THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY

Benjamin H. Culbertson, Circuit Court Judge

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2025-001317

John Gallman.....Appellant

v.

Waccamaw Publishers, Inc.....Respondent

RESPONDENTS' INITIAL BRIEF

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STATEMENT OF THE CASE

Respondents object to appellant's statement of the case and propose this as a statement in conformity with Rule 208(b)(2), SCACR.

Appellant initiated his action with the filing of a Summons and Complaint in the Court of Common Pleas in Horry County on February 24, 2021. Appellant identified 15 defendants including respondents Waccamaw Publishers, Inc. (Waccamaw) and Christian Boschult (Boschult). This initial Complaint sought recovery for defamation, intentional infliction of emotional distress, invasion of privacy, and civil conspiracy.

The allegations concerning respondents related to a profile of appellant written by Boschult and published by Waccamaw in its newspaper *The Myrtle Beach Herald* and on its website *Myhorrynews. com* on June 16, 2020. Appellant was then a candidate in a run-off in the 2020, Republican Party primary for a nomination to be the party's candidate for a state Senate seat. (Complaint **Jrlr** 20 and 30).

On April 9, 2021, respondents moved to dismiss the invasion of privacy and civil conspiracy claims in the initial Complaint. In response, and with the consent of the parties appearing in the case, appellant filed an Amended Complaint deleting the invasion of privacy claims and adding an additional defendant. Respondents filed several motions in response to the Second Amended Complaint including a motion to dismiss the civil conspiracy claim as to them. Judge William Keesley ruled in an order dated August 3, 2021, that allegations of civil conspiracy were inadequate and "the comt requires that the plaintiff re-plead his Complaint and have it filed and served within 30 days." (Order of August 3, 2021, p. 2). No appeal was taken from this order.

Appellant did not re-plead the allegations of his civil conspiracy claim as to Waccamaw and Boschult within the 30 days required by the order of August 3, 2021. Waccamaw and Boschult moved to dismiss the civil conspiracy claim on grounds that appellant had disregarded a court order. Judge Benjamin H. Culbertson granted this motion on December 8, 2021, on grounds that involuntary dismissal is authorized where a party has failed to comply with any court order. (Order of December 8, 2021, p. 2). Appellant did not file any motions seeking reconsideration of this order. This order has been identified in the Notice of Appeal filed July 1, 2025, and attached to the Notice.

The Second Amended Complaint was dismissed by order of Judge Culbertson on grounds that it was improper under Rule !S(a), SCRCP as having been filed without leave of the court or with the written consent of the parties appearing in the action. (Order of December 9, 2021). This order has not been appealed.

On June 10, 2021, respondents moved to strike allegations regarding campaign finance violations from the Amended Complaint and to sever the action against them from the action against the other defendants. That motion was granted, and the court stated, "plaintiff must proceed independently against Waccamaw and Boschult in all future matters as he seeks to establish his claims for libel and intentional infliction of emotional distress." (Order of March 23, 2022, p. 6). This order has not been appealed.

Respondents moved for summary judgment and supported their motion with the pleadings, answers to interrogatories, documents the genuineness of which had been admitted by appellant, and the affidavit of Boschult. Appellant's response consisted of his affidavit. Summary judgment was granted in favor of respondents by Judge Cordell Maddox in an order dated April 23, 2023. Appellant did not file any motions seeking reconsideration of the grant of

summary judgment. The order of April 23, 2023, granting summary judgment was identified in a Notice of Appeal filed July 1, 2025, and attached to the Notice.

Respondents moved for sanctions against appellant and his attorney pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann.§§ 15-36-10, *et seq.* Sanctions in the form of attorney fees and costs were imposed against appellant and his attorney in an order filed December 16, 2024. Appellant's motion for reconsideration of the sanctions order was denied by an order filed June 4, 2025. The order imposing sanctions and the order denying reconsideration are subject to this appeal.

On July 10, 2025, respondents moved to dismiss the appeal of orders dated December 8, 2021, and April 3, 2023, on grounds that the appeal of these orders was untimely. Respondents' motion was denied on September 26, 2025. (Order of September 26, 2025).

STATEMENT OF ISSUES ON APPEAL

1. May this court consider appellant's arguments regarding his Second Amended Complaint when the order dismissing the Second Amended Complaint was neither referenced in the Notice of Appeal nor attached to the Notice when filed?
2. If appellant's arguments regarding dismissal of the Second Amended Complaint are to be considered was the trial court correct in dismissing the Second Amended Complaint when appellant, having amended his initial Complaint once with the consent of the parties appearing in the case, sought to file a second amended complaint without the consent of the appearing parties or leave of the court as required by Rule 15(a), SCRCP?
3. Were respondents entitled to a grant of summary judgment in their favor as a matter of law when appellant, a candidate for public office, failed to demonstrate by affidavit or otherwise that he could prove by clear and convincing evidence that respondents published with actual malice statements of fact of and concerning appellant that were false and defamatory and not subject to any privilege?
4. Were respondents entitled to a grant of summary judgment in their favor as a matter of law when appellant's counsel conceded that respondents' publication of June 16, 2020, was subject to the fair report privilege?
5. Were respondents entitled to a grant of summary judgment in their favor as a matter of law when appellant failed by affidavit or otherwise to demonstrate that respondents' publication of June 16, 2020, was motivated by actual malice sufficient to exceed and overcome the fair report privilege?
6. Was the trial court correct as a matter of equity in imposing sanctions against appellant and his attorney pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act for

filing and maintaining an action that was clearly not warranted under existing law and facts, and for which no good faith or reasonable argument existed for the extension, modification, or reversal of existing law?

7. Was the trial court correct as a matter of equity in imposing sanctions against appellant and his attorney pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act when the action was initiated and continued merely to harass or injure respondents or for any other improper purpose?

ARGUMENT

1. **This court lacks jurisdiction to consider appellant's argument regarding the dismissal of his Second Amended Complaint as the order of dismissal was neither referenced in the Notice of Appeal nor attached to the Notice at the time of filing.**

STANDARD OF REVIEW

There has been no trial court decision for review and this court considers the lack of jurisdiction *ab inilio* with reference to its own view of the law and the facts to reach a decision.

Rule 203(b)(I), SCACR establishes that a notice of appeal shall be served on a respondent within thirty (30) days following receipt of written notice of entry of the order. The time for the filing of a notice of appeal is stayed in cases such as the one now before the court only by the filing of a motion to alter or amend the judgment pursuant to Rule 59, SCRCP.

