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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

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2022-001332

Andrew Pampu, ...	Appellant-Respondent,
v.	
Erin Wingo, David Wingo, and Colin J. Gahagan…….	Respondents-Appellants.

RESPONDENTS-APPELLANTS ERIN WINGO AND DAVID WINGO'S RETURN TO APPELLANT-RESPONDENT'S PETITION FOR REHEARING

Appellant-Respondent Andrew Pampu ("Pampu") filed a Petition for Rehearing asserting that the Court incorrectly determined that he was precluded from seeking damages from Erin Wingo ("Ms. Wingo"), David Wingo ("Mr. Wingo"), and Colin J. Gahagan ("Gahagan") for defamation and civil conspiracy.[1] Rehearing is not warranted because the Court has not misapprehended or overlooked specific points when deciding the appeal. Rule 221, SCACR. Accordingly, the Court should deny Pampu's Petition for Rehearing.

REINTRODUCTION AND SUMMARY OF FACTS

On October 24, 2015, Ms. Wingo, a 5'2" Clemson University freshman, drank approximately 13.5 ounce of liquor in a friend's dorm room over the course of one hour and then

[1] This Return refers to the parties in line with the Court's June 11, 2025 decision.

proceeded to go to a fraternity party, taking a plastic bottle with vodka in it with her. (R. 1637, line 2 to1638, line 22; R. 1641, line 23 to 1642, line 7). Fraternity party's attendees, including Pampu, observed Ms. Wingo was drunk. (R. 1521, lines 1–3). At this party, Ms. Wingo and Pampu made out, walked from the fraternity party to a location between a wooden fence and a shed, drank vodka from the plastic bottle, and engaged in intercourse. (R. 1438, lines 10–18; R. 1438, line 10 to 1446; R. 1506, lines 7–10; R. 1508–14). On the walk back to the fraternity party, Pampu observed that Ms. Wingo was "extremely emotional," stumbling, and "on the bad end of drunk." (R. 1521, lines 4–11). Pampu later texted a fraternity member about the sexual intercourse, which text was shared with his entire fraternity. (cite)

A Clemson resident assistant learned of the encounter from Ms. Wingo's roommate and filed a report with Clemson University's Office of Community and Ethical Standards ("OCES"), which resulted in a formal Title IX complaint to Clemson by Ms. Wingo on November 11, 2015. (R. 48; R. 1572, lines 9–16; R. 1721, lines 3–5). Clemson instituted an investigation of the sexual encounter, and as a result of the investigation, charged Pampu with violating various Clemson University General Student Regulations, including harm to person and sexual misconduct. (R. 52; R. 340–41). Following a hearing involving multiple witnesses where lawyers were present, on February 29, 2016, Clemson University found that Ms. Wingo was "incapacitated and unable to give consent which [Pampu] should have reasonably known," and the board suspended Pampu for five months. (R. 345). Pampu exhausted Clemson University's appeal process, and Clemson repeatedly upheld the findings. (R. 348–359; R. 3080–83; R. 3092–95; R. 3115). Pampu did not attempt to seek state court judicial review at the conclusion of the Clemson appeal process.

Instead, on June 15, 2016, he opted to file an action in federal court naming as defendants Clemson University, Clemson University Board of Trustees, and several of Clemson's individual

employees. *See Doe v. Clemson Univ.*, No. 8:16-CV-1957, 2019 WL 1383822 (D.S.C. Mar. 27, 2019) (unpublished). Pampu asserted claims for violation of Title IX of the Education Amendments of 1972, violation of due process (Fourteenth Amendment), breach of contract, breach of the covenant of good faith and fair dealing, negligence, promissory estoppel, and declaratory judgment. Pampu claimed in the suit against Clemson that the findings against him were incorrect and the Clemson process inadequate and illegal. Ultimately, the parties settled the case. On March 21, 2018, the parties in *Doe v. Clemson* participated in mediation and reached a settlement agreement, which was reduced to writing (the "Clemson Settlement") and reinstated OCES's factual decision, and Pampu was paid with monies from the South Carolina Insurance Reserve Fund on behalf of Clemson and the other named defendants. (R. 3190–91). The Clemson Settlement reads in pertinent part: "Clemson University will reinstate the hearing board's decision of February 29, 2016 as upheld by the University Vice President of Student Affairs." (R. 19; R. 3190). The validity of the Clemson Settlement was thereafter litigated and resolved by the federal district court, who concluded that the Clemson Settlement was enforceable. *See Doe*, 2019 WL 1383822. Pampu did not appeal the federal district court's determination.

