STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2014-002725

RECEIVED
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SC Court of Appeals

Clark D. Thomas, ... Appellant,

v.

Evening Post Publishing Co.,
d/b/a The Post and Courier,
Glenn Smith, Officially
and Individually, ...Respondent.

FINAL BRIEF OF APPELLANT

Clark D. Thomas
Appellant

BRCI / Moultrie A-2087
4460 Broad River Road
Columbia, SC 29210

Pro se Appellant

TABLE OF CONTENTS

Table of Contents i

Table of Authorities iii

Statement of Issues on Appeal 1

Statement of the Case 2

Facts 2

Standard of Review 7

Arguments 9

I. Did the trial court err when denying Appellant's motions for continuance or, for dismissal without prejudice and tolling of the statute of limitations in violation of Appellant's right to due process and equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution and South Carolina law? 9

II. Did the trial court err when granting Respondents' motion for summary judgment on grounds that Appellant failed to proffer evidence establishing a genuine issue of material fact in violation of Appellant's right to due process and equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution and South Carolina law? 12

III. Did the trial court err when failing to remand for review the novel issue of being libel-proof in violation of Appellant's right to due process and equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution and South Carolina law? 17

Conclusion 20

Certificate of Compliance 21

TABLE OF AUTHORITIES

South Carolina Cases:

Anderson v. The Augusta Chronical, 585 S.E.2d 506 (S.C.App. 2003) 13

Calhoun v. Calhoun, 529 S.E.2d 14 (S.C. 2000) 9

Chastain v. Hiltabidle, 673 S.E.2d 826 (S.C.App. 2009) 17

Davenport v. Island Ford, Lincoln, Mercury, Inc., 465 S.E.2d 737 (S.C.App. 1995) ... 12

Dawkins v. Fields, 580 S.E.2d 433 (S.C. 2003) 12

Fountain v. First Reliance Bank, 730 S.E.2d 305 (S.C. 2012) 8

George v. Fabri, 548 S.E.2d 868 (S.C. 2000) 12

Higgins v. Medical University of South Carolina, 486 S.E.2d 269 (S.C.App. 1997) 12

Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr., 687 S.E.2d 269 (S.C. 2009) 9

Keeler v. Mauney, 500 S.E.2d 123 (S.C.App. 1998) 7

Murray v. Holnam, 542 S.E.2d 743 (S.C.App. 2001) 7,8

Singleton v. Sherer, 659 S.E.2d 196 (S.C.App. 2008) 12

State v. Barnes, 753 S.E.2d 545 (S.C. 2014) 9

State v. Dickerson, 716 S.E.2d 895 (S.C. 2001) 9

State v. Powers, 501 S.E.2d 116 (S.C. 1998) 8

State v. Rice, 652 S.E.2d 409 (S.C.App. 2007) 9

Tyler v. Mack Stores of South Carolina, 272 S.E.2d 633 (S.C. 1980) 17

Worsley Companies v. Town of Mount Pleasant, 528 S.E.2d 657 (S.C. 2000) 12

Federal Cases:

Duncan v. Henry, 518 U.S. 364 (1995) 8

Erikson v. Pardus, 551 U.S. 89 (2007) 7

Haines v. Kerner, 404 U.S. 519 (1972) 7

Pollard v. United States, 352 U.S. 354 (1957) 7

Ray v. United States Dept. of Justice, 658 F.2d 608 (8th Cir. 1981) 17

Vander Linden v. Hodges, 193 F.3d 268 (4th Cir. 1999) 9

Other State Cases:

Jackson v. Longscope, 476 N.E.2d 617 (Mass. 1985) 17

Other Authorities:

50 A.L.R. 4th 1257 17,18

Appellate Practice in South Carolina (2nd Edition 2002) 8

Black's Law Dictionary (9th Edition 2009) 12

Rule 56, *South Carolina Rules of Civil Procedure* 14

Constitutional Provisions:

Fourteenth Amendment to the United States Constitution .... Passim

STATEMENT OF ISSUES ON APPEAL

I.

