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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Vernon F. Dunbar, Circuit Court Judge

Appellate Case No. 2026-000307

Bruce Wilson, ……., Appellant,

v.

Ennis M. Fant, …….., Respondent.

INITIAL BRIEF OF RESPONDENT

Respectfully submitted,

/s/ Austin D. Nichols
Austin D. Nichols, Esq.
J. Todd Rutherford, Esq.
RUTHERFORD LAW FIRM
1315 Blanding Street
Columbia, South Carolina 29201
Phone No.: (803) 256-3003
Fax No.: (803) 256-9698
austin@rutherford.law
todd@rutherford.law
Attorneys for Respondent

This the *25th* day of March 2026.

TABLE OF AUTHORITIES

CASES

STATEMENT OF THE ISSUES

1. Whether the Circuit Court committed an error of law in granting Respondent's Motion to Dismiss.

STATEMENT OF THE CASE

This is an appeal from a Circuit Court Order dismissing Bruce Wilson's ("Appellant") Amended Complaint with prejudice. Appellant filed suit against Ennis M. Fant ("Respondent"), alleging defamation, defamation per se, and intentional infliction of emotional distress ("IIED") following alleged statements regarding a medical diagnosis. Respondent moved to dismiss the Amended Complaint pursuant to South Carolina Rules of Civil Procedure ("SCRCP") Rule 12(b)(6). Following a hearing on September 22, 2025, the Circuit Court granted the motion, finding that Appellant failed to plead actionable claims. Appellant now seeks to overturn this dismissal, primarily arguing that the court relied on extrinsic evidence and improperly determined his status as a public figure, which were not matters determined or cited in the Court's Order to Dismiss.

STATEMENT OF THE FACTS

Appellant commenced this lawsuit against Respondent on January 26, 2024, alleging Defamation, Defamation Per Se, and Intentional Infliction of Emotional Distress. On March 26, 2024, Respondent received service of the Summons and Complaint. Respondent timely filed an Answer to Plaintiff's Complaint on May 1, 2024. On May 10, 2024, Respondent filed and served his Motion to Dismiss and Motion for Sanctions. On April 21, 2025, this matter came before the Court on Defendant's Motion to Dismiss Plaintiff's Complaint. During the hearing, this Court granted Appellant's oral Motion to Amend his Complaint, specifically stating in part:

> "At the hearing, the Court granted Plaintiff's oral Motion to Amend his Complaint to correct ***deficiencies*** and allowed Plaintiff thirty (30) days to amend his complaint. Based thereon, the Court stayed discovery for sixty (60) days pending the filing of a renewed Motion to Dismiss. If Defendant does renew his Motion to Dismiss, the Court held that discovery shall be stayed until the resolution of that Motion to Dismiss. After the resolution of the Motion to Dismiss, and if the Motion to Dismiss is denied, Plaintiff may re-serve the subpoena."

(emphasis added). See J. Salvini Order, April 22, 2025.

Plaintiff filed his Amended Summons and Complaint on May 5, 2025. Respondent timely filed an Answer and Motion to Dismiss Plaintiff's Amended Complaint and Motion for Sanctions on July 11, 2025.

On September 22, 2025, the Circuit Court held a hearing on Respondent's Motion to Dismiss and Motion for Sanctions. On November 14, 2025, the Circuit Court issued an Order granting Respondent's Motion to Dismiss and denying Respondent's Motion for Sanctions. See J. Dunbar Order, November 14, 2025. On November 17, 2025, Appellant filed a Motion for Reconsideration

of the November 14, 2025, Order. On February 9, 2026, the Court denied Appellant's Motion. Appellant now appeals these decisions.

STANDARD OF REVIEW

"Rule 12(b)(6), SCRCP, allows the court to dismiss a party's claims for failure to state facts sufficient to constitute a cause of action. The content and detail of the pleadings are viewed in light of the general pleading rules and in the to the non-moving party." *Woodell, Allen v. Marion School Dist. One,* 307 S.C. 297, 298, 414 S.E.2d 794, 794 (Ct.App.1992). "The motion must be granted if the facts and the inferences reasonably deducible from them show that the plaintiff could not prevail on any theory of the case." *Gray v. State Farm Auto Ins. Co*., 327 S.C. 646, 650–51, 491 S.E.2d 272, 274–75 (Ct. App. 1997) (citing *See Morrow Crane Co., Inc. v. T.R. Tucker Constr. Co., Inc.,* 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct.App.1988).

"Upon review of a dismissal of an action pursuant to Rule 12(b)(6), the appellate court applies the same standard of review implemented by the trial court." *Doe v. Marion*, 361 S.C. 463, 470, 605 S.E.2d 556, 560 (Ct. App. 2004), aff'd, 373 S.C. 390, 645 S.E.2d 245 (2007). "The trial courts grant of a motion to dismiss will be sustained if the facts alleged in the complaint do not support relief under any theory of law." *Doe*, 361 S.C. 463, 469–70, 605 S.E.2d 556, 559.

