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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No.: 2022-000674

Kevin Dion Hollinshead, Senior, ... Appellant,

v.

Thomas J. Bell, individually and as Executive Director of Charleston Coalition for Kids, Charleston Coalition for Kids, a nonprofit Organization, Angelica M. Colwell, Lee P. Deas, Godfrey A. Gibbison, Eric P. Strickland, Loren R. Ziff, Courtney S. Waters, Leeza D. Steward, and Teach for America, Inc. ..... Respondents.

RESPONDENTS' JOINT PETITION FOR REHEARING

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INTRODUCTION

Pursuant to Rule 221, SCACR, Respondents file this Joint Petition for Rehearing. Respondents request this Court reconsider its July 23, 2025, Order ("Order") wherein it reversed the trial court's dismissal of all claims and held that Appellant's *Second* Amended Complaint stated facts sufficient to constitute a cause of action for defamation. Respondents also request this Court reconsider its holding that the trial court should have allowed Appellant to amend his pleadings as to the causes of action for intentional infliction of emotional distress ("IIED") and civil conspiracy. The Court, without oral argument and in an unpublished memorandum opinion, reversed and remanded to reinstate a lawsuit that permits Appellant to file a *fourth* complaint against these same Defendants. Respondents respectfully contend the Court overlooked or misapprehended the following facts:

(1) Reviewing only the four corners of Appellant's Second Amended Complaint, Appellant did not state sufficient facts to survive a Rule 12(b)(6) motion as to his defamation claim.

(2) Allowing Appellant a fourth complaint against Respondents is not required by the interests of justice and would be clearly futile.

(3) If this Court determines Appellant's defamation claim may proceed and denies this Petition, any amendment of the IIED and civil conspiracy claims would be clearly futile.

LEGAL STANDARD

A petition for rehearing should be granted whenever it is shown that the Court has "overlooked" or "misapprehended" a point of fact or law. Rule 221(a), SCACR; *S.C. Coastal Conservation League v. Dominion Energy S.C., Inc.,* 432 S.C. 217, 219, 851 S.E.2d 699, 700 (2020) (granting petition for rehearing).

ARGUMENT

I. Reviewing only the four corners of Appellant's Second Amended Complaint, Appellant did not state sufficient facts to survive a Rule 12(b)(6) motion as to his defamation claim.

"The question to be considered is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief." *Williams v. Condon,* 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001). Based "solely upon the allegations set forth on the face of the complaint," that answer is no. *See Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995).

To prove defamation, generally a plaintiff must show: "(1) a false and defamatory statement concerning another, (2) an unprivileged publication to a third party, (3) fault on the part of the publisher, and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." *Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 580, 556 S.E.2d 732, 737 (Ct. App. 2001).

"[T]o prove fault in a defamation action, a plaintiff who is a public official or public figure must prove by clear and convincing evidence that the defendant acted with actual malice in publishing a false and defamatory statement about plaintiff." *Erickson v. Jones St. Publishers, LLC,* 368 S.C. 444, 467, 629 S.E.2d 653, 665 (2006). "The constitutional actual malice standard requires a public official to prove by clear and convincing evidence that the defamatory falsehood was made with the knowledge of its falsity or with reckless disregard for its truth." *Elder v. Gaffney Ledger,* 341 S.C. 108, 114, 533 S.E.2d 899, 902 (2000). When the alleged defamatory statement involves matters of public concern, the Free Speech Clause of the First Amendment to the United States Constitution abrogates the common law presumption of falsity, and "the ***plaintiff*** must prove the statement was false." *Parker v. Evening Post Pub. Co.*, 317 S.C. 236, 243, 452

S.E.2d 640, 644 (Ct. App. 1994) (emphasis added) (citing *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986)).

Here, Appellant, as a candidate running in a general election (R. p. 16, ¶17), appears to allege the following statements were defamatory[1]:

- [B]ut Kevin Hollinshead is using our money to help himself. Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars ($150,000) from a local HBCU and lied to cover it up.
- Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars ($150,000) from Benedict College.
- We can't have someone like that managing the tax dollars for our schools.

(R. p. 18, ¶¶38-40.)

