SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

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Shirl A Jameson-Fergel
Clerk

APPELLANT'S BRIEF

South Dakota Supreme Court

SDCL ch. 15-26A

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I. COVER PAGE

IN THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

Shelby Marie Ellefson,

Plaintiff–Appellant, Pro Se

v.

Delia Druley, representing defendant(s) Eric J. Ronke and Ronke Law, PLLC,

Defendants–Appellees.

Supreme Court No. 4931285__________

(Circuit Court No. 49CIV25-985)

APPELLANT'S BRIEF

Appeal from the Second Judicial Circuit

Minnehaha County, South Dakota

The Honorable Jennifer K. Mammenga, Judge

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II. JURISDICTIONAL STATEMENT

This appeal is taken from a final order dismissing Plaintiff–Appellant's civil action, entered by the Second Judicial Circuit Court, Minnehaha County, South Dakota, in approximately mid-November 2025.

Jurisdiction is proper under SDCL 15-26A-3, as the order appealed from constitutes a final judgment disposing of all claims. Appellant timely filed a Notice of Appeal on November 10, 2025, and paid all required appellate filing and docketing fees.

This brief is submitted in support of Appellant's Motion to Waive Procedural Default, consistent with South Dakota appellate practice and equitable principles governing excusable neglect and good cause, particularly as applied to pro se litigants.

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III. ISSUES PRESENTED FOR REVIEW

1. Whether the circuit court erred in dismissing Appellant's case where dismissal deprived Appellant of the right to have disputed material facts resolved by a jury.

2. Whether the circuit court abused its discretion by dismissing the action under circumstances that denied Appellant meaningful notice and opportunity to be heard.
3. Whether due-process concerns arise where material procedural misinformation was provided by opposing counsel and relied upon to Appellant's detriment.
4. Whether the interests of justice support waiver of any procedural default where Appellant acted in good faith, timely filed a Notice of Appeal, and no prejudice to Appellees exists.

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IV. STATEMENT OF THE CASE AND FACTS

Plaintiff–Appellant, Shelby Marie Ellefson, filed a civil action against Defendants–Appellees arising from alleged legal and financial misconduct that resulted in substantial personal, professional, and economic harm.

The case was assigned to the Honorable Jennifer K. Mammenga. At the initial hearing on May 9, 2025, the court disclosed that it knew defense counsel, Delia Druley, both personally and professionally. No objection was raised at that time.

During the course of litigation, defense counsel provided Appellant with incorrect information regarding alleged procedural prerequisites purportedly required before the case could proceed. Appellant relied on this information in good faith. The information was later determined to be inaccurate and caused Appellant to expend significant time attempting to comply with requirements that did not exist, materially impairing her ability to prosecute her case.

In approximately mid-November 2025, the circuit court entered an order dismissing the case. Appellant did not receive timely notice of certain correspondence and filings due to ongoing mail-delivery irregularities at her residence, caused by a tenant receiving an unusually high volume of mail at the same address. As a result, Appellant was unaware of the need to act within a narrow procedural timeframe.

Compounding these circumstances, Appellant was hospitalized from November 30, 2025 through December 10, 2025. During this period of hospitalization, Appellant was medically unable to prepare filings, respond to correspondence, or otherwise meaningfully participate in court proceedings. This hospitalization materially interfered with Appellant's ability to comply with procedural requirements and constitutes good cause and excusable neglect.

Despite these challenges, Appellant timely filed a Notice of Appeal on November 10, 2025, paid the required $700 appellate filing fee, and has consistently acted in good faith to preserve her rights and pursue appellate review upon regaining the ability to do so.

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V. STANDARD OF REVIEW

• Dismissal of a civil action: reviewed for abuse of discretion.

• Constitutional due-process issues: reviewed de novo.

• Waiver of procedural default / excusable neglect: reviewed under equitable principles, with a strong preference for decisions on the merits.

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VI. ARGUMENT

A. The Circuit Court's Dismissal Improperly Deprived Appellant of Her Right to a Jury Trial

South Dakota law strongly favors resolution of disputes on their merits. Dismissal is a severe sanction and should be imposed only where lesser remedies are inadequate.

Here, dismissal terminated Appellant's claims without a jury's evaluation of disputed material facts, contrary to Article VI, § 6 of the South Dakota Constitution. Appellant's case involved factual disputes that should have been resolved by a jury, not disposed of through procedural dismissal under circumstances beyond Appellant's control.

B. Due-Process Concerns Support Reversal and Remand

Appellant was deprived of meaningful notice and opportunity to be heard due to a combination of factors, including:

1. Mail-delivery irregularities outside Appellant's control;
2. Reliance on inaccurate procedural information provided by opposing counsel; and
3. Appellant's hospitalization from November 30, 2025 through December 10, 2025, which rendered her temporarily unable to participate in proceedings or comply with deadlines.

Taken together, these circumstances undermined the fairness of the proceedings and raise serious due-process concerns warranting appellate intervention.

C. Waiver of Any Procedural Default Is Warranted in the Interests of Justice

Appellant:

• Timely filed a Notice of Appeal;

• Paid all required appellate fees;

• Acted pro se and in good faith throughout the litigation;

• Was hospitalized from November 30, 2025 through December 10, 2025, rendering her temporarily unable to comply with procedural deadlines;

• Caused no prejudice to Appellees.

South Dakota courts consistently favor waiver of technical or procedural defaults where strict enforcement would result in manifest injustice. Equity favors relief where delays result from excusable neglect or extraordinary circumstances and where the opposing party suffers no prejudice. Resolution on the merits is particularly appropriate here.

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VII. CONCLUSION AND RELIEF REQUESTED

WHEREFORE, Plaintiff–Appellant respectfully requests that this Court:

1. Waive any procedural default associated with the appeal;
2. Reverse the order of dismissal entered in Case No. 49CIV25-985;
3. Remand the case to the circuit court for further proceedings; and
4. Order that Appellant's claims proceed to a trial by jury, consistent with South Dakota law and constitutional guarantees.

Respectfully submitted,

Shelby Marie Ellefson

Plaintiff–Appellant, Pro Se

01/09/2026

Date: January 9, 2026

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

No. 31285

SHELBY MARIE ELLEFSON,

Plaintiff/Appellant,

vs.

ERIC RONKE and RONKE LAW, PLLC,

Defendants/Appellees.

APPEAL FROM THE CIRCUIT COURT
Second Judicial Circuit
Minnehaha County, South Dakota

The Honorable Jennifer D. Mammenga, Circuit Judge

BRIEF OF APPELLEES ERIC RONKE AND RONKE LAW, PLLC

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Notice of Appeal filed November 6, 2025

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PRELIMINARY STATEMENT

Citations to the Certified Record are "R." followed by the applicable page number(s) in the Clerk's Index. References to Appellant's Brief are "Appellant's Brief" followed by the applicable page number(s). For ease of reference, Appellees' Brief refers to Eric Ronke and Ronke Law, PLLC collectively as "Ronke."

JURISDICTIONAL STATEMENT

Ellefson appeals from the Order and Judgment Granting Defendant's Motions for Summary Judgment and Judgment on the Pleadings dated November 4, 2025. R. 654-655. Notice of Entry of the Order Granting Defendant's Motions for Summary Judgment and Judgment on the Pleadings and Judgment was filed and served on November 5, 2026. R. 666-669. Ellefson timely filed a Notice of Appeal of the Order on November 6, 2025. R. 672-674. This Court has jurisdiction to consider Ellefson's appeal pursuant to SDCL 15-26A-3(1).

STATEMENT REGARDING ORAL ARGUMENT

Ronke believes the issues presented are adequately submitted on the briefs and controlled by settled law. Thus, Ronke believes that oral argument in this matter is unnecessary. In the event that the Court determines oral argument is warranted, Ronke respectfully requests twenty (20) minutes for oral argument.

STATEMENT OF THE ISSUES

1. Whether the sole issue not waived by Ellefson, her contention that the circuit court's decision improperly deprived her of the right to trial by jury and violated her due process rights, lacks merit.

Ellefson did not argue below that the circuit court's memorandum decision granting Ronke's motions for summary judgment and judgment on the pleadings violated her right to a jury trial or due process rights. Instead, she raises those constitutional claims for the first time on appeal.

- *Cook v. Cook*, 2022 S.D. 74, 983 N.W.2d 180
- *Daily v. City of Sioux Falls*, 2011 S.D. 48, 802 N.W.2d 905
- *Harris v. Interstate Brands Corp.*, 348 F.3d 761 (8th Cir. 2003)
- S.D. Const., Art. VI, Section 6

2. Whether the Circuit Court erred in granting summary judgment because Ellefson failed to demonstrate there were genuine issues of material fact.

The circuit court correctly concluded Ellefson failed to meet her burden under SDCL 15-6-56(c) of demonstrating that there were genuine issues of material fact worth bringing to trial. R. 592-599. The circuit court further reasoned that because it struck Ellefson's late filed Statement of Disputed Facts due to Ellefson's failure to comply with the deadlines set forth in SDCL 15-6-56(c) and its contents, which were largely immaterial, the facts asserted by Ronke in support of the motion for summary judgment were admitted unopposed. R. 595-596. The circuit court entered an Order and Judgment granting Ronke's motion for summary judgment on November 4, 2025. R. 654-655.

- *Zhang v. Rasmus*, 2019 S.D. 46, 932 N.W2d 164
- *City of Sioux Falls v. Strizheus,* 2022 S.D. 81, 984 N.W.2d 119

- SDCL 15-6-56(c)

3. **Whether the Circuit Court erred in granting summary judgment in favor of Ronke on Ellefson's legal malpractice claim because Ellefson failed to support her claim with the required expert testimony.**

Ellefson commenced a pro se legal malpractice claim against Ronke related to his representation of her in a Chapter 13 bankruptcy proceeding, asserting claims for legal malpractice, breach of fiduciary duty, and fraud. R. 3-8. The circuit court correctly granted summary judgment on Ellefson's legal malpractice claim because she failed to support her claim with testimony from a licensed attorney, which is required to establish both the applicable standard of care and breach of the standard of care. R. 592-599. The circuit court entered an Order and Judgment granting Ronke's motion for summary judgment on November 4, 2025. R. 654-655.

- *Lenius v. King, 294 N.W.2d 912*
- *Zhang v. Rasmus*, 2019 S.D. 46, 932 N.W2d 164
- *Hamilton v. Bangs, McCullen, Butler, Foye & Simmons, LLP,* Civ. No. 10-5009-JLV, 2011 WL 902489 (D.S.D. March 15, 2011)

4. **Whether the Circuit Court erred in granting summary judgment in favor of Ronke on Ellefson's breach of fiduciary duty claim based upon her failure to support it with testimony from a licensed attorney.**

The circuit court likewise did not err in granting summary judgment on Ellefson's breach of fiduciary duty claim, based upon her failure to disclose the requisite supporting testimony from a licensed attorney. R. 592-599. The circuit court correctly concluded that because supporting expert testimony is required to establish a claim of breach of fiduciary duty against an attorney. R. 596-597. The circuit court entered an Order and

Judgment granting Ronke's motion for summary judgment on November 4, 2025. R. 654-655.

- *Slota v. Imhoff & Assocs., P.C.,* 2020 S.D. 55, 949 N.W.2d 869
- *Luther v. City of Winner*, 2004 S.D. 1, 674 N.W.2d 339
- *RTI, LLC v. Pro Eng'g, Inc.,* 2025 S.D. 64, 28 N.W.3d 167
- *Am. Zurich Ins. Co. v. Palmer*, No. 5:20-CV-05026-KES, 2023 WL 5822501 (D.S.D. Sept. 8, 2023)

5. Whether the Circuit Court erred in granting judgment on the pleadings on Ellefson's fraud claim.

The circuit court correctly granted Ronke's motion for judgment on the pleadings on Ellefson's fraud claim. R. 592-599. The circuit court's reasoning, which was that Ellefson's pro se complaint failed to plead fraud with particularity as required by SDCL 15-6-9(b) or allege the elements of actionable fraud, was not erroneous. R. 597-598. The circuit court entered an Order and Judgment granting Ronke's motion for judgment on the pleadings on November 4, 2025. R. 654-655.

- *N. Amer. Truck & Trailer, Inc. v. M.C.I. Commc'n Servs.*, 2008 S.D. 45, 751 N.W.2d 710
- *Aqreva, LLC v. Eide Bailly, LLP*, 2020 S.D. 59, 950 N.W.2d 774
- SDCL 15-6-9(b)

STATEMENT OF THE CASE

On February 25, 2025, Ellefson filed a pro se complaint against Ronke, asserting claims for legal malpractice, fraud and misrepresentation, and breach of fiduciary duty. R. 3-7. Ellefson's complaint stems from Ronke's representation of her in a Chapter 13 bankruptcy proceeding. R. 4. Ellefson claims Ronke failed to advise her of alternatives to bankruptcy and more specifically, contends that he failed to advise her of the option of pursuing a home equity line of credit. *Id.* Ronke denies these allegations. R. 11-15.

