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

BACKGROUND

Plaintiff was a candidate for nomination as the Republican Party candidate for a seat in the South Carolina Senate in the 2020 election cycle. Plaintiff received sufficient votes to be in a run-off against the incumbent, Luke Rankin. Prior to the run-off election Waccamaw Publishers, Inc. (Waccamaw) published in its newspaper *The Myrtle Beach Herald*, and online on its companion website www.myhorrynews.com a profile of plaintiff written by its reporter Christian Boschult. The publication stated that the profile was based on "public court records including interview notes, police reports and third-party affidavits in order to avoid relying purely on Price [plaintiff's former wife] or Gallman's narratives." *My Horry News* (6/18/2020), p. A3. Plaintiff lost the run-off election and the within-captioned action ensued.

PROCEDURAL HISTORY

On February 24, 2021, plaintiff filed a Summons and Complaint naming fifteen defendants including his run-off opponent, the third candidate in the initial primary voting, Waccamaw, its reporter, and eleven other defendants alleging defamation, intentional infliction of emotional distress, invasion of privacy, and civil conspiracy.

On June 2, 2021, plaintiff, with the consent of the parties who had entered an appearance in the case, filed an Amended Complaint. The Amended Complaint added an additional defendant and deleted the claim for invasion of privacy.

Waccamaw and its reporter filed several motions in response to the Amended Complaint including a motion to dismiss the civil conspiracy claim for failure to allege facts sufficient to state a cause of action. In ruling on the motion to dismiss the civil conspiracy claim Judge William Keesley wrote in his August 3, 2021, order (p.2):

> The court agrees that the cause of action for civil conspiracy is not sufficiently pleaded as to these two defendants. Due to the strict standards applicable to dismissal at the pleadings stage and in lieu of dismissal, the court requires that the plaintiff re-plead his Complaint and have it filed and served within 30 days.

Plaintiff did not meet the deadline for re-pleading the civil conspiracy allegations against Waccamaw and its reporter, and did not move to enlarge the time for doing so.

On September 21, 2021, nearly three weeks beyond the deadline established by the Order of August 3, 2021, Waccamaw submitted a proposed order to Judge Keesley which would have dismissed the civil conspiracy claim on grounds that plaintiff had failed to comply with the Order of August 3, 2021.

Within an hour of the transmittal of the proposed order to Judge Keesley plaintiff's attorney wrote to Judge Keesley by email to state that he had forgotten to file and serve a Complaint re-pleading the civil conspiracy claim because on "August 30, 2021, my office was vandalized and essentially destroyed." (Exhibit A to Affidavit of Jay Bender 10/20/2021) As the affidavit and attached exhibits established, plaintiff's attorney was not practicing law at the location of the reported break-in, and the Richland County Sheriff's department report stated,

"The business looks to have been abandoned and the door removed from the hinges at an earlier time." (Exhibit B to Bender affidavit)

On September 22, 2021, plaintiff filed a document styled "Second Amended Complaint."

By Order dated December 8, 2021, the civil conspiracy claim as to Wacammaw and its reporter was dismissed.

Waccamaw filed a motion to dismiss the purported "Second Amended Complaint" or for summary judgment so that material outside the pleadings could be considered. By Order dated December 9, 2021, the "Second Amended Complaint" was dismissed.

By Order dated March 22, 2022, allegations of campaign finance violations against Waccamaw and its reporter were stricken from the Amended Complaint, and the action against Waccamaw and its reporter was severed from the action against the remaining defendants.

Plaintiff was dilatory in responding to discovery requests, and motions were filed to compel discovery responses.

Ultimately, Waccamaw and its reporter moved for summary judgment on the remaining causes of action, to wit, libel and intentional infliction of emotional distress. At the outset of the hearing on the motion for summary judgment plaintiff dismissed his intentional infliction of emotional distress claim.

By Order dated March 31, 2023, summary judgment was granted in favor of Waccamaw and its reporter.

On April 3, 2023, Waccamaw filed a motion under the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. (1976) § 15-36-10, seeking to recover attorney fees and costs from plaintiff and his attorney for its defense and the defense of its reporter.

