

IN THE SUPREME COURT OF THE STATE OF IDAHO
Docket No. 52072

ERIC POSEY,	)	
	)	
Plaintiff-Respondent,	)	Lewiston, April 2026 Term
	)	
v.	)	Opinion Filed: September 22, 2026
	)	
SUMMER BUSHNELL,	)	Melanie Gagnepain, Clerk
	)	
Defendant-Appellant,	)	
	)	

Appeal from the District Court of the First Judicial District of the State of Idaho, Kootenai County. Ross Pittman, District Judge.

The judgment of the district court is affirmed.

Summer Bushnell, Pro Se, for Appellant. Summer Bushnell argued.

Stoel Rives LLP, Boise, for Respondent. Wendy J. Olson argued.

BEVAN, Chief Justice.

This appeal arises from a jury verdict and district court judgment in a defamation case. In June 2022, Posey performed on stage at a drag show in Coeur d’Alene City Park. The performance was attended by members of the public, including children. Bushnell did not attend the live show, though she later obtained a video recording of Posey’s performance. On social media, Bushnell posted a video of herself describing what she saw in the video, claiming that Posey had “flashed his genitalia” during the performance, and asking why Posey had not been arrested. Bushnell then uploaded an edited version of Posey’s performance to social media, blurring out the area around his crotch and claiming that the blurred area covered Posey’s “fully exposed genitals.” Posey sued Bushnell for defamation, alleging that Bushnell had lied about his performance for the sake of gaining attention on social media. The case went to trial and the jury found in favor of Posey, awarding him \$926,000 in compensatory damages and \$250,000 in punitive damages.

Bushnell appeals the district court’s judgment giving effect to the jury’s verdict. She alleges that the district court committed ten errors: (1) not requiring proof of loss or evidence of damages before allowing the jury to consider punitive damages; (2) failing to provide an expanded

jury instruction on punitive damages; (3) ignoring her second amended requested jury instructions and verdict form; (4) providing the jury with the verdict form that contained errors; (5) allowing the jury to consider damages after Posey admitted that Bushnell was not the cause of his job loss; (6) misapplying Idaho Code section 16-1604,¹ regarding punitive damages; (7) failing to provide adequate jury guidance on the damages awarded; (8) failing to properly apply Idaho Rule of Civil Procedure Rule 47(f); (9) inconsistently applying the law because a judge previously assigned to the case deemed her to be a “media defendant” and another judge later assigned to the case did not; and (10) holding that Posey was not a limited-purpose public figure. Posey defends the district court’s judgment and argues that the jury’s verdict should be affirmed, and the appeal dismissed. For the reasons set forth below, we affirm the judgment against Bushnell.

We also take this opportunity to address the risks associated with reliance on generative artificial intelligence and to make clear that such reliance is fraught with potential peril. As explained below, the use of artificial intelligence does not excuse inaccuracies in briefing, whether it be used by attorneys or self-represented litigants.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

In June 2022, the North Idaho Pride Alliance (“NIPA”) hosted its sixth annual Pride in the Park event at Coeur d’Alene City Park. A local man, Eric Posey, applied to perform in a drag show that was a part of the event. Posey had not performed in drag for several years, but some of his friends on the board of NIPA told him about the opportunity, and it interested him. Posey’s application was accepted, and he went on to perform three times at Pride in the Park. These performances lasted around three to five minutes each and took place on a stage in front of a crowd comprised of children and other members of the public. One of those observers, a man named Jeremy Lokken, recorded one of Posey’s performances and sent the video recording to Summer Bushnell, a local internet blogger.

Bushnell took great exception to Posey’s performance. After reviewing Lokken’s recording, Bushnell posted a video of herself on Facebook. In her video, Bushnell asked: “why did nobody arrest the man in a dress who flashed his genitalia to minors and people in the crowd[?]”

¹ Idaho Code section 16-1604 describes retained jurisdiction under Idaho’s Child Protective Act. Idaho Code section 6-1604 provides limitations on punitive damages. Bushnell’s briefing repeatedly cites 16-1604 while discussing punitive damages. Our analysis assumes her citations were erroneous and analyzes her argument according to 6-1604.

She then posted an edited version of Posey's performance on social media, blurring out Posey's crotch. Bushnell's posts informed the public that the blurred area covered "fully exposed genitals," and that she could see Posey's "berries and partial twig" in the unedited version. She also spliced in a scene of children from a different performance reacting to something off camera, implying that the children were reacting to Posey's alleged exposure. She would later admit that the most she could see was the "faint outline of a testicle" in the unedited version of the video, and that she knew that it was false to say that she could see Posey's penis at the time she made her comments. Nevertheless, Bushnell still publicly called for the police to investigate Posey's performance, claiming that Posey had violated the law and should be arrested.

