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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY

Court of Common Pleas

The Honorable Perry H. Gravely
Circuit Court Judge

Common Pleas Case No.: 2017-CP-39-00709

Appellate Case No.: 2022-001332

Andrew Pampu.....Appellant/Respondent,

v.

Erin Wingo, David Wingo, and Colin J. Gahagan.....Respondents/Appellants,

**BRIEF OF COLIN J. GAHAGAN,
RESPONDENT/APPELLANT**

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September 14, 2023

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STATEMENT

This appeal arises out of an action for defamation and civil conspiracy allegedly resulting from statements and acts by Erin Wingo, David Wingo and C. J. Gahagan regarding whether Andrew Pampu raped Erin Wingo as a result of her inability to consent to sex due to excessive drinking.

On October 24, 2015, Erin Wingo had become extremely intoxicated while attending a fraternity party. At that time, Erin Wingo was dating C. J. Gahagan, who also happened to be a pledge brother of Andrew Pampu in the fraternity giving the party. *R. p. 1588, lines 12 – 18; R. p. 1824, lines 19 – 25*). When C. J. Gahagan failed to pay attention to Erin Wingo at the party, she sought out Andrew Pampu, who was celebrating his birthday. *(R. p. 1588, lines 11 - 17)*. In further celebration of that birthday, Andrew Pampu and Erin Wingo engaged in sexual intercourse. C. J. Gahagan learned of the sexual interaction when Andrew Pampu bragged about his conquest to a fraternity brother who relayed the text to other fraternity brothers. *(Tr. p. 491, ll. 5-24)*. Erin Wingo later advised C. J. Gahagan, when he later confronted her, that she had little to no memory of the sex. *(R. p. 1828, line 25 to p. 1829, line 18)*. This position seemed to be in accordance with the fact that the texts she had sent him on the evening of the sexual encounter which were almost non-sensical. *(R. pp. 3244 - 45)*. Moreover, C. J. Gahagan contacted girls who were with Erin Wingo on the evening of the party and they confirmed that she was very drunk. C. J. Gahagan's initial effort to confront Andrew Pampu about the

sexual encounter were initially rebuffed by Andrew Pampu. (*R. p. 1829, line 19 to p. 1830, line 1; R. pp. 3249 - 50*). Based upon the information he was able to gather through his investigation, C. J. Gahagan texted two fraternity brothers that he thought Andrew Pampu had raped Erin Wingo. (*R. p. 1830, lines 2 - 24*).

The Clemson Office of Community and Ethical Standards, subsequently received a report that Andrew Pampu had engaged in non-consensual sex with Erin Wingo. It undertook an investigation of the matter, contacting various witnesses, including C. J. Gahagan. It subsequently undertook a Title IX hearing. After an investigation, a Title IX hearing was instituted by Clemson University. (*R. pp. 3253 - 54*).

On February 29, 2016 the Clemson Community and Ethical Standards Office found that Andrew Pampu had engaged in non-consensual sex with Erin Wingo on October 24, 2015. (*R. pp. 3255 - 57*). Andrew Pampu thereafter appealed that finding to the Office of the President for Clemson University and the holding was affirmed. (*R. p. 3258*). He did not appeal that confirmation of the school finding to the Circuit Court but instead instituted direct actions against Clemson University and the Appellants in this case: Erin Wingo, David Wingo and Colin J. Gahagan.

The civil action against Clemson University was settled with the finding of nonconsensual sex being affirmed. (*R. p. 3260*). The action against Erin Wingo, David Wingo and C. J. Gahagan went to trial in Pickens County on

March 21, 2022. During the civil trial of this matter, the trial judge excluded all evidence of the Title IX hearing, including testimony and findings. (*R. p. 1286, line 16 to R. p. 1294, line 9*). Nonetheless, Respondent was able to present expert testimony which relied upon the expulsion of Andrew Pampu as a basis for damages, (*R. p. 1339, line 4 to p. 1340, line 21*) and allowed Andrew Pampu to assert a civil conspiracy by Erin Wingo and C. J. Gahagan to cause him harm through their acts during the Title IX hearing (*R. pp. 67 - 69*). C. J. Gahagan contends this was error and gave an incomplete picture for the jury to consider.

