

FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 5D2024-2368
LT Case No. 16-2020-CA-2410

FORD MOTOR COMPANY,

Appellant,

v.

ROBERT HETSLER, individually and as natural parent of V.H., a
minor child, and S.H., a minor child,

Appellee.

On appeal from the Circuit Court for Duval County.
Waddell Arlie Wallace, III, Judge.

Wendy F. Lumish, of Bowman and Brooke LLP, Miami, and
Jessica L. Ellsworth, of Hogan Lovells US LLP, Washington,
D.C., pro hac vice, for Appellant.

Jason Gonzalez and Robert E. Minchin, III, of Lawson Huck
Gonzalez, PLLC, Tallahassee, and William W. Large, of the
Florida Justice Reform Institute, Tallahassee, Amicus Curiae,
for the Florida Justice Reform Institute, in support of Appellant.

John S. Mills and Jonathan A. Martin, of The Mills Firm, P.A.,
Jacksonville, and Andrew F. Knopf, Brent R. Bigger, and Brian
D. Murry, of Paul Knopf Bigger, Winter Park, for Appellee.

July 31, 2026

ON MOTION FOR WRITTEN OPINION

EISNAUGLE, J.

Appellant, Ford Motor Company (“Ford”), moves for a written opinion, pursuant to Florida Rule of Appellate Procedure 9.330(a)(2)(D)(i), on the ground that a written opinion would provide a legitimate basis for supreme court review. Specifically, Ford asks that we write an opinion limiting the application of the inference adopted in *Cassisi v. Maytag Co.*, 396 So. 2d 1140 (Fla. 1st DCA 1981), which permits a product defect case to go to the jury, in certain circumstances, if the product malfunctioned during normal use.

In the motion, Ford argues that our per curiam affirmance without opinion in this case “means the panel agreed the jury could *infer* from the existence of [a] vehicle fire that Ford was responsible for a product defect causing that incident.” (emphasis supplied by Ford).¹ The motion asserts that we have “reject[ed] each of the guardrails on *Cassisi*’s inference that Ford pressed in this case,” and implies that our affirmance contributes to decisions that have unreasonably “expanded [*Cassisi*] over time[.]” According to Ford, Florida’s appellate courts have “stretch[ed] the doctrine far beyond” what is fair.

¹ We reject Ford’s assertion that our affirmance without opinion could, in any way, expand *Cassisi*. *State v. Swartz*, 734 So. 2d 448, 448 (Fla. 4th DCA 1999) (“As has been stated countless times before, a per curiam affirmance decision without written opinion has no precedential value and should not be relied on for anything other than res judicata.”); *see also Dep’t of Legal Aff. v. Dist. Ct. of Appeal, 5th Dist.*, 434 So. 2d 310, 312 (Fla. 1983).

We deny the motion because Ford's appeal was insufficiently briefed. However, on our own motion,² we withdraw our prior decision, and replace it with the following opinion.³

We will begin with a succinct description of the facts. Then we will describe several ways in which Ford's briefing is generally deficient. Finally, we will address several of Ford's specific arguments on appeal, and explain that we do not reach the substance of these arguments because they are insufficiently briefed. We therefore affirm.

I

This is a heavily litigated manufacturing defect case. Our record on appeal exceeds 40,000 pages.

The evidence at trial showed that Robert Hetsler purchased a used, low-mileage Roush Ford Mustang. The Mustang was modified by Roush (for instance, Roush equipped the vehicle with a supercharger) prior to being sold by a Ford dealer. Shortly after Hetsler purchased the Mustang (he was the vehicle's second individual owner), it exploded during use, and Hetsler suffered catastrophic, permanent injuries.

Hetsler's initial factual theory at trial was that, prior to the explosion, he parked at an abandoned bank and left the Mustang idling while he slept inside the vehicle. Hetsler admitted that he had trouble remembering what happened, and that his recollection of events was aided by hypnosis therapy and a review of receipts from the night in question. While Hetsler's experts could not identify the precise cause of the explosion, they believed the most likely cause was a brake fluid leak that ignited upon contact with the Mustang's hot engine.

² Ford's initial brief also raises a *Binger v. King Pest Control*, 401 So. 2d 1310 (Fla. 1981) issue but Ford did not move for a written opinion on this point, and we affirm on this issue without further discussion.

³ We deny Ford's motion for rehearing by separate order.

