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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM PICKENS COUNTY

Perry H. Gravely, Circuit Court Judge

Appellate Case No.: 2022-001332
Supreme Court Case No.: 2025-001851

Andrew Pampu Petitioner,

v.

Erin Wingo, David Wingo, Colin J. Gahagan Respondents.

RESPONDENT, C.J. GAHAGAN'S, RESPONSE TO PETITIONER'S BRIEF

David L. Moore, Jr., Esquire
Turner Padget Graham & Laney
200 East Broad Street, Suite 250
Greenville, SC 29601
T: 864-552-4625
E: dmoore@turnerpadget.com

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INTRODUCTION

Andrew Pampu was accused by Clemson University of sexually assaulting Erin Wingo at a fraternity party in 2015 (*R. 48; 1572, lines 9-16, R. 1721, lines 3-5*), leading to a hearing before the Clemson Office of Community and Ethical Standards (hereinafter referred to as "OCES"). (*R. 2107, line 23 – 2108 line 1*). The OCES had previously been tasked with undertaking institutional disciplinary hearings pursuant to the South Carolina Sexual Assault Information Act (§§ 59-105-10 et. seq., SC Code 1976, as amended). After receiving evidence and testimony, the OCES held that Andrew Pampu had in fact engaged in non-consensual sex with Erin Wingo due to her intoxicated state and directed that he be suspended from school (*R. 345*).

Andrew Pampu thereafter appealed to Clemson's Vice President of Student Affairs. He complained extensively about the lack of due process afforded him in the OCES hearing. The OCES finding was nonetheless affirmed. Andrew Pampu thereafter appealed to Clemson's President (or designee). He repeated his previous arguments. The OCES finding was again affirmed (*R. 348-359; R. 3080-83; R. 3092-95; R. 3115*).

At this juncture, Andrew Pampu had a choice: he could either seek judicial review (§1-23-380, S.C. Code (1976, as amended)) or he could sue Clemson directly (§59-105-40). Under section 1-23-380, in cases of procedural irregularities, the court could remand the matter to the appropriate agency (Clemson) for the appropriate action. Andrew Pampu opted not to take this option.

Instead, he instituted a direct action against Clemson and others in federal court, Doe v. Clemson University, No. 8:16-CV-1957 (DSC) 3/27/2019, WL 1383822

at #1, alleging several causes of action related to the administrative hearing before the OCES. Again, Pampu asserted a number of allegations having to do with the investigation of the Title IX claims, the hearing and the appeal process (*R. 211-293*). This litigation was resolved at mediation (*R. 3190-91*), with Andrew Pampu agreeing to reinstate the OCES decision in exchange for monetary consideration (*R. 3190-91*).

Having exhausted the administrative process and settled his claims against Clemson, Andrew Pampu sought further monetary damages against Erin Wingo, David Wingo and C.J. Gahagan (*R. 59-64*). After a trial in Pickens County, a jury found in favor of Andrew Pampu (*R. 1084-85*). However, the verdict against the Respondents for civil conspiracy was overturned by the trial court on a motion for judgment n.o.v. (*R. 5-7*). The verdict for defamation damages was upheld by the trial court but reversed by the Court of Appeals. The Court of Appeals also affirmed the trial court's granting of judgment n.o.v. with regard to the action for civil conspiracy. (*Id.*).

ISSUES

1. Did the Court of Appeals properly apply the doctrine of collateral estoppel with regard to whether Andrew Pampu had engaged in non-consensual sex with Erin Wingo when that issue was determined by the Clemson Office of Community and Ethical Standards (OCES) which was thereafter affirmed by the offices of Vice President and President of Clemson University and subsequently agreed to by Andrew Pampu in the settlement of his civil action against Clemson?

2. Did the Court of Appeals properly affirm the circuit court in granting a judgment n.o.v. on Andrew Pampu's action for civil conspiracy based upon the lack of evidence of the commission of an overt act to further the alleged conspiratorial agreement and the absence of evidence which would permit a jury to determine damages with reasonable certainty and accuracy?