Rule 203(d)(l)(B)(ii), SCRCP requires that a notice of appeal be accompanied by "A copy of the order(s)... to be challenged on appeal if they have been reduced to writing ...."

The order dismissing appellant's Second Amended Complaint was electronically filed on December 9, 2021. (Order of December 9, 2021). Under the electronic filing protocol parties are notified electronically of the filing nearly simultaneously with the filing.

Appellant did not file a motion under Rule 59, SCRCP upon receipt of notice of the filing of the order dismissing his Second Amended Complaint. More crucially with respect to this court's lack of jurisdiction appellant did not reference the Order of December 9, 2021, in his Notice of Appeal, and did not accompany the Notice with a copy of the December 9, 2021, order. (Appellant's Notice of Appeal and attached orders).

The timely service of a notice of appeal is a requirement for this court to have jurisdiction. *Mears v. Mears,* 287 S.C. 168,337 S.E.2d 206 (1985). Appellant's Notice of Appeal filed on July 1, 2025, was neither timely nor did it include an appeal of the order dismissing the Second Amended Complaint. To date appellant has not filed an appeal with respect to the order dismissing his Second Amended Complaint and this court lacks authority to extend or expand the time. *Stroup* ii *Duke Power Co.,* 216 S.C. 79, 56 S.E.2d 745 (1949); *Wade v. Gore,* 154 S.C. 262, 151 S.E. 470 (1930); *Renneker* ii *Warren,* 20 S.C. 581 (1884). This court lacks jurisdiction to consider appellant's arguments regarding dismissal of his Second Amended Complaint.

2. **The trial court was correct in dismissing appellant's Second Amended Complaint when appellant, having amended his initial Complaint once with the consent of the parties appearing in the case, sought to file a second amended complaint without the consent of the appearing parties or leave of the court.**

STANDARD OF REVIEW

Appellant never made a motion to file his Second Amended Complaint and did not seek the consent of the pat1ies appearing in the case to file a second amended complaint; therefore, this court reviews the dismissal by a determination of the meaning and requirements of Rule 15 (a), SCRCP. This is analogous to the interpretation of a statute and is a question of law to be reviewed *de nova* by this court. S.C. *Pub. Interest Found. v. Courson,* 420 S.C. 120, 801 S.E.2d 185 (Ct. App. 2017).

Even if this court disregards appellant's failure to file a Notice of Appeal in a timely fashion and in the correct form it is quite clear that appellant's effort to file a second amended

complaint without the consent of the appearing parties or leave of the court is inconsistent with the unequivocal requirements of Rule 15(a) for a successive amendment ofa complaint. Appellant did not comply with Rule I 5(a), SCRCP and his Second Amended Complaint was appropriately dismissed.

Even had appellant appealed the order dismissing his Second Amended Complaint, which he has not done, his arguments in favor of reversal of the order of December 9, 2021, misstate the basis for the court's ruling and are without merit. Appellant states without any reference to the record that his Second Amended Complaint was dismissed "for missing the September 2, 2021, deadline" set by Judge Keesley for appellant to restate his civil conspiracy claim. (App.'s Br. p. 11). Appellant acknowledges that he did not meet the court established deadline for restating his civil conspiracy claim (App.'s Br. p. 11), but that failure was not the basis for the order dismissing the Second Amended Complaint. That order makes clear that the order to dismiss was pursuant to Rule 15(a), SCRCP. (Order of December 9, 2021, p. 2). Appellant next argues that the dismissal of his second effort to amend his complaint was pursuant to Rule 12(b)(6), SCRCP notwithstanding the language of the order itself does not reference Rule 12(b)(6). The order states in the plainest possible terms that the ruling is grounded in appellant's failure to follow the court rule regarding amendments:

> The record before the court established that plaintiff had not moved for leave to file a Second Amended Complaint, had not received leave of the court to file a Second Amended Complaint, nor had he obtained written consent from the adverse parties. Where, as here, a party has amended his pleading once, that "party may amend his pleading only by leave of court or by written consent of the adverse party." Rule 15(a) SCRCP [emphasis supplied (by court)]. Without leave of the court or written consent of the adverse patties, the document styled "Second Amended Complaint" is a nullity.

Order of December 9, 2021, p.2.

The trial court correctly interpreted and applied the requirements of Rule 15(a), SCRCP thus there was no error of law. Even if this court were to consider appellant's arguments regarding an order he did not appeal, those arguments are without merit as a matter of law.

3. **Respondents were entitled to a grant of summary judgment in their favor as a matter of law when appellant, a candidate for· public office, failed to demonstrate by affidavit or otherwise that he could prove by clear and convincing evidence that respondents published with actual malice statements of fact of and concerning him that were false and defamatory and not subject to any privilege.**

STANDARD OF REVIEW

Appellant was a candidate for public office (App. Br. p. 7) and the June 16, 2020, news report at issue dealt with his fitness for office. The discussion of the qualifications of a candidate for public office presents the strongest possible case for the application of the actual malice rule established as a constitutional protection against libel actions brought by public officials and candidates by the decision of the United States Supreme Court in *New York Times Co. v. Sullivan,* 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), and the many cases applying this protection including the South Carolina cases of *George ,i Fabri,* 345 S.C. 440, 548 S.E.2d 868 (2001) and *Elder ,i Gqffney Ledge,;* 341 S.C. 108, 533 S.E.2d 899 (2000). This court reviews the grant of summary judgment *de nova* to determine if appellant demonstrated by clear and convincing evidence that respondents published the June 16, 2000, news report with actual malice. *George, supra; McClain v. Arnold,* 275 S.C. 282,270 S.E.2d 124 (1980). The South Carolina Supreme Court in *George, supra,* held "that the appropriate standard at the summary judgment phase on the issue of constitutional actual malice is the clear and convincing standard." 548 S.E.2d at 874. Appellant misstates the applicable burden of proof to be borne at the

summary judgment stage by a public plaintiff seeking to resist a properly supported motion for summary judgment. Appellant stated that this court is to review the record to determine if appellant provided a "mere scintilla of evidence." (App. Br. p. 11). The Supreme Court of South Carolina held in *George, supra.*, "[W]e hold that the appropriate standard at the summary judgment phase of the issue of constitutional actual malice is the clear and convincing standard." 548 S.E.2d at 875.

