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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

FINAL REPLY BRIEF OF APPELLANT

Appellate Case No.2025-000108

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STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court erred in granting summary judgment in favor of Respondent despite material disputes of fact regarding retaliatory discharge, in violation of S.C. Code Ann. § 41-1-80, that should have been submitted to a jury.
2. Whether the trial court improperly resolved credibility and intent issues--central to the question of retaliatory motive--at the summary judgment stage, contrary to South Carolina and federal precedent.
3. Whether the trial court committed reversible error by failing to rule on Appellant's pending motion opposing summary judgment due to incomplete discovery and by proceeding despite Respondent's discovery noncompliance.
4. Whether citation and formatting issues in a prose litigant's brief, none of which were substantively misleading or outcome-determinative, were improperly used to dismiss legitimate claims rather than granting leeway consistent with South Carolina law.
5. Whether the cumulative pattern of adverse actions--coerced leave, refusal of accommodation, unauthorized PHI disclosures, settlement coercion, expert witness conflicts, and eventual termination--constitutes sufficient circumstantial and direct evidence of retaliatory discharge under South Carolina law.

I. INTRODUCTION

This case is not about abstract legal technicalities; it is about JUSTICE for a frontline nurse who placed his life on the line during one of the most harrowing public health emergencies in modern history. The Appellant served with courage and commitment at The Regional Medical Center (TRMC) during the height of the COVID-19 pandemic, providing care under extreme conditions during a verified outbreak within the hospital (R. p. 414 (under ‘Work Environment’); pp. 520-524). While performing his duties, he contracted COVID-19 (R. p. 420; p. 464) and was immediately removed from active duty by his employer. Alone in isolation, battling a life-threatening illness, he summoned the resolve to file a workers' compensation claim exercising a lawful right intended to protect injured workers (R. pp. 422-424). It was in this moment of profound vulnerability that TRMC initiated a pattern of retaliation (R. pp. 425-429). As a result, Appellant's condition deteriorated, ultimately leading to hospitalization at the very institution where he had risked his life in service to others (R. pp.430-432). Rather than receiving support and procedural fairness, he was met with legal threats (R. pp. 425-428), coercive settlement proposals (R. p. 451), financial pressures (R. pp. 437-442; pp. 580-584; pp. 585-588), and the calculated misuse of internal medical personnel, including a conflicted expert (Dr. Samies) (R. p. 319; lines: 6-16) whose role merged clinical authority with employer interest (R.p.513). Once medically cleared to return to duty (R. p.464), Appellant repeatedly sought reinstatement but was ignored (R. p. 466; pp. 468-471). TRMC then terminated him under a pretextual and carefully crafted narrative (R. p. 477). This retaliation was neither vague nor speculative. It was deliberate, well-documented, and executed with institutional intent (R. p. 475).

This appeal is not merely about correcting a legal error, it is about restoring the right to a jury trial where factual disputes and credibility issues deserve full and fair consideration.

Respondent's Brief attempts to avoid accountability by mischaracterizing the record, misapplying S.C. Code Ann. § 41-1-80, and undermining the credibility of a pro se litigant. The trial court's grant of summary judgment disregarded genuine disputes of material fact, prematurely resolved questions of intent and endorsed a defense narrative contradicted by discovery and deposition evidence.

The Appellant seeks only what the law guarantees: a fair adjudication of retaliation claims based on the evidence, and the opportunity to present his case before a jury of peers. This Court should reverse the summary judgment order and remand for trial.

II- REBUTTAL TO RESPONDENT'S PROCEDURAL WAIVER AND CITATION ATTACKS

Respondent's characterization of Appellant's citations as "fake" or "nonexistent" is both misleading and exaggerated. To the extent that any citation in the Initial Brief was misformatted, misquoted, or cited to the wrong volume, Appellant acknowledges those technical errors and respectfully submits that they are curable defects, not grounds for waiver or dismissal. The core legal principles advanced remain supported by valid and binding South Carolina precedent.

