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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Diane Schaefer Goodstein, Circuit Court Judge

Case No. 2008-CP-18-2286

A.M. Kelly Grove,

Appellant,

v.

South Carolina Department of Health and Environmental Control, BabyNet, Debra M. McCoy, in both her official and individual capacities, and Office of South Carolina First Steps to School Readiness,

Respondents.

APPELLANT'S PETITION FOR REHEARING WITH SUGGESTION FOR REHEARING *EN BANC*

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Pursuant to Rules 219 and 221, SCACR, Appellant A.M. Kelly Grove ("*Grove*") hereby petitions for rehearing of this Court's July 18, 2013 Opinion No. 2013-UP-322 (the "*Opinion*") in the above-captioned appeal, with a suggestion for rehearing *en banc*. *See Grove v. S.C. Dep't of Health and Envtl. Control,* No. 2013-UP-322 (S.C. Ct. App. July 18, 2013). The Court should grant rehearing or rehearing *en banc* and issue a revised opinion holding in favor of Kelly Grove and reversing the trial court's orders granting judgment notwithstanding the verdict on Appellant's defamation claim and summary judgment on Appellant's § 1983 claims, based on the grounds set forth below.

Introduction

This Court effectively annulled the verdict a Dorchester County jury awarded Ms. Grove on her defamation claim after a week-long trial, with an Opinion that does not justify this extraordinary result with a single line of prose. Rather, the Opinion and the decision below which it affirms flatly overlook the primary evidence Ms. Grove presented at trial and instead focus entirely on whether evidence of an alternative ground for the verdict was sufficient. The Panel's decision misapprehends or overlooks the issues created by the defendant's assertion of a qualified privilege. It conflicts directly with the Supreme Court case cited first in the Opinion's string of citations and with this Court's own precedent dictating a standard of review deferential to a jury's factual determinations.

Grove, a pediatric physical therapist's assistant, provided physical therapy services for children in the state's BabyNet system until March 2008, at which time Defendant Debra McCoy terminated her rights to treat patients in the BabyNet system. In two letters, one dated March 11, 2008 and a second dated April 23, 2008, McCoy

published a number of false and defamatory statements regarding Grove. These letters were addressed to Ms. Grove's employer, to Medicaid (the primary alternative payor for her services), and to the Department of Labor, Licensing and Regulation which governs her licensure. At the trial of this matter, McCoy's primary defense was not the truth of her statements or their actionability, but that they were made pursuant to the qualified privilege for defamatory statements under South Carolina law.

Grove refuted the qualified immunity defense with evidence that McCoy acted without good faith, that the statements were not limited in scope or sent on a proper occasion, as well as with evidence of actual malice. Each of these grounds is independently sufficient to defeat the qualified privilege defense, and Grove defeated McCoy's motion for a directed verdict based on such evidence. Then, during the defense case, Grove also elicited testimony showing that the statement was published to a parent, and thus not to a proper party which also is sufficient to defeat any claim of privilege.

First, this Court followed the erroneous path set by the court below and considered only the latter issue concerning evidence of publication to an improper party when determining that the verdict should not stand. The Panel thus overlooked many issues presented by McCoy's assertion of a qualified privilege. The Panel plainly failed to consider the record evidence of McCoy's lack of good faith and failure to limit the statements to a proper scope or to a proper occasion, as well as evidence of actual malice.

That narrow review conflicts with the Supreme Court's decision in the *Swinton Creek* case, the very first case cited in the Opinion. As the Supreme Court recognized in *Swinton Creek*, the question of whether a qualified privilege has been abused presents a variety of factual issues for the jury. That opinion expressly enumerates as examples of

jury issues the very issues in dispute here: whether the defendant acted in good faith, whether the scope of the statement was properly limited, and whether the statement was sent only to proper parties. The Panel and the court below erroneously overlooked the first two issues and considered the latter ground as the only question within the jury's province regarding abuse of a qualified privilege.

Neither this Court nor the court below has ever analyzed the primary issues or evidence regarding the qualified privilege defense to decide those issues as a matter of law, except when the trial court reviewed the evidence and denied the defendant's motion for directed verdict. Rather, these issues and the record evidence supporting them simply have been overlooked since the jury rendered its verdict. Instead, the trial court seized on a secondary, alternative issue unnecessary for the jury's decision, and the Court of Appeals has followed suit.