Motions for summary judgment are controlled by Rule 56, SCRCP which provides in subsection (c):

> The judgment sought shall be rendered f01ihwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Respondents supported their motion with the pleadings, answers to interrogatories, admissions on file and the affidavit of Boschult. Appellant's Amended Complaint identifies respondents' publication of June 16, 2020, as the sole basis for his libel claim against them. (Amen. Comp. Jr 31). In paragraph 87 of the Amended Complaint appellant alleges in the portion that seems to refer to respondents a defamatory publication made with actual malice:

> The written allegations about plaintiff were defamat01y and published with actual malice, to wit: (a) the statements were disseminated despite Defendants knowing they were false; [and] (b) the statements contained illegally disclosed mental health records of Plaintiff's 10 year old daughter....

Appellant alleged in his Amended Complaint that he offered respondents "evidence possessed and offered by Plaintiff that demonstrated that the incomplete and misleading information in the family court file was false." (Amen. Comp. Jr 33). The "mental health"

records referenced by appellant were described by him as "forensic interview notes from the Children's Recovery Center in Horry County." (Amen. Comp. **Jr** 28). In his initial Complaint appellant alleged that the Children's Recovely Center notes were submitted to the family court and that the Family Court records were never sealed. (Comp. **Jrlr** 72, 73).

In his affidavit in support of the motion for summary judgment Boschult stated on personal information that he was the author of the June 16, 2020, profile of appellant (Bosch. Aff. **Jr** 4), that in conjunction with reporting on political campaigns in Hony County in 2020, he "checked court records relating to Mr. Gallman, and found a file in the Family Court for Horry County that involved Mr. Gallman and his former wife," (Bosch. Aff. **Jr** 8), the court file was open for public inspection and copying (Bosch Aff. 9), copies of records in the Family Court file were purchased (Bosch. Aff. **Jr** 11), the 28 documents that were purchased from the Family Court file were assembled in the Request for Admissions (Bosch. Aff. ¶¶ 11, 12), and he used the documents "to the best of my ability... to present a fair and accurate account of the dispute in the court file." (Bosch. Aff. 15). Boschult stated that appellant did not appear to be aware that records were in the family court file or that the public had access to them. (Bosch. Aff. **Jr** 18).

In response to an interrogatory request to identify portions of the June 16, 2020, publication which appellant contended were false and defamatory appellant responded by using a highlighter marker to identify 53 passages in the publication that he claimed to be "false or defamatory." (Pl. Resp. to Waccamaw's 2nd interrogs. P. 1). Boschult stated in his affidavit his process in reporting the profile of appellant and his review of the 53 items appellant contended to be "false or defamatory":

> 29. In preparing the news report I relied on the contents of court records, and presented them as the contents of a court record. I made no effort to

> investigate the contents of the record as my role as a reporter was to present to the public the information in the court file.
>
> 30. Mr. Gallman identified 53 passages in the news report that he claims are false.
>
> 3I. I have reviewed the passages identified by Mr. Gallman, and believe his dispute is not with the news report, but with the underlying documents because in each instance identified by Mr. Gallman, there is a court record supporting the presentation in the news report.
>
> 32. At no time did I have any doubt about the accuracy of the presentation of information from the court file as the news report relied on and quoted from the court records.
>
> 33. Mr. Gallman offered to provide information which he said would refute the information contained in the court records, but my purpose was not to resolve the visitation dispute in which Mr. Gallman was involved, but to present the contents of the public record so that the public would be informed about the dispute from the official record.

Boschult Affidavit p. 4.

In his affidavit filed in opposition to respondents' motion for summary judgment appellant stated:

> I met with Christian Boschultz [sic] at my home a few days before he published his article.
>
> Mr. Boschultz [sic] informed me that he was publishing an mticle based on the allegations in the family court record.
>
> During the meeting, I refuted all of the allegations and provided Mr. Boschultz [sic] with the names of several witnesses who would verify the falsity of the allegations Mr. Boschultz [sic] was going to publish.
>
> Among the names of witnesses and other people he needed to talk to were Thomas Vaughn, who could verify that the Guardian ad Litem made false statements in her report to the Court....
>
> ***
>
> Every allegation quoted by Defendant Boschultz [sic] in his article that was in the family court file was refuted by myself and my attorneys in the family court file. Defendant Boschultz [sic] did not quote or refer to those

> counterarguments, nor did he contact any of my attorneys who filed those responses.

Gallman Affidavit ¶¶ 4,5, 6 and 12.

Appellant's affidavit submitted in opposition to respondents' motion for summary judgment does nothing more than recite the allegations of the Amended Complaint without any supporting documentation. In contrast, respondents in their Memorandum of Points and Authorities in Support of Motion for Summary Judgment set out the passages from the news report that appellant claimed were false and cross-referenced appellant's claims to the specific court record supporting the news report statement. (Resps. Memo. pp. 12-29). In each instance the statement in the news report is supported by a court record with the exception of statements by appellant quoted in the report and statements by others that while not contained in the court record did not have any potentially defamatory content.

The Supreme Court of South Carolina affirming the grant of summary judgment in a case involving a plaintiff who was a candidate for public office articulated comprehensively the requirements for a public figure plaintiff to demonstrate actual malice in the circumstance where the constitutional protection for the press has application:

> As stated above, a public figure must show, by clear and convincing evidence, that the defamatory statements were made with knowledge that they were false or with reckless disregard of whether they were false or not. *New York Times Co., supra; Curtis Publishing, supra* [388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967)]; *Elder, supra* [341 S.C. 108,533 S.E.2d 899 (2000)]. Initially, we note that "the actual malice standard is not satisfied merely through a showing of ill will or 'malice' in the ordinary sense of the term." *Harle-Hanks,* 491 U.S. at 666. Moreover, the reckless conduct contemplated by the *New York Times* standard "is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing." *St. Amant* ıı *Thompson,* 390 U.S. 727, 731, 20 L.Ed.2d 262, 86 S.Ct. 1323 (1968); see also *Eide,;* 341 S.C. at 144, 533 S.E.2d at 902 ('reckless disregard' requires more than a departure from reasonably prudent conduct).

> Instead, actual malice is governed by a subjective standard which tests the defendant's good faith belief in the truth of her statements: *Id.* There must be sufficient evidence to conclude either that the defendant made the statements with a "high degree of awareness of ... probable falsity," *Garrison,* 379 U.S. at 74., or that the defendant "in fact entertained serious doubts as to the truth of his publication." *St. Amant,* 390 U.S. at 731.
>
> The actual malice standard is premised on our 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times,* 376 U.S. at 270. Indeed, "[a] statement made in the heat of an election contest supplies the paradigm for that commitment to free debate." *Lynch v. New Jersey Educ. Ass'n.,* 161 N.J. 152, 735A.2d 1129(N.J.1999).