On June 15, 2017, Pampu filed the present action, asserting claims for abuse of process, intentional infliction of emotional distress, civil conspiracy, and defamation. (R. 59–69). The abuse of process and intentional infliction of emotional distress claims were dismissed prior to trial. (R. 28–29). The circuit court conducted a jury trial on March 21–25, 2022. (R. 1338).

The jury was not presented with evidence related to Clemson's Title IX process, Clemson's investigation, the evidence or information Clemson considered, Clemson's findings or conclusions, or the Clemson lawsuit or settlement. Instead, in granting a Motion in Limine filed by Pampu which was later reaffirmed at trial, the circuit court excluded all evidence related to

Clemson's Title IX process. (R. 1293, line 4 to 1294, line 15; R. 1386, line 15 to 1387, line 23). However, Pampu was permitted to offer testimony from a vocational expert, who claimed that Pampu's "suspension" from Clemson caused him to not be accepted into dental school. (R. 1930–1959).

The trial concluded with a jury verdict for Mr. Wingo on the civil conspiracy claim and the following verdicts for Pampu: Civil Conspiracy, as to Ms. Wingo, $2,000,000 in actual damages; as to Gahagan, $1,000,000 in actual damages; Defamation, as to Ms. Wingo, $700,000 in actual damages and $450,000 in punitive damages; as to Mr. Wingo, $230,000 in actual damages and no punitive damages; as to Gahagan, $700,000 in actual damages and $220,000 in punitive damages. (R. 1084–1085). Following posttrial motions, the circuit court entered a judgement notwithstanding the verdicts on the civil conspiracy claims, finding that Pampu failed to establish numerous elements of the civil conspiracy cause of action. (R. 5–7). The circuit court denied the remaining post-trial motions. These cross-appeals followed.

On appeal, this Court properly determined that Pampu had a full and fair opportunity to seek judicial review in both state and federal court and properly ruled that Pampu was collaterally estopped from indirectly attacking the decision of the Title IX hearing. Further, this Court properly determined Pampu could not recover damages from Ms. Wingo and Gahagan for civil conspiracy because the Record does not include evidence of a conspiracy to have Pampu removed from Clemson or of any damages arising from the alleged conspiracy.

ARGUMENTS

I. The Court properly applied the doctrine of collateral estoppel as neither unfairness nor injustice resulted from the application.

As Pampu states in his Petition for Rehearing, "[t]he doctrine of collateral estoppel 'is grounded upon concepts of fairness, it should not be rigidly or mechanically applied.'" (Pampu

Pet. for Reh'g at p.11 (quoting *State v. Bacote*, 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998)). The Court's application of the doctrine of collateral estoppel to preclude Pampu from pursuing his claims for defamation and civil conspiracy aligns with the doctrine's principles of fairness. Pampu's arguments selectively quote from the Restatement and ignores Comment e. Comment e provides, "A stipulation or consent judgment may have preclusive effect in a subsequent action if the parties have so agreed." Restatement (Second) of Judgments § 27 (Am. Law Inst.1982), cmt. e. The Clemson Settlement explicitly stated that the Title IX findings would be upheld and the initial sanctions would be reinstated and released Clemson from any claims related to the federal suit. (R. 3190–91). The district court determined that the terms of that settlement were "clear and unambiguous" and signed by Pampu. *Doe*, 2019 WL 1383822, at *3. Thus, the Clemson Settlement has a preclusive effect as to the Title IX findings and sanctions as well as to Pampu's breach of contract claim against Clemson, which the Clemson Settlement fully and finally resolved. Further, Section 29 of the Restatement Second of Judgments provides, "A party precluded from relitigating an issue with an opposing party, in accordance with §§ 27 and 28, is also precluded from doing so with another person unless the fact that he lacked full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him an opportunity to relitigate the issue." Restatement (Second) of Judgments § 29 (Am. L. Inst. 1982). Therefore, reading Section 29 of the Restatement Second of Judgements in conjunction with Section 27, comment e, Pampu cannot use the purported procedural deficiencies which were the basis for claims he pursued against and settled with Clemson to avoid the preclusive effect of OCES's decision, which he agreed to be reinstated through the same settlement agreement.