Following a status hearing on May 9, 2025, the circuit court entered a Scheduling Order, imposing a June 27, 2025 deadline for Plaintiff to identify expert witnesses and disclose their opinions. R. 72-73.[1]

On July 1, 2025, Ronke moved for summary judgment on Ellefson's legal malpractice and breach of fiduciary duty claims and for judgment on the pleadings on her fraud and misrepresentation claim. R. 124-125. That same day, Ronke filed a Notice of Hearing, setting the matter for a hearing on July 28, 2025. R. 153. On July 3, 2025, Ellefson filed a brief in opposition to the motion for summary judgment and judgment on the pleadings. R. 157- 160. On July 21, 2025, just seven days before the hearing, Ellefson filed "Plaintiff's Statement of Disputed Material Facts." R. 194-195; App. 15-16. On July 23, 2025, Ronke moved to strike Ellefson's Statement of Disputed Material Facts. R. 206-207.

On July 28, 2025, a hearing was held before the Honorable Jennifer Mammenga on Ronke's motions for summary judgment and judgment on the pleadings and on the motion to strike. R. 153, 214. During the hearing, the circuit court orally granted

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[1] A transcript of the status hearing appears in the Record at R. 79-100.

Ronke's motion to strike pursuant to SDCL 15-6-12(f), but took the remaining issues under advisement. On July 30, 2025, the circuit court entered an Order Granting Defendants' Motion to Strike Plaintiff's Statement of Disputed Material Facts. R. 226. That same day, Notice of Entry of the Order Granting the Motion to Strike was filed. R. 260-262.

On October 24, 2025, the circuit court issued its "Memorandum Decision re: Defendants' Motions for Summary Judgment and Judgment on the Pleadings and Plaintiff's Miscellaneous Motions." R. 592-599; App. 3-10. The circuit court granted summary judgment on multiple grounds. First, the Court found that there were no genuine issues of fact for trial because of Ellefson's failure to comply with SDCL 15-6-56(c) in opposing Defendant's Statement of Undisputed Material Fact. R. 595; App. 5. Next, the court reasoned that Ellefson's failure to support her legal malpractice and breach of fiduciary duty claims with expert testimony from a licensed attorney rendered summary judgment appropriate. R. 596; App. 6. The circuit court next reasoned that judgment on the pleadings on Ellefson's fraud claim was appropriate because Ellefson had failed to plead fraud with particularity and failed to identify any purported statements made by Ronke that were untrue. R. 598; App. 7. Finally, because of the circuit's ruling on Ronke's dispositive motions, it denied Ellefson's multiple motions for scheduling and trial dates and further denied her request for recusal of Judge Mammenga. R. 598-599; App. 7-8. On November 4, 2025, the circuit court entered its Order and Judgment. R. 654-655; App. 1-2. Notice of Entry was filed on November 5, 2025. R. 666-669.

STATEMENT OF FACTS

The Underlying Representation

This case stems from Ellefson's retention of Ronke to represent her in Chapter 13 bankruptcy filing. Debtor side bankruptcy is a complex, specialized area of law, which is governed by the federal bankruptcy code and the applicable rules of practice. Ronke practices law in Sioux Falls, South Dakota, in the areas of consume bankruptcy law (Chapter 7 and Chapter 13) and estate and business planning.

On May 13, 2024, Ronke filed a Voluntary Petition on Ellefson's behalf in the United States Bankruptcy Court for the District of South Dakota. *See* United States Bankruptcy Court for the District of South Dakota, Case No. 24-50152, Docket 1.[2] That same day, Ronke filed a Certificate of Counseling, certifying that on April 26, 2024, Ellefson had completed the required pre-filing education and counseling regarding bankruptcy, its effects, and alternatives to bankruptcy. *Id.* at Docket 2, Certificate of Counseling. A few days later, on May 17, 2024, Ronke filed the Summary of Assets and Liabilities containing the asset, liability, and income information required, along with the requisite schedules, and the Debtor's Plan. *Id.* at Docket 8, 11. On May 18, 2024, Ronke filed a Certificate of Debtor Education, which certified that Ellefson completed the required post-petition financial management course. Docket 14, Certificate of Debtor Education; *see also* 11 U.S.C. § 109(h) (codifying pre-filing debtor education

[2] This Court may appropriately take judicial notice of the filings on the bankruptcy court's docket under SDCL 19-19-201 because they are not subject to reasonable dispute and "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." *See Stutzka v. McCarville,* 420 F.3d 757, 763 (8th Cir. 2005) (a court "may take judicial notice of judicial opinions and public records" (citing *United States v. Eagleboy,* 200 F.3d 1137, 1140 (8th Cir. 1999))).

requirement); 11 U.S.C. § 727(a)(11) (providing a debtor may not receive a discharge in bankruptcy unless a personal financial management course is completed after filing). Following objections to the plan by several creditors, Ronke filed a Modified Plan dated July 23, 2024. United States Bankruptcy Court for the District of South Dakota, Case No. 24-50152, Docket 23. On August 20, 2024, the Honorable Laura L. Kulm Ask entered an Order Confirming Plan. *Id.* at Docket 27. On November 27, 2024, Ronke filed an application for fees pursuant to the relevant statutes. *Id.* at Docket 34.

Ultimately, Ellefson did not receive a discharge because she decided to seek non-bankruptcy alternatives. Therefore, on December 2, 2024, Ronke filed a Motion to Dismiss Ellefson's Chapter 13 case on that basis. *Id.* at Docket 35. The Chapter 13 proceeding was dismissed. On January 7, 2025, the Bankruptcy Court entered an order awarding Ronke his fees, after finding no objection was timely filed after appropriate notice. *Id.* at Docket 39.

Ellefson subsequently filed a pro se civil lawsuit against Ronke in the Second Judicial Circuit, asserting claims for legal malpractice, breach of fiduciary duty, and fraud and seeking an array of damages based upon her belief that she was misled into filing for bankruptcy and not appropriately advised of alternatives to bankruptcy by Ronke. R. 3-7. Ronke denies those allegations. R. 11-15. Following Ellefson's failure to obtain and disclose an expert witness to opine regarding the applicable standard of care and breach of the standard of care for attorneys, Ronke moved for summary judgment on that basis. R. 124-138. Ronke also sought judgment on the pleadings on Ellefson's fraud claim. *Id.* The circuit court granted those motions in Ronke's favor and this appeal ensued.

The Facts Deemed Admitted for Purposes of Summary Judgment

The Circuit Court found that the following facts, as set forth in Defendant's Statement of Undisputed Material Facts were admitted:

Ellefson initiated the lawsuit against Ronke on February 24, 2025. R. 149; App. 11. In her pro se complaint, she asserted claims for legal malpractice, fraud and misrepresentation, and breach of fiduciary duty. *Id.* The underlying representation related to Ellefson's retention of Ronke to assist her in filing a Chapter 13 bankruptcy proceeding. *Id.* Ellefson contended that Ronke failed to advise her of non-bankruptcy alternatives and more specifically, claims that Ronke should have advised her of the option of pursing a home equity line of credit. *Id.* Ronke denied those allegations. *Id.*

In her Complaint, Ellefson disclosed three individuals as witnesses: John Snobeck, who purportedly first suggested that she could have obtained a home equity line of credit instead of filing bankruptcy, Ethan Gette, a personal banker with First Bank and Trust, and Logan Watzek, a home equity specialist with Levo Credit Union. R. 150; App. 12. Ellefson asserted that Gette would testify that Ellefson "could have secured a small loan using home equity, a fact not disclosed by Defendant, prior to filing bankruptcy." *Id.* Similarly, Ellefson asserted that Watzek would testify "based on his professional assessment, legal malpractice occurred and that Plaintiff should have been advised to pursue a loan using her home equity, rather than filing for Chapter 13 bankruptcy." *Id.*

Neither Gette or Watzek is alleged to be a licensed attorney. *Id.*[3] Ronke's answer specifically asserts that Watzek, who Ellefson's Complaint asserts will testify "legal

[3] Neither Gette or Watzek appears in the South Dakota State Bar Directory.

malpractice occurred," is not a licensed attorney competent to opine regarding the standard of care. *Id.*

On April 2, 2025, defense counsel told Ellefson that she would be required to support her legal malpractice claims with expert testimony from a licensed attorney. *Id.; see also* R. 143-144, Exhibit A to Affidavit of Delia M. Druley, April 2, 2025 Letter to Plaintiff. On May 9, 2025, the circuit court entered a scheduling order setting June 27, 2025, as Plaintiff's Expert Disclosure Deadline. R. 150; App. 2; R. 72-73, Scheduling Order. On May 12, 2025, in response from a statement by Ellefson that all matters set forth in the scheduling order were completed and a request to hold a settlement conference, defense counsel once again told Ellefson that she was required to support her claim with expert testimony from a licensed attorney, that her claim could be dismissed if she failed to do so, and told Ellefson of the defense's intent to file a motion for summary judgment if she failed to identify a qualified expert witness by the expert deadline. R. 150-151, App. 12-13, R. 145-148, Ex. B to Druley Aff., May 12, 2025 Email Correspondence.

Ellefson's expert witness disclosure deadline lapsed on June 27, 2025. R. 151, App. 13, 72-73, Scheduling Order at ¶ 2 (setting June 27, 2025 for Plaintiff's expert disclosure deadline). Ellefson did not seek an extension of time on her expert disclosure deadline. R. 151, App. 13, R. 140, Druley Aff. ¶ 4. Ellefson failed to disclose any expert witness, let alone a licensed attorney competent to opine regarding the applicable standard of care and whether Ronke breached the standard of care. R. 151, R. 140-141; Druley Aff. ¶ 5.

Ellefson's Statement of Disputed Material Facts, which was filed on July 21, 2025, did not respond to the facts set forth in Ronke's statement of undisputed material facts. R. 194-195, App.15-16. Instead, it set forth five assertions of "disputed material facts:"

(1) That Plaintiff was adequately advised of all options before filing Chapter 13 bankruptcy;

(2) That Plaintiff's claims require expert testimony due to complexity;

(3) That there are no material facts in dispute;

(4) That the defense attorney has behaved ethically;[4] and

(5) That Plaintiff has not experienced serious non-economic harm.

R. 194-195; App. 15-16. Below these five headings, Ellefson provided a "response" setting forth her position, devoid of any citations to record evidence. *Id.*

Ronke moved to strike the Statement of Disputed Material Facts, pursuant to SDCL 15-6-12(f). R. 206-207. The basis for that request was Ellefson's failure to

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[4] Although this purported statement of disputed fact is not relevant to any issue that was before the circuit court or any issue in this appeal, undersigned counsel specifically denies this assertion. Ellefson's contention that the undersigned counsel acted in bad faith, lied to Ellefson in the phone calls Ellefson surreptitiously recorded, or engaged in harassment is devoid of any support in the record or otherwise. R.195 (Disputed Fact 4); App. 16. It is unclear whether these unsupported attacks flow from Ellefson's lack of understanding of the process or some other motivation. Regardless, they are without merit. The record establishes that Ellefson was repeatedly alerted to the need to support her claims with testimony from a licensed attorney and of defense counsel's role in the process. R. 140-152.

Ellefson's abusive litigation conduct is also well-documented in the record. *See, e.g.,* R. 69-71, 117-121, 635-646. While the certified record does not contain all of her electronic communications to defense counsel and her staff and to the circuit court, or even the most egregious examples, it is illustrative of both the tone and frequency of Ellefson's communications to the parties.

comply with both the procedural and substantive requirements of SDCL 15-6-56. Specifically, Ellefson's statement was untimely under SDCL 15-6-56(c), which required Ellefson to serve any response to Ronke's Statement of Undisputed Material Facts, "no later than fourteen calendar days before the hearing," or by July 14, 2025. R. 209. Similarly, Ellefson's Statement did not respond to each numbered paragraph in Ronke's Statement of Undisputed Material Facts or provide appropriate citations to the record, as required by SDCL 15-6-56(c)(2). Finally, Ronke sought to strike the Statement because it contained irrelevant allegations and inflammatory, untrue assertions regarding defense counsel and was thus immaterial, impertinent, and scandalous within the meaning of SDCL 15-6-12(f).

The circuit court agreed and orally granted Ronke's motion to strike during the July 28, 2025 hearing and subsequently entered an order granting the motion to strike. R. 226.[5]

On October 28, 2025, the circuit court issued its memorandum decision, granting Ronke's motions for summary judgment and judgment on the pleadings. R. 592-599; App.3-10. The circuit court first noted that SDCL 15-6-56(c) requires a nonmoving party's response to the movants statement of undisputed material facts to be served "not

[5] Ellefson did not order a transcript of the July 28, 2025 motions hearing.. Thus, to the extent Ellefson relies upon any arguments advanced at the hearing in her reply brief, the Court will be unable to meaningfully review those assertions. As the appellant, Ellefson had the responsibility for obtaining the transcript to present an adequate record to this Court. *Graff v. Children's Care Hosp. & Sch.*, 2020 S.D. 26, ¶ 16, 943 N.W.2d 484, 489 ("A basic tenet of appellate procedure assigns to the appellant the ultimate responsibility for presenting an adequate record on appeal[.]") (quotations omitted); *see also* SDCL 15-26A-48 (providing appellant 10-days after filing of notice of appeal to order transcript); SDCL 15-26A-49 (stating "[f]ailure to order a transcript within the time fixed by this chapter shall constitute a waiver of the right to such a transcript").

later than fourteen calendar days before the hearing." R. 595; App. 6. The circuit court noted that SDCL 15-6-56(c) further states:

> (2) A party opposing a motion for summary judgment shall include a separate, short, and concise statement of the material facts as to which the opposing party contends a genuine issue exists to be tried. The opposing party must respond to each numbered paragraph in the moving party's statement with a separately numbered response and appropriate citations to the record.
>
> (3) All material facts set forth in the statement that the moving party is required to serve shall be admitted unless controverted by the statement required to be served by the opposing party.

