

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

James W. Trexler,

Plaintiff,

vs.

The Humane Society for the Prevention of
Cruelty to Animals, Wayne Brennessel,
individually and as Executive Director of
the Humane Society for the Prevention of
Cruelty to Animals,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-04652

ORDER

RICHLAND COUNTY
FILED
2014 FEB 10 AM 9:39
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter came before the Court on September 6, 2013 at a hearing on Defendants The Humane Society for the Prevention of Cruelty to Animals (HSPCA) and Wayne Brennessel's Motion for Summary Judgment. Present at the hearing were William Johnson, Esquire, Brook Wills, Esquire, and Matthew Hamrick, Esquire, counsel for Plaintiff; and John Tyler, Esquire, Bill Sweeny, Esquire, and Roopal Ruparelia, Esquire, counsel for Defendants. After considering the law, the briefs filed by the parties, the arguments of counsel, and all matters submitted, Defendants' Motion for Summary Judgment is **GRANTED**.

FACTS

This matter arises out of an investigation the HSPCA made regarding ill treatment to horses and subsequent events resulting from this investigation. On February 25, 2008, at 1820 Zeigler Road South in Eastover, Richland County, South Carolina, the HSPCA and Richland County Sheriff's Department ("RCSD") searched the property pursuant to a search warrant. The search resulted in the HSPCA and the RCSD confiscating twenty-three horses from the property. On February 26, 2008, the HSPCA and RCSD led a search pursuant to a search warrant at 412 Derby Lane, Hopkins, Richland County, South Carolina. The search resulted in five horses being confiscated. On February 27, 2008, Plaintiff, along with his brother, Terry Trexler, and his mother, Hazelene Trexler, were arrested and charged with five counts of misdemeanor mistreatment of animals arising from the horses kept on the Derby Lane property. On March 13, 2008, Plaintiff, Terry Trexler, and Hazelene Trexler were indicted on five counts of ill treatment

RECEIVED

APR 14 2014

SCANNED

of animals. The South Carolina Attorney General entered a deal with Terry Trexler where he would plead no contest to ill treatment of animals, and he, Hazelene Trexler, and the Plaintiff would relinquish all ownership interest in the seized horses. On July 15, 2010, this Court nolle prossed the charges against the Plaintiff. Defendant Wayne Brennessel, president of the HSPCA, was present in the courtroom when the charges were nolle prossed. Brennessel reported to the media "the Trexlers pleaded no contest." This statement was referenced in an article published on WLTX's website on February 1, 2011 entitled "Neglected Horses Still up for Adoption." Through the entire course of events, Plaintiff denied that he owned any of the horses.

On July 5, 2012, Plaintiff filed a complaint against Defendant with two causes of action. The first cause of action is for malicious prosecution related to the criminal charges against the HSPCA, and the second cause of action is for defamation related to the WLTX website article against the HSPCA and Wayne Brennessel. Defendant answered on August 16, 2012 and filed an Amended Answer on September 17, 2012. On July 18, 2013, Defendant filed a Motion for Summary Judgment.

STANDARD OF REVIEW

Summary judgment is appropriate if "there is no genuine issue as to any material fact." Rule 56(c), SCRPC. In determining whether a triable issue of material fact exists, the Court must construe all facts and inferences in the light most favorable to the non-movant. *Wogan v. Kunze*, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008). "In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence." *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011).

DISCUSSION

I. Malicious Prosecution

In a malicious prosecution action, the plaintiff bears the burden to establish each of the following elements: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damages. *Law v. S.C. Dep't of Corrections*, 368 S.C. 424, 435, 629 S.E.2d 642 (648) (2006). Plaintiff argues all six elements are met; Defendant maintains the HSPCA had probable cause as a matter of law. "Probable cause" is defined as a good faith belief that a person is guilty of a

ad
#2

crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise.” *Jones v. City of Columbia*, 301 S.C. 62, 65, 389 S.E.2d 662, 663 (1990). Furthermore, “[p]robable cause is determined as of the time of the arrest, based on facts and circumstances—objectively measured—known to the arresting officer.” *Jackson v. City of Abbeville*, 366 S.C. 662, 667, 623 S.E.2d 656, 659 (2005). Ordinarily the existence of probable cause is a question for the jury to decide in South Carolina. *See Jones*, 301 S.C. at 65, 389 S.E.2d at 663.

