

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY S.C. SUPREME COURT
Court of Common Pleas

Jean H. Toal, Circuit Court Judge
Consolidated C.A. No. 2015-CP-10-2389

Appellate Case No.: 2020-000605

Amy Garrard and Lee Garrard, Guardians Ad Litem for R.C.G., a Minor; Dean Frailey and Kathryn Frailey, Guardians Ad Litem for C.F., a Minor; Richard Nelson and Cheryl Nelson, Guardians Ad Litem for D.G.N., a Minor; Adam Olsen Ackerman; and AEP, III, Plaintiffs,

v.

Charleston County School District, Kevin Clayton, Axxis Consulting Company, and Jones Street Publishers, LLC, Defendants,

And

Eugene Walpole, Plaintiff,

v.

Charleston County School District, Kevin Clayton, Axxis Consulting Company, and Jones Street Publishers, LLC, Defendants,

Of Whom Eugene Walpole, Amy Garrard and Lee Garrard, Guardians Ad Litem for R.C.G., a Minor; Dean Frailey and Kathryn Frailey, Guardians Ad Litem for C.F., a Minor; Richard Nelson and Cheryl Nelson, Guardians Ad Litem for D.G.N., a Minor; Adam Olsen Ackerman; and AEP, III are the Petitioners,

And

Jones Street Publishers, LLC, is the Respondent.

**RESPONDENT JONES STREET PUBLISHERS, LLC ‘S
RETURN TO PETITION FOR REHEARING**

Respondent Jones Street Publishers, LLC (“Jones Street”) respectfully submits this return to the Petition for Rehearing filed by Petitioners Eugene Walpole, Amy Garrard and Lee Garrard, guardians ad litem for R.C.G., a minor, Dean Frailey and Kathryn Frailey, guardians ad litem for C.F., a minor, Richard Nelson and Cheryl Nelson, guardians ad litem for D.G.N., a minor, Adam Olsen Ackerman, and A.E.P., III (“Petitioners”).

Petitioners have not provided any valid basis for this Court to reconsider or to change any part of its opinion affirming in result the grant of summary judgment in favor of Jones Street. The Court’s opinion does not contain any error of law, does not rest upon any factual determination of the lower courts that lacks evidentiary support in the record, and does not overlook any meritorious argument asserted by Petitioners in the underlying appeal. Accordingly, Petitioners’ request for rehearing should be denied.

Petitioners’ request for rehearing purports to allege three errors in this Court’s opinion. Specifically, Petitioners assert that the opinion: 1) misapprehends the definition of general damages under South Carolina defamation law; 2) imposes new or additional burdens of proof for special damages or injury to reputation; and 3) overlooks evidence in the record regarding Petitioners’ allegations of harm in the form of hurt feelings, mental suffering, or emotional distress. However, the crux of Petitioners’ argument for rehearing is that the Court refused to allow them to proceed on a defamation claim without proof of injury to their reputations. Rather, Petitioners misconstrue the Court’s opinion by narrowly focusing on the Court’s statement that “Petitioners fall short on the element of damages.” However, Petitioners conveniently ignore the remainder of the Court’s opinion, which clearly articulates that, as to damages, “it was incumbent on Petitioners to show actual injury attributable to [Jones Street’s] publications.”

Our courts have consistently held and observed that a plaintiff alleging defamation against a media defendant must be able to show an actual injury to reputation caused by the defendant's statement or publication. While the assessment of the monetary value of the reputational injury may include a valuation of hurt feelings, mental suffering, or emotional distress, the gravamen of a defamation claim itself is injury (or damage) to reputation. *See Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998) (“The tort of defamation allows a plaintiff to recover for injury to her reputation as the result of the defendant's communication to others of a false message about the plaintiff.”). Stated otherwise, there is no actionable claim for or damages from an alleged defamatory statement without proof of injury to reputation stemming from that statement. Indeed, “[t]he very essence of an action for defamation is that the plaintiff has suffered damage as a result of the injurious effect of the defamation upon his reputation.” *Capps v. Watts*, 271 S.C. 276, 283, 246 S.E.2d 606, 610 (1978) (citations omitted) (alterations in original). “Consequently, ‘[d]efamation does not focus on the hurt to the defamed parties’ feelings, but on the injury to their reputations.” *Kunst v. Loree*, 424 S.C. 24, 45, 817 S.E.2d 295, 306 (quoting *Castine v. Castine*, 403 S.C. 259, 265, 743 S.E.2d 93, 96 (Ct. App. 2013)).

