STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	C.A. No.: 2020-CP-23-01450
Michael Gene Putnam,	)	
Plaintiff	)	
vs.	)	ORDER GRANTING DEFENDANT ROBERT HENRY PURKERSON'S RENEWED MOTION FOR SUMMARY JUDGMENT
Robert Henry Purkerson,	)	
Defendant	)	

RECEIVED
OCT 11 2022
SC Court of Appeals

ELECTRONICALLY FILED - 2022 Aug 17 9:06 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301450

This matter came before this Court on June 21, 2022, pursuant to Defendant Robert Henry Purkerson's (hereinafter Defendant or Purkerson) Renewed Motion for Summary Judgment. Defendant was represented by Wesley J. Shull and Plaintiff presented *pro se*.

During the Hearing, this Court considered the evidence presented by the parties. After weighing all presented evidence, including motions, memorandums of law (with accompanying exhibits), and oral arguments given by counsel for Defendant and by Plaintiff, the Court grants Defendant's Renewed Motion for Summary Judgment. The ruling is supported by all the evidence on the record and the filings contained herein.

PROCEDURAL HISTORY

Plaintiff's ex-wife, Lyn Maples, is currently married to Robin Maples, a former co-defendant of Purkerson's in this lawsuit. There was one child born of Plaintiff and ex-wife's marriage ("Child"). This Child is still a minor. Until recently, Maples, his wife, and Child lived in North Carolina. While living in North Carolina, Child attended Wake Christian Academy ("Wake Christian") who was formerly a defendant in this case, but was dismissed. (Am. Compl. ¶ 11)

ELECTRONICALLY FILED - 2022 Aug 17 9:06 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301450

Other former defendants included employees of Wake Christian, Dana Lynn Cordell, Kellie O'Neal Auerweck ("School Defendants"), as well as attorney Vanessa Kormylo. All defendants, other than Robert Henry Purkerson, have also been dismissed from this case. Defendant Robert Henry Purkerson is Lyn Maples' father and is, therefore, the father-in-law of Defendant Robin Maples and the maternal grandfather of Child. (Am. Compl. ¶ 51)

Plaintiff initially began this civil action against Robin Maples and School Defendants when he filed a complaint in Greenville County Court of Common Pleas on June 21, 2019, Case No. 2019-CP-23-03584 ("2019 Complaint"), asserting causes of action of libel per se and conspiracy to defame against Maples. Plaintiff also asserted libel *per se* and conspiracy to defame causes of action against the School Defendants.

The School Defendants removed the case to federal court based on diversity, Case No. 6:19-cv-2136-TMC. Maples consented and joined in their removal. Plaintiff filed an amended complaint ("2019 Amended Complaint") asserting claims of libel *per se* and conspiracy to defame against Purkerson in an attempt to defeat diversity. (Am. Compl., August 26, 2019, attached as Ex. A)

The federal magistrate filed his report ("Report") on November 25, 2019. (Report of Magistrate Judge, p. 6, November 25, 2019, Def. Memorandum in Support of Motion for Renewed Summary Judgment Ex. B) The Report was adopted and incorporated in the Hon. Timothy M. Cain's Order of February 6, 2020, holding that Purkerson was fraudulently added to defeat diversity and denying Plaintiff's request to amend a second time. (Order, February 6, 2020, Def. Memorandum in Support of Motion for Renewed Summary Judgment Ex. C)

After Plaintiff's time for appeal of the federal court's order expired, Plaintiff re-filed his claims in the present action in state court via a March 6, 2020, Complaint. ("2020 Complaint") and

also filed an April 6, 2020, Amended Complaint ("Amended Complaint"). A Motion to Dismiss was filed by Defendant Purkerson and this issue was heard by the Hon. Edward W. Miller on June 25, 2020. Judge Miller issued an Order on June 25, 2020, stating, "After liberally construing the pleadings due to the Plaintiff's position as a pro se litigant, the Court respectfully denies both Defendant's Motions to Dismiss, at this time." (June 25, 2020, Order, Def. Memorandum in Support of Motion for Renewed Summary Judgment Ex. D)

