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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No. 2022-CP-10-0309
Appellate Case No. 2025-001650

Philip Woschenko, Appellant,

v.

Sonya Kurien and Kyle Snouffer, Defendants,
Of whom Sonya Kurien is the Respondent.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES

CODE SECTIONS

Am Jur

STATEMENT OF ISSUES ON APPEAL

1. Whether the issue of statutory immunity is properly preserved by Appellant;

2. Whether the conspiracy cause of action is now moot;

3. Whether Appellant submitted no evidence, or insufficient evidence, to overturn the trial court's rulings on the outrage claim; and

4. Whether the trial court correctly determined that the Respondent is entitled to immunity and privilege as a matter of law.

STATEMENT OF THE CASE

Appellant commenced this action on (EF) July 05, 2022 with a complaint sounding in defamation, outrage and conspiracy against two Defendants. Following answers, Respondent filed a Partial Motion to Dismiss on (EF) November 28, 2022. A hearing was held on (EF) July 19, 2023. The next day, (EF) July 20, 2023, the Hon. Debra R. McCaslin denied the motion without prejudice and ordered Appellant to provide a more definite statement of the defamation claims in an amendment, finding "…Plaintiff's defamation claims are vague and do not include sufficient facts for this Court to determine the relief that can be granted." Appellant amended his complaint on (EF) August 2, 2023. Respondent answered that pleading on (EF) August 15, 2023, denying the material allegations of the First Amended Complaint, and asserting numerous affirmative defenses, including Statute of Limitations, Privileges (Absolute and Conditional) and the Statutory Immunity afforded to permissive reporters. Respondent filed a (Second) Partial Motion to Dismiss on (EF) September 5, 2023 and a Motion for Summary Judgment (EF) March 20, 2024. A hearing was held on (EF) May 29, 2024. While the matter was under advisement, the Appellant settled with Co-Defendant Kyle Snouffer. (EF) June 6, 2025 "Proof of ADR". The Hon. Diane S. Goodstein issued

an order on the motions on (EF) August 1, 2024, that included granting Respondent summary judgment on Appellant's claims for Outrage and Conspiracy, and the challenged Defamation allegations. Appellant filed his Motion to Alter and Amend (Reconsideration) on (EF) August 7, 2024. Judge Goodstein denied the Motion per her Order of (EF) July 24, 2025.

STANDARD OF REVIEW

The Court of Appeals may affirm the trial court on any ground apparent in the record. Smalls v. Weed (Ct. App. 1987), 291 S.C. 258, 353 S.E.2d 154, *remanded on other grounds* 292 S.C. 408, 356 S.E.2d 843; Doe v. Doe (Ct. App. 1985) 286 S.C. 507, 334 S.E.2d 829; Cobb v. State (1985) 286 S.C. 92, 332 S.E2d 530; Hossenlopp v. Cannon (S.C. 1985 285 S.C. 367, 329 S.E. 2d 438, Westbury v. Bauer (S.C. 1985) 284 S.C. 385, 326 S.E. 2d 151, later proceeding (Ct. App.) 359 S.E.2d 515; State v. Johnson (1983) 278 S.C. 668, 301 S.E. 2d 138.

When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court: summary judgment is appropriate when there is no genuine issue of material fact such that the nonmoving party must prevail as a matter of law. Savannah Bank, N.A. v. Stalliard (2012) 400 S.C. 246, 734 S.E.2d 161; Fountain v. First Reliance Bank (2012) 398 S.C. 434, 730 S.E. 2d 305. The South Carolina Supreme Court has made clear that the proper standard under Rule 56(c) is the "the genuine issue of material fact". 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.").

ARGUMENT

I. BECAUSE APPELLANT FAILED TO PROPERLY PRESERVE THE ISSUE OF STATUTORY IMMUNITY, THE TRIAL COURT'S RULING SHOULD BE AFFIRMED

Judge Goodstein correctly noted in her Order denying reconsideration that Appellant "...did not move to alter amend (or reconsider) the Court's finding that Sonya Kurien had statutory immunity as a permissive reporter per S.C. Code Ann. §63-7-390, rendering the reconsideration of the granting of Summary Judgment moot." Order, EF July 24, 2025. Appellant only raised the issue of conditional privilege. Motion, EF August 7, 2024. While the original order's section on immunity falls under the headline of conditional privilege, the detailed discussion is on immunity. Order, EF August 1, 2024. Even though the two are distinct defenses, if a defendant is immune from all civil liability, it follows that the statements are additionally privileged. Therefore, it stands to reason that following the lengthy passage on immunity, there is also a ruling that summary judgment was granted on the basis of a conditional privilege.

