THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Veron F. Dunbar, Circuit Court Judge

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Appellate Case No: 2026-000307

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Bruce Wilson, ....., Appellant

v.

Ennis M. Fant……....., Respondent.

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# APPELLANT'S INITIAL BRIEF

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**APPELLANT**

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## STATEMENT OF THE CASE

This is an appeal from the Order of the Circuit Court for Greenville County (Dunbar, J.) dated November 14, 2025, **GRANTED** Defendant-Respondent Ennis M. Fant's Motion to Dismiss Plaintiff-Appellant Bruce Wilson's Amended Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure (SCRCP"). The Order dismissed Appellant's claims for Defamation, Defamation Per Se, and Intentional Infliction of Emotional Distress ("IIED"). The litigation arises from Respondent's malicious and false statements, published to multiple third parties, alleging that Appellant suffered from a confirmed diagnosis of dementia and that his disruptive behavior caused changes to Greenville County Council procedures. Appellant, the founder and CEO of a nonprofit organization, alleges these statements were made with reckless disregard for the truth and with the intent to damage his reputation and livelihood. The procedural

history is relevant. Appellant filed his initial Complaint on January 26, 2024. After Respondent filed a motion to dismiss, the Circuit Court (Salvini, J.) on April 21, 2025, **GRANTED** Appellant leave to amend his Complaint and entered a sixty-day stay of discovery. Appellant filed his Amended Complaint on May 5, 2025. Respondent filed the instant Motion to Dismiss on July 11, 2025, along with a supporting memorandum and multiple affidavits obtained from witnesses during the discovery stay period. Appellant filed a detailed Memorandum in Opposition on September 16, 2025, arguing that the motion improperly relied on extrinsic evidence, raised affirmative defenses not apparent from the pleadings, and misapplied the pleading standard. A hearing was held on September 22, 2025. During the hearing, Appellant objected vigorously to the Court's consideration of the extrinsic affidavits, arguing they transformed the motion into one for summary judgment. The court took the matter under advisement and issued its formal dismissal order, on November 8, 2025, adopting Respondent's arguments without meaningful analysis of the pleading sufficiency or the procedural impropriety of considering outside evidence. Appellant filed a timely Motion for Reconsideration under Rule 59(e), SCRCP on November 17, 2025, and an Amended Motion for Reconsideration under Rule 59(e), SCRCP on November 20, 2025. The Circuit **DENIED** the Motion for Reconsideration under Rule 59(e) on February 9, 2026.

This appeal followed. Appellant contends the Circuit Court erred as a matter of law by (1) prematurely adjudicating his status as a public figure; (2) considering extrinsic evidence on a 12(b)(6) motion without conversion; (3) finding the Amended Complaint insufficiently pled defamation and actual malice; (4) dismissing a defamation claim that Respondent waived challenge to; (5) dismissing the IIED claim; and (6) granting the motion to dismiss in its entirety despite the Amended Complaint stating plausible claims for relief.

## STANDARD OF REVIEW

### A. Motions to Dismiss

In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the [circuit] court. *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 631, 699 S.E.2d 699, 703 (Ct. App. 2010). See also, *Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014) ("A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true."); *Wilkinson v. E. Cooper Cmty. Hosp., Inc*., 410 S.C. 163, 169, 763 S.E.2d 426, 430 (2014) (quoting *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009)). "In deciding whether the [circuit] court properly granted the motion to dismiss, the appellate court must consider whether the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, state any valid claim for relief." Id. "The [circuit] court and this [c]ourt on appeal must presume all well pled facts to be true." Id. at 635, 699 S.E.2d at 705 (internal quotation marks omitted).

### B. Motions to Reconsider

In South Carolina, Rule 59(e), SCRCP, motions have long been considered a vehicle to seek reconsideration of issues and arguments presented to the court. *See Elam v. S.C. Dept. of Transp*., 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). It is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court "alter or amend the judgment," but also as a vehicle to seek "reconsideration" of issues and arguments. A party usually is allowed to ask the trial court to reconsider its decision, even if it means rehashing all or part of an argument previously presented. *Elam*, 361 S.C. at 21,602 S.E.2d at 778-79. Rule 59(e) provides that a "motion to alter or amend the judgment shall be served no later than 10 days after receipt of written notice of the entry of the

order," it does not set forth a defined legal standard for reconsideration. Rule 59(e), SCRCP. The South Carolina Supreme Court has established that, "a party may wish to file such a motion when he believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Id, 361 S.C. at 24, 602 S.E.2d at 780.

## SUMMARY OF ARGUMENT

The Circuit Court's order dismissing Appellant's Amended Complaint represents a profound departure from settled South Carolina pleading standards and civil procedure. The Court committed multiple, interlocking errors that collectively require **REVERSAL** and **REMAND**.

