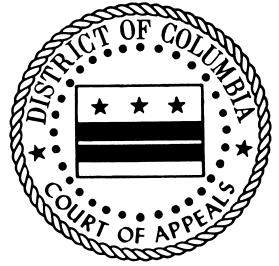


24-CV-0062



IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

Clerk of the Court
Received 08/23/2024 02:40 PM
Filed 08/23/2024 02:40 PM

ALLISON McCracken and GABRIELLA SMITH,

Appellants,

v

RAED JARRAR,

Appellee

On Appeal from the Superior Court of the District of Columbia Civil Division

(Case No. 2023-CAB-003269)

BRIEF FOR APPELLEE RAED JARRAR

August 23, 2024

Raed Jarrar

2815 11th St NW

Washington, DC 20001

(202) 558-0346

Pro Se Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... 3

 Cases..... 3

 Statutes..... 4

 Court Rules..... 4

I. Introduction..... 5

II. Background..... 5

III. Statement of Issues Presented..... 8

IV. Statement of the case..... 10

 A. Procedural History..... 10

 B. Trial Court's Key Findings and Reasoning..... 10

V. Statement of the Facts..... 12

 A. Facts leading to litigation..... 12

 B. Evidence Supporting Jarrar's Claims of Defamation..... 15

VI. Standard of Review..... 18

VII. Summary of Argument..... 20

VIII. Argument..... 22

 A. The Trial Court Correctly Concluded That Appellants' Statements Are Not Protected by the Anti-SLAPP Act..... 22

 1. Statements were false criminal accusations, not issue advocacy..... 22

 2. Statements arose from a private marital dispute, not public controversy. 24

 3. Statements made to a limited audience, not public forum..... 25

 4. References to domestic violence self-referential, not advocacy..... 26

 5. McCracken's Advocacy Was Primarily Self-Interested..... 27

B. Appellee Adequately Alleged Falsity to Proceed on the Merits.....	29
1. Distinguishing extreme accusations from "confession".....	29
2. Deferring factual disputes over "confession".....	30
3. Factual disputes on other elements precluded dismissal.....	32
4. Limited Public Figure Determination Needs Fuller Record.....	32
C. Appellants' Remaining Arguments Lack Merit.....	33
1. Jarrar's Complaint and Declaration Adequately Disavow His Written "Confession".....	33
2. Jarrar Did Not Fail to Dispute Statements Independent of the "Confession".....	35
3. The Doctrine of Substantial Truth and Opinion Does Not Apply.....	36
D. Appellants' Mischaracterizations of the Record.....	38
E. Appellants' Improper New Arguments and Facts Should Be Disregarded....	39
F. McCracken and Smith's Failure to Address the 12(b)(6) Ruling Underscores the Lack of Merit to Their Appeal.....	41
IX. Pro se Litigant.....	41
X. Conclusion.....	42

TABLE OF AUTHORITIES

Cases

- *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) - Pages 27, 28
- *Brown v. Whole Foods Mkt. Grp., Inc.*, 789 F.3d 146 U.S. App. D.C. 1 (D.C. Cir. 2015) - page 37
- *Close It! Title Servs., Inc. v. Nadel*, 248 A.3d 132 (D.C. 2021) - Page 24
- *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213 (D.C. 2016) - Pages 8, 20, 22, 24, 28
- *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007) - page 37
- *Fells v. Serv. Emps. Int’l Union*, 281 A.3d 572, 580 (D.C. 2022) - Page 16
- *Guilford Transp. Indus.*, 760 A.2d at 597 - page 31
- *Hilton v. United States*, 250 A.3d 1061 (D.C. 2021) - Page 17
- *In re S.G.*, 581 A.2d 771 (D.C. 1990) - Page 17
- *Rosen v. American Israel Pub. Affairs Comm., Inc.*, 41 A.3d 1250, 1256 (D.C. 2012) - Page 31
- *Saudi Am. Pub. Rels. Affairs Comm. v. Inst. For Gulf Affairs*, 242 A.3d 602 (D.C. 2020) - Pages 21, 23
- *Solers, Inc. v. Doe*, 977 A.2d 941 (D.C. 2009) - Page 7
- *Tingling-Clemmons v. District of Columbia*, 133 A.3d 241 (D.C. 2016) - Page 29

- Thornton v. Norwest Bank of Minnesota, 860 A.2d 838 (D.C. 2004) - Page 34

Statutes

- D.C. Code § 16-5501(1)(B) - Page 6
- D.C. Code § 16-5501(3) - Page 6
- D.C. Code § 16-5502(a) - Page 10
- D.C. Code § 16-5502(b) - Pages 10, 27, 28

Court Rules

- D.C. Court of Appeals Rule 10(a) - Page 18
- D.C. Court of Appeals Rule 27(c) - Pages 4, 23
- D.C. Court of Appeals Rule 38 - Pages 20, 23

I. Introduction

Pursuant to D.C. Court of Appeals Rule 27(c), Appellee Raed Jarrar, pro se, respectfully submits this brief in response to the appeal filed by Appellants Allison McCracken and Gabriella Smith. The appeal challenges the Superior Court's decision denying Appellants' special motion to dismiss under the District of Columbia's Anti-SLAPP Act. The trial court's decision is firmly grounded in both law and fact, and Appellee submits that the Appellants' arguments on appeal fail to demonstrate any error. Furthermore, Appellants' efforts to characterize this deeply personal and private dispute as a matter of public concern are misleading and contrary to the intent of the Anti-SLAPP Act.

II. Background

Appellee, an immigrant and single father of two, has been unfairly targeted by Appellant McCracken, who, after engaging in an extramarital affair, manipulated public narratives with Appellant Smith to justify leaving the marriage by portraying herself as a survivor of domestic abuse. Appellant McCracken and Smith used an incident where Appellee Jarrar slapped Appellant McCracken during consensual rough sex on May 15, 2022 as false evidence of domestic violence. Despite the incident occurring within the context of their established intimate practices, McCracken sensationalized it to frame herself both as a survivor

and an advocate against domestic abuse rather than a spouse who abandoned her marriage. This forced Jarrar into the difficult position of publicly defending himself by revealing their private sexual activities, including their mutual involvement in BDSM and consensual sexual relationships with other women. Jarrar sought to resolve the matter privately to avoid further public exposure of these intimate details which were deeply personal and humiliating to disclose.

