

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-40-04652
S.C. Court of Appeals Case No. 2014-000663

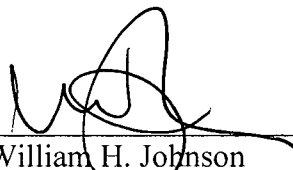
James W. Trexler,

Appellant,

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.

APPELLANT'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO STRIKE



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)

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-and-

W. Westbrook Wills III
Attorney at Law
PO Box 822
Folly Beach, SC 29439
(843) 805-6300 (telephone)
(866) 922- 8596 (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

INTRODUCTION

On March 28, 2014, Appellant filed his Notice of Appeal from the trial court's grant of summary judgment in favor of Respondents. On August 22, 2014, Appellant timely filed his Initial Brief and Designation of Matter to be Included in the Record on Appeal. On September 19, 2014, Respondents filed a consent motion for an extension of time to file their Initial Brief, which this Court granted. On October 23, 2014, Respondents timely filed their Initial Brief and Designation of Matter to be Included in the Record on Appeal. Appellant claims Respondents' Initial Brief and Designation of Matter are improper and do not comport with the applicable Rules of Appellate Procedure.

On November 3, 2014, Appellant timely filed his Reply Brief in which he states his objections to Respondents' inclusion of contested factual assertions and content in their Initial Brief, and to their improper designation of matter to be included in the Record. On December 2, 2014, Appellant filed a consent motion for an extension of time

to file the Record on Appeal in order for this Court to consider his Motion to Strike, which extension the Court granted until January 2, 2015. Appellant herewith submits his Motion to Strike.

I. Respondents' Initial Brief Improperly Includes and Relies on Assertions of Disputed Facts and Should be Stricken

SCACR, Rule 208(a)(2) requires an initial brief from both the appellant and the respondent to an appeal. Rule 208(c) provides that a respondent need not include a separate statement of the case “unless the respondent is dissatisfied with the statement of the issues or of the case by appellant.”¹ A respondent electing to include a separate Statement of the Case in its Initial Brief must do so in conformity with the same rules and requirements applicable to appellants under Rule 208(b)(1)(C). (See SCACR, Rule 208(b)(2)(“The brief of respondent shall conform to the requirements of Rule 208(b)(1)(A)-(E)”)). For appellants and respondents alike, SCACR, Rule 208(b)(1)(C) requires that a Statement of the Case provide, *inter alia*, important procedural history and dates (see fn.1), but the Rule specifically proscribes the inclusion of any contested issues or facts. (“The statement **shall not** contain contested matters”)(emphasis supplied).

Here, despite the clear mandate of Rule 208(b)(1)(C), Respondents' Statement of the Case is comprised almost entirely of contested facts and matters (see Init. Br. of Resp. at 1-5) which either substantially misrepresent the true facts of Record, or are simply

¹ Under SCACR, Rule 208(b)(1)(C), an appellant shall include, in its initial brief, under appropriate heading, a Statement of the Case containing the date of the commencement of the action or matter; the nature of the action or matter; the nature of the defense or of the response; the action of the court, jury, master, or administrative tribunal; the date(s) of trial or hearing; the mode of trial; the amount involved on appeal; the date and nature of the order, judgment or decision appealed from; the date of the service of the notice of appeal; the date of and description of such orders, judgments, decisions and proceedings of the lower court or administrative tribunal that may have affected the appeal, or may throw light upon the questions involved in the appeal.

false.² By way of example, but without limitation,³ Respondents state as fact that the Humane Society's investigation "revealed approximately five mistreated horses on Appellant's property located at 412 Derby Lane in Richland County." (See Init. Br. of Resp. at 1). That assertion is not only false and contrary to evidence which is of Record (see generally Transcript at 7:14-17; 16:2-25), but also goes to the heart of one of the fundamental disputes of material fact in the trial court below on the issue of malicious prosecution.

In similar fashion, Respondents represent as unequivocal fact in their Initial Brief that "the Attorney General of South Carolina consummated a deal with the Appellant, his mother, and brother, where Terry Trexler pled no contest to ill-treatment of animals, the family relinquished all ownership interest in the horses that were seized, and the criminal action against Appellant and Appellants' mother were *nolle prossed*." (Init. Br. of Resp. at 2). There is absolutely no evidence (of Record or otherwise) to support that false statement, and the trial court made no such finding in its Order (See Order at 3-4).

Further, Respondents incorrectly state as fact the Humane Society, "in addition to on-site inspections of multiple properties revealing malnourished horses and dogs on property owned by the Appellant, the HSPCA searched horse ownership records and property ownership records linking Appellant James Trexler to some of the horses in question and to the property where some of those horses were stabled." This is simply untrue, and the evidence of Record clearly establishes the contrary. (See Transcript at 21:1 - 22:15; see also Exhibits B, C, and D to Plaintiff's Memo. In Opp. to Defs.'s Mtn.

² It appears as if Respondents' have confused "Statement of the Case" with "Statement of Facts".

³ Because Appellant submits any and all assertions of disputed facts by Respondents in their Initial Brief are improper and should be stricken anyway, Appellant illustrates the point with selected examples as opposed to a compendium of Respondents' factual transgressions.

for Sum. Judg.) (The Humane Society did no investigation into who owned the horses they allege were neglected or the property on which the horses were found.). *Plaintiff's Memo. In Opp. to Defs.'s Mtn. for Sum. Judg. is attached hereto as EXHIBIT "A."*

Respondents also help themselves to material outside the Record to bolster the disputed factual assertions they improperly include in their Initial Brief. For instance, Respondents cite multiple times to the deposition testimony of Brennessel. (See Init. Br. of Resp. at 14-15). However, Brennessel's deposition testimony was neither offered to nor considered by the trial court, and was never made part of the Record. (See generally Defs. Memo in Supp. of Mtn. for Sum. Judg.)(absence of excerpts from deposition of Brennessel), *Defendants' Memo. in Supp. of Mtn. for Sum. Judg. is attached hereto as EXHIBIT "B;"* (see also Appellant's objections to Respondents' Designation of the Record on Appeal, below). Respondents dedicate an entire paragraph to providing an overview of dubious accuracy regarding civil actions commenced by Appellant's mother and brother and subsequently dismissed. (See Init. Br. of Resp. at 2). Those alleged facts are irrelevant to and have no bearing on this appeal.

Making further use of materials outside the record to support their argument to this Court, Respondents imprecisely paraphrase testimony from a deposition of Appellant in another case (see Init. Br. of Resp. at 8-9), the actual deposition testimony which Respondents never made a part of the record or submitted to the trial court. In addition to these alleged facts being disputed, they are not supported by the Record, are not relevant to this appeal, and should be stricken with the rest of the unsupported disputed and irrelevant materials. (See SCACR, Rule 208(b)(1)(C))(The Statement of the Case "shall not contain contested matters")

Because the contested facts and matters Respondents improperly assert in their Initial Brief (Statement of the Case) are not supported by the evidence of Record, it is not surprising they also consistently fail to provide substantiating citation to matter which may be properly included in the Record on Appeal, as required under SCACR, Rule 208(b)(4). Respondents' improper and inaccurate factual assertions shed no light on any of the true issues in this appeal, and serve no purpose other than clearly revealing the material questions of fact that exist as to each issue before this Court. Appellant respectfully requests the Court strike all factual assertions in Respondents' Initial Brief which are not supported by citation to matter properly to be included in the Record on Appeal.

II. Respondents' Designation of Materials to be Included in the Record on Appeal Contains Materials Which May Not be Properly Included And Which Should be Stricken.

Appellant objects to, and moves to strike, Respondents' designation of all materials outside the Record below which were not presented to the trial court, and which the trial court did not consider in ruling on Appellant's causes of action from which this appeal is taken. Specifically, Appellant objects to the inclusion of the following materials Respondents have designated to be included in the Record and moves to strike the same:

1. Deposition transcript of James Trexler from Civil Action No. 2010-CP-40-1249, taken September 14, 2011 (entirely);
2. Deposition of James Trexler from the underlying action, taken May 15, 2013: pp. 6,10,11,18,19, 69, 75, 76, 79, 80, 91, 114, 142, 143;
3. Deposition of Wayne Brennessel from September 30, 2013 (entirely);
4. Articles of Organization, Bates labeled HSPCA0473 – HSPCA0474 (entirely); and

5. Documentation related to ownership of various horses, Bates labeled HSPCA0518-HSPCA00534, HSPCA0539-HSPCA0540 (entirely).

None of the above materials were presented in the trial court or otherwise made part of the Record below, and therefore the trial court could not have relied on them in making the rulings from which the present appeal is taken. As such, the materials are irrelevant to this appeal and are not proper materials to comprise the Record on Appeal. (See SCRAP, Rule 209(b)(“Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal); (see also SCRAP, Rule 210(c)(“A party shall not include any matter in his Designation which is not relevant to the appeal The Record shall not, however, include matter which was not presented to the lower court or tribunal.”)).

SCRAP, Rule 209(C) requires counsel for Appellant to certify that the Designation of Materials to be Included in the Record on Appeal contains no matter which is irrelevant to the appeal. Counsel for Appellant is unable to do so where the Designation includes the materials Respondents propose which either do not exist in the Record below or are otherwise irrelevant to the appeal. After conferring with counsel for Respondents and not being able to come to an agreement with regard to their designations, Appellant moves to strike them.

CONCLUSION

For the reasons above and those presented in Appellant’s Reply Brief, Appellant respectfully requests this Court strike from Respondents’ Initial brief those disputed or irrelevant factual assertions they improperly include, and strike from their Designation of Materials to be Included in the Record on Appeal those elements which do not exist in

the Record below or are otherwise irrelevant to the appeal.

[Signature on following page]

DATED this 19th day of December 2014

Respectfully submitted,



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)

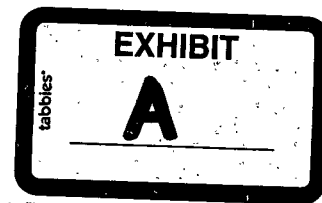
-and-

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
SWEENY, WINGATE & BARROW, P.A.
1515 Lady Street
Post Office Box 12129
Columbia, SC 29211
ATTORNEYS FOR RESPONDENTS



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,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Case No.: 2012-CP-40-4652

PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

RICHLAND COUNTY
FILED
SEP 19 AM 9:50
JANETTE W. MCBRIDE
Clerk, S.C.P. & C.S.

COMES NOW Plaintiff James W. Trexler ("Plaintiff") pursuant to Rule 56 (e), SCRPC, and responds to 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's (collectively "Defendants") Motion for Summary Judgment as follows:

INTRODUCTION

This is a malicious prosecution that arises out of the Humane Society for the Prevention of Cruelty to Animals' ("HSPCA") participation in the instigation and continuation of Plaintiff's 2008 arrest and subsequent prosecution over the course of two and a half years on misdemeanor and felony charges of ill treatment to animals. This case also involves defamation arising out of statements Wayne Brennessel, Executive Director of the Human Society for the Prevention of Cruelty to Animals ("Brennessel") made to the media regarding the final disposition of the

misdeemeanor and felony charges of ill treatment of animals against Plaintiff.

Plaintiff alleges that the HSPCA partnered with the Richland County Sheriff's Department in the malicious instigation and continuation of legal process against him without probable cause, and with actual or constructive knowledge Plaintiff was not involved with the activity and ownership upon which the charges against him were brought. Plaintiff further alleges Brennessel and the HSPCA defamed him by reporting to the media that he pleaded "no contest" to the charges when they had actual knowledge the charges against Plaintiff were dismissed, which report intentionally implied Plaintiff's guilt rather than announce his innocence. Plaintiff alleges that as a direct result of malicious prosecution and defamation by the Defendants, he lost his job, salary, pension, retirement benefits, his ability to obtain like employment, and has suffered irreparable harm to his personal and professional reputation.

Defendants have moved for summary judgment as to both causes of action claiming there is no genuine issue of material fact as to both Plaintiff's causes of action, and they are entitled to summary judgment as a matter of law. Defendants' motion is without merit as ample evidence of disputed material facts exists in the record as to each cause of action, and for the reasons discussed below, this Court should deny Defendants' motion.

FACTS

Prior to March of 2008, Plaintiff's mother and brother operated a for profit Arabian horse breeding business in Richland County, South Carolina under the name Carolina Arabian Show Horses, LLC ("Carolina Arabian"). Plaintiff has never had any interest in the ownership or operation of Carolina Arabian, or the horses owned by the company. In early 2008, Carolina Arabian maintained its horses on two leased properties, one located at 1820 Zeigler Road South in Eastover, Richland County, South

Carolina ("Zeigler Rd."), and the other located on Misty Meadow Road, in Hopkins, Richland County, South Carolina. Plaintiff's mother and brother also maintained five Carolina Arabian horses needing special attention in a barn at their home located at 412 Derby Lane in Hopkins, Richland County, South Carolina ("412 Derby Ln."). Plaintiff previously lived at the 412 Derby Ln. residence but moved to New Zion, South Carolina in 2007. In early 2008, and at all times relevant to this action, Plaintiff had no ownership interest in the 412 Derby Ln. property, and did not live there.

In February of 2008, the HSPCA allegedly received a report of malnourished horses at the Zeigler Rd. property. The HSPCA then partnered with the Richland County Sheriff's Department ("RCSD") to investigate the reported malnourished horses. On February 19, 2008, Hart and Perry from the HSPCA, Holly Wagner ("Wagner") of the RCSD, and Mary Ellen Tobias, a colleague of Plaintiff's at the South Carolina Department of Agriculture arranged a special meeting to formulate a strategy for investigating Plaintiff's mother and brother's horses and decided they needed to obtain a search warrant to enter the property and evaluate the horses.

On February 25, 2008, after obtaining the search warrant anticipated in the February 19th meeting, the HSPCA and the RCSD led a search of the Zeigler Rd. property in which over 16 agents or employees from the two organizations participated. The February 25th search of the Zeigler Rd. property resulted in the HSPCA and the RCSD confiscating every one of the twenty-three horses Plaintiff's mother and brother maintained at that property. At the time of the search and confiscation of the horses at the Zeigler Rd. property, the HSPCA and the RCSD had information that Plaintiff's

no one from the HSPCA or the RCSD checked any records whatsoever to determine if Plaintiff was the owner of the horses they confiscated from 412 Derby Ln.

On March 5, 2008, as a result of his arrest and continued prosecution for mistreatment of animals, Plaintiff's employment with the South Carolina Department of Agriculture was terminated. Thereafter, the HSPCA continued to work closely with the RCSD and assistant solicitor Jill Andrews in the prosecution of the case against Plaintiff. Allegedly based on reports from the HSPCA concerning their investigation of horse abuse at properties other than 412 Derby Ln., on or about March 12, 2008, the office of the solicitor increased all charges against Plaintiff from misdemeanors to felony cruelty to animals.

On July 15, 2010, the Richland County Court of General Sessions dismissed all charges then pending against Plaintiff on the merits. Wayne Brennessel, president of the HSPCA was present in the courtroom on July 15, 2010 when the court dismissed the charges against Plaintiff. From the inception of the HSPCA and the RCSD's prosecution of Plaintiff until the court dismissed all charges on July 15, 2008, Plaintiff maintained his innocence, and pleaded accordingly. Nevertheless, following the court's dismissal of the case against Plaintiff, Brennessel reported to the media the Trexlers had pleaded no contest to the charges.

