RECEIVED
Feb 15 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Circuit Court Judge Bentley Price

Appellate Case No. 2020-001460

Andrew HaLevi, Ph.D., Appellant,

v.

Charleston County School District, Respondent.

APPELLANT'S PETITION FOR REHEARING

BLOODGOOD & SANDERS, LLC
Nancy Bloodgood, SC Bar No.: 6459
242 Mathis Ferry Road, Suite 201
Mt. Pleasant, SC 29464
Telephone: (843) 972-0313
Email: nbloodgood@bloodgoodsanders.com

Attorneys for the Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

LEGAL ARGUMENTS

I. The Court overlooked several factual statements made by Collins when it upheld the trial court's summary dismissal of Petitioner's defamation claim.

The Chronicle newspaper reported its interview with CCSD Board Member Collins as follows:

> A Charleston County school administrator should be fired, but most likely won't be, said county school board member Rev. Chris Collins. ….. Halevi was placed on administrative leave the following Monday, but he should have been arrested when the incident occurred and then fired, Collins said this week. … Halevi should have known whether the child was wearing a dress though he said he never went to the back of the bus where she was sitting. But that's irrelevant. He should not have demanded she take off her pants while on the bus. You don't embarrass a child or cause her to be exposed in front of other students. That's unacceptable. I think he just got mad and demanded the pants back. …I think he should be fired, but I don't think there is board support to do that.

(R. p. 394.)

Many of Collins' statements could be proven true or false, so they are not statements of opinion. "[A] statement of opinion relating to matters of public concern [that] does not contain a provably false factual connotation will receive full constitutional protection." Garrard v. Charleston Cnty. Sch. Dist., 429 S.C. 170, 199–200, 838 S.E.2d 698, 713 (Ct. App. 2019), aff'd in part, vacated in part sub nom. Garrard for R.C.G. v. Charleston Cnty. Sch. Dist., 439 S.C. 596, 890 S.E.2d 567 (2023) (internal citations omitted.) Here, the false factual statements Collins made about Petitioner (Petitioner should have been arrested when the incident occurred and then fired, that Petitioner demanded a student take off her pants while on a bus, and the student was exposed in front of other students) can each be proven true or false and, therefore, they are not entitled to any constitutional protection. Further, merely, using the words "I think" will not automatically

turn a defamatory statement into protected opinion. See, Milkovich v. Lorain J. Co., 497 U.S. 1, 20, 110 S. Ct. 2695, 2706 (1990). The Court of Appeals erred by focusing only on parts of Collins' statements and overlooked the factual parts of his statements.

II. The Court overlooked facts from which a jury could find Collins was speaking in his official capacity.

The Court of Appeals erred in finding as a matter of law that Collins was speaking in his individual capacity. A jury could find that the public could rightly assume after reading this article that Collins' statements, whether authorized or not, were made in his official capacity. The newspaper article identified Collins as a "county school board member;" the facts involved a public school, student, principal and school bus; the newspaper article mentioned what CCSD administrators' positions were was regarding the incident; and Collins discussed what action the board might take. The fact that Collins, as a board member, is discussing what action the board might take serves to emphasize his statements were made in his official capacity. At the time Collins made these statements, there was sufficient evidence from which a jury could conclude Collins was not speaking in his individual capacity.

III. The Court misapprehended agency law and overlooked the theory of apparent authority.

CCSD Board Member Collins did not have to be acting within the scope of his employment for his defamatory statements to be attributed to CCSD. The Court of Appeals, citing Murray v. Holnam, Inc., 344 S.C. 129, 139, 542 S.E.2d 743, 748 (Ct. App. 2001), explained that "a principal may be held liable for defamatory statements made by an agent acting within the scope of his employment or within the scope of his apparent authority," but then failed to consider whether Collins was acting within his apparent authority.

"[T]he doctrine of apparent authority provides that the principal is bound by the acts of his agent when he *has placed the agent in such a position that* persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption." Spence v. Spence, 368 S.C. 106, 126, 628 S.E.2d 869, 879 (2006) (emphasis added). "In the principal and agent relationship, apparent authority is considered to be a power which a principal holds his agent out as possessing or permits him to exercise under such circumstances as to preclude a denial of its existence." Beasley v. Kerr–McGee Chem. Corp., 273 S.C. 523, 257 S.E.2d 726 (1979). Here, there is nothing in the record indicating the CCSD board ever denied Collins' statements.

In Crittenden v. Thompson–Walker Co., Inc., 288 S.C. 112, 341 S.E.2d 385 (Ct.App.1986), this Court discussed scope of employment in the master-servant context where an employee physically assaulted the plaintiff because he refused to pay a bill for work performed by the employer. The dispositive issue was whether the employee was acting outside the scope of his employment and the Court of Appeals held:

> [I]t is not necessary to find the particular act creating liability was within the servant's authority. Nor is it necessary that the assault should have been made as a means or for the purpose of performing the work the servant was employed to do. If the servant is doing some act in furtherance of the master's business, he will be regarded as acting within the scope of his employment, although he may exceed his authority.... If there is doubt as to whether the servant in injuring a third party was acting at the time within the scope of his employment, the doubt will be resolved against the master....
> 288 S.C. at 115–116, 341 S.E.2d at 387 (citations omitted).

