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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Commons Pleas

Alex Kinlaw Circuit Court Judge
Civil Case No: 2023-CP-23-03268

Appellate Case No: 2023-001985

Bruce Wilson,……..……., Appellant,

v.

Megan Riegel, In her Capacity as the CEO and President of the Peace Center for the Performing Arts; and Rueban Hays, In his Capacity as the Executive Director and Founder of the Juneteenth GVL Inc., Defendants,

Of Whom Rueban Hays, In his Capacity as the Executive Director and Founder of the Juneteenth GVL Inc.,…….……...…., Respondent.

APPELLANT'S INITIAL BRIEF

Bruce Wilson
14 Freestone St
Greenville SC 20605
(864) 907-7080

APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

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   a. Law of the Case Doctrine

STATEMENT OF THE CASE

Appellant, Bruce Wilson ("Appellant"), filed this action alleging defamation and civil conspiracy against Defendant Megan Riegel ("Riegel") and Respondent Rueban Hays ("Hays") on June 27, 2023. Riegel filed a Rule 12(b)(6), SCRCP Motion to Dismiss on August 18, 2023. Appellant filed a Motion in Opposition to Riegel's Motion to Dismiss on September 29, 2023.

Oral Arguments were held in Greenville County, on October 12, 2023, before the Honorable G.D. Morgan Jr., on Riegel's motion to dismiss. On October 27, 2023 Judge Morgan denied Riegel's motion to dismiss the Defamation and Civil Conspiracy action.

Hays filed a Rule 12(b)(6), SCRCP Motion to Dismiss on October 13, 2023. Appellant filed a Motion in Opposition to Hays' Motion to Dismiss on October 31, 2023.

Oral Arguments were held in Greenville County, on November 1, 2023, before the Honorable Alex Kinlaw Jr., on Hays' motion to dismiss. Judge Kinlaw granted Hays' motion to dismiss the Defamation and Civil Conspiracy action and remove Hays from the case. Judge Kinlaw enter a Form 4 Order on November 2, 2023.

Appellant filed a Moton for Reconsideration on November 3, 2023. Judge Kinlaw denied Appellant's Motion for Reconsideration on December 19, 2023. Judge Kinlaw enter a formal order granting Hays' Motion to Dismiss on December 19, 2023.

Appellant timely filed his Notice of Appeal on December 20, 2023. Appellant the dismissal of his case against Hays on the Defamation and Civil Conspiracy claims.

PLEADINGS

At some point in January of 2023, the Peace Center and Juneteenth GVL Inc., agreed to jointly host the upcoming 2023 Juneteenth celebration in downtown Greenville crafted as Juneteenth Maga Fest. (Compl. ¶ 7).

At the end of May 2023, Rueban approved several marketing banners with images to be placed throughout downtown Greenville to promote the upcoming Juneteenth event hosted at the Peace Center. The banners were approved by Rueban, depicted White Americans with the words JUNETEENTH under the Juneteenth flag.

The banners created a huge backlash on social media, and the Plaintiff who had hosted the first and two (2) subsequent Juneteenth events in downtown Greenville was ask about the imagery

on the banners by Fox Carolina news and on May 24, 2023, Plaintiff was interviewed by the news outlet. (Compl. ¶¶ 9,10).

With in hours after the Plaintiff had filed suit against the Peace Center, the State Newspaper published an article the same day the suit was filed and used the information within the suit for the article with no statement from the Plaintiff regarding the suit.

On June 2, 2023, Megan released a statement to the media on behalf of the Peace Center, regarding Plaintiff's suit. In the release to the media, Megan made derogatory statements regarding the Plaintiff', and such statements were published by WYFF News Ch 4, calling the Plaintiff a "media seeker" and a litigious individual. (Compl. ¶ ¶12,13).

Within hours the Peace Center released a second statement/press release to the media, removing the derogatory statement/comments. (Compl. ¶ 14).

On June 6, 2023, Rueban, sent a text message to Derrick Quarles, one of the original sponsor/hosts of the Greenville downtown Juneteenth events, using derogatory and threatening language toward Mr. Quarles and the Plaintiff; to include saying the Plaintiff was a "Hoe Ass Niggas". (Compl. ¶ 15).

