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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

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

Appellate Case No.: 2025-002380

Unpublished Opinion No. 2025-UP-252
(Ct. App. filed July 23, 2025, withdrawn, substituted, and refiled October 29, 2025)

Kevin Dion Hollinshead, Senior, ...Respondent,

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. ..... Petitioners.

JOINT REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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ARGUMENT

This case warrants review because the Court of Appeals' decision permits a party to pursue a defamation claim arising out of a hotly contested election when no set of facts can alter what should be abundantly clear—the political advertisement is protected speech under the First Amendment because it is true or at the very least, substantially true.

Respondent's principal argument is remarkable. Respondent admits he confessed judgment in a lawsuit alleging he stole $144,677.75 in insurance premiums paid by Benedict College to Student Assurance Services, Inc. ("SAS"). When SAS questioned Respondent about outstanding unpaid premiums, Respondent allegedly misrepresented the facts, informing SAS that Benedict College was having "severe cash problems," despite that Benedict College submitted to him all premiums owed. (R. p. 269 ¶ 28; *see also* R. p. 43 ¶¶ 47, 52). What are unquestionably allegations of stealing and lying, Respondent incredulously refers to as a "commission dispute." The record clearly refutes this blatant mischaracterization.[1]

Respondent also erroneously contends that Petitioners ignore the standard of review. To be sure, Petitioners are cognizant of the applicable standard of review. Instead, it is Respondent who misrepresents his own complaint by claiming to this Court that certain allegations—which are nowhere to be found in the document—must be accepted as true. Specifically, in his Return, Respondent states, "As the Second Amended Complaint alleges, Respondent was involved in a commission dispute with SAS relating to commissions earned as a result of sales of health insurance to students enrolled in Benedict College." (Return, p. 10). Quite simply, there is no allegation in the Operative Complaint that the SAS Lawsuit was a simple "commission dispute."

[1] The SAS Lawsuit resulted in a promissory note and a confession of judgment. (R. pp. 307-08 ¶¶ 1.1, 2.1; R. pp. 313-14 ¶¶ 2-3, 5; *see also* R. p. 44 ¶¶ 59-60).

The complaint in the SAS Lawsuit also clearly contravenes that characterization; indeed, it alleges Respondent repeatedly stole money and lied and asserted claims for conversion, fraud, breach of contract, breach of contract accompanied by a fraudulent act, unfair trade practices, and unjust enrichment. (R. pp. 265-77). Nowhere in that complaint is there so much as a reference to a "commission dispute." Accordingly, Respondent's argument that this Court must accept as true that the SAS Lawsuit was simply a "commission dispute" must necessarily fail. *See, e.g*., *Todd v. S.C. Farm Bureau Mut. Ins. Co*., 283 S.C. 155, 172, 321 S.E.2d 602, 612 (Ct. App. 1984) (acknowledging a deferential standard of review still does not permit the record to be "embellish[ed] . . . by frequent flights into the fanciful"), *quashed on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (1985).

I. This Court should grant certiorari because the allegedly defamatory statements are true, substantially true, and permissible opinions.

Respondent asserts there is "nothing whatsoever" that warrants granting certiorari in this case. (Return, p. 8). Petitioners urge this Court to view the political ad, which accurately portrays the outcome of the SAS Lawsuit.[2] The relevant documents before this Court—the political ad, the complaint in the SAS Lawsuit, and the confession of judgment—demonstrate the complete and utter fallacy of Respondent's contention. These documents should all be reviewed at the Rule 12(b)(6) stage because Respondent repeatedly quoted them in his operative complaint. *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009).

Petitioners submit that review of these three documents unequivocally establish that Respondent's claims fail as a matter of law, even at the Rule 12(b)(6) stage. This is so because a

[2] A video of the political ad was served on all counsel of record and delivered to the Court on January 6, 2026. The video was provided to the circuit court and is identified on pages 380-82 of the record on appeal.

true or substantially true statement cannot give rise to a defamation claim as a matter of law. *Parker v. Evening Post Pub. Co.*, 317 S.C. 236, 243, 452 S.E.2d 640, 644 (Ct. App. 1994) (holding when the alleged defamatory statement involves matters of public concern, the First Amendment dictates that "the plaintiff must prove the statement was false") (emphasis added) (citing *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986)). The trial court did not err in dismissing this lawsuit when the only reasonable interpretation of the Operative Complaint is that the allegedly defamatory statements are true or substantially true.

