2025-M-292

ORIGINAL

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. _____

SHADRACK TUCKER WHITE,

Petitioner-Defendant,

vs.

BRETT LORENZO FAVRE,

Respondent-Plaintiff.

PETITION TO APPEAL INTERLOCUTORY ORDER
AND TO STAY TRIAL COURT PROCEEDINGS

Brett Lorenzo Favre v. Shadrack Tucker White, No. 23-cv-00095,
Circuit Court of Hinds County, First Judicial District, Honorable Debra Gibbs, presiding

EXPEDITED CONSIDERATION REQUESTED

MOTION# 2025-786

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INTRODUCTION

Shad White respectfully asks to appeal Judge Debra Gibbs's order denying his motion to dismiss Brett Favre's defamation claims against him.

This case presents important questions of First Amendment law about which there exist clear differences of opinion. An appeal at this stage serves all the interests that Mississippi Rule of Appellate Procedure 5 is designed to serve. This Court's decision will:

1. **materially advance the termination of the litigation and avoid exceptional expense of the parties;**

The questions for this Court are dispositive questions of law. They do not require a jury to first resolve any issue of fact. This Court should decide these questions of law now instead of later. A decision now likely will terminate this litigation and avoid the unnecessary and substantial expense of a trial.

2. **protect a party from substantial and irreparable injury;**

The continued litigation of this case not only threatens important First Amendment rights. Equally if not more worrisomely, it discourages public servants from doing their jobs. Favre uses this case to relitigate a state audit of the misuse of welfare funds, five years and seven criminal convictions later. He uses discovery to demean the very public employees whose hard work helped uncover the fraud. The injury is not merely to White but to a state office and to the integrity of the public fisc.

3. **and resolve an issue of general importance in the administration of justice.**

The issues in this case are of constitutional import and require this Court's attention.

Until now, the First Amendment and Mississippi law protected comment on publicly known facts. Indeed, in September, the U.S. Fifth Circuit Court of Appeals, applying Mississippi law, dismissed Favre's identical defamation claims against Shannon Sharpe. Judge Gibbs's order,

which does not account for the same Mississippi law, sets a dangerous precedent with implications for all citizens' freedom of speech.

This case separately raises the question of immunity from defamation claims for statewide officeholders, an issue as-yet undecided by this Court. This Court should adopt the majority rule, embodied in the Restatement (Second) of Torts § 591(b), that statements made by an executive officeholder in the performance of his official duties are privileged. "The public welfare is so far dependent upon a reasonable latitude of discretion in the exercise of functions of high executive offices that their incumbents may not be hindered by the possibility of a civil action for defamation in connection therewith." § 591 cmt. A.

STATEMENT OF FACTS

Favre alleges White defamed him in statements White made about Favre's role in a widely reported welfare fraud scandal. Seven people have pleaded guilty in connection with the scandal. MDHS has civilly sued dozens, including Favre, to recover the misspent money.

There is no question that Favre received millions of dollars that were intended for the state's neediest. Favre lobbied John Davis, then-director of MDHS, for money to build a volleyball stadium at the University of Southern Mississippi for his daughter and for money to fund a startup company with a professor named Jake Vanlandingham. Davis caused MDHS to give the money to MCEC, an entity controlled by Nancy New, and New, in turn, wired the money to Favre and others at Favre's direction.

White is the state auditor and his office uncovered the fraud. Initially, White did not have any information indicating that Favre knew the source of the money he received. In May 2020, White told the public that White had not seen any records indicating that Favre knew the money's source.

But as the investigation unfolded, new information came to light. On September 12, 2022, New filed numerous text messages between herself and others, including Favre, in the Hinds County court's public record. On September 13, 2022, *Mississippi Today* published the "[n]ever-before-seen text messages" in a story titled "Former Gov. Phil Bryant helped Brett Favre secure welfare funding for USM volleyball stadium, texts reveal."

