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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Lawton McIntosh, Circuit Court Judge

Lower Court Case No. 2022-CP-07-01079

Jerilyn Jean Vogelsang, an Individual, Appellant,

v.

Chatham Chiropractic & Integrated Health Services, LLC, a South Carolina Limited Liability Company; d/b/a Kalensky Chiropractic, Robert Kalensky, as individual and officer of Chatham Chiropractic & Health Integrated Services, LLC; Nicole Todd, an individual; and Does 1-50, inclusive, whose true names are unknown, Respondents.

Appellate Case No. 2025-001762

INITIAL BRIEF OF RESPONDENT

RUFFIN LAW FIRM, LLC
Adam Sinclair Ruffin
SC Bar No. 101350
1320 Main Street, Suite 300
Columbia, SC 29201
(803) 470-5629
adam@ruffinappeals.com

LAUGHLIN AND BOWEN, P.C.
John R.C. Bowen
SC Bar No. 791
P.O. Drawer 21119
Hilton Head Island, SC 29925
(843) 689-5700
john@laughlinandbowen.com

Attorneys for Respondents

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES..... iii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE..... 2

STANDARD OF REVIEW 3

ARGUMENT 4

1.

The circuit court correctly granted Respondents’ motion for partial summary judgment as to Appellant’s negligent and intentional infliction of emotional distress claims because there was no evidence that Appellant suffered from emotional distress..... 4

 A. The mere allegation that Appellant suffered from emotional distress is insufficient to survive a motion for summary judgment. 4

 B. Appellant failed to produce any evidence which created a genuine issue of material fact as to her negligent and intentional infliction of emotional distress claims. 6

2.

The circuit court correctly ruled that Respondent Todd was entitled to summary judgment on Appellant’s claim that she engaged in the unauthorized practice of medicine because there is no private cause of action for this claim. 9

 A. The mere allegation that Todd engaged in the unauthorized practice of medicine is insufficient to survive a motion for summary judgment. 9

 B. Appellant’s argument is not supported by legal authority and is different from the argument raised below and is therefore not preserved for appellate review. 10

 C. Appellant’s argument that there is a private cause of action for harm caused to a plaintiff by a defendant who is engaged in the unauthorized practice of medicine is meritless. 11

3.

The circuit court correctly found that Appellant failed to bring documents to her deposition because Appellant admitted to not bringing the documents to her deposition despite having been served with a subpoena requiring her to do so, and despite a circuit court judge ordering her to bring the documents to her deposition after a previous motion to compel.12

4.

The circuit court correctly found that Appellant and her Counsel improperly disrupted her testimony because the deposition transcript provides ample evidence to support this conclusion.15

CONCLUSION.....17

TABLE OF AUTHORITIES

Cases

<i>Babb v. Lee Cty. Landfill SC, LLC</i> , 405 S.C. 129, 153, 747 S.E.2d 468, 481 (2013)	6
<i>Bishop v. South Carolina Dep't of Mental Health</i> , 331 S.C. 79–86, 502 S.E.2d 78 (1998)	3
<i>Dooley v. Richland Mem'l Hosp.</i> , 283 S.C. 372, 322 S.E.2d 669 (1984)	7
<i>Ex parte Whetstone</i> , 289 S.C. 580, 347 S.E.2d 881 (1986)	14
<i>Faile v. S.C. Dep't of Juv. Justice</i> , 350 S.C. 315–24, 566 S.E.2d 536 (2002)	3
<i>Fields v. Melrose P'ship</i> , 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993)	15
<i>Gauld v. O'Shaugnessy Realty Co.</i> , 380 S.C. 548, 671 S.E.2d 79 (Ct. App. 2008)	3
<i>Glasscock, Inc. v. United States Fid. & Guar. Co.</i> , 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001)	11
<i>Hansson v. Scalise Builders of S.C.</i> , 374 S.C. 352, 650 S.E.2d 68 (2007)	7, 8
<i>Hansson v. Scalise Builders of S.C.</i> , Op. No. 2005-UP-340 (S.C. Ct. App. filed May 18, 2005)	7
<i>Hawkins v. City of Greenville</i> , 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004)	3
<i>Kinard v. Augusta Sash & Door Co.</i> , 286 S.C. 579, 582, 336 S.E.2d 465, 467 (1985)	6
<i>Kitchen Planners, LLC v. Friedman</i> , 440 S.C. 456, 892 S.E.2d 297 (2023)	3
<i>Paradis v. Charleston Cty. Sch. Dist.</i> , 433 S.C. 562, 861 S.E.2d 774 (2021)	5