At the conclusion of evidence and testimony, a verdict was rendered on March 25, 2022. (*R. p. 2314, line 5 to p. 2315, line 2*). The jury returned verdicts against all Appellants, with the damages being assessed against C. J. Gahagan in particular for \$700,000.00 for defamation, \$220,000 for punitive damages and \$1,000,000.00 for civil conspiracy. (*R. p. 2334, lines 16 - 18*). The verdict for civil conspiracy was overturned by Order of Judge Perry Gravely on July 11, 2022. (*R. pp. 5 - 7*). That same Order confirmed the jury verdicts for defamation and punitive damages. C. J. Gahagan has appealed the trial court's posttrial rulings on defamation and punitive damages, as well as the court's ruling regarding the admissibility of the Title IX hearing which led to Andrew Pampu having engaged in nonconsensual sex with Erin Wingo.

I.

DID THE LOWER COURT ERR IN FAILING TO DISMISS ANDREW PAMPU'S ACTION SINCE HE WAS COLLATERALLY ESTOPPED FROM PURSUING FURTHER LITIGATION ON THE ISSUE OF NON-CONSENSUAL SEX DETERMINED IN A PRIOR ADMINISTRATIVE HEARING?

On February 26, 2016, an administrative hearing was held before the Clemson Office of Community and Ethical Standards regarding Andrew Pampu's violation of the Clemson University general student regulations. (*R. pp. 3255 - 57*). Among the charges brought against Andrew Pampu was a violation of the Anti-Harassment and Non-Discrimination Policy. *Id.* Specifically, Andrew Pampu was accused of having engaged in sexual misconduct on October 24, 2015. On February 29, 2016, the Office of Community and Ethical Standards found that Andrew Pampu had violated the policy by engaging in sexual misconduct with Erin Wingo. *Id.*

The Anti-Harassment and Non-Discriminatory Policy for Clemson University defines "sexual misconduct" to include non-consensual conduct of a sexual nature including but not limited to touching, fondling, kissing, groping and indecent exposure, among other activities. The policy goes on to state that an impairment due to the influence of alcohol may limit or negate a person's ability to consent to a sexual act. (*R. pp. 3147 - 48*). The term "rape" is defined by the Anti-Harassment and Non-Discriminatory Policy to include the carnal knowledge of a person without the consent of the victim. (*R. p. 3145*). If the finding of non-consensual sex is binding upon Andrew Pampu through the

doctrine of collateral estoppel, then the assertion that he raped Erin Wingo would be considered to be true, thereby impacting the action for defamation.

However, the trial court held that collateral estoppel was not applicable in this matter, primarily on two grounds: initially, the court held that the Clemson Office of Community and Ethical Standards did not qualify as a state agency (*R. pp. 20 - 22*); later the court held that the Title IX hearing provided inadequate protection to Andrew Pampu on due process grounds due to the absence of certain evidentiary protections. (*R. pp. 7 - 8*).

Under South Carolina law, where a civil action arises out of the same factual scenario as one which has been the subject of an agency hearing, a finding by the state agency on any issue which is critical to recovery in the civil action is binding upon the parties to the civil action who were also the subject of the administrative hearing. Bennett v. South Carolina Dept of Corrections, 305 S.C. 310, 408 S.E.2d 230 (1991); Perry v. South Carolina Law Enforcement Division, 310 S.C. 558, 426 S.E.2d 334 (1992). However, this general rule is subject to certain exceptions:

- 1) the party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action;
- 2) the issue is one of law and (a) the two actions involve claims which are substantially unrelated, or (b) a new determination is warranted in order to take into account an intervening

change in the applicable legal context or otherwise to avoid an inequitable administration of the laws;

- 3) a new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts or by factors relating to the allocation of jurisdiction between them;
- 4) the party against whom preclusion is sought had a significantly greater burden of persuasion with respect to the issue in the initial action; the burden has shifted to his adversary; or the adversary has a significantly heavier burden than he had in the first action; or
- 5) there is a clear and convincing need for a new determination of the issue (a) because of the potential adverse impact on the determination on the public interest or on the interests of persons not themselves parties to the initial action, (b) because it was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context of a subsequent action, or (c) because the party sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication of the initial action.

Restatement (2d) Judgments §28.

Only the issue of whether the Clemson Office of Community and Ethical Standards qualified as a state agency which could issue a binding decision and the issue of whether the procedures followed by the Clemson Office of Community and Ethical Standards were adequate were utilized by the trial court as a basis to hold that the doctrine of collateral estoppel was not applicable to this case.