As Petitioners noted in their Petition, Respondent appears to allege the following statements were defamatory:

- [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.[3]
- 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. 42, ¶¶ 38-40). Respondent confessed judgment in the SAS Lawsuit, admitted that he owed SAS $144,677.75, agreed to pay it back, and authorized the entry of judgment against himself and in favor of SAS. (R. pp. 307-08 ¶¶ 1.1, 2.1; R. pp. 313-14 ¶¶ 2-3, 5; *see also* R. p. 44 ¶¶ 59-60). Because the political ad accurately recounted the outcome of the SAS Lawsuit, the defamation claim fails. Respondent's reliance on the standard of review does not save him because the only reasonable interpretation is that the allegedly defamatory statements are true or substantially true.

[3] Respondent's Operative Complaint mischaracterizes this statement, as the political ad clearly says: "Hollinshead was successfully sued for stealing *nearly* one-hundred fifty thousand dollars…") (emphasis added).

Respondent contends the statements in the political ad tend "to impeach [his] honesty or integrity or reputation" because "stealing money is 'universally regarded as conduct which reflects adversely on a man's honesty and integrity.'" (Return, pp. 11-12) (quoting *State v. Al-Amin*, 353 S.C. 405, 425, 578 S.E.2d 32, 43 (Ct. App. 2003), *overruled on other grounds by State v. Broadnax*, 414 S.C. 468, 476, 779 S.E.2d 789, 793 (2015). But Petitioners are not to blame because Respondent admitted he was liable in the SAS Lawsuit. (R. p. 313).[4] The statement that Respondent was "successfully sued" in a lawsuit that alleged he stole "nearly $150,000" is accurate, and therefore, questions about Respondent's integrity or reputation are due to his own conduct and cannot form the basis of a defamation claim. *See Kennedy v. Richland Cty. Sch. Dist. Two*, 428 S.C. 98, 130, 833 S.E.2d 414, 431 (Ct. App. 2019) (emphasizing that "the tort of defamation allows a plaintiff to recover for injury to his or her reputation *as the result of* the defendant's communications to others of a false message about the plaintiff") (quoting *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 484, 514 S.E.2d 126, 133 (1999)).

Further, Respondent's attempt to seize on a single phrase in the political ad—"our money"—to suggest he was defamed because he did not steal from taxpayers also fails as a matter of law. In essence, Respondent argues the court of appeals' decision should stand because although the confession of judgment proves he was successfully sued for stealing nearly $150,000, the alleged theft involved private and not public money. This inconsequential hairsplitting over the source of the money is precisely the type of statement that is protected by the substantial truth doctrine. Under the substantial truth doctrine, "slight inaccuracies . . . are immaterial provided the defamatory charge is true in substance." Restatement Second, Torts § 581A, cmt. f (1977)); *see*

[4] The confession of judgment refers to Hollinshead Group Insurance, LLC and Kevin Hollinshead as debtors and provides, "Debtors are liable to Student Assurance in the amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 ($144,677.75) Dollars." (R. p. 314).

Anderson v. Stanco Sports Library, Inc., 542 F.2d 638, 641 (4th Cir. 1976) (interpreting South Carolina law and holding the substantial truth doctrine applied where an article contained "inconsequential embellishments made by the author to add color or interest to the article" that did not cause the plaintiff's "'good name' to be sullied any more than it already had been" by virtue of his conviction).

Finally, the statement made by Petitioner Leeza Steward that "[w]e can't have someone like that managing the tax dollars for our schools" is an opinion that cannot serve the basis of a defamation claim. The Court of Appeals' decision resurrects a lawsuit wherein the only factual allegations against Petitioner Steward is that she appeared in the political ad and expressed an opinion similar to opinions that appear in virtually every political ad.[5]

Expressing one's political opinion is the cornerstone of a free and open debate in a political election. *George v. Fabri*, 345 S.C. 440, 454, 548 S.E.2d 868, 875 (2001) ("The considerations which led to the formulation of the *New York Times* rule 'apply with special force to the case of the candidate.'" (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 274 (1971))). Accordingly, "anything which might touch on an official's fitness for office is relevant." *Id.* (quoting *Garrison v. Louisiana*, 379 U.S. 64, 77 (1964)). "In public debate our own citizens must tolerate insulting, and even outrageous, speech in order to provide 'adequate 'breathing space' to the freedoms