Respondent's claim that such clerical flaws constitute waiver of the entire appeal is both unsupported by law and contrary to principles of fairness and judicial efficiency. Appellant respectfully offers the following clarifications:

Clarification and Good-Faith Effort: All authorities cited in Appellant's Initial Brief were selected using credible academic and legal resources available to a pro se litigant, including USC's law school library portal and citation generators. If citation formatting fell short of SCACR Rule 208(b)(I)(E), Appellant requests leave to amend or clarify, not to have his arguments disregarded.

Legal Standards Remain Valid and Substantive Law Still Applies: Every legal standard cited, such as retaliatory discharge under *Johnson v. JP. Stevens & Co.*, 308 S.C. 116, 417 S.E.2d 527 (1992), and credibility disputes at summary judgment per *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133 (2000), remains good law. Respondent's position that citation flaws (especially from a pro se litigant) nullify the entire brief is unsupported by South Carolina jurisprudence. See *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002) (holding that appellate courts must look to substance, not form).

Procedural Leeway for Pro Se Litigants: South Carolina courts have consistently acknowledged the distinct challenges faced by pro se litigants and have held that self-represented parties should not be unduly penalized for technical deficiencies, provided their substantive claims are intelligibly and fairly presented. South Carolina courts have long recognized the need to construe pro se filings liberally in order to avoid injustice due to technical defects. In *Baughman v. AT&T*, 306 S.C. 101, 410 S.E.2d 537, 538 (1991), the South Carolina Supreme Court emphasized that "[w]e construe prose pleadings liberally to ensure that no meritorious claim is overlooked merely because of a litigant's unfamiliarity with legal procedures." Procedural imperfections, particularly where there is clear evidence of good-faith compliance, should not obscure or undermine otherwise legitimate claims.

No Prejudice to Respondent: Importantly, Respondent has suffered no prejudice from any alleged citation defect. The legal issues were clearly framed, and Respondent had ample opportunity to respond to the substantive claims. Courts are cautioned against weaponizing procedural rules to avoid merits-based review, particularly in employment retaliation cases involving prose parties.

In sum, while Appellant regrets any inadvertent citation inaccuracies, none were intended to mislead, nor do they justify the erasure of legitimate claims grounded in record evidence and

applicable law. Appellant should not be penalized for citation formatting errors, especially where the arguments are legally sound, the precedent is binding, and the record demonstrates diligence and sincerity.

III. REINFORCING THE EIGHT RETALIATORY ACTS

Appellant has presented substantial and specific evidence contained in the Record, supporting each of the eight retaliatory acts challenged in this case. These acts are not speculative or generalized grievances; they are documented instances of adverse employment actions temporally and causally connected to Appellant's protected activity under S.C. Code Ann. § 41-1-80. Each is further supported by circumstantial or direct evidence of retaliatory intent, credibility disputes, or procedural inconsistencies that render summary judgment inappropriate. See *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133 (2000) (issues of motive and intent must be resolved by a jury).

Respondent's primary defense hinges on the pretextual assertion that Appellant "failed to meet work standards." This framing, however, deliberately ignores a clear pattern of retaliatory conduct. Each of the **eight retaliatory actions** identified by Appellant is supported by the evidentiary record and applicable law:

1-Pressure to Return During Medical Isolation

Appellant received text messages from his manager and supervisor at TRMC urging his return to work just five days after he was medically removed from duty due to COVID-19 virus which he contracted at work, while he remained in isolation, still contagious with COVID-19 (R. pp. 425-429). These communications contravened CDC guidelines and occurred after he just filed a workers' compensation claim with the hospital claims system (R. pp. 422-424), supporting an inference of retaliatory pressure.

Relevant Precedent: See *Hines v. UPS*, 736 F. Supp. 2d 1139 (N.D. Cal. 2010) which

underscores that such early employer contact during medical leave is circumstantial evidence of retaliation and precludes summary judgment.