<i>Rife v. Hitachi Const. Mach. Co.</i> , 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005)	3
<i>Simmons v. Tuomey Reg'l Med. Ctr.</i> , 341 S.C. 32, 533 S.E.2d 312 (2000)	5
<i>Singleton v. Sherer</i> , 377 S.C. 185–98, 659 S.E.2d 196 (Ct. App. 2008)	3, 4, 10
<i>Spence v. Spence</i> , 368 S.C. 106, 628 S.E.2d 869 (2006)	5
<i>State v. Dunbar</i> , 356 S.C. 138, 587 S.E.2d 691 (2003)	10, 14
<i>Todd v. S.C. Farm Bureau Mut. Ins. Co.</i> , 276 S.C. 284, 278 S.E.2d 607 (1981)	5, 7
Statutes	
S.C. Code § 40-9-110.....	10
S.C. Code § 40-47-200.....	12
Rules	
Rule 34, SCRCP	13
Rule 56, SCRCP	3, 5
Other	
Jean Hoefler Toal et al., <i>Appellate Practice in South Carolina</i> (3d ed. 2016).....	10, 14

STATEMENT OF ISSUES ON APPEAL

1.

Whether the circuit court correctly granted Respondents' motion for partial summary judgment as to Appellant's negligent and intentional infliction of emotional distress claims where there was no evidence that Appellant suffered from emotional distress?

2.

Whether the circuit court correctly ruled that Respondent Todd was entitled to summary judgment on Appellant's claim that she engaged in the unauthorized practice of medicine where there is no private cause of action for this claim?

3.

Whether the circuit court correctly found that Appellant failed to bring documents to her deposition where Appellant admitted to not bringing the documents to her deposition despite having been served with a subpoena requiring her to do so, and despite a circuit court judge ordering her to bring the documents to her deposition after a previous motion to compel?

4.

Whether the circuit court correctly found that Appellant and her Counsel improperly disrupted her testimony where the deposition transcript provides ample evidence to support this conclusion?

STATEMENT OF THE CASE

This is an appeal from an order partially granting the Respondent's motion for summary judgment and compelling Appellant to produce discovery.

Jerilyn Vogelsang (Appellant) filed a summons and complaint on June 16, 2022 bringing causes of action including negligent and intentional infliction of emotional distress against Chatham Chiropractic & Integrated Health Services, LLC, (Chatham), Robert Kalensky as an individual and as an officer of Chatham, and unauthorized practice of medicine against Nicole Todd—an employee of Chatham. (Summons and Complaint). The remaining causes of action are not relevant to this appeal.

Respondents filed their answer and counterclaims on October 14, 2022. Respondents brought counterclaims for breach of contract, breach of covenant of good faith and fair dealing, tortious interference with contractual/business relations, and fraudulent impersonation to obtain privileged and confidential medical records. (Answer and Counterclaim).

Respondents moved to compel discovery responses and for partial summary judgment. (Motion for Summary Judgment). The circuit court held a hearing on the motion on July 11, 2025. Appellant was represented by Allen Johnson and Respondents were represented by John Bowen. (Tr. p. 1).

The circuit court granted Respondents' motion for summary judgment as to Appellant's causes of action for negligent infliction of emotional distress and the unauthorized practice of medicine. The circuit court also granted Respondents' motion to compel discovery but did not impose sanctions on Appellant or her Counsel. (Aug. 4, 2025 Order).

STANDARD OF REVIEW

In an appeal from the granting of summary judgment, this Court “applies the same standard which governs the trial court.” *Hawkins v. City of Greenville*, 358 S.C. 280, 289, 594 S.E.2d 557, 562 (Ct. App. 2004). “Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.” *Faile v. S.C. Dep’t of Juv. Justice*, 350 S.C. 315, 323–24, 566 S.E.2d 536, 540 (2002) (citing *Bishop v. South Carolina Dep’t of Mental Health*, 331 S.C. 79, 85–86, 502 S.E.2d 78, 81 (1998)). “[T]he court must view the evidence and all inferences which can be reasonably drawn from the evidence in the light most favorable to the nonmoving party.” *Id.*

