

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
CIRCUIT COURT

Brian M. Gibbons, Circuit Court Judge

Case No. 2022-CP-20-00104
Appellant Case No. 2023-001451

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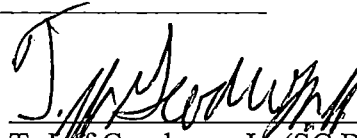
DEC 21 2023
SC Court of Appeals

Bertha Goins.....Respondent,

vs.

Jenkinsville Water Co., Inc.,.....Appellant.

INITIAL BRIEF OF APPELLANT



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STATEMENT OF ISSUES ON APPEAL

- I. **There is at least a question of fact that the alleged defamatory statements are false, that Respondent was not acting within the scope of her duties on the Fairfield County Council and whether Respondent acted with actual malice in telling a series of lies of which some are admitted.**

STATEMENT OF THE CASE

Appellant brought a case for defamation against Respondent March 4, 2020. Respondent brought counterclaims for abuse of process, breach of contract, violations of the Freedom of Information Act, Breach of Implied Warranties, Unfair Trade Practices, and outrage/harassment. The case was dismissed pursuant to S.C.R.C.P. 40(j) on December 2, 2021 and restored March 30, 2022. The parties filed cross motions for summary judgment on all causes of action and the trial court granted summary judgment as to Appellant's defamation cause of action and all of Respondent's causes of action except the outrage cause of action April 28, 2023. Appellant filed a timely motion to alter or amend that was denied September 8, 2023. Appellant filed a timely notice of appeal September 11, 2023.

STATEMENT OF FACTS

Respondent is a former board member of Jenkinsville Water Co. ("JWC") and lost her board seat in 2015. After losing her board seat, Respondent has been a vocal critic of JWC and has openly supported consolidating JWC with the water systems of Winnsboro and Mid-County going so far as to write letters to the paper to that effect. (R., p. ____).

JWC won the award for the best tasting water in the state by the South Carolina Rural Water association in both 2017 and 2019. (R., p. ____). JWC won the second place award (tie) for the best tasting water in the United States by the National Rural Water association in 2019. (R., p. ____). The President of JWC was given public recognition by State Senator Mike Fanning in a letter dated January 6, 2020 and as announced at the company's annual meeting on January 8, 2020 for winning the best tasting water in the state two out of the past three years. (R., p. ____).

In the years leading up to the filing of this complaint March 4, 2020, Respondent engaged in a public campaign of maliciously attacking JWC by stating that the water produced by JWC is

substandard, that there is a causal connection between her husband's medical conditions and the water he drinks that is provided by JWC, there is criminal activity going on at JWC, that JWC hasn't issued boil water notices in the past 20 years, that JWC doesn't bill for water at times, and that the age of JWC's pipes are causing a degradation in the quality of the water it provides. These above-referenced statements were made to news reporters with Respondent's knowledge that the statement would be published in the newspaper, broadcast on television and online and were also made publicly at Fairfield County Council meetings with Respondent's knowledge that these statements would be publicly heard and incorporated into the minutes of the publicly available county council meetings, recorded and reported in newspapers by reporters.

Specifically, at the October 14, 2019 Fairfield Council meeting, the minutes of the meeting indicate that Respondent stated that she was "complaining about the operation of the company, investigations and house arrest. She suggested that maybe some jail time is needed now." (R., p. ____). Respondent unequivocally testified that she knew of no criminal activity at JWC at the time she made those statements (R., p. ____).

