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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

Andrew Pampu,Petitioner,

v.

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

PETITIONER'S REPLY

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INTRODUCTION

Respondents' briefs confirm why the Court of Appeals' decision cannot stand. Indeed, "[f]acts are stubborn things." Wingo Br. at 3. But Respondents refuse to face them. The jury heard the facts in this case the way civil trials are designed to present them: guided by the ordinary safeguards of the rules of evidence and civil procedure. After hearing that evidence, the jury rejected Respondents' narrative, found that Respondents had defamed Pampu, and that Wingo and Gahagan conspired to have him removed from Clemson. Respondents' contrary framing of the case through their factual lens violates the standard of review for JNOV motions. And by starting off with the wrong premise, they get the wrong answer.

At every turn, Respondents' arguments are contrary to the law and the record. The arguments also reach far beyond this case. They would turn any campus disciplinary proceeding into a preclusive contested case, where students must appeal to the Court of Appeals to preserve their rights. No law requires or even supports that result. This Court should reverse.

ARGUMENT

I. The OCES decision is not preclusive of any issue here.

A. Whether the OCES decision is a final appealable order from a contested case is irrelevant because the decision is not preclusive regardless.

Respondents frame this case around whether the OCES decision is a final, appealable order in a contested case. Wingo Br. at 16–29; Gahagan Br. at 10–15. But the right to appeal does not make a judgment preclusive. *Cf. Retreat at Charleston Nat'l Country Club Home Owners Ass'n v. Winston Carlyle Charleston Nat'l, LLC*, 445 S.C. 566, 595–96, 915 S.E.2d 736, 752 (Ct. App. 2025) (holding a circuit court order becomes final for purposes of collateral estoppel before an appeal is filed). Indeed, no final decision is automatically preclusive. *S.C. Prop. & Cas. Ins. Guar. Ass'n v.*

Wal-Mart Stores, Inc., 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991). So even if Pampu could have appealed to the Court of Appeals, the OCES decision still is not preclusive because it falls within the exceptions to collateral estoppel in Restatement (Second) of Judgments §§ 28–29. *See id.*

Respondents do not dispute that there are “differences in the quality or extensiveness of the procedures followed” before the OCES and in circuit court, that the circuit court afforded Pampu “procedural opportunities in the presentation and determination of the issue that were not available in the first action and could likely result in the issue being differently determined,” or that Pampu could “avail himself of procedures” in the circuit court that “were not available to him in the first action and that may have been significantly influential in determination of the issue.” Restatement (Second) of Judgments § 28(3); *id.* § 29(2); *id.* § 29 cmt. d. Before the OCES, Pampu’s attorney could not question witnesses, Pampu could not directly cross-examine Wingo, witnesses did not testify under oath, the Rules of Evidence did not apply, the panel received unsigned statements from witnesses whom Pampu could not examine, and Pampu could not compel favorable witnesses to attend, among other procedural differences which resulted in a different outcome. Rather than dispute this record, Respondents rotely incant that Pampu should have appealed these issues instead. *E.g.*, Wingo Br. at 11–12, 14–15. But because the right to appeal does not matter, this Court can stop at these undisputed procedural differences which prove collateral estoppel does not apply.

B. In any event, the OCES decision was not appealable because the proceeding was not a contested case.

The OCES proceeding was not a contested case because no statute required Clemson to hold disciplinary hearings. *See Garris v. Governing Bd. of S.C. Reinsurance Facility*, 333 S.C. 432, 440–41, 511 S.E.2d 48, 52 (1998) (holding that an agency only decides a contested case under the

APA when a statute “explicitly requires [the agency] to hold a hearing”). When the General Assembly requires a hearing, it says so expressly. *See, e.g.*, S.C. Code Ann. § 59-58-110(B) (requiring an APA hearing before determining a nonpublic educational institution’s license or permit); *id.* § 40-68-160(E) (requiring an APA hearing and directing all contested hearings be held before the ALC); *id.* § 38-48-140 (requiring an APA hearing before imposing penalties against a public adjuster); *id.* § 40-33-111(B) (requiring a final determination after an opportunity for an APA hearing when an employer seeks review of a Board of Nursing finding). Respondents do not dispute that the Campus Sexual Assault Information Act does not explicitly require universities to hold a hearing. It only requires them to adopt *procedures*. S.C. Code Ann. § 59-105-40(A), (B)(4). That should end the contested-case inquiry.

Unable to refute *Garris* and the Information Act, the Wingos pivot to arguing that *due process* requires a hearing in cases like this one.¹ Wingo Br. at 21–23. That may be true, but it is irrelevant. First, due process is not a statute. Respondents therefore cannot meet the *Garris* test for a contested case. Second, substituting due process for an express statutory mandate would be unworkable. Due process is a sliding scale that does not uniformly require a formal hearing. *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) (“These decisions underscore the truism that ‘(d)ue process,’ unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. Due process is flexible and calls for such procedural protections as the particular situation demands.”) (internal citations omitted). It is “flexible” and requires the procedures appropriate to the deprivation, considering the interest at stake, the risk of error, the value of additional safeguards, and the governmental burden. *Id.* at 334–35.

¹ Gahagan does not address *Garris* at all.