Once the moving party meets its burden of showing an absence of evidentiary support for the nonmoving party’s case, the nonmoving party “cannot simply rest on mere allegations or denials contained in the pleadings.” *Singleton v. Sherer*, 377 S.C. 185, 197–98, 659 S.E.2d 196, 203 (Ct. App. 2008). The nonmoving party must come forward with specific evidentiary support showing there is a genuine dispute for trial. *Rife v. Hitachi Const. Mach. Co.*, 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005); *see also Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (“the ‘mere scintilla’ standard does not apply under Rule 56(c). Rather, the proper standard is the ‘genuine issue of material fact’ standard set forth in the text of the Rule”).

“The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case and on which that party will bear the burden of proof at trial.” *Gauld v. O’Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008).

ARGUMENT

1.

The circuit court correctly granted Respondents’ motion for partial summary judgment as to Appellant’s negligent and intentional infliction of emotional distress claims because there was no evidence that Appellant suffered from emotional distress.

Relevant Facts

Respondents filed a motion for partial summary judgment on Appellant’s negligent and intentional infliction of emotional distress claims along with supporting memorandum and exhibits. (Mot. for Partial Summary Judgment; Memorandum in Support of Mot. for Partial Summary Judgment). Respondent pointed to Appellant’s deposition transcript in which she acknowledged that she had never sought any type of medical treatment for her emotional distress. Appellant did not file any response to the motion and did not submit any documents or exhibits to counter Respondents’ arguments to the circuit court.

At the hearing on the motion, the circuit court asked Counsel for Appellant whether Appellant had ever sought medical treatment and Counsel admitted that she had not. However, Counsel argued “that doesn’t mean she didn’t suffer emotional distress.” (Tr. p. 23, ll. 5 – 17). The circuit court granted Respondents’ motion for summary judgment on Appellant’s claims for emotional distress. (Aug. 4, 2025 Order).

Discussion

A. The mere allegation that Appellant suffered from emotional distress is insufficient to survive a motion for summary judgment.

In her brief to this Court, Appellant appears to confuse the difference between summary judgment and judgment on the pleadings. At the summary judgment stage, mere allegations are not enough. *See Singleton v. Sherer*, 377 S.C. 185, 197–98, 659 S.E.2d 196, 203 (Ct. App. 2008)

(“Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings”).

Appellant argues that because she *alleged* that she suffered from emotional distress, the circuit court erred by granting Respondents’ motion for summary judgment on this cause of action. (BOA pp. 5-7). Appellant complains that the “court essentially ruled that without medical treatment a claim for emotional distress fails as a matter of law which is error.” (BOA p. 7). As noted above, Appellant did not file any responsive pleading to Respondents’ motion for summary judgment and did not submit any documentation or exhibits to support her claim for emotional distress. Instead, Appellant sought to rely on the allegations in the complaint alone.

The only case Appellant cites to support her argument on appeal is *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 278 S.E.2d 607 (1981) (overruled on other grounds by *Paradis v. Charleston Cty. Sch. Dist.*, 433 S.C. 562, 573, 861 S.E.2d 774, 779 (2021)). *Todd* was a case involving a demurrer (judgment on the pleadings), not a motion for summary judgment. Accordingly, *Todd* is inapplicable to this case. *Compare Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006) (“In considering [a motion to dismiss the pleadings], the trial court must base its ruling solely on allegations set forth in the complaint”) *with Simmons v. Tuomey Reg’l Med. Ctr.*, 341 S.C. 32, 39, 533 S.E.2d 312, 316 (2000) (“A trial court may properly grant a motion for summary judgment when ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law’”) (quoting Rule 56(c), SCRPC).

Accordingly, Appellant's argument that the circuit court erred in granting summary judgment because she *alleged in her complaint* that she suffered emotional distress confuses the standard for summary judgment with the standard for a motion to dismiss on the pleadings and fails as a matter of law.

B. Appellant failed to produce any evidence which created a genuine issue of material fact as to her negligent and intentional infliction of emotional distress claims.

Appellant combines her arguments regarding negligent infliction of emotional distress and intentional infliction of emotional distress despite these being distinct causes of action with different elements and standards. Appellant failed to produce evidence sufficient to sustain a cause of action on either and therefore the circuit court correctly granted summary judgment as to both.

