

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

James W. Trexler,

Plaintiff,

vs.

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

Defendant.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-04652

ORDER

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SC Court of Appeals

JEANETTE W. McBRIDE  
C.C.P. & G.S.

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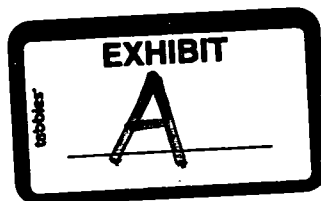
RICHLAND COUNTY  
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This matter came before the Court on September 6, 2013 at a hearing on Defendants The Humane Society for the Prevention of Cruelty to Animals (HSPCA) and Wayne Brennessel's Motion for Summary Judgment. Present at the hearing were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

**FACTS**

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

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

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

### **STANDARD OF REVIEW**

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

### **DISCUSSION**

#### **I. Malicious Prosecution**

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

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

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

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

## II. Defamation

In an action for defamation, the burden is on the plaintiff to prove: "(1) a false and defamatory statement was made; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." See *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Defendant argues that Plaintiff's claim for defamation fails as a matter of law because the statement was true or substantially true. If an alleged defamatory statement is true or substantially true, then a defamation claim must fail. *Ross v. Columbia Newspapers, Inc.*, 266 S.C. 75, 80, 221 S.E.2d 770, 772 (1976). Furthermore, the South Carolina Supreme Court has held that requiring a strict adherence to legal terminology is unreasonable. *Id.* at 80, 221 S.E.2d at 773. Plaintiff claims the statement "the Trexlers pleaded no contest and gave up rights to the horses, Humane Society director Wayne Brennessel said" is defamatory. Plaintiff contends the statement refers to him when it says "the Trexlers," and that he did not plead no contest, but rather was nol prossed. Based upon the *Ross* case, this Court finds that the statement was substantially true, as a strict adherence to legal terminology is not required. Additionally, Terry Trexler did plead no contest, and the statement does not specifically reference Plaintiff.

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

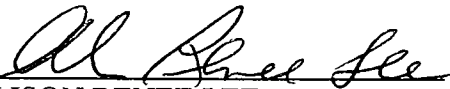
### III. Defendant Wayne Brennessel

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

#### ORDER

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

**AND IT IS SO ORDERED.**

  
ALISON RENEE LEE  
Presiding Judge

Columbia, South Carolina  
February 5, 2014

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 James W. Trexler, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 The Humane Society for the Prevention of )  
 Cruelty to Animals, Wayne Brennessel, )  
 individually and as Executive Director of )  
 the Humane Society for the Prevention of )  
 Cruelty to Animals, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 Civil Action No.: 2012-CP-40-4652

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

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 SC Court of Appeals

**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

**EXHIBIT**  
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*Memorandum of Law in Support of Defendants'*

*Motion for Summary Judgment*

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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 not prosecuted.

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

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 Brenniessel. 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).

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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 7<sup>th</sup> 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

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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 Snavelly 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

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

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

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**

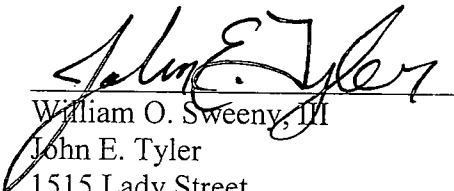
Because the Plaintiff has failed to establish at least one essential element each for malicious prosecution and defamation, summary judgment should be granted in favor of the Defendants as to all causes of action.

*(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.**

A handwritten signature in black ink, appearing to read "John E. Tyler", is written over a horizontal line. The signature is cursive and stylized.

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 / Olymphia Magistrate

THE STATE

James W Trexler

Address: 412 Darby Lane

Hopkins, SC 29061

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_

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

DL State: SC DL #: 0M8028322 Agency CR#: \_\_\_\_\_

DOB: 1/14/1960

Prosecuting Agency: Hospital The Humane Society

Prosecuting Officer: Elisabeth Perry - 122

Offense: Animals / III treatment of animals, in general.

overworking - 1st offense (Tried

overworking - 1st offense (Tried

Offense Code: 0610

Code/Ordinance Sec: 47-11-1040(A)

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of \_\_\_\_\_

is to be served and brought before me to be

dealt with according to the law

The enclosed

(L.S.)

Date: \_\_\_\_\_

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to

at \_\_\_\_\_

on \_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

RETURN WARRANT TO:

Olymphia Magistrate

1601 Shop Road

Columbia, SC 29201

ORIGINAL

ORIGINAL

County/ Municipality of

Richland / Olymphia Magistrate

Person(s) appeared before me the affiant

being duly sworn deposes and says that defendant

did within this county and state on or about

State of South Carolina for ordinance of

in the following particulars:

DESCRIPTION OF OFFENSE

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

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AFFIDAVIT

ORIGINAL

Magistrate

Elisabeth Perry

James W Trexler

02/26/2008

Richland / Olymphia Magistrate

Richland / Olymphia Magistrate

Richland / Olymphia Magistrate

Richland / Olymphia Magistrate

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Richland / Olymphia Magistrate

Richland / Olymphia Magistrate

ARREST WARRANT

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

do hereby certify that the above affiant is a duly sworn and qualified law enforcement officer

and that the above affiant is authorized to execute this warrant

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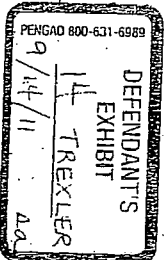
and that the above affiant is authorized to execute this warrant

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and that the above affiant is authorized to execute this warrant

and that the above affiant is authorized to execute this warrant



WITNESSES

(S) Investigator Holly Wagner, RCSD

DOCKET NO. 2008-GS-40-02283

The State of South Carolina

County of Richland

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

ARREST WARRANT NUMBER

DP08060

MARCH TERM 2008  
101

Defendant

THE STATE  
vs.

Witness:

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

SECTION OF GRAND JURY  
HOLLY WAGNER

James W. Trexler

Foreperson of Grand Jury  
Date: MAR 19 2008

*Holly Wagner*

VERDICT

Indictment for

ILL TREATMENT OF ANIMALS

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

Foreperson of Petit Jury  
Date:

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





WITNESSES

(s) Investigator Holly Wagner, RCSD

ARREST WARRANT NUMBER  
DP08062

ACTION OF GRAND JURY

**WILLIAMS**

Foreperson of Grand Jury  
Date: MAR 19 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(9)  
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.

