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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
Maite Murphy, Circuit Court Judge

Appellate Case No. 2025-000108
Case No.: 2023-CP-38-00331

Serge R. Wandji……………………………………………………………Appellant,

v.

The Regional Medical Center……………………………………………Respondent,

INITIAL BRIEF OF THE RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. DID APPELLANT WAIVE HIS RIGHT TO APPELLATE REVIEW OF THE ISSUES HE PRESENTS ON APPEAL BY RELYING ON FICTITIOUS CASES AND FAILING TO SUPPORT HIS ARGUMENTS WITH CREDIBLE LEGAL AUTHORITY?

2. DID APPELLANT FAIL TO PRESERVE THE ISSUES PRESENTED ON APPEAL BY NOT FILING A RULE 59(E) MOTION TO ALTER OR AMEND AS TO THOSE ARGUMENTS RAISED BUT NOT RULED UPON BY THE LOWER COURT?

3. DID THE TRIAL COURT PROPERLY GRANT SUMMARY JUDGMENT TO RESPONDENT BASED ON THE UNDISPUTED EVIDENCE THAT APPELLANT COULD NOT MEET THE ESTABLISHED WORK STANDARDS FOR HIS POSITION AS A FLOOR NURSE, AND THUS, COULD NOT PROVE A CLAIM FOR WORKERS' COMPENSATION RETALIATION UNDER S.C. CODE ANN. § 41-1-80?

4. DID THE TRIAL COURT PROPERLY FIND THERE WAS NO DUTY TO ACCOMMODATE WORK RESTRICTIONS UNDER THE WORKERS' COMPENSATION RETALIATION STATUTE AND NO TEMPORAL PROXIMITY BETWEEN APPELLANT'S INSTITUTION OF WORKERS' COMPENSATION PROCEEDINGS AND HIS TERMINATION?

STATEMENT OF THE CASE

This is an appeal from the circuit court's grant of summary judgment to Respondent The Regional Medical Center ("TRMC" or "Respondent") on January 15, 2025.[1] (Order.) On March 3, 2023, *pro se* Appellant Serge R. Wandji ("Appellant") filed a Complaint against TRMC and Dr. John H. Samies ("Dr. Samies") purporting to assert claims for workers' compensation retaliation, negligence, fraud, and fraud/bad faith. (Complaint.) On April 5, 2023, TRMC filed a partial motion to dismiss seeking dismissal of all claims against Dr. Samies, as well as the claims against TRMC for negligence, fraud, and fraud/bad faith. (Def.'s Mot. for Partial Dismissal.) On June 22, 2023, after a hearing before the Honorable George McFadden, the court granted TRMC's Motion for Partial Dismissal. (Order Granting Mot. for Partial Dismissal.) Thus, Appellant's sole remaining claim was against TRMC for worker's compensation retaliation under S.C. Code Ann. § 41-1-80.

On May 5, 2023, while TRMC's partial motion to dismiss all claims against Dr. Samies and three of the four claims against TRMC was pending, Appellant emailed counsel for TRMC a copy of a subpoena for the deposition of Dr. Samies, which was noticed to take place on May 12, 2023. (5/5/23 Email with Dr. Samies Subpoena.) On May 9, 2023, TRMC filed a Motion to Quash and For Protective Order for various reasons, including that TRMC's Motion for Partial Dismissal was pending before the Court, which may -- and did -- dismiss Dr. Samies as a defendant in the matter. (Mot. to Quash.) Despite the pending motions, Appellant did not cancel the scheduled deposition, and filed a statement of non-appearance for Dr. Samies on May 12, 2023. (Statement of Non-Appearance.) On

[1] Although the Order granting TRMC's Summary Judgment Motion was filed on January 15, 2025, the decision was communicated to the parties via e-mail on December 16, 2024.

June 15, 2023, a hearing on TRMC's Motion to Quash and for Protective Order took place before the Honorable Diane Goodstein. On August 3, 2023, the Court granted TRMC's Motion to Quash and for Protective Order. (8/3/23 Order Granting Mot. to Quash.)

On May 7, 2024, TRMC filed a Motion to Compel Appellant's Written Responses to First Set of Interrogatories and Requests for Production, which had been served on July 28, 2023 and to which no responses were served by Appellant. (TRMC's Motion to Compel.) In response, on May 10, 2024, Appellant also filed a Motion to Compel Discovery, seeking (1) the deposition of Dr. Samies and (2) more complete responses to Appellant's discovery requests. (Pl.'s Mot. to Compel.) On August 7, 2024, TRMC filed an Opposition to Plaintiff's Motion to Compel and Motion for Protective Order. (TRMC's Opp. to Pl.'s Mot. to Compel.) On September 4, 2024, a virtual hearing on both motions to compel was held before the Honorable Thomas W. McGee, III at which time the court granted Appellant one hour to depose Dr. Samies. Appellant took the deposition of Dr. Samies deposition on September 17, 2024, less than two weeks following the hearing. On October 4, 2024, the court notified the parties via email that TRMC's Motion to Compel Appellant's written discovery responses was granted. (10/4/24 Email with Ruling on Mot. to Compel.) On October 7, 2024, the court issued a Form 4 reflecting the court's ruling. (10/7/24 Order Granting Mot. to Compel.)

On September 24, 2024, TRMC filed its Motion for Summary Judgment. (TRMC's Mot. for Summ. J.) On September 26, 2024, Appellant filed an Opposition to TRMC's Motion for Summary Judgment. (Pl.'s 9/26/24 Opp. to Mot. for Summ. J.) On November 4, 2024, Appellant filed a second Opposition to TRMC's Motion for Summary Judgment. (Pl.'s 11/4/24 Opp. to Mot. for Summ. J.) On November 13, 2024, TRMC filed its Memorandum in Support of the Motion for Summary Judgment. (TRMC's Memo. in Supp.

of Mot. for Summ. J.) On November 14, 2024, a hearing on TRMC's Motion for Summary Judgment was held before the Honorable Maite Murphy (the "Hearing"). On November 21, 2024, Appellant filed his third Opposition to Motion for Summary Judgment ("Third Opposition"), as allowed by the Court. (Pl.'s Third Opposition to Summ. J.) On December 16, 2024, the Court granted TRMC's Motion for Summary Judgment which was informally communicated to the parties via email. (12/26/24 Email Granting Summ. J.) On January 11, 2025, before the Court issued its formal Order, Appellant filed the relevant notice of appeal ("the Appeal"). On January 15, 2025, the court issued its Order Granting Defendant's Motion for Summary Judgment (the "Order") and held as follows: (1) Appellant's failure to meet the established work standards of his position as a floor nurse defeated his workers' compensation retaliation claim under S.C. Code Ann. § 41-1-80 as matter of law. (Order.) Specifically, the undisputed facts demonstrated that TRMC terminated Appellant's employment because he could not return to work and perform his duties as a floor nurse, and S.C. Code Ann. § 41-1-80 does not require an employer to retain an employee who can no longer perform his duties. (Order.) (2) The court also held that there was no temporal proximity between the institution of Appellant's workers' compensation proceedings and his subsequent termination seven months later when he was still unable to return to work. (Order.) (3) Finally, the court held that South Carolina's workers' compensation laws do not require an employer to accommodate restrictions stemming from a work-related injury. (Order.)