The parties proceeded to trial on this factual theory. But at trial, a firefighter on scene—who had not been deposed—surprised the parties, testifying that he thought he recalled Hetsler stating the car exploded while Hetsler was driving. In light of this testimony, Hetsler modified his theory mid-trial and argued to the jury that the explosion more likely occurred while Hetsler was driving because the Mustang’s engine would have been significantly hotter than when merely idling.

Ford, on the other hand, continued to press the original factual theory that Hetsler was parked in the bank parking lot at the time of the explosion. In closing argument, Ford agreed that a car should not spontaneously blow up, but argued that the engine of an idling car could not reach temperatures hot enough to ignite brake fluid. Instead, Ford told the jury that a lit cigarette in Hetsler’s pocket or jacket started a fire in the passenger compartment while he slept.⁴

At the conclusion of Hetsler’s case and again at the close of the evidence, Ford moved for a directed verdict, arguing that Hetsler offered no direct evidence that a defect caused his injuries. Ford also argued that *Cassisi* did not apply. The trial court denied the motion, and the jury returned a verdict for Hetsler.⁵

II

With that factual background, we address some general deficiencies in Ford’s briefing on appeal.

i

Ford’s briefing casts the inference as a narrow common law doctrine that has been unreasonably expanded by courts over time.

⁴ During oral argument, Ford’s counsel conceded that the jury rejected the lit cigarette theory.

⁵ While Ford makes repeated references to the size of the jury verdict in this case, it fails to challenge the amount of the verdict.

Ford posits that *Cassisi*'s reach is a largely open question in our jurisdiction, and essentially invites us to adopt a narrow view of the inference. But Ford does not give us the analytical tools necessary to evaluate its claims.

While Ford's briefing identifies the inference as a creature of the common law, it offers no framework for deciding an open common law question. This is critical because, unlike the interpretation of a legal text, defining the contours of the common law is anything but common for today's positive law courts.

For instance, based on our own research, we know this Court has said, as a potential analogy, that "[i]n evaluating the existence of a common law duty, courts assess the interests of each party and society to determine whether a duty should be imposed." *Shamrock-Shamrock, Inc. v. Remark*, 271 So. 3d 1200, 1204 (Fla. 5th DCA 2019). This view of the common law method has received substantial criticism for appearing to be "[j]udges applying their [own] notions of justice to new conditions[.]" John S. Ewart, *What is the Common Law?*, 4 Colum. L. Rev. 116, 125 (1904).

In contrast, the original view of the common law was that it "was considered to be a kind of customary law—the law of 'custom' and 'long usage.'" John F. Stinneford, *Death, Desuetude, and Original Meaning*, 56 Wm. & Mary L. Rev. 531, 561 (2014). Of course, a hybrid model could be true—the common law might have its origin in customary law, but at some point became, at least in part, "law developed by the judges" as courts began to wrestle with "refined questions to which customary practice provided no answer." Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* 4 (1997).

In any event, we are skeptical that Florida courts possess unbridled policy discretion—even when addressing questions of common law. Our constitutional role is limited, and we are no super legislature. That said, even if we need only balance "the interests of each party and society" as we see fit, the initial brief should generally identify more than one side's interests and then explain how the proposed common law rule balances those interests. Ford's initial brief is conclusory on this point.

In short, Ford has not offered us any standard with which to measure the limits of *Cassisi*'s application in this case. If the proper formula requires consideration of competing interests without a foundation in custom and long usage, Ford has not acknowledged any interests other than its own. And even then, it does so largely in conclusory fashion.

ii

Ford's initial brief also, quite incorrectly, presents the inference as if it were invented by the *Cassisi* court and as though Florida stands alone. Ford cites no decisions from outside of Florida, even though there are a legion of cases—spanning more than fifty years—considering a *Cassisi* style inference in jurisdictions across the country, both before *Cassisi* was decided and after.⁶ To be sure, despite the distinct impression left by Ford's initial brief, *Cassisi* did not invent the inference, nor is Florida the only jurisdiction to apply it.⁷

If we are to decide the limits of an open common law question, we expect a discussion of the rule's development over time, not only in Florida, but in other jurisdictions as well. This is especially so given that some of the issues raised by Ford have not been directly addressed by Florida's courts. While decisions from other jurisdictions are only persuasive authority, the failure to confront the substantial body of common law decisions from other

⁶ In fact, *Cassisi* itself labeled the inference the "Greco rule," in reference to *Greco v. Bucciconi Engineering Co., Inc.*, 283 F. Supp. 978 (W.D. Pa. 1967). This Court has called it the *Greco* inference. See *Torres v. Matsushita Elec. Corp.*, 762 So. 2d 1014, 1016 (Fla. 5th DCA 2000).

