STATE OF SOUTH CAROLINA	)	IN THE CURCUIT COURT THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GEEENVILLE	)	
HAROLD ESTES BLACKWELL, JR.,	)	2017-CP-23-3754
Appellant,	)	
vs.	)	CERTIFICATE OF SERVICE
MIRACLE HILL MINITRIES, INC,	)	
	)	Appellate Case # 2017-002618
Respondent	)	

The undersigned, being the Appellant in this action, acting *pro se*, does hereby certify that service of Appellant's Final Brief was made upon Respondent Miracle Hill Ministries, Inc., by placing the same in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelope this the 1st day of August, 2018, addressed as follows:

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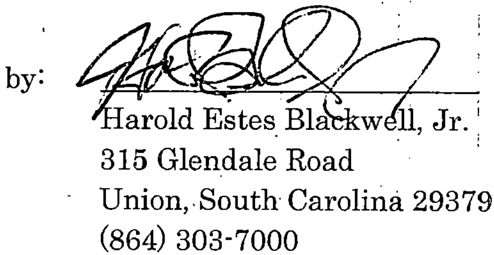
by: 

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SC Court of Appeals

Union, South Carolina
August 1, 2018

CERTIFICATE OF COUNSEL

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Harold Estes Blackwell, Jr. .... Appellant

Miracle Hill Ministries, Inc...Respondent

Case No. 2017-002618

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FINAL BRIEF

The undersigned certifies that this Final Brief complies with Rule 211 SCRCP.

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THE STATE OF SOUTH CAROLINA
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Table of Contents

TABLE OF CONTENTS ---------- 1

TABLE OF AUTHORITIES ---------- 3

STATEMENT OF ISSUES ON APPEAL ---------- 5

STATEMENT OF THE CASE ---------- 6

FACTS ---------- 7

ARGUMENTS ---------- 14

Did the Court err in holding Appellant to the same pleading standards as that of an attorney in each of its orders dismissing Appellant's claims against the three defendants? ---------- 14

Did the Court err by ordering dismissal of the action with prejudice regarding each defendant? ---------- 16

Did the Court err in not allowing Appellant to amend his complaint? ---------- 18

Did the Court err in finding Appellant could not state a claim under any theory of law in granting Miracle Hill's motion for dismissal? ---------- 19

Did the Court err in finding Miracle Hill's communication with police is privileged? ---------- 21

Did the Court err in determining the absence of an authority finding a specific conduct outrageous is exculpatory? ---------- 22

Did the Court err in finding Miracle Hill acted in good faith?---------- 22

Did the Court err in determining Appellant failed to allege he was treated by Miracle Hill?---------- 23

Did the Court abuse its discretion by drawing conclusions not supported by the evidence in the Fisk order?---------- 23

Did the Court err in finding Fisk was not acting in a fiduciary role at this juncture of the proceedings?- 25

Did the Court err in analyzing Miller's conduct regarding Appellant's claim of outrage?---------- 27

Did the Court err in failing to consider Miller's false police report to the Oconee County sheriff's department as outrageous behavior?---------- 31

Did the Court err in dismissing Appellant's claim of defamation against Miller?---------- 31

CONCLUSION---------- 32

APPENDIX I---------- 34

APPENDIX II---------- 35

APPENDIX III---------- 36

Table of Authorities

CASES

Ardis v Cox, (see Order at 10, ¶2), ...28, 29, 30

Baker v. Town of Middlebury, 753 N.E.2d 67, 74 (Ind.App.2001) 21

Bolin v. Bostic, 235 S.C. 319, 111 S.E. (2d) 557.) 26

Conwell v. Spur Oil Co. of Western South Carolina, 270 S.C. 170, 178, 125 SE2d 270 (1962 35

Davis v. Lunceford, 279 S.C. 503, 507, 309 S.E.2d 791, 793 (Ct.App. 1983) 18

Dockside Assn., Inc. v. Detyens, Simmons & Carlisle, 297 S.C. 91, 374 S.E.2d 907 (Ct.App. 1988) 19

Flemming v Rose, 338 S.C. 524 (2000), 526 S.E.2d 732 33

Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962) 18

Ford v Hudson, 276 S.C. 157, 276 SE2d 776 (1981). 30, 31, 32

Giuliani v. Chuck, 1 Haw.App. 379, 620 P.2d 733, 737 (1980), ... 19

Hill v. Watford, 276 S.C. 344, 278 S.E. (2d) 347 (1981) 26

Lucas v. Department of Corrections. 66 F.3d 245, 248 (9th Cir. 1995 21

Lucas v. Department of Corrections. 66 F.3d 245, 248 (9th Cir. 1995) 21

Phillips v County of Allegheny, 515 F3d 224 (2008). 21

Plyer v. Burns, 373 S.C. 637 (2007)647 S.E.2d 188 .... passim

Potter, Prescott, Jamieson & Nelson, P.A. v. Campbell, 708 A.2d 283, 286-87 (Me.1998) 20

Pucket v. Cox, 456 F. 2d 233 (1972) (6th Cir. USCA)). 16

Rhodes v. Security Finance Corp. of Landrum, 268 S.C. 300, 233 S.E. (2d) 105 (1977). 32, 33

Shane v. Fauver, 213 F.3d 113, 116 (3d Cir.2000) 21

Shipman v. Glenn 33

Small v. Mungo, 254 S.C. 438, 442-44, 175 S.E.2d 802, 804 (1970). 19

Spence v. Spence, *368 S.C. 106, 628 S.E.2d 869 (2006)* 18, 19

Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d601 (1995) 16, 17, 20

Tele-Communications of Key West v. United States, 757 F. (2d) 1330 (D.C. Cir.1985) 26

Thacker v. Bartlett, 785 N.E.2d 621, 624 (Ind.App. 2003) 19

Todd v Farm Bur. Mut. Ins. Co., ... 33

Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987) 37

Wilkinson v. East Cooper Community Hosp. 763 SE 2d 426 SC Sup.Ct. (2014)). 18

Statement of Issues on Appeal

Did the Court err in holding Appellant to the same pleading standards as that of an attorney in each of its orders dismissing Appellant's claims against the three defendants?

Did the Court err by ordering dismissal of the action with prejudice regarding each defendant?

Did the Court err in not allowing Appellant to amend his complaint?

Did the Court err in finding Appellant could not state a claim under any theory of law?

As to the Miracle Hill order of dismissal singularly:

Did the Court err in finding Appellant could not state a claim under any theory of law in granting Miracle Hill's motion for dismissal?

Did the Court err in finding Miracle Hill's communication with police is privileged?

Did the Court err in determining the absence of an authority finding a specific conduct outrageous is exculpatory?

