ELECTRONICALLY FILED - 2023 Apr 03 10:28 AM - HORRY - COMMON PLEAS - CASE#2021CP2601096

RECEIVED
Jul 01 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	ORDER GRANTING MOTION
JOHN GALLMAN,	)	FOR SUMMARY JUDGMENT
PLAINTIFF	)	ON BEHALF OF DEFENDANTS
	)	WACCAMAW PUBLISHERS, INC.
	)	AND CHRISTIAN BOSCHULT
VS.	)	
	)	
WACCAMAW PUBLISHERS,	)	
INC. AND	)	
CHRISTIAN BOSCHULT,	)	
DEFENDANTS	)	CASE NO. 2021-CP-26-01096

BACKGROUND

Plaintiff was an unsuccessful candidate for the South Carolina Senate in a 2020 Republican primary. After losing in a runoff plaintiff initiated an action against his political opponents, numerous political consultants, Waccamaw Publishers, Inc. (Waccamaw) and Christian Boschult (Boschult) for libel, invasion of privacy, civil conspiracy, and intentional infliction of emotional distress. The initial complaint was amended to add a party and dismiss the invasion of privacy claim.

Waccamaw publishes *The Myrtle Beach Herald*, a newspaper circulated in Horry County, and a companion website, www.myhorrynews.com. Boschult is a reporter for Waccamaw and the author of a news report published on June 16, 2020 regarding plaintiff's candidacy. It is this news report that is the basis of the claims against Waccamaw and Boschult.

Following rulings on motions by Waccamaw and Boschult, plaintiff's action against them was severed from the action against the other defendants, and plaintiff's claims against Waccamaw and Boschult were reduced to libel and intentional infliction of emotional

distress. Waccamaw and Boschult moved for summary judgment supporting their motion with the pleadings, matters of record, plaintiff's responses to interrogatories and Family Court records, the genuineness of which had been established by a request for admissions, the affidavit of Boschult, and a memorandum. Plaintiff filed a memorandum which incorporated plaintiff's affidavit, together with an unauthenticated document purporting to be a transcription of an interview of plaintiff by Boschult, and a Family Court order filed nearly seven months subsequent to the June 16, 2020 publication that is the basis of plaintiff's libel claim. Significantly plaintiff did not file documents from the Family Court that existed prior to June 16, 2020 which could supply proof that defendants' publication was not a fair and substantially true summary of the public records in the Family Court file. A hearing was held on the motion for summary judgment at which time counsel for the parties appeared. Plaintiff, through his counsel, voluntarily dismissed with prejudice his claim for intentional infliction of emotional distress against Waccamaw and Boschult.

DEFENDANTS' SUPPORT FOR THE MOTION

In their Second Interrogatories to plaintiff Waccamaw and Boschult asked plaintiff for information regarding those statements in the June 16, 2020 news report he alleged to be false:

1. Identify with specificity each statement of fact in the news report by Waccamaw Publishers, Inc. and Christian Boschult dated June 16, 2020 which plaintiff contends to be false and defamatory.

2. With respect to each statement identified in response to interrogatory 1 above, state with specificity the manner in which plaintiff contends the statement to be false.

In response to these interrogatories plaintiff provided a copy of the published news report on which he had highlighted the passages and statements he contended to be "false or defamatory," stating:

ELECTRONICALLY FILED - 2023 Apr 03 10:28 AM - HORRY - COMMON PLEAS - CASE#2021CP2601096

ELECTRONICALLY FILED - 2023 Apr 03 10:28 AM - HORRY - COMMON PLEAS - CASE#2021CP2601096

Response to Interrogatory #1 and #2

> False statements in Boscultz [sic] Articles [sic]—A copy if [sic] the article is being provided with highlighted portions that are false or defamatory. Interrogatory #2 seeks an explanation of how the statement is false or defamatory. The articles [sic] are replete with false statements that leave the impression in the mind of the reader that Plaintiff abused his wife, despite never being arrested, charged, or found by any court in any capacity that he abused her.

Plaintiff identified 53 separate items or statements he contends are "false or defamatory" in the news report. To support a libel claim the publication must be both false and defamatory, not as plaintiff stated in response to the interrogatories "false or defamatory." Three of the highlighted passages are direct quotes of plaintiff, and on their face are not defamatory. One highlighted passage is a quote from plaintiff's political opponent Luke Rankin expressing surprise that his name was included in a court record relating to an automobile accident involving plaintiff. This statement is not defamatory. One highlighted passage quoted the principal of the Catholic school where plaintiff's children were students and a statement from the Diocese of Charleston stating that the principal "stands by the comments attributed to her in the guardian ad litem report." Since this passage adds nothing to the comments by the principal contained in the guardian ad litem report which is in the public record it is neither false nor defamatory.