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*

WARREN B. GIESE, SOLICITOR

1-891848

STATE OF SOUTH CAROLINA

County/

Municipality of

Richland / Olympia Magistrate

THE STATE

James W Trexler

Address: 412 Derby Lane

Hopkins, SC 29061-

Phone: M Race: W SSN: S I Weight: 130

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

DOB: 1/14/1960

Agency ID #: 008028522

Prosecuting Agency: Hispanic / The Humane Society

Prosecuting Officer: Elizabeth Perry - 122

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

Offense Code: 0610

Case/Offense Size: 47.01-0040(A)

This warrant is CERTIFIED FOR SERVICE in the

County/  Municipality of

is for arrest 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 on \_\_\_\_\_

RETURN WARRANT TO:

Olympia Magistrate  
1601 Sharp Road  
Columbia, SC 29201

ORIGINAL ORIGINAL

AFFIDAVIT ORIGINAL

STATE OF SOUTH CAROLINA  
MAY 21 2008  
CLERK

County/  Municipality of

Richland / Olympia Magistrate

Personally appeared before me, the affiant Elizabeth 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

in the following particulars: Richland / Olympia Magistrate

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 knowingly and intentionally deprive the animal of necessary quantities of wholesome foodstuff suitable for the species and equal suitable intervals and sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight. There was no feces, urine, and mud. The animal was separately confined in a barn with 3 other horses standing in a or more inches of muddy, wet property. Affiant and others are witnesses to prove same.

Signature of Affiant

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: 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

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 apprehension, or as soon thereafter as is practicable

Sworn to and subscribed before me on 02/27/2008

Signature of the Affiant: Elizabeth Perry (L.S.)

Judge/Clerk: Sybil (L.S.)

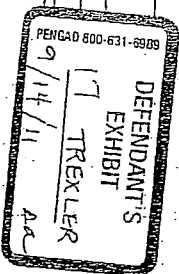
Judge's Address: 1601 - B Sharp Road

Columbia, SC 29201 - 4847

Judge's Telephone: (803)576-2350

Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL ORIGINAL ORIGINAL



WITNESSES

(S) Investigator Holly Wagner, RCSD

ARREST WARRANT NUMBER

DP08061

ACTION OF GRAND JURY

**TRIPPLE**

Foreperson of Grand Jury  
Date: MAR 18 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.

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 of  Richland / Olympia Magistrate

James W. Trexler  
Address: 412 Derby Lane  
Hopkins, SC 29061

Phone: \_\_\_\_\_  
Sex: M Race: W Height: 5 11 Weight: 130  
DL State: SC DL #: 008028522 Agency: A111  
DOB: 1/14/1960  
Prosecuting Agency: Hesper / The Humane Society  
Prosecuting Officer: Elisabeth Perry - 122  
Offense: Animals / Ill treatment of animals, in general,  
overworking - 1st offense (Trick  
Offense Code: 0610  
Cited Ordinance Sec: 47-01-004(A)

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

is to be arrested and brought before me in the  
detail with according to the law. The undersigned  
(L.S.)

Date: \_\_\_\_\_  
Signature of Judge: \_\_\_\_\_

RETURN  
A copy of this arrest warrant was delivered to  
defendant: \_\_\_\_\_  
on \_\_\_\_\_

RETURN WARRANT TO:  
Olympia Magistrate  
1601 Shupp 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

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

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 Magistrate 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 (FSS). He  
knowingly and intentionally deprived the animal of necessary quantities of wholesome foodstuff suitable for the species and age, in  
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 a concrete trough 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. A farm and others are willing 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:  
I, appearing from the above affidavit, that there are reasonable grounds to believe

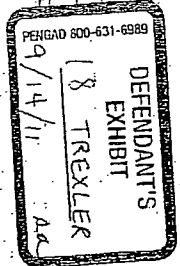
on or about 2/26/2008 defendant James W. Trexler  
did violate the criminal laws of the State of South Carolina (or ordinance in  
 County/  Municipality of Richland / Olympia Magistrate ) as you both know.

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

Having found probable cause and the above affiant having sworn before me, you are commanded 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 in the presence of the undersigned, or his  
agent, if he is in custody, as is practicable  
Sworn to and subscribed before me  
on 02/27/2008

Judge's Address: 1601 - 13 Shupp Road  
Columbia, SC 29201-4847  
Judge's Telephone: (803) 576-2530  
Judge's Name: Harold A. Cull  
Judge's Office: 5406

Issuing Court:  Magistrate  Circuit  Criminal  
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WITNESSES

Investigator Holly Wagner, RCSD

ARREST WARRANT NUMBER

DP08059

ACTION OF GRAND JURY

**FILED**

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.

STATE OF SOUTH CAROLINA )

INDICTMENT

COUNTY OF RICHLAND )

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

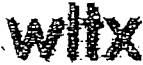
ILL TREATMENT OF ANIMALS

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

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

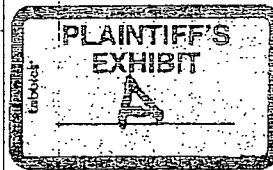
with good nutrition and lots of care and the Humane Society paying their boarding costs.

"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



Print Powered By Dynamics



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] -----

5+



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

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 approxiamately 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 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 indentification.

