THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2017-002618
Lower Court Case No. 2017-CP-23-03754

Harold Estes Blackwell, Jr. ..... Appellant,

v.

Miracle Hill Ministries, Inc., Anita Jane Miller
(aka Anita M. Blackwell), and William Fisk ..... Respondents.

INITIAL BRIEF OF RESPONDENT MIRACLE HILL MINISTRIES, INC.

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STATEMENT OF THE CASE

On June 8, 2017, Appellant Harold Estes Blackwell, Jr. ("Blackwell") filed his summons and complaint against Respondents Anita Jane Miller ("Miller"), Miracle Hill Ministries, Inc. ("Miracle Hill"), and William Fisk ("Fisk") in the Court of Common Pleas for Greenville County. *See* Compl. Blackwell also contemporaneously filed a motion for leave to proceed *in forma pauperis*, which was denied on June 29, 2017. *See* Mot. filed June 8, 2017; Order filed June 29, 2017. The complaint alleges the following nine causes of action against three defendants: (i) intentional infliction of emotional distress, (ii) gross negligence, (iii) civil conspiracy, (iv) breach of fiduciary duty, (v) aiding and abetting breach of fiduciary duty, (vi) defamation, (vii) fraudulent concealment, (viii) failure to control patient, and (ix) fraud. *See id.*, pp. 43-68.

On July 20, 2017, Miracle Hill filed a motion to dismiss Blackwell's claims against it pursuant to Rule 12(b)(6), SCRCP. Mot. filed July 20, 2017. The other defendants, Miller and Fisk, also filed motions to dismiss on August 9, 2017 and August 21, 2017. Mot. filed Aug. 9, 2017; Mot. filed Aug. 21, 2017. On September 11, 2017, Blackwell filed a motion and memorandum seeking a temporary injunction barring Miracle Hill from providing any addiction

treatment services to patients or advertising its treatment services on its website. Mot. filed Sept. 11, 2017. On October 3, 2017, Miracle Hill filed a motion to quash various subpoenas issued by Blackwell and a memorandum in support of its motion to dismiss and in opposition to Blackwell's motion for a temporary injunction. Mot. filed Oct. 3, 2017; Memo. in Supp./Opp. filed Oct. 3, 2017.

On October 4, 2017, the lower court convened a hearing on the following motions filed by the parties: (i) Blackwell's motion for a temporary injunction, (ii) Miracle Hill's motion to dismiss, (iii) Miller's motion to dismiss, (iv) Fisk's motion to dismiss, and (v) a motion to dismiss filed by Toby Woodard ("Woodard"), a defendant in a separate lawsuit filed by Blackwell captioned "*Harold E. Blackwell, Jr. v. Toby Woodard*, C.A. No. 2016-CP-23-065467." *See* Tr. of Oct. 4, 2017 Hearing. At the conclusion of the hearing, the lower court requested that the parties submit proposed orders by October 21, 2017. *Id.*, p. 39, lines 13-16.

On November 8, 2017, the lower court issued multiple orders separately granting each defendant's motion to dismiss. *See* Orders filed Nov. 8, 2017. Specific to Miracle Hill, the lower court's order granted Miracle Hill's motions to dismiss and to quash the subpoenas and denied Blackwell's motion for a temporary injunction (the "Order"). Order filed Nov. 8, 2017. On November 16, 2017, Blackwell filed a motion pursuant to Rule 60(b)(1), SCRCP, seeking relief from the judgment provided by the Order. Mot. filed Nov. 16, 2017. The lower court denied Blackwell's motion on December 11, 2017. Order filed Dec. 11, 2017. Blackwell filed a second Rule 60 motion on December 13, 2017 seeking relief from the orders dismissing his claims against Miller and Fisk, which was denied on January 18, 2018. Mot. filed Dec. 13, 2017; Order filed Jan. 18, 2018. On December 29, 2017, Blackwell filed a notice of appeal with the Circuit Court of Greenville County relating to his appeal of the Order. Notice of Appeal filed Dec. 29, 2017.

STATEMENT OF FACTS

Spanning 69 pages and 285 paragraphs, the allegations of the complaint relate to various incidents surrounding the final years of Blackwell's marriage to Miller and Miller's enrollment in Miracle Hill's "Renewal" addiction treatment program during the spring and summer of 2015. The numerous events described by the allegations of the complaint are summarized below.

After serious marital discord between Blackwell and Miller resulted in their separation in late January 2015, Blackwell consulted Fisk, a fellow church member, about his marital problems. *Id.*, pp. 6-7, ¶¶ 25-31. Subsequently, Miller enrolled in Miracle Hill's Renewal program to treat her alcoholism. *Id.* p. 7, ¶¶ 34-35. For the first 30 days of her treatment, Miller was not allowed to visit her husband or correspond with him outside of letters delivered by U.S. Mail. *Id.*, p. 8, ¶ 42. When the 30-day time period expired, Blackwell attempted to visit Miller at the first opportunity, however a Miracle Hill staff member accused Blackwell of being intoxicated and threatened to remove him from the premises. *Id.*, p. 9, ¶¶ 48-51.

