

12. Plaintiff avers the Court's grant of dismissal was a dismissal of a motion for summary judgment. ("We have interpreted this language as meaning "the trial court may treat a 12(b)(6) motion as a motion for summary judgment and consider matters presented outside the pleadings if the parties are afforded a reasonable opportunity to respond to such matters in accordance with Rule 56(c) and (e) of the South Carolina Rules of Civil Procedure. The notice provisions in Rule 56 are incorporated into Rule 12(b)(6)." Brown v. Leverette, 291 S.C. 364, 367, 353 S.E.2d 697, 698-99 (1987); see also Johnson v. Dailey, 318 S.C. 318, 457 S.E.2d 613 (1995). "In Brown, we found the trial court had not given notice to the parties that it was going to consider the affidavits and hear the 12(b)(6) motion as a motion for summary judgment. Thus, the supporting affidavits in Brown were improperly considered by the trial court in ruling on the 12(b)(6) motion." (Baird v Charleston County 333 S.C. 527 (1999) 511 S.E.2d 69).) Since

13. The Court not only considered many different complaints but opposing counsel's and Plaintiff's proposed orders submitted at request of Judge Stilwell in open court on October 4, 2017, as well. The Court's consideration of the proposed orders is analogous to the affidavits in Brown (ibid, Baird) and must be considered to be outside the complaint. As such, the Court's ruling is changed from one of dismissal under Rule 12 to one of summary judgment per Rule 56. ("The trial court's ruling on a Rule 12(b)(6) motion must be bottomed and premised solely upon the allegations set forth by the plaintiff." Holy Loch Distribs. v. Hitchcock, 332 S.C. 247, 503 S.E.2d 787 (Ct.App.1998)). Plaintiff has not had the opportunity to present all material pertinent to a motion pursuant to Rule 56 and therefore the Court has abused its discretion and the Order granting dismissal must be vacated.

14. Order's Dismissal Nonresponsive

15. Also, the Court's Order cites as the legal standard for Defendant's Motion to Dismiss as that of a Rule 12(c) Motion for Judgment on the Pleadings (see Order at 2, ¶2) yet grants Defendant's Motion to Dismiss pursuant to Rule 12(b)6. This fatally flaws the Order's grant of dismissal to Defendant as the Court fails to address the matter at bar, a motion to dismiss per Rule 12(c). Though the standard may be the same for Rules 12(c) and 12(b), the Court abused its discretion to grant a Rule 12(b)(6) motion to dismiss when Defendant's Motion to Dismiss was one under Rule 12(c). therefore the Court has abused its discretion and the Order granting dismissal must be vacated.

Order's Misstatement of Fact

16. The Order states, "Subsequent to filing that Complaint the Plaintiff conceded he had misrepresented to counsel and the Court in this original pleadings the existence of "Lynn Estes," that there was no such person as "Lynn Estes," and that in fact he was "Lynn Estes," thus negating any publication of the alleged defamatory statements." This statement is a factual conclusion not supported by the evidence and is false.

17. The Encarta Dictionary defines the word "concede" as, "transitive verb to admit or acknowledge something, often grudgingly or with reluctance." Plaintiff informed opposing counsel promptly, with no prompting, as to the exact nature of "Lynn Estes." Plaintiff had revealed himself as "Lynn Estes" to his wife at the time, Anita Jane Miller, (Miller), in July of 2016 and was under the impression at the time he wrote the original Complaint Miller had told Defendant "Lynn Estes" was Facebook profile created by Plaintiff. **Plaintiff never alleges defamation by virtue of the Facebook conversation in any complaint filed in this matter and Plaintiff never intentionally mislead the Court or opposing counsel. Plaintiff alleges only that the Facebook private messages are circumstantial evidence Defendant published**

the same defamatory information to others, including Bill Fisk, David Woodard and members of Alcoholics Anonymous.

18. The Order's statement, "'Subsequent to filing the Complaint the Plaintiff conceded he had misrepresented to counsel and the Court in this original pleadings the existence of 'Lynn Estes,' that there was no such person as 'Lynn Estes,' and that in fact he was 'Lynn Estes,' thus negating any publication of the alleged defamatory statements" taken as fact in the Order is an abuse of discretion by the Court. There is nothing in any of the pleadings stating the Facebook messages are a publication to a third party. Plaintiff does not need to depend on the Facebook messages to well-plead an allegation Defendant published defamatory material to a third party. (see Amended Complaints and the police report attached to each complaint).

19. The Court's assertion Plaintiff cannot adequately plead an allegation of publication to a third party in this case absent the Facebook messages is an error in law. (Ibid). Therefore, the Court has abused its discretion in dismissing this action pursuant to a Rule 12(b)(6) motion to dismiss because Plaintiff did not adequately allege Defendant published the material in question to third parties and therefore the Order granting dismissal must be vacated.

Court's Failure to Consider Plaintiff's pro se Status

20. The Court abuses its discretion by making a ruling on a Rule 12(b)(6) Motion to Dismiss using a standard applied to an attorney and providing no allowance for Plaintiff's *pro se* status. In exercising the level of strictness used in evaluating Plaintiff's Complaint, the Court makes no allowance for Plaintiff's *pro se* status. ("More specifically, if the court can reasonably read the pleadings to state a valid claim on which a pro se plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his or her confusion of various legal theories, his or her poor syntax and sentence construction ,

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.2017-002635

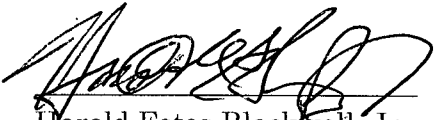
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MAY 16 2018
SC Court of Appeals

Harold E. Blackwell, Jr.Appellant,

Toby Woodard.....Respondents.

The undersigned, being the Appellant in this action, acting *pro se*, does hereby certify that service of Appellant's Final Brief was made upon the Respondent by placing the same in the United States Mail, first class postage prepaid, at the below listed addresses this the 14th day of April, 2018.

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RECEIVED
MAY 16 2018
SC Court of Appeals

Re: Harold E. Blackwell, Jr. v Toby Woodard, Appellate Case No. 2017-002635

Dear Ms. Allen,

Please find enclosed Appellant's Final Brief, certificate of service and missing pages of Appellant's motion to reconsider the order of dismissal. I am not sure how these three pages were skipped.

Please let me know if there are any questions or concerns.

Best regards,



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