Negligent Infliction of Emotional Distress

South Carolina explicitly adopted a cause of action for negligent infliction of emotional distress in *Kinard v. Augusta Sash & Door Co.*, 286 S.C. 579, 582, 336 S.E.2d 465, 467 (1985). “[T]he damages element [in a negligence case] requires a plaintiff to establish physical injury or property damage.” *Babb v. Lee Cty. Landfill SC, LLC*, 405 S.C. 129, 153, 747 S.E.2d 468, 481 (2013). Damages for emotional distress are recoverable in a negligence case only when there is “some physical manifestation of the emotional distress.” *Id.* (citing *Dooley v. Richland Mem'l Hosp.*, 283 S.C. 372, 322 S.E.2d 669 (1984)).

Negligent infliction of emotional distress requires proof of a physical injury, e.g., a physical manifestation of emotional distress. Appellant produced no evidence to support a finding that she suffered from a physical injury or that there were physical manifestations of her emotional distress. Appellant makes no argument in her brief that she satisfied this element. Instead, Appellant merely argues that she alleged she suffered emotional distress. That is not enough to survive summary judgment and this Court should affirm the circuit court's grant of summary judgment on this cause

of action. See *Dooley v. Richland Mem'l Hosp.*, 283 S.C. 372, 375, 322 S.E.2d 669, 671 (1984) (finding that defendants were entitled to a directed verdict on negligent infliction of emotional distress claim where the plaintiffs testified that they were “upset and nervous” but did not receive any medical treatment and failed to produce any “objective evidence of physical injury”).

Intentional Infliction of Emotional Distress

In *Ford v. Hutson*, our Supreme Court adopted the cause of action known as intentional infliction of emotional distress, or outrage. 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981). Intentional infliction of emotional distress requires the plaintiff to show “severe emotional distress” that “no reasonable [person] could be expected to endure,” and “extreme and outrageous” conduct by the defendant that “exceed[s] all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized society.” *Id.*

In *Hansson v. Scalise Builders of S.C.*, our Supreme Court applied this standard to a case in which a plaintiff’s claim was based on allegations that his coworkers constantly ridiculed him with callous and vulgar remarks and gestures related to homosexuality. 374 S.C. 352, 650 S.E.2d 68 (2007). The trial court granted the defendant-employer’s motion for summary judgment on all of the plaintiff’s claims. In an unpublished, and split decision, this Court reversed the trial court’s decision as to Hansson’s intentional infliction of emotional distress claim. The majority held that the plaintiff had demonstrated a genuine issue of material fact with respect to the second (“extreme and outrageous”) element. *Hansson v. Scalise Builders of S.C.*, Op. No. 2005-UP-340 (S.C. Ct. App. filed May 18, 2005). However, the Supreme Court reversed. The Supreme Court concluded that the plaintiff had failed to produce sufficient evidence of emotional distress. His alleged emotional damages rested on testimony that he lost sleep at night and that he visited a dentist who told him he appeared to be grinding his teeth in his sleep. Even assuming that the alleged conduct

was sufficiently “outrageous,” the Supreme Court held that Hansson’s passing references to fairly ordinary symptoms were insufficient to create a jury question on the damages element of his claim for intentional infliction of emotional distress. *Hansson*, 374 S.C. at 360, 650 S.E.2d at 72.

Respectfully, the allegations made by Appellant against Respondents come nowhere close to meeting the high standards of “severe” emotional distress and “extreme and outrageous” conduct by the Respondents. The circuit court correctly found that Appellant testified at her deposition that she has never sought medical or psychological treatment for her supposed emotional distress, nor has she ever been prescribed any medications. She has neither sought nor received any medical treatment whatsoever. (Final Order p. 3). The circuit court granted summary judgment on this claim because “there is no dispute that plaintiff has neither sought nor has had any medical or psychological treatment, has no diagnosis, has not been prescribed any medication, or has any ascertainable damages resulting from any alleged intentional or negligent infliction of emotional distress.” (Final Order p. 4). The circuit court’s ruling was correct.

Appellant alleged in her complaint that she suffered emotional and physical distress and was entitled to “economic damages for the care and treatment thereof, as well as general damages for her emotional distress, inconvenience, anxiety, humiliation, stress, and pain and suffering.” (Comp. par. 98). However, Appellant acknowledged in her deposition that she has not sought any medical or psychiatric treatment whatsoever for any emotional distress, and has no bills or expenses. (Appellant’s 11/14/24 Depo. p. 89, l. 2 – 90, l. 24; Appellant’s 4/29/25 Dep. p. 193, ll. 8 – 13). Accordingly, Appellant has produced no evidence supporting her claim of emotional distress and the circuit court correctly granted summary judgment on this issue.

