THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
COURT OF COMMON PLEAS

Judge Patrick C. Fant, III

Case No. 2021CP0201525

Dr. Joe Holt,

Appellant,

v.

RURAL HEALTH SERVICES, INC.,

Respondent.

FINAL BRIEF OF APPELLANT

March 24, 2025

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s/Dalton Cooper
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STATEMENT OF THE CASE

On July 20, 2021, Appellant filed a Complaint against his former employer, Respondent. Respondent subsequently removed the action to the District Court of South Carolina Columbia Division under 28 U.S.C. § 1331 as four causes of action arose under federal law. Respondent filed a motion for summary judgment and memorandum of law in support in federal court. The District Court granted summary judgment as to Appellant's ADA and Title VII causes of action, and the Court declined to exercise jurisdiction over Appellant's state law claims, subsequently remanding them to the Court of Common Pleas.

On July 8, 2024, a trial roster for the week of August 5, 2024, was issued. Respondent filed a motion for continuance, with consent. On July 30, 2024, Respondent filed a motion for summary judgment. On August 28, 2024, Respondent filed a memorandum in support of its motion for summary judgment. Respondent's motion for summary judgment was heard before the Honorable Judge Patrick C. Fant, III, on September 4, 2024. A full written order granting summary judgment in favor of Respondents was then issued on December 13, 2024. This appeal followed.

STANDARD

"When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." *Peterson v. West Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999). Summary judgment shall be granted when the evidence shows that no genuine issue exists as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Bluestein v. Town of Sullivan's Island*, 429 S.C. 458, 462, 839 S.E.2d 879, 881 (2020)(quoting *Turner v. Milliman*, 392 S.C. 116, 121–22, 708 S.E.2d 766, 769 (2011)).

ARGUMENT

EXCEPTION I

The lower court erred, the error being that the record viewed in the light most favorable to the Appellant establishes that there are genuine issues of material fact.

The lower court erred in deciding that Appellant failed to meet his burden of presenting claims which contained issues of material fact ripe for presentment to a jury. However, each of Appellant's claims, when the facts are viewed in the light most favorable to Appellant, contain issues of material fact which should be presented to a jury.

I. Defamation Claim

Appellant put forth evidence supporting each element of a defamation claim in South Carolina. "The tort of defamation allows Plaintiffs to recover for injuries to their reputation as the result of Defendants' communications to others of falsities regarding the Plaintiffs." *Cruce v. Berkeley Cnty. Sch. Dist.*, 435 S.C. 7, 18, 865 S.E.2d 391, 397 (Ct. App. 2021), reh'g denied (Dec. 2, 2021), cert. granted (Sept. 7, 2022)(citing *Boone v. Sunbelt Newspapers, Inc*., 347 S.C. 571, 580, 556 S.E.2d 732, 737 (Ct. App. 2001)). "Defamatory communications take two forms: libel and slander." *Id.* (quoting *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 133-34 (1999). Slander, what is at issue here, is spoken defamation. *Id.*

To prove defamation, a Plaintiff must show "(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." *Banks v. St. Matthew Baptist Church,* 406 S.C. 156, 161, 750 S.E.2d 605, 607 (2013)(quoting *Erickson v. Jones St. Publishers, LLC,* 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006). Respondent made false and defamatory statements about Appellant to parents of Appellant's patients. (R. p. 295-300). Respondent defamed Appellant in word and by

falsely accusing him of incompetence in his profession and engaging in conduct that he did not, which is defamation *per se*. *Id.* Respondent defamed Appellant to unprivileged staff and Appellant's patients by accusing him of making a false police report. (R. p. 283-85). In South Carolina, pursuant to SC Code § 16-17-722, is it unlawful for a person to knowingly file a false police report. Accordingly, to accuse Appellant of filing a false police report is to falsely accuse Appellant of engaging in a criminal action, which is defamation *per se*.

These false statements identified above occurred on June 29, 2020, and continued thereafter seemingly to the present. (R. p. 297-300); (R. p. 283-85). Respondent, through its representative(s), is the source of these false and maliciously published accusations about Appellant, as affirmed by the patient's mother on July 20, 2020, and employee Gabrielle Gaudette on July 23, 2020. The defamatory actions and words of Respondent have directly and indirectly promulgated to the public at large the false insinuation that Appellant is unfit for his profession, and that he committed unprofessional acts. As a direct and proximate result of the aforesaid defamation, Appellant's personal and professional reputation has been damaged.