Despite the parties obtaining an amicable divorce, wherein they mutually agreed not to cast each other in a negative light within the hearing of Appellee Jarrar's children, and McCracken, who was the kids' stepmother, testifying under oath that she left the marriage voluntarily, she breached this agreement the day after receiving her settlement check and finalizing the divorce. Appellant McCracken solicited the help of others and began a public campaign to attack Appellee Jarrar, disregarding the agreed-upon terms meant to protect his minor children.

Leveraging harmful stereotypes, Appellants McCracken and Smith fabricated allegations of domestic abuse to shift blame and "cancel" Appellee Jarrar. Unlike the Appellants, who were raised in privileged White households, Appellee Jarrar and his children lack similar social and financial support. Fearing the loss of his job and his ability to provide for his children, and erroneously believing it would put an end to the personal attacks, Appellee was coerced into complying with the

Appellants' increasingly belligerent demands, including selling his gun, taking online courses, and writing and editing an apology letter under their pressure.

In a significant development last year, co-defendant Noor Mir, who initially supported and perpetuated the false defamatory allegations against Appellee Jarrar, including accusations of breaking McCracken's jaw and entrapping her in the house, retracted her statements before reaching a formal settlement with Appellee Jarrar. Riding the wave of the #BelieveWomen movement, Mir, like the Appellants, manipulated language about believing women and protecting survivors of domestic violence. However, she later issued a public apology for “disseminating false information,” (A156) which underscores the baseless nature of the claims against Appellee Jarrar and further supports the trial court’s conclusion that the Appellants’ statements were not only false but also maliciously intended.

This case is not about contributing to public discourse or advocacy; it is about the misuse of public platforms to advance personal vendettas. The trial court correctly determined that the statements made by Appellants were not protected under the Anti-SLAPP Act, as they were based on false and private accusations rather than on any genuine issue of public interest. The record supports Appellee’s allegations of falsity, and the Appellants' arguments on appeal are a mischaracterization of

both the facts and the law. Appellee respectfully requests that this Court affirm the trial court's decision, recognizing the true nature of this dispute as a personal attack rather than a matter of public concern.

III. Statement of Issues Presented

McCracken and Smith's appeal challenges the trial court's denial of their special motion to dismiss under the D.C. Anti-SLAPP Act. The trial court's ruling was based on a careful application of the Act's legal standards to the facts of this case (A105-107). McCracken and Smith now seek to overturn that decision, raising two primary issues for this Court's review:

- A. Anti-SLAPP Applicability: Did the trial court err in finding that the Appellants' statements, arising from a private marital dispute, were not protected speech under the Anti-SLAPP Act, despite their attempts to frame them as advocacy on domestic violence? This issue examines whether the trial court correctly determined that McCracken and Smith's statements, despite being framed as part of an advocacy campaign, were primarily personal and focused on a private dispute, thus falling outside the statutory definition of an "issue of public interest" in D.C. Code § 16-5501(3).

B. Likelihood of Success on Defamation: Did the trial court err in finding that Appellee Jarrar demonstrated a likelihood of success on his defamation claims, considering the coerced "confession" letter and other evidence presented? This issue addresses whether the trial court applied the correct legal standard in evaluating the sufficiency of Jarrar's defamation claims based on the allegations in his complaint, see *Solers, Inc. v. Doe*, 977 A.2d 941, 947 (D.C. 2009) (A114-117), and whether the court properly rejected McCracken and Smith's arguments that Jarrar's prior statements precluded him from establishing a likelihood of success on the merits.

IV. Statement of the case

A. Procedural History

This case arises from the defamation lawsuit filed by Appellee Jarrar against Appellants Allison McCracken and Gabriella Smith. Key procedural events include:

June 2, 2023: Filing of the lawsuit by Raed Jarrar (A1). **August 31, 2023:** Filing of the amended complaint (A24). **November 6, 2023:** Settlement and retraction by Noor Mir. In her initial statements, Mir also manipulated advocacy language to bolster her defamatory allegations against Jarrar (A286, 300). However, as part of

the settlement, Mir issued a formal retraction and apology, stating: “I am writing to retract messages from last October. My earlier statements about Raed included allegations that he fractured Alli's jaw and that he trapped her in the house, both of which were inaccurate. Regardless of my intentions at the time, I apologize for disseminating false information and ask that you correct it with anyone you've shared it with.” (A156). **December 15, 2023:** Hearing on Appellants' special motion to dismiss under the District of Columbia Anti-SLAPP Act (A76). **January 5, 2024:** Trial court's denial of the Anti-SLAPP motion (A98).

B. Trial Court's Key Findings and Reasoning

The trial court's decision was based on the following key findings and reasoning:

- **Private Dispute, Not Public Interest:** The court found that the statements made by McCracken and Smith primarily concerned a private dispute between Jarrar and McCracken, rather than addressing matters of public interest. The court stated, "The only debate Plaintiff and Defendant McCracken—and by extension Defendants Smith and Siegel—are engaged in with one another involves the circumstances surrounding the demise of their marriage and subsequent divorce and enforcement of the Marital Settlement Agreement." (A262).

- **Personal Nature and Limited Audience:** The court determined that most of the statements were personal in nature and aimed at a limited audience, noting that "The majority of the Plaintiff's claims are premised on statements allegedly made by the Defendants to individual family members or friends, either directly or via text message, or to a WhatsApp group, named "Alli's support group," comprised of "a number of friends from the DC area." (A263).
- **Lack of Broader Advocacy:** The court concluded that there was insufficient evidence to support the claim that the statements were part of a broader public advocacy campaign. It noted, "Any allusion by Defendant McCracken to the larger issue of domestic violence remains largely self-referential and directed predominantly, if not exclusively, to the abuse Plaintiff allegedly inflicted upon her." (A264).
- **Failure to Meet Anti-SLAPP Burden:** The court determined that "the Defendants fall short of meeting their initial burden to make a prima facie case showing that their statements constitute advocacy in connection with an issue of public interest" (A261-A262).
- **Plausible Defamation Claims:** The court found that Appellee Jarrar adequately established plausible claims for defamation against McCracken and Smith, stating that "Plaintiff has set forth sufficient facts in his Amended

Complaint to support a plausible claim that the remaining Defendants' allegedly defamatory statements were made with actual malice with an intent to damage his personal and professional relationships and reputation" (A260).

