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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM PICKENS COUNTY

Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2025-001851

Andrew Pampu..... Petitioner,

v.

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

**RESPONDENT, COLIN J. GAHAGAN'S REPLY TO
PETITION FOR WRIT OF CERTIORARI**

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Pursuant to Rule 242 of the South Carolina Appellate Court Rules, a writ of certiorari is to be granted only upon a showing of the existence of special and important reasons. Among the factors considered are:

- 1) the existence of a novel issue of law;
- 2) the existence of a dissent in the Court of Appeals decision;
- 3) whether the decision of the Court of Appeals conflicts with a prior decision of the Supreme Court;
- 4) whether there are substantial constitutional issues directly involved; and
- 5) where a federal question is included upon which the Court of Appeals decision is in conflict with a decision of the U.S. Supreme Court.

None of these factors exist with regard to this case, although Appellant argues that there are novel issues.

Questions Presented for Review

- I. DID THE COURT OF APPEALS CORRECTLY DETERMINE THAT THE DECISION OF THE CLEMSON OFFICE OF COMMUNITY AND ETHICAL STANDARDS THAT APPELLANT HAD ENGAGED IN NON-CONSENSUAL SEX WITH ERIN WINGO COLLATERALLY ESTOP APPELLANT FROM ASSERTING OTHERWISE?
- II. IN THE ABSENCE OF PROOF OF AN OVERT ACT TO FURTHER AN ALLEGED AGREEMENT TO EXPEL APPELLANT FROM CLEMSON OR PROOF OF NON-

SPECULATIVE DAMAGES ALLEGEDLY SUSTAINED, DID THE COURT OF APPEALS CORRECTLY AFFIRM THE TRIAL COURT'S DECISION TO GRANT A JUDGMENT N.O.V. REGARDING THE ACTION FOR CIVIL CONSPIRACY?

INTRODUCTION

Appellant has petitioned the Court to review the Court of Appeals opinion which overturned a judgment against Respondents based on defamation and affirmed the trial court which granted judgment n.o.v. with regard to Appellant's actions for civil conspiracy. Appellant sets forth a long factual recitation of 'the events leading' to litigation, essentially requesting the court to reconsider those facts in order to determine if a write of certiorari should be granted.

However, a reconsideration of those facts is unnecessary with regard to the action for defamation, in which Appellant has asserted that he was wrongfully accused of rape. (ROA 31-32). He does not contest that he had sexual relations with Erin Wingo, but does assert that, contrary to the finding of the Clemson Office of Community and Ethical Standards, that the sexual interaction was consensual. (ROA 3077). The issue presented to the Court of Appeals was whether the finding of the Office of Community and Ethical Standards was binding due to collateral estoppel. If so, no further consideration of the underlying facts need to be considered with regard to the action for defamation, since the allegation of "rape" would be taken as true. (See Clemson University Anti-Harassment and Non-Discrimination Policy § II.c.1. (defining "rape" as "[t]he carnal knowledge of a person without the consent of the victim"); §16-3-654(1), S.C. Code; State v. Lindsey, 355 SC 15, 583 SE2d 740 (2003)). As a result, the only determination to be made was

whether the analysis of the Court of Appeals was correct given the procedural history of this matter.

With regard the decision of the Court of Appeals on the action for civil conspiracy, the standard of review requires the Court to view the evidence and all reasonable inferences in a light most favorable to the non-moving party. RFT Management Co. V. Tinsley & Adams, LLP, 339 SC 322, 732 SE2d 166 (2012). In the instant case, there were no reasonable inferences to be drawn which would create a jury issue as to whether there was a factual question regarding the existence of an overt act to carry out a conspiracy or proof of any non-speculative damages arising from the alleged conspiracy.

PROCEDURAL BACKGROUND

Appellant, a Clemson student, was accused by the Clemson Office of Community and Ethical Standards of having engaged in non-consensual sex with Erin Wingo. (ROA 3075-76). After giving Appellant notice of the charges, an administrative hearing was held. (ROA 3077). The Appellant was found to have engaged in non-consensual sex and suspended from school. He appealed that finding internally through Clemson, which upheld the finding on two occasions. (ROA 3092, 3115). Rather than challenge the finding through an appeal to the courts, Appellant opted to sue Clemson in federal court. That litigation was settled with an agreement that the finding of the Clemson Office of Community and Ethical Standards was to be reinstated.

