THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Diane S. Goodstein, Circuit Court Judge

Case No: 2022-CP-10-03009
Appellate Case No. 2025-001650

Philip Woschenko, …… Appellant,

v.

Sonya Kurien and Kyle Snouffer,…… Defendants,
of whom Sonya Kurien is the respondent.

FINAL BRIEF OF APPELLANT

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2. Did the lower court err in granting summary judgment as to Appellant's Outrage and Civil Conspiracy actions based on Appellant's failure to submit evidence creating a factual basis or evidence of emotional damages, when the Defendant failed to state these grounds with particularity in her motion, thus denying Appellant notice as required by the South Carolina Rules of Civil Procedure?

STATEMENT OF THE CASE

On July 5, 2022, Plaintiff Philip Woschenko (hereinafter, "Appellant") initiated this action against Defendant Sonya Kurien (hereinafter, "Respondent") and Co-Defendant Kyle Snouffer, asserting claims for Defamation, Outrage / Intentional Infliction of Emotional Distress (IIED), and Civil Conspiracy. (R. pp. 28-34, 48-55).

The action centers on the Defendants' repeated, unfounded public accusations regarding Appellant's alleged sexual abuse of his daughter and physical abuse of his son. These specific allegations, which were fully investigated by law enforcement, South Carolina Department of Social Services (DSS), and a forensic interviewer, were officially determined to be "Unfounded" by March 21, 2019. (R. pp. 159-163, Ap. 22-27, 36). Nevertheless, Respondent and Co-Defendant Snouffer continued to assert these falsities to not only the police and medical providers, but to an unknown number of other members of the public.

Currently, this matter comes before the Court, in part, on Respondent's Partial Motion to Dismiss and Motion for Summary Judgment. (R. pp. 42-47). Respondent's Motion sought judgment on the Defamation claim stemming from a July 31, 2020 police dispatch call, asserting that the communication was "cloaked in statutory immunity" and was privileged. *Id*. For the

Outrage and Civil Conspiracy claims, Respondent argued for dismissal because Appellant had "no proof at all to support those allegations." *Id*.

On August 1, 2024, the Honorable Judge Dian Schafer Goodstein issued an Order granting in part Respondent's Partial Motion to Dismiss and granting the Motion for Summary Judgment in full. (R. pp. 4-11). As to Respondent's summary judgment motion, Judge Goodstein found that Respondent's statements to a consolidated call center on July 31, 2020 were protected by statutory immunity (S.C. Code Ann. § 63-7-390) and conditional privilege. *Id.* Regarding the Outrage and Civil Conspiracy claims, Judge Goodstein granted summary judgment to Respondent on the grounds that Plaintiff/Appellant failed to present sufficient evidence of emotional damages. *Id.*

After Judge Goodstein's August 1, 2024 Order, two separate Circuit Court judges issued rulings in this same case that directly addressed and contradicted the substance of the dismissed claims. Co-Defendant Kyle Snouffer filed a Motion for Summary Judgment based on substantially the same facts and legal arguments as those adopted by Judge Goodstein (statutory immunity, privilege, and insufficient evidence for Outrage and Civil Conspiracy). Judge Van Slambrook denied Snouffer's motion in its entirety, finding a genuine issue of material fact existed as to whether Snouffer's subsequent defamatory statements were made in "good faith" or for the purpose of defaming the Appellant. (R. pp. 12-22). Furthermore, Judge Van Slambrook explicitly held that the Appellant did address each element of Civil Conspiracy and Outrage, and "supported his arguments with evidence," contradicting Judge Goodstein's finding of a lack of factual basis. *Id.*

Respondent filed a subsequent motion seeking summary judgment on the single remaining defamation claim based on a May 7, 2021 statement made to MUSC providers. Judge Rode denied this motion, finding there was a genuine issue of material fact as to "whether defendant's statements... were made with malice and/or whether the statements fall within qualified privilege."

(R. pp. 23-25).