ARGUMENTS

I. THE CIRCUIT COURT CORRECTLY APPLIED RULE 12(B)(6) AND DID NOT RELY ON EXTRINSIC EVIDENCE, NOR WAS THE COURT REQUIRED TO CONVERT THE MOTION TO SUMMARY JUDGMENT.

Appellant argues the Circuit Court erred by failing to convert the motion to summary judgment after Respondent submitted affidavits from Jack Logan and Chandra Dillard. This argument is unsupported by Judge Dunbar's Order, as the Order does not refer to any extrinsic evidence, the Order makes no finding of fact nor states any facts that were relied upon in reaching its decision. See J. Dunbar Order, November 14, 2025. It is clear in the record that the Court relied solely upon the review of the pleaded allegations of Appellant in asserting his claims, including attached exhibits to the pleadings. As such, the Court unquestionably found that Appellant failed to properly plead each of his causes of action, which will be discussed further below. See J. Dunbar Order, November 14, 2025. The Circuit Court very simply dismissed the action based on the Appellant's failure to plead an actionable claim. See J. Dunbar Order, November 14, 2025.

The Circuit Court's Order explicitly sets forth the South SCRCP Rule 12(b)(6) standard. Crucially, Appellant fails to cite any "extrinsic evidence" relied upon by Judge Dunbar. Appellant speculates that Judge Dunbar relied upon the competing affidavits of Jack Logan and Rep. Chandra Dillard, which directly contradict Appellant's allegations, likely because Appellant's own exhibits and references in his Amended Complaint are patently false or mischaracterized. Yet, there is not a single reference to any evidence, affidavits, or exhibits in Judge Dunbar's Order. See J. Dunbar Order, November 14, 2025. There is nothing in the record suggesting that Judge Dunbar relied on either party's exhibits, attachments, or otherwise "extrinsic evidence".

However, even if the Court had relied upon such information, all of the so-called "extrinsic evidence" is cited and incorporated by reference in Appellant's Amended Complaint. Reliance on

this information would not constitute the need to convert the action to a summary judgment. South Carolina law permits a court to consider documents that are central to a plaintiff's claim and specifically referenced in the complaint without converting the motion to one for summary judgment. *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009). The South Carolina Supreme Court has specifically held, "In our view, allowing a trial court to consider documents that are incorporated by reference in the complaint but not actually attached thereto prevents a plaintiff from benefiting from his own oversight or from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based." *Brazell*, 384 S.C. 512, 516, 682 S.E.2d 824, 826.

Appellant very clearly has attempted to engage in the very conduct the *Brazell* Court cautioned against. Appellant continuously fails to acknowledge that his own pleadings are littered with alleged direct quotes from Jack Logan and Rep. Chandra Dillard concerning the alleged facts of Appellant's claims. See Am. Compl. ¶¶ 8; 11; 14-15; 17. Perhaps more significantly, attached to Appellant's Amended Complaint is an alleged Affidavit of Jack Logan and a screenshot of text messages between Appellant and Rep. Chandra Dillard, which are also incorporated by reference in the body of the pleadings. See Am. Compl. Respondent's competing affidavits are at best responsive to the numerous references and duplicitous assertions incorporated and relied upon in Appellant's Amended Complaint.

Yet, there is still nothing in the record to suggest that Judge Dunbar relied on any of the affidavits submitted, whether by Appellant or Respondent. See J. Dunbar Order, November 14, 2025. It appears Appellant seeks the Court to review and rely upon his extrinsic evidence, while limiting Respondent's ability to present legal and factual defects within his Amended Complaint, which diametrically opposes the ruling in *Brazell*. Regardless, the Order under review rests entirely on the legal insufficiency of the allegations themselves. As such, the Court determined Appellant's

Amended Complaint was again deficient and failed to state a claim, pursuant to SCRCP Rule 12(b)(6). See J. Dunbar Order, November 14, 2025.

II. THE CIRCUIT COURT MADE NO FINDING REGARDING APPELLANT'S STATUS AS A PUBLIC FIGURE.

Appellant contends the Circuit Court "effectively" determined he was a public figure. However, a review of the Order reveals no such finding. The dismissal was based on the failure to state facts sufficient to constitute a cause of action, which is a threshold inquiry regarding the elements of the claims, not an evidentiary determination of public status. To the extent public status was discussed in the briefing, it was for the purpose of addressing the level of scrutiny applied to the review of the elements, but not the sufficiency of the causes of action as alleged. Appellant again ignores the basic principle that the elements are deficiently pled on their face under any level of scrutiny, as determined by the Court. The Circuit Court never issued a determination of Appellant's public figure status and should not be an issue for review at this juncture. Even assuming arguendo that Appellant is a private figure, dismissal remains proper because the complaint fails to plead the necessary elements under any defamation standard. As will be discussed further, Appellant failed to properly plead an actionable claim for defamation via libel. The Court unquestionably did not determine his public figure status, and such an argument is immaterial.

