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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2023-001985
Trial Court Case No. 2023CP2303268

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,

Of Whom Rueben Hays, In his Capacity
as the Executive Director and Founder of
the Juneteenth GVL, Inc. is the

Respondent.

RESPONDENT'S INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. The Circuit Court was correct in finding that Appellant failed to allege that Respondent published the alleged defamatory comment.
- II. The Trial Court was correct in finding that Appellant failed to allege facts sufficient to constitute a cause of action for Civil Conspiracy against Respondent.

STATEMENT OF THE CASE

Appellant brought an action against Respondent alleging causes of action for defamation and civil conspiracy in the Greenville County Circuit Court with case number 2023-CP-23-0326. Complaint. Respondent filed a motion to dismiss for to state facts sufficient to constitute causes of action for defamation or civil conspiracy pursuant to Rule 12(b)(6) SCRCF on October 13, 2023. Plaintiff's Motion to Dismiss. The motion was heard by the Honorable Alex Kinlaw, Jr. on November 1, 2023. Order Dated December 18, 2023. Judge Kinlaw entered a formal order granting Respondent's motion on December 18, 2023. Order Dated December 18, 2023. This appeal follows.

FACTS

The only allegations in the Appellant's Complaint that referenced the Respondent are that "the Peace Center and Juneteenth GVL, Inc. agreed to jointly host the upcoming 2023 Juneteenth celebration" (Complaint ¶ 7), that Mr. Hays approved marketing banners depicting white Americans, the work Juneteenth and the Juneteenth flag to be placed in downtown Greenville to promote the Juneteenth event (Complaint ¶ 9), and that Hays "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 Plaintiff was a "Hoe Ass Niggas" (Complaint ¶ 15).

STANDARD OF REVIEW

"On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court." *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). A Complaint must be dismissed if it does not "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570 (2007)). A complaint is only plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 129 S. Ct. at 1949 (citing *Bell Atlantic*, 550 U.S. at 556).

ARGUMENT

- I. The Trial Court was correct in finding that Appellant failed to allege that Respondent published the alleged defamatory comment.

The Appellant failed to state facts sufficient to constitute a cause of action for defamation against the Respondent by failing to state facts showing that the alleged defamatory statement was published. To prove defamation, the plaintiff must show (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). The publication of a statement 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." *Id.* There is no allegation that Hays and/or Juneteenth GVL made any publication of its alleged derogatory language. The allegation is that the alleged derogatory language was sent via text to, and was about, Mr. Quarles, the who was a "sponsor/host" with the Appellant in this matter. "It is well settled that parties are judicially bound by their pleadings . . ." *Postal v. Mann*, 308 S.C.

385, 387, 418 S.E.2d 322, 323 (Ct.App.1992). Because the Complaint alleges that the alleged derogatory language was about the person to whom it was sent, Mr. Quarles. Mr. Quarles is referred to in the Complaint “sponsor/hosts of the Greenville downtown Juneteenth events” working with the Appellant. There are no facts in the complaint that would allow a reasonable inference of publishing to a community or third persons, not also addressed in the alleged derogatory language, so as to lower either Mr. Quarles or Appellant in the estimation of the community or to deter third persons from associating or dealing with [them].

Further, in the context the alleged derogatory language was presented in the Complaint, the phrase used by the Respondent were epithets or words of abuse and scurrility because they were made to the Appellant through Mr. Quarles, an original host/sponsor of Appellant’s event and therefore not defamatory. See. *Smith v. Phoenix Furniture Co.*, 339 F.Supp. 969 (1972); See also, *Capps v. Watts*, 271 S.C. 276, 246 S.E.2d 606 (1978) (“[t]he words ‘paranoid sonofabitch’ are words of abuse and scurrility and that such words, on their face, are not, as a general rule, considered defamatory.”]

Appellant makes arguments in his brief referencing factual statements made at the hearing on the motion to dismiss. Though the Trial Court did grant Appellant a full hearing, it was correct not to rule based on matters outside of the Complaint. Under Rule 12(b)(6), SCRPC, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint." *Spence v. Spence*, 628 S.E.2d 869, 368 S.C. 106 (S.C. 2006).

- II. The Trial Court was correct in finding that Appellant failed to allege facts sufficient to constitute a cause of action for Civil Conspiracy against Respondent.

The Appellant failed to state facts sufficient to constitute a cause of action for civil conspiracy against the Respondent by failing to state facts showing that Respondent acted in combination with any other person or showing special damages. In South Carolina, [a] civil conspiracy exists when there is (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes the plaintiff special damage. *Robertson v. First Union Nat. Bank*, 350 S.C. 339, 348, 565 S.E.2d 309, 314 (Ct.App.2002). “A claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than reallege other claims within the complaint. Moreover, because the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action.” *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 682 S.E.2d 871 (Ct. App. 2009) (internal citations omitted). In his Complaint, Appellant describes actions of two separate defendants. The actions of both defendants are alleged to be defamatory. However, the Appellant failed to state any facts that would support the claim that the Respondent combined with the co-defendant in the case, or any other person, to harm the Appellant and the Complaint therefore fails to state facts sufficient to constitute a cause of action under the first element of proof for civil conspiracy. Appellant also failed to state any new allegations in his cause of action for civil conspiracy stating the same allegations as used in the prior causes of action in the complaint. Special damages are those elements of damages that are the natural, but not the necessary or usual, consequence of the defendant's conduct. *Loeb v. Mann*, 39 S.C. 465, 469, 18 S.E. 1, 2 (1893). Further “[g]eneral damages are inferred by the law itself, as they are the immediate, direct, and proximate result of the act complained of. Special damages, on the other hand, are not implied at law because they do not necessarily result from the wrong. Special damages must, therefore, be

specifically alleged in the complaint to avoid surprise to the other party.” *Id.* (internal citations omitted).

Appellant argues in his brief that the Trial Court that dismissed the civil conspiracy cause of action against Responded should not have done so because the Trial Court that heard the co-defendant’s motion on similar grounds did not dismiss the civil conspiracy cause of action against the co-defendant citing, without authority, the “Law of The Case Doctrine.” This argument fails for three reasons. First, Appellant fails to cite authority for the doctrine as agued. "A party is deemed to have abandoned an issue where the party fails to cite authority or where the argument is simply a conclusory statement." *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994). Second, the Law of the Case Doctrine applies to matters decided by appeals court when that case is sent back down to the trial court. “Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court.” *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 776 S.E.2d 397 (S.C. App. 2015) (Citing, *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) (citing 5 C.J.S. Appeal & Error § 991 (2007))). Third, the other Trial Court’s order cited in Appellant’s brief, adjudicated a matter for the co-defendant, not the Respondent.

CONCLUSION

For the reasons stated, this Court should reverse deny the Appellants appeal.

Respectfully submitted,

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