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SC Court of Appeals

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,.....
of whom Sonya Kurien is the respondent.**

Defendants,

FINAL REPLY BRIEF OF APPELLANT

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INTRODUCTION

Respondent's Brief relies upon a narrative that both misrepresents key facts and ignores the procedural mandates of South Carolina law. Specifically, Respondent erroneously asserts that there was "no evidence" of bad faith regarding her repeated defamatory statements. This ignores her own testimony, which reveals a stark cognitive dissonance that seriously undermines the "good faith" of her statements: Respondent (mother) claims Appellant (father) committed one of the worst crimes imaginable against their children, yet she never sought sole custody and continued to allow him unsupervised access to them. (R. pp. Ap. 16-17).

Respondent's brief also dramatically exaggerates by claiming daughter made prior "allegations of abuse" when, in fact, daughter (who is minimally verbal) made a single, non-verbal gesture that Respondent interpreted and reported as an allegation of abuse. It also ignores that Respondent made her defamatory statement more than one and a half years after the South Carolina Department of Social Services ("DSS") and law enforcement investigated the supposed allegation and deemed it "unfounded." (R. pp. 22, 28 audio recording, 58).

It is in this context that the Court must ask if there are factual questions regarding Respondent's abuse of the conditional privilege.

Furthermore, Respondent's legal arguments misapply the standards for statutory immunity and civil conspiracy:

- Misapplication of S.C. Code Ann. § 63-7-390: Respondent presumes immunity is absolute for any "reporter." However, the statute explicitly requires the reporter to act in good faith, a rebuttable presumption that Appellant successfully challenged.

- **Erroneous Mootness Argument:** Respondent argues that the settlement with a co-conspirator legally dissolves the Civil Conspiracy claim. This is a misstatement of the law; a settlement by one joint tortfeasor does not absolve the remaining defendant of liability for the underlying conspiratorial acts.
- **Procedural Violations of Rule 7(b)(1):** Respondent’s brief fails to justify or even address the lower court’s grant of summary judgment on the issue of emotional damages—a ground Respondent never raised in her motion, thereby denying Appellant the required notice and opportunity to present evidence on that specific element.

By conflating “good faith” reporting with the malicious repetition of debunked claims, Respondent seeks to transform a limited statutory protection into a license for unending defamation.

ARGUMENT

I. The issue of statutory immunity is properly preserved because the lower court’s primary order conflated immunity and privilege, and subsequent orders confirmed the dispute as to good faith.

Respondent argues that Appellant failed to preserve the issue of statutory immunity because it was not explicitly separated from conditional privilege in the Rule 59(e) motion. This is a formalistic mischaracterization of the record.

In its August 1, 2024 Order, the lower court’s heading for Section 3 explicitly stated it was granting summary judgment “on the basis of a conditional privilege,” yet the text of that section analyzed statutory immunity under S.C. Code Ann. § 63-7-390. (R. pp. 7-9). Appellant’s Motion to Alter or Amend directly challenged the court’s finding that there was “no evidence” of bad faith—a factual determination required for both the statutory immunity and the conditional privilege defenses. (R. pp. 94-100).

Furthermore, the issue of “good faith” was the central point of contention during the May 29, 2024 hearing. (R. pp. 111-141). South Carolina law does not require a party to use “magic words” in a post-trial motion to preserve an issue that the court itself conflated in its primary ruling. Because the lower court’s finding of immunity was predicated on the exact same “lack of bad faith” evidence that Appellant moved to reconsider, the issue is fully preserved for appellate review.

II. Genuine issues of material fact exist regarding respondent’s “good faith” and reasonable belief.

Respondent asserts she is entitled to immunity as a matter of law because she acted as a “permissive reporter” concerned for her daughter’s welfare. However, immunity under § 63-7-390 only applies when the reporter acts in “good faith,” which is a question for the jury. In fact, Respondent’s brief argues there are eight criteria that must be found before a conditional privilege applies: “if [1] the matter is published upon an occasion that makes it conditionally privileged and [2] the privilege is not abused, and the respondent must prove [3] good faith, [4] an interest to be upheld, [5] a statement limited in its scope, [6] a proper occasion, [7] publication in a proper manner, and [8] to the proper parties only.” (Respondent Initial Brief at 8).