On June 7, 2023, Plaintiff sent Rueban a Cease-and Desist notice, and Rueban immediately texted the Plaintiff stating, "I said with I had to say" **See Exhibit C**. (Compl. ¶ 16).

The statements and actions made by Defendants, during the initial disclosure of a of a public statement to media, and messaging to third parties regarding the Plaintiff on June 2, 2023, June 6, 2023, and June 7, 2023, with publication(s) wrongly painting the Plaintiff in derogatory terms as a "Hoe Nigga" and as "A media attention seeker". These statements were defamatory per se. Defendants' statements, actions, threats and bullying subject Plaintiff to ridicule, contempt, disgrace, suffering, anguish, horror, nervousness, grief, anxiety, worry, shock, humiliation, and

shame. The defamatory and slanderous statements were false when made, were made without regard to their truth and falsity, were made without justification, and were made for the purpose and with the intent of damaging the reputation of the Plaintiff with reckless disregard of their effect on the reputation of the Plaintiff and with malice intent. (Compl. ¶ 18).

The Defendants entered into an agreement or understanding, explicitly or implicitly, for the purpose of injuring the Plaintiff by:

a. Assembling and coordinating for the purpose of denigrating and tarnish the reputation of Plaintiff for the purpose of generating interest in the community for the Defendants' personal and business motives;

b. Making negative comments and or threat regarding Plaintiff to create a harmful climate surrounding the Plaintiff;

c. Attempting to demean the Plaintiff in the Public's Eye, to quell concerns from the Public regarding a Juneteenth Event;

d. Willfully and/or wantonly, and collectively assaulted the Plaintiff's reputation, to include intimidation tactics in an effort to diminish the backlash from the whitewashing of a Juneteenth Event in downtown Greenville;

e. Sending public derogatory message(s) to public entities, media, and third parties about regarding the Plaintiff and

The Defendants directly and proximately caused injury to the Plaintiff by the acts committed herein in furtherance of the conspiracy. (Compl. ¶¶ 25, 26).

STANDARD OF REVIEW

This is an appeal of an order granting Rule 12(b)(6), SCRCP Motion to Dismiss. "[T]he appellate court [on Rule 12(b)(6)] applies the same standard of review implemented by the trial court." *Ashley River Properties I, LLC v. Ashley River Properties 11, LLC,* 374 S.C. 271, 279, 648

S.E.2d 295, 298 (Ct. App. 2007) (citing *Williams v. Condon,* 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001)).

"The trial court's ruling on a Rule 12(b)(6) motion must be bottomed and premised solely upon the allegations set forth in by the plaintiff." *Williams v. Condon,* 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001); *citing, Holy Loch Distribs. V. Hitchcock,* 332 S.C. 247, 503 S.E.2d 787 (Ct. App. 1998), *rev'd on other grounds,* 340 S.C. 20, 531 S.E.2d 282 (2000): *Berry v. McLeod,* 328 S.C. 435, 492 S.E.2d 794 (Ct. App. 1997). "The [Trial Court's Order] will not be sustained if the facts allege and the inferences reasonable deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." *Williams,* 553 S.E.2d 431 (Ct. App. 1997). "The question to be considered is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief." *Williams,* 553 S.E.2d at 499-500; *citing, Toussaint v. Ham,* 292 S.C. 415, 357 S.E.2d 8 (1987); *Cowart v. Poore,* 337 S.C. 359, 523 S.E.2d 182 (Ct. App. 1999).

ARGUMENTS

Appellant filed this civil case on June 27, 2023, alleging Defamation and Civil Conspiracy against Defendant Megan Riegel and Respondent Rueben Hays.

On October 13, 2023, Respondent Hays, through counsel, filed a motion to dismiss Appellant's complaint against Respondent, as provided by Rule 12(b)(6) SCRCP. Respondent's motion listed purported deficiencies with Appellant's complaint and alleged causes of actions.

The Honorable Judge Alex Kinlaw Jr. held a hearing on Respondent's motion to dismiss on November 1, 2023. The Court received testimony and arguments from Respondent's counsel, Mr. Gleaton, and from Appellant, Bruce Wilson.