Second, the Panel and trial court misapprehended the applicable evidentiary standard and failed to draw reasonable inferences in the light most favorable to Grove. This Court's precedent forbids any court from disturbing a jury's factual findings unless the record discloses no material evidence which could support them in the mind of a reasonable juror. The court reviewing the jury's determination below must view the evidence and the inferences that can be drawn therefrom in the light most favorable to Grove, whether that court is the trial court on a motion for judgment notwithstanding the verdict or this Court reviewing the trial court's order granting such motion. The record is replete with evidence to support the jury's rejection of the qualified privilege defense for a number of independent reasons addressed herein. Viewed through the proper scope, the record evidence supports the jury's determination even on the single issue the reviewing

courts have centered on, the publication to an improper party.

Last, the Court again followed the trial court and failed to review the record evidence and draw reasonable inferences in favor of Ms. Grove on her due process claims under 42 U.S.C. § 1983. The panel opinion appears to recognize that the government action implicates Grove's liberty interest in practicing her profession and property interests in specific work she was doing at the time of the government action foreclosing such opportunities and specific work. The Panel cites applicable cases but does not apply the holdings to the case at hand, at least not with the proper review of the record evidence.

What bitter irony it would be for a case that is in part an individual's challenge to action by the State of South Carolina without due process of law to end with the South Carolina judicial system taking away a jury's award to that individual by overlooking the primary issues and evidence in the case and refusing to apply well-established legal standards.

Legal Analysis

I. The Panel overlooks issues presented by the assertion of a qualified privilege.

The key substantive legal questions before the trial court and the Panel on the defamation claim were (1) whether McCoy established a qualified privilege from Grove's defamation action and (2) whether McCoy abused such privilege. As the primary case the Panel relies on makes clear, "the question whether the privilege has been abused is one for the jury." *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 485, 514 S.E.2d 126, 134 (1999). Moreover, the Supreme Court offered an exemplary but non-exhaustive list of factual issues that should be left in the hands of a jury: (a) "whether the

defendants acted in good faith in making the statement"; (b) "whether the scope of the statement was properly limited"; and (c) "whether the statement was sent only to the proper parties." *Id.* This Court's decision erroneously takes each of these very factual inquiries, and others, away from the jury. Even worse, it does so after considering only the last one.

In overlooking the several factual inquiries created by the qualified privilege defense, whether considered in the context of determining the existence of a privilege or its abuse, the Court overlooks extensive evidence of record supporting the jury's determination to reject the qualified privilege defense, including (i) testimony of witnesses that McCoy had a bias against Ms. Grove (R. p. 163, line 23-p. 165, line 5; R. p. 188, line 23-p. 189, line 4; R. p. 218, lines 5-10; R. p. 218, line 18-p. 219, line 1; p. 312, lines 23-24; R. p. 339, line 24-p. 340, line 6); (ii) McCoy admitting that certain statements were not accurate and that she in fact knew before she published them that they were not accurate (*e.g.*, R. p. 269, line 22-p. 272, line 4; R. p. 281, lines 5-9; p. 805); (iii) patent contradictions between McCoy's testimony and her libelous statements (*e.g.*, R. p. 264, lines 18-20; R. p. 313, lines 4-9; cf. R. pp. 806, 815-16); and (iv) direct conflicts in testimony of Defendant and Ms. Grove regarding the issues addressed in the letters at issue. In addition, the Court overlooked evidence demonstrating that the Defendant's statements exceeded the scope of any applicable privilege, including that she sent two separate letters for a single purported reporting purpose and that the second letter labeled Ms. Grove, a physical therapist assistant in pediatrics, a danger to children and families based on an incident Defendant admitted she did not investigate and claimed she did not consider in her decision to terminate Ms. Grove as an approved provider.

Grove has presented this overlooked evidence primarily to advance three arguments, *any one* of which would defeat the qualified privilege defense: lack of good faith, the statement exceeded the scope of any privilege, McCoy acted with actual malice. Should this Court determine that Grove presented sufficient evidence to create a factual issue for the jury on *any one* of these issues, reversal of the trial court's JNOV order and reinstatement of the jury's verdict is warranted.

As demonstrated below, Grove presented substantial material evidence permitting the jury to infer McCoy's lack of good faith and that McCoy acted with actual malice, or a reckless disregard of Grove's rights. Although Grove has raised this issue in depth, both in post-trial motion papers (R. pp. 536-44, 585-643) and before the Panel, neither has given it any consideration. Rehearing is necessary to correct this substantial oversight.