Bushnell's public statements subjected Posey to public backlash. The police department began an investigation into Posey's performance based on Bushnell's claims that Posey had exposed himself to children in public. This investigation was eventually closed for a lack of evidence. Posey was also harassed at Walmart, where he worked, and repeatedly called racial slurs. Customers even told Posey to run away and to go into hiding.

These experiences caused Posey significant mental anguish. He felt that he had to hide his movements from the public, and he decided to seek out crisis counseling to address his deteriorating mental health. Posey even changed his residence in response to the public backlash. He was also afraid that he might be arrested for his performance, at least until the police department dropped its investigation because of the lack of evidence of wrongdoing.

Posey further claimed that Bushnell's allegations cost him his employment with Walmart. After Bushnell posted her video to social media, Posey had a very negative experience with a customer. The customer had asked Posey for change and then called him a racial slur when he took too long. In Posey's words, he "cracked" when he heard the insult, and he wrote the racial slur down on the customer's change before giving it to the customer. Walmart then fired Posey, something he attributed to Bushnell's statements because he was "fine before all of this."

B. Procedural Background

Posey filed a complaint on September 26, 2022, alleging that Bushnell had defamed him directly and by implication. After about a year of discovery, Posey and Bushnell² brought cross motions for summary judgment. Then, a few months later, Posey moved for leave to amend his

² Bushnell was represented by an attorney in the proceedings below. She represents herself in this appeal.

complaint to add punitive damages. The district court denied the parties' cross motions for summary judgment in late December 2023. As part of its order denying the parties' cross motions for summary judgment, the district court determined that Posey was not a "public figure" or a "limited-purpose public figure." However, the district court did permit Posey to amend his complaint and seek punitive damages, which he did.

On May 13, 2024, both Posey and Bushnell submitted proposed jury instructions to the district court. Bushnell argued—for the first time—that she was a media defendant; thus, her statements were deserving of heightened First Amendment protection. She also reasserted that Posey was a limited-purpose public figure, which would have increased Posey's burden of proof at trial. Then, on May 19, Bushnell submitted her first set of amended jury instructions. By this time, a new district court judge had been assigned to the case. That judge determined that Bushnell was a media defendant, and that Posey therefore had to prove that Bushnell's statements were false in order to prevail. However, the new judge rejected Bushnell's argument that Posey was a limited-purpose public figure, noting that a judge previously assigned to the case had already determined that Posey was not a limited-purpose public figure, and that he would not "disturb" that ruling.

Jury selection began on May 20, 2024. During voir dire, the district court asked the potential jurors if any of them held "a religious or moral position that would make it impossible to render judgment" The court asked this question because it could "see there's a religious position in this specific case [that] may preclude [potential jurors] from making a decision." The district court then asked if the potential jurors would be "willing to set aside this religious position and render a fair and impartial verdict" Bushnell did not object when the district court asked these questions, nor did she object when jurors were excused for cause on this basis. Ultimately, five prospective jurors were excused because they held moral or religious views that they felt could not allow them to render judgment or be impartial. The jury was empaneled early in the afternoon on May 20, and the jury trial began.

A few days later, on May 22, Bushnell submitted a second set of amended jury instructions. This second set of amended jury instructions was identical to Bushnell's first set of amended jury instructions, except that she had also included two new jury instructions that identified truth as a defense to defamation. On May 23, after Bushnell had rested her case, the district court began conferencing with the parties to finalize the jury instructions and verdict form. The next day, the district court, with input from the parties, finalized the jury instructions and a verdict form.

Bushnell’s counsel did not object to the final jury instructions or verdict form. Once the parties finished presenting their closing arguments, the case was submitted to the jury.

The jury returned a verdict in favor of Posey. The jury found that Bushnell had defamed Posey and defamed him by implication. The jury awarded Posey \$326,000 in damages for the defamation claim and \$600,000 for the defamation by implication claim. The jury also found that Bushnell knew that her statements were false, or had acted with reckless disregard for the truth, and that she had acted oppressively, fraudulently, maliciously, or outrageously by making those statements. Pursuant to this finding, the jury awarded Posey \$250,000 in punitive damages. The district court then entered a judgment giving effect to the verdict. Bushnell timely appealed from that judgment.

II. ISSUES ON APPEAL

1. Whether Bushnell’s appeal should be dismissed for her failure to comply with appellate standards.
2. Whether the district court erred by holding that Posey was not a limited-purpose public figure.

