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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2022-001332

Andrew Pampu .... Appellant-Respondent,

v.

Erin Wingo, David Wingo, and Colin J. Gahagan, ... Respondents-Appellants.

PETITION FOR REHEARING

Rehearing is warranted where this Court has misapprehended or overlooked specific points when deciding an appeal. Rule 221, SCACR. The instant Petition for Rehearing should be granted for the reasons detailed below.

REINTRODUCTION AND SUMMARY OF FACTS

Erin Wingo ("E. Wingo"), David Wingo ("D. Wingo"), and Colin J. Gahagan defamed Pampu by stating that he raped/sexually assaulted E. Wingo. R. p. 1458, line 25-p. 1459, line 16. The jury found the Wingos and Gahagan liable for defamation. R. p. 2314, lines 8-18. E. Wingo and Gahagan were also found liable for civil conspiracy. R. p. 2314, line 19-p. 2315, line 2. The Circuit Court denied the Wingos' and Gahagan's motions for judgment notwithstanding the verdict (JNOV) regarding the defamation claims but granted E. Wingo and Gahagan's motions for JNOV regarding the civil conspiracy claims. R. pp. 7-11. On June 11, 2025, this Court reversed the

Circuit Court's decision on the JNOV motions regarding defamation and affirmed the grant of JNOV regarding civil conspiracy. This Petition for Rehearing timely follows.

ARGUMENT[1]

I. The Court's Determination that Clemson's Office of Community and Ethical Standards ("OCES") is a State Agency Conflicts with the Plain Language of the South Carolina Administrative Procedures Act ("APA")

"When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *State v. Sweat*, 379 S.C. 367, 375, 665 S.E.2d 645, 650 (Ct. App. 2008). The APA defines "agency" as "each state board, commission, department, executive department or officer, other than the legislature, the courts, the South Carolina Tobacco Community Development Board, or the Tobacco Settlement Revenue Management Authority, authorized by law to make regulations or to determine contested cases." S.C. Code Ann. § 1-23-10(1). Similarly, S.C. Code Ann. § 1-23-310 defines "agency" as "each state board, commission, department, or officer, other than the legislature, the courts, or the Administrative Law Court, authorized by law to determine contested cases." S.C. Code Ann. § 1-23-310(2). As written, the plain language APA indicates that state schools, colleges, and universities are not state agencies as defined by the APA.

A "contested case" means "a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." S.C. Code Ann. § 1-23-310(3). OCES disciplinary proceedings are not "contested cases," as the statute plainly fails to mention school disciplinary proceedings, which are not analogous to the state and industry-wide regulatory functions contemplated by the APA. S.C. Code Ann. § 1-23-310. Additionally, parties to a

[1] The Arguments set forth in Pampu's Respondent's Briefs are incorporated herein by reference.

contested case under the APA are entitled to conduct direct cross-examination (*i.e.*, without having to submit questions to the adjudicator in advance). S.C. Code Ann. § 1-23-330(3). The APA unambiguously states that "the rules of evidence as applied in civil cases in the court of common pleas **shall be followed**" in all contested cases except for proceedings before the Industrial Commission. S.C. Code Ann. § 1-23-330(1) (emphasis added). Moreover, parties to a "contested case" under the APA have the right to depose witnesses, and agencies deciding "contested cases" have full subpoena power to obtain testimony and documents, including from witnesses identified by a party. S.C. Code Ann. § 1-23-320(C)-(D). None of these rights are available to students involved in the OCES process. R. pp. 364-389; pp. 391-403. Indeed, Pampu was not able to conduct direct cross-examination during the OCES proceeding. R. at 22. Pampu's OCES hearing was not conducted using the South Carolina Rules of Evidence. *Id*. Pampu was also unable to depose witnesses or compel them to attend the hearing *via* subpoenas. R. pp. 378-380. OCES did not conduct itself as a state agency because it is not a state agency as defined by the APA.[2]

Moreover, and as noted by then Judge Letitia H. Verdin (now Associate Justice Verdin), there is not "a single case in this state holding that a university board is considered a state agency entitled to preclusive effect." R. at 22. The Court's reliance on the *Ross v. Med. Univ. of S.C.* line of cases is misplaced. *Ross v. Med. Univ. of S.C.*, 317 S.C. 377, 453 S.E.2d 880 (1994) ("*Ross I*"),