Grove sets forth the extensive evidence, including copious citations to the record, of McCoy's lack of good faith at pages 21 through 30 of her Final Brief. Perhaps the most egregious instance is the completely false, innuendo-laden accusation in McCoy's letter to Grove's licensing board that Grove was involved in a "potentially violent domestic dispute" with the parent of one of her patients and was therefore a danger to children and families. (R. p. 815-16.) In fact, the uncontested evidence at trial was that McCoy had no idea what was going on and that Grove was trying to calm the father down because of his anger at the BabyNet program and at McCoy—and specifically *not* at Grove. (R. p. 272, lines 5-17; R. p. 274, lines 6-14; R. p. 284, line 18-p. 286, line 5; R.

p. 301, lines 14-25; R. p. 327, line 9-p. 328, line 20.) Such accusation shows an improper bias on McCoy's part against Grove, and the jury so found.[1]

Grove also presented evidence of McCoy's bias against Grove as a physical therapist's *assistant*, when in fact Grove was the only physical therapist's *assistant* providing services for BabyNet in South Carolina. (R. p. 163, line 23-p. 165, line 5; R. p. 188, line 23-p. 189, line 4; R. p. 218, lines 5-10; R. p. 218, line 18-p. 219, line 1; p. 312, lines 23-24.) The evidence includes not only Grove's testimony, but testimony of a third-party parent whom McCoy spoke to about Grove. (R. p. 339, line 24-p. 340, line 6.)

Also glaring in support of the verdict is McCoy's admission that in her letter describing complaints, her investigation, and violations of procedure as the basis for her action against Grove, she included a complaint she knew to be false! (R. p. 269, line 22-p. 272, line 4; R. p. 281, lines 5-9; R. p. 805.)

Further, though perhaps not a surprise in light of the evidence above, McCoy admitted she never investigated the complaints against Grove despite her assurances in the defamatory letters that she had done so. That failure violated her duties as the Procedural Safeguards Officer as well as BabyNet policies and procedures. (R. p. 276, lines 7-13; p. 289, line 13-p. 290, line 1; p. 305, line 10-p. 306, line 17; pp. 813-14.)

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[1] This evidence also demonstrates that the Defendant's statements exceeded the scope of any applicable privilege. The March 11 letter accomplished any necessary reporting purpose to Grove's employer, Medicaid, and LLR; McCoy had no need to send a second letter on April 23. Furthermore, it was this second letter that labeled Ms. Grove a danger to children and families based on an incident of which Defendant admitted she did not know the facts. Moreover, McCoy testified that such incident was not a factor in her decision, (R. p. 274, lines 19-25; R. p. 275, lines 7-13), again either calling into question McCoy's credibility or begging the question of whether the description of the incident exceeded the scope of any privilege. Even if the first letter somehow is somehow conditionally privileged, the second exceeds the scope of any such privilege.

McCoy's defamatory letters themselves, when compared with the actual evidence in the case, provide additional evidence of bias and lack of good faith:

- McCoy's knowingly false statements that she concluded Grove violated certain policies and procedures, when in fact she admitted in trial testimony that she had not made any such conclusions (R. p. 264, line 12-p. 265, line 7; p. 274, lines 4-25; p. 313, lines 4-9; pp. 806, 815, 816); and
- in three other instances, Grove's uncontradicted evidence showing that had McCoy investigated, as she stated she had, she would have found that no violation of policy underlay the complaints (R. p. 197, line 1-p. 198, line 23; R. p. 319, lines 7-10; R. p. 437, line 23-p. 440, line 14; R. p. 457, line 3-p. 458, line 4; p. 465, line 7-p. 466, line 15; p. 647; R. p. 180, lines 3-13; R. p. 222, line 12-p. 223, line 4; R. p. 229, line 24-p. 230, line 18; R. p. 242, lines 12-24; R. p. 266, line 13-p. 269, line 12; p. 181, line 13-p. 182, line 7; pp. 805, 814-15).

From this evidence, as set forth more fully in Grove's Final Brief to the Court, the jury could reasonably infer that McCoy had an improper bias against Grove. It could also reasonably infer that McCoy acted on that bias by lying about whether she had investigated Grove's actions and about her findings that Grove had violated certain policies and procedures in order to support her false and defamatory statements to Grove's employer and licensing authority. This evidence shows a lack of good faith is, *by itself*, sufficient to defeat McCoy's qualified privilege defense.

