THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Veron F. Dunbar, Circuit Court Judge

Appellate Case No: 2026-000307

Bruce Wilson, ..., Appellant

v.

Ennis M. Fant…….……..., Respondent.

APPELLANT'S REPLY BRIEF

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APPELLANT

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PRELIMINARY STATEMENT

Respondent's Brief advances four principal responses to Appellant's assignments of error: (1) the Circuit Court did not rely on extrinsic evidence because the dismissal order does not cite it; (2) the Court made no public figure determination; (3) the Amended Complaint failed to plead the necessary elements of defamation and intentional infliction of emotional distress; and (4) the Rule 59(e) motion merely rehashed arguments previously decided. Each of these responses either misstates the controlling legal standard, concedes the very error Appellant identifies while arguing it is harmless, or impermissibly inverts the burden of proof applicable at the pleading stage. The dismissal order cannot stand and must be **reversed**.

ARGUMENT

I. RESPONDENT'S SILENCE-OF-THE-ORDER ARGUMENT DOES NOT CURE THE RULE 12(D) VIOLATION.

Respondent's central response to the conversion issue is that because Judge Dunbar's Order does not mention the competing affidavits, no inference of reliance can be drawn from them. Resp. Br. at 8. This argument fundamentally misreads the trigger for mandatory conversion under Rule 12(d), SCRCP. The rule does not condition conversion on proof that the court actually relied upon extrinsic materials. It states that when matters outside the pleading are "presented to and not excluded by the Court," the motion "shall be treated as one for summary judgment." SCRCP Rule 12(d) (emphasis added). Presentation plus non-exclusion is the standard not citation in the Order. *Paradis v. Charleston Cnty. Sch. Dist*., 424 S.C. 603, 614, 819 S.E.2d 147, 153 (Ct. App. 2018).

Respondent's competing affidavits were presented at oral argument and made the centerpiece of counsel's argument. The Court acknowledged Appellant's objection but never sustained it, never struck the affidavits, and never entered any order excluding them. Its statement that it would "look at the complaint as well as the basis for your motion" (Tr. p. 10, Lines 22-23;

ROA) confirmed that the affidavits which were the stated "basis" of the motion remained in the record unconsidered but unexcluded. An Order's silence as to the affidavits is not a ruling of exclusion; it is precisely the failure to exclude that Rule 12(d) makes dispositive. Under Paradis, that failure was reversible error. 424 S.C. at 614.

A. Respondent's Brazell Argument Misapplies the Incorporated-by-Reference Doctrine.

Respondent invokes *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009), for the proposition that a court may consider documents incorporated by reference into a complaint without triggering conversion. Resp. Br. at 8-9. Brazell is plainly inapposite. That doctrine addresses a plaintiff's own documents that are central to the plaintiff's claim and specifically referenced in the complaint itself. It does not authorize a defendant to submit wholly new, contradictory sworn statements obtained after litigation commenced and during a court-ordered discovery stay for the express purpose of disproving the plaintiff's incorporated exhibits.

The distinction is critical. Appellant's Logan Affidavit was attached to the Amended Complaint and incorporated into its factual allegations it is part of the pleading. Respondent's competing Logan Affidavit, obtained under disputed circumstances and containing diametrically opposite statements, is not part of the pleading. It is classic extrinsic evidence. Respondent cannot convert a contradictory, post-litigation affidavit into an incorporated document by pointing out that the plaintiff referenced the same witness in his complaint. To hold otherwise would mean any defendant could neutralize a plaintiff's attached exhibit by obtaining a competing statement from the same witness and submitting it on a motion to dismiss the very abuse Rule 12(d) was designed to prevent. The *Brazell* rule was crafted to stop plaintiffs from "surviving a motion to dismiss by intentionally omitting documents upon which their claims are based." 384 S.C. at 516. It was not crafted to supply defendants with a mechanism to introduce factual rebuttals at the pleading stage.