Waccamaw supported its motion with affidavits from Waccamaw's counsel, and Wallace K. Lightsey, Esq.

Waccamaw filed a memorandum in support of its motion. Plaintiff filed a memorandum in opposition to the motion. Waccamaw filed a reply to plaintiff's memorandum.

Following a telephone conference with the Court on October 8, 2024, the parties agreed that the motion would be decided on the record without need for additional argument.

FINDINGS OF FACT

As plaintiff alleged in his Amended Complaint he was a candidate in a Republican primary and a run-off in that primary in 2020.

Waccamaw published in one of its newspapers and on its website a profile of plaintiff which included the statement that the report was based on public court records.

In responding to Waccamaw's interrogatory requesting plaintiff to identify the factual statements in the profile that he contended to be false and defamatory plaintiff and his attorney used a highlighting pen to mark 53 statements in the publication they contended to be false or defamatory.

Plaintiff admitted pursuant to Rule 36(a), SCRCP the genuineness of 28 documents which were contained in plaintiff's Family Court file.

In support of its summary judgment motion Waccamaw annotated each of the statements in the publication identified by plaintiff to be false or defamatory, and for each statement demonstrated that the statements in the publication were consistent with the contents of the Family Court records.

Plaintiff did not depose Waccamaw's reporter, nor did he serve interrogatories seeking the identity of the reporter's source for the information in the publication.

Notwithstanding the statement in the publication that the profile was based on the contents of plaintiff's Family Court file, plaintiff's attorney on several occasions communicated with Waccamaw's counsel that the case could be dismissed if the reporter would only reveal his source.

In spite of being told on several occasions that, as the news report stated, the reporter's source was plaintiff's Family Court file, plaintiff's attorney, in exchange for a promise to dismiss the action, sought confirmation from Waccamaw that the current husband of plaintiff's former wife had been the source of information for the reporter.

Plaintiff contended in his initial Complaint, and in his response to Waccamaw's motion for sanctions that the publication of information regarding a Children's Resource Center evaluation of his children which was contained in his Family Court file was wrongful.

Plaintiff alleged that he learned in September 2020, that the report from the Children's Resource Center that was referenced in the news report was contained in his Family Court file.

Plaintiff acknowledged in his initial Complaint that the contents of his Family Court file were not sealed.

Plaintiff filed his initial Complaint on February 24, 2021, and his Amended Complaint on June 2, 2021.

Plaintiff was aware of the contents of his Family Court file at least five months prior to filing his initial Complaint and an additional three months prior to filing his Amended Complaint.

Plaintiff claimed in response to the motion before the Court that filing suit against Waccamaw and its reporter to learn the identity of someone thought to be the reporter's source for the published profile was a legitimate aim of litigation. Given that plaintiff took no steps

pursuant to the South Carolina Rules of Civil Procedure regarding discovery to seek the identity of anyone said to be the source of the information in the profile, this claim is unpersuasive and unsupported in the record.

The persistent efforts of plaintiff and his attorney to obtain the identity of someone they believed to be the reporter's source in the face of assurances that there was no source other than the Family Court file, and the specific promise to dismiss the case if the source were revealed, support the conclusion that the suit against Waccamaw and its reporter was either to harass them for publishing an unflattering profile or for a purpose other than securing proper discovery or adjudication of the claims upon which the proceedings were based.

In support of its Motion for Sanctions Waccamaw served and filed affidavits tracking the factors to be considered by the trial court when determining an award of attorney fees.

Plaintiff did not contest the evidence submitted in support of the claim for attorney fees either as to the factors or the amount sought.

The appellate courts of South Carolina have identified specific factors to be considered by a trial court tasked with evaluating a claim for an award of attorney fees and costs. These factors are discussed fully below in the context of the record in this action.

Nature, extent and difficulty of the case. A review of the caption of this case and the allegations in the Complaint and Amended Complaint establish facially that this was from the outset a complex case. The affidavits submitted by Waccamaw confirm that this suit was complex due to the number of defendants, the breadth of claims made by plaintiff, and the misjoinder of Waccamaw and its reporter in a suit with defendants who had no role to play in the preparation and publication of the news report complained of by plaintiff.