Although Blackwell initially spoke with Miller by telephone frequently during her treatment, she eventually stopped all communication with him. *Id.*, p. 10, ¶¶ 54-59; p. 12, ¶ 67. Due to Miller's refusal to explain her silence and Miracle Hill's alleged encouragement of her behavior, Blackwell alleges he suffered severe emotional harm. *Id.* pp. 13-14, ¶ 73-75. On July 18, 2015, Blackwell attempted to visit Miller at Miracle Hill's facility. *Id.*, p. 17, ¶ 93. After meeting with Miller for thirty minutes, Blackwell alleges that a Miracle Hill employee identified by the complaint as Mr. Slocum called the police, reported that Blackwell had committed a crime, and insisted that Blackwell be arrested. *Id.* pp. 18-19, ¶ 94-102.

On July 27, 2015, Blackwell and Fisk met with Reid Lehman, who was employed by Miracle Hill, and Lehman agreed that Fisk should meet with Miller because "[Blackwell's] actions

on July 18, 2015 indicated [Blackwell] was unfit to have...Miller...communicate with him in any capacity." *Id.*, p. 23, ¶ 117(g). When Blackwell asked for an explanation for Miller's silence, Lehman stated that it was entirely Miller's decision not to explain her silence and that "Renewal clients routinely made such decisions without the influence of Renewal staff." *Id.*, p. 24, ¶ 117(q). Fisk ultimately met with Miller on July 31, 2015 to speak with her about her decision not to speak to Blackwell and her plans for their marriage. *Id.*, p. 30, ¶ 135. After meeting with Miller, Fisk called Blackwell on August 1, 2015 and gave answers regarding Miller's silence, which deepened Blackwell's emotional distress. *Id.*, p. 31, ¶¶ 140-143.

On September 23, 2015, Blackwell served his lawsuit seeking a divorce from Miller. *Id.*, p. 37, ¶ 174. On October 1, 2016, a divorce decree was issued on the grounds of twelve months' separation. *Id.* p. 41, ¶ 201. On December 9, 2015, Blackwell attempted to commit suicide due to emotional distress allegedly caused by the defendants. *Id.*, p. 38, ¶ 182.

Blackwell brought the instant suit on June 9, 2017 asserting eight causes of action against Miracle Hill for (i) intentional infliction of emotional distress, (ii) gross negligence, (iii) civil conspiracy, (iv) breach of fiduciary duty, (v) aiding and abetting breach of fiduciary duty, (vi) defamation of character, (vii) mental health facility failure to control patient, and (viii) fraud. *See* Compl. On July 20, 2017, Miracle Hill filed a motion to dismiss Blackwell's claims pursuant to Rule 12(b)(6), SCRCP. On August 18, 2017, Blackwell filed a memorandum in opposition to Miracle Hill's motion to dismiss. Memo. filed Aug. 18, 2017. The memorandum generally states that the complaint contains facts sufficient to legally set forth each claim for relief and requests that Blackwell be allowed to amend his complaint if any deficiencies are noted by the court. *See id.*

On October 4, 2017, the lower court heard arguments from the parties on multiple motions, including Miracle Hill's motions to dismiss and to quash and Blackwell's motion for a temporary injunction. *See* Tr. of Oct. 4, 2017 Hearing. Blackwell argued first, contending that Miracle Hill should be forced to suspend its treatment programs due to questionable success rates. *Id.*, p. 5, lines 12-20. The other parties then presented their arguments supporting their motions to dismiss, and Blackwell was allowed to present his arguments in response. *Id.*, pp. 17-33. The only point argued by Blackwell in response to Miracle Hill's motion to dismiss was his assertion that Miracle Hill breached its legal duty to allow Blackwell to communicate with Miller during her treatment. *Id.*, p. 35, line 2 – p. 36, line 15. The other arguments advanced by Blackwell related to Miller, Fisk, or Woodard. *Id.*, pp. 36-39. The lower court concluded the hearing by instructing the defendants to submit proposed orders by October 13, 2017 with Blackwell to submit his proposed order by October 21, 2017. *Id.*, pp. 39-41.

On November 8, 2017, the lower court issued the Order which granted Miracle Hill's motion to dismiss and to quash and denied Blackwell's motion for a temporary injunction based upon the grounds argued by Miracle Hill in its memorandum and at the hearing. Order filed Nov. 8, 2017. On November 16, 2017, Blackwell filed a motion "pursuant to Rule 60(b)1 of the South Carolina Rules of Civil Procedure." Mot. filed Nov. 16, 2017. In his motion, Blackwell argued that the complaint sufficiently alleged facts to constitute causes of action for (i) intentional infliction of emotional distress, ¶¶ 5, 18-19; (ii) gross negligence, ¶¶ 6-7, 13-14, 27-28; (iii) breach of fiduciary duty, ¶¶ 9, 30; (iv) aiding and abetting breach of fiduciary duty, ¶ 10; (v) defamation, ¶¶11-12, 32-25; and (vi) fraud, ¶ 13-14. Blackwell also argued for the first time that the lower court erred by making various factual conclusions without evidentiary support, *Id.* pp. 1-5, ¶¶ 1-14; and by failing to apply a less stringent pleading standard due to Blackwell's status as a *pro se*

litigant, *Id.*, pp. 5-8; ¶¶ 15-17. Blackwell's Rule 60 motion was denied on December 11, 2017. Order filed Dec. 11, 2017. Blackwell's memorandum does not address any of the following: (i) the Order's denial of Blackwell's motion for a temporary injunction; (ii) the Order's grant of Miracle Hill's motion to quash; or (iii) the Order's dismissal of Blackwell's claims against Miracle Hill for civil conspiracy, fraudulent concealment, or mental health facility failure to control patient. *See id.*