STATEMENT OF THE FACTS

Appellant began working as a bedside nurse at TRMC in Orangeburg, South Carolina on or about March 8, 2021. (Compl. ¶ 7). The nursing position required Appellant to have the ability to "stand up to twelve (12) hours, walk, sit, use hands, reach, stoop,

kneel, talk, hear and smell." (Ex. 1 to Def.'s Mot. for Summ. J.) In addition, the position also required Appellant to perform certain mental functions such as "deal[ing] with concrete and abstract concepts and interpret[ing] verbal, nonverbal and written instructions." (*Id.*) Appellant worked in the behavioral health unit and performed various duties as a nurse, including conducting nursing assessments for patients, administering patients medication as needed, changing sheets, and taking urine samples. (Ex. 2 to Def.'s Mot. for Summ. J, pp. 33:20-25 - 35:21.)

On August 27, 2021, Appellant tested positive for COVID-19. (Ex. 2 to Def.'s Mot. for Summ. J, pp. 37:13-19.) On August 31, 2021, Appellant filed a workers' compensation claim with TRMC contending that his illness was an occupational disease contracted while working at TRMC. (Compl. ¶¶ 11.) Appellant subsequently filed a Form 50 - Employee's Notice of Claim and Request for Hearing with the South Carolina Workers' Compensation Commission on November 29, 2021. (Compl. ¶ 14.)

Following his COVID-19 diagnosis, Appellant alleges his heath condition deteriorated quickly, and he was diagnosed with pneumonia due to COVID-19 with acute hypoxemic respiratory failure. (Compl. ¶ 12). On September 7, 2021, TRMC provided Appellant with Family and Medical Leave Act ("FMLA") paperwork. (Ex. 3 to Def.'s Mot. for Summ. J.) On September 22, 2021, Appellant's doctor signed the FMLA paperwork and noted Appellant would be incapacitated until October 22, 2021. (Ex. 4 to Def.'s Mot. for Summ. J.; Ex. 2 to Def.'s Mot. for Summ. J., pp. 51:16 - 52:1.) On September 24, 2021, TRMC informed Appellant that he was not eligible for protected leave under the FMLA because he had only worked for TRMC for five months. (Ex. 5 to Def.'s Mot. for Summ. J.) However, TRMC granted Appellant a leave of absence that would allow him to take up

to twelve weeks of medical leave beginning on August 28, 2021 per TRMC's policies. (*Id.*)

On October 22, 2021, Appellant was unable to return to work and his doctor recommended that he continue to convalesce at home from October 22, 2021 through November 22, 2021. (Ex. 6 to Def.'s Mot. for Summ. J.; Ex. 2 to Def.'s Mot. for Summ. J., p. 57:1-9.)

As of November 20, 2021, Appellant had been on leave for twelve weeks, and his doctor submitted another note stating Appellant should continue to convalesce at home through January 1, 2022. (Ex. 7 to Def.'s Mot. for Summ. J.; Ex. 2 to Def.'s Mot. for Summ. J., p. 57:15-22.) On January 13, 2022, Appellant had not yet returned to work, and thus, TRMC sent Appellant a letter noting that TRMC had not received any updated information on an expected return to work date or notice of additional leave needed. (Ex. 8 to Def.'s Mot. for Summ. J..) TRMC requested that Appellant submit an updated physician's note. (*Id.*) On January 17, 2022, Appellant provided TRMC with a doctor's note that stated Appellant "could not currently return to work full time floor nursing for numerous reasons." (Ex. 9 to Def.'s Mot. for Summ. J.) Appellant testified that his doctor told him, "you cannot lift, you are forgetful, you can give the wrong medication and kill patient…." (Ex. 2 to Def.'s Mot. for Summ. J., pp. 62:15 - 63:5.) Appellant was not cleared to work as a floor nurse and no return to work date was provided. (*Id.*; Ex. 2 to Def.'s Mot. for Summ. J., pp. 63:20 - 64:8, 64:22-25.)

Appellant remained on medical leave, and on March 11, 2022, Appellant provided TRMC with a doctor's note stating there were "still concerns that could mildly limit [Appellant's] functionality at bedside nursing (physical - still waiting to gain back his smell, mental/emotional - acute stress due to COVID-19 experience and hospitalization)."

(Ex. 10 to Def.'s Mot. for Summ. J.; Ex. 2 to Def.'s Mot. for Summ. J., pp. 68:18 - 69:24.) Appellant's provider did not clear him to work in his position as a nurse and noted he could only return to work if it was in an administrative, part-time role. (*Id.*) In his email communication to TRMC on March 9, 2022, he acknowledged that TRMC presented him with three available positions for returning to work and invited him to review TRMC's other available positions on its career website. (Ex. 18a to Pl.'s Third Opposition.) Appellant rejected the positions, which included positions as a staff/bedside nurse and as a dietary assistant. (*Id.*) Appellant noted he is "medically prohibited to return to floor nursing" and declined those positions as a result. (*Id.*)

On March 15, 2022, TRMC communicated to Appellant that he exhausted his twelve week maximum period of available leave under TRMC's Leave of Absence policy over three months ago (December 2021) and was being separated from employment due to his physical inability to return to his position as a bedside nurse despite offers by TRMC to return. (Ex. 11 to Def.'s Mot. for Summ. J.; Ex. 12 to Def.'s Mot. for Summ. J.; Ex. 18a to Pl.'s Third Opposition.) Both the email and the letter from TRMC made clear that the decision to separate Appellant from employment was not punitive, and informed him that he was eligible for rehire. (Ex. 11 to Def.'s Mot. for Summ. J.; Ex. 12 to Def.'s Mot. for Summ. J.)

Since Appellant's separation from his employment at TRMC, he has been unable to work as a nurse. Though he obtained a position as a nurse at Tri-County Commission on Alcohol and Drug Abuse in May 2022, he resigned a month after his hire due to "personal health and personal safety reasons." (Ex. 13 to Def.'s Mot. for Summ. J.) Specifically, Appellant testified that after administering the wrong medication to a patient, which Appellant attributed to his long COVID, forgetfulness, and confusion, his doctor

told him to quit before he hurt somebody else and himself. (Ex. 2 to Def.'s Mot. for Summ. J., pp. 79:17 - 84:18.) To date, Appellant has not held any other positions as a nurse and testified he continues to suffer from long COVID and has ongoing memory issues. (Ex. 11 to Def.'s Mot. for Summ. J., pp. 5:14-22, 84:8-11.) In fact, in his deposition, Appellant could not remember where he was born, where he has lived, whether he has any criminal history, what educational degrees he has received, his employment history, the medications he takes, and whether he has been a party to any other legal actions or complaints (Ex. 2 to Def.'s Mot. for Summ. J., pp. 5, 11, 13-14, 19, 22-26.) As a result of his long COVID issues, Appellant testified when he looks for employment, he is not seeking floor nurse positions, but rather "[s]omething that the life of somebody is not going to be on the line. Something academic." (Ex. 2 to Def.'s Mot. for Summ. J., p. 86:1-9.)