⁷ Although not mentioned in Ford's briefing, the inference now appears in the Restatement (Third) of Torts: Prods. Liab. § 3 (1998).

jurisdictions (which often cut against Ford's arguments in this Court) does not advance Ford's cause.

iii

One final observation before we address some of Ford's specific *Cassisi* arguments. In the initial brief, Ford misrepresents the holdings of at least two Florida decisions in ways that are distracting and difficult for us to understand. The most troubling, and inexplicable, of the two is that Ford represents that the per curiam affirmed decision *without opinion* in *Corey v. Sunar Ltd.*, 446 So. 2d 145, 146 (Fla. 3d DCA 1983), somehow demonstrates that the Third District is "divided" on how broadly *Cassisi* should apply.

As best we can tell, Ford improperly draws conclusions about the majority's disposition in *Corey* based solely on Judge Jorgenson's written dissent. Ford apparently believes that the majority must have rejected application of the inference merely because the dissent would have applied the inference and reversed. Ford's initial brief goes so far as to describe *Corey* in a parenthetical as "declining to apply *Cassisi* when product was not self-operating and was not destroyed by malfunction."

But the liberties Ford has taken with its description of *Corey* are entirely unjustified. It is well-established that a per curiam affirmed decision without opinion does not reveal the basis for the disposition. *Newmons v. Lake Worth Drainage Dist. ex rel. Martin*, 87 So. 2d 49, 51 (Fla. 1956) (observing that "there is no limit to the grounds that may prompt a per curiam opinion"); *Dep't of Legal Aff.*, 434 So. 2d at 312 ("The rationale and basis for the decision without opinion is always subject to speculation."); *see also Robinson v. Dep't of HRS ex rel. Robinson*, 473 So. 2d 228, 229 n.1 (Fla. 5th DCA 1985) (recognizing a per curiam affirmance without opinion "is not precedential authority, because the reasons for the affirmance cannot be determined"). And a written dissent is of no binding consequence. *Munnerlyn v. Wingster*, 825 So. 2d 481, 483 (Fla. 5th DCA 2002) (recognizing that "a dissenting opinion possesses no precedential value"). Suffice it to say, we do not know why the majority affirmed in *Corey*, and neither does Ford.

To be clear, we do not suggest that these general deficiencies alone would foreclose our ability to reach the merits in this case. But this level of briefing is not an auspicious start for the party carrying the burden to demonstrate reversible error on appeal. *Bolick v. Sperry*, 82 So. 2d 374, 376 (Fla. 1955) (“Under our system of procedure the burden is always upon the appellant to make reversible error clearly appear.”); *Fla. Virtual Sch. v. Calfee*, 425 So. 3d 78, 83 (Fla. 6th DCA 2025); *Dean v. Marineways, Inc. of Ft. Lauderdale*, 146 So. 2d 577, 577 (Fla. 2d DCA 1962).

III

With Ford already on shaky ground, we turn to some of the specific arguments raised in the initial brief. As we explain, Ford has failed to carry its burden to demonstrate error for numerous reasons. We discuss five examples.

i

First, in about one page of the initial brief, Ford argues that a *Cassisi* inference is not available in this case because Hetsler’s own expert testified that the Roush modifications “involved removing, adjusting, installing, and rerouting components *through* and around the braking system[.]”⁸ (emphasis added). We read Ford’s cursory argument to suggest that the inference cannot apply because Roush modified (or at least tampered with) the relevant parts of the braking system.

We have thoroughly reviewed every record citation Ford provides in support of this proposition and find no testimony that, when read in context, would support an inference that Roush removed, adjusted, installed or rerouted components “through” the braking system. Instead, the cited testimony indicates Roush

⁸ Ford does not argue that all modifications, even if the evidence suggests those modifications could not cause the malfunction, should eliminate the application of *Cassisi*’s inference.

installed components near the braking system—not through it. In fact, the experts, including Ford’s, testified that Roush did not modify any of the relevant parts of the braking system and that Roush would not have caused a brake fluid leak. Ford does not disclose this testimony in its initial brief.