The court made repeated inquiries to the Appellant, regarding his claim of defamation related to statements texted by Respondent Hays to a Mr. Quarles in were Hays called the Appellant a "Hoe Ass Nigga". The Court did not believe such comments were defamatory and attributed the comments to simple "Insults" conferring that insults cannot be defamatory. The Court noted that he had been called similar names and that he viewed the language as an Insult [HT pp. 13, Line 17-22]. The Court ruled from the bench that Appellant's defamation claim did not meet the elements for defamation, because the alleged defamatory statement was nothing more than an Insult [HT pp. 13, Line 10-16]; the Court made no verbal findings on the Civil Conspiracy claim but nerveless dismissed the claims and **GRANTED** Respondent's Motion to Dismiss; the Court further **DENIED** Appellant's **MOTION FOR RECONSIDERATION.** Appellant appeals that Order and finding.

I. DID THE CIRCUIT COURT JUDGE ERR IN DISMISSING APPELLANT'S, CLAIMS AGAINST RESPONDENT PURSUIT TO RULE 12(B)(6) SCRCP FOR FAILURE TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION?

In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. Dismissal under Rule 12(b)(6) is improper if the facts alleged and inferences reasonably deducible therefrom, when viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory. The court should not dismiss the complaint merely because it doubts the plaintiff will prevail in the action. The Court dismissed Appellant's claims against Respondent with disregard to this basic premise.

In the instant case, Respondent didn't challenge the validity of the alleged defamatory statement; to the contrary, Respondent conceded to such said statement of calling the Appellant a "**Hoe Ass Nigga**", but instead attacked Appellant's reliance on the defamatory statement not being

published to a third party; even though such reliance was insufficient on its face. Appellant's complaint detailed **who**, **where** and **when** the defamatory statement was published, to include the publication to a third party. Respondent further, complained that Appellant failed to adequately plead civil conspiracy and the Court erroneously agreed without finding any defenicy in such pleading to dismiss the civil conspiracy claim against Respondent. Without just cause the Circuit Judge dismissed all Appellant's claims against the Respondent.

A. Defamation Sufficiently Plead:

Libel and slander are collectively known as defamation, or misrepresentation intended to harm the reputation of another person or entity. If a defamatory statement is written and seen, it falls under the category of libel. If the statement is spoken and heard (but not published in print), it is considered slander. As the recent explosion of channels for social media and online communication has opened new venues for the publication of libelous or slanderous statements, it is important to know the difference between the two, and to understand the components of a defamation.

A plaintiff must prove that the defendant communicated a defamatory statement. Any message that results in an unwarranted loss of respect or confidence in the plaintiff is considered defamatory, as is any statement that causes derogatory, hostile, or unfavorable opinions of the plaintiff. Based on these definitions, even a comment made in jest can be considered defamation if at least one person perceived it as serious.

The plaintiff must show that the statement was published. According to defamation law, "publication" simply refers to the communication of a statement to someone other than the ***plaintiff***. A defamatory statement does not have to be printed or broadcast by ***official media sources*** to be considered slander or libel; it can be spoken in conversation to an individual or

group, or written in a personal ***email*** or ***letter***.

More specifically, The tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff. *Swinton Creek Nursery v. Edisto Farm Credit,* 334 S.C. 469, 514 S.E.2d 126 (1999). The focus of defamation is not on the hurt to the defamed party's feelings, but on the injury to his reputation. *Wardlaw v. Peck,* 282 S.C. 199, 318 S.E.2d 270 (Ct. App. 1984). Defamatory communications take two forms: libel and slander. *Swinton Creek Nursery,supra*. Slander is a spoken defamation, while libel is a written defamation or one accomplished by actions or conduct. Id. *Fleming*, 338 S.C. at 532, 526 S.E.2d at 737. Defamation need not be accomplished in a direct manner. *Eubanks v. Smith*, 292 S.C. 57, 354 S.E.2d 898 (1987); *Tyler v. Macks Stores,* 275 S.C. 456, 272 S.E.2d 633 (1980). A mere insinuation is actionable as a positive assertion if it is false and malicious, and its meaning is plain. *Eubanks*, *supra*; *Tyler*, *supra*.