Defendant Purkerson filed a Motion for Summary Judgment on April 13, 2021. Oral argument was held before Judge Letitia Verdin on April 21, 2021. In an April 27, 2021, Form 4 Order, Judge Verdin ruled, "After careful review of the pleadings and other filings in this case, this Court denies Defendant Puerkson's Motion for Summary Judgment at this time. However, Plaintiff is ordered to provide with specificity the names of 'mutual friends or acquaintances in Greenville, SC' referred to in Paragraph 57 of Plaintiff's First Amended Complaint. Plaintiff shall provide this information to all Defendants within 14 days of the date of this Order. Failure to provide this information to Defendants will result in this Court granting Defendant Purkerson's Motion for Summary Judgment."

On May 7, 2021, Plaintiff sent defense counsel a letter with an attachment listing 14 potential witnesses, including Gail Purkerson (Defendant Purkerson's wife), Tony Traynham, Jeff Fleming, Nikkee Fleming, and Zoie Fleming (Defendant Purkerson's granddaughter). (May 7, 2021, letter, Def. Memorandum in Support of Motion for Renewed Summary Judgment Ex. G)

On December 22, 2021, Defendant Purkerson filed a Motion to Compel Discovery responses, resulting in a February 1, 2022, Order of Judge Cordell Maddox compelling Plaintiff to provide additional discovery. Specifically, this Order compelled Plaintiff to provide complete answers to Purkerson's Interrogatories Numbers 5 and 6. In response to this, Plaintiff provided a

ELECTRONICALLY FILED - 2022 Aug 17 9:06 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301450

February 21, 2022, letter with 5 Exhibits attached. (Def. Memorandum in Support of Motion for Renewed Summary Judgment Ex. I, with only attachments Ex. 2 and Ex. 3 from Plaintiff's responses) Also, in response to an email exchange between defense counsel and Plaintiff (Def. Memorandum in Support of Motion for Renewed Summary Judgment Ex. J), Plaintiff sent a February 22, 2022, letter explaining his discovery responses. (Def. Memorandum in Support of Motion for Renewed Summary Judgment Ex. K)

On January 11, 2022, Defendant Purkerson filed a Motion to Compel Plaintiff's Deposition, resulting in a March 24, 2022, Form 4 Order from Hon. Edward W. Miller that ordered Plaintiff to appear at defense counsel's office on April 12, 2022, at 10:00 AM. The deposition took place on April 12, 2022. (Partial Transcript of Plaintiff's Depo. at Def. Memorandum in Support of Motion for Renewed Summary Judgment Ex. H)

FACTS

Plaintiff's claims against Defendant Robert Henry Purkerson allege defamation *per se* and conspiracy to defame. The parties have conducted discovery in this matter. Specifically, the parties have exchanged written discovery and Plaintiff's deposition was taken by Purkerson's attorney on April 12, 2022. (Defendant's Memo. in Support of Summary Judgment Ex. H, I, J and K). In addition, defense counsel has procured affidavits from Defendant Robert Purkerson, Dr. Ryland Tyrone Traynham, Sergeant Robert Perry, Jeffrey Fleming, and Nicole Fleming. (Id. at Ex. E, F, L and M). Lyn Maples was also previously married to Jeff Fleming, with whom she had one child, Zoie Fleming. Jeff Fleming is currently married to Nikkee Fleming.

During the Summer of 2016, an investigation was conducted by law enforcement and the local authorities in Greenville, South Carolina into alleged criminal conduct by Plaintiff based on

ELECTRONICALLY FILED - 2022 Aug 17 9:06 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301450

information that Child conveyed to her teacher and counselor at Wake Christian. (Am, Compl. ¶¶ 9-11 & Ex. #1-3 to Am. Compl.) This investigation is the basis for this lawsuit.

