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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
DANIEL COBLE, CIRCUIT COURT JUDGE

Appellate Case No.: 2026-000047

Stuart Axelrod,Appellant,

v.

Steve Nash and John Doe,
Principal of Steve Nash, Defendants,

of whom Steve Nash is the,Respondent.

FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in granting Nash's Motion for Summary Judgment when Axelrod presented sufficient evidence creating a genuine issue of material fact concerning Axelrod's civil conspiracy claim?

STATEMENT OF THE CASE

This matter was initiated by Appellant Stuart Axelrod's filing of a Summons and Complaint against Respondent Steve Nash (hereinafter "Nash") and John Doe on October 5, 2022. The Complaint alleged, in pertinent part, that Nash and John Doe, an unidentified co-conspirator, participated together in a civil conspiracy against Axelrod to gather and disseminate false and misleading information for the purpose of seeking the disqualification of Axelrod from the Fifteenth Judicial Circuit Public Defender Selection Panel (hereinafter "Selection Panel").

After being served with the Complaint on December 22, 2022, Nash filed an Answer on January 17, 2023, and thereafter filed a motion to dismiss the action pursuant to Rule 12(b)(6), SCRCF on January 20, 2023. (R. p. 28). A hearing on Nash's motion to dismiss was held on October 12, 2023, before the Honorable Daniel Coble. Following the hearing, Judge Coble issued an order on October 20, 2023, denying Nash's motion to dismiss. (R. p. 2).

Nash filed a motion for summary judgment on June 17, 2025, asserting that Axelrod had failed to produce any evidence to create a genuine issue of material fact. (R. p. 30). A hearing on the motion for summary judgment was held on November 19, 2025, and following the hearing, Judge Coble issued a Form 4 Order on November 26, 2025, granting Nash's motion and directing Nash to submit a formal order within ten (10) days. (R. p. 5).

On December 8, 2025, Judge Coble issued a formal order granting Nash's motion for summary judgment, finding that Axelrod had failed to establish that Nash committed an unlawful act or lawful act by unlawful means. (R. p. 8). On December 18, 2025, Axelrod filed a timely motion to reconsider Judge Coble's order granting Nash's motion for summary judgment. (R. p. 69). Axelrod's motion to reconsider was subsequently denied by order dated December 23, 2025.

(R. p. 13). Axelrod timely filed his Notice of Appeal on January 8, 2026. (R. p. 71). This appeal follows.

FACTUAL BACKGROUND

This action arises from Axelrod's service on the Fifteenth Judicial Circuit Public Defender Selection Panel (hereinafter "Selection Panel"), and Nash's participation in a conspiracy to disqualify Axelrod from membership on the panel in 2020. Axelrod has resided and practiced law in the State of South Carolina since 1997, and he has served as a member of the Selection Panel for over ten (10) years. Pursuant to S.C. Code § 17-3-510(B), Selection Panel members must be residents within the judicial circuit in which they serve. In April 2020, the Selection Panel was activated to interview candidates for the role of the Fifteenth Judicial Circuit Public Defender upon the impending retirement of the current circuit public defender. (R. p. 18, ¶ 9). At that time, the Selection Panel members included Axelrod, Scott Bellamy, Greg McCollum, Billy Monckton, and Jace Phelps. (R. p. 92, lines 20-23).

Prior to interviewing the applicants, Axelrod expressed concerns about a potential conflict that existed with one of the applicants. (R. p. 18, ¶ 10). On May 4, 2020, less than twenty-four (24) hours after Axelrod raised those concerns, Respondent Nash, who is a private investigator and former law enforcement officer residing in California, submitted a complaint to the South Carolina Commission on Indigent Defense ("SCCID"), which alleged that Axelrod was a resident of California and was ineligible to serve on the Selection Panel. (R. p. 22; R. p. 18, ¶ 12). Within and attached to the complaint were false, misleading, and incomplete statements and information portraying Axelrod as a non-resident of South Carolina. (R. p. 19, ¶ 17). Nash's complaint was set forth through a sworn affidavit representing that all statements within his complaint and affidavit were true despite their false and misleading nature. In his affidavit, Nash attested that he was

familiar with Axelrod, that Axelrod maintained a residence in California, and that Axelrod was a resident of California, none of which was true. (R. p. 22; R. p. 18, ¶ 12).