George v. Fabri, 345 S.C. 440, 548 S.E.2d 868, 876 (2001).

Under the holding in *George* the appellant could withstand a motion for summaiy judgment only by demonstrating by affidavit or otherwise that he could prove actual malice by clear and convincing evidence at trial. Application of this requirement meant appellant needed to come forward with evidence that demonstrated clear and convincing proof that respondents at the time of publication either knew the publication was false or they had a high degree of awareness of probable falsity. The entirety of appellant's claim of falsity relating to the June 16, 2020, publication is his contention that the statements in the court file were false and that he had refuted them. (App.'s Aff., *supra).* In this regard appellant's affidavit does nothing more than recite the allegations of the Amended Complaint which stated, "The Boschult Group refused to review the evidence possessed by Plaintiff that demonstrated that the incomplete and misleading information in the family court documents were false." (Amen. Comp. Jr 32). The requirements of Rule 56(e), SCRCP are that where, as here, there was a motion for summary judgment made and supported in accordance with the rule, "an adverse party may not rest upon the mere

allegations... of his pleading, but his response, by affidavits or as otherwise provided in this rule must set forth specific facts showing that there is a genuine issue for trial."

Appellant offered no specific facts by affidavit or otherwise to demonstrate by clear and convincing evidence that there was a genuine issue regarding whether respondents either knew their publication was false or published with substantial doubt about the accuracy of the publication. This failure to offer specific facts addressing the subjective state of mind of respondents is fatal to appellant's claim. *George, supra.* An adverse patty cannot withstand summary judgment in a public figure libel case if "there was insufficient evidence of actual malice." *Id.,* 548 S.E.2d at 878. Appellant offered no clear and convincing evidence of actual malice and summary judgment was appropriate as a matter of law.

Appellant argues that the consideration of respondents' summary judgment motion was premature because at the time of the motion "eleven defendants had yet to file an answer [to] the Amended Complaint." (App. Br. p. 12). The absurdity of this argument is exposed by the indisputable fact that appellant's case against respondents had been severed from the case against the remaining defendants prior to the motion for summary judgment by an order entered March 23, 2022, which provided "plaintiff must proceed independently against Waccamaw and Boschult in all future matters...." (Order of March 23, 2022, p. 6). If appellant felt the need for additional time to secure affidavits Rule 56(f), SCRCP provides a mechanism by which a party opposing a motion for summary judgment can obtain additional time to secure affidavits with facts "essential to justify his opposition." Appellant did not seek additional time to secure affidavits or

other essential facts. He cannot now complain that discovery was incomplete. *Covil Corp.* ii *Pa. Nat'/ Mut. Cas. Ins. Co.,* 436 S.C. 85,870 S.E.2d 191 (Ct. App. 2022).

Appellant contends that summary judgment was improper because neither respondents nor the court addressed allegations that a statement published on June 19, 2020, attributed to Amanda Loehr was false. (App. Br. pp. 8,9). In his initial Complaint and in his Amended Complaint, as discussed above, appellant's claims against respondents related exclusively to a June 16, 2020, publication. Appellant never moved to amend his pleadings to add a separate claim for a June 19, 2020, publication, and did not address the publication in appellant's affidavit, the sole affidavit filed in response to respondents' motion for summary judgment. Even had appellant included the June 19, 2020, Loehr statement in his pleadings, appellant has not provided any indication that he can prove by clear and convincing evidence that respondents published the Loehr statement with constitutional actual malice. Appellant argues in his brief that he moved to allow an amendment to his pleadings to add the June 19, 2020, statement as part of his libel claim. (App. Br. p. 24). Neither the record in this court nor in the court below contains any reference to a motion by appellant to amend his Complaint to add the June 19, 2020, statement as the basis for a libel claim. Finally on this point, appellant cannot establish as a matter of law that he can prove the falsity of the Loehr statement reported on June 19, since appellant acknowledges in his brief that for almost a year he "was forbidden from speaking to his children," and "his children [were] taken away [from him.]" (App. Br. p. 8). On the basis of these disclosures by appellant, one could conclude that appellant would be unable to prove that the statement that he was unfit was false. *Boone v. Sunbelt Newspapers, Inc.,* 347 S.C. 571, 556 S.E.2d 732 (Ct. App. 2001).

4. Respondents were entitled to a grant of summary judgment in their favor when appellant conceded at argument on their motion for summary judgment that the fair report privilege applied to the publication of June 16, 2020.

STANDARD OF REVIEW

In an appeal from the grant of summary judgment to media defendants in a libel action initiated by a candidate for public office appellant must establish that the publication complained of is not subject to a privilege. *Holtzscheiter v. Thomson Newspapers,* 332 S.C. 502, 506 S.E.2d 497 (1998) (Toal, J., Concurring). The existence of a privilege is a question of law to be determined by this court *de nova. Padgett v. Sun News,* 278 S.C. 26,292 S.E.2d 30 (1982).

Appellant's attorney conceded at argument on respondents' motion for summary judgment that the fair report privilege applied to the June 16, 2020, publication:

> ... [F]or purposes of the legal issue, I will -I think what Jay cited in his memorandum and what he just quoted isa fair reporting privilege. I do not- I will concede that privilege applies.

Transcript of hearing of September 26, 2022, p. 32, lines 3-6.

Appellant in his brief seeks to argue that the fair report privilege was not properly asserted. (App. Br. p. 21). Appellant with his attorney's concession at argument on the motion for summary judgment has waived any claim that the fair rep01t privilege did not apply. The Supreme Court of South Carolina defined waiver as the intentional and voluntary relinquishment or abandonment of a known right. *Janosik\'. Fairway Oaks Villas Horizontal Property Regime,* 307 S.C. 339,415 S.E.2d 384 (1992). The question of whether appellant offered sufficient proof

at the summary judgment stage to override the privilege will be discussed in the next section of this brief.

5. Respondents were entitled to summary judgment in their favor as a matter of law when appellant failed by affidavit or otherwise to demonstrate that respondents' publication of June 16, 2020, was motivated by actual malice sufficient to overcome the fair report privilege.

