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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

BRIEF OF APPELLANT CINDY BARNETTE CAMP

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STATEMENT OF THE CASE

Appellant filed a Complaint against Respondent alleging defamation, false light invasion of privacy, civil conspiracy to commit false light invasion of privacy, public disclosure of private matter, civil conspiracy to commit public disclosure of private matter, and negligence (Amended Complaint R. pp. 21-28). Respondent filed a Motion to Dismiss pursuant to Rule 12(b)(6) (Motion R. pp. 29-36). The Court granted the Motion with respect to all causes of action on 7/11/2025 (Order R. pp. 1-13). Appellant timely filed her Notice of Appeal on 7/21/2025.

FACTS

The relevant facts are contained in the Complaint, but here is the short of it. Appellant is a female law enforcement officer. During a political campaign in 2020 – for Sheriff of Greenville County -, she was defamed by two (2) men, *i.e.* they published false statements about her private life. The first man is A.T. Smith. He was a candidate in a runoff to determine who would represent the GOP in the general election. (A.T. Smith lost to Hobart Lewis, who is currently the Sheriff of Greenville County.) The second man is Chris Miller ("Respondent"). He supported A.T. Smith's campaign and had an axe to grind with A.T. Smith's opponent, Hobart Lewis. To be clear, this case involves two (2) separate publications by these two (2) men.

The A.T. Smith publications (The subject of a prior lawsuit). A.T. Smith dragged Appellant into the public square in an attempt to defeat his opponent, Hobart Lewis. Specifically, A.T. Smith mailed thousands of flyers to Republican voters that clearly implied Appellant, formerly known as Cindy Barnette a/k/a "Cindy B", had engaged in a sexual relationship with Hobart Lewis when she worked for the Greer Police Department. One flyer referred to Hobart Lewis' "sex scandal", while the other flyer referred to his "sex with a subordinate. Who is Cindy B?" (Amended Complaint R. p. 23 ¶ 9.) Appellant learned about the A.T. Smith publications – the two (2) political flyers - because her family and friends received them in the mail. They knew the flyers were referring to Appellant. (Amended Complaint R. p. 24 ¶ 12-14.) Appellant filed a lawsuit against A.T. Smith, and it was resolved in February 2025. (Amended Complaint R. p. 24, ¶ 17.)

The Chris Miller publications (The subject of this lawsuit). There were other publications that Appellant knew nothing about until January 16, 2025. (Amended Complaint R. p. 24 ¶17.) It will be shown that in her lawsuit against A.T. Smith, Appellant took reasonable

action to learn the "ultimate source" of the false statements about her. [1] She did not know the very existence of the Chris Miller publications, much less who made them. To be clear, these publications were not made by A.T. Smith. They were made by Respondent, and importantly they were "concealed" and "secretive."

1. **ATS Private Supporters Publications.** Between January 7, 2020 and January 12, 2020, Respondent posted numerous false statements about Appellant's private life in a Facebook Group called ATS Private Supporters. (Amended Complaint R. p. 21 ¶ 5 –p. 22 ¶ 7). This group supported the A.T. Smith campaign and had at least seventy (70) members, including members of law enforcement who knew Appellant. (Amended Complaint R. p. 21 ¶ 5). Among many things Respondent posted, he urged: "[G]et Cindy Barnett out there Hobart is done…the same thing Will Smith did." Respondent wanted to "make Hobart go away." (Amended Complaint R. p. 21 ¶ 6 – p. 22 ¶ 7). He also stated that Hobart Lewis had "[a]n affair with subordinate that more than 1 person has recollection of he admitted to it during polygraph at County." (Amended Complaint R. p. 22 ¶ 7).

2. **Publication to A.T. Smith Campaign for the Purpose of Further Publication to Thousands of Potential Voters.** On January 12 or 13, 2020, Respondent published false statements about Appellant's private life to the A.T. Smith campaign. Respondent was determined to push the Cindy Barnette sexual relationship story to Republican voters for the purpose of defeating Hobart Lewis. ("This is the last post I'm going to put out here. Tyler whoever [sic] [Hoover] needs to send a flyer like Will Lewis did during the runoff which is what defeated

[1] Appellant does not believe she is required to provide in her Complaint an explanation of her "reasonable action" or efforts to discover the "ultimate source" of the false statements about her. However, discovery in this case will reveal that she sought this information in interrogatories and depositions during discovery in *Cindy Barnette Camp v. A.T. "Tommy" Smith, et al.; Case No. 2021-CP-23-05802.* She was essentially told by A.T. Smith – "I don't know" or given the wrong name.