ARGUMENT

With respect to the appellant's claims against Miracle Hill, the instant appeal broadly presents the following questions: (i) whether the lower court correctly determined that the complaint should be dismissed for failure to state facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6), SCRCP; (ii) whether the lower court abused its discretion; and (iii) whether there are supporting grounds to support the lower court's orders. As argued below, the position of both the lower court and Miracle Hill roundly rejects the appellant's attempt to fashion virtually limitless liability upon an addiction treatment facility for emotional distress suffered by non-patient plaintiffs as a result of common, private decisions made by its patients in emotionally tumultuous circumstances.

I. THE LOWER COURT CORRECTLY DETERMINED THAT THE COMPLAINT FAILED TO STATE FACTS SUFFICIENT TO CONSTITUTE ANY CAUSE OF ACTION AGAINST RESPONDENT MIRACLE HILL

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 lower court. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the lower court must base its ruling solely on allegations set forth in the complaint. *Id.*

If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. *Brazell v. Windsor*, 384 S.C. 512, 515, 682 S.E.2d 824, 826 (2009). In deciding whether the lower court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. *Id.*

A. The Lower Court Correctly Determined that the Complaint Fails to Allege Extreme and Outrageous Conduct by Respondent Miracle Hill Sufficient to State a Claim for Intentional Infliction of Emotional Distress

As an initial matter, Blackwell's arguments on appeal concerning his claim for intentional infliction of emotion distress were not raised with the lower court either prior to or during the hearing on October 4, 2017. Although it was raised in Blackwell's Rule 60 motion, an argument that could have been raised before the lower court ruled cannot be raised for the first time in a post-order motion for reconsideration of that ruling. *Patterson v. Reid,* 318 S.C. 183, 185, 456. S.E.2d 436, 437 (Ct. App. 1995). Regardless, Blackwell's argument fails on the merits.

The lower court correctly concluded that the complaint fails to allege any extreme or outrageous conduct by Miracle Hill against Blackwell. In order to recover for the intentional infliction of emotional distress, a plaintiff must establish that (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 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 the plaintiff's emotional distress, and (4) the emotional distress suffered by the plaintiff was severe so that no reasonable man could be expected to endure it. *Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778-79 (1981). The question of whether a defendant's conduct may be reasonably regarded as so extreme and

outrageous as to permit recovery is one for the court to determine in the first instance. *Todd v. South Carolina Farm Bureau Mutual Insurance Co.*, 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984), *quashed in part on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (1985).

Here, Blackwell has failed to allege any extreme or outrageous conduct sufficient to state a claim for intentional infliction of emotional distress. As the lower court correctly observed, the only allegation concerning outrageous and extreme conduct is Miracle Hill's patient's decision to refrain from communicating with her estranged spouse. *See* Compl., ¶ 73 ("Plaintiff made clear through letters and emails to Defendants Miller and Miracle Hill he was experiencing the most extreme emotional distress imaginable due to the disrespect, pain and suffering due directly and proximately to Defendant Miller's refusal to explain her silence and Defendant Miracle Hill's encouragement of her outrageous behavior."). Such alleged behavior falls far short of the uniquely reprehensible and shocking conduct required for a claim of intentional infliction of emotional distress. To the contrary, the complaint suggests that Miracle Hill's behavior was neither extreme nor uncommon. *See* Compl., at 24, ¶ 117(q) ("Mr. Lehman stated the decision not to provide an explanation for Defendant Miller's silence was entirely Defendant Miller [sic] decision and that Renewal clients routinely made such decisions without the influence of Renewal Staff.").

In his initial brief, Appellant argues that the true "essence" of his claim rests upon "Miller's scheme to not explain her silence" and "the defendants' efforts to 'teach Plaintiff a lesson.'" See App. Br., p. 22. Neither Appellant's reframing of his complaint nor the paragraphs cited by Appellant in support provide any basis for overturning the lower court's decision. The vast majority of the paragraphs cited by Appellant concern actions taken solely by Miller whose conduct cannot form the basis of tort liability against Miracle Hill. The only allegations specific to Miracle Hill concern its alleged use of "the disrespectful refusal of Defendant Miller to explain

her silence," *see* Compl., and Miracle Hill's alleged failure "to disclose to Plaintiff any information regarding his wife." Compl., p. 13-14, ¶¶ 74, 75. Miracle Hill has no legal obligation to insert itself into its patient's marital relationship or to disclose information to an estranged spouse contrary to the wishes of its patient, and Appellant has cited no legal authority to the contrary.