STANDARD OF REVIEW

The determination of the existence of actual malice sufficient to overcome the fair report privilege is a quest of law to be reviewed *de novo. Padgett, supra.*

With appellant's concession that the June 16, 2020, publication was subject to the fair report privilege the privilege the question becomes whether the privilege is overcome by a demonstration by appellant of the existence of evidence to establish that respondents acted with actual malice. It has long been the law of South Carolina that the fair and substantially accurate reporting of the contents of court records is privileged unless actual malice is shown. *Padgett, supra.* The "actual malice" standard articulated by the South Carolina Supreme Court in *Padgett* differs from and is less rigorous than the "actual malice" standard established as a First and Fourteenth Amendment constitutional protection for the press when reporting on public figures and public matters. *New York Times v. Sullivan, supra.; Eide,; supra.* Whereas *Times v. Sullivan, George,* and *Elder* held that this constitutional "actual malice" standard requires a public figure plaintiff in a suit against media defendants to prove by clear and convincing evidence that a publisher published information knowing it to be false or published with substantial doubt as to

the truth of the publication. By comparison the *Padgett* court defined "actual malice" in terms of ill will or conscious indifference towards the rights of the plaintiff:

> Actual malice means that appellant [in that case the newspaper publisher] acted with "ill-will towards the plaintiff or that it acted with conscious indifference toward the plaintiff's rights" and requires that "at the time of his act or omission to act the tort-feasor be conscious, or chargeable with consciousness of his wrongdoing." *Rogers ¡ Florence Printing Co.,* 233 S.C. 567, 577, 106 S.E.(2d) 258; *Jones v. Garner,* 250 S.C. 479, 158 S.E.(2d) 909....

Padgett, supra., 292 S.E.2d 30 at 32.

It would be inconsistent with the constitutional protection for repot1ing on political candidate and public matters to allow liability to be imposed on a less rigorous and specific standard than that established by *Times v. Sullivan* and *George. Parker v. Evening Post Pub. Co.,* 317 S.C. 236, 452 S.E.2d 640 (Ct. App. 1994) citing *Gertz ¡ Robert Welch, Inc.,* 418 U.S. 323, 94 S.Ct. 2897, 18 L.Ed.2d 1094 (1974), and *Philadelphia Newspapers v. Hepps,* 475 U.S. 767, 106 S.Ct. 1558, 89 L.Ed.2d 783 (1986) stands for the proposition that malice must be proven and in not presumed. While a sound argument can thus be made that a public figure plaintiff can overcome the fair report privilege only upon a showing by clear and convincing evidence that the fair repo1t privilege was overridden because the publisher knew at the time of publication that it was publishing a false statement of fact not in the record or entertained serious doubt regarding the substantial accuracy of the publication. It is not necessary to resolve that conflict in this case as appellant did not come forward by affidavit or othe1wise at the summary judgment stage to demonstrate evidence of "actual malice" under either formulation.

As was discussed in Section 3 above, appellant failed at the summary judgement stage to show in response to respondents' properly supported motion that he had evidence of actual

malice in the *New York Times* v. *Sullivan* meaning. Likewise, at the summary judgment stage appellant failed to offer proof of ill will or conscious indifference to his rights by respondents as required under the lesser *Padget/* standard. Appellant said in his affidavit that there were documents in the file that should have been reported but he failed to introduce them by affidavit or otherwise. (Gallman Aff. ,i 12). The mandate of Rule 56(e), SCRCP is specific:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations... of his pleadings, but his response, by affidavits or as otherwise provide in this rule, must set for specific facts showing that there is a genuine issue for trial.

Certainly appellant complained about the publication of court records in his affidavit but as *Padget/* makes clear, protest by the person about whom an article is to be written "is not evidence of malice." *Padget/,* 292 S.E.2d at 32 citing *Oliveros v. Henderson,* 116 S.C. 77, 91 S.E. 855 (1921).

Appellant argues in his brief that reporting from the notes of the Children's Resource Center contained in the court file was evidence of malice and a violation of Section 63-7-1990 of the South Carolina Code of Laws. (App. Br. pp. 19-21). Appellant quotes from subsection (A) which imposes restrictions on the Department of Social Services but he neglects to make reference to subsection (B) which allows the department to grant access to persons or entities including in (2) "a person appointed as the child's guardian ad !item [and] the attorney for the child's guardian ad !item...." It is unclear from the documents contained in the court file (Tab 1 Def's Req. to Admit) identified as a report from the Children's Resource Center that these were documents maintained by the Department of Social Services and subject to Section 63-7-1990 but it is beyond dispute that these records were contained in the Family Cour file as indicated by

the September 23, 2019, "FILED" stamp affixed by the Clerk of Court. No evidence offered by appellant at the summary judgment stage implicates Section 63-7-1990, or that the reporting of these documents constitutes actual malice. Appellant cites no authority for the proposition that a reporter is obligated to determine if a record is appropriately contained in a court file. This omission is most likely a consequence of there being no such authority.

Appellant argues that Section 63-7-920 of the South Carolina Code prevents dissemination of the records contained in the Family Court file. There is no language in that code section relating to the dissemination of records of the investigation of child abuse. Then appellant takes a detour from his effort to secure a reversal of the grant of summary judgment in favor of respondents to allege "Every single defendant committed a crime when they published and republished the mental health records" of appellant's daughter. (App. Br. pp. 20,21). Nothing in the records in the Family Court file indicate that the report of the Children's Resource Center constitutes a "mental health" record of appellant's daughter. Neither statute cited by appellant imposes criminal penalties in circumstances where a Department of Social Services record, if the report of the Children's Resource Center even comes within the ambit of departmental records, has been disclosed to a guardian ad litem and filed in court in a child custody dispute. Publication of a summary of records in the Family Court file did not constitute actual malice or criminal activity. Even if there were an applicable criminal statute, the existence of a criminal statute does not confer a civil cause of action unless specifically authorized by the General Assembly. *Dorman v. Aiken Communications, Inc.*, 303 S.C. 63, 398 S.E.2d 687 (1990).

The most bizarre and unsupported assertion advanced by appellant to claim that the news report was not a fair and substantially accurate summary of the contents of a court record is to argue that an order by Judge Timothy Hogue filed in the action by appellant's former wife to alter child custody and visitation rights should have been reported in the June 16, 2020, news report. This order relied upon by appellant was filed on January 8, 2021, seven months after the June 16, 2020, publication. (Item 17 in app. Designation). The fair report privilege is measured by the records on file at the time of the report, not records that might be filed in the future. Subsequently filed documents do not vitiate the substantial accuracy of a report of records already in the file as the South Carolina Supreme Court noted in *Padgett,* stating:

> When appellant [publisher] accurately published the contents of the Summons, it had the right to do so; and it actions in so publishing the contents of the Summons cannot properly be judged in light of the subsequently filed Complaint ....

