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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

The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No.: 2022-001332

Common Pleas Case No.: 2017-CP-39-00709

Andrew Pampu.....Appellant/Respondent,

v.

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

RETURN TO PETITION FOR REHEARING

Andrew Pampu has filed a Petition for Rehearing asserting that the Court incorrectly determined that he was precluded from seeking damages from Erin Wingo, David Wingo and Colin J. Gahagan for defamation and civil conspiracy. In doing so, he ignores the fact that he was found to have engaged in sex with Erin Wingo without her consent (R. pp. 3255 – 57), a finding which was confirmed on two appeals through Clemson University (R. p. 3258). Rather than appeal that adverse finding, he opted to sue Clemson University in the federal district court which was concluded with a settlement that reinstated the Clemson finding. Notwithstanding those results, he undertook this action seeking to collaterally attack the Clemson finding and thereby recover damages from these defendants. This Court, having

determined the Andrew Pampu had a full and fair opportunity to seek judicial review in both state and federal court, properly ruled that he was collaterally estopped from indirectly attaching the ruling of his Title IX hearing. Moreover, the Court properly determined that Andrew Pampu was precluded from recovering damages for the alleged civil conspiracy on the part of Erin Wingo and C.J. Gahagan since there as no evidence of a conspiracy on their part to have Andrew Pampu removed from Clemson through the disciplinary process or of any damages supposedly resulting from that alleged conspiracy. As a result, the petition for rehearing should be denied.

CIVIL CONSPIRACY

To successfully recover on a civil conspiracy claim, a plaintiff must prove the following:

- 1) a combination or agreement of two or more persons
- 2) to commit an unlawful act or a lawful act by unlawful means
- 3) in conjunction with the commission of an overt act in furtherance of the agreement which
- 4) proximately results in damages.

Paradis v. Charleston County School Dist., 433 SC 562. 864-SE2d 774 (221).

Andrew Pampu argues that C.J. Gahagan and Erin Wingo undertook a concerted effort to have him removed from Clemson. While there may have been a desire on the part of Erin Wingo and C.J. Gahagan to have Andrew Pampu expelled for his acts (R. pp. 1796-97), there was no evidence that they attempted any overt act to accomplish the removal of Andrew Pampu. Nevertheless, Andrew Pampu asserts

that Erin Wingo and C.J. Gahagan utilized the Title IX process to do this. However, evidence of the testimony submitted in the Title IX hearing and the ultimate result of that hearing were kept from the jury. As a result, there is no evidence of any acts by C.J. Gahagan or Erin Pampu to utilize the Title IX process (the legal investigation and hearing) to obtain an unlawful result. The settlement with Clemson by Andrew Pampu, in fact, confirmed the legitimacy of Andrew Pampu's suspension from Clemson (R. p. 3260).

Andrew Pampu goes on to argue that C.J. Gahagan and Erin Wingo committed an unlawful act through tortious inference of his contract with Clemson. As noted by the court, there must be proof that Erin Wingo and C.J. Gahagan intentionally procured a breach of that contract in order to establish tortious interference. It should first be noted that Andrew Pampu through his settlement with Clemson, agreed to allow the result of the Title IX hearing to be confirmed, thereby removing the contention that it was an illegal act. Secondly, Clemson had an obligation under *Section 59-105-40* of the *South Carolina Code* (the South Carolina Campus Sexual Assault Information Act) to conduct a disciplinary hearing and make a decision as to the existence of sexual wrongdoing and the appropriate sanction for that wrongdoing. In light of this duty there was no breach of the contract between Andrew Pampu and Clemson University.

Finally, there was an absence of proof of any damages resulting from the alleged civil conspiracy. The testimony of Andrew Pampu's expert as to Andrew Pampu's subsequent inability to be admitted to dental school or orthodontic school

was purely speculation in nature since there was no true testimony as to why he was not accepted at dental school, only speculative as to the impact of his required reporting of his Title IX suspension (R.p. 1949). Again, the Title IX suspension was upheld by Clemson and confirmed by the settlement of the federal court action with Clemson.