With regard to the issue of whether the Clemson Office of Community and Ethical Standards constitutes an “agency”, recourse must be made to the various statutes which define that term. *Section 1-23-310* of the South Carolina Code defines “agency” to include each state board, commission, department or office, other than the legislature or courts, which are authorized by law to determine “contested cases”. The term “contested case” is defined by *Section 1-23-310* to be a proceeding in which the legal rights, duties or privileges of a party are to be determined by an agency after an opportunity for a hearing. *Section 15-78-30(a)* defines the term “agency” to include state schools, colleges and universities.

The lower court held that the definition set forth in *Section 15-78-30(a)* was inapplicable since that statute was part of the Tort Claims Act and this statute action did not involve an action against a governmental agency. (*R. pp. 20 - 22*). The distinction is similar to arguments raised in Shelton v. Oscar Meyer Foods Corp., 325 S.C. 248, 481 S.E.2d 706 (1997) and Bennett v. South

Carolina Dept. of Corrections, 305 SC 310, 408 S.E.2d 230 (1991). In Shelton, the court held that collateral estoppel would not apply with regard to a finding made by the Employment Security Commission since the finding by that commission is to determine whether a claimant is qualified to receive employment benefits in an expeditious manner so that employers are not compelled to intensely contest the hearing due to the stakes being low. A wrongful termination lawsuit in comparison seeks to place the blame for an employee's dismissal upon the employer, thereby exposing the employer to much greater damages. As a result, the findings of the Employment Security Commission were found to not collaterally estop the employer from contesting the issue of proper termination.

In Bennett, on the other hand, the employee filed a complaint with the State Grievance Committee and the Committee ruled in the favor of the employer. The Court held that the Commission's ruling served to collaterally estop the employee from contesting the issue of retaliatory discharge since that claim was identical to the issues presented to and ruled upon by the Grievance Committee. The employee had failed to appeal the committee ruling rather than bring a direct civil action. The Bennett court, unlike the Shelton court, found that the hearing before the Grievance Committee was necessarily more in the nature of a full evidentiary hearing, thereby leading to the application of collateral estoppel.

In this case, the Title IX hearing to which Andrew Pampu was a party, involved the presentation of evidence and testimony through witnesses with the benefit of lawyers. (*R. p. 2106, line 10 to p. 2108, line 5; R. p. 2109, lines 11 - 24*). The issues included whether Andrew Pampu was to be expelled or suspended from Clemson, (*R. p. 2111, lines 4 - 6; R. p. 2114, lines 2 - 16*), an issue which would be expected to and was fully contested. The hearing was in essence similar to a full evidentiary hearing one would be involved in in a civil trial. Moreover, the importance of the findings to Andrew Pampu is further demonstrated by the fact that he appealed the findings twice. Both times the findings were upheld by Clemson. (*R. p. 2114, line 19; R. p. 2118, line 5; R. pp. 3255 - 57*). He thereafter brought a direct action against Clemson in federal court rather than appealing to the circuit court as provided by *Section 1-23-380*. By failing to do so, Andrew Pampu waived his right to contest the finding of the Clemson Office of Community and Ethical Standards and is bound by that finding as was the Plaintiff in Bennett, *supra*.

Andrew Pampu has gone on to argue that the Clemson Office of Community and Ethical Standards is not a governmental agency since it does not fit within the definition of "agency" as set forth by *Section 1-23-310*. In order to fit that definition, unlike the definition of agency set forth in *Section 15-78-30(a)*, there must be a state board, commission, department or office which is not part of legislature or courts. In general, for the state government to operate, it must do so through either the legislative, judicial or executive

branch. The definition set forth in *Section 1-23-310* excludes any actions taken through either the legislative or judicial branch and as a result applies only to the executive branch. Undertaking “contested cases” is the function of the executive branch since it is meeting the mandate of the South Carolina Campus Sexual Assault Information Act as set forth in *Sections 59-105-10 to 60*. Moreover, the Clemson Office of Community and Ethical Standards is a part of Clemson University. Clemson University is under the management and control of its board of trustees, which is statutorily directed to make all rules and regulations for the government of the school. See §§59-119-40 and 50. As a result, the findings of the Clemson Office of Community and Ethical Standards are in essence the work of that office for a governmental board and hence an “agency”. This would make the definition of “agency” as used in *Section 15-78-30(a)* consistent with the definition of “agency” as used in *Section 1-23-310*. Moreover, since the Clemson Office of Community and Ethical Standards is not part of either the legislative or judicial branch, its charge to conduct “contested cases” must be undertaken as an agency of the executive branch since there is no other method for it to act.