An argument presented at a summary judgment hearing but not raised in a motion for reconsideration is not preserved. Metts v. Mims, 384 S.C. 491, 682 S.E.2d 813 (2009). South Carolina appellate courts do not recognize the "plain error rule," under which a court in certain circumstances is allowed to consider and rectify an error not raised below by the party. Elam v. S.C. Dept't of Transp., 361 S.C. 9, 602 S.E.2d 780 (2004). An appellate court may affirm the trial court on any ground apparent in the record. Smalls v. Weed, 291 S.C. 258, 353 S.E.2d 154 (Ct. App. 1987).

Effectively, the Court can end its inquiry here, because the immunity afforded per statute states that a permissive reporter "...is *immune from civil and criminal liability* which might otherwise result by reason of these actions." S.C. Code Ann. §63-7-310 (emphasis added). As such,

the Respondent is immune from all causes of action brought forth in this case. The trial court's Order should be affirmed.

II. BECAUSE APPELLANT SETTLED HIS CASE WITH THE CO-DEFENDANT, THE CONSPIRACY CAUSE OF ACTION IS MOOT

Appellant settled his claim with Co-Defendant Kyle Snouffer at mediation. ADR Report, EF June 6, 2025. By operation of law, this defeats the conspiracy cause of action because the count requires at least two tortfeasors.

An essential element of the tort of conspiracy is that it requires "...the combination or agreement of two or more persons..." Paradis v. Charlston Cnty. Sch. Dist., 433 S.C. 562, 861 S.E. 2d 774 (2021). There can be no conspiracy of one. Only one Defendant remains in this case, the Respondent. Therefore, the appeal of the grant of summary judgment has been mooted by Appellant's settlement with former Co-Defendant Snouffer.

III. BECAUSE APPELLANT SUBMITTED NO EVIDENCE, OR INSUFFICIENT EVIDENCE, TO SUPPORT HIS OUTRAGE CLAIM, THERE IS NO BASIS TO REVERSE THE TRIAL COURT'S RULING

South Carolina recognizes that "one's willful, malicious conduct proximately causing another's emotional distress may be actionable" as intentional infliction of emotional distress or the tort of outrage. Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776, (1981). Initially, it is for the trial court to determine whether the defendant's conduct may be considered so extreme and outrageous as to permit recovery, and only where reasonable minds might differ should the issue be submitted to the jury. Hainer v. Am. Med. Int'l, Inc., 320 S.C. 316, 465 S.E.2d 112, (Ct. App. 1995), *aff'd as modified*, 328 S.C. 128, 492 S.E.2d 103 (1997).

Significantly, Appellant presented only theory to combat summary judgment. The theory included Respondent made "allegations" following the S.C. Department of Social Services

categorization of investigative results of unfounded. The Appellant himself admitted as much in his deposition, excerpts of which beginning on page 91:

Q. Now, what is your proof that Sonya Kurien
25 intentionally or recklessly inflicted severe emotional
Page 92
1 distress on you?
2 MR. SLAVIN: Object to the form.
3 THE WITNESS: Can you repeat the question?
4 I want to make sure I understand.
5 BY MR. DeANTONIO:
6 Q. Sure. The objection will stand. But you
7 have included a cause of action called intentional
8 infliction of emotional distress.
9 A. Okay.
10 Q. So my question, naturally, as a lawyer is:
11 How did she intentionally or recklessly inflict severe
12 emotional distress upon you?
13 A. Once the charges were dismissed, she
14 should have not continued making the allegations.

Depos. of Philip Woschenko, pps. 91 and 92.

This is significant because it has been said that an action for outrage does not lie where the facts support a defamation action. See Evans v. Rite Aid Corp., 317 S.C. 154, 452 S.E.2d 9, (Ct. App. 1994) (Citing Judge Bristow's holding in the underlying action that the dismissal for the outrage cause of action was the law of the case).

"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, *supra.* The Appellant failed to meet this burden of showing a genuine issue of material fact to which the court could rule for a denial of summary judgment. The granting of summary judgment on the outrage claim should be affirmed.

IV. DESPITE APPELLANT'S FAILURE TO PRESERVE A CHALLENGE TO IMMUNITY, THE TRIAL COURT WAS CORRECT TO RULE RESPONDENT WAS PROTECTED AS A MATTER OF LAW BECAUSE OF IMMUNITY AND CONDITIONAL PRIVILEGE

