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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2021-CP-10-2862
Appeal Case No. 2022-000775

Pet Helpers, Inc.....Respondent
v.
Janet L.Frisco.....Appellant
v.
Melissa Susko.....Third-Party Defendant

**AMENDED INITIAL BRIEF OF
APPELLANT**

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STATEMENT OF ISSUES ON APPEAL

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STATEMENT OF THE CASE

On June 9, 2021 Pet Helpers, Inc. filed a *Complaint for Libel and Slander* against Janet Frisco and subsequently proceeded to file the following motions: *Motion for an Ex Parte Restraining Order* (6/9/21), *Motion for a Partial Summary Judgement* (6/16/21), *First Interrogatories, Requests for Production, Requests to Admit* (6/18/22), *Motion to Dismiss and Consolidate* (7/23/21), *2nd Motion for Emergency/Ex Parte Restraining Order and Injunction* (7/23/21), *Return to the Motion to Dismiss* (7/23/21), Plaintiff’s Return to Defendants Motion to Dismiss and Consolidate (7/23/21), Plaintiff’s 2nd Requests to Admit (7/27/21), *Motion to Compel Discovery* (7/27/21), *Notice of Motion and Motion for Rule to Show Cause* (8/5/21), *Motion to Reconsider Order on Plaintiff’s 2nd Motion for Temporary Restraining Order, Injunctive Relief and*

Rule to Show Cause for Contempt (8/27/21), 2nd Notice of Motion and Motion for Rule to Show Cause(Verified) (10/15/21), and Motion for Sanctions for Failure to Comply w/ Order of Discovery (1/21/22).

Defendant attempted to respond and protect herself from Plaintiff's lawsuit with its numerous motions and requests by answering their complaint (6/23/21), filing *Objection to Partial Summary Judgement* (6/23/21), answering Plaintiff's admit requests (7/7/21), Requesting Admits from Pet Helpers (7/7/21), *Objecting to Defendant's Motion to Consolidate* (7/17/21) *Motion to Dismiss and Consolidate* (7/22/21), *Objecting to Plaintiff's 2nd Motion for Emergency/Ex Parte Restraining Order and Injunctive Relief* (7/28/21), *Supplement in Objection to 2nd Motion for Restraining Order and Injunctive Relief* (8/13/22), *Objecting to Motion to Reconsider Order on Plaintiff's 2nd Motion to Reconsider Order on Plaintiff's 2nd Motion for a Temporary Restraining Order & Injunctive Relief and Rule to Show Cause for Contempt* (9/22/21), *Motion to Amend Answer Pursuant to Rule 15(b)* (10/19/21), *Motion to Reconsider Plaintiff's Two Restraining Orders and Sanction Judgement* (10/29/21), *Amended Motion to Reconsider Plaintiff's Sanction Judgement Pursuant to Rule 15(a)* (11/1/21), *2nd Objection to Plaintiff's Motion for a Partial Summary Judgement and Objection to Plaintiff's Motion to Reconsider Consolidation* (11/19/21). On 12/8/21 Defendant filed *Second Objection to Plaintiff's Motion for a Partial Summary Judgement and Supplement for Second Objection to Plaintiff's Motion for a Partial Summary Judgement*. On 2/7/22 Defendant filed *Opposition to Plaintiff's Motion for Sanctions for Failure to Comply with an Order for Discovery* On 2/28/22 Defendant filed *Return to Defendants Motion to Amend Answer Pursuant to 15(b) and Counterclaim for Malicious Prosecution in error*. In order to correct my two previous attempts to amend my answer to the Plaintiff's complaint, Defendant filed a **Motion for Leave to Supplement Answer to Plaintiff's Complaint Pursuant to Rule 15(d) and Amended Counterclaim for Malicious Prosecution** (3/24/22) which were both scheduled to be heard on April 22, 2022, but the *Leave for Motion to Supplement Answer to Complaint* was not granted by court administration beforehand outside of a hearing, as it should have been, but was scheduled with the previous motion so Defendant didn't want to cancel the motion that was in error at the risk of it not being heard. My motion to supplement my answer was on the roster, but the court refused to consider it during the hearing and said it had already been denied by Judge Cothran. On April 21, 2022 Defendant filed *Memorandum in Opposition to Plaintiff's Motion for a Partial Summary Judgement*.