Ford’s failure to provide us with record citations that clearly support its argument on appeal wastes judicial resources and is fatal to its claim. We will not scour the record in search of evidence that might support an appellant’s argument. While this principle applies to a record of any size, it is especially important where, as here, the record is more than 40,000 pages. *Polyglycoat Corp. v. Hirsch Distribs., Inc.*, 442 So. 2d 958, 960 (Fla. 4th DCA 1983) (“When points, positions, facts and supporting authorities are omitted from the brief, a court is entitled to believe that such are waived, abandoned, or deemed by counsel to be unworthy.”); *see also Murthy v. Missouri*, 603 U.S. 43, 67 n.7 (2024) (“As the Seventh Circuit has memorably put it, ‘[j]udges are not like pigs, hunting for truffles buried [in the record].’” (citation omitted)).

If the evidence established that Roush did something to the braking system that might have caused a brake fluid leak, as Ford seems to assert, it was Ford’s burden to provide record citations supporting that proposition. Having failed to do so, Ford’s claim is insufficiently briefed.

ii

Second, Ford argues that the inference does not apply because Hetsler’s testimony that the car was parked and idling (while he slept) was not “contemporaneous or specific” enough to establish normal use. But Ford’s argument on this point consists of a single sentence and is entirely conclusory. *See Dixon v. Green*, 425 So. 3d 739, 745 (Fla. 5th DCA 2025) (“Conclusory arguments are insufficient for purposes of appeal and should be deemed waived.”); *Wells v. State*, 807 So. 2d 132, 136 (Fla. 3d DCA 2002) (“On this issue, the defendant’s appellate argument is entirely conclusory, and does not carry the defendant’s burden of making error appear.”).

Ford does not attempt to elucidate why the testimony is not contemporaneous enough or how it could have been more specific. For instance, Ford does not explain why idling in an automobile is not “normal use.” Nor does Ford explain what other specificity is required. While we can think of arguments Ford could have made, we are not permitted to rebrief the appeal. *D.H. v. Adept Cmty. Servs., Inc.*, 271 So. 3d 870, 888 (Fla. 2018) (Canady, C.J., dissenting) (recognizing “it is not the role of the appellate court to act as standby counsel for the parties” and that it is likewise “not the function of the Court to rebrief an appeal and thereby become an advocate” (citation omitted)); *Figueroa v. Kossiver*, 336 So. 3d 1260, 1264 (Fla. 5th DCA 2022) (recognizing “it is not the function of [an appellate court] to rebrief an appeal [for a party]” (citation omitted)).

iii

Third, Ford argues that the evidence did not establish normal use because there was no competent substantial evidence at trial that Hetsler was either idling or driving when the Mustang exploded. Ford’s argument is two-fold. As for the theory that Hetsler was sleeping in the idling Mustang, Ford asserts this does not establish normal use because Hetsler abandoned his theory of the case mid-trial and urged the jury to find that the car exploded while Hetsler was driving. As for the theory that Hetsler was driving the Mustang when it exploded, Ford argues this evidence was not competent and substantial because the firefighter’s testimony on this point was equivocal. Therefore, says Ford, the evidence at trial did not establish normal use under either factual theory.

But even if we were to agree that the jury could not rely on the firefighter’s testimony that the Mustang was moving, the fact remains that while Hetsler might have abandoned the idling car theory, Ford did not. Rather, Ford pressed, in part, the theory for the remainder of the trial, inviting the jury at closing to conclude that the Mustang was parked at the time of the explosion and therefore the engine could not have been hot enough to ignite brake fluid.

In the initial brief, Ford does not disclose that it continued to press the parked car theory at trial⁹—let alone explain why the jury was not entitled to accept (in part) a theory it advanced.¹⁰ And the reason, if there is any, is not obvious to us. As a result, this argument is insufficiently briefed.

iv

Fourth, Ford argues that *Cassisi*'s inference does not apply to cars at all—regardless of the circumstances. In only about one page, Ford informs us that “many cases” apply the inference to passive, self-operating products. Ford’s chosen language is notable, of course, because the fact that “many cases” apply the inference to self-operating products does not mean the inference is limited to such products. In fact, it implies that at least some courts have applied the inference to a product that is not passive. This obfuscation does not advance Ford’s cause or otherwise assist in our decision.