Alone, the Clemson litigation and Clemson Settlement in which Pampu agreed for Clemson to "reinstate [OCES's] decision of February 29, 2016 as upheld by the University Vice President

of Student Affairs," precludes Pampu from relitigating whether Ms. Wingo consented to sexual intercourse. (R. 3190–92). The U.S. District Court for the District of South Carolina found the Clemson Settlement is enforceable. *See Doe,* 2019 WL 1383822. Regardless of whether Clemson's OCES is a state agency, Pampu signed a binding agreement for the following findings to be reinstated: "[Ms. Wingo was] incapacitated and unable to give consent which [Pampu] should have reasonably known," and the board suspended Pampu for five months. (R. 345). To allow Pampu to pursue his claim for defamation when he has agreed for the reinstatement of OCES's findings that Ms. Wingo was too intoxicated to consent to intercourse and Pampu should have reasonably known that, is inequitable and unjust.

II. The Court properly determined that Clemson's OCES is a state agency as well.

Under South Carolina law, where a civil action arises out of the same factual scenario as one which has been before a state agency, a finding by that state agency with regard to an element that is critical to recovery in the civil action is binding upon the civil court. *Bennett v. South Carolina Dept. of Corr.*, 305 S.C. 310, 408 S.E.2d 230 (1991); *Perry v. South Carolina Law Enforcement Div.*, 310 S.C. 558, 426 S.E.2d 334 (1992). Clemson's OCES qualifies as a state agency under the South Carolina Administrative Procedures Act, S.C. Code Ann. §§ 1-23-10, et. seq. pursuant to (1) the plain language of the statutes, (2) the reading of the South Carolina Campus Sexual Assault Information Act in conjunction with the APA, and (3) caselaw finding university boards and/or committees have been found to be subject to the APA.

First, Sections 1-23-10(1) and -310(1) of the APA define "agency" to include each state board, commission, department, or officer, other than the legislature or the courts, authorized by law to determine "contested cases."[2] This definition neither includes nor excludes schools, colleges

[2] Additionally, the term "agency" has been defined to include state schools, colleges, and universities. S.C. Code Ann. § 15-78-30(a).

or universities. The APA agency term includes "state boards" that are authorized to hear "contested cases." The term "contested case" is defined as a "proceeding **including, but not restricted to**, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party **are required by law** to be determined by an agency after an opportunity for hearing" S.C. Code Ann. § 1-23-310(3) (emphasis added).

Second, the Court properly relied on the South Carolina Campus Sexual Assault Information Act to conclude OCES's IX decision was a contested case determined by a state agency. Clemson's OCES is a board at Clemson that is authorized and required by law to determine rights of parties under both federal and state law. Both the Department of Education and the Department of Justice have promulgated regulations under Title IX that require a school to "adopt and publish grievance procedures that provide for the prompt and equitable resolution of student . . . complaints alleging any action that would be prohibited by" Title IX or regulations thereunder. 34 CFR § 106.8(b) (Dep't of Education); 28 CFR § 54.135(b) (Dep't of Justice). Such prohibited actions include all forms of sexual harassment, including sexual intercourse without consent. Similarly, the South Carolina Campus Sexual Assault Information Act requires public South Carolina universities, like Clemson, to establish procedures for institutional disciplinary actions in cases of alleged sexual assault. *See* S.C. Code Ann. § 59-105-20(3) ("'institution' means a public two-year or four-year . . . university located in this State") and § 59-105-40 (requiring public universities "implement a campus sexual assault policy regarding . . . ***procedures*** followed by the institution once sexual assault occurs and is reported" that "must address" among other things, "procedures for institutional disciplinary action in cases of alleged sexual assault" and "possible sanctions following the final determination of ***an institutional disciplinary procedure*** regarding sexual assault."). These required procedures make the decisions by Clemson's OCES "contested

cases" under the APA, as the term "contested case" is defined in § 1-23-310 as a "proceeding including, ***but not restricted to***, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing" S.C. Code Ann. § 1-23-310(3) (emphasis added).

