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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge

Case # 2011201047

William A. Thompson,145029, ... Appellant,

V.

South Carolina Dept. Of Corrections, ... Respondents.

APPELLANTS FINAL BRIEF

Signed: William Thompson

William Thompson,145029
KCI HC Rm. 122
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Kershaw, SC 29067

Date: 2/11/13

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ISSUES PRESENTED

1. Did the judge error in granting summary judgment to Defendants
2. Did Plaintiff have case of defamation
3. Did Plaintiff meet all elements of defamation
4. Did Plaintiff meet the statute of limitations
5. Did judge error in waiting more than five (5) years to issue the final order

STATEMENT OF ISSUES

1. Did Judge in Lower Court error in granting Summary Judgment to Defendants

a. Plaintiff presented a case of defamation. The Judge did not consider the elements of defamation. The Judge showed no concern whether Plaintiff had a prima facie case of defamation. Plaintiff did not have the chance to present all the evidence to prove his case.

2. Did Plaintiff have case of defamation

a. Plaintiff has evidence to prove a case of defamation, meeting all elements of defamation.

3. Did Plaintiff meet all elements of defamation

a. Plaintiff had all elements of defamation to present before the Judge, if given the chance to present them. Plaintiff has documented evidence that confirms the elements of defamation.

4. Did Plaintiff meet the Statute of Limitations

a. Plaintiff did file within the Statute of Limitations. The documentation will show proof that Plaintiff met the Statute of Limitations. Plaintiff has witness to testify to that fact.

5. Did Judge error in waiting more than five (5) years to issue final order of dismissal

a. Plaintiff can not obtain a transcript of Summary Judgment Hearing because of length of time; for October 10,2005.

STATEMENT OF THE CASE

Plaintiff filed a defamation suit, pro se, in the Court of Common Pleas, Richland County, South Carolina July 26,2004. Defendants moved the action to the District Court of South Carolina September 2,2004. Defendants filed motion for Summary Judgment January 13,2005. Plaintiff was advised January 20,2005 pursuant to Roseboro v. Garrison,528 F.2d 309(4thCir.1975). Plaintiff filed a memorandum in opposition to summary judgment January 31,2005. Case was remanded back to the Lower Court and summary judgment hearing was held on October 10,2005. Honorable L Casey manning appeared to be on behalf of Plaintiff. Plaintiff received form order, signed August 22,2006 from judge Manning, stating: formal order to follow. Plaintiff wrote judge Manning September 22,2007 enquiring of the order - no answer. Plaintiff wrote another letter to judge Manning June 14,2011 enquiring of the order - no answer. Plaintiff wrote the Court Administration June 23,2011 - no answer until after Plaintiff wrote the Supreme Court, Chief Justice, Jean Toal. Then Plaintiff received letter from, copy of letter form Supreme Court, Clerk Mr. Shearouse, to Clerk, Common Pleas, Jeanette W. McBride date August 22,2011 telling McBride to make sure the order is issued and that if Plaintiff desired counsel to be appointed to him in his case he would have to file a motion for appointment of counsel with Ms. McBride. Plaintiff filed motion for appointment of counsel August 24,2011. Plaintiff received letter from South Carolina Court of Appeals giving 14 days to pay $100.00 filing fee for the Notice

of Appeal and to order transcript. Plaintiff filed everything according to instructions. Plaintiff received letter from South Carolina Court of Appeals dated November 10,2011 stating that Plaintiff has not paid the $25.00 filing fee for motion for appointment of counsel. Plaintiff was again given 14 days to file those fees. Also stated transcript should have been ordered October 21,2011. This is a contradiction to letter from Court of Appeals dated October 28,2011 giving Plaintiff 14 days to order transcript of October 10,2005 of summary judgment hearing.

STATEMENT OF FACTS

When Plaintiff started the complaint it was about a parole list listing him as a sex offender. In 1998 Plaintiff filed grievance and it was removed. Then when Plaintiff went up for parole that same year he saw that he was again on the list as a sex offender.

Plaintiff tried to tell Defendant Dennise Patterson as well as grievance clerk, Don Driskell and case worker, Betty James tried to tell him Plaintiff had no sex offense in his crime. Plaintiff has documentation of conversation between Don Driskell and Dennise Patterson. This shows that Dennise Patterson knew Plaintiff had no sex offense.

