

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

Jefferson Davis, Jr.,

Plaintiff,

v.

Chad Connelly, Dave Wilson, Steven Kirkland,
Tom Persons, Neil Mellen, E3 Software, LLC,
Endurance International Group Holdings, Inc.,
John Doe #1, John Doe #2, & John Does 3-40,

Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2020-CP-36-00382

**ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF
DEFENDANTS CHAD CONNELLY,
DAVE WILSON, TOM PERSONS,
AND NEIL MELLEN**

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SC Court of Appeals

This matter came before the Court upon the separate Motions for Summary Judgment on Behalf of Chad Connelly, Tom Persons, Dave Wilson, and Neil Mellen filed on November 15, 2021 (“Motions for Summary Judgment”). After the Court determined that the motions could readily be decided upon the motions and briefs submitted, the Court provided each party with an additional forty (45) days to submit any supplemental briefing, memoranda, submissions, or argument from the date of this Court’s Amended Bench Order filed on May 31, 2022. After careful review and consideration of the parties’ motions, briefs, memoranda, and other submissions, this Court grants the Motions for Summary Judgment on Behalf of Chad Connelly, Tom Persons, Dave Wilson, and Neil Mellen filed on November 15, 2021.

FINDINGS OF FACT

Plaintiff, who, though an attorney licensed to practice law in the State of Georgia, prosecutes this action as a *pro se* litigant, filed the Summons and Complaint in this matter on September 10, 2020. The Complaint asserts six causes of action against the various named and unidentified defendants collectively, including causes of action for (1) defamation per se and per quod, (2) defamation by innuendo, (3) invasion of privacy, (4) negligence, (5) intentional infliction of

emotional distress, and (6) conspiracy. Plaintiff shortly thereafter commenced the action against Defendants by serving the Summons and Complaint upon them individually between September 15, 2020, and September 18, 2020. On March 26, 2021, this Court dismissed the causes of action for defamation by innuendo and negligence asserted against Defendants Connelly, Persons, Wilson, and Mellen.¹ As a result, Plaintiff now proceeds against these defendants only upon the causes of action for defamation per se and per quod, invasion of privacy, intentional infliction of emotional distress, and conspiracy.

On July 27, 2021, Defendants Connelly, Persons, Wilson, and Mellen each properly served Plaintiff with interrogatories, requests for production, and requests for admission.² The defendants' requests for admission requested that Plaintiff admit the following as to each Defendant:

1. Admit that this Defendant did not publish any libelous, slanderous, or defamatory statement regarding you.
2. Admit that you do not possess any documentation supporting the allegation that this Defendant made any libelous, slanderous, or defamatory statement regarding you.
3. Admit that this Defendant has not made any false statement disparaging you.
4. Admit that you do not possess any documentation supporting the allegation that this Defendant has made any false statement disparaging you.
5. Admit that this Defendant has not published any false statement regarding you.
6. Admit that you do not possess any documentation supporting the allegation that this Defendant published any false statement regarding you.

¹ Plaintiff did not move for reconsideration, alteration, or amendment of the Order As To Motion to Dismiss Five Individual Defendants filed on March 26, 2021.

² These written discovery requests included Defendant Chad Connelly's First Set of Interrogatories to Plaintiff, Defendant Chad Connelly's First Set of Requests for Production to Plaintiff, Defendant Chad Connelly's First Set of Requests for Admission to Plaintiff, Defendant Dave Wilson's First Set of Interrogatories to Plaintiff, Defendant Dave Wilson's First Set of Requests for Production to Plaintiff, Defendant Dave Wilson's First Set of Requests for Admission to Plaintiff, Defendant Tom Persons' First Set of Interrogatories to Plaintiff, Defendant Tom Persons' First Set of Requests for Production to Plaintiff, Defendant Tom Persons' First Set of Requests for Admission to Plaintiff, Defendant Neil Mellen's First Set of Interrogatories to Plaintiff, Defendant Neil Mellen's First Set of Requests for Production to Plaintiff, and Defendant Neil Mellen's First Set of Requests for Admission to Plaintiff.

