

South Carolina

COURT of APPEALS

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Appeal From Charleston County

JUL 16 2013

SC Court of Appea

Court of Common Pleas

Hon. Judge Nicholson, Circuit Judge

Case No. 12-CP-10-7056

* Appellate Case Number: 13-000948

Herbert Alonzo Robinson, Appellant

v.

Charleston Police Dept., Appellee

BRIEF of Appellant

Date. July 10, 2013

Herbert Alonzo Robinson
#298364-Allendale C.F., POB 1151
Fairfax, SC 29827

Appellant - Pro se

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* Holtzcheiter v. Thompson Newspaper, Inc., 332 SC - 502.

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— Statutes —

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Issues on Appeal

1. Whether Lower Court 'Erred'

In Dismissing Appellants Lawsuit
On Statute of Limitations Issue
When Appellant Produced Evidence
Suit in Libel/Slander Case Was
Timely Filed . . .

2. Whether Lower Court Erred

In Dismissing Appellants, Libel/-
Slander Case Against Defendant,
Charleston Police Dept., When
Appellant Produced Overwhelming
Evidence Defendant was Liable
For Defamation . . .

3. Whether a Genuine Issue of

A Material Fact Exsisted to

Preclude Granting of Summary

Judgment on Defendant, Chas.

Police Dept. Behalf and Lower

Court Abused Its Discretion . . .

Statement of the case

on October 14, 2010, Appellant was accused of committing a Burglary in Charleston County.

Defendant, News Agencies, relying on Falsified or uncorroborated information from Defendant, Charleston Police Dept, (CPD) alleged Appellant left a washcloth or rag containing * feces in the residence, cooked and ate a

can of soup. In * August of 2011, Appellant, Robinson filed suit against Defendant News agencies, including Defendant, CPD, Please see Attached Appellants Exhibit-A, wherein the * Initial File date is confirmed. On August 19, 2011, Judge Kristi Harrington, Denied Appellants Motion to Proceed with the Summons and

Complaint he submitted In Forma Pauperis. The clerk of Courts'

* office [Failed to Assign a case Number] so Appellant could serve

** Defendants. * In October 19/20/2010, News Agency Broadcasted Story.

* In September of 2012, Appellant once again submitted his

* Complaint, Summons and Motion to Proceed In Forma Pauperis for

filing. It too was Denied by Judge Deadra Jefferson, chief Administrative Judge for the Ninth Judicial Circuit (Charleston and Berkeley Countys). In spite of such, the Clerk assigned

Appellant, Robinson a Case Number, which it had again:

* Failed to do with his Initial August 2011 filing of suit involving and naming Defendant, CPD as Defendant...

→ Appellant argued at hearing (Summary Judgment

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Hearing before the Hon. Judge Nicholson, that his lawsuit against Defendant, CPD should not be Dismissed nor Summary Judgment be Granted to Defendant, CPD, since the Court Dismissed Appellants case on Defendant, CPD's Argument Appellant allegedly Filed his lawsuit against it one CD day or a few days beyond the October 21, 2012, Deadline under 2 (two) year statute of Limitations.

Appellant, Robinson argued before the Lower Court that the Attached Exhibit B Decided and signed by Judge Jefferson or Denied on:

* October 22, 2012, One day after the October 21, 2012, Deadline; clearly demonstrates the Clerk received the Appellants summons and Complaint prior to October 22, 2012, as its not customary for the Clerk of Court to place it before the Court: Day (Same Day) it receives it. The Lower Court rejected Appellants argument and * Relied on The Actual Date of October 30, 2012, when the Clerk stamped File suit in spite of Appellants, Bonafied Arguments He is Not at "Fault" for any Late Filing on Clerk's Behalf, and that Lower Court should have given him the Benefit of Doubt with his: Initial * Filing in August of 2011, some 14 (Fourteen) Months prior to October 21, 2012, Deadline, since he had made Every Effort at Filing. Appellant, further argued he had delivered his Complaint and summons to prison Mailroom personnel in September of 2012 (second Filing) and Had No control even over [when] Prison Mailroom actually forwards his Legal Mail to Court. The [Date] of Appellants Summons and Complaint and Forme Paperis Motion was * September 28, 2012, all Delivered to the Court [prior to DEADLINE.]

The Lower Court also Dismissed Appellant's suit on the [Merits] in spite of Appellant submitting Evidence that Defendant, CPD as demonstrated by Appellant's Exhibit _____ was the "[Source]" of the False and Defamatory Publication of Appellant's Name and Picture over the InterNet/Online, surrounding the Feces and Soup Can Incidents and that He (Appellant) was [Not Aware of] said Publication to be Viewed by Millions until a friend from Indiana provided him with a copy of said Harmful Story she sent him and downloaded in January/February of 2013, which Appellant argued "Should constitute as yet [another] Cause of Action" Against Defendant, CPD, due to Newly Discovered Information.

The Appellant offered: Evidence Defendant, CPD [Lied]" that it had; obtain Information from the [Residents] of the Feces on washcloth left at the scene, since even via "[Discovery]" and in Court at Motions Hearing, Defendant could not produce a single name of any resident it falsely Claimed gave it said story! Appellant argued Defendant, CPD was liable for Gross Negligence, resulting in Libel/Slandering, since the Day of the alleged Non-violent crime, Defendant, * CPD's very own Detectives and/or Crime Scene Investigators did not locate a wash cloth with feces, nor did they find Appellant's DNA or Fingerprints on Soup Can to prove he ate from it. Appellant, Robinson further submitted a statement from The owner (Attached) which did not describe a washcloth or anything containing feces was found in her home as she was the first to awaken.