Due process therefore may require a hearing for some OCES proceedings but not others. *See Goss v. Lopez*, 419 U.S. 565, 579–84 (1975). And the required procedures for a hearing, if one is required, may vary as well. *See Stinney v. Sumter Sch. Dist. 17*, 391 S.C. 547, 551–52, 707 S.E.2d 397, 399–400 (2011); *see also* Wingo Br. at 22 (arguing that “public-school disciplinary proceedings must be calibrated to the severity of the consequences at stake”). Without a clear line, whether a disciplinary proceeding under the Information Act rises to the level of a contested case will vary case-by-case. Universities must continually evaluate whether the APA applies when charges are filed, when investigations determine that the severity rises above the invisible threshold, and when the sanction is ultimately imposed. The lack of guidance and risk of inconsistency will leave students, universities, and courts in the lurch as to the governing rights and procedures. *Garris*’s simple rule provides the guidance all parties need.

Respondents then raise a strawman by arguing that Clemson is a state agency under the APA. Wingo Br. at 16–20; *see also* Gahagan Br. at 12–13 (refuting an argument about agency which Pampu does not make here). But whether Clemson is a state agency in the abstract has no bearing on whether this OCES proceeding is preclusive. The APA defines an agency as a state board, commission, department, or officer “authorized by law to determine contested cases.” S.C. Code Ann. § 1-23-310(2). So the definition turns on the decision-making body having contested case authority, not on whether it is a state entity. And because no statute requires a hearing, the OCES does not decide contested cases and Clemson by extension is not a state agency for these purposes.²

² The Wingos suggest Pampu’s petition for certiorari failed to dispute that Clemson is a state agency under the APA. Wingo Br. at 17. Not so. A state entity is an agency under the APA *only* if it decides contested cases. S.C. Code Ann. § 1-23-310(2). Pampu’s petition argued that the OCES proceeding is not a contested case. Pet. for Cert. at 14–16. That means Clemson is not an agency here.

Finally, Respondents return to *Ross v. Medical University of South Carolina*, 317 S.C. 377, 453 S.E.2d 889 (1994), and the teacher dismissal cases as proof that school boards decide contested cases. Wingo Br. at 17–18; Gahagan Br. at 13. They gloss over the fact that no one challenged the APA’s application in *Ross*, the APA therefore was the law of the case only, and a ruling which is law of the case has no precedential effect. *See* Pet’r’s Br. at 22. They also discount Pampu’s argument that the Court of Appeals erred in relying on teacher dismissal cases, because the statutory procedures and right to judicial review in the cases Pampu cites were adopted before the APA. Wingo Br. at 18–19. But that invites the question: if teacher dismissal cases are irrelevant because the statutes pre-date the APA, how could the Court of Appeals rely on them as proof that the OCES proceeding falls under the APA? *See* App. 25. Respondents do not provide an answer.

II. The Clemson settlement is not preclusive.

Because the OCES proceeding cannot carry the weight placed on it, Respondents (and particularly the Wingos) spend substantial effort arguing the Clemson settlement is independently preclusive. Wingo Br. at 10–16; Gahagan Br. at 1, 5, 7, 10–11, 14. This argument fares no better: neither the Clemson settlement nor the court proceedings to enforce it have any bearing.

A. There is no evidence that Pampu and Clemson intended the settlement to be preclusive of Pampu’s claims against Respondents.

Respondents argue the Clemson settlement “alone” supports the Court of Appeals’ decision. Wingo Br. at 10; *see also* Gahagan Br. at 14 (arguing that the Clemson settlement “reinstated by agreement” “the finding that Pampu had engaged in sexual intercourse with Erin Wingo without her consent”). They characterize the Clemson settlement as a “consent judgment” in which Pampu agreed to “reinstate” the “finding” that he committed sexual assault, irrespective of whether the OCES proceeding is preclusive. This argument fails at every level.

First, Respondents concede Pampu could collaterally attack the OCES decision by suing Clemson. Wingo Br. at 15; Gahagan Br. at 1, 5, 7. If the OCES decision does not bar his suit against Clemson, then it does not bar his suit against Respondents who were not parties to that proceeding.

Second, a settlement is not a consent judgment or judgment of any kind. And even a consent judgment does not finally determine matters for purposes of collateral estoppel. *Arizona v. California*, 530 U.S. 392, 414 (2000). Settlements are preclusive only when it is “clear ... that the parties intend their agreement to have such an effect.” *Id.* Here, there is no clear evidence of that intent. To the contrary, the clear intent was for the agreement *not to* be preclusive.

Settlements, like ordinary contracts, must be read as a whole and, where possible, construed to give effect to all provisions. *See Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009). The recitals to the agreement state that Pampu “denies the allegations of [Wingo’s] November 11, 2015 formal Title IX complaint to Clemson University, the basis of which the hearing board’s decision of February 26, 2016 was made.” R. p. 3190; *see also KMS Fusion v. United States*, 36 Fed. Cl. 68, 77 (1996), *cited with approval in Stevens Aviation, Inc. v. DynCorp. Intern. LLC*, 394 S.C. 300, 715 S.E.2d 655 (Ct. App. 2011) (holding that recitals “may be read in conjunction with the operative portions of a contract in order to ascertain the intention of the parties”). Further, Clemson denied all liability in the settlement, thereby eliminating Respondents’ argument that the settlement finally determined any issue raised in that case. *See* R. p. 3191. Pampu and Clemson also signed this settlement on July 1, 2019, after this case had been pending for two years. R. p. 31; p. 3190. On this record, it is absurd to maintain that Pampu intended his settlement of a separate suit against Clemson to preclude this lawsuit as well.