- **Credibility Determination Inappropriate at This Stage:** The court ruled that "to do so would require a credibility determination, which is neither permitted nor possible at this early stage of the case," when considering whether to reject Jarrar's attempt to recant or distance himself from the "confession" letter (A259).
- **Public Figure Status Undetermined:** The court concluded that "At this early stage of the proceedings, this Court concludes that the factual record is insufficiently developed to determine the applicable fault standard" (A259).

These findings collectively support Appellee Jarrar's arguments that the Anti-SLAPP Act does not apply to the defendants' statements, that his defamation claims are plausible and should proceed, and that key factual disputes require further development and cannot be resolved at this stage of the proceedings.

V. Statement of the Facts

A. Facts leading to litigation

Jarrar and McCracken got married in 2018 and McCracken took up residence with Jarrar and his two children from a prior marriage (A43). Jarrar and McCracken's marriage ended in a divorce in 2022 (A26-30). Despite signing a voluntary marital settlement agreement in July 2022 (A27) and testifying under oath that she left the marriage voluntarily (A51), McCracken claimed she "feared for her life" and had to "escape" the marriage (A45). When asked for evidence by friends, McCracken cited an incident from May 15, 2022, where Jarrar slapped her during consensual rough intimacy that the couple regularly engaged in (A45). This incident was exaggerated and sensationalized by McCracken and Smith from a slap to her jaw (A45) to a fractured jaw (A47), then to a broken jaw, and finally to "breaking [McCracken's] neck and jaw" (A53). These statements were shared with various friends, in social media posts, and in group messages.

The trial court, after thorough consideration, noted that Jarrar "plausibly alleges that Defendant McCracken knew that he had neither broken or fractured her jaw or neck, and that Defendant Smith, who spent significant time with Defendant McCracken, was similarly aware that such statements were false." (A260).

In the Marital Settlement Agreement signed by Jarrar and McCracken in June 2022, the parties agreed to refrain "from casting each other in a negative light to the children or within their hearing" (A65). During the amicable divorce hearing in December 2022, McCracken testified under oath that she voluntarily left the marriage (A51). However, the very next day after the final divorce decree and receiving her \$85,000 settlement payment from Jarrar (A50), McCracken launched a series of attacks against him on Facebook, disregarding their agreement (A264).

Jarrar's position is that he has not engaged in acts of domestic violence against McCracken, and that McCracken and Smith have mischaracterized an incident where Jarrar engaged in a mutually-consented intimacy with McCracken to fabricate claims of domestic violence (A138, 165, 220). Jarrar's position is further corroborated by a recorded conversation he mentions in his declaration, where the mediator Omar Baddar confronted McCracken about omitting the context of consensual intimacy from her allegations. Baddar stated to Jarrar that McCracken initially "left out the sex part entirely" and "was not honest" until pressed, at which point "She struggled to answer...She tripped all over herself and then she clarified" about the consensual nature of the interactions (A162). This evidence supports Jarrar's claim that McCracken took the intimate context "out of context after the fact," despite knowing the truth about their consensual relationship (A162).

McCracken alleged that bruises observed on her were evidence of domestic violence perpetrated by Jarrar. She transmitted text messages to her sister, claiming that Jarrar had "beat her up" during a romantic encounter on May 15, 2022, and provided a photo of discolorations on her upper arm (A45). However, Jarrar stated that McCracken often had bruises on her arms, thighs, and buttocks as a result of their consensual rough intimacy, adding, "She showed bruises to friends on different occasions and bragged about our sex life" (A165). Notably, McCracken has not contested Jarrar's explanation of these bruises, further undermining her assertions of domestic violence.

B. Evidence Supporting Jarrar's Claims of Defamation

The trial court found that Jarrar had established a likelihood of success on the merits of his defamation claims. The court noted that Jarrar's complaint provided specific factual allegations and evidence to support his claims, including a detailed account of the incident and the context in which it occurred. Moreover, Jarrar vehemently denies the allegations of abuse and highlights that the defamatory statements made by McCracken and Smith were part of a malicious campaign to damage his reputation and "cancel" him (A50).

During the court hearing, Jarrar clearly stated his position: "I have not denied that I have had physical interactions with Appellant McCracken. But the matter of

controversy here is that my statements have been consistent. That all of these acts have been during consensual intimate relationships. And that Ms. McCracken took that out of context after the fact” (A219-220).

Jarrar's position is further corroborated by a recorded conversation he mentions in his declaration, where the mediator Omar Baddar confronted McCracken about omitting the context of consensual intimacy from her allegations. Baddar stated to Jarrar that McCracken initially "left out the sex part entirely" and "was not honest" until pressed, at which point "She struggled to answer...She tripped all over herself and then she clarified" about the consensual nature of the interactions (A219). This evidence supports Jarrar's claim that McCracken took the intimate context "out of context after the fact," despite knowing the truth about their consensual relationship (A219).

Jarrar has provided multiple messages from McCracken to other women they were dating together, discussing their consensual rough intimacy. For instance, on January 17, 2020, a woman they were dating texted them on a joint thread saying, "Sometimes you need a good spanking every once in a while." Defendant McCracken responded, "Maybe someday you can take on some of the spankings to spare my abused bum." Additionally, on April 9, 2020, another woman they were dating at the time sent a text on a joint thread asking, "what are you more into?" to

which Appellant McCracken answered, "we're into some BDSM but I'm a softie hahaha." (A165).

McCracken and Smith have not contested the authenticity or content of these messages. This lack of contestation effectively concedes this significant point, which lies at the heart of the controversy, thereby undermining their allegations of non-consensual behavior.

McCracken alleged that bruises observed on her were evidence of domestic violence perpetrated by Jarrar. She transmitted text messages to her sister, claiming that Jarrar had "beat her up" during a romantic encounter on May 15, 2022, and provided a photo of discolorations on her upper arm (A21). However, Jarrar stated that Defendant McCracken often had bruising on her arms, thighs, and buttocks as a result of their consensual rough intimacy, adding, "She showed bruises to friends on different occasions and bragged about our sex life" (A165). Notably, McCracken has not contested Jarrar's explanation of these bruises, further undermining her assertions of domestic violence.

