

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

**RECEIVED**

**Nov 21 2024**

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.

---

**REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI**

---

PARKER LAW GROUP, LLP  
John E. Parker  
John E. Parker, Jr.  
Post Office Box 487  
Hampton, South Carolina 29924  
[jparker@parkerlawgroupsc.com](mailto:jparker@parkerlawgroupsc.com)  
[jayparker@parkerlawgroupsc.com](mailto:jayparker@parkerlawgroupsc.com)

AND

CARRIGG LAW FIRM  
John W. Carrigg, Jr.  
120 North Lake Dr.  
Lexington, South Carolina 29072  
[jcarrigg@carrigglaw.com](mailto:jcarrigg@carrigglaw.com)  
ATTORNEYS FOR PETITIONER

In its Return, Respondent West Fraser, Inc. (“West Fraser”) makes several claims that are inaccurate or are unsupported by the law. First, West Fraser claims that Petitioner Anthony Wise’s Petition for Writ of Certiorari is untimely and was due within 30 days of the Court of Appeals’ filing of its second refiled Opinion, which occurred on July 17, 2024, arguing that Wise’s second Petition for Rehearing was improperly filed, barred by Rule 221(c), SCACR, and therefore did not stay the time for appeal under Rule 242(c), SCACR. Second, West Fraser claims that none of the circumstances justifying this Court’s review, as set forth by Rule 242(b), SCACR, are present, necessitating a denial of Wise’s Petition. Lastly, West Fraser claims that there is no evidence, either direct or circumstantial, supporting that Keith Nelson, West Fraser’s Environmental Health and Safety Director, could have conveyed a facially defamatory statement or a facially true statement capable of conveying a defamatory meaning to West Fraser employee George Wilson, Jr., leading to the rampant rumors that subsequently spread throughout the West Fraser workforce. For the following reasons, the Court should grant the Petition for a Writ of Certiorari and review the merits of the Court of Appeals’ decision.

### **ARGUMENT**

**I. The Petition for Writ of Certiorari is timely because Wise’s second Petition for Rehearing challenged something that was altered from the original unpublished Opinion.**

West Fraser argues that under Rule 242(c), SCACR, and Rule 221(c), SCACR, a second petition for rehearing is prohibited and does not toll the 30-day deadline for

filing a petition for a writ of certiorari. There is no South Carolina case law or Appellate Court Rule supporting West Fraser's position. On June 20, 2024, the Court of Appeals filed Unpublished Opinion No. 2024-UP-216, in which it affirmed the Circuit Court's Orders on the ground that Nelson's statement to Wilson was facially true, and as such truth was an absolute defense to Wise's defamation claim. (App. pp. 919-24). However, in Wise's Final Brief, he advanced an alternative argument that Nelson's statements could be defamatory by way of innuendo, even if he only told Wilson that Wise had an "infection" and the statement was facially true. (App. pp. 835-37). West Fraser did not argue in its Final Brief that this argument was unpreserved, and instead opposed Wise's position on the merits. (App. pp. 883-887, 892-95).

Because the Court of Appeals' Opinion failed to address this alternative innuendo argument, on June 27, 2024, Wise filed a Petition for Rehearing, arguing that the Court of Appeals had overlooked Wise's defamation by implication/innuendo argument, that there was sufficient evidence to create a factual dispute as to whether Nelson published a facially defamatory statement, despite his denials, and that the court's Opinion was in error in that it affirmed the Circuit Court's denial of his Motion to Amend. (App. pp. 925-35). On July 17, 2024, the Court of Appeals withdrew, substituted, and refiled Unpublished Opinion No. 2024-UP-216, which altered the original Opinion in that it included a new ground for affirming the Circuit Court by setting forth that Wise's defamation by innuendo argument was unpreserved,

without an accompanying order denying the remainder of Wise's arguments raised in his Petition for Rehearing. (App. p. 944).

