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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Appellate Case.: 2023-000952

Kellie Bingham and Kayla BinghamAppellants-Respondents

v.

Medical University of South Carolina.....Respondent-Appellant.

**APPELLANTS-RESPONDENTS' RETURN TO RESPONDENT-APPELLANT'S
MOTION TO STRIKE**

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ATTORNEYS FOR APPELLANTS-
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Respondent-Appellant Medical University of South Carolina (“MUSC”) has moved the Court to strike all portions of Appellants-Respondents Kellie and Kayla Bingham’s Reply Brief as Appellants citing or relating to a Form 4 Order entered by the Circuit Court on February 7, 2023, and vacated by the Circuit Court on October 29, 2024. For the following reasons, the Bingham’s respectfully request that the Court deny MUSC’s Motion to Strike.

Courts derive authority to strike pleadings and other materials from three sources: (1) Rule 12(f), (2) a court’s inherent powers to control its docket, and (3) any relevant local rules. *Goodwin v. AT&T*, Case No. 2:23-cv-01950-GMN-DJA, 2024 WL 2866895, at *3 (D. Nev. June 6, 2024); *see also Renaissance Enters., Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 651, 515 S.E.2d 257, 258 (1999) (“The adjudicative power of the Court carries with it the inherent power to control the order of its business to safeguard the rights of litigants.”). However, there is no source of authority in this instance that would permit the Court to selectively editorialize the Bingham’s Reply Brief at MUSC’s insistence, regardless of whether the assertions concerning the Form 4 Order are now moot.

Rule 12(f), SCRCF provides that

Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court’s own initiative, at any time the court may order stricken from *any pleading* any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

Rule 12(f), SCRCF (emphasis added). Under Rule 7(a), SCRCF, there are seven types of pleadings: “[1] a complaint and [2] an answer; and [3] a reply to a counterclaim

denominated as such; [4] an answer to a cross-claim . . . [5] a third-party complaint . . . [6] a third-party answer [and] [7] a reply to an answer” Rule 7(a), SCRCP. A brief submitted by a party is not a pleading under the Rules of Civil Procedure and as such is not subject to be struck pursuant to Rule 12(f), SCRCP. *See Adams v. City of Cedar Rapids, Iowa*, No. 21-cv-53-MAR, 2022 WL 16572036, at *16 (N.D. Iowa Oct. 19, 2022) (“[T]he documents in opposition to summary judgment which Defendants seek to strike are not pleadings as contemplated by the Federal Rules of Civil Procedure, and therefore, the Motion to Strike is improper under Rule 12(f).”); Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1380 (3d ed. 2004) (“Rule 12(f) motions only may be directed towards pleadings as defined by Rule 7(a); thus motions, affidavits, briefs, and other documents outside of the pleadings are not subject to Rule 12(f).”).¹

A court’s inherent authority to strike filings and control the filings on its docket to achieve the orderly and expeditious disposition of cases is derived from its power to hear and decide cases. *See Williams v. Bordon’s, Inc.*, 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980) (explaining the source of a court’s similar authority to grant continuances); *Lunsford v. United States*, 570 F.2d 221, 227 n.11 (8th Cir. 1977) (recognizing the court’s authority to strike materials on its own initiative). This authority provides courts the power “to strike improper or untimely briefs and

¹ The Court may rely on guidance from federal cases when interpreting the South Carolina Rules of Civil Procedure. *See Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991) (“Since our Rules of Procedure are based on the Federal Rules, where there is no South Carolina law, we look to the construction placed on the Federal Rules of Civil Procedure.”).

otherwise to enforce their local rules.” *Libault v. Mamo*, 4:22CV3096, 2023 WL 1474853, at *1 (D. Neb. Feb. 2, 2023); *see also WWP, Inc. v. Wounded Warriors, Inc.*, 2008 WL 150234, at *1 (D. Neb. Jan. 14, 2008) (noting the existence of the court’s authority to strike briefs but declining to exercise it).

Nevertheless, a court’s “inherent powers must be exercised with restraint and discretion.” *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44, 111 S. Ct. 2123, 2132, 115 L. Ed. 2d 27 (1991). As such, courts generally disfavor granting motions to strike. *See Wounded Warriors, Inc.*, 2008 WL 150234, at *1. By and large, courts operate under the understanding that briefs or portions of briefs should not be stricken unless the content is scandalous or defamatory or the brief “flagrantly” violates the court’s rules:

The Court should grant motions to strike only in cases where there has been a flagrant disregard of the rules of court, and should deny motions to strike unless the brief demonstrates a lack of good faith, or that the Court would be prejudiced or misled by the inclusion in the brief of the improper material [T]here is no occasion for a party to move to strike portions of an opponent’s brief (unless they be scandalous or defamatory) merely because he thinks they contain material that is incorrect, inappropriate, or not a part of the record.

See Papierfabrik Aug. Koehler SE v. United States, 997 F. Supp. 2d 1347, 1349-50 (Ct. Int’l Trade 2014) (punctuation and citations omitted); *see also LaLoup v. United States*, 92 F. Supp. 3d 340, 354 (E.D. Pa. 2015) (refusing to strike “heated” briefs that verged on character attacks where such briefs did not flagrantly violate the court’s rules); *Great Lakes Gas Transmission Ltd. P’ship v. Essar Steel Minnesota, LLC*, Civil No. 09-CV-3037 (SRN/LIB), 2011 WL 1486033, at *2 (D. Minn. Apr. 19, 2011) (noting that striking materials is an “improper vehicle” to address impermissible arguments).

Here, the Bingham's references to the February 7, 2023 Form 4 Order in their Reply Brief were made to point out that it would have been error for the Circuit Court to later reduce the verdict if the Form 4 Order was an unappealed judgment in the amount of \$750,000 per Plaintiff. To the extent that the Circuit Court has since vacated the February 7, 2023 Form 4 Order and explained that its designation as ending the case was a clerical error, the Bingham's now withdraw this alternative argument. The Court is fully capable of disregarding this argument while reviewing the Bingham's Reply Brief in its initially filed form without being prejudiced or misled, eliminating the necessity of striking every portion of the Reply Brief that refers to the Form 4 Order. Granting MUSC's Motion would have the effect of unilaterally disrupting the substance and continuity of the Brief, altering the form in which it was drafted and presented to the Court by the Bingham's, in order to erase material that was not included in bad faith and is in no way scandalous, defamatory, impertinent, or in violation of the Court's rules.

For the foregoing reasons, Appellants-Respondents respectfully request that the Court deny the Motion to Strike.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Appellants-Respondents' Return to Respondent-Appellant's Motion to Strike has been served upon the following counsel of record by emailing a copy of the same, this 7th day of May 2025.

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[SIGNATURE PAGE FOLLOWS]

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