The time necessarily devoted to the case. The affidavit of Mr. Lightsey establishes the appropriateness of the time spent in defense of Waccamaw and its reporter, stating (Lightsey Affidavit ¶ 10):

> I have reviewed time records maintained by Mr. Bender, and they reveal motions to require plaintiff to respond to discovery requests, a motion to defeat the effort to file an improper Second Amended Complaint, and the strategic effort to narrow the claims against Waccamaw Publishers, Inc., and to separate Waccamaw Publishers, Inc. and its reporter from the other defendants, all of which were essential to getting the case in an appropriate posture for summary judgment, and all of which led to a successful outcome in a complex case.

Professional standing of counsel. Waccamaw's attorney has represented news organizations in defense of libel and invasion of privacy claims for decades, has taught media law courses at the University of South Carolina, and has written and lectured on media law. Mr. Lightsey characterized Mr. Bender's professional standing by stating, "Mr. Bender is considered the preeminent news media defense attorney in South Carolina, and one of the best in the country." (Lightsey Affidavit ¶ 7).

Contingency of compensation. This was not an element in this case.

Beneficial results obtained. Waccamaw obtained beneficial results including defeating an attempt to file an improper Second Amended Complaint, obtaining orders compelling discovery responses from plaintiff, obtaining dismissal of the civil conspiracy claim, securing the voluntary dismissal of the intentional infliction of emotional distress claim, obtaining an order striking irrelevant allegations regarding campaign finance violations, obtaining an order separating the claims against Waccamaw and its reporter from claims against the other defendants, and ultimately securing summary judgment in favor of Waccamaw and its reporter. Beyond question these constitute beneficial results for Waccamaw and its reporter.

Customary legal fees for similar services. Mr. Bender stated that his hourly rate in this matter was Four Hundred Dollars which he believed to be significantly less than the fees charged by other attorneys with his experience for similar litigation. Mr. Lightsey confirmed that this hourly rate "is significantly less than the rate that a lawyer of his experience and knowledge could be expected to charge in a case of this nature." (Lightsey Affidavit ¶ 8).

The legal fees claimed by Waccamaw of Seventy-Five Thousand Four Hundred ($75,400.00) Dollars are reasonable in light of the factors discussed above.

The expenses claimed by Waccamaw of One Thousand Seventy-four and Sixty-eight One Hundred ($1,074.68) are also reasonable in this case.

An award of attorney fees and expenses in the amount of Seventy-Six Thousand Four Hundred Seventy-four and Sixty-eight ($76,474.68) Dollars is reasonable and supported by the facts enumerated herein.

CONCLUSIONS OF LAW

This Court has found as fact that plaintiff's Family Court file was not sealed. This is consistent with "…South Carolina['s]…long history of maintaining open court proceedings and records…." Rule 41.1, SCRCP. This history and the rule are founded on Article I, § 9, of the Constitution of South Carolina which provides that all courts shall be public.

Access to court records serves significant public interests such as insuring that court rules and procedures are followed, and that citizens will have an opportunity to inspect records to gather information that may be instrumental in the decisions they may wish to make. The handmaiden of this right of access is the protection of the press in the reporting of the contents of a court record. 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 30 (1982); *Herring v. Retail Credit Co.,* 266 S.E. 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).

Plaintiff alleged that information contained in his Family Court file was false. The Supreme Court of South Carolina held in *Padgett, supra,* that the privilege associated with reporting the contents of the court record is not diminished by any falsity in the record stating:

> 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.

This long recognized fair report privilege has enhanced relevance in this action given that the news report was a profile of a candidate for public office. As the United States District Court for the District of South Carolina held in *Corbin v. Hearst-Argyle TV, Inc.,* 561 F.Supp2d 546, (D.S.C. 2008) the timely report of information regarding a candidate for public office serves the public interest which supports the application of the privilege for the substantially accurate summation of the contents of a public record.