Furthermore, Jarrar disavowed the "confession" letter, asserting that he was coerced and intimidated into writing it under pressure from McCracken and her associates. In his declaration, Jarrar stated that the original letter contained an acknowledgment that the physical acts occurred during consensual intimacy, but he

was instructed to remove any such context (A219). In a recorded conversation with the mediator Omar Baddar on the day Jarrar presented the signed “confession” letter, Baddar expressed concern about Jarrar's legal exposure due to the letter's content. Baddar asked Jarrar, "what if you had to explain yourself about the context, I suppose it is legally safe?" Jarrar responded, "I have enough paper trail to back me up. I did receive very clear instructions from Alli, through you. Because in my initial apology, I said I am sorry about everything that happened even though it happened during sex or self-defense, so I took out that part." Baddar confirmed, "Yes, you took out that part." Jarrar concluded, "obviously she knows the truth—you know the truth—everyone involved in this process knows the truth" (A219). This recorded conversation provides strong evidence that Jarrar was pressured to remove the context of consensual intimacy from the “confession” letter, despite McCracken and others involved in the process being fully aware of the true nature of their relationship (A161-162, A219).

While appellants heavily rely on this so-called 'confession' as evidence of appellee's acknowledgment of physical abuse, it is crucial to emphasize that the letter was not a free and voluntary admission of guilt. The letter was drafted under significant duress, with McCracken and her associates exerting intense pressure on Jarrar to produce the letter. Moreover, the context of the “confession” letter was deliberately altered at McCracken's insistence, as she demanded that Jarrar remove

any mention of the consensual nature of their physical interactions. This coerced and manipulated “confession” lacks credibility and should not be considered a valid or reliable piece of evidence.

VI. Standard of Review

This Court reviews the Superior Court's application of the Anti-SLAPP Act de novo. As established in *Fells v. Serv. Emps. Int’l Union*, 281 A.3d 572, 580 (D.C. 2022), de novo review applies to questions of statutory interpretation, such as the applicability of the Anti-SLAPP Act.

However, the trial court’s factual findings, including credibility determinations, are reviewed under the clearly erroneous standard and are entitled to substantial deference on appeal. As this Court held in *In re S.G.*, 581 A.2d 771, 775 (D.C. 1990), an appellate court will only overturn a trial court's factual findings if they are clearly erroneous. This means that the appellate court must respect the trial court's findings unless a review of the entire record leaves the appellate court with the firm conviction that a mistake has been made.

The Appellants' arguments improperly seek to relitigate factual issues already decided by the trial court, which is not the role of an appellate court. “An appellate court reviews mixed questions of law and fact under its usual deferential standard

of review for factual findings and apply de novo review to the ultimate legal conclusions based on those facts. *Hilton v. United States*, 250 A.3d 1061, 1066.

Applying these principles, the Court should carefully distinguish between the trial court's legal determinations, which warrant independent review, and its factual findings, which are subject to substantial deference.

VII. Summary of Argument

This Court should affirm the trial court's well-reasoned denial of Appellants' Anti-SLAPP motion. The trial court correctly determined that McCracken and Smith's statements are not protected by the Anti-SLAPP Act, as they were false criminal accusations stemming from a private marital dispute, not genuine public interest advocacy (A261-A262). The court found that the statements arose from a private controversy, not a public one, involving only "the circumstances surrounding the demise of their marriage and subsequent divorce" (A262). Most statements were made to a limited audience, not in a public forum (A263), and references to domestic violence were largely self-referential rather than broader advocacy (A264). McCracken's advocacy was primarily self-interested, differing qualitatively from her explicit calls to action on other subjects (A265). Appellee Jarrar adequately alleged falsity to proceed on the merits, with the court finding his claims plausible and supported by sufficient facts (A260). The court properly

deferred factual disputes over the "confession" letter to a jury (A259) and recognized that other factual disputes, including those related to actual malice and damages, precluded dismissal (A260-261). The court correctly concluded that the record was insufficient to determine Jarrar's status as a limited public figure (A259-260). Jarrar's complaint and declaration adequately disavow his written "confession," explaining the coercive circumstances under which it was produced (A159-160, A165), and he did not fail to dispute statements independent of the "confession" (A47). The doctrine of substantial truth and opinion does not apply to the Appellants' statements, which went beyond minor inaccuracies (A309). Appellants have mischaracterized the record, particularly regarding Jarrar's alleged admissions (A165, A220), and their attempts to introduce new arguments and facts on appeal should be disregarded as improper.

Finally, Appellants' failure to address the 12(b)(6) ruling underscores the lack of merit in their appeal (A106-109). The trial court's decision adhered to the Anti-SLAPP Act, relevant precedents, and the specific facts of this case. McCracken and Smith have failed to show any reversible error, and this Court should affirm the denial of their special motion to dismiss.

VIII. Argument

A. The Trial Court Correctly Concluded That Appellants' Statements Are Not Protected by the Anti-SLAPP Act

1. Statements were false criminal accusations, not issue advocacy

The accusations made by McCracken and Smith, which included allegations of physical abuse such as breaking McCracken's neck or jaw (A53), were personal attacks not protected under the Anti-SLAPP Act. For example, during or about September 2022, Smith contacted a mutual friend, Sarah Ibrahim, and asked her to cut all ties with Jarrar because he "fractured Alli's jaw" (A47). Dr. Ibrahim contacted Omar Baddar to verify the information (A47). Mr. Baddar contacted McCracken directly and informed her that Smith was claiming that Jarrar had fractured her jaw (A47). McCracken told Mr. Baddar that although the allegations are not accurate, she refused to ask Smith to stop spreading such allegations or set the record straight. (A47). The exaggerated and sensationalized statements by McCracken and Smith continued where they told false stories of a fractured jaw (A47), then fantastical stories of a broken jaw, and finally accused Jarrar of "breaking [McCracken's] neck and jaw" (A53).

