument that a statement made by West Fraser's safety director, Keith Nelson, to Wise's coworker, George Wilson, could reasonable be construed as defamatory by way of innuendo and implication. The refiled Opinion addresses this argument as follows:

After a scrupulous review of the record, we find this argument is not preserved for our review. Wise never raised an innuendo argument to the circuit court-he did not file any written arguments opposing summary judgment, nor did he make a defamation by innuendo argument at the summary judgment hearing before the circuit court.

Wise v. Leap, Op. No. 2024-UP-216 (S.C. Ct. App. refiled July 17, 2024). In short, the revised Opinion does not reach the merits of Wise's argument because it finds that the issue is unpreserved.

Appellate courts are to be "mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner as if this is some sort of game of 'gotcha' elevating form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue." *State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023) (citing *State v. Jones*, 435 S.C. 138, 145, 866 S.E.2d 558, 561

(2021)). “One primary purpose of our issue preservation rules is to ‘give the trial court a fair opportunity to rule.’” *Id.* (quoting *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012)). Additionally, issue preservation rules serve the purpose of ensuring that “both parties are aware of the nature of the [issue] such that they may present their best arguments addressing *that* [issue].” *Id.* So long as a party raises an issue with sufficient specificity to permit the opposing party and the trial court to meaningfully address that issue prior to ruling, the issue is preserved. *See S.C. Dep’t of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 641 S.E.2d 903 (2007).

At the hearing on West Fraser’s Motion for Summary Judgment, the first argument that counsel for Wise advanced was that the statement made by Nelson to Wilson, that Wise had an “infection”, could be defamatory by way of inference or innuendo:

You know, I sat here listening to this, we obviously have different viewpoints of this case. Her thinking and the Defendant West Fraser’s thinking, well, you got to have a witness to say that so and so told me. But you don’t have to have that. All you have to do is have an inference that that is what they said.

(R. p. 132, lines 5-11). Counsel for West Fraser had just argued that Nelson only told Wilson that Wise had an “infection”. (R. p. 126, line 17-p. 127, line 12). While the specific word “innuendo” was not used in Wise’s argument at the hearing, it is sufficiently clear that Wise was arguing that one could reasonably infer from Nelson and Wilson’s testimony that when Nelson told Wilson that Wise had an “infection” that he was inferring that Wise had a sexually transmitted infection. *See State v.*

Dunbar, 356 S.C. 138, 192, 587 S.E.2d 691, 694 (2003) (“A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground.”).

West Fraser responded to this argument at the hearing, arguing that there was no evidence that a reasonable person could have inferred from Nelson’s statement that he was accusing Wise of having a sexually transmitted infection. (R. p. 148, lines 11-14). The Circuit Court extensively addressed the argument and counterargument, stating in its Order that “Nelson’s statement cannot be construed as defamatory by innuendo” and that his statement was true based on its literal meaning and that “there is no evidence to establish the statements reasonably would be construed as defamatory.” (R. pp. 13-16). Therefore, the two overriding policy considerations behind issue preservation have been satisfied, as both West Fraser and the Circuit Court had sufficient notice of the innuendo argument that they were able to present counterarguments and rule on it on West Fraser’s Motion for Summary Judgment. The issue was raised by Wise again on his Motion for Reconsideration. (R. pp. 111-14). Therefore, a meaningful opportunity for appellate review has been presented to the Court on this issue.

Denying Wise’s previous Petition for Rehearing on the basis that he did not sufficiently raise the issue at the Motion for Summary Judgment hearing is in error because it places form over substance. It does not serve either of the purposes of the issue preservation rules because the Circuit Court had a “fair opportunity to rule” on the innuendo argument, and West Fraser had the opportunity to present its

counterargument, thus ensuring “meaningful appellate review.” *Morales*, 439 S.C. at 609, 889 S.E.2d at 556. For the foregoing reasons, the Appellant requests that the Court rehear and alter its refiled Unpublished Opinion and reverse the Circuit Court’s Order granting summary judgment to Respondent. Appellant incorporates all further arguments made in its previous Petition for Rehearing as to why the Court’s Unpublished Opinion is in error.

Respectfully submitted,

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July 23, 2024
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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No.: 2016-002525

Anthony Wise, ... Appellant,

v.

Kenneth E. Leap, Newberry Hospital, LLC d/b/a
Newberry County Memorial Hospital, and West
Fraser, Inc., Defendants,

Of Whom, West Fraser, Inc. is Respondent.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing **Appellant's Petition for Rehearing** has been served upon the following counsel of record by emailing a copy of the same this 23rd day of July 2024.

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APP-951

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By: *April E. Musser*
April E. Musser

July 23, 2024
Hampton, South Carolina.

The South Carolina Court of Appeals

Anthony Wise, Appellant,

v.

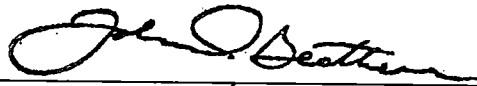
Kenneth E. Leap, Newberry Hospital, LLC d/b/a
Newberry County Memorial Hospital and West Fraser,
Inc., Defendants,

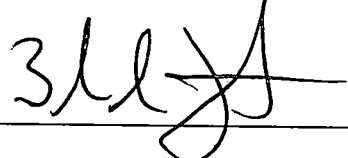
Of which West Fraser, Inc. is the Respondent.

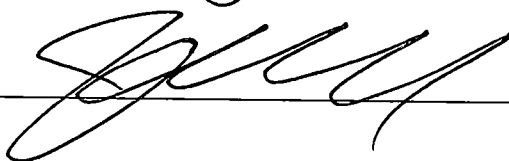
Appellate Case No. 2021-001463

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____. J.


_____. J.


_____. J.

Columbia, South Carolina

cc:

FILED
Aug 13 2024

John Elliott Parker, Jr., Esquire
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The Honorable G. D. Morgan, Jr.