

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
 Clark D. Thomas,)
 Plaintiff,)
 v.)
 Evening Post Publishing Co., d/b/a The)
 Post and Courier, Glenn Smith,)
 Officially and Individually,)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 Civil Action No. 2013-CP-10-05444

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 DEC 29 2014
 SC Court of Appeals

ORDER GRANTING BY
 SUMMARY JUDGMENT

FILED
 2014 NOV -4 AM 10:18
 JULIE J. ARMSTRONG
 CLERK OF COURT

This matter came before the court on defendants' motion for summary judgment filed July 2, 2014. A hearing on the motion was held in open court in Charleston on October 29, 2014. Plaintiff was present and defendants appeared through counsel. Plaintiff's Amended Complaint alleges that a news report prepared by defendant Glenn Smith and published by defendant Evening Post Publishing Co. in its newspaper *The Post and Courier* defamed him and intentionally inflicted emotional distress by publishing false statements of fact of and concerning him. The news report provided an account of plaintiff's activities representing himself in an action in Family Court seeking a divorce from his wife.

Defendants supported their motion with the pleadings, answers to interrogatories, admissions, the transcript of record in the Family Court proceeding Clark D. Thomas v. Rachel M. Crowley, and the affidavit of defendant Smith. Plaintiff filed no affidavits or other material in opposition to defendants' supported motion save a memorandum of law, and had not responded to defendants' requests for admissions. It has long been the law in South Carolina that a plaintiff may not rest on his pleading alone in response to a supported motion for summary judgment as the Supreme Court of South Carolina has held:

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Where the plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law. *Garrett v. Reese*, 269 S.C. 327, 329, 204 S.E.2d 432, 433 (1974).

Humana Hospital—Bayside v. Lightle, 305 S.C. 214, 407 S.E.2d 637, 638 (1991).

The news report complained of by plaintiff related to the operation of the Family Court system in a divorce action where plaintiff was appearing *pro se*. It seems beyond doubt that the functioning of the court system is a matter of public interest. See, *Parker v. Evening Post Pub. Co.*, 317 S.C. 236, 452 S.E.2d 640, certiorari den., 516 U.S. 1172, 116 S.Ct. 1263, 134 L.Ed.2d 211 (1994). And, where the publication concerns a matter of public interest, a libel plaintiff bears the burden of proving the falsity of the publication at issue. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 106 S.Ct. 1558, 89 L.Ed.2d 783 (1986). Plaintiff offered no proof by way of affidavit that the publication was false.

Defendants demonstrated that the contents of the news report tracked either a police report relating to plaintiff's arrest for kidnapping and other charges, or the transcript of the divorce proceeding. Even if the police report or the trial testimony contained false statements of fact, fair and substantially accurate reports of the contents of official records and judicial proceedings may be published without the publisher incurring liability. *Padgett v. Sun News*, 278 S.C. 26, 292 S.E.2d 30 (1982); *West v. Morehead*, 396 S.C. 1, 720 S.E.2d 495 (Ct. App. 2011).

Nothing supplied by plaintiff supports a finding that a genuine issue of material fact exists with respect to falsity or privilege; therefore, as a matter of law, defendants are entitled to judgment in their favor on the libel claim.

Plaintiff's intentional infliction of emotional distress claim merely recites the allegations of the libel claim and asserts that the publication constituted an intentional infliction of emotional distress. As the South Carolina Court of Appeals explained in *Todd v. S. C. Farm Bureau*, 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984), *rev'd on other ground*, 287 S.C. 190, 336 S.E.2d 472 (1985), the tort of outrage excludes from its scope "those wrongs that could be brought under other actions, such as defamation." F.P. Hubbard & R.L. Felix, *The South Carolina Law of Torts* (2d ed. 1997) p. 419. Plaintiff has failed to establish that any facts exist which would provide a basis for recovery on this claim independent of his libel claim.

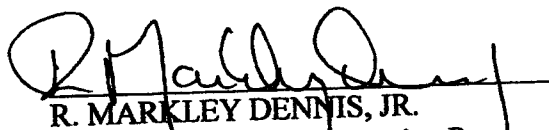
Based on the matters of record and the discussion above, IT IS HEREBY ORDERED that defendants' motion for summary judgment be, and hereby is, granted.

IT IS FURTHER ORDERED that defendants shall have judgment in their favor as a matter of law.

AND IT IS SO ORDERED.

Charleston, South Carolina

October 31st, 2014


R. MARKLEY DENNIS, JR.
Chief Judge for Administrative Purposes
Ninth Judicial Circuit

RMDJ/3

Clark David Thomas #187845
Broad River C.I. / Moultrie A-2087
4460 Broad River Road
Columbia, SC 29210

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SC Court of Appeals

December 29, 2014

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

HAND DELIVERED

Re: Clark D. Thomas v. Evening Post Publishing Co., et. al.
Trial Case No. 2013-CP-10-5444
Court of Appeals Case No.

Dear Ms. Kitchings:

Please attach the *Order* listed below to the *Notice of Appeal* in the referenced case sent by me and received by your office in today's mail whereas it was inadvertently left out.

1. *Order Granting Summary Judgment* filed November 4, 2014.

With kindest regards
I am,



Clark D. Thomas

cc: The Honorable Julie J. Armstrong
Jay Bender, Esquire