Id. Ellefson filed her Statement of Disputed Facts seven days before the hearing. *Id.* Therefore, the circuit court struck the pleading based upon the late filing and "largely immaterial contents." *Id.* Because Ellefson had not met her burden under SDCL 15-6-54, the circuit court determined that the facts asserted by Ronke are admitted unopposed and no genuine issues of material fact existed. R. 595-96; App. 6-7. Accordingly, summary judgment was granted. R. 596; App. 7.

But the circuit court did not end its analysis there. It found that regardless of Ellefson's procedural missteps, Ronke was entitled to summary judgment on her legal malpractice and breach of fiduciary duty claims because of her failure to timely identify an expert witness. R. 596; App. 7. As the court correctly noted, "it is well-established that expert testimony is required to support a claim of legal malpractice and appears to be equally essential in support of a claim of breach of fiduciary duty between an attorney and their client." *Id.* Moreover, Ellefson's claim hinges on the intricacies of Chapter 13 bankruptcy proceedings and whether Ronke breached his duty in advising her to seek bankruptcy relief. *Id.* The circuit court correctly reasoned that whether the claim was couched as legal malpractice or breach of fiduciary duty, "an ordinary juror will not be able to understand the complexities and nuance regarding what is required of attorneys in an attorney-client relationship absent a member of the profession to explain it." *Id.* Because none of Plaintiff's proposed witnesses were licensed attorneys, they could not opine on what an attorney should have done or whether fiduciary duties were breached. *Id.*[6] Consequently, summary judgment was appropriate.

The circuit court next analyzed Ronke's motion for judgment on the pleadings regarding Ellefson's fraud and misrepresentation claims. R. 597; App. 8. The court noted that South Dakota law requires both that fraud be pleaded with particularity and that the essential elements of actionable fraud be pleaded. *Id.* The circuit court reasoned that Ellefson's pro se status did not exempt her from those requirements, noting that Ellefson "fails to state with particularity any statements by Defendants that were untrue" and in fact, Ellefson "fails to mention any statements made by Defendants." R. 598; App. 9. Consequently, Ellefson's claim failed on its face and Ronke was entitled to judgment on the pleadings. *Id.*

Lastly, the circuit court denied Ellefson's pending motions for scheduling and trial dates as moot. *Id.* The circuit court also denied Ellefson's proposed order for recusal, noting it was not aware of any basis for recusal and Ellefson had availed herself of the jurisdiction of the Court through the filing of multiple motions and appearance at multiple hearings. R. 598; App. 9.[7] On November 4, 2025, the circuit court entered its

[6] Nor did Ellefson provide any disclosure of their purported opinions.

[7] The circuit court's first reason for denying the motion was because Ellefson had not made a motion for recusal or informal request. The circuit court later entered a Supplemental Order re: Motion to Recuse, noting that the court recognized that Ellefson had in fact filed a Motion to Recuse. R. 616. The circuit court further noted that although it has had professional contact with defense counsel for several years, there is no personal relationship of a nature that would necessitate recusal. *Id.*

Order and Judgment. R. 654-655; App. 1-2. A Notice of Entry of Order was filed on November 5, 2025. R. 666. On November 6, 2025, Ellefson filed a pro se appeal of the Order and Judgment. R. 672-673.

ARGUMENT

Ellefson has waived the majority of the issues identified in her Statement of Issues on Appeal by failing to brief them. The remaining issue identified by Ellefson is her allegation that the circuit court's decision granting summary judgment somehow violated her constitutional right to a jury trial and her due process rights. None of the arguments raised by Ellefson on appeal justify disturbing the circuit court's carefully considered decision.

While not briefed or argued by Ellefson, Ronke asserts that the circuit court properly granted Ronke's motions for summary judgment and judgment on the pleadings. First, the circuit court correctly concluded that because Ronke's Statement of Undisputed Material Facts was deemed admitted pursuant to SDCL 15-6-56(c), no genuine issues of fact remained for trial. Next, the circuit court correctly reasoned that summary judgment was likewise warranted on Ellefson's legal malpractice and breach of fiduciary duty claims because she failed to disclose expert testimony from a licensed attorney to support those claims. In reaching that holding, the circuit court relied upon well-established case law from this Court regarding the necessity of expert testimony to prove legal malpractice claims and on the majority rule, which requires supporting testimony from a licensed attorney in breach of fiduciary duty claims. Similarly, the circuit court properly granted Ronke's motion for judgment on the pleadings based upon Ellefson's failure to plead fraud with particularity and failure to identify a statement of fact by Ronke which was untrue. Consequently, the circuit court's decision should be affirmed.

I. The sole issue not waived by Ellefson, her contention that the circuit court's decision improperly deprived her of the right to trial by jury and violated her due process rights, lacks merit.

Ellefson's Statement of Issues on Appeal identifies four specific issues for appeal:

1. Whether the trial court erred in granting Defendants' Motion to Strike.

2. Whether the trial court abused its discretion by striking Plaintiff's statement, thereby effectively limiting Plaintiff's ability to oppose summary judgment and denying her due process rights.

3. Whether the trial court failed to properly consider the evidence presented by Plaintiff, including financial documentation, bankruptcy related records, medical records, and communications with Defendants, in ruling on the Motion to Strike.

4. Whether the trial court's ruling improperly impacted Plaintiff's right to a jury trial, in violation of South Dakota law and constitutional protections.

R. 679. Ellefson's brief, however, fails to address several of these issues.

In her briefing, Ellefson argues only the following issues: (1) "The circuit court's dismissal improperly deprived appellant of her right to a jury trial;" (2) "Due process concerns support reversal and remand;" and (3) "Waiver of any procedural default is warranted in the interests of justice."[8] Appellant's Brief at 4-5. In support of the first issue, Ellefson writes:

> State law strongly favors resolution of disputes on their merits. Dismissal is a severe sanction and should be imposed only where lesser remedies are inadequate.
>
> Here, dismissal terminated Appellant's claims without a jury's evaluation of disputed material facts, contrary to Art. VI, § 6 of the South Dakota Constitution. Appellant's case involved factual disputes that should have

[8] This Court granted Ellefson's motion to excuse the default in service and filing of appellant's brief. Accordingly, this issue is moot.

> been resolved by a jury, not disposed of through procedural dismissal under circumstances beyond Appellant's control.

Id. at 5. This is the entirety of Ellefson's argument on that point.

Ellefson addresses the second issue as follows:

> Appellant was deprived of meaningful notice and opportunity to be heard due to a combination of factors including:
>
> 1. Mail delivery irregularities outside of Appellant's control;
>
> 2. Reliance on inaccurate procedural information provided by opposing counsel;[9] and
>
> 3. Appellant's hospitalization from November 30, 2025, to December 10, 2025, which rendered her temporarily unable to participate in proceedings or comply with deadlines.[10]
>
> Taken together, these circumstances undermined the fairness of the proceedings and raise serious due process concerns warranting appellate intervention.

Id. Once again, this is the entire argument made on this issue. Ellefson cites to no case law in her brief. Other than a brief invocation of Article VI, Section 6 of the South Dakota Constitution, Ellefson's briefing is devoid of authority.[11]

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[9] Ellefson does not identify what this purportedly inaccurate information was. The record establishes she was repeatedly advised of the necessity of supporting testimony from a licensed attorney to support her claims. *See* R. 140-152; App. 11-14.

[10] This hospitalization occurred after Ellefson filed the Notice of Appeal on November 6, 2025, and thus, cannot relate be the basis for any due process claim related to proceedings below.

[11] Article VI, Section 6 of the South Dakota Constitution provides:

> The right of trial by jury shall remain inviolate and shall extend to all cases at law without regard to the amount in controversy, but the Legislature may provide for a jury of less than twelve in any court not a court of record and for the decision of civil cases by three-fourths of the jury in any court.

Id.

The Court "will consider only those issues that the parties actually briefed." *Cook v. Cook*, 2022 S.D. 74, ¶ 30 n.7, 983 N.W.2d 180, 191 n.7 (quoting *Daily v. City of Sioux Falls*, 2011 S.D. 48, ¶ 10 n.6, 802 N.W.2d 905, 910 n.6). Indeed, issues not briefed are waived—even those listed in the docketing statement accompanying the notice of appeal. *See Daily*, 2011 S.D. 48, ¶ 10 n.6, 802 N.W.2d at 910 n.6 (concluding appellant "has waived the other issues it listed in its docketing statement" that were not briefed); *Duerre v. Hepler*, 2017 S.D. 8, ¶ 28, 892 N.W.2d 209, 220 ("It is well-settled that the failure to brief an issue and support an argument with authority waives the right to have this Court review it." (citation omitted)). Accordingly, Ellefson has waived Issues 1-3 in her "Statement of Issues on Appeal."

The only remaining issues on appeal are whether the trial court's grant of Ronke's motion for summary judgment and judgment on the pleadings deprived her of a right to a jury trial or violated her due process rights. As set forth above, Ellefson has failed to provide any supporting authority for her claims that her right to jury trial and due process rights were violated by the circuit court. Thus, she has waived these claims as well. *Hart v. Miller*, 2000 S.D. 53, ¶ 42, 609 N.W.2d 138, 148 ("Failure to cite authority waives this argument") (citing SDCL 15–26A–60(6); *State v. Pellegrino*, 1998 S.D. 39, ¶ 22, 577 N.W.2d 590, 599).

Entry of summary judgment does not violate the right to trial by jury. *See, e.g., Harris v. Interstate Brands Corp.*, 348 F.3d 761, 762 (8th Cir. 2003) ("A grant of summary judgment does in itself not violate the Seventh Amendment."). In civil case, the right to a jury trial exists only with respect to disputed issues of fact. *Fidelity & Deposit Co. v. United States*, 187 U.S. 315, 319–20 (1902). In other words, there is no absolute constitutional right to a jury trial in a civil case. Rule 56 of the South Dakota Rules of Civil Procedure provides a mechanism to dismiss cases summarily when the facts are not in dispute and the claims fail as a matter of law. "When no genuine issue of material fact exists, summary judgment is looked upon with favor and is particularly adaptable to expose sham claims and defenses." *Healy Ranch, Inc. v. Healy*, 2022 S.D. 43, ¶ 17, 978 N.W.2d 786, 793. Here, Ellefson failed to obtain and disclose testimony from a licensed attorney to establish elements of her legal malpractice and breach of fiduciary duty claims. Consequently, this argument is unavailing.

Nor were Ellefson's procedural due process rights violated by the circuit court's decision. Ellefson received notice of the motions and hearing, as evidenced in the record by her submissions in opposition to them and her appearance at the motions hearing, had an opportunity to be heard before the circuit court in compliance with the South Dakota Rules of Civil Procedure, and resisted the motions through her written submissions to the circuit court and her arguments during the hearing. Requiring a pro se litigant to adhere to the applicable rules does not violate any notion of due process. *See, e.g., Jones, Waldo, Holbrook & McDonough v. Cade*, 98 F. App'x 740, 748 (10th Cir. 2004) (rejecting argument from pro se litigant the entry of summary judgment violated his due process rights because district court required him to comply with deadline to respond to motion for summary judgment); *Kehoe v. Int'l Ass'n of Theatrical Stage Emps. Loc. 21*, 682 F. App'x 161, 163 (3d Cir. 2017) (rejecting pro se litigant's argument that district court's "thorough and cogent opinion" granting summary judgment somehow violated his due process rights). Ellefson's contention that her right to a jury trial and due process rights were violated by the circuit court's well-reasoned decision, which was grounded in both precedent and the South Dakota Rules of Civil Procedure, is without merit. Accordingly, the circuit court's Memorandum Decision and subsequent Order and Judgment should be affirmed.

II. The circuit court correctly granted summary judgment in Ronke's favor.

A. Standard of Review for Summary Judgment

The Court reviews a circuit court's entry of summary judgment *de novo*. *Davies v. GPHC, LLC*, 2022 S.D. 55, ¶ 17, 980 N.W.2d 251, 258. The standard of review in summary judgment cases is to determine "whether genuine issues of material fact exist and whether the law is correctly applied." *Schulte v. Progressive N. Ins. Co.*, 2005 S.D. 75, ¶ 5, 699 N.W.2d 437, 438. The Court will affirm, "[i]f any legal basis exists to support the trial court's ruling." *Id.*
When the material facts are undisputed, the Court's review "is limited to determine whether the trial court correctly applied the law." *Schulte*, 2005 S.D. 75, ¶ 5

Summary judgment is authorized "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law." SDCL 15-6-56(c). A summary judgment motion is designed to "isolate and dispose of factually unsupported claims or defenses." *Stern Oil Co. v. Brown*, 2012 S.D. 56, ¶ 16, 817 N.W.2d 395, 401 (citations omitted). While Ronke, as the moving party, had the burden to show that no genuine issues of material fact exist, Ellefson, as the party opposing the summary judgment motion, was required to present specific facts which demonstrate the existence of genuine, material issues for trial. *Godbe v. City of Rapid City,* 2022 S.D. 1, ¶ 21, 969 N.W.2d 208. "A disputed fact is not 'material' unless it would affect the outcome of the suit under the governing substantive law in that a reasonable jury could return a verdict for the nonmoving party." *Robinson v. Ewalt*, 2012 S.D. 1, ¶ 10, 808 N.W.2d 123, 126 (quotations omitted).