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Defendant, CPD, simply could not produce any written, Audio or Video Statement to support its Argument it relied on Information it received from any party. The Statement of the owner of 2100 "contradicted," Defendant, CPD's position, yet the Lower Court Dismissed Appellants case on the [Merits] in Light of Defendant, CPD's very own crime scene Report. It Did not confirm the presence of faces anywhere in the Residence.

ARGUMENT

The Lower Court Erred in Dismissing Appellants case on the [Merits] when Appellant had demonstrated by a preponderance of the Evidence Defendant, CPD, " Should have relied on its very own employees or police officers at alleged crime scene who's [Investigation] did not reveal any object containing faces in the residence, of which Defendant employees determined on October 14, 2010, when they arrived at Residence.

With such [knowledge] at hand, Defendant, CPD, should have ****NEVER** publicized a story over the Internet its very own Investigation could not confirm or corroborate, even if given to them by a second or third party. Defendant, CPD, [Failed] to [rely] on its very own FACTS, but disregarded it to "sensationalize" an account Defendant, knew would be very much Defamatory against Appellant and a

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thing it should have Not done, but Intentionally did, as Defendant, CPD, greatly disregarded the Risk its un-corroborated publication would cause Appellant, who continues to suffer: mental Anguish, Emotional Distress, scorn and Ridicule, and severing of relationships with friends, associates, family and unknown persons, confronting him he does not know over the Incident.

* The Defendant, CPD's very own Investigation by its Crime Scene Investigators of No Evidence of Feces or Appellant's DNA or Fingerprints on Soup can, should have served as a "WARNING" or STOP SIGN to: Not publicize said part of Story or provide such Information to News Agencies that had not gotten it from any of the Residents.

The Defendant, CPD's Motion for Summary Judgment in the Aforementioned matter should have been [Denied] as the Lower Court

* Abused its Discretion in its misinterpretation of the Law, * Title 15-78-10-et seq, of the South Carolina Tort Claims Act, in not acknowledging a Genuine Issue of a Material Fact did exist, not only with regard to Feces incident, however, also Fact that Appellant's Lawsuit was Timely submitted to the Court [twice] prior to statute of Limitation ran its course, since it should have been unquestionable Appellant did not by any Error of his own failed to comply with Statutes or Court Rules.

In Eubank v. Smith, 354 S.E.2d 898 and Hubbard v. Assoc. Press, - 123 F.2d 864 (Fourth Cir.) the Court respectively ruled that Defamation need not be accomplished by Direct manner or means and that mere Insinuation is actionable as positive assertion if it is False, Malicious and its very meaning Plain.

The Court further stated: The standard of Interpretation to be used in [Testing], alleged Defamation matter is: "How Those in the [Community] in

which matter was Publicized would Reasonably Understand it, and that All Parts of alleged Defamatory statements MUST be Considered..."

Please see, White v. Wilkerson, 493 S.E.2d 345; Holtzschetter v. Thompson News paper Inc, 332 SC 502, - 506 S.E.2d 497 and Wilhoit v. WESC, Inc, 293 SC 34, - 358 S.E.2d 397 (False publication of Plaintiff Picture/Photo and Name Actionable in Damages).

Our Courts in South Carolina (Appellate and State Supreme Court) have Ruled that Libel is Actionable per se, if it involves written or Printed words, which tends to Degrade a person to Reduce his Character or reputation in the estimation of his: Friends or Acquaintances, or the Public, or to Disgrace him, or render him Odious, contemptible, or Ridiculous, as what Defendant, CPD, has done to Appellant, Robinson.

Regarding: statute of Limitations issue once more; Appellant contends that the Lower Court Erred when it totally disregarded his Argument under Jones v. City of Folly Beach, 326 SC 360, - 483 S.E.2d 770, when he pointed to Fact that his case should be saved on [Discovery] (January/February, 2013), of Defendant, CPD's False Publication On Line as yet Another cause of Action, Against Defendant, which should begin to Run from the Newly Discovered Publication He could not have obtained in 2010 or 2012, Due to his: Imprisonment. Simply put, Appellant's Argument was: the statute

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Should begin to run from New Discovery: OnLine in 2013
as yet Another cause of Action against Defendant, CPD,
as is required under Jones, 326 SC 360.

See: Curtis v. Blake, (S.C. 2009), 381 SC 189, 672 S.E. 2d, -
376 on service of complaint and summons on Court
per Court Rules and/or Statutes.

Wherefore, Appellant, Robinson, Respectfully
prays the Honorable/Noble Court would
Reverse and/or Remand his case against
Defendant, CPD and order a Jury Trial
on Issue of Damages for Defendant, CPD's
Libel/Slender of Appellant's Name and Picture
involving its Report: Appellant, left a washcloth
containing feces in a burglarized residence and
ate Soup and order Defendant, CPD to removed
publication On Line, still accessible to Millions..
Respectfully Submitted,



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July 11, 2013
Fairfax, SC

Appellant - prose

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