By arguing that Miracle Hill may be held liable for Miller's decision to refrain from communicating with her estranged husband, Blackwell is urging that this Court subject all addiction treatment facilities to virtually limitless liability for non-patients' injured feelings. Such a result would constitute an absurd expansion of the tort of intentional infliction of emotional distress which is reserved for truly extreme and outrageous conduct that has no place in civilized society. *See Todd,* 283 S.C. at 171, 321 S.E.2d at 611 (noting "widespread reluctance of courts to permit the tort of outrage to become a panacea for wounded feelings rather than reprehensible conduct").

B. The Lower Court Correctly Determined that the Complaint Fails to Allege Any Legal Duty Owed by Respondent Miracle Hill to Appellant Sufficient to State a Claim for Gross Negligence

To establish a claim of negligence, three essential elements must be proven: (1) duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. *Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 468 S.E.2d 292 (1996). An essential element in a negligence cause of action is the existence of a legal duty of care owed by the defendant to the plaintiff. *Rogers v. S.C. Dep't of Parole and Cmty. Corr.*, 320 S.C. 253, 255, 464 S.E.2d 330, 332 (1995). Without such a duty, there can be no actionable negligence. *Id,* 320 S.C. at 255, 464 S.E.2d at 332. "In a negligence action, the court must determine, as a matter of law, whether the defendant owed a duty of care to the plaintiff." *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 545 (2002).

In the case at bar, the lower court correctly held that Miracle Hill owes no legal duty to Blackwell. Blackwell's allegations of legal duty appears in paragraph 221 of the complaint, where he claims Miracle Hill owed duties stemming from the following: (1) Miracle Hill admitting Blackwell's former wife into its Renewal Program; (2) failing to follow or implement appropriate treatment protocols with respect to Miller and other unidentified patients; and (3) the foreseeability of Blackwell's emotional distress resulting from Miracle Hill's implementation of Miller's decision to refrain from communicating with Blackwell. *See* Compl., ¶ 221. As to the first argument, Blackwell cannot maintain a claim of negligence against Miracle Hill for Miller choosing to voluntarily undergo treatment from Miracle Hill or for any other patient choosing treatment from Miracle Hill. *See Bishop v. S.C. Dept. of Mental Health*, 331 S.C. 79, 91, 502 S.E.2d 78, 84 (1998) ("If a physician deviated from accepted standards of professional care in treating a patient, he breached a duty of care to the patient and not a third party."). Blackwell has no standing to bring a claim on behalf of his ex-wife or other patients stemming from their treatment at Miracle Hill. *See also Moye v. United States*, 735 F.Supp. 179 (E.D.N.C. 1990) (holding that there must be a physician-patient relationship between victim and doctor before the court will find a doctor owes a victim harmed by his patient a duty of care to properly evaluate and treat patient); *Russell v. Adams*, 125 N.C.App. 637, 482 S.E.2d 30 (1997) (stating that psychologists, like other health care providers, may be held liable in medical malpractice only to their patients). While Miracle Hill may owe a legal duty of care to Miller, the same cannot be said for Blackwell as his only connection to Miracle Hill is his former wife's treatment.

Second, Miracle Hill owes no legal duty to Blackwell to divulge information concerning its patient or to force its patient to communicate with her estranged husband against her will. *See* Compl., p. 24, ¶ 117(q). It is the public policy of this state to maintain the confidential nature of

the physician-patient relationship. *See McCormick v. England*, 328 S.C. 627, 639, 494 S.E.2d 431, 437 (Ct. App. 1997). Blackwell cites no law to the contrary.

Finally, Blackwell's brief advances a nonsensical argument that the doctrine of respondeat superior creates a legal duty owed by Miracle Hill to Blackwell. Without any citation to authority, Blackwell argues that because Lehman, Slocum, and Woodard "were acting within the scope of their employment during all times referenced in the complaint" the lower court erred by concluding "appellant failed to allege treatment by the institution." *See* App. Init. Br., p. 25. This *non-sequitur* does not describe a legal duty.

C. The Lower Court Correctly Found that the Complaint Fails to Allege an Unprivileged Publication by Respondent Miracle Hill to a Third Party or the Existence of Legally Presumed or Special Damages Sufficient to State a Claim for Defamation

The tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998). 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 the publication. *Id.* at 506. The lower court correctly found that the complaint fails to meet the second element of defamation, an unprivileged publication to a third party.

The complaint identifies three occasions where Blackwell contends he was defamed by Miracle Hill: (i) when Miracle Hill "published" "to third parties" information relating to Miller's accusations of Blackwell's "adultery under oath in her divorce proceedings," *see* Compl., p. 64, ¶¶ 246-247; (ii) when Miracle Hill's employee stated to police officers that Blackwell "was guilty of public intoxication and domestic abuse," *see id.*, p. 64, ¶ 250; and (iii) when Miracle Hill's

employee "publish defamatory material to a marriage counselor" who Miracle Hill provided to Miller. *See id.*, p. 64, ¶ 252. First, Miller's accusation of Blackwell's adultery in the context of a divorce proceeding in a South Carolina Family Court is absolutely privileged and cannot form the basis of a defamation claim against Miracle Hill. *See McKesson & Robbins, Inc. v. Newsome*, 206 S.C. 269, 33 S.E.2d 585 (1945) (holding that "defamatory matter contained in pleadings filed according to law in a court having jurisdiction, if relevant and pertinent to the issues in the case, are absolutely privileged").