Wise filed a second Petition for Rehearing on July 23, 2024, arguing that the issue was preserved, that counsel for Wise had raised the issue to the Circuit Court by arguing at the hearing on West Fraser's Motion for Summary Judgment that evidence of the inference that a defamatory meaning was conveyed by Nelson to Wilson was sufficient to survive summary judgment, that counsel for West Fraser had also addressed the innuendo issue in detail in the hearing, that West Fraser and the Circuit Court had a meaningful, fair opportunity to address the issue, and that the Circuit Court had in fact ruled on the issue in detail in its Orders. (App. pp. 946-50). On August 13, 2024, the Court of Appeals filed an Order denying Wise's second Petition for Rehearing, and Wise filed a Motion for Extension of Time to File Petition for Writ of Certiorari within seven days on August 20, 2024, which was granted. (App. pp. 953-54).

Rule 242(c), SCACR, states that the time for filing and serving a petition for writ of certiorari lapses 30 days after the Court of Appeals finally decides the petition for rehearing. After Wise's first Petition for Rehearing, the Court of Appeals never filed an order denying all grounds raised by Wise in the first Petition, and instead filed an altered Opinion affirming the Circuit Court on a new ground that had not been raised or briefed by either Wise or West Fraser. Nowhere within Rule 242(c) does it state that a petitioner cannot file a second petition for rehearing following the filing of a substituted opinion that raises a brand-new ground for affirming the circuit

court. West Fraser argues that Rule 221(c), SCACR, confirms that a second petition for rehearing is barred and improper in this scenario, but Rule 221(c) in fact does the opposite, and provides that a party may petition the Court of Appeals for rehearing on a prior petition for rehearing when the action of the court on the prior petition has the effect of finally deciding a party's appeal. That is exactly what happened when instead of denying Wise's first Petition for Rehearing in an order, the Court of Appeals substituted and refiled an altered Opinion affirming the Circuit Court.

South Carolina case law analyzing the effect of filing consecutive Rule 59, SCRCR motions is analogous to the present facts and indicates that Wise's second Petition for Rehearing stayed the time for Wise to file his Petition for Writ of Certiorari until the Court of Appeals filed an order denying the second Petition for Rehearing. In *Coward Hund Const. Co., Inc. v. Ball Corp.*, 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999), the Court of Appeals was faced with the question of whether a second motion for reconsideration stayed the time for filing a notice of appeal. The court stated that the prevailing rule is that a second motion for reconsideration is appropriate "if it challenges something that was altered from the original judgment as a result of the initial motion for reconsideration." *Id.* at 3, 518 S.E.2d at 58. Therefore, "in such a case, a new judgment has replaced the previous judgment and the party aggrieved by the alteration may move for reconsideration" and "the time for appeal runs from the receipt of written notice of entry of the order disposing of the motion." *Id.* When an aggrieved party learns of additional relief or grounds for a court's decision for the first time upon receiving an order on a Rule 59 motion, the

party must file a second Rule 59 motion to preserve the record for appeal. *Id.* at 5, 518 S.E.2d at 58.

Wise's second Petition for Rehearing was not a successive request to revisit an issue that had been adjudicated in the final briefing and original Opinion, or on his first Petition for Rehearing, and it challenged a new ruling in the Court of Appeals' substituted and refiled Opinion. If Wise had failed to file a second Petition for Rehearing, his argument concerning preservation of the defamation by implication/innuendo issue would have been unpreserved for this Court. The Court of Appeals did not deny or finally decide on any of the remaining issues raised in Wise's Petitions for Rehearing until it filed its August 13, 2024 Order denying the second Petition. Under Rule 242(c), SCACR, Wise had 30 days from that date to file his Petition for Writ of Certiorari or to ask the Court for an extension, and he did so on August 20, 2024. Wise's Petition for Writ of Certiorari is timely, and the Court should decide whether to grant the Petition on its merits.

**II. The Court should grant Wise's Petition for Writ of Certiorari because it embodies the character of reasons for granting review, even if it does not contain a wholly novel question of law.**

There are special and important reasons for the Court to exercise its discretion and grant review of the Court of Appeals' substituted and refiled Opinion. West Fraser argues that there is no novel issue of law, and that therefore there is no reason for the Court to grant certiorari review. However, Rule 242(b), SCACR, specifically provides that its enumerated list of reasons for granting review is not controlling or exhaustive, and that the Court may grant review for other special and important

reasons. An important reason for granting review in this case is that South Carolina's defamation by innuendo doctrine is in serious need of clarification and modernization.