It is undisputed that the HSPCA, through its agent Elizabeth Perry, instigated original judicial proceedings against Plaintiff. Defendant argues probable cause exists as a matter of law because the Grand Jury “true billed” the indictments against Plaintiff, relying on *Law v. S.C. Dep’t of Corrections*. True bills of indictment are prima facie evidence of probable cause. *Law v. S.C. Dep’t of Corrections*, 368 S.C. 424, 436, 629 S.E.2d 642, 649 (2008). Plaintiff maintains that true bills only create a rebuttable presumption of probable cause because in *Law*, the Court held that probable cause existed as a matter of law where the indictments against the plaintiff were true billed by the Grand Jury and where the underlying facts supported probable cause to instigate or pursue criminal charges. *See Law*, 368 S.C. at 437, 629 S.E.2d at 649. In the present case, Plaintiff claims that the underlying facts did not support probable cause to instigate or pursue criminal charges. In the affidavits Elizabeth Perry submitted to obtain arrest warrants for the Plaintiff, the basis for the arrest warrants was that Plaintiff owned the five horses on the 412 Derby Lane Property. Plaintiff has submitted Perry’s deposition as evidence that Perry cannot state the reasons why she believed Plaintiff was the owner of the horses and did not search ownership records of the horses to determine if Plaintiff owned them, so the statements in the affidavit were untrue. Defendants contend that the statements in the affidavits were supported by property ownership records indicating that Plaintiff owned the 412 Derby Lane property, and therefore, the inference can be made that Plaintiff owned the horses. Although Plaintiff contends that he had transferred ownership interest to his mother and brother two years prior, he was still paying for the utilities and taxes at the time of the underlying events. In determining the existence of probable cause, the facts must be “regarded from the point of view of the party prosecuting; the question is not what the actual facts were, but what he honestly believes them to be.” *Eaves v. Broad River Elec. Coop., Inc.*, 277 S.C. 475, 478, 289 S.E.2d 414, 416 (1982). Though Plaintiff claims to have transferred his interest in the property to his mother and

am
83

brother's business two years earlier, the fact that Plaintiff owned the property where five of the horses were stabled would excite the belief in a reasonable mind acting on the facts within the knowledge of the prosecutor that Plaintiff was the owner of the horses. Based upon this evidence, probable cause existed, and the Motion for Summary Judgment as to malicious prosecution is **GRANTED**.

II. Defamation

In an action for defamation, the burden is on the plaintiff to prove: "(1) a false and defamatory statement was made; (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." See *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Defendant argues that Plaintiff's claim for defamation fails as a matter of law because the statement was true or substantially true. If an alleged defamatory statement is true or substantially true, then a defamation claim must fail. *Ross v. Columbia Newspapers, Inc.*, 266 S.C. 75, 80, 221 S.E.2d 770, 772 (1976). Furthermore, the South Carolina Supreme Court has held that requiring a strict adherence to legal terminology is unreasonable. *Id.* at 80, 221 S.E.2d at 773. Plaintiff claims the statement "the Trexlers pleaded no contest and gave up rights to the horses, Humane Society director Wayne Brennessel said" is defamatory. Plaintiff contends the statement refers to him when it says "the Trexlers," and that he did not plead no contest, but rather was not proessed. Based upon the *Ross* case, this Court finds that the statement was substantially true, as a strict adherence to legal terminology is not required. Additionally, Terry Trexler did plead no contest, and the statement does not specifically reference Plaintiff.

Furthermore, public figures may recover for defamation only upon clear and convincing evidence that the false and defamatory statement was made with knowledge that it was false or a reckless disregard for the truth. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974). The Court has held Plaintiff to be a public official in a previous action arising out of the same facts and circumstances, and this Court defers to that ruling. See Order Granting Summary Judgment, *James W. Trexler v. The Associated Press, Barrington Broadcasting S.C. Corp., Raycom TV Broadcasting, Inc., The Spartanburg Herald Journal, Inc., and the Pacific & Southern Co., Inc.*, No. 2010-CP-40-1249 (Oct. 30, 2012). Plaintiff has submitted no evidence to support a finding that the statement was made with knowledge that it was false or a reckless disregard for the truth.



III. Defendant Wayne Brennessel

Finally, regarding Brennessel, South Carolina law mandates that a judgment against an employee of a charitable organization may not be returned unless a specific finding is made that the employee acted in a reckless, willful, or grossly negligent manner. S.C. Code Ann. § 33-56-180. A "charitable organization" is defined in Section 33-56-170 as a society "which is exempt from taxation pursuant to 26 U.S.C.A. § 501(c)(3) (2010)." It is undisputed that the HSPCA is a 501(c)(3) tax exempt organization and Wayne Brennessel is its Executive Director. Plaintiff has alleged insufficient facts to support a charge that Brennessel's statement was made recklessly, willfully, or with gross negligence, and therefore, Brennessel should be dismissed from this action. For these reasons, Defendant's Motion for Summary Judgment as to defamation is **GRANTED**.