[2] The Court's misplaced reliance on the Oregon APA and irrelevant out-of-state caselaw cannot support a finding that OCES is a state agency as defined by the South Carolina APA. *Pampu v. Wingo*, No. 2022-001332, 2025 WL 1646413 at *14-*15 (S.C. Ct. App. June 11, 2025). The Court's comparison of secondary school boards, which are comprised of duly elected public officials managing multimillion dollar budgets obtained through mandatory taxation, to an *ad hoc* disciplinary committee, nearly half of which is comprised of undergraduate college students, is also illogical. *Id*. at *15. Further, the fact that Clemson is defined as a state institution and state agency in unrelated statutes does not make Clemson or OCES a state agency as defined by the APA. *Id*. at *14-*15. Nor does the fact that Clemson made payment from the South Carolina Insurance Reserve Fund as part of its federal settlement with Pampu, as this does not indicate that Clemson or OCES is a state agency whose decisions are entitled to preclusive effect. *Id*. at *15.

merely determined that a Circuit Court sitting as a reviewing court under the APA had the ability to order discovery. *Ross I*, 317 S.C. at 381. There is no indication that MUSC ever contested the application of the APA, and the Supreme Court did not hold that MUSC's Faculty Hearing Committee was a state agency, nor did it determine that the matter involved a contested case. *Id*. at 380-81, 453 S.E.2d at 882-83. In *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 492 S.E.2d 62 (1997) ("*Ross II*"), the Supreme Court was simply applying the law of the case doctrine based on the discovery issues resolved in *Ross I*. *Ross II*, 328 S.C. at 62, 492 S.E.2d at 68. There was no holding that university disciplinary boards are state agencies; rather, the Court held that the specific proceedings *in that case* were governed by the APA because of the law of the case doctrine. *Id*. An unappealed ruling – whether it is right or wrong – is the law of the case. *Transportation Ins. Co. & Flagstar Corp. v. S.C. Second Inj. Fund*, 389 S.C. 422, 431, 699 S.E.2d 687, 691-92 (2010). "[T]he doctrine of 'law of the case' is just that—the law of the case in which it was made, not the law of future cases." *E. Cherry Grove Co., LLC v. State*, 443 S.C. 617, 630, 905 S.E.2d 421, 429 (Ct. App. 2024) (internal quotations and citation omitted). Thus, the *Ross* cases cannot support the Court's finding, as they do not establish that all state university disciplinary boards are state agencies whose decisions are entitled to preclusive effect.

II. The Court's Reading of the APA Conflicts with South Carolina's Interpretation of the Statute and Would Lead to Absurd Results

Based on the Court's ruling in the instant matter, the disciplinary boards of every state-funded college and university in South Carolina are state agencies charged with deciding contested cases and, therefore, must comply with all of the procedural requirements stated in the APA. Pursuant to the APA, parties to a contested case have the right to depose witnesses, the ability to subpoena witnesses for documents and testimony, the right to cross-examination, and the right to a hearing conducted in compliance with the South Carolina Rules of Evidence. S.C. Code Ann.

§ 1-23-320(C)-(D); § 1-23-330(3); § 1-23-330(1). Clemson's policies do not afford students appearing before a disciplinary tribunal these rights. R. pp. 364-389; pp. 391-403. None of the equivalent policies at South Carolina's other public colleges and universities comply with the APA. *See* Pampu Brief in Response to Gahagan Appellate Brief at pp. 24-26 (detailing aspects of public university disciplinary policies that do not comply with APA).