STANDARD OF REVIEW

"When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the circuit court pursuant to Rule 56(c), SCRCP." *Knight v. Austin*, 396 S.C. 518, 521, 722 S.E.2d 802, 804 (2012). Rule 56, SCRCP, requires the entry of summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Although the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, "this initial responsibility may be discharged by 'showing' – that is, pointing out to the trial court – that there is an absence of evidence to support the nonmoving party's case." *Baughman v. American Tel. and Tel. Co.,* 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (internal quotations omitted). Once the moving party makes this demonstration, the opposing party "must, under Rule 56(e), do more than simply show some metaphysical doubt as to the material facts but must

come forward with specific facts showing that there is a *genuine issue for trial*." *Id.* (emphasis in original) (internal quotations omitted); *Midland Mut. Life Ins. Co. v. Harrell*, 331 S.C. 394, 397, 503 S.E.2d 189, 190 (Ct. App. 1998). The nonmoving party must specifically set forth such facts, "as would be admissible in evidence," to show that a true jury issue exists. *See* Rule 56(e), SCRCP.

ARGUMENTS

I. APPELLANT WAIVED THE RIGHT TO APPELLATE REVIEW OF THE ISSUES PRESENTED IN THE INITIAL BRIEF BY FAILING TO SUPPORT THEM WITH COMPETENT LEGAL AUTHORITY IN CONTRAVENTION OF RULE 208(B)(1)(E).

A. Appellant's Brief is Riddled With Irrelevant, Improperly Cited and Fictitious Judicial Opinions and Should be Disregarded by the Court in Full.

The Court should disregard the Initial Brief of Appellant in its entirety due to Appellant's almost exclusive reliance on irrelevant, improper, and fictitious judicial opinions to support his arguments. Appellant's citation to and reliance on such authority contravenes Rules 208(b)(1)(E) and 268 of the South Carolina Appellate Court Rules and impairs the integrity of these judicial proceedings. In its "Interim Policy on the Use of Generative Artificial Intelligence," the South Carolina Supreme Court reminded lawyers and litigants that "they are responsible to ensure the accuracy of all work product and must use caution when relying on any output of Generative AI." Appellate Case No. 2025-000043.

"A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law." *State v. Burton*, 356 S.C. 259, 265, 589 S.E.2d 6, 9 n. 5 (2003). Though South Carolina has not specifically ruled on the issue of how to address fictitious filings and improper or misleading legal authority presented by pro se litigants, there are courts across the country

that have consistently found that a party's pro se status does not so easily excuse the act of filing documents that contain citations to fabricated propositions, improperly connected to real, unrelated judicial opinions. "Although courts 'make some allowances for the pro se Plaintiff's failure to cite to proper legal authority,' courts do not make allowances for a [party] who cites to fake, nonexistent, misleading authorities." *Morgan v. Cmty. Against Violence*, No. 23-CV-353-WPJ/JMR, 2023 WL 6976510, at *7 (D.N.M. Oct. 23, 2023) (quoting *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013)); *see also An v. Archblock, Inc.*, No. 2024-0102-LWW, 2025 WL 1024661, at *2 (Del. Ch. Apr. 4, 2025) ("It is improper and unacceptable for litigants—including pro se litigants—to submit 'non-existent judicial opinions with fake quotes and citations.") (internal quotation omitted); *Saxena v. Martinez-Hernandez*, No. 2:22-CV-02126-CDS-BNW, 2025 WL 522234, at *4 (D. Nev. Feb. 18, 2025), *reconsideration denied*, No. 2:22-CV-02126-CDS-BNW, 2025 WL 1194003 (D. Nev. Apr. 23, 2025), and *reconsideration denied sub nom. Grant M. Saxena, Plaintiff v. Jezrael Martinez-Hernandez, et al., Defendants*, No. 2:22-CV-02126-CDS-BNW, 2025 WL 1411887 (D. Nev. May 14, 2025) ("Indeed, although courts make "some allowances for [a] pro se Plaintiff's failure to cite to proper legal authority, courts do not make allowances for a Plaintiff who cites to fake, nonexistent, misleading authorities.") (citing *Morgan v. Cmty. Against Violence*, No. 23-CV-353-WPJ/JMR, 2023 WL 6976510, at *7 (D.N.M. Oct. 23, 2023)); *Nichols v. Walmart, Inc.*, No. CV 124-236, 2025 WL 1178592, at *2 (S.D. Ga. Apr. 23, 2025) ("Courts that have addressed the practice [of citing to fake, nonexistent, and misleading authorities] consistently agree that the use of fake legal authority is problematic and warrants sanctions.") (quoting *O'Brien v. Flick*, No. 24-61529-CIV, 2025 WL 242924, at *6 (S.D. Fla. Jan. 10, 2025).

In his Initial Brief, Appellant cites to eight fake or non-existent judicial opinions.[2] In addition to the fake or non-existent judicial opinions cited in Appellant's Initial Brief, Appellant improperly cites to an additional four judicial opinions that he argues support his self-serving statements even though the judicial opinions cited do not stand for the proposition he cites.[3] Appellant also purports to support various arguments with quotations from case law, but in many instances, those legal quotations are also fictitious.[4]

Significantly, Appellant's Initial Brief is not the first time he has filed documents with the court containing fictitious legal authority. In fact, Appellant has repeatedly cited to non-existent judicial opinions and misrepresented the authority he relies upon in multiple matters, including the following: (1) Appellant's Opposition to TRMC's Motion to Strike filed on June 13, 2025 in the subject appeal, (2) Third Opposition brief filed by Appellant

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[2] The following list contains the case citations included in Employee's Initial Brief that we were unable to locate despite various searches: *Clark v. Aiken County Hospital* (no reporter included); *Hines v. Blue Cross Blue Shield of South Carolina*, 41 S.C. 108,119 (2014); *In re Evans*, 410 S.C. 614, 620 (2014); *Layman v. State Workers' Compensation Fund*, 336 S.C. 37 (2005); *Miller v. State Workers' Compensation Fund*, 379 S.C. 129 (2008); *Stewart v. Beaufort Cty.*, 481 S.E.2d 168 (S.C. Ct. App. 1997*); Hernandez v. Compass Group USA, Inc.,* No. 2:18-cv-03594, 2020 WL 1067614 (D.S.C. Mar. 5, 2020)*; Hines v. United Parcel Serv., Inc.,* 736 F. Supp. 2d 1139, 1153 (S.D. Fla. 2010).