III. STANDARD OF REVIEW

“Determining whether an individual is a public figure or official presents a question of law.” *Verity v. USA Today*, 164 Idaho 832, 842, 436 P.3d 653, 663 (2019) (citation omitted). “This Court applies a de novo standard of review to questions of law.” *Yellowstone Log Homes, LLC v. City of Rigby*, 173 Idaho 288, 293, 540 P.3d 990, 995 (2023) (quoting *Ware v. City of Kendrick*, 168 Idaho 795, 798, 487 P.3d 730, 733 (2021)).

IV. ANALYSIS

A. **We decline to address nine of Bushnell’s issues on appeal because Bushnell’s briefing does not comply with our appellate standards.**

Generally speaking, aggrieved parties have a right to appeal those judgments and orders made appealable by the Idaho Appellate Rules. *See, e.g.*, I.A.R. 11 (identifying appealable judgments and orders); I.A.R. 4 (outlining who may appeal). However, the right to appeal does not entitle a litigant to prosecute an appeal in whatever manner the litigant chooses. Idaho Appellate Rule 4 clarifies that an aggrieved party may appeal an appealable judgment or order only in accordance with Idaho’s appellate rules. *See* I.A.R. 4. Those rules, together with this Court’s precedent, establish the standards governing appellate advocacy before this Court, and those standards apply equally to represented and self-represented litigants. *See Suitts v. Nix*, 141

Idaho 706, 709, 117 P.3d 120, 123 (2005) (“Pro se litigants are held to the same standards and rules as those represented by an attorney.” (quoting *Twin Falls County v. Coates*, 139 Idaho 442, 445, 80 P.3d 1043, 1046 (2003))). When a party’s arguments fail to comply with the requirements of the Idaho Appellate Rules or this Court’s precedent, we will often refuse to consider those arguments. *See Bach v. Bagley*, 148 Idaho 784, 790–91, 229 P.3d 1146, 1152–53 (2010). In more egregious cases, we may exercise our discretion to impose sanctions for violations of the appellate rules or other misconduct in the appellate process. *See* I.A.R. 11.2(a).

In this case, Posey requests that we dismiss Bushnell’s appeal “outright” for failing to sufficiently comply with our appellate standards. He does not seek a monetary sanction in the form of attorney fees. Posey argues that Bushnell failed to support her issues with cogent argument and authority, that she has failed to preserve most of her issues, and that she failed to articulate or apply the correct standard of review.

Generally, this Court will not dismiss an entire appeal because the appellant has failed to argue some of the issues under the correct standard of review. *See Cummings v. Stephens (Cummings II)*, 160 Idaho 847, 853, 380, P.3d 168, 174 (2016) (refusing to consider one issue raised under the wrong standard of review but considering others that were raised under the correct standard of review). And this Court will not necessarily dismiss an entire appeal because some—or even most—of the issues were presented without cogent argument or authority. *See Bach*, 148 Idaho at 790–91, 229 P.3d at 1152–53 (addressing some arguments on appeal that were “marginally raised” but refusing to consider others that were “lacking in coherence, citations to the record, citations of applicable authority, or comprehensible argument”). Nor will this Court dismiss an entire appeal simply because some issues were unpreserved. *See State v. Bodenbach*, 165 Idaho 577, 583–84, 448 P.3d 1005, 1011–12 (2019) (addressing one issue that was preserved while dismissing other issues that were not). Applying this standard in this case, we agree with Posey that Bushnell’s briefing fails to comply with appellate standards to such a degree that we will not address nine of the alleged errors she claims on appeal. However, we decline to dismiss the appeal outright.

1. Our appellate standards require adequate argument and authority.

One foundational appellate standard is the requirement to present one’s position with adequate argument and authority. This Court will not consider an issue that is not “supported by argument and authority in the opening brief.” *Bach*, 148 Idaho at 790, 229 P.3d at 1152 (quoting

Jorgensen v. Coppedge, 145 Idaho 524, 528, 181 P.3d 450, 454 (2008); remaining citation omitted); *see also* I.A.R. 35(a)(6), (b)(6) (stating that the parties should present argument with “citations to the authorities . . . relied upon”). “Regardless of whether an issue is explicitly set forth in the party’s brief as one of the issues on appeal, if the issue is only mentioned in passing and not supported by any cogent argument or authority, it cannot be considered by this Court.” *Bach*, 148 Idaho at 790, 229 P.3d at 1152 (citation omitted). “A party waives an issue cited on appeal if *either* authority or argument is lacking, not just if both are lacking.” *AgStar Fin. Servs., ACA v. Nw. Sand & Gravel, Inc.*, 161 Idaho 801, 816, 391 P.3d 1271, 1286 (2017) (emphasis added) (quoting *Gem State Ins. Co. v. Hutchinson*, 145 Idaho 10, 16, 175 P.3d 172, 178 (2007); and then citing I.A.R. 35(a)(6)).