The elements of defamation include: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Holtzscheiter v. Thomson Newspapers, Inc.,* 332 S.C. 502, 506 S.E.2d 497 (1998)(Toal, J., concurring in result in separate opinion); *Fleming*, *supra*. A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. *Fleming*, *supra*.

Central to Respondent's motion to dismiss, is that the Appellate did not alleged or show publication to a third party. See Respondent's motion to dismiss:

> *[N]o cause of action for defamation has been made regarding Hayes/or Juneteenth GVL because there is no*

> *allegation that either published any statements to third party*.

Circuit court judge during the hearing to dismiss Appellant's claim of defamation against Respondent, seemed to escape the very premise of the second element of defamation, by ignoring the publication of a defamatory statement to a **third-party** [HT pp. 11, Line 2-7]; which Appellant wholly and completely alleged.

The Court went on to confuse the publication to a third-party individual and a media-outlet. Although our Courts have not differentiated, between a media outlet and a third-party private individual as related to defamation publication, the Circuit Court Judge in the instant case, misinterpreted this fundamental fact. [HT pp. 10, Line 11-14]; which gave validity to Respondent's misguiding claim, that Appellant did not alleged publication to a third-party in the complaint, which disregarded the complaint. (Compl. ¶ 15).

> *On June 6, 2023, Rueban, sent a text message to Derrick Quarles, one of the original sponsor/hosts of the Greenville downtown Juneteenth events, using derogatory and threatening language toward Mr. Quarles and the Plaintiff; to include saying the Plaintiff was a "**Hoe Ass Niggas**".*

Appellant during the dismissal hearing, went on to explain in detailed to the court that Respondent sent the defamatory comment via text to Mr. Quarles and that the Appellant was not part of the text message exchange and that's why it was a third-party publication. [HT pp. 8, Line 15-24]; as previously stated the Court acknowledged such text message but refused to accept such text message exchange as publication. [HT pp. 10, Line 11-14].

Though the Circuit Court's Order dismisses the defamation claim against Respondent based on Appellant's complaint failing to allege the publication of communication/publication to a third party of a defamatory statement, such dismissal should not stand.

Appellant pled an actionable defamation claim against Respondent: (Compl. ¶ 15). Based on the pleading, including but not limited to the above quoted paragraphs of the complaint, Appellant sufficiently pled, with the required specificity at this stage of the litigation, his defamation claim against Respondent.

B. Civil Conspiracy Claim Sufficiently Plead:

The basis for dismissal of the civil conspiracy claim was the finding that "the Court cannot find that the alleged actions of Respondent were related to a joint two-party conspirator act and there is no combination of two or more persons to support a civil conspiracy claim. And therefore, Appellant cannot as a matter of law plead a cause of action for civil conspiracy under South Carolina Law. Because of this Respondent is entitled to dismissal of Appellant's civil conspiracy cause of action as a matter of law: Specifically, "In his Complaint, Plaintiff describes actions of two separated defendants. Both actions are alleged to be defamatory. However, the Plaintiff failed to state any facts that would support the claim that the defendants combined to harm the plaintiff and the Complaint therefore fails the first element of proof for civil conspiracy." December 19, 2023, Order, p. 4. Appellant appeals that finding.

A properly pled civil conspiracy claim asserts three elements: (1) A combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage. *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989). To establish the first two elements, a plaintiff needs to allege "additional acts in furtherance of the conspiracy." *Todd v. S.C. Farm Bureau Mut. Ins. Co*., 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981). The third element, special damages beyond those alleged in other causes of action, must be satisfied to prevent a double recovery. *Kuznik v. Bees Ferry Assocs*., 342 S.C. 579, 610, 538 S.E2d 15, 31 (Ct. App. 2000); *see also, Anthony v. Ward*, 336 Fed. Appx. 311, 318, C.A.4 (S.C.) (2009); *Hackworth v.*

Greywood at Hammett, L.L.C., 358 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009) (*citing Vaught,* at 209, 387 S.E.2d 95). Because the Circuit Court found that Appellant's action failed to state any facts that would support the claim that the Respondent combined to harm the Appellant, the dismissal is based on the first element, a combination of two or more persons. (See December 19, 2023, Order, p. 4). Th other two elements are not the basis of dismissal; therefore, Appellant does not address them in great detail here. However, Appellant addressed such arguments in his memoranda and oral arguments (See Plaintiff's Memorandum and Hearing Transcript).