Did the Court err in finding the complaint alleged Miracle Hill acted in good faith?

Did the Court err in determining Appellant failed to allege he was treated by the institution?

As to the William Fisk (Fisk) order of dismissal singularly:

Did the Court abuse its discretion by drawing conclusions not supported by the evidence in the Fisk order?

Did the Court err in finding Fisk was not acting in a fiduciary role at this juncture of the proceedings?

As to the Anita Jane Miller (Miller) order of dismissal singularly:

Did the Court err in analyzing Miller's conduct regarding Appellant's claim of outrage?

Did the Court err in failing to consider Miller's false police report to the Oconee County sheriff's department as outrageous behavior?

Did the Court err in dismissing Appellant's claim of defamation against Miller?

Statement of the Case

Appellant filed this action against Miracle Hill, Fisk and Miller, on June 9, 2017, and simultaneously for leave to proceed informa pauperis and have counsel appointed. Appellant's motions for leave to proceed informa pauperis and have counsel appointed were denied.

Appellant sued all defendants for outrage, gross negligence, civil conspiracy, defamation, breach of fiduciary duty, and aiding and abetting breach of fiduciary duty. Appellant sued Fisk singularly for fraudulent concealment. Appellant sued Miracle Hill singularly for mental health facility failure to control patient and fraud.

The "nature of the defense" for each defendant is failure to state a claim pursuant to Rule 12(b)(6) SCRCP. None of the defendants answered Appellant's complaint.

The court heard Respondents' motions to dismiss on October 4, 2017, at the same time and in the same proceeding as Toby Woodard's motion to dismiss in another case brought by Appellant which was pending before the bar at the same time.

The Court granted each defendant's Rule 12(b)(6) motion with prejudice. Appellant received notice via U.S. post on November 14, 2017, of the court's decisions. The order of dismissal regarding Miracle Hill is dated October 8, 2017, and the orders of dismissal granted Fisk and Miller are dated November 8, 2017.

On November 16, 2017, Appellant filed a motion to reconsider regarding Miracle Hill and on December 13, 2017, Appellant moved the court to reconsider the Fisk and Miller orders. The court, as of the date of this initial brief, to the best of Appellant's knowledge, has yet to rule on these motions.

In his motions post-decision, Appellant admitted Miracle Hill was not liable for failure to control patient, Miller was not liable as a fiduciary and Fisk was not liable for defamation.

The court presumably denied Appellant's motion to reconsider regarding Miracle Hill on December 11, 2017 and Appellant received notice via U.S. post. The Form 4 which accompanied Judge Stilwell's signed order list "Anita Blackwell" as the defendant and "Amy Snyder" as opposing counsel. Appellant received notice via U.S. post on December 14, 2017.

Appellant appeals the Court's orders dismissing his claims against each respondent and its order denying his motion to reconsider regarding Miracle Hill.

Appellant served notice of appeals on each respondent on December 14, 2017, by U.S. post and these documents were stamped by the clerk on December 18, 2017.

Facts

REDACTED PARAGRAPH

Miller was admitted into Miracle Hill's addiction program called "Renewal" for women at the request of Appellant in a 30-minute conversation with Toby Woodard, a teacher at Renewal. Appellant attended Sunday school with Woodard's brother.

Appellant visited Miller on the first two Saturdays allowed per the rules at Renewal. On those two visits Appellant witnessed abuse of "clients[1]" by Miracle Hill staff. On the first visit Miracle Hill staff accused Appellant of being intoxicated which he was not. On the second visit Appellant arrived to find Miller in tears because her fellow clients were angry she had been given the easy task of scrubbing the facilities' baseboards. These two visits caused Appellant concern for Miller's safety and prospects for recovery from her addiction to alcohol.

Before and after these two visits Miller called Appellant every time she was permitted use of the telephone, which was twice a week for 15 minutes, strictly enforced. On May 28,

[1] Persons in the Renewal program are referred to in all Miracle Hill literature as "clients."

2015, Miller was scheduled to call Appellant but he was on a very important business call and could not speak with her that day. Appellant's last conversation with Miller, on May 25, ended with Miller saying, "I love you very much." Those were the last words Appellant heard Miller speak for 18 months save a "yes" twice in their divorce proceedings.

Miller, his wife of 23 years and mother of his only two children, refused to communicate with Appellant but most alarmingly refused to confirm to Appellant she was not under duress. Appellant wrote Miller several letters with no response. Appellant telephoned Miracle Hill on several occasions to inform Miller's counselors of the situation and asked for a return telephone call, to no avail[2]. He then emailed Miracle Hill management to no avail. Appellant then "snail mailed" both Miracle Hill management and Miller explaining that if Miller did not want to speak with Appellant that was fine but he desperately needed to know she was not under duress.

On June 29, 2015, Miller wrote a cryptic letter containing 30 words which was attached to an email received from Miracle Hill Director of Adult Services William Slocum (Slocum). The letter did not address whether or not Miller was under duress and, in contrast to her last statement of "I love you very much," instructed Appellant not to visit the Renewal facility any more.

Appellant began reaching out to anyone and everyone at Miracle Hill to explain his primary concerns had not been addressed with Slocum's email. Neither Miller or Miracle Hill responded in any way.

After running the Pickens County 5k on Saturday morning July 17, 2015, knowing Miller would be allowed out of the Renewal facility for the first time, Appellant traveled to Greenville

[2] Appellant has never had anyone answer his call to the number listed for Renewal. The line just rings. On the occasions he called no answering device was in use to leave a message.

and parked across the street from the Renewal facility to see when Miller might leave so he might speak to her outside the presence of Miracle Hill staff.

Appellant was observed and the Greenville police were called. The police were told Appellant had committed domestic violence against Miller during their marriage and had showed up intoxicated at the Renewal facility on his visits, *inter alia*. The police told Appellant to leave and he did so.

Upon his return to Clemson, where he resided at the time, Appellant drafted a complaint claiming defamation and sent it to Miracle Hill with the promise it would be filed if someone did not communicate with him about the wellbeing of his wife. The draft produced an email from Reid Lehman (Lehman), the Director at Miracle Hill, stating, "when Christians have disagreements they should be discussed." Lehman agreed to meet with Appellant on the condition he have a member of his church's pastoral staff come along "for accountability."

Appellant reached out to Fisk and he agreed to act in this role even though he was an elder in the church not a member of the pastoral staff. Appellant and Fisk met with Lehman on July 27, 2015, at Clemson Presbyterian Church. Lehman was told Fisk was an elder, not pastoral staff.

