

RECEIVED

Jun 13 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of
Appeals

APPEAL FROM ORANGEBURG
COUNTY in the Court of Common Pleas
Judge Maite Murphy

Case No.: 2023-CP-38-00331

Serge R. Wandji, Plaintiff/Appellant
v.
The Regional Medical Center, Defendant/Respondent

**APPELLANT'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION TO
STRIKE PORTIONS OF APPELLANT'S DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL ALONG WITH PORTIONS OF APPELLANT'S
INITIAL BRIEF REFERENCING THE SAME**

Appellate Case No.2025-000108

INTRODUCTION

Respondent's Motion to Strike constitutes yet another dilatory tactic seeking to exclude highly relevant and properly designated materials that were part of the record before the trial court, reviewed and submitted during summary judgment proceedings, and directly relevant to the factual and legal issues on appeal. This Court should deny Respondent's Motion in its entirety for four principal reasons:

1. The designated materials were all presented to the lower court, either directly or through Appellant's multiple written submissions and filings opposing summary judgment.

2. Respondent's objections improperly attempt to re-litigate the factual sufficiency of the Appellant's evidence under the guise of "irrelevance," which is not the proper standard under Rule 209, SCACR.
3. The Respondent's Motion reflects procedural unfairness and seeks to exclude adverse evidence that directly contradicts its pretextual justifications, falling squarely within the type of evidence courts routinely allow in retaliation claims.
4. The Respondent itself failed to object to these submissions at the trial level, thereby waiving its right to challenge them at the appellate stage.

The Appellant respectfully requests that this Court deny Respondent's Motion to Strike in its entirety and permit full consideration of the designated record as submitted.

I. THE RECORD DESIGNATIONS WERE PROPERLY SUBMITTED AND CONSIDERED BY THE LOWER COURT

The materials challenged by Respondent were submitted as part of Appellant's opposition filing to Defendant's Motion for Summary Judgment, which the Defendants/Respondents now falsely and misleadingly characterize as Appellant's "*Third Memorandum in Opposition*," was filed on November 21, 2024, included Exhibits 1 through 33, under section "**E. Exhibits**", all of which were accepted and reviewed by the trial court as part of its ruling.

South Carolina appellate courts have consistently held that documents attached to filings before the trial court are properly part of the appellate record. See *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002) (entire record on summary judgment is reviewable on appeal).

Respondent's repeated reference to a so-called "Third Memorandum" inaccurately suggests procedural abuse where none exists. As fully detailed in Appellant's Initial Brief, the record reflects one preliminary response (on 9/26/2024); one Motion in Opposition due to incomplete

discovery filed November 4, 2024; and the one and only memorandum filed November 21, 2024, at the court's instruction following delayed discovery on the part of the Defendant.

II. RESPONDENT'S VAGUENESS ARGUMENT UNDER RULE 209(b) IS MERITLESS

Respondent's assertion that Appellant's designation of "B(6)" relating to the November 12, 2024 discovery production is "vague" is entirely without merit. The challenged materials were produced after extended delays and immediately prior to the summary judgment hearing. Having delayed discovery, produced incomplete records late, and submitted no objections below, Respondent cannot now manufacture vagueness as a ground for exclusion.

III. RESPONDENT'S ARGUMENTS OF "IRRELEVANCE" MISSTATE THE LAW

Respondent improperly invokes Rule 209(b)'s prohibition on including matters "*not relevant to the appeal*" but misconstrues its meaning. Respondents do not have any authority to unilaterally determine which evidence is "*relevant*" and "*admissible*"; these determinations are governed by South Carolina law.

Rule 401, SCRE, broadly defines relevant evidence as: "*Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.*"

South Carolina courts have consistently emphasized that this definition is intentionally expansive, requiring only a minimal logical connection between the evidence offered and a fact in dispute. See *State v. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001); *State v. Aleksey*, 343 S.C. 20, 31, 538 S.E.2d 248, 254 (2000).

In the context of employment retaliation cases, where motive, credibility, and pretext are central issues, South Carolina courts have repeatedly permitted wide-ranging evidence to establish

circumstantial proof of retaliatory intent. See *Hines v. Blue Cross Blue Shield of S.C.*, 411 S.C. 108, 767 S.E.2d 362 (2014); *Miller v. State Workers' Compensation Fund*, 379 S.C. 129, 665 S.E.2d 612 (2008); *Layman v. State Workers' Compensation Fund*, 366 S.C. 37, 620 S.E.2d 86 (2005); *Johnson v. J.P. Stevens & Co.*, 308 S.C. 116, 417 S.E.2d 527 (1992); *Stewart v. Beaufort County*, 481 S.E.2d 168 (S.C. Ct. App. 1997).

Each of the Appellant's designated materials directly addresses factual disputes involving retaliation, pretext, adverse actions, and procedural misconduct. Their relevance is both evident and legally sufficient.