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 Market. 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	[REDACTED]
05	Horse	4	0006A9C6AB		
06	Horse	3	480E6E410B		
07 RF Gllory Bey	Horse	3	0006AA06C1	Foster	[REDACTED]
08 April Delight	Horse	4	0006A9DEF7		
09 DA Reflectinns	Horse	4	0006A9A169	Foster	[REDACTED]
10 Blazing Passion V	Horse	3	0006ADD0C8	Foster	[REDACTED]
11	Horse	4	480A3C2250		
12 Bonaparte's Fancy	Horse	4	480A08606A	Foster	[REDACTED]
13	Horse	3	0006A9E2BD	Foster	[REDACTED]
14	Horse	3	0006A9A907		
15 Summer's Charm	Horse	2	0006ADE05C		
16 Ju Beylee	Horse	3	00069CC971	Foster	[REDACTED]
17 Khandi Berry Bey	Horse	3	0006ADA225		
18 OA Sweet Promise	Horse	3	0006ADBC47		
19	Horse	2	0006ADB08B	Foster	[REDACTED]
20 Amoree Promotion	Horse	3	48120667		
21	Horse	3	0006ADC7A6	Foster	[REDACTED]
22 Hucks Jubalee	Horse	3	00069CC606		
23	Horse	4	480A7F1411		
31 Amoree	Horse	3	0006A9B15D		
32	Horse	4	0006ABEA01	Foster	[REDACTED]
33 Camelo V	Horse	3	0006ADAAA3		
34	Horse	4	480B0F1241		
35	Horse	1	0006ADCEA0		

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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 )

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND )

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. )

JEANETTE W. McBRIDE  
C.C.P. & G.S.

2012 OCT 30 PM 3:34

RICHLAND COUNTY  
FILED

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

EXHIBIT  
4

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

Rule 56(e), SCRPC 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?

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

  
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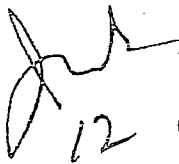
proposition and plaintiff's argument was not persuasive. The privilege urged by defendants attaches to official acts and records, and the dissemination by the Sheriff's Department of a press release describing criminal charges leveled against plaintiff and his family members is beyond doubt an official 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**

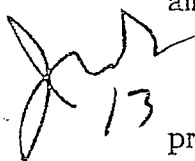
At common law libel was a strict liability tort with an accompanying presumption of fault in the form of common law malice, but the law of libel has undergone significant changes since 1964, and the common law presumption of malice no longer applies placing on plaintiffs the burden of proving the requisite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

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

  
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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 (4<sup>th</sup> 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*.

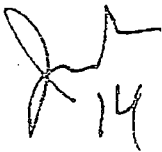
 Plaintiff contends that he is a private figure. Even if plaintiff were a private figure for purposes of this litigation, he has failed to carry his burden on the fault issue in opposition to defendants' motion. Plaintiff has pointed to nothing in the record that demonstrates he has evidence to establish 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

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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

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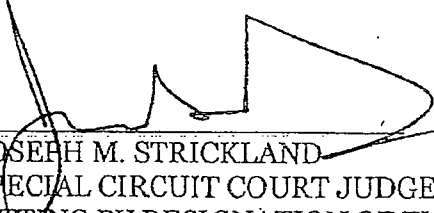
adequate to establish the existence of a genuine issue of material fact on the malice of the defendants even if he were a private figure.

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

CERTIFICATE OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Defendants, do hereby certify that I have served a copy of the foregoing Pleading in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:


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JEANETTE W. PROBERT  
C.C.P. & G.S.  
RICHARDSON COUNTY

  
\_\_\_\_\_  
Reese Abbott

Columbia, South Carolina  
September 6, 2013

State of South Carolina )  
County of Richland )

In The Court of Common Pleas  
Fifth Judicial Circuit  
2012-CP-40-4652

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.

Transcript of Record

September 6, 2013  
Columbia, South Carolina

B E F O R E:

The Honorable Alison Renee Lee, Judge

A P P E A R A N C E S:

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Attorneys for the Plaintiff

Roopal S. Ruparelia, Esquire  
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John E. Tyler, Esquire  
Attorneys for the Defendants

Elizabeth B. Harris, CVR-M  
Circuit Court Reporter



I N D E X

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<u>Witness/Description</u>	<u>Page No.</u>
Motion by Defense . . . . .	4
Certificate Page . . . . .	35

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>
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No Exhibits Introduced.

1 THE COURT: Yes, sir.

2 MR. TYLER: And after, after the removal -- well,  
3 during the time of, of the investigation, the Humane  
4 Society entered three separate properties and took pictures  
5 of horses. They had veterinary examinations of horses  
6 done. The horses were ultimately seized.

7 One piece of -- one of the three pieces of the  
8 property is 412 Derby Lane, which was owned by the  
9 plaintiff. He claims he had no ownership interest at this  
10 time. He does admit that he, that he lived there through  
11 December 2007, and somehow did not live there when the  
12 investigation was occurring, but then lived there again  
13 shortly after the investigation.

14 THE COURT: So, is it your position or is it Mr.  
15 Trexler's position that he didn't own the property, or that  
16 he didn't own the horses that were on the property?

17 MR. TYLER: He, he claims both, Your Honor. What was,  
18 what was reasonable to the Humane Society at the time,  
19 based on their investigation and their, particularly their  
20 investigation into ownership of horses and, and property  
21 ownership, that, that he and his wife owned 412 Derby Lane.  
22 The plaintiff and his wife owned 412 Derby Lane and that  
23 there was a horse, Prose Cognac, who had been sold to James  
24 Trexler. Those documents for contract for sale and such  
25 have been produced to the other side with, with the

1 plaintiff's name on those. Plaintiff was deposed on those  
2 issues, and he claims that he, he never owned the horse.

3 But the Humane Society investigated. They have  
4 documentation showing horse ownership; they had  
5 documentation showing property ownership. Mr. Trexler  
6 admitted that he was paying property taxes and maintenance  
7 and such on the 412 property during the times of these  
8 investigations. And we have plenty of pictures of horses  
9 that were kept at 412 Derby Lane that have been produced to  
10 the other side. I have them with me today if you're  
11 interested in reviewing them. They just -- they show, they  
12 show the malnourished horses and, and offer proof of the  
13 Humane Society's investigation.

14 March 13th of 2008, a grand jury issued a true bill of  
15 indictment on five counts for the ill treatment of animals  
16 against the plaintiff. Your Honor is, is, is aware that a  
17 true bill of indictment is prima facie evidence of probable  
18 cause. In order to prove a claim for malicious  
19 prosecution, the plaintiff must meet all of the elements  
20 for probable -- for malicious prosecution.

21 One of those is that there is a -- there's malice in  
22 instituting such proceedings, and another element is that  
23 there was a lack of probable cause. It's well established  
24 in South Carolina that, that when a grand jury hears the  
25 evidence presented and issues a true bill of indictment,

1 that probable cause exists as, as a matter of law. Your  
2 Honor, Exhibit 1 to our brief shows the true bills of  
3 indictments.