2-Retroactive and Involuntary Leave Classification

First, TRMC coercing Appellant while he was fighting for his life in an intensive care unit at the hospital (TRMC), into completing FMLA paperwork (R. p. 434) despite his clear ineligibility (has been an employer at TRMC for less than a year). Then TRMC imposed a leave of absence retroactively without Appellant consent (R. p. 436).

This maneuver, undertaken after Appellant had already filed a valid workers' compensation claim, appears calculated to undermine that claim by reframing his medical removal as voluntary leave rather than a workplace injury.

Legal Significance: Fabricated administrative actions were used to weaken Appellant's pending claim. This misclassification functioned as a pretext to deny reinstatement (R. pp. 466-471) and delay termination while concealing retaliatory intent (R. p. 477).

3-Refusal to Accommodate Work Restrictions

Despite multiple medical clearances indicating Appellant could return to temporarily modified duty (R. p. 464; p. 473), TRMC refused accommodation or meaningful engagement in the interactive process (R. pp. 466-471). This failure to accommodate is not only a potential ADA violation but also supports the broader retaliatory narrative.

Cited Authority: TRMC's refusal to consider Appellant's physician-approved request for modified-duty assignments closely mirrors the circumstances in *Jacobs v. N.C. Admin. Office of the Courts*, where the 4th Circuit affirmed that summary judgment was improper because the employer "never even engaged in a dialogue" about the requested accommodation, despite close temporal proximity to the adverse employment action. 769 F.3d 178, 187-89 (4th Cir. 2014)

4-Improper Disclosure of Protected Health Information (PHI)

TRMC transmitted unredacted and non-consensual disclosures of Appellant's health status via unsecured email (R. p. 593) violating HIPAA and undermining professional privacy.

Even if HIPAA does not provide a private cause of action, such conduct may support a claim of employer hostility or retaliation.

Case Law: *Doe v. SEPTA*, 72 F.3d 1133 (3d Cir. 1995) (evidence of improper disclosure admissible to establish adverse workplace environment).

5-Coercive and Bad-Faith Settlement Offers and illegal financial pressures

TRMC offered Appellant a \$100 "settlement" contingent on releasing all legal claims, including retaliation (R. p. 451).

TRMC unlawfully billed Appellant for costs related to his COVID-19 hospitalization that exceeded what was covered by his health insurance (R. pp. 580-584) -conduct that appears to violate protections under the federal CARES Act, which prohibits balance billing for COVID-19 treatment. TRMC then attempted to leverage these illegitimate charges by offering to waive them only if Appellant agreed to release all legal claims, including his pending retaliation claim (R. p. 451), an act tantamount to coercive settlement tactics rooted in financial duress.

After Appellant rightfully declined TRMC's coercive settlement offer (R. p. 451), which conditioned the waiver of unlawful COVID-19 hospitalization charges on surrendering his legal claims, TRMC escalated its retaliatory conduct by reporting those fictitious charges to debt collection agencies (R. pp. 585-588). This vindictive act inflicted long-term harm on Appellant's credit standing, compounding the injury and financial distress already caused by his unlawful termination. Such conduct underscores a pattern of institutional retaliation and abuse of power.

Such coercive and predatory settlement offers fall short of good-faith bargaining and reflect retaliatory leverage.

After TRMC medically removed Appellant from duty due to his workplace contraction of COVID-19, the hospital then demanded that Appellant assume full responsibility for the total cost of his health insurance premiums as a condition of maintaining coverage (R. pp. 437-442), despite the fact that his removal was involuntary and medically necessitated by the very occupational exposure at issue in his workers' compensation claim.