Third, there were no “findings” to “reinstate.” Neither the Clemson Vice President of Student Affairs nor the President’s office vacated the panel’s finding that Pampu committed sexual misconduct. *See* R. p. 354; p. 360. There were no findings to “reinstate.” The only change was the President’s office increasing the panel’s suspension from one semester to one year. R. p. 360. So when the settlement provided that Clemson “will reinstate the hearing board’s decision of February 29, 2016 as upheld by the University Vice President of Student Affairs,” R. p. 3191, the only decision to reinstate was the one-semester suspension. The agreement does not use the word “findings” anywhere. As a result, the only reading which gives effect to the entire agreement—and the reading then-Judge Verdin correctly adopted—is that while Clemson reinstated the final decision, Pampu denied the underlying allegations. Respondents’ contrary reading makes Pampu’s express denial meaningless and contradictory.

Fourth, the Wingos’ eleventh-hour attempt to inject records from Pampu’s separate malpractice action is procedurally and substantively wrong. As to procedure, the records cited are public filings that were available to the Wingos when this case was before the circuit court. Were these records relevant, the Wingos could have and should have made them a part of the record. It is improper to work them in for the first time before this Court under the guise of judicial notice. As to substance, the Wingos grossly misstate what the records say. According to the Wingos, the malpractice action is inconsistent with Pampu’s argument here because it alleges that his prior attorneys were “negligent for reinstating a ‘sexual misconduct *finding*’—and allowing for a ‘dirty’ record” rather than reinstating a shorter suspension. Wingo Br. at 13 n.8. But that is not what the expert said. The expert said Pampu’s attorneys were negligent for not affirmatively *removing* the misconduct finding from Pampu’s record. Appendix at 82–83, *Pampu v. Clawson Fargnoli, LLC*,

No. 2025-002188 (S.C. Apr. 10, 2026). Pampu’s malpractice complaint also did not allege that the Clemson settlement frustrated the purpose of *this* case, as the Wingos now claim. Wingo Br. at 13. Pampu merely identified a series of errors in both this case (for example, discovery deficiencies) and the Clemson case (such as issues surrounding the settlement), “[o]ne or more” of which “frustrat[ed] the purpose of the underlying litigation,” meaning the litigation where that conduct occurred. *Id.* at 38–39, 61, 112–113. Nothing Pampu or his expert has said in the malpractice case is inconsistent with Pampu’s position here that his settlement with Clemson does not preclude his claims against Respondents.³

Fifth, the federal court’s order enforcing the settlement determined nothing at issue here. For example, the Wingos argue Pampu had a full and fair opportunity to address the inadequacies in the OCES proceeding because he challenged Clemson in federal court, settled those claims, unsuccessfully challenged the settlement’s enforceability, and did not appeal. Wingo Br. at 1–2, 14–15. Gahagan goes even further by falsely stating, “it was determined by the federal district court that the findings of the OCES should be reinstated.” Gahagan Br. at 11. Both are wrong.

The federal court only decided whether the settlement between Pampu and Clemson was enforceable or if additional terms should be added. *Doe v. Clemson Univ.*, No. 8:16-cv-1957, 2019 WL 1383822, at *2–3 (D.S.C. Mar. 27, 2019). It did not hear Wingo’s testimony, determine whether she was incapacitated and Pampu had reason to know it, decide whether Respondents’ accusations were false, determine whether Wingo and Gahagan lied to Clemson, or consider any fact or issue raised here. *See id.* The court merely enforced the settlement agreement between

³ If the Court disagrees and finds that the Clemson settlement is preclusive of his claims here, Pampu reserves the right to amend his malpractice complaint to include that finding.

Pampu and Clemson as executed. *Id.* That ruling cannot preclude a factual issue the federal court never tried.

B. Pampu's position does not make the Information Act ineffective or invite improper duplicative litigation.

The Wingos claim Pampu's arguments render the Information Act ineffective. Not so.

Clemson may investigate misconduct. Clemson may discipline misconduct. Clemson may enforce the policies and procedures it enacted under the Information Act. But the issue here is separate: whether Clemson's internal decision binds a later civil jury in a suit against non-university actors who allegedly lied to procure that discipline. Respondents attempt to confuse the issue by equating the claims Pampu brought in this suit with the allegations he was defending before the OCES. In other circumstances, Clemson's disciplinary procedures under the Information Act may produce a proper result and just discipline. But in the circumstances where the outcome of the OCES proceeding was the result of knowingly false testimony by the claimants to secure a specific outcome, the procedures in place have given way to civil causes of action that only a court can determine.

So rejecting preclusion does not nullify the Information Act. It preserves the line between university discipline and civil liability. A university may decide whether a student violated school policy. A jury may decide whether private parties defamed that student or conspired to harm him through false statements. Those are different proceedings with different parties, different procedures, different burdens, and different remedies. Nor does Pampu seek duplicative recovery for the same wrong. The Clemson settlement resolved claims against Clemson for Clemson's process. This case concerns Respondents' false statements and agreement to remove Pampu from

Clemson. Respondents may argue causation, setoff, or damages where properly preserved and supported. But they cannot avoid their misconduct.