Notwithstanding that procedural history, Appellant took the position that he was not bound by the administrative finding and that he was free to sue Respondents for defamation and civil conspiracy. The Court of Appeals ruled otherwise. It determined

that Appellant was precluded from recovery by collateral estoppel as to the action for defamation. It also determined that Appellant had failed to prove the existence of an overt act causing damages of non-speculation damages necessary for recovery for alleged civil conspiracy. (Pampu v. Wingo, Op. No. 6112, filed June 11, 2025).

ARGUMENT

I.

DID THE COURT OF APPEALS CORRECTLY DETERMINE THAT THE DECISION OF THE CLEMSON OFFICE OF COMMUNITY AND ETHICAL STANDARDS THAT APPELLANT HAD ENGAGED IN NON-CONSENSUAL SEX WITH ERIN WINGO COLLATERALLY ESTOP APPELLANT FROM ASSERTING OTHERWISE.

A party claiming the preclusive effect of the doctrine of collateral estoppel in a civil action is required to prove that the particular issue in question was actually litigated in a prior action, that the issue in question was directly determined and that the issue was necessary to support the prior judgment. Aaron v. Mahl, 381 SC 585, 674 SE2d 482 (2009).

Appellant has argued that there was no actual litigation of this matter since the hearing before the Clemson Office of Community and Ethical Standards did not constitute a “contested case” and, even if it was a “contested case”, it did not adhere to the procedural requirements set forth in the Administrative Procedures Act (§§1-23-310 et seq.)

Section 59-105-40 of the South Carolina Code provides that "institutions of higher learning", such a Clemson University, are to provide procedures for institutional disciplinary actions in cases of alleged sexual assault. The action in this case by the Clemson Office of Community and Ethical Standards would fall under this statute. Subsection (B)(4) of that statute calls for procedures to be established when undertaking this type of disciplinary action. Since Appellant's legal rights, duties or privileges as a student at Clemson were to be determined by the Clemson Office of Community and Ethical Standards, the Clemson Office of Community and Ethical Standards administrative hearing falls squarely within the definition of "contested case" as provided by section 1-23-310(2) of the South Carolina Code.

Appellant goes on to argue that the procedures for "contested cases", as set forth in section 1-23-320 of the Administrative Procedures Act, have not been complied with. Any issue regarding non-compliance with statutory procedural requirements would necessarily have been dealt with on appeal of the Circuit Court of the Clemson Office of Community and Ethical Standards findings or through a direct action against Clemson. See §1-23-380; 59-105-40 (c), S.C. Code. Appellant had a choice of which road to follow when responding to the Clemson Office of Community and Ethical Standards holding. He could have appealed to obtain judicial review under section 1-23-380 upon exhausting administration remedies. In this case, administrative remedies were exhausted upon the final review by the Clemson Office of the President. Appellant opted not to utilize this avenue of relief and therefore waived his right to challenge the contested case procedures

followed by the Clemson Office of Community and Ethical Standards through that procedure.

However, Appellant had another option to challenge the holding of the Clemson Office of Community and Ethical Standards through direct litigation to enforce the procedures of the Clemson Office of Community and Ethical Standards that should have allegedly been utilized in determining if a sexual assault had occurred and what sanctions were to be imposed. See § 59-105-40 (C) S.C. Code. Appellant, in fact followed this route by directly suing Clemson in the U.S. District Court. Before a final trial or judicial resolution of that action was obtained, however, the matter was settled. (ROA 3190-93). Part of that settlement mandated that the decision of the Clemson Office of Community and Ethical Standards be reinstated, thereby upholding that agency's finding. (ROA 3191). As a result, all litigation which could have challenged the procedure utilized by the Clemson Office of Community and Ethical Standards was ended. As a result, its finding of non-consent by Erin Wingo was upheld.