The trial court also determined that the hearing procedures of the hearing before the Clemson Office of Community and Ethical Standards were inadequate in that the office failed to follow the South Carolina Rules of Evidence by not permitting cross-examination but requiring questions be submitted to the chairperson before being asked. (*R. pp. 4 - 5*). The procedural

and evidentiary rules and standards for contested cases are set forth in *Sections 1-23-320 and 330*. In this case the parties were allowed to participate in examination with the benefit of advice from an attorney. (*R. p. 2106, line 20 to p. 2107, line 18*). However, as noted by the trial court, questions for examination were submitted to and asked by the chairman. It is not clear that this is a violation of due process and a failure to protect the rights of Andrew Pampu. However, the issues of the manner in which the hearing was conducted and whether the interests of Andrew Pampu were harmed by the manner of presentation are matters which should have been resolved by Andrew Pampu in his appeal of the finding of the Clemson Office of Community and Ethical Standards. These issues are controlled by Clemson University due to its control of the Title IX hearing and by Andrew Pampu who had standing to contest the manner in which this Title IX hearing was conducted. C. J. Gahagan was not a party to that hearing, only a witness, and therefore had no standing to effect the manner in which the hearing was conducted. (*R. p. 2123, line 16 to p. 2124, line 11*). Andrew Pampu waived his right to contest the manner in which the Title IX hearing was conducted by not appealing to the circuit court. Although Andrew Pampu may complain that it is unfair to him to be found to have engaged in non-consensual sex by the manner in which the hearing was conducted, he at least had the means to correct the purported wrong. C. J. Gahagan did not and is left with the unfair situation of being held responsible for what was previously determined by a governmental agency.

Between those two parties, the impact should be placed upon the party which had the means to correct the hearing results.

As it now stands, however, the results of the Title IX hearing stand and Andrew Pampu is bound by the finding of that hearing that he engaged in non-consensual sex. Yet, if he is not collaterally estopped from contesting that finding, he would be allowed to collect an enormous judgment based upon an inconsistent determination. As was determined in Beall v. Doe, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984).

In the abstract, there is no legitimate reason to permit a defendant who has already thoroughly and vigorously litigated an issue and lost the opportunity to relitigate the identical question..... The public interest demands an end to the litigation of the same issue. Principles of finality, certainty, and the proper administration of justice suggest that a decision once rendered should stand unless some compelling countervailing consideration necessitates re-litigation.

Beall, 281 S.C. at 370, 315 S.E.2d at 190, quoting Hossler v. Barry, 403 A.2d 762, 769 (Me. 1979). The same logic should be applicable to a plaintiff who has thoroughly litigated the issue of consensual sex before a state agency.

II.

SHOULD ANDREW PAMPU'S ACTION FOR DEFAMATION AGAINST C. J. GAHAGAN HAVE BEEN DISMISSED DUE TO THE ABSENCE OF EVIDENCE OF NEGLIGENT FAULT BY C. J. GAHAGAN?

The elements of defamation include: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by that publication. Restatement, *Torts (2d)* § 558; *Holtzscheiter v Thompson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998) (Toal, dissent).

Focusing upon the essential element of fault, there must be proof that C. J. Gahagan acted contrary to an applicable standard. In the case of a private individual, as opposed to a public official or public figure, there must be proof of negligence. According to the Restatement, *Torts (2d)* § 580B, comment g

Negligence is conduct that creates an unreasonable risk of trauma (*See* § 282). The standard of conduct is that of a reasonable person under like circumstances (*See*, § 283). Insofar as the truth or falsity of the defamatory statement is concerned, the question of negligence has sometimes been expressed in terms of the defendant's state of mind by asking whether he had reasonable grounds for believing that the communication was true. Putting the question in terms of conduct is to ask whether the defendant acted reasonably in checking on the truth or falsity or defamatory character of the communication before publishing it.