The *Mississippi Today* story drew national attention to the welfare scandal, and the media called White. In interviews with CNN and ESPN, and in social media posts, White, commenting on the now-publicly disclosed text messages, stated that Favre did know the money was intended for persons in need, not for someone like Favre.

On February 9, 2023, Favre filed a complaint against White that alleged White made three statements that defamed Favre. White moved to dismiss or for summary judgment on March 27, 2023. Judge Gibbs denied that motion on January 25, 2024.

On August 6, 2024, White published a book about the welfare scandal titled *Mississippi Swindle: Brett Favre and the Welfare Scandal that Shocked America*.

On October 11, 2024, Favre amended his complaint to also include allegations arising from statements in White's book. [Ex. 1] Favre's complaint, as amended, now alleges White has made 15 statements that defamed Favre. It also expressly puts Favre's text messages at issue because it alleges White mischaracterizes them.[1]

On October 18, 2024, White moved to dismiss the amended complaint. [Ex. 2] He reproduced and attached Favre's text messages—more than 60, all unaltered. [Ex. 2] Those text

[1] From the amended complaint: "Based on a deliberate and malicious mischaracterization of text messages described in court documents filed by the Mississippi Department of Human Services ('MDHS') in the civil action involving welfare funds, White claimed that the 'texts make it clear Favre knew he was receiving "grant" money intended to benefit people in "state funded shelters, schools, homes, etc." In other words the poor.' In fact, those text messages show no such thing." [Ex. 1 at ¶26]

messages—among them: "John mentioned 4 million"; "if we keep this confidential where money came from as well as amount I think this is gonna work"; "is there anyway the media can find out where it came from and how much?"; "Santa came today and dropped off some money"; "John told me you would be getting with me about some really good news"; "John Davis would use federal grant money for Prevacus"; "I thought maybe John Davis we could get him a raptor"; "[I] still owe 1.1 million on Vball Any chance you and Nancy can help with that?"; "You and Nancy stuck your neck out for me and jake with Prevacus I know"; "Shit I still owe 1.2 for Vball complex on campus and not sure if Nancy and John can keep covering for me"; "I love John so much"; "I want you to know how much I love Nancy New and John Davis"; "is there any way to prove where the money came from that I was paid? Or at least not from an entity that can be labeled as taking food off poor peoples table"—speak for themselves.

Truth is an absolute defense to a defamation claim. In view of Favre's own text messages, every statement about which Favre complains is true. But a court need not decide the truth of the matter to decide this case. There are at least three independent reasons Favre's defamation claims fail as a matter of law:

1. White's statements are comments on publicly known facts. Under Mississippi law, comments on publicly known facts are not actionable. *Ferguson v. Watkins*, 448 So. 2d 271, 276 (Miss. 1984) ("Caustic commentary is simply not actionable libel.").

2. The public has a right to know what its state auditor discovers. Elected officeholders such as the state auditor require immunity from defamation claims so that they may speak freely to the public. The majority rule is that statements made in the performance of official duties are privileged.

3. The law requires Favre to prove White's actual malice by clear and convincing evidence, but Favre's text messages are the source of the information in White's statements. Even if Favre could prove falsity, as a matter of law he cannot prove actual malice.

Judge Gibbs nevertheless denied White's motion on February 20, 2025. [Ex. 5] By this petition, White asks this Court for permission to appeal.

QUESTIONS FOR THIS COURT

Question No. 1:

Are comments on publicly known facts actionable?

The First Amendment and Mississippi law protect comments on publicly known facts. *E.g., Ferguson v. Watkins*, 448 So. 2d 271, 276 (Miss. 1984) ("Caustic commentary is simply not actionable libel.").