4 As a housekeeping matter that perhaps I should have  
5 brought up at the beginning of the hearing, Your Honor, do  
6 you wish to proceed on discussing both of the plaintiff's  
7 claims, or discussing the malicious prosecution claim and  
8 then discussing the defamation claim?

9 THE COURT: No. I can go ahead and hear both of them.

10 MR. TYLER: Okay. Your Honor, on the defamation  
11 claim, defamation in South Carolina has, has four elements:  
12 false and defamatory statement, unprivileged publication,  
13 fault on the part of the publisher, and actionability of a  
14 statement irrespective of special harm or the existence of  
15 special harm caused by the publication.

16 As we have argued in our brief and as is attached as  
17 an exhibit to that brief, Exhibit 4, this court has already  
18 held Plaintiff Trexler to be a public figure for the  
19 purposes of the issue in question in this case. Therefore,  
20 he's held to a heightened standard. The plaintiff must  
21 show clear and convincing evidence that the false and  
22 defamatory statement was made with knowledge, and that it  
23 was false or a reckless -- or with a disregard for the  
24 truth.

25 That case involved a claim that Mr. Trexler made

1 against multiple broadcasting agencies, multiple members of  
2 the media -- the Associated Press, Barrington Broadcasting,  
3 Greycom, *Spartanburg Herald Journal* -- all relating to  
4 libel, slander, defamation-type claims against them for  
5 publishing.

6 Your Honor, we've not been involved with that case,  
7 but according to the, to the order, those are, those are,  
8 those are the grounds. And it's all based on him -- his  
9 public-figure status is based on him having served as the  
10 assistant to the commissioner of agriculture for the state  
11 of South Carolina.

12 The -- Judge Strickland in that case found on page 13  
13 of the order:

14 It seems clear beyond doubt that plaintiff is a  
15 public official in the context of this  
16 litigation. He acknowledged in his letter of  
17 resignation filed by defendants in support of  
18 their motion that he was an assistant  
19 commissioner of agriculture, that he helped to  
20 lead to the agency.

21 Plaintiff testified in his deposition on and on  
22 regarding his, his duties. And then into the next  
23 paragraph on page 14:

24 Plaintiff himself acknowledged in his deposition  
25 that he had an important position in the agency.

1           And, and ultimately, ultimately the court held in the  
2 conclusion on page 15, starting with the last sentence:

3           Plaintiff was a public official, official for  
4 purposes of this action, but his responses to the  
5 motion would not have been adequate to establish  
6 the existence of a genuine issue of material fact  
7 of the malice of the defendants even if he were a  
8 private figure.

9           Your Honor, the same is, is true in this case. The  
10 alleged defamatory incident, though it occurred in February  
11 of 2011, it was related entirely to the investigation and  
12 the outcome of that investigation which happened back in  
13 2008 and then ultimately in 2010, July 2010 when, when the  
14 case was nolle prossed.

15           I'd like to read the actual language of, of this  
16 article that is allegedly defamatory. It says, and it's  
17 attached as Exhibit 2 to, to the brief:

18           Some horses seized three years ago still need  
19 permanent homes. In 2008, the Humane Society  
20 began taking ---

21           THE COURT: You don't have to read the whole thing to  
22 me. I can read it.

23           MR. TYLER: Okay. Your Honor, particularly in that  
24 one paragraph, it, it references the horses owned by the  
25 Trexler family. Tripp, Terry Trexler, and Hazelene Trexler

1           The, the courtroom, the courtroom incident took place  
2 in July of 2010, and this interview took place in February  
3 of 2011. Mr. Brennessel was, was present in the courtroom  
4 that day. Whether he was, whether he was in the room when  
5 the plea went, went through is -- Your Honor, I can't  
6 testify on his behalf on that, on that issue. But he was,  
7 he was here and, and he is not an attorney, and he, he  
8 explained, he explained what happened, and this is what the  
9 news publication printed.

10           THE COURT: And in your brief, you talk about there  
11 being a privilege. Can you explain to me how there is a  
12 privilege?

13           MR. TYLER: Well, Your Honor, as executive, as  
14 executive director of the, the Humane Society, he was -- he  
15 is asked an issue of public interest. And the court has  
16 held in, in the Swinton Creek Nursery that:

17                   When one has an interest in the subject matter of  
18 a communication, and the person to whom it is  
19 made has a corresponding interest, every  
20 communication honestly made in order to protect  
21 such common interest is privileged by reason of  
22 the occasion. The statement, however, must be  
23 such as the occasion warrants, and must be made  
24 in good faith to protect the interest of the one  
25 who makes it and the person to whom it is

1           addressed.

2           An occasion gives rise to a qualified conditional  
3 privilege is, is one of law for, for the court. It's  
4 warranted here because WLTX interviewed the director of the  
5 Humane Society, an organization responsible for preventing  
6 cruelty to animals in a, in a interest -- a matter of  
7 public interest.

8           In his, his, his testimony essentially -- or not his  
9 testimony, Your Honor, his -- the publication that, that --  
10 his alleged quote, he gives information about, about  
11 matters of mistreatment to animals and about the outcome of  
12 prosecution related to these particular horses that were  
13 still up for adoption.

14           THE COURT: Anything further?

15           MR. TYLER: No, Your Honor, not on privilege.

16           THE COURT: Anything further on your argument?

17           MR. TYLER: Yes. Yes, Your Honor. The Solicitation  
18 of Charitable Funds Act would also require that Wayne  
19 Brennessel be dismissed as, as a individual defendant,  
20 South Carolina 33-56-180. The Humane Society is a  
21 charitable organization as defined under section 170 of the  
22 same act as a 501(c)(3) nonprofit.

23           There's no specific set of facts to support that Mr.  
24 Brennessel's statement was made recklessly, willfully, or  
25 with gross negligence. Again, what he said, Your Honor,

1 was substantially true and, therefore, he cannot, he cannot  
2 be sued individually under the Solicitation of Charitable  
3 Funds Act.

