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Feb 06 2024

SC Court of Appeals

ROGERS LEWIS
ATTORNEYS AT LAW

Kevin D. Maroney, Esq.
Direct: (803) 978-2832
kmaroney@rogerslewis.com

February 6, 2023

The Honorable Jenny A. Kitchings
Clerk of Court
SC Court of Appeals
ctapfilings@sccourts.org

RE: Appellate Case No. 2022-001114, Charleston Carriage Works, LLC v. Charleston Animal Society, *et. al.*

Dear Ms. Kitchings,

Per Rule 208(b)(7), Respondents are providing notice, “by letter”, of “pertinent and significant” authority that came to their attention after the filing of Final Briefs. Rule 208(b)(7), SCACR. The South Carolina Supreme Court recently published Jeffrey Lane Cruce v. Berkley County School District, Op. No. 28186 (S.C. Sup. Ct. filed Jan. 17, 2024) (Howard Adv. Sh. No. 2 at 31-46). In Cruce, the Supreme Court overturned its prior test “for determining whether one is a limited public figure[.]” Id. (Howard Adv. Sh. No. 2 at 37-38). The Court instituted a new test in place of the prior one. Id. (“We therefore replace the *Erickson* factors with this three-part inquiry.”). The new test affects page 34 of the brief for Respondents Ellen Harley and Charleston Carriage Horse Advocates, LLC. Respondents Brief, p. 34 (citing Erickson v. Jones St. Publishers, LLC, 368 S.C. 444, 474, 629 S.E.2d 653, 669 (2006) and its test). The new test also affects pages 9-10 of Respondent Charleston Animal Society’s brief.

Appellant claims that Cruce “overrules the reasoning adopted by the Master-in-Equity in granting summary judgment, especially the lower court’s analysis of public and limited public figures.” This is incorrect. First, this appeal does not involve a “public official” determination. The Master ruled that “Appellant is a limited public figure when it comes to the speech at issue in this appeal.” Brief of Respondents Ellen Harley and CCHA, p. 37 (citing R., pp. 9-14). Second, although Cruce did change the test for determining whether one is a limited public figure, this change “is not substantive and will not affect the outcome of any cases.” Jeffrey Lane Cruce v.

Berkley County School District, Op. No. 28186 (S.C. Sup. Ct. filed Jan. 17, 2024) (Howard Adv. Sh. No. 2 at 46) (Few, J., Concurring).

Appellant also claims that Cruce “restated the law on defamation[,] further eroding the reasoning below.” What Appellant means by “restated” is unclear; however, the issue on appeal was the public official or limited public figure status of Cruce. Jeffrey Lane Cruce v. Berkley County School District, Op. No. 28186 (S.C. Sup. Ct. filed Jan. 17, 2024) (Howard Adv. Sh. No. 2 at 33) (“We granted Cruce’s petition for a writ of certiorari *to address the issue of whether Cruce was a public official or public figure.*”) (emphasis added). The Court was not addressing defamation law generally. Id. Appellant does not show how the “reasoning below” has been “eroded” either.

Appellant nevertheless proclaims that “further appellate review of the summary judgment is unnecessary under the controlling authority of *Cruce*...[and] the remaining issues on appeal are likewise called into question and should be redetermined by the trial court[.]” As shown, however, Cruce has a limited and inconsequential effect on this appeal. Supra. Given that the “remaining issues on appeal”¹ have nothing to do with defamation law at all, Appellant’s contention about Cruce’s effect upon them is unreasonable.

Sincerely,

s/Kevin Maroney

cc:

Thomas R. Goldstein
Attorney for Charleston Carriage Works, LLC
tgoldstein@cobblaw.net

Elizabeth J. Palmer
Attorneys for Charleston Animal Society
ep@saxtonstump.com

Joseph D. Thompson, III
Spencer C. Gill
Hall Booth Smith, P.C.
Attorneys for Ellen Harley & Charleston Carriage Horse Advocates
jthompson@hallboothsmith.com
sgill@hallboothsmith.com

¹ Brief of Ellen Harley and CCHA, p. 7 (Statement of Issues on Appeal).

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY Mikell R. Scarborough, Master-in-Equity

Appellate Case No. 2022-001114

(Case No. 2018-CP-10-4083)

Charleston Carriage Works, LLC,Appellant,

v.

Charleston Animal Society, Ellen Harley, and

Charleston Carriage Horse Advocates, LLCRespondents.

PROOF OF SERVICE

Per the Supreme Court’s Order concerning electronic service in the Appellate Courts (Order # 2020-000447), I certify that I provided a copy of the Respondents’ Rule 208(b)(7), SCACR Notice via email to all counsel, using the email addresses listed on the Attorney Information System (AIS). Counsel received a copy of the Rule 208(b)(7) Notice at the same time it was filed in the Court of Appeals. Per the Supreme Court’s Order, a copy of the email is enclosed with this Proof of Service.

February 6, 2023

s/ Kevin Maroney
Rogers Lewis Jackson & Mann LLC
PO Box 11803
803.629.3542
kmaroney@rogerslewis.com