On August 7, 2024, Appellant filed a timely Motion to Alter or Amend the August 1, 2024, Order pursuant to Rule 59(e), SCRCP, arguing the Court improperly ruled on questions of fact reserved for the jury and granted summary judgment on Outrage and Civil Conspiracy on grounds not argued or noticed by Respondent, particularly the absence of evidence of damages. (R. pp. 94-100).

On July 24, 2025, the Honorable Judge Diane Schafer Goodstein issued an Order denying the Appellant's Motion to Alter or Amend. (R. pp. 26-27). The final order confirmed the original ruling, stating that the Appellant failed to move to alter or amend the finding of statutory immunity (S.C. Code § 63-7-390), rendering reconsideration moot. *Id*. The Order also added that the Civil Conspiracy claim was now moot due to the settlement with Co-Defendant Kyle Snouffer. *Id*. This appeal followed.

STANDARD OF REVIEW

A trial court may only grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the 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." Rule 56(c), SCRCP. An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP. *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct.App.1998).

In determining whether any triable issues of fact exist, the Court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Manning v. Quinn*, 294 S.C. 383, 385, 365 S.E.2d 24, 25 (1988). On appeal from an order granting summary judgment, the appellate court will review all ambiguities,

conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. *Osborne v. Adams*, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001).

Moreover, summary judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of the law. *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is a dispute as to the conclusion to be drawn from those facts. *Id*.

FACTUAL BACKGROUND

Appellant and Respondent are the parents of two children who both have severe autism and limited communication skills. (R. p. Ap. 8, 50-51 58). Co-Defendant Snouffer was the children's in-home behavioral technician. The marital conflict began in December 2018 when Respondent asked Appellant to move out and immediately initiated a sexual relationship with Snouffer – the children's caretaker. (R. p. Ap. 49).

Respondent alleged their non-verbal daughter disclosed sexual abuse the night Appellant moved out (December 9, 2018), but waited ten days to file a police report and permitted Appellant continued unsupervised time with the children. (R. pp. Ap. 16, 18-21). Appellant disputes that his daughter was "distraught" during this time.

Between January and March 2019, multiple independent investigations – including by the Folly Beach Police Department, the South Carolina Department of Social Services (DSS), and a forensic interview – unanimously concluded the allegations were "Unfounded," finding no forensic, direct, or circumstantial evidence of abuse. (R. pp. 159-163, Ap. 18-27).

Despite these allegations being declared unfounded over a year and half earlier, Respondent and Snouffer continued to falsely accuse Appellant of abuse:

July 31, 2020 Respondent's Police 911 Call: Respondent called police dispatch to state

that her daughter was "sexually molested" by Appellant and claimed that Appellant was harassing her. (R. pp. 184, Ap. 28, CD)

July 31, 2020 Incident: During a police-accompanied retrieval of Appellant's belongings, Snouffer told officers that Appellant "molested [Respondent's] 12-year-old autistic daughter." (R. pp. 48-55, Ap. 29 CD).

September 2020 Workplace Harassment: Snouffer appeared at Appellant's place of work (Costco) to make derogatory comments about the affair and repeat the abuse allegations to Appellant's co-workers.

May 7, 2021 Hospital Allegations: Appellant's and Respondent's son was hospitalized for rib fractures and constipation, shortly after a physical altercation between the son and Snouffer at Disney World that required EMS intervention. (R. pp. Ap. 15-16, 50-51). While the son was hospitalized, Respondent told hospital staff that Appellant physically and sexually abused the son while simultaneously repeating the prior sexual abuse claims regarding the daughter. (R. pp. Ap. 51, 55, 58). The examining physician's note confirmed the son's behaviors were "not diagnostic for sexual abuse." (R. p. Ap. 58).This new set of accusations resulted in another DSS referral, which, like the previous ones, concluded that no abuse was found, and no criminal charges were filed.

Despite repeatedly making these accusations of heinous abuse, Respondent never sought sole custody of her children and often asked Appellant to watch their children on days she had custody.