B. The Record Confirms Presentation Without Exclusion.

As, previously stated, during the September 22, 2025, hearing, Respondent's counsel expressly invited the Court to draw factual inferences from the competing affidavits that no text message was ever sent or received calling those affidavits proof that the alleged statement "**never existed and it never occurred**." (Tr. p. 10, Lines 2-4; ROA). Appellant's timely and specific objections were logged. (Tr. p. 10, Lines 7-19; ROA). The Court's response was to "note the objection and review the file" not to sustain the **objection** or **exclude** the materials. The dismissal Order does not state the affidavits were disregarded. That silence constitutes non-exclusion under Rule 12(d), and conversion was mandatory.

II. RESPONDENT'S CONCESSION THAT NO PUBLIC FIGURE RULING WAS MADE SUPPORTS, NOT DEFEATS, REVERSAL.

Respondent concedes the Circuit Court made no explicit public figure determination and argues this renders Appellant's argument on this point "immaterial." (*Resp. Br. at 10*). That concession does the opposite of what Respondent intends. The standard of fault in a defamation action negligence for a private figure, actual malice for a public figure is a threshold legal question that must be identified and applied before the sufficiency of the pleadings can be meaningfully assessed. *Erickson v. Jones St. Publishers*, LLC, 368 S.C. 444, 467, 629 S.E.2d 653, 668 (2006) Where the motion was argued entirely on the premise that Appellant was required to plead actual malice as a public figure, and the Court then dismissed for failure to plead "necessary elements" without specifying which standard governed its analysis, the Order is unreviewable on appeal and cannot stand.

Respondent asserts that even assuming Appellant is a private figure, the complaint fails to plead the necessary elements. (*Resp. Br. at 10*). This argument simply restates the conclusion the Circuit Court reached without the analysis this Court needs to review it. An appellate court cannot

supply the missing legal framework and then affirm a dismissal the circuit court issued on unidentified grounds. *Cruce v. Berkeley Cnty. Sch. Dist*., 442 S.C. 1, 8-9, 896 S.E.2d 765, 768-69 (2024) Remand is required so that the correct standard is identified and applied on the record developed below.

III. RESPONDENT MISSTATES THE PLEADING STANDARD AND THE AMENDED COMPLAINT'S ALLEGATIONS.

A. The Dementia Text Was Adequately Pled; Respondent's Argument Imposes an Evidentiary Burden at the Pleading Stage.

Respondent argues Appellant "failed to plead the actual existence of the alleged written defamatory statement" and that no individual "witnessed" it. (*Resp. Br. at 11-12*). This substitutes an evidentiary standard for a pleading standard. At the Rule 12(b)(6) stage, a plaintiff is not required to prove the existence of a defamatory statement only to allege it plausibly. The Amended Complaint, through its body and the incorporated Logan Affidavit, specifically alleges that Respondent sent text messages to Representatives Dillard and Jones asserting Appellant had a confirmed dementia diagnosis; that Representative Dillard disclosed the text to Jack Logan; and that Logan's account corroborates the publication chain. (Am. Compl. Lines 8, 11; Logan Aff. ¶¶ 2-3). These are not conclusory labels. They identify the speaker, the recipients, the medium, the content, and a corroborating witness. *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 416 (Ct. App. 2003).

Whether Respondent's competing affidavit creates a factual dispute about whether the text was sent is a question for summary judgment, not for dismissal. The Amended Complaint's allegations, if accepted as true as required by the standard of review, sufficiently state a claim for publication. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). Respondent's demand

that Appellant produce eyewitness confirmation of a text message at the pleading stage finds no support in the Rules of Civil Procedure or in South Carolina precedent.