There are 15 statements in question. In the most caustic of the statements, White allegedly accuses Favre of stealing and white-collar fraud. The amended complaint represents that "White, during an interview published online by the Christian news outlet, *WORLD*, accused Favre of 'steal[ing] taxpayer funds and commit[ting] white-collar fraud.'" [Ex. 1 at ¶ 24] In fact the complete statement did not mention Favre at all. *See Hays v. LaForge*, 333 So. 3d 595, 603 (Miss. Ct. App. 2022) (a court must consider "[t]he said-to-be-offending words . . . in the context of the entire utterance") (citation omitted). The complete statement was: "People don't make it to a position where they can steal taxpayer funds and commit white-collar fraud by being a nobody. So you have to be prepared to go after anybody, regardless of who they are." The complete statement is not clearly directed at Favre, and for that reason alone is not actionable. *See Ferguson*, 448 So. 2d at 275 ("the words employed must have clearly been directed toward the plaintiff").

But even if White had said "*Favre* stole money" or "*Favre* committed white-collar fraud," those statements are still fair comment. If the most caustic of the 15 statements is not actionable, none of the 15 statements is actionable.

Two federal courts, applying Mississippi law, already agreed that identical statements in *Favre v. Sharpe* were not actionable.

In *Favre v. Sharpe*, Favre complained that Shannon Sharpe said "you've got to be a sorry mofo to steal from the lowest of the low," "Brett Favre is taking from the underserved," and "[Favre] stole money from people that really needed that money." *Favre v. Sharpe*, No. 2:23-cv-42-KS-MTP, 2023 WL 7132949, at *3 (S.D. Miss. Oct. 30, 2023), *aff'd on other grounds*, 117 F.4th 342 (5th Cir. 2024). U.S. District Judge Keith Starrett, dismissing Favre's complaint against Sharpe pursuant to Rule 12(b)(6), admonished that "[u]nder Mississippi law, the trial court in a defamation case must make the threshold determination of whether the language in question is actionable." *Id.* at *4 (citations omitted). "Dismissal of defamation suits for failure to state a claim occurs 'with relative frequency.'" *Id.* (citation omitted). "Accordingly, it is wholly appropriate for the Court to determine on a Motion to Dismiss whether the language used is actionable." *Id.* Concluding that Sharpe's language was not actionable, Judge Starrett summarized the broader context:

> [F]rom the reports in the public arena after government investigations, forensic audits, civil litigation, Favre's text messages, and Favre's own implicit admission by returning $1.1 million dollars to the State, it appears to be widely believed that the money obtained by Favre for himself and USM came from welfare funds. Although the funds may have come from the State of Mississippi, such TANF funds were intended to go to poverty-stricken families, not to fund the construction of a college volleyball facility.

Id. Judge Starrett determined that, "against the backdrop of longstanding media coverage," Sharpe's statements were merely "rhetorical hyperbole."

In September, the U.S. Fifth Circuit Court of Appeals affirmed. Judge Leslie Southwick, writing for a unanimous panel, observed that Sharpe had merely commented on widely reported facts. *Favre v. Sharpe*, 117 F.4th 342, 347 (5th Cir. 2024). Sharpe's statements were "strongly stated" but "did not imply that Sharpe was relying on any undisclosed facts." *Id.* "He instead relied only on facts widely reported in Mississippi news and specifically in the just-released *Mississippi Today* article." *Id.* "At the time Sharpe made the statements, the facts on which he was relying were publicly known, and Sharpe had a right to characterize those publicly known facts caustically and unfairly." *Id.* Under the Mississippi Supreme Court's longstanding *Ferguson* standard, "[c]austic commentary is simply not actionable libel." *Ferguson*, 448 So. 2d at 276.[2]

The same law applies here. Substituting "White" for "Sharpe," it is equally true here that: White's statements "did not imply that [White] was relying on undisclosed facts." *Favre*, 117 F.4th at 348. "[White] instead relied only on facts widely reported in Mississippi news and specifically in the just-released *Mississippi Today* article." *Id.* "At the time [White] made the statements, the facts on which he was relying were publicly known, and [White] had a right to characterize those publicly known facts caustically and [even] unfairly." *Id.*

Sharpe's First Amendment right to comment on widely reported facts is not greater or different than White's. White's First Amendment right to comment on widely reported facts is