In his Amended Complaint, Plaintiff alleges that Purkerson has "engaged in constant and willful action aimed at parental alienation directly and by aiding and abetting MAPLES in his pursuit of parental substitution by making false and defamatory statement about Plaintiff in the presence of CHILD." (Am. Compl. ¶ 52) Plaintiff further alleged that Purkerson "made false allegations and has encouraged CHILD to either exaggerate or make up stories defamatory of the PLAINTIFF, and to pass such on to other adults in an attempt to denigrate PLAINTIFF'S reputation and standing as a person of good character in an attempt at parental substitution." (Id., ¶ 53)

Plaintiff further alleged that Purkerson encouraged CHILD to lie to the North Carolina DSS and the Greenville County Sherriff's Office and that "PURKERSON in fact called a Sargent Robert Perry with the Greenville County Sherriff's Office trying to have him re-open the 'Investigation' and making defamatory statements in an effort to further denigrate the reputation of PLAINTIFF." (Id., ¶ 54)

Plaintiff further alleges that Purkerson, "... disclosed the information of a sex crime investigation and made other derogatory comments to Dr. Ryland T. (Tony) Traynham who is an oral surgeon here in Greenville ..." (Id., ¶ 55)

On October 21, 2020, Dr. Ryland Tyrone Traynham executed an affidavit ("Affidavit of Traynham") in which he testified, among other things, "I have never heard [Purkerson] say anything negative about Mr. Putnum." (Aff. of Traynham, Def. Memorandum in Support of Motion for Renewed Summary Judgment Ex. E)

ELECTRONICALLY FILED - 2022 Aug 17 9:06 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301450

On November 9, 2020, Sargeant Robert Perry, of the Greenville County Sheriff's office, executed an affidavit ("Affidavit of Perry"). In said affidavit, Sargeant Perry testified, among other things, "My interaction with Robert Purkerson was limited to one phone call. During the call, I explained to Mr. Purkerson the reason that the Greenville County's Sheriff's Office was not moving forward with the criminal charges against Michael Putnam." (Aff. of Perry, Def. Memorandum in Support of Motion for Renewed Summary Judgment Ex. F). Sargeant Perry further testified in his affidavit, "During the call with Mr. Purkerson, he never asked that the investigation into Mr. Putnam be re-opened. He did not make any allegations or claims about Mr. Putnam during our call." (Id.)

Plaintiff's February 21, 2022, letter was, per Judge Maddox's Order, supposed to answer, completely, Defendant Purkerson's Interrogatories #5 and #6, which said:

5. Set forth the specific contents of any and all Statements you allege Purkerson made concerning you. For each Statement, identify the date of the Statement, the person(s) to whom the Statement was made and any other person(s) present when the Statement was made if the Statement was a verbal communication, of if the Statement was a written communication, identify the recipient of the Statement and all persons to whom Purkerson provided a copy of the Statement.

6. State with specificity what Purkerson encouraged the Child to exaggerate and/or the false statements Purkerson encouraged the Child to make. State what aspect of the Child's statements were exaggerated or false and the manner in which the statements were exaggerated or false.

Plaintiff's response to Interrogatory #5 was attached to a February 21, 2022, letter to defense counsel. (Def. Memorandum in Support of Motion for Renewed Summary Judgment Ex. I). In his response, Plaintiff referred to: (1) 36 pages of copies of text message exchanges between himself and Nikkee Fleming "all involving your client;" (2) an undated copy of an email from Defendant to Jeffrey C. Fleming in which Defendant referred to Plaintiff as a "sick desperate man," and stated that Plaintiff was manipulating Mr. Fleming "big time;" (3) an August 21, 2015, email

ELECTRONICALLY FILED - 2022 Aug 17 9:06 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301450

ELECTRONICALLY FILED - 2022 Aug 17 9:06 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301450

from Defendant to Plaintiff, copying Maggie Nowell and Lyn Purkerson, in which Defendant told Plaintiff that "All communications with [Defendant's wife] and [Purkerson] must come to me at my e-mail address or home phone. Do not continue texting and calling Gail. I am your only contact starting now;" and, (4) a copy of an undated email from Defendant to Plaintiff in which he stated, "I understand that you have lawyered up and we will get lawyered up. The lawyers will try to assassinate the character of each person and everybody will loose [sic] and a judge will make a decision and probably get DSS involved. What will happen to [Child] and where does this end and when will you get out of our lives?" (Id.) Copies of these communications were attached to Plaintiff's amended responses and to his supplemented responses to Defendant's Requests to Produce.