At the October 14, 2019 Fairfield Council meeting, the minutes of the meeting indicate that Respondent stated that "In 20 years, there has not been one boil water advisory." (R., p. ____). Respondent concedes that she has done no investigation as to whether there in fact had been no boil water notices in the past 20 years at the time she made those statements and made no investigation as to the truth of that statement. Respondent agrees that investigating the truth of the existence of boil water advisories may have been the prudent thing to do. Respondent also remembers JWC discussing issuing boil water advisories when she was a member of the JWC board from 2012-2015. (Depo. of Bertha Goins, p. 39, l. 11 – p. 46, l. 4, R., p. ____). The evidence in the case shows that there have in fact been many boil water advisories over the past 20 years

including these dates: 7/6/12; 7/31/18 for Ms. Goins street; 1/16/17; 6/30/17; 7/10/17; 1/18/17; 2/22/17; 4/12/17; 4/10/17; (R., p. ____).

At the October 14, 2019 Fairfield Council meeting, the minutes of the meeting indicate that Respondent stated that “Water is being sold without a meter with thousands of gallons going against accountability and transparency.” (R., p. ____). Respondent testified that when she made those remarks, she had no knowledge “[w]hether they were charged, not charged, I don’t know. Didn’t ask. Didn’t follow up on it”. (Depo. of Bertha Goins, p. 125, l.11 - p. 128, ll. 7; (R., p. ____). The only evidence in the record on this issue is that these trucks are metered and are billed. (Depo. of Greg Ginyard dated 12/15/21, p. 196, l. 14 – p. 197, l. 7; (R., p. ____).

Defendant is reported by multiple newspaper articles that she believes the age of the pipes in the JWC water system is causing the water quality to suffer. (R., p. ____). Respondent’s testimony however is that she has no information and has no way of knowing as to whether the JWC pipes have degraded over time. (Depo. of Bertha Goins, P. 83, l. 16 – P. 84, l. 2; (R., p. ____). The only evidence in the record is that JWC’s pipes are PVC that do not degrade over time. (Depo. of Greg Ginyard dated 12/15/21, p. 79, l. 13 – p. 80, l. 19; (R., p. ____).

The statements were not made in the discharge of a public duty, but were made with actual malice and/or implied malice and with a reckless disregard for truth of the accusations made, without proof of these accusations, and with the intent to harm the reputation of JWC. The above-referenced statements were also made to private individuals.

ARTICLES & MEDIA SOURCES:

DATE	SOURCE	BATES NUMBER(S)
	Associated Press	00818 (R., p. ____)
4/8/49	News & Observer (Charlotte)	00819-00821(R., p. ____)
4/9/19	106.3 The Word	00827(R., p. ____)
4/9/19	SC Now	00828(R., p. ____)

4/9/19	The Independent Voice	00829-00831 & 00845-00849 (R., p. _____)
3/8/20	The State	00848-00849 (R., p. _____)
4/9/19	The State	00835-00838 (R., p. _____)
	The State	00816-00817 (R., p. _____)

FAIRFIELD COUNTY COUNCIL BOARD MEETINGS:

DATE	BATES NUMBERED PAGES
4/8/19	00092-00093 (R., p. _____)
4/22/19	00127 (R., p. _____)
10/14/19	00246-00249 (R., p. _____)
1/13/20	00343-00344 (R., p. _____)

The statements as set forth above are false and impugn the character and reputation of JWC and its operators.

STANDARD OF REVIEW

“Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact.” *Baughman v. Am. Tel. & Tel. Co.*, S.C. 101, 115,410 S.E.2d 537, 545 (1991). This initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party’s case, and it is not necessary for the moving party to support its motion with affidavits or other similar materials negating the opponent’s claim. *Id.* Once the moving party carries its initial burden, the opposing party must do more than rest upon the mere allegations or denials of his pleadings, but must, by affidavit or otherwise, set forth specific facts to show that there is a genuine issue for trial. *Id.*; Rule 56(e) SCRPC.

“In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party.” *David v. McLeod Reg’l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). “[I]n cases applying the preponderance of the evidence burden of proof, the non-moving

party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Lanham v. Blue Cross & Blue Shield of S.C.*, 349 S.C. 356, 362, 563 S.E.2d 331,333 (2002). Moreover, because summary judgment is a drastic remedy, it should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues. *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006).