ARGUMENT AND CITATION OF AUTHORITY

I. Summary Judgment

Summary Judgment is appropriate where 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), SCRCP. In evaluating a motion for summary judgment, the Court “is to liberally construe the record in favor of the nonmoving party and give the non moving party the benefit of all favorable inferences that might reasonably be drawn therefrom.” Estes v. Roper Temp. Servs., Inc., 304 S.C. 120, 121, 403 S.E.2d 157, 158 (Ct. App. 1991). Because summary judgment is a drastic remedy, the Court should invoke it cautiously “so that no person will be improperly deprived of a trial of the disputed factual issues.” Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991)(quoting Watson v. Southern Ry. Co., 470 F. Supp. 483, 486 (D.S.C. 1975)). In determining whether any triable issue of fact exists, the Court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Rule 56(c), SCRCP.

II. Plaintiff's Cause of Action for Malicious Prosecution Must Survive Summary Judgment Because a Genuine Issue of Material Fact Exists as to Whether the HSPCA had Probable Cause to Arrest and Continue to Prosecute Plaintiff.

To maintain an action for malicious prosecution, a plaintiff must demonstrate 1) the institution or continuation of original judicial proceedings, either civil or criminal; 2) by, or at the instance of, the defendant; 3) termination of such proceeding in plaintiff's favor; 4) malice in instituting such proceeding; 5) want of probable cause, and 6) resulting injury or damage. Parrott v. Plowden Motor Company, 246 S.C. 318, 321, 143S.E.2d 607, 608 (1965)(referencing 34 Am.Jur., Malicious Prosecution, Sec. 6, p. 706; Prosser v. Parsons, 141 S.E.2d 342; Gibson v. Brown, et al., 141 S.E.2d 653.).

“Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious [person], 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) and “[o]nly those facts and circumstances which were or should have been known to the prosecutor at the time he instituted the prosecution should be considered.” Parrott, 246 S.C. 318 at 322, 609; see also Brown v. Bailey, 215 S.C. 175, 54 S.E.2d 796 (1945). In an action for malicious prosecution, a plaintiff must demonstrate the prosecution was instituted maliciously and without probable cause. Id.; see also Margolis v. Telech, 239 S.C. 232, 122 S.E.2d 417 (1961). However malice may be inferred from a want of probable cause. See Brown v. Bailey, 215 S.C. 175, 54 S.E.2d 769 (1949).). As pointed out in Baker v. Hornick, 57 S. C. 213, 35 S. E. 524, 529 (1900), “where a person instituted a prosecution against another without probable cause, it is difficult to conceive of any other motive but a malicious one for bringing the prosecution.”

One who instigates prosecution based solely on information received from another acts without probable cause. 34 Am.Jur. 735, Malicious Prosecution, Section 51 instructs:

The failure of a person who has received information tending to show the commission of a crime to make such further inquiry or investigation as an ordinarily prudent man would have made in the same circumstances, before instituting a proceeding, renders him liable for proceeding without probable cause. One may not rely without further investigation on representations of another where the information received is such as to put an ordinarily prudent and cautious person on inquiry, or, it has been held, where he has no personal knowledge of the truth of the representation.

“The prosecutor must not only actually believe in the guilt of the accused, but the belief must also . . . be supported by circumstances sufficiently strong in themselves to warrant a reasonably cautious or prudent [person] in that belief.” 34 Am.Jur. 733, Malicious Prosecution, Section 49. 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 believed them to be. Eaves v. Broad v. Broad River Elec. Co-op., Inc., 277 S.C. 475, 478, 289 S.E.2d 414, 415 (1982). Ordinarily the existence of probable cause is a question to be decided by the jury. Parrott supra at 323, 609 (in dicta); Caldwell v. Bennett, 22 S.C. 1 (1884); Wheeler v. Nesbitt, 65 U. S. 544, 551, 16 L. Ed. 765 (1860) (want of probable cause is evidence of malice for the consideration of the jury).

Here, it is undisputed the HSPCA, through its agent Elizabeth Perry, instigated original judicial proceedings against Plaintiff. See Arrest Warrants for Plaintiff attached to his Complaint as Exhibits "B.1"- "B.2." It is also undisputed that termination of such proceedings was in Plaintiff's favor. See Dismissal of Charges attached as Exhibit "C" to Plaintiff's Complaint. Plaintiff has also alleged monetary and reputation damage directly resulting from prosecution instigated and continued by the HSPCA. See Complaint at paragraphs 71 and 72.

Notwithstanding ample authority, *supra*, establishing that the existence of probable cause is a question to be decided by the jury, Defendants argue probable cause exists, here, as a matter of law merely because the Grand Jury "true billed" the indictments against Plaintiff, creating "prima facie" evidence of probable cause. For this proposition, Defendants rely on Law v. S. Carolina Dept. of Corrections, 365 S.C. 424, 629 S.E.2d 642 (2006). However, in applying the law as set out in Law to the case at hand, Defendants overlook the crucial second half of the proposition. In Law, probable cause existed as a matter of law where the indictments against plaintiff were true billed by the Grand Jury **and** where the underlying facts supported probable cause to instigate or pursue criminal charges. See Id. at 437, 649. In fact, in Law, the Court found the facts and circumstances underlying the instigation of proceedings against the Appellant supported the presumption of probable cause created by true-billed indictments by the Grand

Jury. The Law Court determined original proceedings against Appellant followed, and were the result of, a thorough investigation, included the interviews of over forty witnesses, and based on actual knowledge of historical conspiracy. Law at 437, 647.

Here, unlike in Law, evidence exists to show the HSPCA not only instigated proceedings against Plaintiff based on unreliable information from other individuals, without any performing independent investigation whatsoever, but it also obtained Plaintiff's arrest warrant by swearing as true facts in an affidavit to a Magistrate facts it did not know to be true. Elizabeth Perry, Cruelty Investigator for the HSPCA, swore to the Magistrate that probable cause existed for Plaintiff's arrest based on the fact that Plaintiff was the owner of the five subject horses. However, evidence exists to show Elizabeth Perry, in fact, did not know, as she swore she did, that James Trexler owned any of the horses he was accused of mistreating, nor did she have any reason to believe, when she swore out the warrant, that he was the owner.

In her deposition taken on January 17, 2012, counsel for Plaintiff asked Ms. Perry if she did any investigation before making the affidavit into whether Plaintiff owned the horses. Ms. Perry responded "they [horses] were on his property so -- I mean --" (Perry Depo. at 108:3, January 17, 2012). An excerpt of the forgoing is attached hereto as Exhibit "A." When counsel for Plaintiff asked Ms. Perry if she represented Plaintiff as the owner of the horses based solely on the fact he allegedly owned the property, Ms. Perry indicated that was not the only reason why, but she could not recall any other reasons. See id. at 108:4-13. In a separate case against the Richland County Sherriff's Department ("RCSD") for malicious prosecution based on the same operative facts (case number 2010-CP-40-1343), counsel for Plaintiff took the deposition of RCSD Investigator Holly Wagner who worked hand in hand with Elizabeth Perry and the HSPCA in the investigation and prosecution of Plaintiff. Counsel for Plaintiff asked Investigator

Wagner whether to her knowledge the HSPCA did any investigation into whether Plaintiff owned any horses before swearing an affidavit to obtain his arrest warrant. Investigator Wagner indicated to her knowledge, she did not know of any investigation that was done by the HSPCA into whether Plaintiff owned the horses he was accused of abusing. (Wagner Depo. 105:5-16, November 3, 2011). An excerpt of the foregoing is attached hereto as Exhibit "B." Investigator Wagner also indicated that Elizabeth Perry never communicated to her she had evidence Plaintiff owned the subject horses prior to attesting that probable cause existed to arrest Plaintiff. (Wagner Depo. 112:11-15). An excerpt of the foregoing is attached hereto as Exhibit "C." When Counsel for Plaintiff asked Ms. Perry if she did any investigation into whether Plaintiff owned the property on which the subject horses were found and seized, Ms. Perry indicated that the HSPCA did not have the ability to do that kind of search. (Perry Depo. 111:17-20). Ms. Perry also admitted she did no search of the ownership records of the subject horses to determine if Plaintiff owned them. See id. at 111:22-23. An excerpt of the foregoing is attached hereto as Exhibit "D."

More troubling still is the evidence that Elizabeth Perry lied in her affidavit to obtain an arrest warrant for Plaintiff. Ms. Perry's affidavit states that upon the HSPCA's search of the property purportedly belonging to Plaintiff, no food or hay was found on the property. However, she stated just the opposite in her January 17, 2012 deposition. When counsel for Plaintiff inquired as to whether during the search of the property purportedly belonging to Plaintiff she looked inside the garage, Ms. Perry state she did. When counsel for Plaintiff asked what she saw there, Ms. Perry admitted she saw horse food. (Perry Depo. 113: 7-14). An excerpt of the foregoing is attached hereto as Exhibit "E."

RCS D Investigator Wagner admitted in her deposition that it would be improper for an

affiant, in order to obtain an arrest warrant, to swear to a judge as true facts he or she knew were false. (Wagner Depo. 111:11-14). An excerpt of the foregoing is attached hereto as Exhibit "F."

The U.S Supreme Court was of the same opinion in Franks v. State of Delaware, 438 U.S 154, 98 S.Ct 2674 (1978). "The requirement that a warrant not issue but upon probable cause, supported by Oath or affirmation, would be reduced to a nullity if [an affiant] was able to use deliberately falsified allegations to demonstrate probable cause, and, having misled the magistrate, then was able to remain confident that the ploy was worthwhile." Id. at 168, 2682.

Defendants claim that probable cause exists because the Grand Jury true-billed the indictments after evaluation of the underlying facts supporting the indictments. However, evidence exists that no facts at all were presented to the Grand Jury. Plaintiff has alleged, and it is undisputed that Holy Wagner presented the indictments to the Gran Jury and that she did nothing but read the indictments, and presented no underlying facts whatsoever. Therefore, evidence exists to support the proposition that the Grand Jury true-billed the indictments against Plaintiff based solely on the falsified information the HSPCA provided the magistrate in the affidavit to obtain his arrest warrant.

Unlike in Law cited by Defendants, the HSPCA did little to no investigation as to Plaintiff's ownership and the facts supporting the indictment are insufficient to create probable cause as a matter of law. Indeed, genuine issues of material fact exist as to the validity of the arrest warrant obtained through falsehoods. As such, this Court should deny Defendants' motion for summary judgment as to Plaintiff's cause of action for malicious prosecution.

III. Plaintiff's Cause of Action for Defamation Must Survive Summary Judgment Because a Genuine Issue of Material Fact Exists as to Whether the HSPCA and Brennessel Acted Negligently or With Reckless Disregard for the Truth in Reporting the Trexlers pleaded No Contest

To establish a claim for defamation Plaintiff must prove “1) a false and defamatory claim 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 regardless of harm or the publication of the statement caused special harm.” Erickson v. Jones Street Publishers, LLC, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006). “A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or deter third persons from associating or dealing with him.” Holtzscheiter v. Thompson Newspapers, Inc., 332 S.C. 502, 510, 506 S.E.2d 497, 502 (1998) (Holtzscheiter II) (quoting Lesesne v. Willingham, 83 F. Supp. 918, 921 (E.D.S.C. 1949)).

If the defamatory meaning of a statement is obvious on the face of the statement, the statement is defamatory per se. Id. Defamation 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 to render him odious, contemptible, or ridiculous . . .” Id. “If a defamation is actionable per se, then under common law principles the law presumes the defendant acted with common law malice and that the plaintiff suffered general damages.” Fleming v. Rose, 338 S.C. 524, 533 526 S.E.2d 732, 737 (Ct. App. 2000).

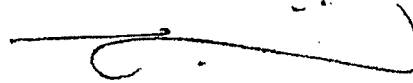
“[T]o prevail in a defamation action, a plaintiff must establish that the defendant's statement referred to some ascertainable person, and that the plaintiff was the person to whom the statement referred. Burns v. Gardner, 328 S.C. 608, 493 S.E.2d356 (S.C.Ct.App.1997). Surrounding circumstances, however, may reasonably imply the identity of an individual not otherwise immediately ascertainable from the face of the allegedly defamatory statement. Neeley v. Winn-Dixie Greenville, Inc., 255 S.C. 301, 178 S.E.2d 662, 665 (1971)(In a

defamation action, the challenged statement must "be such that persons reading or hearing it will, in the light of surrounding circumstances, be able to understand that it refers to the person complaining, and it must have been so understood by at least one other person.") (quotation omitted). Furthermore, "a motion for summary judgment should be granted only if the court determines the publication is **incapable of any reasonable construction which will render the words defamatory.**" Adams v. Daily Telegraph Printing Co. 292 S.C. 273, 279, 356 S.E.2d 118, 122 (Ct. App. 1986) (emphasis added).

Defendants assert Plaintiff is a public official and must show that the HSPCA and Brennessel made the defamatory statements with actual malice. "A defamatory statement is made with actual malice if it is made "with knowledge that it was false or with reckless disregard for whether it was false or not. New York Times v. Sullivan, 376 U.S. 254, 279 (1964). "Reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." St. Amant v. Thompson, 390 U.S. 727, 731, 20 L. Ed. 2d 262, 88 S. Ct. 1323 (1968).

Plaintiff argues that he is not required to meet the heightened standard of actual malice to show defamatory intent because at the time the statements were made and published to third parties, Plaintiff was no longer a public official, having been fired from his post some two years earlier. Nevertheless, even were Plaintiff to be considered a public official, the inquiry into whether the HSPCA and Brennessel engaged in actual malice in defaming him is a question of fact for the jury to weight the circumstances and make a determination thereon. It is undisputed that Brennessel was present at in court for the disposition of all the charges against each Trexler. Brennessel had actual knowledge that Plaintiff did not plead no contest, and neither did

Plaintiff's mother. In reporting the Trexlers pleaded no contest, Brennessel published defamatory information which was not only not substantially true, but was totally wrong with regard to Plaintiff and two thirds wrong with regard to the three. Each and every article that was written about the Trexler involvement with the mistreatment of horses since February of 2008 included each Trexler, including Plaintiff. A question of fact exists as to whether the statement related to all Trexlers. Because genuine issues of material fact exist with regard to the defamation claim and the Plaintiff's status as a public official, this Court should deny Defendants' motion for summary judgment with regard to defamation.



W. Westbrook Wills III
Law Office of W. Westbrook Wills III
38 Broad Street
Suite 200
Charleston, SC 29401
(843) 805-6300 - tel.
(843) 278-9333 - fax
wwills@austinfowlerwills.com

William H. Johnson
Law Offices of William H. Johnson, LLC
411 North Brooks Street
PO Box 137
Manning, South Carolina 29102
(803) 435-0909 - tel.
(803) 435-2858 - fax
william@whjohnsonlaw.com

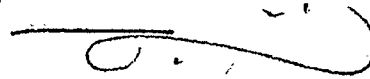
Matthew D. Hamrick
Attorney at Law
875 Lowcountry Blvd., Suite 206
Mt. Pleasant, SC 29464
(843) 693-4700 - tel.
(877) 524-5023 - fax
matt@matthamricklaw.com

This 6th day of September 2013
Charleston, South Carolina

Certificate of Service

I hereby certify that I have served a copy of the forgoing on counsel of record by hand delivery, and by U.S. Mail.

