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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
Circuit Case Number 2024-CP-08-03367

Court of Appeals 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.

RESPONDENT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. **Should this appeal be dismissed as interlocutory because the appealed orders leave all claims and defenses pending and do not fall within any category of S.C. Code Ann. § 14-3-330?**

II. **If the Court reaches the merits, should the denial of BCSD's Rule 12(f) motion to strike damages allegations be affirmed?**

III. **If the Court reaches the merits, did the Circuit Court properly leave Respondent's jury demand intact?**

STATEMENT OF THE CASE

This appeal arises from a civil employment action pending in the Berkeley County Court of Common Pleas. The operative Amended Complaint, filed on December 3, 2024, asserts a statutory claim against Appellant Berkeley County School District ("BCSD" or "Appellant") for workers' compensation retaliation under S.C. Code Ann. § 41-1-80 and a separate common-law defamation claim against BCSD and Defendant Anne-Magill Payne. (R. pp. 13, 17–19). The Amended Complaint demands a jury trial and seeks damages in an amount to be determined by the trier of fact. Id. No trial has occurred, no damages have been awarded, and no claim or defense has been finally adjudicated.

On January 7, 2025, BCSD filed a Motion to Strike and for More Definite Statement under Rules 12(f) and 12(e), SCRCP. (R. pp. 20–24). BCSD asked the Circuit Court to strike the damages allegations that exceeded reinstatement and lost wages. Id. The Motion further requested the Circuit Court strike Respondent's request for a jury trial. Id. BCSD also sought a more definite statement concerning the defamation allegations.[1] The Circuit Court entered a written order on November 6, 2025, denying the motions. (R. pp. 1–7).

BCSD filed a Motion to Alter or Amend on November 17, 2025. (R. p. 35). The Circuit Court denied that motion by Form 4 Order filed on December 8, 2025, finding that BCSD had presented no new information, argument, or novel issue warranting modification of the November 6 Order. (R. p. 9). The Form 4 expressly identifies the ruling as one that "does not end the case." (R. p. 9). All claims and defenses therefore remain pending in the Circuit Court. (R. pp. 1–7; R. p. 9).

[1] Defendant Payne filed a separate Motion for More Definite Statement on February 28, 2025.

BCSD filed and served its Notice of Appeal on January 6, 2026, identifying the November 6 and December 8 Orders as the rulings challenged on appeal. (R. p. 78). This appeal accordingly seeks immediate review of two pretrial orders while the underlying claims remain unresolved in the Circuit Court. (R. pp. 1–7; R. p. 9).

STATEMENT OF FACTS

Respondent Stephanie Lehman ("Ms. Lehman" or "Respondent") began working for BCSD in March 2019 as a physical education teacher and athletic coach at Phillip Simmons High School. (R. p. 13, ¶ 5). On October 13, 2023, a student attacked Ms. Lehman in a hallway while she was at work. (R. pp. 13–14, ¶ 6). The student struck Ms. Lehman's unguarded head and face with a large stainless-steel water bottle that was partially or fully filled with water. (R. p. 14, ¶¶ 8–10). The attack caused injuries to her head and face and a concussion. (R. p. 14, ¶¶ 10, 12). On October 18, 2023, Ms. Lehman filed a claim for benefits under the South Carolina Workers' Compensation Act. (R. p. 14, ¶ 13).

While Ms. Lehman was still recovering from the concussion and experiencing post-concussion symptoms, BCSD assigned her to work in an elementary school cafeteria as a food service technician. (R. p. 14, ¶ 14). The Amended Complaint alleges BCSD knew of Ms. Lehman's restricted ability to perform the duties of that assignment and informed her that she would not remain eligible for workers' compensation benefits if she declined to work in the cafeteria. (R. p. 15, ¶ 16). Ms. Lehman attempted the assignment but experienced severe headaches because of the active cafeteria environment and the constant movement required to perform her assigned duties. (R. p. 15, ¶ 17). BCSD thereafter assigned Ms. Lehman to perform administrative work at Phillip Simmons High School, but that assignment also included "custodial tasks as needed." (R. p. 15, ¶ 18).