B. Ellefson failed to demonstrate a genuine issue of material fact for trial.

The circuit court correctly reasoned that Ellefson had failed to demonstrate with any sufficient specificity that there are genuine issues of material fact worth bringing to trial. R. 595-596. The record establishes that Ellefson failed to properly respond to Defendants' Statement of Undisputed Material Facts.[12] Accordingly, those facts are deemed admitted. SDCL 15-6-56(c)(3), ("All material facts set forth in the statement that the moving party is required to serve *shall be admitted unless controverted by the statement required to be served by the opposing party.*") (emphasis supplied); *see also* SDCL 15-6-56(c)(2) (stating that "[a] party opposing summary judgment *shall include* a separate, short, and concise statement of material facts as to which the opposing party contends a genuine issue exists to be tried. The opposing party *must respond* to each numbered paragraph in the moving party's statement with a separately numbered response and appropriate citations to the record.") (emphasis supplied). Although Ellefson was proceeding pro se, she was still required to comply with these requirements. *Zhang v. Rasmus*, 2019 S.D. 46, ¶ 37, 932 N.W.2d 153, 164 (noting that "[a]n unrepresented party can claim no advantage from [her] pro se status[,]" and advising that

[12] Ronke's motion for summary judgment was predicated upon Ellefson's admitted failure to disclose testimony from a licensed attorney to support her claims. The contents of Ellefson's Statement of Disputed Material Facts, which were stricken by the circuit court, do not address the issues raised in Ronke's motion for summary judgment. *Compare* R. 194-195 (Ellefson's Statement of Disputed Facts) with R. 149-152 (Ronke's Statement of Undisputed Material Facts in Support of Motion for Summary Judgment). Consequently, even if the circuit court had not stricken the Plaintiff's Statement of Disputed Facts, Ellefson still would have failed to present a genuine issue of material fact for trial.

"our procedural and evidentiary rules, like the substantive requirements of the law, apply universally to all parties, regardless of whether they are represented.").

The plain language of SDCL 15-6-56 compels the conclusion that the facts set forth in Ronke's Statement of Undisputed Material Facts were admitted. Specifically, SDCL 15-6-56(c) provides in relevant part:

> (2) A party opposing a motion for summary judgment shall include a separate, short, and concise statement of the material facts as to which the opposing party contends a genuine issue exists to be tried. The opposing party must respond to each numbered paragraph in the moving party's statement with a separately numbered response and appropriate citations to the record.
>
> (3) All material facts set forth in the statement that the moving party is required to serve shall be admitted unless controverted by the statement required to be served by the opposing party.

Id. It is not error for the circuit court to follow the South Dakota Rules of Civil Procedure by finding Ronke's Statement of Undisputed Material Facts undisputed. Because there were no disputed facts, Ellefson failed to satisfy her burden of setting forth specific facts that created a genuine issue for trial. *City of Sioux Falls v. Strizheus*, 2022 S.D. 81, ¶ 27, 984 N.W.2d 119, 127 (affirming grant of summary judgment where pro se plaintiffs "failed to present any affidavits or documentary evidence setting forth specific facts that create a genuine issue for trial."). Accordingly, summary judgment was appropriate.

C. The circuit court correctly concluded that expert testimony was required to support Ellefson's legal malpractice claim and granted summary judgment based on its absence.

Under South Dakota law, "[t]o prevail in a legal malpractice claim, a plaintiff must prove: (1) the existence of an attorney-client relationship giving rise to a duty; (2) the attorney, either by an act or failure to act, breached that duty; (3) the attorney's breach of duty proximately caused injury to the client; and (4) the client sustained actual damage." *Peterson v. Issenhuth*, 2014 S.D. 1, ¶ 17, 842 N.W.2d 351, 355 (quotations omitted). It is well-settled that expert testimony generally is required to establish the elements of a legal malpractice claim. This Court has explained that:

> In a malpractice action the jury decides, from evidence presented at trial by other lawyers called as expert witnesses, whether a lawyer possessed and used the knowledge, skill, and care which the law demands of him. The opinions and testimony of such experts are indispensable in determining questions which are unfamiliar to ordinary witnesses.

Lenius v. King, 294 N.W.2d 912, 914 (S.D. 1980). Accordingly, the general rule is that expert witnesses are required:

> [E]xcept in clear and palpable eases (such as the expiration of a statute of limitation), expert testimony is necessary to establish the parameters of acceptable professional conduct, a significant deviation from which would constitute malpractice. The reason for this requirement is simply that a jury cannot rationally apply negligence principles to professional conduct absent evidence of what the competent lawyer would have done under similar circumstances, and the jury may not be permitted to speculate about what the "professional custom" may be. Expert evidence as to the "professional custom" is required in malpractice actions against other professionals. Consistence demands a similar standard for attorneys.

Id. (quoting *Hughes v. Malone*, 247 S.E.2d 107, 111 (Ga. Ct. App. 1978)); *see also Zhang*, 2019 S.D. 46, ¶ 30, 932 N.W.2d at 163 (noting "circuit court did not err when it concluded an expert would be necessary to assist the jury in determining issues of negligence" in pro se legal malpractice claim); *Hamilton v. Bangs, McCullen, Butler, Foye & Simmons, LLP*, Civ. No. 10-5009- JLV, 2011 WL 902489, at *8 (D.S.D. March 15, 2011) (applying South Dakota law and holding that "[i]n the absence of expert evidence to Hamilton's claim that the defendants violated their duty, that is, committed legal malpractice, the defendants are entitled to summary judgment as a matter of law"); *Young v. Broaddus*, 555 F. App'x 638, 369 (8th Cir. 2014) (affirming dismissal of pro se legal malpractice suit for failure to prosecute where plaintiff failed to identify expert witness in support of claim as required by district court's scheduling order).

The circuit court correctly reasoned that Ellefson's legal malpractice claim "turns on the intricacies of Chapter 13 bankruptcy proceedings and whether her attorney breached his duty to her in advising her to seek bankruptcy relief" and that "an ordinary juror will not be able to understand the complexities and nuance regarding what is required of attorneys in an attorney-client relationship absent a member of the profession to explain it." R. 596. This conclusion is both logical and supported by the decisions of courts who have concluded that expert testimony is required in similar circumstances. *See, e.g., Townsend Tr. ex rel. Townsend v. Smith*, No. 31203-8-III, 2014 WL 265785, at *4 (Wash. Ct. App. Jan. 23, 2014) (upholding dismissal on summary judgment of a claim of malpractice centered on an underlying bankruptcy lawsuit because "[t]he standard needed to be established by expert testimony in light of the complex facts of this action ... the standard of care for Washington attorneys dealing in these matters was subject to proof by experts. It was not a matter within the common knowledge of lay person or state trial judge."); *Roselle v. Nims*, No. 02AP-423, 2003 WL 283160, at * 5 (Ohio Ct. App. Feb. 11, 2003) ("The legal issue presented by the plaintiff (whether defendant's advice concerning the exemption status of plaintiff's monthly disability payments in a Chapter 7 bankruptcy proceeding was improper) is not a matter within the ordinary knowledge of lay persons."); *cf. Morici v. Gordon*, No. D038405, 2003 WL 128233, at *5 (Cal. Ct. App. Jan. 16, 2003) (unpublished) (affirming trial court's exclusion of proposed attorney expert witness because he had never handled a bankruptcy matter and had never handled any matter in which application of the particular provision of bankruptcy code at issue was applied); *LNC Investments, Inc. v. First Fidelity Bank,* No. 92 Civ. 7584, 2000 WL 1024717 (S.D.N.Y. July 25, 2000) ("This is a case of alleged banking malpractice, where the participants conducted themselves within the complex and specialized setting of trust indentures, high corporate finance, and bankruptcy law. A lay jury will clearly require the assistance of expert witnesses to understand the standard of conduct the Defendant bank's officers owed to Plaintiffs [and] whether the officers failed to meet that standard ..."). Accordingly, the circuit court's grant of summary judgment on Ellefson's legal malpractice claim based upon her failure to support it with the testimony of a licensed attorney should be affirmed.

D. The circuit court correctly granted summary judgment on the basis that Ellefson was required to support her breach of fiduciary duty claim with expert testimony and failed to do so.

The circuit court properly held that expert testimony is essential to support a claim of breach of fiduciary duty between an attorney and their client. R. 596. Consequently, summary judgment was warranted due to Ellefson's failure to support her breach of fiduciary duty claim with testimony from a licensed attorney. *Id.* This conclusion is grounded in both this Court's precedent regarding breach of fiduciary duty claims and the necessity of expert testimony to establish the standard of care in claims against professional, as well as well-reasoned precedent from other courts.

A breach of fiduciary duty in the attorney-client relationship arises from the representation of a client and involves the fundamental aspects of an attorney-client relationship. The fiduciary obligations are twofold: (1) confidentiality; and (2) undivided loyalty." *Behrens v. Wedmore*, 2005 S.D. 79, ¶ 52, 698 N.W.2d 555, 576. This Court has explained breach of fiduciary duty claims, stating:

> Breach of fiduciary duty in the lawyer-client setting is a species of legal malpractice, in that the claim is focused on lawyer misconduct in connection with representing a client. In most situations, the claim for legal malpractice and the claim for breach of fiduciary duty require virtually the same kinds of proof on causation and damages. To succeed on a fiduciary breach claim, the plaintiff must typically prove that the lawyer owed the plaintiff a fiduciary duty, breached it, and that the breach caused damages.

Slota v. Imhoff & Assocs., P.C., 2020 S.D. 55, ¶ 26, 949 N.W.2d 869, 877. Thus, it stands to reason that a fiduciary duty claim posed against an attorney must likewise be supported by expert witness testimony since the two claims require "the same kinds of proof" on causation and damages. *Id.*

This Court has emphasized that "expert testimony is required to establish the standard of care for a professional unless the issue is within the common knowledge of the jury." *Luther v. City of Winner*, 2004 S.D. 1, ¶ 9, 674 N.W.2d 339, 344; *see also Sheard v. Hattum,* 2021 S.D. 55, ¶ 28, 965 N.W.2d 134, 143 (holding expert testimony is required in a negligence action when the subject matter "is not within the common knowledge or experience of a lay person"); *Matter of Drainage Permit 11-81*, 2019 S.D. 3, ¶ 42, 922 N.W.2d 263, 275 ("[T]his Court has repeatedly affirmed that expert testimony is required when the subject matter at issue does not fall within the common experience and capability of a lay person to judge.") (internal quotation marks omitted). This Court recently reaffirmed that "[t]he expert testimony requirement is not, however, limited to negligence actions; it can apply with equal force to a breach of contract claim." *RTI, LLC v. Pro Eng'g, Inc.,* 2025 S.D. 64, ¶ 42, 28 N.W.3d 167, 179. Thus, this Court's precedent supports requiring a plaintiff suing an attorney for breach of fiduciary duty to support her claim with testimony from a licensed professional regarding both the parameters of the attorney's fiduciary duty and breach of that duty.

Although this Court has not yet reached that question, the United States District Court for the District of South Dakota has analyzed the issue and concluded that "claims for breach of fiduciary duty brought against an attorney likewise require the support of an expert witness." *See Am. Zurich Ins. Co. v. Palmer,* No. 5:20-CV-05026-KES, 2023 WL 5822501, at *14 (D.S.D. Sept. 8, 2023), *reconsideration denied,* No. 5:20-CV-05026-KES, 2023 WL 8111791 (D.S.D. Nov. 22, 2023). The federal district court reasoned that "the South Dakota Supreme Court has repeatedly held that expert testimony is generally required in cases involving the breach of a professional duty." *Id.* Moreover, "the duty of loyalty and confidentiality have specific meanings in the legal profession and are not 'within the common knowledge and comprehension of persons possessed of ordinary education, experience and opportunity.' " *Id.* (citing *Hanson v. Big Stone Therapies, Inc.,* 2018 S.D. 60, ¶ 26, 916 N.W.2d 151, 158). "And simply knowing the applicable standard for breach of fiduciary duty is insufficient for a jury to conclude whether an attorney breached that duty in a specific instance." *Id.* Accordingly, "[b]ecause a layperson would not ordinarily have experience in or knowledge of a lawyer's fiduciary duty of confidence and loyalty, the court predicts the South Dakota Supreme Court would require expert testimony on whether a lawyer breached his duty of confidentiality or loyalty for a breach of fiduciary duty claim." *Id.*

The circuit court's well-reasoned decision is consistent with the majority rule, which is to require expert witness testimony to support a breach of fiduciary duty claim against an attorney. *See, e.g., Sloan v. Urban Title Servs., Inc.*, 770 F.Supp.2d 227, 234-35 (D.D.C. 2011) (recognizing this general requirement is "well-established" under Virginia law); *Mittelstaedt v. Henney*, 969 N.W.2d 634, 640 (Minn. 2022) (recognizing general requirement); *Olfe v. Gordon*, 286 N.W.2d 173, 180 (Wis. 1980) (same); *Gables at Sterling Vill. Homeowners Ass'n., Inc. v. Castlewood-Sterling Vill. I, LLC*, 417 P.3d 95, 111 (Utah 2018) (recognizing expert testimony is required "to explain standard of care and breach issues where the average person has little understanding of the duties owed by particular trades or professions"); *Glenwood Farms, Inc. v. Ivey*, No. 03-CV-217, 2006 WL 5186486, *1 (D. Me. 2006) (recognizing general requirement under Maine law); *Ball ex rel. Hedstrom v. Kotter*, 746 F.Supp.2d 940, 955 (N.D. Ill. 2010) (recognizing general requirement under Illinois law). Accordingly, the finding that summary judgment was warranted on Ellefson's breach of fiduciary duty claim based upon her failure to support it with the testimony of a licensed attorney is well supported by precedent and should be affirmed.