4 THE COURT: Thank you.

5 On behalf of the plaintiff?

6 MR. WILLS: May it please the court?

7 THE COURT: Yes, sir.

8 MR. WILLS: Your Honor, as a preliminary matter, Mr.  
9 Trexler, our client, has, has been in the unfortunate  
10 circumstance of having had charges brought against him for  
11 which -- the prosecution of which caused him to lose his  
12 employment, caused him to lose his, his retirement, his  
13 pension. He worked with the state; he was one year away  
14 from retiring.

15 The damages in this case have been determined by an  
16 expert to be in the neighborhood of \$1 million. That's  
17 only his financial loss. That has nothing -- that's not --  
18 not to mention at all his reputational loss, both  
19 professional and personal.

20 He was prosecuted for two and a half years on these  
21 charges, and then the charges were dismissed, and there  
22 must be an opportunity for Mr. Trexler to have redress for  
23 this, for this, at least the opportunity for it to be heard  
24 by a jury who could decide.

25 I'll address the issues one by one. As to our claim

1 for malicious prosecution, the facts as they are, are  
2 stated in, in opposing counsel's brief are chronologically  
3 out of order. And they are important to the extent that,  
4 that one of the issues in the case -- and this is going to  
5 jump in the heart of why we are arguing that there is  
6 material issue -- genuine material issues of fact, and this  
7 is, this is borne out in, in the, in the confusion of the,  
8 of the factual circumstances.

9 One thing that's going to become important in this is  
10 that there was a, a very short period of time between,  
11 between the time that the Humane Society began  
12 investigating cruelty against the animals, the horses that  
13 belonged to, to Mr. Trexler's brother and his mother. The  
14 order of the circumstances goes directly to whether or not  
15 probable cause and the facts supporting the probable cause  
16 can be established.

17 The true chronology of the facts was that on February,  
18 on -- in February of 2008, the Humane Society began  
19 investigating a property that was in Eastover. Mr. Trexler  
20 had absolutely nothing to do with that property, and that  
21 was property that was leased by Mr. Trexler's brother and  
22 his mother, who were running a for-profit horse -- Arabian  
23 horse breeding operation. His mother and his brother also  
24 had another property that they kept horses on, and that's  
25 the 412 Derby, Derby Lane property, and that's where

1 plaintiff's mother and brother were living.

2       There's a semantical -- there's a semantic difference.  
3 I think we've cleared it up. Mr. Trexler argues that, that  
4 he neither owned the property at 412 Derby Lane, nor did he  
5 own any horses that were at 412 Derby Lane, nor did he live  
6 at the property during any of the time relevant to this  
7 action.

8       Mr. Trexler had transferred interest in that property  
9 some two years earlier to his mother, and he had no  
10 ownership interest in the property. That's going to become  
11 important in the determination of what investigation the  
12 members of the Humane Society and of the Richland County  
13 Sheriff's Department did in order to establish probable  
14 cause to arrest Mr. Trexler.

15       THE COURT: And there are public records that would  
16 have designated or shown that the property had been  
17 transferred?

18       MR. WILLIS: That's correct, Your Honor. The deed was  
19 not in Mr. Trexler's, Mr. Trexler's -- when I speak of Mr.  
20 Trexler, I'm speaking of James Trexler.

21       THE COURT: Yes, sir.

22       MR. WILLIS: The deed was not in James Trexler's name.

23       THE COURT: But it was recorded in the public record,  
24 so it could have been ascertained?

25       MR. WILLIS: Correct, Your Honor.

1 THE COURT: And so you say that that goes to the issue  
2 of while you cannot go back and say what in hindsight it  
3 should have revealed, you're claiming that that goes to  
4 what would have been reasonably available to law  
5 enforcement at the time that they were conducting the  
6 investigation?

7 MR. WILLIS: That's correct, Your Honor, and as to the  
8 elements of, of the malicious prosecution, the plaintiff  
9 must establish that the institution or, or continuance of a  
10 judicial proceeding was at the instance of the defendant,  
11 and I don't believe that's in question. That's undisputed.  
12 That the termination of such proceeding was in plaintiff's  
13 favor, I believe that's undisputed as well.

14 THE COURT: Well, just because a case has been nolle  
15 proessed does not necessarily mean that that's in the  
16 plaintiff's favor. I mean, there are other elements that  
17 go into determining whether or not it was within ---

18 MR. WILLIS: Correct, Your Honor, and that the -- and  
19 South Carolina law states that if, if a nolle -- if charges  
20 are nolle proessed and the facts and circumstances give the  
21 indication that, that the nolle proess was due to something  
22 other than a plea bargain or some -- or something giving --  
23 indicating the charge was dropped because there was no  
24 reason to have it, then that can support a favorable, a  
25 favorable outcome for the purposes of malicious

1 prosecution. That would also create a question of fact as  
2 to whether those circumstances existed.

3 THE COURT: And you would agree that at least as far  
4 as the probable cause was concerned, the indictment by the  
5 grand jury would provide some evidence that there was  
6 probable cause?

7 MR. WILLIS: Your Honor, I agree that the indictment by  
8 the grand jury creates a presumption of prima facie showing  
9 of probable cause. It is a rebuttable presumption.

10 What we have to look at is what were the facts that  
11 were used to initiate the proceeding. And, and, and to  
12 that point, I would direct Your Honor to the Humane  
13 Society's -- the first initiation of the proceeding would  
14 be the Humane Society's affidavit that it swore out through  
15 its agent Elizabeth Perry to the magistrate judge in order  
16 to obtain an arrest warrant for Mr. Trexler.

17 And in that arrest warrant, the Humane Society agent  
18 has sworn as true to the magistrate facts that, that agent  
19 did not know to be true. And moreover, she swore as fact  
20 facts that were not true, that she knew not to be true,  
21 and ---

22 THE COURT: So, you're saying she intentionally lied?

23 MR. TYLER: Your Honor, I'm saying that she  
24 intentionally lied. In our brief, we have submitted the  
25 deposition testimony of that agent, Elizabeth Perry.