In 2003 or 2004 Plaintiff's friend sent him a print out from South Carolina Department of Corrections web site showing Plaintiff to be a sex offender. The print out was copy righted 2003, downloaded March 11,2004.

Plaintiff wrote letter to Dennise Patterson telling him to remove him from the web site. Patterson would not answer the letter.

Plaintiff tried to tell Patterson that the sex offender registry law was not retroactive. Patterson stated that it was retroactive and that the opinion of Attorney General's office was that it was retroactive.

Plaintiff has a letter from South Carolina Law enforcement Division stating opinion of Attorney General's office was that it is prospective and not retroactive.

Plaintiff has lost friends in prison and in society because of the false printing on the web site.

Patterson, although he knew Plaintiff had no sex offense in his crime refused to remove the false information.

Plaintiff explained to patterson that his life was in danger haven to wear a sex offender label in prison. Patterson refused to remove the false information until Plaintiff could get a judge to send him what he wanted.

Patterson only removed the false information after clarification from Honorable Judge Lee Alford.

Plaintiff still has to wear a sex offender label because of false information printed on SCDC's web site.

Plaintiff's case should have went to trial for jury to decide.

Plaintiff showed all elements of defamation required for a tort action.

Plaintiff has witnesses that will testify that SCDC knew

Plaintiff had no sex charge. Has Affidavit of Dennise Patterson, documentation proving his case.

ARGUMENT I

1. **Summary Judgment:** Summary Judgment should not have been granted to Defendants. **Rule 56 SCRCP** provides that a party is entitled to judgment as a matter of law when there is no genuine dispute of material fact. Summary judgment was not appropriate since it is clear there is a genuine issue of material facts. Etheredge v. Richland School District One,341 S.C. 307, 534 S.E. 2d 275 (2000) when determining if any triable issue of fact exist the light most favorable to the non moving party.Fleming v. Rose, 350 S.C. 484, 493, 567 S.E. 2d 857, 860 (2002),

a. The pleadings and documents on file must be liberally construed in favor of the non moving party who must be given the benefit of all favorable inferences that might reasonably be drawn from the record. Bates v. City of Columbia,301 S.C.320,391 S.E.2d 733 (Ct.App.1990).

b. Defendants admitted knowing that Plaintiff's records had no evidence of sex crime and stated leaving the false information on the so-called Sex Registry because there was no evidence of a sex crime.

c. Defendants stated the Sex Registry Law was retroactive. It was not.

FLEMING V. ROSE, supra; STANDARD OF REVIEW

Summary Judgment is appropriate when it is clear ther is no

genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Young v. South Carolina Department of Corrections, 333 S.C. 714,511 S.E.2d 413(Ct.App.1999); **Rule 56(c), SCRCP.** In determining whether any triable issue of fact exists, as well as preclude summary judgment, the evidence and all inferences which can be reasonably drawn from there must be viewed in the light most favorable to the non-moving party. Vermeer Carolina's, Inc., v. Wood/Chuck Chipper Corp.,336 S.C.53, 518 S.E.2d 301(Ct.App.1999),if triable issues exist, those issues **must go to the jury.**

Summary Judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Carolina alliance for fair Employment v. South Carolina Dept. of Labor, Licensing and Regulation, et al.,Op. No. 3061 (S.C.Ct.App.filed October 25,1991)(Shearouse Adv.Sh.No.33 at 1). All All ambiguities, conclusions, and inferences arising form the evidence must be construed most strongly against the movingparty. **Vermeer, supra.** Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them. Summary Judgment should be denied. Id. In general, if the pleadings and the evidentiary matter in support of summary jdugment do not establish the absence of a genuine issue of material fact, summary judgment must be denied if no opposing evidence, even if no opposing evidentiary matter is presented. Baird v. Charleston County,333 S.C. 519,511 S.E.2d 69(1999). Because it is a drastic remedy, Summary Judgment should be

cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. **Columbia Alliance, supra.**

FLEMING V. ROSE, supra. LAW/ANALYSIS

1. LIBEL

Fleming argues the trial Court erred in granting summary judgment in favor of Rose and Caulder as to his cause of action for libel. Counsel for Fleming characterizes the action as one for slander. However, because this case involve the printing of allegedly defamatory statements, we are treating it as a libel ACTION. SeeHoltzchiter v. Thomson Newspaper, Inc., 332 S.C. 502,506 S.E.2d 497(1998)(Holtzchiter 11).