In addition to failing to comply with the procedural protections mandated by the APA when a state agency decides a contested case, none of the policies reference or cite the APA. These institutions, and by extension the State of South Carolina, do not view their student disciplinary boards as state agencies. Indeed, at least four institutions explicitly disclaim the availability of the procedural protections required by the APA. *See* The Citadel, *Title IX Grievance Policy* at p. 26, Section 4.L.3. https://web.citadel.edu/root/images/policies/title-ix-grievance-policy.pdf (last visited June 18, 2025) ("Parties to the Grievance Process do not have the right to depose parties or witnesses, nor to invoke a court system's subpoena powers to compel parties or witnesses to appear at hearings, or otherwise. The Citadel . . . does not have subpoena power, and it cannot compel attendance of third parties"); College of Charleston, *Student Sexual Misconduct Policy* at Sections 7.5 and 12.7, https://charleston.edu/equal-opportunity-programs/files/program-thumbnails/student-sexual-misconduct-policy.pdf (last visited June 18, 2025) (stating "Under no circumstances will on Party be permitted to directly cross examine another party," and "The hearing will not follow a courtroom model and formal rules of evidence will not be observed"); South Carolina State University, *Sex Discrimination and Harassment Policy (Title IX Policy)* at p. 16, Section 2C.06, https://scsu.edu/_resources/pdfs/SCSU%20T9%20Policy.pdf (last visited June 18, 2025) ("A Title IX hearing does not take place within a court of law and is not bound by formal rules of evidence"); Winthrop University, *Title IX Sexual Harassment Policy* at Sections 13.5.3-

13.5.4, https://www.winthrop.edu/uploadedFiles/studentconduct/TitleIX-PolicyRevisions-2023.pdf (last visited June 18, 2025) ("Parties to the grievance process under this policy do not have the right to depose parties or witnesses, nor to invoke a court system's subpoena powers to compel parties or witnesses to appear at hearings, or otherwise. Likewise, the University does not compel participation or have subpoena power under this grievance process."). Based on this Court's reasoning, every public college and university in South Carolina is either unaware that its student disciplinary boards are state agencies, or they are intentionally violating the rights of students charged with disciplinary violations. Thus, the Court's construction of the APA is incorrect, as it would lead to these absurd results. *Tempel v. S.C. State Election Comm'n*, 400 S.C. 374, 378, 735 S.E.2d 453, 455 (2012). The more logical explanation that is harmonious with the plain language of the APA is that public university disciplinary committees are not state agencies as defined by the APA. Rehearing is warranted for these reasons.

III. The Court Improperly Relied on the South Carolina Campus Sexual Assault Information Act ("SCCSAIA")

This Court was incorrect to rely on the purported legislative intent of the SCCSAIA to wrongly determine that the OCES findings are entitled to preclusive effect – a finding that is unsupported by any citation or basis for the Court's divining of the Legislature's intent when enacting that SCCSAIA. Even so, it could not have been the Legislature's intent to protect individuals who make false claims and prevent falsely accused individuals of clearing their names. Permitting a victim of a false rape claim to vindicate his rights in court does not render the SCCSAIA superfluous. Moreover, Pampu is not seeking to attack the OCES decision or relitigate the OCES findings through his defamation claim, which is solely based on statements made outside the OCES process. The SCCSAIA also cannot support a finding that OCES is a state agency, as it applies to all "institutions of higher learning," which includes both public and private universities.

S.C. Code Ann. § 59-105-20. Without question, private entities are not state agencies. The word "agency" is also absent from the SCCSAIA. S.C. Code Ann. §§ 59-105-10, *et seq.* Further, the SCCSAIA only requires that schools "establish and implement a written campus sexual assault policy." S.C. Code Ann. § 59-105-40. It does not require that schools implement the procedural protections mandated by the APA when deciding disciplinary matters; in fact, it does not even explicitly require that a school hold a hearing. S.C. Code Ann. § 59-105-10, *et. seq.* Thus, the Court's reliance on the SCCSAIA is misguided and warrants rehearing.

IV. The Court Misapprehended the OCES Findings and the Law Regarding Collateral Estoppel

Even if OCES were a state agency whose decisions were entitled to preclusive effect (which it is not), rehearing would still be warranted because the Court fundamentally misapprehended the OCES findings and the law regarding collateral estoppel. The decision incorrectly states that OCES found that "Ms. Wingo lacked the capacity to consent **to sexual intercourse** and that Pampu should have known so." *Pampu*, 2025 WL 1646413 at *10 (emphasis added). However, the OCES decision actually states, "Based on the information presented, the hearing board found that [Ms. Wingo] was incapacitated and unable to give consent which you should have reasonably known, therefore you were **found in violation of all four charges**." R. p. 3077 (emphasis in original). There is no mention of sexual intercourse in the OCES decision or any of the two internal appeal decisions. R. pp. 354, 360.

