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COURT OF COMMON PLEAS

FEB 06 2015

COUNTY OF SPARTANBURG

2011-CP-42-04385

SC Court of Appeals

_____)
 Nellie Josephine Brown,)
)
 Plaintiff,)
)
 -vs-)
)
 Delilah Goode,)
)
 Defendant.)
 _____)

TRANSCRIPT OF RECORD

September 10, 2014
Spartanburg, South Carolina

Ordered: November 28, 2014

Delivered: December 24, 2014

B E F O R E:

The Honorable R. Keith Kelly, Presiding Judge.

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

Mr. Charles J. Hodge, Esquire
Attorney Appearing for the Plaintiff

Mr. O. Cyrus N. Hinton, Esquire
Attorney Appearing for the Defendant

Pamela Faucette, CVR-M
Circuit Court Reporter

WITNESSES

(No Witnesses were called by either party.)

ARGUMENTS OF COUNSEL

Mr. Hinton.....	3
Mr. Hodge.....	7
Mr. Hinton.....	10

EXHIBITS

Plaintiffs' Exhibits:	Marked:	Received:
(None)		
Defendant's Exhibits:	Marked:	Received:
(None)		

Reporter's Certification.....	12
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REPORTER'S NOTES: This transcript contains quoted material. Such material is reproduced as read or quoted by the speaker.

REPORTER'S NOTES: Some of the names in this transcript are spelled phonetically.

1 September 10, 2014

2:44 P.m.

2 THE COURT: Mr. Hodge and Mr. Hinton, *Brown vs.* — is it Good
3 or Goode?

4 MR. HINTON: Goode, Your Honor.

5 MR. HODGE: Delilah Goode, Your Honor.

6 THE COURT: Okay. You all ready?

7 MR. HODGE: We're ready, Your Honor.

8 THE COURT: Okay.

9 **(Parties stepped forward for the hearing.)**

10 MR. HODGE: Judge, I have not been served with any brief by Mr.
11 Hinton. But I — I got a copy for you of — of a brief that — that I'm anticipating
12 arguments. Let's put it that way.

13 I've already given Mr. Hinton a copy of it.

14 THE COURT: All right.

15 **(Documents handed up.)**

16 MR. HODGE: And there are various exhibits that are attached to
17 it as well.

18 **(Brief Pause)**

19 THE COURT: Mr. Hinton, do you have anything?

20 MR. HINTON: I do not have a brief, Your Honor.

21 THE COURT: Okay.

22 MR. HINTON: It did not seem that the Rules for Magistrate
23 appeals required a brief. We did — we do have the transcript from the
24 Magistrate Court case.

25 I just have brief arguments as to why WE believe a directed verdict

1 should have been granted in our favor.

2 **THE COURT:** Okay. Let me tell you before you get started that
3 we finished around — around 12:30 I guess this morning. And we had a little
4 time in between there. So I have read the file, including the transcript.

5 **MR. HINTON:** Yes, sir.

6 **THE COURT:** So I'm familiar with the case. So I'll be happy to
7 hear from you, Mr. Hinton.

8 **MR. HINTON:** Yes, sir. If it pleases the Court, Your Honor?

9 **THE COURT:** Yes, sir.

10 **MR. HINTON:** Thank you very much. As it relates to the appeal
11 in this case, I represented Ms. Delilah Goode in the Magistrate Court case
12 involving issues of libel and slander.

13 We believe that a directed verdict should have been granted in favor of
14 Ms. Goode. The case involved allegations amongst college students at
15 Converse College in the masters degree program, particularly a class wherein
16 Ms. Goode, at some point, believed students within the class were cheating.

17 The evidence in the case as produced shows that Ms. Brown indicated
18 that, at some point, Ms. Goode approached her and accused her of cheating.
19 Ms. Brown, then, approached Dr. Harris, who was the professor in the class,
20 and informed him that she had been accused of cheating and that she had to
21 report to a Dean Faulkenberry (phonetic).

22 At no point does any evidence suggest that Ms. Goode made any
23 statements to any third persons regarding cheating on behalf of Ms. Brown.
24 In fact, Ms. Brown, on Page 25 of the transcript, indicates that she believed
25 other students must have heard Ms. Goode accuse her because it was at the

1 dismissal of class.

2 However, she is contradicted by the testimony of Dr. Harris, who
3 indicates that he did not hear Ms. Goode accuse anyone out loud.

4 This is a case wherein the honor code required Ms. Goode to approach
5 the student she believed was cheating, inform that student that he or she had
6 24 hours to report to Dean Faulkenberry, to essentially self report based upon
7 the accusation.

8 The way that the honor code is written, it does not require the student
9 to make a disclosure to any third persons; I — I would believe in part to avoid
10 any issues of slander and/or defamation.