STATEMENT OF FACTS

On October 24, 2015, Erin Wingo, a Clemson freshman, attended a fraternity party sponsored by Phi Delta Theta. Also attending that party were Andrew Pampu and C.J. Gahagan, (*R. 1588, lines 12-18, 1824, lines 19-25*) who were freshmen pledges to that fraternity (*R. 1429, line 14-1431 line 1.*) Erin Wingo had consumed a number of alcoholic drinks prior to arriving at the party. When she arrived, she initially approached C.J. Gahagan, whom she had been dating. However, C.J. Gahagan suggested she mingle with others at the party. She thereafter approached Andrew Pampu, who was also celebrating his birthday (*R. 1583, lines 11-17*). She suggested that they engage in sex and Andrew Pampu agreed. They left the party to find a private place (*R. 1441-43*), continuing to drink throughout. Ultimately, the two engaged in sexual intercourse and then returned to the party. On the way back, Erin Wingo became emotional, stumbled as she walked and, as testified to by Andrew Pampu, appeared to be “on the bad end of a drunk”. (*R. 1521*) Andrew Pampu, upon returning to the party, deposited her with some friends and left to go back to the party. (*R. 1710-11; 2161*). Erin Wingo continued to show signs of intoxication and, while being driven back to her dormitory and upon arriving, became sick and vomited. (*R. 1656, lines 20; 1675, line 3; 2163, lines 2165 line 1*). She was returned to her room and awoke the next morning with a hangover and an apparent lack of memory of what had occurred. (*R. 1828, lines 25 to 1829, line 18*). In the, meantime, C.J. Gahagan had deduced that she had had sex with Andrew Pampu by virtue of a text created by Pampu in which he bragged about his sexual conquest. (*R. 491, lines 5-24*). When C.J. Gahagan confronted Erin Wingo with this information, she advised him that she

had no memory of what occurred. (*R. 1828, line 25 to 29, line 18*). Subsequently, the incident was reported to the Clemson OCES, which undertook an investigation. While Erin Wingo did not initially report the matter, she subsequently agreed with the investigation going forward. C.J. Gahagan was to be one of many witnesses.

The matter was investigated by OCES and it was determined that a hearing was necessary. (*R. 45; R. 52; R. 1572, line 9-16*). Charges against Andrew Pampu were made by the OCES pursuant to the South Carolina Campus Sexual Assault Information Act. (*R. 340-341*) §§ 59-105-10, *S.C. Code (1976, as amended)*. One of the issues presented to the OCES board during the hearing was whether Andrew Pampu engaged in non-consensual sex with Erin Wingo. (*R. 52, R. 340-41*). After receiving evidence and testimony, the OCES panel determined that he had and thereafter suspended him from Clemson (*R. 345-46*).

The OCES ruling was appealed to the Clemson office of the Vice President, which affirmed the result. Pampu thereafter appealed to the Clemson Office of the President, which also affirmed the ruling but increased the time of suspension. (*R. 348-59; R. 3080-83; R. 3092-95*). Pampu opted not to pursue the matter under the Administrative Procedures Act but did thereafter directly sue Clemson University in the federal district court. *See Doe v. Clemson University, supra*. Before that action was brought to trial, the parties settled with Andrew Pampu being paid \$100,000.00 and the OCES ruling being reinstated. (*R. 3190-93*). Andrew Pampu in the meantime instituted a separate action in state court seeking damages from the Respondents under various theories, including defamation and civil conspiracy. (*R. 59-69*). The

result of that trial and subsequent opinion of the Court of Appeals serve as the basis for this appeal.

STATEMENT OF THE CASE

After having lost his case before the Clemson OCES and having that result affirmed by Clemson, Andrew Pampu instituted suit in state court against the Respondents. (*R. 59-69*). At approximately the same time he instituted suit against Clemson in federal district court. *See, Doe v. Clemson University, supra*. The federal court action was ultimately settled with Andrew Pampu receiving \$100,000 and the OCES ruling being reinstated. (*R. 3190-93*).