Our review of Bushnell’s briefing reveals that most of the issues raised on appeal are unsupported by cogent argument or authority. Although Bushnell cites numerous authorities in support of her arguments, many do not support her arguments because they are fabricated or inaccurate quotations. In fact, of the twenty-two purported quotations Bushnell attributes to caselaw, statutes, court rules, pattern jury instructions, and the Idaho Constitution, only six are accurate quotations with some minor spelling errors. Bushnell’s briefing also misrepresents caselaw, statutory law, court rules, and pattern jury instructions. For example, Bushnell cites “*Jones v. Lynn*, 155 Idaho 439, 445 (2013),” (italics in original), as holding that errors occurring during voir dire require reversal, even absent a contemporaneous objection, when those errors undermine the fairness of jury selection. No such decision exists. The only *Jones v. Lynn* decision in Idaho is from 2021 and concerns an appeal from a grant of summary judgment. 169 Idaho 545, 549–50, 498 P.3d 1174, 1178–79 (2021). The decision does not discuss jury selection. *Id.* Bushnell also cites two nonexistent cases: *McAdam v. McAdam* and *Dairyland Insurance Co. v. Hawkins*. Neither reference included the reporter citation for the case, and we were unable to identify any relevant caselaw in Idaho with those names.³

Fake quotations, errant citations, and non-existent cases do not constitute adequate authority. Neither do citations that materially misstate or misrepresent the authorities on which

³ Bushnell claims that she inadvertently failed to identify *McAdam* as a North Dakota case. The record does not support that explanation. Bushnell cited *McAdam* for the proposition that legally inaccurate jury instructions require reversal. The closest North Dakota case we identified is *McAdams v. McAdams*, 530 N.W.2d 647, 650 (N.D. 1995), which involved a child custody case that did not address juries or jury instructions.

they purport to rely. Indeed, fabricated authority is more troubling than the absence of authority because it introduces false information into the judicial process. Appellate advocacy depends on the accurate and candid presentation of legal authority. Fabricated authority hinders this Court's consideration of the issues presented, requires this Court to expend resources identifying and correcting false representations, and undermines the integrity of the appellate process.

Many of Bushnell's arguments on appeal depend on fabricated or misrepresented authority. Once that authority is set aside, those arguments are left without the cogent legal support necessary for appellate review. For example, Bushnell has failed to provide adequate authority supporting her contention that compensatory damages must be shown before punitive damages may be awarded. She has also failed to provide sound authority demonstrating that Idaho Rule of Civil Procedure 51(e) requires reversal if a district court did not rule on a requested instruction. And she has provided no authority to show that the district court must find clear and convincing evidence supporting an award of punitive damages before allowing the jury to consider such an award. Therefore, we decline to consider these arguments, which comprise parts of the first, third, and fifth issues that Bushnell has raised on appeal.

Bushnell has also failed to support a significant number of her issues with cogent argument. Many of her issues are presented in passing with very little explanation. Others are so amorphous that it is almost impossible to determine what she is arguing. For example, Bushnell asserts that the district court erred by not accepting her proposed "verdict form modifications," but she has made no attempt to identify those supposed modifications, nor has she identified the specific language those modifications were meant to replace. She only states that these modifications were necessary "to avoid language implying Defendant's guilt or predetermining liability." These vague and conclusory arguments appear to invite this Court to search the record on Bushnell's behalf to make her arguments for her. But "it is not the role of this Court to search the record on appeal for citation or argument. Indeed, judges are not like pigs, hunting for truffles buried in briefs." *Dickenson v. Benewah Cnty. Sheriff*, 172 Idaho 144, 150, 530 P.3d 691, 697 (2023) (citation modified). For that reason, we decline to consider several of Bushnell's deficient arguments, including: whether the district court erred in how it instructed the jury on defamation by implication; whether the district court erred by not accepting Bushnell's proposed verdict form modifications; whether the district court erred by failing to include limiting principles from section 6-1604; whether the district court erred by "allowing damages to be considered" in light of Posey's

employment testimony; and whether the district court erred by failing to reduce the punitive damages amount due to constitutional limitations on punitive damages. This disposes of parts of the second, third, and sixth issues that Bushnell raised on appeal, as well as the entire fifth error alleged.

Finally, several of Bushnell's arguments rely on imagined or misrepresented facts from the record. For example, Bushnell claims that the district court erred by failing to adopt her proposed punitive damages instruction based on Idaho Civil Jury Instruction 9.20. But the record clearly demonstrates that the district court adopted Bushnell's requested instructions based on 9.20. An appellate argument is only as sound as the record on which it rests. When a party misrepresents the record, the resulting argument cannot establish reversible error because it attributes actions to the district court that it never took.