The statements made by Appellants McCracken and Smith were false criminal accusations rather than issue advocacy. The court emphasized that "this Court

concludes that the Appellants fall short of meeting their initial burden to make a prima facie case showing that their statements constitute advocacy in connection with an issue of public interest.” (A261). The court further noted that there was "no basis to conclude that the Plaintiff initiated this action as an advocate on one side of the public policy debate concerning domestic violence or the #MeToo movement, or that the Appellants are active participants on the opposing side of this larger public debate." (A262). “The Anti-SLAPP Act, D.C. Code § 16-5501 et seq. (2021 Supp.) The Act protects the targets of meritless litigation that is “filed by one side of a political or public policy debate aimed to punish or prevent the expression of opposing points of view.” *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1220. This determination aligns with the principles established in *Competitive Enterprise Institute v. Mann*, 150 A.3d 1213 (D.C. 2016), where the court emphasized the need to distinguish between public advocacy and private grievances.

The appellants' statements were not intended to advance a public dialogue on domestic violence or the #MeToo movement. While they attempt to cloak their defamatory accusations in the guise of advocacy, the true intent behind these statements was to harm the appellee's reputation within a specific social circle. The appellants' communications were self-serving, motivated by personal animus rather than any genuine desire to contribute to a public debate. The D.C. Court of

Appeals has previously rejected attempts to stretch the Anti-SLAPP statute to cover private grievances that masquerade as public advocacy. See *Saudi Am. Pub. Rels. Affairs Comm. v. Inst. For Gulf Affairs*, 242 A.3d 602, 612 (D.C. 2020).

2. Statements arose from a private marital dispute, not public controversy

The trial court found that the statements in question arose from a private marital dispute between Jarrar and McCracken, rather than a public controversy (A262). The court stated, "The only debate" the parties "are engaged in with one another involves the circumstances surrounding the demise of their marriage and subsequent divorce and enforcement of the Marital Settlement Agreement" (A262). This private nature of the dispute underscores that the statements were not related to a public issue but were instead based on personal grievances stemming from a failed marriage. This interpretation is consistent with the ruling in *Saudi Am. Pub. Rels. Affairs Comm. v. Inst. For Gulf Affairs*, 242 A.3d 602, 612 (D.C. 2020), which held that private disputes do not qualify for Anti-SLAPP protection.

This case does not involve opposing sides of a public dispute. The appellants' statements were not part of a broader debate where differing views on a public issue were being contested. Instead, the statements arose from a private conflict, with no genuine public interest component. The lack of any true public controversy

further confirms that the appellants' statements do not fall under the protection of the Anti-SLAPP Act.

Even if some aspects of the statements touch upon broader social issues, they remain inextricably linked to a private dispute. The personal and vindictive nature of the statements reveals that they were not aimed at advancing public discussion but rather at inflicting harm on the appellee in a private matter. The court must consider the totality of the circumstances, including the intent, audience, and context of the statements, to determine that they fall outside the scope of Anti-SLAPP protections.

3. Statements made to a limited audience, not public forum

The trial court determined that most of the statements were made to a limited audience, such as individual family members or friends, rather than in a public forum (A263). The court highlighted that "the majority of the Plaintiff's claims are premised on statements allegedly made by the Defendants to individual family members or friends, either directly or via text message, or to a WhatsApp group, named 'Alli's support group,' comprised of 'a number of friends from the DC area'" (A263). This limited dissemination indicates that the statements were not made in a manner that would qualify them as communications to the public under the Anti-SLAPP Act.

4. References to domestic violence self-referential, not advocacy

The court rejected McCracken and Smith's argument that their statements were part of broader advocacy against domestic violence (A264). The court found that "Any allusion by Defendant McCracken to the larger issue of domestic violence remains largely self-referential and directed predominantly, if not exclusively, to the abuse Plaintiff allegedly inflicted upon her." (A264). The court noted that these references were not framed as part of a larger public debate or advocacy effort but were instead focused on personal accusations against Appellee Jarrar. This finding aligns with the analysis in *Close It! Title Servs., Inc. v. Nadel*, 248 A.3d 132, 138 (D.C. 2021), where the court concluded that self-referential statements did not meet the criteria for Anti-SLAPP protection.

*In Close It! Title Servs. v. Nader, 2018 D.C. Super. LEXIS 109, *11-12:*

As stated by the Court of Appeals, the D.C. Anti-SLAPP Act was enacted "to protect a 'particular value of high order' — the right to free speech guaranteed by the First Amendment — by shielding defendants from meritless litigation that might chill advocacy on issues of public interest." *Competitive Enter. Inst. V. Mann*, 150 A.3d 1213, 1231 (D.C. 2016). First, the moving party must demonstrate that the "underlying claim arises from an act in furtherance of the right of advocacy on issues of public interest." *Doe No. 1 v. Buirke*, 91 A.3d 1031, 1040 (D.C. 2014). The statute defines an "act in the furtherance of the right of advocacy on issues of public interest" as "any written or oral statement made: (i) in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; or (ii) In a place open to the public or a public forum in connection with an issue of public interest.

5. McCracken's Advocacy Was Primarily Self-Interested

The trial court analyzed the substance of McCracken's statements and compared them to her other advocacy efforts on issues like Palestine and Guantanamo Bay (A209-211). As the court found, McCracken's references to domestic violence and the #MeToo movement were qualitatively different from her explicit calls to action on other subjects. The court stated: “While three sentences of the post speak more generally to other victims of domestic violence and encourage her followers to contribute to the National Network to End Domestic Violence, these statements cannot be construed as “advocacy,” particularly when contrasted with the following paragraph in which she explicitly advocates for the liberation of Palestine, the closure of Guantanamo, and the release of an imprisoned Native American activist and a government whistleblower.” (A265).

The court also recognized that the record failed to establish Jarrar was an adversary engaging in the "#MeToo arena" from the perspective of defending accused abusers or disputing whether accusers should be believed (A221-223). As McCracken and Smith's opening brief sidestepped this aspect of the trial court's analysis, this Court should affirm that McCracken's statements, focused chiefly on her private marital dispute with Jarrar, fell outside the Anti-SLAPP Act's scope despite superficial connections to more general advocacy.