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[2] *See also Sharpe*, 117 F.4th at 347 ("'offensive insults and opinion statements' 'generally are not actionable in Mississippi' unless they meet the *Ferguson* standard") (citing *Trout Point Lodge, Ltd. v. Handshoe*, 729 F.3d 481, 493 (5th Cir. 2013) (applying Mississippi law) ("Here, although some of Handshoe's opinions certainly imply facts (*e.g.*, that Trout Point was involved in the Aaron Broussard scandal), his bare 'linguistic slings and arrows' do not.")); *Johnson v. Delta-Democrat Pub. Co.*, 531 So. 2d 811, 814 (Miss. 1988) ("We noted in *Ferguson* that caustic commentary is simply not actionable libel."); *id.* at 815 ("We have upheld summary judgments dismissing libel claims on several occasions. In each case this Court compared 'true' facts to the published facts and found no defamation.") (citing *Blake v. Gannett Co.*, 529 So. 2d 595 (1988); *Chatham v. Gulf Publishing Co.*, 502 So. 2d 647, 650 (Miss. 1987); *Fulton v. Mississippi Publishers Corp.*, 498 So. 2d 1215, 1217 (Miss. 1986); *Prescott v. Bay St. Louis Newspapers*, Inc., 497 So. 2d 77, 81 (Miss. 1986)).

not diminished merely because he is a state auditor. White is equally entitled to characterize widely reported facts caustically and even unfairly.

Because each of White's statements, even the most caustic, do nothing more than characterize publicly known facts, they are not actionable under the First Amendment and Mississippi law. Judge Gibbs's order does not account for this important First Amendment and Mississippi law and so sets a dangerous precedent with implications for all citizens' freedom of speech. This Court's immediate attention is necessary to protect the essential right to comment on publicly known facts.

Question No. 2:

Do elected officeholders have immunity to speak freely with the public?

The majority rule is that statements made in the performance of official duties are privileged.

The public has a right to know what its state auditor discovers. *E.g.*, Miss. Const. art. 3, §§ 5, 6; Miss. Code Ann. § 27-104-152. *See also Mayor & Aldermen of City of Vicksburg v. Vicksburg Printing & Pub. Co.*, 434 So. 2d 1333, 1336 (Miss. 1983) ("secrecy in government generates suspicion and mistrust on the part of our citizenry"). Elected officeholders such as the state auditor require immunity from defamation lawsuits so that they may speak freely to the public to whom they answer. A majority of courts, including the U.S. Supreme Court, hold that executive officers have "[a]n absolute privilege to publish defamatory matter concerning another in communications made in the performance of his official duties." Restatement (Second) of Torts § 591(b). "The public welfare is so far dependent upon a reasonable latitude of discretion in the exercise of functions of high executive offices that their incumbents may not be hindered by the possibility of a civil action for defamation in connection therewith." § 591 cmt. a.

This Court has consistently looked to the Restatement to address unresolved issues of law.[3] This Court should follow the Restatement and the majority rule here and hold that White's statements, because he made them in the performance of his official duties,[4] are privileged. This Court's immediate attention is necessary else the benefit of the privilege—immunity from suit—will have been wasted.