On February 9, 2024, after being placed on administrative leave, BCSD notified Ms. Lehman that her employment had been terminated for purportedly failing to report to her new assignment at Sedgefield Middle School. (R. p. 16, ¶ 25). BCSD later rescinded Ms. Lehman's termination but maintained her transfer away from Phillip Simmons High School and removed her from her position as an athletic coach. (R. p. 16, ¶ 31). Respondent claims the termination, transfer, removal of coaching duties, light-duty assignments, accusations, administrative leave, and threatened loss of benefits as retaliation for Ms. Lehman's workers' compensation claim. (R. pp. 17–18, ¶ 37).

Respondent also asserts a separate defamation claim against BCSD and Payne, both individually and in Payne's alleged capacity as an agent of BCSD. (R. p. 18, ¶¶ 54–56). The Amended Complaint alleges that Payne called Ms. Lehman a liar, accused her of faking her injuries and stealing time, repeatedly referred to her as a "bitch," and made statements suggesting that she was unfit to work as a teacher. (R. pp. 16–18, ¶¶ 33, 56). Payne made those statements during school hours and often in the presence of students, parents, and other staff members. (R. pp. 16–17, ¶ 33). Respondent alleges that the defamatory statements caused lost wages and benefits, emotional and physical injuries, and harm to her professional standing, character, and reputation. (R. p. 18, ¶ 59).

These allegations support two distinct causes of action arising from related events: a workers' compensation retaliation claim against BCSD and a common-law defamation claim against BCSD and Payne. (R. pp. 17–18, ¶¶ 35–38, 54–59). The Amended Complaint demands a jury trial and seeks judgment in an amount to be determined by the trier of fact. (R. p. 19).

STANDARD OF REVIEW

Questions of statutory interpretation, including the scope of remedies available under S.C. Code Ann. § 41-1-80 and the classification of a cause of action as legal or equitable, are reviewed de novo. *Flowers v. Giep*, 436 S.C. 281, 871 S.E.2d 604 (Ct. App. 2021). Whether an order is immediately appealable is likewise a question of law reviewed de novo. *State v. McCarty*, 437 S.C. 355, 878 S.E.2d 902 (2022).

A ruling on a motion to strike is within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. *Flowers*, 436 S.C. at 286. A trial court abuses its discretion when it commits an error of law, makes a factual finding that lacks evidentiary support, or fails to exercise any of its vested discretion. Id.

A discretionary pretrial ruling is not necessarily subject to immediate appellate review merely because a party alleges that it will affect the fairness or structure of the eventual trial. In *Senter v. Piggly Wiggly Carolina Co*., 341 S.C. 74, 77, 533 S.E.2d 575, 577 (2000) the Supreme Court held that an order denying bifurcation was not immediately appealable because "[t]he trial court's order in this case was discretionary, and an abuse of discretion, if any, which deprives petitioner of a fair trial can be corrected on appeal following trial on all issues." *Senter,* 341 S.C. at 77, 533 S.E.2d at 577 (2000).

SUMMARY OF THE ARGUMENT

This appeal should be dismissed because the orders challenged by Appellant are interlocutory and do not fall within any statutory category permitting immediate appellate review. The Circuit Court's November 6, 2025, Order denied a pretrial Motion to Strike, and its December 8, 2025, Order denied Appellant's request for reconsideration. Neither order

determines liability, adjudicates a cause of action or defense, awards damages, dismisses a party, or otherwise ends the action. The December 8, 2025, Form 4 Order expressly states that the order does not end the case. (R. p. 9) Here, appellate jurisdiction is statutory and these orders do not satisfy S.C. Code Ann. §§ 18-9-10 and 14-3-330. Therefore, this Appeal should be dismissed.

The challenged orders do not qualify for immediate review under § 14-3-330(1). They do not finally determine any substantial matter forming the whole or part of a cause of action or defense. Instead, they leave Respondent's workers' compensation retaliation and defamation claims, Appellant's defenses, the availability of particular remedies, and the ultimate allocation of issues between the court and jury unresolved. Further proceedings are therefore required before the parties' rights can be determined, and any review should occur after final judgment.