As a result of Nash's complaint, SCCID opened an investigation into the allegations concerning Axelrod's residency, and the work of the Selection Panel was temporarily suspended while SCCID investigated the matter. (R. p. 19, ¶ 14; R. p. 107, lines 11-15). Axelrod retained counsel at his personal expense, to defend against the complaint and SCCID's investigation, which was only necessary due to Nash's actions. (R. p. 20, ¶ 20). During the investigation, Herverly Young, then Deputy Director and General Counsel for SCCID, attempted to contact Nash multiple times to obtain more information about the complaint, however Nash refused to cooperate or answer Mr. Young's inquiry as to why Nash submitted the complaint or who directed Nash to do so. (R. p. 19, ¶ 16). Ultimately, SCCID concluded its investigation and dismissed the complaint against Axelrod on June 4, 2020, after determining that Axelrod was a resident of the State of South Carolina. (R. p. 19, ¶ 18).

On October 5, 2022, Axelrod filed suit against Nash and an unidentified co-conspirator, John Doe, alleging that Nash and John Doe participated in a civil conspiracy to use false, misleading, and incomplete information for the improper purpose of seeking the unmerited disqualification of Axelrod from serving on the Selection Panel. (R. p. 19, ¶ 17). Nash filed a Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP on January 20, 2023, and a Memorandum in Support of the Motion on August 8, 2023, asserting that the Complaint failed to plead the necessary elements to support a civil conspiracy cause of action. (R. p. 61). On October 20, 2023, Judge Coble issued an Order denying Nash's Motion, specifically finding that the Complaint adequately states a cause of action for civil conspiracy. (R. p. 2).

The parties engaged in discovery, including taking the depositions of Nash, Scott Bellamy, Greg McCollum, Billy Monckton, Jace Phelps, and Herverly Young. During his deposition, Nash testified that he had been contacted by another party to investigate Axelrod, however, Nash refused to disclose who contacted or hired him. (R. p. 86, lines 15-25; R. p. 87, line 24-p. 89, line 7). Discovery also revealed that during SCCID's investigation into Nash's complaint, Nash also refused to disclose to Mr. Young who had directed Nash to submit the complaint. (R. p. 97, lines 15-20). Concerning Axelrod's residency, each of the members who were serving on the Selection Panel in 2020 testified in their depositions that Axelrod was a resident of South Carolina, and that they had no reason to question his residency despite knowing that Axelrod spent time in California. (R. p. 95, line 6-p. 96, line 3).

On June 17, 2025, Nash filed a motion for summary judgment. (R. p. 30) A hearing on Nash's motion for summary judgment was held before Judge Coble on November 19, 2025. As set forth above, the trial court ultimately granted Nash's motion for summary judgment pursuant to Rule 56, SCRCPP and denied Axelrod's motion to reconsider its order, thus Axelrod filed the instant appeal.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard that governs the trial court under Rule 56(c), SCRCPP. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "The grant of summary judgment is appropriate only if it is clear that no genuine issue of material fact exists, that inquiry into the facts is not desirable to clarify the application of the law, and that the movant is entitled to judgment as a matter of law." *Standard Fire Ins. Co. v. Marine Contracting & Towing Co.*, 301 S.C. 418, 422, 392 S.E.2d 460, 462 (1990). Even when there is no dispute as to evidentiary facts, but only as to conclusions or

inferences to be drawn from them, summary judgment should be denied. *Montgomery v. CSX Transp., Inc.*, 376 S.C. 37, 656 S.E.2d 20 (2007).

“A party seeking summary judgment has the burden of clearly establishing by the record properly before the court the absence of a triable issue of fact. All inferences from facts in the record must be viewed in the light most favorable to the party opposing the motion for summary judgment.” *Standard Fire Ins. Co. v. Marine Contracting & Towing Co.*, 301 S.C. 418, 422, 392 S.E.2d 460, 462 (1990). Moreover, because summary judgment is a “drastic remedy,” it “should be cautiously invoked so that a litigant will not be improperly deprived of trial on disputed factual issues.” *Conner v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002).

ARGUMENT

I. THE TRIAL COURT ERRED IN FINDING THAT AXELROD FAILED TO ESTABLISH A GENUINE ISSUE OF MATERIAL FACT TO MAINTAIN A CIVIL CONSPIRACY CAUSE OF ACTION.

The elements of a civil conspiracy in South Carolina are “(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff.” *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 861 S.E. 2d 744 (S.C. 2021). To establish a conspiracy, direct or circumstantial evidence “must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise.” *Cowburn v. Leventis*, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005) (quoting *First Union Nat’l Bank of S.C. v. Soden*, 333 S.C. 554, 575, 511 S.E.2d 372, 383 (Ct. App. 1998)). In its order granting Nash’s motion for summary judgment, the trial court specifically found that Axelrod failed to make a showing that Nash committed an

unlawful act or lawful act by unlawful means despite the evidence within the record to the contrary. (R. pp. 8-12).

