



FILED
 05/28/2026
 Ashley Thrasher
 CLERK, CIRCUIT COURT
 Buchanan COUNTY

**IN THE MISSOURI COURT OF APPEALS
 WESTERN DISTRICT**

BRIAN KIRK,)
)
Appellant,)
 v.) **WD88127**
)
GRACE EVANGELICAL CHURCH,) **OPINION FILED:**
et al.,) **April 21, 2026**
)
Respondents.)

**Appeal from the Circuit Court of Buchanan County, Missouri
 The Honorable Bart Spear, Judge**

Before Division Three: Karen King Mitchell, Presiding Judge,
 Lisa White Hardwick, Judge, and Janet Sutton, Judge

Brian Kirk appeals from an order dismissing his defamation claims against Grace Evangelical Church, doing business as Grace Calvary Chapel (Grace Chapel); Pastor Josh Blevins; and Steven Greiert. On appeal, Kirk raises two points, arguing that the trial court erred in (1) dismissing his claims after improperly considering materials outside the scope of his petition and (2) ordering Kirk to pay \$15,000 in attorneys’ fees under Missouri’s anti-SLAPP statute, § 537.528, because his petition makes a claim for the

common-law tort of defamation, which is excepted from the anti-SLAPP statute.¹
Finding no error, we affirm.

Background

Kirk's petition, which he filed in Jackson County Circuit Court on November 8, 2024, contains the following allegations.² Kirk, who is an openly gay pastor at the First Christian Church in St. Joseph, Missouri, served on the St. Joseph Public Library Board of Trustees from June 2021 to June 2024. Kirk alleged, that in an effort to prevent his reelection to the Library Board, Blevins, who works for Grace Chapel, and Greiert sent emails "claiming that [Kirk] presented a danger to society and children because he would try to 'indoctrinate' other people and children into becoming part of the LGBTQ community while on the Library Board." For example, Kirk alleged that Blevins wrote,

Through research into the candidate's public social media, [Kirk] clearly intends to use his platforms to bolster the LGBTQ+ movement and agenda within our city. Considering how many libraries around America have turned ideological centers concerned with the indoctrination of LGBTQ[+] ideas and agenda, I do not believe it is unfounded to have concerns that [Kirk] may use his post to further that specific agenda through Saint Joseph Libraries.

And, while referring to Kirk's beliefs during a podcast, Blevins allegedly said, "They do not stem from the clear meaning and teaching of the Bible, but . . . their clear roots are in . . . all sorts of cultural places that are, you know, under the control of Satan." Kirk

¹ "SLAPP is an acronym for 'strategic lawsuits against public participation.'" *Impey v. Clithero*, 553 S.W.3d 344, 348 n.4 (Mo. App. W.D. 2018). All statutory references are to the Revised Statutes of Missouri, Cum. Supp. 2024.

² On November 21, 2024, Blevins and Greiert filed a motion for change of venue to Buchanan County, Missouri. On January 23, 2025, the Jackson County Circuit Court granted the motion for change of venue.

alleged that Greiert wrote, “This transgender and homosexual propaganda is pure evil. It is designed to destroy the family, to undercut traditional American values and our way of life, and ultimately institute governmental control that will undermine our city, county, state, and nation.”

Kirk’s petition alleged that these statements are false, the actions of Blevins and Greiert were outrageous, and their motives were willful, wanton and malicious or in reckless disregard of Kirk’s rights. Kirk claimed reputational harm, extreme emotional distress, embarrassment, and humiliation. He sought both compensatory and punitive damages.