The text message exchanges submitted by Plaintiff in his supplemental discovery were texts between Plaintiff and Nikkee Fleming. Nikkee Fleming is the current wife of Jeff Fleming, who was previously married to Purkerson's daughter, Lyn Maples. Also included in Plaintiff's responses was a transcript from a telephone conversation between Plaintiff and Purkerson in which Purkerson allegedly told Plaintiff, "You're going to get yours; cause I'm going to give it to you bigtime!" The audio recording of this exchange was played for the Court at the June 21, 2022, hearing by Plaintiff on his mobile phone. Plaintiff's discovery response also included an email with a redacted date from Bob Purkerson to Jeff Fleming in which Purkerson stated, "Michael is a sick and desperate man and is manipulating you big time. What Michael is doing and saying is not true. We are so thankful Zoie is safe and happy with you and is getting the help that she needs. You are doing a fine job with her and we thank you for it. We wish we could help."

Plaintiff also emailed defense counsel audio recordings, none of which contain a recording of Purkerson defaming Plaintiff to any third-party.

In Plaintiff's supplemental response to Interrogatory #6, he discussed the evidence that he had that showed that Defendant encouraged his child to exaggerate and/or make false statements about him. (Defendant's Memo. Exhibit I) In his response, Plaintiff stated:

> Wes, since I was not present when much of this occurred, I will be relying on testimony from other individuals. Some of the same ones mentioned above. Ms. Hinkle in Mt. Pleasant will be able to testify that my daughter eves drops on family meetings where Purkerson and Lyn and Rob are behind closed doors, and [daughter's name] puts her ear up against the wall. My daughter has called me from inside cars while parked in the driveway and asked me why "bad" things are said. I am trying to find the phone recordings of those, which I believe is in my storage facility. Sometimes if a child hears the same thing over and over, they will begin to believe it.
>
> Also, I have been desperately trying to get emails, which I believe will unlock a vault of gold in my opinion. I hope to have the audios cleared up by the end of next week. They are highly time consuming to work with.

An audio recording of a voicemail that was purportedly left on Plaintiff's' voicemail by Defendant was played in Court by Plaintiff, and transcripts of two audio recording that purportedly contained recorded conversations between Plaintiff and Defendant were submitted as an exhibit to Plaintiff's Motion in Opposition to Summary Judgment by Purkerson. This submitted transcript reads as follows:

MR. PURKERSON:

> Okay. I can't wait to get my hands on you, buddy.

MR. PUTNAM:

> Well, still got a ways to go, don't we?

MR. PURKERSON:

> Yeah, we do. You're gonna get yours, 'cause I'm gonna give it to you big time."

Also submitted as an exhibit to Plaintiff's Memorandum was a transcript of the same audio recording that Plaintiff played in Court during arguments. The transcript stated:

ELECTRONICALLY FILED - 2022 Aug 17 9:06 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301450

MALE VOICE:

(Inaudible) all over the damn parking lot. You have disgraced my family. You have – you've dishonored my wife. You've dishonored all of us. And you is just – you is just trash is what you are. You're just lou – lousy trash.

FEMALE VOICE:

This is why we brought the cops. We thought he was coming anyway.

MALE VOICE:

Why you bring policemen to my house when you're supposed to pick her up today anyway? We knew that. All you had to do was to come by and all you had to do was make your own schedule. Instead you arrive at my house with two damn policemen. You are a lowlife coward, that's what you are. And if you want to defend those words, I'll meet you anywhere anytime. And I can't wait to get my hands on you. Goodbye.