In the meeting, Lehman flatly refused to accommodate Appellant in any way. Appellant stressed that if Miller did not want to speak with him that was one thing but providing no explanation for her silence or refusing to confirm her wellbeing was a product of her rage and clear evidence she was not making progress in her recovery. Lehman's statement such conduct was necessary for a person's recovery using the 12 steps of Alcoholics Anonymous was an obvious absurdity, which left Appellant dumbfounded[3].

[3] Appellant has accumulated over 22 years of sobriety in AA.

As Appellant tried to explain the nature of the absurdity, Fisk and Lehman both cited Appellant's July 17th visit to Renewal as the reason Appellant's pleading could not be considered.

When Appellant recounted the circumstances leading up to the visit his words had no effect. When he protested to Lehman regarding matters in the drafted complaint, Lehman chuckled at having Slocum confront Appellant on Saturday, July 17, saying, "Yeah, Bill is probably not the best choice for conflict resolution."

Lehman did agree, on the spur of the moment, to allow Fisk to visit Miller on Appellant's behalf if Appellant would not file the drafted complaint. Since Miller had gone silent with no explanation and was being encourage to do so by Miracle Hill, it was apparent to Appellant that Miller had no chance at long term sobriety under the Miracle Hill protocol. Fisk and Lehman fervently disagreed with Appellant's assessment. Both Fisk and Lehman pointed out Appellant had lost all credibility as they construed Appellant's July 17, 2015, conduct as "stalking."

It also became clear to Appellant in the meeting Toby Woodard had lied to him about Renewal's adherence to the precepts of AA or he had no idea what the precepts of AA were. This realization caused Appellant emotional tumult of the highest order. People die from their addiction to alcohol and Miller life was being endangered by Miracle Hill.

Appellant was in a terrible emotional state as he determined the fate of his wife's recovery was in the hands of Fisk and Lehman, whom he considered grossly incompetent. Appellant, powerlessness to help his wife in the face of Lehman's complete control of the situation, had a paralyzing pall draped over his life and emotional wellbeing by Miracle Hill. Appellant began being unable to leave his residence at this point without considerable effort.

Appellant had no idea when he asked Fisk to the meeting he would be Appellant's only conduit for communication with his wife going forward.

Once Appellant returned home after the meeting he realized having Fisk involved in the contemplated role was a horrible mistake. Appellant called Fisk to say "thanks but no thanks." Appellant had had a relationship with Fisk previously and was aware of his antics attempting to address his son's issues with addiction. Fisk became very agitated then proceeded to browbeat Appellant into letting him serve in the role created by Lehman. Fisk, inter alia, claimed Appellant was not being submissive to church leadership[4] as called for in the Scripture.

Appellant agreed to let Fisk go but only in a limited role to get the answers to 4 questions. Fisk's report back to Appellant was a short telephone conversation after he had spent 2 hours with Miller. Fisk only provided the answer to one of the questions. That question posed to Miller was a request for a 5-minute telephone conversation. The answer was "no" but with no explanation.

Since Appellant was in such emotional distress, he began seeing a therapist who attended church with Appellant and Fisk, Ross Collins. Fisk began reporting to Mr. Collins the results of secret visits and communications Fisk was having with Miller without Appellant's knowledge. After some 3 weeks Mr. Collins hinted strongly several times he no longer wanted to see Appellant and admitted Fisk had been reporting to him regarding his secret interactions with Miller[5]. When asked the nature of these communications Mr. Collins refused to characterize them stating, "you need to talk to Bill, I might leave something out."

When confronted by Appellant, Fisk was caught in several lies about what role he had been playing in Appellant's life without Appellant's knowledge. Mr. Collins inferred Fisk had

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[4]Fisk had been Appellant and Miller's shepherding elder some 10 years prior.

[5] After Appellant's suicide attempt Mr. Collins announced he was no longer seeing individual patients to focus on his corporate team building offerings.

been scheming with Miller and Lehman to inflict emotional pain on Appellant in order to "teach him a lesson" because Appellant had been so critical of Miracle Hill's handling of the situation particularly in regards to Appellant's harsh criticism of the addiction treatment protocol employed by Miracle Hill., for writing the many letters and emails, showing up at Miracle Hill to see Miller on July 17 and threatening to sue Miracle Hill. Miracle Hill had been unable to cite any success they had achieved treating alcoholism which seemed to make Miracle Hill extremely defensive.

In late August Lehman, via email, notified Appellant he was turning over letters he had selected from the many Appellant had written to a marriage counselor Miracle Hill was providing Miller inferring his weighty recommendation would be for Miller not to reconcile with Appellant. Appellant was not going to be allowed to participate in any way.

After this devastating news, in an attempt to move on with his life, Appellant pleaded with Miller one last time for a 5-minute telephone conversation and that if she refused he would file for divorce. Appellant received no response to his 4-page letter.

Emotionally distraught, Appellant filed for divorce from Miller on September 16, 2015, eight days after Miller graduated from Miracle Hill's treatment program. In an email Lehman chastised Appellant for his ultimatum to Miller to contact him or face divorce proceedings, inferring Miller was making great progress in her recovery, boasting Miller would be easy to find in 6 months. Lehman recommended Appellant wait up to up to 3 years if necessary for Miller to communicate with him. Appellant communicated to Lehman via email, in no uncertain terms, he was wrong.[6]

After filing for divorce Appellant discovered Fisk had secretly attended Miller's graduation from Miracle Hill in a meeting Appellant had arranged between Fisk and their pastor,

[6] After 6 months Miller was drunk and living with a paramour.

David Sinclair. Despite pointing out Fisk's lies, Sinclair stated, "If I see you in the grocery store I'll speak but I won't respect you" when Appellant refused to acknowledge Fisk had done nothing wrong.

This pushed Appellant over the edge emotionally and on December 9, 2015, Appellant attempted suicide by carbon monoxide poisoning. Appellant's attempt was thwarted by police who had been called by Miller 51 minutes after she read Appellant's suicide note sent to her in an automatically. In the recorded call to police Miller said Appellant suffered from narcissistic personality disorder which is blatant lie[7].

Appellant spend 72 hours in the Patrick Harris Psychiatric hospital for evaluation after being involuntarily committed. Upon Appellant's release, he was not even prescribed an antidepressant. The doctors determined anyone who had been subjected to the treatment Appellant had endured might reasonably attempt suicide.

Other than seeing her for 5 minutes across the courtroom at their divorce proceeding, Appellant heard nor saw Miller until early November 2016 when her one of her paramours, Allen Moorehead, wrote Appellant a Facebook instant message which stated he was calling the police because Miller had stolen his property. For the first time since July 17, 2015, Appellant began looking for Miller, as he again feared for her safety. Appellant had not heard Miller's voice in some 18 months when, on Sunday night November 29, 2016, Miller called him, obviously intoxicated. The conversation went reasonably well and the two made arrangements to communicate via text message.