Here, the district court did not fail to adopt Bushnell's requested 9.20 instructions, her "truth as a complete defense" to defamation instruction, or a media defendant instruction. Nor did the district court fail to adopt a requested actual malice instruction. Bushnell never requested such an instruction. Moreover, the district court never provided a verdict form to the jury asking the jury to award damages before determining liability. Nor did it err in failing to apply any statutory limitation on the punitive damages award because the jury's award did not exceed the statutory cap. *See* I.C. § 6-1604(4) (limiting punitive damages to the greater of \$250,000 or three times the compensatory damages). Likewise, the district court did not apply the law inconsistently because, contrary to Bushnell's assertion, no judge ever determined that she was not a media defendant. These assertions comprise part of the fourth and seventh issues on appeal. They also constitute the remaining arguments in the second, third, and sixth errors alleged—as well as the entirety of the ninth issue on appeal. These arguments rest on demonstrably inaccurate descriptions of the record and therefore do not constitute the cogent appellate advocacy required before this Court.

Accordingly, we decline to consider Bushnell's first, second, third, fifth, sixth, and ninth issues on appeal because she has failed to present these issues with adequate argument and authority. We also decline to consider some of the arguments raised in the fourth and seventh issues for the same reason.

2. Our appellate standards require issues to be preserved.

Another foundational standard in appellate review is the doctrine of preservation. "Appellate court review is limited to the evidence, theories and arguments that were presented

below.” *Nelson v. Nelson*, 144 Idaho 710, 714, 170 P.3d 375, 379 (2007) (quoting *Obenchain v. McAlvain Constr., Inc.*, 143 Idaho 56, 57, 137 P.3d 443, 444 (2006)). “[A] party preserves an issue for appeal by properly presenting the issue with argument and authority to the trial court below . . . or a party preserves an issue for appeal if the trial court issues an adverse ruling.” *State v. Miramontes*, 170 Idaho 920, 924–25, 517 P.3d 849, 853–54 (2022) (emphasis omitted). This is so because trial courts are usually “in the best position to determine the relevant facts and adjudicate the dispute.” *Id.* at 925, 517 P.3d at 854 (quoting *Puckett v. United States*, 556 U.S. 129, 134 (2009)). And also so that “the trial court may have an opportunity to prevent or if possible eradicate such error” *Id.* (quoting *Stewart v. City of Idaho Falls*, 61 Idaho 471, 478–79, 103 P.2d 697, 700 (1940)).

Here, in addition to failing to cite adequate authority and misstating the record, Bushnell has failed to preserve a number of her issues on appeal. Some of those unpreserved issues have already been addressed above, and those issues will not be recounted here. But there are three additional issues that were presented with at least some cogency and supporting authority that were nonetheless unpreserved, namely issue eight and parts of issues four and seven.⁴ First, Bushnell did not preserve her argument that the district court erred by failing to adopt an instruction based on Idaho Civil Jury Instruction 9.20.5 because she never requested this instruction and did not object to its absence in the final jury instructions. *See* I.R.C.P. 51(i)(3) (stating that parties may not “assign as error” the failure to give an instruction unless the party objected to the failure). Second, Bushnell failed to preserve her argument that the district court erred during voir dire by asking prospective jurors whether they held any beliefs that would prevent them from rendering a fair and impartial verdict and by excusing for cause several jurors who indicated that they did. Bushnell did not object when the district court asked this question, nor did she object when the district court excused these jurors for cause. And finally, Bushnell failed to preserve her general objection to the verdict form because she was given an opportunity to object to that form and instead indicated that the form was acceptable. In each of these instances, Bushnell failed to present her argument to the district court and as such, failed to receive an adverse ruling. These arguments

⁴ This is not to say that these arguments would have prevailed but for the preservation problem. Rather, these arguments at least arguably cleared the minimum requirements for appellate filings to be considered by this Court, except for the lack of preservation.

comprise the rest of the fourth and seventh issues and the entirety of the eighth issue on appeal. Therefore, these issues are unpreserved, and this Court will not consider them on appeal.

At bottom, we decline to consider issues one through nine for failing to conform to our minimum appellate standards.