In this instance, the asserted defamatory statements by C. J. Gahagan have to do with two texts he sent to fraternity brothers concerning Andrew Pampu's activities with Erin Wingo. (*R. p. 1830, lines 10 - 24*). The evidence

and testimony establish C. J. Gahagan was not present when the sexual acts between Andrew Pampu and Erin Wingo occurred. However, there is no dispute that they engaged in sexual intercourse. (*R. p. 1588, lines 4 - 7*). The real question has to do with whether the sex was consensual. C. J. Gahagan learned of the sexual activities of Andrew Pampu and Erin Wingo through a text sent by Andrew Pampu to a fraternity brother bragging of his sexual conquest. (*R. p. 3248*). C. J. Gahagan thereupon confronted Erin Wingo with what had occurred. She advised him that she had little to no knowledge of her interaction with Andrew Pampu due to her state of intoxication. (*R. p. 1728, line 7 to p. 1729, line 19*). Note should be taken of the definition of “rape” under the Clemson Anti-Harassment and Non-Discrimination Policy as including the carnal knowledge of a person without consent with the victim, including instances where the victim is incapable of giving consent due to temporary or permanent mental or physical incapacitation. (*R. p. 3145*). The policy goes on to note that the inability to consent may be due to the influence of alcohol, where the accused party knew or should have known of the victim’s inability to consent. (*R. pp. 3147 - 48*).

Armed with this definition of “rape” and the position of Erin Wingo that she was too drunk to remember what she had done, there was a sufficient basis for C. J. Gahagan to conclude that there may have been a “rape”. However, he undertook to further investigate the matter to get a fuller picture. He was aware that Erin Wingo had attempted to contact him following her interaction

with Andrew Pampu. A review of texts she sent at that time are almost incomprehensible and reveal a person who is having problems typing and conveying a coherent message. (*R. pp. 3244 - 3245*). C. J. Gahagan also contacted several of the girls who were with Erin Wingo who confirmed that she was very drunk. (*R. p. 1602, lines 3 - 6*). He also attempted to discuss the matter with Andrew Pampu, who initially refused to discuss the matter. (*R. p. 1829, lines 19 - 24*).

It is only following this investigation by C. J. Gahagan that he sent the two texts to his fraternity brothers regarding the alleged "rape". Please note that Andrew Pampu at that time had refused to reveal his side of the story.

There is no evidence or testimony of what further actions C. J. Gahagan should have undertaken to comply with the reasonable man standard. In the absence of such evidence there is no proof of a breach of the applicable standard and therefore no proof of negligence. Without proof of this essential element, there is no proof of defamation by C. J. Gahagan.

III.

DID THE TRIAL COURT ERR IN AFFIRMING THE AWARD OF PUNITIVE DAMAGES AGAINST C. J. GAHAGAN DUE TO THE ABSENCE OF CLEAR AND CONVINCING EVIDENCE OF STATUTORY FACTORS LISTED IN SECTION 15-32-520(E) OF THE SOUTH CAROLINA CODE?

In determining if a jury properly awarded punitive damages, a trial court is to consider the eleven factors set forth in *Section 15-32-520(E)*. These include:

- 1) the defendant's degree of culpability;
- 2) the severity of the harm caused by the defendant;
- 3) the extent to which the plaintiff's own conduct contributed to the harm;
- 4) the duration of the conduct, the defendant's awareness, and any concealment by the defendant;
- 5) the existent of similar past conduct;
- 6) the profitability of the conduct to the defendant;
- 7) the defendant's ability to pay;
- 8) the likelihood the award will deter the defendant or others from like conduct;
- 9) the awards of punitive damages against the defendant in any state or federal court action alleging harm from the same act or course of conduct complained of by the plaintiff;

- 10) any criminal penalties imposed on the defendant as a result of the same act or course of conduct complained of by the Plaintiff; and
- 11) the amount of any civil fines assessed against the defendant as a result of the same act or course of conduct complained of by the plaintiff.

§ 15-32-520(E), S.C. Code (1976, as amended).

The trial court ruled that the jury award of punitive damages was to be affirmed because:

- 1) the defamatory statements were actionable *per se*, thereby raising the presumption of common law malice;
- 2) the duration of the conduct in issue lasted more than four (4) months;
- 3) defendants were fully aware of their conduct;
- 4) the award was likely to deter others from making similar claims;
- 5) the punitive award was reasonably related to the harm;
- 6) the punitive award was less than the award for actual damages; and
- 7) the inability of the defendants to pay was not controlling.

(R. pp. 11 - 12);

With regard to the presumption of common law malice, the Supreme Court has held that when a defamation is actionable *per se* there arises a common law presumption of implied malice or “malice in law,” which substitutes for common law malice. Holtzscheiter v. Thomson Newspaper.