The court's dismissal for "failure to plead an actionable claim" is a general finding of legal insufficiency that does not necessitate a public figure ruling.

III. THE CIRCUIT COURT CORRECTLY APPLIED RULE 12(b)(6).

The Court properly ruled that Appellant failed to properly plead the necessary elements of each cause of action. As such, the Court found that the facts alleged in the complaint do not support relief under any theory of law. *Doe*, 361 S.C. 463. South Carolina remains a notice-pleading state, but notice pleading still requires facts—not speculation, inference stacking, or conclusory labels. *See Doe*, 373

S.C. 390. A Complaint must allege facts sufficient to support relief under any theory of law. *See Id.* at 390*, see also Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 416 (Ct. App. 2003). It is important to note that this matter was brought before the trial court on a Motion to Dismiss the initial Complaint, and Appellant voluntarily dismissed the initial Complaint for the purposes of correcting its deficiencies. (emphasis added). See J. Salvini Order, April 22, 2025. Appellant failed to correct the deficiencies and properly plead his causes of action in his Amended Complaint.

A. APPELLANT FAILED TO STATE A CLAIM OF DEFAMATION AND DEFAMATION PER SE.

"The elements of defamation include: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by publication." *Murray v. Holnam*, 344 S.C. 129, 139, 542 S.E.2d 743,748 (Ct. App. 2001).

"[Defamation] is actionable per se only if it charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession." *Murray*, 344 S.C. 129, 142. Defamation per se presumes that Defendants acted with common law malice and Plaintiff suffered general damages. *Id.,* 344 S.C. at 142.

Appellant failed to plead any defamatory statement published by Respondent by way of libel. Appellant claims on January 9, 2024, Respondent "sent several text messages to members of the South Carolina Statehouse to include Representative Chandra Dillard and Representative Wendell Jones stating that Appellant suffered from the loathsome, and debilitating disease "Dementia" and that it was a confirm diagnosis." Plt. Am. Compl. ¶¶ 8-9. Therefore, Appellant asserts a written instrument exist in which Respondent defamed him by way of libel. Libel is actionable *per se* if it involves "written or printed words which tend to degrade a person, that is, to reduce his character or

reputation in the estimation of his friends or acquaintances, or the public, or to disgrace him, or to render him odious, contemptible, or ridiculous....". *Holtzscheiter v. Thomson Newspapers, Inc*., 332 S.C. 502, 510, 506 S.E.2d 497, 502 (1998) (quoting *Lesesne v. Willingham*, 83 F.Supp. 918, 921 (E.D.S.C.1949)). Appellant failed to plead the actual existence of the alleged written defamatory statement, or any individual, including himself, who witnessed the alleged statement, and as such Appellant failed to plead a publication of a defamatory statement.

Further, Appellant claims Respondent defamed him by alleging that Respondent stated, "plaintiff was the reason that Greenville County council had to change its citizens comment rules, because plaintiff was disruptive in questioning the defendant during council meetings." Plt. Am. Compl. ¶¶ 21-23. To prove a claim for defamation or defamation *per se,* a Plaintiff must first prove that a statement was in fact false. *See Erickson v. Jones St. Publishers, LLC,* 368 S.C. 444, 473, 629 S.E.2d 653, 668 (2006), disapproved of by *Floyd v. WBTW,* No. CIV.A. 4:06CV3120-RB, 2007 WL 4458924 (D.S.C. Dec. 17, 2007) (citing *Foretich v. Capital Cities/ABC, Inc.*, 37 F.3d 1541, 1551 (4th Cir.1994)). Appellant has failed to plead any facts that this alleged statement was, in fact false. Such a statement on its face is not defamatory. There is nothing in the Amended Complaint stating, inferring, or suggesting this alleged statement, if made, is in fact false. Appellant has failed to plead that Respondent published a false statement concerning Appellant to a third party and that a special harm was caused by its publication.

I. APPELLANT'S WAIVER ARGUMENT LACKS LEGAL MERIT.

The Circuit Court properly dismissed the defamation claim in its entirety because Respondent moved to dismiss the cause of action as a whole, rather than specific factual allegations therein. Appellant erroneously contends that Respondent waived his challenge to the defamation claim regarding statements allegedly made to Bill Gibson. This argument reflects a fundamental misunderstanding of the function of a motion to dismiss under SCRCP Rule 12(b)(6). In his

Amended Complaint, Appellant did not plead separate causes of action for each individual to whom a statement was allegedly published. Instead, Appellant merged multiple factual allegations—including those involving Jack Logan, Chandra Dillard, and Bill Gibson—into a single "First Cause of Action" for Defamation and a "Second Cause of Action" for Defamation Per Se.