Ultimately, Respondents' position is what will render the Information Act ineffective. If proceedings under the Information Act, and likely a vast array of other disciplinary proceedings, are contested cases, each will require the APA's notice, discovery, evidentiary, cross-examination, and decisional procedures, regardless of the severity of the alleged misconduct. *See* S.C. Code Ann. §§ 1-23-320 to -350. This enormously burdens universities, delays or thwarts investigations, and allows automatic review of every final disciplinary decision in the South Carolina Court of Appeals. *See id.* § 1-23-380; App. 29. This all but guarantees cases will end long after the student has graduated. While Respondents observe that the appeals have not yet started, the ink on the Court of Appeals' decision is barely dry. As students and attorneys become aware of it, they will invoke it and all the university burdens that come with it. Those proceedings will move through the university process and ultimately to the appellate courts.

The simpler reading avoids all these unintended consequences. The Information Act requires universities to adopt disciplinary procedures, and public universities (and private universities which opt into the Information Act) must administer those procedures consistently with the process constitutionally required, which can include a hearing.⁴ S.C. Code Ann. § 59-105-40(B)(4). But because the Information Act does not expressly require a hearing, those procedures are not APA contested cases. *See Garriss*, 333 S.C. at 440–41, 511 S.E.2d at 52. Constitutional due

⁴ The Wingos justify the disparate rights in public vs. private university proceedings by noting that the Due Process Clause does not apply to private institutions. *Wingo Br.* at 24–25. They never otherwise explain how private and public schools can be treated differently under the same statute. This means the Wingos again concede that the Information Act itself does not make disciplinary proceedings a contested case. Under *Garriss*, that ends the argument.

process and statutory contested-case authority remain distinct, as the text of both statutes requires, and the Information Act remains intact.

C. Pampu’s recovery of damages from Clemson is not preclusive.

The Wingos also claim that Pampu’s damages here mirror those sought against Clemson, that his counsel tied Respondents’ statements to his removal from Clemson, and that Clemson alone made the decision to suspend him. Wingo Br. at 32–34. None of those points establishes preclusion or prior satisfaction of Respondents’ liability.

First, the Wingos cite no case law holding that damages paid by a third party in a separate lawsuit have any preclusive effect. At most, and without conceding the point, the payment entitles Respondents to a setoff. It does not relieve them of liability. Simply put, the fact that Pampu received a monetary settlement from Clemson has nothing to do with collateral estoppel.

Second, the defamation damages Pampu sought and recovered here are not the same as those sought in the Clemson case. Pampu’s lawsuit against Clemson sought compensation for Clemson’s unlawful discrimination and deprivation of due process during the OCES investigation and hearing, and during the internal review of the decision. R. pp. 214–215. In contrast, Pampu’s defamation claim sought relief only for reputational harm caused by false statements made outside the OCES process. R. p. 1465, line 23–p. 1466, line 7; p. 1676, line 19–p. 1679, line 25; p. 1682, line 18–p. 1683, line 9; p. 1684, line 12–p. 1685, line 18; p. 1687, line 4–p. 1688, line 13; p. 1772, lines 20–22; p. 1775, lines 2–6; p. 1776, lines 6–8; p. 1777, lines 10–13; p. 1777, lines 16–19; p. 3131; p. 3133; pp. 1118–1120. Consistent with this distinction, Pampu clarified to the jury that his defamation damages were separate. For example, during opening statements, Pampu’s counsel explained, “[t]o be clear, the plaintiff’s civil conspiracy claim is based on the defendants’ common plan to get him removed from Clemson University and removed from the fraternity. Meanwhile,

plaintiff's defamation claim is actually based on defendants' false statements to at least 20 other people calling him a rapist." R. p. 1416, lines 15–21. Pampu then testified that his reputation suffered because of Respondents' statements. R. p. 1460, line 7–p. 1461, line 1. And during closing arguments, his counsel again distinguished between these claims. R. p. 2234, line 10–p. 2236, line 12. The Wingos' assertion that Pampu tied his defamation damages to his removal from Clemson is based on misleading out-of-context quotations, and the Court should reject it.

Third, Clemson did not make its decision to suspend Pampu "alone." *See* Wingo Br. at 34. Respondents ignore that Wingo and Gahagan voluntarily participated in the OCES proceeding. R. p. 2540, line 25–p. 2541, line 8. And they ignore that Pampu had no right to compel the production of evidence and witnesses favorable to him. They also ignore the evidence that Wingo and Gahagan lied to the panel. R. p. 3135. So the OCES panel heard a curated set of unsworn facts consisting largely of statements and documents from Wingo, Gahagan, and Wingo's friends. The panel's decision was not independent; it was the result which Wingo and Gahagan conspired to achieve. Under Respondents' theory, no one could be liable for successfully manipulating a disciplinary body to harm another so long as the decision-maker conducted *some* process. But tort law exists in part for these very situations.

Finally, the record confirms why Dave Wingo's liability cannot be folded into Clemson's decision. He separately accused Pampu of predatory conduct, called him a serial predator, warned of a likelihood he would harm others, and suggested that failing to act would give others a "green light" to engage in similar conduct. R. p. 3142; p. 3145. OCES made none of those findings, and Clemson's settlement paid nothing on Dave Wingo's behalf. The jury was entitled to decide whether his statements were defamatory, and it did so accordingly.

III. The jury heard sufficient evidence that Wingo and Gahagan conspired to have Pampu removed from Clemson to support their civil conspiracy verdict.