Dated: September 6, 2013



W. Westbrook Wills III

MCCLAND COUNTY
FILED
2013 SEP 19 AM 9:50
JENNIFER M. MCBRIDE
C.C.P. & G.S.

EXHIBIT

A

ELISABETH E. PERRY

1 making this affidavit into whether Mr. Trexler owned
2 the horse?

3 A. They were on his property so -- I mean --

4 Q. Did you base that fact that -- did you
5 base saying that fact representing him as the owner
6 only on the fact that it was on property that
7 allegedly belonged to him?

8 A. No. Not only on that fact, no.

9 Q. What else then?

10 A. I couldn't tell you. I don't remember.

11 Q. Okay. What makes you think -- what made
12 you think at this point even that James Trexler or
13 that the horses were on James Trexler's property?

14 A. I witnessed the horses on his property.

15 Q. Okay.

16 A. I touched them.

17 Q. What information did you have?

18 MR. GARFIELD: Hold on. I'm sorry,
19 Brook. Were you through with your answer?

20 THE WITNESS: Yes.

21 MR. GARFIELD: Okay. I'm sorry.

22 BY MR. WILLS:

23 Q. Okay. What information did you have that
24 that property belonged to James Trexler?

25 A. I can't tell you the information I had

GARBER REPORTING SERVICE



EXHIBIT

B

1 A. Okay.

2 MR. GARFIELD: Well, object to the
3 characterization and the foundation. Go
4 ahead. Sorry.

5 Q. Between -- to your knowledge, between February 26th
6 during the execution of the Search Warrant and the
7 time period that James Trexler -- at the time that
8 James Trexler was arrested on the next day, no
9 investigation to your knowledge was done into whether
10 James Trexler owned the horses or James Trexler lived
11 at the property; is that fair to say?

12 A. I don't know what investigation was done by the Humane
13 Society, no.

14 Q. Okay. But to your knowledge, you don't know of any
15 that was done?

16 A. No.

17 Q. Okay. To your knowledge, during the February 26th
18 Search Warrant execution, did anyone try to contact
19 James Trexler?

20 A. I don't know. I don't recall.

21 Q. You didn't try to contact James Trexler on the 26th of
22 February?

23 A. No, I -- no, I did not.

24 Q. Nobody told you, did they that they had tried to
25 contact him?

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PLAINTIFF'S
EXHIBIT

B

EXHIBIT

C

1 James Trexler did commit the crime of ill treatment of
2 animals in that he is the owner of a two year old Bay
3 female with a body score of 1.5." Now, the question
4 is, at this point in time, did you know that James
5 Trexler was the owner of any of these horses?

6 A. No.

7 Q. Okay. To your knowledge, did Elizabeth Perry know for
8 sure that James Trexler was the owner of these horses?

9 MR. GARFIELD: Object to the form.

10 A. I don't know. No.

11 Q. Did Elizabeth Perry ever call you or communicate to
12 you in any way that she had evidence that James
13 Trexler owned the horses that were confiscated at 412
14 Derby Lane?

15 A. No.

16 Q. So, if James Trexler did not own these horses and this
17 was not true, that this Affidavit says that he was the
18 owner, and Elizabeth Perry did not know he was the
19 owner but represented that he was the owner, would
20 that be improper in order to obtain a Search Warrant?

21 A. Well, I mean, if she absolutely knew it was improper,
22 but it says that they have Probable Cause to believe.
23 You don't have to know a hundred percent, you just
24 believe that he is the owner of those animals.

25 Q. Okay.

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EXHIBIT

D

ELISABETH E. PERRY

1 BY MR. WILLS:

2 Q. Did you know he owned them or did you not
3 know?

4 A. If that is what I put, then that is the
5 truth.

6 Q. Okay. And my question then is how did you
7 know that he owned the horses?

8 MR. TYLER: Object to the form.

9 MR. GARFIELD: Same objection.

10 THE WITNESS: I can't tell you
11 specifically how I knew back in 2008 how I knew. I
12 don't --

13 BY MR. WILLS:

14 Q. Okay. But you don't recall doing any
15 investigation into who owned the horses yourself?

16 A. I don't remember.

17 Q. Okay. And you don't recall -- did you do
18 any record search on the property?

19 A. I don't have the -- we didn't have the
20 ability to do that.

21 Q. Okay. Did you do any record search on the
22 horses?

23 A. No.

24 Q. Okay. Did you talk to anybody about
25 whether -- who owned those horses?

GARBER REPORTING SERVICE



EXHIBIT

E

1 Q. Okay. Have you ever known a Judge to do any kind of
2 independent investigation into the facts that are
3 being told to him before issuing a Warrant?

4 A. Not to my knowledge.

5 Q. Okay. So, in other words, the Affiant or the Affiant
6 could say pretty much whatever they want under oath in
7 order to get a Warrant and a Judge will either believe
8 it or they don't; is that -- is that correct?

9 MR. GARFIELD: Object to the form.

10 A. I would guess that's true.

11 Q. Okay. If an Affiant goes before a Judge and swears to
12 facts that they know are false in order to obtain an
13 Arrest Warrant, would that be improper?

14 A. Yes.

15 Q. Okay. Would it be improper in your experience for an
16 Affiant to go before a Judge and swear as true facts
17 that they do not know are true? Would that be
18 improper?

19 A. Sure.

20 Q. Okay. If you could look at these Arrest Warrants then
21 made by Elizabeth Perry and just read what the
22 Affidavit portion that she -- that she has provided in
23 order to obtain these Search Warrants. "That on
24 February 26th, 2008, while at 412 Derby Lane in
25 Olympia Magisterial District of Richland County, one

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EXHIBIT

F

1 Q. Okay. Have you ever known a Judge to do any kind of
2 independent investigation into the facts that are
3 being told to him before issuing a Warrant?

4 A. Not to my knowledge.

5 Q. Okay. So, in other words, the Affiant or the Affiant
6 could say pretty much whatever they want under oath in
7 order to get a Warrant and a Judge will either believe
8 it or they don't; is that -- is that correct?

9 MR. GARFIELD: Object to the form.

10 A. I would guess that's true.

11 Q. Okay. If an Affiant goes before a Judge and swears to
12 facts that they know are false in order to obtain an
13 Arrest Warrant, would that be improper?

14 A. Yes.

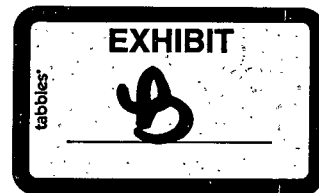
15 Q. Okay. Would it be improper in your experience for an
16 Affiant to go before a Judge and swear as true facts
17 that they do not know are true? Would that be
18 improper?

19 A. Sure.

20 Q. Okay. If you could look at these Arrest Warrants then
21 made by Elizabeth Perry and just read what the
22 Affidavit portion that she -- that she has provided in
23 order to obtain these Search Warrants. "That on
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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Civil Action No.: 2012-CP-40-4652

James W. Trexler,)

Plaintiff,)

vs.)

**MEMORANDUM OF LAW IN
SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

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.)

INTRODUCTION

Defendants The Humane Society for the Prevention of Cruelty to Animals and Wayne Brennessel submit this Memorandum of Law in support of their Motion for Summary Judgment in the above-captioned action.

FACTS

In February of 2008, the Humane Society for the Prevention of Cruelty to Animals (HSPCA) responded to a complaint that horses owned by Plaintiff's family and located on property on Zeigler Road in Richland County, South Carolina, may be being mistreated. The HSPCA investigated the complaint and ultimately determined that the horses were being mistreated. Following all appropriate procedures, and in cooperation with local authorities, the HSPCA effected the removal of the horses from the Zeigler Road property. Subsequent investigations revealed additional mistreated horses located at Misty Meadows Road in Richland County. Investigation also revealed approximately five mistreated horses on Plaintiff's property located at 412 Derby Lane in Richland County. As with the Ziegler

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Road property, the HSPCA, following all appropriate procedures, and in cooperation with local authorities, effected the removal of the mistreated horses from these locations. Finally, an investigation of property in Sumter County owned or occupied by the Plaintiff's family revealed several horse burial sites. Approximately 50 horses were seized from the three properties.

The Plaintiff, his brother Terry Trexler, and his mother Hazelene Trexler were subsequently charged with numerous criminal counts of animal cruelty. In March 2008, a Richland County Grand Jury issued a True Bill of Indictment for five separate counts of animal cruelty (see Exhibit 1). Ultimately, the Attorney General of South Carolina consummated a deal with the Plaintiff, his mother, and brother, where Terry Trexler pled no contest to ill treatment of animals, all three relinquished all ownership interest in the horses that were seized, and the criminal actions against Plaintiff and Plaintiff's mother were nol prossed.

During the pendency of the criminal charges, Terry Trexler and Hazelene Trexler brought four civil lawsuits against the HSPCA, the Richland County Sheriff's Department, Solicitor Barney Giese, and other entities. They made claims for malicious prosecution, defamation, civil conspiracy, and other claims. They filed an action in Calhoun County, civil action no. 2009-CP-09-16. They filed suit in the United States District Court, District of South Carolina, Case no. 0:09-0144-RBH-PJG. They also filed two State actions in Richland County: case no. 2009-CP-40-419 and case no. 2009-CP-40-420. Terry Trexler and Hazelene Trexler dismissed these cases via stipulations of dismissal which were filed in all of the respective courts.

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Much like his mother and brother, Plaintiff James Trexler has filed multiple actions in Richland County with allegations of defamation and malicious prosecution against many different defendants. In the action at hand, Plaintiff brings one claim for malicious prosecution related to the criminal charges referenced above and one claim for defamation related to a WLTX website article posted on February 1, 2011 (attached as Exhibit 2).

As mentioned *supra*, a Richland County Grand Jury issued True Bills indicting Plaintiff James Trexler for five counts of cruelty to animals. In addition to on-site inspections of multiple properties revealing malnourished horses and dogs on property owned by the Plaintiff, the HSPCA searched horse ownership records and property ownership records linking Plaintiff James Trexler to some of the horses in question and to the property where some of those horses were stabled. In his deposition, the Plaintiff admitted that he had owned the 412 Derby Lane property and that he was still paying for the utilities and taxes at the time of the underlying events.

Subsequent to the indictments, the investigation continued which included forensic examination of multiple dead horses (see page HSPCA0008 of the HSPCA's case notes attached as Exhibit 3). Subsequent investigation also revealed a witness, Connie Dickman, informing the HSPCA that she sold a horse to James Trexler (see page HSPCA0008 of Exhibit 3). While James Trexler denies that he owned any of the subject horses, the investigation established sufficient evidence for the appropriate authority to prosecute Terry Trexler, Hazelene Trexler, and Plaintiff James Trexler.

On or about July 15, 2010, Terry Trexler, as mentioned above, pled no contest to charges of animal cruelty and all ownership rights of the Trexler family to the subject horses were relinquished. During the pending criminal charges, the HSPCA spent over \$200,000

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to care for the 50 horses that were seized. They took malnourished, sick animals and nourished them back to health through providing proper feed, pasture, stable, and veterinary care. As soon as the Trexler family relinquished their ownership right to the horses, the HSPCA began to offer the horses for adoption. In an effort to promote the adoption of these horses, WLTX published an article on February 1, 2011 entitled "Neglected Horses Still up for Adoption" (see Exhibit 2). This article is the complete basis for the Plaintiff's defamation claim. It states, as follows:

Some horses seized three years ago still need permanent homes. In 2008, the Humane Society began taking horses from Richland County properties owned by the Trexler family, saying the animals were neglected and malnourished. In court, the Trexlers pleaded no contest and gave up rights to the horses, Humane Society director Wayne Brennessel said... "When they were removed, they were in really terrible shape – halters were grown into their skin, their hooves were splayed," Brennessel said.

(Exhibit 2).

The article does not mention James Trexler. Consistent with the article, the horses in question were owned by the Trexler family. The HSPCA has produced documentation, veterinary records, and photographs that show the terrible shape in which the horses were found. Rather than publishing that Terry Trexler pleaded no contest, WLTX published that "the Trexlers pleaded no contest and gave up rights to the horses." However, the article still does not mention Plaintiff's name and contains substantially true comments about events that transpired several years ago..

In a case that Plaintiff has brought against several press agencies, Civil Action No.: 2010-CP-40-1249, this Court granted summary judgment in favor of the Defendants. Similar to this case, the other case contained allegations of libel, slander, and/or defamation

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against the news agencies for their reporting regarding the mistreatment of horses and the ensuing criminal proceedings against James Trexler. Prior to the underlying circumstances giving rise to this action, Plaintiff served as the state's Assistant Commissioner of Agriculture. Though he contended in the other case that he was a private figure, this Court by Order dated October 25, 2012, held as follows:

It seems clear beyond doubt that plaintiff is a public official in the context of this litigation. He acknowledged in his letter of resignation... that he was an Assistant Commissioner of Agriculture, and that he helped to lead the agency. Plaintiff testified in his deposition, and the Commissioner of Agriculture testified in his deposition, that plaintiff was the department's liaison with the General Assembly, the State Budget and Control Board and the Board of Trustees of the University of South Carolina as project manager for the relocation of the State Farmer's Market... Had plaintiff's title been "head bookkeeper" or something similarly limited, he might be considered a private figure for *some cases*, ***but in the context of publications concerning his arrest and indictment for mistreatment of horses, public interest in his activity in this particular context, apart from his title, makes him a public official.***

(See pp. 13-14 of Order of Judge Joseph M. Strickland, attached as Exhibit 4).

LEGAL STANDARD

Under Rule 56 of the South Carolina Rules of Civil Procedure, summary judgment is mandated 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" Rule 56(c), SCRPC. Our Supreme Court, citing the U.S. Supreme Court, has held that summary judgment against a defendant is mandated for any cause of action for which the plaintiff, after adequate time for discovery, fails to establish—with evidence—every essential element of the cause of action. Baughman v.

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American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). Baughman stated as follows:

[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she had the burden of proof.

Baughman, 306 S.C. at 116, 410 S.E.2d at 545-46 (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 2552 (1986)) (emphasis added). The moving defendant may meet its obligation of demonstrating the absence of a genuine issue of material fact by "showing – that is pointing out to the trial court – that there is an absence of evidence to support" the plaintiff's claims. Baughman, 306 S.C. at 115, 410 S.E. 2d at 545 (quoting Celotex, 477 U.S. at 325, 106 S. Ct. at 2554). A plaintiff may not rely on the allegations of her pleadings to overcome a motion for summary judgment. Rule 56(e), SCRPC.

Legal Argument

Plaintiff brought this action claiming malicious prosecution by the HSPCA and defamation by Defendant Brennessel. Based on the facts established above and the legal analysis provided below, there exists no genuine issue as to any material fact, so the Defendants are entitled to a judgment as a matter of law.

I. Plaintiff's claim for malicious prosecution fails because Probable Cause existed as a matter of law.

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 damage." Law v. S. Carolina Dept. of Corrections, 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006).

The Supreme Court of South Carolina has defined probable cause as "the extent of such facts and circumstances as would excite the belief in a reasonable mind acting on the facts within the knowledge of the prosecutor that the person charged was guilty of a crime for which he has been charged, and only those facts and circumstances which were or should have been known to the prosecutor at the time he instituted the prosecution should be considered." Parrott v. Plowden Motor Co., 246 S.C. 318, 322, 143 S.E.2d 607, 609 (1965). In other words, would an ordinary person, with the information available and obtained through investigation, at the time the defendant was indicted, believe that the defendant was guilty of the crime charged? In this case, the Grand Jury said "yes."

