

RECEIVED

Oct 20 2026

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Honorable Circuit Court Judge Dianne S. Goodstein

Case No. 2026-000034

Stephanie Lehman,

Respondent,

v.

Berkeley County School District and
Anne-Magill Payne, individually, and as an
agent of Berkeley County School District, Defendants,

of which Berkeley County School District
is the Appellant,

Appellant.

FINAL REPLY BRIEF OF APPELLANT

Amanda M. Gaston, Esq. (SC Bar # 104135)
Bob J. Conley (SC Bar # 12243)
CLAWSON AND STAUBES, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492
Phone: (843) 577-2026
Email: agaston@cslaw.com
bconley@cslaw.com

Attorneys for Appellant

TABLE OF CONTENTS

Table of Authorities	iii
Reply Argument.....	1
I. Respondent’s Jurisdictional Argument Does Not Alter the Immediate Appealability of the Order.....	1
II. <i>Wallace</i> and <i>Hinton</i> Control the Nature and Mode of Trial for § 41-1-80 Claims.....	2
III. The Remedies Available Under § 41-1-80 Cannot Be Expanded by Analogy to a Public Policy Wrongful Discharge Action.....	2
IV. Respondent’s Distinction Concerning <i>Drew</i> Does Not Alter the Analysis Under § 41-1-80.....	3
Conclusion	4

TABLE OF AUTHORITIES

<i>Barron v. Labor Finders of S.C.</i> , 393 S.C. 609, 713 S.E.2d 634 (2011)	3
<i>Bowden v. Powell</i> , 194 S.C. 482, 10 S.E. 2d 8 (1940)	1
<i>C & S Real Estate Servs., Inc. v. Massengale</i> , 290 S.C. 299, 350 S.E.2d 191 (1986)	2
<i>Drew v. Waffle House, Inc.</i> , 351 S.C. 544, 571 S.E.2d 89 (2002)	3, 4
<i>Flagstar Corp. v. Royal Surplus Lines Ins. Co.</i> , 341 S.C. 68, 533 S.E.2d 331 (2000)	1
<i>Grazia v. S.C. State Plastering, LLC</i> , 390 S.C. 562, 703 S.E.2d 197 (2010)	3
<i>Hinton v. Designer Ensembles, Inc.</i> , 343 S.C. 236, 540 S.E.2d 94 (2000)	2, 4
<i>Lester v. Dawson</i> , 327 S.C. 263, 491 S.E.2d 240 (1997)	1
<i>Ludwick v. This Minute of Carolina, Inc.</i> , 287 S.C. 219, 337 S.E.2d 213 (1985)	3
<i>Robinson v. Code</i> , 384 S.C. 582, 682 S.E.2d 495 (Ct. App. 2009)	3
<i>Stiles v. American Gen. Life Ins. Co.</i> , 335 S.C. 222, 516 S.E.2d 449 (1999)	3
<i>Wallace v. Milliken & Co.</i> , 305 S.C. 118, 406 S.E.2d 358 (1991)	2, 4

Statutes

S.C. Code Ann. § 41-1-80.....	1, 2, 3, 4
-------------------------------	------------

REPLY ARGUMENT

I. Respondent's Jurisdictional Argument Does Not Alter the Immediate Appealability of the Order

In her Initial Brief, Respondent again characterizes the appealed Orders as ordinary interlocutory rulings. That issue was already presented through Respondent's Motion to Dismiss and Appellant's Return, and this Court denied dismissal. Respondent's renewed jurisdictional argument does not alter the dispositive inquiry: whether the Order denying Appellant's Motion to Strike affects Appellant's right to the proper mode of trial.

Respondent argues no present deprivation exists because the Circuit Court may later allocate issues between the court and jury. But the challenged Order did not merely preserve that determination for a later stage. The Circuit Court denied Appellant's request to strike the jury demand after rejecting Appellant's position that the § 41-1-80 claim is equitable and must be tried by the court. The Order therefore squarely affects Appellant's mode of trial; the possibility that the Circuit Court may later revisit the allocation of particular issues does not negate the substantial right implicated by that ruling.

Flagstar recognizes that an order depriving a party of a mode of trial to which it is entitled as a matter of right is immediately appealable, and failure to immediately appeal may waive the issue. 341 S.C. at 72-73, 533 S.E.2d at 333. *Lester* likewise recognizes the immediate appealability of a ruling determining whether an action will proceed before a jury. 327 S.C. 263, 491 S.E.2d 240. Respondent's reliance on general principles governing interlocutory appeals therefore does not displace the specific rule applicable to orders affecting the mode of trial.

Nor does *Bowden v. Powell*, 194 S.C. 482, 10 S.E.2d 8 (1940), warrant a different result. Appellant does not contend that every order denying a Rule 12(f) motion is immediately appealable. Rather, immediate review is warranted because the challenged Order affects

Appellant's substantial right to the proper mode of trial. The procedural vehicle through which that issue was presented does not alter the substantive effect of the Circuit Court's ruling.