IV. RESPONDENT MISCHARACTERIZES THE WORKERS' COMPENSATION PROCEEDINGS

Respondent seeks to exclude evidence originating from the related workers' compensation proceeding, but South Carolina law permits such evidence where the facts overlap. See *Miller v. State Workers' Compensation Fund*, 379 S.C. 129, 665 S.E.2d 612 (2008).

Testimony by CEO David Sutherland, deposition excerpts, internal emails, Dr. Samies' conflicting statements and related filings are all highly probative of retaliatory animus and inconsistent justifications, central to pretext analysis. TRMC (Respondent) cannot shield these materials merely because they were first introduced in the intertwined workers' compensation action. Respondent's argument would improperly insulate incriminating evidence simply because multiple proceedings occurred, a result antithetical to South Carolina's broad standards for pretext and motive evidence. The underlying factual relevance remains essential to Appellant's prima facie case

V. RESPONDENT WAIVED ITS OBJECTIONS BY FAILING TO OBJECT BELOW

Respondent never objected to the inclusion of these materials before the trial court. The trial court fully reviewed all exhibits without limitation or exclusion. It is procedurally improper to raise new evidentiary objections for the first time on appeal. See *Futch v. McAllister Towing*, 335 S.C. 598, 518 S.E.2d 591 (1999).

VI. PRIVACY ARGUMENTS ARE MISPLACED

The limited protected health information (PHI) materials included confirm Appellant's COVID-19 exposure while performing clinical duties. These records originated from Respondent's files and were produced in discovery. While redaction may be appropriate if the Court deems necessary, wholesale exclusion is unwarranted.

VII. SETTLEMENT COMMUNICATIONS ARE ADMISSIBLE TO SHOW RETALIATORY INTENT

Respondent's attempt to invoke Rule 408, SCRE, is misplaced. Rule 408, SCRE, does not bar settlement evidence offered to show retaliatory animus and bad faith tactics. See *In re Evans*, 410 S.C. 614, 765 S.E.2d 67 (2014) (permitting use of settlement discussions for purposes other than liability).

VIII. THE EIGHT RETALIATORY ACTS PROPERLY SUPPORTED BY THE RECORD

The challenged evidence in the Respondents' Motion to Strike, directly support Appellant's argument that the trial court erred in granting summary judgment despite a pattern of escalating retaliatory actions, pretext, and procedural misconduct. These include:

1. Initial Retaliatory Acts Following Workers' Compensation Claim Filing
(e.g., disguising the employer-imposed involuntary medical removal after he had

contracted COVID-19 at work as a voluntary leave of absence, pressuring Appellant to return to work while he was still severely ill with a known COVID-19 infection, and improper invocation and misuse of FMLA procedures)

2. Post-Hospitalization Retaliatory Conduct

(e.g., forcing Appellant to personally pay health insurance premiums while on medical leave, systematically ignoring his repeated communications and requests for claim updates, and engaging in bad faith settlement tactics designed to pressure waiver of his legal rights)

3. Unlawful Disclosure of Protected Health Information

(repeatedly violating HIPAA by unlawfully disseminating Appellant's confidential medical records and protected health information without authorization, further evidencing retaliatory animus and disregard for federal privacy laws)

4. Failure to Reinstate After Medical Clearance

(rejecting Appellant's multiple requests for reinstatement despite multiple medical clearances with reasonable temporary accommodation)

5. Pretextual Termination Based on "Leave Exhaustion"

(invoking a manufactured justification of leave exhaustion after repeatedly denying reinstatement requests with temporary medical restrictions)

6. Secret Legal Consultations with Labor Attorneys

(engaging in undisclosed consultations with outside labor counsel to strategize Appellant's termination, and falsely denying their existence under sworn testimony of CEO David Sutherland)

7. Improper Use of a Biased Expert Witness as Part of Retaliation Tactics

(relying on the ‘expert’ opinion of Dr. Samies, despite his clear conflicts of interest as an active member of Respondent’s own Board of Trustees, to manufacture medical justification for adverse actions against Appellant, while misleadingly presenting him in the litigation Briefs as an independent infectious disease expert affiliated solely with Palmetto Infectious Physicians, LLC. This strategic use of conflicted testimony further supported Respondent’s retaliatory efforts to deny reinstatement and terminate Appellant under a pretextual medical rationale).

8. Coercive Settlement Tactics and Procedural Misconduct

(including deliberate last-minute discovery productions and offering a nominal \$100 payment in exchange for waiving and surrendering legal claims under the workers’ compensation retaliation statute).

Each directly supports the prima facie case of retaliation. See *Hines v. Blue Cross Blue Shield of South Carolina*, 411 S.C. 108, 767 S.E.2d 362 (2014); *Layman v. State Workers' Comp. Fund*, 366 S.C. 37, 620 S.E.2d 86 (2005).