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[3] *E.g., Williams v. Bennett*, 921 So. 2d 1269, 1275 (Miss. 2006) (looking to Restatement (3d) of Torts: Products Liability § 2 regarding proof of a feasible design alternative); *Ayles ex rel. Allen v. Allen*, 907 So. 2d 300, 306 (Miss. 2005) ("In *Young v. Jackson*, [572 So. 2d 378 (Miss. 1990)], this Court adopted the definition of the tort of public disclosure of private facts provided by Restatement (2d) of Torts § 652D (1977)."); *Welsh v. Mounger*, 883 So. 2d 46, 49 (Miss. 2004) (observing that the Court in *Guastella v. Wardell*, 198 So. 2d 227 (Miss. 1967), had "adopted the rule that is now embodied in the Restatement (Second) of Torts § 551" regarding duty to disclose); *Sligh v. First Nat'l Bank of Holmes Cty.*, 735 So. 2d 963, 966, 969 (Miss. 1999) (looking to Restatement (2d) of Torts § 390 regarding negligent entrustment); *Stewart v. Southeast Foods, Inc.*, 688 So. 2d 733, 736-39 (Miss. 1996) (applying Restatement (2d) of Torts § 660 regarding malicious prosecution); *Clark v. Moore Mem'l United Methodist Church*, 538 So. 2d 760, 762-64 (Miss. 1989) (applying Restatement (2d) of Torts § 332's definition of "public invitee"); *Comet Delta, Inc. v. Pate Stevedore Co. of Pascagoula, Inc.*, 521 So. 2d 857, 859-861 (Miss. 1988) (looking to Restatement (2d) of Torts §§ 821B, 821C, and 822 as to differences between private and public nuisances); *Robirtson v. Gulf & S.I.R. Co.*, 158 So. 350, 352 (Miss. 1935) ("[W]e think the correct rule is stated in American Law Institute Restatement, Torts, vol. 2, § 388"). *See also Cromwell v. Williams*, 333 So. 2d 877, 889-90 (Miss. Ct. App. 2022) (adopting § 772 of the Restatement (2d) of Torts); *Gaw v. Seldon*, 85 So. 3d 312, 317 n.2 (Miss. Ct. App. 2012) ("Mississippi has adopted the elements found in the Restatement (Second) of Torts § 822 (1977)" regarding private nuisance.); *Kitchens v. Dirtworks, Inc.*, 50 So. 2d 388, 392 (Miss. Ct. App. 2010) ("By the 1950s, Mississippi had adopted the Restatement (Second) of Torts, section 390, for its definition of negligent entrustment") (citing *Lovett Motor Co. v. Walley*, 64 So. 2d 370, 374 (Miss. 1953)); *Bullock Bros. Trucking Co., Inc. v. Carley*, 930 So. 2d 1259, 1261 (Miss. Ct. App. 2005), observing that the Court in *Sligh* "adopted the Restatement (Second) of Torts [§ 390] definition of negligent entrustment."); *Thomas v. Harrah's Vicksburg Corp.*, 734 So. 2d 312, 316 (Miss. Ct. App. 1996) (looking to Restatement (2d) of Torts § 163 comment (b) regarding "the requisite intent for trespass to land").

[4] *Salazar v. Morales*, 900 S.W.2d 929, 932–33 (Tex. App. 1995) (state attorney general's statements to press were within performance of official duties); *Liberty Bank of Seattle, Inc. v. Henderson*, 878 P.2d 1259, 1270 (Wash. 1994) (banking commissioner's statements to press were within performance of official duties) ("Clearly, the public had more than an idle interest and concern in the actions of this particular office of state government, and defendants' contacts with the press facilitated the public's right to be kept informed of actions taken to abate the unsafe condition of Liberty Bank."); *Little v. Spaeth*, 394 N.W. 2d 700, 706 (N.D. 1986) (state attorney general's statements to press were within performance of official duties); *Johnson v. Dirkswager*, 315 N.W. 2d 215, 221 (Minn. 1982) (commissioner's telephone interview with reporter was within performance of official duties) ("The public has more than an idle interest in this public business. One way to hold public officials accountable for their actions is to subject them to lawsuits. But in instances like this one, it would seem government can best be held accountable by assuring that its top-level representatives have no excuse not to speak out in the performance of their duties."); *Hackworth v. Larson*, 165 N.W.2d 705, 709 (S.D. 1969) (secretary of state's press release was within performance of official duties) ("The theory behind this view is that it is in the public interest that information be made available as to what takes place in public affairs. The public is entitled to more than rumors. It is thought desirable to encourage free and uninhibited dissemination of information about governmental activities even if on occasions an individual suffers harm thereby.").

Question No. 3:

Can Favre prove actual malice by clear and convincing evidence?

No. White's statements merely mirror Favre's own text messages.