1 First, if I could direct Your Honor to, to the, to the  
2 affidavit, the arrest warrant itself. We can, we can  
3 see ---

4 THE COURT: Is that attached?

5 MR. WILLS: Your Honor, that's attached to defendants'  
6 memorandum at ---

7 MR. TYLER: Exhibit 1, Your Honor.

8 MR. WILLS: Exhibit 1 and in the affidavit section,  
9 Your Honor, at the top here in the middle portion it's  
10 signed by Elizabeth Perry. That's the investigator for the  
11 Humane Society, and it says that:

12 The crime set forth and the probable cause is  
13 based on the following facts.

14 Not the following understanding. Not the following --  
15 the following facts and reads that:

16 On February 26 while at 412 Derby Lane in Olympia  
17 Magistrate District of Richland County, one James  
18 Trexler did commit the crime of ill treatment of  
19 animals in that he is the owner of a  
20 twenty-year-old gray stallion with a body score  
21 of 3.5.

22 Having a hard time reading this.

23 He knowingly and intentionally deprived the  
24 animal of necessary quantities of wholesome food  
25 stuffs suitable for the species.

1           Then it goes down and says: There was no food or hay  
2 on the property. And then talks about a bucket with some  
3 blood and whatever.

4           This, this is an affidavit that Elizabeth Perry swore  
5 out after Elizabeth Perry and an agent from the Richland  
6 County Sheriff's Department executed a search warrant out  
7 at 412 Derby Lane. In -- when I took Ms. Perry's  
8 deposition, I asked her, and the excerpts are here attached  
9 to my memorandum. I asked her what knowledge she had that  
10 these horses belonged to the plaintiff, James Trexler. And  
11 she responded that she didn't, she didn't, she don't -- she  
12 didn't recall what knowledge she had that the horses  
13 belonged to Mr. Trexler.

14           I asked her why, then, did she believe and swear in  
15 this affidavit that the horses belonged to Mr., Mr., Mr.  
16 Trexler, and her response was -- at Exhibit A to our  
17 memorandum, her response was: Because they were on his  
18 property.

19           I said: Well, did you base that fact -- did you  
20 base saying -- representing him as the owner only  
21 on the fact that it was on his property that --  
22 on property that allegedly belonged to him?

23           She says: No, not only on that, no.

24           I said: What else then?

25           She says: I couldn't tell you; I don't remember.

1           Earlier when I spoke of the chronology of events, this  
2 is why it became important. The Humane Society had never  
3 heard of James Trexler. And, and Elizabeth Perry had never  
4 heard of James Trexler until two days before this when they  
5 got an anonymous tip that there were some horses on a  
6 property at 412 Derby Lane, and that that property belonged  
7 to James Trexler.

8           I ask Ms. Perry if she did any investigation into  
9 whether or not Mr. Trexler actually owned that property.  
10 She said: No, I didn't. At Exhibit B...

11           (A PAUSE.)

12           MR. WILLIS: I must not have attached that portion, but  
13 I asked her if she did any research into the property and  
14 who owned the property, and she said that she didn't have  
15 -- that the Humane Society didn't have the capacity, the  
16 capabilities of looking into those records, so that they  
17 didn't do any property search.

18           THE COURT: I think it started down on Exhibit A, down  
19 at the bottom of page 108, but it doesn't continue over to  
20 give the full answer on 109. I don't have a 109.

21           MR. WILLIS: Your Honor, would I be -- would you allow  
22 me to supplement the record with that additional page?

23           THE COURT: Yes, sir.

24           MR. WILLIS: The -- both the search of 412 Derby Lane  
25 and the seizure of the horses there and the arrest warrant

1 were, were done in partnership and collaboration with the  
2 Richland County Sheriff's Department. Investigator Holly  
3 Wagner had been involved with this investigation with the  
4 Richland -- with the Humane Society every step of the way.

5 We also took Holly Wagner's deposition in a separate  
6 case. In that deposition -- and this is reflected in  
7 Exhibit B of our memorandum. I asked Holly Wagner if she  
8 ever -- if she had any knowledge whether the Humane Society  
9 did any investigation into whether -- into the ownership of  
10 the property. And she, and she says:

11 I don't know what investigation was done by the  
12 Humane Society, never.

13 I said: But to your knowledge, you don't know of  
14 any, of any investigation that was done?

15 She said: Never.

16 So, so, it's our, our first contention that there was  
17 there was a, there was a duty to investigate on the part  
18 of the HSPAC because they had received an anonymous tip  
19 from someone who was possibly unreliable -- the facts  
20 would have to bear that out -- who was possibly unreliable,  
21 and probable cause, the law here in South Carolina says  
22 that:

23 Where a person instituted a prosecution against  
24 another without probable cause, it's difficult to  
25 conceive any other but a malicious one. One who

1 instigates prosecution based solely on  
2 information received from another acts without  
3 probable cause. The failure of a person who has  
4 received information tending to show the  
5 commission of a crime, to make such further  
6 inquiry or investigation as an ordinary, prudent  
7 man would have in the same circumstances before  
8 instituting a proceeding renders him liable for  
9 proceeding without probable cause.

10 This is one aspect of why we're contending that there  
11 was no probable cause. The most important, however, is the  
12 boldfaced lie that was told, that was sworn to the  
13 magistrate with regard to the food, with regard to the  
14 conditions at 412 Derby Lane.

15 THE COURT: And you're claiming that because the  
16 warrant came after there was a search warrant, and the  
17 search warrant revealed that there was feed on the  
18 premises, right?

19 MR. WILLS: Your Honor, the search warrant, the search  
20 warrant -- the affidavit for the arrest warrant came after  
21 the search warrant. In the affidavit, it was attested to,  
22 sworn to that there was no food on the property.

23 THE COURT: Yes, sir.

24 MR. WILLS: And then I -- in the deposition that I  
25 took of that investigator, Elizabeth Perry, I asked her

1 about her investigation out there at the house. This is  
2 reflected in our Exhibit F.

3 THE COURT: And the claim is is that there was food,  
4 and that was revealed when they executed the search  
5 warrant. They found food on the property, and so her  
6 statements in the arrest warrant would not have been true.

7 MR. WILLS: That's correct, Your Honor.

8 THE COURT: Tell me about the defamation claims.

9 MR. WILLS: If I may just briefly touch on the grand  
10 jury indictment as well? Pass up -- before I get to  
11 probable cause, there is evidence, and I hope this is  
12 undisputed, that there were no facts presented to the grand  
13 jury. That only the indictment was read, and the  
14 indictment just listed the charges. So, the grand jury  
15 wouldn't have had the opportunity to weigh the facts and  
16 circumstances, and if they relied ---

17 THE COURT: Well, how would you know what the grand  
18 jury considered, considering that they are secret  
19 proceedings?

