

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

Andrew Pampu,
Plaintiff,

vs.

Erin Wingo, David Wingo, and Colin J.
Gahagan
Defendants.

IN THE COURT OF GENERAL SESSIONS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

C.A. NO.: 2017CP3900709

**ORDER ON
POST TRIAL MOTIONS**

RECEIVED
Sep 21 2022
SC Court of Appeals

In this lawsuit, the Plaintiff sought damages for defamation and civil conspiracy arising out of an incident on October 24, 2015 at a fraternity party near Clemson University’s campus, where both Plaintiff and Defendant Erin Wingo were students. Plaintiff asserted that he had consensual sex with Defendant Erin Wingo. Ms. Wingo later claimed that because of her consumption of alcohol, she did not have the capacity to consent and reported the Plaintiff to Clemson’s Office of Community and Ethical Standards, (hereinafter “OCES”), stating that Plaintiff was in violation of Clemson’s Anti-Harassment and Non-Discrimination Policy. Defendant Colin Gahagan was in a relationship with Ms. Wingo and was involved in some of the post encounter activities and various communications with other fraternity brothers of Plaintiff. Defendant David Wingo is Defendant Erin Wingo’s father and was involved in various communications with Clemson University and the National office for the Plaintiff’s Fraternity. The case went to trial on March 21, 2022 and a jury returned the following verdict on March 25, 2022: 1) On the defamation cause of action, in favor of the Plaintiff against Erin Wingo for \$700,000 actual damages and \$450,000 punitive damages; against David Wingo for \$230,000

actual damages and no punitive damages and against Colin Gahagan for \$700,000 actual damages and \$220,000 punitive damages; and 2) on the civil conspiracy cause of action, in favor of the Plaintiff against Erin Wingo for \$2,000,000 and against Colin Gahagan for \$1,000,000, and in favor for Defendant David Wingo.

Post-trial Motions filed

Following the Jury Verdict, the Court granted the parties 10 days to make any post-trial motions as provided for in Rule 50, SCRCP and the Defendants filed various post trial motions within the 10 days. Defendant Gahagan filed a Motion for the following relief: 1) JNOV; (2) New Trial and (3) New Trial Absolute under 13th Juror Doctrine. Erin and David Wingo filed a Motion for the following relief: (1) Motion for JNOV; (2) New Trial Absolute and (3) New Trial Remittitur.

After careful consideration, the Court grants Defendants' Motions for JNOV as to the Civil Conspiracy verdict, but denies the remainder of the Motions relating to the verdict on the defamation causes of action.

Civil Conspiracy Verdict as to All Defendants

First, the Court will address the Civil Conspiracy cause of action and resulting jury verdict against Erin Wingo and Colin J. Gahagan. The jury found in favor of David Wingo on this cause of action.

The Standard for JNOV is found in Rule 50(b):

Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict...

The South Carolina Supreme Court has ruled, “[i]n deciding motions for a directed verdict or judgment notwithstanding the verdict, the trial judge must consider the evidence in the light most favorable to the nonmoving party. If only one reasonable inference can be drawn from the evidence, the motion must be granted.” *Brady Dev. Co, Inc. v. Tow of Hilton Head Island*, 312 S.C. 73 (1993). See *Sorin Equipment v. The Firm*, 323 S.C. 359 474 S.E.2d 819 (Ct. App. 1996). (“View the evidence and its inferences in the light most favorable to the non-moving party. The jury’s verdict must be upheld if there is any evidence to sustain the factual findings implicit in the verdict.”) see also *Garrison v. Target*, 429 S.C. 324 838 S.E.2d 18 (Ct. App. 2020). (requiring the Court to “determine the existence of evidence to support the award and not its weight”.)

The South Carolina Supreme Court has recently clarified the murky cause of action for civil conspiracy. See *Paradis v. Charleston School District*, 433 S.C. 562 (2021). The elements of civil conspiracy are as follow:

A Plaintiff asserting a civil conspiracy claim must establish: (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages resulting to the plaintiff. *Paradis*, 433 S.C. at 575.