This case was called to trial on March 21, 2022 before Judge Perry Gravely. Prior to the presentation of testimony, Judge Gravely ruled that evidence of the OCES proceedings and ruling would not be permitted (*R. 1286, line 16 to R. 1294, line 9*). Upon the conclusion of testimony, motions for directed verdict were made and denied. (*R. 2153*). The jury thereafter returned awards of \$700,000 in actual damages and \$200,000 in punitive damages against C.J. Gahagan on the action for defamation and \$1,000,000 for actual damages on the action for civil conspiracy. \$700,000 actual damages and \$450,000 punitive damages were also returned against Erin Wingo as well as a verdict for \$2,000,000 on the civil conspiracy action; \$230,000 in actual damages was awarded against Dave Wingo in the defamation action.) (*R. 1084-1085*).

Respondents moved for judgment n.o.v. on all verdicts. Judge Gravely granted those motions with regard to the civil conspiracy action but denied those motions with regard to defamation. (*R. 4-13*).

All parties appealed to the Court of Appeals. The Court of Appeals affirmed the Circuit Court with regard to its granting the motion for judgment n.o.v. on the action for civil conspiracy. It also reversed the Circuit Court with regard to the actions for defamation finding that Pampu was collaterally estopped from pursuing those actions. (*App. 33-50*).

After the Court of Appeals denied Pampu's petition for rehearing (*App. 85*), a petition for writ of certiorari was made and thereafter granted on April 1, 2026.

STANDARD OF REVIEW

When an appellate court undertakes to review a trial court's ruling on a judgment n.o.v. motion, it must apply the same standard as utilized by the trial court "by viewing the evidence and all reasonable inferences in the light most favorable to the non-moving party." Elam v. S.C. Dept. of Transportation, 361 S.C. 9, 602 S.E.2d 772 (2006). A motion for judgment n.o.v. should be granted "only if no reasonable jury could have reached the challenging verdict." Gastineau v. Murphy, 331 S.C. 565, 503 S.E.2d 712 (1998).

ARGUMENTS

I.

THE COURT OF APPEALS CORRECTLY DETERMINED THAT ANDREW PAMPU WAS COLLATERALLY ESTOPPED FROM FURTHER LITIGATING THE ISSUE OF WHETHER ERIN WINGO HAD THE CAPACITY TO CONSENT TO HAVE SEX WITH HIM.

As noted by the Court of Appeals, collateral estoppel is an equitable doctrine founded upon the principles of fundamental fairness (*App. 14*). It prevents a party from re-litigating an issue in subsequent litigation which was actually and necessarily litigated and determined in a prior action. (*App. 15; see also, Aaron v. Mahe, 381 S.C. 585, 674 S.E.2d 482 (2009)*). Because it is an equitable doctrine, it is only available when the party being estopped has had a full and fair opportunity to actually litigate the issue in a prior action. (*App. 16; Beall v. Doe, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984)*).

As noted in *Beall v. Doe, supra*:

[p]rinciples of finality, certainty, and the proper administration of justice suggest that a decision once rendered should stand unless some countervailing consideration necessitates relitigating.

Pampu argues that because the OCES hearing precluded him from directly examining any witness; allowed the chairman to rephrase submitted questions so that they were adverse to his position; failed to place witnesses under oath; failed to grant subpoena power; and took statements from non-testifying witnesses into consideration, collateral estoppel should not have been applied (Petitioner's Brief 21). However, this argument fails to consider the right to appeal under section 1-23-380,

S.C. Code (1976, as amended) which allowed Pampu to seek a reversal with remand to the OCES. If Pampu had followed this route, he would have had a full and fair opportunity to litigate before the OCES panel, particularly since section 1-23-380 provides that where “there are alleged irregularities in the procedure before [an] agency, not shown in the record, and established by proof satisfactory to the court, the case may be remanded to the agency for action as the court considers appropriate.” Rather than have his complaints regarding procedure resolved by remanding the matter to the OCES with instructions addressing the alleged procedural irregularities, Pampu decided to sue Clemson for damages after he had decided to leave Clemson and enroll at the College of Charleston. Moreover, when concluding his litigation with Clemson, it was determined by the federal district court that the findings of the OCES should be reinstated. This would have included the finding of non-consensual sex by Pampu with Erin Wingo. (R. 3260).