In their petition for rehearing, and throughout this litigation, Petitioners have conflated the requirements of actionable defamation – i.e., that the defendant made a false statement that caused actual injury to their reputations – with the determination of the monetary damages (whether in the form of general or special damages) to which they may be entitled if the defendant is found liable. Despite Petitioners’ persistence in pressing this inaccurate reading of defamation law, the trial court, the Court of Appeals, and now this

Court have consistently found that Petitioners failed to demonstrate the foundational element of actual injury to reputation when required to do so to avoid summary judgment and have only put forth speculative and conjectural statements regarding this threshold issue. Consequently, the findings of each of these courts is wholly consistent with South Carolina law.

Nowhere in their petition do Petitioners direct this Court to any evidence in the record demonstrating that the publications at issue in this appeal caused any damage to their reputations separate and apart from the extensive negative publicity concerning the controversy by other media outlets or the many individuals who spoke out against Petitioners' actions. Instead, Petitioners continue to rely on vague statements regarding Petitioners' personal discomfort with being confronted about their actions. *See* Petition for Rehearing, at pp. 5-7.¹ Notably, Petitioners do not direct the Court to any deposition excerpts or other material in the record showing evidence that Petitioners suffered any actual injury to their reputations. However, concrete proof of injury to reputation is required as a matter of law. *See Time, Inc. v. Hill*, 385 U.S. 374, 384 n.9 (1967) (in a defamation case “the primary harm being compensated is damage to reputation,” not “the mental distress from having been exposed to public view”); *see also Monitor Patriot Co. v. Roy*, 401 U.S. 265, 275 (1971) (“[D]amage to reputation is, of course, the essence of libel.”).

Interestingly, Petitioners make no mention of the evidence that is contained in the record supporting the trial court's findings and the appellate courts' affirmance of the same.

¹ This pagination starts from the page that begins with the heading “Argument” given that Petitioner's filing does not include any page numbers.

For example, in written discovery, Petitioners admitted that they could not identify anyone who read the publications and changed their opinions of any of the Petitioners or their reputations because of those publications. (App. 149) When questioned in their depositions, none of the Petitioners identified any instance in which they experienced damage to their reputations. During his deposition, Coach Walpole admitted that he had not lost any friends because of the publications. He further noted that a student who wrote an article critical of the team's actions and Coach Walpole's response to those actions continued to have a good relationship with him. He further conceded that he and the coaches at other schools maintained good relationships with "mutual respect." (App. 120-24) Additionally, the student Petitioners acknowledged that, while their actions may have been the topic of conversation in the community for a while, none of them had any evidence that their reputations were compromised because of the publications. *See, e.g.*, (App. 132-34 (Petitioner Ackerman admitting that none of his friends stopped associating with him after the publications); App 101-102 (Petitioner Frailey noting that classmates who were friendly with him prior to the publications remained friendly with him after the publications); App. 466-67 (Petitioner Moore complaining of perceived stigma, but unable to identify anyone who actually changed their opinion of him because of the publications); App. 158-59 (Petitioner Nelson conceding that he lost no friends as a result of the publications); App. 170-71 (Petitioner Perry stating that no one in the school or community ever spoke negatively of him because of the publications); App. 184-89 (Petitioner R.C.G. conceding that he never experienced and negative commentary or treatment from his friends or community as a result of the publications)). Jones Street's briefing during this appeal elaborates on this issue and is incorporated herein by reference. *See* Brief of

Respondent Jones Street Publishers, LLC, dated May 27, 2022, at pp. 33-40; *see also* Final Brief of Respondent Jones Street Publishers, LLC, at App. 1024-28.

At bottom, Petitioners have always sought to recover damages against Jones Street for what amounts to embarrassment and bruised egos. However, without any actual injury to reputation, Petitioners do not have an actionable defamation claim. This Court's opinion holds true to South Carolina defamation law requiring proof of injury of reputation in the context of a media defendant's publication on a matter of public concern. Nothing in the opinion changes the definition of general damages, imposes any additional burdens of defamation plaintiffs, or overlooks Petitioner's failure to present evidence of reputational damage.

For these reasons, and for the reasons set forth in Jones Street's prior briefing and arguments to this Court, Petitioners' request for rehearing should be denied and the remittitur should be duly issued.

Respectfully submitted,

s/Meliah Bowers Jefferson

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