First, and most egregiously, the Court permitted Respondent to transform a 12(b)(6) motion into a vehicle for a factual showdown. Respondent submitted contradictory affidavits procured in potential violation of a discovery stay that directly rebutted the factual allegations of the Amended Complaint. Appellant repeatedly objected that this was an improper "mini trial." The Court was obligated under Rule 12(d) to either exclude this extrinsic evidence or convert the motion to one for summary judgment. Its failure to do so and its apparent reliance on this outside evidence to find the pleadings deficient is reversible error. Second, the Court seemingly injected and relied upon the affirmative defense that Appellant is a "*public figure*." This determination is a fact-intensive inquiry that cannot be resolved on the bare pleadings, which contain no allegations of such status. By adopting Respondent's argument, the court prematurely imposed a heightened pleading standard without the requisite factual development.

Third, the Amended Complaint, when judged solely on its own well-pled facts and attached exhibits, plausibly alleges all elements of defamation and defamation per se. It identifies the false statements (dementia diagnosis), the publishers (Respondent), the recipients (Dillard, Jones,

others), the falsity, and the resulting harm. It further alleges Respondent acted with reckless disregard for the truth, which is sufficient to plead actual malice at this stage. The allegation that Respondent fabricated a serious medical condition without any verification constitutes classic defamation per se as it imputes a loathsome disease and professional unfitness. Fourth, Respondent's Motion to Dismiss failed to challenge the defamation claim based on the statements made to Bill Gibson regarding council meeting disruptions. By not raising this in his motion, Respondent waived the issue. The Circuit Court erred by **sua sponte** dismissing this claim. Fifth, the alleged conduct systematically fabricating and disseminating a debilitating mental illness diagnosis to destroy a person's reputation and livelihood is the very definition of "extreme and outrageous" conduct required for an IIED claim. The Amended Complaint details severe emotional and physical manifestations, satisfying South Carolina's stringent standard at the pleading stage.

Finally, viewing the Amended Complaint in the light most favorable to Appellant, as required, it states plausible claims for relief. The Circuit Court's order provides no analysis, merely concluding Appellant "failed to plead the necessary elements." This conclusory finding, against the detailed factual backdrop of the Amended Complaint, cannot stand. The order must be **REVERSED**, and the case **REMANDED** for further proceedings, including discovery on the factual disputes the Respondent improperly tried to short-circuit.

## ARGUMENT

### I. WHETHER THE CIRCUIT COURT ERRED BY FAILING TO EXCLUDE EXTRINSIC AFFIDAVITS OR CONVERT THE MOTION TO SUMMARY JUDGMENT AS REQUIRED BY THE CONVERSION PROVISION OF RULE 12(B), SCRCP.

#### A. The Strict "Four Corners" Rule Bars Consideration of Extrinsic Evidence on a 12(b)(6) Motion. The Standard for a Rule 12(b)(6) Motion Is Sacrosanct.

The trial court must base its ruling solely on allegations set forth in the complaint. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (emphasis added). This foundational principle exists to separate the distinct functions of a motion to dismiss and a motion for summary judgment. At the pleading stage, the court's role is narrow: to determine whether, assuming the truth of all factual allegations and drawing every reasonable inference in the plaintiff's favor, the complaint states a legally cognizable claim. *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 416 (Ct. App. 2003). The court may consider documents attached to the complaint or incorporated by reference, as they are deemed part of the pleading. *See Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 166 (4th Cir. 2016). It may not, however, consider "extrinsic evidence," such as affidavits, exhibits, or testimony that contradict, challenge, or supplement the pleaded facts. *See, e.g.*, 5A C.J.S. *Appeal and Error* § 1000 (2024); *Paradis v. Charleston Cnty. Sch. Dist.*, 424 S.C. 603, 613–14, 819 S.E.2d 147, 153 (Ct. App. 2018).

***The last sentence of Rule 12(b), SCRCP, provides the explicit and mandatory procedure when such extrinsic evidence is introduced:***

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not ***excluded*** by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, SCRCP, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56, SCRCP.

This rule serves critical procedural justice purposes: (1) it prevents defendants from using a motion to dismiss as a Trojan horse to introduce contested evidence and obtain a premature merits-based dismissal; (2) it ensures that factual disputes are resolved only after the parties have had the full benefit of discovery, including depositions, document production, and the right to cross-examine affiants; and (3) it guarantees litigants notice and a meaningful opportunity to

present all countervailing evidence before a dispositive ruling. To allow a court to consider contradictory affidavits on a 12(b)(6) motion "converts the motion to dismiss into a motion for summary judgment." *Paradis*, 424 S.C. at 614, 819 S.E.2d at 153.

### B. Defendant's Motion and Argument Were Replete with Extrinsic Evidence and Factual Contests.

Respondent's Motion to Dismiss was not a pure challenge to legal sufficiency; it was a factual assault disguised as a pleading motion. (Mot. to Dismiss pp. 7–8, Lines 2–25; Lines 1–16; ROA___). The motion and its supporting memorandum were built upon a foundation of extrinsic evidence, primarily new, contradictory affidavits from Jack Logan and State Representative Chandra Dillard. (Memo in Supp., pp. 4–5, 10; Mot. to Dismiss, Lines 10, 13–15; ROA___). These affidavits were not part of, attached to, or referenced in the Amended Complaint. They were classic "matters outside the pleadings."