[3] Employee's Initial Brief, p. 7, *McCall by Andrews v. Batson*, 285 S.C. 243, 247, 329 S.E.2d 741, 743 (1985)); Employee's Initial Brief, p 10, *Pirayesh v. Pirayesh,* 359 S.C. 284, 289, 596 S.E.2d 469, 472 (Ct. App. 2004)); Employee's Initial Brief, p 21, *State v. Galbreath,* 359 S.C. 398, 597 S.E.2d 845 (Ct. App. 2004)); Employee's Initial Brief, p 10, *Smith-Cooper v. Cooper*, 344 S.C. 289, 291, 543 S.E.2d 271,272 (Ct. App. 2001)); Employee's Initial Brief, p 17, *Burlington N. & Santa Fe Ry. Co. v. White,* 548 U.S. 53, 126 S. Ct. 2405, 165 L. Ed. 2d 345 (2006)); Employee's Initial Brief, p 19, *Reeves v. Sanderson Plumbing Prods., Inc.,* 530 U.S. 133, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000); Employee's Initial Brief, p. 14, *Stevenson v. Precision Standard, Inc.*, 762 So. 2d 820, 826 (Al. 2000)); Employee's Initial Brief, p. 19, *Horn v. Davis Elec. Constructors, Inc.,* 307 S.C. 559, 416 S.E.2d 634 (1992).

[4] Employee's Initial Brief, p. 24, *Futch v. McAllister Towing of Georgetown, Inc*., 335 S.C. 488, 567 S.E.2d 591 (1999)); Employee's Initial Brief, p 10, *Smith-Cooper v. Cooper*, 344 S.C. 289, 291, 543 S.E.2d 271,272 (Ct. App. 2001)); Employee's Initial Brief, p. 14, S.C. Code Ann. § 41-1-80.

in the lower court on November 21, 2024, and (3) in various filings submitted by Appellant in a separate appeal pending before this Court, Serge R. Wandji v. The Regional Medical Center and Antum Risk, Appellate Case No. 2024-001935 ("Workers' Compensation Appeal"). Notably, the respondent's briefs in the Workers' Compensation Appeal alert both the Court and Appellant to Appellant's improper and misleading use of fictitious and irrelevant case law. (*See* Appellate Case No. 2024-001935, Initial Brief of the Respondents at pp. 6-9.) Despite being put on notice of this issue in the Workers' Compensation Appeal, Appellant continues to mislead this Court with fictitious and misleading authorities. Permitting Appellant to proceed without consequence will encourage the continuation of this misleading, improper, and unethical conduct, which has wasted and will continue to waste the valuable time and resources of the parties, counsel, and the Court.

Courts have sanctioned parties, including pro se parties, for the use of fictitious cases or "artificial intelligence hallucinations" by striking their filings or dismissing the proceeding in order to protect the integrity of the justice system. *See Kruse v. Karlen*, 692 S.W.3d 43, 52 (Mo. Ct. App. 2024), *reh'g and/or transfer denied* (Apr. 9, 2024) (dismissing pro se appellant's appeal after finding twenty-two inaccurate case citations in appellant's brief, most of which were fictitious); *Mata v. Avianca, Inc.*, No. 22-CV-1461, 678 F. Supp. 3d 443, 461 (S.D.N.Y. June 22, 2023) (dismissing a filing and sanctioning a party for submitting bogus legal citations generated by ChatGPT).

Here, Appellant had a duty to comply with the appellate court rules and to confirm the legitimacy of the judicial opinions cited throughout his Initial Brief. Because he failed to comply with these Rules not only in his Initial Brief in the subject appeal, but in multiple other filings before this Court and the lower court, his brief should be disregarded in full.

See Rule 269, SCACR (providing for the imposition of sanctions where an appeal is frivolous or not in compliance with these Rules).

B. The Issues Presented in Appellant's Brief are Not Supported by Legal Authority and Thus Are Abandoned On Appeal.

Not only does Appellant's Initial Brief incorporate numerous references to fictitious cases, but it also fails to include any credible legal authority to support the various issues on appeal. "An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority." *Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008); *see also State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011); *Bluffton Towne Ctr., LLC v. Gilleland-Prince,* 412 S.C. 554, 573, 772 S.E.2d 882, 893 (Ct. App. 2015) (holding issue abandoned when appellant made a conclusory argument while citing no legal authority to support the claim); *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").

As reflected in the below table, the legal authority cited by Appellant to support Arguments A - L in his Initial Brief is either non-existent or it fails to support the proposition for which Appellant cites it.

Legal Authority Cited by Appellant	Reason it Lacks Credibility
Clark v. Aiken County Hospital, (unreported)	**Fictitious case** used to support the proposition that any adverse employer conduct can amount to unlawful retaliation. (Appellant's Initial Brief, p. 25.)
Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 488, 567 S.E.2d 591 (1999)	**Fictitious quotation from an irrelevant case.** Appellant cites to this judicial opinion to support the proposition that settlement agreements may be voidable when procured through unfair circumstances. (Appellant's

	Initial Brief, p. 24.) This judicial opinion does not say "settlement" once nor does it contemplate the proposition it is cited to support.
Hines v. Blue Cross Blue Shield of South Carolina, 41 S.C. 108,119 (2014)	**Fictitious case** used to support the false proposition that temporal proximity strengthens the inference of retaliation and that reliance on untrustworthy sources can be evidence of pretext (Appellant's Initial Brief, pp. 6, 21, 22.)
In re Evans, 410 S.C. 614, 620, 765 S.E.2d 67, 70 (2014)	**Fictitious case** used to support the proposition that obstructive conduct in the course of litigation demonstrates bad faith and supports a finding of unlawful retaliation. (Appellant's Initial Brief, p 23.)
Layman v. State Workers' Compensation Fund, 336 S.C. 37 (2005)	**Fictitious case** used to support the false proposition that the South Carolina Workers' Compensation Act requires that employers accommodate temporary work limitations of employees which result from injuries. (Appellant's Initial Brief, pp. 18, 19.)
McCall by Andrews v. Batson, 285 S.C. 243, 247, 329 S.E.2d 741, 743 (1985)	**Does not stand for the proposition for which it is cited.** Appellant improperly cites to this judicial opinion regarding the application of sovereign immunity to torts committed by the state to support his argument that alleged retaliatory actions create factual disputes which are not appropriate for summary judgment. (Appellant's Initial Brief, p. 7.)
Miller v. State Workers' Compensation Fund, 379 S.C. 129 (2008)	**Fictitious case** used to support the false proposition that an employer's consultation with legal counsel in efforts to avoid liability can be evidence of retaliatory intent. (Appellant's Initial Brief, pp. 25, 27.)
Pirayesh v. Pirayesh, 359 S.C. 284, 289, 596 S.E.2d 469, 472 (Ct. App. 2004)	**Does not stand for the proposition for which it is cited.** Appellant improperly cites to this judicial opinion regarding whether it was proper for a family court judge to adopt the recommendation of a guardian ad litem, in support of his proposition that the trial court erred in adopting TRMC's proposed Order. (Appellant's Initial Brief, p 10.)
State v. Galbreath, 359 S.C. 398, 597 S.E.2d 845 (Ct. App. 2004)	**Does not stand for the proposition for which it is cited.**