Appellants argue that their statements were part of a coordinated advocacy campaign, similar to those protected in cases like *Saudi American Public Affairs Committee v. Institute for Gulf Affairs*. However, the trial court found that the context and intent of the statements in this case were different. The statements were not made as part of a larger public discourse on human rights or domestic violence but were instead focused on personal grievances stemming from the dissolution of a marriage. The court noted that the appellants' attempt to frame the statements as part of a broader advocacy effort was unconvincing, as the primary focus was on Jarrar's personal conduct rather than any larger public issue.

The trial court's decision is further supported by its analysis of the specific statements made by the Appellants. The court noted that McCracken's Twitter posts focused predominantly on Jarrar and the abuse he allegedly inflicted upon her (A265). The court's conclusion that Appellants' statements were primarily focused on a private dispute and not on advancing a broader public dialogue on domestic violence is consistent with the purpose of the Anti-SLAPP Act.

Finally, While personal stories can be powerful tools in advocacy, they do not automatically shield false and defamatory statements from liability. Appellants' use of McCracken's false allegations should not obscure the fact that their statements were not aimed at furthering public debate.

B. Appellee Adequately Alleged Falsity to Proceed on the Merits

McCracken and Smith's primary argument is that Jarrar's claims fail because he previously "confessed" to the conduct described in their statements. However, this argument collapses under scrutiny for several reasons:

1. Distinguishing extreme accusations from "confession"

The trial court correctly distinguished between Jarrar's private letter admitting certain behaviors and McCracken and Smith's extreme public accusations. In his sworn declaration, Jarrar reiterated, "I do wish to reiterate that I did not engage in 'physical abuse' of McCracken. Rather, we mutually engaged in a number of rough sex practices and BDSM, and Defendant McCracken has not denied that this was, in fact, the case" (A165). Furthermore, Jarrar disavowed the "confession" letter, asserting that he was coerced and intimidated into writing it under pressure from McCracken and her associates. In his declaration, Jarrar stated that the original letter contained an acknowledgment that the physical acts occurred during consensual intimacy, but he was instructed to remove any such context (A161-162). This distinction is crucial in establishing the falsity of McCracken and Smith's statements. Either way, Appellee Jarrar does not admit to any of the false crimes and felonies Appellants McCracken and Smith claim he engaged in.

The arguments raised by McCracken and Smith, relying on an out-of-context interpretation of the “confession,” do not undermine the credibility of Jarrar’s claims and should not be given dispositive weight.

The credibility of the Appellants' accusations is significantly undermined by the retraction issued by Defendant Noor Mir, who initially supported these defamatory claims. Mir's retraction explicitly acknowledges that her statements about Appellee Jarrar were 'inaccurate,' particularly the allegations that Jarrar 'fractured Alli's jaw' and 'trapped her in the house.' As a defendant in this case, Mir’s admission directly contradicts the narrative constructed by the Appellants and serves as critical evidence demonstrating the falsity of their claims against Appellee Jarrar (A156).

2. Deferring factual disputes over "confession"

The court emphasized that resolving factual disputes, such as the interpretation of Jarrar’s letter, was not appropriate at the motion to dismiss stage. It stated, "Doing so would require 'a credibility determination, which is neither permitted nor possible' at this stage" (A259). The court referenced *Anderson v. Liberty Lobby, Inc.*, in pointing out that “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 244. This deferral

to a jury underscores the need for further factual development before making a determination on the merits.

Significantly, because the trial court determined that McCracken and Smith failed to meet their threshold burden of showing their statements qualified as protected advocacy under the Anti-SLAPP Act, the burden never shifted to Jarrar to establish a likelihood of success on the merits (A266). As the court recognized, a special motion to dismiss under the Act involves a burden-shifting analysis. Only if the moving party first makes a prima facie showing of protected advocacy must the non-moving party then demonstrate a likelihood of prevailing. D.C. Code 16-5502(b).(A266). The trial Court concluded that Appellants fell short of meeting their initial burden to make a prima facie case showing that their statements constitute advocacy in connection with an issue of public interest (A262).

“Defendants bring this special motion to dismiss pursuant to D.C. Code § 16-5502, of the D.C. Anti-SLAPP Act (the "Act"). The Act "creates a burden-shifting procedure that is triggered by the party seeking to invoke [its] special protections." *Competitive Enter. Inst. V. Mann*, 150 A.3d 1213, 1232 (D.C. 2016). The party invoking the Act first "makes a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest." D.C. Code § 16-5502(b).

3. Factual disputes on other elements precluded dismissal

The court also identified other factual disputes, such as those related to actual malice and damages, which precluded dismissal. The court noted that Jarrar's allegations included claims that McCracken and Smith acted maliciously to destroy his reputation and that these actions caused concrete harm (A260-61). These disputes require further exploration and support the trial court's decision to allow the case to proceed. This aligns with the holding in *Tingling-Clemmons v. District of Columbia*, 133 A.3d 241, 245 (D.C. 2016), which emphasizes that factual disputes are not suitable for resolution at the motion to dismiss stage.

4. Limited Public Figure Determination Needs Fuller Record

The trial court correctly concluded that the record was insufficient to determine Jarrar's status as a limited public figure. This determination requires a fact-intensive inquiry into Jarrar's role in the specific controversy at hand, not just his general public profile. The trial noted that "the evidence was 'insufficiently developed' to make the [public figure] determination as a matter of law" (A260-61). The court emphasized the need for a fuller factual record to properly analyze this issue. McCracken and Smith's assertion that the plaintiff was a public figure in a broader "#MeToo, domestic violence debate was found to be

unsubstantiated, given the court's focus on the specific controversy surrounding the allegations made by McCracken (A260-61).

Certainly, let's incorporate those suggestions and further refine the Anti-SLAPP Act arguments section. Here's the enhanced draft:

C. Appellants' Remaining Arguments Lack Merit

Appellee Jarrar addresses below the remaining points raised in Appellants' briefs, demonstrating that they lack legal and factual support.

1. Jarrar's Complaint and Declaration Adequately Disavow His Written "Confession"

Appellants McCracken and Smith argue that Appellee Jarrar's complaint and declaration fail to directly disavow his written "confession." They contend that Jarrar's claims of being "intimidated" into writing the letter do not negate the statements made within it. However, this argument overlooks the broader context and evidence presented by Appellee Jarrar.