Argument

I. There is at least a question of fact that the alleged defamatory statements are false and Respondent was not acting within the scope of her duties.

A. There are multiple defamatory statements made by Respondent that are demonstrably false or conceded to be a lie.

The elements of defamation are as follows: (1) It had a defamatory meaning; (2) it was published with actual or implied malice; (3) it was false; (4) it was published by the defendant; (5) it concerned the Plaintiff; (6) it resulted in legally presumed damages or in special damages to plaintiff. Smith v. Bradstreet, 63 S.C. 525, 41 S.E. 763 (1902). Organizations like corporations, associations, and partnerships can sue for defamation that affects their businesses or other organization interests. (South Carolina Law of Torts, Third ed., p. 479).

One of the grounds the trial court granted summary judgment to Respondent was the statements were truthful (Order, p. 3) (R., p. ____). There is sufficient evidence in the record to create a fact question as to whether the statements are true or Respondent concedes are a lie.

At the October 14, 2019 Fairfield Council meeting, the minutes of the meeting indicate that Respondent stated that she was “complaining about the operation of the company, investigations and house arrest. She suggested that maybe some jail time is needed now.” (R., p. ____). This language strongly implies that there is criminal activity going on at JWC which is actionable under South Carolina defamation law and implies malice by law and is slander per se. Defamation need not be accomplished in a direct, open or positive manner, insinuation can be defamatory. (see Eubanks v. Smith, 292 S.C. 57, 354 S.E.2d 898 (1987); Tyler v. Macks Stores of South Carolina, Inc., 275 S.C. 456, 272 S.E.2d 633 (1980)). Respondent unequivocally testified that she knew of no criminal activity at JWC at the time she made those statements (Depo. Bertha Goins, P. 193, ll. 17-20; (R., p. ____).

At the October 14, 2019 Fairfield Council meeting, the minutes of the meeting indicate that Respondent stated that “In 20 years, there has not been one boil water advisory.” (R., p. ____). This statement impugns JWC’s fitness in its business and is slander per se. Respondent concedes that she has done no investigation as to whether there in fact had been no boil water notices in the past 20 years at the time she made those statements and made no investigation as to the truth of that statement. Respondent agrees that investigating the truth of the existence of boil water advisories may have been the prudent thing to do. Respondent also remembers JWC discussing issuing boil water advisories when she was a member of the JWC board from 2012-2015. (Depo. of Bertha Goins, p. 39, l. 11 – p. 46, l. 4; (R., p. ____). Most telling, Respondent’s attorney conceded that this statement was a lie at the hearing on her motion for summary judgment.

“The only statement that is an actual lie is that they issued two boil water notices, one in 2012 for her street and one in 2018... There were two. She fully admits – and she says in her deposition, she didn’t know about it, and she says, yeah, I should have looked up whether there was a boil-water notice before I said it. I wasn’t aware of the boil-water notices... So **that’s the only statement that we agree would technically be a lie.**” (Tr. of Sum. Jgmt. Hrg., P. 30, l. 21 – P. 31, l. 25) (R., p. ____) (emphasis added).

At the October 14, 2019 Fairfield Council meeting, the minutes of the meeting indicate that Respondent stated that “Water is being sold without a meter with thousands of gallons going against accountability and transparency.” (R., p. ____). This statement impugns JWC’s fitness in its business and is slander per se. Respondent testified that she was referring to a water truck getting water from a JWC hydrant and thought the truck owner was not paying for the water. Respondent testified that when she made those remarks, she had no knowledge “[w]hether they were charged, not charged, I don’t know. Didn’t ask. Didn’t follow up on it”. (Depo. of Bertha Goins, p. 125, l.11 - p. 128, ll. 7) (R., p. ____). The only evidence in the record on this issue is that these trucks are metered and are billed. (Depo. of Greg Ginyard, p. 196, l. 14 – p. 197, l. 7) (R., p. ____).