Notwithstanding that agreement, Pampu initiated a collateral attack on the Clemson finding by suing the Respondents, alleging that they are guilty of defaming him and engaging in a civil conspiracy to damage him.

In South Carolina, where a civil action involves the same factual scenario as one which was presented and tried by a state agency, a finding by that agency on an element which is critical to recovery in the civil action is binding upon the civil court. Bennett v. South Carolina Dept of Corrections, 305 S.C. 310, 408 S. E. 2d 230 (1991). Pampu has argued that there was no actual litigation on the issue of non-consensual sex since the hearing before the Clemson OCES did not constitute a “contested case”.

Pursuant to section 1-23-310(3), a “contested case” is a “proceeding ... in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.” The Campus Sexual Assault Information Act provides that an “institution of higher learning”, such as Clemson, is to provide procedures for institutional disciplinary action in cases of alleged sexual assault and the possible sanctions following a final determination regarding the sexual assault. §59-105-40, S.C. Code (1976, as amended). Since Pampu’s right and duties as a Clemson student were determined through a hearing before the Clemson OCES, that administrative hearing would fall directly under the definition of a “contested case.”

Pampu has previously argued however that the OCES is not a government agency, relying upon the definition of agency set forth in section 1-23-10. That statute provides that an “agency” includes “each state board, commission, department, executive department or officer, other than the legislature or the courts, authorized by law... to determine contested cases.” As noted, the OCES is authorized by statute to determine contested cases. Pampu nonetheless argues that the absence of reference to schools, colleges and universities precludes those institutions from acting as agencies. He goes on to cite the rule of statutory interpretation that when a statute’s terms are clear and unambiguous, there is no room for statutory construction. However, the argument ignores the fact that section 1-23-10 is ambiguous with the regard to the definition of “agency” since the statute is ambiguous as to whether colleges and universities are included within that definition. *See,*

Kennedy v. South Carolina Retirement System, 345 S.C. 339, 549 S.E.2d 243 (2001)

The argument also ignores another rule of statutory interpretation. Statutes which deal with the same subject matter are considered to be in pari materia and must be construed together, if possible, to produce a harmonious result. Denman v. City of Columbia, 387 SC 131, 691 S.E.2nd 465 (2010). Under section 15-78-30(a), the term “agency” is defined to include “the individual office, agency, authority, department, commission, board, division, instrumentality, or institution, including a state-supported government health facility, school, college university, or technical college.” Since both Tort Claims Act and the APA are both concerned with government agencies, the rule of statutory interpretation in pari materia would harmonize the definition of “agency” to include colleges and universities. Further, in previous cases, the courts have determined that decisions by university boards and committees are subject to the APA. See, e.g., Ross v. Medical University of South Carolina, 317 SC 377, 453 S.E.2d 880 (1994). As a result, the OCES properly acted as an agency with the duty to decide matters concerning sexual assault.

Pampu nevertheless goes on to argue that because the OCES did not adhere to the APA requirements on procedure, it was not acting as a government agency. See, §1-23-320, S.C. Code (1976, as amended). He complains that the OCES procedures did not provide him with sufficient notice of the disciplinary hearing, the opportunity to undertake depositions, to cross-examine witnesses directly, to apply the Rules of Evidence or to obtain sworn testimony. Each of these complaints should have been directed against Clemson University. Pampu had the opportunity to appeal within

Clemson and in fact did appeal to Clemson's Vice President of Student Affairs and thereafter to the Office of the President. On both occasions he raised issues of due process in the manner in which the disciplinary hearing was held. Each time he lost. He thereafter had the option to continue that appeal, seeking judicial review under section 1-23-380 of the APA. Under section 1-23-380 (4), cases involving alleged irregularities in procedure, which are not shown in the record but established by proof satisfactory to the court, may be remanded to the agency for action as the court deems appropriate. Pampu chose not to pursue this course.