- **Coercion and Intimidation:** Jarrar's declaration provides a detailed account of the circumstances surrounding the creation of the "confession" letter. He describes being a vulnerable single father and immigrant with no other family in the United States while subjected to intense pressure, threats of public exposure of sexual details, and concerns about the impact on his minor children and career if he did not comply with Appellants McCracken

and Smith's demands (A159-160). These coercive tactics raise serious questions about the voluntariness and truthfulness of the statements made in the letter. The trial court acknowledged the potential for coercion, stating that "to reject as implausible any attempt by Plaintiff to recant or distance himself from his earlier confession...would require a credibility determination, which is neither permitted nor possible at this early stage of the case" (A259).

- **Specific Disavowals & Evidence of Fabrication:** While Appellee Jarrar acknowledges slapping Appellant McCracken and engaging in other rough physical intimacy, he explicitly denies engaging in the "domestic abuse" characterized in the "confession" letter and Appellants' statements (A165). He clarifies that any physical contact occurred within the context of their consensual BDSM practices, which McCracken has not denied (A165). This directly contradicts the narrative presented by Appellants. Furthermore, Jarrar's declaration includes evidence that McCracken deliberately omitted the context of consensual intimacy from her allegations, further undermining the credibility of the "confession" (A162).

Appellee Jarrar's complaint and declaration, when considered alongside the supporting evidence, provide a plausible basis to disavow the "confession" letter. The allegations of coercion, intimidation, and deliberate omission of context create a factual dispute regarding the letter's accuracy and truthfulness. The trial court correctly recognized that this is a matter for a jury to decide, not something to be

dismissed at the pleading stage. The “confession” letter, which the appellants heavily rely upon, should be viewed in light of the well-established legal principle that coerced statements are inherently unreliable. Courts have long recognized that coercion undermines the voluntariness of a “confession,” rendering it inadmissible or of limited evidentiary value. In this case, the appellants’ pressure tactics, which included threats and manipulation, stripped the “confession” of any credibility, further substantiating my claims of defamation.

Either way, the “confession” letter does not include language admitting to the false crimes and felonies that Appellants Mcracken and Smith accused Appellee Jarrar of engaging in.

2. Jarrar Did Not Fail to Dispute Statements Independent of the “Confession”

Appellants argue that Appellee Jarrar failed to specifically dispute statements that did not rely on his “confession” letter. They point to allegations in the amended complaint regarding rumors of specific violent acts and statements made by Noor Mir, which they claim Jarrar did not deny. However, this argument misrepresents the content of the amended complaint and overlooks key evidence.

- Rumors vs. False Accusations: The amended complaint acknowledges the existence of "rumors" about specific violent acts but does not admit their truthfulness (A47). It is crucial to distinguish between acknowledging the existence of rumors and admitting their truth. Jarrar's consistent position is that any physical interactions with McCracken were consensual and part of

their BDSM practices, not acts of domestic abuse. Merely acknowledging that rumors exist does not equate to accepting them as true.

- Noor Mir's Retraction: While Appellants highlight certain statements made by Noor Mir, they fail to acknowledge her subsequent retraction and settlement with Jarrar (A156). Mir's retraction explicitly states that her earlier statements were "false information," giving examples of her statements not limiting her retraction to only those examples (A156). This directly refutes Appellants' claim that Jarrar did not dispute these statements. Mir's retraction further supports Jarrar's overall narrative of false accusations being spread about him.

Appellee Jarrar's amended complaint, along with Mir's retraction, adequately addresses the statements in question. The complaint does not concede the truthfulness of the rumors but rather frames them as part of the larger campaign of defamation against Jarrar.

3. The Doctrine of Substantial Truth and Opinion Does Not Apply

Appellants attempt to invoke the doctrine of substantial truth and argue that many of the statements are protected opinions. However, these arguments are misplaced and inconsistent with the trial record.

- Substantial Truth: The doctrine of substantial truth, as defined in *Armstrong v. Thompson*, 80 A.3d 177, 183 (D.C. 2013), allows for minor inaccuracies in

a statement as long as the overall "gist" or "sting" remains true. In this case, Appellants' statements went beyond minor inaccuracies and fundamentally distorted the nature of the events, portraying consensual acts within a BDSM relationship as violent abuse. The trial court correctly recognized this distinction, stating that "the Defendants fall short of meeting their initial burden to make a prima facie case showing that their statements constitute advocacy in connection with an issue of public interest" (A309). The court's rejection of the substantial truth doctrine underscores the seriousness of the Appellants' misrepresentations. The "sting" of the Appellants' statements was that Jarrar engaged in criminal physical violence, a claim that is demonstrably false based on evidence and Jarrar's consistent assertions and the context of the relationship.

- Opinion vs. Fact: Appellants' claim that their statements were protected opinions is also flawed. The statements in question, particularly those alleging specific acts of violence and injuries, such as a broken jaw, are presented as factual assertions, not subjective opinions. Statements like "Raed broke her neck and jaw" are presented as objective truths, not expressions of personal viewpoints. The trial court rightly identified these statements as potentially defamatory, as they imply false facts about Jarrar's conduct.

Appellants' reliance on the doctrines of substantial truth and opinion is misplaced. Their statements were not merely opinions or minor inaccuracies but rather

deliberate distortions of the truth aimed at harming Appellee Jarrar's reputation. The trial court's rejection of these arguments is well-founded and should be upheld.

D. Appellants' Mischaracterizations of the Record

McCracken and Smith's distortions of the factual record and misstatements regarding Jarrar's alleged "confession" reinforce the frivolous nature of this appeal. Their brief relies heavily on mischaracterizations of Jarrar's statements, taking them out of context and presenting disputed factual issues as conclusively established.

This pattern was clear at the very hearing on the Anti-SLAPP motion itself. Counsel for McCracken and Smith incorrectly claimed that Jarrar had "conceded" they had made the required prima facie showing that the statements were on a matter of public interest (A194-195). The Court corrected this misrepresentation (A196).

