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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

Honorable Donald B. Hocker

Common Pleas Case No. 2020-CP-41-00075

Debrah J. Taylor Greene and David Greene, …………..……………...….. Appellants,

v.

Christian G. Spradley and Taylor Moore, LLC ……………………….… Respondents.

APPELLANT'S INITIAL BRIEF

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II. Whether the circuit court erred in issuing a permanent restraining order on the speech of appellants where no defamatory statements were identified or tied to such restraints?

STATEMENT OF THE CASE

Respondents Christian G. Spradley, Esquire ("Spradley") and Moore Taylor, LLC ("Moore Taylor") brought this action for defamation, intentional interference of a contractual relationship, and negligence against Respondents Debrah J. Taylor Greene ("Debrah Greene") and David Greene ("David Grenne") on March 19, 2020. (R. pp. ___; summons and complaint.) The Spradley and Moore Taylor complaint sought judgment against the Defendants for actual and punitive damages, "for a ruling that the statements and posts are false; and for such other as this Court might deem just and proper" (R. pp. ___; summons and complaint.)

On December 7, 2020, Appellants jointly filed their answer wherein they asserted a general denial of the allegations and asserted it was "just plain ludicrous for you and your cohorts to be, once again, forcing us (the I(E)rvings) into another uncalled for court battle." (R. pp. ___; answer.) Appellants craved in their answer to the Saluda Country courthouse records indicating that Attorney Spradley, and some of his colleagues, including Attorney Kathy O. Rushton, who served as a special referee for a partition action of Appellants' family homestead, "eventually decided to just outright the I(E)rvings property" using "a 2008 untruthful complaint written, filed, and published by you, Attorney Spradley, quieting titled and then secretly sold…" (R. pp. ___; answer.)

On November 10, 2025 the trial of the case commenced at Saluda County Courthouse, the Honorable Donald B. Hocker presiding. The Appellants appeared pro se and Respondents Spradley and Moore Taylor were represented by S. Jahue Moore, Esquire of Moore, Bradley, Myers in West Columbia, South Carolina. The trial occurred on November 10, 12, 13, and 14th of 2025. (R. pp. ___; transcript.) On November 14, 2025, the jury returned a verdict in favor of Respondents for $75,000 ($25,000 actual damages and $50,000 punitive damages). (R. pp. ___; restraining order 1.)

On November 17, 2025, the trial court entered its "Restaining Order" wherein it provides in its entirety:

> The defendants over the years posted via social media, etc., multiple defamatory remarks against the plaintiffs and others. In addition the defendants mailed to individuals and businesses approximately 150 mailings containing defamatory statements in saluda about the plaintiffs. The defendant Debrah Greene, while on the witness stand at trial stated she would continue the above conduct notwithstanding the outcome of the trial. The egregiousness of Defendant's conduct cannot be adequately explained in this order other than to simply state in somewhat legal terms that "it was bad and beyond being over the top!"
> BASED UPON THE COURT'S SUA SPONTE MOTION IN LIGHT OF THE VERDICT REACHED IN THIS CASE, IT IS HEREBY ORDERED (ALL CAPS INTENTIIONAL):
>
> 1. THAT DEFENDANTS OR ANYONE ON THEIR BEHALF ARE ENJOINED AND RESTRAINED FROM COMMUNICATING ANYTHING WHATSOEVER, OF ANY KIND OR NATURE, ABOUT THE PLAINTIFFS; KATHY RUSHTON; HENRIETTA GILL; BILLY COLEMAN OR ANYONE ELSE CONNECTED TO THIS CASE AND THE TRIAL OF THIS CASE INCLUDING, BUT NOT LIMITED TO, JURORS, COURT STAFF, AND ANY OTHERS VIA MAIL, EMAIL, SOCIAL MEDIA, INTERNET, VERBAL OR OTHERWISE FROM THIS POINT FORWARD.
> 2. FAILURE TO COMPLY WITH THIS ORDER SHALL SUBJECT DEFENDANTS TO SANCTIONS BY THIS COURT, MONETARY AND/OR IMPRISONMENT.
> 3. THIS ORDER IS RENDERED AS AN EXTENSION OF THE PERSONAL JURISDICTION OVER THE DEFENDANT ALREADY ESTABLISHED IN THIS DEFAMATORY ACTION.
> 4. THE DEFENDANTS SHALL IMMEDIATELY TAKE DOWN ALL POSTS VIA SOCIAL MEDIA AND THE INTERE CONCERNING THIS CASE.
>
> SO ORDERED.

