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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh

Case No. 2020-CP-04-00085
Appellate Case No. 2024-001911

Moats Construction, Inc. and Russell Moats,

Appellants,

v.

Anderson County, Rusty Burns, Matt Schell, and Holt Hopkins,

Respondents.

**RESPONDENTS RUSTY BURNS, MATT SCHELL AND HOLT HOPKINS
INITIAL BRIEF**

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STATEMENT OF ISSUES ON APPEAL

At the conclusion of the above captioned case, each of the individual Defendants were granted a directed verdict by the trial court on the Plaintiff's claims for defamation. As to the individual Defendant Rusty Burns ("Burns"), the Court, in granting his Motion for a directed verdict, ruled that the news story quoting Burns did not reflect a false statement or actual malice. As to the individual Defendant Matt Schell ("Schell"), the trial court granted a directed verdict based upon the two (2) year statute of limitations and the Court's finding of no defamation. The individual Defendant Holt Hopkins ("Hopkins") was granted a directed verdict based upon the fact that there was no evidence to show that he was involved in painting over Moats' logo on the on-site project sign. However, of the individual Defendants dismissed by the trial court, Burns is the only individual Defendant the Appellant has named as a party to this appeal. In other words, no appeal has been filed by the Appellant to the lower court's decisions as to Schell and Hopkins and, therefore, those claims against those individual Defendants are ended and are not a part of this appeal.

STATEMENT OF THE CASE

A. As an initial matter, it is the position of the Respondent Burns that the Appellants have failed to timely file a Notice of Appeal regarding the directed verdict which was granted during trial by the Trial Court to the Respondent Burns. The Notice of Appeal filed by the Appellants refers only to the appeal of the Order Granting a New Trial to the Respondent Anderson County issued by the Honorable R. Lawton McIntosh dated

October 14, 2024. No where in that Order is there any reference to the directed verdict motion granted by the trial court to Respondent Burns. The failure to timely file such a Notice of Appeal regarding the trial court's direction of verdict as to the Defendant Burns is fatal to the Appellant's appeal as to Defendant Burns and must result in the dismissal of the Appeal as to Burns. (Rule 203, South Carolina Appellant Court Rules).

B. As previously stated, the trial court granted a directed verdict to Respondent Burns based upon the fact that the Plaintiff did not establish any of the elements of defamation under South Carolina Law as none of the statements identified in deposition(s) or exhibit(s) contained any false and defamatory statements, (1) since almost all communication in this matter was between employees of Anderson County and could not be a publication to a third party; (2) the other persons included in the emails were persons employed by Anderson County working on the project and would not be a third party; and, (3) the Plaintiff did not show any fault on the part of Burns nor any damages resulting therefrom.

In the Appellant's Initial Brief, Moats continues to assert that his defamation claim(s) against Burns are based upon the following statements allegedly made by Burns which Appellant claims were false and defamatory: (1) that, while speaking with news media about the delays in the East West Project, Burns said in response to a question about delays, that "there have been disputes with the contractor which, are being resolved"; (2) that, Burns said that he was familiar with designs having to be changed; and, (3) the parties disputed whether the designs were correct and whether the sidewalk

could be poured in such a manner to meet ADA standards. Such an argument is pure nonsense and falls far short of meeting any of the elements of defamation under South Carolina law. The lower court correctly opined that the statements he made were truthful statements and saying that disputes with your contractor were resolved does not rise to the level of a defamatory statement.

In addition, the lower court reasoned that the only way to hold these individual defendants liable under §15-77-60(17) of the South Carolina Code of Laws is for there to be evidence that there was actual fraud, actual malice, an intent to harm or a crime of moral turpitude. The Court then determined that there was absolutely no such evidence in the record regarding any of these employees or representatives of Anderson County without which the individual employees or representatives of Anderson County must be dismissed, including Burns.

CONCLUSION

Based upon the above reasoning and authority, Appellants' failure to file a Notice of Appeal as to the lower court's granting of Defendant Burns' Motion for a Directed Verdict is fatal to Appellants' Appeal. Further, the trial court correctly determined that there was no evidence of defamation presented/shown in this case on the part of Defendant Burns and said defendant must therefore be dismissed as a party defendant pursuant to §15-77-60(17) of the South Carolina Code of Laws. For these reasons, it is respectfully submitted that the decision of the lower court must be upheld and this appeal should be dismissed as to Burns.

Respectfully Submitted,



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