

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) FOR THE NINTH JUDICIAL CIRCUIT

Caine Henry, ) C/A No. 2020-CP-10-01315

*Plaintiff,* )

Versus )

Medical University of South Carolina, Medical )  
University of South Carolina Department of )  
Public Safety, and Kevin Kerley, )

*Defendants.* )

**ORDER GRANTING DEFENDANTS’  
MOTION FOR SUMMARY JUDGMENT**

**RECEIVED**

**Feb 14 2023**

**SC Court of Appeals**

This matter is before the Court on the Defendants’, Medical University of South Carolina, Medical University of South Carolina Department of Public Safety and Kevin Kerley, (hereinafter “Defendants”), Motion for Summary Judgment. The Defendants bring their motion on the grounds that there is no genuine issue of material fact raised by Plaintiff and that they are entitled to judgment as a matter of law because (1) the Plaintiff has failed to present proof concerning essential elements for his causes of action of defamation: libel/slander, civil conspiracy, and negligence; and (2) intentional infliction of emotional distress is barred by the South Carolina Tort Claims Act against these Defendants. Based on the record and undisputed material facts, the Defendants’ Motion for Summary Judgment is hereby GRANTED.

**BACKGROUND**

The Plaintiff, Caine Henry, has asserted causes of action including defamation: libel/slander, intentional infliction of emotional distress, civil conspiracy, and negligence against the Defendants. The issues presented in the Plaintiff’s Complaint arise from a welfare check conducted by the North Charleston Police Department and Charleston County Mental Health Mobile Crisis Unit at the Plaintiff’s home in 2019 after the Plaintiff had sent various emails to the

Defendants and SLED. The specific emails shortly before the welfare check bore subject lines of “with a bullet” and “shooting Officer Register in the head.” Notably, the Plaintiff has conceded that conducting the welfare check was reasonable under the circumstances. The Plaintiff contends that an alleged unknown individual or entity provided defamatory statements to the North Charleston Police Department, leading officers to believe he was armed and threatening to shoot anyone that came to his door. The Plaintiff further alleges all Defendants conspired together to cause harm to him and were negligent in the following particulars: failing to accurately and properly conduct an internal investigation into the false statements given to a police officer; failing to initiate a requested incident report from the Plaintiff; failing to take a written statement from the Plaintiff; making arrest threats against the Plaintiff; failing to address concerns based on inaccurate information; defaming the Plaintiff; and failing to exercise the degree of care and prudence which a reasonable person should exercise.

### **LEGAL STANDARD**

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), S.C.R.C.P. In determining whether any true triable issues of fact exist, the Court should view the evidence in the light most favorable to the non-moving party. *Fleming v. Rose*, 350 S.C. 488, 493 (2002). Naturally, a court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth the facts that remain undisputed. *David v. McLeod Regional Medical Center*, 367 S.C. 242, 250 (2006). Moreover, summary judgment is appropriate where there is a complete failure of proof concerning

an essential element of the nonmoving party's case, which necessarily renders all other facts immaterial. *Baughman v. At&T*, 306 S.C. 101, 116, 410 S.E.2d 537, 547 (1991).

### DISCUSSION

#### **I. Defendants are Entitled to Summary Judgment on Plaintiff's Claim for Defamation: Libel and Slander.**

To succeed in a claim of defamation, the plaintiff must prove the following four elements: "(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 caused by the publication." *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006). However, a communication made in good faith on any subject matter in which the person communicating has an interest or duty is qualifiedly privileged if made to a person with a corresponding interest or duty even though it contains matter which, without this privilege, would be actionable. *Murray v. Holnam, Inc.*, 344 S.C. 129, 141, 544 S.E.2d 743, 749 (Ct. App. 2001). "A communication this qualifiedly privileged is not actionable, even though it contain[s] a charge of crime, unless malice in fact be shown." *Cullum v. Dunn & Bradstreet, Inc.*, 228 S.C. 384, 388 90 S.E.2d 370, 372 (1955). Malice is defined as when a person acts by ill will in what he does and says with the design to causelessly and wantonly injure another person. *Id.* at 388-89, 90 S.E.2d at 372.

Here, the Plaintiff has had the opportunity to engage in discovery but presents no specific evidence that any individual associated with the Defendants made defamatory statements and/or libelous statements about the Plaintiff. The Plaintiff has not provided any such statements nor has Plaintiff presented evidence as to whom the alleged statements were made. Therefore, because he cannot prove the first two essential elements of a defamation cause of action, the Plaintiff's claim fails as a matter of law. In addition, even if it were assumed the Defendants had made any

statements to SLED about the emails received or the conducting of a welfare check, such statements made by law enforcement in such context are, by their very definition, qualifiedly privileged.