Favre is a public figure, therefore, he must prove White spoke with actual malice. *J. Pub. Co. v. McCullough*, 743 So. 2d 352, 361-62 (Miss. 1999) (citing *New York Times v. Sullivan*, 376 U.S. 254, 280 (1964)). Actual malice does not mean "with intent to harm." *See id.* at 362 ("[p]ersonal spite, even an intent to do injury to the plaintiff, will not suffice"); *see also id.* at 365 ("hatred, ill will, malice in the common law sense" are not enough). It means with "a high degree of awareness of probable falsity." *Id.* at 361 (citation omitted). *See also id.* ("with knowledge that [a statement] was false, or in reckless disregard of whether it was false or not") (quoting *New York Times*, 376 U.S. at 280); *id.* ("A reckless disregard for the truth requires more than a departure from reasonably prudent conduct.") (citations omitted).

Because Favre bears the burden of proof at trial, he bears the burden of production pretrial. *E.g.*, *Karpinsky v. Am. Nat'l Ins. Co.*, 109 So. 3d 84, 88 (Miss. 2013) ("[T]he movant only bears the burden of production where they would bear the burden of proof at trial."); *Downs v. Choo*, 656 So. 2d 84, 85 (Miss. 1995) ("the parties are responsible for the production of evidence corresponding to their respective burdens at trial"). That burden is especially high: Evidence of actual malice must be clear and convincing. *Id.* at 359 ("Further, the burden of proving actual malice is by clear and convincing evidence, not a preponderance of the evidence.") (citations omitted).[5]

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[5] It is not enough that the evidence could be consistent with actual malice. "[I]t must be more consistent with the existence of actual malice than with its nonexistence." *Hays v. LaForge*, 333 So. 3d 595, 603 (Miss. Ct. App. 2022) ("In this regard, '[t]he proof of malice must ... be clear. It is not sufficient that the evidence be consistent with the existence of actual malice, or even that it raise a suspicion that the defendant might have been actuated by malice or a doubt as to his good faith.' Hays 'must affirmatively prove the existence of actual malice, and to do so it must be more consistent with the existence of actual malice than with its nonexistence.'") (quoting *Garziano v. E.I. Du Pont*

Favre cannot meet his burden to prove by clear and convincing evidence that White had "a high degree of awareness of probable falsity" for any of the 15 statements in question.

The crux of Favre's complaint is that White said Favre knew the money was "grant" money intended for "poor folks"—but the incontrovertible and widely reported facts are that Favre asked then-MDHS Director John Davis for money; Favre called the money "state money" and "grant money"; and Favre suggested that, in exchange for the money, he would become "a spokesperson for various state funded shelters, schools, homes, etc." Favre's text messages—again, among them: "John mentioned 4 million"; "if we keep this confidential where money came from as well as amount I think this is gonna work"; "is there anyway the media can find out where it came from and how much?"; "Santa came today and dropped off some money"; "John told me you would be getting with me about some really good news"; "John Davis would use federal grant money for Prevacus"; "I thought maybe John Davis we could get him a raptor"; "[I] still owe 1.1 million on Vball Any chance you and Nancy can help with that?"; "You and Nancy stuck your neck out for me and jake with Prevacus I know"; "Shit I still owe 1.2 for Vball complex on campus and not sure if Nancy and John can keep covering for me"; "I love John so much"; "I want you to know how much I love Nancy New and John Davis"; "is there any way to prove where the money came from that I was paid? Or at least not from an entity that can be labeled as taking food off poor peoples table"—speak for themselves and are fatal to Favre's claims. It cannot be that White had "a high degree of awareness of probable falsity," *McCullough*, 743 So. 2d at 361, when White's statements merely mirror Favre's.[6]

De Nemours & Co., 818 F. 2d 380, 389 (5th Cir. 1987) (quoting *Hayden v. Foryt*, 407 So. 2d 535, 539 (Miss. 1981))).

[6] White's statements have always mirrored the information available to him at the time. In May 2020, White told the public that he had not seen records indicating that Favre knew the money's source. That fact, which because it is in Favre's amended complaint must be accepted as true, undermines—not supports—Favre's claims.

