

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS FOR
THE NINTH JUDICIAL CIRCUIT

PHILIP WOSCHENKO,

CASE NO: 2022-CP-10-03009

Plaintiff,

**ORDER DENYING DEFENDANT
KURIEN'S MOTIONS TO STRIKE AND
GRANTING IN PART DEFENDANT
KURIEN'S MOTION FOR PARTIAL
DISMISSAL AND GRANTING MOTION
FOR SUMMARY JUDGMENT**

vs.

**SONYA KURIEN and KYLE
SNOUFFER**

Defendants.

This matter came before the court on May 29, 2024, on Defendant Sonya Kurien's motion to strike, partial motion to dismiss, and motion for summary judgment. Having considered all arguments and submissions, the Court rules that Defendant Kurien's motion to strike is denied, partial motion to dismiss is granted as to all defamatory statements made prior to July 5, 2020, and motion for summary judgment is granted.

BACKGROUND

According to the amended complaint, Plaintiff Philip Woschenko and Defendant Sonya Kurien are the parents of two special needs children, Daughter and Son. Defendant Kyle Snouffer was hired as a "behavioral technician" to care for the children in the Woschenko's home. According to the complaint Defendants Kurien and Snouffer had an extra-marital affair prior to Ms. Kurien initiating divorce proceedings against her husband, Mr. Woschenko.

The complaint alleges that on or about December 19, 2018, Defendant Kurien made allegations to Folly Beach Department of Public Safety officers that Plaintiff had physically abused his son and sexually abused his daughter. The officers investigations revealed no evidence to substantiate the allegations reported.

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The complaint alleges that similar allegations were made to the Department of Social Services, doctors, JSS Behavioral Services, the court appointed guardian *ad litem* and others, but the complaint does not provide dates that these allegations were made.

According to the amended complaint, on July 31, 2020, Defendant Kurien called 911 based on Plaintiff appearing at their former home to retrieve his belongings. At this time, Defendant reported the allegations on the phone call that Plaintiff was sexually abusing Daughter and Defendant Snouffer repeated similar allegations to responding police officers.

The complaint alleges that in September 2020 Defendant Snouffer appeared at Plaintiffs place of work and made defamatory statements to Plaintiffs coworkers.

The complaint alleges that on May 7, 2021, Son was admitted to MUSC and Defendant Kurien repeated the defamatory statements to Son's doctor, specifically that Plaintiff had sexually abused the children.

Mr. Woschenko filed this action on July 5, 2022. In denying Defendant Kurien's partial motion to dismiss, the Court previously ordered Mr. Woschenko to provide a more definite statement of his defamation claims and granted leave to amend his complaint to do so. That amended complaint was timely filed in accordance with the Court's order.

FINDINGS

1. Defendant's motion to strike is denied.

A motion to strike under Rule 12(f) SCRPC must be made before responding to a pleading and requires a showing that the material sought to be struck is redundant, immaterial, impertinent, or scandalous. Rule 12(f), SCRPC.

Defendant Kurien moved to strike paragraphs 11, 12, 14-18, and 23-25 of Plaintiff's amended complaint. However, Ms. Kurien's motion was made *after* she filed her pleading

responding to Plaintiff's amended complaint, making the motion untimely. Accordingly, Defendant's motion to strike is denied.

2. Defendant's partial motion to dismiss is granted in part and denied in part.

In deciding a motion to dismiss, the Court "must base its ruling solely on the allegations set forth in the complaint" and "presume all well pled facts to be true." *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 699 S.E.2d 699 (Ct. App. 2010). In deciding a motion to dismiss for failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6), SCRC, "the court must resolve every doubt in a light most favorable to the nonmovant to determine whether the facts alleged on the face of the complaint state 'any valid claim for relief.'" *S.C. Coastal Conservation League, Inc. v. Charleston Cnty.*, 442 S.C. 409, 899 S.E.2d 609 (Ct. App. 2024).

Defamation claims in South Carolina are subject to a two-year statute of limitations. S.C. Code Ann. § 15-3-550. The statute of limitations for defamation claims in South Carolina begins when the statements were made, not when the statements were discovered. *Jones v. City of Folly Beach*, 326 S.C. 360, 483 S.E.2d 770 (Ct. App. 1997). However, the statute of limitations applicable to Plaintiff's other two causes of action, outrage and civil conspiracy, is three years. S.C. Code Ann. § 15-3-530(5). The statute of limitations for civil conspiracy and outrage begins to run upon the plaintiff's "discovery" that a cause of action exists. S.C. Code Ann. § 15-5-535.

Defendant Kurien argues that the statute of limitations bars a cause of action for any defamatory statements made prior to July 5, 2020 because Plaintiff filed this action on July 5, 2022. Plaintiff's counsel conceded this point and the Court agrees. However, the Court does not agree that paragraphs 11, 12, 14-18, 25, 29, 30, and 31 of the amended complaint contain allegations of defamation that require the court to grant dismissal. Rather, these paragraphs appear

to provide factual background to support the allegations of defamation detailed elsewhere in the complaint, and to support the causes of action for outrage and civil conspiracy.

Defendant Kurien moves to dismiss the allegation in paragraph 23 of the amended complaint describing in detail the statements made to an MUSC children's doctor on May 7, 2021. She argues that although this statement was made after July 5, 2020, it should be time barred because it was not included in the original complaint.