6- Improper Use of Conflicted Expert Witness

TRMC relied on the 'expert' opinion of Dr. John H. Samies, a senior medical executive and Board of Trustee member in good standing at TRMC (R. p. 319; lines: 6-16), while presenting him in the Briefs proceedings as an "independent" expert from Palmetto Infectious LLC (R. p. 513: Letter Head). His written statements (R. p. 513) were used to dispute causation of Appellant infection and thus justify termination due to 'leave exhaustion' (R. p. 477), raising credibility issues.

Applicable Standard: *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993) (expert testimony must be impartial and methodologically sound).

7- Pretextual Termination Based on "Leave Exhaustion"

TRMC denied medically recommended accommodations (R. p. 466; pp. 468-471), imposed a backdated leave of absence without Appellant consent (R. p. 436), then cited "leave exhaustion" as a reason for termination (R. p. 477).

This sequence of actions reflects a pretext designed to manufacture lawful justification for an otherwise retaliatory termination.

Controlling Authority: *Reeves v. Sanderson Plumbing*, 530 U.S. 133 (2000) (pretext may be inferred when an employer's explanation is unworthy of credence).

Also, *EEOC v. Wal-Mart Stores E., L.P.*, 477 F.3d 561, 568 (8th Cir. 2007) ("Once the plaintiff has established a prima facie case and introduced evidence to rebut the employer's stated justification, the case must be submitted to the jury.")

8- Secret Legal Strategy to Facilitate Termination

Internal memos/emails and deposition (CEO David Sutherland) contradictions (R. p. 577; lines: 16-24) reveal secret legal consultations with labor attorneys (R. p. 475), confirming that TRMC sought legal advice on termination strategy, strong circumstantial evidence of retaliatory motive and malice. Each of these eight retaliatory acts raises triable questions of fact. Taken individually or as a pattern, they establish more than mere suspicion; they constitute a body of circumstantial and documentary evidence that satisfies Appellant's burden under South Carolina law and federal retaliation jurisprudence.

IV- PROCEDURAL IRREGULARITIES AND DUE PROCESS VIOLATIONS

Respondent's brief downplays procedural defects that warrant reversal:

Lack of Oral Hearing for Appellant: Defense was allowed oral argument; pro se Appellant was not.

Withholding of Discovery and last Minute Partial production before Hearing: Appellant was deprived of timely access to critical discovery materials central to his retaliation claim, including: (1) internal emails and human resources memoranda related to Appellant COVID infection and termination; and (2) documents transmitted to Dr. Samies by TRMC's Employee Health and Infection Control departments regarding Appellant's workplace exposure and resulting infection; (3) internal email and memo from Dr. Samies to anyone regarding Appellant COVID-19 and exposure and job related issues (R. pp. 232-234). Despite Judge McGee III's clear directive in Form 4 dated November 5, 2024, ordering production of this material (R. pp. 229-231), Respondent waited until the eve of the summary judgment

hearing to provide only a partial and selective disclosure (R. pp. 374-383). As of the date of this filing, Respondent remains in continuing violation of that court order (R. pp. 229-231). This pattern of delay and incomplete compliance not only undermined the discovery process but also substantially prejudiced Appellant's ability to present a full and fair opposition to summary judgment. Such conduct contravenes fundamental principles of due process and should preclude any dispositive ruling in Respondent's favor.

Furthermore, the trial court never adjudicated Appellant's duly filed November 4, 2024, Motion opposing summary judgment on the grounds of incomplete discovery (R. pp. 98-106). Despite clear notice to the court and a pending motion raising unresolved discovery issues, the court proceeded without addressing Appellant's request for relief. This omission compounded the prejudice caused by Respondent's last-minute, partial production (R. pp. 374-383) and deprived Appellant of the procedural fairness required before entry of summary judgment. By ignoring this timely and substantive motion, the trial court effectively permitted Respondent to benefit from its own noncompliance with discovery obligations. The trial court's failure to adjudicate Appellant's duly filed November 4, 2024 motion, submitted in opposition to summary judgment on the grounds of incomplete discovery, raises serious due process concerns. As the U.S. Supreme Court held in *Mullane v. Central Hanover Bank & Trust Co.*, due process demands that parties be given meaningful notice and a fair opportunity to be heard before their claims are extinguished. 339 U.S. 306, 314 (1950). Proceeding to summary judgment without addressing this pending motion deprived Appellant of that fundamental protection.