A meeting of the minds need not induce a meeting of the bodies. The Defendants, under a common scheme and purpose, was attempting to regain the public's respect and admiration as related to the 2023 Juneteenth event after staunch public criticism and this is where the defamatory scheme was hatched. (Compl. ¶ 25).

Appellant's pleading is sufficient under the breath of Civil Conspiracy by the defendant Riegel and Respondent Hays in this matter. There is no doubt that "Conspiracy" is cloaked in secrecy and such secrecy cannot be tumbled without full discovery. However, even with such limitations, the Appellant has illuminated a collective plan by the Defendant Riegel and Respondent Hays to erode Appellant's standing in the community and such plan was not by accident or incident. A simple inference would detail the collaborative efforts of the defendants as outlined in the complaint. "[A] complaint is sufficient if it states any cause of action, or it appears that the plaintiff is entitled to any relief whatsoever. *Baldwin v. Sanders,* 266 S.C. 394, 223 S.E.2d 602 (1976).

With totality, Appellant's pleadings were sufficient and should have been able to withstand a motion to dismiss under a Rule 12(b)(6) SCRCP.

II. DID THE CIRCUIT COURT JUDGE ERR IN DISMISSING APPELLANT'S, DEFAMATION CLAIM AGAINST RESPONDENT BECAUSE THE DEFAMATORY STATEMENT WAS MERELY AN INSULT?

A. Defamatory Statement More Than an Insult

The tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff. *Holtzscheiter,* 332 S.C. at 508, 506 S.E.2d at 502; *Murray v. Holnam, Inc.,* 344 S.C. 129, 138, 542 S.E.2d 743, 748 (Ct.App.2001). Defamatory communications take two forms: libel and slander. *Holtzscheiter,* 332 S.C. at 508, 506 S.E.2d at 502. Libel is the publication potentially material by written or printed words, by its embodiment in physical form or by any other form of communication that has the potentially harmful qualities characteristic of written or printed word. Slander is a spoken defamation. *Id.* at 508, 506 S.E.2d at 501; *see also Swinton Creek Nursery v. Edisto Farm Credit,* 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999).

To recover for defamation, the plaintiff must establish by a preponderance of the evidence, that there was (1) a false and defamatory statement by the defendant concerning the plaintiff; (2) an unprivileged communication; (3) fault on the defendant's part in publishing the statement; and (4) either actionability of the statement irrespective of special harm or the existence of special harm to the plaintiff caused by the publication *Fleming v. Rose,* 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002).

The Honorable Judge Alex Kinlaw Jr held a hearing on Respondent's motion to dismiss on November 1, 2023. The court received testimony and arguments from Respondent's counsel Mr. Gleaton and from Appellant Bruce Wilson.

The court made repeated inquiries to the Appellant regarding his claim of defamation related to statements texted by Respondent Hays to a Mr. Quarles in were Hays called the Appellant a "Hoe Ass Nigga". The Court did not believe such comments were defamatory and attributed the comments to simple "Insults" [HT pp. 10, Line 11-14] conferring that insults cannot be defamatory as used [HT pp. 13, Line 21-22]. The Court noted that he had been called similar names and that he viewed the language as a harsh Insult. [HT pp. 11, Line 13-15] The view by the Court is at odds with the South Carolina Court of Appeals, who has addressed **insults** as related to Defamation. *Goodwin v. Kennedy*, 347 S.C. 30, 552 S.E.2d 319 (Ct. App. 2001).