Respondent's Motion to Dismiss and supporting Memorandum specifically sought the dismissal of these causes of action in their entirety. A Rule 12(b)(6) motion challenges the legal sufficiency of the claim as a whole. Appellant chose to bundle his various factual allegations into single counts; Respondent's challenge to the legal viability of those counts necessarily encompassed every underlying factual instance. There is no requirement under the SCRCP that a defendant "carve out" and specifically rebut every individual sentence or factual example within a single cause of action to avoid waiver. By moving to dismiss each and every cause of action, Respondent placed the legal sufficiency of that entire claim before the Court.

Furthermore, the Circuit Court's Order explicitly granted the motion as to the causes of actions and dismissed the Amended Complaint because Appellant failed to plead an actionable claim. The Court found that the allegations—regardless of the recipient—failed to satisfy the essential elements of defamation or defamation per se. Consequently, there was no waiver, and the Circuit Court properly exercised its authority to dismiss the legally deficient claims in their entirety.

Therefore, the Circuit Court properly determined that Appellant failed to state facts sufficient to constitute a cause of action and dismissed this matter, pursuant to SCRCP Rule 12(b)(6).

B. APPELLANT FAILED TO STATE A CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

In order to succeed on a claim for Intentional Infliction of Emotional Distress, a Plaintiff must plead, "(1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct; (2) the conduct was

so “extreme and outrageous” so as to exceed “all possible bounds of decency” and must be regarded as “atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was “severe” such that “no reasonable man could be expected to endure it.” *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007). The Circuit Court properly ruled that Appellant failed to plead any action or conduct by Respondent which intentionally or recklessly inflicted severe emotional distress, failed to plead a showing of extreme and outrageous conduct that exceeds all possible bounds of decency, and that Appellant failed to plead any supporting allegations that he suffered any severe damages attributable to Respondent.

The Circuit Court correctly found that Appellant failed to plead "so extreme and outrageous so as to exceed all possible bounds of decency" and be regarded as "atrocious and utterly intolerable in a civilized community." *Hansson*, 374 S.C. 352, 356. Viewed in the light most favorable to the Appellant, the alleged dissemination of an incorrect medical diagnosis without the Appellant ever witnessing the alleged disseminated material does not rise to this "extremely high" level of outrage required in South Carolina. *Hansson,* at 356. “Under the heightened standard of proof for emotional distress claims emphasized in *Ford*, a party cannot establish a prima facie claim for damages resulting from a defendant's tortious conduct with mere bald assertions. To permit a plaintiff to legitimately state a cause of action by simply alleging, “I suffered emotional distress,” would be irreconcilable with this Court's development of the law in this area. *Id.*, at 358.

Therefore, the Circuit Court properly ruled that Appellant failed to state facts sufficient to constitute a cause of action and dismissed this matter, pursuant to SCRCP Rule 12(b)(6).

IV. THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING APPELLANT’S RULE 59(e) MOTION AS THE MOTION MERELY SOUGHT TO RE-LITIGATE ISSUES ALREADY DECIDED BY THE COURT.

"Motions under Rule 59 are limited in scope and are not to be used to 'rehash' the same arguments and facts previously presented." *Dockins v. Benchmark Commc'ns*, 180 F.R.D. 294, 295 (D.S.C. 1998), aff'd, 176 F.3d 745 (4th Cir. 1999). Here, Appellant's Rule 59(e) motion did not identify a clerical error or a newly discovered manifest error of law. Instead, the motion served as a wholesale repetition of the arguments made in opposition to the Motion to Dismiss—namely, the argument that the Court should have converted the motion to one for summary judgment and the argument regarding the "Bill Gibson" statement.

Accordingly, the Circuit Court's denial of the Rule 59(e) motion should be affirmed as the trial court did not abuse its discretion in denying Appellant's motion.

CONCLUSION

For the foregoing reasons, Respondent Ennis M. Fant respectfully requests that this Court affirm the Circuit Court's order dismissing the Amended Complaint with prejudice. Appellant has failed to demonstrate any error of law; the Circuit Court's Order should be **AFFIRMED**.

Respondent respectfully requests that this Court affirm the Circuit Court's Order and dismiss this matter with prejudice.

Respectfully submitted,

/s/ Austin D. Nichols
Austin D. Nichols, Esq.
J. Todd Rutherford, Esq.
RUTHERFORD LAW FIRM
1315 Blanding Street
Columbia, South Carolina 29201
Phone No.: (803) 256-3003
Fax No.: (803) 256-9698
austin@rutherford.law
todd@rutherford.law
Attorneys for Respondent

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