

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Jefferson Davis, Jr.,

Plaintiff,

v.

Chad Connelly, Tom Persons, Geoffrey Chambers, Esq., & South Carolina Educational Credit for Exceptional Needs Children Fund,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2020-CP-36-00384

**ORDER GRANTING SUMMARY  
JUDGMENT IN FAVOR OF  
DEFENDANTS CHAD CONNELLY  
AND TOM PERSONS**

**RECEIVED**

**Oct 13 2023**

**SC Court of Appeals**

This matter came before the Court upon the separate Motions for Summary Judgment on Behalf of Chad Connelly and Tom Persons 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 and Tom Persons 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 11, 2020. The Complaint asserts five causes of action against this Defendant, including causes of action for (1) defamation per se and per quod, (2) defamation by innuendo, (3) negligence, (4) intentional infliction of emotional distress, and (5) conspiracy. On March 26, 2021, this Court dismissed the

causes of action for defamation by innuendo and negligence asserted against this Defendant.<sup>1</sup> As a result, Plaintiff proceeds against this Defendant only upon the causes of action for defamation per se and per quod, intentional infliction of emotional distress, and conspiracy. The only allegations of fact that Plaintiff offers in support of these causes of action are that Defendants allegedly collectively defamed Plaintiff by stating (1) through their attorney in open court that the Injunction Action “is based upon shutting a corporation down, freezing its assets, because he alleges it is going to go over this 2% max”, (Compl. ¶¶ 16-17), and (2) in an email that through the Injunction Action “[i]t is the intention of this individual to shut down Exceptional SC with absolutely no regard to the impact that would have on your students and your schools”, (Compl. ¶ 22).

On July 27, 2021, Defendants each properly served Plaintiff with interrogatories, requests for production, and requests for admission.<sup>2</sup> Defendant’s requests for admission specifically requested that Plaintiff admit the following:

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.

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<sup>1</sup> Plaintiff did not move for reconsideration, alteration, or amendment of the Order filed on March 26, 2021.

<sup>2</sup> 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 Tom Persons’ First Set of Interrogatories to Plaintiff, Defendant Tom Persons’ First Set of Requests for Production to Plaintiff, and Defendant Tom Persons’ First Set of Requests for Admission to Plaintiff.

7. Admit that this Defendant did not intentionally inflict emotional distress upon you.
8. Admit that you do not possess any documentation supporting the allegation that this Defendant intentionally inflict emotional distress upon you.
9. Admit that this Defendant did not conspire with any other individual for the purposes of injuring you.
10. 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.
11. Admit that this Defendant did not take any overt action in pursuit of any conspiracy to cause damage to you.
12. 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.
13. 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.
14. 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.
15. Admit that you petitioned the South Carolina Court of Common Pleas for Newberry County to enjoin the expenditure of administrative expenses by the South Carolina Educational Credit for Exceptional Needs Children Fund.
16. Admit that the expenditure of administrative expenses includes the purchasing of office supplies, stamps, envelopes, paper, webhosting services, and electronic mail services.
17. Admit that the South Carolina Educational Credit for Exceptional Needs Children Fund cannot operate without the expenditure of administrative expenses.
18. Admit that the South Carolina Educational Credit for Exceptional Needs Children Fund cannot operate without the expenditure of administrative expenses.

19. Admit that the South Carolina Educational Credit for Exceptional Needs Children Fund cannot issue scholarships without the expenditure of administrative expenses.
20. Admit that the allegedly defamatory statements referenced in Plaintiff's Complaint are statements that arose out of a judicial proceeding.
21. Admit that the allegedly defamatory statements referenced in Plaintiff's Complaint are true.
22. Admit that the allegedly defamatory statements referenced in Plaintiff's Complaint are a matter of opinion.

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 motions 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.<sup>3</sup>

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<sup>3</sup> 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.

On November 15, 2021, Defendants Connelly and Persons filed separate Motions for Summary Judgment as to Plaintiff's remaining causes of action for defamation per se and per quod, 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.

### **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 and Persons. 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 and Persons.

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

“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 and Persons defamed Plaintiff by stating (1) through an attorney in open court that a civil action filed by Plaintiff “is based upon shutting a corporation down, freezing its assets, because he alleges it is going to go over this 2% max”, (Compl. ¶¶ 16-17), and (2) in an email that through the civil action “[i]t is the intention of this individual to shut down Exceptional SC with absolutely no regard to the impact that would have on your students and your schools”, (Compl. ¶ 22). Plaintiff, however, has conclusively admitted that (1) Plaintiff sought to prevent the South Carolina Educational Credit for Exceptional Needs Children Fund from operating and issuing scholarships, (2) the allegedly defamatory statements arose out of a judicial proceeding, and (3) the allegedly defamatory statements are true. Moreover,

Plaintiff has conclusively admitted that Defendants (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. In addition, Plaintiff has conclusively admitted that he does not possess any documentation supporting his 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 and Persons. As a result, Defendants Connelly and Persons 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 Intentional Infliction of Emotional Distress Against Defendants Connelly and Persons.**

“[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 and Persons intentionally inflicted 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 Defendants Connelly and Persons used the conditions to intentionally inflict emotional distress upon Plaintiff. Moreover, Plaintiff has conclusively admitted that Defendants Connelly and Persons 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 and Persons 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 and Persons. As a result, Defendants Connelly and Persons 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 Conspiracy Against Defendants Connelly and Persons.**

“[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 and Persons conspired and colluded with others to injure Plaintiff. The Complaint, however, fails to identify any act or means by which Defendants Connelly and Persons contributed to any harm to Plaintiff. Moreover, Plaintiff has conclusively admitted that Defendants Connelly and Persons 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 and Persons. As a result, Defendants Connelly and Persons 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 and Tom Persons 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, intentional infliction of emotional distress, and conspiracy against Defendants Chad Connelly and Tom Persons are hereby dismissed with prejudice.

**AND IT IS SO ORDERED.**

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The Honorable Donald B. Hocker

September \_\_\_\_, 2022



Newberry Common Pleas

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

**Case Number:** 2020CP3600384

**Type:** Order/Summary Judgment

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167