B. The Complaint Adequately Pled the Falsity of the Gibson Statement.

Respondent argues the Amended Complaint contains no facts establishing that the statement to Bill Gibson that Appellant's disruptive conduct caused the Greenville County Council to change its public comment rules was false. (*Resp. Br. at 12*). This is incorrect. The Amended Complaint expressly alleges the statement is false (Am. Compl. Line 23; ROA) and provides a specific factual basis: Appellant was never cited or charged in connection with any council meeting conduct, and a FOIA response confirmed the circumstances surrounding any rule changes. (Am. Compl. Lines 23-24; ROA). Those are specific, falsifying factual allegations, not mere conclusory denials. *Erickson*, 368 S.C. at 473.

Whether the statement is "defamatory on its face" is a legal question that cannot be resolved without evaluating the full context of the statement and its impact on Appellant's reputation as a community advocate and nonprofit leader. That contextual analysis is inappropriate at the pleading stage. The allegation that Respondent stated Appellant was so disruptive that government procedures were changed to accommodate him plainly tends to harm his reputation in the community he serves and deter public officials and donors from associating with him the very standard for defamation.

IV. RESPONDENT'S WAIVER ARGUMENT FAILS BECAUSE THE GIBSON CLAIM IS FACTUALLY AND LEGALLY DISTINCT, AND RESPONDENT'S OWN BRIEFING BELOW CONFIRMED HE TREATED IT AS OUTSIDE THE SCOPE OF HIS MOTION.

A. Respondent's "Cause of Action as a Whole" Theory Proves Too Much and Cannot Be Reconciled With His Own Prior Characterization of the Gibson Allegations.

Respondent now argues that because Appellant consolidated multiple factual allegations into a single First Cause of Action, his motion to dismiss "necessarily encompassed every underlying factual instance," relieving him of any obligation to identify or address the Gibson statement specifically. (*Resp. Br. at 12–13*). This theory is facially attractive but internally contradicted by Respondent's own conduct below.

In Respondent's supporting memorandum before the Circuit Court, Respondent affirmatively characterized the Gibson allegations as "completely unrelated, irrelevant, and immaterial." That is not the language of a party who believed the Gibson claim was subsumed within and defeated by his motion. That is the language of a party who recognized the Gibson claim as a separate and distinct matter and deliberately chose not to engage it. Respondent cannot simultaneously maintain that his motion "necessarily encompassed" the Gibson allegation and that the Gibson allegation was "completely unrelated" to the subject of his motion. Those two positions are irreconcilable. The former is a litigation construct invented on appeal; the latter was Respondent's actual position below.

Respondent is not entitled to abandon the characterization that suited him at the trial level and adopt the opposite characterization that now suits him on appeal. Cf. *Cothran v. Brown*, 357 S.C. 210, 216, 592 S.E.2d 629, 632 (Ct. App. 2004) (parties are bound by the position they took at trial and may not assume a different posture on appeal). Having told the Circuit Court that the Gibson allegations were unrelated and immaterial and having filed no argument, citation, or analysis directed at the Gibson statement Respondent forfeited any claim that he had placed the Gibson allegation before the Court for dismissal.

B. Rule 7(b)(1)'s Particularity Requirement Exists Precisely to Prevent the Notice Failure Respondent Now Defends.

Respondent contends 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." (*Resp. Br. at 13*). But this framing inverts the proper inquiry. The question is not what Respondent was required to do to avoid personal waiver. The question is what Respondent was required to do to place a specific ground before the Court and thereby authorize the Court to act on it.

Rule 7(b)(1), SCRCP requires that motions "state with particularity the grounds therefor." The South Carolina Supreme Court has explained that this requirement exists to reduce prejudice and to ensure that "the court can comprehend the basis of the motion and deal with it fairly." *Camp v. Camp* (S.C. 2010). The particularity requirement is not a technicality. It is the mechanism by which a party gives notice to the opposing party and to the court of what is being challenged and why. A motion that says "Plaintiff fails to state a defamation claim" without more gives no notice that the Gibson oral statement at a public event is being challenged on the same grounds or any grounds as a written text message transmitted to legislators asserting a specific medical condition. These statements differ in medium, recipient, content, and applicable legal analysis.