ARGUMENT

1a. The lower court erred in granting summary judgment as to Appellant's Defamation action regarding the July 31, 2020 911 call, finding statutory immunity applied as a matter of law, where evidence of bad faith and abuse of privilege, confirmed by subsequent conflicting judicial findings in the same

case, created genuine issues of material fact reserved for the jury.

The lower court granted summary judgment for the statements made during the July 31, 2020 911 call, finding Respondent was entitled to statutory immunity (S.C. Code Ann. § 63-7-390) and conditional privilege. (R. pp. 4-11). This was based on the finding that the Appellant provided "no evidence... to show bad faith." *Id*. This constitutes error because the application of these defenses depends on a factual finding regarding Respondent's good faith, which Appellant demonstrated was highly disputed.

S.C. Code Ann. § 63-7-390 provides in relevant part:

> A person required or permitted to report pursuant to Section 63-7-310 or who participates in an investigation or judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is rebuttably presumed. Immunity under this section extends to full disclosure by the person of facts which gave the person reason to believe that the child's physical or mental health or welfare had been or might be adversely affected by abuse or neglect.

Under the statute, immunity only applies if the reporter is "acting in good faith." Good faith is rebuttably presumed. Appellant provided evidence sufficient to rebut this presumption and place the issue before a jury.

Respondent's sworn deposition testimony revealed she did not seek sole custody of her daughter despite claiming to believe the Appellant sexually abused her. (R. pp. Ap. 16). This lack of protective action directly undermines the requirement that the communication be made "in good faith" to protect the child's interest, creating a genuine question of fact regarding the same. In her deposition, Respondent was directly questioned about her decisions regarding custody, given the nature of her accusations. (*Id*.) When asked if she wanted sole custody of her children in the divorce, Respondent replied, "No." She was then pressed: "You didn't want sole custody, even though you believed that your ex-husband sexually abused your daughter?" Respondent again

replied, "No." (*Id*.) When asked if she wanted sole custody of their son, even though she believed the Appellant was "capable of one of the worst crimes imaginable," Respondent still replied, "No." (*Id*.) That Respondent did not seek sole custody of her children, even though she claimed to believe the Appellant was "capable of one of the worst crimes imaginable," creates a clear contradiction and/or dispute of material fact.

Judge Goodstein's conclusion that there was "no evidence" to show bad faith is further challenged by subsequent rulings in this action. Two other lower court judges found that similar allegations of bad faith in this same case created a genuine issue of material fact as to these defenses, requiring jury resolution. Judge Van Slambrook found a genuine issue of material fact as to whether co-Defendant Snouffer's subsequent statements were made in "good faith," and Judge Rode found a genuine issue of material fact existed regarding whether Respondent's subsequent May 7, 2021, statements were made with malice. (R. pp. 12-22, 23-25). The fact that multiple judges reached differing conclusions on similar evidence and identical defenses confirms that there is sufficient evidence to raise a genuine issue of material fact that cannot be decided as a matter of law.

A jury could reasonably infer that if Respondent genuinely believed her daughter was subjected to sexual abuse, a parent would seek sole custody to prevent further harm. Her admitted lack of desire for sole custody directly conflicts with a finding that she acted in good faith to protect the children's welfare when repeating the allegations. A jury could also reasonably find that repeating allegations that had been investigated and deemed unfounded 19 months earlier demonstrates bad faith by Appellant. As South Carolina law makes clear, summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is a dispute as to the conclusion to be drawn from those facts.

Respondent's admitted refusal to pursue sole custody, despite claiming she believed Appellant physically and sexually abused their children, and her repetition of investigated and deemed unfounded allegations constitute a genuine issue of material fact regarding her good faith, thereby defeating the motion for summary judgment on the basis of statutory immunity.

1b. The lower court erred in granting summary judgment based on conditional privilege, as evidence demonstrated that Respondent abused the privilege by failing to make the statements "honestly" or limit their scope, thereby raising a question of fact reserved for the jury.

