

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2012-CP-301

Akim A. Anastopoulos.....Appellant,

v.

Edward R. Cole, individually and as
employee/agent of Turner Padgett Graham
and Laney, P.A., Turner Padgett Graham
and Laney, P.A., and Nationwide Mutual
Insurance Company,Respondents.

NOTICE OF APPEAL

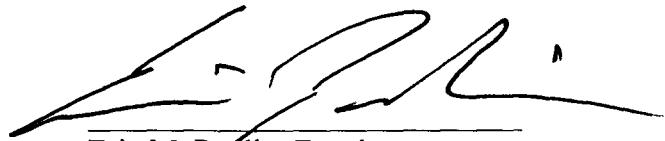
Akim A. Anastopoulos appeals the Order of the Honorable Thomas A. Russo, dismissing his Complaint, signed August 24, 2012 and entered August 27, 2012. Appellant received written notice of said Order on or about August 28, 2012.

September 18, 2012

RECEIVED

SEP 24 2012

SC Court of Appeals



Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Anastopoulos Law Firm, LLC
2850 Ashley Phosphate Rd., Suite B
North Charleston, SC 29418
(843) 614-8888

Attorney for Appellant

Other Counsel of Record:

Kevin M. Barth
P.O. Box 107
Florence, SC 29503

Attorney for Edward Cole and Turner Padgett

Regina H. Lewis
3710 Landmark Dr., Suite 109
Columbia, SC 29204

Attorney for Nationwide

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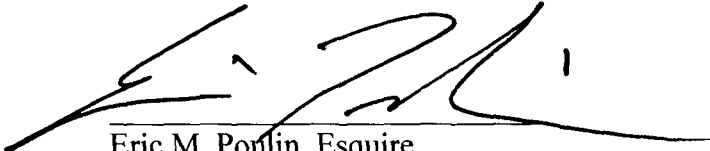
Edward R. Cole, individually and as
employee/agent of Turner Padgett Graham
and Laney, P.A., Turner Padgett Graham
and Laney, P.A., and Nationwide Mutual
Insurance Company,Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Nationwide Mutual Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on September 18, 2012, addressed to their attorney of record, Regina H. Lewis, 3710 Landmark Dr., Suite 109, Columbia, South Carolina, 29204.

September 18, 2012

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APPEAL FROM FLORENCE COUNTY
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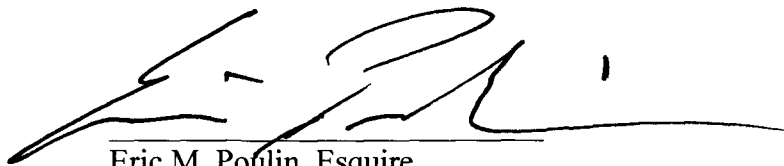
I certify that I have served the Notice of Appeal on Edward R. Cole and Turner Padget Graham and Laney, P.A. by depositing a copy of it in the United States Mail, postage prepaid, on September 18, 2012, addressed to their attorney of record, Kevin M. Barth, Post Office Box 107, Florence, South Carolina, 29503.

September 18, 2012

RECEIVED

SEP 24 2012

SC Court of Appeals



Eric M. Poulin, Esquire
S.C. Bar No.: 100209
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North Charleston, SC 29418
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Attorney for Appellant

Other Counsel of Record:

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P.O. Box 107
Florence, SC 29503

Attorney for Edward Cole and Turner Padgett

Regina H. Lewis
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Columbia, SC 29204

Attorney for Nationwide

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SC Court of Appeals

ANASTOPOULO LAW FIRM, LLC

Akim A. Anastopoulos (SC)

Eric M. Poulin (NC) (SC)

John I. Henderson, (SC)

Catherine F. Juhas (NC) (SC)