Even presuming all well-pled facts to be true at this stage, Appellant has failed to set forth a valid claim for defamation sufficient to survive a 12(b)(6) motion. While the original briefing focused on many issues, there is no need to go beyond the four corners of the Second Amended Complaint to see the basis for the trial court's dismissal. Respondents request this Court focus on paragraphs 41, 43, 47, 51, 52, 54, 56, and 59 of Appellant's Second Amended Complaint. (R. pp. 18-20.) Specifically:

- Paragraphs 41 and 43 states that Appellant was sued by SAS [Student Assurance Services, Inc] in a lawsuit alleging Appellant "stole and unlawfully converted $144,677.75 of insurance premiums paid to [Appellant] for the benefit of SAS." (R. p. 18.)
- Paragraph 47 states the lawsuit alleged Appellant made "false statements and false representations to SAS." (*Id.*)
- Paragraph 51 states the lawsuit alleged Appellant was "misappropriating insurance premium checks paid by Benedict." (R. p. 19.)

[1] Respondents do not concede these were the verbatim statements published and adopt them only for purposes of this Petition.

- Paragraph 52 states the lawsuit alleged Appellant made "false statements to be relied upon by SAS so as that [Appellant] would have opportunity and time to convert premiums paid and funds belonging to SAS." (*Id.*)

- Paragraph 54 states the lawsuit alleged Appellant was engaging in "deceptive acts which were then repeated on numerous occasions, constituting a violation of the South Carolina Unfair Trade Practices Act." (*Id.*)

- Paragraph 56 states the lawsuit alleged Appellant was "misappropriating $144,677.75 of insurance premiums due to SAS." (R. p. 20.)

- Paragraph 59 states Appellant "confessed judgment to SAS for a total amount of $144,677.75" (i.e. for the same amount of money alleged by SAS to have been stolen and unlawfully converted). (*Id.*)

While Appellant takes issue with the fact he was sued by Student Assurance Services, Inc. rather than directly by Benedict (*Id.,* ¶ 58), in the Second Amended Complaint it was alleged in that lawsuit that Appellant was "misappropriating insurance premium checks paid *by Benedict."*[2] (R. p. 19, ¶51) (emphasis added).

Assuming the well-pled facts in the Second Amended Complaint to be true (i.e., that Appellant was sued by SAS for "misappropriating insurance premium checks paid by Benedict" and then confessed judgment), the statement that Appellant was successfully sued for stealing money from Benedict is not defamatory as it is true or substantially true. Under the substantial truth doctrine, "slight inaccuracies . . . are immaterial provided the defamatory charge is true in substance." Restatement Second, Torts § 581A Comment f (1977)); *see Anderson v. Stanco Sports Library, Inc.*, 542 F.2d 638, 641 (4th Cir. 1976) (interpreting South Carolina law and holding that minor inconsistencies in the alleged defamatory statements did not defeat the defense of substantial truth).

[2] Appellant admits the SAS Lawsuit involved a dispute over commissions earned because of health insurance to students enrolled in Benedict College. (Appellant's Initial Brief at p. 11.)

For the reasons stated, Respondents ask this Court to review the four corners of Appellant's Second Amended Complaint; reconsider its July 23, 2025, Order and affirm the trial court's dismissal of the defamation claim.

II. Allowing Appellant to file a fourth complaint against Respondents is not required by the interests of justice and would be clearly futile.

As to the IIED and civil conspiracy claims, this Court correctly held that "[Appellant] failed to put forth sufficient facts to support his civil conspiracy and IIED claims." (Order, p. 3.) However, this Court then held, "the circuit court erred when it did not allow [Appellant] to amend his complaint . . . before granting a 12(b)(6) motion." (*Id.*, p. 4.)

Our Supreme Court has exhibited a clear reluctance to afford litigants more than one bite of the proverbial apple. *See, e.g.*, *Landry v. Landry*, 430 S.C. 153, 164, 843 S.E.2d 491, 496 (2020) ("Normally, we are not inclined to provide litigants with another 'bite at the apple' in presenting their case."). However, the decision here affords Appellant an unprecedented fourth attempt to successfully plead his case. Rehearing is warranted because this Court overlooked or misapprehended that Appellant has already had three bites at the apple against these same Respondents by way of a complaint, amended complaint, and second amended complaint. (R. pp. 12-50.) Incorporating the points in subsection I, *supra*, and in subsection III, below, a fourth bite at the apple would be clearly futile as to all claims.