The affidavits created a direct "swearing contest" on the central factual issue: whether Fant published the defamatory text. The Logan affidavit **attached to the Amended Complaint** states Rep. Dillard informed him she received Fant's text claiming Wilson had dementia. (Am. Compl., Logan Aff. ¶ 3; ROA___). The Logan affidavit **attached to Fant's motion** states the opposite: "**did** she inform me that Ennis Fant had sent a text message or in any way insinuated that Mr. Fant stated Bruce Wilson had been diagnosed with dementia." (Def. Ex., Logan Aff. ¶ 7; ROA___). This is not a subtle nuance; it is a diametric factual contradiction that goes to the very heart of the publication element.

Respondent's counsel centered his entire oral argument on this extrinsic evidence, explicitly asking the court to find facts based on it:

> **On the non-existence of the text:** "The chief argument as to why this case should be dismissed, your Honor, is **because** no one has ever seen a … this alleged written statement. The Plaintiff has never seen it."

(Tr. p. 7, Lines 23–25; ROA___).

> **On the credibility of the new affidavits:** "We have presented to you two affidavits, your Honor. One from **Representative** [Chandra] Dillard, and one from … Jack Logan. Both of those individuals … simply state that this text message never occurred."
> (Tr. p. 8, Lines 9–13; ROA___).

> **On drawing a factual conclusion:** "The fact that no one has ever seen it is **proof** that it never existed and it never occurred."
> (Tr. p. 10, Lines 2–4; ROA___).

***Appellant's timely and precise objections highlighted the procedural violation:***

> "Your Honor, he's putting in … this is about the complaint. He's having a mini trial. This is not a summary judgment; this is a motion to dismiss. He's already told this court about affidavits that are not part of my pleadings."
> (Tr. p. 10, Lines 7–12; ROA___).

> "He's trying to have a mini trial. He's asking this court to weigh evidence at a motion to dismiss, and that's not allowed." (Tr. p. 10, Lines 16–19; ROA___).

Furthermore, this extrinsic evidence was arguably procured through improper means, in violation of the court's own discovery stay. Appellant's opposition memorandum alleges that during the 60-day stay ordered on April 21, 2025, Respondent's agent contacted witness Jack Logan, falsely represented the case had been dismissed, and met with him on July 8, 2025, to secure the contradictory affidavit. (Pl. Mem. Opp., p. 2; ROA__). This allegation, while not yet proven, starkly illustrates the profound unfairness of allowing such ex parte, pre-discovery evidence to form the basis for dismissing a complaint. It demonstrates the very abuse Rule 12(b)'s conversion mandate is designed to prevent.

### C. The Circuit Court Erred by Failing to Either Exclude the Extrinsic Evidence or Convert the Motion, Thereby Resolving Factual Disputes Without Rule 56 Protections.

Confronted with a motion saturated with extrinsic evidence and clear, correct objections from Appellant, the Circuit Court was presented with a **binary choice** under Rule 12(b):

**(1) Exclude** the affidavits that is, strike them or affirmatively state they will not be considered and decide the motion based solely on the Amended Complaint's allegations; or

**(2) Convert** the motion to one for summary judgment under Rule 56, provide explicit notice to the parties, and allow a reasonable opportunity for both sides to submit all pertinent Rule 56 materials, including conducting discovery.

***The court did neither.***

Its handling of the issue was procedurally opaque and substantively erroneous. While the court verbally acknowledged Appellant's "four corners" objection (Tr. p. 10, Lines 20–22; ROA___), it did not sustain it, strike the affidavits, or order them excluded. Instead, it allowed Respondent to continue weaving the affidavits into the heart of his argument. The court's statement, "I'll look at the complaint **as well as the basis for your motion**," (Tr. p. 10, Lines 22–23; ROA___) was a critical misstep. The "basis" for Respondent's motion was the extrinsic evidence. By considering that "basis," the court necessarily considered the extrinsic evidence and, at a minimum, **failed to exclude it**. The court's failure to exclude is fatal. Under Rule 12(b), the trigger for mandatory conversion is **presentation + non-exclusion**. The rule does not require proof that the court actually *relied* on the extrinsic materials; it requires only that they were "presented to and not excluded by the Court." Here, they were presented. They were never excluded. The court's silence on the affidavits its failure to rule on Appellant's objection means the affidavits remained "not excluded." Conversion was therefore **mandatory**.

This violation is cemented by the court's final Order, which notes, "Each party has submitted a supporting memorandum stating their respective positions and legal arguments." (Order p. 2; ROA___). Respondent's "position," as laid out in his memorandum and at the hearing, was entirely dependent on the new affidavits. The order does not state that the affidavits were disregarded, nor does it reflect any ruling excluding them. This Court in *Paradis* was unequivocal:

"Because the circuit court considered the emails attached to the [defendant's] motion to dismiss, it should have treated the motion as one for summary judgment." 424 S.C. at 614, 819 S.E.2d at 153. The same logic applies with even greater force here, where the extrinsic materials were not merely appended emails, but contradictory sworn statements procured under questionable circumstances and made the centerpiece of Respondent's argument.