Padgett, 29 S.E.2d 30 at 32.

Finally, appellant argues that respondents should have gone beyond the records that existed at the time of publication to resolve disputes between appellant and his former wife reflected in the Family Court file. The documents used to prepare the news repott are contained in Defendants' Request to Admit, Tabs 1-28, filed in support of respondents' motion for summary judgment. Appellant states in his brief that "a large portion of the Boschultz[sic] article's source material is from the initial divorce of Appellant." (App. Br. p. 23). While it is true that some of the documents in the court file related to appellant's divorce in 2017, *(see* Def. Req. to Admit tab 19, ,i 2), most of the records related to an action brought by appellant's former wife to modify custody and visitation action initiated in 2018. (Def. Req. to Admit, tab 19). The Children's Resource Center report was dated September 2019 (Def. Req. to Admit, tab 1), and an order

prohibiting appellant from having visitation, "telephonic or electronic contact," or "attend any of the children's extracurricular activities, appointments or events" (Def. Req. to Admit, tab 11, p. 3), were filed in connection with the 2018 litigation. Clearly the claim that the records reported were from the 2017 divorce was misleading. It is not the job of a reporter or publisher to resolve disputes reflected in court files or vouch for the sufficiency of the truth of the charges in court records. *Padgett, supra,* citing with approval and adopting the language in *Alexandria Gazette v. West,* 198 Va. 154, 93 S.E.2d 274 (1956).

Appellant was unhappy with the report of information contained in his Family Court file which he claimed were refuted in the Family Court file. (Gallman aff. ,i 12). There was no effort to submit evidence to the trial court to establish appellant's contention that the news rep011 was not a fair and accurate summaly of the contents of an unsealed court record. Appellant's failure to submit to the trial court in opposition to the motion for summary judgment those records in the file which would have shown the news rep011 to have been other than a fair and substantially accurate summary of the contents of a public record and published with actual malice of either variety. This failure of proof was fatal to appellant's arguments of unfairness or inaccuracy. Summary judgment in favor of respondents on grounds of the fair report privilege was appropriate as a matter of law and not overcome by a demonstration of proof of actual malice.

6. The trial court was correct as a matter of equity in imposing sanctions against appellant and his attorney pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act for filing and maintaining an action that was clearly not warranted under existing law and facts, and for which no good faith or reasonable argument existed for the extension, modification, or reversal of existing law.

STANDARD OF REVIEW

The factual support for an award of attorney fees as sanctions under the South Carolina Frivolous Civil Proceedings Sanctions Act is reviewed as an equity matter and the appellate court makes its own determination of facts. If the appellate court agrees with the trial court findings of fact the award of sanctions is reviewed under the abuse of discretion standard. *Ex parte Gregol J,* 378 S.C. 430, 663 S.E.2d 46 (2008).

Even though this court may find facts based on its own view of the evidence it is not required to disregard the factual findings of the trial judge as this court stated unequivocally in its opinion in *Kilcawley v. Ki/caw/eJ,* 312 S.C. 425,440 S.E.2d 892 (1994):

> Even where this court may find facts in accordance with its own view of the preponderance the evidence, we are not required to disregard the factual findings of the trial judge who saw and heard the witnesses and was in a better position to judge their credibility and demeanor. *Godfrey v. Helle,;* [311] S.C. [516], 429 S.E.2d 859 (Ct. App. 1993).

Kilcawley, 440 S.E.2d 892 at 893.

In *Godfrey* the Court of Appeals considering an appeal in a matter in equity tried before a referee explained that the appellant "must convince the Court of Appeals that referee erred in his findings of fact." 429 S.E. 859 at 861. There was no referee in the matter now before the court but to prevail appellant must convince this court that the trial court erred in its factual findings

that supported an award of attorney fees and costs as sanctions against appellant and his attorney. Under the abuse of discretion standard a decision to award sanctions will be affirmed absent a showing that the sanctions were imposed by a clear abuse of discretion evidenced by unsupported factual conclusions or controlled by an error of law. *Gregol J, supra.*

The South Carolina Frivolous Civil Proceedings Sanctions Act provides in Section 15-36-10(C)(l) of the Code of Laws of South Carolina three categories of acts that will justify the imposition of sanctions against an attorney or party. Subsection (a) can best be characterized as the prohibition against the filing and maintenance of a claim that is not supported under existing facts or law and no good faith or reasonable argument exists for extension, modification, or reversal of existing law. Subsection (b) penalizes the initiation and continuation of a civil action to injure or harass the other party. Subsection (c) authorizes sanctions when an action is brought for a purpose other than adjudication of the claim upon which the proceedings are based. This section of respondents' brief will deal with subsection (a) of the Act. Subsections (b) and (c) overlap in their coverage and will be discussed in section 7 of this brief.

The trial court found as fact the following:

I. Appellant was a candidate in a Republican Party primary and run-off election in 2020;
2. Waccamaw published in one of its newspapers and on its website a profile of appellant;
3. The profile included the statement that it was based on public court records;
4. Appellant alleged that 53 statements in the profile were "false or defamatory";
5. Appellant admitted the genuineness of28 documents from the Family Court file;

6. In their motion for summary judgment respondents annotated each of the statements alleged to be "false or defamatory" and demonstrated that the statements in the publication were consistent with the contents of the Family Court records;
7. Appellant acknowledged in his initial Complaint that he knew the contents of the Family Court file were not sealed;
8. Appellant alleged he learned in September 2020 that the report of the Children's Resource Center which was referenced in the profile was contained in the unsealed Family Court file;
9. Appellant was aware of the contents of his Family Court file at least five months in advance of the filing of his initial Complaint and eight months in advance of filing his Amended Complaint;
10. Appellant did not contest the evidence submitted in support of the claim for attorney fees either as to the factors to be considered by the court or the amount sought; and,
11. Respondents obtained beneficial results from the efforts of counsel.

What facts did appellant submit to the trial court that would support his claim that under existing facts and law the action against Waccamaw and Boschult was warranted or that a good faith or reasonable argument existed to modify or reverse existing law? In his memorandum in opposition to the motion for sanctions appellant asserted:

> As this court reviews the pleadings in this case, it will understand the complexity of the issues and the nature of all Defendants [sic] actions complained of in the complaint. Defendants all agree that advertisements revealing and publicizing the mental health records of a minor child were published for purposes of ruining the reputation of a political opponent. They ruined the reputation of a political opponent based on allegations found in a family court file that were categorically rejected by the factfinders *in !hat case.* [Emphasis supplied by appellant]. Plaintiff and his Counsel still believe they have valid claims against this Defendant.. ..