3. *Our appellate standards require parties to apply the correct standard of review.*

Posey cites an Idaho Court of Appeals case, *Somes v. Starnes*, in support of his argument that Bushnell’s appeal should be dismissed “outright” for failing to articulate and apply the correct standard of review. In *Somes*, the Court of Appeals noted that the appellant had failed to “identify the applicable standard of review or apply that standard in his opening brief.” *Somes v. Starnes*, 176 Idaho 368, ___, 576 P.3d 305, 308 (Idaho Ct. App. 2025). The Court of Appeals concluded that the appellant had “waived the issues on appeal” because the “[f]ailure to include the correct standard of review on appeal results in a waiver of claims on appeal.” *Id.* at ___, 576 P.3d at 308–09 (citation omitted). Nevertheless, the Court of Appeals still “review[ed]” the appellant’s “claims on their merits” to show that he had “failed to establish the district court erred.” *Id.* at ___, 576 P.3d at 309.

Here, Bushnell only attempts to identify a standard of review on one issue: whether the district court erred in allowing the jury to consider punitive damages. And the standard of review she identified for that issue is incorrect. Bushnell claimed that the standard of review for that issue was a de novo standard, but the standard of review for that issue is for an abuse of discretion. *Alexander v. Stibal*, 161 Idaho 253, 260, 385 P.3d 431, 438 (2016) (citation omitted).

However, this Court does not “require a formalistic recitation of the standard of review” to reach the merits of an appeal. *State v. Jeske*, 164 Idaho 862, 870, 436 P.3d 683, 691 (2019). “The real concern of this Court is whether an appellant’s arguments are supported with relevant argument and authority.” *Id.* (first citing *Bach v. Bagley*, 148 Idaho 784, 790, 229 P.3d 1146, 1152 (2010); and then citing I.A.R. 35(a)(6)). In order for this Court to disregard an appellant’s argument, the appellant must have ignored the standard of review to such a degree that portions of their appeal must be rejected for lack of adequate argument or authority. *See Cummings v. Stephens (Cummings II)*, 160 Idaho 847, 853, 380, P.3d 168, 174 (2016).

In *Cummings II*, this Court disregarded an appellant’s argument on a particular issue because he failed to “identify the applicable standard of review, much less attempt to apply it.” *Id.* The standard of review for that issue was an abuse of discretion standard, but the appellant had

made “no attempt to address the” factors that this Court considers “when evaluating a claimed abuse of discretion.” *Id.* We concluded our analysis of that issue by stating that the appellant had “failed to advance any meaningful argument that the district court abused its discretion Therefore, his claim that the district court erred fails.” *Id.* However, we still considered another issue he had raised on appeal because he had applied the correct standard of review for that issue. *See id.* at 850–52, 380 P.3d at 171–73.

Our cases declining to consider appellate arguments for failure to articulate the standard of review in briefing have largely involved claims of abuse of discretion. *See, e.g., Stephens v. Buell*, 175 Idaho 574, 598–99, 568 P.3d 471, 495–96 (2025) (appellant’s failure to identify the abuse of discretion standard of review, among other things, was a waiver of that issue on appeal); *Est. of Ekic v. Geico Indem. Co.*, 163 Idaho 895, 899, 422 P.3d 1101, 1105 (2018) (failure to cite the abuse of discretion standard of review and explain how the court violated that standard is “fatally deficient” to the party’s appeal (quoting *State v. Kralovec*, 161 Idaho 569, 575 n.2, 388 P.3d 583, 589 n.2 (2017))); *Bergeman v. Select Portfolio Servicing*, 164 Idaho 498, 502, 432 P.3d 47, 51 (2018) (appellant’s failure to identify the applicable abuse of discretion standard of review rendered his appeal “fatally flawed” as to that issue). A proper articulation of the standard of review in such cases is essential, as the appellant must explain how the trial court abused its discretion under one or more of the four *Lunneborg*⁵ prongs in order to prevail. *See Midtown Ventures, LLC v. Capone*, 173 Idaho 172, 180, 539 P.3d 992, 1000 (2023) (“[T]he failure to articulate the abuse of discretion prong challenged and put forth an argument under that prong is fatal” to an appeal.).

By contrast, the only remaining issue appropriate for consideration in this case, whether the district court erred in determining that Posey was not a limited-purpose public figure, presents a question of law. *See Verity v. USA Today*, 164 Idaho 832, 842, 436 P.3d 653, 663 (2019) (citation omitted). Questions of law are reviewed de novo. *See Yellowstone Log Homes, LLC v. City of Rigby*, 173 Idaho 288, 293, 540 P.3d 990, 995 (2023) (quoting *Ware v. City of Kendrick*, 168 Idaho 795, 798, 487 P.3d 730, 733 (2021)). This Court may review these legal questions even in the

⁵ This Court considers four elements when reviewing a trial court’s decision for an abuse of discretion. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018). “Whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.” *Id.*

absence of an explicit statement of the de novo standard of review, provided the argument that error occurred is otherwise supported by cogent authority. *See Bach*, 148 Idaho at 790, 229 P.3d at 1152. We determine that Bushnell’s remaining issue was sufficiently argued under the correct legal standard. Therefore, we decline to dismiss Bushnell’s appeal “outright” for this reason.