As the Plaintiff's attorney was filing a plethora of motions and requests, and related hearings were being held, the defendant also attempted to defend herself by filing a Personal Injury Complaint against Pet Helpers actionable for the deliberate infliction of emotional pain Case #2021-CP-10-2848 (6/16/21) and in response, Plaintiff answered the complaint, filed a *Motion to Consolidate Pursuant to Rule 42(a) SRCRP, Motion to Dismiss and Counterclaim for Malicious Prosecution* (7-9-21). On 7/16/21 Plaintiff (Janet Frisco) filed an *Objection to Defendant's (Pet Helpers, Inc.) Motion to Consolidate and Objection to Defendant's Motion to Dismiss and Counterclaim for Malicious Prosecution*. A virtual hearing was held on 12/3/21 by Judge Jennifer McCoy and ordered to be consolidated and disposed as of 1/6/22.

Hearings, dates and orders for Case #2021-CP-10-2682 Pet Helpers v. Janet Frisco are as

follows: **Ex Parte Restraining Order** by Judge Roger M. Young ordered 6/11/21, **Injunction and Restraining Order** ordered by Judge Robert Bonds on 6/17/21, **2nd Order for Injunction and Temporary Restraining Order** heard virtually on 6/29/21 and ordered by R. Kirk Griffin on 6/30/21, **Order Extending 2nd Order for Injunction and Temporary Restraining Order** ordered by Roger M. Young on 8/5/21, **Order for Permanent Injunction** is heard and denied by Judge Bentley Price on 8/16/21, but granted with Plaintiff's other motions on May 5, 2022, **Motion to Reconsider** is heard on 9/23/21 Defendant was ordered to pay sanctions of \$5434.32 on 10/12/21 by Judge Bentley Price for violating restraining orders, **Motion to Show Cause** is heard and ordered on 11/05/22 and defendant is held in contempt and is ordered to be jailed for 30 days or until making payment of \$5,434.34, **Motion to Compel Discovery is heard by R. Ferrell Cothran on 12/17/21 and orders sanction payment of \$1214.24 and an additional \$560.00 in legal fees to the Plaintiff to be paid in thirty (30) days** for failure to complete plaintiff's discovery requests. **Plaintiff's Motion to Consolidate** is heard virtually on 12/3/21 and ordered by Judge Jennifer McCoy on 1/6/22. **Motion for Partial Summary Judgement and Sanction for Failure to Complete Discovery (\$9,668.24)** was heard on 4/22/22 and ordered on 5/5/22 by Judge Bentley Price. The Defendant's attempt to supplement answer was not allowed to be heard and was denied because Judge Price said that supplementing answer was the same as amending it and that had already been denied by Judge Cothran although it was a different subdivision of SCRCP 15(d).

In the Court of Appeals defendant filed two appeals: The first appeal, *Motion for Relief from Restraining Orders and Sanctions* was filed on 1/10/22 and amended on 1/14/22 due to errors. Respondent filed a *Motion to Dismiss on 1/12/22*. In response, Appellant filed a *Return to Motion to Dismiss on 1/24/22*, Appeal was ordered dismissed on 3/2/22 by the court. *Petition for Rehearing* was filed on 3/15/22 which was denied by court order on 4/12/22.