Recognizing "[t]he serious nature and consequences of sexual assault and the particular problems caused by sexual assault within a campus community prompt[ed] the General Assembly to encourage institutions of higher learning to develop . . . a comprehensive sexual assault policy to address prevention and awareness of sexual assault and to establish procedures that address campus sexual assaults." S.C. Code Ann. § 59-105-30. It is presumed that by passing a statute, the General Assembly intended to accomplish something and not to do a futile thing. *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002); *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964). Courts have recognized the retaliatory nature of defamation claims brought by alleged perpetrators of sexual assault and the consequential impact of the under reporting of sexual assault. *See Sagaille v. Carrega*, 194 A.D.3d 92, 143 N.Y.S.3d 36, leave to appeal denied, 37 N.Y.3d 909, 174 N.E.3d 710 (2021) ("[S]exual assaults remain vastly under reported, primarily due to victims' fear of retaliation. It does not escape [the Court] that defamation suits like the instant one may constitute a form of retaliation against those with the courage to speak out."). To allow Pampu to relitigate OCES's findings which resulted from procedures established pursuant to the South Carolina Campus Sexual Assault Information Act, would undermine the Act's purpose to address the problems caused by campus sexual assaults and render the Act a futile thing. Therefore, the Court properly relied on the South Carolina Campus Sexual Assault Information Act to conclude OCES's decision was a contested case determined by a state agency.

Third, in previous cases, decisions by university boards and/or committees have been found to be subject to the APA. *See Ross v. Med. Univ. of S.C.*, 317 S.C. 377, 379, 453 S.E.2d 880, 882 (1994) (tenured professor appeals a decision by a faculty committee, that was approved by the universities board of trustees, pursuant to the APA). Additionally, courts within this state have found that numerous other state boards fall within this broad definition of "agency." *See, e.g.*, *Bursey v. S.C. Dep't of Health & Env't Control*, 360 S.C. 135, 143, 600 S.E.2d 80, 85 (Ct. App. 2004) (finding that the Mining Council is an agency under the APA), aff'd, 369 S.C. 176, 631 S.E.2d 899 (2006); *Ruocco v. S.C. State Bd. of Registration for Pro. Engineers & Land Surveyors*, 314 S.C. 111, 114, 441 S.E.2d 829, 831 (Ct. App. 1994) (finding that the South Carolina State Board of Registration for Professional Engineers and Land Surveyors is an agency under the APA); *Webber v. Michelin Tire Corp*., 285 S.C. 581, 583, 330 S.E.2d 547, 548 (Ct. App. 1985) ("The Industrial Commission is an agency for purposes of the Administrative Procedures Act."); *Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) ("Clearly, the Employment Security Commission is an agency within the meaning of S.C. Code Ann. § 1–23–310(1) of the APA as 'it has rule making authority, and hears and decides contested matters.'"); *Guerard v. Whitner*, 276 S.C. 521, 280 S.E.2d 539 (1981) (finding that the Coastal Council is an agency under the APA).

As the Court concluded, *Ross v. Med. Univ. of S.C.*, 317 S.C. 377, 453 S.E.2d 880 (1994), offers support for the conclusion that the Clemson OCES hearing constitutes a "contested case" before a "state agency." There, a tenured professor at MUSC was terminated for alleged abuse of his position for personal financial gain. *Id.* at 378, 453 S.E.2d at 881. A Faculty Hearing Committee upheld the decision, and that committee's decision was reviewed by the Vice President for Academic Affairs and then by the MUSC Board of Trustees. *Id.* The professor then filed suit in

the Circuit Court, seeking review of the decision under the APA. *Id.* This fact pattern is substantially similar to the one at issue in this case, with the Faculty Hearing Committee being akin to the OCES board and with a similar internal appellate process. [3]

