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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Bentley Price, Circuit Court Judge

Case No.: 2018-CP-10-00123
Appellate Case No. 2020-001460

Andrew Halevi, Ph.D.,

Appellant,

v.

Charleston County School District,

Respondent.

RESPONDENT'S RETURN TO APPELLANT'S PETITION FOR REHEARING

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LEGAL ARGUMENTS

Appellant has raised three separate issues in his Petition for Rehearing regarding his claim for defamation based on the statements of Chris Collins, then a member of the Charleston County School Board. Each of these three issues concerns the decision of the Court of Appeals upholding the finding of the Circuit Court that "the District was not a proper defendant regarding statements made by board member Chris Collins." (Opinion of Court of Appeals, p. 4).

Appellant does not challenge any other ruling of the Court of Appeals, including those findings that (1) the evidence and all reasonable inferences do not show a genuine issue of material fact as to whether the District defamed Appellant by innuendo, (2) the District did not violate Appellant's Due Process rights, and (3) the Circuit Court properly found that Appellant failed to properly allege, or otherwise show a genuine issue of material fact, that the District breached his contract or the covenant of good faith and fair dealing.

Importantly, the Petition for Rehearing does not challenge the Circuit Court's finding that Appellant was a "public official" for purposes of his defamation claims.

Otherwise, for the reasons stated below, Plaintiff's Petition for Rehearing should be denied.

I. DID THE COURT OF APPEALS MISCHARACTERIZE THE STATEMENTS OF CHARLESTON COUNTY SCHOOL DISTRICT BOARD MEMBER CHRIS COLLINS REGARDING APPELLANT'S DEFAMATION CLAIM?

In his Petition, Appellant argues that the Court upheld dismissal of his defamation claim because it mischaracterized Collins' reported statements as "opinions" rather than

statements of fact. Curiously, it is Appellant – not the Court – that misapprehends the Court's ruling on this matter.

The Court's opinion does not affirm dismissal of the defamation claim because it found Collins' statements were merely opinions. Rather, it found that Collins' statements reported in the media were clearly his own assertions, and that he was not acting as a spokesman for, or agent of, the School Board. The Court noted that Collins made a point of observing that the School Board most likely would not share his views that Appellant should have been fired or arrested. (Opinion of the Court of Appeals, p. 5). The Court also notes that Collins prefaced his remarks with the phrase "I think," as opposed to presuming to present the opinion of the School Board. As the Court rightly noted, "[t]hese comments aptly demonstrate that Collins was not acting within the authority of the board." (Opinion of the Court of Appeals, p. 5).

Appellant relies heavily on *Garrard v. Charleston Cnty. Sch. Dist.*, 429 S.C. 170, 198, 838 S.E.2d 698, 713 (S.C. 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) to argue that the comments reported in the media by Chris Collins were not mere opinions, but were instead factual assertions, and therefore potentially defamatory. The appellants in *Garrard* were six members of the 2014-2015 Academic Magnet High School (AMHS) football team and their head coach, Eugene Walpole, who alleged that two published editorials contained defamatory statements. Specifically, one referred to the students as "racist douchebags," and another stated Coach Walpole "condoned a racist act." 429 S.C. at 185, 838 S.E.2d at 706. In finding that the statements could not be defamatory, the Court noted that these statements could not reasonably be interpreted

as "stating actual facts" about the appellants, but were instead expressions of "rhetorical hyperbole" or "opinion," and that the actions at issue were subject to the "varying viewpoints and interpretations." 429 S.C. at 199-200, 838 S.E.2d at 713-14. Indeed, Collins' very statements indicated his belief that there were varying opinions of Appellant within the School Board, and that the School Board would not follow Collins' preferred courses of action.

Furthermore, even Appellant's argument regarding the nature of Collins' statements fails. It is hard to imagine statements that are more clearly opinions. In addition to noting that he did not think the Board would support his assertions, he prefaced many of his remarks by expressing opinions about the incident, such as "I think he just got mad and demanded the pants back," or "I think he should be fired, but I don't think there is board support to do that." (R. p. 394). In this regard, Collins' statements were similar to those reported in *Garrard*, where the actions at issue were subject to the "varying viewpoints and interpretations."

In any event, Appellant fails to show how the Court misapprehended the nature of Collins' statements, especially as it pertains to his acting as an agent of the Board or District.

II. DID THE COURT OF APPEALS ERR IN HOLDING AS A MATTER OF LAW THAT COLLINS WAS NOT SPEAKING IN HIS OFFICIAL CAPACITY WHEN HE MADE ALLEGEDLY DEROGATORY COMMENTS ABOUT APPELLANT?

Appellant's argument that Collins was speaking "in his official capacity," as opposed to speaking as an individual, makes no sense and, unsurprisingly, contains no citations to supporting authority. For the reasons stated previously by the Court, there is

no genuine issue of material fact supporting Appellant's argument that Collins was speaking as a duly authorized representative of the Board.

