

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Anonymous Surgeon,)
)
Plaintiff,)
)
vs.)
)
Matthew T. Siedhoff, M.D.,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2012-CP-40-04129 DEC 20 2013

DEPT of Appeals

**ORDER GRANTING SUMMARY
JUDGMENT TO DEFENDANT**

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RICHLAND COUNTY
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JULIE W. HORTON
C.C.P. & G.S.

This matter is before the Court on Defendant Matthew T. Siedhoff, M.D.'s motion for summary judgment pursuant to Rule 56(b), SCRPC. After reviewing the written submissions of counsel and listening to oral arguments, this Court finds that South Carolina Supreme Court precedent requires the entry of summary judgment in favor of the Defendant.

FACTS

This action stems from an external peer review of Plaintiff conducted by Defendant at the request of Palmetto Health Baptist Hospital, where Plaintiff held surgical privileges. Defendant, a surgeon at UNC Healthcare in Chapel Hill, North Carolina, wrote a written report of his opinions regarding his review of Plaintiff's cases. Plaintiff alleged that the report contains "false and libelous statements" about Plaintiff. Plaintiff filed suit against Defendant alleging causes of action for libel per se and civil conspiracy. Defendant filed a motion to dismiss both causes of action. On April 30, 2103, the Honorable Alison Renee Lee partially granted Defendant's Motion to Dismiss and dismissed the civil conspiracy claim, leaving the libel claim as the sole

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cause of action. The parties were beginning to engage in written discovery when the Plaintiff unexpectedly died.¹

LEGAL STANDARD

“The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder.” *Singleton v. Sherer*, 377 S.C. 185, 197-98, 659 S.E.2d 196, 203 (Ct. App. 2008). Summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC. “In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010).

“Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” *Singleton*, 377 S.C. at 197-98, 659 S.E.2d at 203. “The nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” *Id.* at 198, 659 S.E.2d at 203.

LAW AND ANALYSIS

South Carolina’s Survival Statute, S.C. Code Ann. § 15-5-90, governs which causes of action survive a party’s death. That Section 15-5-90 provides: “Causes of action for and in respect to...any and all injuries to the person or to personal property shall survive both to and against the personal or real representative, as the case may be, of a deceased person....” The

¹ See Death Certificate, Hearing Exhibit 1.

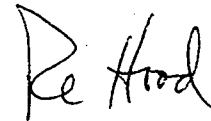
South Carolina Supreme Court has carved out three (3) specific exceptions to the Survival Statute, thus completely removing certain causes of action from the statute's applicability. *Schneider v. Allstate Ins. Co.*, 487 F.Supp. 239, 245 (D.S.C. 1980). See also *Carver v. Morrow*, 213 S.C. 199 (1948); *Belcher v. S.C. Bd. of Corr.*, 460 F.Supp. 805 (1978). "The Supreme Court in *Brewer v. Graydon* recited the three exceptions to survivability under the Survival Statute, namely malicious prosecution, slander, and fraud and deceit." *Id.* (citing 233 S.C. 124, 103 S.E.2d 767 (1958)) (internal citations omitted).

The South Carolina Supreme Court first established the slander exception to the Survival Statute in *Carver v. Morrow*. 213 S.C. 199 (1948). In that case, the plaintiff claimed that the testator's will contained defamatory language about the plaintiff. The Court was asked to decide whether this action could be maintained against the testator's estate. In deciding that it could not, the Court noted the common law rule, "which has long been followed in this State unless changed by statute, that a personal action ex delicto dies with the person." *Id.* at 202. The Court went on to say that an "action for libel is one ex delicto, and is a personal action. It is clear, therefore, that an ordinary cause of action for libel or slander dies with the person." *Id.* at 203 (citing *Perry v. Atlantic Coast Life Ins. Co.*, 166 S.C. 270, 164 S.E. 753 (1932)).

The *Carver* case involved the death of the defendant, but the rule applies with equal force in the event of the plaintiff's death. In *Belcher v. South Carolina Board of Corrections*, the plaintiff was the widow of an inmate who died in a prison fire. 460 F.Supp. 805 (1978). The Court specifically held that the defendants' motion to dismiss was denied because the plaintiff's claim did "not come within one of the exceptions" (malicious prosecution, libel/slander, and fraud/deceit). *Id.* at 808. Therefore, the exceptions to the Survival Statute apply to the death of the plaintiff or the defendant.

In this case, the Plaintiff's death was unexpected. Nonetheless, Plaintiff's defamation claim against the defendant died with her and cannot be revived as a matter of law. The Supreme Court precedent holds that defamation is an exception to the Survival Statute and a cause of action for defamation does not survive the death of either party. See *Brewer v. Graydon*, 233 S.C. 124, 103 S.E.2d 767 (1958); *Schneider v. Allstate Ins. Co.*, 487 F.Supp. 239, 245 (D.S.C. 1980); *Carver v. Morrow*, 213 S.C. 199 (1948); *Belcher v. S.C. Bd. of Corr.*, 460 F.Supp. 805 (1978).

Immediately prior to the Plaintiff's death, the sole remaining cause of action in this case was defamation. Because South Carolina law mandates that the defamation claim did not survive the Plaintiff's death, as a matter of law, this case cannot continue, and summary judgment is GRANTED in Defendant's favor.



The Honorable Robert E. Hood
Fifth Judicial Circuit

November 12, 2013

Columbia, South Carolina