A. Pampu’s civil conspiracy arguments are preserved.

The Wingos claim two arguments Pampu made in his brief are either abandoned or unpreserved. Wingo Br. at 35–38. The record forecloses those arguments.

To start, they argue Pampu “abandoned” his argument that Clemson breached its contract with him by failing to cite supporting cases in his brief to the Court of Appeals. Wingo Br. at 36. This argument mixes the Court of Appeals’ findings, each of which is wrong. The Court of Appeals first held that “Pampu’s argument that Clemson’s suspension of Pampu constituted a breach of contract does not appear in his initial brief; it is only in his reply brief.” App. 9 n.7. But Pampu made this argument on pages 20–21 of his brief. Next, the Court held Pampu abandoned any argument that Clemson could breach its contract when it complied with the Information Act by failing to cite supporting authority. Op. at 9–10. But the circuit court’s JNOV on civil conspiracy did not reference the Information Act, so Pampu did not address it in his opening brief. *See R.* pp. 5–7. And because Respondents did not raise the Information Act in their response briefs, Pampu did not raise it in reply. This was a conclusion the Court of Appeals reached on its own. Pampu therefore had no reason to raise the Information Act in his civil conspiracy briefing.

Next, the Wingos argue Pampu improperly cited *Hall v. UBS Financial Services, Inc.*, 435 S.C. 75, 866 S.E.2d 337 (2021), for the first time in his petition for certiorari. Wingo Br. at 36–37. The Wingos misunderstand why Pampu cited *Hall*. In *Hall*, this Court recognized that third-party interference with a relationship can be actionable even when the relationship itself permits termination. *Hall*, 435 S.C. at 90–92, 866 S.E.2d at 344–45. Here, Clemson could enforce its policies, but not at the instigation of students who conspired to provide false information. This

means Wingo and Gahagan's intentional procurement of Pampu's suspension through deceit is actionable regardless of whether Clemson's ultimate act was technically authorized. Pampu previously made this argument. *See, e.g.*, Pet. for Reh'g at 15.

B. The jury could find an agreement between Wingo and Gahagan and unlawful means used in furtherance of it.

Civil conspiracy requires an agreement, an unlawful act or lawful act by unlawful means, an overt act, and resulting damages. *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021). The parties to the agreement need not complete their objective; they just need to take steps in furtherance of it which cause him harm. *Paradis*, 433 S.C. at 580–81, 861 S.E.2d at 783–84 (Few, J., concurring in part and dissenting in part); *see also* 16 Am. Jur. 2d *Conspiracy* § 53. Pampu's brief recounted the evidence presented to the jury showing that Wingo and Gahagan agreed to have Pampu removed from school, took steps in furtherance of that agreement by lying to Clemson, and caused Pampu to suffer substantial harm. Pet'r's Br. at 7–9, 13–14, 28–31. Respondents do not deny the evidence exists. They instead raise meritless ancillary arguments hoping to excuse it.

Respondents first argue that the Clemson settlement bars Pampu from litigating this claim. Wingo Br. at 35–36; Gahagan Br. at 17. For the reasons discussed above, it does not. Next, Respondents argue that Clemson could not breach its contract with Pampu by implementing required Title IX and Information Act proceedings. Wingo Br. at 36; Gahagan Br. at 17–18. But that is the point of *Hall*, which controls even though it involved at-will employment rather than a student's enrollment contract. *Hall*, 435 S.C. at 90–92, 866 S.E.2d at 344–45. And again, Pampu did not need to prove a breach in-fact. He only needed to prove that Wingo and Gahagan conspired to procure one. *Paradis*, 433 S.C. at 580–81, 861 S.E.2d at 783–84 (Few, J., concurring in part and

dissenting in part). So even if Wingo and Gahagan's actions are not actionable under *Hall*, they still are an actionable conspiracy. Either way, the Court of Appeals erred.

Respondents then argue that "the jury never heard what Ms. Wingo and Gahagan told Clemson." Wingo Br. at 38; *see also* Gahagan Br. at 18. But they ignore that the jury received evidence that Wingo and Gahagan texted each other about getting Pampu removed from Clemson, Gahagan admitted to lying to Clemson about Wingo's consent, and Clemson suspended Pampu as a result. *E.g.*, R. p. 1453, line 20–p. 1456, line 3; p. 1586, lines 7–14; p. 3135; pp. 3137–3139. That is more than enough to sustain the verdict.

Finally, Gahagan claims that Pampu "has requested that this Court consider evidence of alleged extrinsic fraud in order to reverse the OCES panel." Gahagan Br. at 18. Pampu is *not* trying to reverse the OCES decision. He is holding Respondents liable for their misconduct. Gahagan also cites no cases finding that the extrinsic vs. intrinsic dichotomy applies to university disciplinary proceedings which lack any resemblance to court proceedings. In any event, an agreement outside of court to provide false evidence in court is extrinsic fraud that warrants relief from a judgment. *See Ray v. Ray*, 374 S.C. 79, 86, 647 S.E.2d 237, 241 (2007) ("We hold an act of perjury or concealment of a document coupled with an intentional scheme to defraud the court justifies the setting aside of a judgment pursuant to Rule 60(b) due to extrinsic fraud."). Pampu's claim therefore is proper even under Gahagan's incorrect framing.