III. The circuit court did not err in granting Ronke's motion for judgment on the pleadings on Ellefson's fraud claim.

A. Standard of Review for Judgment on the Pleadings

This Court reviews judgment on the pleadings *de novo*. *Thom v. Barnett*, 2021 S.D. 65, ¶ 13, 967 N.W.2d 261, 257 (quoting *Slota*, 2020 S.D. 55, ¶ 12, 949 N.W.2d at 873). "Judgment on the pleadings provides an expeditious remedy to test the legal sufficiency, substance, and form of the pleadings." *Slota,* 2020 S.D. 55, ¶ 12, 949 N.W.2d at 873. "The provisions of SDCL 15-6-12(c), like its federal counterpart, contain an identical provision that limits a court's examination of the sufficiency of the pleadings to the pleadings themselves, which is the standard we use for our analysis here." *Healy Ranch P'ship v. Mines*, 2022 S.D. 44, ¶ 32, 978 N.W.2d 768 n.8. Judgment on the pleadings is a proper remedy "where there are no issues of fact and only issues of law are to be resolved." *Sorenson v. Sommervold*, 2005 S.D. 33, ¶ 4, 694 N.W.2d 266, 268.

B. The circuit court correctly applied this Court's precedent requiring fraud to be pleaded with particuiarity in granting Ronke's motion for judgment on the pleadings.

As set forth above, Ellefson has waived this claim by failing to address it both at the circuit court level and on appeal. However, out of an abundance of caution due to Ellefson's pro se status, Ronke addresses the merits of the circuit court's well-grounded decision. The circuit court correctly found Ellefson's fraud claim was insufficiently pleaded to survive a motion for judgment on the pleadings because she failed to identify any representation of fact that was untrue by Ronke. R. 597-598; App. 8-9.

Judgment on the pleadings is a proper remedy "where there are no issues of fact and only issues of law are to be resolved." *Sorenson*, 2005 S.D. 33, ¶ 4, 694 N.W.2d at 268. Fraud must be pleaded with particularity. SDCL 15-6-9(b) provides in relevant part that "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Specifically, a civil pleading based upon fraud by must allege "all of the essential elements of actionable fraud." *N. Am. Truck & Trailer, Inc. v. M.C.I. Commc'n Servs., Inc.*, 2008 S.D. 45, ¶ 10, 751 N.W.2d 710, 713–14 (noting that complaint must satisfy "the elements" test). Under South Dakota law, there are three elements required to state a claim for fraud. *Aqreva, LLC v. Eide Bailly, LLP*, 2020 S.D. 59, ¶ 56, 950 N.W.2d 774, 791. First, the representation at issue must be "made as a statement of fact, which was untrue and known to be untrue by the party making it, or else recklessly made[.]" *Id.* Second, the representation must have been "made with intent to deceive and for the purpose of inducing the other party to act upon it[.]" *Id.* Finally, the person to whom the representation is made must show "that he did in fact rely on it and was induced thereby to act to his injury or damage." *Id.*

The circuit court correctly found that Ellefson's pro se complaint, even when broadly construed, failed to plead the elements of fraud. Ellefson's complaint does not identify a representation by Ronke of a "statement of fact" that he knew to be untrue. Rather, Ellefson appears to be predicating her complaint on Ronke's alleged failure to disclose alternatives to bankruptcy, which is predicated upon an assumption that Ronke, as her attorney, knew every relevant fact regarding Ellefson's financial situation. Specifically, Count II asserts "Defendant knowingly withheld critical financial options and misrepresented bankruptcy as the only solution," R. 14, Complaint ¶ 14, and "Plaintiff relied on Defendant's false advice to her detriment, including the loss of a career opportunity." R. 14, Complaint ¶ 15. R. No alleged statement of fact by Ronke appears in the Complaint. Nor is there any allegation that Ronke made a representation of fact that he knew to be untrue or that he acted with the intent to deceive Ellefson. Consequently, the circuit court's decision to grant judgment on the pleadings in Ronke's favor on Ellefson's fraud claim should be affirmed.

CONCLUSION

The circuit court's carefully considered decision granting summary judgment and judgment on the pleadings should be affirmed. As set forth above, Ellefson has waived the majority of the issues identified in her Statement of Issues by failing to brief them with supporting authority. The sole remaining issue is Ellefson's unsupported contention that the circuit court's Memorandum Decision granting summary judgment and judgment on the pleadings violated her constitutional right to trial by jury and due process rights. Ellefson does not specify how the circuit court's decision, which was grounded in precedent and the South Dakota Rules of Civil Procedure, was so erroneous as to violate her constitutional rights, nor does Ellefson engage with the substance of the Memorandum Decision. These bare contentions are insufficient to justify departing from the circuit court's decision.

The circuit court correctly concluded that Ellefson failed to identify genuine issues of material fact for trial and that her failure to obtain supporting expert testimony on her legal malpractice and breach of fiduciary duty claims mandated summary judgment. Debtor side bankruptcy and the question of the contours of a bankruptcy attorney's duty to advise his client prefiling are complex questions, requiring familiarity with the United States Bankruptcy Code, which is beyond the experience of ordinary lay persons. Similarly, the parameters of an attorney's fiduciary duties are beyond the knowledge of laypersons. Consequently, supporting expert testimony from a licensed attorney was required. The circuit court did not err in concluding that without that expert testimony, Ellefson cannot prove two essential elements of her claims: 1) duty and 2) breach. Therefore, summary judgment was required. *Dakota Indus., Inc. v. Cabela's.com, Inc.*, 2009 S.D. 39, ¶ 11, 766 N.W.2d 510, 513 ("Entry of summary judgment is mandated against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.") (quotation omitted). Similarly, the circuit court's conclusion that Ellefson had failed to plead the essential elements of fraud, thereby mandating the entry of judgment on the pleadings in Ronke's favor, was well-grounded in this Court's precedent. Accordingly, the circuit court's decision granting summary judgment and judgment on the pleadings in Ronke's favor should be AFFIRMED.

Dated at Sioux Falls, South Dakota, this 13th day of March, 2026.

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Brief of Appellee complies with the type volume limitations set forth in SDCL § 15-26A-66(b)(2). Based on the information provided by Microsoft Word 2016, this Brief contains 9,179 words, excluding the table of contents, table of authorities, jurisdictional statement, statement of legal issues, any addendum materials, and any certificates of counsel. This Brief is typeset in Times New Roman (12 point) and was prepared using Microsoft Word 2016.

Dated at Sioux Falls, South Dakota, this 13th day of March, 2026.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing "Brief of Appellees" was filed, mailed via First-Class mail and emailed to the following:

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Dated at Sioux Falls, South Dakota, this 13th day of March, 2026.

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

No. 31285

SHELBY MARIE ELLEFSON,

Plaintiff/Appellant,

vs.

ERIC RONKE and RONKE LAW, PLLC,

Defendants/Appellees.

Appeal from the Circuit Court
Second Judicial Circuit
Minnehaha County, South Dakota

The Honorable Jennifer D. Mammenga, Circuit Judge

APPENDIX OF APPELLEES ERIC RONKE AND RONKE LAW, PLLC

Shelby Ellefson
611 Teddy Street
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Pro Se Plaintiff/Appellant

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Notice of Appeal filed November 6, 2025

APPELLEES' APPENDIX

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STATE OF SOUTH DAKOTA)	: SS	IN CIRCUIT COURT
COUNTY OF MINNEHAHA)		SECOND JUDICIAL CIRCUIT

* *

SHELBY MARIE ELLEFSON,	*	49CIV25-985
Plaintiff,	*	
vs.	*	**ORDER AND JUDGMENT**
ERIC RONKE and RONKE LAW, PLLC,	*	
Defendants.	*	

* *

A hearing was held on Defendants Eric Ronke and Ronke Law, PLLC's Motions for Summary Judgment and Judgment on the Pleadings before the Honorable Jennifer D. Mammenga on July 28, 2025, in the Minnehaha County Courthouse in Sioux Falls, South Dakota. Plaintiff appeared pro se. Defendants Eric Ronke and Ronke Law, PLLC appeared personally through their counsel of record Delia M. Druley of Evans, Haigh, & Arndt, LLP.

The Motions for Summary Judgment and Judgment on the Pleadings were fully briefed. The Court reviewed all briefs prior to the hearing, and considered the same during the period of time that the Court took the issues under advisement.

Based upon the pleadings, authority cited by the parties and the arguments of counsel, the Court issued a Memorandum Decision dated October 24, 2025 and filed October 27, 2025, which is herein incorporated into this Order and Judgment. As set forth in the Court's Memorandum Decision, **IT IS ORDERED, ADJUDGED AND DECREED** as follows:

1) Defendants' Motion for Summary Judgment is **GRANTED** pursuant to SDCL 15-6-56(b);

2) Defendants' Motion for Judgment on the Pleadings is **GRANTED** pursuant to SDCL 15-6-12(c);

3) Plaintiff's remaining motions for scheduling orders, trial dates, and recusal are **DENIED**;

4) Judgment shall be entered in favor of the Defendants and Plaintiff's Complaint is dismissed in its entirety and with prejudice; and

5) Upon application by Defendants Eric Ronke and Ronke Law, PLLC of taxation of costs, the Defendants Eric Ronke and Ronke Law, PLLC may recover costs from Plaintiff in the amount of $249.35 ADDED 12/12/2025, to be hereinafter inserted by the clerk.

11/4/2025 6:59:49 PM

BY THE COURT:

Honorable Jennifer D. Mammenga
Circuit Court Judge

Attest:
Traefald, Justin
Clerk/Deputy

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

SHELBY MARIE ELLEFSON, Plaintiff, v. ERIC RONKE AND RONKE LAW, LLC, Defendants.	49 CIV 25-985 **MEMORANDUM DECISION RE: DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT AND JUDGMENT ON THE PLEADINGS, AND PLAINTIFF'S MISCELLANEOUS MOTIONS**

The above-entitled matter came before the Court on the 28th day of July, 2025, upon the Defendants' Motions for Summary Judgment and Judgment on the Pleadings. Plaintiff appeared before the Court pro se. Defendants were represented by their attorney, Delia M. Druley, of Evans, Haigh, and Arndt, LLP. After having considered the submissions and arguments of the parties, the Court issues this Memorandum Opinion.

FACTUAL AND PROCEDURAL BACKGROUND

In April 2024, Plaintiff Shelby Ellefson retained attorney Eric Ronke for legal advice concerning her financial situation. On May 16, 2024, Ronke filed a petition for Chapter 13 bankruptcy on Ellefson's behalf. Ellefson argues that she subsequently learned that she had approximately $130,000 in equity in her home at the time the bankruptcy was filed, and that she could have resolved her mortgage delinquency by taking out a $5,000 loan, using her home as collateral. Ellefson claims that Ronke failed to disclose this option, or any others, aside from a bankruptcy filing to her during his representation, and that he withheld the value of her assets from her until after the bankruptcy was filed.

On February 25, 2025, Ellefson commenced an action against Ronke for legal malpractice, fraud and misrepresentation, and breach of fiduciary duty, requesting damages in the amount of $175,056.25.

On July 1, 2025, Defendants filed a Motion for Summary Judgment and Motion for Judgment on the Pleadings. Plaintiff filed a brief in opposition to the motions on July 3, 2025, and her Statement of Disputed Material Facts on July 21, 2025, just seven days before the hearing on the motions. On July 23, 2025, Defendants filed a Motion to Strike Plaintiff's Statement of Disputed Material Facts. At the July 28th hearing, the Court granted the motion and struck the Plaintiff's Statement of Dispute Material Facts due to the statement being immaterial and untimely.

Since this hearing, Plaintiff filed several motions to schedule the matter for trial, despite being informed at and after the hearing that there would not be further scheduling decisions made until the Court ruled on the Defendants' pending motions. Plaintiff also filed a proposed order for recusal, despite neither an informal request nor a formal motion for recusal having been made.