7. Admit that this Defendant did not appropriate or exploit your personality.
8. Admit that you do not possess any documentation supporting the allegation that this Defendant appropriated or exploited your personality.
9. Admit that this Defendant did not publicize your private affairs.
10. Admit that you do not possess any documentation supporting the allegation that this Defendant publicized your private affairs.
11. Admit that this Defendant did not intrude into your private activities.
12. Admit that you do not possess any documentation supporting the allegation that this Defendant intruded into your private activities.
13. Admit that this Defendant did not intentionally inflict emotional distress upon you.
14. Admit that you do not possess any documentation supporting the allegation that this Defendant intentionally inflict emotional distress upon you.
15. Admit that this Defendant did not conspire with any other individual for the purposes of injuring you.
16. Admit that you do not possess any documentation supporting the allegation that this Defendant conspired with any other individual for the purposes of injuring you.
17. Admit that this Defendant did not take any overt action in pursuit of any conspiracy to cause damage to you.
18. Admit that you do not possess any documentation supporting the allegation that this Defendant undertook any overt action in pursuit of any conspiracy to cause damage to you.
19. Admit that this Defendant did not make any false statement or representation concerning you in any printed material, on any website, or on any social media platform.
20. Admit that you do not possess any documentation supporting the allegation that this Defendant made any false statement or representation concerning you in any printed material, on any website, or on any social media platform.

Plaintiff admitted proper service and timely receipt of the written discovery requests but failed to provide any response to the requests within the time periods expressly prescribed by the South Carolina Rules of Civil Procedure. Plaintiff also failed to make any effort to obtain an enlargement of time to respond to the written discovery requests, including either by requesting an extension from the defendants who served the requests or by petitioning the Court for an enlargement of time to respond.

On September 27, 2021, Defendants filed a motion to compel responses to the interrogatories and requests for production and for an Order deeming each of the properly served requests for admission admitted in accordance with Rule 36, SCRPC. After careful review and consideration of the parties' motions and briefing, South Carolina jurisprudence, and the particular facts and circumstances of Plaintiff's complete failure to comply with the substantive and procedural requirements of the South Carolina Rules of Civil Procedure, this Court filed an Order deeming each matter of which an admission was requested of Plaintiff in Defendants' requests for admission admitted and conclusively established for trial on November 8, 2021.³

On November 15, 2021, Defendants Connelly, Persons, Wilson, and Mellen filed separate Motions for Summary Judgment as to Plaintiff's remaining causes of action for defamation per se and per quod, invasion of privacy, intentional infliction of emotional distress, and conspiracy on the grounds that the pleadings and admissions on file show that there is no genuine issue as to any material fact and, therefore, each defendant is entitled to summary judgment as a matter of law.

³ This Court also finds noteworthy that as of the date of this Court's deadline for the parties to submit any supplemental briefing, memoranda, submissions, or argument regarding these motions, Plaintiff has still failed to provide any responses to these defendants' interrogatories and requests for production in violation of this Court's Order Compelling Discovery filed on October 15, 2021. In fact, Plaintiff has completely failed to engage in any written discovery with these defendants.

LEGAL STANDARD

“A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.” Rule 56(a), SCRPC. “Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law.” Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002) (citing Rule 56(c), SCRPC). “The judgment sought shall be rendered forthwith 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 a judgment as a matter of law.” Rule 56(c), SCRPC. “The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citing Bankers Trust of South Carolina v. Benson, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976)).

ORDER

The pleadings and admissions on file show that there is no genuine issue as to any material fact as to Plaintiff’s remaining causes of action for defamation per se and per quod, invasion of privacy, intentional infliction of emotional distress, and conspiracy as to Defendants Connelly, Persons, Wilson, and Mellen. As a result, these defendants are entitled to summary judgment as a matter of law as to the causes of action without the services of a fact finder. Accordingly, this Court dismisses with prejudice the remaining claims asserted in this action by Plaintiff against Defendants Connelly, Persons, Wilson, and Mellen.

- I. There is No Genuine Issue of Material Fact Left Unresolved as to Plaintiff’s Cause of Action for Defamation Against Defendants Connelly, Persons, Wilson, and Mellen.**

“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.” Garrard v. Charleston County School District, 429 S.C. 170, 190, 838 S.E.2d 698, 708-09 (Ct. App. 2019) (quoting Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998). “Slander is a spoken defamation while libel is a written defamation or one accomplished by actions or conduct.” Id. “To establish a defamation claim, a plaintiff must prove: (1) a false and defamatory statement was made; (2) the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable regardless of harm or the publication of the statement caused special harm.” Id. (quoting West v. Morehead, 396 S.C. 1, 7, 720 S.E.2d 495, 498 (Ct. App. 2011); Erickson v. Jones Street Publishers, LLC, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006); Fleming v. Rose, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002)).