The principle articulated in *Bell v. Bank of Abbeville*, 208 S.C. 490, 493–94, 38 S.E.2d 641, 643 (S.C. 1946) holds that a communication is privileged by reason of the occasion when one party has an interest in the subject matter and the recipient has a corresponding interest. Crucially, the court established the following requirements for the privilege to provide a defense: the communication must be "honestly made," in order to protect such a common interest; the statement must be such as the occasion warrants; and the statement must be made in good faith to protect the interests of the one who makes it and the persons to whom it is addressed. *Id*.

The common law defense of conditional or qualified privilege protects publications only if the privilege is not abused. *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484-85, 514 S.E.2d 126 (S.C. 1999). While whether a privilege may apply is a question of law for the court, the question of whether the privilege has been abused is one for the jury. *Id*. Abuse occurs if the statement is not "honestly made" or exceeds the scope warranted by the occasion. *Id*.

Again, the testimony showing Respondent's unwillingness to seek sole custody, despite claiming to believe the Appellant was a sexual abuser, directly challenges whether her communications were "honestly made" to protect a corresponding interest. Evidence of bad faith or malice negates the privilege. A reasonable jury could find that Respondent did not "honestly believe" the allegations she was repeating – which included claims of sexual abuse of one's own

child, "one of the worst crimes imaginable" – if she was simultaneously unwilling to seek sole custody or otherwise protect her children from their supposed abuser. This strong disconnect creates a genuine question of fact for the jury regarding whether Respondent honestly believed the claims when she repeated the debunked allegations, such as during the July 31, 2020, 911 call.

The context of Respondent's call also demonstrates abuse of the privilege. Appellant had both kids for the evening; Respondent and Defendant Snouffer put Appellant's personal belongings on the front porch that evening and told him they were out there; Appellant went to collect his personal belongings and asked for the police to be present. Respondent called the law enforcement consolidated call center for a well-check and again repeated her 19-month-old unfounded allegation about Appellant. (R. p. Ap 28, audio recording). If the jury determines the statements were not made in good faith, the conditional privilege is stripped away, allowing the defamation claim to proceed.

In her briefing to the trial court, Respondent cited "*Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 326 S.C. 426, 483 S.E.2d 789 (S.C. 1999)" as an opinion from the South Carolina Supreme Court affirming a directed verdict on the issue of conditional privilege. (R. pp. 102). In fact, the opinion Respondent cited was reversed by the Supreme Court in *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 514 S.E.2d 126 (S.C. 1999). Instead of affirming the trial court's grant of a directed verdict as Respondent's memo suggested, the Supreme Court ruled that a question existed for the jury to decide whether the privilege was exceeded or abused. *Id*. at 486.

The Supreme Court's *Swinton Creek Nursery* decision provides:

> In general, the question whether an occasion gives rise to a qualified or conditional privilege is one of law for the court. 50 Am.Jur.2d *Libel and*

> *Slander* § 276 (1995). However, **the question whether the privilege has been abused is one for the jury**. *Id.* Factual inquiries, such as whether the defendants acted in good faith in making the statement, whether the scope of the statement was properly limited in its scope, and whether the statement was sent only to the proper parties, are generally left in the hands of the jury to determine whether the privilege was abused.

Id. at 484-85 (emphasis added).

In the initial briefing and at the hearing on Respondent's motions for summary judgment and dismissal, Appellant showed ample evidence to support a jury finding that a conditional privilege was abused. (R. pp. 80-93, 111-141). Repeating the specific, debunked sexual abuse allegation – which had been investigated and dismissed 19 months earlier – to the consolidated call center operator exceeded the proper scope warranted by the occasion (a simple welfare check request). The repetition of the specific, debunked sexual abuse allegation to the 911 operator during a request for a simple welfare check was unnecessary and exceeded the scope warranted by the occasion. When presented with evidence of the same allegation in a very similar context (to their son's doctor at MUSC), Judge Rode determined there was at least a question of fact for the jury and denied Respondent's second summary judgment motion. (R. pp. 23-25). Largely the same evidence and arguments were presented in Appellant's response to Co-Defendant Snouffer's summary judgment motion, which Judge Van Slambrook also agreed raised a question of fact for the jury. (R. pp. 12-22). As the case law makes abundantly clear, determining whether this constituted an abuse of privilege is traditionally a question reserved for the jury when facts are controversial.