4. Misrepresented facts and authorities can merit sanction.

As discussed above, the errors in Bushnell’s briefing are pervasive and egregious. Even a cursory review of the record and transcript, or verification of the rules and cases cited in her brief, would have readily revealed the errors. Indeed, the nature and extent of the inaccuracies and misrepresentations in Bushnell’s briefing suggest that she may have relied on generative artificial intelligence (“GenAI” or “AI”) in drafting her briefs. It is well-established that such tools often “hallucinate” and generate false legal citations. *See Kruse v. Karlen*, 692 S.W.3d 43, 51–52 (Mo. Ct. App. 2024) (noting that GenAI often hallucinates or provides false authority). Based on the extent and nature of the misrepresentations in Bushnell’s briefing, we conclude that these cited authorities were not subjected to meaningful verification by Bushnell before filing.

As a result of these errors, we ordered Bushnell to submit supplemental briefing to explain why her appeal should not be dismissed as a sanction. *See Grant v. City of Long Beach*, 96 F.4th 1255 (9th Cir. 2024) (dismissing an appeal for similar errors). Bushnell filed a supplemental brief in which she was apologetic and asserted that any inaccuracies were inadvertent. And she repeated these assertions at oral argument. We accept those representations. But Bushnell also maintained that she did not rely on GenAI in preparing her briefing. Review of her briefing and the record raise serious doubt as to that assertion. Regardless, the origin of these deficiencies is less concerning than the burdens they impose on this Court.

All litigants, whether represented by counsel or proceeding pro se, are obligated to ensure the accuracy and validity of the arguments they present to this Court. *See* I.A.R. 11.2. Parties must sign the briefs they submit, thereby certifying that, “to the best of the signer’s knowledge, information, and belief after reasonable inquiry[,]” the filing is “well grounded in fact and is warranted by existing law” *Id.* A failure to satisfy that obligation may warrant sanctions under the rule. *See id.* Thus, this Court possesses ample authority to sanction a litigant for submitting briefing containing the type of pervasive inaccuracies and misrepresentations present here.

We nevertheless decline to award attorney fees sua sponte as a sanction in this case. An award of attorney fees on appeal is discretionary. *See Wilson v. Wilson*, 174 Idaho 979, 993, 560

P.3d 1126, 1140 (2024). Ordinarily, such an award depends on a request from the prevailing party identifying a legal basis for the award. *Contrast York v. Kemper Nw., Inc.*, 177 Idaho 1, ___, 584 P.3d 1, 14 (2026) (declining to award attorney fees where the prevailing party failed to “timely cite to a code section or contract provision that forms the basis of the request for attorney fees”), *with Idaho State Bar v. Smith*, 170 Idaho 534, 556, 513 P.3d 1154, 1176 (2022) (awarding attorney fees sua sponte as a sanction for a frivolous appeal). Posey requested no attorney fees in his briefing or at oral argument. Although that omission does not limit our authority to impose a monetary sanction, we decline to exercise that authority here.

We have dismissed nine of Bushnell’s issues on appeal because of deficiencies in her briefing. Although those dismissals are not sanctions under Idaho Appellate Rule 11.2, they represent substantial consequences flowing directly from Bushnell’s failure to comply with the requirements of appellate briefing. Finally, Bushnell is already subject to a judgment of \$1,176,000, plus post-judgment interest. Under these circumstances, we conclude that an additional monetary sanction is unnecessary. Our decision should not be understood as minimizing the seriousness of Bushnell’s conduct. As noted above, her briefing reflects a pervasive failure to verify the accuracy of the factual and legal representations made to this Court and falls well below the standard of candor and reasonable inquiry required of every litigant who invokes our appellate jurisdiction. Thus, while Bushnell’s conduct could warrant sanctions under Rule 11.2, we exercise our discretion to impose no sanction in this appeal.

B. Any alleged error in the district court’s determination that Posey was not a limited-purpose public figure did not prejudice Bushnell’s substantial rights because the jury was instructed that Bushnell had to act with actual malice to award Posey damages.