C. The jury could find damages proximately caused by the conspiracy.

Respondents next argue Pampu failed to prove damages proximately caused by the conspiracy. Wingo Br. at 39–43; Gahagan Br. at 18–21. Wingo specifically contends the Clemson settlement became a substantial intervening and superseding cause because Pampu agreed to

reinstate the OCES decision before applying to dental school. Wingo Br. at 40–41. But the record does not compel that conclusory leap.⁵

To cut the chain of causation, an intervening cause must be (1) independent of the defendant’s conduct, (2) not the foreseeable result of the defendant’s conduct, (3) sufficient to cause the injury itself, and (4) sufficient to render the defendant’s conduct merely an indirect or remote cause of the harm. *Stone v. Bethea*, 251 S.C. 157, 161–62, 161 S.E.2d 171, 173–74 (1968); *Dawkins v. Sell*, 434 S.C. 572, 581–82, 865 S.E.2d 1, 6 (Ct. App. 2021); *cf.* Restatement (Third) Torts-Physical & Emotional Harm § 27 cmt. c (“A defendant whose tortious act was fully capable of causing the plaintiff’s harm should not escape liability merely because of the fortuity of another sufficient cause.”). Here, the Clemson settlement contributed nothing to Pampu’s injuries. A suspension was already on Pampu’s record because of Wingo and Gahagan’s conduct; the settlement did not put it there. Still, the settlement allowed Pampu to reduce the suspension from one year to one semester, which would not be reflected on his transcript as a sanction, thus improving Pampu’s odds of acceptance to dental school. *Supra* pp. 5–6; Pet. at 19. The settlement therefore was an effort to mitigate, not cause, Pampu’s harm. Respondents also admit that Pampu could sue Clemson. Wingo Br. at 14–15; Gahagan Br. at 1. A settlement of claims against Clemson therefore was foreseeable to them.

Nor do Pampu’s separate alcohol and disorderly-conduct violations break the causal chain. *See* Wingo Br. at 41–42. The Wingos argue Pampu’s other policy violations “may have” impacted his ability to attend dental school. *Id.* at 41. But they provide no evidence Clemson would have

⁵ Pampu addresses Respondents’ argument that Clemson independently reached its decision on page 12, above.

known about these acts, much less charged Pampu with policy violations for them, but for Wingo's sexual misconduct complaint. They also present no evidence that dental schools would have treated these lesser offenses the same as having sex with an allegedly incapacitated person. These other violations therefore provide no relief for Wingo and Gahagan. Likewise, Gahagan's reliance on Clemson's policy against reporting a one-semester suspension misses the point. Clemson's policy made the shorter suspension valuable because Clemson would not affirmatively report it. R. p. 384. But Pampu still had to disclose it when dental school applications asked whether he had been disciplined. R. p. 3149.

Far more than aspiration supported Pampu's damages. This Court gives juries "wide latitude" in determining future damages, particularly where the nature of the injury prevents exact proof. *Haltiwanger v. Barr*, 258 S.C. 27, 32–33, 186 S.E.2d 819, 821 (1972); *Jones v. Thomas & Hill, Inc.*, 265 S.C. 66, 73–74, 216 S.E.2d 871, 874–75 (1975). Difficulty calculating the loss does not defeat recovery, *Powers v. Calvert Fire Ins. Co.*, 216 S.C. 309, 321, 57 S.E.2d 638, 644 (1950), and damages are not speculative merely because their determination depends in part on contingent future events, *Piggy Park Enters., Inc. v. Schofield*, 251 S.C. 385, 392, 162 S.E.2d 705, 708 (1968). The record here amply meets this standard.

Pampu graduated magna cum laude in biochemistry, performed well on the dental school admissions examination, shadowed in dental clinics, worked for an orthodontist, and obtained recommendations from professors and practicing dentists. R. p. 1464, line 21–p. 1465, line 5; pp. 3158–3159; pp. 3167–3169; p. 3176. He disclosed his suspension, applied to nine dental schools, but was rejected by all nine. R. p. 1463, lines 16–20; p. 1967, lines 16–23; p. 3149. He was forced to abandon that path and enter medical sales. R. p. 1608, line 16–p. 1609, line 6. Steven Shedlin then

supplied additional causation and damages evidence. The circuit court qualified him, without objection, as a vocational rehabilitation expert with more than forty years' experience. R. p. 1930, line 17–p. 1936, lines 4–12. Shedlin testified that, but for the suspension, Pampu would have been accepted into dental school and earned substantially more over his working life. R. p. 1939, line 22–p. 1949, line 3; p. 1959, lines 3–7; p. 1976, line 17–p. 1977, line 5. The jury duly considered and rejected Respondents' criticisms that Shedlin did not speak with every dental school or calculate the statistical likelihood of obtaining an orthodontics residency. Wingo Br. at 42–43; Gahagan Br. at 20. It also heard evidence from which to estimate the resulting loss, received an instruction against speculative damages, and returned an award consistent with approximately \$70,000 in annual lost earnings over Pampu's working life. R. p. 1085; p. 2301, line 19–p. 2302, line 5; p. 2366, lines 17–21. The record contains sufficient evidence to support the jury's damages award.