Andrew Pampu goes on to argue that there was nonetheless sufficient evidence to support an award of damages, citing Whisenent v. James Island Corp., 277 SC 10, 281 SE2d 794 (1981). While that case does stand for the proposition that proof to a mathematical certainty of the amount of damage is not required, it goes on to state that the existence, causation or amount of damages cannot be left to conjecture, guess or speculation. What constitutes “reasonable certainty and accuracy” often depends on the type of damage being considered. “Non-economic” damages such as pain and suffering, disfigurement, and loss of companionship have no standard by which to measure a loss and therefore are left to the discretion of the court or jury. See, §15-32-210(9), S.C. Code (1976). By comparison, “economic damages” such as medical expenses, education costs, lost earnings, loss of earning capacity, and property losses usually have a standard or formula which can be utilized to clearly determine the extent of a loss. This is true with regard to a claim for future lost earnings. This type of loss is usually determined through an economist. However, Andrew Pampu did not utilize an economist and therefore the claim for future economic loss was based on speculation.

Based upon the above, the circuit court was correct in granting a judgment NOV pursuant to Rule 50(6) of the *South Carolina Rules of Civil Procedure*, which permits a trial court to reconsider a prior directive verdict motion.

DEFAMATION

Andrew Pampu contends that Erin Wingo and C.J. Gahagan made false and defamatory statements about him. Since there was never any controversy as to whether Erin Wingo and Andrew Pampu had sexual intercourse, the true focus was on whether Erin Wingo had the capacity to consent since intercourse without consent constituted rape. See, §16-3-654(1), S.C. Code (2015). The issue of consent was determined by the Title IX hearing, with the Office of Community and Ethical Standards (OCES) finding that Erin Wingo was incapable of giving consent due to her incapacity and that Andrew Pampu knew of her incapacity (R. pp. 3255-57).

Andrew Pampu contends this finding is not binding and that he is not precluded by collateral estoppel to assert that the statements were false and therefore he was defamed.

Where a civil action arises out of the same factual scenario as one which has been before a state agency with regard to an element that is critical to recovery in the civil action, the finding by the state agency is binding on the civil court. *Bennett v. South Carolina Dept. of Corrections, 305 S.C. 310, 408 SE2d 230 (1991)*. In this case, the element which is critical to recovery of damages is whether statements by C.J. Gahagan and Erin Wingo concerning the interaction between Erin Wingo and Andrew Pampu was consensual. The OCES found the interaction was non-

consensual. As a result, the statements were true and the action for defamation must fail.

However, Andrew Pampu contends that the OCES finding was not binding upon him and therefore he was able to again contest the issue of consensual engagement by Erin Wingo. He argues that collateral estoppel is inapplicable in this situation since the Clemson Office of Community and Ethical Standards was not a state agency and that, even if it was a state agency, it failed to adhere to procedural safeguards, thereby failing to give him the opportunity to defend himself.

He first relies upon statutory definition of “agency”, citing the state APA. *§1-23-310 to 680* It should be noted that the Title IX hearing was a creature of the campus Sexual Assault Information Act. (*§§59-105-10 to 60*). Pursuant to *section 59-105-40*, each institution of higher learning (which would include Clemson University) is required to establish and implement a campus sexual assault policy, which would include procedures for institutional disciplinary action in cases of alleged sexual assault. (*See, §59-105-40 (B)(4)*). *Section 59-105-60* provides that the South Carolina Commission on Higher Education was to develop a model sexual assault policy which was to be given to the institution of higher learning.

The definition of “agency” relied upon by Andrew Pampu include state commissions, such as the South Carolina Commission on Higher Education. Moreover, *section 1-23-310 of the South Carolina Code* defines “agency” to include each state board, commission, department or office, other than the legislature or courts, which are authorized by law to determine “contested cases”. The term

“contested case” is defined by *section 1-23-310* to be proceeding in which the legal rights, duties or privileges of a party are determined by an agency after an opportunity to be heard. Under the Campus Sexual Assault Information Act, an institution of higher learning, such as Clemson, is to establish procedures for disciplinary action which are to include clear opportunities of both accused and accuser to have support persons or legal counsel (if allowed by the institution’s policy), and to constitute be informed by the outcome. Clearly the Title IX procedures utilized in this case was a “contested case” since it allowed for notice of hearing, testimony before a board with assistance from counsel, notice of the outcome. As a result, the OCES should be considered a state agency.