The orders likewise do not satisfy § 14-3-330(2). They do not determine or discontinue the action or prevent a later appeal under subsection (2)(a); they do not grant or refuse a new trial under subsection (2)(b); and they do not strike an answer, pleading, claim, defense, or prayer for relief under subsection (2)(c). The Circuit Court denied the motion to strike.

The Circuit Court retains authority as the case develops to determine which issues, if any, must be decided by the court, which issues are properly submitted to a jury, and how the proceedings, verdict form, and findings should be structured. Appellant therefore has not demonstrated a present deprivation of a mode of trial to which it is entitled as a matter of right.

If the Court concludes the orders are immediately appealable, it should nevertheless affirm the Circuit Court's denial of the Motion to Strike. A motion under Rule 12(f), SCRCP, challenging a theory of recovery is evaluated at the pleading stage, before the evidence has been developed and before the trial court has determined the relief ultimately available. The Circuit Court did not award Respondent any particular remedy. It merely declined to remove allegations

and a jury demand from the pleadings before the parties' claims, defenses, and evidence had been developed.

The denial of the Motion to Strike was also proper because the Amended Complaint presents both statutory and common-law claims arising from related events. In addition to the workers' compensation retaliation claim, Respondent asserts a defamation claim against BCSD and Anne-Magill Payne. That claim seeks traditional legal relief and independently supports a jury demand. Even if the court must decide some or all issues arising under § 41-1-80, that conclusion would not justify striking Respondent's jury demand from the entire action.

ARGUMENT

I. THE APPEAL SHOULD BE DISMISSED BECAUSE THE ORDERS ARE INTERLOCUTORY AND DO NOT DEPRIVE APPELLANT OF A MODE OF TRIAL.

The appealed orders do not satisfy any statutory basis for immediate review. They leave every claim and defense pending, do not finally determine any substantial matter forming part of a cause of action or defense, and do not fall within any category identified in S.C. Code Ann. § 14-3-330. Further, the Circuit Court did not deprive Appellant of a mode of trial. The Circuit Court merely declined to strike Respondent's jury demand at the pleading stage while retaining authority to allocate legal and equitable issues as the case proceeds. Accordingly, any alleged error may be reviewed and corrected following entry of a final judgment, and this interlocutory appeal should be dismissed.

A. The appealed orders are nonfinal and do not involve the merits within the meaning of section 14-3-330(1).

The right to appeal is statutory and S.C. Code Ann. § 18-9-10 permits an appeal only in the cases identified in S.C. Code Ann. § 14-3-320 and § 14-3-330. S.C. Code Ann. § 18-9-10; *N.C. Fed. Sav. & Loan Ass'n v. Twin States Dev. Corp.*, 289 S.C. 480, 347 S.E.2d 97 (1986*); Ex*

parte Capital U-Drive-It, Inc., 369 S.C. 1, 6–7, 630 S.E.2d 464, 467–68 (2006). Accordingly, an interlocutory order is not immediately appealable merely because it addresses an important issue or may affect the manner in which the litigation proceeds. The order must fall within a statutory category authorizing immediate review.

An appeal ordinarily may be pursued only after entry of a final judgment. *Ex parte Capital U-Drive-It*, 369 S.C. at 6, 630 S.E.2d at 467. If further action by the trial court is necessary before the parties' rights are determined, the order is interlocutory. *Mid-State Distribs., Inc. v. Century Imps., Inc*., 310 S.C. 330, 334–35, 426 S.E.2d 777, 780–81 (1993); *Hagood v. Sommerville*, 362 S.C. 191, 194–95, 607 S.E.2d 707, 708 (2005). Here, the Circuit Court has not adjudicated liability, resolved a defense, awarded damages, dismissed a party, or entered judgment on any cause of action. The December 8, 2025, Form 4 Order expressly states that it "does not end the case." (R. p. 9).