LAW AND LEGAL ANALYSIS

I. Defendants' Motion for Summary Judgment.

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law." SDCL § 15-6-56(c). "[T]he moving party has the burden of clearly demonstrating an absence of any genuine issue of material fact and an entitlement to judgment as a matter of law." *Johnson v. Matthew J. Batchelder Co., Inc.*, 2010 S.D. 23, ¶ 8, 779 N.W.2d 690, 693 (citations omitted). All reasonable inferences drawn from the facts must be viewed in favor of the non-moving party. *Id.* (citations omitted). "Unsupported conclusions and speculative statements do not raise a genuine issue of fact." *Dakota Indus., Inc. v. Cabela's Com., Inc.*, 2009 S.D. 39, ¶ 20, 766 N.W.2d 510, 516. "[A] disputed fact is not 'material' unless it would affect the outcome of the suit under the governing substantive law in that a 'reasonable jury could return a verdict for the nonmoving party.'" *Gul v. Ctr. For Family Med.*, 2009 S.D. 12, ¶ 8, 762 N.W.2d 629, 633 (quoting *Weitzel v. Sioux Valley Heart Partners*, 2006 S.D. 45, ¶ 17, 714 N.W.2d 884, 891).

Once the moving party has established its burden, the nonmoving party must "present specific facts showing that a genuine, material issue for trial exists" to prevent a grant of summary judgment. *Johnson v. Hayman & Associates, Inc.*, 2015 S.D. 63, ¶ 11, 867 N.W.2d 698, 701 (internal citations and quotations omitted). Faced with a motion for summary judgment, the nonmoving party "must 'be diligent in resisting the motion, and mere general allegations and denials which do not set forth specific facts will not prevent the issuance of a judgment.'" *Citibank South Dakota, N.A. v. Schmidt*, 2008 S.D. 1, ¶ 8, 744 N.W.2d 829, 832 (citations omitted). The specific facts alleged to be in dispute by the non-movant must be more than "mere speculation, conjecture, or fantasy." *Stern Oil Co., Inc. v. Brown*, 2012 S.D. 56, ¶ 8, 817 N.W.2d 395, 398. "Unsupported conclusions and speculative statements do not raise a genuine issue of fact." *Dakota Indus., Inc. v. Cabela's.Com, Inc.*, 2009 S.D. 39, ¶ 20, 766 N.W.2d 510, 516.

Accordingly, SDCL 15-6-56(c) requires a nonmoving party's response to the movant's statement of undisputed material facts to be served "not later than fourteen calendar days before the hearing." SDCL 15-6-56(c). The statute also provides, in part:

> (2) A party opposing a motion for summary judgment shall include a separate, short, and concise statement of the material facts as to which the opposing party contends a genuine issue exists to be tried. The opposing party must respond to each numbered paragraph in the moving party's statement with a separately numbered response and appropriate citations to the record.
>
> (3) All material facts set forth in the statement that the moving party is required to serve shall be admitted unless controverted by the statement required to be served by the opposing party.

SDCL 15-6-56(c).

Plaintiff filed her Statement of Disputed Material Facts just seven days prior to the hearing on Defendants' Motion for Summary Judgment and Motion for Judgment on the Pleadings, which violates the deadlines set forth by SDCL 15-6-56(c). Based on the late filing, as well as the largely immaterial contents of Plaintiff's Statement of Disputed Material Facts, the Court struck the pleading. Plaintiff has not been diligent in resisting the motion and has failed to demonstrate with any sufficient specificity that there are genuine issues of material fact worth bringing to trial. Plaintiff has not met her statutory burden and, consequently, the facts asserted by Defendants are admitted unopposed, meaning there are no genuine disputes of material fact before the Court. Summary judgment is therefore granted in favor of Defendants.

Notwithstanding Plaintiff's procedural missteps, Defendants would be entitled to summary judgment as to Plaintiff's claims for legal malpractice and breach of fiduciary duty. Plaintiff failed to timely identify an expert witness, and it is well-established that expert testimony is required to support a claim of legal malpractice and appears to be equally essential in support of a claim of breach of fiduciary duty between an attorney and their client. See *Lenius v. King*, 294 N.W.2d 912, 914 (S.D. 1980) (citations omitted); *Zhang v. Rasmus*, 2019 S.D. 46, ¶ 30, 932 N.W.2d 153, 163; *Slota v. Imhoff & Assocs, P.C.*, 2020 S.D 55, ¶ 26, 949 N.W.2D 869, 877; *Hanson v Big Stone Therapies, Inc.*, 2018 S.D. 60, ¶26, 916 N.W.2d 151, 158.

Plaintiff's case turns on the intricacies of Chapter 13 bankruptcy proceedings and whether her attorney breached his duty to her in advising her to seek bankruptcy relief. Whether the claim is legal malpractice or breach of fiduciary, an ordinary juror will not be able to understand the complexities and nuance regarding what is required of attorneys in an attorney-client relationship absent a member of the profession to explain it. None of Plaintiff's listed witnesses are licensed attorneys. While her witnesses may be able to testify to what they would have recommended to someone in Plaintiff's financial position, they cannot opine on what an attorney should have done or whether Defendants breached their fiduciary duty to Plaintiff.

II. Defendants' Motion for Judgment on the Pleadings.

Defendants move for judgment on the pleadings as to Plaintiffs fraud and misrepresentation claims. "[J]udgment on the pleadings is only appropriate where there are no issues of fact and only issues of law are to be resolved." *Sorensen v. Sommervold*, 2005 S.D. 33, ¶ 4, 694 N.W.2d 266, 268. The movant must be entitled to judgment as a matter of law; therefore, "all reasonable inferences of fact must be drawn in favor of the non-moving party." *Daktronics, Inc. v. LBW Tech Co., Inc.*, 737 N.W.2d 413, 416 (S.D. 2007) (citations omitted).

In South Dakota, when a party presents a fraud claim, "the circumstances constituting fraud or mistake shall be stated with particularity." *North American Truck & Trailer, Inc. v. M.C.I. Communication Services, Inc.*, 2008 S.D. 45, ¶ 6, 751 N.W.2d at 712 (quoting SDCL 15-6-9(b)). "Additionally, 'this Court has required that a pleading based on fraud as a basis of recovery of damages must allege all the essential elements of actionable fraud to be sufficient." *Id.* (quoting *Holy Cross Parish v. Huether*, 308 N.W.2d. 575, 576 (S.D. 1981)). "The essential elements of actionable fraud are:

> [T]hat a representation was made as a statement of fact, which was untrue and known to be untrue by the party making it, or else recklessly made; that it was made with intent to deceive and for the purpose of inducing the other party to act upon it; and that he did in fact rely on it and was induced thereby to act to his injury or damage.

Id. (quoting *Northwest Realty Co. v. Colling*, 147 N.W.2d 675, 683 (S.D. 1966)).

Plaintiff is acting as her own attorney in this matter and appears to have drafted the Complaint. "While we have acknowledged that pro se pleadings are held to less stringent standards, self-represented litigants are otherwise held to the same standard as attorneys, include the obligations to comply with rules of procedure and evidence." *Zhang*, 2019 S.D. 46, ¶ 37, 932 N.W.2d at 164 (quoting *Peck v. S.D. Penitentiary Emps.*, 332 N.W.2d 714, 716 (S.D. 1983)). "Indeed, we have held that an unrepresented party 'can claim no advantage from his pro se status.'" *Id.* (quoting *Webb v. Webb*, 2012 S.D. 41, ¶ 14, 814 N.W.2d 818, 823). "In this regard, our procedural and evidentiary rules, like the substantive requirements of the law, apply universally to all parties, regardless of whether they are represented." *Id.*

Against this backdrop, Plaintiff is still procedurally required to plead with particularity her fraud claim against Defendants. In Count 2 of the Complaint, Plaintiff fails to state with any particularity statements made by Defendants that were untrue. In fact, Plaintiff fails to mention any statements made by Defendants. Therefore, her claim fails on its face, and Defendants are entitled to judgment on the pleadings.

III. Plaintiff's Miscellaneous Motions.

Due to the ruling on the above issues, there is no need to schedule the matter for trial, so Plaintiff's motions for further scheduling and trial dates are moot. Furthermore, Plaintiff's proposed order for recusal will be denied, as she has not filed a motion for recusal or made an informal request for recusal. The Court is not aware of any basis for recusal. Plaintiff has also availed herself to the jurisdiction of the Court by filing several motions and having multiple hearings before the Court.

CONCLUSION

Defendants' Motion for Summary Judgment and Motion for Judgment on the Pleadings are GRANTED. Plaintiff's motions for scheduling orders, trial dates, and recusal are DENIED. Counsel for Defendant shall submit an Order incorporating this Memorandum Opinion.

Dated this 24th day of October, 2025.

BY THE COURT:

Jennifer D. Mammenga
Circuit Court Judge

ATTEST:
KARLA KALB,
Clerk of Courts

By
Deputy (Seal)

UNIFIED JUDICIAL SYSTEM
JUSTICE
STATE OF SOUTH DAKOTA

FILED
OCT 27 2025
Minnehaha County, S.D.
Clerk Circuit Court

STATE OF SOUTH DAKOTA)	: SS	IN CIRCUIT COURT
COUNTY OF MINNEHAHA)		SECOND JUDICIAL CIRCUIT

* *

SHELBY MARIE ELLEFSON, Plaintiff,	*	49CIV25-985
vs.	*	
ERIC RONKE and RONKE LAW, PLLC, Defendants.	*	**DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

* *

Defendants, Eric Ronke and Ronke Law, PLLC, by and through their attorneys of record, respectfully submit this Statement of Undisputed Material Facts in Support of Motion for Partial Summary Judgment pursuant to SDCL 15-6-56(c):

1. Plaintiff Shelby Marie Ellefson initiated the present civil lawsuit against Defendants Eric Ronke and Ronke Law, PLLC[1] on February 24, 2025. Complaint. In her pro se Complaint, she asserts claims for legal malpractice, fraud and misrepresentation, and breach of fiduciary duty. *Id.*
2. The underlying representation relates to Ellefson's retention of Ronke to assist her in filing a Chapter 13 bankruptcy proceeding. Complaint at ¶¶ 4-9. Generally, Ellefson contends that Ronke failed to advise her of non-bankruptcy alternatives and more specifically, contends he should have advised her of the option of pursuing a home equity line of credit. *Id.*
3. Ronke denies Plaintiff's allegations. *See* Answer.

[1] Hereinafter, "Ronke."

4. In her pro se Complaint, Ellefson disclosed three individuals as witnesses: John Snobeck, Ethan Gette, a personal banker with First Bank and Trust, and Logan Watzek, a home equity specialist with Levo Credit Union. Complaint at p. 4.

5. Ellefson asserted that Gette would testify that Ellefson "could have secured a small loan using home equity, a fact not disclosed by Defendant, prior to filing bankruptcy." *Id.*

6. Similarly, Ellefson asserted that Watzek would testify "based on his professional assessment, legal malpractice occurred and that Plaintiff should have been advised to pursue a loan using her home equity, rather than filing for Chapter 13 bankruptcy." *Id.*

7. Neither Gette or Watzek is alleged to be a licensed attorney. Ronke's answer specifically asserts that Watzek, who Ellefson's complaint states will testify "legal malpractice occurred" is not a licensed attorney, who is competent to opine regarding the standard of care. Answer at ¶ 12.

8. On April 2, 2025, defense counsel advised Ellefson that she would be required to support her legal malpractice claims with expert testimony from a licensed attorney. See Exhibit A to Affidavit of Delia M. Druley, April 2, 2025 Letter to Plaintiff.

9. On May 9, 2025, this Court entered a scheduling order setting June 27, 2025, as Plaintiff's Expert Disclosure Deadline.

10. On May 12, 2025, in response from a statement by Ellefson that all matters set forth in the scheduling order were completed and a request to hold a settlement conference, defense counsel once again advised Ellefson that she was required to support her claim with expert testimony from a licensed attorney, that her claim could be dismissed if she failed to do so, and advised Ellefson of the defense's intent to file a motion for summary

judgment if she failed to identify a qualified expert witness by the expert deadline. Ex. B to Druley Aff. , May 12, 2025 Email Correspondence.

11. Plaintiff's expert witness disclosure deadline has lapsed. See *Scheduling Order* at ¶ 2 (setting June 27, 2025 for Plaintiff's expert disclosure deadline).
12. Ellefson has not sought any extension of time on that deadline. *See* Druley Aff. at ¶ 4.
13. Ellefson has failed to disclose any expert witness, let alone a licensed attorney competent to opine regarding the applicable standard of care and whether Ronke breached the standard of care. Druley Aff. at ¶ 5.

Dated this 1st day of July, 2025 at Sioux Falls, South Dakota.

EVANS, HAIGH & ARNDT, L.L.P.

/s/ Delia M. Druley

Delia M. Druley
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Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Defendants, hereby certifies that a true and correct copy of the foregoing "Defendants' Statement of Undisputed Material Facts in Support of Defendant's Motion for Summary Judgment" was filed electronically with the Clerk of Court using the Odyssey File and Serve system, and served via First Class mail and emailed to the following:

Shelby Ellefson
611 Teddy Street
Harrisburg, SD 57032
ellefson.shelby@outlook.com
Pro se Plaintiff

on this 1st day of July, 2025.

/s/ Delia M. Druley

IN THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT

MINNEHAHA COUNTY, SOUTH DAKOTA

Shelby Marie Ellefson,

Plaintiff

v.

Eric Ronke and Ronke Law, PLLC,

Defendants.