Nevertheless, Ford explains that these self-operating products, like the dryer in *Cassisi*, are “activated by human agency simply by turning a switch or pushing a button.” 396 So. 2d at 1152. Of course, we are aware that operating the Mustang in this case (at least while driving) requires more than merely pushing a button¹¹ which, according to Ford, increases the possibility that user error caused the malfunction instead of a product defect. Thus, says Ford, “[e]xtending *Cassisi* beyond passive, self-operating products would permit juries to infer the existence of a

⁹ Ford argued there was no brake fluid leak at all, and that the fire was caused by a lit cigarette while the Mustang was parked.

¹⁰ For that matter, Ford does not offer any legal authority for the proposition that the jury could not accept Hetsler’s original factual theory when that theory is supported by the evidence, even though Hetsler advanced a different theory later in the trial.

¹¹ There is no evidence that this Mustang was self-driving or otherwise autonomous.

product defect when it is equally possible that an accident was caused by the vehicle’s operator.”

Perhaps that statement is true, but we do not know, because Ford does not explain how or why user error is “*equally possible*” just because a product is not self-operating. (emphasis added). Moreover, we are not sure if Ford means user error is “equally possible” for all nonpassive products or specifically when the product is a Mustang. In any event, conclusory assertions do not carry Ford’s burden on appeal.

More importantly, *Cassisi* does not, by its own terms, limit the inference to self-operating products. Instead, *Cassisi* expressly anticipates the inference will often apply to products that require greater user control. On this point, *Cassisi* says that the amount of control a user has over a product “is but one of several circumstances to be considered in determining whether the product was defective while it was within the control of the manufacturer.” *Id.* And significantly, *Cassisi* continues, “[o]rdinarily the weight of such evidence is for the trier of fact.” *Id.*

We do not decide whether *Cassisi* was correct on this point. Perhaps the inference should only apply to self-operating products. Or perhaps the decision should not be left for a jury. But Ford’s briefing misstates *Cassisi*’s analysis by omission and does not grapple with what *Cassisi* clearly states—that the degree of control over a product does not automatically eliminate application of the inference, and that instead, it ordinarily presents a jury question.¹²

¹² We are aware *Cassisi* says that there are times when a court can determine that the inference is not available as a matter of law. While we take no position on the issue, according to *Cassisi*, this occurs when the product “is shown to be so old, so frequently repaired, and subjected to such rugged use . . . the ordinary consumer’s expectations could not reasonably be said to have been frustrated by the product’s failure under such circumstances.” *Id.* Ford offers no argument concerning this part of *Cassisi*’s analysis.

To further compound the problem, Ford does not acknowledge the Florida decisions applying *Cassisi* in defect cases involving vehicles (or the like) and their integrated component parts. Cf. *Miller v. Allstate Ins. Co.*, 650 So. 2d 671, 675 (Fla. 3d DCA 1995) (allegedly sticking accelerator); *Jones v. Heil Co.*, 566 So. 2d 565, 566 (Fla. 1st DCA 1990) (garbage truck equipped with allegedly defective refuse collection unit); *Thrasher v. Koehring Co.*, 543 So. 2d 754, 754 (Fla. 3d DCA 1988) (“crane boom ‘ran ten feet past the load,’ evidencing an operational defect”). In fact, Ford’s initial brief only cites *Miller* for the general proposition that *Cassisi* requires evidence that the malfunction occurred during “normal operation”; cites *Thrasher* only for the vague proposition that the Third District has applied *Cassisi* “broadly”; and does not mention *Jones* at all.

Nor does Ford address the decades of cases from other jurisdictions that have applied the inference to vehicles. A small sample of those decisions includes: *Kaplan v. DaimlerChrysler, A.G.*, No. 02–13223, 2003 WL 22023315, at *3 (11th Cir. Aug. 1, 2003) (defective airbag); *Leonard v. Gen. Motors L.L.C.*, 504 F. Supp. 3d 73, 97 (D. Conn. 2020) (defective airbags and seat belts); *McIlvaine v. Ford Motor Co.*, No. 2:12–CV–111–DBH, 2013 WL 588934, at *2 (D. Me. Feb. 13, 2013) (faulty truck throttle); *Nationwide Mut. Fire Ins. Co. v. Gen. Motors Corp.*, 415 F. Supp. 2d 769, 771 (N.D. Ohio 2006) (fire in transmission of recreational vehicle); *Stackiewicz v. Nissan Motor Corp. in U.S.A.*, 686 P.2d 925, 926–27 (Nev. 1984) (steering malfunction); *Tweedy v. Wright Ford Sales, Inc.*, 357 N.E.2d 449, 450–52 (Ill. 1976) (brake failure while driven by third owner); *MacDougall*, 257 A.2d at 680 (steering malfunction); *Charles Thummel, III et al. v. Presidential Ford, Inc. & Ford Motor Co.*, 3 Phila. Co. Rptr. 399, 401 (Pa. Com. Pl. 1980) (sudden explosion from beneath vehicle’s hood or dashboard); *Spann v. Francis-Fords, Inc.*, 56 Pa. D. & C. 2d 519, 520 (Pa. Com. Pl. 1972) (“[T]he evidence establishes that plaintiff, after purchasing the car on March 5, 1968, drove it less than 100 miles, experiencing no difficulty and was sitting in the vehicle on March 9th with the motor running when smoke and flame shot up from underneath the dashboard and the hood.”).