Since Miller seemed to Appellant to be under duress, he offered to pick her up and bring her to the safety of his home after going to see Clemson play Oklahoma in Florida. Miller

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[7] Persons suffering from narcissistic personality disorder do not attempt suicide without threatening to do so first.

responded to Appellant's text stating he was on his way to Greenville to pick her up with a "thumbs up" emoji via text message. Given the situation, Appellant asked for conformation she was ready for him to come for her. Shortly after Appellant's third request for confirmation the Oconee County Sheriff's office called Appellant say Miller was at the station reporting that Appellant had committed domestic abused against her during their marriage and was now harassing her again in obvious attempt to induce Appellant's arrest.

Arguments

Did the Court err in holding Appellant to the same pleading standards as that of an attorney in each of its orders dismissing Appellant's claims against the three defendants?

Appellant's complaint is required to be afforded a less stringent reading than that of a lawyer. (*It was held that a pro se complaint requires a less stringent reading than one drafted by a lawyer per Justice Black in Conley v Gibson.*" Pucket v. Cox, 456 F. 2d 233 (1972) (6th Cir. USCA) (R. p. 117, L. 7).

In determining if the Court erred in regard to Appellant's *pro se* status the first logical step would be to determine if Appellant was afforded any such consideration. Nowhere in the record does the court acknowledge Appellant appears *pro se.* In fact, in several instances the order indicates Appellant is being held to the same or even a higher standard of pleading than a lawyer.

By citing Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d601 (1995) (see Court's order granting Miracle Hill's motion for dismissal (MHO.) pg. 2, (R. p. 98, Line 9). Court's order of dismissal per Fisk (FO.), pg.2, Court's order of dismissal per Miller (MO.) pg 2), the Court shows no deference the Appellant's *pro se* status when given the opportunity. In Stiles, Appellant, Beverly Stiles, was represented by attorney John Bowen. (Stiles v. Onorato, 457

S.E.2d 601 (1995)) and is therefore not analogous to instant case regarding the legal standard in each order of dismissal.

The court also incorrectly cites *Plyer v. Burns*, 373 S.C. 637, 645, 647, S.E.2d 188, 192 (2007) (R. p. 117, line 13) as grounds for setting the standard of review, or delineating "the question for the court," as it were, in the instant case (MHO. pg. 2, FO. pg. 2, MO, pg 2.) (R. p. 98, line 9). Not only was Ms. Plyler represented by counsel (Plyer v. Burns, 373 S.C. 637 (2007)647 S.E.2d 188) (R. p. 98, line 11) but the Court misconstrues Plyler in each order of dismissal. Each order of dismissal misquotes Plyler thusly, "*The question for the court is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the allegations set forth on the face of the complaint state any valid claim for relief.*" (MHO. pg. 2, FO. pg. 2, MO. pg. 2) (R. p. 98, lines 9-12). "Allegations" do not state claims for relief, complaints state claims for relief. The correct verbiage from Plyler states, "*The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.*" (Plyler, Ibid.).

Even more revealing as to the extremely high pleading standard the Court set for Appellant is the omission of the fact Appellant is entitled to the inferences of his allegations. ("*A 12(b)(6) motion should not be granted if "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.*" Plyler Ibid, citing Stiles).

The Court, by allowing Appellant "only one bite at the apple," and failing to state any reason for veering from what is generally allowed, holds Appellant to a higher standard of pleading than a lawyer (*citing Rule 15(a), SCRCP, that plaintiff generally is allowed to amend a complaint to correct deficiencies which resulted in dismissal under provisions of Rule*

12(b)); Davis v. Lunceford, 279 S.C. 503, 507, 309 S.E.2d 791, 793 (Ct.App. 1983)), (App. Init. Brief, page 18, line 1).

For this reason alone Appellant must be allowed to amend his complaint in regards to all three defendants.

Did the Court err by ordering dismissal of the action with prejudice regarding each defendant?

The Court veered, without comment or explanation, from generally accepted procedure dismissing the case with prejudice. ("*When a complaint is dismissed under Rule 12(b)(6) for failure to state facts sufficient to constitute a cause of action, the dismissal generally is without prejudice. The plaintiff in most cases should be given an opportunity to file and serve an amended complaint.*" Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962) (App. Init. Brief, pg 18, Line 7). also ("*Because dismissal is not statutorily mandated, Wilkinson claims the appropriate remedy would be for her to be given an opportunity to cure any defect as the Court permitted a plaintiff to file an amended Complaint after the expiration of the statute of limitations in Spence v. Spence, 368 S.C. 106, 628 S.E.2d 869 (2006)*". Wilkinson v. East Cooper Community Hosp. 763 SE 2d 426 SC Sup.Ct. (2014)) (App. Init. Brief, pg 18, line 14). Appellant does not have to overcome any issues as grave as the expiration of the statue of limitations to have his case remanded to allow him to amend his complaint.

It is clear Appellant must be given the opportunity to amend his complaint absent a reason to disallow such a motion. (*complaint dismissed for failure to state facts upon which relief can be granted should be dismissed without prejudice in order for plaintiff to decide whether to serve amended complaint or appeal*); Thacker v. Bartlett, 785 N.E.2d 621, 624 (Ind. App. 2003) (App. Init. Brief pg 19, line 2), (*dismissal for failure to state a claim is without prejudice because the complaining party may either file an amended complaint or stand upon complaint*

and appeal); Giuliani v. Chuck, 1 Haw. App. 379, 620 P.2d 733, 737 (1980) (App. Init. Brief, pg 19, Line 6), (*complaint is not subject to dismissal with prejudice unless it appears to a certainty that no relief can be granted under any set of facts that can be proved in support of its allegations*); James F. Flanagan, *South Carolina Civil Procedure* 95 (2d ed. 1996), (*party who loses a motion to dismiss normally is given the right to amend the complaint to cure the defect*), Spence v Spence, 368 S.C. 106 (2006), 628 S.E.2d 869. (App. Init. Brief, pg. 19, line 10).

Ironically, and unfairly, if Appellant had failed to proceed and dismissal resulted, for that reason he would have been entitled to a dismissal without prejudice. (*affirming dismissal of complaint for failure to proceed, but finding it should have been dismissed without prejudice*); Dockside Assn., Inc. v. Detyens, Simmons & Carlisle, 297 S.C. 91, 374 S.E.2d 907 (Ct.App. 1988). (App. Init. Brief, pg. 19, line 14).