The remaining items identified by plaintiff as false are statements which are supported fully by records from the Family Court. The genuineness of documents from the Family Court records was deemed admitted by plaintiff by operation of Rule 36(a), SCRCP when plaintiff failed to respond to a Request for Admissions served on July 7, 2021, requesting plaintiff to admit the genuineness of 28 documents from the Family Court file. Plaintiff did not respond to the Request, and did not move pursuant to Rule 36(b), SCRCP to withdraw the admission of the genuineness of the documents.

In paragraph 25 of his Amended Complaint plaintiff alleges that a "dossier purportedly containing documents selected from Plaintiff's divorce file [hereinafter the 'Dossier'] were [sic] distributed to numerous media organizations across the state." In paragraph 31 plaintiff alleges, "After receipt of the Dossier, the Boschult Group (plaintiff's label for Waccamaw and Boschult) published an article on June 16, 2020, seven days before the runoff election." In paragraphs 32, 33, and 34 plaintiff alleges that the information in the Family Court file was false thus acknowledging that his allegation of falsity is with the information contained in the Family Court records, and not with information other than that which was contained in the published summary of the records. Plaintiff's allegations clearly demonstrate his awareness that records from a court file were the basis for the June 16, 2020 news report. The test of plaintiff's allegations under the law of libel is not whether the information contained in court records was false, but whether the news report presented a fair and substantially true summation of the contents of the court records. The protection for the reporting of the contents of public records is referred to as "the fair report privilege."

THE FAIR REPORT PRIVILEGE

To establish his defamation claim plaintiff must be able to prove at trial the unprivileged publication of a false statement of fact of and concerning him that is injurious to his reputation, and occasioned by the requisite level of fault on the part of the publisher. *Holtzscheiter v. Thomson Newspapers, Inc. (*Toal, J., Concurring*),* 332 S.C. 502, 506 S.E.2d 497 (1998).

It has long been the common law of South Carolina that the fair and substantially true reporting of the contents of public records, including court records, is privileged. *White v. Wilkerson,* 328 S.C. 179, 493 S.E.2d 345 (1997); *Padgett v. Sun News,* 278 S.C. 26, 292 S.E.2d

ELECTRONICALLY FILED - 2023 Apr 03 10:28 AM - HORRY - COMMON PLEAS - CASE#2021CP2601096

30 (1982); *Herring v. Retail Credit Co.,* 266 S.C. 455, 224 S.E.2d 663 (1976); *Jones v. Garner,* 250 S.C. 479, 158 S.E.2d 909 (1968); *Lybrand v. The State Co.,* 179 S.C. 208, 184 S.E. 580 (1936). *See also* S.C. Const. art. IX (all courts shall be public), and Rule 41.1, SCRCP ("South Carolina has a long history of maintaining open court proceedings and records"). In *Padgett* the Supreme Court of South Carolina noted that court records are public records open for public inspection, and the privilege associated with reporting the contents of the court record is not diminished by any falsity in the record, stating, 292 S.E2d at 33:

> As stated in *Alexandria Gazette v. West,* 198 Va. 154, 93 S.E.2d 274 (1956):
>
> > Privilege in reporting a judicial record is not measured by the legal sufficiency of the charges made in the judicial proceedings or the truth of those charges. The privilege consists of making a fair and substantially true account of the proceeding or record.
>
> The same principle prompted our holding in *Herring v. Retail Credit Co.,* 266 S.C. 455, 224 S.E.2d 663 [1976] that
>
> > Court proceedings are public events and the public has a legitimate interest in knowing the facts in them. Traditionally court records have been public records, generally open for public inspection. Fair reports of what is shown on public records may be circulated freely and without liability.

Consistent with South Carolina law the United States District Court for the District of South Carolina rejected a libel claim by a candidate for public office when the defendant demonstrated that the news reports complained of were in each instance a "substantially accurate summation" of the contents of a police report relating to charges against the candidate. The court stated that the news reports served the purposes of the "fair report privilege," *Corbin v. Hearst-Argyle TV, Inc.,* 561 F.Supp.2d 546, 554 (D.S.C. 2008):

> In the Court's opinion, these are quintessential examples of the type of journalism which squarely implicates the purposes of the fair report privilege: 'The fair report privilege encourages the media to report

ELECTRONICALLY FILED - 2023 Apr 03 10:28 AM - HORRY - COMMON PLEAS - CASE#2021CP2601096

> regularly on government operations so that citizens can monitor them. In return for frequent and timely reports on governmental activity, defamation has traditionally stopped short of imposing extensive investigatory requirements on a news organization reporting on a governmental activity or document." *Reuber [v.Food Chemical News, Inc.]*, 925 F.2d [703 (4th Cir. 1991)] at 712. Precisely because the plaintiff was a candidate for public office in the United States Congress, just days before the election, the defendants' timely reporting of the arrest justifies the kind of protection contemplated by the fair report privilege. Accordingly, the Court has not observed any statements in the News Reports which are not a substantially accurate summation of the contents of the Police Report.