***This error was not harmless. It was outcome-determinative.***

The core of Respondent's motion was that the defamatory statement was a fiction because his new affidavits said so. Had the court properly **excluded** the affidavits, the motion would have stood or fallen on the legal sufficiency of the Amended Complaint's allegations. Those allegations, as demonstrated in Section III, are plainly sufficient to state a claim for defamation. The motion to dismiss would have been denied. Instead, by leaving the affidavits in the record and never excluding them, the court effectively allowed Respondent to obtain a **dismissal on factual grounds** without any of the procedural protections of Rule 56 without discovery, without the opportunity to cross-examine the affiants, and without the chance to submit counter-affidavits or other evidence. This "converts the motion to dismiss into a motion for summary judgment," *Goines*, 822 F.3d at 166, but without providing any of Rule 56's safeguards. It is the antithesis of a proper Rule 12(b)(6) analysis and constitutes reversible error.

The Circuit Court's failure to adhere to the strictures of Rule 12(b) resulted in an order that is fundamentally inconsistent and legally unsustainable. The court expressly began its analysis by reciting the controlling principle that a ruling must be based "solely on allegations set forth in the complaint." *Doe*, 373 S.C. at 395 (Order p. 1; ROA___). Having correctly stated the law, the court then proceeded to **ignore it** by permitting Respondent's motion to be built on and argued with extrinsic affidavits that were never excluded. A court cannot, as a matter of logic or law, profess

fidelity to the "four corners" rule while simultaneously allowing a party to wage a factual battle with materials from outside those corners. This self-contradiction strips the dismissal order of coherent legal reasoning and demonstrates that the court applied an improper standard. Where a lower court's application of the law so blatantly diverges from its own stated analysis, its judgment cannot stand. The judgment must be **REVERSED**, and the case **REMANDED** with instructions that any factual challenge to the complaint be raised if at all through a properly noticed motion for summary judgment after the close of discovery, with all the procedural protections Rule 56 affords.

## II. WHETHER THE CIRCUIT COURT ERRED, ON A RULE 12(B)(6) MOTION, BY EFFECTIVELY DETERMINING APPELLANT WAS A PUBLIC.

### A. The Applicable Law Requires a Fact-Intensive Inquiry Inappropriate for a Rule 12(b)(6) Motion.

The Court's ruling necessarily rests upon an *IMPLICIT* factual and legal determination that Plaintiff is a public figure. In granting the motion in its entirety, the Court adopted Defendant's argument that the claim failed because Plaintiff did not adequately plead **actual malice**, an element required only in cases involving public figures. Because the Order does not state Plaintiff is *not* a public figure and does not identify any other basis for the dismissal that would apply to a private figure, it is clear the Court accepted and applied the legal standard applicable to public figures. Accordingly, by granting Defendant's motion on this ground, the Court functionally and dispositively treated Plaintiff as a public figure for purposes of its 12(b)(6) analysis

In South Carolina, a plaintiff who is a "public official" or "public figure" must prove defamation by clear and convincing evidence and must demonstrate the defendant acted with "actual malice" that is, with knowledge that the statement was false or with reckless disregard for the truth. *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 467, 629 S.E.2d 653, 668 (2006) (citing *N.Y. Times Co. v. Sullivan*, 376 U.S. 254 (1964)). However, the threshold determination of

whether a plaintiff qualifies as a public figure is "an affirmative defense upon which the defendant bears the burden of proof." *Cruce v. Berkeley Cnty. Sch. Dist.*, 442 S.C. 1, 8, 896 S.E.2d 765, 768 (2024). It is not an element of the plaintiff's claim to be disproven in the complaint.

Critically, the public figure determination is "a fact-intensive inquiry." *Id.* at 9, 896 S.E.2d at 769. South Carolina courts look to factors such as whether the plaintiff "voluntarily injected himself into a public controversy" or "assumed a role of special prominence in the affairs of society." *Elder v. Gaffney Ledger*, 341 S.C. 108, 115, 533 S.E.2d 899, 903 (2000). This analysis requires examining "the nature and extent of an individual's participation in the particular controversy giving rise to the defamation." *Cruce*, 442 S.C. at 8, 896 S.E.2d at 768. Such an examination inherently relies on developed facts regarding the depth of the plaintiff's fame, his access to media channels, and the nature of the specific controversy all matters far beyond the four corners of a complaint. Federal courts in this district have consistently held that resolving public figure status at the pleading stage is improper. As the District of South Carolina noted, the question of whether a plaintiff is a public figure "frequently requires factual development" and is "more appropriately addressed at the summary judgment stage." *Leask v. Robertson*, 589 F. Supp. 3d 506, 520 (D.S.C. 2022). Dismissal based on an affirmative defense is only appropriate "when the defense clearly appears on the face of the pleading." *Richmond v. Benchmark Constr. Corp.*, 347 S.C. 572, 576, 557 S.E.2d 92, 94 (Ct. App. 2001). The public figure defense is almost never apparent from the complaint alone.