On December 19, 2024, Grace Chapel, Blevins, and Greiert filed a motion to dismiss Kirk’s petition with suggestions in support of the motion. The motion and suggestions articulated two grounds for dismissal: (1) Kirk’s lawsuit is prohibited by § 537.528³ because “nearly all” of the allegedly defamatory statements were made in the context of quasi-judicial public proceedings involving Kirk’s reappointment to the

³ Section 537.528.1 states, in part,

Any action against a person for conduct or speech undertaken or made in connection with a public hearing or public meeting, in a quasi-judicial proceeding before a tribunal or decision-making body of the state or any political subdivision of the state is subject to a special motion to dismiss . . . that shall be considered by the court on a priority or expedited basis to ensure the early consideration of the issues raised by the motion and to prevent the unnecessary expense of litigation.

A “‘public meeting in a quasi-judicial proceeding’ means and includes any meeting established and held by a state or local governmental entity, including without limitations meetings or presentations before state, county, city, town or village councils, planning commissions, review boards or commissions.” § 537.528.4.

Library Board, and (2) his petition fails to state a claim upon which relief may be granted, citing § 509.300 and Rule 55.27(a)(6),⁴ insofar as Kirk’s petition fails to allege all the elements of a defamation claim. The motion also requested attorneys’ fees and costs pursuant to § 537.528.⁵ Kirk filed a response to the motion, and Grace Chapel, Blevins, and Greiert filed a reply in support of their motion.

On May 23, 2025, the motion court issued an order dismissing Kirk’s petition based on § 537.528.⁶ The court concluded that § 537.528 “clearly encompass[es] the allegations of [Kirk’s] petition.” Accordingly, the court granted the motion to dismiss and awarded \$15,000 in attorneys’ fees to Grace Chapel, Blevins, and Greiert, jointly. Kirk filed a motion for reconsideration, which the court denied. Kirk then filed this appeal.

By letter dated June 30, 2025, this court inquired whether the order dismissing Kirk’s petition was a final, appealable judgment, and we asked the parties to file suggestions on that issue. Kirk responded by stating,

Since the dismissal is without prejudice, it is not construed as a final judgment and the action can be refiled in [c]ircuit [c]ourt. [Kirk] agrees the dismissal without prejudice is not a final judgment and agrees the

⁴ All rule references are to the Missouri Supreme Court Rules (2024).

⁵ Section 537.528.2 provides, “If the rights afforded by this section are raised as an affirmative defense and if a court grants a motion to dismiss . . . filed within ninety days of the filing of the moving party’s answer, the court shall award reasonable attorney fees and costs incurred by the moving party in defending the action.”

⁶ The motion court dismissed Kirk’s petition without specifying whether the dismissal was with or without prejudice. “Because the judgment does not otherwise specify, the dismissal is deemed to be without prejudice.” *Fin. Credit Invs. II, Tr. E v. Est. of Towers*, 718 S.W.3d 92, 97 (Mo. App. W.D. 2025) (citing Rule 67.03).

[a]ppellate [c]ourt should dismiss the appeal without prejudice. Therefore, [Kirk] will refile the petition in circuit court.

Grace Chapel, Blevins, and Greiert acknowledged that the order is not a final judgment “because the [motion] court believed that it did not have the power under [§ 537.528] to enter a final judgment.” But they concluded,

Regardless of the finality of the order, this [c]ourt has jurisdiction over an appeal of this order under § 53[7].528.3, RSMo., which states: “Any party shall have the right to an expedited appeal from a trial court order on the special motions described in subsection 2 of this section or from a trial court’s failure to rule on the motion on an expedited basis.” [Kirk] may forgo his right to an appeal should he choose to do so.

Based on the parties’ suggestions, this court allowed “[t]he case [to] proceed in its normal course at this time.”