Indeed, Pampu was never charged with having non-consensual sexual intercourse with Ms. Wingo. Rather, the Record demonstrates that Pampu was charged with and found responsible by OCES for "Alcohol," "Disorderly Conduct," "Harm to Person," and "Sexual Misconduct." R. p. 3077. The definitions of the first three charges do not mention sexual intercourse. R. p. 345. Clemson's Anti-Harassment Policy has distinct definitions for "Sexual Misconduct," "Sexual

Assault," and "Rape." R. p. 392-93.[3] Only the definitions "Sexual Assault" and "Rape" contemplate instances where nonconsensual penetrative sexual contact, including intercourse, occurs. R. p. 392. Only "Rape" implicates instances of sexual intercourse where an individual is unable to give consent due to incapacitation. R. p. 392. "Sexual Misconduct," on the other hand, involves instances of "nonconsensual conduct of a sexual nature" **that are not covered** by "Sexual Assault" and "Rape." R. p. 393. Thus, the definition of "Sexual Misconduct" *explicitly excludes* instances of sexual intercourse when an individual is incapacitated. R. p. 393. As a result, while OCES may have mistakenly investigated and wrongfully determined the issue of whether E. Wingo was incapacitated to the point where she could not consent to sexual intercourse, this finding was not necessary to determining whether Pampu engaged in "Sexual Misconduct" as that term is defined by Clemson's Anti-Harassment Policy. Accordingly, it cannot form the basis of a collateral estoppel. *See Lowe v. Clayton*, 264 S.C. 75, 85, 212 S.E.2d 582, 587 (1975) ("a gratuitous finding . . . unnecessary to the decision . . . could not form the basis of an estoppel.").

This Court also disregarded or overlooked multiple other reasons why the doctrine of collateral estoppel cannot possibly apply. The doctrine of collateral estoppel "is grounded upon concepts of fairness, it should not be rigidly or mechanically applied." *State v. Bacote*, 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998). As a result, "even if all the requirements of issue preclusion are met, when unfairness or injustice results or public policy requires it, the doctrine's application may be precluded." *Id*. Further, even where an issue is "actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, relitigation of the issue in a subsequent action between the parties is not precluded in the following circumstances:

[3] The Court's mischaracterization of this important distinction as a pedantic parsing of policy provisions in improper. Indeed, *if* OCES is a state agency, as this Court asserts, then its polices must be interpreted and applied as written.

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> (3) A new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts or by factors relating to the allocation of jurisdiction between them;
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> . . .
>
> (5) There is a clear and convincing need for a new determination of the issue . . . because the party sought to be precluded, **as a result of the conduct of his adversary** or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.

Restatement (Second) of Judgments § 28 (1982) (emphasis added); *see also Bacote*, 331 S.C. at 332, 503 S.E.2d at 163 (relying on Section 28 of the Restatement (Second) of Judgments to decline exercise of collateral estoppel). Moreover, where the first judgment at issue stems from a proceeding that operates informally without pleadings, counsel, or rules of evidence, the first judgment should not preclude arguments on the same issue in a subsequent action. Restatement (Second) of Judgments § 28, Illustration 7 (1982).

The OCES process did not follow the rules of evidence, did not allow the parties to conduct depositions, did not allow direct cross examination, did not allow direct participation of counsel, did not obtain sworn testimony, and did not compel testimony or document production through the use of subpoenas.[4] Additionally, during the OCES process, the presentation of evidence was heavily restricted, there was no right to a jury trial, there was no public record, and the case was investigated, prosecuted, and decided by agents of the same party, namely Clemson. R. pp. 375-383. The Court glosses over the majority of these procedural issues and is inappropriately dismissive of the defects it does acknowledge. The Court's assertion that Pampu was "allowed to cross-examine OCES witnesses just as he was allowed to cross-examine Respondents-Appellants'