Appellant cannot simply rely on the allegations in her complaint but must come forward with actual evidence to support those allegations. Appellant failed to produce any such evidence and this Court should affirm the circuit court’s grant of summary judgment on this claim.

2.

The circuit court correctly ruled that Respondent Todd was entitled to summary judgment on Appellant’s claim that Todd engaged in the unauthorized practice of medicine because there is no private cause of action for the unauthorized practice of medicine and Appellant cannot circumvent this rule by attempting to transform this claim into a claim of general negligence.

Relevant Facts

Appellant did not submit any written memoranda in opposition to Respondents’ motion for summary judgment. At the hearing on the motions, the circuit court asked Counsel for Appellant whether he agreed that there was no private cause of action for the unauthorized practice of medicine. Counsel responded by saying that he was “happy to look into that.” (Tr. p. 23, l. 18 – p. 24, l. 11). The circuit court pointed out that “that is what should have been done before today.” (Tr. p. 24, ll. 12 – 13). Counsel made no argument against summary judgment on this issue. The circuit court granted summary judgment in favor of Todd because there is no private cause of action for the unauthorized practice of medicine. (Aug. 4, 2025 Order).

Discussion

A. The mere allegation that Todd engaged in the unauthorized practice of medicine is insufficient to survive a motion for summary judgment.

Appellant again confuses the standard between judgment on the pleadings and summary judgment. Appellant argues that she alleged that Todd engaged in the unauthorized practice of medicine by “controlling patient care, modifying, amending and deleting procedure and diagnosis codes without consent, [of Appellant], the treating chiropractor, and modifying, altering, and/or

del[e]ting medical records without chiropractic consent authorization or approval” and that Todd did so without being a licensed chiropractor. (BOA p. 8). Appellant also argues that she alleged in her complaint that Todd’s conduct violated section 40-9-110 of the South Carolina Code and that her conduct was a tort per se. (BOA pp. 8-9). Appellant does not allege that any patient was harmed by Todd’s supposed unauthorized practice of medicine but that she—a licensed chiropractor—was harmed by Todd. (BOA p. 9).

As in issue 1, Appellant’s sole reliance on the mere allegations asserted in her complaint is insufficient to overcome a motion for summary judgment. Appellant introduced no evidence to support the allegation that Todd engaged in the unauthorized practice of medicine and therefore the circuit court correctly granted summary judgment on this issue. *See Singleton v. Sherer*, 377 S.C. 185, 197–98, 659 S.E.2d 196, 203 (Ct. App. 2008) (“Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings”).

B. Appellant’s argument is not supported by legal authority and is different from the argument raised below and is therefore not preserved for appellate review.

Appellant concedes that there is no private cause of action for the unauthorized practice of medicine. However, Appellant argues in her brief that there is a cause of action where the unauthorized practice of medicine causes harm to a plaintiff. (BOA p. 9). Appellant did not make this argument to the circuit court and therefore this argument is not preserved for appeal. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) (“A party may not argue one ground at trial and an alternate ground on appeal”); *see also* Jean Hoefler Toal et al., *Appellate Practice in South Carolina* 185 (3d ed. 2016) (“The first step in preserving an issue for appellate review is to actually raise it to the lower court”). Appellant made no argument at all to the circuit court in

opposition to summary judgment on this issue. (Tr. p. 23, l. 18 – p. 24, l. 11). Accordingly, Appellant’s argument is not preserved for appeal and should not be considered by this Court.

Additionally, Appellant cites to no authority for her position and this Court should not consider it. *See Glasscock, Inc. v. United States 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”). Accordingly, this Court should find that this issue has been abandoned on appeal and affirm the circuit court’s grant of summary judgment.

C. Appellant’s argument that there is a private cause of action for harm caused to a plaintiff by a defendant who is engaged in the unauthorized practice of medicine is meritless.