	Appellant improperly cites to this judicial opinion to support the proposition that compromised expert testimony should not be considered when the opinion does not once state the word "expert." (Appellant's Initial Brief, p 21.)
Stewart v. Beaufort Cty., 481 S.E.2d 168 (S.C. Ct. App. 1997)	**Fictitious case** used to support the false proposition that the cumulative effect of TRMC's conduct amounts to unlawful retaliation. (Appellant's Initial Brief, p. 27.) **Fictitious quotes** used to support the false proposition that S.C. Code Ann. § 41-1-80 prohibits all forms of retaliatory conduct. (Appellant's Initial Brief, pp. 13, 14.)
Smith-Cooper v. Cooper, 344 S.C. 289, 291, 543 S.E.2d 271,272 (Ct. App. 2001)	**Fictitious quote; This case does not otherwise stand for the proposition for which it is cited.** Appellant improperly cites to this judicial opinion regarding the terms of an agreement between a husband and wife in family court to support his argument that the trial court erred in adopting TRMC's proposed order granting TRMC's motion for summary judgment. (Appellant's Initial Brief, p 10.)
Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 126 S. Ct. 2405, 165 L. Ed. 2d 345 (2006)	**Does not stand for the proposition for which it is cited.** Appellant improperly cites to this judicial opinion regarding a Title VII action for sex discrimination to support his argument that the refusal to reinstate an employee following medical leave is a form of retaliation (Appellant's Initial Brief, p 17.)
Hernandez v. Compass Group USA, Inc., No. 2:18-cv-03594, 2020 WL 1067614 (D.S.C. Mar. 5, 2020)	**Fictitious case** used to support the false proposition that denial of reinstatement following protected leave constitutes evidence of retaliation. (Appellant's Initial Brief, p 18.)
Hines v. United Parcel Serv., Inc., 736 F. Supp. 2d 1139, 1153 (S.D. Fla. 2010)	**Fictitious case** used to support the proposition that temporal proximity may serve as compelling evidence of retaliation. (Appellant's Initial Brief, p 11.)
Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000)	**Does not stand for the proposition for which it is cited.**

	Appellant improperly cites to this judicial opinion regarding an Age Discrimination in Employment Act action for discrimination based on age, in support of his false proposition that the ADA prohibits an employer from using an employee's physical limitations as justification for adverse employment actions.
Stevenson v. Precision Standard, Inc., 762 So. 2d 820, 826 (Al. 2000)[5]	**Does not stand for the proposition for which it is cited.** Appellant improperly cites to this Alabama judicial opinion related to Alabama state tort claims, in support of his argument that S.C. Code Ann. § 41-1-80 prohibits adverse actions beyond termination. (Appellant's Initial Brief, p 14.)
Horn v. Davis Elec. Constructors, Inc., 307 S.C. 559, 416 S.E.2d 634 (1992)	**Does not stand for the proposition for which it is cited.** Appellant incorrectly relies on this case to argue that failing to accommodate an employee's medical restrictions proves retaliation. (Appellant's Initial Brief, p. 19.) However, the court in *Horn* held that an employer may terminate an employee unable to perform their former job functions and stated, "Section 41–1–80 does not singularly accord to an employee the right to a reasonable period of time for rehabilitation to demonstrate the ability to perform his former employment…." *Horn v. Davis Elec. Constructors, Inc.*, 307 S.C. 559, 564, 416 S.E.2d 634, 637 (1992).
Family Medical Leave Act ("FMLA")	There is no claim brought under the FMLA in Appellant's Complaint and is **not relevant to the issues before the Court.**
Americans with Disabilities Act ("ADA")	There is no claim brought under the ADA in Appellant's Complaint and is **not relevant to the issues before the Court.**
S.C. Code Ann. § 41-1-80	**Misrepresents to the court** that the relevant statute "explicitly prohibits any adverse employment action taken in response to the filing of a workers' compensation claim." (Appellant's Initial Brief pp. 13, 17, 27.)

[5] The citation included by Appellant in his brief was incorrect, using "La." rather than "Al." to reference the relevant court in the citation.

	Includes a fictitious quote to the statute in attempts to improperly broaden the scope of prohibited acts. (Appellant's Initial Brief, p 14.) In fact, the statute states, "No employer may *discharge or demote* any employee because the employee has instituted or caused to be instituted, in good faith, any proceeding under the South Carolina Workers' Compensation Law. . . ." (emphasis added).
S.C. Code. Ann. § 42-9-10	**Misrepresents to the court** that this statute requires an employer to accommodate work restrictions stemming from an injury. (Appellant's Initial Brief, p 18.) In fact, the statute contains the statutorily required amount of compensation for an individual found to be totally disabled under the Workers' Compensation Act.

As reflected in the above table, not one of Appellant's twelve arguments in his Initial Brief is supported by proper legal authority. Instead, Appellant's Initial Brief is riddled with citations to inapposite, fabricated, or non-existent cases, as well as misstatements of legal standards. Because all of Appellant's arguments and the corresponding issues on appeal are unsupported by any relevant or credible legal authority, they should be deemed abandoned on appeal. *Bryson*, 378 S.C. at 510, 662 S.E.2d at 615.

II. APPELLANT FAILED TO PRESERVE FOR APPELLATE REVIEW THOSE ISSUES RAISED, BUT NOT EXPRESSLY RULED UPON BY THE CIRCUIT COURT BECAUSE HE DID NOT FILE A MOTION TO ALTER OR AMEND THE JUDGMENT PURSUANT TO RULE 59(E), SCRCP.

Not only did Appellant abandon the arguments set forth in his appeal by failing to support them with credible legal authority, Appellant has also failed to preserve for appeal many of the issues he now presents to this Court for appellate review. To successfully preserve an issue for appellate review, the issue must be: "(1) raised to and ruled upon by

the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 302, 641 S.E.2d 903, 907 (2007) (quoting Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002)). The purpose of the issue preservation requirements is to "enable the lower court to rule properly after it has considered all relevant facts, laws, and arguments." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). It also "prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case." *Id.*

In its Order Granting Summary Judgment, the lower court's ruling addressed the following three issues: (1) whether TRMC had established its affirmative defense pursuant to S.C. Code § 41-1-80, (2) whether there was sufficient temporal proximity between the institution of Appellant's workers' compensation claim and the termination of his employment to raise an inference of retaliatory intent, and (3) whether TRMC's alleged failure to accommodate Appellant, even if taken as true, was enough to overcome TRMC's affirmative defense.

Despite the narrow issues ruled upon by the lower court, Appellant now seeks to include multiple issues on appeal that were never ruled upon by the lower court. Those issues include: (1) allegations of procedural errors and a lack of due process during the proceedings in the lower court, which correspond to Argument B of Appellant's Initial Brief and (2) allegations of misrepresentation and retaliatory conduct in violation of S.C. Code Ann. § 41-1-80, which correspond to Arguments A, C, D, E, G, H, I, J, K, and L of Appellant's Initial Brief.

By Appellant's own admission, the lower court did not rule on these issues in its Order Granting Summary Judgment, most of which were raised for the first time in his Third Opposition following the summary judgment hearing. ("[T]he trial court never ruled on or acknowledged the Appellant's duly filed Motion in Opposition to Summary Judgment. . . ." Appellant's Initial Brief p. 7.) Despite the foregoing, Appellant did not file a Rule 59(e) motion asking the circuit court to rule on these issues. Instead, he immediately filed an appeal before the circuit court issued its final order granting summary judgment. (*See* Notice of Appeal dated 1/11/25). "A party *must* file [a rule 59(e)] motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Feldman v. Feldman*, 380 S.C. 538, 545, 670 S.E.2d 669, 672 (Ct. App. 2008) (citing *Elam v. S.C. Dep't of Transp.,* 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004)) (emphasis in original) (internal quotations omitted).