### B. The Amended Complaint Contains No Allegations That Would Support a Public Figure Determination.

Appellant's Amended Complaint alleges he is the CEO of a nonprofit organization that advocates for marginalized communities. (Am. Compl. Line 5; ROA___). It alleges he seeks grants from public officials. (Am. Compl. Line 6; ROA___). These allegations describe a private citizen

engaged in community advocacy and nonprofit work. They do not allege that Appellant "thrust himself into the vortex of [a] public issue," or that he "engaged the public's attention in an attempt to influence its outcome." *Cruce*, 442 S.C. at 9, 896 S.E.2d at 769. There is no allegation of pervasive fame or notoriety, nor that he has regular access to the media to counteract criticism. Respondent's entire public figure argument was imported from outside the pleadings. His memorandum references Appellant's purported "over twenty-five (5) years" as a "community activist" and that he "has filed to run for public office on numerous occasions." (Def. Mem. Supp. Mot. Dismiss, p. 3; ROA__). None of these facts are in the Amended Complaint. They are extrinsic assertions used to bootstrap an affirmative defense into a pleading deficiency.

### C. The Circuit Court Erred by Adopting and Relying on Defendant's Public Figure Argument Without Analysis.

The transcript reveals that Respondent's counsel argued extensively that Appellant was a public figure and thus had to meet the "**actual malice**" standard. (Tr. p. 16, Lines. 2-12-; p. 17, Lines. 1-3; ROA___). Appellant objected, correctly stating:

> "What type of public figure am I, your Honor? General, limited? That's not in his motion… this court would have to do evidence weighing, fact finding, to determine what type of public figure I am. But once again, we're at a motion to dismiss that would be outside the pleadings. There's nothing in my pleadings talks about me being a public figure, nothing." (Tr. p. 16, Lines. 14-22; ROA__).

Despite this clear objection, the Circuit Court's order implicitly adopted the public figure framework. The court's legal standard citation includes a block quote defining defamation elements but provides no analysis rejecting the public figure argument. (Order p. 2). By dismissing the complaint for failure to plead the necessary elements after Respondent had argued extensively that the "necessary elements" included a heightened showing of actual malice due to public figure

status the court effectively ratified Respondent's improper argument. This was error. Even if Appellant were eventually determined to be a public figure, the pleading standard for actual malice at the 12(b)(6) stage is one of allegation, not proof. The Circuit Court's failure to properly analyze this threshold issue, and its apparent application of a heightened scrutiny based on an extraneous defense, constitutes reversible error requiring remand.

## III. WHETHER THE AMENDED COMPLAINT PLAUSIBLY ALLEGED ALL ELEMENTS OF DEFAMATION AND DEFAMATION PER SE, INCLUDING ACTUAL MALICE, BY ALLEGING RESPONDENT PUBLISHED A FALSE DEMENTIA DIAGNOSIS WITH RECKLESS DISREGARD FOR THE TRUTH.

### A. The Well-Pled Facts Establish a Plausible Claim for Defamation.

The Circuit Court's dismissal of the defamation claim reflects a fundamental misunderstanding of both the elements of the tort and the procedural posture of a Rule 12(b)(6) motion. Viewing the Amended Complaint's factual allegations as true as the court was required to do reveals a classic and well-pled defamation case.

#### 1. The Complaint Alleges a False and Defamatory Statement of Fact.

The core allegation is that Fant told multiple individuals that Wilson had a "confirmed diagnosis" of dementia. (Am. Compl. Line 8; ROA___). South Carolina law defines a defamatory statement as one that "tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). An accusation of a debilitating, degenerative mental illness like dementia is perniciously harmful to reputation. It implies cognitive decline, unreliability, and instability traits that would inevitably lower Wilson in the estimation of colleagues, donors, and public officials, and deter them from associating with him or his nonprofit. The statement is actionable as one of fact, not opinion, because it asserts a specific, verifiable medical condition ("confirmed diagnosis"). *See Holtzscheiter*, 332 S.C. at 511 (distinguishing

between fact and opinion in defamation context). Wilson expressly alleges this factual assertion is false. (Am. Compl. Line 12; ROA__). At the pleading stage, no more is required.

**2. The Complaint Specifically Alleges Unprivileged Publication to Multiple Third Parties.**

Publication is satisfied by communication to a single third party. *Baugus v. Wessinger*, 303 S.C. 412, 416, 401 S.E.2d 169, 171 (1991). Here, the Amended Complaint alleges publication to at least five identified individuals: State Representatives Chandra Dillard and Wendell Jones (via text), community leaders Derrick Quarles and Lisa Bailey (via rumor flowing from the original publication), and Bill Gibson (via oral statement at a public event). (Am. Compl. Lines 8, 11, 13, 21; ROA___). The attached affidavit of Jack Logan corroborates the publication chain, detailing how Rep. Dillard told him about Fant's text and showed it to Rep. Jones. (Logan Aff. Lines 2-3; ROA___). These are not "conclusory" allegations; they are specific identifications of the publisher, the recipients, the medium, and, in some instances, the precise words used. Fant's argument that publication is not adequately pled because "no one has seen" the text message is an evidentiary challenge, not a pleading deficiency. It asks the court to resolve a factual dispute whether the text was sent and received which is categorically improper on a motion to dismiss. *Gentry*, 337 S.C. at 5.