Appellant argues for the first time in her brief to this Court that her cause of action is not one for the unauthorized practice of medicine, but instead is for “tortious injury” which resulted from the unauthorized practice of medicine. (BOA p. 9). Appellant’s position is contrary to her own complaint which states as her Eighth Cause of Action: “UNAUTHORIZED PARTICE (sic) OF MEDICINE / TORT PER SE (As Against Defendant Todd). (Comp. p. 24). In her brief to this Court, Appellant draws an obscure reference to a motorist who—while driving 90 miles-per-hour—scrapes the side of another motorist’s car. (BOA p. 9-10). Appellant’s argument, even if preserved for appeal and not abandoned on appeal, is without merit.

Even if Appellant’s allegations against Todd were true—which Respondents deny—South Carolina law does not provide for a private right of action for the unauthorized practice of medicine. While Title 40 of the South Carolina Code regulates professions, including chiropractors, and outlines the consequences for unauthorized practice, it does not grant

individuals the right to sue for damages resulting from such actions. The remedies are disciplinary actions by the Board and potential criminal penalties.

Section 40-47-200 of the South Carolina Code specifically addresses the unauthorized practice of medicine. The South Carolina Board of Medical Examiners is authorized to take disciplinary actions against licensed physicians for misconduct, not private lawsuits by individuals. Nowhere in Title 40 is there a provision granting individuals the right to sue for damages for violations. Since South Carolina Law does not provide for a private right of action, the circuit court correctly granted summary judgment to Respondent Todd on this claim.

3.

The circuit court correctly found that Appellant failed to bring documents to her deposition because Appellant admitted to not bringing the documents to her deposition despite having been served with a subpoena requiring her to do so, and despite a circuit court judge ordering her to bring the documents to her deposition after a previous motion to compel.

Relevant Facts

Appellant's deposition began on November 14, 2024. However, the deposition was suspended due to Appellant's failure to comply with the subpoena, Appellant's refusal to answer questions, Appellant's Counsel's constant interruptions, and ultimately Counsel's instructions to her not to answer certain questions. (Mem. in Support of Amended Mot. to Compel). On March 14, 2025, the circuit court granted Respondents' motions to compel and ordered that Appellant's deposition be reconvened and that she "fully comply with the subpoena previously issued for her deposition." (Mar. 14, 2025 Order on Motions). Respondents' requests for sanctions against Appellant were denied. *Id.*

Appellant's deposition was reconvened on April 29, 2025, and Appellant again refused to answer numerous questions, failed to produce a single document as required by the subpoena, and interposed formulaic objections which she read into the record from a paper in front of her, presumably given to her by her attorney. Furthermore, her testimony was constantly interrupted by her Counsel who engaged in frequent conversations with Appellant, interjected insulting and demeaning comments directed to Counsel for Respondents and Respondents personally, made speaking objections suggesting to Appellant what answers to give, disrupted the examination of Appellant, and again essentially directed her not to respond to certain questions. (Mem. in Support of Motion to Compel and for Sanctions filed on July 2, 2025, Ex. 9).

The circuit court heard Respondent's motion to compel and for sanctions at the same time it heard the motion for summary judgment. Counsel for Appellant argued that he believed Appellant had sufficiently responded to the interrogatories and the requests for production. (Tr. p. 33, ll. 8 – 16). Counsel for Appellant did not respond to Counsel for Respondents' statement that Appellant failed to bring the documents to her deposition which she was subpoenaed to bring. (Tr. p. 34, ll. 15 – 25).

The circuit court granted Respondent's motion to compel as to several specific interrogatories and requests to produce. However, the circuit court did not order sanctions and did not order Appellant to bring documents to her deposition. (Final Order p. 5).

Discussion

Appellant argues that she was not required to bring the documents that she was subpoenaed to bring to her deposition because she furnished them to Counsel for Respondents prior to the deposition. Appellant cites to Rule 34(b)(5) of the South Carolina Rules of Civil Procedure to support her position. (BOA pp. 10-11).

Appellant did not make this argument to the circuit court and therefore cannot now make this argument on appeal. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) (“A party may not argue one ground at trial and an alternate ground on appeal”); *see also* Jean Hoefler Toal et al., *Appellate Practice in South Carolina* 185 (3d ed. 2016) (“The first step in preserving an issue for appellate review is to actually raise it to the lower court”). Accordingly, this Court should not consider this issue on appeal.