Of course, if *Cassisi* should apply only to self-operating products, there would be a host of other issues to consider. For

instance, products possess varying levels of self-operation. Is a toaster simpler than a blender? And not all vehicles are the same. A mobility scooter is probably simpler than a Mustang, *see Spitzers v. Golden Technologies Inc.*, No. 2:25–CV–00541–JAD–BNW, 2025 WL 2986693, at *6 (D. Nev. Oct. 22, 2025)—or maybe not? What about a golf cart or riding lawn mower? If we were to adopt a *per se* rule that *Cassisi* only applies to self-operating products, as Ford would have us do, where would we draw the line to determine which products are self-operating *enough*?

More important in this case, does the specific use at the time of the malfunction matter? Does the inference apply to a vehicle when it is merely idling (which in today’s world might involve little more than the push of a button), or is the inference only prohibited when the vehicle is in motion (when there is greater user control)? If it applies when idling, but not when in motion, what if the vehicle is moving at only two miles per hour in an empty parking lot? At what point is it enough to say that the occurrence of the accident is no longer such that “in the ordinary course of events it could not have happened . . . without the product’s defective condition[?]” *Cassisi*, 396 So. 2d at 1149. Ford’s summary briefing does not contemplate, let alone attempt to answer, any of these questions. Nor do we.

v

Finally, Ford argues that *Cassisi* does not apply in this case because some parts of the braking system went missing after the accident. Specifically, potential evidence was lost when the third-party towing company sold the vehicle for salvage and the new owner removed parts of the braking system. Ford contends it was therefore unable to inspect those parts which “could have ruled in (or out) the existence of a defect.”

But again, Ford’s briefing on this point is insufficient. At trial, the court rejected Ford’s argument that the missing evidence precluded the inference, ruling that *Cassisi* applied because loss of the evidence was not Hetsler’s fault. The trial court reasoned, in part, that Hetsler’s estranged wife engaged attorneys while Hetsler was in a coma and that the attorneys did not clearly have authority to represent Hetsler at the time.

On appeal, while Ford argues that the loss of evidence renders the *Cassisi* inference improper, it ignores the trial court’s ruling. A party cannot demonstrate reversible error on appeal without challenging the basis for the trial court’s decision. *Cf. Brown v. State*, 304 So. 3d 243, 267 (Fla. 2020) (“In failing to challenge the circuit court’s primary bases for denying relief, Brown has waived the argument that they are in error.”); *CTCW-Berkshire Club, LLC v. CED Cap. Holdings 2000 EB, LLC*, 330 So. 3d 991, 991 (Fla. 5th DCA 2021) (Sasso, J., concurring specially) (“Appellant does not challenge this alternative basis in its initial brief and therefore has waived the issue.”); *Livingston v. State*, 219 So. 3d 911, 915 (Fla. 2d DCA 2017) (“By failing to challenge the admission of the evidence as an excited utterance, Livingston has failed to satisfy his burden on appeal of demonstrating that the trial court erred in its ruling, and we affirm for this reason.”).¹³

IV

A word of warning. An appellant is not required to address every possible question before its briefing will be sufficient. The rule is not so trifling—and the briefing need not be perfect or even artful. While logic dictates that complex or novel legal arguments