Because the Office of Community and Ethical Standards decision held that Appellant had non-consensual sex with Erin Wingo, under the doctrine of collateral estoppel Appellant could not contend that he had been defamed by Respondents. Under collateral estoppel the finding of non-consensual sex is binding and treated as true. Since the statements regarding "rape" by Appellant were deemed true, there was no defamation upon which an award of damages could be based. McBride v. School District of Greenville County, 389 SC 546, 698 SE2d 245 (Ct. App. 2010). (Proof of defamation requires a Plaintiff to demonstrate that the statement was false).

II.

IN THE ABSENCE OF PROOF OF AN OVERT ACT TO FURTHER AN ALLEGED AGREEMENT TO EXPEL ANDREW PAMPU FROM CLEMSON OR EVIDENCE OF NON-SPECULATIVE DAMAGES ALLEGEDLY SUSTAINED, DID THE COURT OF APPEALS CORRECTLY AFFIRM THE TRIAL COURT'S DECISION TO GRANT A JUDGMENT N.O.V REGARDING THE FINDING OF A CURL CONSPIRACY?

To successfully prove the tort of civil conspiracy, a plaintiff is required to prove the following elements:

- 1) a consultation or agreement of two or more people;
- 2) to commit an unlawful act or to commit a lawful act by unlawful means;
- 3) through the commission of an overt act in furtherance of the agreement;
- 4) which proximately causes damages to the plaintiff.

Paradis v. Charleston County School District, 433 S.C. 562, 861 SE2d 774 (2021). The trial court ruled, and the Court of Appeals confirmed, that Appellant failed to prove the commission of an overt act (the utilization of the Clemson disciplinary process which proximately caused him to be suspended from school). With regard to the commission of an overt act, Appellant argues that Erin Wingo and C.J. Gahagan conspired to have him removed from Clemson. (Petition for Writ of Certiorari; p. 23.). They allegedly undertook to accomplish this goal by interfering with Appellant's contract with Clemson to obtain a college education. (Petition for Writ of Certiorari pp. 21-22). However, as noted by the Court of Appeals, this alleged wrongful act requires proof that Clemson breached that

contract as a result of Erin Wingo and C.J. Gahagan somehow bamboozling the Office of Community and Ethical Standards into making an incorrect decision.

It should first be noted that Clemson has an obligation under the South Carolina Campus Sexual Assault Act to implement a policy which would serve to deal with complaints of sexual assault. This policy was to include disciplinary actions to determine the existence of a sexual assault but also the appropriate discipline to be imposed. By undertaking this procedure, Clemson was actually adhering to a legislative mandate and not breaching its contract with the Appellant.

It should also be noted that the process was not started by either Erin Wingo or C.J. Gahagan. (ROA 928). In fact, C.J. Gahagan served only as a witness at the hearing. More importantly, Appellant moved to exclude evidence of the Clemson disciplinary proceedings in the civil action against Respondents. (ROA 1077-81). As a result, there is no evidence of any intervention or activity by Erin Wingo or C.J. Gahagan which served to cause the Office of Community and Ethical Standards to enter a decision contrary to the evidence and testimony presented.

Additionally, this argument by the Appellant attempts to introduce evidence of alleged intrinsic fraud in order to reverse the Office of Community and Ethical Standards decision. Intrinsic fraud typically includes such matters as perjury and forged documents. Rycraft v. Tanguery, 279 SC 76, 302 SE2d 327 (1985). In this instance, Appellant is arguing that either C.J. Gahagan or Erin Wingo committed perjury which led to the Office of Community and Ethical Standards decision. However, pursuant to Rycraft v. Tanguery, supra, intrinsic fraud may not be used as a basis for reversing a decision or judgment.

(The result is different with extrinsic fraud, which involves acts which prevent a party from presenting all of his or her case, where the party cannot protect his or her interest through the presentation of evidence or cross-examination).