(R. pp. ___; restraining order 1-3 (emphasis in original).)

On December 3, 2025, Respondents filed a motion to reconsider and for a new trial supported by the affidavit of Debrah Greene. (R. pp. ___; motion for a new trial with exhibit.) The motion and affidavit alleged that neither Respondent received notice of the statements that were alleged to be untrue, that no such statements were identified in the Court's sole restraining order, and that the restraining order sweeps so broadly it would not be possible to speak about underlying partition action again. (R. pp. ___; motion for a new trial with exhibit 2-3.) On December 12, 2025, the trial court denied the motion for a new trial it was "without merit and without evidentiary and legal support. (R. pp. ___; order denying new trial.) The order denying the motion to reconsider and for a new trial provided "[t]here was overwhelming evidence of defamation by the Defendants against the Plaintiffs presented at trial. For example, evidence showed that the Defendants mailed over 150 letters to various individuals and businesses in Saluda and surrounding areas defaming the Plaintiffs as well as a multitude social media posts of like nature." (R. pp. ___; order denying new trial 2.) "2. The Defendants complain they were unaware of the remarks the jury found to be defamatory. The jury was not required to make such a finding in their verdict." (R. pp. ___; order denying new trial 2.) Appellants filed a motion to reconsider on December 22, 2025 that was never ruled on by the trial court. (R. pp. ___; motion to reconsider) This appeal followed on January 12, 2026. (R. pp. ___; notice of appeal)

STANDARD OF REVIEW

The grant or denial of an injunction by the trial court will not be reversed absent an abuse of discretion. *Gilley v. Gilley*, 327 S.C. 8, 11-12, 488 S.E.2d 310, 312 (1997);

MailSource, L.L.C. v. M.A. Bailey & Assocs., 356 S.C. 363, 367, 588 S.E.2d 635, 637-38 (Ct.App.2003). An abuse of discretion occurs when the decision of the trial court is unsupported by the evidence or controlled by an error of law. *Ledford v. Pa. Life Ins. Co.*, 267 S.C. 671, 675, 230 S.E.2d 900, 902 (1976); *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct.App.2002).

"An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions." *In re: Care and Treatment of Miller*, 393 S.C. 248, 256, 713 S.E.2d 253, 257 (2011). "When a trial court's decision is made on a sound evidentiary basis and is adequately explained with specific findings — as the law requires — [the appellate court] defer[s] to the trial court's discretion." *Horton v. Jasper Cnty. Sch. Dist.*, 423 S.C. 325, 331, 815 S.E.2d 442, 444 (2018).

ARGUMENT

I. The court erred in awarding damages for defamation liability where no specific evidence was provided and the Court never identified or determined the statements that were capable of defamatory meaning

The determination of whether a statement is capable of bearing a defamatory meaning is a question of law for the trial court, not the jury. South Carolina law establishes a clear division of labor between the trial court and the jury in defamation cases. It is the trial court's function to determine initially whether a statement is susceptible of having a defamatory meaning. *Leask v. Robertson*, 589 F. Supp. 3d 506 (D.S.C. 2022). This threshold legal determination is made by the judge before the case is submitted to the jury. As the District Court of South Carolina has explained, if there is any dispute regarding the truth of the defamatory statement, it is a question for the jury to determine. *McGlothlin v. Hennelly*, 370 F. Supp. 3d 603 (D.S.C. 2019). The court also determines the legal framework — including whether a statement is defamatory per se (meaning its defamatory meaning is clear from the statement standing alone) or defamatory per quod (meaning the reader must know additional extrinsic facts to understand its defamatory nature). *McGlothlin* at 612. The jury's role in defamation cases then is limited to resolving factual questions — such as whether the defendant actually made the statements the court has already determined to be potentially defamatory, whether those statements were false, and whether the defendant acted with the requisite fault. *Id.* The trial court's restraining order, order denying motion for a new trial, and the transcript manifestly illustrate the trial court misunderstood these roles in policy, practice and procedure.