ORDER

For the reasons stated above, it is therefore **ORDERED** that Defendants' Motion for Summary Judgment is **GRANTED**.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
February 5, 2014

Handwritten initials and number:
BRL
#5

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Circuit Court Case No. 2012-CP-40-4652

S.C. Court of Appeals Case No. 2014-000663

James W. Trexler,

Appellant,

v.

The Humane Society For The
Prevention of Cruelty To Animals;
and Wayne Brennessel, individually
and as Executive Director of the
Humane Society For the Prevention
of Cruelty To Animals,

Respondents.

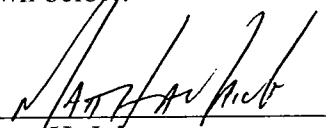
PROOF OF SERVICE

RECEIVED

APR 14 2014

SC Court of Appeals

I certify that I have served a copy of the order being appealed, which inadvertently did not accompany the Appellant's Notice of Appeal in the above-referenced case, on The Humane Society For The Prevention of Cruelty To Animals; and Wayne Brennessel, individually and as Executive Director of the Humane Society For the Prevention of Cruelty To Animals, by depositing a copy of it in the United States Mail, postage prepaid, on April 9, 2014, addressed to their attorneys of record, Roopal R. Samuels, Esquire; William O. Sweeny, III, Esquire; and John E. Tyler, Esquire at their respective addresses shown below.



William H. Johnson
Law Offices of William H. Johnson, LLC
411 North Brooks Street
Post Office Box 137
Manning, South Carolina 29102
(803) 435-0909 (telephone)

(803) 435-2858 (facsimile)

-and-

W. Westbrook Wills III

Attorney at Law

38 Broad Street

Suite 200

Charleston, SC 29401

(843) 805-6300 (telephone)

(843) 278- 9333 (facsimile)

-and-

Matthew D. Hamrick

Attorney at Law

Tidewater Executive Center

222 W. Coleman Blvd.

Mt. Pleasant, SC 29464

(843) 693-4700 (telephone)

(877) 524-5023 (facsimile)

ATTORNEYS FOR APPELLANT

Other counsel of record:

Roopal R. Samuels, Esquire

Haynsworth Sinkler Boyd, P.A.

1201 Main Street, 22nd Floor

P.O. Box 11889

Columbia, SC 29211-1889

William O. Sweeny, III, Esquire

John E. Tyler, Esquire

SWEENEY, WINGATE & BARROW, P.A.

1515 Lady Street

Post Office Box 12129

Columbia, SC 29211

ATTORNEYS FOR RESPONDENTS

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2012CP4004652**

James W Trexler

Humane Society For The Prevention Of Cruelty To Animals

PLAINTIFF(S)

Wayne Brennessel

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. No.); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

2/5/2014

For Clerk of Court Office Use Only

This judgment was entered on the 10 day of Feb, 20 14 and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of Feb, 20 14 to attorneys of record or to parties (when appearing pro se) as follows:

William H. Johnson

William O. Sweeny III

Roopal S. Ruparelia

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

RECEIVED

Clerk of Court

Jeanette W. McBride

APR 14 2014

SCRPC Form 4C (10/2011)

SC Court of Appeals

SCANNED

MATTHEW D. HAMRICK
ATTORNEY AT LAW
CERTIFIED CIRCUIT COURT MEDIATOR
TIDEWATER EXECUTIVE CENTER
222 W. COLEMAN BLVD.
MT. PLEASANT, SC 29464
PHONE: (843) 693-4700
FAX: (877) 524-5023
matt@matthamricklaw.com

April 9, 2014

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

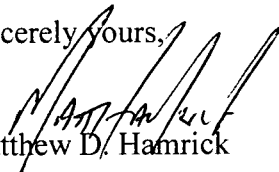
Re: *James W. Trexler v. The Humane Society et al. (2012-CP-40-4652)*
SC Ct. of Appeals Case Number: 2014-000663

Dear Ms. Kitchings:

Please find a copy of the order being appealed, which inadvertently did not accompany Appellant's Notice of Appeal in the above-referenced case.

I have copied Roopal R. Samuels, Esquire; William O. Sweeny, III, Esquire; and John E. Tyler, Esquire; with copies this letter and its enclosures for service of the same upon them.

Sincerely yours,



Matthew D. Hamrick

Enclosures

cc: Roopal R. Samuels, Esq. (via U.S. Mail, w/enclosure)
William O. Sweeny, III, Esq. (via U.S. Mail, w/enclosure)
John E. Tyler, Esq. (via U.S. Mail, w/enclosure)
William H. Johnson, Esq. (via email, w/enclosure)
W. Westbrook Wills (via email, w/enclosure)

RECEIVED

APR 14 2014

SC Court of Appeals