Case No. 49CIV25-985

PLAINTIFF'S STATEMENT OF DISPUTED MATERIAL FACTS

COMES NOW Plaintiff Shelby Marie Ellefson, pro se, and pursuant to SDCL 15-6-56(c)(2), submits the following Statement of Disputed Material Facts opposing Defendants' Motion for Summary Judgment:

1. Disputed Fact: That Plaintiff was adequately advised of all options before filing Chapter 13 bankruptcy.

   Response: Plaintiff was not advised of reasonable alternatives, despite being eligible for several non-bankruptcy solutions. Attorney Ronke misrepresented bankruptcy as her "only option" and failed to explain consequences or alternatives.

2. Disputed Fact: That Plaintiff's claims require expert testimony due to complexity.

   Response: The misconduct alleged—failure to inform, misleading advice, and coercion—is not technical or complex, but clear-cut. A jury does not need an expert to understand what a reasonable attorney should have done under these circumstances.

3. Disputed Fact: That there are no material facts in dispute.

   Response: There are multiple disputed issues, including whether Defendant Ronke knowingly misled Plaintiff, whether her consent to bankruptcy was truly informed, and whether the attorney-client relationship was abused for personal convenience.

4. Disputed Fact: That the defense attorney has behaved ethically.

   Response: Defense attorney Delia Druley has repeatedly acted in bad faith, including lying to Plaintiff on at least two recorded phone calls and sending harassing, misleading letters. Her actions have caused additional emotional trauma and intimidated Plaintiff during litigation.

5. Disputed Fact: That Plaintiff has not experienced serious non-economic harm.

   Response: Plaintiff has suffered extreme emotional distress, suicidal ideation, anxiety, PTSD exacerbation, humiliation, reputational damage, and life-altering disruption as a direct result of the defendants' misconduct and continued retraumatization through litigation tactics.

Respectfully submitted,

/s/ Shelby Ellefson

611 Teddy Street, Harrisburg, SD 57032

sellefson33@gmail.com

Pro Se Plaintiff

Shelby Ellefson 07/21/2025

FILED
JUL 21 2025
Minnehaha County, S.D.
Clerk Circuit Court

**IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA**

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

APR 23 2026

Shirl A Jameson Legal
Clerk

No. 31285

**SHELBY MARIE ELLEFSON,
Plaintiff/Appellant,**

vs.

**ERIC RONKE and RONKE LAW, PLLC,
Defendants/Appellees.**

APPEAL FROM THE CIRCUIT COURT
SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

*THE HONORABLE JENNIFER D. MAMMENGA,
CIRCUIT COURT JUDGE*

APPELLANT'S REPLY BRIEF

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(605) 275-9599

Attorney for Defendants/Appellees

Notice of Appeal filed November 6, 2025

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TABLE OF AUTHORITIES

Cases

Statutes, Rules, and Constitutional Provision

PRELIMINARY STATEMENT

This appeal does not present a case lacking merit—it presents a case that was never allowed to be heard.

At its core, this matter concerns whether a pro se litigant's claims—supported by evidence, grounded in substantial financial and personal harm, and involving genuine disputes of material fact—can be procedurally extinguished before ever reaching a jury. The circuit court's decision did precisely that.

By striking Plaintiff's Statement of Disputed Material Facts on procedural grounds, the court eliminated all factual disputes from the record and then relied on that resulting absence of dispute to grant summary judgment. In doing so, the court did not resolve the case on its merits—it prevented the merits from being considered at all.

This action carried consequences far beyond procedural posture. Plaintiff's claims involve significant financial loss, reputational harm, and lasting personal damage arising from Defendants' conduct. These are precisely the types of claims that, under longstanding legal principles, are reserved for determination by a jury—not disposed of through procedural technicalities.

The circuit court's rulings effectively deprived Plaintiff of her constitutional right to a trial by jury as guaranteed by Article VI, § 6 of the South Dakota Constitution. By removing all factual disputes from consideration and resolving the case as a matter of law, the court denied Plaintiff the opportunity to have a jury evaluate contested facts central to her claims.

Plaintiff did not lack evidence. Plaintiff identified witnesses, including financial professionals, and presented documentation supporting her claims. Plaintiff consistently maintained that viable alternatives to bankruptcy existed and were not properly considered prior to the filing that caused substantial harm. These are factual determinations—squarely within the province of a jury—not matters appropriate for dismissal at the pleading or summary judgment stage.

Appellees attempt to reframe this case as one involving waiver or procedural default. It is not. The record reflects that Plaintiff actively participated in the proceedings, responded to filings, and attempted to present her claims despite limited legal resources. Any perceived procedural deficiencies do not justify the complete elimination of her claims without a trial.

This appeal presents fundamental questions of fairness and constitutional protection: whether procedural rules may be applied in a manner that prevents a litigant from ever having her claims heard, and whether a court may rely on the absence of disputed facts after striking the very document that identified them.

Plaintiff respectfully submits that the answer to both questions is no—and that reversal is required to restore her right to have her claims decided by a jury.

JURISDICTIONAL STATEMENT

This appeal arises from a final Order and Judgment entered by the Circuit Court for the Second Judicial Circuit, Minnehaha County, South Dakota, on November 4, 2025, granting Defendants' motion for summary judgment and motion for judgment on the pleadings.

Plaintiff timely filed a Notice of Appeal on November 6, 2025, within the time prescribed by SDCL 15-26A-6.

This Court has appellate jurisdiction pursuant to SDCL 15-26A-3, which provides for review of final judgments and orders of the circuit courts of the State of South Dakota.

The Order and Judgment appealed from disposes of all claims as to all parties and constitutes a final, appealable order. Accordingly, jurisdiction is proper before this Court.

This appeal further presents substantial questions regarding the deprivation of Plaintiff's constitutional right to a jury trial under Article VI, § 6 of the South Dakota Constitution.

STATEMENT REGARDING ORAL ARGUMENT

Plaintiff respectfully requests oral argument. This appeal presents issues concerning the proper application of summary judgment standards, the scope of procedural rulings that effectively dispose of claims prior to adjudication on the merits, and the preservation of the right to trial by jury.

Plaintiff is amenable to participating in oral argument but respectfully requests that any such argument be limited to no more than thirty (30) minutes.

Plaintiff submits that oral argument, within this timeframe, would assist the Court in addressing the legal and procedural issues presented and aid in the Court's decisional process.

STATEMENT OF THE ISSUES

1. Whether the circuit court erred in striking Plaintiff's Statement of Disputed Material Facts, thereby eliminating all factual disputes from the record prior to granting summary judgment.

Summary judgment procedures must be applied in a manner that preserves the nonmoving party's ability to present disputed facts. Zhang v. Rasmus, 2019 S.D. 46, ¶ 16, 932 N.W.2d 153. By striking Plaintiff's Statement of Disputed Material Facts, the circuit court prevented meaningful consideration of disputed facts and improperly allowed Defendant's asserted facts to be deemed admitted. See SDCL 15-6-56(c).

2. Whether the circuit court erred in granting summary judgment where genuine issues of material fact existed.

Summary judgment is improper where material facts are disputed or where reasonable minds could differ. Peterson v. Issenhuth, 2014 S.D. 1, ¶ 9, 842 N.W.2d 351. Courts must not weigh evidence or make credibility determinations at the summary judgment stage. Schulte v. Progressive Northern Insurance Co., 2005 S.D. 75.

Here, disputes exist regarding authorization of the bankruptcy filing, the availability of alternatives, and the adequacy of legal advice—issues that are properly resolved by a jury.

3. Whether the circuit court erred in concluding that expert testimony from a licensed attorney was required under the circumstances of this case.

While expert testimony is often required in legal malpractice claims, it is not required where the alleged negligence falls within the common understanding of a jury. Lenius v. King, 294 N.W.2d 912 (S.D. 1980).

4. Whether the circuit court erred in granting judgment on the pleadings on Plaintiff's fraud claim.

A motion for judgment on the pleadings tests the legal sufficiency of the complaint and requires the court to accept all well-pleaded allegations as true and construe them in favor of the nonmoving party. North American Truck & Trailer, Inc. v. M.C.I. Communications Services, Inc., 2008 S.D. 45.

5. Whether the circuit court's rulings deprived Plaintiff of her constitutional rights, including due process and the right to a jury trial.

The right to trial by jury is preserved under Article VI, § 6 of the South Dakota Constitution. While issues not raised below are generally considered waived, appellate courts retain discretion to consider issues affecting fundamental rights. Daily v. City of Sioux Falls, 2011 S.D. 48.

Here, the circuit court's procedural rulings operated to eliminate all factual disputes and prevent Plaintiff from presenting her claims to a jury, thereby implicating fundamental constitutional protections.

STATEMENT OF THE CASE

This appeal arises from a civil action filed by Plaintiff, pro se, against Defendant Eric Ronke and Ronke Law, PLLC, asserting claims for legal malpractice, breach of fiduciary duty, and fraud in connection with Defendant's legal representation of Plaintiff in a Chapter 13 bankruptcy proceeding.

On February 24, 2025, Plaintiff commenced this action by filing a complaint in the Second Judicial Circuit, Minnehaha County, South Dakota.

On May 9, 2025, the circuit court entered a scheduling order requiring Plaintiff to disclose expert witnesses by June 27, 2025.

On July 1, 2025, Defendant filed a motion for summary judgment on Plaintiff's legal malpractice and breach of fiduciary duty claims, and a motion for judgment on the pleadings on Plaintiff's fraud claim pursuant to SDCL 15-6-56 and SDCL 15-6-12(c).

Plaintiff filed a written response opposing Defendant's motions. On July 21, 2025, Plaintiff filed a Statement of Disputed Material Facts in an effort to identify factual disputes as contemplated under SDCL 15-6-56(c).

On July 23, 2025, Defendant filed a motion to strike Plaintiff's Statement of Disputed Material Facts. Following a hearing on July 28, 2025, the circuit court granted Defendant's motion to strike on procedural grounds.

As a result of that ruling, the circuit court deemed Defendant's asserted facts admitted and concluded that no genuine issues of material fact existed.

On October 24, 2025, the circuit court issued a memorandum decision granting Defendant's motion for summary judgment and motion for judgment on the pleadings. The court concluded that Plaintiff failed to establish a genuine issue of material fact and failed to support her claims with expert testimony from a licensed attorney.

On November 4, 2025, the circuit court entered its Order and Judgment. Notice of Entry was filed on November 5, 2025.

Plaintiff timely filed a Notice of Appeal on November 6, 2025.

STATEMENT OF FACTS

In April 2024, Plaintiff began experiencing temporary financial difficulty and sought legal advice regarding available options. On April 9, 2024, Plaintiff consulted with Defendant Eric Ronke to evaluate her financial situation and explore alternatives to bankruptcy.

At the time Plaintiff sought legal advice, her financial condition was not static and was improving. Plaintiff had secured, or was in the process of securing, employment as a Social Services Director with an annual salary of approximately $70,000. In addition, Plaintiff maintained part-time employment as a casino attendant, earning approximately $1,200 per weekend, and received rental income of approximately $1,100 per month from a tenant residing in her home.

Plaintiff's position throughout this case has been that viable non-bankruptcy alternatives existed. These included the potential use of home equity to obtain a loan sufficient to address her financial obligations. Plaintiff identified financial professionals, including a home equity specialist, who could testify to the availability and feasibility of such alternatives.

On May 13, 2024, a voluntary Chapter 13 bankruptcy petition was filed on Plaintiff's behalf in the United States Bankruptcy Court. Plaintiff maintains that she did not sign, authorize, or otherwise approve the filing of any bankruptcy petition on that date.

Plaintiff did not sign any bankruptcy documents until May 16, 2024, when she met with Defendant in person. Plaintiff's position is that she did not authorize the filing of a bankruptcy petition prior to that meeting.

Following the bankruptcy filing, Plaintiff experienced significant financial and personal consequences, including restrictions affecting her ability to manage her finances and pursue alternative financial solutions.

Plaintiff did not receive a discharge, and the bankruptcy proceeding was ultimately dismissed. Plaintiff contends that the filing itself caused substantial and lasting harm.

On February 24, 2025, Plaintiff filed a pro se complaint against Defendant asserting claims for legal malpractice, breach of fiduciary duty, and fraud arising from Defendant's representation in connection with the bankruptcy.

On May 9, 2025, the circuit court entered a scheduling order requiring Plaintiff to disclose expert witnesses by June 27, 2025. Plaintiff did not disclose a licensed attorney as an expert witness.

On July 1, 2025, Defendant filed motions for summary judgment and for judgment on the pleadings. Plaintiff filed a written response opposing those motions.

On July 21, 2025, Plaintiff filed a Statement of Disputed Material Facts in an effort to identify and preserve factual disputes relevant to Defendant's motion for summary judgment.

On July 23, 2025, Defendant moved to strike Plaintiff's Statement of Disputed Material Facts. Following a hearing on July 28, 2025, the circuit court granted Defendant's motion to strike on procedural grounds.

As a result of that ruling, Plaintiff's Statement of Disputed Material Facts was excluded from consideration, and the circuit court deemed Defendant's asserted facts admitted and concluded that no genuine issues of material fact existed.

On October 24, 2025, the circuit court issued a memorandum decision granting Defendant's motions for summary judgment and judgment on the pleadings. The court concluded, in part, that Plaintiff failed to establish a genuine issue of material fact and failed to support her claims with expert testimony from a licensed attorney.