The South Carolina Supreme Court in *Holtzscheiter v. Thomson Newspapers*, Inc., 332 S.C. 502, 506 S.E.2d 497 (1998) clarified the framework, holding that the question of whether a statement is actionable per se (relating to pleading and proof requirements) is always a question of law for the court. The court distinguished between two different uses of "per se" in defamation law: (1) whether a statement is defamatory per se or per quod (which relates to whether extrinsic facts are needed to understand the defamatory meaning), and (2) whether a statement is actionable per se (which relates to pleading and proof requirements). *Id.* at S.C. 510, S.E.2d at 501. For defamation per quod cases, the plaintiff must introduce facts extrinsic to the statement itself in order to prove a defamatory meaning. *Id.*

Once the court has made its legal determination and submitted the case to the jury, the jury resolves the factual elements of the defamation claim. Under South Carolina law, a plaintiff must establish: (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Erickson v. Jones St. Publishers*, LLC, 368 S.C. 444, 629 S.E.2d 653 (2006). The trial court here failed to make it its duty to determine which, in fact, deserves the jury's consideration.

To be clear, neither South Carolina procedural rules nor case law require a jury to specifically identify which statements in evidence it found to be defamatory. South Carolina Rule of Civil Procedure 49 grants courts discretionary, not mandatory, authority to require special verdicts or written interrogatories. The rule states that the court "may" require a jury to return only a special verdict in the form of a special written finding upon each issue of fact, and "may" submit written questions or use "any other method that the court considers appropriate." Rule 49, SCRCP. This permissive language confirms that special verdict forms identifying specific defamatory statements are within the court's discretion, not a mandatory requirement. What is mandatory is the trial judge's determination of the alleged specific statement's defamatory meaning.

The South Carolina Supreme Court's decision in *Erickson* case illustrates this principle in practice. In that case, the special verdict form approved by both parties posed four broad yes/no questions — including whether the newspaper published "a statement" about the plaintiff that was false, and whether "the false statement" was defamatory — without requiring the jury to identify each specific statement within the article it found actionable. *Erickson,* S.C. at 460. The court upheld this approach, noting that the jury found Newspaper liable for defamation pursuant to instructions agreed upon by the parties, and that the jury's verdict was supported by the evidence. Notably, the trial court itself had already made legal determinations about which statements could be considered — for example, directing the jury not to consider a particular statement the court had ruled was not defamatory as to the plaintiff. *Erickson* at 484. This demonstrates that the court's pre-submission rulings, rather than jury-specific findings, serve the function of narrowing the universe of actionable statements. The trial court failed in this record to make such pre-submission rulings and thus failed to provide to guidance to the jury about what could be considered and what could not.

In some defamation instances though, a general verdict form, like in this case, has been upheld. In *Kelley v. Wren*, 415 S.C. 379, 782 S.E.2d 406 (Ct. App. 2016), the jury returned a general verdict finding that the newspaper's articles (but not its editorial) were defamatory, without specifying which individual statements within the articles it found actionable. This court conducted its own independent review of the specific statements to assess whether the evidence supported the jury's findings on falsity and actual malice. *Id.* Unfortunately, the record in this matter won't allow this approach – even if it were constitutionally appropriate: no specific statements were identified by the Court and the jury's findings on falsity are presently unknown.