Respondent's own formulation that defendants need not "carve out" individual factual allegations would reduce Rule 7(b)(1) to a nullity in any case involving a complaint with more than one factual basis for a single count. Under Respondent's theory, a single-sentence motion challenging "the negligence claim" would authorize a court to dismiss every distinct act of negligence alleged in the complaint, without any identification of which acts are challenged and why. That is not the law in South Carolina, and it would gut the notice function that Rule 7(b)(1) was designed to protect.

C. Respondent's "Cause of Action as a Whole" Theory Cannot Authorize the Circuit Court's Sua Sponte Dismissal of an Unchallenged Ground for Relief.

Most critically, Respondent's argument misapprehends the boundary between what a motion to dismiss can reach and what a court may do in response. Even accepting for argument's sake that Respondent's motion was broad enough to encompass the entire First Cause of Action, the Circuit Court's authority to dismiss is bounded by the grounds actually raised and briefed. It is well settled in South Carolina that a trial court "cannot ex mero motu grant relief on a ground not raised by a party." *Southern Railway Co. v. Coltex, Inc*., 285 S.C. 213, 214, 329 S.E.2d 736, 736 (1985). The South Carolina Court of Appeals has reaffirmed this principle and extended it across procedural contexts. *State v. Dicapua,* 373 S.C. 452, 646 S.E.2d 150 (Ct. App. 2007).

Here, Respondent raised no argument legal or factual directed at the Gibson allegation. He cited no case law addressing the distinct elements of that claim. He offered no analysis of why an oral statement made at a public civic event regarding disruptive conduct should be analyzed the same way as a written text message to legislators asserting a specific medical diagnosis. The Circuit Court's Order, in turn, contains no analysis of the Gibson allegation, no citation to authority applicable to it, and no explanation of why the legal elements of defamation are unsatisfied as to that distinct statement. That is not a merits ruling. That is a sua sponte dismissal of a ground for relief that no party placed before the Court and it is precisely the judicial conduct that Coltex and Dicapua prohibit.

Respondent's assertion that the Circuit Court "found that the allegations regardless of the recipient failed to satisfy the essential elements," (*Resp. Br. at 13*), does not cure this error; it confirms it. A court cannot insulate an unauthorized sua sponte ruling from appellate review simply by drafting a broad order. If the ground was never raised, briefed, or argued by any party, the breadth of the order dismissing it does not transform the court's unilateral action into authorized adjudication.

D. Respondent's Position Would Incentivize Deliberate Omission as a Litigation Tactic.

There is an additional structural reason to reject Respondent's theory. If a defendant can move to dismiss a cause of action "as a whole" in a single line without identifying which factual allegations are targeted, which elements are absent, or which legal theories are deficient and thereby trigger automatic dismissal of every factual basis for that claim including those never analyzed, defendants have every incentive to file underdeveloped, non-specific motions. The broader and more vague the motion, under Respondent's theory, the more it sweeps in. This outcome is the inverse of what Rule 7(b)(1)'s particularity requirement commands.

This Court should hold that where a complaint alleges multiple distinct factual bases for a single cause of action here, (a) written text messages to legislators asserting a specific medical condition and (b) an oral statement at a public event regarding disruptive civic conduct a motion to dismiss that targets one basis, or targets the cause of action generically without identifying the other as a challenged ground, does not authorize the court to dismiss the untargeted basis sua sponte, without notice, and without any legal analysis. The Circuit Court's dismissal of the Gibson claim was error. That portion of the judgment should be reversed and the Gibson allegation remanded for further proceedings.