Sensing that they cannot prevail on the record as it stands, the Wingos again cite evidence from another case (this time, the Clemson action) to argue that Pampu's claims are inconsistent. Wingo Br. at 42 & n.17. Because this issue on appeal tests the sufficiency of evidence presented to the jury, citing evidence from other matters which was never admitted is plainly improper. In any event, it is of no moment. The fact that Pampu's parents said he wanted to go to medical school, not dental school, in 2018 is consistent with the record here. *See id.* Pampu testified that his "original" plan was to become a doctor *or* an orthodontist. R. p. 1462, lines 18–24; p. 1577, lines 8–17. He graduated from the College of Charleston in 2020, two years after his parents' affidavits, and applied to dental school in January 2021. *See* R. p. 3147; p. 3150; *see also* R. p. 1969, lines 3–8 (stating Pampu applied for the 2021–2022 academic year). His plan shifting from medical school to dental school over three years is already in the record and unremarkable.

IV. The Wingos' alternative grounds do not justify JNOV or a new trial.

The Court of Appeals did not address the Wingos' alternative grounds because its collateral estoppel ruling resolved the appeal. Wingo Br. at 2 n.3. Those grounds are therefore not part of the decision under review. Even so, the Wingos compress into their final seven pages the alternative claims they briefed across 20 pages below. Wingo Br. at 43–49; Wingos Final Appellants' Br. at 27–47. While Rule 220(a), SCACR, permits affirmance on any ground appearing in the record, it does not require this Court to decide several unaddressed cross-appeal issues in the first instance.

In any event, none has merit. Based on the arguments below and contained in Pampu's briefs to the Court of Appeals, this Court should reject all stated grounds to affirm.

A. The circuit court did not abuse its discretion in admitting only a redacted version of Dave Wingo's letter to Pampu's fraternity.

Dave Wingo first argues he is entitled to a new trial because the circuit court erred in admitting only a redacted copy of the letter he sent to Pampu's fraternity. Although he frames this issue at times through the lens of a JNOV, his argument really is one for a new trial based on the exclusion of evidence. Because the court did not abuse its discretion, Dave Wingo is not entitled to a new trial. *See Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 434, 673 S.E.2d 448, 457 (2009) (“The admission of evidence is a matter left to the discretion of the trial judge and will not be disturbed on appeal absent an abuse of discretion.”).

He argues the court erred in redacting parts of the letter referring to the Clemson disciplinary process and OCES findings. But the letter went far beyond the OCES process. Dave Wingo wrote that Pampu “preyed” on Wingo, his conduct was “predatory,” he is a “serial predator,” there is a “likelihood that he will do something harmful again,” and he will “possibly

giv[e] others a ‘green light’ to do so as well.” R. p. 3142; p. 3145. The circuit court correctly found that it “didn’t see ... any findings like that from Clemson University.” R. p. 1397, lines 9–12. The circuit court therefore did not abuse its discretion in declining to include the entire letter under Rule 106, SCRE. And as explained below, the circuit court did not abuse its discretion in excluding the redacted material under Rule 403, SCRE.

B. The circuit court properly refused to charge qualified privilege.

Dave Wingo next argues that the circuit court erred in not charging the jury on qualified privilege. Wingo Br. at 44–46. The court did not err.

He contends the letter was a settlement communication because he held Erin Wingo’s power of attorney, demanded payment from the fraternity, and stated that he wished to resolve the matter without litigation. Wingo Br. at 45–46. First, the Wingos never produced the power of attorney. They also conceded that “Erin was not involved in the letter” and Dave Wingo “alone authored” it. R. p. 2130, lines 5–7. Furthermore, Dave Wingo (an insurance executive) explained that he authored the letter only to “raise the issue of risk” and to “identif[y] the liability,” and it was the fraternity’s choice “on how they actually wanted to deal with” it. R. p. 1884, lines 7–22. The accusations of Pampu being a serial predator who will green-light others to do the same also go beyond the bounds of a good-faith settlement offer.

The circuit court therefore correctly determined that the privilege does not apply. R. p. 2219, lines 10–23; *Murray v. Holnam, Inc.*, 344 S.C. 129, 140–41, 542 S.E.2d 743, 749 (Ct. App. 2001) (“A communication made in good faith on any subject matter in which the person communicating has an interest or duty is qualifiedly privileged if made to a person with a corresponding interest or duty even though it contains matter which, without this privilege, would be actionable.”); *Woodward v. S.C. Farm Bureau Ins.*, 277 S.C. 29, 32, 282 S.E.2d 599, 601 (1981)

(“As with all matters of qualified privilege, these communications must be reasonably related to the issue at hand which is of common interest to the parties. The publisher must take care not to wander beyond the scope of the occasion”); *id.* at 32–33, 282 S.E.2d at 601 (“While abuse of the conditional privilege is ordinarily an issue reserved for the jury, in the absence of a controversy as to the facts, as here, it is for the court to say in a given instance whether or not the privilege has been abused or exceeded.”) (internal citations omitted).

C. The circuit court properly excluded the Title IX investigation, hearing, and decision while allowing damages evidence.

Next, the Wingos claim the circuit court created an asymmetric record by excluding the Title IX investigation, OCES hearing, Clemson decision, and settlement while allowing Pampu to present his suspension and its consequences. Wingo Br. at 45–47. Their argument is only that the evidence is relevant. But they ignore why the circuit court excluded it: Rule 403, SCRE. They cannot show the court abused its discretion in that regard. *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003) (“A trial judge’s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances.”).