The Court's obvious err egregiously prejudices Appellant's case as a *pro se* litigant in each order of dismissal and the err constitutes reversible error mandating the case be remanded to the lower court where Appellant may amend his complaint and be given sufficient time to do so. (*rules of civil procedure should be liberally construed to do substantial justice and the lower court erred in denying motion to amend complaint where amendment would have stated alternative theory of recovery*). Small v. Mungo, 254 S.C. 438, 442-44, 175 S.E.2d 802, 804 (1970). (App. Init. Brief, pg. 19, line 25).

The Court also holds Appellant to a higher pleading standard than a lawyer by stating his claim against Miracle Hill fails because he did not cite an authority that Miracle Hill's conduct was outrageous. (R. p. 99, line 8).

The Court also holds Appellant to a higher pleading standard than a lawyer by requiring him to "show" facts instead of "allege" facts. (MHO, pg. 3) (R. p. 100, line 4).

Importantly, Appellant shows in the subsequent errs alleged herein the Court failed to read the complaint in a light most favorable to Appellant has required. (Stiles, Ibid.)

Appellant, in light of the new evidence represented in the appendix to this brief must be allowed to amend his complaint. ("*When a plaintiff is not given the opportunity to file and serve an amended complaint, but is left with no choice but to appeal after dismissal of her case with prejudice, an appellate court which affirms the dismissal may modify the lower court's order to find the dismissal is without prejudice. When the statute of limitations has expired, the appellate court may in its discretion impose a reasonable period of time in which to amend the complaint. An appellate court should follow this procedure 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.* Potter, Prescott, Jamieson & Nelson, P.A. v. Campbell, 708 A.2d 283, 286-87 (Me.1998) (App. Init. Brief pg. 20, line 21), ("*in absence of bad or dilatory motives on the part of plaintiff or undue prejudice to defendant, the trial court abused its discretion by denying the plaintiff an opportunity to amend her complaint after it was dismissed pursuant to Rule 12(b)(6)).* Baker v. Town of Middlebury, 753 N.E.2d 67, 74 (Ind.App.2001). (App. Init. Brief pg. 21, line 22).

Did the Court err in not allowing Appellant to amend his complaint?

The Court abused its discretion by dismissing this case without providing a notice of deficiencies and an opportunity for Appellant to amend his complaint to cure the deficiencies. (*"[A] pro se litigant is entitled to notice of the complaint's deficiencies and an opportunity to amend prior to dismissal of the action."* Lucas v. Department of Corrections. 66 F.3d 245, 248 (9th Cir. 1995) (App. Init. Brief pg 21, line 4). and *"Moreover, in the event a complaint fails to state a claim, unless amendment would be futile, the District Court must give a plaintiff the*

opportunity to amend her complaint. Shane v. Fauver, 213 F.3d 113, 116 (3d Cir.2000) (App. Init. Brief, pg., 21, line 6). The District of Columbia Court of Appeals ruled to remanded a case grounded in the lower court's failure to provide this accommodation to a pro se litigant. "*Because the District Court did not follow these dictates, we will reverse in part and remand.*" Phillips v County of Allegheny, 515 F3d 224 (2008) (App. Init. Brief, pg. 21, line 20).

As to the Miracle Hill order of dismissal singularly:

Did the Court err in finding Appellant could not state a claim under any theory of law in granting Miracle Hill's motion for dismissal?

The Court states Appellant makes numerous allegations regarding Miracle Hill's treatment of Miller, (MHO. pg. 1) (R. p. 98 line 10). This is a true statement used by the Court to color the complaint falsely. The Court makes this observation on the first page of the Order and grounds its findings here. The Court does not contemplate Appellant's allegations are grounded in Miracle Hill's treatment of Appellant.

The complaint has to do with the incredibility negligent appointment of Fisk to be his representative to speak with his wife, Miracle Hill's defamation of Appellant (which certainly has nothing to do with Miracle Hill's treatment of his wife), Miracle Hill's facilitation of his divorce (which has as much to do with Miracle Hill's treatment of him as it does its treatment of his wife), Miracle Hill's efforts to avoid being sued by Appellant and, most importantly, Miracle Hill's decision to torture Appellant (Compl. ¶¶ 85, 86) (R. pp 85-86) and "teach Appellant a lesson."

The Court's order granting dismissal to Miracle Hill found in error, "In essence, Blackwell contends that Miracle Hill's alleged encouragement of Miller not to communicate with Blackwell amounts to extreme and outrageous conduct that exceeds all possible bounds of

decency." (MHO. pg. 3) (R. p.99, line 23). There are several aspects of the allegations in the complaint which show this conclusion by the Court to be in error.

First, the Court does not cite in the complaint a single allegation that Miller's silence was at issue. The complaint alleges in many places it was Miller's scheme to not explain her silence that is the "essence" of the complaint and defendants encouraged Miller in an effort to "teach Plaintiff a lesson." (Compl. ¶59, 62, 63, 68, 75, 76, 77, 78, 80, 83, 85, 87, 88, 91, 109, 117(b)(q), 118(b)(e), 121, 129, 146, 149, 157, 181, 190 and 197), (R. p 10, lines 21-24, R. p. 11, lines 9- p. 12, lines 2, R. p. 12, lines 15-18, R. p. 14, lines 3-25, R. p. 15, lines 6-10, R. p. 15, lines 18-22, R. p. 16, lines 4-9, R. p. 16, lines 16-22, p. 17 lines 1- 4, R. p. 17 lines 8- 13, R. p. 19, lines 8-12, R. p. 22, lines 5-6, R. p. 24, lines 21-24, R. p. 26, lines 4-6, 12-17, R. p. 27, lines 7-14, R. p. 29, lines 8-17, R. p. 32 lines 4-7, lines 13-17, R. p. 34, lines 8-14, R. p. 38, R. lines 12-16, R. p. 39, lines 15-18, R. p. 140, lines 17-18).

Appellant pleads, or attempts to plead, or would plead, his challenge to Miracle Hill to show they were not abusing their clients as he had observed, prove their protocol was not contributing to the death of their patients and to show proof their protocol was not harmful, provoked the actions of Miracle Hill to teach him a lesson. All of these issues concern action Miracle Hill took against Appellant and had nothing to do with their treatment of his wife.

Additionally, the Facebook conversation attached in the appendix is the defamatory remarks of Toby Woodard long after Miller "graduated" from Miracle Hill. Mr. Woodard obviously made a decision to destroy Appellant's reputation. Mr. Woodard had obviously decided to commit this heinous act at a time prior to June 15, 2016.

If Appellant had sued Miracle Hill for encouraging his wife to give him the silent treatment he would have rightly been counter sued for filing a frivolous claim and no such claim has been filed.

The Court's inference Appellant seeks a "panacea for wounded feelings" (MHO. pg. 3), (R. p. 99, line 18) when he alleges he attempted to take his own life (Compl. ¶182) (R. p.38, line 17) is grossly inaccurate. Clearly, the Court did not take this in a light most favorable to Appellant as required. (Plyler, Ibid.)