Appealable Order

Before addressing the merits of Kirk’s appeal, we must *sua sponte* determine whether the motion court’s order dismissing his defamation claims is an appealable order and, consequently, whether we have jurisdiction over this appeal. *Cedar Green Land Acquisition, L.L.C. v. Baker*, 212 S.W.3d 225, 226 (Mo. App. S.D. 2007). “The right to appeal in Missouri is purely statutory, and generally a final judgment is a prerequisite to appellate review.”⁷ *Id.*

⁷ Section 512.020 states, in relevant part,

Any party to a suit aggrieved by any judgment of any trial court in any civil cause from which an appeal is not prohibited by the constitution, nor clearly limited in special statutory proceedings, may take his or her appeal to a court having appellate jurisdiction from any:

- (1) Order granting a new trial;

It is fundamental that the right of appeal exists only as provided by statute; and while appeals are favored, and statutes granting the right of appeal are to be liberally construed, there is no room for indulging liberality unless there is some reasonable statutory basis for the exercise of the right which is being claimed in the particular case.

Sullivan v. Sparks, 318 S.W.2d 203, 205 (Mo. App. 1958) (quoting *Samuel C. Stout Co., Inc. v. Inter-City Mfg. Co., Inc.*, 251 S.W.2d 978, 979 (Mo. App. 1952)).

Grace Chapel, Blevins, and Greiert contend that § 537.528.3 authorizes an interlocutory appeal from an order granting a motion to dismiss under that statute.⁸ The Southern District of this court addressed a very similar issue in *Cedar Green*. There, the court noted that “[i]n enacting [§ 537.528], the Missouri legislature has ‘recognized the importance of expedited judicial consideration and prevention of unnecessary litigation expenses for actions seeking money damages from a person for conduct or speech undertaken or made in connection with a public hearing or public meeting[.]’” *Cedar Green*, 212 S.W.3d at 227 (quoting *State ex rel. Diehl v. Kintz*, 162 S.W.3d 152, 157 (Mo. App. E.D. 2005) (internal quotations omitted)). However, the Southern District

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- (2) Order refusing to revoke, modify, or change an interlocutory order appointing a receiver or receivers, or dissolving an injunction;
 - (3) Order granting or denying class action certification provided that:
 - (a) The court of appeals, in its discretion, permits such an appeal; and
 - (b) An appeal of such an order shall not stay proceedings in the court unless the judge or the court of appeals so orders;
 - (4) Interlocutory judgments in actions of partition which determine the rights of the parties; or
 - (5) Final judgment in the case or from any special order after final judgment in the cause.

⁸ Subsection 3 of § 537.528 states, “Any party shall have the right to an expedited appeal from a trial court order on the special motions described in subsection 2 of this section or from a trial court’s failure to rule on the motion on an expedited basis.”

concluded that § 537.528.3 “does not afford a party the right to an interlocutory appeal, but rather . . . requires [only] that when an appeal is filed it is handled in an expedited manner by the appellate court.” *Id.* Noting that the legislature used the term “expedited” instead of “interlocutory” in subsection 3 of the anti-SLAPP statute, the Southern District stated, “we believe [the legislature] intended the term ‘expedited appeal’ in § 537.528(3) to . . . refer to the appeal being done quickly, as opposed to authorizing an interlocutory appeal.” *Id.* at 228.

While we agree with the Southern District that subsection 3 of § 537.528 supports the conclusion that § 537.528 mandates the expedited handling of an appeal rather than authorizing an interlocutory appeal, we find the final sentence in § 537.528.1 instructive on the issue of whether the anti-SLAPP statute grants the right of interlocutory appeal. That sentence states, “Upon the filing of any special motion described in this subsection, all discovery shall be suspended pending a decision on the motion by the court *and the exhaustion of all appeals regarding the special motion.*” (Emphasis added.) The highlighted language appears to anticipate an interlocutory appeal because, if an appeal cannot be taken from the denial of a motion or from the granting of a motion without prejudice, the language regarding appeals of special motions would be excess verbiage.