Respondent argued to the lower court that because the defamatory statements made about Appellant were not specific and because the statements made were either true (making the police report), or questionably defamatory (calling Appellant racist), the court should grant summary judgment regarding Appellant's defamation claim. This argument fails to take into account the standard on summary judgment and the defamatory nature of the statements made regarding Appellant. When viewing the facts in a light most favorable to the Plaintiff, as the lower court was obligated to do, Appellant presented proof that a statement was made by a representative or representatives of Respondent who stated that Appellant was fired for making a false police report and that Appellant is racist. The proof presented by Appellant at the lower court should have been

sufficient to survive summary judgment. Even if the exact parameters of the making of the defamatory statement were not presented, "[s]ummary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Marlowe v. S.C. DOT*, 441 S.C. 319, 329, 893 S.E.2d 21, 26 (Ct. App. 2023)(citing *Ray v. City of Rock Hill*, 434 S.C. 39, 45, 862 S.E.2d 259, 262 (2021)).

While calling someone racist may not always be a defamatory statement, calling a counselor who frequently sees clients of all races racist is defamatory and has the potential to severely harm Appellant's ability to retain patients in an area such as Aiken County with a highly diverse population. At the very least, the question of whether calling Appellant racist in the context of this action is defamatory is a question which should have been presented to a jury of Appellant's peers to determine to what extent such a statement regarding Appellant is defamatory or not.

II. **Abuse of Process Claim**

"The essential elements of abuse of process are: (1) an ulterior purpose; and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding." *Gregory v. Riley Pope & Laney, LLC,* No. 2015-000740, 2017 WL 4640146, at *2 (S.C. Ct. App. May 3, 2017)(quoting *Johnson v. Painter*, 279 S.C. 390, 391, 307 S.E.2d 860, 860 (1983). "[T]he tort of abuse of process contains neither an element of intent to harm, nor actual malice." *Swicegood v. Lott*, 379 S.C. 346, 352, 665 S.E.2d 211, 214 (Ct. App. 2008). "The improper purpose element of an abuse of process claim usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself. Therefore, it is the use of the process to coerce or extort that is the abuse, and need not be accompanied by any ill will." *Id*. The 'willful act' element of the abuse of process tort has been "interpreted to consist of three different components: 1) an act that is either willful or overt; 2) in the use of the process; 3) that is ultimately

reprehensible because it is either (a) unauthorized or (b) aimed at an illegitimate collateral objective." *Swicegood,* 379 S.C. at 353–54, 665 S.E.2d at 215 (citing *Food Lion, Inc. v. United Food & Commercial Workers Intern. Union,* 351 S.C. 65, 71, 567 S.E.2d 251, 254 (Ct. App. 2002).

One or more representatives of Respondent, acting on behalf of Respondent, engaged in a willful act in the use of a legal process not proper in the regular conduct of the proceeding. Specifically, Respondent's representative(s) called the South Carolina Department of Social Services and made a false report against a family who decided to continue medical care services with Appellant rather than Respondent, by falsely alleging that the family was refusing to follow the doctor's recommendation of getting counseling. (R. p. 341-44). The parents were contacted by Child Protective Services as a result of this false claim. *Id.*

The ulterior purpose for abusing this complaint process to DSS was in retaliation for the family choosing to utilize Appellant's counseling services over using a different counselor employed by Respondent. This complaint filed wrongfully with DSS was an abuse of process with a malicious intent to harm the family and Appellant for using Appellant's medical care services after he was no longer affiliated with Respondent. Such harms are properly brought as an abuse of process claim. *See Gecy v. Somerset Point at Lady's Island Homeowners Ass'n, Inc.,* 426 S.C. 540, 554, 828 S.E.2d 73, 81 (Ct. App. 2019)("We still agree, as this Court found in *Pond Place*, that "the proper action against a maliciously filed [notice of] lis pendens is under abuse of process or malicious prosecution.")(*citing Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 16, 567 S.E.2d 881, 889 (Ct. App. 2002)). While this action does not involve a lis pendens, the maliciously filed notice of lis pendens in *Gecy* is synonymous to Respondent's maliciously filed complaint with DSS, as both are statutory doctrines. "In South Carolina, lis pendens is a statutory doctrine designed to inform prospective purchasers or encumbrancers that a particular piece of property is