**3. The Complaint Adequately Pleads Fault, Encompassing Both Negligence and Reckless Disregard.**

The element of "fault" varies depending on the plaintiff's status. For a private figure alleging a matter of private concern (like personal health), negligence suffices. *Erickson*, 368 S.C. at 465. The Amended Complaint's allegation that Fant disseminated a damaging medical diagnosis "without any effort to obtain any clarification, substantiating, or obtain any credible evidence" (Am. Compl. Line 9) is a textbook allegation of negligence the failure to exercise reasonable care

before speaking. This alone satisfies the fault element for a private-figure plaintiff. Furthermore, the Complaint pleads facts that go beyond negligence and support a finding of "actual malice" (knowledge of falsity or reckless disregard for the truth), which would be the applicable standard if Wilson were deemed a public figure. As detailed in Section C below, the complete lack of verification for such a serious claim, coupled with allegations of malicious intent and subsequent cover-up conduct, pleads reckless disregard. At the 12(b)(6) stage, the plaintiff is not required to choose his legal theory; he must only plead facts supporting relief under *any* theory. *Flateau*, 355 S.C. at 202. The pleaded facts support a finding of fault under both the negligence and actual malice standards.

#### 4. The Complaint Alleges Actionable Harm, and Harm is Presumed for the Per Se Claim.

The fourth element is disjunctive: the statement must be either (a) actionable irrespective of special harm (defamation per se), or (b) cause special harm. *Murray*, 344 S.C. at 139. The dementia accusation is defamation per se, making it actionable without proof of special harm. *Infra* Section B. Nevertheless, the Complaint goes further and details special harm: damage to Wilson's reputation and standing with elected officials critical to his nonprofit's funding (Am. Compl. Lines 6, 18, 24), the significant expenditure of time and resources to combat the falsehoods (Am. Compl. Line 18; ROA___), and the severe emotional distress and its physical manifestations (Am. Compl. Line 20; ROA___). These allegations of special damages are more than sufficient. The Circuit Court's conclusion that Wilson "failed to plead the necessary elements" is contradicted by a plain reading of the pleading.

### B. The Allegations Regarding a Dementia Diagnosis Constitute Defamation Per Se, Presuming Damages and Negating Any Requirement to Plead Special Harm with Specificity.

The Circuit Court's dismissal is particularly erroneous concerning the defamation per se claim because it ignores the established legal doctrine that certain categories of defamation are so inherently damaging that the law presumes injury.

**1. Accusation of a Loathsome Disease.**

South Carolina has expressly recognized that imputing a "loathsome disease" is defamation per se. *Holtzscheiter*, 332 S.C. at 511. While the *Holtzscheiter* footnote references historical examples like leprosy, the principle is based on the disease's "effect upon social interaction." *Id.* at 511 n.7. Modern courts and the Restatement recognize that the category includes "mental illness." Restatement (Second) of Torts § 572 cmt. b (1977). Dementia is not merely a physical ailment; it is a profoundly stigmatized cognitive and mental disorder that carries a "social stigma" and would cause "others to avoid the plaintiff." *Id.* The accusation implies not just illness, but a loss of rational capacity, self-control, and competence traits that would understandably cause others to shun or avoid the individual in social, professional, and community settings. This allegation alone qualifies the statement as defamation per se.

**2. Imputation of Unfitness in One's Trade or Profession.**

The per se category for professional unfitness is "broadly construed" to apply to any occupation. *See* David A. Anderson, *Reputation, Compensation, and Proof*, 25 WM. & MARY L. REV. 747, 778 (1984). The allegation must "touch the plaintiff in his special trade or occupation." Here, Wilson is pleaded as the founder and CEO of a nonprofit. (Am. Compl. Line 5; ROA___). His role requires sound judgment, mental acuity, financial stewardship, and the trust of donors and government partners. An accusation of a confirmed dementia diagnosis directly and powerfully impugns these very qualities. It suggests he is mentally incapable of fulfilling his core duties. The Complaint explicitly links the defamation to this harm, alleging the statements "call into question

the plaintiff's ability to operate his nonprofit organization." (Am. Compl. Line 36; ROA___). This is a straightforward allegation of professional unfitness.

#### 3. Legal Effect: Presumption of General Damages.

The practical and procedural importance of the per se classification cannot be overstated. "In a defamation action that is actionable per se, general damages are presumed and need not be proven by the Plaintiff." (Am. Compl. Line 34 (quoting *Constant*, 316 S.C. at 91); ROA___). This presumption is a substantive rule of law that fundamentally alters the plaintiff's pleading burden. *See* Robert D. Sack, *Sack on Defamation* § 2:8.2 (5th ed.). The plaintiff is relieved of the requirement to plead or prove specific economic loss at the outset. The Circuit Court's dismissal for failure to adequately plead damages is, therefore, a clear legal error when applied to the per se claim. The court imposed a requirement (detailed pleading of special harm) that South Carolina law expressly disclaims for this category of defamation.

## IV. WHETHER THE CIRCUIT COURT ERRED BY DISMISSING THE DEFAMATION CLAIM BASED ON THE STATEMENTS TO BILL GIBSON, AS DEFENDANT WAIVED ANY CHALLENGE TO THIS CAUSE OF ACTION BY FAILING TO ADDRESS IT IN HIS MOTION TO DISMISS.

