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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

William A. McKinnon
Circuit Court Judge

Appellate Case No. 2025-000971

Latif Taheri-Azar, Appellant,

vs.

Tim Haake and Justin Marlow, Respondents.

RESPONDENT JUSTIN MARLOW FINAL BRIEF

July 15, 2026

/s/ Daniel D. D'Agostino
S.C. Bar No. 65088
/s/ Jacqueline N. Davis
S.C. Bar No. 74778
DAGOSTINO/DAVIS LAW GROUP
25 WEST LIBERTY STREET
YORK, S,C. 29745
dan@dagostinoanddavis.com
jackie@dagostinoanddavis.com
Office 803 628 6509
Attorneys for Respondent Marlow

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STATEMENT OF ISSUES ON APPEAL

Respondent Marlowe adopts the Statement of Issues on Appeal and the Statement of the Case, as well as the Standard of Review as set forth by Respondent Haake filed by attorney Steve D. Dluzneski with the one following addition.

> Did the Appellant ever identify a defamatory statement which would be the basis of the lawsuit when the Circuit Court Judge asked him to specifically identify the defamatory statement concerning his client?

ARGUMENT

> THE APPELLANT NEVER SET FORTH OR IDENTIFIED A DEFAMATORY STATEMENT CONCERNING HIMSELF WHEN THE CIRCUIT COURT JUDGE ASKED HIM TO SPECIFICALLY IDENTIFY SUCH STATEMENT, WHICH WOULD BE THE BASIS OF THE LAWSUIT.

Pursuant to South Carolina law, a plaintiff asserting a defamation claim must prove four elements: (1) a false and defamatory statement was made; (2) the unprivileged publication of that statement was made to a third party; (3) the publisher was at fault; and (4) either the statement is actionable irrespective of special harm, or the publication caused special harm. The defamatory statement must concern the plaintiff — meaning the plaintiff must establish that the statement referred to some ascertainable person and that the plaintiff was the person to whom it referred. The Supreme Court confirmed the modern four-element framework for defamation in **Fountain v. First Reliance Bank**, 398 S.C. 434, 330 S.E.2d 305 (2012) and it has been consistently applied by South Carolina courts. As articulated in **Parrish v. Allison**, 376 S.C. 308, 656 S.E.2d 382 (Ct. App. 2007) to recover for defamation, the plaintiff must establish by a preponderance of the evidence: (1) a false and defamatory statement by the defendant concerning the plaintiff; (2) an unprivileged communication to a third party; (3) fault on the defendant's part in publishing the statement; and (4) either actionability of the statement irrespective of special harm or the existence of special harm to the plaintiff caused by the publication.

As to the issue of the requirement that the statement must concern the plaintiff — the plaintiff must establish both that the defendant's statement referred to some ascertainable person and that the plaintiff was the person to whom the statement referred. **Burns v. Gardner**, 328 S.C. 608, 493 S.E.2d 356 (Ct. App. 1997). As stated in **Neeley v. Winn-Dixie Greenville, Inc.**, 255 S.C. 301, 178 S.E.2d 662 (1971) the challenged statement must "be such that persons reading or hearing it will, in the light of surrounding circumstances, be able to understand that it refers to the person complaining, and it must have been so understood by at least one other person."

The trial court properly granted summary judgment because the Appellant failed to demonstrate a false statement concerning the Appellant. No questions of fact exist as to this issue as there was no statement made concerning the Appellant. The only alleged false statement concerned the Respondent themselves. The Appellant never identified a defamatory statement concerning himself. The relevant portion of the transcript dealing with the motion for summary judgment, March 11, 2025 is at Rp. 565, line 21 to Rp. 572. The trial judge asked Appellant what the defamatory statement is upon which the suit lies and the Appellant kept referring the statement as being Mr. Marlow says he is writing on behalf of the Poplar Forest HOA and Appellant asserts that there is no such entity. (Rp. 568, line 15 to Rp. 571). The appellant is basing his lawsuit upon statements that the respondent wrote a letter to the city on behalf of a formal homeowner's association. Appellant asserts that since no formal homeowners Association exists, the statement is false, and therefore a claim for defamation exists. If the statement that there is a homeowner's association is false, it is not about the appellant. Such a statement is about an entity or a group of individuals, but not about the appellant. As such, the statement the Appellant asserts is defamatory is not about the appellant and a critical element of the cause of action for defamation is lacking.

The Appellant argued the same thing in the motion to alter or amend at pages 10 when he said "the inflammatory statement is that they—they—that they—that they were there is an active HOA, and that that one was the head of the architectural review committee and the other one was on the board for the HOA and those are the statements that are false." The Appellant reaffirmed in the motion to alter or amend that the basis of his lawsuit was a statement that the respondents made about themselves, not about the appellant.

Also, as Respondent Haake has clearly set forth, the city put a stop work order in place approximately a week before the statements. The Appellant does not tie the stop work order, which is the basis for his damages, to any alleged defamatory statement the Respondents made concerning the Appellant.

Lastly, the Appellant, as Respondent Haake set forth, testified the statements and letter actually helped him and bolstered his reputation. If the alleged statements helped and bolstered his reputation, they cannot be statements concerning the Appellant that defamed him.

As an additional matter, the individuals who wrote the letter lived in the subdivision and each individual had a right to file a lawsuit, or bring a claim to enforce the restricted covenants. This was explained in Rp. 565 to 568. Since the individuals lived in the subdivision, each has a right to enforce the terms of the restrictive covenants. (R.pp 779-780; 797-799)

The claim of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff **Erickson v. Jones Street Publishers, LLC**, 368 S.C. 444, 629 S.E.2d 653 (2006). A communication is defamatory if it tends to impeach the honesty, integrity, virtue, or reputation of the plaintiff. In the case, at hand, there is no evidence that anyone impeached the honesty, integrity, virtue, or reputation of the plaintiff. The appellant simply did not produce any evidence,

and as such, there were and are no questions of fact as it relates to the claims and summary judgment was appropriate.

CONCLUSION

The respondent respectfully submits that this court should uphold the trial courts granting of summary judgment.

/s/ Daniel D. D'Agostino
S.C. Bar No. 65088
/s/ Jacqueline N. Davis
S.C. Bar No. 74778
DAGOSTINO/DAVIS LAW GROUP
25 WEST LIBERTY STREET
YORK, S,C. 29745
dan@dagostinoanddavis.com
jackie@dagostinoanddavis.com
Office 803 628 6509
Attorneys for Respondent Marlow