On 6/3/22 Defendant filed current appeal concerning Judge Bentley Price orders of May 5, 2022 together with *Motion to Appear in Forma Pauperis*, Respondent filed *Return to Motion to Appear in Forma Pauperis*. In response, Appellant filed *Reply to Return to Appear in Forma Pauperis* (6/7/22), and *Motion to Stay Impositions of Sanctions Pending Appeal Pursuant to SCRCP 62(g) and Brief in Support* (6/17/22), On 6/20/22 Respondent filed *Motion to Dismiss and Return to Motion to Stay Sanctions*. Orders on second appeal are as follows: On 6/22/22 Motion to Appear in Forma Pauperis was denied, Respondent's Motion to Dismiss was denied on 6/22/22 and on 7/21/22 Appellant's Motion to Stay Sanctions was denied by the appeals court.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the Trial Court under Rule 56(c), SCRCP, which is that summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 611 S.E.2d 922 (2005); *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 603 S.E.2d 629 (Ct.App.2004). In reviewing a motion for summary judgment, the evidence and all inferences which can

reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004); *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 609

S.E.2d 565 (Ct.App.2005). Any triable issues must go to the jury. *Mulherin–Howell v. Cobb*, 362 S.C. 588, 608 S.E.2d 587 (Ct.App.2005). On an appeal from an order granting summary judgment, “the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.” *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 219, 616 S.E.2d 722, 729 (Ct. App. 2005); see also *Schmidt v. Courtney*, 357 S.C. 310, 592 S.E.2d 326 (Ct.App.2003) (stating that all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Gadson v. Hembree*, 364 S.C. 316, 613 S.E.2d 533 (2005); *Montgomery v. CSX Transp., Inc.*, 362 S.C. 529, 608 S.E.2d 440 (Ct.App,2004). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Nelson v. Charleston County Parks & Recreation Comm'n*, 362 S.C. 1, 605 S.E.2d 744 (Ct.App.2004). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (Ct.App.2004)

ARGUMENTS

- I. Judge Bentley Price did not conduct a roll call at the beginning of the hearing on April 22, 2022 and neglected to state the motions that were scheduled to be heard when he commenced the hearing. Instead, the lower court allowed the Respondent’s attorney to take control of the proceedings and would not allow the Appellant to state arguments concerning her own filed motions. The judge interrupted and silenced the Appellant repeatedly whenever she attempted to raise a question or verbalize a defense, but the court allowed respondent’s lawyer to speak at length reiterating their entire case. When he finally gave Appellant the floor, he said he had another hearing and kept interrupting me or cutting me off entirely which is obvious in the transcript of the hearing. On the final order the court did not refer to or explain the Appellant’s motions and the reason they were denied. It is as if the court wanted to give the impression that they were never filed.

- II. The court acted like they knew beforehand that the Respondent’s lawyer was going to submit an adoption application as evidence that a third party, not Blaine John the Pet Helper’s employee, as Appellant contends, had legitimately adopted Toby. During the hearing when appellant mentions the need for an unredacted adoption application

to determine if the adoption was legitimate, the court immediately addresses the Respondent's lawyer and he submits one as evidence. Then the court wouldn't let Appellant object to its submission as evidence when she stated it could be a forgery because Pet Helpers has control of the forms. The Respondent did not include a form of identification with the adoption application to prove that the person listed as the adopter on the application is the legitimate adopter and the person that the Respondent's attorney provided a picture of in October 2021 and claimed was the actual adopter. The court abused the standard of discretion by accepting evidence that is not admissible in a court of law and could not be verified as authentic by itself.