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 believed them to be." Eaves v. Broad River Elec. Co-op., Inc., 277 S.C. 475, 478, 289 S.E.2d 414, 416 (1982). When the evidence yields but one

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conclusion, a court may decide that probable cause exists as a matter of law. Parrott at 323, 143 S.E.2d at 609.

It is well established law in South Carolina that a true bill of indictment is “prima facie evidence of probable cause in an action for malicious prosecution.” 368 S.C. at 437–38, 629 S.E.2d at 649–50. In the Law case, the Supreme Court of South Carolina found probable cause existed as a matter of law and affirmed Summary Judgment for the defendant in a malicious prosecution action. In that case, the plaintiff was indicted by a Grand Jury and underlying facts supported probable cause to pursue criminal charges. Id. at 437, 629 S.E.2d at 649. The court held that a true bill of indictment was “prima facie evidence of probable cause in an action for malicious prosecution.” Id. at 436, 629 S.E.2d at 649 (citing Kinton v. Mobile Home Indus., Inc., 274 S.C. 179, 182, 262 S.E.2d 727, 728 (1980)). Because the plaintiff did not refute the presumption of probable cause and facts objectively supported such a finding, probable cause existed as a matter of law. Id. at 437, 629 S.E.2d 649.

In this action for malicious prosecution, the plaintiff has failed to refute and cannot refute the presumption of probable cause. Much like the plaintiff in Law, the Grand Jury indicted Plaintiff under a true bill of indictment and supported probable cause with underlying facts (see Exhibit 1). Plaintiff owned the 412 Derby Lane property at the time that horses were stabled there. Though he claims to have transferred his interest in the property to his mother and to his brother’s business just prior to his divorce and just prior the removal of mistreated horses, the fact that he owned the property where five of the subject horses were stabled would *excite the belief in a reasonable mind* acting on the facts within the knowledge of the prosecutor that Plaintiff James Trexler was guilty of the

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crime of mistreatment of animals. When the Grand Jury considered the facts available, they issued the indictment.

In addition to owning the property in question, the following facts support the prosecution of James Trexler:

1. Plaintiff admits to living at 412 Derby Lane, the property in question, the months before and the months after the two-month period in question. He claims he did not live at 412 Derby Lane when he was investigated, arrested on Feb. 27, 2008, and charged with five counts of misdemeanor mistreatment of animals. (Depo. of J. Trexler pp. 6-8).
2. Plaintiff admits he paid utilities and taxes on the property after he allegedly transferred title to the property to his mother and his family's company and after he moved out. He even continued to visit the premises. (Id. at 12-16). Neither his mother, nor Carolina Arabian paid for the property he transferred. (Id. at 29-30) He took his son there every other weekend—two times in Jan. and two times in Feb. (Id. at 13-14, 35-36).
3. Around Spring of '07, plaintiff was listed on a Coggins test report for a horse named Nova which was kept at Derby Lane (Id. at 22, 27-29). He claims the horse belonged to his mother (Id. at 17).
4. Plaintiff moved back onto the property for a short period after being charged in March – April, 2008. (Id. at 6)
5. Horses were present on the property when he lived there, before he transferred ownership of the property to his mother's company in 2006 and after the transfer. (Id. at 17).
6. Plaintiff admits that HSPCA received a report of malnourished horses and that it was appropriate for them to investigate. (Id. at 70).
7. Plaintiff acknowledges that his pickup truck was at the Zeigler Rd. property when his brother used the truck to block in Ms. Hart, the HSPCA investigator. (74-78).
8. Plaintiff admits that he thinks there was mass confusion at the Ziegler Rd. property scene where his brother claimed to be him. (77-79).
9. James Trexler acknowledged owning the pit bulls that were kept at the house at Derby Lane when the warrant was issued (Id. at 95-96).

*Memorandum of Law in Support of Defendants'
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10. Plaintiff's mother purchased a horse called Pros Cognac and registered it to James Trey Trexler. When shown an email to Connie James from his account, James Trexler claimed he did not send it and said someone was evidently pretending to be him (Id. at 125). He claimed the same with regard to other emails from his account. (1. Id. at 26-128). An email on Feb 7th from his account also listed his phone number as the appropriate contact. (Id. at 128).
11. In regard to James Trey Trexler's Horse, signature on the bill of sale was "James Trey Trexler" and appeared to be an adult's signature (Id. at 130).

In opposition to the above established facts, Plaintiff argues that HSPCA employee Elizabeth Perry's claim that there was stored horse feed at the property contradicts the comment of HSPCA employee Kelly Graham who stated that the outcome of the case may have been different if the HSPCA would have found any evidence that the Trexlers were feeding the animals. (Plaintiff's Compl. ¶¶ 33-34.) However, the presence of stored feed in a locked garage is not conclusive evidence that the horses were being fed. The horses appeared malnourished, were examined, and were determined to be malnourished. Furthermore, Plaintiff denies that he owned or cared for the horses and admits that he saw the horses only when they arrived and knew nothing of whether they were being fed. (Trexler Deposition at 27:3-10; 35:4-6.)

In this case, the HSPCA's role was to investigate reports of animal cruelty and to convey the information obtained to the sheriff's department in the form of sworn affidavits. The facts obtained through their investigation combined with the Grand Jury's true bill of indictment leave no doubt that probable cause existed to prosecute Plaintiff as a matter of law, and Defendant HSPCA is entitled to summary judgment.

II. Plaintiff's Claim for Defamation fails because Plaintiff is a Public Figure and Mr. Brennessel Was Not Negligent When He Spoke to WLTX in a Privileged Communication.

In an action for defamation, the burden is on the plaintiff to prove : "(1) a false and defamatory statement concerning another; (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." Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 517, S.E.2d 497, 506 (1998) (citing Restatement (Second) of Torts § 558 (1977)). If a plaintiff fails to establish any element, the claim must fail. See, e.g., Williams v. Lancaster County Sch. Dist., 369 S.C. 293, 304, 631 S.E.2d 286, 292-93 (Ct. App. 2006) (failure to show that defamatory statement was published to a third party was fatal to defamation claim).

A. This Court has held Plaintiff to be a public official, and therefore Plaintiff's claim must fail as a matter of law.

The Supreme Court of the United States has held that 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). This Court has held Plaintiff to be a public official in a previous action arising out of the same facts and circumstances. (See Exhibit 3).

In this case, the same public figure issue is decided under the doctrine of collateral estoppel. "[C]ollateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." Kunst v. Loree, 404 S.C. 649, 746 S.E.2d 360, 362 (Ct.App.2013) *citing* Carolina Renewal, Inc. v. S.C. Dep't

Memorandum of Law in Support of Defendants'
Motion for Summary Judgment
Civil Action No.: 2012-CP-40-4652

of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct.App.2009). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id.* Further, mutuality of parties is not necessary when "the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues." *Kunst* at 649, 746 S.E.2d at 362, *citing Snavely v. AMISUB of S.C., Inc.*, 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct.App.2008).

The public figure issue was actually litigated in the other action because the Order granted summary judgment after ample time for discovery and included analysis of multiple deposition transcripts and evidence established through discovery. (See Exhibit 4, page 13-14). It was directly determined and articulated in the Court's analysis (p. 13 "clear beyond doubt") and in the Court's Conclusion (p. 15 "Plaintiff was a public official for purposes of this action"). Furthermore, it was necessary to support the Court's judgment found in the conclusion (p. 15 "Plaintiff was a public official for purposes of this action").

Counsel for Plaintiff may argue that the prior Order of this Court has been appealed and therefore is somehow not applicable to this case. However, the Order is in effect in this case until the appellate court reverses the judgment. *See Shaw Components Inc. v. National Bank of South Carolina*, 304 S.C. 114, 403 S.E.2d 153 (1991).

Therefore, the Plaintiff has the burden to prove that the alleged false and defamatory statement was made with knowledge that it was false or a reckless disregard for the truth. As argued *infra*, the article published by WLTX was substantially true. James Trexler's name does not appear in the publication. A simple misstatement does

*Memorandum of Law in Support of Defendants'
Motion for Summary Judgment
Civil Action No.: 2012-CP-40-4652*

not even amount to negligence, let alone the heightened standard of reckless disregard for the truth.

Therefore, Plaintiff's claim for defamation must fail as a matter of law.

B. Plaintiff's claim for defamation must fail as a matter of law because Mr. Brennessel's statement was true and/or substantially true.

Even if the heightened standard applicable to public figures does not apply in this case, the Plaintiff's claim for defamation fails because Defendant Brennessel's statement was true or substantially true.

If an alleged defamatory statement is true, then the claim must fail. Ross v. Columbia Newspapers, Inc., 266 S.C. 75, 79, 221 S.E.2d 770, 772 (1976). However, the Supreme Court of South Carolina has also held that a sufficient defense is made out where the statement is substantially true. Id. (citing Dauterman v. State-Record Co., 249 S.C. 512, 514, 154 S.E.2d 919, 919 (1967)). In that case, a plaintiff sued a newspaper for falsely reporting that he was charged with assault and battery with intent to kill when, in fact, no formal charges had been brought against him. Id. at 80, 221 S.E.2d at 772-73. However, plaintiff had been arrested and detained in connection with the shooting of his wife. Id. The South Carolina Supreme Court held that the newspaper's statement was substantially true and requiring a strict adherence to legal terminology was unreasonable. Id. at 80, 221 S.E.2d at 773.

Like the plaintiff in Ross, The Plaintiff in this action claims he was defamed by words allegedly spoken by Defendant Brennessel and published by WLTX. Specifically, Plaintiff cites the following statement in a WLTX online publication as defamatory: "the Trexlers pleaded no contest and gave up rights to the horses, Humane Society director Wayne Brennessel said." (Compl. ¶¶ 51-57.) Unlike Ross, where the plaintiff made his

*Memorandum of Law in Support of Defendants'
Motion for Summary Judgment
Civil Action No.: 2012-CP-40-4652*

claim against a newspaper, the Plaintiff here claims he was defamed by a statement attributed to Mr. Brennessel that was published by WLTX. Though his first name is not mentioned and though he emphatically denies owning any of the horses which were seized, Plaintiff still contends that the statement refers to him when it says "the Trexlers."

Mr. Brennessel is not an attorney. Mr. Brennessel is not the publisher, author, or editor of the article in question. In essence, Plaintiff wants Mr. Brennessel to strictly adhere to a legal terminology standard that the South Carolina Supreme Court does not require of Brennessel. It is not contested that Plaintiff's own brother, Terry A. Trexler pleaded no contest to multiple counts of animal cruelty and the Trexler Family gave up their rights to the horses. Because the statement claiming that "the Trexlers" pleaded no contest and gave up rights to horses is substantially true, the Plaintiff's claim for defamation must fail.

C. Plaintiff's claim for defamation must fail as a matter of law because the statement by Mr. Brennessel was privileged.

The South Carolina Supreme Court has held that one who publishes a defamatory statement about another is not liable for defamation if "(1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused. Swinton Creek Nursery v. Edisto Farm Credit, ACA, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). The court has held that the existence of the privilege depends upon the occasion and the relationship of the parties:

When one has an interest in the subject matter of a communication, and the person (or persons) to whom it is made has a corresponding interest, every communication honestly made, in order to protect such common interest, is privileged by reason of the occasion. The statement, however, must be such as the occasion warrants, and must be made in good faith to protect the interests of the one who makes it and the persons to whom it is addressed.

Id. (citing Bell v. Bank of Abbeville, 208 S.C. 490, 493–94, 38 S.E.2d 641, 643 (1946)).

The question of whether an occasion gives rise to a qualified or conditional privilege is one of law for the court. Id. at 484-85, 514 S.E.2d at 134.

Here, the occasion warranted the privilege because WLTX was interviewing the director of the HSPCA, an organization responsible for preventing cruelty to animals. WLTX's intent was to glean the status of neglected horses in need of adoption, a topic of undoubted interest to many of its readers. Additionally, Mr. Brennessel's statements were made in a good faith effort to educate the public about the hardships the horses had endured, the justice delivered to the responsible parties, and their current and future prospects for adoption. Therefore, because Mr. Brennessel's statement to the media was privileged, Plaintiff's claim for defamation fails as a matter of law.

D. Mr. Brennessel's statement was not made negligently, and therefore Plaintiff's claim fails as a matter of law.

The Supreme Court of South Carolina specifically addressed the question of proof required for a private figure to recover for defamation and held that a defamatory statement must be made at least negligently. Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 510, S.E.2d 497, 501 (1998). In this case, there is every indication that Mr. Brennessel was referring to Hazelene and Terry Trexler when he stated that the Trexlers pleaded no contest and gave up rights to the horses. James Trexler is not even mentioned. Furthermore, the quote cited by WLTX was not a direct quote.

Multiple cases have been pending for more than three years, the alleged defamatory statement occurred two-and-a-half years ago, this action has been pending for 14 months, and multiple attorneys represent the Plaintiff. Despite ample time and

Memorandum of Law in Support of Defendants'
Motion for Summary Judgment
Civil Action No.: 2012-CP-40-4652

opportunity to establish a case against the HSPCA, Plaintiff's best evidence of a negligent statement is that an article—which does not mention the Plaintiff; which attributes to Mr. Brennessel a quote for which there is no evidence of his direct authorship; which relates to horses that Plaintiff denies ever owning—is somehow defamatory and damaging to the Plaintiff.

Therefore, the claim against Defendant Brennessel fails as a matter of law.

III. The Solicitation of Charitable Funds Act (the "ACT") Requires the Court to Dismiss Wayne 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 (2012). A "charitable organization" is defined in § 33-56-170 as a society "which is exempt from taxation pursuant to 26 U.S.C.A. § 501(c)(3) (2010). The HSPCA is a 501(c)(3) organization and enjoys the benefits of the Internal Revenue Code's tax exempt status, which is reserved for charitable organizations. Because Plaintiff can state no specific set of facts to support a charge that Mr. Brennessel's statement was made recklessly, willfully, or with gross negligence, Mr. Brennessel should be dismissed from this action.

CONCLUSION

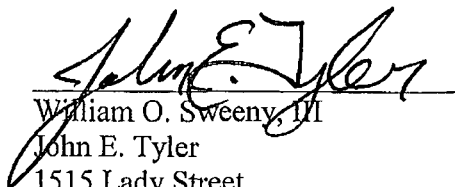
Because the Plaintiff has failed to establish at least one essential element each for malicious prosecution and defamation, summary judgment should be granted in favor of the Defendants as to all causes of action.

(Signature on following page)

*Memorandum of Law in Support of Defendants'
Motion for Summary Judgment
Civil Action No.: 2012-CP-40-4652*

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.