The scholarly work of Prosser & Keeton on the Law of Torts acknowledges that "there is a great deal of the law of defamation which makes no sense."W. Page Keeton et al., Prosser & Keeton on the law of Torts & 111, at 771(5th ed.1984),In South Carolina, decisions emanating from the appellate entities have admittedlyin obfuscation:

The confusion in South Carolina defamation law hasbeen compounded by the fact that this Court's opinions have not completely taken into consideration the impact of decisions by the United States Supreme Court. Since the Supreme Court has attempted "to define the proper accommodation between the law of defamation and the freedoms of speech and press protected by the First Amendment."Gertz v. Robert Welch, Inc.,418 U.S. 323,325,94 S.Ct.

2997, 3000,41 L.Ed.2d 789,797(1974). The effect of these decisions has been the interweaving of Constitutional principles into the fabric of State defamation law. Because state defamation rues have become inextricably tied to these CONSTITUTIONAL PRINCIPLES, It is not possible to review defamation issues in a state law facuum.

Holtzchiter 11, 332 S.C. at 517, 506 S.E.2d at 505(Toal,J., concurring in result in separate opinion). ...

ARGUMENT II

2. **Defamation:** Plaintiff met all elements of defamation: (1). The statement was false; (2). an unprivileged publication to a third party; (3). fault on the part of the publisher; and (4). either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.

a. **Fleming,** supra,... The tort of defamation allows a Plaintiff to recover for injury to his or her reputation as the result of the defendants communications to pothers of a false message about thePlaintiff.Swinton Creek Nursery v. Edisto Farm Credit,334 S.C. 469,514 S.C.2d 126(1999). The focus of defamation is not hurt to the defamed party's feelings, but on the injury tohis reputation. SeeWardlaw v. Peck,282 S.C.191,318 S.E.2d 270(Ct.App.1984), Defamatory communications take two forms: Libel and Slander. **Swinton Creek Nursery, supra.** Slander is a spoken defamation, while libel is a written defamation or one accomplished byactions

or conduct. Id.

The defamatory meaning of a message or statement may be obvious on the face of the statement, in which case the statement is defamatory perse. **Holtzchiter 11,supra.** If the defamatory meaning is not clear unless the hearer knows or circumstances not contained inthe statement itself,then the statement is defamatory per quod. Id.

A separate issue is whether the statement is "actionable per se" or not. Id. This issue is one of pleading and proof and is always a question of law for the Court. Id. If a defamation isactionable per se, then under common law the principles the law presumes the defendant acted with common law malice and that the Plaintiff suffered general damages. Id. If a defamation is not actionable per se, then at common law the Plaintiff must plead and prove common law actual malice and special damages. Id.

"Libel is actionable per se if it involves 'written or printed words which tend to degrade a person, that is to reduce his character or reputation in the estimation of his friends or acquaintances, or the public, or to disgrace him, or render him odious, contemptible, or rediculous. ...Holtzchiter 11,332 S.C. at 510,506 S.E.2d at 502(quoting Lesesne v. Willingham,83 F. Supp.918,921(E.D.S.C.1949)(In other words, if the trial judge can legally presume, because of the nature of the statement, that the Plaintiff's reputation was hurt as a consequence of its

publication, then the libel is actionable per se.Id. Essentially, all libel is actionable perse. Id.

Fleming, supra. ARGUMENT III

3. The elements of defamation include:(1) a false defamatory statement concerning another;(2) an unprivileged publication to a third party;(3) fault on the publisher; and (4) either actionability ofthe statement irrespective of special harm or the existence of special harm caused by the publication. **Holtzchiter II**,supra.(Toal,J.,concurring in result in separate opinion). A communication is defamatory if it tends to harm the reputation of another from association or dealing with him.Id.

a. Plaintiff was placed on SCDC's web site as a sex offender. SCDC is the Publisher. The publication was defamatory. The statement was false. The publisher knew it was false and refused to remove the statement until clarification from judge. The publisher was aware of falsity and danger placed on Plaintiff by the statement, The publisher refused to remove the statement stating the Sex Registry Amendment was retroactive. Plaintiff told defendants it was not retroactive. Plaintiff has letter from South Carolina Law Enforcement Division (SLED) that the amendment was prospective and not retroactive. Defendants admitted to knowing the statement was false and still refused to remove it.