ATTORNEYS AT LAW

Toll Free: (800) 313-2546

Facsimile: (843) 853-2291

Mailing Address: 2850 Ashley Phosphate Rd., Suite B
North Charleston, SC 29418

Florence Office: 150 W. Evans Street, Florence, SC

Reply to the North Charleston Office

September 18, 2012

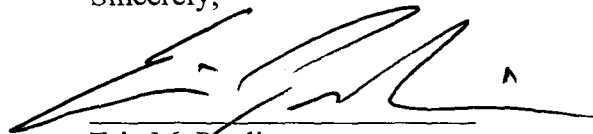
The Honorable Connie Reel-Shearin
Florence County Clerk of Court
108 N. Irby Street, MSC-E
Florence, South Carolina 29501

RE: *Akim A. Anastopoulos v. Edward R. Cole, individually and as employee/agent of Turner Padgett Graham and Laney, P.A., Turner Padgett Graham and Laney, P.A., and Nationwide Mutual Insurance Company*
Case No.: 2012-CP-21-301

Dear Ms. Reel-Shearin:

Enclosed for filing please find a Notice of Appeal in the above case.

Sincerely,



Eric M. Poulin
2850 Ashley Phosphate Rd Ste. B
North Charleston, SC 29418
(843) 614-8888

Cc: Kevin M. Barth
P.O. Box 107
Florence, SC 29503

Cc: Regina H. Lewis
3710 Landmark Dr., Suite 109
Columbia, SC 29204

RECEIVED
SEP 24 2012
SC Court of Appeals

ADDITIONAL OFFICES

Florence, South Carolina * Greenville, South Carolina * Columbia, South Carolina
Wilmington, North Carolina

65641

ANASTOPOULO LAW FIRM, LLC

Akim A. Anastopoulos (SC)
John I. Henderson, (SC)

Eric M. Poulin (NC) (SC)
Catherine F. Juhas (NC) (SC)

ATTORNEYS AT LAW

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Mailing Address: 2850 Ashley Phosphate Rd., Suite B
North Charleston, SC 29418

Florence Office: 150 W. Evans Street, Florence, SC

Reply to the North Charleston Office

September 18, 2012

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

RE: *Akim A. Anastopoulos v. Edward R. Cole, individually and as employee/agent of Turner Padget Graham and Laney, P.A., Turner Padget Graham and Laney, P.A., and Nationwide Mutual Insurance Company*
Case No.: 2012-CP-21-301

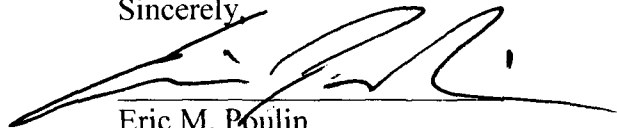
Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal on Respondents.
- (2) A filing fee of \$100.00.
- (3) A copy of the Order to be appealed.

We would appreciate it if you would file the original Notice and Proofs of Service and return the copies in the enclosed envelope.

Sincerely,



Eric M. Poulin
2850 Ashley Phosphate Rd Ste. B
North Charleston, SC 29418
(843) 614-8888

Cc: Kevin M. Barth
P.O. Box 107
Florence, SC 29503

Cc: Regina H. Lewis
3710 Landmark Dr., Suite 109
Columbia, SC 29204

RECEIVED
SEP 24 2012
SC COURT OF APPEALS

ADDITIONAL OFFICES

**Florence, South Carolina * Greenville, South Carolina * Columbia, South Carolina
Wilmington, North Carolina**

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

FORM 4
FILED

2012 AUG 27 PM 2:36

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP2100301

Akim A Anastopoulo	Edward R Cole Nationwide Mutual Insurance Company	Turner Padget Graham & Laney Pa
PLAINTIFF(S)		DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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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. Nonsuit);
 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:

CERTIFIED: A TRUE COPY

Connie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

RECEIVED
SEP 24 2012

SC Court of Appeals

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 (List amount(s) below)

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	8/27/2012
		Date

For Clerk of Court Office Use Only

This judgment was entered on **August 27, 2012**, and a copy mailed first class or placed in the appropriate attorney's box on **August 28, 2012**, to attorneys of record or to parties (when appearing pro se) as follows:

Eric Marc Poulin
2850 Ashley Phosphate Rd., Suite B
North Charleston, SC 29418

Kevin Mitchell Barth
PO Box 107
Florence, SC 29503
Regina Hollins Lewis
3710 Landmark Dr., Ste. 109
Columbia, SC 29204

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel-Shearin

Connie Reel-Shearin - Clerk of Court

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Amelia Y. Spivey

FILED

2012 AUG 27 AM 10:11

CORRIE REEL-SHEARIN
CCJP & GS
FLORENCE COUNTY, SC

ORDER

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
Civil Action No. 2012-CP-21-301

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Akim A. Anastopoulos,

Plaintiff,

vs.