Respondent is reported by multiple newspaper articles that she believes the age of the pipes in the JWC water system is causing the water quality to suffer. (R., p. ____). This statement impugns JWC’s fitness in its business and is slander per se. Respondent’s testimony, however, is that she has no information and has no way of knowing as to whether the JWC pipes have degraded over time. (Depo. of Bertha Goins, P. 83, l. 16 – P. 84, l. 2) (R., p. ____). The only evidence in the record is that JWC’s pipes are PVC that do not degrade over time. (Depo. of Greg Ginyard, p. 79, l. 13 – p. 80, l. 19) (R., p. ____).

In addition to the defamatory statements outlined above, there are at least two other defamatory statements that Respondent has made where there will be some dispute as to whether the statement was actually made or not. This includes the statements that Respondent made April 9, 2019 and in October 2019 claiming that the water JWC provides caused her husband's cancer (Newspaper article dated April 9, 2019 bates labeled Goins 829 and Depo. of Clemart Camack, p. 141, ll. 6 – p. 142, p. 19) (R., p. ____). It also includes the statement that a bottle of dirty water she held up at the October 14, 2019 Fairfield County Council meeting was actually from her home. (Depo. of Clemart Clemak, p. 19, l. 7 – p. 31, l. 12) (R., p. ____).

As can be seen by the above facts, there is substantial evidence in the record to dispute the truth of these statements giving rise to at least a question of fact as to whether these statements are truthful. Respondent actually concedes that one of the statements is a lie. For these reasons, this court should reverse the grant of summary judgment and the denial of Appellant's Motion to Alter/Amend as to the defamation cause of action on the grounds that the statements were truthful and remand the case to the trial court for a trial.

B. There is a question of fact that Respondent was not acting within her official duties as a member of the Fairfield County Council at the time she made the defamatory statements.

One of the grounds the court granted summary judgment on the defamation cause of action was that Respondent was acting in her official capacity as a County Council member and that her statements were not made with actual malice (Order, p. 4) (R., p. ____). There is sufficient evidence in the record to give rise to a fact question as to whether Respondent was acting within the scope of her position as a member of County Council and whether she was acting with actual malice.

Section 15-78-60 of the Tort Claims Act reads as follows:

§15-78-60. Exceptions to waiver of immunity (17) employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude;

At the time Respondent was making the defamatory comments at Fairfield County Council meetings, she was not speaking as part of her official duties for the county, but giving her personal thoughts on JWC to the general public. The statements were made during a time during the County Council meeting where the Council members can say whatever they want to but have no obligation to say anything. Anyone can speak at the County Council meetings at the appropriate time. The fact that Respondent was a Council Member does not make what she was saying connected to her job in any way. Respondent was making similar statements about JWC prior to becoming a County Council member and continued after she lost her re-election bid for the County Council. Speaking to the general public at a County Council meeting does not make these statements a part of her official duties as contemplated by the Tort Claims Act. She is simply stating her personal thoughts during her time at the meeting. As a result, there is a question of fact that the tort claims act does not apply to these statements.

Even if the tort claims act does apply, pursuant to §15-78-60, if a jury determines that Respondent was acting with actual malice, she will be determined to have been acting outside her scope of employment and not subject to the tort claims act. Kennedy v. Richland Cnty. Sch. Dist. Two, 428 S.C. 98, 833 S.E.2d 414 (S.C. App. 2019). As shown above, Respondent has told multiple lies about JWC, some of which are admitted lies, and others she has no explanation for.

Telling a series of these types of lies is good evidence of malicious intent. Only someone who is intent on causing harm to another would tell this many lies about a company.

As a result, there is a question of fact for the jury as to whether these statements were made within her official duties and whether they were made with malice even if they are held to be within official duties. For these reasons, this court should reverse the grant of summary judgment and the denial of Appellant's Motion to Alter/Amend on this basis and remand the case to the trial court for a trial on the defamation cause of action.