Loftis...Put him away before the Sheriff's Office is ruined." (Amended Complaint R. p. 22 ¶ 7-8). Appellant alleges that Respondent "contacted (or was contacted by) A.T. Smith or Kerry Wood, a consultant for A.T. Smith's campaign. Miller provided the information contained in his January 12, 2020 post and encouraged A.T. Smith or Kerry Wood to mail out a flyer or flyers containing the information to potential voters." (Amended Complaint R. p. 22 ¶ 8 – p. 23 ¶ 9). It is clear the flyers track/mirror Respondent's January 12, 2020 post, including the references to Appellant, formerly known as Cindy Barnette a/k/a "Cindy B".

ARGUMENT

I. APPELLANT'S STATUTE OF LIMITATIONS BEGAN TO RUN FROM THE DATE SHE KNEW OF THE *CHRIS MILLER* PUBLICATIONS - NOT THE DATE SHE KNEW OF THE A.T. SMITH PUBLICATIONS.

The trial court erred by focusing on the wrong publications. It focused on the A.T. Smith publications rather than the Chris Miller publications. ("Here, the statute of limitations began to run in 2020 when Plaintiff was made aware of the flyers published by the A.T. Smith Campaign..." (Order R. p. 10 ¶ 2); "...[I]t cannot be disputed that the date of discovery was in January 2020 when the Plaintiff was upset and distressed by the flyers from the Smith campaign..." (Order R. p. 11 ¶2.)

Appellant has already sued A.T. Smith for his publications. She knew about his publications by January 18, 2020, because her family and friends received his political flyers in the mail and then called her. Accordingly, she filed her lawsuit against A.T. Smith in 2021 – well within the statute of limitations. *This case is not about the A.T. Smith publications. It is about the Chris Miller publications.*

There is a three (3) year statute of limitations for several enumerated causes in SC Code §15-3-530. However, a "discovery rule" applies to "any injury to the person or rights of another

not arising on contract and not enumerated by law..." SC Code §15-3-530(5). These have been called "personal rights." *Campus Sweater and Sportswear Company v. M.B. Kahn Construction Company,* 515 F. Supp. 64, 77 (SCDC 1979). The causes in this "catch-all" provision "must be commenced within three (3) years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." SC Code §15-3-535.[2]

All causes of action in Appellant's case are governed by the "discovery rule." The trial court mostly got this right.[3] ("Therefore, as to the other non-defamatory causes of action, the discovery rule certainly applies.") (Order R. p. 7, ¶ 2).

Here's where the trial court got it wrong. It found that Appellant knew or should have known about the Chris Miller publications simply because she knew about the A.T. Smith publications. This is a finding of fact, and the trial court should not have made it at the Motion to Dismiss stage. Moreover, there is no support in the record for such a finding. Never mind that the Chris Miller publications were separate and distinct from the A.T. Smith publications, much less that they were "concealed" and "secretive" in that they were hidden in private discussions/conversations. As Appellant sets forth in her Amended Complaint, she did not know or have reason to know of the Chris Miller publications until January 16, 2025. Thus, her statute of limitations in this case – for her claims against Respondent - did not begin to run until that time. She filed her complaint in this case on February 27, 2025 – six (6) weeks after learning of Respondent's publications.

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[2] As will be discussed more fully below, the "discovery rule" has been repeatedly applied to causes of action not covered by SC Code §15-3-530(5).

[3] The Trial Court ruled that Appellant's defamation cause of action is not governed by the discovery rule based upon precedent. *Jones v. City of Folly Beach,* 326 SC 360, 483, SE2d 770 (1999). Appellant will argue against this precedent below and will file a Motion to Argue Against Precedent pursuant to Rule 217 SCACR.