While Pampu attempts to distinguish this case by claiming that the issue of whether the APA was applicable was not raised in *Ross,* it is of no moment in *Ross* that the Supreme Court of South Carolina was not specifically presented with an argument regarding whether the APA applied. The state courts in *Ross* only had subject matter jurisdiction because the case was appealed under the APA. Other issues were originally brought in the lawsuit, but those issues were removed to federal court. Only the review of the APA action was remanded to the circuit court. *Id.* A state appellate court "must, on its own motion, raise the issue of subject matter jurisdiction to ensure the 'orderly administration of justice.'" *Tatnall v. Gardner*, 350 S.C. 135, 137, 564 S.E.2d 377, 378 (Ct. App. 2002) (quoting *State v. Castleman*, 219 S.C. 136, 139, 64 S.E.2d 250, 252 (1951)). By deciding the issues in the case, the Supreme Court of South Carolina implicitly recognized that the APA applied. Otherwise, it would have lacked subject matter jurisdiction to decide the case. Therefore, *Ross* does support the conclusion that the South Carolina Supreme Court has treated a state-supported university as a state agency for purposes of the APA.

Finally, if Clemson's OCES is a state agency (in a general sense and not necessarily as one expressly defined or listed under the APA), and Pampu was afforded a quasi-judicial proceeding, the proceeding will have a preclusive effect from its findings. As such, collateral estoppel applies regardless of whether the APA applies and regardless of whether all of the procedural aspects (i.e., depositions and subpoenas) were available to Pampu. For example, in *King v. Charleston Cnty. Sch.*

[3] Similar to *Pampu,* the plaintiff in *Ross* argued on appeal that the APA was violated because he was refused a deposition and a subpoena. *See Ross,* at 64, 492 S.E.2d at 69. The supreme court determined that the plaintiff's rights were not substantially prejudiced by this refusal. *Id.*

Dist., the United States District Court for the District of South Carolina concluded that a "quasi-judicial hearing before the Charleston County School District Board of Trustees pursuant to the South Carolina Teacher Employment and Dismissal Act" was entitled to preclusive effect. 664 F. Supp. 2d 571, 580 (D.S.C. 2009); *see also Pettiford v. S.C. State Bd. of Ed.*, 218 S.C. 322, 344, 62 S.E.2d 780, 790 (1950) (finding that a school board disciplinary hearing resulting in the termination of a faculty member constituted a quasi-judicial proceeding). In *King*, the court noted that the plaintiff received substantial due process rights before the school board, including the first to produce witnesses, the right to cross-examine, the right to present defenses, and the right to counsel. *Id.*

Here, as authorized by statute, Clemson's OCES provided Pampu not only the right to retain counsel, but also the right to be notified of the proceedings, the right to participate in the proceedings, the right to notice of the findings of the agency, and the right of appeal. (R. 375-77; R. 391-99). Pampu received notice of the hearing, retained counsel, participated in the proceedings with the assistance of counsel and was notified of the agency finding. (R. 342; R. 344; R. 2394, lines 2-18). Pampu exercised his right to appeal the Hearing Board's decisions on two levels, to the Vice President of Student Affairs and then to the President of the University. (R. 2395, lines 2-4, 2396, line 24 - 2397, line 6; R. 348-360; R. 3080-83; R. 3092-95; R. 3115). Because OCES is a part of Clemson, authorized to enforce institutional disciplinary actions for alleged sexual assaults through contested cases, it is a state agency authorized by law to determine contested cases and its findings are binding upon Pampu.

III. Pampu's failure to exhaust remedies regarding Clemson's findings should weigh in favor of precluding Pampu from relitigating the issue of Ms. Wingo's consent.

To the extent Pampu believed certain protections of the APA were not provided, he could have appealed those issues to the state courts of South Carolina. *See* S.C. Code Ann. § 1-23-380.

Pampu should not be allowed to collaterally attack the findings of OCES via this defamation action after failing to seek judicial review of the OCES findings. *See Bennett*, 305 S.C. 310, 408 S.E.2d 230 (finding that a claimant's failure to seek judicial review of an agency's ruling barred his subsequent suit because by not seeking judicial review of the decision, he abandoned his only opportunity to gain a favorable ruling on the issues also raised in the subsequent suit); *McClellan v. Bd. of Regents of State Univ.*, 921 S.W.2d 684 (Tenn. 1996) (noting that allegedly procedural issues in a hearing before the university's board should and could have been raised on appeal).