Judge Gibbs refused to consider Favre's text messages because, she said, to do so would convert White's motion to dismiss to a motion for summary judgment, which she said would be premature. [Ex. 5] That refusal was error. Favre's amended complaint expressly put his text messages at issue by alleging White's statements are a "deliberate and malicious mischaracterization." [Ex. 1 at ¶26] He cannot avoid dismissal by failing to attach them to his amended complaint. They are central to his claims. As the Mississippi Court of Appeals has observed:

> A plaintiff is under no obligation to attach to her complaint documents upon which her action is based, but a defendant may introduce certain pertinent documents if the plaintiff failed to do so. Documents that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to her claim.

Breeden v. Buchanan, 164 So. 3d 1057, 1068 (Miss. Ct. App. 2015) (quoting *Venture Assocs. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir.1993)). *See also, e.g., Pearl River Valley Water Supply Dist. v. Khalaf*, 332 So. 3d 263, 268 (Miss. 2021) ("The United States Court of Appeals for the Seventh Circuit has held, and we agree, that '[d]ocuments that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to her claim.'") (quoting *Venture Assocs. Corp.*, 987 F.2d at 431); *Short v. Break Land Co., LLC*, No. 2022-CA-01180-COA, 2024 WL 4354694, at *6–7 (Miss. Ct. App. Oct. 1, 2024), *reh'g denied* (Feb. 11, 2025) ("Because the agreement was mentioned in the complaint and part of the Shorts' claims, the trial court did not err in considering it at this stage of the litigation. Further, the trial court's consideration did not convert the motion to one for summary judgment, which the Shorts argue would trigger additional rights for them, such as discovery. This argument is without merit."). "This authority is too logical to ignore."

Breeden, 164 So. 3d at 1068. Judge Gibbs should have considered Favre's text messages and granted White's motion to dismiss.

CURRENT STATUS OF THE CASE

A jury trial is set for July 21, 2025. This Court's immediate attention is necessary to save the parties and the court from the substantial additional expense in time and resources that continued litigation and trial will cost.

TIMELINESS

This petition for interlocutory appeal, filed less than 21 days after the entry of Judge Gibbs's February 20, 2025 order denying White's motion to dismiss [Ex. 5], is timely under Mississippi Rule of Appellate Procedure 5(a).

RELATED CASES

There are no other cases or petitions for interlocutory appeal pending before this Court and known to White which are related to the matter for which interlocutory review is sought.

REQUEST FOR EXPEDITED PROCEEDINGS

Because a jury trial is set for July 21, 2025, White respectfully asks this Court to exercise its discretion to expedite this appeal.

REQUEST FOR A STAY OF TRIAL COURT PROCEEDINGS

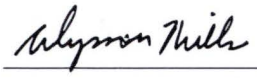
Because this petition presents questions of law that are dispositive of Favre's claims, White respectfully requests a stay of proceedings in the trial court pending its resolution. Because a jury trial is set for July 21, 2025, if a stay is not granted, the parties and the court will incur the substantial additional expense in time and resources that continued litigation and trial will cost.

CONCLUSION

There is no to-be-discovered set of facts that make up for the incontrovertible and widely reported facts, which include Favre's own text messages. For any one of the three independent reasons stated herein, resolution today, more than two years into this litigation, is not only proper but overdue.

White respectfully asks that this Court grant his petition and, after due proceedings, enter judgment dismissing Favre's amended complaint.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that I have this day served via electronic mail and the court's electronic case filing system a copy of the foregoing on the trial judge and all other parties to the action:

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March 12, 2025

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EXHIBITS

1. Favre's Amended Complaint
2. White's Motion to Dismiss Amended Complaint
3. Favre's Opposition to Motion to Dismiss Amended Complaint
4. White's Reply to Opposition to Motion to Dismiss Amended Complaint
5. Judge Gibbs's Order on Plaintiff's Motion to Dismiss