Respondents testified about what they observed, what Wingo reported, what others told them, and why they believed the accusations to be true. The court excluded only Clemson’s conclusion and the surrounding administrative record as substantive proof that Respondents’ accusations were true. R. pp. 7–10; p. 1386, line 24–p. 1388, line 2; p. 1395, lines 6–22. It was right to do so. Admission of Clemson’s decision would have invited the jury to treat one conclusion under a university policy, found under different and wildly deficient procedures, and based on statements from Gahagan which are admitted lies as dispositive. It would have required evidence and argument before the jury as to procedural deficiencies, allegations of malpractice, and other

matters. All this would have consumed undue time, confused the jury, and substantially prejudiced Pampu.

The circuit court therefore properly excluded this evidence under Rule 403, and the Wingos do not argue otherwise here.

D. Wingo's subsequent intoxication testimony does not require a new trial.

The Wingos also claim questioning Wingo about becoming blackout drunk after October 24 was irrelevant character evidence barred by Rules 404(a) and 404(b), SCRE. Wingo Br. at 47. This argument is unpreserved and wrong.

The Wingos did not raise this issue in their post-trial motions. *See* R. pp. 1094–1109. And at trial, the Wingos only objected to this evidence on relevance grounds. R. p. 1694, lines 1–4. Their argument that it constitutes improper character evidence therefore is not preserved. *State v. Johnson*, 363 S.C. 53, 58–59, 609 S.E.2d 520, 523 (2005). Even if the issue is preserved, the circuit court did not abuse its discretion. The evidence showed Wingo had a motive to lie about her experience with alcohol. Thus, it is admissible to establish her character for truthfulness or untruthfulness while attacking her credibility regarding the incident in question. Rule 404(a), SCRE; Rule 607, SCRE. The testimony is also indicative of her motive to lie about the true nature of her sexual encounter with Pampu, especially considering the other evidence admitted at trial showing her desire to maintain a relationship with Gahagan. Rule 404(a), SCRE; Rule 404(b), SCRE; Rule 608, SCRE. And even assuming the questioning should have been excluded, any error was harmless. Wingo already testified she had been blackout drunk on other occasions. R. p. 1626, line 13–p. 1628, line 4. Two brief questions later about her drinking could not reasonably have driven the verdict or required a new trial.

E. The jury’s actual damages award was not excessive.

Next, the Wingos argue Pampu offered only conclusory testimony about reputational harm and that the jury must have relied on speculative lost earning capacity tied to his suspension. Wingo Br. at 47–48. But the record shows otherwise.

“[A] jury’s determination of damages is given substantial deference.” *Kunst v. Loree*, 424 S.C. 24, 46, 817 S.E.2d 295, 306 (Ct. App. 2018). A jury’s award cannot be disturbed unless it is “so grossly excessive and the amount awarded is so shockingly disproportionate to the injuries to indicate that it was the result of caprice, passion, prejudice, or other considerations not found on the evidence.” *Miller v. City of W. Columbia*, 322 S.C. 224, 231, 471 S.E.2d 683, 687 (1996). Because the Wingos accused Pampu of a crime of moral turpitude (rape and sexual assault), their statements were actionable *per se*, and the law presumes that they acted with common law malice and that Pampu suffered general damages. *Kunst*, 424 S.C. at 39, 817 S.E.2d at 302–303. The jury’s verdict was based on Pampu’s testimony that he suffered reputational damage, as well as problems forming relationships, trusting others, and socializing, all because of the Wingos’ defamatory statements. R. p. 1460, lines 7–23. “[A] person’s reputation is invaluable.” *Kunst*, 424 S.C. at 50, 817 S.E.2d at 308.

Thus, the actual damages the jury awarded are reasonable considering that Pampu will have to deal with the false smear of being a rapist for 50-plus years.

F. The circuit court’s punitive damages review was sufficient.

The Wingos lastly contend the circuit court erred in applying the *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991), factors to the jury’s punitive damages award and not *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009). Wingo Br. at 48–49. Here too, the argument is unpreserved and wrong.

The Wingos did not make this argument in their post-trial motion. In fact, they did the opposite: they cited and argued the *Gamble* factors as governing review of the jury's punitive damages award. R. pp. 1106–1108. Moreover, the Wingos participated in the preparation of the jury charge regarding an award of punitive damages and did not object at trial when the circuit court relayed the *Gamble* factors to the jury. R. p. 2298, line 20–p. 2299, line 13. This Court therefore cannot consider their belated assertion. See *Pelican Bldg. Ctrs. of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993) (holding “where an issue has not been ruled upon by the trial judge nor raised in a post-trial motion, such issue may not be considered on appeal.”).

Even if the issue is preserved, the circuit court did not err. Although its order organized its discussion under *Gamble*, the court addressed the substance that the Wingos allege was omitted. The circuit court considered culpability, duration, awareness, concealment, deterrence, the relationship between the award and the harm, ability to pay, and the severity of accusing Pampu of a crime of moral turpitude. R. pp. 10–12. It also observed the punitive award was substantially less than the actual damages award and concluded it was neither excessive nor violative of due process. R. pp. 11–12. The jury awarded \$450,000 in punitive damages against Wingo after awarding \$700,000 in actual damages, a ratio of approximately 0.64 to one. R. pp. 4–5. The Wingos' effort to recalculate the ratio using nominal damages depends on first accepting their rejected argument that the actual damages award lacked support. Wingo Br. at 49.

CONCLUSION

For these reasons, the Court should reverse the Court of Appeals, reinstate the jury's verdict, and reject Respondents' alternative grounds for JNOV or a new trial.

Respectfully submitted,

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