V. RESPONDENT'S IIED ARGUMENT TRIVIALIZES THE ALLEGED CONDUCT AND MISAPPLIES THE PLEADING STANDARD.

Respondent characterizes the conduct underlying the IIED claim as merely "the alleged dissemination of an incorrect medical diagnosis without the Appellant ever witnessing the alleged disseminated material." (*Resp. Br. at 14*). This description evacuates the complaint of its substance and bears scant resemblance to what the Amended Complaint actually alleges.

The Amended Complaint alleges a deliberate, sustained campaign by a public official to fabricate a diagnosis of a cognitively devastating illness and disseminate it specifically to the

legislators and community leaders who control Appellant's nonprofit funding and organizational credibility for the express purpose of destroying his livelihood. (Am. Compl. Lines 8-9, 11, 20, 44; ROA). This is not an inadvertent misstatement. It is alleged intentional weaponization of stigma against a community leader. Whether this conduct is ultimately found to be "extreme and outrageous" within the meaning *of Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 356-57, 650 S.E.2d 68, 70 (2007), is a question for the finder of fact on a developed record not for a court ruling on the bare pleadings.

Respondent's observation that Appellant never personally witnessed the text message is irrelevant to the IIED analysis. The tort does not require the plaintiff to observe the act causing distress; it requires that the defendant's intentional or reckless conduct caused severe emotional distress. The Amended Complaint specifically and particularly alleges chronic anxiety, persistent insomnia, panic attacks, weight loss, hypertension, strained relationships, and treatment for acute stress disorder all directly and causally attributed to Respondent's conduct. (Am. Compl. Line 20; ROA). These allegations go well beyond the "mere bald assertion" of emotional suffering the South Carolina courts have found insufficient; they identify concrete medical and functional consequences. Id. at 358. The Circuit Court's conclusory dismissal of these particularized allegations, without analysis, was error.

VI. RESPONDENT'S RULE 59(E) ARGUMENT RELIES ON NON-BINDING FEDERAL AUTHORITY AND MISCHARACTERIZES THE MOTION'S SUBSTANCE.

Respondent cites *Dockins v. Benchmark Communications*, 180 F.R.D. 294, 295 (D.S.C. 1998), for the proposition that Rule 59 motions may not "rehash" prior arguments. (*Resp. Br. at 15*). Dockins is a federal district court opinion applying the Federal Rules of Civil Procedure. It

carries no precedential authority in this Court, and it states a more restrictive standard than South Carolina law requires.

The controlling standard in South Carolina is set forth in *Elam v. S.C. Dept. of Transp*., 361 S.C. 9, 21-24, 602 S.E.2d 772, 778-80 (2004). Under *Elam*, a Rule 59(e) motion is appropriate and may properly revisit prior arguments when the movant contends the court "misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue." Id. at 24. Reprising prior arguments to highlight that they were never decided is expressly permitted.

Appellant's Rule 59(e) motion identified two specific rulings the Circuit Court never made: (1) a ruling on Appellant's timely and specific objection to the presentation of extrinsic affidavits, which the Court noted but never sustained or overruled; and (2) a ruling on the threshold public figure question, which determined the entire standard of fault applicable to the defamation claims but was left entirely unresolved in the dismissal Order. A court cannot "rehash" a ruling it never made. The denial of the Rule 59(e) motion without addressing either of these unresolved threshold issues was controlled by an error of law and constitutes an abuse of discretion requiring reversal.

CONCLUSION

Respondent's brief does not identify a single error in Appellant's legal framework. Instead, it asks this Court to infer exclusion of extrinsic affidavits from an Order that never addresses them, to treat an unresolved public figure question as immaterial, to require proof at the pleading stage where allegation suffices, and to find a motion to dismiss encompassed claims it never identified. None of these arguments withstands scrutiny under settled South Carolina law. For the reasons set forth in Appellant's Brief and herein, Appellant respectfully requests that this Court **REVERSE** the Circuit Court's Order dismissing the Amended Complaint and **REMAND** for further proceedings consistent with the proper application of Rule 12(b)(6), SCRCP.

Respectfully submitted,

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