### A. A Motion to Dismiss Must State with Particularity the Grounds for Dismissal.

Rule 7(b)(1), SCRCP, requires that a motion "state with particularity the grounds therefor." Rule 12(b) states that a motion asserting the defense of failure to state a claim "shall be made before pleading if a further pleading is permitted." The purpose of these rules is to give fair notice to the opposing party of the basis for the challenge so it may be properly opposed. A motion to dismiss that fails to challenge a specific cause of action or allegation within a complaint effectively waives any challenge to that part of the pleading. *See Richmond*, 347 S.C. at 576, 557 S.E.2d at 94 (dismissal based on affirmative defense only appropriate when defense "clearly appears on the face of the pleading").

### B. Defendant's Motion Failed to Challenge the Gibson-Related Allegations.

Appellant's Amended Complaint contains a distinct set of factual allegations related to statements made by Respondent to Bill Gibson at a community event on January 18, 2024. (Am. Compl. Lines 21-25; ROA___). Respondent is alleged to have told Mr. Gibson and others that Appellant's disruptive behavior caused the Greenville County Council to change its public comment rules. (Am. Compl. Line 21; ROA___). This is pleaded as part of the "pattern" of defamatory conduct. (Am. Compl. Line 25; ROA__). It is incorporated into the First Cause of Action for Defamation. (Am. Compl. Line 27).

Respondent's Motion to Dismiss is utterly silent on these allegations. The motion states only: "Plaintiff fails to state a claim for defamation and defamation per se against Fant… because Plaintiff failed to plead Fant published a false and defamatory statement." (Mot. Dismiss, p. 1-2; ROA___). It contains no specific reference to the Gibson event or the "disruptive behavior" statement. The supporting memorandum mentions the Gibson affidavit only in passing, calling it "completely unrelated, irrelevant, and immaterial to the facts of Plaintiff's Amended Complaint." (Def. Mem., p. 3; ROA___). It later devotes a section to arguing the statement was not defamatory, but this is a legal argument buried in a memorandum, not a ground stated in the motion itself. (Def. Mem., pp. 6-7; ROA___). A party cannot use a memorandum to expand the grounds of a motion that were not stated with particularity in the motion itself. *See S.C. R. Civ. P. 7(b)(1).

Appellant highlighted this waiver at the hearing: "In my opinion, because it is not in their motion to dismiss, the Court could look at their motion to dismiss. That particular claim was waived:

> "They have not filed anything to challenge that. It's not in their motion."
> (Tr. p. 20, Lines. 21-24; ROA___).

> "It's talked to nothing about my all the claims dealing with a… statement that was made to Mr. Gibson, which is a separate claim. So I do believe that is waived…"
> (Tr. p. 20, Line 25 –; p. 21, Line. 2; ROA___).

### C. The Circuit Court Impermissibly Raised and Decided a Waived Issue Sua Sponte.

Despite the waiver, the Circuit Court's order dismissed the *entire* defamation claim. By doing so, it necessarily dismissed the defamation claim based on the Gibson statement, even though Respondent's motion failed to challenge it. A court may, in rare instances, dismiss a claim sua sponte for failure to state a claim, but it must provide the plaintiff with notice and an opportunity to respond. *See, e.g., Carroll v. Prof'l Ins. Corp.*, 355 S.C. 125, 584 S.E.2d 365 (2003). Here, Appellant did respond in his opposition memorandum, arguing the claim was sufficient and, alternatively, waived. The court provided no analysis of why the Gibson-based claim failed as a matter of law.

On the merits, the statement to Gibson is plausibly defamatory. It accuses Appellant of disruptive conduct so severe it necessitated a change in government procedure. It implies a lack of respect for civic order and an inability to engage constructively in public discourse traits harmful to a community advocate's reputation. The Complaint alleges it is false (Am. Compl. Line 23; ROA___) and provides a basis for that falsity (no misdemeanor charges, FOIA request response). This is sufficient to state a claim. By dismissing a claim that was not properly challenged by the motion, the Circuit Court deprived Appellant of fair notice and an opportunity to be heard on that specific issue, constituting reversible error.

## V. WHETHER THE AMENDED COMPLAINT ADEQUATELY STATED A CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BY ALLEGING EXTREME AND OUTRAGEOUS CONDUCT CAUSING SEVERE DISTRESS.

To state a claim for IIED, a plaintiff must allege: "(1) the defendant intentionally or recklessly inflicted severe emotional distress; (2) the conduct was 'extreme and outrageous'; (3) the defendant's actions caused the distress; and (4) the emotional distress was 'severe.'" *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007). While proving these elements at trial is "rigorous," at the 12(b)(6) stage a plaintiff need only allege facts that, if true, would satisfy them. *Id.* at 357. The Amended Complaint alleges Respondent, a public official, deliberately fabricated a diagnosis of dementia a stigmatizing, debilitating mental illness and published it to Appellant's professional contacts to destroy his reputation and derail his nonprofit work. (Am. Compl. Lines 8-9, 11, 20, 44; ROA___). This is not mere insult but a malicious campaign of character assassination exploiting social stigma, which can be regarded as "utterly intolerable in a civilized community." *Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981). Respondent's attempt to recast this as private messaging mischaracterizes the gravamen of the claim.

