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**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY  
CIRCUIT COURT

Brian M. Gibbons, Circuit Court Judge

Case No. 2022-CP-20-00104  
Appellant Case No. 2023-001451

Bertha Goins.....Respondent,

vs.

Jenkinsville Water Co., Inc.,.....Appellant.

**AMENDED INITIAL BRIEF OF APPELLANT**

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**STATEMENT OF ISSUES ON APPEAL**

- I. **There is at least a question of fact that the alleged defamatory statements are false, that Respondent was not acting within the scope of her duties on the Fairfield County Council and whether Respondent acted with actual malice in telling a series of lies of which some are admitted.**

## **STATEMENT OF THE CASE**

Appellant brought a case for defamation against Respondent March 4, 2020. Respondent brought counterclaims for abuse of process, breach of contract, violations of the Freedom of Information Act, Breach of Implied Warranties, Unfair Trade Practices, and outrage/harassment. The case was dismissed pursuant to S.C.R.C.P. 40(j) on December 2, 2021 and restored March 30, 2022. The parties filed cross motions for summary judgment on all causes of action and the trial court granted summary judgment as to Appellant's defamation cause of action and all of Respondent's causes of action except the outrage cause of action April 28, 2023. Appellant filed a timely motion to alter or amend that was denied September 8, 2023. Appellant filed a timely notice of appeal September 11, 2023.

## **STATEMENT OF FACTS**

Respondent is a former board member of Jenkinsville Water Co. ("JWC") and lost her board seat in 2015. After losing her board seat, Respondent has been a vocal critic of JWC and has openly supported consolidating JWC with the water systems of Winnsboro and Mid-County going so far as to write letters to the paper to that effect. (R., p. \_\_\_\_).

In the years leading up to the filing of this complaint March 4, 2020, Respondent engaged in a public campaign of maliciously attacking JWC by stating that the water produced by JWC is substandard, that there is a causal connection between her husband's medical conditions and the water he drinks that is provided by JWC, there is criminal activity going on at JWC, that JWC hasn't issued boil water notices in the past 20 years, that JWC doesn't bill for water at times, and that the age of JWC's pipes are causing a degradation in the quality of the water it provides. These above-referenced statements were made to news reporters with Respondent's knowledge that the statement would be published in the newspaper, broadcast on television and online and were also

made publicly at Fairfield County Council meetings with Respondent's knowledge that these statements would be publicly heard and incorporated into the minutes of the publicly available county council meetings, recorded and reported in newspapers by reporters.

At the October 14, 2019 Fairfield Council meeting, the minutes of the meeting indicate that Respondent stated that "In 20 years, there has not been one boil water advisory." (R., p. \_\_\_\_). Respondent's attorney conceded that this statement was a lie at the hearing on her motion for summary judgment. (R., p. \_\_\_\_).

### **STANDARD OF REVIEW**

"Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." *Baughman v. Am. Tel. & Tel. Co.*, S.C. 101, 115,410 S.E.2d 537, 545 (1991). This initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case, and it is not necessary for the moving party to support its motion with affidavits or other similar materials negating the opponent's claim. *Id.* Once the moving party carries its initial burden, the opposing party must do more than rest upon the mere allegations or denials of his pleadings, but must, by affidavit or otherwise, set forth specific facts to show that there is a genuine issue for trial. *Id.*; Rule 56(e) SCRCF.

"In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803

(2009). “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Lanham v. Blue Cross & Blue Shield of S.C.*, 349 S.C. 356, 362, 563 S.E.2d 331,333 (2002). Moreover, because summary judgment is a drastic remedy, it should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues. *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006).

### Argument

**I. There is at least a question of fact that the alleged defamatory statements are false and Respondent was not acting within the scope of her duties.**

**A. The statement made by Respondent that are demonstrably false or conceded to be a lie.**

The elements of defamation are as follows: (1) It had a defamatory meaning; (2) it was published with actual or implied malice; (3) it was false; (4) it was published by the defendant; (5) it concerned the Plaintiff; (6) it resulted in legally presumed damages or in special damages to plaintiff. Smith v. Bradstreet, 63 S.C. 525, 41 S.E. 763 (1902). Organizations like corporations, associations, and partnerships can sue for defamation that affects their businesses or other organization interests. (South Carolina Law of Torts, Third ed., p. 479).

One of the grounds the trial court granted summary judgment to Respondent was the statements were truthful (Order, p. 3) (R., p. \_\_\_\_). There is sufficient evidence in the record to create a fact question as to whether the statements are true or Respondent concedes are a lie.

