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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellate Case No. 2025-0001468

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Patrick C. Fant, III, Circuit Court Judge

Cindy Barnette Camp,

Appellant

v.

Christopher Miller,

Respondent

REPLY BRIEF OF APPELLANT CINDY BARNETTE CAMP

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This issue is fully briefed in Argument II of Appellant's Initial Brief. Appellant concedes that the discovery rule has not been applied to defamation claims in South Carolina. *Jones v. City of Folly Beach,* 326 SC 360, 483 SE2d 770 (Ct. App. 1997). But it should be, and thus she argues and will argue against precedent. Respondent does not offer any compelling reason for defamation to remain the *only* South Carolina cause of action to which the discovery rule does not apply. There is no such reason.

II. REPLYING TO RESPONDENT'S ARGUMENTS II AND III - THAT ALL OF APPELLANT'S CLAIMS FAIL BECAUSE SHE DID NOT EXERCISE REASONABLE DILIGENCE IN DISCOVERING HER INJURIES.

Respondent urges this Court to make the same mistake as the circuit court. He wants this Court to conflate/combine two entirely separate publications made by separate parties to separate groups of people on separate dates. The first is the AT Smith publications, which consisted of 5,000+ political flyers placed in the US mail that were received by potential Republican voters, including Appellant's family and friends, on January 18, 2020. The second is the Chris Miller publications, which

consisted of numerous posts in a Facebook Group called ATS Private Supporters between January 7 and January 12, 2020. (Amended Complaint, ¶ 6 and 7.) These publications are simply not the same, and it was error for the circuit court to treat them as if they were.

Respondent also urges this Court to overlook the fact that the circuit court engaged in fact-finding at the motion to dismiss stage. In addition to finding that notice of the AT Smith publications is tantamount to notice of the Chris Miller publications, the circuit court implicitly found that Appellant was not reasonably diligent in discovering the Chris Miller publications. ("Here, the statute of limitations began to run in January of 2020 when the Plaintiff was made aware of the flyers published by the AT Smith campaign...The injury was discovered in January of 2020..." (Order p. 10); "The alleged 2025 discovery ... was clearly not the date the Plaintiff discovered her injury nor the date she was put on notice that someone invaded her rights...[I]t cannot be disputed that the date of discovery was in January of 2020 when the Plaintiff was upset and distressed by the flyers of the Smith campaign." (Order p. 11.)

Appellant is not required to plead and outline her reasonable diligence to discover the Chris Miller publications. She alleged in her Complaint that she did not determine Chris Miller's role in this matter until January 16, 2025. (Amended Complaint ¶ 17.) At the hearing, she also explained *some* of her reasonable diligence. (Transcript p. 16.) ("Throughout the discovery we were trying to determine who was

the ultimate source of this information and got numerous answers...I took Chris Miller's deposition, and he acted...like he had merely suggested that...AT Smith and his staff...look into this rumor. [In Hobart Lewis' deposition] there's some reference to ATS Private Supporters and some screenshot that Hobart Lewis had received. So I went and got those screenshots from Matt Wavle, and sure enough what Chris Miller posted basically formed an outline for the flyers...[I]t was all Chris Miller...[I]t was not until we even found out the existence of ATS Private Supporters that we knew it was Chris Miller who was the ultimate source, that she had a cause of action against Chris Miller..."

If the circuit court expected Appellant to plead and outline her reasonable diligence in discovering the Chris Miller publications, it should have made that clear at the hearing. Then the circuit court should have provided Appellant an opportunity to amend her Complaint so as to plead and outline her reasonable diligence. *Skydive Myrtle Beach v. Horry County,* 426 SC 175, 180-189, 826 SE2d 585 (2019). ("When a complaint is dismissed under Rule 12(b)(6)..., the dismissal generally is without prejudice. The plaintiff in most cases should be given an opportunity to file and serve an amended complaint.") It was error to dismiss Appellant's complaint with prejudice without affording her leave to amend.

When a statute of limitation defense is lodged, questions about a plaintiff's reasonable diligence are not decided at the motion to dismiss stage. The issue of reasonable diligence is determined by evidence developed through discovery, as was

pointed out to the circuit court several times at the hearing. Thus, the issue of a plaintiff's reasonable diligence is raised at the summary judgment or directed verdict stages. *Brown v. Finger,* 240 SC 102, 124 SE2d 781 (1962) (JNOV and new trial); *Santee Portland Cement Co. v. Daniel International Corporation,* 299 SC 269, 384 SE2d 693 (1989) (directed verdict); *Myrtle Wiggins v. Edwards,* 442 SE2d 169 (1994) (summary judgment); *Dean v. Ruscon Corporation,* 468 SE2d 645 (1996) (directed verdict).