CONSTITUTIONAL PROTECTION OF SPEECH IN A POLITICAL ELECTION

Publications addressing the fitness of candidates for public office are protected by the First and Fourteenth Amendments. *George v. Fabri,* 345 S.C. 440, 548 S.E.2d 868 (2001). Legal protection for speech relating to the qualifications of candidates for public office was traced by the South Carolina Supreme Court to the writings of James Madison. In affirming the grant of summary judgment in favor of a defendant who had been a candidate in an election contest with the plaintiff in the case, the court stated, 548 S.E.2d at 875:

> The considerations which led to the formulation of the *New York Times [v. Sullivan*, 376 U.S.254, 84S.Ct. 710, 11 L.Ed.2d 686 (1964)] rule "apply with special force to the case of the candidate." *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 274, 91 S.Ct. 621, 28 L.Ed.2d 35 (1971). Additionally, the Supreme Court has explained that the *New York Times* rule "protects the paramount public interest in a free flow of information to the people concerning public officials, their servants. To this end, anything which might touch on an official's fitness for office is relevant." *Garrison v. Louisiana,* 379 U.S. 64, 77, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964). Indeed, "[t]here is little doubt that 'public discussion of the qualifications of a candidate for elective office presents what is probably the strongest possible case for application of the *New York Times* rule.'" *Harte-Hanks Communications, Inc. v. Connaughton,* 491 U.S. 657, 686, 109 S.Ct. 2678, 105 L.Ed.2d 562 (1989) (quoting *Ocala Star-Banner Co. v. Damron*, 401 U.S. 295, 300, 91 S.Ct. 628, 28 L.Ed.2d 57 (1971).
>
> In *Harte-Hanks*, the Supreme Court further discussed the basis for the rule as follows:

ELECTRONICALLY FILED - 2023 Apr 03 10:28 AM - HORRY - COMMON PLEAS - CASE#2021CP2601096

As Madison observed in 1800, just nine years after ratification of the First Amendment:

> "Let it be recollected, lastly, that the right of electing the members of the government constitutes more particularly the essence of a free and responsible government. The value and efficacy of this right depends on the knowledge of the comparative merits and demerits of the candidate for public trust, and on the equal freedom, consequently, of examining and discussing these merits and demerits of the candidates. Respectively." 4 J. Elliot, Debates on the Federal Constitution 575 (1861).

> *This value must be protected with special vigilance.* When a candidate enters the political arena, he or she "must expect that the debate will sometimes be rough and personal,"… and cannot "'cry Foul!' when an opponent or an industrious reporter attempts to demonstrate" that he or she lacks the "sterling integrity" trumpeted in campaign literature and speeches…. Vigorous reportage of political campaigns is necessary for the optimal functioning of democratic institutions and central to our history of individual liberty. [Emphasis in original].

PLAINTIFF'S BURDEN OF PROOF

The Supreme Court of South Carolina explained that summary judgment is appropriate under Rule 56(c), SCRCP when the nonmoving party fails to make a showing that there is evidence to establish an essential element of the party's case. If the nonmoving party is unable to demonstrate that it can meet its burden of proof on an essential element of its case then summary judgment is appropriate. *Baughman v. American Tel. and Tel. Co.,* 306 S.C. 101, 410 S.E.2d 537 (1981) quoting the decision of the United States Supreme Court in *Celotex Corp. v. Catrett,* 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986), 410 S.E.2d at 545:

> [T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning

ELECTRONICALLY FILED - 2023 Apr 03 10:28 AM - HORRY - COMMON PLEAS - CASE#2021CP2601096

> an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.
>
> *Celotex* 477 U.S. at 322-23, 106 S.Ct. at 2552, 91 L.Ed.2d at 273.

Plaintiff here has failed to demonstrate that he can meet his burden of proof to establish an unprivileged publication. And, because plaintiff was a candidate for public office, and the June 16, 2020, publication addressed his qualifications for office, he can prevail against defendants' motion only if he can show he has evidence to prove both the falsity of an unprivileged publication and fault on the part of these defendants. Plaintiff has failed to offer evidence that the publication was not a fair and substantially true summation of the contents of public records, and that these defendants acted with *New York Times* actual malice. To establish that the publication was false and not privileged plaintiff needed to provide to the court any court records which would support his claim that the news report was not within the fair report privilege. The only court record offered by plaintiff was a court order entered on January 8, 2021. An order entered nearly eight months following the June 16, 2020 news report does not support in any way plaintiff's claim that the records that existed prior to June 16, 2020 were not fairly reported. Likewise plaintiff's affidavit in which he claims to have refuted the allegations in the Family Court record is insufficient to establish that the records were not fairly reported.