S.C. Code Ann. § 14-3-330(1) does not authorize immediate review because neither order "involv[es] the merits" within the meaning of the statute. An intermediate order involves the merits only when it "finally determines a substantial matter forming the whole or part" of a cause of action or defense. *Mid-State*, 310 S.C. at 334, 426 S.E.2d at 780. The November 6, 2025, Order does not determine whether Appellant BCSD retaliated against Respondent, whether Payne defamed her, whether either Defendant has a valid defense, or what relief Respondent may ultimately recover. The Circuit Court merely declined to strike a jury demand from the pleadings before the development of the matter. (R. pp. 4–7). Further, the December 8, 2025, Order does not adjudicate any claim or defense, but only declines to alter the earlier interlocutory ruling. (R. p. 9).

S.C. Code Ann. § 14-3-330(1) also expressly anticipates that intermediate orders may be

reviewed after final judgment when it affects the judgment. Appellant has a statutory avenue for later review if the ultimate allocation of issues between the court and jury adversely affects the final judgment. Immediate review is not necessary merely because Appellant disagrees with the Circuit Court's pretrial ruling. South Carolina has long held an order that strikes a pleading is a separate matter and distinguishable from an order refusing to strike. In *Bowden v. Powell*, 194 S.C. 482, 484, 10 S.E.2d 8, 9 (1940) the Supreme Court stated that "[a]n order refusing to strike out is not appealable." *Id*. That distinction is consistent with the statute. Granting a motion to strike may remove a claim, defense, or material allegation from the action, while denying the motion leaves the litigation pending and preserves the issue for later review. Any other interpretation would make every order on a motion to strike subject to immediate appeal.

B. The orders are not subject to immediate appeal under S.C. Code Ann. § 14-3-330(2).

The orders are not immediately appealable under S.C. Code Ann. § 14-3-330(2). Subsection (2)(a) applies when an order affects a substantial right and effectively determines the action, prevents a judgment from which an appeal may be taken, or discontinues the action. These orders do none of those things. Here, the litigation remains pending, a final judgment remains available, and all claims and defenses remain unresolved. Moreover, the orders do not effectively determine the action.

Subsection (2)(b) concerns an order granting or refusing a new trial. No trial has occurred, and neither order triggers subsection (2)(b).

Subsection (2)(c) applies when an order "strikes out an answer or any part thereof or any pleading in any action." S.C. Code Ann. § 14-3-330(2)(c). Here, the Circuit Court denied Appellant's request to strike and left the pleadings intact. (R. pp. 5–7). The fact that Appellant requested striking relief does not transform the denial of that request into an order that "strikes

out" a pleading. Otherwise, every unsuccessful motion to strike would create an interlocutory appeal and potentially cause extreme inefficiency to the progression of litigation.

Appellant emphasizes the alleged "practical effect" of the Order, but practical consequences cannot replace the statutory prerequisites. The Supreme Court has declined to permit immediate appeals even when an interlocutory ruling concerns an important right and will require the party to proceed through trial. In *Breland v. Love Chevrolet Olds, Inc*., 339 S.C. 89, 93–95, 529 S.E.2d 11, 13–14 (2000), the Court held that immediate review under subsection (2) is reserved for situations in which the substantial right cannot be vindicated after trial, and it emphasized the policy against piecemeal litigation. Id. The possibility of undergoing a trial under a disputed procedural ruling is not, standing alone, a sufficient basis for immediate appellate jurisdiction.

C. The "mode of trial" cases do not establish immediate appealability because the Circuit Court did not conclusively require a jury to decide every issue arising under S.C. Code Ann. § 41-1-80.

Appellant relies on *Flagstar Corp. v. Royal Surplus Lines Insurance Co*., 341 S.C. 68, 533 S.E.2d 331 (2000), and *Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240 (1997) to support its argument that the November 6, 2025, Order deprives it of a nonjury mode of trial. This argument is misplaced. Those cases recognize that an order is immediately appealable when it actually deprives a party of a mode of trial to which that party is entitled as a matter of right. The Circuit Court orders do not deny Appellant a mode of trial it is entitled to as a matter of right. Further, *Lester* and *Flagstar* do not hold that every order touching upon a jury demand is immediately appealable.