The court's order granting dismissal regarding Miracle Hill cannot possibly come to a correct determination of whether Appellant can state a claim under any theory of law failing to contemplate these facts nor could the Court be construing these acts in a light most favorable to the Appellant.

Did the Court err in finding Miracle Hill's communication with police is privileged?

The Miracle Hill order states, "Since these communications were between only Miracle Hill staff and the police officers, this Court finds that statements were privileged." (MHO. pg. 8) (R. p. 104, lines 17-20) .

The statement is plainly in error for three reasons. First, the face of the complaint says nothing about who was present when Miracle Hill staff spoke to police. Second, the police report, at the bottom of page 3 states in pertinent part, "(Redacted) was also there" which Appellant alleges was his mother-in-law. Third, in any case the identity of this person determined to be a member of Miracle Hill staff by the Court is a doubt not decided in favor of Appellant as required. (Plyler, Ibid.).

The Court's use of the word "Since" is clear indication its determination would be different were the name of the person on the police report unredacted and found not to be a

member of the Miracle Hill staff. As such, the Court erred in finding Miracle Hill's statement to police on July 18, 2015, was privileged.

Did the Court err in determining the absence of an authority finding a specific conduct outrageous is exculpatory?

The Court, in siding with Miracle Hill, errs by determining Appellant's inability to cite a Court's precedent that Miracle Hill's conduct was outrageous is exculpatory. (MHO. pg. 3) (R. p. 99, line 6). This is not a logical conclusion, as rarity and uniqueness are characteristics of outrageous conduct. Logically, in the absence of a citation by opposing counsel the alleged conduct had been found to not be outrageous, Appellant's inability to cite similar conduct ruled upon by a court is evidence the conduct being contemplated is unique and rare, just like outrageous conduct.

As such, the Court erred in weighing the absence of comparable conduct in the record as exculpatory. Therefore the Court erred in ruling the absence of precedent indicates Miracle Hill's conduct was not outrageous using said metric.

Did the Court err in finding Miracle Hill acted in good faith?

The Court reads the complaint in a grossly erroneous fashion regarding its determination Appellant alleges Miracle Hill acted in good faith. (MHO. pg. 8) (R. p. 104, lines 3-15). Citing ¶194 (R. p. 40 lines 4-8) in the complaint the Court's order states Miller felt Appellant sought to do her harm. In fact, the complaint alleges Miller <u>represented to others</u> she thought Appellant intended to do her harm not that she actually felt that way. Therefore, the Court's order is in error in this regard.

Did the Court err in determining Appellant failed to allege he was treated by Miracle Hill?

Appellant alleged Lehman, Slocum and Woodard were acting within the scope of their employment during all times referenced in the complaint. (Compl. ¶17) (r. p. 4, lines 8-13). The Court's order therefore errs when it concludes Appellant failed to allege he was treated by the institution. (MHO. pg. 4) (R. p. 100, line 8-19). ("*It is well settled that the liability of the master for the torts of his servant arises only when the servant is acting about the master's business, within the scope of his employment; if he is upon his own business acting outside of his employment the master is not liable. An act is within the scope of a servant's employment where reasonably necessary to accomplish the purpose of his employment and is in furtherance of the master's business. These general principles govern in determining whether an employer is liable for the acts of his servant.*" Bolin v. Bostic, 235 S.C. 319, 111 S.E. (2d) 557.) (App. Init. Brief, pg. 26, line 3).

As to the William Fisk (Fisk) order of dismissal singularly:

Did the Court abuse its discretion by drawing conclusions not supported by the evidence in the Fisk order?

"*An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.*" State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). "*The trial court must dispose of a motion for failure to state a cause of action based solely upon the allegations set forth on the face of the complaint.*" Tele-Communications of Key West v. United States, 757 F. (2d) 1330 (D.C. Cir. 1985); Hill v. Watford, 276 S.C. 344, 278 S.E. (2d) 347 (1981).

The following are conclusions of the Court not supported by the evidence or allegations in the complaint, as it were:

The Fisk Order makes a factual conclusion not supported by the evidence by stating, "*The Plaintiff has alleged that Defendant Fisk intentionally inflicted emotional duress upon the Plaintiff for a number of reasons, which are identified in Paragraph 215(b).*" The evidence shows Appellant never opines regarding Fisk's motives. Section 215(b) of the complaint lists acts of Fisk, plainly not "reasons".

Appellant avers the Court fails to consider Appellant did not select Fisk to be his representative in the matter of communicating with his wife. (FO. at 3, ¶2). Reid Lehman created a role in the July 27, 2015, meeting then offered to let Fisk, and no one else, act in that role. For this reason the Court's characterization of the Appellant's and Fisk's relationship "*as an agreement between friends*" (FO. pg. 7, ¶2) is not complete, and materially inaccurate.

Appellant telephoned Fisk to recant his authorization of agency. (Compl. ¶121, 127). The complaint alleges Fisk browbeat Appellant into reauthorizing him as Appellant's agent by stating Appellant was not being submissive to authority, underestimating the expertise he could bring to the problem, not acting Biblically by availing himself of his services as an elder, displaying a doubt about his ability to discern the right thing to do and displaying distrust in general. (Compl. ¶128). Considered in a light most favorable to the nonmoving party as required, (Plyler, Ibid), the Court makes a factual conclusion the relationship was "one friend asking another" (FO. Ibid) which is not supported by the evidence.

Also showing the Fisk order's portrayal of Fisk's and Appellant's relationship was not "an agreement between friends" are Appellant's claims, both directly and by inference, that due to his extreme codependent personality, Fisk desperately wanted to be involved to the extent he was not acting for the benefit of Appellant but himself. (Compl. ¶¶30, 31, 129). Appellant alleges, attempts to allege or would allege, Fisk commandeered Appellant's personal crisis and

used it for his own gratification. Again, this is evidence the relationship was not as the Court considered in granting Fisk's motion for dismissal. The Court failed to consider the allegations in a light most favorable to the nonmoving party as required. (Plyler, Ibid).

Perhaps most importantly Fisk's email showing he thought Appellant had agreed to obey him is concrete evidence Appellant never had the opportunity to present to the Court[8] the relationship was not "an agreement between friends."

Did the Court err in finding Fisk was not acting in a fiduciary role at this juncture of the proceedings?