In federal court proceedings in South Carolina, the Fourth Circuit has addressed the related — but distinct — question of whether a verdict form must quote the specific statements the court has determined to be defamatory. In *Benjamin v. Sparks*, 986 F.3d

332 (4th Cir. 2021), the Fourth Circuit held that the trial judge determines as a matter of law which statements are defamatory, and the jury's role is limited to determining whether the defendant actually made those specific pre-identified statements. The court affirmed the district court's use of a verdict form that quoted the precise statements the court had determined to be defamatory per se, rejecting the plaintiff's argument that the jury should have been allowed to consider "similar" statements testified to by witnesses. *Benjamin* at F.3d 353. The court explained that without limiting the jury's inquiry to statements the court has already determined to be defamatory, "even the most diligent and well-intentioned jury could have improperly returned a verdict finding that Sparks had made *some* slanderous statement, without knowing if the district court would have found that statement defamatory as a matter of law." *Id.* This reasoning reinforces the principle that it is the court — not the jury — that identifies which statements are legally capable of being defamatory. The jury's task is then to determine whether those specific statements were actually made and whether the other elements of the claim are satisfied.

The District Court of South Carolina has similarly noted that special verdict forms are generally favored in federal court because they serve the purpose of identifying the basis for the jury's verdict and avoiding confusion and appellate uncertainty *Maytag Corp. v. Clarkson*, 875 F. Supp. 324 (D.S.C. 1995). Under the special verdict system, the jury makes findings on all issues of material fact and the court applies the law. *Id.* However, this preference for special verdict forms does not translate into a requirement that juries specifically identify which of multiple statements they found defamatory.

Instead, it is the First Amendment rights of persons like Appellants which provide that the primary constraints in defamation law operate at the judicial level. The trial court must determine as a matter of law whether a statement is capable of defamatory meaning before submitting the case to the jury. *Leask v. Robertson*, 589 F. Supp. 3d 506 (D.S.C. 2022). In cases involving public figures, the First Amendment requires that actual malice be proven by clear and convincing evidence, and appellate courts must independently review the record to determine whether this constitutional threshold has been met. *Kelley,* 415 S.C. 379, 782 S.E.2d 406 (Ct. App. 2016). As the Fourth Circuit noted in *Wells*, the question of whether a statement is capable of a defamatory meaning is a legal determination that precedes the jury's factual inquiry, and the jury must still determine whether the plaintiff was actually defamed, whether the defendant acted with the requisite fault, and whether the plaintiff was damaged. It might be tempting to use the procedure outlined above, whereby this Court, looks through the mountain of exhibits submitted by Plaintiffs, but that would similarly infirmed as the initial determination required of the First Amendment in this case (by the trial court) would still not have been made.

In practice, the trial court in a South Carolina defamation case will typically make pre-trial or mid-trial rulings on which statements are legally capable of bearing a defamatory meaning. Statements the court finds incapable of defamatory meaning are removed from the jury's consideration. The remaining statements — those the court has determined are susceptible of defamatory meaning — are then submitted to the jury, which resolves the factual questions of falsity, fault, and damages. The verdict form may be a general verdict, a special verdict with broad yes/no questions about whether "a statement" was defamatory, or a more detailed form quoting specific statements. The trial court sent the dozens upon dozens of documents (exhibits) back to the jury before providing a general verdict form in this case, all to the detriment of Appellant's First Amendment rights.

II. The court erred in granting a permanent injunction on the speech of Respondents

The restraining order provides that Respondents are forever restrained and enjoined from "communicating anything whatsoever about the Plaintiffs, Kathy Rushton, Henrietta Gill, Billy Coleman or anyone else connected to this case, including, but not limited to, jurors, court staff, and any others via mail, email social media, internet, verbal or otherwise …" (R. pp. ___; restraining order 2.)

The First Amendment to the United States Constitution protects citizens' freedom of speech from governmental restraint or encroachment, which includes judicial actions enjoining protected speech. U.S. Const. amend I; *See Madsen v. Women's Health Center*, 512 U.S. 753, 764 (1994); accord S.C. Const. art. I, § 2. "The essential thrust of the First Amendment is to prohibit improper restraints on the voluntary public expression of ideas; it shields the [wo]man who wants to speak when others wish [her] to be quiet." *Harper & Row v. Nation*, 471 U.S. 539, 559 (1985). In addressing the protections afforded by the First Amendment, the United States Supreme Court has declared that "prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 559 (1976). "Where, as here, [an order] imposes a direct restriction on protected First Amendment activity, and where the defect in the [order] is that the means chosen to accomplish the State's objectives are too imprecise, so that in all its applications the [order] creates an unnecessary risk of chilling free speech, the [order] is properly subject to facial attack." *Secretary of State of Md. v. J.H. Munson Co.*, 467 U.S. 947, 967-68 (1984) (citations and footnote omitted).

