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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2012-CP-20-099

[Handwritten mark]

David Michael Hollis.....Appellant,

v.

Fairfield County, Philip Hinely, Davis Anderson and David Brown.....Respondents.

NOTICE OF APPEAL

David Michael Hollis appeals the order of the Honorable G. Thomas Cooper, dated March 22, 2013. Appellant filed a Motion to Reconsider and received written notice of entry of an order on said motion on May 15, 2013.

J. Lewis Cromer & Associates, L.L.C.

May 31, 2013

BY: *Julius W. Babb*

Julius W. Babb, IV (#77216)
J. Paul Porter (#100723)
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533

Attorneys for Plaintiff

Other Counsel of Record:

Derwood L. Aydlette, III (SC Bar # 13011)
Gignilliat, Savitz & Bettis, L.L.P.
900 Elmwood Avenue, Suite 100
Columbia, South Carolina 29201

RECEIVED

JUN 03 2013

SC Court of Appeals

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Case No. 2012-CP-20-099

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PROOF OF SERVICE

I certify that I, undersigned employee of J. Lewis Cromer & Associates, L.L.C., served the Notice of Appeal on Fairfield County, Philip Hinely, Davis Anderson and David Brown by depositing a copy of it in the United States Mail, postage prepaid, on May 31, 2013, addressed to their attorney of record, Derwood L. Aydlette, III, with the law firm of Gignilliat, Savitz & Bettis, L.L.P., 900 Elmwood Avenue, Suite 100, Columbia, South Carolina 29201.

May 31, 2013



Julius W. Babb, IV
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530

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JUN 03 2013

SC Court of Appeals

J. LEWIS CROMER
& ASSOCIATES L.L.C.
ATTORNEYS AND COUNSELORS AT LAW

J. LEWIS CROMER
JULIUS W. BABB, IV
J. PAUL PORTER • ASHLEY C. STORY

June 3, 2013

HAND DELIVERY

Hon. Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

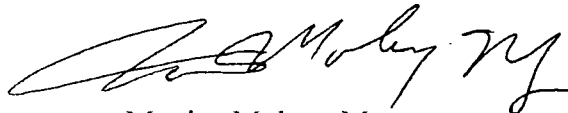
Re: **David Michael Hollis v. Fairfield County, Philip Hinely, Davis Anderson and David Brown in their individual capacities**
Case No.: 2012-CP-20-099

Dear Ms. Kitchings:

Please find enclosed the original and one copy of Appellant David Michael Hollis's Notice of Appeal, attachments and Proof of Service in connection with the above referenced matter. We have also enclosed our firm's check in the amount of \$100.00, made payable to the clerk's office representing the filing fee of the appeal. Please file the originals and return the clocked copies to our runner.

By copy of this letter and enclosures, we are serving same to Clerk Beckham and Mr. Aydlette. We have also enclosed our request for transcript from the court reporter for the Motion for the Judgment on the Pleadings Hearing on March 7, 2013. A hearing was not held for the reconsideration motion.

Sincerely,



Monica Mulvey Mcgee
Paralegal

JWB/mkm
Enclosures

cc: The Honorable Betty Jo Beckham (via US Mail)
Clerk of Court to Fairfield County
Derwood L. Aydlette, III, Esquire (via US Mail)



PP

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012-CP-20-099

David Michael Hollis

2013 MAR 22 A 10:51

Fairfield County, Philip Hinely, Davis Anderson,
and David Brown, in their individual capacities

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____ FAIRFIELD COUNTY CLERK OF COURT BETTY JO BECHTOLD	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

RECEIVED

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) by the Court: _____

ORDER INFORMATION

This order ends or does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: _____ _____		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code 139 Date 3/19/13

For Clerk of Court Office Use Only

This judgment was entered on **March 21, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **March 21, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

J. Lewis Cromer
J. Lewis Cromer & Associates, LLC
PO Box 11675
Columbia, SC 29211-1675

ATTORNEY(S) FOR THE PLAINTIFF(S)

Derwood L. Aydlette III
Gignilliat Savitz & Bettis, LLP
900 Elmwood Ave. Suite 100
Columbia, SC 29201

ATTORNEY(S) FOR THE DEFENDANT(S)

Betty Jo Beckham

Betty Jo Beckham - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)
)
David Michael Hollis,)
)
Plaintiff,)
vs.)
Fairfield County, Philip Hinley, Davis)
Anderson, and David Brown, in their)
individual capacities,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

CASE NO: 2012-CP-20-099

ORDER

2013 MAR 22 A 10:57
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BROWN, CLM

This matter came before the Court on March 7, 2013 upon Defendants' Motion for Judgment on the Pleadings, pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure. Defendant argues that Plaintiff's defamation claim against Fairfield County is barred by the South Carolina Tort Claims Act. Defendant also argues that Plaintiff's civil conspiracy claim is barred because Plaintiff was an at-will employee and a public official. After considering oral arguments and reviewing applicable authority, the Court grants Defendant's Motion for Judgment on the Pleadings.