II. *Wallace and Hinton* Control the Nature and Mode of Trial for § 41-1-80 Claims

Respondent identifies no South Carolina appellate decision overruling or limiting *Wallace* or *Hinton*. In *Wallace*, the Supreme Court held that the relief authorized by § 41-1-80, consisting of reinstatement and lost wages, is equitable. 305 S.C. at 120, 406 S.E.2d at 359. *Hinton* likewise expressly held that an action under § 41-1-80 is an equitable proceeding for which there is no right to a jury trial. 343 S.C. at 241, 540 S.E.2d at 96. Those holdings control here.

Respondent argues that the Amended Complaint also asserts a defamation claim and that legal and equitable claims may coexist in the same action. Appellant does not dispute that contention. The defamation claim retains the remedies and mode of trial applicable to that cause of action, but its joinder does not alter the equitable nature of the separate § 41-1-80 claim. See *C & S Real Estate Servs., Inc. v. Massengale*, 290 S.C. 299, 302, 350 S.E.2d 191, 193 (1986).

Rules 38, 39, 42, 49, and 52 govern the administration of jury and nonjury issues; they do not create a substantive right to jury trial. Rule 38(c), SCRCPP, extends a general jury demand only to issues "so triable," and Rule 39(a)(2) expressly permits the court to determine that no jury right exists as to particular issues. Rules 42, 49, and 52 provide procedural mechanisms for managing mixed legal and equitable claims, but they do not alter the nature or mode of trial prescribed by § 41-1-80. The Circuit Court may therefore preserve any jury right applicable to the defamation claim while adjudicating the statutory retaliation claim as an equitable matter.

III. The Remedies Available Under § 41-1-80 Cannot Be Expanded by Analogy to a Public Policy Wrongful Discharge Action

The Circuit Court erred in treating Respondent's statutory claim as "akin to" wrongful discharge in violation of public policy. (R. 5). The public policy exception is a narrow common

law remedy available where no adequate statutory remedy exists. *Barron v. Labor Finders of S.C.*, 393 S.C. 609, 615, 713 S.E.2d 634, 637 (2011); *Stiles v. American Gen. Life Ins. Co.*, 335 S.C. 222, 228, 516 S.E.2d 449, 452 (1999). Respondent elected to proceed under § 41-1-80, which provides both the statutory cause of action and the available relief. The Circuit Court therefore could not rely on an analogy to *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 337 S.E.2d 213 (1985), to import tort damages or a jury trial into the statutory claim.

Respondent's contention that leaving the challenged damages allegations in the pleading does not itself award those damages misconstrues the issue. Appellant challenged those categories of relief because § 41-1-80 does not authorize them. A motion to strike under Rule 12(f), SCRPC, challenging a theory of recovery in a pleading "is in the nature of a motion to dismiss under Rule 12(b)(6), SCRPC." *Grazia v. S.C. State Plastering, LLC*, 390 S.C. 562, 567, 703 S.E.2d 197, 199 (2010). Where the governing statute forecloses the requested relief as a matter of law, further factual development cannot render that relief recoverable.

Respondent's reliance on *Robinson* and the availability of alternative forms of relief does not change the analysis. Although a party may plead alternative theories and forms of relief, doing so does not permit recovery of remedies otherwise unavailable under the governing statute. See *Robinson v. Code*, 384 S.C. 582, 682 S.E.2d 495 (Ct. App. 2009); Rules 8 and 54(c), SCRPC. Because § 41-1-80 does not authorize tort damages, further development of the record cannot render those damages recoverable under the statutory claim.

IV. Respondent's Distinction Concerning *Drew* Does Not Alter the Analysis Under § 41-1-80

Respondent correctly notes that the Circuit Court cited the South Carolina Supreme Court's decision in *Drew v. Waffle House, Inc.*, 351 S.C. 544, 571 S.E.2d 89 (2002), rather than the federal decision identified in Appellant's Initial Brief. Respondent nevertheless concedes that *Drew* arose

under the Family and Medical Leave Act and did not construe § 41-1-80. See *Drew*, 351 S.C. at 550, 571 S.E.2d at 92.

Respondent characterizes the Circuit Court's reliance on *Drew* as limited to the availability of front pay when reinstatement is not feasible. Even accepting that characterization, *Drew* does not affect the analysis under § 41-1-80. *Wallace* establishes that the relief available under the statute is equitable, while *Hinton* expressly holds that an action under § 41-1-80 is equitable and affords no right to jury trial. Accordingly, Respondent's distinction concerning *Drew* provides no basis to affirm the challenged ruling.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the Circuit Court's Order, hold that Respondent's claim under S.C. Code Ann. § 41-1-80 is equitable, limited to the remedies authorized by the statute, and not subject to jury trial, and remand this matter for further proceedings consistent with the Court's ruling.

Respectfully submitted,

s/ Amanda M. Gaston
Amanda M. Gaston, Esq. (SC Bar # 104135)
Bob J. Conley (SC Bar # 12243)
CLAWSON AND STAUBES, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492
Phone: (843) 577-2026
Email: agaston@cslaw.com
bconley@cslaw.com

Attorneys for Appellant

October 20, 2026