Next, Miracle Hill's communications with the police and the marriage counselor are privileged and cannot constitute the basis of a defamation claim. "A communication made in good faith on any subject matter in which the person communicating has an interest...is privileged if made to a person having a corresponding interest or duty, even though it contains matter which, without this privilege, would be actionable, and although the duty is not a legal one, but only a moral or social duty of imperfect obligation." *Conwell v. Spur Oil Co. of Western South Carolina*, 240 S.C. 170, 178 (1962). As the complaint alleges, Miller "accus[ed] Plaintiff of domestic abuse to the staff at Miracle Hill." *See* Compl., p. 43, ¶ 215(a)(iii). Therefore, Miracle Hill had, at the very least, a moral or social obligation to notify law enforcement in an effort to protect its patient from someone who "she felt...sought to do her physical harm again." *See id.*, p. 40, ¶ 194. Similarly, Miracle Hill and the marriage counselor both shared the common interest in providing needed treatment to Miller, and any information about Blackwell would be relevant to that treatment.

With respect to Miracle Hill's communications with police, Blackwell erroneously argues that the complaint demonstrates that such conversations were not privileged due to the presence of a third party. First, Blackwell failed to present this argument to the lower court prior to its ruling,

thus it is not preserved for appellate review. *See Patterson*, 318 S.C. at 185, 456 S.E.2d at 437. Second, Blackwell's argument relies on consideration of materials outside the pleadings as the undisclosed police report was not part of the complaint. Finally, the unidentified police report fails to identify the identity of the third party, whether this individual was employed by Miracle Hill, or whether this individual was present for Miracle Hill's conversation with police. Rather, the relevant inquiry concerns whether the complaint identifies the presence of a third party. As Blackwell readily admits, "the complaint says nothing about who was present when Miracle Hill staff spoke to police." *See* App. Init. Br., p. 24; *see also* Compl., pp. 18-20, ¶¶ 94-108.

Finally, the lower court correctly concluded that the complaint fails to allege any legally presumed or special damages. South Carolina recognizes only four types of slander that are actionable without the existence of special damages, which "include statements that impute unchastity, a criminal offense, a loathsome disease, or matter incompatible with business or trade." *Holtzscheiter*, 332 S.C. at 508, 506 S.E.2d at 501. The complaint states only that "defamatory material" was communicated to a marriage counselor provided by Miracle Hill to Miller. *See* Compl., p. 64, ¶ 252. Standing alone, the phrase "defamatory material" does not implicate any of the four categories for legally presumed damages, and the complaint does not describe any specific harm to Blackwell's reputation because of this communication. Moreover, Blackwell presents no arguments on appeal about legally presumed or special damages relating to his defamation claim against Miracle Hill.

D. The Lower Court Correctly Concluded That the Complaint Failed to State Facts Sufficient to Constitute a Claim for Relief Despite Appellant's Status as a *Pro Se* Litigant

The appellant mistakenly argues that the lower court should have denied the dismissal of the complaint due to Blackwell's status as a *pro se* litigant. Blackwell failed to raise this argument prior to the issuance of the Order. Therefore, Blackwell has not adequately preserved this issue on

appeal. See *Patterson*, 318 S.C. at 185, 456. S.E.2d at 437. Notwithstanding Blackwell's failure to preserve his argument, his argument fails on the merits.

Although it has stated that courts must liberally construe *pro se* pleadings, the United States Supreme Court has made clear that a plaintiff must do more than make conclusory statements to state a claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 677-78, 129 S.Ct. 1937, 1943 (2009); *Bell Atlantic Corp v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964 (2007). The mandated liberal construction afforded to *pro se* pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so; however, a lower court may not rewrite a complaint to include claims that were never presented, *Barnett v. Hargett*, 174 F.3d 1128 (10th Cir. 1999), construct the plaintiff's legal arguments for him, *Small v. Endicott*, 998 F.2d 411 (7th Cir. 1993), or "conjure up questions never squarely presented" to the court, *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). Rather, the pleading must contain sufficient factual matter, accepted as true, to state a claim that is plausible on its face, and the reviewing court need only accept as true the pleading's factual allegations, not its legal conclusions. *Ashcroft*, 556 U.S. at 678-79, 129 S.Ct. at 1944. Further, allegations that are no more than conclusions are not entitled to the assumption of truth. *Id.* at 681, 129 S.Ct. at 1951.

In the instant case, the lower court correctly concluded that the complaint fails under any construction to allege facts sufficient to state a claim against Miracle Hill. Blackwell is trying to sue Miracle Hill because he disagrees with the treatment his ex-wife voluntarily chose to undergo at Miracle Hill's treatment facility. Even the most liberal construction will not yield a single colorable claim against Miracle Hill. The lower court is not required to act as Blackwell's legal counsel to transform the disjointed allegations of the complaint into actionable claims against Miracle Hill. Blackwell has been afforded ample opportunity to identify a set of facts that would

entitle him to relief against Miracle Hill, however he has been unable to do so either at the hearing, in his Rule 60 motion, or on appeal. Therefore, the lower court correctly dismissed the complaint with prejudice.