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[4] As then Judge Verdin noted, "Clemson's OCES board did not conduct itself as a state agency. It would be unfair to allow the OCES board's decisions to be entitled to preclusive effect while at the same time allowing it to operate outside of the rules that other state agencies follow." R. p. 22.

witnesses in the present action" is undeniably incorrect. *Pampu*, 2025 WL 1646413 at *10. Pampu was required to submit his questions to the chairperson at the OCES hearing before they were asked to witnesses with no guarantee all would be asked (and, in fact, not all of the questions were asked). R. at 22. This cannot be reasonably equated with direct cross-examination of a witness by an attorney. Additionally, if, as the Court asserts, OCES is a state agency, its refusal to subpoena witnesses and failure to obtain sworn testimony should be deeply concerning and certainly warrants a finding that collateral estoppel does not apply to the OCES determination. Accordingly, in light of the vast gulf in the quality and extensiveness of the procedures applied during the OCES process and those applied during the instant civil proceeding, it would be inequitable and improper to apply collateral estoppel in this matter. Restatement (Second) of Judgments § 28(3) (1982); Restatement (Second) of Judgments § 28, Illustration 7 (1982); *see also* Restatement (Second) of Judgments § 29(2) (1982) (noting that when determining whether to apply collateral estoppel consideration should be given to whether the forum in a second action affords the potentially estopped party with procedural opportunities unavailable in the first action that could likely result to the issue being decided differently in the second action).

Indeed, the evidence unearthed during litigation and presented at trial – when Pampu had all of the tools necessary to uncover the truth – shows that the Wingos and Gahagan engaged in the very type of misconduct that prevented Pampu from having "an adequate opportunity . . . to obtain a full and fair adjudication in the initial action." Restatement (Second) of Judgments § 28(5) (1982). The Court overlooks this glaring issue. Indeed, the evidence developed through discovery and presented to the jury provided that E. Wingo was not incapacitated when she had sex with Pampu. R. p. 1447, lines 14-17; p. 1667, lines 11-13; p. 1761, line 18-p. 1762, line 14; p. 2011, lines 9-19; p. 2016, lines 11-21; p. 2019, lines 3-12; p. 2020, lines 3-11; p. 2050, lines

20-22; p. 2051, lines 12-24; p. 3124. The evidence also showed that E. Wingo and Gahagan both knew that the sexual encounter with Pampu was consensual and that they lied to Clemson about the nature of the encounter during the disciplinary process. R. p. 1798, lines 10-12, 16-19; p. 1787, lines 2-4; p. 1787, line 22-p. 1789, line 2; p. 3135. The evidence gathered through a robust adversarial process showed that the OCES finding was based on false information and testimony provided by E. Wingo and Gahagan. Accordingly, there is no basis for applying collateral estoppel here, as it would be fundamentally unfair, unjust, and contrary to public policy. Restatement (Second) of Judgments §§ 28(5), 29(2) (1982); *Bacote*, 331 S.C. at 332, 503 S.E.2d at 163.

V. Pampu was not Required to Exhaust his Administrative Remedies

This Court held that "Pampu's course of action (or inaction) after receiving the final decision of Clemson's President [w]as the deciding factor in our conclusion that he was precluded from relitigating the issue of Ms. Wingo's consent." *Pampu*, 2025 WL 1646413 at *11. In explaining its rationale, this Court incorrectly determined Pampu's decision not to seek judicial review of the inadequate OCES procedures served as a bar to his claims. The plain language of the APA and relevant case law shows that this finding was in error. The APA merely notes that an individual who has exhausted his administrative remedies *within* the agency and who is aggrieved by the agency decision in a contested case is "entitled" to judicial review. S.C. Code Ann. § 1-23-380. The next sentence in the statute clearly states, "This section **does not limit** utilization of or **the scope of judicial review available under other means of review, redress, relief**, or trial de novo provided by law." S.C. Code Ann. § 1-23-380 (emphasis added). In other words, even if OCES were a state agency, Pampu was *entitled*, but not *required*, to seek judicial review because "The doctrine of exhaustion of administrative remedies only applies when a litigant invokes the original jurisdiction of the circuit court to adjudicate a claim based upon a statutory violation for which the legislature has provided an administrative remedy." *Stinney v. Sumter Sch. Dist. 17*, 391