11 There is a letter. Mister — and Counsel indicates, Exhibit 2, there is a
12 letter from Dean Faulkenberry wherein he specifically quotes Ms. Goode as
13 saying she saw two other students in the classroom cheating. She did not —
14 and that is in quotation marks — she did not indicate those students' names.

15 Dr. Harris, a witness for the Plaintiff, indicates that, as he was informed,
16 Ms. Goode had been told by the administration of Converse College that, if
17 she did not carry forward and inform the students who she believed she had
18 witnessed cheating, of the fact that she witnessed them cheating, that
19 disciplinary action would be taken against her.

20 So, at no point, even through the testimony of Dr. Harris, did Ms.
21 Goode approach the teacher and give the teacher the name of the student
22 she believed were cheating.

23 It was only the students themselves that she gave the names to or that
24 she informed she believed that they were cheating. And, then, informed them
25 that they had 24 hours in which to report to Dean Faulkenberry and self report

1 and, then, deal with the charges of cheating.

2 At no point — and at no point, in the Plaintiff's case, was any evidence
3 produced to suggest that Ms. Goode ever divulged the names of the students
4 she believed was cheating — or were cheating.

5 In fact, Counsel attempted to, at some point, introduce an email, but
6 did not have the email. And, as a result of that, that was excluded.

7 So, at no point during the Plaintiff's case in chief, does anyone indicate
8 that they had anything written from the Defendant indicating that they — that
9 she saw Ms. Brown cheating.

10 The best that we have is a letter from Dean Faulkenberry. And he
11 specifically, in that letter, Your Honor, quotes what he had — what he believes
12 Ms. Goode to say.

13 And in quotations it says, "As I was walking out of the class with
14 another classmate, she and I observed two students from our class standing
15 outside the door with their test changing answers by using the answer key still
16 on the wall."

17 As he quotes her specifically, "She only indicates that it was two other
18 students. She does not indicate the name of those two other students."

19 At some point, after he wrote that letter, he wrote a letter to Ms. Goode
20 where he asked her — or he basically told her, if she did not approach those
21 students and inform them, pursuant to the honor code what she had
22 observed, that disciplinary action would be taken against her.

23 So we believe that the case in chief of the Plaintiff failed based on the
24 evidence that was presented.

25 We also requested that a necessary party be added to the action, Your

1 Honor. And that was Converse College. That was denied.

2 We believe that Converse College because the honor code was an
3 honor code established by Converse College, because Converse College
4 required Ms. Goode to approach these students and inform them that she
5 believed she witnessed them cheating, then, Converse College was a
6 necessary party to this action in order to reach a resolution.

7 So based on those factors, the fact that we believe the case fails and
8 we should be granted a directed verdict and based on the 12(b)(7) motion that
9 we made at the beginning of trial that Converse College be added as a party,
10 we believe that the verdict should be overturned.

11 **THE COURT:** Okay. Mr. Hodge?

12 **MR. HODGE:** Your Honor, Delilah Goode and Josephine Brown
13 were in the same class in a masters education program. Contrary to these
14 assertions, she directly accused my client of changing answers.

15 She said she observed my client outside changing answers at least
16 when we got — when we — when the allegations were made. And that's set
17 forth in Dean Faulkenberry's letter.

18 When we got to the honor code hearing, she — she changed her story.
19 And, then, she said, "Well, I really didn't see her doing that."

20 So my client gets accused of cheating. She responds to it. She takes
21 a polygraph to exonerate herself. Then, she goes through the school hearing,
22 which could have been resolved if Delilah Goode had said, "Listen, I was
23 mistaken. It didn't happen. Or it got misinterpreted."

24 Instead, she participated fully in that hearing. And she kept trying to
25 insist that my client ought to be reprimanded for something that she didn't do.

1 Now, we gave her plenty of opportunity not to do that, but she insisted.
2 So my client had to hire me, had to go and defend her so she wouldn't get
3 kicked out of the Masters of Education program. It had a very, very serious
4 ramifications.

5 So we tried — so we go — after that, we try to resolve the thing. It
6 doesn't get resolved so we filed an action. And we filed this action and we
7 tried it on May 23rd, 2011. And it's a full jury trial.

8 Now, everything that Mr. Hinton said was presented in front of that jury.
9 The jury and the judge got to hear everything.

10 The truth of the matter is, we probably should have gotten summary
11 judgment on our part based on the fact that the overwhelming evidence
12 pointed to the fact that Delilah Good accused my client of cheating.

13 The jury understood it, got it, made a pretty prompt decision. And, as a
14 result, we got a verdict. And they've appealed this case.

15 Now, the nature of this appeal; no brief, no legal citation, come in front
16 of you with nothing. I have to write a brief trying to guess at what they're going
17 to argue.

18 But I — I do want to point out what the law is because I think it's really
19 important. The law says — and, you know, sometimes I kind of — you've got
20 basic premises in your head, but it's interesting to go back through it and —
21 and verify that what the — what it requires.