Did the trial court err when denying Appellant's motions for continuance or, for dismissal without prejudice and tolling of the statute of limitations in violation of Appellant's right to due process and equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution and South Carolina law?

II.

Did the trial court err when granting Respondents' motion for summary judgment on grounds that Appellant failed to proffer evidence establishing a genuine issue of material fact in violation of Appellant's right to due process and equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution and South Carolina law?

III.

Did the trial court err when failing to remand for review the novel issue of being libel-proof in violation of Appellant's right to due process and equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution and South Carolina law?

STATEMENT OF THE CASE

This is an appeal from the final *Order* in the Court of Common Pleas for the Ninth Judicial Circuit granting Respondents' motion for summary judgment. (R. pp. 5-7). Appellant, Clark D. Thomas, filed this lawsuit for libel and the intentional infliction of emotional distress in response to an article written and published about him by Respondents. Thomas is seeking $250,000 in actual damages, punitive damages in an amount to be determined by a jury and, for pre-judgment and post-judgment interest.

FACTS

Precursory Publications

Respondents' first article about Thomas dated June 9, 2006, is based on allegations in a police report made by Thomas' then-wife, Rachel M. Crowley, after he asked for a divorce. Consequently, Thomas was charged with kidnapping and criminal domestic violence of a high and aggravated nature (underlying criminal matter). Respondents' second article setting forth those same false allegations and published on March 1, 2007, is centered on Thomas' release from jail on bond. However, it was supplemented with more allegations made by Crowley and her mother, Cathy Meree, during an interview conducted by Respondent Smith while preparing that article for print.

In response, Thomas alerted Smith on or about March 3, 2007, to the fact that both of the foregoing articles were inaccurate. And when Thomas was erroneously convicted in the underlying criminal matter: the evidence went on record confirming that Respondents' articles are grounded on false statements. However, Respondents' third article printed after Thomas' trial on July 12, 2008, again reiterated the same allegations despite having been controverted.

Divorce Trial Proceedings

During Thomas and Crowley's divorce trial on September 20, 2012: Thomas entered into the record under oath that Smith was in attendance; and that Smith should confirm his facts before writing another story about him for publication. And Thomas' mother, Carol Ann Cook, along with other family members, friends and associates in attendance would have supplied Smith with the information required to write a veritable story: but he did not seek to interview any of them. Be that as it may, Cook did ask Smith not to publish another story before hearing the truth. (R. p. 89, ¶ 12; p. 103, ¶ 10). And the next day on September 21, 2012: Cook emailed Smith to relay that Thomas wanted to provide him with the documents proving his articles are based on events that did not happen. (R. p. 97). However, Respondents published the article in dispute on September 23, 2012.

Procedural History

Thomas formally requested that Respondents retract the article in dispute on September 12, 2013: but Respondents failed to comply. (R. p. 95, ¶ 44; p. 106, ¶ 25). Consequently, Thomas filed his *Complaint* on September 17, 2013, setting forth the article dated September 23, 2013, as the grounds for this action, (R. pp. 9-81); and Respondents filed their *Answer* on October 17, 2013. (R. pp. 82-86). And Respondents filed a motion on October 18, 2013, seeking a judgment on the pleadings as to claims alleged of libel arising out of publications on June 9, 2006, March 1, 2007, and July 12, 2008. (R. p. 109).

In response, Thomas filed an *Amended Complaint* on November 22, 2013, to supplement the pleadings with, among other things, specificity regarding the reason for this lawsuit and an additional claim for the intentional infliction of emotional distress, (R. pp. 87-101); and Respondents filed their *Answer* on November 27, 2013. (R. pp. 102-108). Thomas also filed on

November 22, 2013, a request for judicial notice to be taken of, *inter alia,* the fact that the only cause of action for this lawsuit is Respondents' disputed article published on September 23, 2012. What's more, Thomas filed his arguments in support in a written *Motion*—that included an affidavit establishing genuine issues of material fact—explaining why a hearing was not required. (R. pp. 110-113). Also provided was a proposed *Order of Judicial Notice* stating that a hearing for Respondents' motion for judgment on the pleadings should not be convened. (R. p. 115, ¶ 1).