subject to litigation." *Gecy v. Somerset Point at Lady's Island Homeowners Ass'n, Inc.,* 426 S.C. 540, 549, 828 S.E.2d 73, 78 (Ct. App. 2019)(citing S.C. Code Ann. § 15-11-10; *Shelley Constr. Co., v. Sea Garden Homes, Inc.*, 287 S.C. 24, 30, 336 S.E.2d 488, 491 (Ct. App. 1985)). Similarly here, the identification and reporting of child abuse and neglect is a statutory doctrine designed to protect the abused and neglected children in South Carolina. S.C. Code Ann. § 63-7-310. Respondent utilized the DSS complaint process as a weapon against Appellant's client for preferring his services after termination. Thus, when viewed in a light most favorable to the Appellant, the abuse of process claim should have survived summary judgment.

III. Interference with Contractual Relationships Claim

"The elements of a cause of action for tortious interference with contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages." *Dutch Fork Dev. Grp. II, LLC v. SEL Properties, LLC*, 406 S.C. 596, 604, 753 S.E.2d 840, 844 (2012)(quoting *Camp v. Springs Mortgage Corp*., 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993). "[I]intent to injure is not an element of tortious interference." *Broach v. Carter,* 399 S.C. 434, 442, 732 S.E.2d 185, 189 (Ct. App. 2012). The South Carolina Supreme Court held,

> [n]one of the elements required for [tortious interference with a contract] ... include "intent to harm." Although it is true that harm may result from an intentional inference with ... contractual relations, it is not necessary that the interfering party intend such harm. Instead, it is only necessary that they intended to interfere with ... an existing contract....".

Broach, 399 S.C. at 442, 732 S.E.2d at 189 (quoting *Eldeco, Inc. v. Charleston County School District,* 372 S.C. 470, 481, 642 S.E.2d 726, 732 (2007).

After termination, Appellant built his own clinic, the Family Center of Aiken County. (R. p. 275-82); (R. p. 288-90). Appellant has existing and prospective contractual relationships with

patients and their families to provide medical services, specifically pediatric behavioral therapy through the Family Center of Aiken County. (R. p. 337-38); (R. p. 291-92); (R. p. 295-96); (R. p. 339-40); (R. p. 297-300); (R. p. 341-42). Respondent was on notice that Appellant continued to provide pediatric behavioral therapy services in Aiken, South Carolina, through his clinic after his termination. (R. p. 275-82); (R. p. 303-04).

Respondent has a responsibility to its patients and Appellant to truthfully provide the patients who were treated by Appellant with the options available to them for ongoing care. *See* Physicians' Patient Records Act, S.C. Code Ann. §§ 44–115–10 to –150. Respondent has not done so. Respondent actively provided false information to patients and their families to dissuade them from using Appellant's services and Respondent engaged in intentional conduct to prevent Appellant from receiving contract services from his former patients, seen while Appellant was employed by Respondent. (R. p. 295-96); (R. p. 339-40); (R. p. 341-42); (R. p. 343-44).

"[A]n action for tortious interference protects the property rights of the parties to a contract against unlawful interference by third parties." *Dutch Fork Dev. Grp. II*, 406 S.C. at 604, 753 S.E.2d at 844 (quoting *Threlkeld v. Christoph*, 280 S.C. 225, 227, 312 S.E.2d 14, 15 (Ct. App. 1984). There is no justification for Respondent's actions to prevent Appellant's contractual business interests and in making a false report to DSS against the family after the family expressed an intent to continue counseling services with Appellant. (R. p. 295-96); (R. p. 339-40); (R. p. 341-42). Furthermore, there is no justification for Respondent's representative(s) communicating to Appellants current and former patients slanderous statements such as him being an alleged racist and that he was fired for making a false police report. These actions by Respondent through its representative and employees interfere with Appellants contractual relationships with his patients. Appellant presented sufficient evidence of this interference at the lower court, and when the facts

are viewed in a light most favorable to him, summary judgment should not have been granted regarding his claim for tortious interference with a contract.