Pampu cites *Thomas Sand Co. v. Colonial Pipeline Co.*, 349 S.C. 402, 563 S.E.2d 109 (Ct. App. 2002). (Pampu Pet. for Reh'g at 12), asserting it supports his positions. In *Thomas Sand Co.*, a mining company brought a negligence action against a pipeline owner for economic damages arising from a diesel spill, alleging Department of Health and Environmental Control ("DHEC") denied a permit to mine a sand deposit as a result of the spill. *Id.* at 406–07, 563 S.E.2d 110–11. The Court of Appeals found a mining company was not required to exhaust administrative remedies before bringing a negligence action against the pipeline owner because "a litigant need not exhaust administrative remedies where 'there are no administrative remedies for the wrongs it assertedly suffered.'" *Id.* at 413, 563 S.E.2d at 115. In contrast with the mining company in *Thomas Sand Co.*, Pampu had remedies under the APA available for the wrongs he allegedly suffered, and he did not exhaust them. Instead, he sued Clemson in federal court and asserted claims arising from purported deficiencies in the Title IX proceeding, and he resolved those claims through the Clemson Settlement. (R. 19; R. 3191).

IV. The Court properly concluded that OCES found Ms. Wingo lacked consent.

Following the hearing, Clemson OCES sent Pampu the initial decision letter memorializing the findings of the board that Pampu did commit "Sexual Misconduct," which is by definition

nonconsensual conduct,[4] and the letter unequivocally states that, "[b]ased on the information presented, the hearing board found that [Ms. Wingo] was incapacitated and unable to give consent which you should have reasonably known."[5] (R. 345–47; R. 2106, lines 1–19; R. 2113–2114; R. 3075–77). The finding that Ms. Wingo was incapacitated and unable to consent to the sexual encounter was necessary to support OCES's finding. To determine if Pampu committed "Sexual Misconduct," OCES had to determine whether the incident was consensual; it conclusively found that it was not. Therefore, a finding that Ms. Wingo was incapacitated and unable to give consent was necessary to the judgment that Pampu committed Sexual Misconduct.

It is true that OCES did not make a charge of "Sexual Assault and/or Battery," defined to include "[a]ny attempted or actual act of nonconsensual sexual intercourse" (R. 392), or "Rape," which is defined as the "carnal knowledge of a person without the consent of the victim including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical impairment," (R. 392). Because the act of sexual intercourse was not in dispute,[6] the only issue to be decided by Clemson and OCES was one of consent. Although, for reasons not appearing in the record, Clemson did not *charge* Pampu with rape or sexual assault, non-consensual sexual intercourse meets the definitions of rape and sexual assault. The fact that he was not so charged is thus of no moment to this matter based on

[4] "Sexual Misconduct" is defined by Clemson's Anti-Harassment and Non-Discrimination Policy as "any other nonconsensual conduct of a sexual nature." (R. 393). Pampu concedes he had sexual intercourse with Wingo.

[5] Under the Anti-Harassment Policy, in order to find a person failed to receive consent from a person impaired and unable to give consent "due to the influence of alcohol," "there must be a finding that the complainant was unable to consent and a finding that the respondent knew or had reason to know the complainant was unable to consent." (R. 394-95).

[6] Pampu has never denied engaging in sexual intercourse with Ms. Wingo on the night at issue. (R. 1530, line 16 - 1531, line 16). "Rape" as defined above, thus applies as a term because of the temporary impairment and corresponding lack of consent, coupled with admitted sexual intercourse.

the necessary factual finding made by OCES in the initial decision letter and later affirmed by Clemson on appeal of lack of consent.

While it is true that he was not charged with violating Clemson's policy on "Sexual Assault" and "Rape," all of the factual predicates for such a finding were present (*i.e.*, nonconsensual sexual intercourse). Substantial truth is the most obvious defense to defamation. Pampu cannot escape the admitted truth that he had sexual intercourse with Ms. Wingo and the truth that OCES explicitly determined "[Ms. Wingo] was incapacitated and unable to give consent." (R. 345–47). Courts have addressed nomenclature in the defamation context and generally do not require that we all communicate technical legal principles with precision. *See Simonson v. United Press Int'l, Inc.*, 654 F.2d 478, 481–82 (7th Cir. 1981) (no defamation when word "rape" used even though crime was second-degree sexual assault because "rape," as understood in common usage, truthfully described the conduct involved); *Nanji v. Nat'l Geographic Soc'y*, 403 F. Supp. 2d 425, 433–34 (D. Md. 2005) (finding that use of "rape" instead of "more technically precise term, such as 'sexual assault' or 'sexual abuse,'" did not render article inaccurate, and collecting cases for proposition that "technical errors in legal nomenclature in reports on matters involving violation of the law are of no legal consequence" in defamation actions) (internal quotations omitted). Therefore, the conclusion that OCES, as a state agency, made finding that Ms. Wingo was incapacitated and unable to give consent was necessary to the judgment that Pampu committed Sexual Misconduct disposes of Pampu's defamation claim.