Appellant's failure to raise these issues to the circuit court through a Rule 59(e) motion following the issuance of the circuit court's Order Granting TRMC's Motion for Summary Judgment precludes Appellant from now arguing these issues on appeal. *See Bean v. S.C. Cent. R. Co.*, 392 S.C. 532, 559, 709 S.E.2d 99, 113 (Ct. App. 2011) (holding plaintiff's argument that he was not afforded a reasonable opportunity to complete discovery was not ruled upon in the court's order granting summary judgment, and thus, the issue was not preserved for the appellate court's review); *Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 235, 612 S.E.2d 719, 726 (Ct. App. 2005) (holding appellant's assertion that the trial court erred in granting summary judgment due to a factual issue was not preserved for review because the trial court did not explicitly rule on the argument and the appellant did not make a Rule 59(e) motion to alter or amend). "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled

upon by the trial judge to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

Because the arguments regarding alleged procedural errors and due process concerns (Argument B of Appellant's Initial Brief at pp. 7-10) and alleged misrepresentations and retaliatory conduct (Arguments A, C, D, E, G, H, I, J, K, L of Appellant's Initial Brief) were never raised or ruled upon by the circuit court, they have not been preserved for appeal and must be dismissed.

III. THE CIRCUIT COURT DID NOT ERR IN GRANTING TRMC'S MOTION FOR SUMMARY JUDGMENT.

The sole cause of action at issue in this matter is Appellant's claim for workers' compensation retaliation under S.C. Code § 41-1-80. In order to prevail on a workers' compensation retaliation claim, a plaintiff bears the burden of proving the following: "1) institution of workers' compensation proceedings, 2) discharge or demotion, and 3) a causal connection between the first two elements." *Hinton v. Designer Ensembles, Inc.*, 343 S.C. 236, 242, 540 S.E.2d 94, 97 (2000) (citing *Hines v. United Parcel Serv., Inc.*, 736 F. Supp. 675, 677 (D.S.C. 1990)). In order to prove causation, the employee must "establish that he would not have been discharged 'but for' the filing of the workers' compensation claim." *Id*. "The employee may succeed in this, either directly by persuading the court that the discharge was significantly motivated by retaliation for her exercise of statutory rights, or indirectly by showing that the employer's proffered explanation is unworthy of credence." *Id.* "[T]he ultimate burden is, throughout, upon the employee." *Id.* (citing *Wallace v. Milliken & Co.*, 305 S.C. 118, 122, 406 S.E.2d 358, 360 (1991)).

The lower court granted TRMC's Motion for Summary Judgment on the grounds that the undisputed evidence demonstrated that TRMC terminated Appellant's employment because he could not return to work and perform his duties as a floor nurse,

and S.C. Code Ann. § 41-1-80 does not require an employer to retain an employee who can no longer perform his duties. Notably, Appellant's appeal does not seek to overturn the lower court's ruling on this issue, perhaps because the undisputed evidence demonstrates that Appellant was offered the opportunity to return to work, but declined the offers because he could not perform the duties of his position as a floor nurse. (Ex. 2 to Def.'s Mot. for Summ. J., pp. 68:18 - 69:24; Ex. 10 to Def.'s Mot. for Summ. J.; Ex. 11 to Def.'s Mot. for Summ. J.; Ex. 12 to Def.'s Mot. for Summ. J.; Ex. 18a to Pl.'s Third Opposition.) Instead of arguing the court erred in granting TRMC's summary judgment based on Appellant's failure to meet established work standards, Appellant instead attempts to mislead the court with arguments that he not only failed to preserve for appellate review, but which are unsupported by the facts, unsupported by the improper and fictitious legal authority cited, and have no bearing on the issue of whether or not Appellant was terminated by TRMC in retaliation for instituting workers' compensation proceedings.

Accordingly, this Court should affirm the lower court's Order Granting TRMC's motion for summary judgment because: (1) the court properly granted TRMC's Motion for Summary Judgment based on Appellant's failure to meet established work standards; (2) there is no evidence of temporal proximity between the institution of his workers' compensation proceedings and the termination of Appellant's employment; (3) alleged evidence of TRMC's failure to accommodate Appellant's medical restrictions cannot support a finding of retaliatory discharge; (4) Appellant's arguments that the court erred in granting summary judgment based on alleged evidence of retaliation and misrepresentation are not properly before the court and are without merit; and (5) Appellant's argument that he was not afforded due process is not properly before this court and is without merit.

A. **The Court Properly Held that Appellant's Failure to Meet Established Work Standards Defeated His Workers' Compensation Retaliation Claim as a Matter of Law.**

S.C. Code Ann. § 41-1-80 provides that "[n]o employer may discharge or demote any employee because the employee has instituted or caused to be instituted, in good faith, any proceeding under the South Carolina Workers' Compensation Law…." The failure to meet established work standards is an affirmative defense under S.C. Code Ann. § 41-1-80 that may defeat a claim for workers' compensation retaliation. *See Horn v. Davis Elec. Constructors, Inc.*, 302 S.C. 484, 489, 395 S.E.2d 724, 727 (Ct. App. 1990), *aff'd as modified,* 307 S.C. 559, 416 S.E.2d 634 (1992) ("An employer may prove as an affirmative defense [to S.C. Code § 41-1-80] that an employee failed to meet established work standards because he could not perform the physical requirements of the job."). In its Order Granting Defendant's Motion for Summary Judgment, the court held that Appellant's workers' compensation retaliation claim failed as a matter of law because Appellant was admittedly unable to perform the duties of his position as a floor nurse. (Order at p. 7.) "Section 41-1-80 and statutes like it do not [ ] require an employer to retain an employee who can no longer perform the duties of her job simply because her inability to perform the duties results from an on-the-job injury." *Varner v. Serco Inc.*, No. 2:16-CV-02340-DCN, 2018 WL 4052447, at *3 (D.S.C. Aug. 24, 2018) (quoting *Hines v. United Parcel Serv., Inc.*, 736 F. Supp. 675, 677 (D.S.C. 1990)) (granting defendant's motion for summary judgment on plaintiff's workers' compensation retaliation claim because plaintiff was unable to meet the requirements of her job as a result of a lifting restriction imposed on her by her physician.).

Notably, Appellant makes no attempt to appeal the court's ruling granting summary judgment to TRMC based on the affirmative defense that Appellant was terminated from

his position at TRMC because he failed to meet established work standards. Instead, Appellant's appeal includes a series of issues and arguments that were never ruled upon by the lower court. Because Appellant failed to challenge the lower court's grant of summary judgment based on the failure to meet established work standards, he has waived his right to appeal that issue, and this Court should affirm the lower court's decision on this basis alone. (*See* Appellant's Statement of Issues on Appeal.) Even if Appellant had preserved his right to appeal this issue, he does not dispute and has presented no evidence that he was able to perform the duties of a floor nurse.