22 And it's, "In South Carolina, the tort of defamation allows a Plaintiff to
23 recover for injury to his or her reputation as a result of the Defendant's
24 communication to others of a false message about the Plaintiff."

25 In support of that false information testimony that was communicated,

1 we presented the testimony of Dr. Harris, who was the professor. That's in
2 that transcript he refers to as well.

3 We presented the testimony — I believe this is correct; it's been a long
4 time now — I believe we presented the testimony of Ms. Mintz (phonetic), who
5 provided an affidavit.

6 She verified a — a similar thing that, you know, my client didn't cheat.
7 Dr. Harris checked it out. He — he verified in front of the honor council my
8 client didn't cheat.

9 "A statement is classified as defamatory per se when the meaning or
10 message is obvious on its face." Well, nothing can be more defamatory than
11 to accuse a fellow student of cheating.

12 And there's specific cases. The case that I was referencing that — that
13 outlined the elements of the tort *Ericson vs. Jones Street Publishers, LLC*,
14 (phonetic) 368, S.C. 444, 629 SE 2nd, 653. It's a 2006 case. See also *Parris*
15 *vs. Allison* (phonetic), which is 973, S.C. 308, 656, SE 2nd, 382. And that's an
16 appellant case from 2007.

17 In the case of *Lynch vs. Toys 'R Us Delaware, Inc.*, (phonetic) which is
18 375, S.C. 604, 654, SE 2nd, 541, that's a 2007 case. And, in that case, the
19 Court determined that "Evidence supported the jury's actual damages award
20 of \$50,000 for each cause of action in a shop — in a shopper's false
21 imprisonment, malicious prosecution, and slander case."

22 And, in that case, what happened is a shopper said she was arrested
23 without justification. She was handcorted [sic], she was escorted to a police
24 car in full view of customers. She was jailed for 10 hours, the combination
25 which injured her reputation, and led to her humiliation, sleepless —

1 sleeplessness, and emotional pain.

2 And, in that same case, the Court held that \$250,000 was justified in a
3 — for punitive damages because of the egregious nature.

4 I submit to you that, in this case, it's just about as egregious. She gets
5 escorted in front of this honor panel that's hearing allegations; you, a student
6 in a masters of education program, are accused of cheating. And you've got
7 to defend yourself.

8 That's as bad as it gets. It probably should have been brought in
9 Common Pleas; maybe a verdict like this would have happened. But, to the
10 benefit of this Defendant, it was brought in Magistrate's Court. And, of course,
11 the jury returned a verdict for the full sum of seventy-five hundred dollars
12 (\$7,500).

13 It was justified. It was right. This is a bad case. And this — this appeal
14 is frivolous. And I think — I think they ought to have to pay us some extra for
15 having to come and defend it. Thank you.

16 **MR. HINTON:** If I may just ----

17 **THE COURT:** Yes, sir, briefly, Mr. Hinton.

18 **MR. HINTON:** Yes, sir, Your Honor. And just to correct one thing,
19 not only did Ms. Smith not testify, her — her affidavit was excluded based on
20 hearsay.

21 On Page 23, we objected to the inclusion of Ms. Smith's affidavit based
22 upon the fact that she was not there and we could not cross examine her.

23 So not only did she not testify, but her affidavit was not submitted to the
24 Court either.

25 **MR. HODGE:** I — I stand corrected, Your Honor. And we can

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remove that from the exhibit. You may recall that I said I recall because I haven't been provided with the transcript.

THE COURT: Okay. That's fine. All right, gentlemen, you know how — how — how I do things. So watch your email, okay?

MR. HINTON: Yes, sir, Your Honor.

MR. HODGE: Okay.

MR. HINTON: Thank you.

MR. HODGE: Thank you, Judge.

(Off-the-Record Comments)

MR. HINTON: Thank you, Your Honor.

THE COURT: Thank you both. Good to see both of you.

MR. HINTON: Good to see you as well.

(Whereupon, the proceeding concluded at 2:59 p.m.)

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 11, were transcribed by me and represent a true and accurate transcript of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

December 25, 2014



Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

O. Cyrus Hinton

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February 3, 2015

Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Nellie Brown v. Delilah Goode
Appellate Case No. 2014-002260

Dear Ms. Kitchings:

Enclosed please find the transcript of the Circuit Court in the above referenced case. This matter was originally appealed from the magistrate court to circuit court. Please advise if the magistrate court transcript is needed as well.

Please notify my office of any impending court dates. Should you have any further question regarding the above referenced matter do not hesitate to contact me.

O. CYRUS HINTON, P.A.

Thank You,


O. Cyrus Hinton

OCH:dm

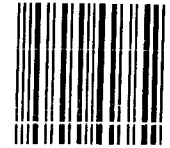
Cc: South Carolina Office of Court Administration
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