The same evidence meets the common-law standard for actual malice, that "the defendant's statement was motivated by ill will with the intent to injure the plaintiff, or that the statement was made with such recklessness as to show a conscious indifference

toward or disregard of the plaintiff's rights." *Eubanks v. Smith*, 292 S.C. 57, 63, 354 S.E.2d 898, 902 (1987). By showing such actual malice, Grove overcomes the qualified privilege defense—without regard to whether any improper publication took place or any of the other elements of qualified privilege were met. *Id.*

II. The Panel's Opinion Misapprehends the applicable evidentiary standard for judgment notwithstanding the verdict.

The Opinion's application of the JNOV standard to the facts of this case is incomplete, one-sided, and ignores significant evidence in the record. Such a review plainly conflicts with this Court's duty to draw all inferences in the light most favorable to Ms. Grove and to preserve a jury's verdict if there is any evidence to sustain the implicit factual findings. *Compare Wright v. Craft*, 372 S.C. 1, 18, 640 S.E.2d 486, 495 (Ct. App. 2006) ("When reviewing a motion for directed verdict or JNOV, an appellate court must employ the same standard as the trial court.") *with Burns v. Universal Health Servs., Inc.*, 361 S.C. 221, 231-32, 603 S.E.2d 605, 611 (Ct. App. 2004) (reciting standard of review deferential to jury verdict).

The Opinion's citation to cases addressing the evidentiary standard overlook the basic standard articulated by this Court and cited above. The Opinion cites *Hanahan v. Simpson*, 326 S.C. 140, 485 S.E.2d 903 (1997), for the proposition that "verdicts may not be permitted to rest upon surmise, conjecture, or speculation." As the *Hanahan* court recognized, this is a "corollary" of another rule: "when only one reasonable inference can be deduced from the evidence, the question becomes one of law for the court." *Id.* at 149, 485 S.E.2d at 908. The same opinion also holds that "[t]he issue *must* be submitted to a jury whenever there is material evidence tending to establish the issue in the mind of

a reasonable juror." *Id.* These three statements are not contradictory; rather, they inform each other and together describe one standard.

But what constitutes "material evidence"? The Opinion offers as its answer a citation to *Shealy v. Doe*, 470 S.C. 194, 204, 634 S.E.2d 45, 50 (2006), which it cites for the proposition that to warrant the finding of a fact, circumstantial evidence must "lead to the conclusion with reasonable certainty and must have sufficient probative value to constitute the basis for legal inference, not for mere speculation." Again, this statement of the legal rule is one-sided. The *Shealy* opinion goes on to state that "[c]ircumstantial evidence means proof that does not actually assert or represent the proposition in question, but that asserts or describes something else, from which the trier of fact may (1) reasonably infer the truth of the proposition . . . or (2) at least reasonably infer an increase in the probability that the proposition is in fact true." *Id.* at 204-05, 634 S.E.2d at 50-51. In the former case, where the factfinder may reasonably infer the truth of the proposition from the proffered evidence, the evidence is sufficient to create a jury question; in the latter, it may be sufficient or may not be. *Id.* Thus if circumstantial evidence allows a factfinder to reasonably infer the truth of a proposition, it permits a "legal inference" and necessarily creates a factual question for jury determination.

A. The evidence at trial supported a jury finding that McCoy published her defamatory statement to the mother of a child Grove treated.

The issue to which both the trial court and the Panel appear to have devoted their sole attention is whether Grove presented sufficient evidence to support a jury finding that McCoy published her defamatory March 11, 2008 letter to Kelly Hogan, the parent of a child Grove treated. It is the only issue addressed in the order on appeal and is the only issue about which any contention has been made regarding surmise or conjecture,

which appears to be the basis of the panel's decision to affirm the trial court's grant of JNOV on the defamation claim. McCoy has never disputed that such publication would extend beyond the bounds of publication to a "proper party" as required to maintain the qualified privilege. Thus, the sole question on this element is whether Grove presented sufficient evidence to support a reasonable jury inference that McCoy sent the March 11, 2008 letter to Hogan. *Shealy*, 470 S.C. at 204-05, 634 S.E.2d at 50-51. It is *necessary but not sufficient* for McCoy to prevail on this point to establish her qualified privilege.