ARGUMENT IV

4. Plaintiff met the statute of limitations:

a. S.C. Code Ann.§ 15-5-550(Supp.2004) page 46-47 Case Notes:

1.In General ...

Statute of limitations governing cause of action for slander and libel requires said action be commenced within 2 years from date it accrues; fraudulent concealment of defamatory statement tolls running of statute, fraudulent most be by party raising statute of limitations and party must fail to discover facts which are basis of cause of action, despite exercise of due diligence on his part; although traditional slander case accrues at time of utterance, discovery rule applies for cases of surreptitious slander which results in harm, although unknown to injured party. Austin v. Torrington Co.,(D.C. S.C. 1985) 611 F.Supp.191, reversed 810 F.2d 416, certiorari denied 108 S.Ct. 489, 484 U.S. 977, 98 L.Ed.2d 487.

Two year statute of limitations does not apply to tort of intentional affliction of mental distress. Ford v. Hutson,(S.C. 1981) 276 S.C. 157,276 S.E.2d 776.

The trial Court properly permitted the Plaintiff in a libel action to amend his complaint after the two year statute of limitations had elapsed where the amendment did not change the nature of the cause of action, but amplified and made more definite and certain the original allegation of malice, Scott v. McCain, (S.C.1978) 272 S.C. 198, 250 S.E.2d 118.

b. CONSTITUTION OF SOUTH CAROLINA AND THE UNITED STATES SUPPLEMENT 2004 page 467

The Tort Claims Act's limitation on damages does not infringe upon the constitutional right of trial by jury. The limitation on recovery as set forth in the Tort Claims Act does nothing more than establish the outer limits ofa remedy providedby legislature A remedy is a matter of law, not a matter of fact. Although a party has right to have a jury assess his or her damages, he or she has no right to have a jury dictate through an award the legal consequences of its assessments, The Tort Claims Act does not restrain the fact-finding province of the jury or prevent a jury from assessing a plaintiff's damages. Wright v. Colleton County School Dist.,,(S.C.1990) 301 S.C. 282,391 S.E.2d 564.

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Due process prohibits estopping some litigants who never had a chance to present their evidence and arguments ona claim, despite one or more existing adjudications of the identical issue which stand squarely against their position.Roberts v. Recovery Bureau Inc.,,(S.C.1994) 316 S.C 492,450 S.E.2d 616. Constitutional Law key 315; Judgment key 713(1)

c. Plaintiff discovered the SCDC's web site statement 2004;after fighting to have the false statement from the parole listing, which is no longer posted for an inmate to see. The parole listing is available to the public when inmates parole hearing is nearing. Plaintiff believes the false statement is still on the parole listing. Plaintiff is well within the statute of

limitations.

ARGUMENT V.

5. Plaintiff has no law pertaining to the judge waiting more than five (5) years to issue a final order. Even then the higher Court had to intervene, because judge wouldn't answer plaintiff's letter requesting the order.

CONCLUSION

In reviewing the evidence in the light most favorable to plaintiff. There are genuine issues of material fact and the case should go to trial before a jury. plaintiff asks this Honorable Court to review the evidence and grant to plaintiff whatsoever the law allows.

Signed: William Thompson

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Kershaw, SC 29067

Date: 2/11/13

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L. Casey Manning, Circuit Court Judge

Case # 2011201047

William Thompson,145029, ... Appellant,

V.

South Carolina Dpet. Of Corrections, ... Respondents.

APPELLANTS FINAL BRIEF

I,William Thompson, a pro se inmate, file this FINAL BRIEF pursuant to Rule 211 SCACR.

Signed: William Thompson

William Thompson,145029
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4848 Goldmine Hwy.
Kershaw, SC 29067

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South Carolina Dept. Of Corrections, Respondents.

CERTIFICATE OF SERVICE

I,William Thompson, 145029, pro se litigant; declare under penalty of perjury that I did cause to be served on the below listed parties my APPELLANT FINAL BRIEF. One original and 15 copies to the Appellate Court, one copy to the Court of Common Pleas and one copy to attorneys for Defendants by placing said documents in the United Postal Mail; postage prepaid on this 15th day of February, 2013.

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