Based on the foregoing, the lower court properly found that TRMC established an affirmative defense to Plaintiff's claim under S.C. Code § 41-1-80 and properly granted TRMC summary judgment on this basis.

B. The Court Did Not Err in Concluding That, Under S.C. Code Ann. § 41-1-80, Evidence of Temporal Proximity Between Any Protected Activity and Employment Termination is Insufficient to Rebut TRMC's Affirmative Defense.

The circuit court properly found that a showing of close temporal proximity between the institution of a workers' compensation claim and an employee's termination, even if proven, is insufficient as a matter of law to defeat a defendant's motion for summary judgment where an employer proffers a "legitimate, non-retaliatory reason" for termination. (Order at p. 8.) "If the employer articulates a legitimate, nonretaliatory reason for the termination, the proximity in time between the work-related injury and the termination is not sufficient evidence to carry the employee's burden of proving a causal connection." *Hinton*, 343 S.C.at 243, 540 S.E.2d at 97; *see also Johnson v. J.P. Stevens & Co., Inc.,* 308 S.C. 116, 118, 417 S.E.2d 527, 529 (1992) ("[i]n light of the conceded legitimate, nonretaliatory motives for the termination, [the] proximity in time does not meet the employee's burden of proof.")

As noted in the Court's Order Granting Summary Judgment, TRMC provided a legitimate, non-retaliatory reason for Appellant's termination. (Order at pp. 8-9.) Appellant does not dispute the facts supporting the proffered reason for termination (he could not perform the duties of a floor nurse), nor does he challenge the circuit court's conclusion that TRMC's affirmative defense under S.C. Code Ann. § 41-1-80 (Appellant's failure to meet established work standards) defeats Appellant's claims. Instead, Appellant argues that irrespective of that fact, the temporal proximity between the filing of his workers' compensation claim and his termination are enough to establish the necessary causation to prove his claim. (Appellant's Initial Brief, p. 7.) However, Appellant cites no legal authority in support of this position.[6] Thus, the lower court correctly found that "there is no temporal proximity between the filing of [Appellant's] workers' compensation claim and [Appellant's] subsequent termination." (Order at p. 7.)

C. The Court Did Not Err in Concluding That, Under S.C. Code Ann. § 41-1-80, Alleged Evidence of TRMC's Failure to Accommodate Appellant's Medical Restrictions Was Insufficient to Support a Finding of Unlawful Retaliatory Discharge.

Appellant attempts to argue, without legal or factual support, that TRMC's failure to reinstate or accommodate the Appellant's restrictions violated "state and federal law and reveal retaliatory pretext." (Appellant's Initial Brief p. 16.) This argument is misplaced. As an initial matter, TRMC has not asserted any federal claims in his Complaint, nor were any federal laws the subject of TRMC's Motion for Summary Judgment or the lower court's Order Granting Summary Judgment. Accordingly, any reliance by Appellant on

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[6] The cases cited by Appellant in support of the argument that temporal proximity may support an inference of retaliation do not exist: *Layman v. State Workers' Compensation Fund*, 336 S.C. 37 (2005) and *Hines v. Blue Cross Blue Shield of South Carolina*, 41 S.C. 108,119 (2014). Moreover, *McCall by Andrews v. Batson*, 285 S.C. 243, 247, 329 S.E.2d 741, 743 (1985) does not support the proposition for which it is cited.

federal laws, including the Americans with Disabilities Act ("ADA"), the Family Medical Leave Act ("FMLA"), or Title VII to support his claims is improper and misleading.

The only cause of action at issue in this matter is Appellant's state law claim for alleged violation of S.C. Code Ann. § 41-1-80, which prohibits an employer from discharging or demoting an employee because the employee filed a workers' compensation claim. Contrary to the allegations in Appellant's Initial Brief, S.C. Code Ann. § 41-1-80 does not require an employer to accommodate restrictions stemming from a work-related injury. Appellant has cited no legal authority to the contrary.[7] Instead, he relies upon federal case law and various failure to accommodate cases under the ADA, which are inapposite to his state law claim for workers' compensation retaliation.

In addition, Appellant's assertion that he was able to return to work, but was not permitted to do so is a blatant misrepresentation of the facts. Appellant was hired by TRMC to work as a full-time floor nurse. (Compl. ⁋ 7; Ex. 2 Ex. 2 to Def.'s Mot. for Summ. J.) After seven months of leave, Appellant was unable to return to his full-time position as a floor nurse. (Ex. 2 to Def.'s Mot. for Summ. J., pp. 68:18 - 69:24; Ex. 10 to Def.'s Mot. for Summ. J.; Ex. 11 to Def.'s Mot. for Summ. J.; Ex. 12 to Def.'s Mot. for Summ. J.; Ex. 18a to Pl.'s Third Opposition.) Notably, he was offered other available, open positions, but he refused them. (Ex. 18a to Pl.'s Third Opposition.) He was also encouraged to apply for any available positions that he may qualify for, but he declined to do so. (Ex. 11 to Def.'s Mot. for Summ. J.; Ex. 12 to Def.'s Mot. for Summ. J.; Ex. 18a to Pl.'s Third Opposition.) Instead, he wanted an entirely new position in a part-time

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[7] As detailed above, the only case law cited by Appellant in support of this proposition is *Layman v. State Workers' Compensation Fund*, 336 S.C. 37 (2005), which does not exist, and *Horn v. Davis Elec. Constructors, Inc.,* 307 S.C. 559, 416 S.E.2d 634 (1992), which does not support the proposition for which it is cited. Appellant also cites to S.C. Code. Ann. § 42-9-10, which does not support the proposition for which it is cited.

administrative role, which was not available. (Ex. 11 to Def.'s Mot. for Summ. J.) There is no requirement under S.C. Code Ann. § 41-1-80 to create a new position for an employee who is unable to perform the job for which he was hired. Appellant's failure to present any credible legal or factual authority demonstrating that TRMC had a duty to accommodate Appellant's work-related restrictions under S.C. Code Ann. § 41-1-80 is fatal to his argument.

The lower court properly held that there is no legal or factual evidence to support Appellant's argument that TRMC's proffered reason for termination was pretextual. The undisputed evidence demonstrates that Appellant was terminated from his position because he could not meet the established work standards for the job and the lower court's ruling should be affirmed.

D. Appellant's Arguments that the Court Erred in Granting Summary Judgment Despite Alleged Evidence of Retaliation and Misrepresentation are Not Properly Before the Court and are Without Merit.

Appellant attempts to argue that the court erred in granting summary judgment due to various alleged acts of retaliation and misrepresentation by TRMC, including the following: mishandling of his protected health information,[8] coercive settlement tactics, the use of a conflicted 'expert' witness, refusal to reinstate Appellant despite medical clearance, imposition of retroactive leave, TRMC's alleged demand that Appellant return to work after his COVID-19 diagnosis, Appellant's placement on "forced leave," and TRMC's requirement that Appellant pay for health insurance premiums while on leave. (See Arguments A, C-L of Appellant's Initial Brief.) As set forth in Sections I and II above,

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[8] Though Appellant takes issue with his protected health information being sent via unencrypted email, he has filed his own medical information, as well as the medical information of third parties, in the public record as exhibits to his summary judgment brief.