“The primary rule of statutory construction is to determine the intent of the [drafters] from the language used by considering the plain and ordinary meaning of the words used in the statute.” *Lasley v. St. Louis Cnty.*, 711 S.W.3d 492, 496 (Mo. App. E.D. 2025) (quoting *Dubinsky v. St. Louis Blues Hockey Club*, 229 S.W.3d 126, 130 (Mo. App. E.D. 2007)). We presume “the [drafters] intended that every word, clause,

sentence, and provision of a statute have effect and [should] be given meaning.” *Id.*

(quoting *Boles v. City of St. Louis*, 690 S.W.3d 592, 600 (Mo. App. E.D. 2024)).

“Equally, we presume the drafters did not include excess verbiage in a statute.” *Id.*

In addition, the purpose of the anti-SLAPP statute favors construing the last sentence of § 537.528.1 to grant the right of interlocutory appeal. Anti-SLAPP statutes have been enacted in thirty-two states and the District of Columbia to provide for quick resolution of causes of action, based on certain conduct, when the cause of action might interfere with a defendant’s First Amendment right to free speech. Nicole J. Ligon, *Solving SLAPP Slop*, 57 U. Rich. L. Rev. 459, 467-68 (2023). Some anti-SLAPP statutes also allow for the recovery of attorneys’ fees and costs incurred by the defendant if his motion to dismiss, motion for judgment on the pleadings, or motion for summary judgment is granted. *Id.* at 469. By giving defendants a procedure to quickly resolve allegedly non-meritorious claims, anti-SLAPP statutes attempt to ensure that time-consuming and expensive litigation does not burden a defendant’s First Amendment rights. By granting the right to an interlocutory appeal, § 537.528.1 gives a defendant the ability to fully litigate his claim that a lawsuit is non-meritorious on an expedited basis and thereby limit any unreasonable burden on his First Amendment rights. Otherwise, a defendant might have to bear the effect on his First Amendment rights of an erroneous

ruling by a trial court for an extended period of time until the matter could be resolved on appeal.⁹

In *Cedar Green*, the Southern District of this court refused to interpret the last sentence of subsection 1 to grant a right of interlocutory appeal, reasoning that, when the legislature granted the right to an interlocutory appeal in other statutes, it did so specifically and with clarity. *Cedar Green*, 212 S.W.3d at 228. We disagree with the Southern District’s conclusion.¹⁰ While other statutes granting a right to an interlocutory appeal do so more clearly, we have found no case that requires the grant of the right to an interlocutory appeal to be expressly provided. Here, we are faced with competing rules of statutory construction. But, in view of the language of § 537.528.1, the purpose of Missouri’s anti-SLAPP statute, and the liberal construction afforded statutes granting rights of appeal, we find a “reasonable statutory basis” to conclude that § 537.528.1 affords the right of interlocutory appeal. *Sullivan*, 318 S.W.2d at 205 (quoting *Samuel C. Stout*, 251 S.W.2d at 979).¹¹ Having determined that the dismissal of Kirk’s petition

⁹ While arguably the same rationale does not apply to the grant of a special motion as to its denial, the legislature chose not to distinguish between appeals from the grant or denial of such a motion.

¹⁰ Because the opinion declines to follow the Southern District’s opinion in *Cedar Green Land Acquisition, L.L.C. v. Baker*, 212 S.W.3d 225 (Mo. App. S.D. 2007), the opinion has been reviewed and approved by order of the Court en banc. See S.Ct. Operating Rule 22.01; Western District Special Rule 31.

¹¹ Were it not for § 537.528, the order dismissing Kirk’s claim without prejudice would not be appealable because, “[g]enerally, a dismissal without prejudice is not a final, appealable judgment.” *Pride v. Boone Cnty. Prosecutor’s Off.*, 711 S.W.3d 476, 480 (Mo. App. W.D. 2025) (quoting *Pride v. Boone Cnty. Sheriff’s Dep’t*, 667 S.W.3d 210, 211 (Mo. App. W.D. 2023)). An exception to this general rule exists “when the court dismisses the petition without prejudice for failure to state a claim and the plaintiff elects to stand on h[is] petition rather than pleading additional facts[.]” *Id.* (quoting

without prejudice under § 537.528 is an appealable order and, thus, we have jurisdiction to hear the appeal, we consider its merits.