The Court disagrees. "Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading." Rule 15(c), SCRPC. The original complaint alleges in paragraph 18 that Defendant Kurien made defamatory statements to doctors and others. As ordered by the Court in its July 10, 2023 order, Plaintiff "provided a more definite statement of his defamation claims" by specifically identifying the defamatory statement to the children's doctor at MUSC in paragraph 24 of the Amended Complaint.

Accordingly, Defendant's motion to dismiss is granted as to any statements made by Ms. Kurien prior to July 5, 2020 and denied as to any statements made after July 5, 2020.

3. Defendant's motion for summary judgment on the basis of a conditional privilege is granted.

"Summary judgment is appropriate when 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463 (S.C. 2023); (citing *Town of Hollywood v. Floyd*, 403 S.C. 466, 477 (S.C. 2013) ("it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.")).

Defendant Kurien has moved for summary judgment on the basis that she has statutory immunity under S.C. Code Ann. § 63-7-390 which grants permissive reporters statutory immunity.

Specifically, S.C. Code Ann. § 63-7-390 provides:

A person required or permitted to report pursuant to Section 63-7-310 or who participates in an investigation or judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is rebuttably presumed. Immunity under this section extends to full disclosure by the person of facts which gave the person reason to believe that the child's physical or mental health or welfare had been or might be adversely affected by abuse or neglect. S.C. Code Ann. § 63-7-390.

Defendant Kurien made a call to the consolidated call center to request a welfare check on Daughter. Based on the audio file submitted as Exhibit 5 to the Court, Kurien states she saw her special needs Daughter appearing upset. She articulates seeing her largely non-communicative child forced back into Plaintiff's vehicle, and had no further indication as to the wellbeing of Daughter. Kurien was unable to go to Plaintiff's residence to check on Daughter personally.

Taking the evidence in the light most favorable to the nonmoving party, Defendant's statement to the CCC operator falls within the scope of S.C. Code Ann. § 63-7-310. The Defendant presents no evidence other than the mere fact that the parties are involved in contentious litigation in the family court that the statements of Kurien were made in bad faith.

A person who has reason to believe that a child's welfare has been or may have been adversely affected by abuse or neglect may report and is encouraged to do so in accordance with the statute and allows for the reports to be made to the county Department of Social Services or a law enforcement agency in a county where the child resides. (S.C. Code Ann. § 63-7-310(d)(e))(emphasis added). The Code continues:

A person required or permitted to report pursuant to Section 63-7-310 or who participates in an investigation or judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is rebuttably presumed.

Immunity under this section extends to full disclosure by the person of facts which gave the person reason to believe that the child's physical or mental health or welfare had been or might be adversely affected by abuse or neglect. (S.C. Code Ann. §63-7-390).

Additionally, a parent's duty to care for and protect their child is held in our system to be of the highest societal importance. The paradigm of the parent-child relationship creates a legal duty for a parent to take reasonable care to act in the best interest of their child from harm. *See State v. Claypoole*, 371 S.C.473, 479 (Ct. App. 2006) (“...the nature of the parent-child relationship places a legal duty upon the parent to take all reasonable steps to protect a child from harm...”) (*citing State v. Walden*, 306 N.C. 446, 472, 475-76 (S.C. 1982)). *See also Stasi v. Sweigert*, 434 S.C. 239,248(S.C. 2021) (“a parent has a legal duty to care for and act in the best interest of his or her children.”).

Although there are pending matters in the family court regarding these issues, in this proceeding before the Circuit Court, there must be some form of evidentiary proof offered which has not been provided to show bad faith in accordance with the requirements of S.C. Code §63-7-390 to survive a Motion for Summary Judgment. Upon careful review and consideration, this Court finds that Defendant Kurien is a permissive reporter under S.C. Code §63-7-390, giving her statutory immunity for the statements made to the consolidated call center on July 31, 2020.

Accordingly, Defendant's motion for summary judgment on the basis of a conditional privilege is granted.

4. Defendant's motion for summary judgment as to Outrage and Civil Conspiracy is granted.

Viewing the evidence in the light most favorable to the non-moving party, the Defendant's motion for summary judgment as to outrage and civil conspiracy is granted. The Supreme Court of South Carolina has made clear that the nonmoving party on a motion for summary judgment must show facts that create a reasonable inference to be drawn by a jury at trial; “it is not

sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023). While it is conceivable that Plaintiff could have suffered emotional damages for an outrage cause of action, the standard on a motion for summary judgment is more than conceivability or a “mere scintilla.” Because Plaintiff has failed to submit evidence to create a genuine issue of material fact that there is a factual basis for the outrage cause of action as well as the conspiracy cause of action, the motion for summary judgment as to these causes of action is granted.

CONCLUSION

For the foregoing reasons, it is hereby ordered that Defendant Kurien’s motion to strike is denied in full, partial motion to dismiss is granted in part and denied in part as detailed more fully above, and motion for summary judgment is granted in full.

IT IS SO ORDERED.

This the ___ day of _____, 2024.

The Honorable Diane Schafer Goodstein
Circuit Court Judge



Charleston Common Pleas

Case Caption: Philip Woschenko VS Sonya Kurien , defendant, et al

Case Number: 2022CP1003009

Type: Order/Other

It is so Ordered!

s/Diane S. Goodstein