"Id. *Goodwin v. Kennedy,* Mr. Goodwin argued that his comments of calling an Assistant Principal a "**House Nigga**" was nothing more than an **insult**, or abusive language; However, the Court disagreed; Id."*Kennedy* requested the jury be charged the following: "Name calling, insults and profanity, absent the showing of special damages is not slander." The trial judge seemed troubled by the broad statement of law offered by defense counsel. The judge did not believe he could give the charge as proposed without some quote or further explanation. The judge was correct, and it would have been an incorrect statement of the law to have charged the jury that insults, or profanity cannot be defamatory, as extrinsic facts may be proven to show the defamatory nature of the remarks. We find the charge as a whole was proper and note that the judge did not preclude the defense from arguing that the alleged defamatory statements were mere insults or name-calling. *Keaton v. Greenville Hosp. Sys.*, 334 S.C. 488, 514 S.E.2d 570 (1999) (holding a jury charge which is substantially correct and covers the law does not require reversal). Accordingly, we find no error in the trial judge's refusal to charge in this instance*." Goodwin v. Kennedy*, 347 S.C. 30, 42, 552 S.E.2d 319, 326 (Ct. App. 2001)." Insults can be defamatory and the Court's assertion that "Hoe Ass Nigga" can only fall in the rim of an insult is legally erroneous

by the standards of this Honorable Court, but the court here viewed the comment as simply Ugly. [HT pp. 13, Line 10-13]

Defendant admitted that he sent the text calling the Plaintiff a " **Hoe Ass Nigga**" and such message was sent to a Third-Party, thereby the publishing of a Defamatory statement regarding the Plaintiff would satisfy the first two element of Defamation and any question as to whether the statement was defamatory would be a question for a jury "Likewise, the question of whether the statements were actionable per se or not actionable per se was a matter for the jury to determine as the finders of fact; *Goodwin v. Kennedy,* 347 S.C. 30, 38 552 S.E.2d 319 (Ct. App. 2001)."

Even if the comment "Hoe Ass Nigga" was viewed as an epithet it would be at odds with *Id*. *Goodwin*: "Kennedy argued he was entitled to a directed verdict because there was no evidence the comments were anything other than epithets. The trial judge denied the motion for a directed verdict, stating "all of the words have to be considered in the context with which they are used." The court stated whether the words were defamatory or not presented "factual questions" for the jury. We agree with the trial judge that, viewing all the evidence in the light most favorable to Goodwin, as we are required to do, whether the comments were defamatory presented a question of fact for the jury to determine. Thus, we find no error in the denial of a directed verdict on this basis. *Goodwin v. Kennedy*, 347 S.C. 30, 41, 552 S.E.2d 319, 325 (Ct. App. 2001)."

Notwithstanding, a text message is no different than an email. "Issue of whether an email, stating that a school district security guard was not to be trusted with keys, was false and defamatory, as required to establish claim for defamation, presented a question for the jury; evidence indicated that head of security and assistant manager of security for the district published an email to third parties potentially insinuating that the guard was a thief, that the guard had previously had a reputation for reliability, and that the guard's role as a mentor in his church

significantly decreased following the publication of the email. *Kennedy v. Richland Cnty. Sch. Dist. Two*, 428 S.C. 98, 833 S.E.2d 414 (Ct. App. 2019)" In the instant case the Court was not moved and did not believe that the text message from Respondent to Mr. Quarles was sufficient for publication. [HT pp. 10, Line 11-14]

Nerveless, the Court did not note any deficient elements but simply the word "Hoe Ass Nigga" and ruled that such word was an Insults and not defamation [[HT pp. 13, 14 Line 23-25, 1]], such ruling should yield to "*Goodwin v. Kennedy,* 347 S.C. 30, 552 S.E.2d 319 (Ct. App. 2001)"as Appellant did include such opinion with is Motion in Opposition to Respondent's motion to dismiss.

The Court at one point incorrectly believed that since the text message was sent to Mr. Quarles, that the message was not considered published, because Mr. Quarles was not a media outlet. [HT pp. 10, Line 10-14]; not only is this assertion erroneous, but it was nonsensical and illogical. Once the Respondent sent the text message to Mr. Quarles concerning the Appellant and the Appellant not being apart of the text thread that became a published communication to a third-party regarding the Appellant.