At the October 14, 2019 Fairfield Council meeting, the minutes of the meeting indicate that Respondent stated that “In 20 years, there has not been one boil water advisory.” (R., p. \_\_\_\_). This statement impugns JWC’s fitness in its business and is slander per se. Respondent concedes

through her attorney that she has done no investigation as to whether there in fact had been no boil water notices in the past 20 years at the time she made those statements and made no investigation as to the truth of that statement. In fact, Respondent's attorney conceded that this statement was a lie at the hearing on her motion for summary judgment. (R., p. \_\_\_\_).

"The only statement that is an actual lie is that they issued two boil water notices, one in 2012 for her street and one in 2018... There were two. She fully admits – and she says in her deposition, she didn't know about it, and she says, yeah, I should have looked up whether there was a boil-water notice before I said it. I wasn't aware of the boil-water notices... So **that's the only statement that we agree would technically be a lie.**" (Tr. of Sum. Jgmt. Hrg., P. 30, l. 21 – P. 31, l. 25) (R., p. \_\_\_\_) (emphasis added).

There is substantial evidence in the record to dispute the truth of this statement and in fact it was admitted to being a lie giving rise to at least a question of fact as to whether these statements are truthful. For these reasons, this court should reverse the grant of summary judgment and the denial of Appellant's Motion to Alter/Amend as to the defamation cause of action on the grounds that the statements were truthful and remand the case to the trial court for a trial.

**B. There is a question of fact that Respondent was not acting within her official duties as a member of the Fairfield County Council at the time she made the defamatory statements.**

One of the grounds the court granted summary judgment on the defamation cause of action was that Respondent was acting in her official capacity as a County Council member and that her statements were not made with actual malice (Order, p. 4) (R., p. \_\_\_\_). There is sufficient evidence in the record to give rise to a fact question as to whether Respondent was acting within the scope of her position as a member of County Council and whether she was acting with actual malice.

Section 15-78-60 of the Tort Claims Act reads as follows:

**§15-78-60.** Exceptions to waiver of immunity (17) employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude;

At the time Respondent was making the defamatory comments at Fairfield County Council meetings, she was not speaking as part of her official duties for the county, but giving her personal thoughts on JWC to the general public. (R., p. \_\_\_\_). The statements were made during a time during the County Council meeting where the Council members can say whatever they want to but have no obligation to say anything. . (R., p. \_\_\_\_). Anyone can speak at the County Council meetings at the appropriate time. The fact that Respondent was a Council Member does not make what she was saying connected to her job in any way. Respondent was making similar statements about JWC prior to becoming a County Council member and continued after she lost her re-election bid for the County Council. Speaking to the general public at a County Council meeting does not make these statements a part of her official duties as contemplated by the Tort Claims Act. She is simply stating her personal thoughts during her time at the meeting. As a result, there is a question of fact that the tort claims act does not apply to these statements.

Even if the tort claims act does apply, pursuant to §15-78-60, if a jury determines that Respondent was acting with actual malice, she will be determined to have been acting outside her scope of employment and not subject to the tort claims act. Kennedy v. Richland Cnty. Sch. Dist. Two, 428 S.C. 98, 833 S.E.2d 414 (S.C. App. 2019). As shown above, Respondent has told admitted lies about JWC. Telling admitted lies is good evidence of malicious intent. Only someone who is intent on causing harm to another would tell admitted lies about a company.

As a result, there is a question of fact for the jury as to whether these statements were made within her official duties and whether they were made with malice even if they are held to be within official duties. For these reasons, this court should reverse the grant of summary judgment and the denial of Appellant's Motion to Alter/Amend on this basis and remand the case to the trial court for a trial on the defamation cause of action.

### CONCLUSION

Respondent concedes that at least one of her defamatory statements was a lie. This alone merits a reversal of the grant of summary judgment of the defamation cause of action based on the truth of the statements. As a result, the court should reverse the grant of summary judgment and the denial of Appellant's Motion to Alter/Amend on these grounds.

There is a genuine fact question as to whether the statements made at Fairfield County Council meetings were made in her personal capacity or in her duties as a council member. Even if Respondent is found to have been acting within the scope of her duties as a council member, there is a fair question as to whether she was acting with actual malice in light of the admitted lies she told about JWC. As a result, the court should reverse the grant of summary judgment and the denial of Appellant's Motion to Alter/Amend on the defamation cause of action and remand the case for trial.

Respectfully submitted,

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