II. SOUTH CAROLINA SHOULD ADOPT THE "DISCOVERY RULE" IN DEFAMATION CASES.

With respect to the defamation cause of action specifically, the trial court held that the discovery rule does not apply. The trial court's holding was based upon precedent. In *Jones v. City of Folly Beach,* 326 SC 360, 483 SE2d 770 (Ct. App. 1997), the Court of Appeals recognized two (2) approaches to applying the statute of limitations in a defamation case: the "date of utterance rule" and the "discovery rule". *Id.* at 368-369. The Court of Appeals noted that a cause of action accrues "at the moment when the plaintiff has a legal right to sue on it." *Id.* at 368. (Using the "date of utterance rule", the statute of limitations begins to run as soon as defamatory words are spoken/written – regardless of whether the victim of defamation is aware.) The Court of Appeals apparently believed that the discovery rule had been applied *sparingly* by the Supreme Court, citing *Santee Portland Cement Co. v. Daniel Int'l. Corp.*, 299 SC 259, 384 SE2d 693 (1989), *overruled on other grounds by Atlas Food Systems v. Crane Nat'l. Vendors,* 319 SC 556, 462 SE2d 858 (1995). The Court of Appeals noted: "In *Santee*, the court applied the discovery rule to contract actions but did not adopt the discovery rule for all causes of action." *Id.* Thus, the Court of Appeals applied the "date of utterance rule" rule to libel and slander causes of action. ("The trial court was correct in granting Peeples's motion for summary judgment because South Carolina has not adopted the discovery rule in libel and slander cases.") *Id.* at 369.

Respectfully, in *Jones* the Court of Appeals read too much into *Santee.* Yes, the Supreme Court applied the discovery rule to contract actions governed by §15-3-530(1). *Santee*, 299 SC at 273. But the Court of Appeals' statement that the Supreme Court "did not adopt the discovery rule for all causes of action" is unnecessary and somewhat misleading. The statement implies the Supreme Court was asked to adopt the discovery rule for *all* causes of action (It was not) and that it deliberately limited its decision to contract causes of action (It did not). In fact, in *Santee* the

Supreme Court concluded that the legislature had *not* limited the discovery rule to actions under §15-3-530(5). Significantly the Supreme Court made it clear that the discovery rule should be applied liberally.

> "This concern [about allowing defendants to gather evidence while facts are still fresh] must be balanced against a plaintiff's interest in prosecuting an action and pursuing his rights. ***Plaintiffs should not suffer where circumstances prevent them from knowing they have been harmed.*** (citation omitted). '[S]tatutes of limitations which are susceptible to judicial construction should not be applied mechanically but rather construed in the manner most consistent with both their underlying purposes and the requirements of substantial justice for all parties involved.' *Gattis v. Chavez,* 413 F. Supp. 33, 39 (D.S.C. 1976)." [emphasis added].

Id. at 271-272.

The Supreme Court noted its own decision to apply the discovery rule to actions for professional negligence and recognized that the "discovery rule represents the more equitable and rational view." *Id.* at 272, citing *Mills v. Killian,* 273 SC 66, 70, 254 SE2d 556, 558 (1979). It observed: "In recent years, the trend has been toward recognition and *expansion* of the discovery rule." [emphasis added]. *Id.* at 274. The Supreme Court also noted – clearly with approval and in support of its ruling – that Judge Hemphill of the South Carolina District Court had extended the discovery rule to actions under §15-3-530(3) (action for trespass upon or damage to real property) and §15-3-530(4) (action for taking, obtaining, or injuring any goods or chattels including an action for the specific recovery of personal property). *Campus Sweater and Sportswear Company v. MB Kahn Construction Company, supra.* Like the Supreme Court, Judge Hemphill agreed and presumed South Carolina would apply the discovery rule freely based upon equitable factors. He further observed that adoption of the discovery rule has been a nationwide trend since 1870. *Id.* at 78. (In an earlier case, Judge Hemphill observed: "It cannot be disputed that adoption of the

'discovery' rule is a modern and growing trend in the law." *Gattis v. Chavez,* 413 F. Supp 33, 38 (1976))

To be clear – the Supreme Court and the South Carolina District Court have applied the discovery rule freely – not sparingly. The Supreme Court has recognized the discovery rule is "equitable and rational" and avoids results that are "manifestly unfair". *Mills,* 254 SE2d at 70. Yet defamation remains the outlier. Other than defamation, counsel for Appellant is not aware of any case in which the discovery rule has not been applied. "The courts of South Carolina have consistently applied the 'discovery rule' in non-defamation cases to determine when a cause of action accrues..." *Gillman v. City of Beaufort,* 368 SC 24, 27, 627 SE2d 746, 748 (Ct. App. 2006).