TRMC waived these arguments by utilizing fictitious and improper legal citations and by failing to preserve the arguments through a Rule 59(e) motion.

Even if Appellant had properly preserved the arguments relating to TRMC's alleged retaliation and misrepresentation (Arguments A, C-L), they are without merit, contain gross mischaracterizations of the facts, and have no basis in the law for the following reasons:

- Appellant's argument that TRMC's "mishandling of his protected health information, coercive settlement tactics, and the use of a conflicted 'expert' witness" evidence retaliatory discharge fails on its face because these events all occurred after Appellant's employment with TRMC ended on March 15, 2022. Specifically, these events took place during the litigation of Appellant's workers' compensation proceedings after his employment ended. Thus, they cannot serve as evidence of Appellant's retaliatory discharge.

- Appellant's arguments that TRMC's "refusal to reinstate Appellant despite medical clearance" and "imposition of retroactive leave" evidence retaliation by TRMC is unsupported by the facts. The only evidence is that Appellant could not return to work as a floor nurse, the position for which he was hired. (Ex. 2 to Def.'s Mot. for Summ. J., pp. 68:18 - 69:24; Ex. 10 to Def.'s Mot. for Summ. J.; Ex. 11 to Def.'s Mot. for Summ. J.; Ex. 12 to Def.'s Mot. for Summ. J.; Ex. 18a to Pl.'s Third Opposition.) Appellant has presented no evidence that he could return to work as a floor nurse, which is why he was on leave for seven months. After seven months, when he was still unable to return to work as a floor nurse and refused to apply for any other positions, his employment ended. (*Id.*)

- Appellant's argument that the following alleged acts support a claim of retaliation is a gross mischaracterization of the facts: TRMC's alleged demand that Appellant return to work after his COVID-19 diagnosis, placement of Appellant on "forced leave," and requirement that Appellant pay for health insurance premiums while on leave. These alleged acts fail to support any assertion of retaliation. TRMC did not "demand" that Appellant return to work after his COVID-19 diagnosis, but merely followed-up on the status of his return as any employer would do. (Ex. 6 to Pl.'s Third Opposition.) Appellant was placed on leave in accordance with TRMC's policies because Appellant was unable to return to work, which he does not dispute. (Ex. 7 to Def.'s Mot. for Summ. J; Ex. 2 to Def.'s Mot. for Summ. J., pp. 68:18 - 69:24.) In order to maintain his health insurance, he was required to pay his premiums, just as any employee would be required to do. Appellant has presented no evidence that he was treated differently than any other employee as it relates to his leave, benefits payments, or communications regarding his return to work. He has made nothing more than conclusory assertions that these various alleged events demonstrate he was terminated from his position in retaliation for filing his workers' compensation claim.

As set forth above, Appellant's arguments that the lower court erred in granting summary judgment despite alleged evidence of retaliation and misrepresentation are not preserved for appeal, and Appellant fails to cite any credible legal or factual authority to support these misleading arguments.

E. Appellant's Assertion that He was Not Afforded Due Process is Not Properly Before this Court and is Without Merit.

Employee argues the circuit court erred in granting TRMC's motion for summary judgment due to alleged procedural errors and due process concerns including the following: (1) "the court's refusal to acknowledge or rule on the Appellant's Opposition Motion," (2) granting summary judgment while there is incomplete discovery production, (3) the denial of an oral argument to a pro se litigant, and (4) the wholesale adoption of Defendant's proposed order. (Appellant's Initial Brief pp. 7-10.) As set forth above, this argument is not preserved for appeal, but even if it had been preserved, there is no basis in the law or in the facts for Appellant's assertion that there was a lack of due process:

- Appellant could have filed a Rule 59(e) motion to address his assertion that the lower court refused to acknowledge or rule upon his Third Opposition brief.
- As reflected in the transcript from the summary judgment hearing, Appellant had the opportunity to present an oral argument at the summary judgment hearing but requested the opportunity to submit a third opposition brief which the lower court permitted. (Hearing Trans. pp. 10:22-25 -- 14:14.)
- There is nothing procedurally improper with the court's decision to adopt, in whole or in part, the proposed order prepared by TRMC's counsel at the request of the court. As set forth above, the cases cited by Appellant in support of his position are either fictitious or do not stand for the proposition cited.
- Discovery was complete at the time of the summary judgment hearing and contrary to Appellant's assertion, TRMC produced discovery responses and documents to Appellant on October 10, 2023, a year before the summary judgment hearing. (Def.'s Opp. to Pl.'s Motion to Compel.) There was one additional document produced prior to the summary judgment hearing and notably, Appellant did not even reference it in his Third Opposition brief filed after the summary judgment hearing. (Hearing Trans. pp. 12:25 -- 13:1-19.) Appellant has not identified what discovery was unavailable to him at the time of the summary judgment hearing that

impacted his ability to oppose TRMC's summary judgment. In fact, neither his Third Opposition nor his subject appeal address the primary grounds for the granting of the summary judgment because Appellant cannot overcome the undisputed evidence that he could not return to work as a floor nurse.

- Appellant is not entitled to a jury trial. Courts have clearly held that claims for retaliatory discharge under S.C. Code Ann. § 41-1-80 are actions in equity tried without a jury. *Hinton*, 343 S.C. at 241, 540 S.E.2d at 96; *Johnson*, 308 S.C. at 118, 417 S.E.2d at 529.

Not only did Appellant waive his ability to allege any due process issues, but as set forth above, his arguments are completely without merit. Thus, there is no basis for asserting the lower court erred in granting TRMC's Motion for Summary Judgment.

CONCLUSION

For the reasons set forth above, the circuit court properly granted summary judgment in favor of TRMC, and TRMC respectfully requests this Court affirm the circuit court's Order in its entirety.

Respectfully submitted,

s/Amanda C. Williams

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June 20, 2025
Charleston, South Carolina

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Jun 20 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
Maite Murphy, Circuit Court Judge

Appellate Case No. 2025-000108
Case No.: 2023-CP-38-00331

Serge R. Wandji……………………………………………………………….Appellant,

v.

The Regional Medical Center……………………………………………….Respondent,

PROOF OF SERVICE

The undersigned hereby certifies that a copy of **RESPONDENT'S INITIAL BRIEF** was served on Appellant, Serge R. Wandji this 20th day of June 2025, by electronic mail and U.S. mail, as follows:

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June 20, 2025

VIA EMAIL: ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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

Dear Mrs. Kitchings:

Enclosed for filing please find the following:

(1) Respondent's Initial Brief;

(2) Respondent's Designation of Matter to be Included in the Record on Appeal; and

(3) Proof of Service.

Thank you and with kind regards, I am

Sincerely,

Amanda Williams

Amanda C. Williams

Enclosures

cc: Serge R. Wandji (via electronic mail and U.S. Mail)

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