Further distortions are evident in their appellate briefing. McCracken and Smith repeatedly assert that Jarrar has admitted to physically abusing McCracken and causing her grievous injury (Opening Br. 4, 13-14, 18). However, they completely ignore Jarrar's consistent repudiations of any non-consensual abuse. In his sworn declaration, Jarrar stated: "I do wish to reiterate that I did not engage in 'physical abuse' of McCracken. Rather, we mutually engaged in a number of rough sex

practices and BDSM, and McCracken has not denied that this was, in fact, the case" (A165). At the hearing itself, Jarrar was even more unequivocal, stating under questioning: "Any act of physical violence happened with Ms. McCracken's consent during consensual sex" (A220).

McCracken and Smith also gloss over the letter's limited scope, omitting Jarrar's explanation that McCracken directed him to excise any reference to the voluntary nature of the conduct described (Jarrar Decl. A161-62). They further ignore the evidence that Jarrar was pressured to remove that context despite McCracken and the mediator being fully aware of the consensual basis for the acts described (A161-162, A219).

These crucial details fatally undermine McCracken and Smith's "confession" argument, but their brief fails to meaningfully grapple with them or accurately represent the record. Instead, they resort to selectively quoting the complaint and declaring victory on a question that is hotly contested and demands further factual development.

E. Appellants' Improper New Arguments and Facts Should Be Disregarded

This Court should disregard McCracken and Smith's attempts to raise new arguments and introduce new facts for the first time on appeal. For the Court of Appeals "it is fundamental that arguments not raised in the trial court are not

usually considered on appeal.” *Thornton v. Norwest Bank of Minnesota*, 860 A.2d 838, 842 (D.C. 2004). Under D.C. Court of Appeals Rule 10(a), the record on appeal consists of: "(1) the original papers and exhibits filed in the Superior Court; (2) the transcript of proceedings, if any; and (3) a certified copy of the docket entries prepared by the Clerk of the Superior Court." The Court's review is confined to the record as defined in Rule 10(a).

Appellants McCracken and Smith dedicated an entire section of their appeal to events that took place after the trial court's order (Appellants Brief Section F pp25-28). This issue over the proper scope of the appellate record was the subject of a lengthy email exchange between the parties in late April and early May 2024 about the contents of the Joint Appendix. In the exchange, Jarrar objected to Appellants McCracken and Smith's proposal to include post-order filings in the Appendix, stating "I question the inclusion of several documents that post-date the trial court's January 5, 2024 order denying the anti-SLAPP motion, such as the discovery motions and protective order. It is my understanding that the appellate court's review should focus on the record before the trial court at the time of its anti-SLAPP ruling. Later filings concerning discovery disputes seem extraneous to the core issues on appeal." Despite Jarrar's objections, on May 3, 2024 McCracken and Smith's counsel stated their intent to "include those post-1/5/24 documents in the appendix," so the parties did not file a joint appendix.

F. McCracken and Smith's Failure to Address the 12(b)(6) Ruling Underscores the Lack of Merit to Their Appeal

In addition to correctly rejecting McCracken and Smith's Anti-SLAPP arguments, the trial court thoroughly analyzed their Rule 12(b)(6) motion and determined Jarrar's allegations were sufficient to state claims for defamation (A106-109). Although the denial of a 12(b)(6) motion is not directly appealable at this stage, McCracken and Smith's opening brief does not even acknowledge this ruling, let alone attempt to show any error in the court's sufficiency analysis.

As the trial court explained, Appellee Jarrar plausibly alleged the key elements of falsity, publication, fault, and damages through his specific factual claims (A106-109). By completely ignoring this aspect of the trial court's decision, McCracken and Smith effectively concede they have no grounds to challenge the substantive viability of Jarrar's defamation case. Their decision to train all fire on the Anti-SLAPP issue demonstrates the weakness of this appeal.

IX. Pro se Litigant

As a pro se litigant, Jarrar respectfully requests that this Court construe his arguments liberally and afford him some leeway in the presentation of his case. The Supreme Court has recognized a “document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less

stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007) (cleaned up).

Moreover, the Court should assess a pro se complaint "in light of all filings, including filings responsive to a motion to dismiss." *Brown v. Whole Foods Mkt. Grp., Inc.*, 789 F.3d 146 U.S. App. D.C. 1 (D.C. Cir. 2015).

This principle is grounded in the fundamental right of access to the courts and the notion that the judiciary should not close its doors to those who lack formal legal training. While Appellee Jarrar has endeavored to comply with all applicable rules and present a cogent, well-supported argument, any minor deficiencies should not detract from the merits of his position or preclude him from obtaining the relief he seeks.

X. Conclusion

The trial court's denial of the Appellants' Anti-SLAPP motion was soundly grounded in the law and facts of this case. The Appellants' statements, arising from a personal dispute and aimed at tarnishing the Appellee's reputation, do not constitute protected advocacy on matters of public interest. The Appellee has convincingly demonstrated the falsity of these statements and the potential for harm, warranting further proceedings in this defamation action. The Appellants' reliance on a coerced and misleading "confession" and their attempts to introduce

new arguments and evidence on appeal further highlight the weakness of their position.

The trial court's decision reflects a proper application of the Anti-SLAPP Act and defamation law, safeguarding both freedom of speech and individual reputations.

The Appellee respectfully requests that this Court affirm the trial court's denial of the Appellants' special motion to dismiss.

The Appellants' actions have unnecessarily prolonged this litigation and placed an undue burden on Appellee Jarrar, who has been forced to defend himself against baseless accusations that have threatened his livelihood with his children. The Court should consider appropriate relief to address the Appellants' conduct and ensure that justice is served.

Respectfully submitted,

/s/Raed Jarrar

Raed Jarrar
2815 11th St NW
Washington, DC 20001
(202) 558-0346
Pro Se Appellee

Certificate of Service

I hereby certify that on this 23 day of August, 2024, I caused a true and correct copy of the foregoing Appellee Brief to be served via the electronic filing system upon the following:

Gregory M. Lipper (No. 494882)

LIPPER LAW PLLC

1325 G Street NW, Suite 500

Washington DC 20005

(202) 996-0919

glipper@lipperlaw.com

Respectfully submitted,

/s/Raed Jarrar

Raed Jarrar
2815 11th St NW
Washington, DC 20001
(202) 558-0346
Pro Se Appellee