We have declined to address virtually every issue raised by Bushnell on appeal except for one: whether the district court erred by ruling as a matter of law in connection with Bushnell’s motion for summary judgment, that Posey was not a limited-purpose public figure. Bushnell contends this ruling lead to a lowering of Posey’s burden of proof and materially altered the jury instructions. We disagree. Even if we were to conclude the district court erred when it ruled that Posey was not a limited-purpose public figure, the district court instructed the jury that, to award punitive damages, it must find Bushnell acted with actual malice. The district court further instructed the jury that actual malice existed if Bushnell “knew the defamatory information was false, or acted with a reckless disregard for its truth” The jury unambiguously found on the special verdict form that Bushnell knew the communicated information was false or that she acted

with reckless disregard for its truth. In other words, even if we assumed the district court's ruling was wrong, any alleged error was harmless because the jury determined by clear and convincing evidence that Bushnell acted with actual malice, which would mean that Posey is entitled to recover compensatory damages.

"To prevail on a defamation claim in Idaho, a plaintiff must prove that the defendant: (1) communicated information concerning the plaintiff to others; (2) the information was defamatory; and (3) the plaintiff was damaged because of the communication." *Verity*, 164 Idaho at 841, 436 P.3d at 662 (citing *Clark v. Spokesman-Review*, 144 Idaho 427, 430, 163 P.3d 216, 219 (2007)). However, a private individual who voluntarily injects himself or herself into a particular public controversy may become a "limited-purpose public figure" and, as a result, must prove actual malice to recover for defamatory statements related to that controversy. *See Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351–52 (1974) (recognizing that a person may become a "public figure for a limited range of issues" by voluntarily injecting himself or herself into a "particular public controversy"). In this context, "actual malice" does not refer to ill will, spite, or hostility toward the plaintiff. Rather, it requires proof that the defendant knew the defamatory statement was false or acted with reckless disregard for whether it was false. *Id.* at 327–28.

Bushnell contends that, because Posey was a limited-purpose public figure, he was required to prove actual malice to prevail on his defamation claim. She provides three pieces of evidence that Posey was a limited-purpose public figure:

1) Posey's conduct at a public park performing in front of many people, including minors, were [sic] at the center of a public controversy that garnered profound media attention, 2) By making public accusations, engaging with multiple community members, and allowing his claims to be discussed in public forums, Posey voluntarily participated in - and helped shape - the public discourse surrounding the events, and 3) Posey's interactions with the press and willingness to make statements for public consumption indicate a purposeful engagement with public attention.

She therefore argues that, because the district court erroneously found that Posey was not a limited-purpose public figure, the jury was improperly instructed and that the error prejudiced her defense. Posey counters that Bushnell has failed to show that he was a limited-purpose public figure. He also asserts that any error by the district court was harmless on this issue.

Even assuming Posey was a limited-purpose public figure and therefore required to prove that Bushnell acted with actual malice, any error was harmless. The district court instructed the jury that it could award punitive damages only if Posey proved that Bushnell acted with actual

malice. Thus, although the actual-malice instruction was given for a different reason, the jury necessarily found that Bushnell acted with actual malice when it awarded punitive damages.

The district court instructed the jury:

In this case the law requires that the plaintiff shall not be entitled to recover punitive damages unless the defendant acted with actual malice in the communication of the defamatory information.

Therefore, you are instructed that in order to recover punitive damages, the plaintiff must prove all of the elements of defamation claimed and must prove by clear and convincing evidence that the defendant communicated the defamatory information with actual malice.

Actual malice exists when the defendant knew the defamatory information was false or acted with reckless disregard for its truth at the time of the communication of the information to another.

Moreover, the jury's special verdict form showed that Posey did, in fact, prove that Bushnell knew the defamatory statements were false or acted with reckless disregard for their truth. Question number three on the jury verdict form asked:

3. Did Plaintiff Eric Posey prove by clear and convincing evidence that Defendant Summer Bushnell knew that the communicated information was false, or acted with reckless disregard for the truth, and in communicating that information acted oppressively, fraudulently, maliciously, or outrageously when she made defamatory comments about him? <u> X </u> Yes. <u> </u> No.
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As shown in the image of the verdict form above, the jury answered “yes” to this question. This means that the jury believed, based on clear and convincing evidence, that Bushnell either “knew that the communicated information was false, or acted with reckless disregard for the truth” Because this is the very definition of actual malice, we conclude that the jury found that Posey had proved that Bushnell acted with “actual malice.” Consequently, Posey would have been able to recover compensatory damages even if the district court had ruled that he was a limited-purpose public figure; thus, any potential error in the district court’s summary judgment ruling is harmless because it did not prejudice Bushnell’s substantial rights. *See* I.R.C.P. 61 (“At

every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.”). Thus, Bushnell's claim of error is without merit.

V. CONCLUSION

As set forth above, we affirm the district court's judgment in full. We also conclude that Posey has prevailed on every issue raised on appeal. Accordingly, he is awarded costs as a matter of course. I.A.R. 40(a).

Justices BRODY, MOELLER, ZAHN, and MONSON, J. Pro Tem, CONCUR.