Instead, Pampu chose to leave Clemson University to attend the College of Charleston and sue Clemson University directly, seeking damages for the asserted violation of Title IX, violation of his due process rights, breach of contract, processing estoppel among other assertions. This litigation was subsequently settled with the OCES decision being reinstated. In other words, the finding that Pampu had engaged in sexual intercourse with Erin Wingo without her consent was not overturned but reinstated by agreement.

Based upon the above, Pampu has had three bites of the apple to overturn the OCES finding of non-consent and failed in each instance. Collateral estoppel serves to preclude further relitigation of the issue of non-consent by Erin Wingo. It precludes the indirect attack on the findings of the OCES (which has now been reinstated) by seeking damages from the Respondents in contradiction to that holding. That holding determined that Pampu engaged in non-consensual sex with Erin Wingo, a finding which no longer should have been open to attack but instead

establishes that the assertion that the sex was non-consensual to be true. Since any statement regarding the non-consensual sex by Andrew Pampu would be taken as being based on the truth, the defamation causes of action are not actionable. See Ross v. Columbia Newspaper, Inc., 266 SC 75, 221 S.E.2d 770 (1976).

II.

THE COURT OF APPEALS PROPERLY DETERMINED THAT AS A MATTER OF LAW ANDREW PAMPU FAILED TO ESTABLISH THE NECESSARY ELEMENTS TO PROVE THAT ERIN WINGO AND C.J. GAHAGAN HAD CONSPIRED TO DECEIVE CLEMSON UNIVERSITY INTO SUSPENDING HIM.

A party who asserts a civil conspiracy claim must establish :

- (1) a combination or agreement of two or more people
- (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
- (4) which proximately results in damage to the plaintiff.

Paradis v. Charleston County School District, 433 S.C. 562, 861 S.E.2d 774 (2021).

In this case, Pampu has alleged that Erin Wingo and C.J. Gahagan entered into an agreement to have Clemson University suspend him from school based upon their false testimony during the course of the OCES administrative hearing (Petitioner's Brief 7-9). The circuit court found that Pampu had failed to establish an overt act in furtherance of their agreement and that, in any event, Pampu had failed to present non-speculative evidence of damages caused by the alleged conspiracy. (R. 4-13). The Court of Appeals affirmed the circuit court's Order granting judgment n.o.v. (App. 7-12) on this cause of action.

Pampu argues that the South Carolina Sexual Assault Information Act does not serve to insulate students who abuse proceedings under the act. (Petitioner's

Brief p. 29). In other words, that Act applies only to schools and universities, not to students. Clearly, section 59-105-40 anticipates that a college or university will hold hearings regarding an alleged sexual assault and determine what sanctions will be imposed upon proof of the alleged act. As such, the Sexual Assault Information Act clearly applies to both schools and students. Moreover, adherence to Pampu's argument would lead to inconsistent results where a finding against a student is upheld but that student is permitted to seek damages based upon the premise that the finding is incorrect. Since Pampu agreed in his settlement with Clemson University to reinstate the holding which included a finding that he had engaged in non-consensual sex with Erin Wingo, he should now be estopped from arguing otherwise.

Pampu goes on to argue that Erin Wingo and C.J. Gahagan agreed to persuade Clemson University to breach its contract with him by removing him from school. Of course, under the Sexual Assault Information Act, Clemson University had a duty to establish a system whereby alleged acts of sexual assault could be investigated and, if the allegations proved true, to issue the proper punishment to the student who committed the wrongful act. In this case the OCES held a hearing regarding the allegations against Andrew Pampu and, upon finding that he had engaged in non-consensual sex, suspended him from Clemson. As a result, Clemson University did not breach its contract with Pampu. Since one of the essential elements of tortious interference with contractual relations is the intentional breach of a contract by an

outside third party, the absence of that breach serves to defeat Pampu's claim. Camp v. Spring Mortg. Corp., 310 SC 514, 426 S.E.2d 304 (1995).

Pampu goes on to argue that even if Clemson did not breach its contract with him, Erin Wingo and C.J. Gahagan can still be held responsible since they intentionally engaged in deceitful conduct to attempt to persuade Clemson to remove him from School. This ignores the fact that the gravamen of the tort of civil conspiracy is the damage resulting to a plaintiff from an overt act done pursuant to the combination of the defendants. Todd v. South Carolina Farm Bureau, 192 SC 32, 5 S.E.2d 464 (1939).