Analysis

Kirk raises two points on appeal. First, he argues that the motion court erred by dismissing his claims after improperly considering materials outside his petition. Second, he asserts that the court erred by ordering him to pay \$15,000 in attorneys' fees under § 537.528, because his petition makes a claim for the common-law tort of defamation, which is excepted from the anti-SLAPP statute. We address each point in turn.

I. Kirk failed to show that the motion court erred in dismissing his defamation claims.

In his first point, Kirk claims the motion court erred in granting defendants' motion to dismiss due to improper consideration of materials outside his petition. Kirk's first point states,

The trial court erred in dismissing the case because the court failed to consider the actual allegations of defamatory remarks contained in the Petition and merely dismissed the Petition considering only that additional documents were attached to the response to Defendant[s'] motion to dismiss which were not contained in the Petition.

Pride, 667 S.W.3d at 211). Under those circumstances, “the judgment of dismissal constitutes an appealable adjudication on the merits.” *Id.* (quoting *Pride*, 667 S.W.3d at 211). Here, Kirk has expressed his intention to refile his petition. Defendants' motion to dismiss alleged that Kirk's petition did not adequately allege all of the elements of a defamation cause of action. We cannot say that, in an amended petition, Kirk could not plead a cause of action for defamation. Therefore, the exception does not apply, and, under the general rules, the order dismissing Kirk's claim without prejudice would not be an appealable judgment.

This point, which focuses solely on the court’s alleged consideration of extraneous materials, fails because, in its order granting the motion to dismiss, the circuit court clearly stated that it “excluded and thus did not consider any matter not contained within [Kirk’s] petition.” And we are “obliged to determine only those questions stated in the point[] relied on.” *Moyers v. Lindenbusch*, 530 S.W.3d 646, 652 n.7 (Mo. App. W.D. 2017) (quoting *Lusher v. Gerald Harris Constr., Inc.*, 993 S.W.2d 537, 544 (Mo. App. W.D. 1999)).

In the argument in support of Point I, Kirk goes beyond the issue identified in the point relied on and argues that “the allegations contained in the [p]etition itself are sufficient to overcome the motion to dismiss.” “Issues raised only in the argument portion of the brief are not presented for review.” *Id.* Even if we were to reach the issue raised in the argument in support of Point I, Kirk fails to carry his burden.

The sole cause of action asserted in Kirk’s petition is defamation against Grace Chapel, Blevins, and Greiert. Missouri’s anti-SLAPP statute does not curtail or prohibit “the exercise of a right or remedy of a party granted pursuant to another constitutional, statutory, common law or administrative provision, including civil actions for defamation.” § 537.528.5. “Therefore, the statute does not provide any special defenses or immunities; instead, it recognizes that . . . such suits [may be] intended to prevent participation in governmental matters and accelerates the consideration of motions to dispose of such obstructive efforts.” *Jiang v. Porter*, No. 4:15-CV-1008, 2015 WL 9459943, *2 (E.D. Mo. Dec. 28, 2015) (quoting *Hallmark Cards, Inc. v. Monitor Clipper Partners, LLC*, No. 08-840-CV-W-ODS, 2010 WL 4853848, at *1 (W.D. Mo. Nov. 22,

2010)). “The statute, thus, is a procedural statute with remedial provisions,” *id.*, consisting of an expedited procedure for raising certain dispositive motions and the award of reasonable attorneys’ fees and costs in certain circumstances.

Accordingly, when appealing a successful § 537.528 motion to dismiss, the non-moving party must show that the petition states a non-meritless claim for defamation. To state a claim for defamation, a plaintiff must allege “1) publication, 2) of a defamatory statement, 3) that identifies the plaintiff, 4) that is false, 5) that is published with the requisite degree of fault, and 6) damages the plaintiff’s reputation.” *Nigro v. St. Joseph Med. Ctr.*, 371 S.W.3d 808, 818 (Mo. App. W.D. 2012) (quoting *Overcast v. Billings Mut. Ins. Co.*, 11 S.W.3d 62, 70 (Mo. banc 2000)).