Likewise, when there is a question whether a plaintiff has exercised reasonable diligence, such question must be decided by a jury. *Brown,* 240 SC at 113. ("The burden of establishing the bar of the statue of limitations rests upon the one interposing it [citation omitted], and where the testimony is conflicting upon the question, it becomes an issue for the jury to decide [citation omitted].") *Santee Portland,* 299 SC at 274. (Whether Santee knew or should have known it had a cause of action at a certain time was an issue to be decided by the jury.) *Myrtle Wiggins,* 442 SE2d at 171 (Reasonable diligence is a jury question unless there is no genuine issue of material fact)*; Dean v. Ruscon,* 468 SE2d at 648. (As regards reasonable diligence, where more than one reasonable inference can be drawn from the testimony, the case should be submitted to the jury.) This, too, was pointed out to the circuit court. (Transcript of hearing pp. 16-17.) ("[W]hether this should have been discovered earlier...will be a fact question...It's usually a fact question. It's usually

a jury question...[W]hether my client...and/or I acted with sufficient diligence is...for the jury to decide. I think it will be a fact question.")

III. REPLYING TO RESPONDENT'S ARGUMENT IV – THAT APPELLANT HAS ABANDONED HER FALSE LIGHT CLAIM AND THAT SOUTH CAROLINA DOES NOT RECOGNIZE FALSE LIGHT.

Appellant has not abandoned her false light claim. However, this issue is outside the scope of the circuit court's order. The circuit court's order of dismissal is 100% based on the statute of limitations.

But to address Respondent's point. The fact that no South Carolina case has yet recognized "false light" invasion of privacy should not prevent Plaintiff from pursuing such a cause of action. [1] Questions of novel impression may be pled and should survive a motion to dismiss. *Madison v. Am. Home Products. Corp.*, 358 S.C. 451, 595 S.E.2d 493, 494 (Ct. App. 2004). ("As a general rule, important questions of novel impression should not be decided on a motion to dismiss.") Notably, this court has applied the "novel impression" rule to false light invasion of privacy. *Sign-N-Ryde, LLC v. Preferred Automotive Group, LLC,* UP No. 2011 – UP-554 (Ct. App. 2011). [2] ("As to dismissal of the cause of action for false light invasion of privacy, we agree with Sign-N-Ryde, LLC that

[1] The Court of Appeals has not ruled that the cause of action does not exist. It has merely acknowledged the cause of action has not been recognized... *yet* – usually failing for a lack of "publicity." *Brown v. Pearson,* 326 SC 409, 421, 483 SE2d 477 (Ct. App. 1997) (dismissal of invasion of privacy causes, including false light, proper because facts not "publicized."); *Sign-N-Ryde, LLC v. Preferred Automotive Group, LLC,* UP No. 2011 – UP-554 (Ct. App. 2011)) (dismissal of false light proper because facts not "publicized.")

[2] *Sign-N-Ryde* is an unpublished opinion and cannot be cited as precedent.

dismissal of this claim at the pleading stage solely on the ground that it has not been recognized as an actionable tort is premature".)

IV. REPLYING TO RESPONDENT'S ARGUMENT V – THAT THE PUBLIC DISCLOSURE CLAIM FAILS BECAUSE THE MATTER WAS OF LEGITIMATE PUBLIC CONCERN.

This issue is outside the scope of the circuit court's order. The circuit court's order of dismissal is 100% based on the statute of limitations.

But to address Respondent's point. To the extent it is a matter of legitimate public concern that a candidate for sheriff in 2020 had a sexual relationship with a co-worker in another town more than fifteen (15) years prior, the co-worker's name clearly is not a matter of public concern. Moreover, when the publication is false with regard to both the candidate and the co-worker, there is no legitimate public concern.

V. REPLYING TO RESPONDENT'S ARGUMENT VI – THAT DISMISSAL UNDER 12(b)(6) WAS PROPER.

Appellant has not abandoned her objection to dismissal. Afterall, she appealed.

But to address Respondent's point. The statute of limitations bar does not appear on the face of the Complaint. In her Complaint, Appellant draws a distinction between the false publications she knew about as of January 18, 2020 (the AT Smith publications) and the publications she knew virtually nothing about until January 16, 2025 (the Chris Miller publications.). Unless this Court agrees that the two (2) publications should be conflated/combined, there is no basis for dismissal under Rule

12(b)(6). In her Complaint, Appellant does not concede she was on notice of the Chris Miller publications at the time she was on notice of the AT Smith publications, nor does she concede that she failed to act with reasonable diligence to learn of the Chris Miller publications.

CONCLUSION

Based upon the foregoing, the Order Dismissing Plaintiff's Complaint should be reversed. The statute of limitations for all causes of action - including defamation – should run from January 16, 2025, the date Appellant learned of the Chris Miller publications.

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