Appellant provided substantial evidence to rebut the presumption of good faith:

- **Contradictory Conduct:** Respondent testified she believed Appellant committed “one of the worst crimes imaginable” against their children, yet she admitted she did not want sole custody and continued to allow Appellant unsupervised time with the children. (R. pp. Ap. 16-17). These positions cannot be reconciled and necessarily raise a credibility issue for Respondent that the jury must weigh.
- **Repeated Unfounded Claims:** Respondent repeated specific allegations of sexual abuse by Appellant to 911 dispatch and MUSC medical providers more than one and a half years

after independent investigations by DSS and law enforcement concluded the claims were "unfounded." (R. pp. Ap. 28 audio recording, 58). Merely claiming Daughter disclosed abuse (itself, a factual dispute) does not create a license for Respondent to repeat the allegations of heinous criminal conduct by Appellant in perpetuity after the allegation is investigated and debunked by law enforcement.

- **Conflicting Judicial Rulings:** In this same case, Judge Rode denied Respondent's second motion for summary judgment, which was based on the same privilege/immunity arguments applied to statement to a medical provider, because he determined there was a genuine issue of material fact as to Respondent's good faith. (R. pp. 23-25). Similarly, Judge Van Slambrook denied Co-Defendant Snouffer's motion for summary judgment regarding his statements to law enforcement on the same evening as those *sub judice*, finding there was a genuine issue of material fact as to whether the Defendant's statements were made in good faith. (R. pp. 12-22).

If one circuit judge finds a genuine issue of material fact on the same evidence while another does not, there must be a dispute reserved for a jury.

II. The civil conspiracy claim is not mooted by settlement with a co-conspirator.

Respondent incorrectly argues that Appellant's settlement with Co-Defendant Kyle Snouffer moots the conspiracy claim because "there can be no conspiracy of one." (Respondent Initial Brief at 4).

Respondent's reliance on *Paradis v. Charleston Cnty Sch. Dist.*, 433 S.C. 562, 861 S.E. 2d 774 (2021) is misplaced. That case does not hold that a settling co-conspirator makes moot claims against a non-settling co-conspirator.

While a conspiracy requires two or more persons, the settlement of one co-conspirator does not erase the fact of the conspiracy or the liability of the remaining non-settling defendant. Under South Carolina law, a plaintiff may proceed against one or all joint tortfeasors. Judge Van Slambrook's order explicitly found that Appellant "addressed each element of each cause of action and supported his arguments with evidence," specifically regarding the conspiracy between Kurien and Snouffer. (R. pp. 12-22). The settlement with Snouffer merely limits the parties from whom Appellant can collect a judgment; it does not grant Respondent an automatic dismissal of a claim based on her own documented cooperation with Snouffer to harm Appellant.

Allowing Respondent's argument would create a perverse disincentive to never settle with a co-conspirator.

IV. The lower court committed reversible error by granting summary judgment on grounds not noticed or argued.

Respondent's brief fails to address the procedural violation of Rule 7(b)(1), SCRPC. The lower court granted summary judgment on Appellant's outrage and civil conspiracy claims based on a perceived "failure to submit evidence... of emotional damages."

However, Respondent never moved for summary judgment on the basis of a lack of damages; her motion argued only that the claims were "re-packaged" defamation or a "legal impossibility." Moreover, the issue of whether Appellant sustained damages was not even argued at the hearing. By ruling on a ground not raised by the movant, the court denied Appellant the notice and opportunity to present evidence on that specific element, constituting clear reversible error.

CONCLUSION

Respondent's hair-splitting and factually wrong waiver argument, incorrect explanation of the law of conditional privileges and statutory immunity that ignores glaring factual issues

effecting its application, and failure to address the lower court's obvious procedural flaw of granting summary judgment on grounds never argued make clear that the lower court's decision cannot stand. Accordingly, Appellant Philip Woschenko respectfully requests that the Court reverse the decisions below and allow his causes of action for defamation, outrage, and civil conspiracy to proceed to trial in full.

Respectfully submitted,

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