Plaintiff has also failed to provide evidence to support his claim that these defendants acted with actual malice. As the Supreme Court of South Carolina held in *George v. Fabri, supra,* a public figure plaintiff such as plaintiff must offer clear and convincing evidence that the publication was made with actual malice. Actual malice requires a showing of an awareness of probable falsity, 548 S.E.2d at 876:

ELECTRONICALLY FILED - 2023 Apr 03 10:28 AM - HORRY - COMMON PLEAS - CASE#2021CP2601096

> ,,,[A] public figure must show, by clear and convincing evidence, that defamatory statements were made with knowledge that they were false or with reckless disregard of whether they were false or not. *New York Time [Co. v. Sullivan,* 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964)]; *Curtis Publishing, supra [Co. v. Butts,* 388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967); *Elder [v. Gaffney Ledger,* 341 S.C. 108, 533 S.E.2d 899 (2000)] *supra.*
>
> ***
>
> …[A]ctual malice is governed by a *subjective* standard which tests the defendant's good faith belief in the truth of her statements. *Id.* There must be sufficient evidence to conclude either that the defendant made statements with a "high degree of awareness of …probable falsity," *Garrison [v. Louisiana],* 379 U.S. at 74, 85 S.Ct. 209 or that the defendant "in fact entertained serious doubts as to the truth of his publication." *St. Amant [v. Thompson],* 390 U.S. at 731, 88 S.Ct. 1323.

To defeat defendants' appropriately supported motion for summary judgment plaintiff was required to have demonstrated by affidavit or otherwise that he has evidence to establish by clear and convincing evidence that the June 16, 2020 publication was not a fair and reasonably true summary of the records in the Family Court file, and that defendants entertained serious doubts as to the truth of the June 16, 2020 publication prior to its publication. Summary judgment against plaintiff is appropriate unless the court finds that he is able to prove at trial actual malice by the "heightened" standard of clear and convincing evidence. *George v. Fabri, supra; McClain v. Arnold,* 275 U.S. 282, 270 S.E.2d 124 (1980). Plaintiff stated in his affidavit that Boschult "informed me that he was publishing an article based on the allegations in the family court record." Gallman affidavit ¶ 4. Plaintiff alleged that he refuted the allegations in the Family Court record and provided Boschult "with the names of several witnesses who would verify the falsity of the allegations" in the Family Court record. Gallman affidavit ¶ 5. Fair reports of the contents of public records may be published without liability. *Padgett, supra.* Nothing in plaintiff's affidavit addresses the fairness of the reporting of the contents of the Family Court record or the defendants' subjective state of mind regarding potential falsity.

ELECTRONICALLY FILED - 2023 Apr 03 10:28 AM - HORRY - COMMON PLEAS - CASE#2021CP2601096

ELECTRONICALLY FILED - 2023 Apr 03 10:28 AM - HORRY - COMMON PLEAS - CASE#2021CP2601096

CONCLUSION

In response to a properly supported motion for summary judgment plaintiff failed to demonstrate that at trial he could prove by clear and convincing evidence or otherwise that the June 16, 2020 news report was not a fair and reasonably true summary of the contents of his Family Court file, or that these defendants published false and defamatory information about him with actual malice. Rule 56(c), SCRCP provides in its pertinent provision that judgment is to be awarded a moving party in the absence of a demonstration by the nonmoving party of genuine issues of material fact, and that the moving party is entitled to a judgment as a matter of law. Plaintiff has failed to demonstrate that he has facts to support two essential elements of his libel claim. "A complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Baughman, supra,* 410 S.E.2d at 545. Based on the authorities cited herein, Waccamaw and Boshult are entitled to judgment in their favor as a matter of law.

Based on the foregoing, IT IS HEREBY ORDERED that the motion for summary judgment filed on behalf of defendants Waccamaw Publishers, Inc. and Christian Boshult be, and the same hereby is, GRANTED.

AND IT IS SO ORDERED.

Anderson, South Carolina

_______________, 2023

____
J. CORDELL MADDOX, JR.
Presiding Judge

Horry Common Pleas

Case Caption: John Gallman VS Luke Rankin , defendant, et al

Case Number: 2021CP2601096

Type: Order/Summary Judgment

So Ordered

s/ J. Cordell Maddox Jr.

ELECTRONICALLY FILED - 2023 Apr 03 10:28 AM - HORRY - COMMON PLEAS - CASE#2021CP2601096