Moreover, the argument is self-defeating. Because Appellant's Petition for Rehearing does not challenge the Circuit Court's finding that Appellant was a "public official," it is the law of the case. *Crossmann Communities of N. Carolina, Inc. v. Harleysville Mut. Ins. Co.*, 411 S.C. 506, 524, 769 S.E.2d 453, 463 (S.C. App. 2015) (under the law of the case doctrine, "[a]n unappealed ruling is the law of the case and requires affirmance."). Because Appellant was a "public official," he could only be defamed if a defendant acted with "actual malice," and for that reason, Respondent could not be a proper defendant to the defamation action under the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-60(17); *Scott v. McClain*, 272 S.C. 198, 250 S.E.2d 118, 120 (1978); *Gause v. Doe*, 317 S.C. 39, 42, 451 S.E.2d 408, 409 (S.C. App. 1994). If Collins had acted with "actual malice," Appellant could only bring suit against Collins as an individual – however unsuccessful pursuit of those claims would otherwise appear to be – but not against the Respondent.

III. DID THE LOWER COURT MISAPPREHEND THE LAW OF AGENCY FOR PURPOSES OF ATTRIBUTING STATEMENTS MADE BY COLLINS TO THE SCHOOL DISTRICT?

Appellant's third argument is self-defeating for the same reason that his second argument fails. In order for Collins to speak "in his official capacity," he could have acted with the requisite "actual malice" required for Appellant to bring a defamation claim. If he had, under the operation of the South Carolina Tort Claims Act, he could not be acting within the scope of his official duty. S.C. Code Ann. § 15-78-60(17); S.C.

Code Ann. § 15-78-70. In fact, the Petition for Rehearing ignores entirely the South Carolina Tort Claims Act, and for that reason alone, the Petition must be dismissed.

Appellant's third argument also fails because it relies on *S.C. State Budget & Control Bd., Div. of Gen. Servs., Ins. Rsrv. Fund v. Prince*, 304 S.C. 241, 245, 403 S.E.2d 643, 646 (1991), which actually undercuts Appellant's argument. In *Prince*, the Supreme Court took pains to distinguish the concept of "scope of employment" used in an insurance contract to determine coverage against the concept of "scope of official duty" as it is used in the South Carolina Tort Claims Act.

> The Fund argues that we are constrained by the South Carolina Tort Claim Act (Act), including its definition of "scope of official duty," S.C. Code Ann. § 15–78–30(i) (Supp.1989), in determining whether Prince was acting within the course of his employment. However, the Act does not provide immunity to employees whose conduct constitutes actual malice.[2] S.C. Code Ann. § 15–78–70(b) (Supp.1989). Consequently, it is the language of the policy, and not of the Act, which is determinative. **The policy does not limit coverage to acts within the "scope of official duty", but instead utilizes broader language and provides coverage to an employee "acting in the course ... of employment."**

Prince, 304 S.C. at 245, 403 S.E.2d at 646 (emphasis added). In the footnote to that passage, the Supreme Court also noted that "[s]ince Sanders and Dabbs are public officials, they have to prove that Prince acted with actual malice in order to recover against him." *Id.*, n 2. Notably, the plaintiffs in *Prince* were seeking to sue him individually, not the School District.

Finally, it is clear the Court already considered, and rejected, Appellant's arguments based upon apparent authority. In the Court's decision, it cited *Murray v. Holnam, Inc.*, 344 S.C. 129, 139, 542 S.E.2d 743, 748 (S.C. App. 2001), for the proposition 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 (emphasis added). In its discussion of the record of Collins' reported statements, the Court properly concluded that the nature of statements "aptly demonstrate that Collins was not acting within the authority of the Board." (Opinion of the Court of Appeals, p. 5). In fact, Collins' statements differ markedly from the statements at issue in *Murray*, where a company supervisor announced in a meeting of "employees, including at least six workers [that] Murray was fired for misappropriating or misusing company property." 344 S.C. at 136, 542 S.E.2d at 746.

CONCLUSION

For the reasons set forth above, Respondent Charleston County School District respectfully requests that this Court affirm the Order granting the Motion for Summary Judgment, and for any other such relief as this Court deems just and proper.

Respectfully submitted,

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COUNSEL FOR RESPONDENT CHARLESTON COUNTY SCHOOL DISTRICT

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PROOF OF SERVICE

I, the undersigned employee for Richardson Plowden & Robinson, P.A., counsel for the Respondent Charleston County School District, do hereby certify that I have served a copy of the Respondent's Return to Appellant's Petition for Rehearing by causing a copy of the same to be deposited in the United States mail, first class postage prepaid, addressed to counsel of record on this 8th day of March, 2024:

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March 8, 2024
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March 8, 2024

The Honorable Jenny Kitchings, Clerk
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Andrew Halevi, Ph.D. vs Charleston County School District
Appellate Case No.: 2020-001460

Dear Honorable Kitchings:

Enclosed herewith for filing is the Respondent's Return to Appellant's Petition for Rehearing, together with the Certificate of Service.

With kind regards, I remain

Sincerely,

RICHARDSON PLOWDEN & ROBINSON, P.A.

Eugene H. Matthews

cc:
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