The Amended Complaint pleads specific, severe manifestations of distress directly caused by Respondent's actions: "severe and debilitating emotional distress," "chronic anxiety," "persistent insomnia," "panic," an inability to focus, strained relationships, physical symptoms (weight loss, hypertension), and treatment for acute stress disorder. (Am. Compl. Line 20; ROA___). These particularized allegations of disrupted life function and necessary medical intervention suffice to plead "severe" distress. The Circuit Court's conclusory finding to the contrary, without analysis, was error. (Order p. 3; ROA___).

## VI. WHETHER THE CIRCUIT COURT ABUSE ITS DISCRETION BY DENYING PLAINTIFF'S RULE 59(E) MOTION FOR RECONSIDERATION?

A trial court's denial of a Rule 59(e), SCRCP, motion is reviewed for an abuse of discretion. *Bowers v. Bowers,* 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991). An abuse of discretion

occurs when the ruling is controlled by an error of law or rests on factual conclusions without evidentiary support. Id. Rule 59(e) motions are properly granted to correct manifest errors of law or fact or to address issues the court overlooked or misapprehended. *Cumberland v. State Farm Mut. Auto. Ins. Co.,* 336 S.C. 266, 519 S.E.2d 347 (1999); *In re Timmerman*, 331 S.C. 455, 502 S.E.2d 920 (Ct. App. 1998). Here, the circuit court abused its discretion by denying reconsideration without addressing threshold legal errors that controlled the dismissal of the action. The summary denial left uncorrected procedural and substantive defects that rendered the original dismissal legally infirm.

### A. Failure to Address the Rule 12(b) Procedural Error

Appellant's Rule 59(e) motion squarely identified the court's failure to comply with Rule 12(b), SCRCP. Respondent's Rule 12(b)(6) motion relied on affidavits extrinsic to the pleadings and directly contrary to Appellant's factual allegations. Appellant objected to this procedure in briefing and at oral argument. The dismissal order did not rule on the objection[1], did not exclude the affidavits, and did not convert the motion to one for summary judgment.

South Carolina law is unequivocal: when matters outside the pleadings are considered, the court must either exclude them or convert the motion and afford the parties the procedural protections of Rule 56. *Paradis v. Charleston County School District,* 424 S.C. 603, 819 S.E.2d 147 (Ct. App. 2018). The court's failure to do either was a legal error, not a discretionary judgment. Rule 59(e) exists precisely to allow a trial court to correct such oversights. By denying reconsideration without addressing the Rule 12(b) violation, the court allowed a procedurally defective ruling to stand. A refusal to correct a controlling legal error constitutes an abuse of discretion. *Bowers v. Bowers,* 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991).

[1] **THE COURT**: All right. I'll note your objection. I'll go through the file very carefully. You gentlemen have given me a lot to read. (trans p. 18, Lines 19-21; ROA)

### B. Failure to Rule on the Threshold Public-Figure Issue

The Rule 59(e) motion also identified the court's failure to decide whether Appellant was a public or private figure, a threshold issue that determines the applicable standard of fault in a defamation action. Respondent's motion to dismiss depended entirely on the assertion that Appellant was required to plead actual malice. The dismissal order adopted that heightened pleading requirement without explaining why it applied. A court cannot assess the sufficiency of a defamation complaint without first determining the governing legal standard. The failure to resolve that issue is a manifest error of law. Appellant expressly asked the court to rule on this question in the motion for reconsideration. The court's denial, again without analysis, left the parties without guidance as to what standard governs the claim and effectively insulated the dismissal from meaningful appellate review. South Carolina courts recognize that Rule 59(e) is designed to address precisely this situation where a party contends the court failed to rule on a properly presented legal issue. *Elam v. South Carolina Department of Transportation,* 361 S.C. 9, 602 S.E.2d 772 (2004).

Finally, the Circuit Court's dismissal order rested on unresolved procedural and substantive questions that were outcome-determinative. Appellant's Rule 59(e) motion identified those errors and requested rulings necessary to ensure the case was decided under the correct legal framework. The Court's unexplained refusal to address those issues was controlled by errors of law and therefore constituted an abuse of discretion. Reversal and remand are required so that Appellant's claims may be evaluated under the proper procedural and constitutional standards.

## CONCLUSION

The Circuit Court's order of dismissal should be reversed. The Court erroneously: (1) resolved the fact-intensive public-figure defense on a motion to dismiss; (2) considered extrinsic

affidavits in violation of Rule 12(b); (3) applied an improper pleading standard to the defamation allegations; (4) **sua sponte** dismissed an unchallenged claim; (5) overlooked the sufficiently pled IIED claim; and (6) dismissed a factually detailed Amended Complaint that states plausible claims for relief. For these reasons, Appellant respectfully requests that this Court **REVERSE** the order, reinstate the Amended Complaint, and **REMAND** for further proceedings.

Respectfully submitted,

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February 13, 2026
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Veron F. Dunbar, Circuit Court Judge

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Appellate Case No: 2026-000307

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Bruce Wilson, ....., Appellant

v.

Ennis M. Fant……..……....., Respondent.

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**CERTIFICATE OF SERVICE**

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I hereby certify that on February 13, 2026, I served a copy of Appellant's Initial Brief via United States Mail, postage prepaid, and email addressed to:

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