Strict scrutiny applies in reviewing a governmental limitation that purports to criminalize or otherwise punish constitutionally protected speech and conduct through a prior restraint. *See Broadrick v. Oklahoma*, 413 U.S. 601, 611-12 (1973); State v. Green, 397 S.C. 268, 276, 724 S.E.2d 664, 668 (2012). Similarly, where a vague or overly broad governmental prohibition threatens to inhibit protected speech or conduct, a stringent test will apply. *See Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 498 (1982); *Town of Honea Path v. Flynn*, 255 S.C. 32, 39, 176 S.E.2d 564, 567 (1970).

It is entirely philosophically possible to think about an instance in which an untrue statement that identifies a person in the community and holds them up to ridicule in their community and causes them damage might be considered a compelling state interest. Theoretically then this statement that has been found to be defamatory could then be tied to a narrowly drawn restraining order against the party who uttered it on a permanent basis. But this is all a matter of theory and philosophy for the philosophers out there. In this case with no identification from the court as a matter of law of what statements constituted defamatory meaning this is not what happened here.

The foundational constitutional problem with permanent restraining orders in defamation cases is that they operate as prior restraints on speech. The Supreme Court established in *Near v. State of Minnesota ex rel. Olson*, 283 U.S. 697, 51 S. Ct. 625, 75 L. Ed. 1357 (1931) that injunctions suppressing defamatory publications are presumptively unconstitutional prior restraints. The Court held that a statute permitting suppression by injunction of a defamatory newspaper was void as an infringement of liberty of the press, even where the publisher was permitted to show that the matter published was true. *Id.* The fact that a court may permit a showing of truth before issuing the injunction does not remove the constitutional objection to the prior restraint.

The special vice of a prior restraint is that communication will be suppressed before an adequate determination that it is unprotected by the First Amendment. *Pittsburgh Press Co. v. Pittsburgh Comm'n on Hum. Rels.*, 413 U.S. 376, 93 S. Ct. 2553, 37 L. Ed. 2d 669 (1973). This principle is directly applicable to permanent injunctions in defamation cases, which by their nature operate to suppress speech in advance of any future utterance. In *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 91 S. Ct. 1575, 29 L. Ed. 2d 1 (1971), the United States Supreme Court vacated an injunction restraining distribution of literature critical of a real estate broker, holding that courts do not concern themselves with the truth or validity of the publication when evaluating prior restraints. This principle has significant implications for defamation injunctions: <u>even if the underlying statements were false, the injunction itself must independently satisfy First Amendment requirements</u>.

The Fourth Circuit has applied these principles with particular force. In *In re Murphy-Brown, LLC*, 907 F.3d 788 (4th Cir. 2018), the Fourth Circuit held that gag orders warrant the most rigorous form of review because they rest at the intersection of two disfavored forms of expressive limitations: prior restraints and content-based restrictions. The court held that gag orders must survive strict scrutiny, requiring that they be narrowly tailored to serve a compelling interest and represent the least restrictive means of achieving that interest. *Id.* at 799-800. The court emphasized that gag orders should be a last resort, not a first impulse. *Id.* The Fourt Circuit Court of Appeals and the United States Supreme Court have reiterated this principle time and time again. Alas, the entirety of the Trial Court's restraining order appears above, it lacks any of the requisite findings or conclusions identified as to what makes these orders on a permanent basis constitutionally suspect yet affirmable.

A permanent restraining order in a defamation case then must be tied to specific judicial finding identifying the particular false statements that were adjudicated at trial, or at the very minimum (see argument 1 above) be identified in the record of the trial itself as having been identified and ruled capable of defamatory meaning. Several converging lines of authority support this requirement.