In *Flagstar*, the Supreme Court described the traditional mode of trial inquiry as whether a party has been erroneously denied a jury in a law action or erroneously required to proceed

before a jury in an equity action. *Id.* 341 S.C. at 72, 533 S.E.2d at 333. The Court nevertheless held that a bifurcation order was not immediately appealable because it did not deprive the party of a mode of trial to which it was entitled as a matter of right and any error could be reviewed after trial. *Id*. at 73, 533 S.E.2d at 333. Thus, *Flagstar* requires examination of what the challenged order actually commands, not merely whether the order may influence trial procedure. Here, the court may still proceed by way of a bifurcated trial, issue jury charges, or prepare a verdict form, if necessary, to address any issues that are not to be decided by the jury.

The November 6, 2025, Order was entered on a Rule 12(f) motion directed to the pleadings. Although the Order states that Respondent's jury request is proper, it does not direct that every factual and remedial issue arising under S.C. Code Ann. § 41-1-80 must be decided by a jury. It does not make a determination under Rule 39(a)(2), SCRCP, specifying which particular issues are jury issues and which are nonjury issues. It does not prescribe the questions to be submitted to a jury, foreclose the use of an advisory jury, or prevent the court from reserving equitable findings and remedies for its own determination as the case progresses. (R. pp. 5–7).

The South Carolina Rules of Civil Procedure confirm that preserving a general jury demand does not require a jury to determine every issue in a mixed action. Under Rule 38(c), a general demand is deemed to cover all issues "so triable." It does not require the jury to determine every issue without regard to its legal or equitable character. Rule 39(a)(2) authorizes the trial court, upon motion or on its own initiative, to determine that a jury trial right does not exist as to "some or all" issues. Rule 39(c) further permits the use of an advisory jury on issues not triable to a jury as of right. The continued presence of Respondent's jury demand therefore does not conclusively decide the ultimate mode of adjudication for each claim and remedy.

The trial court also retains additional tools to manage any legal and equitable components of the case. Rule 42(b), SCRCP, authorizes separate trials of claims or issues when necessary for convenience, economy, or avoidance of prejudice. Rule 49 allows the court to submit special interrogatories or a special verdict to the jury, and Rule 52 requires the court to make its own findings in matters tried without a jury or with an advisory jury. These rules permit the Circuit Court to preserve the jury right applicable to the legal claims while reserving equitable matters for judicial determination.

In *Lester*, the trial court denied a request for a jury trial and placed the case on the nonjury roster. *Id*. at 327 S.C. 265–66. That order definitively removed the case from a jury and therefore presented an actual deprivation of the claimed mode of trial. Here, the Circuit Court has not entered a corresponding order conclusively assigning every issue under S.C. Code Ann. § 41-1-80 to a jury or excluding the court from determining any equitable component.

II. IF THIS COURT REACHES THE MERITS, IT SHOULD AFFIRM THE CIRCUIT COURT'S DENIAL OF APPELLANT'S MOTION TO STRIKE THE CHALLENGED DAMAGES ALLEGATIONS.

The Circuit Court properly declined to strike the challenged damages allegations at the pleading stage. The Amended Complaint asserts both a statutory retaliation claim and a separate common-law defamation claim seeking legal damages, and the continued presence of those allegations does not constitute an award of relief or a determination that every requested remedy is recoverable under S.C. Code Ann. § 41-1-80. The Circuit Court retained authority to determine the remedies available under each claim after development of the record, and its limited reliance on Drew did not expand the statutory cause of action or require equitable relief to be decided by a jury.

A. The Circuit Court acted within its discretion by declining to strike allegations and requested relief before the record had been developed.

"A motion to strike under Rule 12(f), SCRCP, which challenges a theory of recovery in the complaint, is in the nature of a motion to dismiss under Rule 12(b)(6), SCRCP." *Grazia v. S.C. State Plastering*, LLC, 390 S.C. 562, 567, 703 S.E.2d 197, 199 (2010). The court must confine its review to the complaint, construe the allegations in the plaintiff's favor, and deny the motion if the alleged facts and reasonable inferences would entitle the plaintiff to relief under any valid theory. *Id*.; *Robinson v. Code*, 384 S.C. 582, 588, 682 S.E.2d 495, 498 (Ct. App. 2009). The Circuit Court properly applied this standard. (R. p. 4).