Due to the absence of extrinsic fraud which prevented the Office of Community and Ethical Standards from fully considering evidence or testimony which would have rendered a different outcome for Appellant, there is no proof from Appellant of an overt act which led to a decision adverse to his interests. This is particularly true in light of the fact that there is no evidence establishing that the Office of Community and Ethical Standards was impacted by some false evidence in rendering its decision. In the absence of such proof, there is no evidence of a tortious interference with the contract between the Appellant and Clemson and therefore no wrongful act on which to base recovery for civil conspiracy.

The civil conspiracy action was also be properly dismissed due to the lack of adequate proof of damages. Any damages sustained by Appellant was necessarily based upon the testimony of his expert rehabilitation witness, Steve Shedlin. According to Steven Shedlin, Andrew Pampu had his earning capacity reduced due to his inability to enter dental school. (ROA 1949). This opinion is allegedly based upon the fact that notwithstanding his excellent grades, Appellant was unable to gain entrance to a dental school. Shedlin surmised that this could only be the result of the Appellant being dismissed from Clemson. (ROA 1949). However, this testimony is pure speculation since the expert never made contact with any of the schools which rejected Appellant, to determine the true reason for the rejection. (ROA 1973-74). In other words, the expert

was attempting to read the minds of the individual graduate school representatives without providing a true factual basis for this opinion. See Gray v. Southern Facilities, Inc., 256 SC 558, 18 SE2d 438 (1971) (Neither the existence, causation nor amount of damages can be left to conjecture guess or speculation).

Appellant also attempted to use Steven Shedlin to render an opinion as to the alleged amount Appellant would have lost in future earnings. However, this testimony was excluded in light of the fact that Steven Shedlin was not qualified as an expert in economics and could not make a reasonable evaluation of future lost income due to his inability to reduce the asserted amount to present value or explain his methodology of determining the amount of loss. (ROA 1955-58).

As a result, there was no expert testimony concerning the amount of damages allegedly sustained. However, Appellant attempts to avoid this shortfall in his proof of damages by arguing that proof of damages to a mathematical certainty is not required. While the Court in Whisenant v. James Island Corp., 277 SC 10, 281 SE2d 794 (1981) does recognize that proof of damages to a mathematical certainty is not required, it goes on to provide that in order for damages to be recoverable, there must be evidence which would enable a court or jury to determine the amount of damages to a reasonable certainty or accuracy.

What constitutes "reasonable certainty and accuracy" often depends upon the type of damages being considered. "Non-economic" damages such as pain and suffering, inconvenience or loss of companionship are often submitted to a jury with a wider discretion since there are no true standards by which those types of damages can be

measured or determined. However, the same is not true with "economic damages" such as medical expenses, education costs, lost earnings, loss of earning capacity or costs of repair since those types of damages are easily determined, often with a formula or factors which can be considered to more clearly determine the extent of a loss. See § 15-32-210 (3), S.C. Code (1976, as amended). With regard to these types of damages, expert testimony is often necessary to assist the jury in making its evaluation of damages. This is particularly true with regard to claims for future lost income. See, Brooks v. United States, 273 F. Supp. 619 (D.S.C. 1967). With a claim for future lost income, there must be evidence regarding a plaintiff's prospective earnings and work life expectancy reduced to present value. Id. In this case, there was no testimony regarding how much Appellant might earn, how long he might be expected to work, what costs might be associated with an orthodontist practice, what discount rate might utilize to bring the amount to present value, among other factors which would be necessary to estimate the future lost income with reasonable certainty. In the absence of such expert testimony, a jury verdict would be impermissibly based on speculation. As a result, the trial court was correct in granting a judgment n.o.v as was the Court of Appeals in affirming that decision.

CONCLUSION

Appellant has not presented any issue which presents a special or important matter, as indicated by Rule 242, SCACR, requiring this Court to review the Court of Appeals holding. In particular, the action for defamation is precluded by collateral estoppel due to prior rulings on the issue of non-consent which were not appropriately challenged. With regard to the action for civil conspiracy, there was no evidence of an

overt act by C.J. Gahagan leading to the adverse result of the Clemson Office of Community and Ethical Standards or any non-speculative damages suffered by Andrew Pampu. In light of this, Appellants' Petition for Writ of Certiorari should be denied.

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