The subject matter of the defamation allegations that were dismissed are referenced in paragraphs 19 and 20 of the First Amended Complaint. They concern events occurring on July 31, 2020, Mr. Woschenko arrived at Kurien's home unannounced to pick up his property. At the time, Kurien had sole use of the martial home and Plaintiff was not allowed on the property. Ex. 1 (Kurien Dep. 119:9-24). The visit by Mr. Woschenko was not coordinated by counsel nor was Defendant Kurien aware that Mr. Woschenko was coming to the property that evening. Ex. 1 (Kurien Dep. 119: 21-25, 120:1-6). Mr. Woschenko had contacted the police to be present when he went to retrieve his property on July 31, 2020. Ex. 3 (Woschenko Dep. 79:18-24). Mr. Woschenko had the children with him when he went to retrieve the property. Ex. 1 (Kurien Dep. 120:7-9). While Mr. Woschenko was retrieving the property, Daughter was attempting to exit Mr. Woschenko' s vehicle and run to her mother. Daughter was distraught, upset, and was trying to reach her mom. Seeing Daughter in this manner distressed Mother. Ex. 1 (Kurien Dep. 121:3-10). Kurien later contacted the Plaintiff to speak to and check on Daughter, which the plaintiff refused Kurien. Ex. 1 (Kurien Dep. 122:19-25; 123:1-3). Unable to speak with Daughter and feeling unnerved by Daughter's attempt to flee her father, Kurien contacted the consolidated call center to have a welfare check performed on Daughter. Ex. 4 (Tr. Of CCC Call); Redacted Audio File, Ex. 5. During the call, Defendant gave notice to the operator that Daughter had autism, that she (Daughter) had made prior allegations of abuse by her father (Appellant), and gave other pertinent information related to the request. Ex. 1 (Kurien Dep. 122:8-18); Ex. 4 (Tr. Of CCC Call 3:21-24); Redacted Audio File, Ex. 5.

A. Statutory Immunity

Judge Goodstein's Order details in compelling fashion why invoking statutory immunity was necessary and proper:

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).

...

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

B. Conditional Privilege

There are certain communications that give rise to privileges, which can be used as a defense in a defamation action. One such privilege is the conditional or qualified privilege. This privilege applies when the defamatory matter is published upon an occasion that makes it conditionally privileged, and the privilege is not abused. Kunst v. Loree, 424 S.C. 24, (Ct. App. 2018). The essential elements of conditionally privileged communication include good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only.

Under this defense, A person is not liable for the publication if the matter is published upon an occasion that makes it conditionally privileged and the privilege is not abused, and the Respondent must prove good faith, an interest to be upheld, a statement limited in its scope, a proper occasion, publication in a proper manner, and to the proper parties only (if it gives rise to privilege is the question of law for the court.). 50 Am. Jur.2d Libel and Slander §276 ; See also Harris v. Tietex Int'l Ltd., 417 S.C. 533 (Ct. App. 2016). In determining whether the communication was qualifiedly privileged, regard must be had to the occasion and to the relationship of the parties. When one has an interest in the subject matter of a communication, and the person (or persons) to whom it is made has a corresponding interest, every communication honestly made, to protect such common interest, is privileged by reason of the occasion. The statement must be such as the occasion warrants and must be made in good faith to protect the interests of the one who makes it

and the persons to whom it is addressed. Bell v. Bank of Abbeville, 208 S.C. 490, (1946); See also Kunst, *supra.*

As to the question of privilege, it is totally appropriate for a Court to find as a matter of law that a conditional privilege can be decided as a matter of law when there is an absence of abuse of the same. Our Supreme Court did just that in Swinton Creek Nursery v. Edisto Farm Credit, ACA, 326 S.C. 426, 483 S.E.2d 789 (S.C 1999) ("Here, the trial court correctly found as a matter of law that EFC established the existence of a qualified privilege and [326 S.C. 438] Plaintiffs failed to prove actual malice."). "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, *supra.* "A party opposing summary judgment 'must ... 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with 'specific facts showing that there is a genuine issue for trial. ' '..." *Id.*

The information given through the call to the CCC operator was made to address the issue of safety concern for Daughter. Reporting of the Incident, Daughter's disabilities and the previous allegations made by Daughter were necessary to identify the purpose for seeking a welfare check of Daughter by Kurien and provide the operator with information as to concern of Respondent and potential welfare of Daughter. Respondent Kurien made these statements in good faith, in reference to protecting the welfare of Daughter and made these statements to CCC operator.

Respondent Kurien offered the statements in good faith, in reference to a proper interest and duty, and made the statements to the proper parties and upon the proper occasion the statements made are privileged. The Appellant's evidence to show bad faith, based on the statements alleged in paragraphs 19 and 20 of the complaint, that the call was made to 911 and that the Respondent was claiming harassment, is shown to be false, as the call speaks for itself.

As the trial court noted, 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..."). *See also* Stasi v. Sweigert, 434 S.C. 239 (2021) ("a parent has a legal duty to care for and act in the best interest of his or her children.").

CONCLUSION

Respondent requests the Court affirm the decisions of the trial court below.

Respectfully submitted,

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