In Abofreka v. Alston Tobacco Co., 288 S.C. 122, 341 S.E.2d 622 (1986), the Supreme Court held the trial judge properly submitted the issue of the employer's liability to the jury citing Restatement (Second) of Agency § 247 (1965) (master is subject to liability for defamatory

statements made by servant acting within scope of his employment, or, as to those hearing or reading the statement, within his apparent authority).

In S.C. State Budget & Control Bd., Div. of General Services, Ins. Reserve Fund v. Prince, 304 S.C. 241, 245–47, 403 S.E.2d 643, 646–47 (1991), the Supreme Court held:

> [W]e conclude that the facts of this case mandate the finding that Prince was acting in the course of his employment at the time of the defamation. Prince was an elected trustee of the governing board of the School District and served as Chairman of the School Board's Finance Committee. Prince's statements at the press conference addressed his concerns about the fiscal management of the School District; these concerns specifically stemmed from his position on the School Board. As such, his actions pertained to his position and were in furtherance of the School District's business. ….. Although Prince was acting without the express authorization of the School Board, his activities were not wholly disconnected from the business of the School District such that he was acting outside the scope of his employment.

In Lollis v. Dutton, 421 S.C. 467, 480–81, 807 S.E.2d 723, 729–30 (Ct. App. 2017), this court held a "principal may be held liable to a third person in a civil lawsuit for the fraud, deceit, concealment, misrepresentation, negligence, and other omissions of duty of his agent [that] occur in the scope of the agent's employment, even when the principal did not authorize, participate in, or know of such misconduct or even when the principal forbade or disapproved of the act in question." Here, a jury could find that the circumstances surrounding Collins' statements led the public to believe the statements were made in his capacity as a CCSD Board Member.

The Court of Appeals also overlooked the fact that agency is a question of fact. Gathers v. Harris Teeter Supermarket, Inc., 282 S.C. 220, 226, 317 S.E.2d 748, 752 (Ct. App. 1984). "[T]he relationship of agency need not depend upon express appointment and acceptance thereof. Rather, an agency relationship may be, and frequently is, implied or inferred from the words and conduct of the parties and the circumstances of the particular case." Nationwide Mut. Ins. Co. v. Prioleau,

359 S.C. 238, 242, 597 S.E.2d 165, 168 (Ct. App. 2004). Agency "may be proved circumstantially by the conduct of the purported agent exhibiting a pretense of authority with the knowledge of the alleged principal." Town of Kingstree v. Chapman, 405 S.C. 282, 315, 747 S.E.2d 494, 511 (Ct. App. 2013) (internal citations omitted). "[T]he doctrine of apparent authority provides that the principal is bound by the acts of his agent when he *has placed the agent in such a position that* persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption." Spence v. Spence, 368 S.C. 106, 126, 628 S.E.2d 869, 879 (2006) (emphasis added). The issue of whether Collins had apparent authority to speak on behalf of CCSD board is an issue of fact that a jury should decide and the Court of Appeals misapprehended agency law by when it held Collins was speaking as an individual.

CONCLUSION

The fact that Collins opined as to what action the CCSD Board might take regarding Petitioner does not protect all of Collins' defamatory statements as opinion because some of his statements were facts that could be proven true or false. A jury could find that the circumstances surrounding Collins' statements led the public to believe the statements were made in his capacity as a CCSD Board Member, and the Board never repudiated Collins' statements. The doctrines of apparent authority and agency are factual issues, and there is sufficient evidence in the record for these issues to be decided by a jury. Petitioner respectfully requests a rehearing as the Court of Appeals overlooked the factual statements Collins made, overlooked the theory of apparent authority, and overlooked the factual issues involved in the determination of agency.

Respectfully submitted,

BLOODGOOD & SANDERS, LLC

s/Nancy Bloodgood
Nancy Bloodgood, SC Bar No.: 6459
242 Mathis Ferry Road, Suite 201
Mt. Pleasant, SC 29464
Telephone: (843) 972-0313
Email: nbloodgood@bloodgoodsanders.com

Counsel for Appellant

Charleston, South Carolina

February 15, 2024

BLOODGOOD & SANDERS, LLC

RECEIVED
Feb 15 2024
SC Court of Appeals

February 15, 2024

The Honorable Patricia A. Howard
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: *HaLevi v. Charleston County School District*
Appellate Case No.: 2020-001460

Dear Ms. Howard,

Enclosed please find a check for the $50.00 filing fee in the above referenced matter. I have previously electronically filed a Petition for Rehearing. Please let me know if the Court requires anything else.

With kindest regards, I remain,

Sincerely,

Nancy Bloodgood

Nancy Bloodgood

Enclosure
cc: Eugene Matthews, via email

242 Mathis Ferry Road, Suite 201 • Mt. Pleasant, South Carolina 29464
(t): 843-972-0313
(e) nbloodgood@bloodgoodsanders.com • lsanders@bloodgoodsanders.com