2. The lower court erred in granting summary judgment as to the Outrage and Civil Conspiracy actions on grounds not argued by the moving party, thereby

denying Appellant notice and constituting reversible error.

The lower court granted summary judgment on the Outrage (IIED) and Civil Conspiracy claims because Appellant "failed to submit evidence to create a genuine issue of material fact that there is a factual basis" for these claims, even though the Court noted it was "conceivable that Plaintiff could have suffered emotional damages." (R. pp. 4). The Order does not address the arguments actually made by Respondent.

The lower court committed reversible error by relying on a failure of proof concerning factual basis and emotional damages because this ground was not argued or noticed by Respondent. Respondent's Motion for Summary Judgment requested dismissal of Outrage and Conspiracy based solely on the argument that they were attempts to "re-package" defamation claims and that conspiracy was a "legal impossibility". (R. pp. 64-66, 67-68, 69-79).

Respondent's arguments for summary judgment did not include a challenge to the factual sufficiency of emotional damages. During the May 29, 2024 hearing, Respondent's counsel, Mr. DeAntonio, characterized the Outrage and Civil Conspiracy claims as "two throwaway... causes of action." (R. pp. 121). He argued that Outrage was precluded because it was based only on the defamation and was an impermissible "repackaging" of the defamation claim. (R. pp. 122-23). For Civil Conspiracy, he argued that the claim could not lie because the Defendants "didn't co-author anything" and there was "no joint communication." (R. pp. 123). The entirety of the Respondent's argument focused on the legal impossibility of the claims, not a factual insufficiency regarding emotional damages or underlying elements.

At no point in Respondent's MSJ, supporting memorandum, or oral argument was it specifically argued that the Appellant failed to produce evidence of emotional damages or challenge the factual basis for the independent elements of Outrage or Conspiracy. In fact,

Appellant's counsel, Mr. Slavin, explicitly noted in opposition that summary judgment could not be granted based on the "limited argument raised by [Respondent] in her motion." (R. pp. 133).

Rule 7(b)(1), SCRCP, requires motions to state their grounds "with particularity" to provide notice. By granting summary judgment on the unargued evidentiary ground of failure to submit proof of a factual basis or damages, the lower court denied Appellant the opportunity to oppose this basis for the ruling, which is clearly prejudicial and constitutes reversible error. Appellant was not required under Rule 56(e) to submit evidence on grounds the movant did not even raise or support.

Judge Goodstein's finding of insufficient evidence for Outrage and Conspiracy is directly contradicted by Judge Van Slambrook, who found, when reviewing similar claims and evidence against Co-Defendant Snouffer, that the Appellant did address each element of Civil Conspiracy and Outrage, and "supported his arguments with evidence." (R. pp. 17). Furthermore, the July 24, 2025 Order's finding that the Civil Conspiracy claim is moot due to the settlement with Co-Defendant Snouffer is erroneous. (R. pp. 26). Judge Van Slambrook's denial of summary judgment confirmed that sufficient evidence existed to find a conspiracy. (R. pp. 17). The settlement of one alleged co-conspirator cannot relieve the non-settling co-conspirator (Respondent) of liability.

CONCLUSION

For the foregoing reasons, the Circuit Court's Order of August 1, 2024, granting summary judgment, and the subsequent Order of July 24, 2025, denying the Motion to Alter or Amend, must be reversed as to the Defamation, Outrage / Intentional Infliction of Emotional Distress (IIED), and Civil Conspiracy causes of action against Respondent Sonya Kurien.

Respectfully submitted,

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