Despite his efforts, Thomas was unnecessarily transported to the hearing on January 10, 2014, where Respondents withdrew their motion for judgment on the pleadings saying that it was moot. (R. p. 141, lines 11-12). And the following day on January 11, 2014: Thomas received Respondents' letter dated January 7, 2014, claiming to have formally withdrawn that motion. (R. p. 206). Be that as it may, the court seemed to be laying the blame for that pointless hearing on Thomas. (R. p. 142, lines 18-25). Therefore, Thomas wrote the court on April 1, 2014, giving a detailed account of the facts absolving him. (R. pp. 207-208). However, Thomas' letter was filed by the court on July 8, 2014, with a response dated April 15, 2014, wherein the court stated that Thomas appeared to be expressing his desire to dismiss this case. (R. p. 209).

Discovery & Summary Judgment

Respondents served Thomas with interrogatories on December 5, 2013, (R. pp. 162-163); and Thomas fully responded when serving them with his interrogatories and request for production of documents on March 5, 2014. (R. pp. 164-173). Respondents then served Thomas with their request for admissions on May 19, 2014, (R. pp. 174-192), and they responded to Thomas' discovery requests on June 12, 2014. (R. pp. 193-197). Respondents then filed their motion for summary judgment on July 2, 2014, on grounds that the news report complained of

by Thomas is (1) privileged as a fair and accurate account of judicial records and proceedings; (2) true or substantially true; and (3) that Thomas' reputation, based on his criminal history, rendered him *libel-proof*. (R. pp. 116-117). Respondents filed with their summary judgment motion (1) a copy of their request for admissions, (R. pp. 174-192); (2) a copy of their response to Thomas' interrogatories, (R. pp. 193-196); (3) the *affidavit* of Respondent Glenn Smith executed on June 18, 2014, (R. pp. 198-205); and (4) a copy of the transcript of Thomas' divorce trial proceedings. (R. pp. 239-527). A hearing was later scheduled for September 10, 2014.

Continuance & Tolling Motions

The facts in this case involve the same allegations made by Thomas' then-wife, Rachel M. Crowley, in the underlying criminal matter. To that end, Thomas' hearing for post-conviction relief (PCR) was finally convened on December 8, 2014, after having been continued several times; and a final ruling in that matter has not yet been handed down. With that in mind, the court hearing Thomas' divorce ruled that Crowley's false allegations in the underlying criminal matter could not be raised outside of PCR proceedings—despite their relevance—which resulted in Thomas being denied relief. Therefore, Thomas filed on October 6, 2014, a motion for continuance; or in the alternative, a motion for dismissal without prejudice and tolling of the statute of limitations to allow time for his PCR issues to be fully adjudicated. (R. pp. 118-132).

Thomas also filed 14 supplementary character *affidavits* on October 6, 2014, in response to Respondents' summary judgment motion seeking to establish that he is not *libel-proof*. (R. pp. 119-132). And on October 28, 2014, Thomas filed a *Memorandum of Law* in opposition to Respondents' motion for summary judgment that was also comprised of arguments in support of his motion for a continuance, or dismissal and tolling. (R. pp. 210-238). However, on October 29, 2014, Thomas' motions were denied; and Respondents were granted summary judgment on

the grounds that Thomas failed to establish a genuine issue of material fact. And on December 1, 2014, the court denied Thomas' motion to alter or amend, (R. p. 8), filed on November 17, 2014. (R. pp. 133-139). This *Appeal* filed on December 29, 2014, follows:

STANDARD OF REVIEW

Pro Se Litigation

The United States Supreme Court has consistently held that they "do not impose on persons unlearned in the law the same high standards of the legal art that they might place on the members of the legal profession." Pollard v. United States, 352 U.S. 354, 363 (1957). *Pro se* litigants are held "to less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 523 (1972). "As a *pro se* litigant, the Plaintiff's pleadings are accorded liberal construction, and held to a less stringent standard than formal pleadings drafted by lawyers." (Emphasis added). (Citation omitted). Erickson v. Pardus, 551 U.S. 89, 94 (2007). "When the United States Supreme Court enunciates a rule based upon the Fourteenth Amendment, that rule is binding upon state courts through the *Supremacy Clause*." (Emphasis added). (Citation omitted). Keeler v. Mauney, 500 S.E.2d 123, 125 (S.C.App. 1998).

Summary Judgment

"In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party." (Citation omitted). Murray v. Holnam, 542 S.E.2d 743, 747 (S.C.App. 2001). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." (Citation omitted). *Id.* "All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party." (Citation omitted). *Id.*

"Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." (Citation omitted). *Id.* "In general, if the pleadings and the evidentiary matter in support of summary judgment do

not establish the absence of a genuine issue of material fact, summary judgment must be denied, even if no opposing evidentiary matter is presented." (Citation omitted). *Murray, 542 S.E.2d at 747.* "In order to withstand a motion for summary judgment ..., the non-moving party is only required to submit a mere scintilla of evidence." (Citation omitted). Fountain v. First Reliance Bank, 730 S.E.2d 305, 309 (S.C. 2012).

Constitutional Rights & Preservation

"If a [plaintiff] wishes to claim that an evidentiary ruling at a state court trial denied him due process of law as guaranteed by the Fourteenth Amendment, he must say so, not only in federal court, but in state court." Duncan v. Henry, 518 U.S. 364, 366 (1995). "[F]ailure to raise constitutional issues at trial results in waiver on appeal." (Citation omitted). State v. Powers, 501 S.E.2d 116, 118 (S.C. 1998). "Even if the court only issues a form order in response to a[n] ... [issue], and a party does not make 59(e) motion, if the arguments in support of the [issue] are included in the record on appeal, they are preserved." (Citation omitted). Jean Hoefer Toal, Shahim Yafai, Robert A. Muckenfuss, Appellate Practice in South Carolina 60 (2nd Edition 2002).

ARGUMENT

I.

The trial court erred when denying Appellant's motions for continuance or, for dismissal without prejudice and tolling of the statute of limitations in violation of Appellant's right to due process and equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution and South Carolina law.

"[A]nything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown…." (Citation omitted). State v. Dickerson, 716 S.E.2d 895, 904 (S.C. 2011). "South Carolina precedent has firmly established that otherwise inadmissible evidence may be properly admitted when opposing counsel 'opens the door' to that evidence." State v. Rice, 652 S.E.2d 409, 422 (S.C.App. 2007).

"A 'stipulation' … constitutes express waiver … conceding for the purposes of trial the truth of some alleged fact, with the fact thereafter to be taken for granted, so that the one party need offer no evidence to prove it, and the other is not allowed to disprove it." (Internal quotations in original). Vander Linden v. Hodges, 193 F.3d 268, 279 (4th Cir. 1999). "A *pro se* litigant, whether an attorney or layperson, does not become liable for or subject to fees charged by an attorney.' (Emphasis in original). Calhoun v. Calhoun, 529 S.E.2d 14, 17 (S.C. 2000).

"[T]he court having jurisdiction of the matter may grant any necessary or reasonable continuance." State v. Barnes, 753 S.E.2d 545, 564 (S.C. 2014). And the court in Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr., 687 S.E.2d 29, 32 (S.C. 2009), explained:

> ""The equitable power of a court is not bound by cast-iron rules but exists to fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other. Equitable tolling may be applied where it is justified under all the circumstances.""