Dismissing a claim is a drastic measuring, and to do so before all fact and or discovery can be obtained can have a chilling effect on a case; on its face a case/claim may seem unconvincing, but facts matter especially when alleging defamation. Calling someone a "Hoe Ass Nigga" could have a host of meanings, just like calling someone a Paranoid Sonofabitch". "[T]urning to the present case we must first determine whether the defendant's characterization of the plaintiff is capable of a libelous meaning. We agree with the defendant that the words "paranoid sonofabitch" are words of abuse and scurrility and that such words, on their face, are not, as a general rule, considered defamatory, See Curtis Publishing Co. v. Birdsong, 5 Cir., 360 F.2d 344 (1966); Smith

v. Phoenix Furniture Co., 339 F.Supp. 969 (D.S.C. 1972); and Prosser, Supra, pp. 741-2; Cf. Dauterman v. State-Record Co., 249 S.C. 512, 154 S.E.2d 919 (1967). Nevertheless, when viewed in light of the extrinsic facts which have been pled (the inducement), we conclude that the defendant's remarks are susceptible of a libelous construction. Or, stated technically, the defendant's remarks are libelous per quod. *Capps v. Watts*, 271 S.C. 276, 281–82, 246 S.E.2d 606, 609 (1978).” After the Respondent text Mr. Quarles that Appellant was a “Hoe Ass Nigga” he then texted, the Appellant stating, *“I said with I had to say”* (Compl. ¶ 16) such comments illuminate extrinsic facts.

Lastly this court’s ruling in *Id*. *Kennedy*, should be the prevailing equivalent to the instant case, due to the similarity in the language: “house nigga” “hoe ass nigga” in *Id. Kennedy* the words were spoken, here the statement was in a text message; both comments go to the heart of societies’ accessibility of decency, and both are defamatory at their core, when use as used here.

III. DID THE CIRCUIT COURT JUDGE ERR IN DISMISSING APPELLANT’S CIVIL CONSPIRACY CLAIM AGAINST RESPONDENT AFTER EARLIER CIRCUIT COURT JUDGE HAD RULE SUCH CLAIM WAS SUFFICIENT FOR RESPONDENT’S CO-DEFENDANT?

A. Law of the Case Doctrine

The Court’s ruling from the bench is in stark contrast from its filed written order, which was produced by Respondent’s counsel.

Respondent was aware that on October 27, 2023, the Honorable G.D. Morgan Jr., dismissed Respondent’s co-defendant Riegel’s motion to dismiss Appellant’s claim of defamation and civil conspiracy; specifically on the matter of Civil Conspiracy. Therefore, Judge Morgan’s ruling would implicate implicitly and explicitly, that Respondent was a coconspirator by the nature of the

Judge Morgan's order which was entered on October the 27, 2023, nearly two months before the Honorable Judge Kinlaw's order was entered; Judge Morgan's Order would undoubtedly be the Law of the Case on the issue of *civil conspiracy* and Judge Kinlaw acknowledged Judge Morgan's order but refused to yield to it as related to the civil conspiracy claim. [HT pp. 14, Line 17-18]. It is well understood that a Judge may make their own findings and enter their on rulings, but it has always been frowned upon when Judges in the same Circuit dealing with the same case/parties to enter dueling and or opposing orders. Judge Morgan held the first hearing regarding the sufficiency of the civil conspiracy claim asserted by Appellant and enter an Order on such claim as sufficient for Respondent's co-defendant, which on its face would tie Respondent to the civil conspiracy claim under the *Law of The Case Doctrine.*

The law of the case doctrine provides that, once an appellate (or trial) court has ruled on a question of law, that ruling must be followed—and cannot be revisited—in all subsequent stages of that particular case. In other words, findings made during one part of the litigation become binding for subsequent stages of that same litigation. It cannot be lost on the fact that the Court knew that Judge Morgan had held a hearing on this issue for the Respondent's co-defendant and had entered an Order related to said issue. [HT pp. 7, Line 7-25]; notwithstanding, counsel for Respondent know of the Judge Morgan's Order. [HT pp. 8, Line 9-11].

The law of the case doctrine exists to ensure the uniformity of decisions, protect the expectations of the parties, and promote judicial economy. It is similar to the doctrine of res judicata, which prevents the re-litigation of final judgments, but it is not as clearly defined.