The Court's use of *Ardis v Cox.* (see Order at 10, ¶2), "*The duty to disclose may be reduced to three distinct classes: (1) where it arises from a preexisting definite fiduciary relation between the parties; (2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied; (3) where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard to any particular intention of the parties.*" as it grounds for granting of Fisk's motion of dismissal in an abuse of the Court's discretion. Appellant had no opportunity to present Fisk's email showing he thought Appellant had agreed to submissive him (Appendix II). This dynamic of the relationship was not considered by the Court when ruling on whether a fiduciary relationship existed. Very likely other such information would be produced in discovery. The Court abused its discretion by prematurely finding no fiduciary relationship existed because it did not rule having all the evidence. The only attachments were designed to state a claim, not prove a claim.

[8] Appellant was trying to state a claim not prove his case in his complaint as required under the Rules.

The Court then reaffirms its finding (disputed by Appellant) that there was no fiduciary relationship between Fisk and Appellant and states the Complaint did not meet the first class of legitimate claimants. (FO., Ibid). The Court then goes on to say, in blatant error, that Appellant did not qualify for the second or third classes listed because "both contemplate the involvement of a commercial or financial component" (see Order. page 10, 11 at ¶¶4 and 1, respectively), relying on the inference the language describing the second class as pertaining solely to commercial interest by virtue of the use of the words "contract" and "transaction" is a mistake. The Court ignores Ardis' language describing the second class, "*or else from the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied.*" The Order's blindness to the words, "or else" and/or the word "or" in Ardis' language setting out the parameters of those who had reposed trust in someone to have implied trust and confidence sufficient to maintain a cause of action for fraudulent concealment flaws the Court's finding starkly. (see Order, page 10 at ¶3). Obviously, Appellant's case meets the criteria set out for the second class due to the very specific language "*circumstances of the case, the nature of their dealings, or their position towards each other.*" which does not contain the words "transaction" or "contract."

The Order's supposition the above-referenced criteria only pertain to commercial settings is not cited. (Ibid.). Appellant avers the Ardis' court did not include any language excluding noncommercial cases though it had the perfect opportunity.

The Court obviously did not construe the Complaint in a light most favorable to the nonmoving party as required. (Plyler, Ibid).

Therefore, the Order's statement Appellant does not satisfactorily answer the "first question in the case at bar" is a factual conclusion not supported by the evidence. For the reasons

articulated above, taken singularly and as a whole, the Order's grant of Fisk's motion to dismiss Appellant's claim for fraudulent concealment must be vacated as it is grounded in mistakes of law and fact. Appellant brings to the Court's attention the Fisk order omits language stating Appellant's complaint is irreparable.

As to the Anita Jane Miller (Miller) order of dismissal singularly:

Did the Court err in analyzing Miller's conduct regarding Appellant's claim of outrage?

The Court abuses its discretion by ruling, "*Thus, the Court must consider in the first instance whether the "cruel acts" alleged against Miller, taking them as true for the purposes of this motion, would constitute, as a matter of law*, "conduct so extreme and outrageous as to exceed all possible bounds of decency, (which).. must be regarded as atrocious and utterly intolerable in a civilized society," Ford v Hudson, 276 S.C. 157, 276 SE2d 776 (1981). (MO. pg. 2).

A reading of the Court's citation in Ford shows the Court makes no determination or statement regarding what the Court must consider "*in the first instance.*" The Order's citation from Ford is only the Court of Appeals statement of the second element of the tort of outrage as provided by Restatement (Second) of Torts § 46.

Actually, in Ford, the Court finds, "*The evidence is susceptible of the inference that the conduct complained of herein was not a mere complaint by a dissatisfied homeowner, but was instead a continuing pattern of highly questionable conduct over a period of almost two years.*" As such, logically, the Court must first consider whether there is more than one reasonable inference to be drawn from the evidence.

The Miller order clearly demonstrates the Court categorized acts into those deemed outrageous by precedent and those not deemed outrageous by precedent.(MO. pg. 3) The Court

then determined none of the alleged acts where in the latter category. (Ibid). The Court's exercise is farcical. No "acts" have ever been found to meet a standard for maintaining a claim for outrage, only "conduct." (Ford, Ibid.).

"Acts" and conduct are not the same. It is not illegal to shout "fire," which is an act. It is illegal to shout "fire" in a crowded theater, which is conduct; or acts taken in context. Webster defines "conduct" thusly, "*the act, manner, or process of carrying on.*" Webster defines "acts" as "*the doing of a thing.*" Per Webster, acts beget conduct. Logically, "acts" constitute "conduct." "Conducts" do not constitute an "act." Therefore, the Court errs in stating the acts are not "the kind of act(s) which would meet the standard set out in the Ford case." (Ibid) Had the Court found the acts do not constitute conduct that would meet the standard set out in Ford the evaluation would have been proper. The Court nowhere makes such a determination.

The Supreme Court's finding in Ford does not contain the word "act" except to quote Prosser at §12, opining on "intentional acts." Appellant avers his complaint's list of acts was an attempt to define the conduct as outrageous due Miller's obvious malice of forethought, refusal to do any act, no matter how minor or convenient, to alleviate Appellant's known duress and trying to lure him into being arrested in Oconee County. In a light most favorable to the non-moving party, these acts meet the standard of outrageous conduct unacceptable in a civilized society.

Furthermore, the Court has stated, "*For example, where plaintiff alleged that she suffered a nervous breakdown after defendant had used vile, profane, and abusive language, we held that a cause of action had been stated. However, we have been careful to distinguish between legally stating a cause of action and successfully proving the claim. Thus, we have said: "[T]here is no liability for emotional distress without a showing that the distress inflicted is extreme or severe ... [and no recovery is justified where] [t]here is no showing that [the defendant's conduct was]*

unreasonable or abusive, nor that [plaintiff's] emotional upset was other than transient and trivial." Rhodes v. Security Finance Corp. of Landrum, 268 S.C. 300, 233 S.E. (2d) 105 (1977). Appellant's alleged suicide attempt is a showing of the most extreme duress. As such, the Court is required to measure the likelihood the alleged of acts are outrageous by their result, which the Miller order obviously fails to do.

Appellant avers the conduct of a supervisor increasing a workload in an effort to build a case for dismissal of an employee or conduct which causes an employee to have to leave work early, as is the case in Shipman v. Glenn (MO. pg. 3, ¶1), is not analogous to Miller's conduct in the instant case. Again, the Court has held such a determination is measured by the severity of injury sustained. (Rhodes, Ibid) Losing one's job is not analogous to losing one's life in regards to severity.

The Order's statement a claim for outrage is not a "panacea for wounded feelings," citing Todd v Farm Bur. Mut. Ins. Co., (MO. pg. 3, ¶1), reveals the Court has determined suicide qualifies merely as a "wounded feeling." (Ibid). This is an obvious error by the court.

In fact, the Rhodes court found the evidence of outrage, everything else being equal, should be determined by the level of outrage displayed by a Appellant is determinative. (Rhodes, Ibid). As such, the Court's finding that suicide is akin to "wounded feelings" severely prejudices Appellant.

