

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

JUDGMI IN A CIVIL CASE

CASE NUMBER: 2013CP4001460

Jeffrey Kennedy

Richland Two County School District

PLAINTIFF(S)

Katie Brochu  
DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk :

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 24 February 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas Jefferson Goodwyn Jr.

Thomas Kennedy Barlow

**RECEIVED**

MAR 13 2015

**SC Court of Appeals**

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court

*Jeannette W. McBride*

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

Jeffrey Kennedy, )

Plaintiff, )

v. )

Richland County School District Two, )  
Eric Barnes, and Chuck Earles, )

Defendants. )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2013-CP-40-01460

ORDER

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MAR 13 2015  
**SC Court of Appeals**

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2015 FEB 24 AM 9:14  
RICHLAND COUNTY

This matter comes before the Court on Defendants' Motion for Judgment Notwithstanding the Verdict, or, in the alternative, for a New Trial Absolute, or, in the alternative, for a new Trial Nisi Remittitur. This case came to trial on September 29, 2014. The jury returned a verdict of \$100,000 in actual damages and \$150,000 in punitive damages against Defendant Barnes and a verdict of \$100,000 in actual damages and \$200,000 in punitive damages against Defendant Earles. Defendants filed this motion pursuant to Rules 50 and 59(e), SCRCP, on October 13, 2014. After careful consideration of the motions made, memorandum submitted, and the record in this case, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Defendants' Motion for Judgment Notwithstanding the Verdict, or, in the alternative, for a New Trial Absolute, or, in the alternative, for a new Trial Nisi Remittitur. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

Additionally, regarding awards of punitive damages, this Court shall conduct a post-trial review to ensure that a punitive damage award is proper. *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991). "Because punitive damages are quasi-criminal in nature, the process of assessing punitive damages is subject to the protections of the Due Process Clause of the Fourteenth Amendment of the United States Constitution." *Atkinson v. Orkin Exterminating Co.*, 361 S.C. 156, 164, 604 S.E.2d 385, 389 (2004). The Due Process Clause of the Fourteenth Amendment prohibits states from imposing grossly excessive punishments on tortfeasors. *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 562 (1996).

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The United States Supreme Court set forth three guideposts for the trial courts to consider when assessing whether an award of punitive damages violates due process. *BMW of North America v. Gore, supra*. Those guideposts are: (1) the reprehensibility of the defendant's conduct; (2) the ratio to the compensatory damages awarded (actual or potential harm inflicted on the plaintiff); and (3) comparison of the punitive damages award and civil or criminal penalties that could be imposed for comparable misconduct. *Id.* at 574.

Reprehensibility is “[p]erhaps the most important indicium of the reasonableness of a punitive damages award.” *Gore*, 517 U.S. at 575. “This principle reflects the view that some wrongs are more blameworthy than others.” *Id.* In considering reprehensibility, a court should consider whether: (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003).

The South Carolina Supreme Court previously employed an eight factor post-verdict review that trial courts were required to conduct to determine if a punitive damages award comports with due process. *See Gamble, supra*. However, following *Gore, supra*, and *Campbell, supra*, as well as other United States Supreme Court opinions, in *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009), the Court “articulate[d] the following test for our courts in conducting a post-judgment review of punitive damages awards”:

1. Reprehensibility

First, any court reviewing a punitive damages award should consider the degree of reprehensibility of the defendant's conduct. ... In considering reprehensibility, a court should consider whether: (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident.

2. Ratio

Second, the court should consider the disparity between the actual or potential harm suffered by the plaintiff and the amount of the

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punitive damages award. ... Although the Supreme Court has been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award, and has consistently declined to adopt a bright line ratio or simple mathematical test, the Court has remarked that in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process. ... With this instruction in mind, we note that a court, when determining the reasonableness of a particular ratio of actual or potential harm to a punitive damages award, may consider: the likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant's ability to pay. Nevertheless, a court may not rely upon these considerations to justify an otherwise excessive punitive damages award.

### 3. Comparative Penalty Awards

Third, the court should consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. When identifying "comparable cases" a court may consider: the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant's conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant.

*Id.* at 587-89, 686 S.E.2d at 185-86. Applying the reprehensibility factors, Plaintiff suffered no physical harm from the defamation, other than perhaps distress and embarrassment. Second, there was no evidence of a reckless disregard for the health or safety of Plaintiff. Evidence was presented that Plaintiff was financially vulnerable; for example, after his termination, he cashed out his retirement. Fourth, the alleged defamation was a one-time event; however, there was repetitive conduct of rumors being spread in general in the department. Finally, Plaintiff argued, and the jury could have inferred from the evidence presented that the harm was the result of intentional malice, trickery, or deceit.


As to the ratio factor, although there is no bright-line test regarding the ratio of the actual damages to the punitive damages, the multiplier for punitive damages is low in this case, being 1.5 for Barnes and 2 for Earles. This factor weighs in favor of finding the punitive damages award appropriate.

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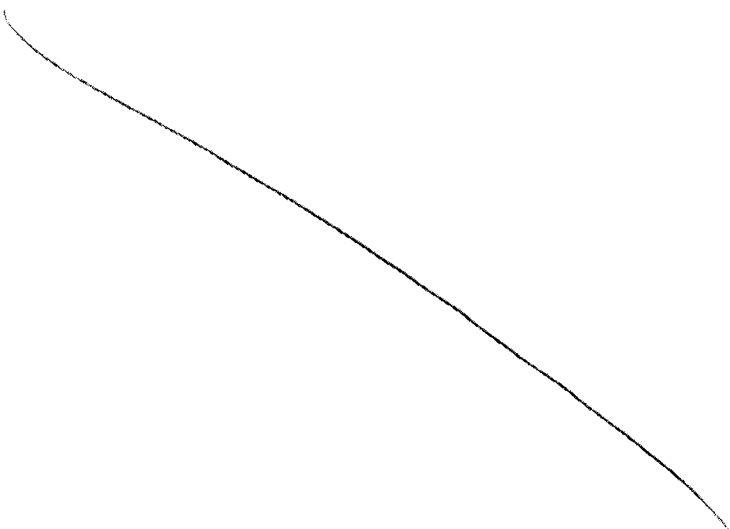
As to the comparative penalty awards factor, there are no criminal penalties for workplace defamation in South Carolina. Consequently, there is nothing against which to assess

this particular factor. Based upon all of these factors and the evidence presented, the punitive damages award does not violate constitutional due process. Defendants are not entitled to a reversal or reduction in the amount of punitive damages.

**AND IT IS SO ORDERED.**

  
ALISON RENEE LEE  
Presiding Judge

February 23, 2015  
Columbia, South Carolina

  
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