The Amended Complaint asserts more than a workers' compensation retaliation claim. It also asserts a common law defamation claim against Payne, individually and as an alleged agent of BCSD, based on statements accusing Respondent of lying, faking her injuries, and stealing time, and statements attacking her professional fitness as a teacher. The defamation claim seeks damages for lost earnings, emotional and physical injury, and harm to Respondent's professional standing and reputation. (R. p. 18, ¶¶ 54–59). Appellant sought to remove categories of damages from the pleading and now asks this Court to strike "all claims for legal damages and any demand for a jury trial." (Appellant's Br. p. 7). That relief would reach beyond the statutory retaliation claim and impair the damages allegations supporting the separate legal cause of action for defamation.

Even as to the retaliation claim, leaving allegations in the pleading does not award the requested relief or decide that each category is recoverable. The November 6, 2025, Order did not enter judgment for damages or any other remedy. It merely declined to remove allegations before discovery, dispositive motions, and trial. Rule 8(a), SCRCP, permits a party to demand alternative or several forms of relief, while Rule 8(e)(2) permits the pleading of legal and

equitable theories regardless of consistency. Rule 54(c) ensures that the final judgment will grant only the relief to which the prevailing party is legally entitled. The Rules therefore distinguish between requesting relief in a pleading and ultimately receiving it in a judgment.

The Circuit Court can later determine the remedies available under each claim based on the governing law and the developed record. It may resolve remedial questions through summary judgment, pretrial rulings, trial instructions, a special verdict, post-trial motions, or its final judgment. The continued presence of a damages allegation at the pleading stage neither expands S.C. Code Ann. § 41-1-80 nor obligates the court to award relief not authorized by law.

B. Appellant misidentifies Drew and misstates the limited purpose for which the Circuit Court relied on it.

Appellant asserts that the Circuit Court relied on *Drew v. Waffle House, Inc*., 2007 WL 837138 (D.S.C. Mar. 15, 2007). (Appellant's Br. pp. 3, 5). That is not the authority cited in the Order. The Circuit Court cited the South Carolina Supreme Court's published decision in *Drew v. Waffle House, Inc*., 351 S.C. 544, 571 S.E.2d 89 (2002). (R. p. 6).

The Circuit Court cited a South Carolina Supreme Court decision for the remedial proposition that front pay is an alternative when reinstatement is not feasible. *Drew*, 351 S.C. at 550, 571 S.E.2d at 92. Appellant is correct that Drew arose under the Family and Medical Leave Act and did not directly construe S.C. Code Ann. § 41-1-80. But the Circuit Court used Drew for a limited purpose to explain why allegations concerning the employment relationship, workplace hostility, and the feasibility of reinstatement were not necessarily irrelevant at the pleading stage. The Order did not rely on Drew to hold that every category of damages alleged in the Amended Complaint is recoverable under S.C. Code Ann. § 41-1-80 or that the jury must determine equitable relief.

III. THE CIRCUIT COURT CORRECTLY PRESERVED RESPONDENT'S JURY DEMAND.

The Circuit Court properly preserved Respondent's general jury demand. The Amended Complaint includes an undisputed legal defamation claim that is triable to a jury. Preserving that demand does not require a jury to decide every issue arising under S.C. Code Ann. § 41-1-80. The South Carolina Rules of Civil Procedure allow the Circuit Court to distinguish between legal and equitable issues, assign each to the proper decisionmaker, and structure the proceedings as necessary. Accordingly, Appellant's challenge to the mode of trial for the statutory claim provides no basis for striking Respondent's jury demand from the action.

A. Appellant's challenge to the mode of trial under section 41-1-80 does not justify striking a jury demand.

The Amended Complaint asserts that claim against BCSD and Payne, including Payne in her individual capacity, and seeks money damages for injury to Respondent's professional reputation, lost earnings, emotional distress, and related harm. (R. p. 18, ¶¶ 54–59). Accordingly, regardless of how the issues arising under S.C. Code Ann. § 41-1-80 are ultimately adjudicated, Respondent's jury demand remains operative as to the defamation claim.