The Order dismissing Appellant's civil conspiracy claim against Respondent read in-part: "In his Complaint, Plaintiff describes actions of two separated defendants. Both actions are alleged to be defamatory. However, the Plaintiff failed to state any facts that would support the claim that

the defendants combined to harm the plaintiff and the Complaint therefore fails the first element of proof for civil conspiracy". (See December 19, 2023, Order, p. 4); Judge Morgan's Order enter on November 19, 2023, devour this Order enter by Judge Kinlaw as the first element. Furthermore, Respondent after notice of Judge Morgan's ruling/order that essentially cemented and implicated him as a co-conspirator in the Civil Conspiracy claim did not move for an Appellate review Judge Morgan's order. Although, Respondent wasn't the author of the motion to dismiss in Defendant's Riegel's motion to dismiss, Respondent was a primary component of said motion and would have had standing to seek such review of Judge Morgan's order, as Judge Morgan's Order would have become the Law of the Case on the issue of the Civil Conspiracy claim. "Appellant asserts the trial court erred in refusing to alter or amend the damages award based on Rule 54(c), SCRCP. Rule 54(c) provides "[a] judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment." Appellant argues Respondents' complaint limits the damages in the case, and therefore, the trial court erred when it granted Respondents' motion to open the judgment to amend the complaint to delete any prayer for a specific sum. We decline to address this issue. Appellant did not appeal the ruling by the trial judge that granted the motion to open the judgment. A portion of a judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the case. *Greenville Cty. v. Kenwood Enters., Inc.,* 353 S.C. 157, 577 S.E.2d 428 (2003). Thus, allowing the complaint to be amended to delete any prayer for a specific sum is the law of the case. *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 319–20, 594 S.E.2d 867, 878 (Ct. App. 2004)."

CONCLUSION

A review of this case, in its totality would indicate that the Circuit Court judge made several legal, errs and or legal conclusions in dismissing Appellant's case against the Respondent; not only

were there legal deficiencies in the Court's dismissal, but a fundamental disregarded the fairness to this state's Rules and Civil Procedure and well-established case law to the process that was blatantly disregarded. Appellate in his complaint plead sufficient facts to overcome a motion to dismiss under current civil rules and case law, and Appellant's claim(s) of defamation and civil conspiracy against Respondent were unabashed and nondeficient. This was further cemented by a previous court order that ruled that the civil conspiracy claim was sufficient and created a legal doctrine that has been well adhered to. What is more legally sound as the *law of the case doctrine*, notwithstanding, for the court, to deem, the language used in this instant case as merely an INSULT, disregarding the long-standing premise from this states prior case law, and this Court's prior rule on the subject-matter, that an insult can be defamatory would lead Appellate to respectfully request this Court to reverse the order from the Greenville County Circuit Court Judge, dismissal of Appellant's claims against Respondent and remand the case back to the Greenville County Common Pleas Court, to resume proceedings.

Respectfully submitted,

Bruce Wilson
14 Freestone St
Greenville SC 29605
(864) 907-7080
Brucewilson23@gmail.com

APPELLANT

Greenville, South Carolina
April 22, 2024

THE STATE OF SOUTH CAROLINA
The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Commons Pleas

Alex Kinlaw Circuit Court Judge
Civil Case No: 2023-CP-23-03268

Appellate Case No: 2023-001985

Bruce Wilson,……..……., Appellant,

v.

Megan Riegel, In her Capacity as the CEO and President of the Peace Center for the Performing Arts; and Rueban Hays, In his Capacity as the Executive Director and Founder of the Juneteenth GVL Inc., Defendants,

Of Whom Rueban Hays, In his Capacity as the Executive Director and Founder of the Juneteenth GVL Inc.,…….……...…., Respondent.

CERTIFICATE SERVICE

I hereby certify that on April 22, 2024, I served a copy of APPELLANT'S INITIAL BRIEF via cc: E-Mail to ctappfiling@sccourts.org and United States Mail, prepaid and addressed to:

Ralph Gleaton, Esq
PO Box 5739
Greeenville, SC 29606
(864) 444-4178
ralph@gleatonlaw.com

By: /s/ Bruce Wilson
Bruce Wilson
14 Freestone St
Greenville SC 29605
(864) 907-7080
Brucewilson23@gmail.com
APPELLANT