In the case before the Court, even considering the evidence in the light most favorable to the Plaintiff, the Court finds that the Plaintiff failed to introduce evidence to establish these necessary elements for civil conspiracy. First, there was no evidence of an agreement or plan between the Defendant Erin Wingo and Defendant Gahagan. Although there was a report to Clemson University regarding the alleged incident, there was no evidence that this was based on any type of agreement or plan between these 2 defendants. Secondly, there was no evidence of the commission of any unlawful act by these defendants nor a lawful act by unlawful means. And finally, the Plaintiff failed to provide any evidence of monetary damages resulting from the

conduct of these defendants. Under the defamation claim, Plaintiff's damages can be presumed, but that does not apply to the conspiracy claim and Plaintiff must prove some type of actual damages. Here, the Plaintiff presented testimony that because the Plaintiff failed to get into dental school, he would not make as much money as he would have otherwise. However, under the South Carolina Rules of Evidence, Plaintiff was not able to establish any amount of damages sustained. So, there was no basis for the jury to determine the amount of damages sustained by the Plaintiff without pure speculation. Further, the damages under the civil conspiracy cause of action were the same as the defamation cause of action and the Plaintiff would not be entitled to a "duplicative recover[y]". See *Paradis*, 433 S.C. at 574. Therefore, the Court grants these Defendants' Motion for Judgment Notwithstanding the Verdict and enters judgment in favor of Defendant Erin Wingo and Defendant Gahagan on the Civil Conspiracy cause of action.

Defendant Gahagan's Remaining Motions as to Defamation Cause of Action

As to the verdict on the Defamation Cause of action, Defendant Gahagan asserts several grounds for the basis for JNOV and/or New Trial.

Defendant Gahagan first argues that the Plaintiff was collaterally estopped from asserting his claim because of the findings of OCES and the hearing which was conducted through this office. While the OCES tribunal dealt with similar issues, the Court found that the OCES's findings were not based on the same standard applicable to civil actions, nor the same parties or issues to support a defense for collateral estoppel. The doctrine of collateral estoppel provides that, "any issue litigated and decided that was necessary to the judgment in the first case, may not be relitigated in a second action involving a different claim." *Catawba Indian Nation v. State*, 407 S.C. 526, 537, 756 S.E.2d 900, 906 (2014). Here, the Court found that the OCES does not follow the South Carolina Rules of Evidence applied in civil cases, follows a different procedure

by not allowing cross examination and requiring questions to be submitted to the chairperson before being asked. The Court found that this hearing was substantially limited and contrary to the Rules of Evidence and Rules of Civil Procedure applicable to a civil case. Further, the OCES Board applied provisions of its standard of conduct under Clemson's Anti-Harassment and Non-Discrimination Policy, which were not controlling in the matter at hand.

Second, Defendant Gahagan argues that evidence of the OCES hearing was improperly excluded. The Court ruled that the evidence of the decision by the OCES Board was improper because it would have been more prejudice than probative. Rule 403, SCREvid. The Court found that it was not admissible and therefore, finds that this is not a basis for the relief requested by this Defendant.

Third, Defendant Gahagan argues that there was no evidence of negligence on his part to support a claim for defamation. Whether Defendant Gahagan acted negligently in this matter was clearly a question for the jury and there was evidence to support the jury's finding in this regard.

Next, Defendant Gahagan argues that punitive damages were not appropriate. The Court has addressed the punitive damages as to all Defendants below and analyzed under the *Gamble* factors.

In regards to Defendant Gahagan's Motion relating to the civil conspiracy verdict, the Court has already addressed these issues above.

Defendant Gahagan asserts that the Plaintiff must elect his remedy from the verdicts. The Court would agree with Defendant Gahagan that the damages for both causes of action and proof at trial were the same and to allow the Plaintiff to recover under both would be a double recovery. But, this is a moot issue based on the Court's granting of Defendants' Motion for JNOV as to the Civil Conspiracy Cause of Action.

Finally, Defendant Gahagan request a new trial based on the 13th Juror Doctrine. Under the 13th Juror Doctrine, a trial judge may grant a new trial if the verdict is inconsistent and reflects the jury's confusion. Norton v. Norfolk S. Ry. Co., 350 S.C. 473, 479, 567 S.E.2d 851, 854 (2002). Under this analysis, the Court finds that the verdict does not warrant a New Trial under the 13th Juror Doctrine and therefore this Motion is respectfully denied.

Wingo Defendants' Remaining Motions as to Defamation Cause of Action

As to the verdict on the Defamation Cause of action, the Wingo Defendants assert several grounds for the basis for JNOV and/or New Trial.

I. The Court erred in failing to admit investigation from Title IX (or the OCES). As set forth above, the Court found that the evidence of the findings and conclusions of the OCES were not admissible and therefore this would not a be a basis for JNOV or New Trial.

II. The Court erred in failing to admit an entire document submitted by Defendant. The Defendants attempted to introduce a letter from Defendant David Wingo to the Plaintiff's national fraternity which contained substantial information about the findings of the OCES tribunal. Since the Court had ruled that the evidence relating to the findings of the OCES was not admissible, these portions of the letter were not admissible. Any prejudice resulting from the presentation of a heavily redacted letter could have been cured by submitting only the admissible portions of the letter instead of the entire letter with the redacted portions blacked out. Nonetheless, the Court does not find that this is a basis for a New Trial.