Judge Adopted Defense's Order Verbatim: The trial court adopted Respondent's draft order wholesale, without addressing Appellant's objections. The trial court adopted Respondent's proposed order verbatim without modification or substantive engagement with Appellant's

objections (R. pp.205-215) same as (R. pp. 216-228). While not per se reversible, this practice "raises serious questions about the trial judge's role as the impartial decision-maker." *Bright v. Westmoreland County*, 380 F.3d 729, 732 (3d Cir. 2004). Such procedural shortcuts are particularly troubling when the court ignores pending motions or unresolved factual disputes, undermining confidence in the fairness of the adjudicative process. These cumulative violations reflect structural unfairness and demand appellate correction. Also, Respondent's repeated characterization of Appellant's November 21, 2024, filing (R. pp. 384-412) as a "Third Memorandum" is misleading and intended to obscure the trial court's procedural error in disregarding Appellant's duly filed November 4, 2024, Motion opposing summary judgment on the grounds of incomplete discovery. As detailed in the Initial Brief, Appellant submitted an initial response on September 26, 2024 (R. pp. 93-97), just three days after Respondent's premature Motion for Summary Judgment (R. pp.90-92), with the understanding that a full memorandum would follow upon completion of discovery, including documents the court had ordered Respondent to produce. When it became clear that Respondent continued to withhold those materials as the summary judgment hearing approached, Appellant filed his November 4 Motion requesting a pause in proceedings until discovery was complete (R. pp. 98-106). The trial court never ruled on this motion, despite Appellant raising it again at the November 14, 2024, hearing (R. p. 192; lines: 21-25). Respondent, notably, never filed an opposition to the motion. Instead, both the court and Respondent disregarded Appellant's request and proceeded. Only at the hearing did the trial judge direct Appellant to submit a formal memorandum in opposition within one week, which Appellant did on November 21, 2024 (R. pp. 384-412). That memorandum, filed in direct compliance with the court's instruction, was the only comprehensive opposition submitted. Any characterization of it as a "third" or redundant

filing is inaccurate and serves merely to distract from the Respondent's failure till this day to comply with discovery obligations ordered by Judge McGee, and the trial court's oversight in failing to adjudicate Appellant's prior motion.

V- CLARIFICATION ON CAUSAL LINK AND PRETEXT

This case hinges on the resolution of disputed facts concerning motive, credibility, and intent; all quintessential issues for a jury, not a judge, to resolve at the summary judgment stage. The South Carolina Supreme Court and the United States Supreme Court have both made clear that when the plaintiff presents evidence suggesting that the employer's stated reason for termination is pretextual, summary judgment is improper.

"In evaluating pretext, a court must not substitute its own judgment for that of the jury. A plaintiffs showing that the employer's explanation is unworthy of credence is one form of circumstantial evidence that is probative of intentional discrimination." See *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147 (2000). Similarly, South Carolina courts have held: "Where the employer's stated reasons are called into question by inconsistent actions or surrounding circumstances, summary judgment is inappropriate." See *.Johnson v. J.P. Stevens & Co.*, 308 S.C. 116, 417 S.E.2d 527, 530 (1992).

Temporal Proximity and Pattern of Retaliation.