Prejudice of Infamy

During the course of Thomas' divorce trial proceedings in the case at bar: Crowley and her mother, Cathy Meree, gave perjured testimony to elude, among other things, the prospect of being ordered to compensate Thomas for his non-marital assets. By way of explanation, every time Crowley testified inconsistently with her testimony during the underlying criminal trial, the court would not allow Thomas to use the record of those proceedings to impeach her on grounds that those were PCR issues—even when Crowley expressly *opened the door* to the underlying criminal matter. (R. p. 427, lines 17-25—p. 428, lines 1-14). And when Thomas did manage to enter evidence from the underlying criminal matter proving Meree had lied on the stand, the court denied Thomas' request for judicial notice of that perjury. (R. p. 439, lines 6-14; p. 518, lines 24-25—p. 519, line 1).

What's more, despite Crowley stipulating to having committed adultery: the court denied Thomas relief on those grounds because he didn't offer proof when the court had prevented him from doing so because Crowley had already stipulated to adultery. (R. p. 286, lines 5-7; p. 385, lines 16-21; p. 520, lines 2-5). Thomas was also denied relief on one year's continuous separation for failure to prove it when he had been in prison for more than four years. (R. p. 306, lines 11-15; p. 519, lines 15-20). Then the court ordered, among other things, that Thomas must pay Crowley's lawyer $9,000 within 30 days of his release from prison notwithstanding the fact that he is a *pro se* litigant. (R. p. 526, lines 18-22). In other words, the evidence indicates that Thomas was prejudiced in that action because of the nature of his charges in the underlying criminal matter. In fact, that postulation seems to have infected every attempt Thomas has made to rightfully protect his legal interests.

With those facts in mind, it appears that the trial court in the case at hand may well have also been influenced by the impact of Thomas' current circumstances. By way of explanation, Respondents have argued just that very infamy as one of the grounds for summary judgment in their favor—that Thomas is *libel-proof*. And while the review of all the documentation in this case reveals that Thomas filed 15 affidavits, *inter alia*, establishing genuine issues of material fact, (R. pp. 119-132), the trial court determined that no such evidence was presented. (R. p. 152, lines 13-15).

Consequently, had the trial court postponed the review of Respondents' motion for summary judgment until the final ruling is handed down in Thomas' PCR: the prejudice engendered by the degradational effect of those convictions would have been lifted and, thereby, enabling justice to be properly served. Therefore, the trial court erred when denying Thomas' motions for continuance or, for dismissal without prejudice and tolling of the statute of limitations.

ARGUMENT

II.

The trial court erred when granting Respondents' motion for summary judgment on grounds that Appellant failed to proffer evidence establishing a genuine issue of material fact in violation of Appellant's right to due process and equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution and South Carolina law.

"When ruling on motion for summary judgment, trial judge must consider *all* of the documents and evidence *within the record*, including the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits." (Emphasis in original). (Citation omitted). Higgins v. Medical University of South Carolina, 486 S.E.2d 269, 272 (S.C.App. 1997). Black's Law Dictionary 1698 (9th Edition 2009) defines *verify* as "[t]o prove to be true; to confirm or establish the truth or truthfulness of; to authenticate," or "[t]o confirm or substantiate by oath or affidavit; to swear to the truth of." "A verified complaint is an acceptable substitute for an affidavit in a summary judgment motion as long as the pleading satisfies 56(e)." Dawkins v. Fields, 580 S.E.2d 433 (S.C. 2003).

"If triable issues exist, those issues must go to jury." (Citation omitted). Worsley Companies v. Town of Mount Pleasant, 528 S.E.2d 657, 660 (S.C. 2000). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." (Citation omitted). Singleton v. Sherer, 659 S.E.2d 196, 197 (S.C.App. 2008). "Unless the trial court finds ... that the Plaintiff *can prove* actual malice, ... it should grant summary judgment for the defendant." (Emphasis in original). (Citation omitted). George v. Fabri, 548 S.E.2d 868, 875 (S.C. 2001). "For a summary judgment to be granted, it must be perfectly clear that no issue of fact is involved." (Citation omitted). Davenport v. Island Ford, Lincoln, Mercury, Inc., 465 S.E.2d 737, 739 (S.C.App. 1995). "[T]he false statement made with

reckless disregard of the truth do[es] not enjoy constitutional protections." (Citation omitted). Anderson v. The Augusta Chronical, 585 S.E.2d 506, 513 (S.C.App. 2003).