Therefore, the Defendants are entitled to Summary Judgment for the Plaintiff's claims for defamation/libel/slander.

## **II. Defendants are Entitled to Summary Judgment on Plaintiff's Claim for Civil Conspiracy.**

In South Carolina, a finding of civil conspiracy requires satisfaction of four elements: "(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff." *Paradis v. Charleston Cty. Sch. Dist.*, 2021 S.C. LEXIS 56 (2021). Furthermore, "[a] claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than reallege other claims within the complaint." *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009) (overruled on other grounds). In other words, the facts pled in furtherance of the conspiracy must be separate and independent from other wrongful acts alleged in the complaint, and failure to properly plead such acts will merit dismissal of the claim. *Id.* at 115-16.

Here, the Plaintiff generally alleges the Defendants conspired together for the purpose of injuring Plaintiff. In his Complaint and in discovery, he has failed to allege and establish a conspiracy for the purpose of harming the Plaintiff or any alleged acts in furtherance of the alleged conspiracy on the part of the Defendants. Furthermore, under the intracorporate conspiracy doctrine, "an agreement between or among agents of the same legal entity, when the agents act in their official capacities, is not an unlawful conspiracy." *Ziglar v. Abbasi*, 137 S.Ct. 1843, 1867 (2017); *see also Painter's Mill Grille, LLC v. Brown*, 716 F.3d. 342, 353 (4<sup>th</sup> Cir. 2013)("The

intracorporate conspiracy doctrine recognizes that a corporation cannot conspire with its agents because the agents' acts are the corporation's own). Here, in his Complaint, Plaintiff alleges a conspiracy only among MUSC and its employees who were at all times acting in their capacities as agents of MUSC. Thus, there could be no conspiracy under the intracorporate conspiracy doctrine and Plaintiff's civil conspiracy cause of action fails.

### **III. The Tort Claims Act Bars Any Attempted Claim for Intentional Infliction of Emotional Distress.**

As stated, this action is governed by the South Carolina Tort Claims Act. S.C. Code Ann. §15-78-30(a), (c), (d), and (h) (1986) (defining "agency," "employee," "governmental entity," and "political subdivision" for purposes of the South Carolina Tort Claims Act). "The remedy provided by [the South Carolina Tort Claims Act] is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in §15-78-70(b)." S.C. Code Ann. §15-78-20(b) (1986). The South Carolina Tort Claims Act provides, "[t]he provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty must be liberally construed in favor of limiting the liability of the State." S.C. Code Ann. §15-78-20(f).

The Plaintiff's Complaint includes a cause of action for intentional infliction of emotion distress, a/k/a outrage. Such a claim is barred. The Tort Claims Act provides that a "loss" recoverable under the act does not include the intentional infliction of emotional harm. S.C. Code Ann. § 15-78-30(f) ("Loss' ... does not include the intentional infliction of emotional harm.") Accordingly, there is no remedy for any alleged intentional infliction of emotional harm and Defendants are entitled to Summary Judgment.

**IV. Defendants are Entitled to Summary Judgment on Plaintiff's Claim for Negligence.**

A negligence cause of action requires a plaintiff to prove the following three elements: “(1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damages proximately resulting from the breach of duty.” *Baggerly v. CSX Transp., Inc.*, 370 S.C. 362, 369, 635 S.E.2d 97, 101 (2006).

The Plaintiff has presented no authority to support the proposition that the Defendants owed a legal duty of care to the Plaintiff. The Plaintiff asserts that the Defendants had a duty of due care to investigate his email “concerns” and that they were negligent in this investigation, leading to defamatory statements being made to the North Charleston Police Department. The negligence claim centers around the alleged defamation, which, as described above, is a fatally flawed claim. Notably, the Plaintiff has admitted that the welfare check was reasonable under the circumstances and acknowledges that the welfare check was conducted by Charleston County Mental Health Mobile Crisis and the North Charleston Police Department. In addition, even if there was such a legal duty to investigate his email concerns, the Plaintiff has not established any act or omission on the part of the Defendants related to the welfare check conducted nor the manner of the welfare check.

Based on the foregoing, the Defendants’ Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED.

\_\_\_\_\_, 2022  
Charleston, South Carolina

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The Honorable Carmen T. Mullen



Charleston Common Pleas

**Case Caption:** Caine Henry VS Medical University Of South Carolina , defendant,  
et al  
**Case Number:** 2020CP1001315  
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So Ordered

s/Carmen T Mullen 2142