Also submitted as evidence by Plaintiff as another attachment to his Motion in Opposition to Summary Judgment by Purkerson was a copy of a June 5, 2020, email from Nikkee Fleming to Plaintiff, in which Nikkee Fleming supposedly stated:

> FYI Lyn went ballistic on Zoie this past week stating she has been talking to you. Zoie told her she hasn't and she wouldn't believe her. Lyn told Zoie that you had told her that you are communicating with her. Zoie told her she hasn't but Lyn didn't believe her. Then Bob and Gail sat Zoie down and to tell her how awful you are and Zoie just cut them off and asked not to be drug into the drama between Lyn and Ella's father. They shouldn't be discussing anything with Zoie.
> My assumption is they don't want you to know they are moving here. The photos from their listing have not furniture because it's all down here in Mt pleasant. [sic] She just needs to tell the truth. It's really unfair for you to have no clue what she's doing with your daughter.

Plaintiff's deposition revealed the following pertinent information:

- When asked when he first found out about Purkerson's allegedly defamatory statements, Plaintiff answered that he found out about them in 2018; (Tr. pg. 50, ll. 9-15)

ELECTRONICALLY FILED - 2022 Aug 17 9:06 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301450

- Plaintiff admitted that he had given to defense counsel all of the text messages and phone call recordings that he had in his possession; (Tr. pg. 51. ll. 16-25)
- When asked if there was anything in the information provided through discovery that would help Plaintiff recall when he first found out about Purkerson's alleged defamation, Plaintiff admitted that this information contained nothing that would help him answer this question precisely; (Tr. pg. 51, ll. 1-9)
- Plaintiff admitted that he could not state when Purkerson first made a defamatory statement about Plaintiff; (Tr. pg. 53-54, ll. 22-24)
- Plaintiff admitted that he could not recall when he first learned of Purkerson's defamatory statements, but testified that he was first told about them by his daughter, Jeff Fleming and Nikkee Fleming; (Tr. pg. 56, ll. 16-24)
- Plaintiff could not recall when he was first told about Defendant's alleged defamatory statements or who it was who told him about these alleged statements; (Tr. pg. 57, ll. 20-25)
- When asked who he could name that had told him of Purkerson's alleged defamatory statements, Plaintiff listed his daughter, Larry Hoxie, Nikkee Fleming, Jeff Fleming, Zoie Fleming, Tony Traynham, Dana Cordell and Kellie Auerweck; (Tr. pg. 59, ll. 16-21; pg. 60, ll. 7-10; pg. 61, ll. 8-25; pg. 62, ll. 1-13)
- Plaintiff later admitted that he could not recall Larry Hoxie telling Plaintiff about any statements made by Purkerson to Mr. Hoxie about Plaintiff; (Tr. pg. 65, ll. 24-25; pg. 65, ll. 24-25; pg. 66, l. 1)

ELECTRONICALLY FILED - 2022 Aug 17 9:06 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301450

ELECTRONICALLY FILED - 2022 Aug 17 9:06 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301450

- Plaintiff was read his response to Purkerson's Interrogatory #5, and admitted that, other than maybe some emails that he had been attempting to obtain, he had nothing to add to his response; (Tr. pgs. 78, ll. 19-25; pg. 79, ll. 1-25; pg. 80, ll. 1-25)
- Plaintiff was asked during his deposition to show defense counsel where in the text messages he had provided between himself and Nikkee Fleming there was evidence of any defamatory statements made by Purkerson, but could only refer to some audio recordings from another supposed witness, Kearson, that have not been produced; (Tr. pg. 82, ll. 11-25)
- Plaintiff admitted that his other witnesses he listed in either his May 7, 2021, letter, or in his discovery responses, namely Gail Purkerson, Amy Creamer, Barbara Hawkins, Diane Jeter, Carol Morgan, Taylor Wilson Tucker, Robbie Purkerson and Gloria Walker never directly told Plaintiff about any alleged defamatory statements made by Purkerson about Plaintiff; (Tr. pg. 88, ll. 15-25; pg. 89, ll. 1-25; pg. 90, ll. 1-24)
- Plaintiff admitted that he could not recall if Chyna Nunez, Ginger Pop, listed in Plaintiff's first Set of Interrogatory Responses, had ever told him about any defamatory statements made about him by Purkerson; (Tr. pgs. 94, ll. 15-25; pg. 95, ll. 1-25; pg. 96, ll. 1-25)
- Plaintiff testified that the Guardian ad Litem appointed to the family court case, Elizabeth Martin-Young, discussed with him that Purkerson had defamed Plaintiff, but could not recall the specifics of what she told him, other than to state that "… a lot of rap has gone under the river bridge, and for me to sort that our in my mind right now, I couldn't do that;" (Tr. pg. 97, ll. 1-25; pg. 98, ll. 1-6)