II. THE LOWER COURT DID NOT ABUSE ITS DISCRETION BY DISMISSING THE COMPLAINT WITH PREJUDICE AND BY DECLINING TO GRANT APPELLANT'S REQUEST FOR A CONTINUANCE

In addition to his arguments concerning the sufficiency of the complaint, Blackwell argues two issues involving the lower court's exercise of discretion: (i) whether the lower court abused its discretion by dismissing the complaint with prejudice and without allowing amended pleadings, and (ii) whether the lower court abused its discretion in denying his request for a continuance. As argued below, the lower court was well within its authority to exercise its discretion in dismissing the complaint with prejudice and refusing Blackwell's request for a continuance.

A. The Lower Court Did Not Abuse Its Discretion by Dismissing the Complaint with Prejudice

On appeal, the plaintiff argues for the first time that the lower court erred when it dismissed the complaint with prejudice and without allowing him to file an amended complaint. Because this issue has never been presented to the lower court, Blackwell cannot now present this issue for the first time on appeal. *See Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."). Therefore, Blackwell's failure to preserve this issue forecloses its consideration on appeal.

Regardless of Blackwell's failure to preserve, the trial correctly dismissed Blackwell's claims with prejudice. While Rule 15(a), SCRCP, provides that leave to amend shall be freely given when justice so requires, a lower court is properly within its discretion to decline an amended

pleading that would be futile. *See Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010) ("Although leave to amend should generally be 'freely given,' this court has held that it may be denied where the proposed amendment would be futile."), *rev'd on other grounds*, 401 S.C. 1, 736 S.E.2d 242 (2012). A reasonable period of time in which to amend the complaint may be allowed "when the plaintiff presents additional factual allegations or a different theory of recovery which, taken as true in a well-pleaded complaint, may state a claim upon which relief may be granted." *Spence v. Spence*, 368 S.C. 106, 130, 628 S.E.2d 869, 881-82 (2006).

In the case at bar, Blackwell has failed to any present any factual allegations or different theory of recovery upon which relief may be based against Miracle Hill. Blackwell has had ample opportunity to identify an alternative set of facts or cause of action that would entitle him to relief had this information originally been included in the complaint. Considering that Blackwell failed to assert a single colorable theory of relief across 69 pages and 285 paragraphs in his complaint, it is difficult to imagine what other facts could be asserted in an amended complaint that would overcome his deficiencies. Miracle Hill need not suffer repeated motions to dismiss successive defective pleadings where it is plain that no relief may be had from the circumstances. In light of this futility, the lower court properly dismissed Blackwell's complaint with prejudice.

B. The Lower Court Did Not Abuse Its Discretion by Denying Blackwell's Request for a Continuance

Without any citation to authority, Blackwell argues for the first time that the lower court erred when it opted to hear multiple motions involving two lawsuits both of which were filed by Blackwell involving virtually the same timeline of events. As an initial matter, Blackwell failed to preserve this issue as it was omitted from his Rule 60 motion and was thus not ruled upon. *See Walsh v. Woods*, 371 S.C. 319, 325, 638 S.E.2d 85, 88 (Ct. App. 2006) (finding issue on appeal

was not preserved because the trial court did not rule on the issue and it was not raised in a Rule 59(e) motion). Regardless, Blackwell's argument is without merit.

The granting or refusal of a request for a continuance rests in the sound discretion of the hearing commissioner, whose ruling will not be disturbed unless a clear abuse of discretion is shown. *Gurley v. Mills Mill*, 225 S.C. 46, 80 S.E.2d 745 (1954); *see also Williams v. Bordon's, Inc.*, 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980) ("It has long been the rule in this State that motions for a continuance are addressed to the sound discretion of the trial judge, and his ruling will not be upset unless it clearly appears that there was an abuse of discretion to the prejudice of appellant."). Although Blackwell did not specifically request a continuance at the time of his objection, his arguments on appeal effectively argue that the lower court should have continued the hearing on Woodard's motion to dismiss so that Blackwell would have time to prepare.

After the lower court heard arguments from the attorneys representing Miracle Hill, Miller, and Fisk, the lower court then heard arguments from counsel for Woodard in another lawsuit captioned, "*Harold E. Blackwell, Jr. v. Toby Woodard*, C.A. No. 2016-CP-23-065467." *See* Tr. of Oct. 4, 2017 Hearing, p. 29. When the motion was called, Blackwell stated to the lower court, "I object to that, your Honor. I'm not ready." *Id.*, lines 11-12. Counsel for Woodard affirmed to the lower court that the motion had been previously scheduled to immediately follow the motions filed by the parties to the instant lawsuit. *Id.*, lines 15-16. Notably, Blackwell did not argue that he had not been notified of the hearing, rather he complained that he was not ready. Since all the motions had been previously scheduled by the lower court to be heard in that order, Blackwell suffered no unfair surprise.