> ""Credibility determinations, the weighing of the evidence and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict, the evidence presented by [appellant] is to be believed, and all justifiable inferences are to be drawn in his favor."" (Internal quotation marks omitted). (Citations omitted). *Id.*

Sworn Testimony

In the case at bar, Thomas was under oath during his divorce trial proceedings when stating that (1) Respondents had printed a lot of lies about him; (2) Respondent Glenn Smith lacked integrity, and was only interested in selling newspapers; (3) Respondents had a duty to disclose the truth, but would likely attempt to further destroy his credibility in their next article; and (4) that Respondents were not interested in the facts. (R. p. 314, lines 11-25; p. 348, lines 24-25—p. 350, lines 1-15). It should be noted that Thomas had his witnesses subpoenaed to testify during the summary judgment proceedings. And Thomas sought to be sworn in to testify, but the court would not allow any testimony. (R. p. 151, lines 21-25—p. 152, lines 1-11).

Verified Pleadings

Respondents have verified that the following averments in the *Amended Complaint* are true statements of fact:

1. Smith was notified on or about March 3, 2007, that their articles are rife with lies, (R. p. 88, ¶ 5; p. 102, ¶ 4);
2. Thomas' mother, Carol Ann Cook, told Respondent Smith during Thomas' divorce trial

on September 20, 2012, that he should hear the truth before writing another story about Thomas, (R. p. 89, ¶ 12; p. 103, ¶ 10);

3. Cook emailed Smith the next day on September 21, 2012, to convey Thomas' eagerness to provide them with documents on public record proving their previous articles were based on events that did not actually happen. (R. p. 89, ¶ 13; p. 103, ¶ 10); and,

4. Respondents refused to retract the article in dispute. (R. p. 95, ¶ 44; p. 106, ¶ 25).

With that in mind, Thomas' request for retraction clearly reveals Smith's malicious reaction to Thomas having disparaged him in open court. (R.pp. 32-58) In other words: with common law actual malice, Smith recklessly disregarded the truth to avenge Thomas. Therefore, Respondents have erroneously argued that the article in dispute (1) is privileged as a fair and accurate account of judicial records and proceedings; (2) is true or substantially true; and (3) that Thomas is *libel-proof*. (R. p. 116).

Opposing Affidavits

The court stated that there were no affidavits filed in response to Respondents' motion for summary judgment; and that unless Thomas had filed something, Respondents' motion would be granted. (R. p. 152, lines 2-25—p. 153, lines 1-9). However, unbeknownst to Thomas, he had also satisfied the requirements of Rule 56(e), SCRCP, when filing an *affidavit* with his motion for judicial notice on November 22, 2014. (R. p. 115). By virtue of that *affidavit* Thomas swore to the truth of the facts stated in, among other things, the (1) *Complaint*; (2) *Amended Complaint*; and (3) his request for retraction of the article in dispute.

Furthermore, the allegations set forth in Smith's *affidavit* filed on July 22, 2014, are directly refuted in Thomas' request for retraction to the extent of also establishing genuine issues for trial pursuant to Rule 56(e). (R. pp. 32-58; pp. 198-205). And finally, Thomas filed 14

affidavits on October 6, 2014, pursuant to Rule 56(e), SCRCP, in opposition to Respondents' line of reasoning in their motion for summary judgment that his reputation was not capable of being damaged. What's more, Thomas made known the existence of those 14 *affidavits* in his 59(e) motion. (R. p. 134).