20 MR. WILLS: That's, that is, that's a good question,  
21 and let's see how I can do this procedurally.

22 (PLAINTIFF'S COUNSELORS CONFER.)

23 MR. WILLS: Okay, I'll move on to defamation, Your  
24 Honor. To sum up malicious prosecution, we, we would  
25 allege that, that there is a genuine issue of material fact

1 with regard to whether probable cause existed, and that is,  
2 that is a question for the jury. And that while questions  
3 of -- for what are probable cause are essentially questions  
4 of fact and ordinarily for the jury, unless there is an  
5 overwhelming showing that there is no facts that would  
6 support otherwise.

7 With regard to defamation, Your Honor, the -- I'll  
8 first address defendants' claimed that Mr. Trexler was a  
9 public official. It is true, Your Honor, that this court  
10 did find Mr. Trexler was a public official for purposes of  
11 defamation at the time of the -- of a defamatory statement  
12 against Mr. Trexler when he was a public official. That  
13 was in 2008, and it, and it was specifically linked to his  
14 role and capacity as a public official.

15 I will note that we have appealed that ruling, and  
16 that is under -- up at the Court of Appeals, but understand  
17 that that is a final ruling at this point.

18 How this differs is that the defamatory material that  
19 was, that was stated by Mr. Brennessel was in 2011. Mr.  
20 Trexler was no longer a public official. He was only a  
21 public official by virtue of having worked at the  
22 Department of Agriculture, and by this time this, this is  
23 two years later after he's been fired from the Department  
24 of Agriculture. So, he, he can no longer be considered a  
25 public official for the purposes of defamation, especially

1 considering that the content of the defamatory statement  
2 had nothing to do whatsoever with Mr. Trexler as a public  
3 official or his capacity or in the role of a public  
4 official.

5 As Your Honor has seen, the statement says the  
6 Trexlers pled no contest. That has nothing to do with Mr.  
7 Trexler as a public official. He wasn't a public official  
8 when that separate defamatory statement was made, and that  
9 defamatory statement had absolutely nothing to do with the  
10 defamatory statements that were uttered while Mr. Trexler  
11 was a public official.

12 The -- it is true that Mr. Trexler is a public  
13 official. Then he, then he must prove actual malice with  
14 regard to the defamatory statement. Actual malice, Your  
15 Honor, is defined as: A statement made with knowledge that  
16 it was false, or with a reckless disregard for the truth.

17 We contend firstly that if Mr. Trexler is not a public  
18 official, then if Mr. Brennessel uttered a statement and it  
19 was false and it injured Mr. Trexler, then, then he is  
20 liable to Mr. Trexler under the common law of malice.  
21 Malice is presumed here because we have a defamatory  
22 statement regarding a crime -- or injuries presumed,  
23 rather.

24 But even if Mr. Trexler is considered a public  
25 official and the heightened standard of actual malice does

1 apply, we still have another aspect of the analysis. We  
2 still have to show that Mr., that Mr. Brennessel uttered  
3 the statements with knowledge that it was false. And there  
4 -- it has been undisputed until this time, but I -- there  
5 may be some question now about whether Mr. Brennessel was  
6 in the courtroom at the time the, the disposition of the  
7 charges were made known. But up until this point, we, we  
8 have understood that he was in the courtroom. If he wasn't  
9 in the courtroom, that's a, that's a question of fact.

10 So, now with regard to the defamation, we have a  
11 material issue of fact, a genuine issue of material fact  
12 with regard to whether or not Mr. Brennessel had actual  
13 knowledge that Mr. Trexler did not, did not plead no  
14 contest. That's a question of fact that would have to be  
15 decided by the jury. It can't be decided on summary  
16 judgement.

17 With regard to the contention that Mr. Trexler is not  
18 specifically named in the article -- and it only states  
19 that the Trexlers pled no contest. Defamation law doesn't  
20 require that an individual be named specifically as long as  
21 the facts and circumstances can be -- as long as the people  
22 who hear the utterance can, can deduce from the facts and  
23 the circumstances who the individual is that the statement  
24 is, is concerning.

25 Here since 2008, every article that was ever published

1 in any newspaper about the mistreatment of horses by the  
2 Trexlers included all three Trexlers. Many of them refer  
3 to them as a trio. That's been the biggest problem is that  
4 everybody is clumping Mr. James Trexler in with his mother  
5 and brother.

6 Every article -- not one single article, and there  
7 have been hundreds, have ever addressed Mr. Terry Trexler  
8 separately from Hazel Trexler and James Trexler or Hazel  
9 and James Trexler -- Hazel and Terry Trexler separate from  
10 Jim Trexler. As a matter of fact, most of the articles  
11 focus on Jim Trexler because he was in the -- under the  
12 spotlight for being the assistant commissioner of  
13 agriculture. So, when Mr. Brennessel comes out and says  
14 the Trexlers plead no contest, the public, just like they  
15 have for the entire, for the entire time, hears the  
16 Trexlers. They associate that with all three Trexlers.

17 Now, substantially true, one Trexler pled no contest.  
18 Two Trexlers were nolle prossed. That means that as to  
19 James Trexler, it is 100 percent false if the insinuation  
20 is that the Trexlers pled no contest. As to all three,  
21 it's two-thirds wrong. So, the defamatory statement is  
22 nowhere near substantially true.

23 The intentional implication is -- and this is where  
24 the question of fact is revisited, revitalized -- the  
25 intentional implication is that all three Trexlers pleaded

1 no contest because the Humane Society has been, has been  
2 persecuting these people for the last two and a half years,  
3 and now they're asking for donations in their article.

4 Well, if they've been persecuting all of these, these  
5 Trexlers and now two-thirds of them were, were -- the  
6 charges were dismissed, and they're asking for donations.  
7 Well, that doesn't -- there's a question of fact there as  
8 to motivation and, and certainly not substantially true.