III. &IV. The court wouldn't allow me to argue my motion to supplement my answer to the Plaintiff's complaint and that would have raised the issue of a **material fact** so the lower court intentionally suppressed information that there was a material fact which should have been left up to a jury to decide. The lower court said at the hearing that supplementing my answer was the same as amending it which is incorrect because it's an entirely different subdivision. I sent the proposed supplement to the Plaintiffs and I asked for leave to file it in a form motion which was never answered by the court administration or the Respondent's attorney except that he claimed it was the same as amending my answer. I attempted to file the motion two previous times, but they were incorrectly done. The last attempt was done correctly as a "form motion" for *Leave to Supplement My Answer* and I sent the proposed answer to the Plaintiffs for their approval, but the court administration office scheduled it before I was given leave although I contacted them several times concerning the permission, there was no reply. Because of their failure to follow the correct procedure, I couldn't cancel my second attempt to amend my answer. In the Plaintiff's attorney's answer to my second attempt to amend my answer he quotes Judge Farrell Cothran from his order of January 11, 2022, "**The Court noted that Defendant failed to submit a proposed amended answer and failed to respond to Plaintiff's request to review any proposed answer amended answer**". Since this was primarily the reason it was denied, I corrected the error and sent the proposed answer to the Plaintiff's attorney on March 14, 2022 when I attempted to supplement the answer, but the court would not hear the pleading on April 22, 2022 regardless of the proper procedure. Also Judge Cothran in the same order said that because I sought the relief of the dismissal of Plaintiff's complaint it was without merit and therefore denied. This is also an abuse of discretion because since the Plaintiff's lawsuit was based on fraud as the supplemental answer stated, the dismissal would have been right and proper.

Below is the text of the SCRCP 15(d) rule concerning supplementing your answer to a complaint:

SCRCP 15(d) SUPPLEMENTAL PLEADINGS. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplement pleading setting forth transactions and occurrences or events which have happened since the date of the pleading sought to be supplemented, whether or not the original pleading is defective in its statement of a cause of action or defense. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor. Note: The Rule 15(d) is the same as the Federal Rule, State Practice since 1870 has followed this procedure. McClasian v. Latimer, 17 S.C. 123 (1882); Frances Marion Hotel v. Chicco, 131 S.C.344, 127 S.E. 436 (1924).

- V. I needed to submit interrogatories to the Plaintiff which are supposed to be completed before a Partial Summary Judgement is granted, in order to prove they staged the adoption and that Melissa Susko is certified to euthanize, but I was too occupied with trying to respond to all the motions, attending the associated hearings, trying to avoid incarceration, paying out thousands of dollars in sanctions and being beaten down by the plaintiff's attorney during the entire ordeal of this lawsuit. This was always the Respondent lawyer's strategy as he assisted them in concealing their criminal fraud. I submitted an Affidavit Pursuant to 56(d) for a continuance which was denied by the court at the hearing on April 22, 2022.
- VI. "In order for defamation to be proven, the complainant must show by clear and convincing evidence that defamatory statements were made with actual malice in publishing a false and defamatory statement about the plaintiff. Actual malice exists when a statement is made "with knowledge that it was false or with reckless disregard of whether it was false or not. New York Times, 376 U.S. at 279-80, see also George, 345 S.C. at 456, 548 S.E. 2d at 876 (actual malice is governed by a subjective standard which tests the defendant's good faith belief in the truth of her statements." The Respondent believed Pet Helpers had euthanized Toby because a former employee told me Ms. Susko was certified to euthanize and had been involved in the deaths of other dogs in their care. When Pet Helpers showed me the video of Toby alive and the front page of the Post & Courier on or about June 17, 2021, I realized then that they hadn't killed him and stopped saying they had. As for my statements

that Pet Helpers was “cruel and greedy” those were true statements I concluded from the fact that they refused to reunite us and deliberately caused acute emotional pain to me and suffering to Toby because he was abandoned by someone he trusted and loved. They were “greedy” because the only reason they didn’t return him to me is they wouldn’t have been able to collect monies on his alleged adoption. In conclusion then, there was no slander or libel because nothing was said that was false for malicious reasons. They committed and tried to conceal fraud through the lawsuit and should face legal consequences along with their legal representative, Stephan Futeral, and should be libel for damages for deliberating causing me emotional pain plus the injuries of the lawsuit itself which extorted thousands of dollars from me, inflicted false imprisonment and caused extreme stress that has been detrimental to my health and general well-being.