Edward R. Cole, individually and as
employee/agent of Turner, Padget, Graham &
Laney, P.A., and Turner Padget, Graham &
Laney, P.A. and Nationwide Mutual Insurance
Company,

Defendants.

This matter came before the Court on August 15, 2012, on Defendants' Motion to Dismiss pursuant to Rule 12(b)(6) *S.C.R.Civ.P.* for failure to state a claim upon which relief can be granted. Defendants seek an Order dismissing the Summons and Complaint filed by Plaintiff on February 1, 2012. All parties were represented by counsel at the hearing. Present were Eric Poulin, Esquire for the Plaintiff, Regina Hollins Lewis, Esquire for Defendant Nationwide, and Kevin Barth, Esquire for Defendants Edward R. Cole and Turner, Padget, Graham & Laney, P.A. Upon consideration of the submissions of the parties and oral argument presented, as set forth herein below, the Court hereby grants the motion to dismiss.

As set forth in Defendants' Motion to Dismiss and supporting Memorandum, Plaintiff's Complaint alleges causes of action for defamation, negligent supervision, negligent retention, and conspiracy arising out of statements made by Defendant Edward R. Cole (hereinafter "Defendant Cole") in the course of his representation of Nationwide and as an employee of Defendant Turner, Padget, Graham & Laney, P.A. (hereinafter "Defendant TPGL"). Such statements, according to Plaintiff's Complaint, were rendered in pleadings, hearings, or in the

course of the lawsuit captioned *Motsinger v. Nationwide Mutual Insurance Company* Civil Action No.: 4:11-cv-01734-RBH (hereinafter referenced as "*Motsinger Lawsuit*").

In order to sustain a cause of action for defamation, the complaining party must show: (1) a false and defamatory statement was made; (2) the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable irrespective of harm or the publication of the statement caused special harm. *Fleming v. Rose*, 350 S.C. 488, 494 (S.C. 2002), quoting, *Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 506 S.E.2d 497 (1998). At the hearing in this matter the parties agreed that the statements attributed to Defendant Cole were contained in memoranda of law filed in the *Motsinger* lawsuit and that the memoranda at issue are the sole basis for the claims in the present case. Defendants argue that the alleged defamatory statements are protected by the judicial proceedings privilege. This court agrees.

It is well-established that defamatory statements made in the course of judicial proceedings are protected by absolute privilege and, therefore, not actionable. *Texas Co. v. C. W. Brewer & Co.*, 180 S. C. 325, 185 S. E. 623 (1936); see *Redfearn v. Pusser*, 276 S. C. 506, 280 S. E. 2d 206 (1981); *McKesson & Robbins, Inc. v. Newsome*, 206 S. C. 269, 33 S. E. 2d 585 (1945). Specifically, the law provides that "[t]he absolute privilege attaching to judicial proceedings embraces communications between counsel, statements made by counsel to a prospective witness, arguments or statements by counsel in the course of proceeding, any statements made by witnesses in the course of proceedings, and even statements in the course of negotiation of a settlement." *Corbin v. Washington Fire & Marine Ins. Co.*, 278 F. Supp. 393 at 398 (D.S.C. 1968).