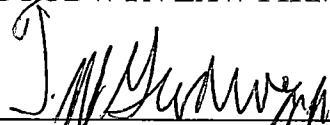
CONCLUSION

Respondent concedes that at least one of her defamatory statements was a lie. This alone merits a reversal of the grant of summary judgment of the defamation cause of action based on the truth of the statements. Even without this admission, there are multiple statements that Respondent can not support the truth of in any way leaving only evidence of their falsity in the record. As a result, the court should reverse the grant of summary judgment and the denial of Appellant's Motion to Alter/Amend on these grounds.

There is a genuine fact question as to whether the statements made at Fairfield County Council meetings were made in her personal capacity or in her duties as a council member. Even if Respondent is found to have been acting within the scope of her duties as a council member, there is a fair question as to whether she was acting with actual malice in light of the series of lies she told about JWC. As a result, the court should reverse the grant of summary judgment and the denial of Appellant's Motion to Alter/Amend on the defamation cause of action and remand the case for trial.

Respectfully submitted,

GOODWYN LAW FIRM, LLC

A handwritten signature in black ink, appearing to read "T. Jeff Goodwyn, Jr.", written over a horizontal line.

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December 21, 2023

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In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
CIRCUIT COURT

Brian M. Gibbons, Circuit Court Judge

Case No. 2022-CP-20-00104
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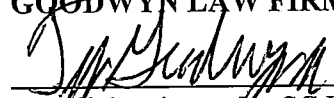
PROOF OF SERVICE

I certify that I have served a copy of **Appellant's Initial Brief** and **Designation of Matter**, upon Samantha S. Owens, Esquire; Austin T. Reed, Esquire; Daniel C. Plyler, Esquire; Sydney J. Douglas, Esquire and H. Thomas Morgan, Jr., Esquire, Attorneys for Respondent, at the address(es) below by depositing a copy of same in the United States Mail, postage prepaid, on December 21, 2023.

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SC Court of Appeals

Bertha Goins,.....Respondent,

v.

Jenkinsville Water Co., Inc.,.....Appellant.

PROOF OF SERVICE

I certify that I have served a copy of the **Motion for Extension to File and Serve Appellant's Initial Brief and Designation of Matter**, upon Samantha S. Owens, Esquire; Austin T. Reed, Esquire; Daniel C. Plyler, Esquire; Sydney J. Douglas, Esquire and H. Thomas Morgan, Jr., Esquire, Attorneys for Respondent, at the address(es) below by depositing a copy of same in the United States Mail, postage prepaid, on December 21, 2023.

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December 21, 2023

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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DEC 21 2023

SC Court of Appeals

RE: ***Bertha Goins v. Jenkinsville Water Company, Inc.***
Civil Action No.: 2022-CP-20-00104
Appellate Case No.: 2023-001451
Our File No.: 3550-0001

Dear Ms. Kitchings:

Enclosed for filing, please find the original and one copy of **Motion for Extension to File and Serve Appellant's Initial Brief** and **Designation of Matter** along with an original and one copy of the Proof of Service in regards to the above referenced matter.

Also, enclosed for filing, please find an original and one copy of **Appellant's Initial Brief** and **Designation of Matter** along with an original and one copy of the Proof of Service.


Please return the filed copies of same to me in the self-addressed stamped envelope provided. Also, enclosed is a check in the amount of \$50.00 representing the filing fees.

As evidenced in the Proofs of Service, I have served all interested parties, with a copy of these documents.

GOODWYN LAW FIRM, LLC

Thank you for your attention to this matter and should you have any questions, please do not hesitate to contact me.

Sincerely,



T. Jeff Goodwyn, Jr.

TJG/msb

Enclosures

cc: Samantha S. Owens, Esquire
Austin T. Reed, Esquire
Daniel C. Plyler, Esquire
Sydney J. Douglas, Esquire
H. Thomas Morgan, Jr., Esquire