Please note that Andrew Pampu argues that the OCES cannot be a state agency since it includes both public and probate colleges and universities. This is a misreading of the applicable statute, *section 59-105-2 (3)* which makes the act mandatory to public colleges and universities but only optional as to private entities.

Andrew Pampu goes on to argue that the procedures used during the Title IX hearing were insufficient and therefore place the OCES outside the definition of “agency”. However, this ignores the holding of *Stinney v. Sumter School District*, 391 S.C. 547, 707 SE2d 397 (2011), which concerned the expulsion of two high school boys. In that case, the Court held that the touchstone of due process is the opportunity to be heard. It also noted that the type of hearing required will depend on the nature of the case. It gave as an example the suspension of a student requiring only notice of the claims against him and an opportunity to explain his position. However, he was

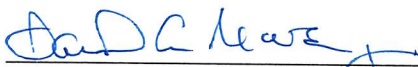
not guaranteed a full adversarial hearing. The court went on to hold that an expulsion is made serious in nature and the procedures and protection might be greater. Andrew Pampu was only suspended by Clemson and he was given, in compliance with *section 59-105-40*, notice of the claim against him and an opportunity to be heard with assistance of counsel. This is sufficient to comply with due process and thereby refute Andrew Pampu's argument that he was not given a fair hearing or chance. Moreover, Andrew Pampu had the means to correct any purported procedural wrong and failed to avail himself of that opportunity. If he were allowed to collaterally attack the Title IX conclusions, he would be able to hold C.J. Gahagan and Erin Wingo responsible for a matter previously determined by a government agency. To avoid this wrong, collateral estoppel should be applied and Andrew Pampu precluded from contesting a finding which he had previously conclusively lost. *See Earle v. Aycock, 276 SC 471, 279 SE2d 614 (1981); 20 USC §1092 Clary Act).*

Finally, Andrew Pampu asserts that the Title IX hearing found him at fault for "sexual misconduct" but not "sexual assault". However, the OCES did find that he had engaged in non-consensual sexual acting with Erin Wingo. Under collateral estoppel, as previously noted, an issue which is critical to a civil action which has been decided in prior agency matter against a party to the civil action, is binding on that party. *Bennett v. South Carolina Dept of Corrections, supra.* In this case, the focus is upon the non-consensual aspect of the sexual intercourse, the latter which was conceded. Collateral estoppel is concerned with findings on issues and elements and not with findings as a whole.

CONCLUSION

Andrew Pampu was given several opportunities to contest the issue of whether his sexual intercourse with Erin Wingo was consensual. He was allowed to interact in the Title IX hearing and lost. He appealed that finding to two separate levels with Clemson and lost on each occasion. He opted not to appeal those findings to the judiciary. Instead, he brought an action against Clemson in federal court. He settled that action. As part of that settlement, the finding of the OCES was left standing. He now attempts to collaterally attack that finding in order to obtain damages against the Wingos and C.J. Gahagan. Andrew Pampu has been given his opportunity and should be collaterally estopped from further contesting the fact that he had non-consensual intercourse with Erin Wingo. Equity requires an end to litigation where there has been a fair opportunity to participate and be heard.

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PROOF OF SERVICE

I do hereby certify that I have served the Respondent/Appellant Colin J. Gahagan's Return to Petition for Rehearing to all counsel of record on July 7, 2025, by *electronic mail only*, as follows:

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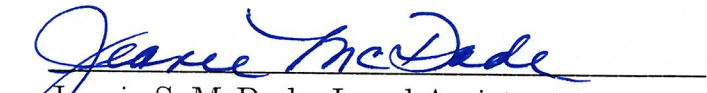
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