IX. RESPONDENT’S CONTINUED PATTERN OF PROCEDURAL ABUSE AND DELAY TACTICS

Respondent’s conduct throughout this litigation has reflected a systemic and persistent pattern of procedural obstruction and delay, both at the trial court and now again before this Court.

At the trial court level, Respondent engaged in extended delays in discovery, producing critical documents only on the eve of the summary judgment hearing after more than a year of resistance. It further orchestrated improper ex parte coordination in the drafting of the trial court’s final order, which the court adopted verbatim without independent judicial findings,

violating Rule 52(a), SCRCP, and well-established precedent. See *Smith-Cooper v. Cooper*, 344 S.C. 289, 543 S.E.2d 271 (Ct. App. 2001); *Pirayesh v. Pirayesh*, 359 S.C. 284, 596 S.E.2d 469 (Ct. App. 2004). Additionally, the trial court denied Appellant any opportunity to present oral argument while allowing Respondent's counsel to argue, an unequal application of procedure that constitutes a violation of fundamental due process. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

This obstructive pattern has continued on appeal. After Appellant timely filed his Initial Brief, Respondent delayed its own response by waiting until near the due date to file a motion requesting a full month's extension based solely on counsel's claimed personal workload. Then, as the extended deadline approached, Respondent filed the present Motion to Strike, advancing legally unsupported and procedurally improper demands to exclude substantial portions of the appellate record, materials that were duly submitted, accepted, reviewed, and never challenged before the trial court.

This strategic pattern of delay, obstruction, and serial procedural maneuvering appears calculated to frustrate the orderly and timely resolution of Appellant's claims, while imposing unnecessary burdens upon both the Appellant and the Court. This Court should not countenance such conduct by rewarding Respondent's continued efforts to eliminate from the record evidence that was fully developed, admitted, and reviewed below.

CONCLUSION

For all the foregoing reasons, Appellant respectfully requests that the Court:

- DENY Respondent's Motion to Strike in its entirety.
- Permit full inclusion of Appellant's designated record materials; and

- Allow this appeal to proceed based on the full record properly submitted before the trial court.

Respectfully submitted,
s/ Serge R. Wandji
Pro Se Appellant

Dated: June 13th, 2025
Charleston, SC

RECEIVED

Jun 13 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of
Appeals

APPEAL FROM ORANGEBURG
COUNTY in the Court of Common Pleas
Judge Maite Murphy

Case No.: 2023-CP-38-00331

Serge R. Wandji, Plaintiff/Appellant
v.
The Regional Medical Center, Defendant/Respondent

Appellate Case No.2025-000108

PROOF OF SERVICE

I hereby certify that on this 13 day of June 2025, a true and correct copy of the APPELLANT'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION TO STRIKE PORTIONS OF APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL ALONG WITH PORTIONS OF APPELLANT'S INITIAL BRIEF REFERENCING THE SAME, was served upon the following party via U.S. mail, and email to the Defendants Attorney in file as followed:

Mrs. Amanda C. Williams
PARKER POE ADAMS & BERNSTEIN L.L.C.
Attorney for Defendants
850 Morrison Drive, Suite 400
Charleston, SC 29403
amandawilliams@parkerpoe.com

June 13, 2025

s/Serge Wandji
579 Folly Rd. P.O. Box 12112,
Charleston SC, 29422
sergewandji@gmail.com

RECEIVED

Jun 13 2025

SC Court of Appeals

Serge Wandji
579 Folly Road
P.O. Box 12112
Charleston, SC 29422
sergewandji@gmail.com
(678) 612-9649

June 13th, 2025

South Carolina Court of Appeals
The Honorable Jenny Abbott Kitchings
P.O. Box 11629 Columbia, SC 29211

Re: Serge Wandji v. The Regional Medical Center: Case No: 2023-CP-38-00331
Appellate Case No. 2025-000108

Dear Mrs. Kitchings,

Please find enclosed for filing the APPELLANT'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION TO STRIKE PORTIONS OF APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL ALONG WITH PORTIONS OF APPELLANT'S INITIAL BRIEF REFERENCING THE SAME, in the above-referenced matter currently before the South Carolina Court of Appeals.

Included with this submission are the following materials:

1. **Original** of the Response of Appellant.
2. **Certificate of Service**, indicating that a copy of this brief has been properly served upon counsel for the Respondent.

I respectfully request that this filing be accepted and docketed accordingly. Please do not hesitate to contact me if any additional information or materials are needed to complete the record.

Thank you for your time and attention to this matter.

Respectfully submitted,

Serge R. Wandji
Appellant, Pro Se

Enc.
cc. Amanda Williams (w/enc.) (email/mail)