Furthermore, Appellant only complains about a factual determination made by the circuit court which relates to an interlocutory discovery order—an order to compel discovery. This aspect of the circuit court’s order is not immediately appealable and should not be considered by this Court. *See Ex parte Whetstone*, 289 S.C. 580, 580, 347 S.E.2d 881, 881 (1986) (“An order directing a party to participate in discovery is interlocutory and not directly appealable”). Instead, Appellant’s options are to comply with the order and thus waive any future appeal, or refuse to comply, be held in contempt, and appeal the circuit court’s order holding Appellant in contempt. *Id.* Appellant has not yet been held in contempt for her repeated refusals to comply with discovery orders and accordingly is not in a position to appeal.

Additionally, the circuit court’s finding that Appellant failed to bring the documents she was subpoenaed to bring to her deposition is amply justified by the evidence in the record. Appellant was subpoenaed to bring documents to her first deposition. (Mem. in Support of Mot. to Compel and for Sanctions filed on December 2, 2024, Exhibit 6). After her first deposition was suspended, the circuit court ordered her to comply with the previously issued subpoena which required her to bring documents to the deposition. (Mar. 14, 2025 Order). Appellant was again subpoenaed to bring documents to her reconvened deposition. (Memo in Support of Motion to Compel and for Sanctions filed on July 2, 2025, Ex. 8).

Appellant admitted at both her initial deposition on November 14, 2024 and her reconvened deposition on April 29, 2025 that she had not brought any documents with her, despite having been subpoenaed, and despite having been ordered to bring documents to her deposition by the circuit court. (Mem. in Support of Mot. to Compel and for Sanctions filed on July 2, 2025, Ex. 9).

Should this Court decide to consider this issue, this Court should affirm the circuit court's finding that Appellant failed to comply with her deposition subpoena.

4.

The circuit court correctly found that Appellant and her Counsel improperly disrupted her testimony because the deposition transcript provides ample evidence to support this conclusion.

While Appellant included this issue in her statement of issues on appeal, she did not include any argument for it in the body of her brief. Accordingly, this issue has been abandoned on appeal and should not be considered by this Court. *See Fields v. Melrose P'ship*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993) (“An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court”).

In any event, the circuit court was clearly correct in finding that both Appellant and her Counsel improperly disrupted her testimony at her deposition. In its final order, the circuit court noted that the transcript of Appellant's deposition showed that Appellant and her Counsel made “speaking objections’ suggesting to plaintiff responses, engaged in frequent improper conversations, interjected insulting and demeaning comments concerning defendants’ counsel, refused to answer questions, interposed improper objections, and refused to respond to counsel’s questions or interposed impermissible objections.” (Aug. 4, 2025 Order p. 3).

The circuit court's finding is fully supported by Appellant's initial deposition transcript which shows that Appellant failed to comply with the subpoena, refused to answer questions,

Appellant's Counsel repeatedly interrupted, and Counsel instructed Appellant not to answer certain questions. (Mem. in Support of Mot. to Compel). The transcript of Appellant's reconvened deposition showed that she again refused to answer questions, failed to produce any documents as required by the subpoena, and interposed formulaic objections. The transcript also shows that her testimony was constantly interrupted by her Counsel who engaged in frequent conversations with Appellant, interjected insulting and demeaning comments directed to Counsel for Respondents and Respondents personally, made speaking objections suggesting to Appellant responses, disrupted the examination of Appellant, and again directed her not to respond to certain questions. (Mem. in Support of Mot. to Compel, Ex. 9).

Accordingly, even if Appellant had not abandoned this issue on appeal, there is ample support for the circuit court's conclusion and this Court should affirm.

CONCLUSION

By reason of the foregoing arguments, this Court should affirm the circuit court's granting of summary judgment as to Appellant's causes of action for negligent infliction of emotional distress, intentional infliction of emotional distress, and for the unauthorized practice of medicine. This Court should also affirm the circuit court's factual finding that Appellant failed to bring documents she was subpoenaed to bring to her deposition, and the circuit court's finding that Appellant and her Counsel improperly disrupted Appellant's deposition.

s/Adam Ruffin
Adam Sinclair Ruffin
SC Bar No. 101350
1320 Main Street, Suite 300
Columbia, SC 29201
(803) 470-5629
adam@ruffinappeals.com

John R.C. Bowen
SC Bar No. 791
P.O. Drawer 21119
Hilton Head Island, SC 29925
(843) 689-5700
john@laughlinandbowen.com

Attorneys for Respondents

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