The truth or substantial truth of any alleged defamatory statement is a complete defense in any case. Parker v. Evening Post Publishing Co., 317 S.C. 236, 245, 452 S.E.2d 640, 645 (Ct. App. 1994) (holding that an article found substantially true as a matter of law is an absolute defense to defamation). “It is well settled that parties are judicially bound by their pleadings [and t]he allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action.” Postal v. Mann, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992) (citing Elrod v. All, 243 S.C. 425, 134 S.E.2d 410 (1964)). In addition, “South Carolina has long recognized that relevant pleadings, even if defamatory, are absolutely privileged.” Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 23, 567 S.E.2d 881, 893 (Ct. App. 2002) (internal citations omitted). “When a communication is absolutely privileged, no action lies for its publication, no

matter what the circumstances under which it is published, i.e., an action will not lie even if the report is made with malice.” Id. at 22, 567 S.E.2d at 892 (quoting Hainer v. American Med. Intern., Inc., 328 S.C. 128, 135, 492 S.E.2d 103, 106 (1997)). ““The [absolute] privilege covers anything that may be said in relation to the matter at issue, whether it be in the pleadings, in affidavits, or in open court.” Id. (quoting W. Prosser & W. Keeton, The Law of Torts, § 114, at 817 (5th ed.1984)). “That is, an ‘absolute privilege exists as to any utterance arising out of the judicial proceeding and having any reasonable relation to it, including preliminary steps leading to judicial action of any official nature provided those steps bear reasonable relationship to it.” Id. (quoting Crowell v. Herring, 301 S.C. 424, 430, 392 S.E.2d 464, 467 (Ct. App. 1990)).

Plaintiff's Complaint generally alleges that Defendants Connelly, Persons, Wilson, and Mellen contributed to the publication of false and defamatory information about Plaintiff on a website and through several emails associated with the website. The Complaint, however, fails to identify any allegedly defamatory statements in those emails or the referenced website or otherwise provide any facts to support these claims. Moreover, Plaintiff has conclusively admitted that Defendants Connelly, Persons, Wilson, and Mellen (1) did not publish any libelous, slanderous, or defamatory statement regarding Plaintiff; (2) has not made any false statement disparaging Plaintiff; (3) has not published any false statement regarding Plaintiff; and (4) did not make any false statement or representation concerning Plaintiff in any printed material, on any website, or on any social media platform. In addition, Plaintiff has conclusively admitted that he does not possess any documentation supporting these allegations. As these facts have been conclusively established, Plaintiff cannot prove the necessary elements to support his cause of action for defamation per se and per quod against Defendants Connelly, Persons, Wilson, and Mellen. As a result, Defendants

Connelly, Persons, Wilson, and Mellen are entitled to summary judgment as a matter of law as to this cause of action.

II. There is No Genuine Issue of Material Fact Left Unresolved as to Plaintiff's Cause of Action for Invasion of Privacy Against Defendants Connelly, Persons, Wilson, and Mellen.

“In South Carolina, there are three separate and distinct causes of action for invasion of privacy: 1) wrongful appropriation of personality; 2) wrongful publicizing of private affairs; and 3) wrongful intrusion into private affairs.” Sloan v. South Carolina Dep’t of Pub. Safety, 355 S.C. 321, 325-26, 586 S.E.2d 108, 110 (2003) (citing Swinton Creek Nursery v. Edisto Farm Credit, 334 S.C. 469, 514 S.E.2d 126 (1999)). “Wrongful appropriation of personality involves the intentional, unconsented use of the plaintiff’s name, likeness, or identity by the defendant for his own benefit.” Id. “Wrongful publicizing of private affairs involves a public disclosure of private facts about the plaintiff.” Snakenberg v. Hartford Cas. Ins. Co., 299 S.C. 164, 170, 383 S.E.2d 2, 10 (Ct. App. 1989). “Wrongful intrusion into private affairs, consists of the following elements, which must be pleaded and proved:

- (1) *Intrusion*. An intrusion may consist of watching, spying, prying, besetting, overhearing, or other similar conduct . . .
- (2) *Into that which is private*. The intrusion on the plaintiff must concern those aspects of himself, his home, his family, his personal relationships, and his communications which one normally expects will be free from exposure to the defendant.
- (3) *Substantial and unreasonable enough to be legally cognizable*. . .
- (4) *Intentional*. The defendant’s act or course of conduct must be intentional.

Id. at 171, 383 S.E.2d at 11 (emphasis included in original).