Facts

Plaintiff David Michael Hollis, former Animal Control Supervisor of Fairfield County, was terminated from his position by Defendant Davis Anderson, Deputy County Administrator. The firing occurred over Plaintiff's handling of a case, in which an owner's dog severely wounded another dog. Following the termination, Plaintiff grieved his termination, and the County's Grievance Committee recommended that the termination be upheld. Defendant Philip Hinley, the County Administrator, accepted the Committee's recommendation. Plaintiff asserts that Fairfield County defamed him, and the natural defendants conspired to terminate his employment.

Analysis

Under South Carolina law, a plaintiff must show the following to recover for defamation: “(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm was caused by the publication.” *Seaton v. City of N. Charleston*, 2012 U.S. Dist. LEXIS 176053, 9 (D.S.C. Dec. 12, 2012); (quoting *Erickson v. Jones Street Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653, 664 (S.C. 2006)). “In addition to the common law elements of defamation, a public official has the constitutional burden of proving that the defendant published the alleged defamatory material with ‘actual malice.’” *Anderson v. Augusta Chronicle*, 365 S.C. 589, 594-595, 619 S.E.2d 428, 431 (2005) (quoting *New York Times v. Sullivan*, 376 U.S. 254, 269 (1964)). Under the South Carolina Tort Claims Act (SCTCA), a governmental entity is not liable for a loss that results from “employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” S.C. Code Ann. § 15-78-60(17) (Supp. 1993).

Plaintiff appears to be a public official. In *Rosenblatt v. Baer*, the United States Supreme Court explains the “public official” designation, and states the term applies “at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs.” *Rosenblatt v. Baer*, 383 U.S. 75, 86 (1966). “Where a position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all government employees, both elements we identified in *New York Times* are present and the


#2 

New York Times malice standards apply.” *Id.* As the supervising officer of his department and a limited duty law enforcement officer, Plaintiff is a public official for the purposes of the New York Times malice standard. Plaintiff’s former position displayed control over the conduct of governmental affairs and was a position that held an important public interest. As a public official, Plaintiff must meet the burden of proving the defamation was conducted with “actual malice.” Because actual malice has not been proven in this case, the SCTCA bars Plaintiff’s claim.

In regards to Plaintiff’s civil conspiracy claim, Plaintiff’s status as an at-will employee and public official control the claim. In this case, Plaintiff was an at-will employee. He was terminated by Defendant Anderson, and the termination was upheld by Defendant Hinley. In *Angus I*, the court held that an at-will employee cannot maintain an action for civil conspiracy against his employer or employees authorized to terminate his employment. *Angus v. Burroughs & Chapin Co.*, 358 S.C. 498, 503, 596 S.E.2d 67, 70 (Ct. App. 2004). As an at-will employee, Plaintiff’s claim against Anderson and Hinley is barred by *Angus I*. Furthermore, *Angus II* states that a public official cannot maintain a civil conspiracy claim against a private party. *Angus v. Burroughs & Chapin Co.*, 368 S.C. 167, 170, 628 S.E.2d 261, 262 (2006). The holding in *Angus II* bars Plaintiff’s claim against Defendant Brown, or any party relating to the termination of his employment.

Conclusion

The Court grants Defendants’ Motion for Judgment on the Pleadings. Plaintiff is barred from his defamation claim, pursuant to the SCTCA. The civil conspiracy claim fails because Plaintiff was an at-will employee and public official.

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IT IS ORDERED, ADJUDGED AND DECREED that the motion of the Defendants for
Judgment on the Pleadings is hereby granted.

IT IS SO ORDERED.



Brooks P. Goldsmith, Judge

Lancaster, South Carolina
March 18, 2013

SP

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS

David Michael Hollis,

2013 APR 26 A 11:03

CASE NO: 2012-CP-20-099

Plaintiff,

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

vs.

ORDER

Fairfield County, Philip Hincly, Davis
Anderson, and David Brown, in their
individual capacities,

Defendants.

This matter comes before the Court upon Applicant's Motion to Reconsider the Court's Order, filed March 22, 2013, that granted Defendant's Motion for Judgment on the Pleadings.

After considering the arguments set for in memoranda submitted by each party's counsel, this Court finds there is no basis for granting the motion, and therefore, denies Applicant's motion.



Brooks P. Goldsmith, Judge

Chester, South Carolina
April 24, 2013

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MAY 15 2013

J. LEWIS OROMER
& ASSOCIATES, L.L.C.