ELECTRONICALLY FILED - 2022 Aug 17 9:06 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301450

- Plaintiff admitted that he cannot prove any financial damages due to Purkerson's alleged defamation; (Tr. pgs. 98, ll. 23-25; pg. 99, ll. 1-25; pg. 100, ll. 1-24)
- Plaintiff admitted that the transcribed recording of an alleged audio recording of Purkerson that he had submitted in his discovery responses did not contain any defamatory statements; (Tr. pg. 108, ll. 1-9; Ex. to Defendant's Memorandum Ex. I)
- When asked why he had not obtained affidavits of any witnesses regarding defamatory statements made by Purkerson, Plaintiff admitted that he had not asked any witnesses for affidavits, rather stating that he was "fine with just turning them loose, which is why I decided not to depose them. That's just not necessary." (Tr. pgs. 115, ll. 1-25; pg. 116, ll. 1-25; pg. 117, ll. 1-11)

On June 13, 2022, both Nicole Fleming and Jeff Fleming executed affidavits stating that Purkerson never discussed any investigation by legal authorities into Plaintiff, never "made any negative factual statements" about Plaintiff to either of them, and stated that they have no personal knowledge of any defamatory statements made by Purkerson about Plaintiff. (Ex. L and M)

On April 18, 2022, Robert Purkerson executed an affidavit denying that he ever encouraged his granddaughter to exaggerate or make up stories defamatory to Plaintiff and also denied that he ever made a false statement about Plaintiff concerning any sex crime investigation to anyone, including counselors in Greenville, Jeff Fleming, Nikkee Fleming, Zoie Fleming, Larry Hoxie, Dana Cordell, Kellie Auerweck, or Elizabeth Martin-Young. This affidavit was attached to Purkerson's Renewed Motion for Summary Judgment.

ELECTRONICALLY FILED - 2022 Aug 17 9:06 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301450

STANDARD OF REVIEW

Under Rule 56 of the South Carolina Rules of Civil Procedure, "[s]ummary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Nelson v. Piggly Wiggly Cent., Inc., 390 S.C. 382, 388, 701 S.E.2d 776, 779 (Ct. App. 2010). "In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party." Id.

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." Englert, Inc. v. LeafGuard USA, Inc., 377 S.C. 129, 134, 659 S.E.2d 496, 498 (2008). "A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." Shupe v. Settle, 315 S.C. 510, 516-17, 445 S.E.2d 651, 655 (Ct. App. 1994). "As Rule 56(e), SCRCP, states, a party may not rest upon the mere allegations or denials of his pleading[s]." Nelson, 390 S.C. at 389.

Per S.C.R.C.P. 56(e), "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond,

summary judgment, if appropriate, shall be entered against him." S.C.R.C.P. 56(c) states that "The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party may serve opposing affidavits not later than two days before the hearing."

ANALYSIS

The Court finds there are no genuine issues of material fact that must be submitted to a fact finder as to Defendant Robert Henry Purkerson; therefore, Defendant Purkerson is entitled to summary judgement as a matter of law.

A person makes a defamatory statement if the statement "tends to harm the reputation of another as to lower him in the estimation of the community or deter third persons from associating or dealing with him." Fleming v. Rose, 350 S.C. at 494, 567 S.E.2d at 860 (2002).

Under South Carolina law, to state a cause of action for defamation, [a plaintiff] must allege the existence of some message that (1) is defamatory, (2) is published with actual or implied malice, (3) is false, (4) is published by the defendant, (5) concerned the plaintiff, and (6) resulted in legally presumed or in special damages. Richardson v. State-Record Co., 330 S.C. 562, 565, 499 S.E.2d 822, 824 (Ct. App. 1998).