William O. Sweeney, III
John E. Tyler
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803)256-2233

Attorneys for Defendants

Columbia, South Carolina

September 5, 2013

1-891851

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE

against

James W Trexler

Address: 412 Derby Lane

Hopkins, SC 29061

Phone: SSN:

Sex: M Race: W Height: 5 11 Weight: 130

DL State: SC DL #: 008028522

DOB: 1/14/1960 Agency ORI #:

Prosecuting Agency: Hspca/ The Humane Society

Prosecuting Officer: Elisabeth Perry - 122

Offense: Animals / III treatment of animals, in general, overworking - 1st offense (Tried)

Offense Code: 0610

Code/Ordinance Sec: 47-01-0040(A)

This warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant: JAMES W Trexler

on: 02/27/08

Signature of [Name]

RETURN WARRANT TO:

Olympia Magistrate

1601 Ship Road

Columbia, SC 29201

ORIGINAL

ORIGINAL

☒ County/ ☐ Municipality of

AFFIDAVIT

Richland / Olympia Magistrate

Personally appeared before me the affiant Elisabeth Perry

being duly sworn deposes and says that defendant James W Trexler

did within this county and state on or about 02/26/2008

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

in the following particulars:

DESCRIPTION OF OFFENSE Animals / III treatment of animals, in general, overworking - 1st offense (Tried)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on 02/26/2008 while at 412 Derby Lane in the Olympia Magisterial District of Richland County, one James Trexler did commit the crime of III/Treatment of Animals in that he is the owner of a 20 year old Gray Stallion with a body score of 3.5 (231). He knowingly and intentionally deprived the animal of necessary quantities of wholesome feedstuff suitable for the species and age, at suitable intervals and sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight. There was no feed or hay on the property. The animal was separately confined in a barn with 3 other horses, standing in 4 or more inches of feces, urine, and mud. The water bucket was filled with feces and other organic debris. One horse was also found wandering the muddy, wet property. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

Affiant's Address 121 Humane Ln

Columbia, SC 29209

Affiant's Telephone (783)126-7 x

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds

on or about 2/26/2008 defendant James W Trexler

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Olympia Magistrate) as set forth below:

DESCRIPTION OF OFFENSE: Animals / III treatment of animals, in general, overworking - 1st offense (Tried)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his arrest, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 02/27/2008

Signature of [Name]

(L.S.)

Harold A. Cull

Judge Code: 5906

Judge's Address 1601 - B Ship Road

Columbia, SC 29201-4847

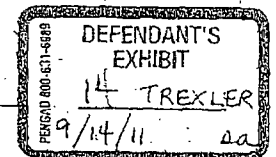
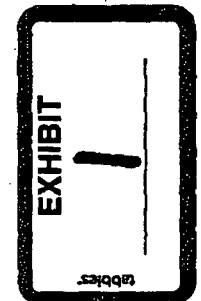
Judge's Telephone (803)576-2550

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL



8441-A-0204

WITNESSES

(S) Investigator Holly Wagner, RCSD

ARREST WARRANT NUMBER

DP08060

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAR 13 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-40-02283

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2008

101

THE STATE
vs.

James W. Trexler

Indictment for
ILL TREATMENT OF ANIMALS

SC Code: 47-01-40(B)
CDR Code: 2804
Class F/F

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

B441-A-0260

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 12, 2008, the Grand Jurors of Richland County present upon their oath:

ILL TREATMENT OF ANIMALS

That James W. Trexler did in Richland County, on or about February 26, 2008, inflict excessive or repeated unnecessary pain or suffering upon a 20 year old Gray Stallion, or by omission or commission caused this to be done, all in violation of SC Code of Laws § 47-1-40.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



WARREN B. GIESE, SOLICITOR

1-891850

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE

Magistrate

James W Trexler

Address: 412 Derby Lane

Hopkins, SC 29061-

Phone: SSN:

Sex: M Race: W Height: 5 11 Weight: 130

DL State: SC DL #: 008028522

DOB: 1/14/1960 Agency ORI #:

Prosecuting Agency: Mspca / The Humane Society

Prosecuting Officer: Elisabeth Perry - 122

Offense: Animals / Ill treatment of animals, in general,

overworking - 1st offense (Tried)

Offense Code: 0610

Code/Ordinance Stat: 47-01-0040(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me by the

dealt with according to the law

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant James W Trexler

on 2-27-08

Signature of James W Trexler

RETURN WARRANT TO:

Olympia Magistrate

1601 Shop Road

Columbia, SC 29201

ORIGINAL ORIGINAL

☒ County/ ☐ Municipality of)

AFFIDAVIT

Richland / Olympia Magistrate

Personally appeared before me the affiant Elisabeth Perry

being duly sworn deposes and says that defendant James W Trexler

did within this county and state on or about 02/26/2008 violate the criminal laws of the

State of South Carolina for ordinance of ☒ County/ ☐ Municipality of Richland / Olympia Magistrate

in the following particulars:

DESCRIPTION OF OFFENSE Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on 02/26/2008 while at 412 Derby Lane in the Olympia Magisterial District of Richland County, one James Trexler did commit the crime of Ill /Treatment of Animals in that he is the owner of a 7 year old Black Stallion with a body score of 4 (532). He knowingly and intentionally deprived the animal of necessary quantities of wholesome foodstuff suitable for the species and age, at suitable intervals and sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight. There was no feed or hay found on the property. The animal was found wandering around on the muddy, wet property. Four other horses were confined separately inside a barn standing in 4 or more inches of feces, urine and mud. Their water buckets were filled with feces and other organic debris. Affiant and others are witness to prove same.

Signature of Affiant Elisabeth Perry

STATE OF SOUTH CAROLINA

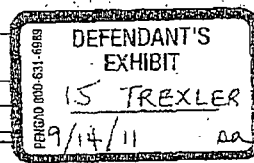
☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

Affiant's Address 121 Humane Ln

Columbia, SC 29209

Affiant's Telephone (783)126-7 X



ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/26/2008 defendant James W Trexler

did violate the criminal laws of the State of South Carolina for ordinance of

☒ County/ ☐ Municipality of Richland / Olympia Magistrate as set forth below:

DESCRIPTION OF OFFENSE: Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his arraignment, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 02/27/2008

Signature of Justice of the Peace

Harold A. Galt

Judge Code: 59061

Judge's Address 1601 - B Shop Road

Columbia, SC 29201-4847

Judge's Telephone (803)576-2550

Issuing Court: ☒ Magistrate ☐ Municipal ☐ County

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8441-A-0203

1-891849

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE
against

James W Trexler

Address: 412 Derby Lane
Hopkins, SC 29061

Phone: SSN:
Sex: M Race: W Height: 5 11 Weight: 130
DL State: SC DL #: 008028522
DOB: 1/14/1960 Agency ORI #
Prosecuting Agency: Hspca/ The Humane Society
Prosecuting Officer: Elisabeth Perry - 122
Offense: Animals / III treatment of animals, in general,
overworking - 1st offense (Tried)
Offense Code: 0610
Code/Ordinance Sec: 47-01-0040(A)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant James W Trexler
on 2-27-08

Signature of Judge

RETURN WARRANT TO:

Olympia Magistrate
1601 Shop Road
Columbia, SC 29201

ORIGINAL ORIGINAL

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

Personally appeared before me the affiant Elisabeth Perry
being duly sworn deposes and says that defendant James W Trexler
did within this county and state on or about 02/26/2008 violate the criminal laws of the
State of South Carolina for ordinance of ☒ County/ ☐ Municipality of Richland / Olympia Magistrate
in the following particulars:

DESCRIPTION OF OFFENSE Animals / III treatment of animals, in general, overworking - 1st offense (Tried)

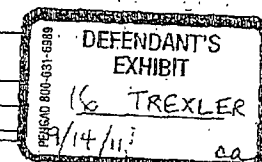
I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That on 02/26/2008 while at 412 Derby Lane in the Olympia Magisterial District of Richland County, one James Trexler did
commit the crime of III/Treatment of Animals in that he is the owner of a 15-20 year old Bay Stallion with a body score of 3 (333).
He knowingly and intentionally deprived the animal of necessary quantities of wholesome foodstuff suitable for the species and
age, at suitable intervals and sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight. There was
no feed or hay found on the property. The animal was separately confined in a barn with 3 other horses, standing in 4 or more
inches of feces, urine, and mud. The water bucket was filled with feces and other organic debris. One horse was also found
wandering the muddy, wet property. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Richland / Olympia Magistrate

Affiant's Address 121 Humane Ln
Columbia, SC 29209
Affiant's Telephone (783)126-7 x



ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/26/2008 defendant James W Trexler
did violate the criminal laws of the State of South Carolina for ordinance of
☒ County/ ☐ Municipality of Richland / Olympia Magistrate as set forth below.

DESCRIPTION OF OFFENSE: Animals / III treatment of animals, in general, overworking - 1st offense (Tried)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his apprehension, or as
soon thereafter as is practicable.
Sworn to and subscribed before me.

on 02/27/2008
Signature of Issuing Judge
Harold A. Cuff
Judge Code: 5906

Judge's Address 1601 - B Shop Road
Columbia, SC 29201-4847
Judge's Telephone (803)576-2550
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL

8441-A-0202

WITNESSES

(S) Investigator Holly Wagner, RCSD

ARREST WARRANT NUMBER

DP08062

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: MAR 12 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-40-02285

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2008

101

THE STATE

vs.

James W. Trexler

Indictment for

ILL TREATMENT OF ANIMALS

SC Code: 47-01-40(B)

CDR Code: 2804

Class F/F

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

8441-A-0264

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 12, 2008, the Grand Jurors
of Richland County present upon their oath:

ILL TREATMENT OF ANIMALS

That James W. Trexler did in Richland County, on or about February 26, 2008, inflict
excessive or repeated unnecessary pain or suffering upon a 15-20 year old Bay
Stallion, or by omission or commission caused this to be done, all in violation of SC
Code of Laws § 47-1-40.

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.



WARREN B. GIESE, SOLICITOR

1-891848

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

THE STATE

against

James W Trexler

Address: 412 Derby Lane

Hopkins, SC 29061

Phone: SSN:

Sex: M Race: W Height: 5 11 Weight: 130

DL State: SC DL #: 008028522

DOB: 1/14/1960 Agency ORI #:

Prosecuting Agency: Humane / The Humane Society

Prosecuting Officer: Elisabeth Perry - 122

Offense: Animals / Ill treatment of animals, in general,

overworking - 1st offense (Tried)

Offense Code: 0610

Crime/Ordinance Sym: 47-01-0040(A)

This warrant is CERTIFIED FOR SERVICE in this

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

RETURN

A copy of this arrest warrant was delivered to

defendant James W Trexler

on 2-27-08

RETURN WARRANT TO:

Olympia Magistrate

1601 Shop Road

Columbia, SC 29201

ORIGINAL

ORIGINAL

☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

Personally appeared before me, the affiant Elisabeth Perry

being duly sworn deposes and says that defendant James W Trexler

did within this county and state on or about 02/26/2008 violate the criminal laws of

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland / Olympia Magistrate

in the following particulars:

DESCRIPTION OF OFFENSE Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on 02/26/2008 while at 412 Derby Lane in the Olympia Magisterial District of Richland County, one James Trexler did commit the crime of Ill Treatment of Animals in that he is the owner of a 6 year old Bay Stallion with a body score of 4 (#341). He knowingly and intentionally deprived the animal of necessary quantities of wholesome foodstuff suitable for the species and age, at suitable intervals and sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight. There was no feed or hay found on the property. The animal was separately confined in a barn with 3 other horses, standing in 4 or more inches of feces, urine, and mud. The water bucket was filled with feces and other organic debris. One horse was also found wandering the muddy, wet property. Affiant and others are witness to prove same.

Signature of Affiant Elisabeth Perry

STATE OF SOUTH CAROLINA

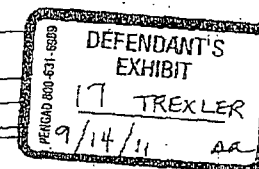
☒ County/ ☐ Municipality of

Affiant's Address 121 Humane Ln

Columbia, SC 29209

Affiant's Telephone (783)126-7 x

Richland / Olympia Magistrate



ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

If appearing from the above affidavit that there are reasonable grounds to believe the

on or about 2/26/2008 defendant James W Trexler

did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland / Olympia Magistrate) as set forth below:

DESCRIPTION OF OFFENSE: Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 02/27/2008

Signature of Judge (L.S.)

Harold A. Cluff

Judge Code: 5906

Judge's Address 1601 - B Shop Road

Columbia, SC 29201-4847

Judge's Telephone (803)576-2550

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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8441-A-0201

WITNESSES

✓ (S) Investigator Holly Wagner, RCSD

ARREST WARRANT NUMBER

DP08061

ACTION OF GRAND JURY

TRUE BILL

Penelope B. ...
Foreperson of Grand Jury

Date: MAR 13 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-40-02284.

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2008

101

THE STATE

vs.

James W. Trexler

Indictment for

ILL TREATMENT OF ANIMALS

SC Code: 47-01-40(B)

CDR Code: 2804

Class F/F

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

8441-A-0262

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

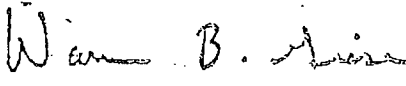
INDICTMENT

At a Court of General Sessions, convened on March 12, 2008, the Grand Jurors
of Richland County present upon their oath:

ILL TREATMENT OF ANIMALS

That James W. Trexler did in Richland County, on or about February 26, 2008, inflict
excessive or repeated unnecessary pain or suffering upon a 6 year old Bay Stallion, or
by omission or commission caused this to be done, all in violation of SC Code of Laws §
47-1-40.

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.


WARREN B. GIESE, SOLICITOR

1-891847
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Richland / Olympia Magistrate

THE STATE
against
James W Trexler
Address: 412 Derby Lane
Hopkins, SC 29061-

Phone: SSN:
Sex: M Race: W Height: 5 11 Weight: 130
OL State: SC OL #: 008028522
DOB: 1/14/1960 Agency ORI #:
Prosecuting Agency: HSPC/ The Humane Society
Prosecuting Officer: Elisabeth Perry - 122
Offense: Animals / Ill treatment of animals, in general,
overworking - 1st offense (Tried)
Offense Code: 0010
Code/Ordinance Sec: 47-11-0040(A)

This warrant is CERTIFIED FOR SERVICE in the:
☐ County/ ☐ Municipality of
is to be: arrested and brought before me to be
dealt with according to the law.

Date: _____

RETURN
A copy of this arrest warrant was delivered to
defendant: _____
on: 2-27-08

RETURN WARRANT TO:
Olympia Magistrate
1601 Ship Road
Columbia, SC 29201

ORIGINAL ORIGINAL

☒ County/ ☐ Municipality of
Richland / Olympia Magistrate
Personally appeared before me the affiant Elisabeth Perry
being duly sworn deposes and says that defendant James W Trexler
did within this county and state on or about 02/26/2008
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Richland / Olympia Magistrate
in the following particulars:

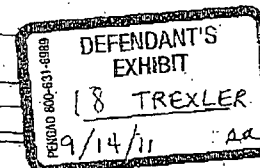
DESCRIPTION OF OFFENSE Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That on 02/26/2008 while at 412 Derby Lane in the Olympia Magisterial District of Richland County, one James Trexler did
commit the crime of Ill Treatment of Animals in that he is the owner of a 2 year old Bay Female with a body score of 1.5 (435). He
knowingly and intentionally deprived the animal of necessary quantities of wholesome foodstuff suitable for the species and age, at
suitable intervals and sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight. There was no feed
or hay found on the property. The animal was separately confined in a barn with 3 other horses, standing in 4 or more inches of
feces, urine, and mud. The water bucket was filled with feces and other organic debris. One horse was also found wandering the
muddy, wet property. Affiant and others are witness to prove same.