First, the United States Supreme Court in *Tory v. Cochran*, 544 U.S. 734, 125 S. Ct. 2108, 161 L. Ed. 2d 1042 (2005) directly addressed a permanent injunction issued in a defamation action. The injunction prohibited the defendant from picketing, displaying signs, and orally uttering statements about attorney Johnnie Cochran in any public forum. *Id.* at U.S. 736. The Court held that the injunction, as written, amounted to an overly broad prior restraint upon speech, lacking plausible continuing justification, as Cochran was deceased, which diminished the desire to picket his law office at the time of the Supreme Court's review in 2005. *Id.* at 738. The Court cited *Carroll v. President & Comm'rs of Princess Anne*, 393 U.S. 175, 89 S. Ct. 347, 21 L. Ed. 2d 325 (1968) for the proposition that an order issued in the area of First

Amendment rights must be precise and narrowly tailored to achieve the pin-pointed objective of the needs of the case. *Id.* The breadth of the injunction — prohibiting all speech about Cochran in any public forum — was constitutionally fatal because it swept far beyond the specific false statements adjudicated at trial. *Id.* Again, there are no specific false statements in this record.

Second, South Carolina Rule of Civil Procedure 65(d) independently requires that every injunction set forth the reasons for its issuance, be specific in its terms, and describe in reasonable detail the act or acts sought to be restrained. The Fourth Circuit Court of Appeals in *CPC Int'l, Inc. v. Skippy Inc.*, 214 F.3d 456 (4th Cir. 2000)(reviewing Federal Rule 65) vacated an injunction that lacked the findings and specificity required by Rule 65(d) and raised serious First Amendment concerns. The court found that the district court had not explained how the enjoined statements violated the underlying order, there were no findings relating the enjoined statements to the prior adjudication, and no reasons were given for issuance of the injunction. *Id.* at 459. Such a terse and sweeping injunction, the court held, does not comply with Rule 65(d) and the Constitution will not tolerate such a wholesale suppression of speech. *Id.* There is no policy or substantive legal reason to understand how Rule 65(d), SCRCP, would be treated any differently.

Third, the Fourth Circuit Court of Appeals in *Alberti v. Cruise*, 383 F.2d 268 (4th Cir. 1967) — a defamation case — vacated an injunction that stated only in conclusory fashion that the plaintiff had contacted members of the defendant's family to harass them. The court held that the injunction was objectionable for failure to state a valid reason for its issuance, failure to find irreparable damage or lack of adequate remedy at law, and failure to describe specifically the acts sought to be restrained. *Id.* at 272. "There are even more fundamental objections to the injunction order. Generally an injunction will not issue to restrain torts, such as defamation or harassment, against the person." *Id. (citing Kukatush Mining Corp. v. Securities and Exchange Com'n.*, 114 U.S.App.D.C. 27, 309 F.2d 647, 651, n. 2 (1962); *Kessler v. General Services Administration*, 236 F.Supp. 693, 698 (S.D.N.Y.), aff'd per curiam, 341 F.2d 275 (2 Cir. 1964). *See generally* 27 Am. Jur. 2d Equity § 67 (1966); 175 A.L.R. 499, 501. "There is usually an adequate remedy at law which may be pursued in seeking redress from harassment and defamation." *Alberti* at 272.

Fourth, in *In re Murphy-Brown, LLC*, 907 F.3d 788 (4th Cir. 2018), the Fourth Circuit vacated a gag order because it included no findings specific to the various individuals it restricted, treated lawyers no differently from parties, and assumed all covered individuals were identically situated. The absence of individualized findings was independently fatal to the order's constitutionality. *Id.* at 800. "Gag orders should be a last resort, not a first impulse. The skimpy findings supporting the gag order here frustrate the sort of fulsome, substantive appellate review that shields First Amendment freedoms from unjustifiable restraints. The lack of narrow tailoring and the availability of less-restrictive alternatives are among the further defects that accompanied the imposition of the challenged order in this case." *Id.*