It is in the context of this long-recognized privilege protecting the fair and substantially true summation of the contents of a public record, especially when the qualifications of a

candidate for public office are the subject of the record, that plaintiff's action is to be analyzed to see if the application of the South Carolina Frivolous Lawsuit Sanctions Act is appropriate. S.C. Code Ann. (1976) § 15-36-10. The relevant provisions of the act establish three disjunctive circumstances in which an action may be deemed frivolous:

> (1) At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous. An attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with one of the following conditions.
>
> (a) a reasonable attorney in the same circumstance would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
> (b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or
> (c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

Five months prior to filing his initial Complaint plaintiff learned that his Family Court file was not sealed. Eight months prior to filing his Amended Complaint plaintiff knew that his Family Court file was not sealed. During the period prior to the initiation and continuation of his action plaintiff knew that the Family Court file contained a report regarding an evaluation by the Children's Resource Center.

A reasonable attorney in the same circumstance, knowing the contents of plaintiff's Family Court file and the established law regarding the fair report privilege, could believe nothing but that under the facts and existing law plaintiff's action against Waccamaw was not warranted. Plaintiff made no effort to demonstrate that a good faith or reasonable argument existed for the modification or reversal of the fair report privilege which protected Waccamaw's publication.

A reasonable attorney in the same circumstance, knowing that there was no evidence, but only supposition and conjecture, that either Waccamaw or its reporter coordinated with or assisted plaintiff's political opponents, could believe nothing but that the action was intended merely to harass or injure Waccamaw or its reporter because of plaintiff's unhappiness with an unflattering profile published shortly prior to the run-off election which he lost.

Plaintiff's attorney repeatedly sought to learn the identity of a "source" for the profile that he had been told did not exist, but nevertheless conditioned the voluntary dismissal of the action against Waccamaw and its reporter upon the disclosure of the identity of this "source." A reasonable attorney in the same circumstances would believe that the case was frivolous as not reasonably founded in fact, and that it was brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim on which the proceeding was based when it was brought to chase the identity of a "source" that existed only in the minds of plaintiff and his attorney.

Plaintiff and his attorney knew the contents of plaintiff's open Family Court file prior to the initiation of litigation. Prior to the initiation of this action plaintiff and his attorney had in their hands a publication that stated unequivocally that the pre-election

profile of plaintiff was based on the contents of plaintiff's Family Court file. Notwithstanding the possession of this information plaintiff and his attorney initiated and maintained an action which featured a multitude of misjoined defendants, dilatory and duplicitous actions and statements, and unsupportable legal positions. If the Frivolous Civil Proceeding Sanctions Act is to have any meaning, its application to this action is imperative. Based on the facts of this case, the law as it exists regarding the fair report privilege, plaintiff's status as a political candidate at the time of the publication, the jumble of parties and claims in the action, the conduct of the litigation on behalf of plaintiff, and the promise to dismiss the action if a "source" were identified, this action was frivolous when initiated and throughout its tortuous path to a successful conclusion for Waccamaw and its reporter. The conduct of plaintiff and his attorney during the maintenance of this action indicates clearly as a matter of law that this action was for a purpose other than proper adjudication of a legitimate claim for defamation, civil conspiracy, and intentional infliction of emotional distress.

Section 15-36-10(G)(1) authorizes the imposition of sanctions in the form of an "order for the party represented by an attorney…to pay the reasonable costs and attorney's fees of the prevailing party…." The law and the facts fully support an award of attorney fees and costs to Waccamaw as the prevailing party in the amount of Seventy-Six Thousand Four Hundred Seventy-four and Sixty-eight ($76,474.68) Dollars.

ORDER FOR JUDGMENT

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that Waccamaw Publishers, Inc. shall have a joint and several judgment in

the amount of Seventy-Six Thousand Four Hundred Seventy-four and Sixty-eight ($76,474.68) Dollars against plaintiff John Gallman and his attorney Tucker S. Player.

This judgment is to be enrolled by the Clerk of Court on the abstract of judgments as required by S.C. Code Ann. (1976) § 15-35-510.

AND IT IS SO ORDERED.

Anderson, South Carolina

December , 2024

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J. CORDELL MADDOX, JR.
PRESIDING JUDGE

Horry Common Pleas

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

Case Number: 2021CP2601096

Type: Order/Sanctions

So Ordered

s/ J. Cordell Maddox Jr.