In cases in which the non-moving party bears the burden of proof at trial, a movant properly makes and supports a motion for summary judgement by pointing out to the court the absence of proof for one or more elements of the non-moving party's claim. See Lanham v. Blue Cross Blue Shield of S.C. Inc., 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002) (citation omitted). When such a motion is made, the non-moving party cannot rest on allegations alone, but "by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." SCRCP 56(d).

ELECTRONICALLY FILED - 2022 Aug 17 9:06 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301450

ELECTRONICALLY FILED - 2022 Aug 17 9:06 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301450

To be libelous, the words on their face or by reason of extrinsic facts, must tend to impeach the reputation of the plaintiff, or, as often stated, they must tend to injure reputation. McGregor v. State Co., 114 S.C. 48, 103 S.E.2d 84 (1920); See Prosser, Law of Torts, p. 739 (4th E. 1971); Restatement (Second) of Torts § 559 (1977). To be actionable, the libel, as a result of its tendency to impeach or injure the plaintiff's reputation, must thereby injury him. Id. The injury, if any, which results from the libel is in the form of 'general damages' or 'special damage.' 'General damages' are those damages which the law presumes, without proof, to have resulted from the publication of the libel. 'Special damage' is actual damage and must be pled and proved. Damages in at least one of these forms must be present to render a libel actionable. If the libelous publication is actionable without the pleading and proof of special damage, it is said to be 'actionable per se.' If special damage must be pled to maintain an action, the defamation is 'actionable per quod.'" Capps v. Watts, 271 S.C. 276, 246 S.E.2d 606 (1978) (citing Restat. 2d. of Torts, § 559). The Restatement states:

> A communication to be defamatory need not tend to prejudice the other in the eyes of everyone in the community or of all of his associates, nor even in the eyes of a majority of them. It is enough that the communication would tend to prejudice him in the eyes of a substantial and respectable minority of them, and that it is made to one or more of them or in a manner that makes it proper to assume that it will reach them. On the other hand, it is enough that the communication would be derogatory in the view of a single individual or a very small group of persons, if the group is not large enough to constitute a substantial minority. If the communication is defamatory only the eyes of a minority group, it must be shown that it has reached one or more persons of that group, although if it is published in a newspaper it will be presumed, unless the contrary is shown, that it was reads by them. Although defamation is not a question of majority opinion, neither is it a question of the existence of some individual or individuals with views sufficiently peculiar to regard as derogatory what the vast majority of persons regard as innocent. The fact that a communication tends to prejudice another in the eyes of even a substantial group is not enough if the group is one whose standards are so anti-social that it is not proper for the courts to recognize them. If the communication is obviously defamatory in

> the eyes of the community generally, the fact that the particular recipient does not regard it as discreditable is not controlling.

In the present case, Plaintiff has presented one voice message that Purkerson allegedly left on Plaintiff's mobile device, one voice recording of an in-person encounter between Purkerson and Plaintiff, and three emails to support his case. Out of these 3 emails, 2 of them were from Purkerson directly to Plaintiff. One of these 2 emails was between Defendant and Plaintiff solely, with another being the same, save for third-parties, Maggie Nowell and Lyn Purkerson, who were copied on the email chain. This email simply states, "All communication with Gail and me must come to me at my e-mail address or home phone. Do not continue texting and calling Gail. I am your only contact starting now." The one email that Defendant allegedly sent to a third-party, the undated email sent to Jeff Fleming, a member of the extended family, does not contain any false factual assertions regarding Plaintiff and only states Defendant's opinions that Plaintiff was a "sick desperate man" and stated Defendant's opinion that Plaintiff was attempting to manipulate Jeff Fleming. Clearly, Jeff Fleming did not understand any possible defamatory meaning from this email, if any existed, as evidenced by Fleming's June 13, 2022, affidavit in which he denied knowing of any defamatory statements made by Defendant about Plaintiff.

Per Richardson and Rose, publication to a third party is a necessary element to this cause of action. Per Capps and the Restatement (Second) of Torts, this publication must be derogatory to more than a single individual or a very small group of persons, such as family members. The email sent from Defendant to Jeff Fleming clearly does not meet these requirements. All of the communications made directly to Plaintiff by Defendant, including voicemail messages, emails, and in-person communications do not meet this publication requirement, as they were all communicated directly to Plaintiff or were directed to a family member.