¹³ Ford’s initial brief also fails to confront the trial court’s ruling regarding the relevant parts of the braking system, specifically the master cylinder and its fittings, that were destroyed in the fire. For instance, Ford emphasizes that the steel brake lines did not burn up and that Ford could not inspect the lines to “rule in (or out)” a defect because they were lost after the explosion. But as the trial court ruled, there was evidence at trial that the brake lines were not the only potential source of a brake fluid leak. Most importantly, Hetsler’s expert testified that the aluminum master cylinder and its seals would have burned up in the explosion. The fact that some relevant parts of the braking system were destroyed by the fire was part of the trial court’s basis for applying the inference. In other words, even if an inspection would have ruled out the brake lines as defective, the initial brief fails to explain why the *Cassisi* inference would not be appropriate when other parts of the braking system were destroyed in the fire.

will require a more thorough analysis, failing to address rudimentary, obvious, collateral, or otherwise minor issues will not render an appeal insufficiently briefed.

That said, an appellant cannot prevail on appeal with mere conclusions and rhetoric, or by glossing over the record and relevant legal questions. When a party “spins” the record and issues in the case, it does so at its own peril.

To carry its burden, an appellant must, at a minimum, adequately brief the important issues along the decisional path so the court is not left to do the lion’s share of the work. *Lynn v. City of Ft. Lauderdale*, 81 So. 2d 511, 513 (Fla. 1955) (recognizing that a party does not carry its burden on appeal by “dumping the matter into the lap of the appellate court for decision”). If the gaps left by an initial brief would require the court to rebrief the appeal, the argument is insufficient, and we will affirm on that basis.

V

In conclusion, we do not decide whether the trial court erred when it applied the *Cassisi* inference because, as we have explained, Ford’s briefing is insufficient to demonstrate reversible error.

AFFIRMED.

BLOCKER, L.P., ASSOCIATE JUDGE, concurs.

BOATWRIGHT, J., concurs, and concurs specially with opinion.

BOATWRIGHT, J., concurs

I concur in the majority's opinion. I write separately to discuss that, even if Ford's briefing were sufficient, the trial court did not err in ruling that the *Cassisi* inference¹ was permissible. Specifically, Ford argues on appeal that the trial court erred in denying their motion for directed verdict by recognizing that the *Cassisi* inference applied in this case and then subsequently erred by instructing the jury on the inference.

Ford proposes a five-factor test to determine whether the *Cassisi* inference should be applied in a given case. According to Ford, the *Cassisi* inference should only be legally available when (1) the product has not undergone repeated changes in ownership or post manufacture modifications; (2) there is firsthand evidence the product was in normal operation when it malfunctioned; (3) the product itself is unavailable as evidence because the alleged malfunction destroyed it; (4) the product is self-operating, eliminating the risk of user error in the malfunction; and (5) the defendant is in the better position to produce evidence of the product's defect. However, the legal authority directly cited by Ford does not support their proposed test.² Rather, the proper test is provided in *Cassisi* itself and its progeny.

To establish strict liability in a products liability case due to a manufacturing defect, the plaintiff must prove that he was injured by a defect in the product that existed at the time the retailer or supplier parted possession with the product. *Cassisi*, 396 So. 2d at 1143. In many cases, a manufacturing defect is proven by direct evidence or by circumstantial evidence presented in the form of

¹ *Cassisi v. Maytag Co.*, 396 So. 2d 1140 (Fla. 1st DCA 1981).

² The lawyers for Ford argued repeatedly during trial that *Cassisi* was wrongly decided, and it appears they wish for us to recede from the principles in *Cassisi* and apply their proposed test which has little to no basis in current law.

expert testimony. *Id.* at 1146–47. However, there can be instances where different possible explanations for an accident exist, not all of which point to the product’s defective condition. *Id.* at 1147. As a result, a plaintiff could not normally meet their burden and survive a motion for directed verdict since the circumstantial evidence of the product’s defect did not affirmatively negate other potential causes of the accident for which a defendant would not be responsible. *Id.*

To alleviate this issue, the court in *Cassisi* adopted a rule announced in *Greco v. Bucciconi Engineering Co.*, 283 F. Supp. 978 (W.D. Pa. 1967), *aff’d*, 407 F.2d 87 (3rd Cir. 1969), which simply states that “when a product malfunctions during normal operation, a legal inference, which is in effect a mirror reflection of the Restatement’s standard of product defectiveness, arises, and the injured plaintiff thereby establishes a prima facie case for jury consideration.” *Cassisi*, 396 So. 2d at 1148; *see Jones v. Heil Co.*, 566 So. 2d 565, 567 (Fla. 1st DCA 1990).³ Thus, the inference arises out of the accident itself and as *Cassisi* points out, “[a] malfunction evidences a defect.” 396 So. 2d at 1149 (quoting *Greco*, 283 F. Supp. at 984). As a result, a plaintiff is not required to negate the alternative explanations for his injury, and the inference need not be corroborated, as “the facts essential for the inference’s application are simply proof of the malfunction during normal operation.” *See Jones*, 566 So. 2d at 567 (quoting *Cassisi*, 396 So. 2d at 1150–51).