Kirk’s argument in support of his first point fails to explain how his petition adequately pleads each of the required elements. Kirk’s appellate brief merely states that his “pleadings are more than sufficient to survive a motion to dismiss for failure to state a claim.” Clearly, the motion court disagreed, and the onus is on Kirk to explain why the court is incorrect.

Point I is denied.

II. Kirk failed to show that the motion court erred in awarding attorneys’ fees because the common-law tort of defamation is not excluded from the application of the anti-SLAPP statute.

For his second point, Kirk challenges the motion court’s award of \$15,000 in attorneys’ fees under § 537.528.2, alleging the anti-SLAPP statute does not apply to the

common-law tort of defamation.¹² But his point relied on and argument misconstrues the anti-SLAPP statute.

It is true that Kirk's underlying claim is one for common-law defamation and the motion court awarded attorneys' fees under § 537.528 following the court's conclusion that the allegedly defamatory statements outlined in the petition fell within the scope of the anti-SLAPP statute and, thus, were subject to dismissal. Kirk's second point is based on the erroneous premise that subsection 5 of the anti-SLAPP statute creates an exception to the application of the anti-SLAPP statute to certain causes of action, including common-law defamation.¹³ As noted *supra*, anti-SLAPP statutes, such as § 537.528, provide a *procedure* for quickly resolving, through certain dispositive motions,¹⁴ causes of action that might interfere with a citizen's First Amendment right to free speech. The statute also provides for the recovery of attorneys' fees and costs incurred by the defendant in certain circumstances. But, the anti-SLAPP statute does not change the standard for granting any of the dispositive motions listed. Rather, it only provides defendants with a procedure to quickly resolve *non-meritorious* claims.

¹² Kirk's second point states, "The trial court err[ed] in assessing \$15,000 in damages for attorney's fees because this matter is one of common law tort that does not require assessment of attorney's fees and not pursuant to the anti-SLAPP [act]."

¹³ Section 537.528.5 provides,

Nothing in this section limits or prohibits the exercise of a right or remedy of a party granted pursuant to another constitutional, statutory, common law or administrative provision, including civil actions for defamation.

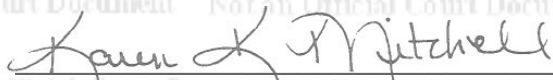
¹⁴ Section 537.528 limits a special motion to a motion to dismiss, motion for judgment on the pleadings, or motion for summary judgment.

Subsection 5 of § 537.528 makes clear that the anti-SLAPP statute does not alter substantive rights. A plaintiff may still pursue a cause of action granted by the constitution, statute, common law, or administrative provision, “including civil actions for defamation.” But, if the conduct that gives rise to the cause of action was “undertaken . . . in connection with a . . . public meeting . . . before a . . . decision-making body of . . . any political subdivision of the state,” the defendant may make “a special motion to dismiss . . . that shall be considered by the court on a priority or expedited basis to ensure the early consideration of the issues raised by the motion and to prevent the unnecessary expense of litigation.” § 537.528.1. Thus, the anti-SLAPP statute does not deprive a plaintiff of the right to bring certain causes of action; it merely provides the defendant with an expedited procedure for testing the claims made and a remedy if the cause of action does not survive the dispositive motion. Kirk’s petition did not survive the dispositive motion, thus the court awarded attorneys’ fees, and Kirk offers no other basis for challenging the award.

Point II is denied.

Conclusion

For the foregoing reasons, the judgment of the motion court is affirmed.



Karen King Mitchell, Presiding Judge

Lisa White Hardwick, Judge, and Janet Sutton, Judge, concur.