A review of the case law reveals that in the last 30 years, only three reported decisions by a South Carolina court have addressed defamation by innuendo. The last, *Fountain v. First Reliance Bank*, 398 S.C. 434, 730 S.E.2d 305 (2012), was 12 years ago. *Fountain's* description of the applicability of the doctrine is limited to the following five sentences:

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.

*Id.* at 441-42, 730 S.E.2d at 309 (punctuation and citations omitted). The decision does not even explain what an "inducement" or "colloquialism" is. It does not overtly explain that a statement can be facially true, but that truth will not be an absolute defense if the statement carries a reasonable inference of a defamatory meaning that is provably false. It does not explain how, if it all, the malice element of defamation impinges on a publication conveying a defamatory inference, and it does not specifically explain how juxtapositions or omissions of material facts can bolster a defamatory inference.

The three previous decisions, *Parrish v. Allison*, 376 S.C. 308, 656 S.E.2d 382 (Ct. App. 2007), *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d

497 (1998), and *Mains v. K Mart Corp.*, 297 S.C. 142, 375 S.E.2d 311 (Ct. App. 1988), do not clearly explain whether a statement that is defamatory by innuendo can be actionable *per se* or not, and leave open, unexplained, or hopelessly muddled many other facets of the doctrine of defamation by innuendo, including the application of the common law presumptions to the doctrine.<sup>1</sup> The justification for granting review in this case is not “semantical”, and it is based on a void of South Carolina case law clearly explaining in plain language what a plaintiff is or is not required to prove when commencing an action under a theory of defamation by implication.

**III. There is a dispute of fact as to whether Wilson interpreted Nelson’s statements to mean that Wise had a sexually transmitted infection, or whether Nelson directly told Wilson that Wise had a sexually transmitted infection.**

As to the merits of Wise’s Appeal, West Fraser states 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.” It is true there is testimonial evidence of the conversation between Nelson and Wilson that does not support that Nelson told Wilson that Wise had a sexually transmitted infection, or that Wilson understood from the conversation that Wise had a sexually transmitted infection. However, there is countervailing evidence in the record demonstrating that Nelson is not credible,

---

<sup>1</sup> Wise’s position is that if a defamatory implication is reasonably inferred from a verbal statement, and the implication charges the plaintiff with one of the five categories of acts rendering slander as actionable *per se*, then the statement is actionable *per se*, and if it involves a private figure plaintiff and a matter of private concern, then the common law presumptions of falsity, common law malice, and general damages are applicable.

and that he either directly told Wilson that Wise had a sexually transmitted infection, or that he inferred to Wilson that Wise had one.

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.

(App. p. 523) (emphasis added). The rumor or “information” 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.<sup>2</sup>

#### Anthony Cannon Testimony

---

<sup>2</sup> West Fraser argues that there was no belief amongst the workforce that Wise had pulled a muscle prior to Nelson’s return to the mill, and that Wilson had no idea of the nature of Wise’s injury prior to speaking to Nelson, presumably because this refutes West Fraser’s theory that the rumors arose spontaneously amongst the coworkers after Wise’s injury, independent of Nelson’s statement. The testimony cited by West Fraser and Wise does not support West Fraser’s assertions. Wilson testified only that he didn’t know the details of what happened, but that coworkers had explained to him “something about what happened” prior to Nelson’s return. (App. p. 530, line 19-p. 531, line 7). It is self-evident from the fact that Wilson approached Nelson and asked how Wise was doing that Wilson had been made aware that Wise possibly suffered a workplace injury.

Q. We're here about an event that happened in November of 2017 involving Anthony Wise. Do you recall something happening then?