Grove presents a detailed analysis of why the only reasonable conclusion from the evidence at trial is that Hogan got her copy of the March 11, 2008 letter from McCoy on pages 18-21 of her Final Brief. Seminal points include that Hogan had been in contact with McCoy for some time before (R. p. 285, lines 12-24; R. p. 295, line 11-p. 297, line 6; R. p. 299, line 20-p. 300, line 7); that Hogan had just complained to McCoy about Grove (R. p. 272, lines 5-13); which complaint prompted McCoy's decision against Grove (R. p. 323, lines 21-25); that Hogan regarded this letter as a response to her complaint to McCoy (R. p. 822-24; R. p. 449, lines 1-4; R. p. 450, lines 4-15); and that there is no evidence of any communication between Hogan and any other person who received the letter except LLR, to whom Hogan herself sent a copy of the letter (R. p. 446, line 21-p. 449, line 4). During the trial itself, the court expressly agreed with Grove that the evidence created a question for the jury as to publication beyond the scope of any privilege. (R. p. 478, lines 21-23). McCoy's briefs in this case do nothing to contradict Grove's argument on this point and put forth no argument for any alternative inference.

The trial court and the Opinion apparently conclude that any publication by McCoy to Hogan "rest[s] upon surmise, conjecture, or speculation." *Hanahan*, 326 S.C.

at 149, 485 S.E.2d at 908. A full review of the evidence, however, shows that Grove has presented circumstantial evidence from which the jury may reasonably infer the truth of the proposition that McCoy did in fact publish the letter to Hogan. *Id.* To hold otherwise, as the trial court and the Opinion do, would be to prevent juries from making any inferences at all—effectively destroying the concept of circumstantial evidence altogether.

B. The evidence at trial supported a jury finding that McCoy did not establish a qualified privilege or that she abused any such privilege.

As discussed in Part I, *supra*, the assertion of a qualified privilege defense to a claim of defamation raises factual questions as to good faith, scope of the privilege and the statements, and as to actual malice. Grove submits that McCoy bore the burden of establishing a proper exercise of any claimed privilege. Case law supports consideration of these issues in determining whether the defense of qualified privilege has been established in the first instance.

> To make the defense of privilege complete * * * good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion and publication in a proper manner and to proper parties only, must appear. The absence of any one or more of these constituent elements will, as a general rule, prevent the party from relying upon the privilege. All of these questions are, however, questions of fact for the jury to determine according to circumstances of each case.

Duckworth v. First Nat. Bank, 254 S.C. 563, 573, 176 S.E.2d 297, 302 (1970). Other cases suggest these factual inquiries are part of determining whether a privilege, once established, has been abused. *See Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 485, 514 S.E.2d 126, 134 (1999). The point remains, however, that from either side of the coin, the defense presents factual issues for the jury's consideration. To the

extent the Opinion is based on an undue burden placed on Grove, Grove contends that is an error based on misapprehension of the law.

Although the Opinion does not suggest that the Panel considered the evidence on these issues recounted *supra* in Part I, to the extent the Court reviewed the evidence it plainly did not draw all reasonable inferences in favor of Grove or the jury's verdict. Accordingly, any review was not pursuant to the applicable legal standard. *Compare Wright*, 372 S.C. at 18, 640 S.E.2d at 495 *with Burns*, 361 S.C. at 231-32, 603 S.E.2d at 611 (Ct. App. 2004).

III. Dismissal of Grove's § 1983 claims prior to jury consideration was improper.

The trial court granted a directed verdict for Defendants on Grove's § 1983 claim for deprivation of a constitutionally protected due process liberty interest. The Opinion correctly cites to *Sloan v. South Carolina Board of Physical Therapy Examiners*, 370 S.C. 452, 483, 6363 S.E.2d 598, 614-15 (2006), for the proposition that a person has a liberty interest in the right to follow a chosen profession free from unreasonable government interference—in Grove's case, physical therapy, which was in fact the very profession at issue in *Sloan*. It purports to apply—again correctly—the Fourth Circuit's "stigma-plus" test for violation of a liberty interest, as set forth in *Jackson v. Long*, 102 F.3d 733, 730 (4th Cir. 1996) and *Ridpath v. Board of Governors of Marshall Univ.*, 447 F.3d 292, 308 (4th Cir. 2006). A proper analysis of the facts of this case under the stigma-plus test, however—which the Opinion makes no effort to undertake—reveals that Grove did set forth facts sufficient to survive directed verdict and take this claim to the jury.

The Opinion appears to affirm the directed verdict on three heads: (1) that the

state action did not "foreclose [Grove's] freedom to take advantage of other employment opportunities," *Jackson*, 102 F.3d at 730; (2) that the communications at issue did not imply the existence of "serious character defects such as dishonesty or immorality," but only alleged "incompetence," *Ridpath*, 447 F.3d at 308; and (3) that the charge of a serious character defect was not "publicly disclosed," *id.* at 312. Grove presented sufficient material evidence to allow a reasonable juror to find for her on each of these issues, rendering directed verdict improper.