However, when considered in the light most favorable to Axelrod, the inferences from the facts in the record clearly establish the presence of a genuine issue of material fact as to whether Nash committed an unlawful act or lawful act by unlawful means, making the grant of summary judgment improper. For those reasons, the trial court erred in granting Nash's motion for summary judgment and dismissing Axelrod's action for civil conspiracy under Rule 56, SCRPC.

A. The record before the trial court demonstrates that Nash committed an unlawful act or lawful act by unlawful means in furtherance of a conspiracy.

The second element of a viable civil conspiracy claim requires the plaintiff to demonstrate that the co-conspirators committed an unlawful act or a lawful act by unlawful means, which the trial court erroneously found lacking in the facts in the record. (R. pp. 8-12). That ruling was erroneous given the presence of evidence demonstrating that Nash committed an unlawful act by submitting a sworn affidavit containing materially false information about Axelrod to SCCID to seek his disqualification from the Selection Panel.

Conspiracy may be inferred from the nature of the acts committed, the relationship of the parties, the interests of the alleged conspirators, and other relevant circumstances. *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987). The Complaint establishes and the evidence in this case demonstrates that Nash, in combination with and at the direction of John Doe, submitted a sworn affidavit to a state agency, the South Carolina Commission on Indigent Defense ("SCCID"), containing materially false statements about Axelrod. The affidavit was submitted to SCCID on May 4, 2020, less than twenty-four (24) hours after Axelrod raised concerns about a candidate's potential conflict to the other members of the

Selection Panel. (R. p. 18, ¶ 12; R. p. 100, lines 9-16). The statements within Nash's affidavit were made with the intent of disqualifying Axelrod from serving on the Selection Panel, and after investigation by SCCID, these statements were determined to be false. (R. p. 19, ¶ 18).

While Nash submitting a complaint to SCCID is not an unlawful act in and of itself, the means by which he accomplished it were unlawful. It is undisputed that Nash executed an affidavit to assert that Axelrod was ineligible to serve on the Selection Panel due to Axelrod being a resident of the State of California. (R. p. 22). In his affidavit, Nash stated that Axelrod "maintains a residence at 3977 Old Adobe Road, Petaluma, Sonoma County, California," and that "as a resident of California, Mr. Axelrod may not serve as a member of a South Carolina Public Defender Selection Panel based upon his residency." (R. p. 22). SCCID's investigation into the matter revealed that these claims were untrue. During SCCID's investigation, Mr. Young contacted the Register of Deeds in California, which confirmed that Axelrod was not the owner of that property. (R. p. 109, lines 12-17). After its investigation, SCCID ultimately determined that Axelrod was a resident of the State of South Carolina, and the complaint against Axelrod was dismissed. Additionally, each of the members who were serving on the Selection Panel in 2020 testified in their depositions that Axelrod was a resident of South Carolina, and that they had no reason to question his residency despite knowing that Axelrod spent time in California. When asked about Axelrod's residency status, Gregory McCollum provided the following testimony:

- A: The fact that [Axelrod] was in California, it never occurred to me that he would not be a resident, you know. In the law firm here [Axelrod] actively practiced here, he had employees here, he owned a house here, or more than one house. His driver's license was here as far as I know, you know, so all of his vehicles were registered here and that sort of thing.
- Q: Okay. So it would be fair to say that you had no dispute as to whether he was a South Carolina resident?
- A: No. I didn't question that at all.

See R. p. 95, line 6 – p. 96, line 3.

When executing an affidavit, the affiant is swearing or warranting that the statements within the affidavit are true under penalty of perjury. However, Nash’s affidavit contained materially false, misleading, and incomplete statements, which constitutes perjury pursuant to S.C. Code Ann. §16-9-10 and §16-9-20. Such conduct clearly falls with the scope of an unlawful act or lawful act by unlawful means as contemplated by *Paradis*.

The direct and circumstantial evidence within the record clearly supports an inference that Nash committed an unlawful act or lawful act by unlawful means by submitting an affidavit containing materially false and misleading information in furtherance of the conspiracy to disqualify Axelrod from the Selection Panel. As such, the trial court erred in finding that Axelrod failed to demonstrate that Nash committed an unlawful act or lawful act by unlawful means.

CONCLUSION

For the reasons set forth above, Appellant Stuart Axelrod respectfully requests an order from this Honorable Court reversing the orders of the trial court granting Respondent’s Motion for Summary Judgment on December 8, 2025, and December 18, 2025, and remanding this case to the Circuit Court to proceed on the merits.

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Respectfully submitted,

s/ Haley Hubbard

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

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