Since both lawsuits were filed by Blackwell and involve virtually the same events and timeline, the lower court did not abuse its discretion in hearing the motions the same day. *See id.*,

lines 19-21 ("I think it actually dovetails nicely with what the Court has just heard."). For example, Woodard worked at Miracle Hill's Renewal program with Miller, *id.*, p. 30, lines 1-5, and the basis of Blackwell's original defamation claims against Woodard relate to Woodard's allegedly false accusation that Blackwell had been subject to a restraining order filed by Miller. *Id.*, lines 6-19. Considering the close interconnection of events and causes of action asserted by Blackwell in both suits and his lack of surprise, the lower court properly exercised its discretion in denying Blackwell's objection and request for a continuance. Moreover, the interest of judicial economy is best served by allowing the parties to argue multiple motions at the same hearing as a single hearing minimizes multiple recitations of the same facts and the need for multiple hearings for the same parties.

Finally, Blackwell's argument that an experienced attorney could have understood what motions were being heard is without merit. As the transcript reveals, each motion heard by the trial court had been scheduled in advance, and Blackwell has never argued that he did not receive notice of the hearings. *Id.*, p. 4, lines 5-8; p. 29, lines 15-16.

III. THERE ARE ADDITIONAL SUSTAINING GROUNDS TO AFFIRM THE ORDER OF THE LOWER COURT GRANTING RESPONDENT MIRACLE HILL'S MOTION TO DISMISS

A respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, even if those reasons have not been present to or ruled on by the lower court." *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000). "The appellate court may review respondent's additional reasons and, if convinced, it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *Id.* at 420, 526 S.E.2d at 723, *see also* Rule 220(c), SCACR ("The appellate court may affirm a ruling, order, decision, or judgment upon any ground(s) appearing in the Record on Appeal.").

A. Appellant Has Abandoned Any Arguments Relating to The Lower Court's Dismissal of His Remaining Causes of Action

Blackwell has failed to raise on appeal the lower court's dismissal of his claims for (i) civil conspiracy, (ii) breach of fiduciary duty, (iii) aiding and abetting breach of fiduciary duty, (iv) fraudulent concealment, (v) "mental health facility failure to control patient", and (vi) fraud. None of these issues were identified in Blackwell's statement of issues on appeal and none were specifically identified or argued elsewhere in his brief. *See* App. Init. Br., p. 5. *See* Rule 208(b)(1)(D), SCACR ("The brief shall be divided into as many parts as there are issues to be argued. At the head of each part, the particular issue to be addressed shall be set forth in distinctive type, followed by discussion and citations of authority."). Because Blackwell has failed to identify or argue these issues on appeal, any arguments he may have had are abandoned and may not be considered on appeal. *See Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993) ("An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court."). In the event this Court finds that Blackwell has not abandoned these arguments, the lower court correctly concluded Blackwell's claims are without merit.

B. The Complaint Fails to State Facts Sufficient to Constitute a Claim for Relief as to the Remaining Causes of Action

First, the complaint fails to allege facts sufficient to constitute a claim for civil conspiracy against Miracle Hill. Primarily, Blackwell's claim for civil conspiracy fails due to his failure to allege special damages. The complaint describes the very same damages requested in both Blackwell's claim for civil conspiracy and his claim for intentional infliction of emotional distress. *See* Compl., ¶¶ 215-220, 226-229; *see also Hackworth v. Greywood at Hammett, LLC,* 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009) ("If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim,

their conspiracy claim should be dismissed."). Furthermore, the complaint fails to allege that any act was committed by Miracle Hill in furtherance of a conspiracy. *See id.* at 116, 682 S.E.2d at 874 ("An unexecuted civil conspiracy is not actionable...A claim for civil conspiracy must allege additional facts in furtherance of a conspiracy rather than reallege other claims within the complaint.").

Second, the complaint fails to allege facts sufficient to constitute either a claim for breach of fiduciary duty or aiding and abetting a breach of fiduciary duty against Miracle Hill. Typically, South Carolina law has reserved the imposition of a fiduciary duty "to legal or business settings, often in which one person entrusts money to another, such as with lawyers, brokers, corporate directors, and corporate promoters." *Hendricks v. Clemson Univ.*, 353 S.C. 449, 458-59, 578 S.E.2d 711, 715 (2003). Relevant to both claims, the complaint fails to identify any fiduciary duty owed by Miracle Hill, Miller, or Fisk to Blackwell as there is no legal or business relationship between the appellant and any respondent. Furthermore, as discussed *supra*, at 9-**Error! Bookmark not defined.**, Miracle Hill owes no duty to Blackwell because he did not receive any treatment from the organization, and Blackwell cannot unilaterally impose a fiduciary duty upon another where such a duty would not otherwise exist. *See Brown v. Pearson*, 326 S.C. 409, 422-23, 483 S.E.2d 477, 484 (Ct. App. 1997) ("[A] fiduciary relationship cannot be established by the unilateral action of one party. The other party must have actually accepted or induced the confidence placed in him."). As to Blackwell's claim for aiding and abetting a breach of fiduciary duty, this claim fails because, as discussed above, the complaint describes no fiduciary duty owed to Blackwell by any individual and the complaint fails to allege that Miracle Hill knew of such a duty and assisted a third party in breaching that duty. *See Future Group, II v. Nationsbank*, 324

S.C. 89, 99, 478 S.E.2d 45, 50 (1996) ("The gravamen of the claim is the defendant's knowing participation in the fiduciary's breach.").