Moreover, the circuit court excluded evidence of the OCES hearing, thereby denying the jury in this case from considering alleged testimony of Erin Wingo and C.J. Gahagan which allegedly swayed the OCES panel to suspend Pampu for his acts as well as the other evidence given to the OCES panel which would also serve it in reaching its decision. (R. 1293, line 4-1294, line 15-1387 l. 23) As a result, there was no proof of the alleged overt act (the false testimony of Erin Wingo and C.J. Gahagan) in furtherance of their conspiracy to have Pampu suspended from school.

Ultimately, Pampu is attempting to have this Court reweigh the evidence considered by the OCES when there was an absence of such evidence presented to the jury due to an affirmative motion made on behalf of Pampu. Additionally, Pampu has requested that this Court consider evidence of alleged extrinsic fraud in order to reverse the OCES panel. (Petitioner's Brief p. 30). Pampu is in essence arguing that C.J. Gahagan and Erin Wingo committed perjury which led to the OCES decision.

Pursuant to Rycraft v. Tanguery, 279 S.C. 76, 302 S.E.2d 327 (1985), intrinsic fraud, which includes such matters as forgery and perjury, may not be used to reverse a decision, since such evidence and testimony can be met through cross-examination or the presentation of evidence during the trial or hearing.

As a result, there is no evidence establishing that the OCES was impacted by false evidence in rendering its decision. In the absence of such evidence, Pampu has failed to establish an overt act by either C.J. Gahagan or Erin Wingo necessary to establish a civil conspiracy.

Pampu's action for civil conspiracy must fail for another reason: the absence of evidence of damages proximately caused by the alleged civil conspiracy. It should first be noted that Andrew Pampu was not expelled from Clemson. He was suspended for less than six months. Clemson does not report such suspensions to other schools (R. 384). As a result, the argument that Andrew Pampu was damaged because of Clemson's reporting his suspension to other schools fails to hold water. Moreover, proof of damages cannot be left to speculation. Gould v. O'Shaughnessy Realty Co., 380 S.C. 548, 671 S.E.2nd 79 (Ct. App. 2008). Although, as Pampu argues, proof need not be to a mathematical certainty, there must be a reasonable basis for computation to give a reasonably close estimate of the loss. Piggy Park Enters., Inc. v. Schofield, 251 SC 385, 162 S.E.2d 705 (1968).

Pampu alleges he sustained damages as a result of being removed from Clemson and thereafter being required to report that removal when he applied for graduate dental school. (Petitioner's Brief 13-14). As a result of his alleged inability

to enter dental school and thereafter orthodontal school, he lost an alleged stream of future income over and above what he might otherwise expect. To prove this loss, he relies upon the expert testimony of Steven Shedlin. Shedlin testified that Pampu was unable to get into dental school due to the necessity of reporting his removal from Clemson. (R. 1940-41; R. 1947-48, R. 1949; R. 1964). This testimony ignores the fact that Shedlin failed to contact any of the schools to which Pampu applied for admission. (R. 1973, line 23-1974, line 5). Additionally, because Pampu agreed to a reinstatement of the OCES finding, he cannot argue that he was inappropriately required to report Clemson's findings.

It should also be noted that Shedlin was presented as a rehabilitation expert and not as an economist. As a result, he could not make a reasonable evaluation of future lost income by reducing any calculated future lost income over Pampu's work life expectancy by the amount he would otherwise earn and thereafter reducing that amount to its present value. In the absence of such expert testimony, there is no proof of the economic loss to a reasonable certainty and accuracy. See, Whisenant v. James Island Corp., 277 S.C. 10, 281 S.E.2d 794 (1981). What constitutes "reasonable certainty and accuracy" depends upon the type of damages being considered." "Non-economic damages" such as pain and suffering have very limited means of measuring the monetary amount of damages sustained and are therefore largely left to the discretion of the court or jury. See, §15-32-210(9). By comparison, "economic damages", such as costs for medical care, lost earnings and loss of earning capacity are more capable of a narrow and explicit measurement. See, §15-2-210(3).