IV. Negligence Claim

Appellant's negligence claim only arises and is brought for actions that occurred after Appellant was no longer employed by Respondent. "[N]egligence is the failure to use due care," i.e., "that degree of care which a person of ordinary prudence and reason would exercise under the same circumstances." *Berberich v. Jack*, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (2011)(quoting *Hart v. Doe*, 261 S.C. 116, 122, 198 S.E.2d 526, 529 (1973)). "In a negligence action, a Plaintiff must show that (1) the Defendant owes a duty of care to the Plaintiff, (2) the Defendant breached the duty by a negligent act or omission, (3) the Defendant's breach was the actual and proximate cause of the Plaintiff's injury, and (4) the Plaintiff suffered an injury or damages." *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006).

"Duty is generally defined as 'the obligation to conform to a particular standard of conduct toward another." *Huggins v. Citibank, N.A.*, 355 S.C. 329, 333, 585 S.E.2d 275, 277 (2003) (quoting *Hubbard v. Taylor*, 339 S.C. 582, 588, 529 S.E.2d 549, 552 (2000)). "[T]he court must determine, as a matter of law, whether the Defendant owed a duty of care to the Plaintiff." *Huggins,* 355 S.C. at 332, 585 S.E.2d at 276. "If a duty exists, the jury then determines whether the defendant breached the duty, resulting in damages." *Fisher v. Shipyard Vill. Council of Co-Owners, Inc.*, 415 S.C. 256, 272-73, 781 S.E.2d 903, 911 (2016).

Respondent owed a duty of care to Appellant as Appellant's former employer and as an entity that improperly received monies solely owed to Appellant. (R. p. 311-36); (R. p. 337-38). Respondent had a duty to only deposit monies for services that it provided and has

no legal right to retain monies owed solely to Appellant. (R. p. 305-306). Respondent's policy required a 24-hour review of monies received. Appellant's evidence proved that Respondent retained money from services he provided, after termination, for an extended period of time. (R. p. 337-338); (R. p. 311-336); (R. p. 307-310). Respondent was on notice of such errors and breached its duty of care owed to Appellant. Respondent breached its duty of care by retaining monies solely owed to Appellant and by wrongfully spreading lies about the Appellant to his current and former patients.

V. **Conversion Claim**

Conversion has been defined in South Carolina as "an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the exclusion of the owner's rights." *Owens v. Andrews Bank & Tr. Co.,* 265 S.C. 490, 496–97, 220 S.E.2d 116, 119 (1975)(citing *Ray v. Pilgrim Health & Life Ins. Co*., 206 S.C. 344, 34 S.E.2d 218, 34 S.E.2d 218 (1945). "Conversion may arise by some illegal use or misuse, or by illegal detention of another's chattel." *Owens,* 265 S.C. at 496–97, 220 S.E.2d at 119 (citing *Castell v. Stephenson Finance Co*., 244 S.C. 45, 135 S.E.2d 311 (1964). "Money may be the subject of conversion, when it is capable of being identified, and there may be conversion of determinate sums even though the specific coin and bills are not identified. *Owens,* 265 S.C. at 496–97, 220 S.E.2d at 119 (citing 89 C.J.S. Trover and Conversion § 23, p. 541 (1955)).

Here, Respondent engaged in unauthorized ownership over monies owed solely to Appellant. (R. p. 311-336). Appellant has exclusive ownership rights to the financial proceeds from the medical services he has provided after Respondent terminated Appellant. *Id*. Respondent received monies from third party payors as payment for services provided solely by Appellant. *Id.* Respondent has no legal right to any of the monies it has retained from services Appellant provided after June 30, 2020. *Id.* The sum at issue is finitely calculated. *Id.*

Appellant is aware of Respondent retaining at least $2,800 owed to Appellant. *Id.*

Respondent argued at the lower court that the money it wrongfully withheld had been returned to the Appellant, and indeed Appellant admitted as much during his deposition. However, Appellant contests that he is still owed money from services he provided after termination which was sent to Respondent. There is clearly a question of fact regarding whether or not Appellant is owed money from the Respondent or not. Accordingly, when viewing the facts in a light most favorable to the Appellant, summary judgment should have been denied.

CONCLUSION

The record shows that there are genuine issues of material fact. That is sufficient to defeat a Motion for Summary Judgment because, when ruling on a Summary Judgment Motion, the Court does not make credibility determinations or weigh evidence; instead, the court must resolve all doubts in favor of the non-moving party.

Therefore, based on the above facts and law, Respondent's motion for summary judgment should have been denied. Appellant respectfully requests that the Court reverse the grant of summary judgment and allow this matter to proceed to trial on all claims.

July 28, 2025

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