Inc., supra. However, while this implied malice will support an award of actual damages, punitive damages cannot be recovered in the absence of proof of actual malice. Jones v. Garner, 250 S.C. 479, 158 S.E.2d 909 (1963). Actual malice cannot be presumed. Id. Moreover, punitive damages must be proved by clear and convincing evidence of willful, wanton or reckless conduct. § 15-32-520(D). The only evidence of defamatory statements by C. J. Gahagan concern two texts he sent to fraternity brothers made a day or two after the event and before the investigation undertaken by Clemson. (*R. p. 1829, lines 10 - 24*). These statements as noted were based upon information obtained by C. J. Gahagan and do not demonstrate that he was actuated by ill will with a design to causelessly and wantonly injure Andrew Pampu or published the texts with a conscious indifference toward the latter's rights.

With regard to the duration of the conduct, the trial court focused on the actions of all defendants. As noted, the defamatory statements made by C. J. Gahagan occurred on one day, shortly after the event and while Andrew Pampu refused to discuss the matter to reveal his position. The trial court extended the duration of defamation to include acts by the other defendants. The award is however to be made on an individual basis.

The trial court acknowledged there was no evidence of prior similar conduct. Instead, it focused on the defendants being "fully aware" of their actions. While C. J. Gahagan was aware of what his statements were, he was, at the time the texts were made, unaware of Andrew Pampu's position since

Andrew Pampu had refused to speak to him. Moreover, the texts from C. J. Gahagan were based upon knowledge of Erin Wingo's condition immediately after the event, as demonstrated through her texts and the fact that she was seen crying uncontrollably after the event. (*R. p. 2038, line 16 to o, 2039, line 2*). He also spoke to Erin Wingo's girl friends who indicated Erin Wingo was in bad shape. As acknowledged by Andrew Pampu in his testimony, Erin Wingo was at the "back end of a drunk." (*R. p. 1562, lines 9 -13*).

The trial court took note of the fact that the punitive damage award was less than the actual damage award. While this is true, the actual damage award was extremely large given the acts undertaken by C. J. Gahagan (two texts) and are not reasonably related to any harm sustained by Andrew Pampu since there was no evidence that either of the recipients of the Gahagan texts were affected by them or held Andrew Pampu to any lesser respect. In fact, the fraternity brothers consistently sided with Pampu and sought to defend him. (*R. p. 1581, line 18 to p. 1582, line 19*).

The trial court also noted there was no evidence of the ability to pay on the part of C. J. Gahagan. The trial court simply indicated that this factor alone was insufficient to require a reversal of the punitive award. However, when considered in conjunction with other factors, it is highly relevant.

The trial court failed to properly take into account these various factors, including the fact that C. J. Gahagan was a college freshman when these

events occurred, which, if properly weighed, would reveal that punitive damages were simply not warranted in this case.

CONCLUSION

In light of the above arguments, C. J. Gahagan would assert that the trial court's order affirming the award of damages for defamation be reversed on the following grounds:

- 1) the case should not have been submitted to the jury since a state agency had determined that Andrew Pampu engaged in non-consensual sex with Erin Wingo, thereby establishing that he had in fact "raped" her, as the term "rape" is defined by the Clemson Anti-Harassment and Non-Discriminatory Policy, and collaterally estopping Andrew Pampu from contending otherwise;
- 2) Andrew Pampu failed to establish "fault" on the part of C. J. Gahagan in texting two fraternity brothers about the rape of Erin Wingo, since there was no evidence of negligence on the part of C. J. Gahagan in determining if in fact Andrew Pampu had engaged in non-consensual sex; and
- 3) The award of punitive damages failed to consider those factors listed in *Section 15-32-520(E)*.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

Pursuant to Appellate Rule 210, the undersigned hereby certifies that
the Brief of Colin J. Gahagan complies with Rule 210(b).

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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Sep 14 2023

SC Court of Appeals

APPEAL FROM PICKENS COUNTY

Court of Common Pleas

The Honorable Perry H. Gravely

Circuit Court Judge

Common Pleas Case No.: 2017-CP-39-00709

Appellate Case No.: 2022-001332

Andrew Pampu.....Appellant/Respondent,

v.

Erin Wingo, David Wingo, and Colin J. Gahagan.....Respondents/Appellants,

CERTIFICATE OF MAILING

The undersigned hereby certifies that a complete and accurate copy of the foregoing *Brief of Colin J. Gahagan*, was served upon all counsel of record, as listed below on September 14, 2023, via email as follows:

Respectfully submitted,

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