Third, the complaint fails to allege any claim of fraudulent concealment against Miracle Hill. This cause of action appears to be solely directed at Fisk as none of the allegations mention Miracle Hill or the defendants collectively. *See* ¶¶ 260-71.

Fourth, the complaint fails to allege a claim of failure to supervise and/or warn against Miracle Hill. A duty to warn others arises when an individual under the defendant's supervision or control has made a specific threat of harm directed at a specific person. *Rogers v. SC. Dep't of Parole & Community Corrections*, 320 S.C. 253,464 S.E.2d 330 (1995). The defendant must "be aware or should have been aware of the specific threat made by the patient to harm a specific person." *Bishop*, 331 S.C. at 87-88, 502 S.E.2d at 82. The complaint states that Miracle Hill "failed to take any steps to control the conduct of Defendant Miller" and "negligently treated a voluntary patient" who "executed her plan to injure Plaintiff." *See* Compl., p. 67, ¶¶ 275-278. These allegations do not describe any specific threat against Blackwell communicated by Miller to Miracle Hill, rather they appear to allege a claim of negligence against Miracle Hill relating to its treatment rendered to Miller. Therefore, this claim must be dismissed as a matter of law.

Finally, the complaint fails to allege a claim of fraud against Miracle Hill. To establish fraud, the following elements must be shown: (1) a representation; (2) the falsity of the representation; (3) the materiality of the representation; (4) knowledge of its falsity, or reckless disregard for its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of the falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Ardis v. Cox*, 314 S.C. 512,431 S.E.2d 267 (Ct. App. 1993). "Failure to allege all elements is fatal to a claim of fraud." *Hansen v. DHL*

Laboratories, Inc., 316 S.C. 505, 511, 450 S.E.2d 624, 628 (Ct. App. 1994). "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Rule 9(b), SCRCP.

Specifically, the complaint fails to allege that Miracle Hill knew of the falsity of the information it represented to Blackwell or was recklessly ignorant; that Miracle Hill intended that its representation be acted upon by Blackwell; or that Blackwell was ignorant of the falsity of the information. Rather, Blackwell alleges that Miracle Hill was "ignorant of the claims made regarding their methods" and that Miracle Hill "has no incentive to provide a legitimate treatment protocol." *See* Compl, ¶¶ 284-285. Such allegations are irrelevant to Blackwell's claim of fraud against Miracle Hill as he never personally received or sought treatment from Miracle Hill. Neither of these allegations is sufficient to establish Miracle Hill's knowledge or recklessness of the statement's alleged falsity. Furthermore, these statements contain no information about whether Miracle Hill intended for Blackwell to rely upon them or whether Blackwell was ignorant of the falsity.

CONCLUSION

For the reasons stated above, this Court should affirm the order of the lower court issued November 8, 2017 granting Miracle Hill's motions to dismiss and to quash the subpoenas and denying Blackwell's motion for a preliminary injunction.

June 18, 2018

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2017-002618
Lower Court Case No. 2017-CP-23-03754

Harold Estes Blackwell, Jr.....Appellant,

v.

Miracle Hill Ministries, Inc., Anita Jane Miller
(aka Anita M. Blackwell), and William Fisk.....Respondents.

PROOF OF SERVICE

I certify that I have served Respondent Miracle Hill Ministries, Inc.'s initial brief and designation of matter to be included in the record on appeal on the following parties by depositing a copy of same in the United States Mail, postage prepaid, on this the 18th day of June 2018, addressed to the parties and attorneys of record at the addresses listed below:

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June 18, 2018

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: *Harold Estes Blackwell, Jr. vs. Miracle Hill Ministries, Inc., Anita Jane Miller (aka Anita M. Blackwell), and Williams Fisk*
Appellate Case No.: 2017-002618

Dear Ms. Kitchings:

Enclosed please find the original and one (1) copy of respondent Miracle Hill Ministries, Inc.'s initial brief and designation of matter to be included in the record on appeal in the above-referenced case, along with a proof of service for the same. We would appreciate your filing the original and returning a clocked copy to us in the envelope provided.

Thank you for your assistance, and please let us know if we may provide any additional information to you at this time.

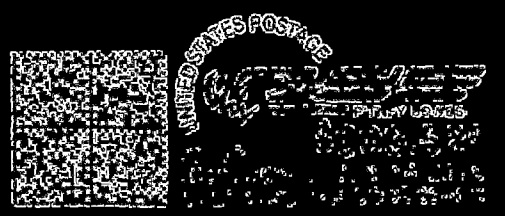
Sincerely,

ELLER TONNSEN BACH, LLC

Adam C. Bach

ACB/amp
Enclosures

cc: Harold Estes Blackwell, Jr.
Carrie Hailman O'Brien
Melegia Lee Daniels, Jr.



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