Because the damages which Andrew Pampu seeks to recover are capable of a more explicit measurement through expert testimony, he should have been required to present testimony to comply with the standard of “reasonable certainty and accuracy.” Because he failed to present this type of testimony, he failed to present sufficient evidence of his damages. Since damages are a crucial element of an action for civil conspiracy, this failure of proof dictates that the action is legally deficient and therefore properly dismissed by the circuit court.

CONCLUSION

Ultimately, as noted by the Court of Appeals, Pampu's course of action (or inaction) controls whether collateral estoppel operates to preclude him from seeking further monetary damages arising out of his immature acts with Erin Wingo. Because collateral estoppel is founded upon concepts of fundamental fairness, see, 46 Am. Jur. 2d Judgments, §469 (2025), principles of finality, certainty and the proper administration of justice require that a decision once rendered should stand unless some compelling countervailing consideration requires that the prior ruling be disregarded. See, Beall v. Doe, supra. In this case, Pampu has objected to the absence of evidentiary controls that are often present in civil litigation. He ignores, however, that the standard is whether the party adversely impacted had "a fair and full opportunity" to litigate the issue in the prior action. Graham v. State Farm and Cas. Ins. Co., 277 SC 389, 287, S.E.2d 495 (1982). In this case, Pampu's complaints of inadequate evidentiary protections could have been resolved on appeal with the possibility of remand for a new hearing. He opted not to pursue that course, having decided to enroll at the College of Charleston, and then sued Clemson directly. That litigation was settled with Pampu receiving compensation. That agreement, however, included a reinstatement of the OCES finding, which would include the finding that he had engaged in non-consensual sex with Erin Wingo. These acts of omission and commission establish the truth of the allegation of non-consensual sex.

Nonetheless, Pampu would have the Court ignore those findings and concessions and relitigate the issue once again through an indirect attack on that

finding by suing the Respondents. Collateral estoppel does not permit such an approach which will lead only to contradictory results and confusion. Instead, collateral estoppel calls for an end to litigation once a party has been given a fair opportunity to litigate the issue. This would include the appellate opportunities which Pampu chose to ignore.

Once collateral estoppel is allowed to operate, the issue of non-consensual sex is established. Defamation would not exist because the statements objected to would be considered to be true.

Pampu's action for civil conspiracy must also fail since the evidence lacks two key elements: the existence of an overt act undertaken to complete the conspiracy and evidence of resulting damage.

Because Pampu had the trial court omit evidence of the testimony given at the OCES hearing, the jury lacked a complete picture of the evidence and testimony presented and therefore had an incomplete view of how either Erin Wingo or C.J. Gahagan could have acted to persuade the panel as to the findings. The evidence presented on behalf of Pampu therefore fails to establish how Erin Wingo and C.J. Gahagan acted to persuade the OCES to find that there was non-consensual sex or whether there was sufficient evidence through other witnesses to establish that finding.

Additionally, civil conspiracy requires proof of damage beyond speculation. Pampu attempted to present such evidence through expert testimony. Unfortunately for him, the expert lacked the appropriate experience and background to give

testimony regarding damages. In addition to failing to contact the schools which had declined Pampu's applications to dental school, he failed to note that Clemson would not have reported the suspension due to its length. Moreover, the expert lacked the ability to determine the net future lost income, being unable to determine how much would have been earned through Pampu's actual employment as opposed to what he might have earned as an orthodontist. He also could not reduce the alleged losses to present value and could not determine what Pampu's work life expectancy would be. Pampu's attempt to argue that the jury could in general make this determination amounts to pure speculation.

Based upon the above, the Court of Appeals' decision should be affirmed.

Respectfully submitted,

By: s/ David L. Moore, Jr.
David L. Moore, Jr., Esquire
Turner Padget Graham & Laney
200 East Broad Street, Suite 250
Greenville, SC 29601
T: 864-552-4625
E: dmoore@turnerpadget.com

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