First, McCoy's state action prevented Grove from being employed in practicing her chosen profession. BabyNet is a practical monopoly for pediatric physical therapists like Grove, (*see* R. p. 254, line 22-p. 256, line 3; R. pp. 808-811), and Grove's practice is limited to this area because of both health conditions and long experience in the field, (R. p. 148, line 10-p. 151, line 7; R. p. 193, line 1-p. 194, line 9). By banning Grove from performing BabyNet services without any investigation, notice, or opportunity for Grove to be heard on the matter, McCoy foreclosed Grove's ability to work in South Carolina as a pediatric physical therapist's assistant. Moreover, even without this evidence, the Court should presume that the state action barring Grove from providing therapy to BabyNet patients will "foreclose other government employment opportunities" and prejudice Grove's private employment prospects as well. *See McNeill v. Butz*, 480 F.2d 314, 320 (4th Cir. 1973).

Second, the allegations in McCoy's two letters went far beyond incompetence. As noted *supra*, the letters alleged that Grove was dangerous to children and families. (R. p. 815-16.) They also alleged dishonesty, immorality, and fraud, including overbilling, ordering expensive or inappropriate equipment, and diagnosis outside the

scope of Grove's license (each of which allegations was proved false by uncontested evidence at trial). (R. p. 805, 814.) This evidence is sufficient for a reasonable juror to conclude that McCoy's statements accused Grove of "serious character defects such as dishonesty or immorality." *Ridpath*, 447 F.3d at 308.

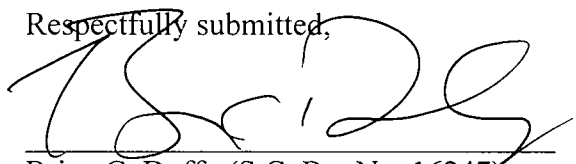
Third, the Opinion misinterprets the meaning of *Ridpath*'s requirement that the serious character defect at issue be "publicly disclosed." The purpose of requiring a "public" disclosure is to demonstrate the effect of the state action on the plaintiff's opportunities to obtain alternate employment in her chosen profession. See id. at 311 (liberty interest infringed by action that serves to exclude from one's occupation). The requirement makes good sense in cases where an employment action is at issue, such as the firing of a teacher or coach at a state educational institution. It is less directly applicable to cases such as this one, where the state action is regulatory and monopolistic, rather than simply being the action of one government employer in a market which includes many potential such employers. In any event, the relevant "public" is not the public at large, but that segment of the public which has the ability to affect Grove's employment opportunities.

McCoy's false statements accusing Grove of serious character defects were made to exactly those persons and institutions which can control her ability to work as a pediatric physical therapist: BabyNet, Medicaid, LLR, and her own employer—not to mention the evidence, described in detail above, that the parent of a child Grove treated also received McCoy's letter. To hold otherwise would be to ignore the substantial wrong done to Grove by McCoy's state action and leave her without a remedy, contrary to the purpose of the Due Process Clause and 42 U.S.C. § 1983.

Conclusion

Rehearing is necessary in this matter to correct the Court's oversight of the issues raised by the defense of qualified privilege and the misapprehension of applicable evidentiary standards. The Court should issue, via a three-judge panel or *en banc*, a revised Opinion in favor of Kelly Grove and reversing the trial court's orders granting judgment notwithstanding the verdict on Appellant's defamation claim and summary judgment on Appellant's § 1983 claims.

Respectfully submitted,



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PROOF OF SERVICE

I certify that I have served Appellant's Petition for Rehearing with Suggestion for Rehearing *en banc* on Respondents, by depositing a copy of it in the United States Mail, postage prepaid, on July 30, 2013, addressed to their attorneys of record, James A. Stuckey, Jr., Esq. and Alissa R. Collins, Esq., 123 Meeting Street, Charleston, South Carolina 29401.

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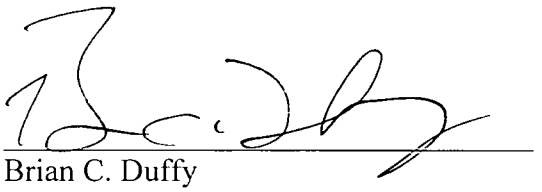

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