V. Pampu's defamation claim improperly seeks to relitigate the OCES's findings and pursue damages that he has already recovered from the Clemson Settlement.

In the Petition for Rehearing, Pampu argues because "he is not seeking to attack the OCES decision or relitigate the OCES findings through his defamation claim, which is solely based on statements made outside the OCES process," OCES's findings should not have a preclusive effect.

(Pampu Pet. for Reh'g at 6). He further argues the damages he recovered in the Clemson Settlement are separate from the damages he seeks from his defamation claim in the present action. (*Id*. at p.13). Yet, in the Petition for Rehearing, Pampu also argues that collateral estoppel should not bar his defamation claim because "[t]he evidence also showed that E. Wingo and Gahagan both knew that the sexual encounter with Pampu was consensual and that they lied to Clemson about the nature of the encounter during the disciplinary process." (*Id*. at p.11).

Pampu's alleged damages were directly related to the Title IX process. For example, Pampu testified that he was unable to graduate from Clemson and that he had to alter his career plans because he could not get into dental school due to his "removal" from Clemson. (R. 1461–64). Pampu's vocational expert testified that Pampu would have gotten into dental school "but for" his removal from Clemson. (R. 1939–43; R. 1948–49). The expert did not place a specific monetary value to this alleged harm, as the trial court did not permit the testimony, and instead generally testified that Pampu suffered a reduced lifetime earning capacity based on the "removal" from Clemson. (R. 1939–43). In his suit against Clemson, Pampu sought "damages to physical well-being, emotional and psychological damages, damages to reputation, past and future economic losses, loss of educational and career opportunities, and loss of future career prospects" Compl., *Doe v. Clemson Univ.*, No. 8:16-CV-1957, at "Wherefore" (i)–(vi) (D.S.C. Jun. 15, 2016). In his suit against the Wingos and Gahagan, Pampu seeks: "damages to physical well-being, emotional and psychological damages, damages to reputation, past and future economic losses, loss of educational and career opportunities, and loss of future career prospects." (R. 69).

Based on the testimony and arguments at trial, Pampu directly and repeatedly tied the allegedly defamatory statements to his removal from Clemson. Pampu's counsel often conflated the issue of defamation reputational damages with the Clemson suspension while addressing the

jury. For example, during the opening statement Pampu's counsel argued that "[Pampu's] defamation claim is actually based on defendants' false statements to at least 20 other people calling him a rapist. Because of defendants' actions, [Pampu] will be required to disclose and self-report ***his removal from Clemson*** for the rest of his life whenever he applies to another school or applies to certain jobs. His dreams of becoming an orthodontist will never happen because of defendants' irreversible actions." (R. 1416, line 18 –1417, line 2 (emphasis added)). In the same vein, during closing arguments Pampu's counsel claimed that, "[t]he reason [Pampu] cannot fulfill his intended career goal of being an orthodontist is not because of Clemson, but for [Ms. Wingo and Gahagan's] statements, ***Clemson would not have kicked him out."*** (R. 2235, lines 3-6 (emphasis added)).

The ultimate decision to suspend Pampu from Clemson was solely based on comments, statements, and evidence from *within* the Title IX process. There is no suggestion that OCES based its decision on anything other than the testimony and evidence uncovered during the Title IX investigation and presented during the Title IX hearing. It was Clemson's decision, and its decision alone, to suspend Pampu. Pampu based his alleged damages solely on Clemson's decision to suspended him from school based on Title IX process and findings.[7] Therefore, Pampu's arguments based on the proposition that "he is not seeking to attack the OCES decision or relitigate the OCES findings through his defamation claim" are meritless.