While many cases will involve products that are either lost or destroyed, the inference can be applied more broadly. *Cassisi*, 396 So. 2d at 1151. Cases applying the inference frequently involve evidence comprising both an expert’s inspection of the product and proof of its malfunction, coupled with evidence of normal use. *Id.* Once again, all that is needed for the application of the inference

³ The *Jones* court notes that “[t]he Restatement standard essentially asks whether the ordinary consumer’s expectations were frustrated by the product’s failure to perform under the circumstances in which it actually failed.” *Jones v. Heil Co.*, 566 So. 2d 565, 567 n.1 (Fla. 1st DCA 1990).

is simply proof that the malfunction occurred during normal operation. *Id.*

It should be noted that the inference is only sufficient to get the plaintiff past a motion for directed verdict, but the inference alone would not allow the trial court to grant a directed verdict or summary judgment in the plaintiff's favor. *Diversified Prods. v. Faxon*, 514 So. 2d 1161, 1163 (Fla. 1st DCA 1987). The inference merely establishes a prima facie case for jury consideration as to whether a defective product caused the plaintiff's injuries. *Id.*; see *Gencorp v. Wolfe*, 481 So. 2d 109, 111 (Fla. 1st DCA 1985) (holding when a product malfunctions during normal operation, a legal inference of product defectiveness arises which is sufficient to create a jury issue). See Thomas D. Sawaya, *Standards to apply in strict liability cases to determine whether a product is defective*, 6 Fla. Prac., Personal Injury & Wrongful Death Actions § 13:18 (2025-2026 ed.). The inference does not place the burden of proof or the burden of producing evidence on the defendant "except in the very limited sense that if he fails to do so, he runs the risk that the jury may . . . find against him." *Cassisi*, 396 So. 2d at 1151.

Even if the inference is applied, a jury may still consider the "product's age . . . the length of the product's use, the severity of its use, the state of its repair, its expected useful life, and whether it was subjected to any abnormal operations" in determining whether the product was defective while it was within the control of the manufacturer or distributor. *Id.* at 1152. As the *Cassisi* court noted, the weight given these factors is for the trier of fact to decide. *Id.* However, even when the product malfunctions during the normal course of use, the application of the inference is not absolute. The *Cassisi* court noted that when a "product which malfunctions is shown to be so old, so frequently repaired, and subjected to such rugged use, its condition may be such as to negate any inference that it was defective at the time of its manufacture despite evidence revealing the product's defective condition at the time of injury because the ordinary consumer's expectations could not reasonably be said to have been frustrated by the product's failure under such circumstances." *Id.*

Contrary to Ford's position, the trial court was correct in applying the *Cassisi* inference because there was sufficient

evidence provided to show that the Ford Mustang malfunctioned during its normal use. There was evidence of two factual scenarios provided at trial: the vehicle either caught fire when Mr. Hetsler was driving and pulled into the parking lot, or it caught fire after he fell asleep while the vehicle was idling in the parking lot. Under either scenario, this is the type of normal use that one would not consider to have caused the vehicle to catch fire and then be fully enveloped in flames. This is exactly the type of normal activity that would allow the inference and to find otherwise would be contrary to the principles in *Cassisi*. As the trial court stated:

I don't think I should deny them the *Cassisi* inference because I think that is contrary to the concept of *Cassisi* and the fact of the commercial expectation that you buy the car, use it the way you're supposed to, it shouldn't blow up...a car like that is not supposed to burn.

Further, the limited exception in *Cassisi* did not apply as the evidence showed the vehicle was sold by a Ford dealer to the original owner less than eighteen months before the fire, had been driven less than a thousand miles, was never subjected to severe use, had never needed any repairs, was very early in its expected life, and was not subject to any abnormal operation. Thus, the trial court correctly applied the inference in denying Ford's motion for directed verdict and subsequently did not abuse its discretion in providing the inference in the jury instructions in a limited and qualified manner.