Additionally, the Court's finding shows the Court assumes inferences and doubts in favor of the moving party despite *stare decisis* prohibition against such determinations on motions to dismiss pursuant to Rule 12(b)(6), (Plyler, Ibid) in regards to Miller's acts.

The Court's proper standard of review is stated in Flemming v Rose, 338 S.C. 524 (2000), 526 S.E.2d 732, "*Inasmuch as this court has already implicitly indicated that conduct*

intended to invade freedom from severe emotional distress is tortious, we now lend express recognition to this proposition. We adopt the rule of liability stated in § 46 of the Restatement (Second) of Torts relating to intentional infliction of emotional distress: § 46. Outrageous Conduct Causing Severe Emotional Distress (1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm." Appellant avers no description could fit Miller's alleged conduct better than, "*conduct intended to invade freedom from severe emotional distress.*" (see Compl.¶¶ 70, 74, 76, 82,85, 88, 109, 182).

Therefore, the Order's statement, "*Thus, even with plaintiff's extensive factual allegations, there is simply no case here for a jury to consider, as the cruel acts of which plaintiff complains do not meet the legal threshold for the tort of intentional infliction of emotional distress (outrage)*" (MO., pg. 4, ¶2). As explained above the Court has made an evaluation of Miller's "acts" not "conduct" and therefore, as a matter of law, has abused its discretion in making this decision. Since the Court clearly decides there is no case due to its failure to properly evaluate Miller's alleged acts it errs in so doing.

Appellant notes the Court did not rule whether or not Appellant's allegation, incorporated by reference, that Miller's conduct in trying to lure Appellant into a compromising situation to affect his arrest, meets the standard of conduct which reasonable persons could disagree was outrageous and unacceptable in a civilized society.

Appellant's alleged suicide attempt is prima fascia evidence Miller's conduct was extreme, outrageous and intolerable in a civilized society. Appellant avers the Court's factual conclusion had to be that Appellant reacted in a hyperbolic fashion to Miller's "cruel acts" to find

as it did, using the metric of Miller's alleged cruel acts instead of Appellant's reaction to them. This is construing the facts and allegations, along with their inferences, in a light not most favorable to the nonmoving party, as required. (Plyler, Ibid).

Did the Court err in failing to consider Miller's false police report to the Oconee County sheriff's department as outrageous behavior?

Appellant incorporated his allegation Miller attempted to lure Appellant into being arrested by the Oconee County sheriff. (Compl.¶114). The court abused it discretion by not considering this act by Miller in evaluating Appellant's claim of outrage, particularly in light of the fact Appellant appears pro se.

Did the Court err in dismissing Appellant's claim of defamation against Miller?

The Court makes several errors in evaluation of Appellant's claim for defamation against Miller.

First, Conwell v. Spur Oil Co. of Western South Carolina, 270 S.C. 170, 178, 125 SE2d 270 (1962), cited in Miller's order, is only applicable if the Court construes the Complaint as alleging Miller acted in good faith. In light of Miller's attempt to lure Plaintiff into a compromising situation to affect his arrest in December 2016 as clearly alleged, and supported by direct evidence, she must be deemed to be up to the same antics in July of 2015 per the evidence.

Appellant avers the new evidence included in Appendix I and III shows Miller has published defamatory material about Appellant to Toby Woodard and Carl Clark. Appellant had no opportunity to present this evidence. The Court will note Mr. Clark expresses in his email that he is in fear of his family's safety due to what he has learned from Miller and Miller's allegation Appellant committed domestic violence against her is undeniably published to Mr. Clark.

The Miller order's recitation of the occasions Appellant alleges Miller defamed him are in error. The occasions listed in the order do not include Appellant's allegations Miller defamed Appellant in regards to communications with Amy Malik. (Compl. ¶¶ 21, 22). The Court abused its discretion by not including these allegations its evaluation of Appellant's claim for defamation.

Appellant made a mistake by not elaborating on all the occasions in which Miller can be shown to have defamed him and his reliance on the police report and documents from the divorce were due to his pro se status. (Compl. ¶¶ 243). Given Appellant did not have the opportunity to amend his complaint, Appellant avers Miller's publication to Carl Clark (Appendix III) is evidence he had no opportunity to present. Again, Appellant was trying to state a claim, not prove his case in his pleading. If allowed to amend his Complaint Appellant can obviously remedy the defects in his original complaint.

CONCLUSION

Appellant, as a pro se litigant, is due consideration he did not receive. The Court abused its discretion in many instances as recounted herein. Although Appellant has cited issues with certain claims, he prays fervently this Court will provide provision for him to amend his complaint as to each defendant on each claim with the exception of his claim for defamation regarding Fisk and breach of fiduciary duty regarding Miller.

Appellant presumes the Court is aware of the seriousness of the allegations Miller has made against him. Under Rule 8 Court rules are to be applied to do substantial justice. Appellant has the opportunity to stand for the elected office of county supervisor in his hometown of Union, South Carolina. Should the Court allow this case to here in the Court of Appeals substantial justice will not have been done. Surely the Court is aware of the recent developments

in "Me Too" movement where men have been forced from their careers for far less than the allegations surrounding this case. Appellant is alleges he is completely innocent and in no way deserved the heinous treatment he received at the hands of the defendants.

In its finding the Court has construed Appellant's allegations according to one reading of the allegations and Appellant other. Just because the Court may think Appellant may not prevail it does not have the discretion to dismiss the case on that basis. ("*A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory. Id. Furthermore, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.*" Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987)).

Affirming the Court's dismissal without granting Appellant the opportunity to amend his complaint is flatly unjust in this matter.

So says Appellant, pro se,

Harold E. Blackwell, Jr.

At Union, South Carolina
January 22, 2018

(R. p. 15, line 4) (R. p. 75, lines 8-20) (R. p. 90, line 1-p. 101, line 14) (R. pp. 29-31)

Harold (Hal) E. Blackwell, Jr.
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August 1, 2018

Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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Re: Case No. 2017-002618

Dear Ms. Kitchings,,

Please find enclosed the final brief, certificate of service and the certificate of counsel served upon Respondent Miracle Hill Ministries, Inc., in the above referenced matter. If you have any questions please let me know.

Kindest regards,

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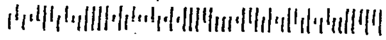

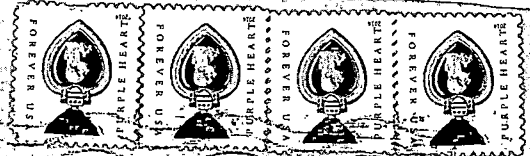

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