9 THE COURT: Talk to me about the privilege.

10 MR. WILLS: The privilege issue, Your Honor, I'll  
11 address it. I believe in the article at issue, we've got  
12 two parts. We have got a portion that addresses a public  
13 interest: having to do with the well-being of the horses,  
14 how they're doing; they're up for adoption; the progress of  
15 the horses, and the progress the Humane Society has made  
16 with regard to those horses. The second part of that is  
17 the, the announcement that the Trexlers pleaded no contest.

18 The public interest part has to do with the horses.  
19 It doesn't have to do with the Trexlers pleading no  
20 contest. If it does, that's all the more reason why it's  
21 defamatory. If that's the focus of the article and it's  
22 wrong, well that's all the more reason why this is  
23 defamatory and harmful. It's all the more consequential.  
24 So, the public interest, the public interest privilege  
25 doesn't apply to the defamatory nugget.

1           But even if it did, Your Honor, even if it does, we  
2 still have, we still have a heightened level to show you  
3 can't just have a privilege and say whatever you want. We  
4 still have to show that they acted recklessly or with  
5 actual knowledge of falsity. And that, again, is our  
6 question of fact. Did Mr. Brennessel know that Mr. James  
7 Trexler did not plead no contest? But he did because he  
8 was in, he was in the, in the courtroom.

9           We don't have any affidavit here to say that he  
10 wasn't; we don't have any affidavit to say that he didn't  
11 mean all three Trexlers. So, all we've got is an article  
12 that's indisputable as to what it says.

13           The question of fact comes as to what the implication  
14 is, what it -- what the understanding is. And, of course,  
15 when in defamation law, when a defamatory statement is  
16 susceptible to more than one interpretation, the question  
17 is for the jury. If the statement is -- has only but one,  
18 one possible meaning -- and if the statement has one  
19 possible meaning, then the court could find that, that --  
20 at the summary judgment level that it's either defamatory  
21 or not. But the court should only grant summary judgment  
22 in a defamation case if it can't determine that the  
23 publication is incapable of having any other meaning except  
24 the one that is explicitly on the page. Otherwise, it  
25 becomes a question for the jury.

1 THE COURT: I notice that your brief doesn't address  
2 the issue related to the charitable statute, and so I'll  
3 give you a chance to make an argument about that.

4 MR. WILLS: Thank you, Your Honor. We -- the  
5 defendants have not moved to be dismissed under this act,  
6 and that would be the appropriate mechanism rather than  
7 summary judgement if this act applies. But our contention  
8 is that for purposes of defamation and certainly for  
9 purposes of vicarious liability, the individual who utters  
10 the statement must be, must be liable before the agency for  
11 which he works can be liable.

12 So, we would, we, we would have a contention with the  
13 fact that he must be dismissed under the charitable -- I  
14 can't see how, can't see how just because you work for a  
15 charitable organization you're immune from making  
16 defamatory statements against somebody and not liable.

17 So, if the defendants want to move to dismiss under  
18 that act, then maybe we should do that at a separate time.  
19 I don't think that's the appropriate mechanism here, Your  
20 Honor.

21 Your Honor, one more point. The standard for holding  
22 an individual liable outside of his capacity as director of  
23 the Humane Society is recklessness: if he acts with  
24 recklessness, then he is outside of the purview of that  
25 act. And our contention is that he did act recklessly and

1 willfully in, in uttering statements that he knew was not,  
2 not true. Thank you, Judge.

3 THE COURT: Thank you.

4 Briefly, Mr. Tyler.

5 MR. TYLER: Yes, Your Honor, briefly. The Charitable  
6 Funds Act was raised as an affirmative defense. The facts  
7 in this case clearly support that probable cause existed.  
8 Opposing counsel relies on depositions which occurred years  
9 later. The important thing is, is the evidence that was  
10 presented to the grand jury as Your Honor has asserted,  
11 which is a secret proceeding. The, the affidavit itself  
12 says that there was no feed or hay on the property. The  
13 animal was separately confined in a barn with three other  
14 horses. Your Honor, the pictures are here. There was no  
15 feed; there was no hay in the barn where those animals were  
16 separately confined.

17 Counsel has raised an issue that the Humane Society  
18 has been persecuting the Trexlers. Perhaps counsel has not  
19 reviewed the hundreds of pictures that we have presented of  
20 persecuted animals, ill-treated animals. The Trexlers ---

21 THE COURT: Well, that's not really relevant in terms  
22 of the allegations that are made in this particular  
23 lawsuit.

24 MR. TYLER: Your Honor, if, if I may? On the, on the  
25 malicious, to wrap up the malicious prosecution issue, the

1 grand jury had the investigation in front of them. It was,  
2 it was presented to them. The Richland County Sheriff's  
3 Department was prosecuting the case at the time.

4 As to defamation, the role and capacity of Mr. James  
5 Trexler as a public official under the prior order of this  
6 court has to do with the same set of facts and  
7 circumstances: that 2008 time period of the treatment of  
8 this animals and their removal, which that order, of  
9 course, addresses.

10 THE COURT: And just so that we're clear, the fact  
11 that the Richland County Sheriff's Department may have, or  
12 the solicitor's office ultimately may have been the body  
13 that chose to go forward with any presentation of evidence  
14 to a grand jury, that does not absolve the Humane Society  
15 from prosecuting the claim by providing information and by  
16 you being the complaining witness, so the speak, or the  
17 complaining individual.

18 MR. TYLER: That -- that's, that's correct, Your  
19 Honor, and the Humane Society performed a investigation in  
20 the amount of time that such an extreme situation warrants  
21 and presented that to the sheriff's department. The  
22 affidavit contains information other than merely whether  
23 there was food. The horses were examined. They were  
24 mistreated and that, that information is -- was presented  
25 before the grand jury.

1 THE COURT: I'll review the information you've  
2 provided. Then I will issue an order. Thank you.

3 MR. TYLER: Thank you.

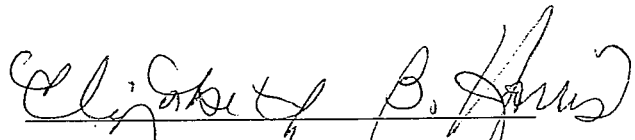
4 MR. WILLS: Thank you, Your Honor.

5 --- END OF TRANSCRIPT OF RECORD ---

## CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 6TH DAY OF SEPTEMBER, 2013.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

  
ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

JUNE 19TH, 2014

**S·W·B**

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