This privilege applies even if the statements were made maliciously and with knowledge of their falsity. *Brewer*, 180 S. C. 325 at 327 (1936). The privilege protects the statements of judges, parties, and witnesses offered in the course of judicial proceedings. *Crowell v. Herring*, 301 S. C. 424, 392 S. E. 2d 464 (Ct. App. 1990) (per curiam). It protects not only trial and deposition testimony, but also statements in pleadings, affidavits, communications between counsel, statements by counsel to prospective witnesses and in general "any utterance arising out of any judicial proceeding and having any reasonable relation to it, including preliminary steps leading to judicial actions of any official nature provided those steps bear reasonable relationship to it." *Corbin v. Washington Fire & Marine Insurance Co.*, 278 F. Supp. 393, 398 (D. S. C.) (dicta), aff'd per curiam, 398 F. 2d 543 (4th Cir. 1968); *Crowell v. Herring*, 301 S. C. 424, 392 S. E. 2d 464 (Ct. App. 1990) (per curiam); *McKesson & Robbins, Inc. v. Newsome*, 206 S. C. 269, 33 S. E. 2d 585 (1945); *Rodgers v. Wise*, 193 S. C. 5, 7 S. E. 2d 517 (1940); *Texas Co. v. C. W. Brewer & Co.*, 180 S. C. 325, 185 S. E. 623 (1936).

Plaintiff's counsel argues that the statements referenced in the Complaint are not relevant to the *Motsinger* lawsuit and thus, are not protected by absolute privilege. This court disagrees. In assessing whether statements are protected by the privilege governing judicial proceedings, the "relevancy" requirement is intended to be interpreted broadly. "[L]ibelous or defamatory statements in pleadings, when pertinent or material or relevant to real issues involved, are privileged...and in determining [the pertinency or materiality or relevancy of such statements] pleadings must be liberally interpreted and all doubts resolved in favor of relevancy." *McKesson & Robbins, Inc. v. Newsom et. ux.*, 206 S.C. 269, 33 S.E.2d 585 (1945) (citing *Texas Company v. C.W. Brewer & Co.*, 180 S.C. 325, 185 S.E. 623 (1936)). Moreover, the question of relevance is one of law for this Court. See *McKesson & Robbins, Inc.*, 206 S.C. at 275.

As the Court of Appeals observed in *Pond Place Partners v. American Federal Bank*,
351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002):

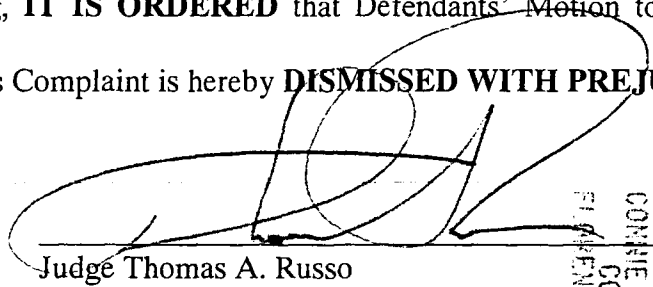
The interest of society requires that whenever men seek the aid of courts of justice, either to assert or to defend rights, of person, property or liberty, speech and writing therein must be untrammelled and free....The law gives to all who take part in judicial proceedings, judge, attorney, counsel, printer, witness, litigant, a right to speak and to write subject only to one limitation, that what is said or written bears upon the subject of litigation, that is, is pertinent, relevant, germane thereto.

See id., 351 S.C. at 23, 567 S.E.2d at 892.

The Court's observation in this regard directly addresses the issues presented in the subject lawsuit and is instructive. Here, as counsel for the defendants acknowledged, while Defendant Cole may well have expressed his client's position in a different manner in the memoranda, his characterizations regarding the plaintiff's alleged handling of the litigation were pertinent and germane and therefore relevant to the proceedings. As such, the statements are absolutely privileged and cannot form the basis for a defamation claim. Thus, the claim should be dismissed. The liability of Defendants TPGL and Nationwide are contingent upon liability of Defendant Cole, consequently, the claims of negligent hiring, negligent supervision and conspiracy must also be dismissed as to all of the Defendants as those claims are all based on the defamation claim that cannot be sustained for the reasons set forth.

Based upon the foregoing, **IT IS ORDERED** that Defendants' Motion to Dismiss is hereby **GRANTED** and Plaintiff's Complaint is hereby **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.



Judge Thomas A. Russo

Florence, South Carolina

August 24, 2012

CERTIFIED: A TRUE COPY
Clerk of Court
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

2012 AUG 27 AM 10:11
CONNIE REEL-SHEARIN
C.C.P. & G.S.
FLORENCE COUNTY, SC

FILED