Rule 18(a), SCRCP, permits legal and equitable claims to be joined in one action. The joinder of an equitable claim with a legal claim does not convert the legal claim into an equitable one or eliminate the jury right attached to it. South Carolina law recognizes that legal and equitable issues may coexist in the same action and retain their respective modes of adjudication. *C & S Real Estate Services, Inc. v. Massengale*, 290 S.C. 299, 302, 350 S.E.2d 191, 193 (1986). The proper course is to allocate the issues according to their character, not to strike a jury demand that unquestionably applies to at least one cause of action.

B. Rules 38 and 39 permit the Circuit Court to preserve the general jury demand while later determining which issues are triable to a jury.

Rule 38(c), SCRCP, states that a general jury demand applies to all issues "so triable." By its terms, therefore, the demand extends only to issues that are properly triable by a jury. It does not convert equitable issues into legal issues or require the jury to determine matters reserved for the court.

Rule 39(a)(2), SCRCP, provides the mechanism for allocating the issues. Even after a jury demand has been made, the trial court may determine, upon motion or on its own initiative, that no jury-trial right exists as to "some or all" issues. Rule 39(c) also permits the use of an advisory jury on issues that are not triable to a jury as of right. The Rules thus contemplate that a general jury demand may remain intact while the court separately determines the proper decision-maker for particular claims, issues, or remedies.

The November 6, 2025, Order should be read consistently with those provisions. The Circuit Court's refusal to strike the jury demand preserved Respondent's entitlement to a jury on all issues, so triable. It did not foreclose the court from later determining that some or all issues arising under section 41-1-80 must be decided by the court. If an issue specific determination becomes necessary, Appellant may also seek relief under Rule 39. The existence of that procedure demonstrates why striking the jury demand was neither required nor appropriate at this stage.

C. Respondent's claim can be tried without compromising either party's proper mode of trial.

The South Carolina Rules of Civil Procedure provide several methods for trying an action containing both legal and equitable issues. Rule 42(b), SCRCP, authorizes separate trials of claims or issues when separation would promote convenience, economy, or fairness. Rule 49 permits special verdicts and written interrogatories, allowing a jury to decide only the factual or

legal issues properly submitted to it. Rule 52 requires the court to make findings and conclusions on matters tried without a jury or with an advisory jury.

These procedures allow the jury to decide the defamation claim while the court determines any issues or remedies under section 41-1-80 that are equitable in nature. They also permit the court to account for any overlapping evidence without surrendering its responsibility to decide matters committed to the court.

The cases cited by the Circuit Court illustrate the practical compatibility of jury findings and judicially determined statutory relief. In *Chastain v. Owens Carolina, Inc*., 310 S.C. 417, 426 S.E.2d 834 (Ct. App. 1993), a jury determined whether workers' compensation retaliation occurred. In *Horn v. Davis Electrical Constructors, Inc*., 307 S.C. 559, 561, 416 S.E.2d 634, 635 (1992), the jury determined whether the statute had been violated while the court addressed the statutory remedies. Those decisions do not necessarily establish an unconditional right to a jury trial on every issue under section 41-1-80. They do, however, demonstrate that the use of a jury to decide appropriate factual or legal issues can coexist with the court's responsibility to determine equitable relief.

Accordingly, the Circuit Court was not required to strike Respondent's jury demand merely because Appellant contends the statutory retaliation claim must be adjudicated by the court. The demand remains proper and necessary for the unchallenged defamation claim, while Rules 38, 39, 42, 49, and 52 provide the Circuit Court with ample authority to allocate the remaining issues as the action proceeds.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court dismiss the appeal as interlocutory. If the Court reaches the merits, Respondent requests that the Court affirm the Circuit Court's denial of Appellant's Motion to Strike and leave Respondent's jury demand intact.

Respectfully submitted,
s/ Emmanuel J. Ferguson, Sr.
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