Appellant filed his workers' compensation claim through TRMC's internal claim system in early September 2021(R. pp. 422-424), immediately after being medically removed from duty following a COVID-19 infection contracted at work. Within days of asserting this protected right, a swift and escalating pattern of retaliatory actions began. While still in medical isolation, Appellant received harassing text messages from supervisors pressuring him to return to work (R. pp. 425-429). He was then coerced into completing FMLA paperwork despite being clearly ineligible under federal guidelines (R. p. 434). Multiple

physician clearances supporting his return to work with restrictions (R. p. 464; p. 473) were disregarded (R. pp. 466-471), and his leave was misclassified (R. p. 436) to preclude reinstatement. This culminated in legal threats and a pretextual termination justified under the false narrative of "leave exhaustion" (R. p. 477). The close temporal proximity of these actions to Appellant's protected activity, along with the sequence and intensity of employer responses, strongly supports a causal inference under South Carolina law. As established in *Johnson v. J.P. Stevens*, "temporal proximity and escalating adverse acts" are sufficient to establish a prima facie case under S.C. Code Ann. § 41-1-80. Here, the evidence of timing and retaliatory pattern is not merely suggestive, it is compelling.

Disputed Facts on Pretext Demand Jury Review.

TRMC's stated justification for terminating Appellant-that he exhausted all available leave and failed to meet return-to-work requirements, is both manufactured and directly contradicted by the evidentiary record. The employer unilaterally and retroactively imposed leave classifications without Appellant's consent (R. p. 436), despite ongoing medical communication (R. pp. 458-464). Moreover, TRMC repeatedly disregarded multiple clearance letters from Appellant's treating physicians, each of which affirmed his ability to return to duty with reasonable restrictions (R. p. 464; p. 473). Compounding these contradictions is the discovery of internal planning to terminate Appellant (R. p. 475) before his final medical clearance had even been submitted, revealing a predetermined outcome disguised as policy compliance. These factual inconsistencies are not merely administrative discrepancies; they are substantive credibility disputes that warrant jury evaluation. As the United States Supreme Court held in *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 148 (2000) (*a plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the*

employer unlawfully discriminated or retaliated). The logic and authority of Reeves apply squarely here: when the employer's narrative is undermined by its own conduct and documentation, summary judgment is inappropriate, and the matter must proceed to a jury.

Summary Judgment was Improper.

The trial court's decision to grant summary judgment improperly resolved these factual disputes in TRMC's favor, disregarding clear conflicts in testimony, inconsistent timelines, and evidence of procedural misconduct. At a minimum, these facts require jury determination.

Conclusion of Legal Standard.

Causation in a retaliation claim does not require a "smoking gun." It can be established by circumstantial evidence, temporal proximity, and demonstrated inconsistencies in the employer's stated reasons. The trial court erred by resolving these issues itself rather than permitting a jury to decide them.

VI- CONCLUSION AND PRAYER FOR RELIEF

The Respondent has not rebutted the core factual disputes nor justified the trial court's disregard for due process. Summary judgment was premature, unjust, and based on a one-sided record that ignored material disputes.

For the foregoing reasons, Appellant respectfully requests that this Honorable Court reverse the trial court's grant of summary judgment in favor of Respondent and remand this matter for trial by jury to resolve the genuine disputes of material fact presented in the record.

Additionally, given Respondent's ongoing noncompliance with the discovery order issued by Judge Thomas McGee III in Form 4 dated November 5, 2024 (R. pp. 229-234), despite clear judicial instruction. Appellant further prays that this Court issue an order compelling

Respondent to fully produce all outstanding discovery materials as previously ordered. This

includes, but is not limited to, internal communications, personnel and claim records, and documents exchanged with third- party agents relevant to Appellant's workplace COVID-19 exposure and subsequent termination; Production of all documents and information provided to Dr. Samies from TRMC' regarding Plaintiff's exposure and infection with COVID-19 (R. pp. 232-234).

Such remedial action is necessary to safeguard Appellant's procedural rights, ensure the integrity of the judicial process, and permit the trier of fact to reach a just determination based on a complete evidentiary record.

Appellant further prays for any such additional relief as the Court deems just and proper under the circumstances.

Respectfully submitted,

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