Moreover, the record shows the only request by Appellant to amend the Second Amended Complaint is on page 22 of Appellant's December 14, 2021, Memorandum in Opposition wherein Appellant includes a general paragraph about leave to amend but only requests the ability, if necessary, to amend the complaint in the *defamation* action as to Respondent Steward on the issue of whether she was acting in her individual capacity or within the scope of employment. (R. p. 307.) This requested amendment appears to have *already*

occurred by way of amendments in the Second Amended Complaint and, regardless, would not change the argument regarding defamation, *supra.* (R. p. 42, ¶¶31-32.) The merit of this request is seriously undermined by the fact that Appellant spends only one paragraph of his 23-page opposition motion addressing the civil conspiracy and IIED causes of action and does so in summary fashion. (R. p. 308.)

Under Rule 15(a), SCRCP, in pertinent part, ". . . a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given *when justice so requires and does not prejudice any other party*." *Id*. (emphasis added). "Courts have wide latitude in amending pleadings and, while this power should not be exercised indiscriminately or to surprise or prejudice an opposing party, the matter of allowing amendments is left to the sound discretion of the trial judge." *Hale v. Finn*, 388 S.C. 79, 87-88, 694 S.E.2d 51 (Ct. App. 2010) (citing *Mylin v. Allen-White Pontiac*, 281 S.C. 174, 180, 314 S.E.2d 354, 357 (Ct. App. 1984)).

Respondents contend that this Court's heavy reliance on the Supreme Court's decision in *Skydive Myrtle Beach, Inc. v. Horry County* is misplaced because that case concerns materially different facts. Unlike *Skydive*, Appellant has already been allowed to file three operative complaints, and the Court's decision here permits Appellant to file an unprecedented *fourth* complaint. *Cf. Skydive Myrtle Beach v. Horry Cty*., 426 S.C. 175, 180, 826 S.E.2d 585, 588 (2019) ("Skydive was—any plaintiff is—entitled to litigate the validity of its *original* pleading without having to convince the trial court of the merits of its underlying claim." (emphasis added)). Permitting Appellant to file a fourth complaint goes far beyond the confines of *Skydive*.

Significantly, the Court in *Skydive* noted "[i]n rare cases . . . a trial court may deny a motion to amend if the amendment would be clearly futile." *Skydive*, 426 S.C. at 182, 826 S.E.2d at 589.

Respondents submit that this is that rare case. Appellant is a public figure who is suing Respondents because he claims he was sued for stealing by SAS, not Benedict, although the Second Amended Complaint pleads that Appellant was sued for misappropriating insurance premium checks paid by Benedict. That lawsuit was successful, as Appellant alleges in his Second Amended Complaint that he confessed judgment for $144,677.75, the exact amount SAS claimed Appellant misappropriated. These well-pled facts within the four corners of the Second Amended Complaint run contrary to not only the defamation claim but also the IIED and civil conspiracy claims. In his Second Amended Complaint, the sole factual allegations in support of Appellant's IIED and civil conspiracy claims are the very same facts he asserts in support of his defamation claim. (R. pp. 47-49.)

As such, it was not an abuse of discretion by the trial judge to dismiss the complaint without allowing yet another amendment. The trial court clearly had the benefit of reviewing Appellant's two prior amendments. For the reasons above, a fourth attempt after three strikes would be clearly futile and not in the interest of judicial economy. A plaintiff should not have unlimited opportunities to properly plead a claim simply because a defendant points out the deficiencies in a motion to dismiss.

For these reasons, Respondents ask this Court to affirm the trial court's dismissal of Appellant's causes of action for IIED and civil conspiracy.

III. In the event this Court allows the defamation claim to proceed, an amendment of the civil conspiracy and IIED claims would be clearly futile.

a. Appellant cannot establish civil conspiracy as a matter of law, and any amendment would be futile.

In the event this Court denies the Petition for Rehearing as to the defamation claim, which Respondents contend would be error, allowing an amendment of the civil conspiracy claim

would be futile. In its Order, this Court found as a matter of law that Appellant's cause of action for civil conspiracy "failed to assert an overt act that was separate and independent from the defamation claim itself; and thus, his claim for civil conspiracy must fail as a matter of law." (Order, p. 4.) As the Order points out, "In a civil conspiracy claim, one must plead acts in furtherance of the conspiracy that are separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim." (Order, p. 4) (citing *Cricket Cove v. Ventures, LLC, v. Gilland*, 390 S.C. 312, 324-325, 701 S.E.2d 39, 46 (Ct. App. 2010)); *see also Paradis v. Charleston Cnty. Sch. Dist*., 433 S.C. 562, 573, 861 S.E.2d 774, 779-80 (2021) ("plaintiff's repetition of the same acts as the prior claims was insufficient to salvage [a conspiracy] claim.").) If the defamation claim goes forward, Appellant will have no facts to support a civil conspiracy cause of action that are separate and independent of the facts supporting the defamation cause of action.