III. Plaintiff's claim barred by collateral estoppel. As set forth above, the Court found that collateral estoppel did not apply. Judge Letitia Verdin reached the same conclusion in denying Defendants' Motion for Summary Judgment. See Order issued October 13, 2021. Therefore, the Court finds that this is not a basis for a JNOV or New trial.

IV. The Court erred in not finding that statements made to OCES were privileged and dismissing the claims. As Plaintiff argued and showed throughout, his case was not based on statements made to the OCES and therefore Defendants' Motion on this ground is denied.

V. Motion for New Trial regarding issues with Civil Conspiracy. Based on the Court's ruling above granting Defendants' Motion for JNOV on the cause of action for civil conspiracy, all issues relating to this cause of action and verdict (including New Trial, 13th Juror and Election of Remedies) are moot.

VIII. Verdict excessive and disproportionate. These Defendants contend that the verdict was excessive and disproportionate. The Court will address the actual damages in this section and the punitive damages below. Although the verdicts as to each defendant was substantial in light of the evidence presented, the jury had sufficient evidence to determine damages to a person's reputation after being labeled a "rapist" in college. Further, in analyzing the excessiveness of a verdict, the Court should only grant a new trial for an excessive verdict if, "the amount is so grossly ...excessive as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives." *RRR, Inc. v. Toggas*, 378 S.C. 174, 662 S.E.2d 438 (Ct. App. 2008), *cert. granted, decision aff'd*, 381 S.C. 490, 674 S.E.2d 170 (2009). The Court does not find that the verdict shocks the conscience of the court nor that it was based on passion, caprice, prejudice, partiality, corruption or other improper motives.

IX. Thirteenth Juror for New Trial Absolute. As discussed above the verdict does not warrant a new Trial under the factors set forth in *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 567 S.E.2d 851 (2002).

X. New trial Nisi remittitur due to excessive verdict. This issue has been addressed above in the Court's finding that the verdict was not excessive. Therefore, the Motion for a new trial nisi is denied.

Punitive Damages Analysis

All Defendants have argued that the punitive damages were not warranted and were excessive in light of the evidence. As set forth in *Gamble v. Stevenson*, 305 S.C. 104 (1991), the Court must analyze the appropriateness and amount of punitive damages using the following factors: 1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and finally, (8) as "other factors" deemed appropriate. As presented by the evidence, the defamatory statements made by the Defendants about the Plaintiff related to the commission of a crime of moral turpitude and classified as actionable per se. "If the alleged defamatory statement is actionable per se, the law presumes that the defendant acted with common law malice..." *Murray v. Holnam, Inc.*, 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001) (citing *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998)). Based on the evidence presented, the jury found that all Defendants were culpable. If you consider the time which elapsed from the initial report until the completion of the hearing by the OCES and subsequent communications with the National Fraternity, the duration of the conduct was for more than 4 months. Even though there was no evidence of prior similar conduct, the evidence showed that all of the Defendants were fully aware of their actions at the time. The verdict and award of punitive damages will likely deter others from bringing such claims which the jury found to be false and

the award was reasonably related to the harm. Additionally, the punitive award was much less than the actual damages. The Court would note that there was no evidence as to the Defendants' ability to pay, but our appellate courts have found that this is not to be a deciding factor. "The defendant's financial ability to pay is always a factor to be considered by the jury in awarding punitive damages. Yet, evidence of ability to pay is not a *sine qua non* of a punitive damage award." *Charles v. Texas Co.*, 199 S.C. 156, 18 S.E.2d 719 (1942). Further, "there is no requirement that the defendant be a man of means before the jury is justified in awarding punitive damages." *Norton v. Ewaskio*, 241 S.C. 557, 565, 129 S.E.2d 517, 521 (1963). Finally, the nature of the defamatory statements was severe. The Courts have found that there is a presumption of common law malice for the defamatory statements which is a factor to consider for awarding punitive damages. See *Murray* 344 S.C. 129 (2001). Therefore, the Court finds that the verdict for punitive damages is not excessive nor violates Defendants' rights of due process and denies Defendants' Motion for New trial or remittitur on this basis.

Conclusion

In conclusion, the Court grants the Defendants' Motion for JNOV as to the Civil Conspiracy verdict and awards a verdict in favor of Defendants Erin Wingo and Colin Gahagan. Further, the Court denies the remainder of Defendants' Motions as to the verdicts on the defamation cause of action.

It is so Ordered.

E- signature of Judge Gravely to follow



Pickens Common Pleas

Case Caption: Andrew Pampu VS Erin Wingo , defendant, et al

Case Number: 2017CP3900709

Type: Order/JNOV

So Ordered

s/ Honorable Perry H. Gravely, #2755

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