S.C. 547, 550 n.1, 707 S.E.2d 397, 398 n.1 (2011); *see also Thomas Sand Co. v. Colonial Pipeline Co.*, 349 S.C. 402, 413, 563 S.E.2d 109, 115 (Ct. App. 2002) (holding that exhaustion of administrative remedies is not required when the "alleged wrong is not one which the administrative process was designed to redress"). Indeed, the relevant statutory provision and caselaw noted herein show that Pampu's case is further distinguishable from the *Ross* cases, which involved a state employee seeking redress for an adverse employment action that could only be remedied through an administrative process. Here, Pampu's defamation claims are not based on any alleged procedural irregularities in the OCES process, nor do they involve statutory claims for which the legislature has provided an administrative remedy. Rather, they are based on provably false statements made by the Wingos and Gahagan outside of the OCES process. [5] Accordingly, Pampu was not required to seek judicial review of how the OCES process was conducted in order to preserve intentional tort claims. *See Thomas Sand Co.*, 349 S.C. at 413, 563 S.E.2d at 115 (holding exhaustion not necessary in tort case against third party because the question of whether administrative agency followed proper procedures was irrelevant).

The Court mistakenly asserts that Pampu is "now attack[ing] the credibility of [the OCES] proceedings for purposes of pursuing redress from Respondents-Appellants." *Pampu*, 2025 WL 1646413 at *12. This is simply wrong. The validity of the OCES proceedings is irrelevant to Pampu's defamation claims and was only raised as an affirmative defense against him. The Court's claim that that it is "fundamentally unfair" for Pampu to seek damages from the Wingos and Gahagan when "he already had an opportunity to mitigate those damages by seeking direct review of the Title IX findings" is entirely misses the point. *Id*. If Pampu successfully sought direct

[5] The Court's assertion that Pampu is trying to recover on a defamation theory for statements made within the OCES process is simply not true. Pampu explained *ad nauseum* in court filings and at trial that his defamation claims are based on statements made **outside** the OCES process.

review of the OCES findings (and assuming for the purposes of argument that OCES is a state agency), the matter would have been remanded to OCES for an APA-compliant proceeding. This would not have mitigated the reputational harm caused by the Wingos' and Gahagan's defamation.

VI. The Court Misapprehended the Effect of the Clemson Settlement Agreement

The Court's conclusion that it is "fundamentally unfair" for Pampu to seek damages from the Wingos and Gahagan when he has obtained compensation from Clemson also misses the point. *Pampu*, 2025 WL 1646413 at *12. Pampu's defamation claim seeks redress for the reputational harm caused by the Wingos' and Gahagan's conduct. No such relief was sought in the Clemson matter. Thus, there are two separate types of damages at issue, and Pampu is certainly entitled to seek recovery for both. The Court also incorrectly asserts that "Pampu has enjoyed the benefits of his settlement with Clemson while also trying to assert in the present litigation the very due process allegations against Clemson that the settlement intended to resolve." *Id*. This is simply not true, as Pampu's defamation claim has absolutely nothing to do with due process or the OCES proceedings. Rather, as explained above, the argument over the validity of the OCES process arises from the affirmative defenses asserted by the Wingos and Gahagan. Additionally, the Clemson settlement agreement explicitly incorporates the language of the "Whereas" clauses into the enumerated contract terms. *See* R. p. 3191 (noting that the settlement agreement is made "in consideration of the Recitals and mutual promises contained herein."). Regardless, the Court admits that "Whereas" clauses can materially influence contract construction and determinations of the intent of the parties. *Pampu*, 2025 WL 1646413 at *12. The inclusion of Pampu's clear denial of E. Wingo's allegations shows that the parties understood Pampu was contesting the OCES findings. R. p. 3190. If the parties meant to incorporate any OCES finding regarding consent by agreement, they would have said so, but they clearly did not. The Court's attempt to add terms that do not appear in the agreement is improper. *Sweat*, 379 S.C. at 375, 665 S.E.2d at 650.