ELECTRONICALLY FILED - 2022 Aug 17 9:06 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301450

ELECTRONICALLY FILED - 2022 Aug 17 9:06 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301450

As of the June 21, 2022, hearing, Plaintiff had not produced an affidavit from anyone but himself that set forth specific facts showing that there is a genuine issue for trial. On June 17, 2022, Plaintiff did file affidavits on the public index of Michael R. Oster and William D. Johnson stating that they believed that the voice on the 2 audio files submitted by Plaintiff were, in fact, recordings of Defendant's voice. Mr. Oster's affidavit also contained his opinion that the statements made in the audio recordings were "intended to denigrate Michael's reputation in the community, which is also his home town. As a close friend to Michael, this is very concerning." Mr. Johnson's affidavit also contained his opinion that the statements made, allegedly by Defendant, on the audio recordings were "clearly defamatory, totally untrue, and without any merit whatsoever. Michael is a very stable and even-tempered person." Likewise, these affidavits do not meet the requirements espoused by Richardson, Rose, or Capps, because they are only opinions of the voice recordings that were made to Plaintiff and recorded by Plaintiff. These affidavits do not show evidence of a defamatory communication made by Defendant to either of the affiants. Although the Court considered these affidavits, it is arguable the statements in the affidavits are inadmissible because they contain opinions and lack proper foundation. Rule 56(e), SCRCP.

The procedural history of the case indicates that Plaintiff first made Purkerson a defendant in this case when he amended his complaint on August 26, 2019. From that time, the Plaintiff has not produced deposition testimony or affidavits which would support his case. Over a year of discovery has taken place, and Plaintiff still does not have an affidavit from a third party or deposition testimony stating that Defendant made defamatory statements about Plaintiff to said third party. The evidence in the record, rather, shows that Defendant likely never made defamatory statements about Plaintiff. This evidence includes the affidavits attached to Defendant's Motion for Renewal of Summary Judgment, the affidavits attached to Defendant's Memorandum in

Support of Renewed Motion for Summary Judgment, and the excerpts of Plaintiff's deposition transcript also submitted as an attachment to Defendant's Memorandum. Specifically, Robert Purkerson, Nikkee Fleming, Jeff Fleming, Dr. Traynham, and Sergeant Perry have all executed affidavits denying any knowledge of any alleged defamatory statements. Plaintiff is required, per Rule 56, to rebut this testimony.

Plaintiff has not made any admissible factual showing in opposition to Defendant's properly supported Renewed Motion for Summary Judgment as required by the Rules, and the Renewed Motion for Summary Judgment should be granted. See Dawkins v. Fields, 354 S.C. 58, 70, 580 S.E.2d 433, 439 (2003) ("[w]here a plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under Rule 56, to grant summary judgment if, under the facts presented by the defendant, he was entitled to judgment as a matter of law.") (quoting Humana-Hosp.-Bayside v. Lightle, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991)).

CONCLUSION

The Court finds there are no genuine issues of material fact that must be submitted to a fact finder. Plaintiff has failed to meet his burden of showing a factual issue.

IT IS HEREBY ORDERED that Defendant Purkerson's Renewed Motion for Summary Judgment is GRANTED.

IT IS SO ORDERED.

____

The Honorable G.D. Morgan, Jr.
Circuit Court Judge
Thirteenth Judicial Circuit

ELECTRONICALLY FILED - 2022 Aug 17 9:06 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301450

Entered this __________ day of ________, 2022
Greenville, South Carolina

ELECTRONICALLY FILED - 2022 Aug 17 9:06 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301450

Greenville Common Pleas

Case Caption: Michael Gene Putnam vs. Wake Christian Academy , defendant, et al

Case Number: 2020CP2301450

Type: Order/Summary Judgment

So Ordered

G.D. Morgan Jr.

ELECTRONICALLY FILED - 2022 Aug 17 9:06 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301450