There is no reason the discovery rule should not be applied in defamation cases. When a person has been defamed in a manner that does not allow her to know about it – to know what was said, who said it, or when it was said -, it is inequitable to apply the "date of utterance rule". Clearly, a person or business can be damaged without knowing why – without knowing enough to file a complaint within two (2) years of the date of utterance. For example, a person operates a daycare. Someone spreads a false rumor that the person is a pedophile. No one tells the person about the rumor. Mysteriously, business begins to drop off, and the daycare closes within two (2) years. On the first day following the two (2) years, the person operating the daycare learns of the defamation. She learns the source of damage and destruction to her reputation and business. She learns what was said about her. Under the "date of utterance rule", she is out of luck. The person who defamed her and destroyed her reputation and business gets a pass. (Appellant's case presents an equally compelling scenario.)

The majority of jurisdictions recognize that such a result is not equitable or rational and, thus, apply the discovery rule to defamation. That is clearly the trend. An excellent discussion is

found in *Digital Design Group, Inc. v. Information Builders, Inc.*, 24 P3d 834 (OK 2001). The plaintiff in that case learned it had been libeled after Oklahoma's one (1) year statute of limitations for defamation had run. *Id.* at 838. The case went to trial, and the trial court allowed a libel claim to be submitted to the jury along with various contract claims. *Id.* Defendant appealed, and the Oklahoma Supreme Court addressed whether the common law discovery rule should apply to libel actions. (It had previously applied the "date of utterance rule". *Id.* at 839.)

> "The discovery rule applies to libel actions when the publication is likely to be concealed or published in a secretive manner which would make it unlikely to come to the attention of the injured party... We have never determined whether the discovery rule may be utilized in libel actions. However, several other jurisdictions have addressed the question. The trend among those courts is to apply the rule in limited situations, for example – when the publication is likely to be concealed from the plaintiff or published in a secretive manner which would make it unlikely to come to the attention of the injured party." *Id.* at 839-840.

In footnote 7 of the Opinion, the Court cites numerous jurisdictions that have either extended the discovery rule under circumstances where publication might be concealed from the plaintiff or published in a secretive manner or simply apply the discovery rule without qualification. *Id.* at 846. Notably, the Court also recognized that "a few other courts" have adhered to the "date of utterance rule" and cited *Jones v. City of Folly Beach, supra.*

The defamation in Appellant's case clearly fits within the category of "concealed" or "secretive". Afterall, Respondent's false statements were made in a private Facebook group and in private conversations between Respondent and certain members of the A.T. Smith campaign staff. Appellant, who lived in Anderson, South Carolina, couldn't possibly have known about these false publications, even though she inquired about the "ultimate source" of the false statements in the discovery phase of her case against A.T. Smith. (See footnote 1.) Recall *Santee:* "Plaintiffs should not suffer where circumstances prevent them from knowing that they have been harmed." *Santee,* 299 SC at 271-272.

Respondent will argue the "discovery rule" will allow someone to bring a claim many years after a defamatory statement is made. That same concern can be applied to any other claim, *i.e.* construction defect, professional malpractice, etc. No matter the type of claim, there are still requirements that an injured party must take reasonable action to discover an injury and the source of injury and then act with promptness upon learning he or she has a claim against another party. *Dean v. Ruscon,* 468 SE2d 645, 647 (1996).

There is simply no good reason for defamation cases to be treated differently from other injuries to personal rights. In light of the Supreme Court's expressed philosophy in *Killian* that the "discovery rule represents the more equitable and rational view", as well as its emphasis on fairness; and in light of its favorable references to Judge Hemphill's expansion of the discovery rule even beyond its ruling in *Killian*, South Carolina should recognize the trend and join the majority when it comes to applying the discovery rule in defamation cases. *Jones v. Folly Beach* should be overruled, and the Court of Appeals should adopt the discovery rule – at the very least in cases where false statements have been made in "concealed" or "secretive" circumstances.

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.

March 10, 2026

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