Signature of Affiant
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Richland / Olympia Magistrate

Affiant's Address 121 Humane Ln
Columbia, SC 29209
Affiant's Telephone (783)126-7 x



ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/26/2008 defendant James W Trexler
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Richland / Olympia Magistrate) as set forth below:

DESCRIPTION OF OFFENSE: Animals / Ill treatment of animals, in general, overworking - 1st offense (Tried)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his arraignment, or as
soon thereafter as is practicable
Sworn by and subscribed before me

on 02/27/2008
Signature of Judge
Harold A. Cull
Judge's Code: 5006

Judge's Address 1601 - B Ship Road
Columbia, SC 29201-4847
Judge's Telephone (803)576-2550
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL ORIG. L ORIGINAL ORIGINAL ORIGINAL ORIGINAL

8441-A-0200

WITNESSES

(S) Investigator Holly Wagner, RCSD

ARREST WARRANT NUMBER

DP08059

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: MAR 13 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-40-02282

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2008

101

THE STATE

vs.

James W. Trexler

Indictment for

ILL TREATMENT OF ANIMALS

SC Code: 47-01-40(B)

CDR Code: 2804

Class F/F

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

8441-A-0258

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 12, 2008, the Grand Jurors
of Richland County present upon their oath:

ILL TREATMENT OF ANIMALS

That James W. Trexler did in Richland County, on or about February 26, 2008, inflict
excessive or repeated unnecessary pain or suffering upon a 2 year old Bay filly, or by
omission or commission caused this to be done, all in violation of SC Code of Laws §
47-1-40.

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.



WARREN B. GIESE, SOLICITOR

neglected horses still up for adoption | wltx.com

Page 1 of 1

wltx

Neglected Horses Still up for Adoption

11:30 PM, Feb 1, 2011 | comments

Written by
Sydney Cummins

FILED UNDER

News

Columbia, SC (WLTx) -- Some horses seized three years ago still need permanent homes.

In 2008, the Humane Society began taking horses from Richland County properties owned by the Trexler family, saying the animals were neglected and malnourished. In court, the Trexlers pleaded no contest and gave up rights to the horses, Humane Society director Wayne Brennessel said.

"As big and as majestic and as strong as they are, if they're not cared for properly, their health deteriorates rapidly," Brennessel said.

Originally there were 45, but after some horses had babies, there were a total of 51. Today, 23 horses still need owners.

"When they were removed, they were in really terrible shape -- halters were grown into their skin, their hooves were splayed," Brennessel said.

By this summer, they were back in shape

with good nutrition and lots of care and the Humane Society paying their boarding costs.

"The horses that remain are still in great shape, tip-top health, but they've never had any socialization," Brennessel said. "They've always lived as a part of a herd and with that herd mentality, they need to be worked with and socialized."

It takes a special home to care for these horses, one that the Humane Society is hoping to find for all of them by the end of the year.

The Humane Society is accepting donations to help with the cost of caring for the horses. You can reach them at 121 Humane Lane, Columbia, SC 29209 or by phone at (803) 783-1267.

Advertisement



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<http://www.wltx.com/news/story.aspx?storyid=120632>

6/1/2012



Trexler Case File.5.09

Case #1000

Case Overview

Case Summary Trexler Case
 Contact Date 02-08-2008 Type General neglect
 Source Phone Alt Info
 Name
 Primary Phone
 Description [FEB-11-08 8:36 AM Elisabeth Perry] Neglected horses,
 ribs showing
 Priority Priority 2
 Print Cruelty Report...

Case Location

County Richland
 Address 1248 Zeigler
 City Eastover
 State SC Zip 29044
 Map Click for map...
 Other Locations?
 Address 2 412 Derby Lane Zip
 Address 3 207 Misty Meadows Zip
 Address 4 Zip

Resources

Resources consist of contacts and the /role/ that each contact plays in each case.

Add Resource

Contact Name	Type	Contact Phone	Contact Cell
Connie Dickman	Witness		(513) 646-7114
Jesse Harmon	Witness		
Johnny Harmon	Witness	(803) 353-0589	
Barbara Person	Witness	(800) 416-4364	
John Robinson	Witness	(800) 783-9418	
Michael Privett, DVM	Veterinarian	(803) 783-6999	(803) 730-2272
Mitch Lowrey, DVM	Veterinarian	(843) 442-3584	
James Trexler	Suspect		
Hazelene Trexler	Suspect		
Terry Trexler	Suspect		
Holly Wagner	Law Enforcement	(803) 576-3456	(803) 309-9358
Capt McKenzie	Law Enforcement	(843) 662-6245	(803) 609-3520
Jim Quinn	Landlord	(803) 606-0260	
John McDaniel	Landlord	(803) 600-4908	
ACO Thompson	Control Officer		(803) 518-6636
Molly Hutchinson	Complainant	(803) 269-2955	

Case Details & Investigator Notes

Case Rating Level 2 Status Closed
 Follow Up 08-15-2008
 Reason Pending Charges
 Notes 2/11/08 Called complainant for more information. She stated that she was driving around one day looking at properties for sale in the area. She stated that she saw the "for sale" sign and the gate was open so she went up to the house but could not find anybody around. She stated that she noticed the horses were underweight and called the HSPCA.

-- [FEB-12-08 5:10 PM Michele Hines] -----

Page 1

5+



HSPCA0005

Trexler Case File.5.09

Went to address but gate was locked. Posted notice to call. Horses could be seen in pasture but too far away to see body condition.

-- [FEB-12-08 5:26 PM Michele Hines] -----

Owner called and was very rude on the phone. He stated that I have no authority to inspect his horses and he will not allow access on his property.

Called Dr Privot and left message to call and he called back immediately. He stated that he would have Dr Stokes call back just as soon as she was free.

-- [FEB-18-08 2:32 PM Michele Hines] -----

2/12/08 Dr Stokes called and said that I could go on her property at any time. She told me how her property line was 72 beyond the fencing so I could walk the outside of the fence and still be on her property. She stated that I was also welcome to climb the fence to get into the pasture.

-- [FEB-18-08 2:57 PM Michele Hines] -----

2/13/08 Went to Dr Stokes and parked in front of the gate. the gate was unlocked and I was able to walk in but had to climb the fencing to get into the pasture. As I was walking across the pasture the owners saw me and started calling the horses in. I was only able to get 3 pictures before an older white female came over and started calling me a fucking whoring bitch. She demanded that I give her my camera as she continued to curse at me with the same wordage. A picture of the woman was taken as she continued to yell and curse. She did threaten to shoot me if I trespassed on her property which she said I was doing. I returned to my truck and the lady and a white male with light colored hair, blue eyes and a cyst on his cheek had blocked my truck in so that I could not leave. There was a very large ditch on both sides and there was no room to move my truck. I asked him to move his truck and he said no, that I wasn't going anywhere and that I should just try to get out.

The man came up to me continuously yelling and get within inches of me. His face was less than a foot away from mine as he continued to scream at me. I asked him to back up and he refused. The two continued to verbally assault me and I had to get in my truck to get away from them.

The guy continued to repeat that I wasn't going anywhere except to jail. That he was going to have a warrant signed against me for trespassing by the end of the day and that he had two witnesses that I was on his property. Before getting in my truck I tried to explain that I had permission to be on Dr Stokes property and he insisted that I was on his property. I tried to tell the female that I called the day prior but was refused entry and she called me a liar. But the male confirmed that he did talk with someone but it was not me. The Richland County Police arrived about 30 minutes later and spoke with the two first. They came up to about ten minutes later and I provided them with my call sheet, previous days notice and the phone number for Dr Stokes.

The officers returned to the other two and spoke with them for another 15-20 minutes. The officers came back and asked if I wanted a case number (#1144) and I said yes. They gave me a verbal warning not to trespass on their property and advised if I had to return that I bring a deputy.

2/18/08 Dr Stokes called and stated that she spoke with the property owner confirming that the property is being leased. She gave me his name and phone number. She stated that she counted approx 26 horses this morning and she stated that about 3/4 are in bad condition. She stated that several are high 1's or low 2's. She said that she took some pictures with her camera phone but was going to go out and try to get some better ones.

-- [FEB-23-08 9:26 AM Michele Hines] -----

2/19/08 Dr Stokes e-mailed pictures taken. Search Warrant signed by

Page 2.

6

HSPCA0006

Trexler Case File.5.09

Judge Valerie Stroman-Boyd.

-- [MAR-02-08 10:50 AM Michele Hines] -----

2/25/08 Execution of Search Warrant

Accompanied by

Richland Co Sheriff's Dept

Inv Wagner

Inv Spears

Inv Thompson

Dep Tena Goff

Dep Newman

Dep Wamsley

HSPCA

Josh Gowans

Inv Elisabeth Perry

Kelly Graham

Veterinarian

Dr Michael Privett

Other Volunteers

Mary Ellen Tobias

Jackie Sisson

Alicia Morgan

Lauren Kinard

Leon Jackson

At approximately 0930hrs the property was approached. The front gate was locked with a chain and padlock so bolt cutters were used to gain entry. No one was located on the premises. Twenty-three (23) horses were found contained in a fenced-in field behind the paddock containing the barn. The fencing was poorly constructed with posts and two strands of barbed wire. Many of the posts had exposed nails on the inside which is hazardous and could easily cause injury to a horse.

It was immediately noted that many of the horses were underweight with spine, ribs and hip bones visible. Many also had tight halters. Dr Privett drove into the paddock looking for a food and water source. No food was found in the paddock and the grass was eaten down to the roots.

The paddock had no trees or structures that would provide shelter for any of the horses. A small container, approx 15 gallons, was found but it was only half full. The surrounding grounds and structures (barn, shed and house) were searched but no food was found. Dr Privett stated that the horses were not in imminent danger of death but that they were underweight and/or in poor condition. Based on our findings the decision was made to seize the horses. The horses were then herded into the smaller paddock containing the barn. The horses gave little resistance entering the paddock and immediately started grazing the grass. The horses were then loaded into the trailers for transport.

While loading the horses Hazelene Trexler drove up in a dark blue pick-up truck. She began yelling and started making phone calls. At one point she spotted me, Inv Hart, and pointed her finger at me twice stating "I'm going to get you?". Inv Perry and Inv Wagner both witnessed this action. Inv Wagner advised Ms Trexler that she needed to stop making threats or she would be arrested. Ms Trexler was then escorted to another area of the property by two uniformed officers where she spoke with them and the media. A copy of the search warrant was given to Hazelene Trexler by the uniformed officers.

Once the horses were loaded they were transported to Dr Privett's farm for evaluation. Blood was drawn from each horse for a coggins and CBC testing. Each horse was paint-branded and photographed. See files for horse description and BSC.

Trexler Case File.5.09

Horses were boarded at Dr Privett's farm pending Show Cause hearing scheduled for 3/3/08 @ 1000 hrs.

-- [MAR-02-08 11:50 AM Michele Hines] -----

2/28/08 During further investigation it was found that Terry and Hazelene Trexler were wanted in Jefferson County Georgia for a combined 61 counts of animal cruelty. The Georgia Department of Agriculture and Jefferson Co Police were contacted to confirm the charges. Spoke with Judy Whetsell at the GA Dept of Agriculture. She stated that they originally recieved a call for a dead horse on the Trexler's Ga property. Once they arrived they found approximately 72 horses. She stated that they had two seizures and impounded a total of 29 horses and the remaining were placed under quarantine. She stated that 10 were sold without permission and the rest were removed from the property.

She stated that Ms Trexler said that she inherited the horses after her uncle died in Waycross GA.

I asked for a copy of their case and she stated that a written request would be needed for an open case record. She said to send the request to the GA Dept of Agriculture, 19 MLK Jr Dr, Agriculture Bldg Rm

133 Atlanta GA 30334. Case #FY08-0550

2/26/08 Arrest warrants signed for Terry and Hazelene Trexler. 23 counts each for ill-treatment of animals.

2/28/08 Sumter Co Police called reporting that several graves sites have been found on the property that the Trexler's recently owned on Brewington Rd. I responded to 920 Brewington Rd and met with Sgt Randy Wright. It was dark but he showed me a couple of grave sites with exposed bones. Arrangements were made to meet the next morning at 9am.

2/29/08 Called Randy Lockwood with the ASPCA in NY City about using their CSI team. He relayed the information to Dr Merck in Ga and she quickly contacted me. Due to the long drive, arrangements were made for her and her asst to deploy on 3/1/08.

3/1/08 Dr Merck arrived at approx 1000hrs and evaluated the scene. With Sgt Wright's assistance they mapped out the scene and excavation was started. Nine (9) grave site were located and excavated removing the deepest leg bone for bone marrow testing. One grave contained the remains of 3 horses. Insect and plant samples were also taken from some of the sites for testing.

During the excavation, Connie Dickman from Indiana arrived stating that she had sold James Trexler a horse approx 2.5 years ago. She stated that he bought the horse for \$10,000 but only paid her \$5,000. She stated that she has been trying to contact him for years without success. She stated that Terry Trexler is the one who accepted delivery of the horse. She described the horse to be a 20 yo grey stallion approx 14.3 hands high. She stated that when he was last seen he was starting to show flea-bitten markings and that he has a growth/lump/callous on his left hock. Ms Dickman provided paperwork including contract, registration papers and attempted coorespondence with the Trexler's. Ms Dickman stated that she can identify her horse and would like to take custody of him. Inv Perry made arrangements with Ms Dickman for identification.

3/1/08 With Dr Merck we arrived at 1248 Zeigler Rd at approx 1630 hrs. meeting with Dr Privett and Inv Perry. With the landlords permission we entered the property and found three grave sites. The horses buried still had intact flesh, skin and fur. From two of the sites, one leg was removed for testing and insect samples were taken. The doctors decided not to take samples from the third site because the foal was too young for testing.

-- [MAR-12-08 4:02 PM Michele Hines] -----

Dr Merck just called with 3 test results. She explained that the marrow test should be 60% or higher.

The test results are as followed.

Trexler Case File.5.09

Site 1 grave 1

.8%

Site 1 grave 6

31.4%

Site 1 grave 9

63.1%

So two out of the three were starved, the first one severely. She is still waiting for other reports and the plant and insect results to come in and will keep me posted.

Josh, Liz & Holly notified via e-mail. Mary Ellen Tobias, Dr Privett and Jill Andrews notified by phone.

[MAR-16-08 6:02 PM Michele Hines] 3/13/08 Recieved e-mail from Dr Merck with prelim report. Only change in report is that grave 1 was from site 2 (Zeigler Rd). Report was e-mailed to Josh, Holly, Liz, Mary Ellen and Dr Privett. Jill was called with the results.

[MAR-19-08 4:24 PM Michele Hines] Spoke with Dr Mitch Lowrey who owns Equine Medical Services in Bluffton SC, 843-442-3584. He stated that on 11/17/07 and 11/18/07 he traveled to Jefferson Co Ga to pull coggins tests on approx 42 horses belonging to the Trexler. He stated that he is licensed in both states and the Trexler told him that Hazelene Trexler was very ill and wasn't expected to live much longer and they were in a hurry to get the tests so they could sell the horses before she passed away. He stated that Hazelene wrote 2 checks on a closed account for just under \$1,500.00. She asked him to hold the checks for a week and he did. He attempted numerous times to contact them without success. He stated that on the first day it was just Hazelene, Terry and himself rounding up the horses. On the second day it was Hazelene, Terry, James and 2 hispanic males helping with the horses. He stated that the Hispanic males were very rough with the horses. He stated that one horse tried jumping the fencing and injured himself which he treated free of charge. He stated that he provided all the coggins tests to the GADA and that he would mail me a copy as well.