[5] Nearly every political ad expresses some version of "we can't afford to elect this person." Taken to its logical extreme, if permitted to go forward, the defamation claim against Petitioner Steward means that every participant in a political advertisement is at risk of being sued for defamation. The fact that a defendant may ultimately prevail is of little comfort. *See, e.g.*, *Biro v. Condé Nast*, 883 F. Supp. 2d 441, 457 (S.D.N.Y. 2012) ("[T]here is 'particular value' in resolving defamation claims at the pleading stage, 'so as not to protract litigation through discovery and trial and thereby chill the exercise of constitutionally protected freedoms.'" (quoting *Armstrong v. Simon & Schuster, Inc*., 649 N.E.2d 825, 828 (1995))).

protected by the First Amendment.'" *Boos v. Barry*, 485 U.S. 312, 322 (1988) (quoting *Hustler Magazine, Inc. v. Falwell*, 485 U. S. 46, 56 (1988).

The Court of Appeals' decision permits Respondent and any other candidate to bring a lawsuit when an ad contains an opinion about his fitness for political office. *Harte-Hanks Commc'ns v. Connaughton*, 491 U.S. 657, 687 (1989). Respondent should not be permitted to take a legal position contrary to his own actions in confessing judgment nor should his attempt to mischaracterize the record before this Court be countenanced. The trial court's dismissal of this lawsuit at the 12(b)(6) stage was correct and should be reinstated.

II. Any amendment to Respondent's civil conspiracy and intentional infliction of emotional distress claims would be futile.

Respondent expends much effort and ink in focusing on mathematics while ignoring the key holdings in *Skydive Myrtle Beach v. Horry County*, 426 S.C. 175, 180, 826 S.E.2d 585, 588 (2019). In *Skydive*, this Court concluded, "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." *Id.* While it is true that Respondent did not raise his civil conspiracy and intentional infliction of emotion distress ("IIED") claims until the Operative Complaint, the Court of Appeals has ostensibly interpreted *Skydive* as permitting a litigant a pleading do-over at any stage of the case. Petitioners submit this represents an improper extension of this Court's decision and supports certiorari review.

Respondent also erroneously claims that Petitioners' position, if accepted, would place the trial court in the role of "soothsayer." (Return, p. 18). While this Court noted the difficulty in conducting the futility analysis without the benefit of a proposed amended complaint, Respondent's characterization is wrong because that difficulty does not exist here. *Skydive* did not

alter the legal principle that a motion to amend may be denied if the amendment would be clearly futile. *Id.* at 182, 826 S.E.2d at 589.

Respondent ignores the following key component of this Court's decision in *Skydive*, and the Court of Appeals followed suit: "[A]n appellate court *must* consider the merits of an amendment to a complaint that in fact failed to state a claim, but was improperly dismissed 'with prejudice' without granting leave to amend, in determining whether to remand to permit the plaintiff to amend." *Id.* at 183 n.3, 826 S.E.2d at 589 n.3 (citing *Spence v. Spence*, 368 S.C. 106, 130, 628 S.E.2d 869, 881-82 (2006) (emphasis added))). The Court of Appeals' opinion does not contain any analysis of futility and instead wrongly faults the trial court for dismissing this action with prejudice without seeing a proposed amendment.

This Court should grant certiorari to undertake the analysis that the Court of Appeals failed to do because there is no question that an amendment would be clearly futile. First, Respondent never provided any new allegations supporting his claims, and therefore, remand was improper. *Spence*, 368 S.C. at 131, 628 S.E.2d at 882 (upholding 12(b)(6) dismissal with prejudice when the plaintiff failed to present any new factual allegations to show amendment would not be clearly futile). Second, Respondent cannot establish a civil conspiracy or IIED claim as a matter of law. There is nothing illegal nor improper about producing a political ad that accurately reflects publicly filed court documents. To hold otherwise would violate the First Amendment. Additionally, there is no question that permitting an amendment of the IIED claim would be clearly futile. Petitioners reiterate "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). Petitioners acknowledge the futility

analysis generally does not turn on whether a claim is likely to succeed, but the record in the case leaves no doubt that this case is far removed from a viable IIED claim.

CONCLUSION

This Court should grant certiorari because the Court of Appeals erred in determining that Respondent sufficiently alleged facts supporting a defamation claim. Respondent's efforts to reduce the SAS Lawsuit to a simple "commission dispute" and then assert that this Court must accept that characterization as true should be rejected. The trial court correctly dismissed this lawsuit, and Petitioners request the Court grant certiorari, reverse the Court of Appeals, and end this litigation.

Respectfully submitted,

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