Plaintiff's Memorandum in Opposition to motion for sanctions, unnumbered second page.

Appellant provided no evidence in the trial court to support any of the assertions made above and appellant provided no evidence to this court that would justify disregarding the facts found by the trial court. Bombast, bluster and misstatement of the contents of the Family Court file and the news rep01t of June 16, 2020, cannot replace evidence so that the trial court findings of fact are to be set aside.

Appellant contends that his defamation suit was justified under the decision of the Supreme Court of South Carolina in *Erickson* ii *Jones St. Pub.*, 368 S.C. 444, 629 S.E.2d 653 (2006), but fails, as he failed in the trial court and earlier in his brief in this court, to explain how a decision concerned with a private figure's libel claim not involving the publication of court records has any relevancy to this action at any stage. In the trial court appellant offered no evidence at the summary judgment stage that would by clear and convincing evidence prove that respondents published unprivileged false statements of fact of and concerning him when they knew they were false or with a serious doubt about the truth of the publication as required by *New fork Times Co., supra, George, supra, and Eide,; supra.* Respondents established that the news report of June 16, 2020, was subject to the fair report privilege. Appellant conceded that the privilege applied but failed to offer evidence at the summary judgment stage to overcome the privilege as required by *Padgett, supra. Erickson* did not involve the fair report privilege and appellant's contention that respondents were required to go behind the court records to determine the "truth" in the records is not the law in South Carolina. See, *e.g., Parke,; supra.*

Appellant and his lawyer argue that they believed the existing law suppo1ted their claim, or that they had a reasonable and good faith belief that the law could be changed with this suit. To support these propositions appellant falls back on his unfounded arguments that it was

unlawful to report from the Children's Resource Center records contained in the Family Comi file and that his original divorce decree indicated that there was no evidence of abuse by either party. The Children's Resource Center documents were filed in connection with an action subsequent to the divorce action to modify custody and visitation arrangements. Appellant noted in his brief that as a consequence of this subsequent action his children were taken away and he was forbidden to talk with them for over a year. (App. Br. p. 14). Appellant wants to tout the joint custody arrangement of the original divorce but ignores that subsequent litigation resulted in his loss of custody and contact.

Perhaps the most telling disregard appellant and his attorney had for the obligation to investigate facts and ascertain the law in advance of filing a civil action was the allegation in the initial Complaint that appellant did not know the document about which he claims most injury, the Children's Resource Center document, was in the unsealed Family Court file until many months after filing his initial Complaint. (Comp. Jr 48). In *Gregory', supra,* the Supreme Court of South Carolina upheld sanctions imposed on an attorney who initiated an action in a "shoot first, ask questions later" mode when a reasonable investigation would have revealed there was no basis for the claim.

Further demonstrating a disregard for existing law appellant argues repeatedly that an order in the Family Court, the "Pogue Order" filed nearly seven months after the June 16, 2020, publication in some unexplained fashion made the news report unfair and inaccurate.

The law applicable to libel and other claims filed by political candidates is neither a mystely nor difficult to locate. *George, supra,* was decided by the Supreme Court of South Carolina 20 years prior to the initiation of this suit by respondent and his attorney. The seminal case providing constitutional protection for media defendants in libel actions initiated by public

plaintiffs, *New York Times v. Sullivan, supra,* was decided in 1964. The controlling South Carolina case on the fair report privilege, *Padge/1, supra,* was decided in 1982. There is no indication that any of these authorities is likely to be modified or reversed any time in the foreseeable future, and certainly not on the facts of this case. When an attorney and by extension the client initiates and maintains a civil action without an initial reasonable investigation into the facts and law the imposition of sanctions is appropriate under the Act. *Gregory,, supra.*

The imposition of sanctions under Section 15-36-l0(C)(l)(a) was fully supported by the facts and law and should be affirmed.

7. The trial court was correct in imposing sanctions against appellant and his attorney pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act when the action was initiated and continued merely to harass or injure respondents or for another improper purpose.

STANDARD OF REVIEW

As discussed in Section 6 of this brief above the imposition of sanctions is reviewed under the abuse of discretion standard. *Ex parte Gregory,* 378 S.C. 430, 663 S.E.2d 46 (2008).

The three subsections of Section 15-36-IO(C)(l) of the South Carolina Code of Laws are disjunctive and sanctions may be imposed under each subsection independently. Subsection (a) dealing with the initiation of a claim unwarranted under existing law or in a circumstance where there is no reasonable or good faith belief that modification or reversal of existing law will occur was treated in Section 6 of this brief above. This section will address why the trial court was correct in imposing sanctions against appellant and his attorney the evidence showed that the action was initiated and maintained either to harass or injure respondents under subsection (b) or because the action was for an improper purpose under subsection (c).

Appellant was a candidate for a nomination of the Republican Party for a state Senate seat in the 2020 Republican Party primary. After the first round of voting respondent was in a run-off with the incumbent Luke Rankin. (Comp. ¶¶ 19, 20). In his initial Complaint and in his Amended Complaint appellant alleged that "on or about June 2, 2020, a dossier purportedly containing documents selected from Plaintiff's divorce file... were distributed to numerous media organizations across the state." (Comp. ¶ 21; Amen. Comp. ¶ 25). Appellant alleged that this "dossier" was paid for by his run-off opponent Luke Rankin. (Comp. ¶ 25; Amen. Comp. ¶ 26).

Appellant never offered proof that respondents had received this "dossier" and the news report and the Boschult affidavit both state clearly and unambiguously that the news report was based on the content of appellant's family court file. (App. Res. to Second Interrogs; Bosch. Aff. *Ir* 15). Appellant alleged that respondents received the "dossier" and then published the June 16, 2020, profile of appellant. (Amen. Comp. ¶ 31). Boschult stated in his affidavit that the only documents in his possession and the only documents used in the preparation of the news report were those records purchased from the Horry County Clerk of Court. (Bosch. Aff. ¶ 14). Appellant alleged throughout this litigation including in his brief in this court that the publication of a report from the Children's Resource Center which was contained in the Family Court file was illegal, dragged his daughter into "a political mudslinging contest," "destroyed his reputation." (Comp. ¶¶ 27, 34; App. Aff. ¶ 16; App. Br., p. 7).

