

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)
)
Thomas M. Reown, Individually and as)
Parent and Natural Guardian of K.R., a)
minor aged 11 years,)
)
Plaintiffs,)
)
vs.)
)
Lieutenant Joshua Smith and The)
Salvation Army of the Carolinas,)
)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-22-00806

**ORDER ON PLAINTIFFS’ MOTION
FOR RECONSIDERATION AND
FOR A NEW TRIAL**

RECEIVED
Jan 12 2023
SC Court of Appeals

This matter is before the Court upon Plaintiffs’ Motion for Reconsideration and for a New Trial (“the Motion”), which was timely filed on October 20, 2022. The Motion was made pursuant to this Court’s Directed Verdict in favor of Defendants after the close of Plaintiffs’ case at trial, where Plaintiffs were represented by attorney Thomas Tisdale and Defendants were represented by attorneys Wes Moran and Mark Phillips. Defendants’ Opposition to Plaintiff’s Motion for Reconsideration and for a New Trial (“Defendants’ Response) was filed on October 27, 2022. For the reasons set forth below, the Court hereby **DENIES** the Motion.

ANALYSIS

On October 11, 2022, this Court granted a Directed Verdict in favor of Defendants at the close of Plaintiffs’ case in chief due to Defendant Lt. Smith being protected by qualified privilege. The Court’s Directed Verdict was ordered on the basis that Plaintiff failed to present any evidence (1) that Lt. Smith’s communication to the Georgetown County Sheriff’s Office exceeded the scope of what the occasion demanded and (2) that Lt. Smith acted with actual malice when reporting a suspected theft to the Georgetown County Sheriff’s Office.

In the Motion, Plaintiffs make two arguments that the Court erred in granting a Directed Verdict in favor of Defendants: (1) because Lt. Smith's statements to police in reporting a suspected theft by Plaintiffs were defamatory *per se*, actual malice is presumed; and (2) the Court overlooked evidence that Lt. Smith acted with actual malice because he could have called The Salvation Army store manager to confirm the Plaintiffs were actually stealing furniture before calling police.

Defendants, on the other hand, maintain the Court's Directed Verdict on the basis of qualified privilege was proper. In response to Plaintiffs' first argument, Defendants contend that even in cases where the alleged defamatory statement is actionable *per se*, if the communication is covered by qualified privilege, malice is not presumed, and the plaintiff must prove actual malice. *See Murray v. Holnam, Inc.*, 344 S.C. 129, 142, 542 S.E.2d 743, 750 (S.C. Ct. App. 2001) (“[E]ven if the slander [or defamatory statement] is actionable *per se*, if the communication is privileged, the plaintiff must prove actual malice.”). In response to Plaintiffs' second argument, Defendants' claim Plaintiffs have no basis to support their assertion the Court overlooked evidence tending to show Lt. Smith acted with actual malice. The Court agrees.

As discussed pre-trial, the Court held that Lt. Smith's statements to police were qualifiedly privileged, and Plaintiffs concede in the Motion that Lt. Smith “possessed a qualified privilege to report his conclusion that a threat was underway . . . to law enforcement.” Plaintiffs' Motion at 3. As such, the burden was on Plaintiffs to show at trial that Lt. Smith acted with actual malice, but they failed to do so and, therefore, granting a Directed Verdict in favor of Defendants was proper.

CONCLUSION

After reviewing the applicable law and considering the arguments of counsel, the Court hereby **DENIES** Plaintiff's Motion for Reconsideration and for a New Trial for the reasons set

forth in this Order. The Court concludes there was no error of law in granting Directed Verdict in favor of Defendants, and therefore, Plaintiffs are not entitled to a new trial.

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]



Georgetown Common Pleas

Case Caption: Thomas M Reown , plaintiff, et al VS Salvation Army Of The
Carolina , defendant, et al
Case Number: 2021CP2200806
Type: Order/Other

It Is So Ordered

s/ Walton J. McLeod