For these reasons, if the Court denies the Petition for Rehearing as to the cause of action for defamation, Respondents ask this Court to dismiss Appellant's cause of action for civil conspiracy.

b. Appellant cannot establish an IIED claim as a matter of law, and any amendment would be futile.

Appellant's claim for IIED fails because the Second Amended Complaint does not adequately allege extreme or outrageous conduct or severe emotional distress.

A plaintiff bringing a claim of intentional infliction of emotional distress must establish that (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused

the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was severe so that no reasonable person could be expected to endure it. *Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981). At the very least, the tort is not available where "an action for defamation, the usual remedy to be employed against one who has [allegedly] published falsehoods, is available to [the plaintiff]." *Todd v. S.C. Farm Bureau Mut. Ins. Co*., 283 S.C. 155, 173, 321 S.E.2d 602, 613 (Ct. App. 1984), quashed on other grounds, 287 S.C. 190, 336 S.E.2d 472 (1985). The South Carolina Supreme Court has noted "the widespread reluctance of courts to permit the tort of outrage to become a panacea for wounded feelings rather than for reprehensible conduct." *Hansson v. Scalise Builders* of S.C., 374 S.C. 352, 357, 650 S.E.2d 68, 71 (2007) (citation omitted).

Even accepting the allegations of the Second Amended Complaint as true for purposes of the motion to dismiss, Appellant's claim for IIED falls well short of establishing a valid claim, and any amendment would be clearly futile. South Carolina case law imposes a high bar to establish a valid IIED claim. The conduct alleged here is comfortably shy of other conduct likewise found insufficiently extreme or outrageous as a matter of law. *See Gattison v. S.C. State Coll*., 318 S.C. 148, 152–55, 456 S.E.2d 414, 416–17 (Ct. App. 1995) (surveying cases).[3]

[3] For example, in *Ford*, the plaintiff alleged "a home buyer subjected the plaintiff, a realtor, to repeated public browbeatings, obscenities, and threats over a two-year period. In fact, he even entered her home without permission and verbally attacked her in front of guests." *Gattison*, 318 S.C. at 152, 456 S.E.2d at 416 (citing *Ford*, 276 S.C. at 162, 276 S.E.2d at 778). As discussed in *Gattison*, even false criminal allegations and lying, which Respondents vehemently contest occurred here, do not support an IIED claim. *See Folkens v. Hunt*, 290 S.C. 194, 204, 348 S.E.2d 839, 845 (Ct. App. 1986) (holding allegations that the plaintiff owed hundreds of thousands of dollars in taxes and filed fraudulent tax returns were insufficient to support an IIED claim); *Todd*, 283 S.C. at 173, 321 S.E.2d at 613 (noting violation of a state statute "does not import turpitude or outrageousness. Nor is lying, in and of itself, outrageous conduct").

This Court correctly determined that Appellant's IIED claim fails, but it erroneously permitted Appellant to amend his pleading when no set of facts can support Appellant's claim that he suffered emotional distress so severe that no reasonable person could be expected to endure it. Where, as here, "physical harm is lacking, the courts should look initially for more in the way of extreme outrage as an assurance that the mental disturbance claimed is not fictitious." *Hansson*, 374 S.C. at 356, 650 S.E.2d at 71 (citation omitted). Because no set of facts can overcome the demanding standard to support an IIED claim, this Court should dismiss Appellant's cause of action for IIED.

CONCLUSION

Therefore, for these reasons, this Court should reconsider its July 23, 2025 Order and affirm the circuit court's decision to dismiss this action.

Respectfully Submitted,

Dated: August 7, 2025

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PROOF OF SERVICE

I certify that I have served Respondents' Joint Initial Brief via Email and first-class, U.S. Mail, postage prepaid, upon the respective attorneys of record as properly addressed below this 7th day of August, 2025:

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