As discussed in this brief there is no indication that the Children's Resource Center report constituted a "mental health record" or that any statute cited by appellant prohibited the publication of information contained in the report when the report itself was in an unsealed Family Court file. Appellant alleged in his Complaint (¶ 51) and Amended Complaint (¶ 50) that Rankin campaign had access to the news report in advance of publication but never identified a witness who would support this allegation. Appellant never identified a witness who would support the allegation that respondents were provided a copy of the "dossier" and used it as the basis of its news report. Without reviewing the contents of an unsealed Family Court file that contained the Children's Resource Center, the existence of which had been disclosed to appellant by Boschult in advance of publication of the news report, appellant accused Boschult of lying about the report and then initiated a suit that joined respondents with 14 other defendants claiming defamation, invasion of privacy, intentional infliction of emotional distress, civil

conspiracy and a violation of campaign practices law. Motions were required to compel appellant to respond to respondents' interrogatories and put the pleadings in a form that complied with applicable rules of procedure.

Appellant and his attorney were convinced without any supporting evidence that respondents had a source who provided the "dossier" and respondents had provided a copy of the news repo1i to appellant's political opponents in advance of publication. In a telephone conversation between counsel for appellant and counsel for respondents, appellant's attorney stated that the case against respondents could be resolved if they would identify the source of the "dossier" and provide information as to whom an advance copy of the news rep01i had been provided. (Bender Aff. ¶ 19). In an e-mail exchange regarding a request from respondents' to appellant's attorney for consent to sever the claims against respondents from the other defendants on grounds that there was no commonality among defendants and the only claim against respondents was the publication of the June 16, 2020, news report, appellant's attorney responded:

> I respectfully disagree. Mr. Boschultz [sic] is alleged to be part of the civil conspiracy. Moreover, the evidence is clear that he provided advanced copies to the political campaign in order for them to directly reference his article in their fliers [sic] and television ads.
> If Mr. Boschultz [sic] is willing to tell me who gave him the CRC records, who coordinated with him to get an advance copy of the article, and other similar information, we may be able to settle rather quickly.

Bender Aff. Ex. A.

On another occasion counsel for appellant after noting that appellant "intends to go after the people for his defamation," wrote, "but there is something he cares more about: His children." (Bender Aff. Ex. B). The letter continued:

> We have a suspicion as to who may have provided these documents to Boschult. I understand the reporters' privilege and all that, and I have yet to see how that works in a depo. What happens when I can ask your client

> If "did so-and-so gave [sic] you any documents?" and then "what documents did they give you?"
> We know Boschult met with Chris Price, the new husband of Sarah rice, my client's ex-wife and mother of his children. Price admitted it in a deposition.
> If the CRC records were obtained or discovered through Chris Price, and your client can verify that in some way, I believe we can reach an agreement rather easily.

Appellant argues in his brief that his effort to learn the identity of a "source" for the news report was because he believed his former wife "may have been involved in the production of dissemination of the Dossier...." (App. Br. p. 27). Had appellant taken the deposition of Boschult at any time in this litigation he could have asked the questions he posed in his e-mail but appellant undertook no discovery with respect to respondents following severance of the claims against them when appellant was directed to proceed separately against respondents. There is a reporter's privilege in South Carolina but it does not protect against forced disclosure by a repo1ter if the reporter is a party to the litigation. S.C. Code Ann. § 19-11· I00(A). Appellant's attorney wondered what would happen if he asked Boschult if he were given documents or if so, who gave them? Those questions could have been asked of Boschult had only appellant bothered to take Boschult's deposition. Since the news report indicated clearly that the information being reported came from the Family Court file, appellant could have anticipated that Boschult's testimony would have been consistent. Forcing respondents to defend against claims that had no support in the law and no facts to justify the claims, while promising a dismissal of the action if Boschult would provide information that did not exist is clear evidence that the suit against respondents, extended as it was by appellant's disregard of court rules, procedure, and deadlines, must establish conclusively that there was no purpose other than harassment for the publication of a profile that did not match appellant's campaign portrait of himself. A political candidate "cannot cry Foul! When an ... industrious reporter attempts to

demonstrate that he... lacks the sterling integrity trumpeted in campaign literature and speeches." *Harte-Hanks, supra,* 491 U.S. at 685, 109 S.Ct. at 2694.

The trial court had ample evidence to conclude that appellant did not only cly "Foul!" in response to respondents' profile of him, appellant filed a suit without investigating the source of the information he was told would be reported, called the reporter a "liar" (App. Aff. Jr I 0) when the source was identified as appellant's Family Court file and sought by offering to dismiss the litigation in exchange for information about a "dossier" and "source" that he could have obtained at any point after suit was filed by deposing Boschult. After the action against respondents was severed from the gaggle of other defendants, appellant had no excuse, such as the defendants have not answered yet (App. Br., pp. 8,9), not to depose Boschult except the real possibility that Boschult would confirm what was in the news report that his source was the Family Court file. Respondents demonstrated, and the trial court concluded correctly that sanctions were appropriate under subsections (b) and (c) on grounds that appellant's suit against respondent had no ascertainable, legitimate purpose. Appellant asserted "The article written by Boschultz [sic) destroyed my reputation and damaged my business in excess of $1 million as a result." (App. Aff. ‖ 16). These sentiments sound as if there is a desire for revenge and an ill-will toward respondents.

The record before the court was populated with evidence of appellant's volatile temper and hostility toward those he believes are against him such as the examples cited here: "John will stop at nothing, including lying, manipulation, intimidation, and now parental abduction. He believes he is above the law...." (Price Aff., Def. Req. to Admit tab 20, p. 2). "Father is often angry and screams a lot." (Def. Req. to Admit tab 1, p. 1). "Father has filed/made complaint against the minor children's counselor... that have been dismissed. Further, anyone involved in this case...have been harassed, intimidated or ridiculed by Father or others acting on his behalf." (Fam. Ct. Order 0/11/2019, Def.

Req. to Admit tab 11, p. 2). "They [potential witnesses] expressed fear of retribution by him if he did not like what they said." (Rep. of Guardian ad Litem, Def. Req. to Admit tab 24, p. 19).

Civil litigation is designed to resolve disputes within a framework of rules and procedures. It is not to be used as a vehicle for harassment and revenge, or to coerce information in exchange for settlement of the case when the fact that this information did not exist could have been confirmed by a deposition that was not taken.

The award of sanctions should be affirmed.

CONCLUSION

For the reasons stated and the authorities cited herein the orders of the trial courts should be affirmed.

Columbia, South Carolina
February 5, 2026

Respectfully submitted,

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