VI. The Court need not address the statements by Mr. Wingo because the finding of the preclusive effect of the OCES decision and remand for the entry of JNOV on the defamation claim is dispositive.

The Court declined to address the Wingos' remaining issues because the remand for the entry of a JNOV on the defamation claim and affirmance of the JNOV on the civil conspiracy

[7] Pampu and Clemson agreed to reaffirm the findings of the Title IX process in the Clemson Settlement, which meant the findings stayed on his record.

claim are dispositive. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing that an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

VII. The Court Properly Affirmed the Circuit Court's Granting JNOV on the Civil Conspiracy Claim.

The Court properly affirmed the circuit court's granting a JNOV on Pampu's civil conspiracy claim. Pampu argues the Court's decision was improper for four reasons: (1) the reliance on Section 27 of the Restatement Second of Judgments, (2) the Court's conclusion that Pampu abandoned his argument that Clemson knowingly accepted and acted on false evidence, (3) the Court's conclusion that Pampu did not prove damages proximately resulting from the alleged conduct of Ms. Wingo and Gahagan, and (4) the Court's conclusion that a court may deny a motion for a directed verdict and then grant a JNOV motion on the same issue. As set forth below, each of Pampu's arguments fail to establish the Court misapprehended or overlooked specific points when deciding the appeal.

First, the Court properly relied on Section 27 of the Restatement Second of Judgments, as outlined above, which also precludes Pampu from establishing that Ms. Wingo and Gahagan committed an "unlawful act" by allegedly causing Clemson to breach its contract with Pampu.

Second, the Court properly concluded that Pampu abandoned the argument that Clemson's imposition of sanctions was a breach of Clemson's contractual duties to him, because Pampu failed to cite legal authority to support his conclusion. In the Petition for Rehearing, Pampu cites to the same baseless conclusions without citing supporting authority on the issue. *See Glasscock*, 348 S.C. at 81, 557 S.E.2d at 691 ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").

Third, Pampu relies on *Mills v. S.C. State Ports Auth.*, 435 S.C. 213, 865 S.E.2d 910 (Ct. App. 2021), for the proposition that a jury does not need a specific calculation to reach a non-

speculative damages amount. However, *Mills* is easily distinguishable from the present case. In *Mills*, the jury was left to determine the amount of lost wages experienced by the plaintiff. 435 S.C. at 228, 865 S.E.2d at 917. Critically, the jury was presented with testimony from the plaintiff that "he lost about $12,000 during the nine weeks he was out of work." *Id.* at 229, 865 S.E.2d at 918. The jury in *Mills* was easily able to use this figure to calculate a non-speculative damages figure for lost wages. Pampu did not present the jury with a single monetary figure regarding Pampu's lost income; instead, the jury was given extreme generalizations that Pampu would earn "significantly less" over his lifetime as a salesman as compared to an orthodontist. (R. 1959, lines 3–7).

Finally, Pampu argues that the trial court is unable to grant JNOV based on a change in reasoning from an earlier directed verdict denial. By asserting this argument, Pampu ignores the plain language and purpose of 50(b), SCRCP. *See Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 496 (Ct. App. 2006) ("[A] motion for JNOV under Rule 50(b), SCRCP[,] is a renewal of a directed verdict motion."). A JNOV motion would not exist if it could not be granted.

CONCLUSION

For the foregoing reasons, Pampu has failed to establish under Rule 221, SCACR, that the Court misapprehended or overlooked specific points when deciding the appeal. Accordingly, the Court should deny Pampu's Petition for Rehearing.

(Signature Page Follows)

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July 14, 2025

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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

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2022-001332

Andrew Pampu, ...	Appellant-Respondent,
v.	
Erin Wingo, David Wingo, and Colin J. Gahagan.....	Respondents-Appellants.

PROOF OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Erin Wingo and David Wingo, do certify that I have served all counsel of record in this action with a copy of the document(s) set forth below under Supreme Court Order dated April 24, 2024:

Pleading(s): Respondents-Appellants Erin Wingo and David Wingo's Return to Appellant-Respondent's Petition for Rehearing

Served: **Via E-Mail**

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