The practical implication is clear: a permanent restraining order in a defamation case must identify with specificity the particular statements adjudicated to be false, explain why those specific statements warrant injunctive relief, and be limited to prohibiting repetition of those specific adjudicated false statements — not broader categories of speech about the subject matter or the plaintiff. The trial court's failure to determine at trial or make sufficient findings in the restraining order and then to expand the categories of speech ("…ANYTHING WHATSOEVER, OF ANY KIND OR NATURE, ABOUT THE PLAINTIFFS; KATHY RUSHTON; HENRIETTA GILL; BILLY COLEMAN OR ANYONE ELSE CONNECTED TO THIS CASE AND THE TRIAL OF THIS CASE INCLUDING, BUT NOT LIMITED TO, JURORS, COURT STAFF, AND ANY OTHERS…") on a permanent basis constitutes an impermissible prior restraint upon the Appellants' First Amendment rights. (R. pp. ___; restraining order 2 (emphasis in original).

Beyond the requirement that injunctions be tied to specific findings of falsity, several additional First Amendment issues arise with permanent restraining orders in defamation cases. For instance, both South Carolina state courts and the Fourth Circuit have consistently held that defamation ordinarily cannot be enjoined because there is usually an adequate remedy at law — namely, monetary damages – which was precisely used in this matter. *See* (R. pp. ___; restraining order 1. In *Alberti*, the Fourth Circuit stated the general rule that an injunction will not issue to restrain torts such as defamation or harassment against the person because there is usually an adequate remedy at law. *Alberti*, 383 F.2d 268 (4th Cir. 1967). The South Carolina Supreme Court in *Dorman v. Aiken Commc'ns, Inc.*, 303 S.C. 63, 398 S.E.2d 687 (1990) recognized that governmental action constitutes a prior restraint when it is directed to suppressing speech because of its content before the speech is communicated. Meanwhile this Court in *Likins v. Hoagland*, No. 2020-001126, 2023 WL 4927392 (S.C. Ct. App. Aug. 2, 2023) affirmed the denial of an injunction in a defamation case on the grounds that the plaintiff had an adequate legal remedy and the injunction may constitute a prior restraint, citing the principle that defamation normally cannot be enjoined. And the District of South Carolina in *McGlothlin v. Hennelly*, No. 9:18-CV-00246-DCN, 2020 WL 1876275 (D.S.C. Apr. 15, 2020) similarly denied injunctive relief in a defamation case, noting that injunctive relief for future defamatory statements would be based on pure conjecture. Respondents cannot have their cake ($75,000 in money damages) and eat it too (forever suppressing the speech of Appellants) as they already been awarded an adequate remedy of law.

Any injunction, but particularly permanent ones, that sweeps beyond the specific adjudicated false statements to prohibit broader categories of speech is unconstitutionally overbroad. The *CPC Int'l, Inc* court held that the Constitution will not tolerate a wholesale suppression of speech, and that injunctions must be narrowly tailored to prohibit only unlawful conduct. *CPC Int'l, Inc* at 456 (4th Cir. 2000). This doctrine: overbreadth, as applied in by District of South Carolina in *Fitts v. Kolb*, 779 F. Supp. 1502 (D.S.C. 1991), prohibits restrictions on speech that are so overly broad that they also restrict protected speech. In *Fitts* court declared South Carolina's criminal libel statute facially unconstitutional because it would allow prosecution of publishers of false information even if the publisher did not know the information was false or had no reckless disregard of probable falsity — sweeping within its ambit speech protected by the First Amendment. *Id.*

Lastly, injunctions that use vague terms to describe the prohibited speech are independently unconstitutional. In *In re Murphy-Brown, LLC*, 907 F.3d 788 (4th Cir. 2018), the Fourth Circuit held that a gag order was unconstitutionally vague because it forced individuals to guess at its contours. An injunction in a defamation case that prohibits the defendant from making any defamatory statements, or any false statements, without identifying the specific statements at issue, would be similarly vulnerable to a vagueness challenge, just like the restraining order issued in this case.

CONCLUSION

This court should reverse the lower court's award of damages, findings of fact and law, and remand for a new trial of this matter.

Respectfully submitted,

_s/ Taylor Smith_____________

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