Spoke with Barbara Person at Markel Ins Co, 4600 Cox Rd, Glen Allen VA, 23058, 800-416-4364. She stated that the Trexler's did have insurance with their company about 6 years ago but a subpoena would be needed.

Jill Anderson was given the information.

Spoke with Jarvis Ins Co in Ohio, 440-248-5330. He stated that they did have a policy on ?Amore? back in 2001 but the records have been purged.

Spoke with Johnny (803-799-6001(w) or 803-353-0589(h) and Jesse Harmon (803-600-2016). Johnny stated that on 10/7/07 him and Jesse saw a large stock trailer at Bunky's that was overcrowded with horses. He stated that 3 of the horses were on the floor being stomped by the others and one was gasping for air. He told the Trexlers but they didn't seem to care so he called the Sheriff's Dept. He stated that James did move a couple of horses to the smaller trailer that they had with them. Before the police could arrive the Trexler's left so they followed them and called the police back. He stated that they followed them into Hunting Creek Subdivision. He stated that James got out of his truck and started beating on the Harmon's truck and Hazelene was calling 9-1-1 claiming that she was being raped. James claimed to be an attorney and a Richland Co officer and Hazelene claimed that she was Sheriff Lotts secretary. Once the police arrived Hazelene filed charges that they had fondled her. Both Harmon's said that they taped the incident and gave Officer Woods with the RCSD a copy. Johnny Harmon also stated that the next day he saw all three Trexler's on Misty Meadows with some horses.

Jesse Harmon stated that he would meet with me next week with a copy of the tape and pictures that he has of the incident. He works at Blanchard's, 711 Buckner Rd. in Columbia. Jesse also stated that an ACO with Richland Co issued the Trexler's a ticket.

Trexler Case File.5.09

[MAR-20-08 2:51 PM Michele Hines] Spoke with Capt McKenzie with SLED. He reported working a case where a horse named Autumn Blaze was purchased by Terry Trexler from CA in the fall of 2001. In May 2002 a \$70K mortality claim was filed with Markel. He is trying to obtain a copy of their case for Inv Wagner.

Spoke with John Robinson with National Equine Claims. He stated that James Trexler was paid for 4 claims filed bx 2003-2005. Subpeona is being sent for those records.

[MAR-20-08 3:43 PM Michele Hines] Spoke with RCACO Thompson who stated that he issued James Trexler a notice on Oct 7, 2007 during the horse trailer incident involving the Harmon's. He will be dropping off the report at the HSPCA.

[MAR-21-08 4:53 PM Michele Hines] Called Walterboro Auction and left a message to call.

[MAR-21-08 4:55 PM Michele Hines] E-mailed Charlotte (VA State Vet) asking that she search her database for the Trexler family.

Result	File charges	
Agency		
Warrant Date	04-01-2008	
Arrest Date		Bond Amount
Court Date	08-15-2008	Conviction
Charge		Sentence
Fines		

Seized Animals

Add Animal

Name	Type	Body Score	Microchip	Action	Contact - Name
01 SH Mhadiya	Horse	1	0006A9D299		
02 Elita MSC	Horse	3	0006AB2E02		
03	Horse	3	0006A9EEC2		
04	Horse	3	0006A9CF53	Foster	
05	Horse	4	0006A9C6AB		
06	Horse	3	480E6E410B		
07 RF Gllory Bey	Horse	3	0006AA06C1	Foster	
08 April Delight	Horse	4	0006A9DEF7		
09 DA Reflectinns	Horse	4	0006A9A169	Foster	
10 Blazing Passion V	Horse	3	0006ADD0C8	Foster	
11	Horse	4	480A3C2250		
12 Bonaparte's Fancy	Horse	4	480A08606A	Foster	
13	Horse	3	0006A9E2BD	Foster	
14	Horse	3	0006A9A907		
15 Summer's Charm	Horse	2	0006ADE05C		
16 Ju Beylee	Horse	3	00069CC971	Foster	
17 Khandi Berry Bey	Horse	3	0006ADA225		
18 OA Sweet Promise	Horse	3	0006ADBC47		
19	Horse	2	0006ADB08B	Foster	
20 Amoree Promotion	Horse	3	48120667		
21	Horse	3	0006ADC7A6	Foster	
22 Hucks Jubalee	Horse	3	00069CC606		
23	Horse	4	480A7F1411		
31 Amoree	Horse	3	0006A9B15D		
32	Horse	4	0006ABEA01	Foster	
33 Camelo V	Horse	3	0006ADAAA3		
34	Horse	4	480B0F1241		
35	Horse	1	0006ADCEA0		

10

Trexler Case File.5.09

41	Fiery Nova	Horse	3	0006A9F03C	Foster
42	RF Fancy Free	Horse	5	0006ADC203	
43	April's Royal Isis	Horse	3	0006ADAB27	
44	Mics Fantasia	Horse	3	0006A9ECA9	
45	Horse	3	0006ADF530	Foster	
46	Safanadd	Horse	2	0006ADD1FB	
47	Jabask Gdancer	Horse	2	480F0C193F	
48	Horse	3	0006AD91E1	Foster	
49	BA Passionette	Horse	3	0006ADD267	
50	Horse	3	0006ADCD32		
51	Horse	3	00069CC8B0		
52	Horse	3	0006ABCB75	Foster	
53	Zabaska	Horse	4	0006A9BFF9	
54	Horse	3	0006A9C28D	Foster	
55	Horse	3	0006ABC5CE	Foster	
56	Horse	3	006AA06DE	Foster	
57	Horse	4	0006AE0ABD	Foster	
Dog_01	(Riggins)	Dog			
Dog_02	Dog				
Dog_03	Dog			Foster	
Dog_04	Dog				
Dog_05	Dog				
Dog_06	(Lola)	Dog			
Dog_07	(Jazzy)	Dog			

Owner: Elisabeth Perry
Created: FEB-11-2008 8:36 AM (EST)
Last Modified: FEB-07-2009 5:12 PM (EST) by Kaney, Denise

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

James W. Trexler,

Civil Action No.: 2010-CP-40-1249

Plaintiff,

v.

ORDER GRANTING
SUMMARY JUDGMENT

The Associated Press, Barrington
Broadcasting South Carolina Corp.,
Raycom TV Broadcasting, Inc. The
Spartanburg Herald Journal, Inc. and the
Pacific & Southern Co., Inc.,

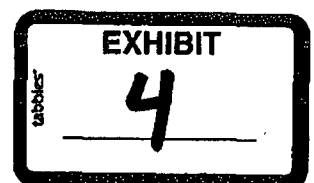
Defendants.

RICHLAND COUNTY
FILED
2012 OCT 30 PM 3:34
JEANETTE W. MCBRIDE
C.C.P. & G.S.

This matter came before the court on defendants' motion for summary judgment. A hearing on the motion was held in open court on January 19, 2012 with all parties appearing through counsel.

Plaintiff's Amended Complaint, filed June 23, 2010, initially included an additional defendant, the *Herald-Journal* newspaper of Spartanburg and, in addition to the defamation claim before the court, claims for civil conspiracy, outrage and negligence. Plaintiff voluntarily dismissed the suit against the newspaper and dismissed with prejudice all claims but the defamation claim prior to the hearing on defendants' motion for summary judgment.

Defendants advanced as grounds for summary judgment the bar of the statute of limitations, absence of falsity, and lack of proof of the requisite level of fault, either "actual malice" or common law malice. Defendants supported their motion with the pleadings, responses to interrogatories and requests for admission together with affidavits, certified copies of records and excerpts of



plaintiff's deposition. Plaintiff's counter-affidavits addressed only his status as a public official.

Rule 56(e), SCRCP requires a party responding to a properly supported motion for summary judgment to set forth by affidavit or otherwise "specific facts showing that there is a genuine issue for trial." A nonmoving party who bears the burden of proof on an issue, responding to a motion that points out that there is an absence of evidence to support the nonmoving party's action, "may not rest upon the mere allegations...of his pleadings." Rule 56(e), SRCP. As the Supreme Court of South Carolina held in *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991), the nonmoving party is charged with the responsibility of coming forward with specific facts demonstrating a genuine issue of fact for trial, saying:



Once moving party carries its initial burden, opposing party must, under Rule 5(e), "do more than simply show that there is some metaphysical doubt as to the material facts" but must come forward with "specific facts showing that there is a genuine issue for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538, 552 (1986) (emphasis in original).

Baughman, *supra*, 410 S.E.2d at 545.

A nonmoving party who fails to make a showing of facts sufficient to establish an essential element of that party's claim on which that nonmoving party bears the burden of proof cannot establish that a genuine issue of material fact exists, and the moving party is entitled to summary judgment as a matter of law. *Id.*

Plaintiff filed nothing with the court which identified specific facts in dispute relative to his libel claim, relying entirely on counsel's description of material not before the court to argue that questions of material fact existed.

STATUTE OF LIMITATIONS

Turning first to the statute of limitations issue, it is undisputed that the allegations challenged in this motion are contained in an Amended Complaint which together with an Amended Summons was filed on June 23, 2010.

Defendants take the position that the applicable two-year statute of limitations

bars plaintiff's claim with respect to all publications prior to June 22, 2008 because prior to the filing of the Amended Complaint no defendant identified in the Amended Complaint had been named in any action initiated by plaintiff. S.C. Code Ann. §15-3-550(1) (Rev. 2005). Two legal issues are presented by the statute of limitations defense: (1) when did plaintiff's libel claim accrue, and (2) did the allegations in the Amended Complaint "relate back" to an earlier filed Complaint?

3
First, a cause of action for libel accrues so as to commence the running of the statute with publication of the material upon which the claim is based. As the South Carolina Court of Appeals has held, a plaintiff's claim for defamation "accrues at the moment when the plaintiff has a legal right to sue on it. *Brown v. Finger*, 240 S.C. 102, 124 S.E.2d 781 (1962)." *Jones v. City of Folly Beach*, 326 S.C. 360, 483 S.E.2d 770, 774 (Ct. App. 1997). As the Court of Appeals explained in its holding in *Jones, supra*, a defamation claim accrues upon publication whether or not a plaintiff is aware of the publication "because South Carolina has not adopted the discovery rule in libel and slander cases." *Id.*, 775. In response

to defendants' interrogatory number 6, filed by defendants in support of their motion, plaintiff identified by date, publisher and headline publications contended to be defamatory occurring between February 26, 2008 and February 1, 2011. For all but three publications, plaintiff's claim for defamation accrued between February 26, 2008 and March 21, 2008. The Amended Summons and Amended Complaint were filed June 23, 2010. Application of the statute bars plaintiff's action for all publications prior to June 22, 2010 unless the allegations in the Amended Complaint "relate back" to an earlier filed complaint.

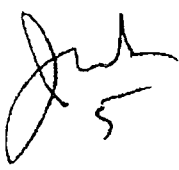
The second issue then is, did the Amended Complaint which for the first time identified these defendants as parties "relate back" to an earlier filed complaint which did not name these defendants, but listed thirteen (13) defendants identified individually by name and "ALL MEDIA COMPANIES THAT PRODUCED OR REPORTED ON ANY EVENT RELATING TO THE PLAINTIFFS IN 2008, 2009 AND 2010?" The Complaint, which was purported to be amended by the Amended Complaint that is the subject of this motion, named as plaintiffs Hazelene E., Terry A. and James W. Trexler. This Complaint was filed on February 23, 2010 and was never served on any of the defendants now appearing before the court. If the allegations of the Amended Complaint "relate back" to this Complaint, there is no statute of limitations bar as the statute would have been tolled by the filing of the February 23, 2010 Complaint. At the motion hearing counsel for plaintiff argued that the Amended Complaint should relate back as the naming in the February 23 Complaint of "ALL MEDIA COMPANIES" as defendants was the equivalent of naming unknown "John Doe" parties and providing names when the identities of these unknowns became

available. There are two problems with counsel's assertion. Plaintiff testified in his deposition that he had no knowledge of the earlier-filed Complaint, and that Complaint did not comply with the applicable procedural rule for designating unknown parties.

The South Carolina Rules of Civil Procedure provide a mechanism for designating unknown parties, stating in the applicable part:

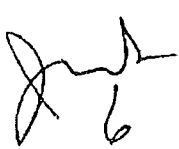
Unknown Parties. When a party does not know the name of an adverse party he may state that fact in the pleadings and designate such adverse party by any name and the words "whose true name is unknown," and when his true name is discovered the pleadings must be amended accordingly.

Rule 10(a)(1), SCRPC.



The plaintiffs in the February 23, 2010 filing failed to comply with the requirements of this rule and did not state that any party's true name was unknown. There is nothing in the record to indicate that the designation "ALL MEDIA COMPANIES" was a designation of adverse parties "whose true name[s] were unknown" or perhaps more significantly, that the defendants now before the court were being identified in the Amended Complaint in place of previously unknown parties. The record does reflect in contrast to counsel's argument that the Amended Complaint bears all the attributes of a new, separate litigation with a single plaintiff, rather than three plaintiffs, bringing an action against parties which had not been identified previously, while each of the previously named defendants was dropped. The addition of new parties, such as defendants herein, is not an amendment that relates back to a period prior to the running of a statute of limitations. *Gause v. Smithers*, 384 S.C. 130, 681 S.E.2d 607 (Ct. App. 2009). Similarly destructive to plaintiff's argument that the Amended Complaint was

filed to correct his misidentification of defendants against which he had intended to bring an action, is his deposition testimony that he was not aware of the February 23, 2010 Complaint in which he was named as a plaintiff along with his mother and brother, and that he had no knowledge of such a suit. If plaintiff did not know about the Complaint naming "ALL MEDIA COMPANIES" as defendants he could not have by that document misidentified these defendants later named in the Amended Complaint. It seems obvious plaintiff did not misidentify any defendant in a suit he did not know existed.

 The action against these defendants was commenced with the filing of the Summons and Complaint on June 23, 2010. Applying the limitation of section 15-3-550(1), plaintiff is barred from asserting a libel claim for any publication prior to June 22, 2008. Asked in defendants' interrogatories to "Identify by date, publisher and headline any publication plaintiff contends to be defamatory" plaintiff identified only three publications subsequent to June 22, 2008. These publications were made on December 15, 2008 and two on February 1, 2011 on WLTX-TV (operated by defendant Pacific & Southern Company, Inc.). Since two of these publications occurred subsequent to the filing of the Amended Summons and Amended Complaint, they are not before the court. Allegations in a complaint must relate to the facts existing at the time of the filing of the complaint, and the issues raised by the allegations are to be determined as of the date of the complaint; therefore, the publications identified in response to defendants' interrogatories, which were made subsequent to the date of the Amended Complaint, can provide no support for plaintiff's libel claim. See 71 C.J.S. Pleading §327. All other publications identified by plaintiff in his response

to interrogatories, with the exception of a publication on WLTX on December 15, 2008, are barred by the operation of section 15-3-550(1).

FALSITY

The clearest official statement of South Carolina libel law is contained in then Justice Jean H. Toal's concurring opinion in *Holtzscheiter v. Thomson Newspapers, Inc.* [*Holtzscheiter II*], 332 S.C. 502, 506 S.E.2d 497 (1998). Justice Toal started her analysis with an articulation of the elements of defamation:

The elements of defamation include: (1) a false and defamatory statement concerning another; (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 Restatement [2d Torts] §558.