VII. The Court Overlooked The Defamatory Statements Made By Dave Wingo

The Court failed to address the fact that D. Wingo made defamatory statements that go well beyond the OCES findings (assuming purely for the sake of argument that these findings are binding).[6] D. Wingo falsely claimed that Pampu "preyed on" E. Wingo and described Pampu's conduct as "predatory." R. pp. 3142, 3145. He also asserted that Pampu "brought [E. Wingo] to an isolated but public location to sexually assault her," would become a "serial perpetrator" who would sexually assault up to five other women, and would "target . . . another female student, guest or visitor of Phi Delt. Or he could next harm [Gahagan], a pledge, or a teacher." R. p. 3145. None of these statements are in the OCES findings, nor can they be inferred from the findings. Thus, the OCES findings do not shield D. Wingo from liability for these false and defamatory statements. There was no basis for reversing the Circuit Court's denial of D. Wingo's JNOV motion.

VIII. The Court Improperly Affirmed Dismissal Of The Civil Conspiracy Claim

The Court's reliance on Section 27 of the Restatement (Second) of Judgments to assert that the Clemson settlement precluded Pampu from asserting a breach at trial is misplaced, as that provision only applies to "a subsequent action between the parties." Restatement (Second) of Judgments § 27 (1982). Even if it did apply, and even assuming that the settlement agreement constitutes a judgment (which Pampu disputes) the Court's assertion is incorrect. *See id.* at cmt. e (1982) ("In the case of a judgment entered by confession, consent, or default, none of the issues is actually litigated."). Nothing in the Clemson settlement agreement states that the parties agreed that Clemson did not breach its contract with Pampu. Rather, Clemson simply denied liability for the same. R. p. 3191-92, ⁋ 7. Thus, the settlement agreement is not a bar in this matter.

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[6] Pampu maintains that D. Wingo's other statements were also defamatory. R. pp. 3142-3146.

The Court's claim that Pampu failed to assert that his suspension constituted a breach in his initial brief is also incorrect. *See* Pampu Appellate Brief at p. 21 ("Pampu was removed from Clemson as a result of their actions even though he had done nothing wrong. . . . Thus, it is clear that they intentionally procured the breach of the contract that Pampu had with Clemson."). The Court's reliance on the SCCSAIA is also incorrect. As Pampu has repeatedly asserted, if he did nothing wrong, then there was no basis for his suspension, regardless of Clemson's duty to establish and implement a sexual assault policy. This argument certainly has not been abandoned. Pampu also asserted that "Wingo and Gahagan provided statements to Clemson that they knew were false in order to procure the breach." *Id.* Thus, the Court's assertion that Pampu has abandoned his argument that Clemson knowingly accepted and acted on false evidence is untrue. Pampu also offered testimony regarding his then-salary at trial. R. p. 1608, lines 21-22. He also presented admissible expert testimony that he would earn significantly less over the course of his lifetime as a result of his inability to obtain admission to dental school and work as an orthodontist based on a detailed explanation for this finding. R. p. 1939, lines:4-6, 8-22-p. 1941, line 4; p. 1959, lines 3-7; p. 2000, lines 12-18. This was sufficient to support an award of damages. *Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981); *Mills v. S.C. State Ports Auth.*, 435 S.C. 213, 228, 865 S.E.2d 910, 917-18 (Ct. App. 2021). Finally, the inexplicable change in reasoning from trial to the JNOV motion is indicative of the trial court's improper basis for disturbing the civil conspiracy verdict. R. p. 6; p. 2207, line 14-p. 2215, line 15.

CONCLUSION

For the foregoing reasons, this Court should grant the instant Petition for Rehearing and reissue an opinion affirming the Circuit Court's denial of the JNOV motions related to Pampu's defamation claims and overturning the grant of JNOV regarding civil conspiracy.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely
Circuit Court Judge

Appellate Case No.: 2022-001332

Andrew Pampu, ……………………………………………………………Appellant

v.

Erin Wingo, David Wingo, and Colin J. Gahagan……………...………. Respondents

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PROOF OF SERVICE

I, hereby certify that the enclosed was served on the parties stated below by emailing a copy of the enclosed document(s) to opposing counsel:

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