Judgment was entered on November 4, 2025. Plaintiff timely filed a Notice of Appeal on November 6, 2025.

ARGUMENT I

THE CIRCUIT COURT ERRED IN STRIKING PLAINTIFF'S STATEMENT OF DISPUTED MATERIAL FACTS

The circuit court's decision to strike Plaintiff's Statement of Disputed Material Facts constituted reversible error because it effectively eliminated all factual disputes from the record and predetermined the outcome of the case without consideration of the merits.

Under SDCL 15-6-56(c), a nonmoving party must respond to a motion for summary judgment by identifying material facts in dispute. Summary judgment is appropriate only when no genuine issue of material fact exists, and courts are required to view the evidence in the light most favorable to the nonmoving party. Zhang v. Rasmus, 2019 S.D. 46, ¶ 16, 932 N.W.2d 153.

Here, Plaintiff attempted to comply with this requirement by filing a Statement of Disputed Material Facts prior to the hearing. Although the circuit court determined that the filing did not strictly comply with procedural requirements, striking Plaintiff's submission in its entirety was a disproportionate response that had the practical effect of preventing any factual dispute from being considered.

Once Plaintiff's statement was struck, the circuit court deemed Defendant's asserted facts admitted and concluded that no genuine issues of material fact existed. The absence of disputed facts was not the result of a lack of evidence, but rather the direct consequence of the court's procedural ruling. In effect, the court created the very condition—no disputed facts—that it then relied upon to grant summary judgment.

South Dakota law recognizes that cases should, where possible, be resolved on their merits rather than on procedural grounds alone. See Duerre v. Hepler, 2017 S.D. 8, ¶ 13, 892 N.W.2d 209.

Here, Plaintiff was proceeding pro se and made a good-faith effort to identify disputed facts. Rather than permitting amendment, clarification, or consideration of the substance of Plaintiff's filing, the circuit court imposed the most severe procedural consequence—complete exclusion—without considering less drastic alternatives.

The resulting prejudice was substantial. By striking Plaintiff's factual assertions and deeming Defendant's facts admitted, the court deprived Plaintiff of a meaningful opportunity to oppose summary judgment and to have disputed issues of fact considered.

This was not merely a procedural consequence—it had a substantive effect. By eliminating all factual disputes from the record, the circuit court removed the case from the province of the jury and prevented resolution of contested facts through the ordinary trial process.

Importantly, summary judgment must not be used to resolve disputed factual issues or weigh evidence. Schulte v. Progressive Northern Insurance Co., 2005 S.D. 75, ¶ 9, 699 N.W.2d 437. When factual disputes exist—or are improperly excluded—summary judgment is inappropriate.

Because the circuit court's grant of summary judgment was directly predicated on its decision to strike Plaintiff's Statement of Disputed Material Facts, that ruling cannot stand. The procedural ruling and the ultimate judgment are inseparable.

For these reasons, the circuit court's order striking Plaintiff's Statement of Disputed Material Facts and the resulting grant of summary judgment should be reversed, and this matter remanded for trial on the merits.

ARGUMENT II

THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT BECAUSE GENUINE ISSUES OF MATERIAL FACT EXISTED

Summary judgment is appropriate only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Courts must view the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor. Zhang v. Rasmus, 2019 S.D. 46, ¶ 16, 932 N.W.2d 153.

A fact is material if it affects the outcome of the case, and a dispute is genuine if a reasonable jury could return a verdict for the nonmoving party. Peterson v. Issenhuth, 2014 S.D. 1, ¶ 9, 842 N.W.2d 351. Courts are not permitted to weigh evidence or resolve credibility determinations at the summary judgment stage. Schulte v. Progressive Northern Insurance Co., 2005 S.D. 75, ¶ 9, 699 N.W.2d 437.

Here, multiple genuine issues of material fact existed.

First, there is a direct and material dispute regarding Plaintiff's authorization of the bankruptcy filing. A Chapter 13 petition was filed on Plaintiff's behalf on May 13, 2024. Plaintiff maintains that she did not sign or authorize any bankruptcy documents until May 16, 2024. Whether Defendant filed the petition without prior authorization is a disputed fact that directly impacts liability and the propriety of Defendant's conduct.

Second, there is a material dispute regarding the availability of non-bankruptcy alternatives and the adequacy of Defendant's advice. Plaintiff consistently asserted that viable alternatives existed, including obtaining a loan through home equity, and identified individuals with knowledge of those alternatives. Whether such alternatives existed and whether Defendant failed to properly advise Plaintiff regarding them are factual questions central to both breach and causation.

Third, there is a material dispute regarding Plaintiff's financial condition at the time she sought legal advice. Plaintiff had multiple sources of income, including employment and rental income, which bear directly on whether bankruptcy was necessary or appropriate. Whether Defendant adequately considered this information presents a question of fact.

These disputes go to the core elements of Plaintiff's claims. A reasonable jury could conclude that Plaintiff was not properly advised, that viable alternatives to bankruptcy existed, and that Plaintiff suffered harm as a result.

Where resolution of a claim depends on competing versions of events or credibility determinations, those issues are not appropriate for summary judgment. By resolving these disputed issues at the summary judgment stage, the circuit court improperly assumed the role of the fact-finder. In doing so, it removed from the jury the responsibility to evaluate credibility, weigh evidence, and determine the truth of contested facts.

Because genuine issues of material fact existed, and because resolution of those issues requires credibility determinations and weighing of evidence, summary judgment was improper.

Accordingly, the circuit court's grant of summary judgment should be reversed, and this matter remanded for determination on the merits.

ARGUMENT III

THE CIRCUIT COURT ERRED IN CONCLUDING THAT EXPERT TESTIMONY FROM A LICENSED ATTORNEY WAS REQUIRED UNDER THE CIRCUMSTANCES OF THIS CASE

The circuit court concluded that Plaintiff's claims for legal malpractice and breach of fiduciary duty failed as a matter of law because Plaintiff did not present expert testimony from a licensed attorney. While expert testimony is often required in professional negligence cases, that requirement is not absolute.

South Dakota law recognizes that expert testimony is unnecessary where the alleged misconduct falls within the common understanding of a jury. Lenius v. King, 294 N.W.2d 912 (S.D. 1980). In such circumstances, jurors are capable of evaluating the conduct at issue without the assistance of expert testimony.

This case presents circumstances that fall within, or at minimum approach, that exception.

Plaintiff's claims are not based on complex or highly technical legal analysis. Rather, they center on straightforward factual issues: whether Defendant filed a bankruptcy petition without proper authorization, whether viable alternatives to bankruptcy existed, and whether Defendant failed to adequately advise Plaintiff of those alternatives before initiating a proceeding with significant consequences.

A jury does not require specialized legal training to evaluate these issues. Whether an individual authorized a filing, whether alternative financial options were available, and whether those options were communicated are matters within the ordinary comprehension of laypersons.

While expert testimony is generally required to establish the standard of care in legal malpractice claims, that requirement applies primarily where the alleged negligence involves specialized legal judgment beyond common experience. See Slota v. Imhoff & Associates, P.C., 2020 S.D. 55, 949 N.W.2d 869.

Here, the alleged misconduct involves factual events and communications rather than complex legal strategy. Whether Defendant filed a bankruptcy petition prior to Plaintiff's authorization is a factual issue. Whether Plaintiff had alternative financial options available is a factual issue. Whether those options were communicated is a factual issue. These are matters that a jury can evaluate without expert testimony.

Moreover, Plaintiff identified witnesses with specialized knowledge relevant to the underlying facts, including financial professionals capable of testifying to the availability of home equity lending options. While such witnesses are not licensed attorneys, their testimony is relevant to causation—whether Plaintiff would have pursued an alternative course had she been properly advised.

The circuit court's application of an expert testimony requirement foreclosed Plaintiff's claims without considering whether the alleged misconduct fell within the common knowledge exception recognized by South Dakota law. In doing so, the court prevented the factual issues at the heart of this case from being evaluated.

Because Plaintiff's claims involve issues within the common understanding of a jury and are supported by relevant factual testimony, the absence of a licensed attorney expert should not have been treated as dispositive.

Accordingly, the circuit court erred in granting summary judgment on this basis, and that ruling should be reversed.

ARGUMENT IV

THE CIRCUIT COURT ERRED IN GRANTING JUDGMENT ON THE PLEADINGS ON PLAINTIFF'S FRAUD CLAIM

The circuit court erred in granting judgment on the pleadings on Plaintiff's fraud claim by failing to construe Plaintiff's pro se complaint liberally and in the light most favorable to the nonmoving party.

A motion for judgment on the pleadings tests the legal sufficiency of the complaint—not the ultimate merits of the claim. In reviewing such a motion, the court must accept all well-pleaded factual allegations as true and draw all reasonable inferences in favor of the nonmoving party. North American Truck & Trailer, Inc. v. M.C.I. Communications Services, Inc., 2008 S.D. 45, ¶ 8, 751 N.W.2d 710.

This standard carries particular importance where, as here, the plaintiff is proceeding pro se. Courts recognize that pro se pleadings should be construed liberally to ensure that potentially meritorious claims are not dismissed due to technical deficiencies in drafting.

Plaintiff's complaint alleged that Defendant failed to properly advise her of available alternatives to bankruptcy and proceeded in a manner that caused significant financial harm. Plaintiff further alleged that she was misled regarding her options and the consequences of filing for bankruptcy. Taken as true and viewed in the light most favorable to Plaintiff, these allegations are sufficient to state a claim for fraud or misrepresentation.

While the circuit court concluded that Plaintiff did not plead fraud with particularity, that determination applied an unduly strict standard at the pleading stage, particularly in light of Plaintiff's pro se status. Although SDCL 15-6-9(b) requires fraud to be pled with particularity, the rule must be applied in a manner consistent with notice pleading principles. See Aqreva, LLC v. Eide Bailly, LLP, 2020 S.D. 59, 950 N.W.2d 774.

Here, Plaintiff's complaint provided sufficient factual context to place Defendant on notice of the nature of the claim, including the alleged failure to disclose alternatives and the resulting harm. At the pleading stage, this is sufficient.

By dismissing Plaintiff's fraud claim at the pleading stage, the circuit court prevented Plaintiff from developing the factual record through discovery and from presenting her claim for adjudication on the merits.

This was not a harmless procedural ruling. By terminating the claim before any factual development, the court prevented evaluation of the alleged misrepresentations and their impact—issues that are inherently factual.

For these reasons, the circuit court's grant of judgment on the pleadings on Plaintiff's fraud claim should be reversed.

CONCLUSION

This case was not resolved on its merits—it was procedurally extinguished before those merits could be heard.

The circuit court's decision to strike Plaintiff's Statement of Disputed Material Facts eliminated all factual disputes from the record and created the very basis upon which summary judgment was granted. Independent of that procedural ruling, genuine issues of material fact existed regarding Plaintiff's authorization of the bankruptcy filing, the availability of non-bankruptcy alternatives, and the adequacy of Defendant's advice—issues properly reserved for a jury.

The circuit court further erred in requiring expert testimony under circumstances where the alleged misconduct falls within the common understanding of a jury, and in dismissing Plaintiff's legal malpractice and fraud claims at the pleading stage without affording a liberal construction of her pro se complaint.

Taken together, these rulings deprived Plaintiff of a meaningful opportunity to present her claims and have disputed facts resolved through the ordinary trial process.

For the foregoing reasons, Plaintiff respectfully requests that this Court:

1. Reverse the circuit court's Order and Judgment granting Defendant's motions for summary judgment and judgment on the pleadings; and
2. Remand this matter to the circuit court for further proceedings, including the opportunity for Plaintiff to present her claims on the merits.

This case does not present a mere procedural dispute—it presents a record in which factual determinations were removed from consideration and resolved as a matter of law. Under these circumstances, reversal is warranted.

Dated this _9th__ day of __April____, 2026.

Respectfully submitted,

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X______________ Date: April 9th, 2026

CERTIFICATE OF COMPLIANCE

I, Shelby Marie Ellefson, certify that this brief complies with the typeface and formatting requirements of the South Dakota Rules of Appellate Procedure.

This brief has been prepared in a proportionally spaced typeface and is formatted in compliance with applicable court rules.

Dated this _9th__ day of _April_____, 2026.

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CERTIFICATE OF SERVICE

I, Shelby Marie Ellefson, certify that on this _9th__ day of _April__, 2026, I served a true and correct copy of the foregoing Appellant's Reply Brief upon the following:

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APPENDIX OF APPELLANT - SHELBY MARIE ELLEFSON

Appellant respectfully submits the following documents in support of this appeal:

1. Plaintiff's Complaint (Filed February 24, 2025)

2. Defendant's Motion for Summary Judgment and Judgment on the Pleadings

3. Plaintiff's Response to Defendant's Motions

4. Plaintiff's Statement of Disputed Material Facts

5. Defendant's Motion to Strike Plaintiff's Statement of Disputed Material Facts

6. Order Granting Motion to Strike

7. Memorandum Decision Granting Summary Judgment and Judgment on the Pleadings (October 24, 2025)

8. Order and Judgment (November 4, 2025)

9. Notice of Entry of Judgment (November 5, 2025)

10. Notice of Appeal (November 6, 2025)

Additional supporting documents may be included as necessary to supplement the record on appeal.