Plaintiff’s Complaint generally alleges that Defendants Connelly, Persons, Wilson, and Mellen contributed to an intrusion into his private affairs and publication of private information about Plaintiff. The Complaint, however, fails to identify the allegedly private information, means of intrusion, or publication. Moreover, Plaintiff has conclusively admitted that Defendants Connelly, Persons, Wilson, and Mellen (1) did not appropriate or exploit his personality, (2) did not publicize

his private affairs, and (3) did not intrude into his private activities. In addition, Plaintiff has conclusively admitted that he does not possess any documentation supporting these allegations. As these facts have been conclusively established, Plaintiff cannot prove the necessary elements to support his cause of action for invasion of privacy against Defendants Connelly, Persons, Wilson, and Mellen. As a result, Defendants Connelly, Persons, Wilson, and Mellen are entitled to summary judgment as a matter of law as to this cause of action.

III. There is No Genuine Issue of Material Fact Left Unresolved as to Plaintiff's Cause of Action for Intentional Infliction of Emotional Distress Against Defendants Connelly, Persons, Wilson, and Mellen.

“[I]n order to recover for intentional infliction of emotional distress, the complaining party must establish that:

- (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
- (2) the conduct was so ‘extreme and outrageous’ so as to exceed ‘all possible bounds of decency’ and must be regarded as ‘atrocious, and utterly intolerable in a civilized community;’
- (3) the actions of the defendant caused plaintiff’s emotional distress; and
- (4) the emotional distress suffered by the plaintiff was ‘severe’ such that ‘no reasonable man could be expected to endure it.’

Ford v. Hutson, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981) (quoting Restatement (Second) of Torts § 46, cmts. d, i, and j). “[W]hen ruling on a summary judgment motion, a court must determine whether the plaintiff has established a prima facie case as to each element of a claim for intentional infliction of emotional distress.” Hansson v. Scalise Builders of S.C., 374 S.C. 352, 358, 650 S.E. 2d 68, 71 (2007).

Plaintiff's Complaint generally alleges that Defendants Connelly, Persons, Wilson, and Mellen contributed to the intentional infliction emotional distress upon Plaintiff through the use of

undefined severe medical conditions suffered by his wife. The Complaint, however, fails to identify the alleged medical conditions or the manner by which any of these defendants used the conditions to intentionally inflict emotional distress upon Plaintiff. Moreover, Plaintiff has conclusively admitted that Defendants Connelly, Persons, Wilson, and Mellen did not intentionally inflict emotional distress upon him. In addition, Plaintiff has conclusively admitted that he does not possess any documentation supporting his allegation that Defendants Connelly, Persons, Wilson, and Mellen intentionally inflicted emotional distress upon him. As these facts have been conclusively established, Plaintiff cannot prove the necessary elements to support his cause of action for intentional infliction of emotional distress against Defendants Connelly, Persons, Wilson, and Mellen. As a result, Defendants Connelly, Persons, Wilson, and Mellen is entitled to summary judgment as a matter of law as to this cause of action.

IV. There is No Genuine Issue of Material Fact Left Unresolved as to Plaintiff's Cause of Action for Conspiracy Against Defendants Connelly, Persons, Wilson, and Mellen.

“[A] plaintiff asserting a civil conspiracy claim must establish (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 County School District, __ S.C. __, 861 S.E.2d 774, 780 (2021).

Plaintiff's Complaint generally alleges that Defendants Connelly, Persons, Wilson, and Mellen conspired and colluded with others to injure Plaintiff. The Complaint, however, fails to identify an unlawful act or means by which any of these defendants contributed to any harm to Plaintiff. Moreover, Plaintiff has conclusively admitted that Defendants Connelly, Persons, Wilson, and Mellen did not (1) conspire with any other individual for the purposes of injuring him and (2)

did not take any overt action in pursuit of any conspiracy to cause damage to him. In addition, Plaintiff has conclusively admitted that he does not possess any documentation supporting these allegations. As these facts have been conclusively established, Plaintiff cannot prove the necessary elements to support his cause of action for conspiracy against Defendants Connelly, Persons, Wilson, and Mellen. As a result, Defendants Connelly, Persons, Wilson, and Mellen are entitled to summary judgment as a matter of law as to this cause of action.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the separate Motions for Summary Judgment on Behalf of Chad Connelly, Tom Persons, Dave Wilson, and Neil Mellen filed on November 15, 2021, are hereby **GRANTED** in accordance with the above order and Plaintiff's remaining causes of action for defamation per se and per quod, invasion of privacy, intentional infliction of emotional distress, and conspiracy against Defendants Chad Connelly, Tom Persons, Dave Wilson, and Neil Mellen are hereby dismissed with prejudice.

AND IT IS SO ORDERED.

The Honorable Donald B. Hocker

July ____, 2022



Newberry Common Pleas

Case Caption: Jefferson Davis Jr VS Chad Connelly , defendant, et al

Case Number: 2020CP3600382

Type: Order/Summary Judgment

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

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