A. Well, something about him pulling a groin or something like that.

Q. Right. He got hurt on the job?

A. Yes.

Q. And afterwards did you know about it getting around that he had some type of disease?

A. Heard it, but – you hear it for a little bit and then it's gone.

#### Jeremy Neal Testimony

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.*

Q. He went to the hospital?

A. Yes, sir.

Q. And some time thereafter what did you hear?

A. I heard he went to the hospital because he had pulled something, if I ain't mistaken.

\*\*\*

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

A. Yes, sir.

#### Raphael Maybin Testimony

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

A. Yeah, something like that.

Q. And how did you find out about it?

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

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

A. Yes. Right.

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

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

Q. Now, what were you told?

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

(App. p. 438, lines 2-13; App. p. 542, line 23-p. 543, line 10; App. p. 544, lines 7-15; App. p. 599, line 22-p. 600, line 13; *see also* App. p. 438, line 9-p. 439, line 22; App. p. 590, line 24-p. 592, line 8; App. p. 612, lines 16-24; App. p. 622, lines 9-21; App. p. 658, lines 11-16). To the contrary of West Fraser's assertions, there is evidence in the record supporting reasonable inferences that the initial belief amongst the workers was that Wise had pulled something and suffered a workplace injury, and that after Nelson returned to the mill that belief transformed into a rumor that Wise had a sexually transmitted infection.

Specifically, Jeremy Neal, a coworker of Wise, testified as follows:

I heard he went to the hospital because he had pulled something, if I ain't mistaken. And I think I was off that day, I'm trying to remember. I think I was off – I was off that day. I had heard that he had went to the emergency room because he had pulled something. And I came back

like a day or two later and heard that through the plant site they were saying that, you know, he had HIV.

(App. p. 543, lines 9-17). 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. (App. p. 567, line 21-p. 568, line 11).

The Circuit Court, and the Court of Appeals, have essentially held that a plaintiff cannot prove a defamation claim by circumstantial evidence. The courts' rationale is in error.

Any fact in issue may be prove by circumstantial evidence as well as direct evidence, and circumstantial evidence is just as good as direct evidence if it is equally as convincing to the trier of the facts. Thus the general rule is any fact can be shown through circumstantial evidence, *and it is up to the trier of fact* to determine whether it alone is worth as much merit as direct evidence.

*Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 79-80, 735 S.E.2d 650, 658 (2012) (emphasis added) (quoting *St. Paul Fire & Marine Ins. Co. v. Am. Ins. Co.*, 251 S.C. 56, 59-60, 159 S.E.2d 921, 923 (1968)). Thus, in the light most favorable to Wise, the warning letter recognizes not only that the statement was susceptible to a defamatory interpretation, but that the sexually transmitted infection rumor was directly attributable to the statement of Nelson, which was subsequently republished in some form by Wilson and others at the mill. There is sufficient evidence supporting an inference that the initial belief amongst the workers was that Wise had suffered a physical injury, and that after Nelson returned to the mill and spoke to Wilson, this belief became a rumor that Wise had a sexually transmitted infection. There is

testimonial evidence that the source of this rumor had to be Wise or Nelson, and that the rumor began before Wise returned back to work. The circumstantial evidence supports a reasonable inference that Nelson either made a facially defamatory statement concerning Wise, or that Wilson inferred from Nelson's statement and tone that "infection" meant "sexually transmitted infection", leading to the subsequent rumors. Because this evidence creates an issue of fact for jury determination, the Court of Appeals and Circuit Court must be reversed.

### **CONCLUSION**

For these and all other reasons set forth to the Court of Appeals, Circuit Court, and in Wise's Petition for Writ of Certiorari, the Petition should be granted, and the Court of Appeals' refiled Opinion affirming the Circuit Court's grant of summary judgment to West Fraser should be reversed.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

November 21, 2024  
Hampton, South Carolina

PARKER LAW GROUP, LLP  
BY: /s/ John E. Parker Jr.  
John E. Parker (SC Bar No. 4442)  
John E. Parker, Jr. (SC Bar No. 104225)  
101 Mulberry Street, East  
Post Office Box 487  
Hampton, SC 29924  
Phone: (803) 903-1781  
jparker@parkerlawgroupsc.com  
[jayparker@parkerlawgroupsc.com](mailto:jayparker@parkerlawgroupsc.com)

AND

CARRIGG LAW FIRM  
John W. Carrigg, Jr. (SC Bar No. 15239)  
120 North Lake Dr.  
Lexington, South Carolina 29072  
[jcarrigg@carrigglaw.com](mailto:jcarrigg@carrigglaw.com)

ATTORNEYS FOR PETITIONER