 *Supra*, 506 S.E.2d at 506.

Plaintiff complains in his Amended Complaint that defendants published falsely that he was a kidnapper, and that authorities had removed from his property horses that had been starved and abused. Defendants acknowledge that the news report that plaintiff had been charged with kidnapping was false, but, as will be discussed more fully below, rely on the common law fair report privilege to defeat plaintiff's claim in this regard. With respect to the other publications claimed to be false, defendants point to plaintiff's deposition testimony wherein he admitted that it was true that he had been arrested for mistreatment of horses and that the warrants by which plaintiff had been arrested stated that plaintiff owned the horses that were mistreated. When a publication concerns a matter of public interest, such as an accusation of the commission of criminal acts, or when

the publisher is a media defendant, a plaintiff must prove the falsity of the publications upon which the libel claim rests. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986); *Erickson v. Jones Street Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653 (2006). Plaintiff made no submission in response to defendants' motion to demonstrate the existence of genuine issues of fact with respect to the falsity of the publications, and his allegations alone are insufficient to overcome defendants' showing.

Beyond plaintiff's failure to offer evidence to indicate that a genuine issue of material fact existed with regard to the falsity of the publications, defendants demonstrated that the publications were true or substantially true. In the context of a libel claim, truth or substantial truth of the publication is an absolute defense. *Parker v. Evening Post Pub. Co.*, 317 S.C. 236, 452 S.E.2d 640 (Ct. App. 1994), cert. denied 516 U.S. 1172 (1976). In analyzing a claim of falsity, a court is to examine the "gist" or "sting" of the publication, and if either is substantially true, other inaccuracies in the publication will not constitute the requisite falsity to support a libel claim. *Hearst-Argyle Television, Inc.*, 561 F.Supp. 2d 546 (D.S.C. 2008) (applying South Carolina law); *Ross v. Columbia Newspapers, Inc.*, 266 S.C. 75, 221 S.E.2d 770 (1976); *Dauterman v. State-Record Co.*, 249 S.C. 512, 154 S.E.2d 919 (1967). The "gist" and the "sting" of the publications regarding plaintiff were that plaintiff had been arrested for mistreatment of horses he owned, and the mistreatment consisted of depriving the horses "of necessary quantities of wholesome foodstuff suitable for the species and age." These publications were true or substantially true as borne out by the arrest warrants submitted to the court by defendants in support of their motion as these

warrants authorized the arrest of plaintiff for the abuse of horses which the warrants said he owned.

Plaintiff's counsel without submitting any supporting affidavits, or even filing with the court the news reports upon which this action rests, argued that the publications were false because they reported that the horses were "starved" and plaintiff was associated with the mistreatment of more horses than were identified in the arrest warrants. The difference between "starved" and deprived "of necessary quantities of wholesome foodstuff" is insufficient to make the

reports false. A common definition of "starve" includes, "To suffer from deprivation," *Webster's II New College Dictionary* (1995), and plaintiff was charged in five arrest warrants with intentionally and knowingly depriving horses of food. Plaintiff's counsel also argued that the publications were false because they connected plaintiff with far more horses than were identified in the arrest warrants. Even without the publications before the court it may be assumed that the publications did connect plaintiff with more horses than were identified in the five arrest warrants before the court. The arrest warrants identified but five horses which were said to have been owned and mistreated by plaintiff whereas the eight True Bills, submitted to the court by defendants in support of their motion, returned by the Richland County Grand Jury indicting plaintiff for felony "Ill-treatment of animals" identified forty-eight (48) horses upon which the Grand Jury found plaintiff had inflicted "excessive or repeated unnecessary pain or suffering." Plaintiff must meet his burden of proof on falsity by demonstrating by evidence rather than conjecture or allegation that there is a genuine issue of material fact for trial. Plaintiff's arguments that there is a difference between

starved and deprived of food and he was tied in the publications to more horses than were mentioned in the arrest warrants do not create a genuine issue of material fact for trial. Based on the record before the court, defendants have shown the news reports as characterized by plaintiff were true or substantially true. There can be no libel claim for the publication of reports that are true or substantially true, and plaintiff in responding to the motion failed to provide any support by affidavit or otherwise for his contention that false publications had been made.

FAIR REPORT PRIVILEGE

As discussed above, defendants reported that plaintiff had been arrested for kidnapping, and this report was not true. That having been said, the report of the kidnapping charge by these defendants cannot be the basis for a libel claim as the reports were based on the contents of a press release prepared and disseminated by the Richland County Sheriff's Department. Defendants filed the affidavit of Sheriff's Department Captain Chris Cowan to establish that he prepared the press release that identified plaintiff as having been arrested for kidnapping, and that he disseminated the press release to defendants herein and others. It has long been the law of South Carolina that fair and accurate reports of official acts, records and reports are privileged. *White v. Wilkerson*, 328 S.C. 179, 493 S.E.2d 345 (1997); *Padgett v. Sun News*, 278 S.C. 26, 292 S.E.2d 30 (1982); *Reinhardt v. State-Record Co.*, 235 S.C. 480, 112 S.E.2d 500(1960); *Lybrand v. The State Co.*, 179 S.C. 208, 184 S.E. 580 (1936). Plaintiff argued that a press release was not a "public" record, thereby making inapplicable defendants' fair report privilege claim. Plaintiff cited no authority for this

proposition and plaintiff's argument was not persuasive. The privilege urged by defendants attaches to official acts and records, and the dissemination by the Sheriff's Department of a press release describing criminal charges leveled against plaintiff and his family members is beyond doubt an official record. Plaintiff argues that since the press release was disseminated by e-mail rather than facsimile or paper copy it cannot be a record, but cited no authority for this proposition. The scope of the fair report privilege does not turn on the method of delivery or presentation of the official record or act. The official, privileged

communication in *White, supra*, was a statement by the mayor at a press conference and on a radio talk show. The fair report privilege attaches to the communication and not the method of its delivery. But, plaintiff's narrow view of what constitutes a record notwithstanding, under the South Carolina Freedom of Information Act a press release prepared and used by the Sheriff's Department is a public record regardless of its physical form or characteristics. S.C. Code Ann. §30-4-20(c) (Rev. 2007). The Sheriff's Department got the facts wrong on the kidnapping charge in the press release, but the Department's error does not defeat defendants' privilege which attached to defendants' accurate publications of the charges contained in the press release.

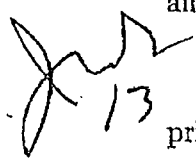
FAULT ON THE PART OF THE PUBLISHER

At common law libel was a strict liability tort with an accompanying presumption of fault in the form of common law malice, but the law of libel has undergone significant changes since 1964, and the common law presumption of malice no longer applies placing on plaintiffs the burden of proving the requisite level of fault on the part of a defendant. The fault burden, as Justice Toal has

explained is influenced by a plaintiff's status as a private or public person, "The degree of fault a plaintiff must establish depends upon his status as a public or private figure." *Holtzscheiter II*, *supra*, 506 S.E.2d at 507. A public official or public figure must prove "actual" or "constitutional" malice. *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); *Elder v. Gaffney Ledger*, 341 S.C. 108, 533 S.E.2d 899 (2000). A private figure plaintiff bringing a libel action based on a publication related to a matter of public interest and published by a media defendant cannot rely on the common law presumption of common-law malice, but must prove that a publisher acted with common law malice. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974); *Erickson v. Jones Street Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653 (2006).

12 Each of the defendants before the court is a "media" defendant, and undoubtedly the arrest and felony indictment of the state's Assistant Commissioner of Agriculture on charges of abusing horses is a matter of public interest. *Philadelphia Newspapers, Inc.*, *supra*; see, *Doe v. Berkeley Publishers*, 329 S.C. 412, 496 S.E.2d 636 (1998). At a minimum, since plaintiff is not entitled to rely on the common law presumption of malice, he is obligated to come forward with evidence in the form of specific facts to support the proposition that a genuine issue of material fact exists with respect to fault, malice, on the part of the publishers. Plaintiff has pointed to nothing in the record that would satisfy this burden with respect to either common law malice or constitutional malice. Nothing filed by plaintiff in response to defendants' motion addresses either version of malice, and no witness listed by plaintiff in response to defendants' interrogatories is identified as one who will provide evidence on

malice. Since the burden of proof on the malice issue rests with plaintiff, his failure to demonstrate the existence of specific facts showing that there is a genuine issue for trial relative to either variety of malice is fatal to his claim for libel. *Anderson v. Liberty Lobby*, 477 U.S. 242 (1986); *Baughman v. American Tel. & Tel. Co.*, *supra*. Plaintiff's attempt to cite comments posted by third parties on defendants' websites as evidence of malice is unavailing. Congress has by statute insulated those who provide interactive websites from liability as publishers of the comments posted by third parties. *Zeran v. America Online, Inc.*, 129 F.3d 327 (4th Cir. 1997); 47 U.S.C. §230. Plaintiff has failed to demonstrate by reference to the material before the court specific facts in dispute on either type of malice, and, as discussed above, he may not rely on mere allegations in his pleadings to meet his burden. *Baughman*, *supra*.

 Plaintiff contends that he is a private figure. Even if plaintiff were a private figure for purposes of this litigation, he has failed to carry his burden on the fault issue in opposition to defendants' motion. Plaintiff has pointed to nothing in the record that demonstrates he has evidence to establish at trial that defendants acted with common law malice, *e.g.*, hatred, ill will, spite or conscious disregard of plaintiff's rights, in publishing the news reports of which he complains. Asked in his deposition if he could identify any journalist or any person in defendants' organizations who might bear ill will toward plaintiff, he testified no.

Even assuming plaintiff's private figure status is at variance with the material before the court. It seems clear beyond doubt that plaintiff is a public official in the context of this litigation. He acknowledged in his letter of

resignation, filed by defendants in support of their motion, that he was an Assistant Commissioner of Agriculture, and that he helped to lead the agency. Plaintiff testified in his deposition, and the Commissioner of Agriculture testified in his deposition, that plaintiff was the department's liaison with the General Assembly, the State Budget and Control Board and the Board of Trustees of the University of South Carolina as project manager for the relocation of the State Farmer's Market.

Plaintiff sought to minimize the significance of his title as Assistant Commissioner, but the title, acknowledge by plaintiff in his resignation letter signified to those with whom plaintiff came in contact that he had responsibility for the operation of a state agency. Plaintiff himself acknowledged in his deposition that he had an important position in the agency, saying, "I went there as legislative liaison and I ran the agency." Had plaintiff's title been "head bookkeeper" or something similarly limited, he might be considered a private figure for some cases, but in the context of publications concerning his arrest and indictment for mistreatment of horses, public interest in his activity in this particular context, apart from his title, makes him a public official. *McClain v. Arnold*, 275 S.C. 282, 270 S.E.2d 124 (1980). As a public official, plaintiff was obligated in response to the motion for summary judgment to demonstrate that he had clear and convincing evidence of actual malice. *Anderson v. Liberty Lobby, supra*; *New York Times Co. v. Sullivan, supra*; *Elder v. Gaffney Ledger, supra*. Plaintiff was obligated to demonstrate with specific facts that the persons making the decisions to publish the reports of which he complains in fact entertained serious doubts as to the truth of the publications or had a high degree

of awareness of probable falsity of the publications. *Elder, supra*. Plaintiff made no such demonstration, nor did he identify in his responses to defendants' interrogatories any witness who could address the issue of constitutional or actual malice on the part of any defendant. Plaintiff's counsel noted at argument that many depositions had been taken in the case, including the depositions of numerous reporters from defendant organizations, but none of these depositions was either filed or identified as containing testimony that would establish actual malice. Plaintiff has failed to make the requisite showing on actual malice.

CONCLUSION

Based on the foregoing, it is clear that plaintiff has failed to meet his burden in responding to a properly supported motion for summary judgment. Each publication cited by plaintiff as the basis of his libel claim, save one, is either barred by the statute of limitations or outside the scope of his Amended Complaint. But, beyond the statute of limitations issue, defendants have demonstrated with the material filed in support of their motion that he publications complained of by plaintiff relative to his arrest and his indictment for mistreatment of horses are true or substantially true. Plaintiff had the burden of presenting evidence to demonstrate specific, material facts in dispute, but failed to do so. The publications concerning plaintiff's arrest for kidnapping while untrue are privileged as a matter of law. Finally, plaintiff has not come forward with any evidence to demonstrate the existence of a genuine issue of material fact on the malice component of his claim. Plaintiff was a public official for purposes of this action, but his response to the motion would not have been

adequate to establish the existence of a genuine issue of material fact on the malice of the defendants even if he were a private figure.

For the reasons stated herein, IT IS HEREBY ORDERED that defendants' motion for summary judgment be, and the same hereby is, granted, and the within-captioned action is dismissed.

AND IT IS SO ORDERED.

Columbia, South Carolina

Oct. 25, 2012



JOSEPH M. STRICKLAND
SPECIAL CIRCUIT COURT JUDGE
SITTING BY DESIGNATION OF THE
CHIEF JUSTICE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2012-CP-40-4652

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

James W. Trexler,

Appellant,

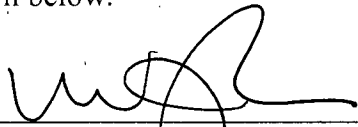
v.

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

I certify that I have this December 19, 2014 served a copy of Appellant's Motion to Strike and Memorandum of Law in Support of Motion to Strike 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 December 19, 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)

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DEC 22 2014
SC Court of Appeals

RECEIVED
DEC 22 2014
SC Court of Appeals

(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

SWEENY, WINGATE & BARROW, P.A.

1515 Lady Street

Post Office Box 12129

Columbia, SC 29211

ATTORNEYS FOR RESPONDENTS

Law Offices of William H. Johnson, LLC

411 North Brooks Street (physical)
Post Office Box 137 (mailing)
Manning, South Carolina 29102
Telephone 803-435-0909
Facsimile 803-435-2858

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DEC 22 2014

William H. Johnson*

December 19, 2014

Christoffer R. DuRant
SC Court of Appeals

The Honorable Jenny A. Kitchings, Clerk
South Carolina Court of Appeals
1205 Pendleton Street
Columbia, South Carolina 29201

RE: James W. Trexler v. The Humane Society, et al
Appellate Case No. 2014-000663
Our File No. 10-108WM

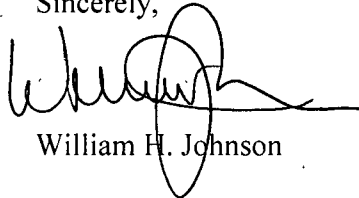
Dear Ms. Kitchings:

Enclosed herewith, please find the original and seven (7) copies of the Appellant's Motion to Strike, Appellant's Memorandum of Law in Support of Motion to Strike, and Proof of Delivery, along with our firm's check no. 5227 made payable to your office in the amount of Twenty-five and 00/100ths (\$25.00) Dollars in regard to the above captioned case. Upon receipt of said Motion, please have someone in your office file same and return a filed copy to our office in the self-addressed, stamped envelope that I have enclosed for your convenience.

By copy of this letter to the other attorneys in this case, I am serving them with a copy of same.

Thank you for your attention to this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



William H. Johnson

WHJ/jeh
Enclosure(s)

cc: John E. Tyler, Esquire
Roopal R. Samuels, Esquire
W. Westbrook Wills, III, Esquire
Matthew D. Hamrick, Esquire

*Also Admitted to Practice in North Carolina