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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the
COURT OF COMMON PLEAS, RICHLAND COUNTY
The Honorable Jean H. Toal, Circuit Judge

Appellate Case No. 2023-000145
Case No. 2022-CP-40-001364

Kenneth B. Loveless……Appellant,

v.

Lesley Ann Stiles a/k/a Leslie Lou Stiles……Respondent.

RESPONDENT'S PETITION FOR REHEARING

On July 2, 2025, the Court issued an Opinion (No. 2025-UP-218) in this matter affirming in part, reversing in part, and remanding the case to the circuit court. Respondent Lesley Ann Stiles now respectfully petitions for rehearing pursuant to Rule 221, SCACR, with respect to Section II.B of the Opinion. The Court should hold that even if the circuit court erroneously treated seven statements allegedly made by Stiles as third-party statements, Stiles is still entitled to judgment on the pleadings for reasons in the records. The grounds for rehearing are as follows:

1. The Opinion finds that Loveless alleged Stiles individually authored "at least some" of the seven statements listed in Paragraph 15 of the Complaint, therefore the circuit court's conclusion that Stiles was entitled to judgment on the pleadings as to those statements was "premature." See Slip Op. 7.

2. However, the Court overlooked or misapprehended that, even accepting the Opinion's reasoning with respect to the seven statements in Paragraph 15, judgment on the pleadings is still appropriate. As the Opinion notes, "a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever." Slip Op. 5 (quoting Russell v. City of Columbia, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991)). Assuming, for the purpose of Rule 12(c), SCRCP, that Stiles made *all* seven statements, the Court overlooked or misapprehended that Loveless is entitled to no relief whatsoever for reasons in the record.

3. The seven statements are as follows:

¶ 15(a) "If you are against government conspiracy, if you are against the appearance of corruption, if you are against the appearance of rewarding friends, if you are against back room deals and public business conducted in private – then you should be interested in the way your current school board or [sic] Trustees is doing business."

¶ 15(b) "Mr. Loveless had an EC opinion requiring his recusal from certain matters and refused for a length of time."

¶ 15(c) "My apologies to Mr. Ken Loveless - I didn't know he was a reader but am happy to make a correction to a comment I made in error stating there was an AG opinion regarding him and I meant an Ethics Commission. . . opinion that he should recuse himself from certain discussion and voting."

¶ 15(d) "Loveless says he will no longer recuse himself from topics related to construction. Likely bc (sic) his financial relationship with Contract Construction has ended, although he makes it appear that he has just decided to end it be he wants to."

¶ 15(e) "Mr. Loveless uses his position to influence decisions."

¶ 15(f) "Mr. Loveless participates in deliberations and attempts to use his position to influence decisions."

¶ 15(g) "This SEC Ethics Opinion . . . further states that Mr. Loveless may not in any way attempt to use his position to influence decisions. Has Trustee Loveless complied with these requirements? Sadly, he has not."

See ROA 000038–039. What the Court overlooked or misapprehended is that these statements are not actionable or defamatory for three reasons.

4. First, Paragraph 15(a) is not about and makes no mention of Loveless—it is directed at the school board. An essential element of defamation is a statement "concerning the plaintiff[.]" Parrish v. Allison, 376 S.C. 308, 320, 656 S.E.2d 382, 388 (Ct. App. 2007). This statement is not about Loveless; it is nothing more than impersonal criticism of a public body. Cf. N.Y. Times v. Sullivan, 376 U.S. 254, 291–92 (1964). On its face, Paragraph 15(a) is not actionable.

5. Second, six of the statements are not defamatory. It is the role of the court to determine initially whether a statement is susceptible of having a defamatory meaning. White v. Wilkerson, 328 S.C. 179, 183, 493 S.E.2d 345, 347 (1997). Here, the statements at Paragraph 15(b), (c), (d), (e), (f), and (g) are simply not defamatory.[1] At most, these statements offer some tepid criticism, hyperbole, or an unfavorable opinion. None of them are statements lending to an odious, contemptable, or ridiculous reputations. Cf. Dauterman v. State-Rec. Co., 249 S.C. 512, 514, 519, 154 S.E.2d 919, 919–22 (1967) (statements plaintiff had been "drinking quite a bit Monday" and disciplined child by slapping his bottom held not actionable); see also Costas v. Florence Printing Co., 237 S.C. 655, 663, 118 S.E.2d 696, 700 (1961) (publication of fact that a fight took place not libelous to merchant where fight occurred).

6. Third, the statements at Paragraph 15(a), (d), (e), (f), and (g) are also mere opinion. Opinions are not actionable unless they assert a provable falsehood. Chapin v. Knight-Ridder, Inc., 993 F.2d 1087, 1093 (4th Cir. 1993). "Even if an opinion may seem pernicious, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." Id.

[1] Notably, the Complaint alleges defamation *per* se. See R. App. 37 ¶ 7; R. App. 38 ¶¶ 11, 14; R. App. 42 ¶¶ 21, 23. Nevertheless, there are no extrinsic facts pled that would give rise to an injurious meaning and allow the Court to conclude they are defamatory *per quod* either.

7. Rule 220, SCACR. provides that "[t]he appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." As such, Rule 220 grants an appellate court "discretion" to affirm on other grounds in the record, Sims v. Amisub of S.C., Inc., 408 S.C. 202, 215, 758 S.E.2d 187, 194 (Ct. App. 2014).

8. The Court should exercise its discretion here because the seven statements present a clear question of law that can and should be dispensed with now, not returned to the trial court where Stiles will re-raise the same arguments and obtain a judgment disposing of them. That would be a tremendous waste of time and legal resources to dispose of a frivolous claim by a public official designed to harass a private citizen and chill her speech about matters of public concerns. This case has already been pending for three years and four months. This Court (correctly) affirmed the circuit court's disposition of Loveless's meritless third-party claims and the decision to grant sanctions based on discovery abuse. In this litigation, Loveless will continue to press frivolous claims as long as permitted. The Court has the discretion to end this nonsense and resolve the remaining legal questions. Respectfully, enough is enough.

CONCLUSION

For these reasons, the Court should grant this petition and revise Section II.B of the Opinion to hold that Stiles is entitled to judgment on the pleadings as to the statements in Paragraph 15 for reasons in the record at R. App. 258–266. The Court should accordingly affirm the circuit court order in full.

[signature page follows]

Respectfully submitted,

s/Christopher P. Kenney
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CERTIFICATE OF SERVICE

I served a copy of Respondent's Petition for Rehearing in this matter on the individuals by electronic mail using the email addresses listed below:

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July 17, 2025
VIA Hand Delivery and Email

The Honorable Jenny Abbott Kitchings
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In re: Loveless v. Stiles, Appellate Case No. 2023-000145

Dear Ms. Kitchings:

Enclosed please find Respondent's Petition for Rehearing and a check for the $50 filing fee. By copy of this letter, I am notifying Appellant's counsel and serving a copy of the same.

Thank you for your assistance and please do not hesitate to contact me with any questions.

With warm regards, I am

Sincerely,

Christopher P. Kenney

CPK/lmd
Enclosures
cc: Counsel of Record (email only)