- VII.** The plaintiff’s attorney, Stephan V. Futeral, abused civil process because he implemented the lawsuit against the Respondent for (1) an ulterior purpose, that being to conceal the criminal fraud of his clients who had staged an adoption of my dog Toby in order to collect donations and subsidies on the basis of finding him a new home. All indications point to the fact that the adoption was actually staged by the third-party defendant, Melissa Susko, Pet Helper’s executive director, and at least one of her employees by the name of Blaine John who posed as the adopter in the “Going Home” adoption photo Pet Helpers posted on their website on or about May 10, 2021. The Respondent’s attorney did (2) willfully conduct the litigation against the Appellant with full knowledge that the adoption was not legitimate and for that same purpose, manufactured evidence in a form of an alleged adoption application and presented it to the court at the hearing April 22, 2022. The lower Court accepted the adoption application as valid although Mr. Futeral did not offer any verification such as a picture identification card of the alleged adopter along with the document. Earlier Mr. Futeral also presented an affidavit from Blaine John stating he had not adopted Toby. Neither document is admissible as evidence in court and do not prove that the adoption was legitimate. Although the court accepted the application as valid, at earlier hearings the court would not consider my photo exhibits that showed the original adoption picture matched the employee Blaine John and subsequent photographs Mr. Futeral provided to the Appellate of another individual, he claimed was actually the adopter in an attempt to discredit the Appellant’s claim that the adoption was staged. In the course of his abuse of civil process, Mr. Futeral also made false statements on court documents he filed in order to obtain restraining orders stating that the Appellant had violated a trespass notice and threatened Pet Helper’s employees. The discovery requests were totally unnecessary because he had already obtained the public verbal and written statements, he claimed were slander and libel. The discovery requests, especially the production, were overly burdensome, impossible for anyone to complete and solely requested to occupy all the Appellant’s time so she wouldn’t be able to defend herself and also to enable the Respondent to

collect sanctions when they couldn't be completed. This type of lawsuit is often referred to a "Strategic Lawsuit Against Public Participation" (S.L.A.P.P.) because it is implemented to silence public discourse through use of a preponderance of legal actions which makes it impossible for the person to defend themselves and they eventually concede due to the sheer volume and intensity of the number of legal actions employed against them. It is an affront on free speech and another example of abuse of civil process.

CONCLUSION

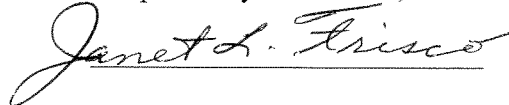
The conclusion that must be arrived at is that the lower court and the plaintiff's attorney worked together to deny me my right to a fair trial with a jury of my peers. The lower court abused the standard of discretion and the plaintiff's lawyer abused civil process in order to conceal the criminal fraud of his client who staged an adoption of my dog Toby to collect donations and subsidies. The Plaintiff's attorney is guilty of making false statements on court documents, manufacturing evidence, fraud upon the court, abuse of civil process and criminal acts in illicitly collecting sanctions and falsely imprisoning me until I paid them. The Court of Common Pleas, 9th Circuit is an accomplice in the injustice I have endured at the hands of the Respondent's attorney and both have flagrantly abused the power of the South Carolina Court system: Because the Plaintiff/Respondent engaged in the abuse of civil process to conceal criminal fraud, all orders should be reversed, my money reimbursed with interest, my dog Toby returned to me and the guilty parties face legal consequences.

The following orders of May 5, 2022 and sanction of \$9,638.48 against me should be revoked by this Honorable Court:

- 1) Partial Summary Judgement on Plaintiff's Causes of Action for libel and slander per se and damages,
- 2) Summary Judgement granted to Plaintiff and Third-Party Defendant regarding Defendant's counterclaims,
- 3) Judgement by Default for Plaintiff's claims for libel and slander per se,
- 4) Dismissal with prejudice of Defendant's claims against Defendant Susko,
- 5) Judgement by Default against Defendant for Plaintiff's Malicious Prosecution claim and damages.
- 6) Judgement by Default for Plaintiff's claim for a permanent injunction.

DATED: March 17, 2023

Respectfully submitted,



Janet L. Frisco, Pro Se