In other words, it appears the court overlooked these points whereas there were a total of 15 *affidavits* filed in response to Respondents' motion for summary judgment. (R. p. 114; pp. 119-132). And notwithstanding Thomas' failure to apprise the court of these filings because of his status of an unlearned, *pro se* litigant, (R. p. 156, lines 2-24), the court was obligated to review all the documents filed in this case.

Results Ascertained

By way of sworn testimony, verified pleadings and *affidavits*: Thomas submitted in response to Respondents' motion for summary judgment much more than the mere scintilla of evidence required to establish genuine issues of material fact. To wit:

1. Thomas had a good reputation among his family, friends, and associates before Respondents published the article in dispute;

2. Respondents were alerted time and again that their articles published before the one in dispute were based on false allegations;

3. Respondents refused to accept and review proof on public record that their previous articles were based on false allegations: then published the article in dispute that was also based on those same false allegations—among other falsities; and,

4. Respondents wrote and published the article in dispute with actual common law malice and a reckless disregard for the truth. Therefore, the Respondents have abused the privileges they invoked under the First and Fourteenth Amendments to the United States Constitution.

Due Process & Equal Protection

Thomas filed a *Memorandum of Law* with exhibits attached thereto. (R. pp. 210-238). And the trial court acknowledged having received that *Memorandum* and stated that it would be included in the record for review by this Court. (R. p. 149, lines 4-8; p. 157, lines 4-7; p. 158, lines 12-24). With that in mind, Thomas' *Memorandum* argued that, *inter alia*, he had a due process and equal protection right to the denial of Respondents' motion for summary judgment. (R. p. 226). Furthermore, the arguments and facts supported by binding authorities herein have established that the article in dispute was written and published with a reckless regard for the truth and actual common law malice, and that there are genuine issues of material fact that require the services of a jury. Therefore, the trial court erred when granting Respondents' motion for summary judgment on grounds that Thomas failed to proffer evidence establishing a genuine issue of material fact.

ARGUMENT
III.

The trial court erred when failing to remand for review the novel issue of being libel-proof in violation of Appellant's right to due process and equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution and South Carolina law?

"A novel issue such as here presented is best decided in light of the testimony to be adduced at trial." Tyler v. Macks Stores of South Carolina, 272 S.E.2d 633, 634 (S.C. 1980). "[N]ovel issues should be decided with a full and complete record." Chastain v. Hiltabidle, 673 S.E.2d 826, 829 (S.C.App. 2009). "[A] person was *libel-proof* when his reputation was so poor due to multiple prior convictions for felonies that he was unlikely, as a matter of law, to recover more than nominal damages for allegedly defamatory publication." Eliot J. Katz, J.D., Annotation, Defamation: Who is "Libel-Proof", 50 A.L.R. 4th 1257, §4.

> ""Although we accept the principle that a convicted criminal may have such a poor reputation that no further damage to it was possible at the time of an otherwise libelous publication, it must be clear, as a matter of law, that the reputation of a plaintiff, even a convicted felon, could not have suffered from the publication of the false and libelous statements."" Jackson v. Longscope, 476 N.E.2d 617, 620 (Mass. 1985).

A serial killer whose convictions included crimes referred to as the *hitch-hike murders* was found to be *libel-proof. Id.* And Martin Luther King, Jr.'s assassin was found to be *libel-proof* as well. Ray v. United States Dept. of Justice, 658 F.2d 608 (8th Cir. 1981).

> ""An attorney who had received substantial adverse publicity for two federal indictments, fines for contempt of court and assault and battery upon a police officer, and maintaining ties to a motorcycle gang reputed to be involved in criminal activity was held to have a sullied reputation, but one which was yet capable of sustaining further harm from an allegedly libelous publication imputing involvement in an illicit drug transaction to

him.'"" *Eliot J. Katz, J.D., Annotation, 50 A.L.R. 4th at 1261 n.10.*

<u>*Diminished Reputation*</u>

Respondents in the instant matter are relying upon Thomas' erroneously determined guilt in the underlying criminal matter and his prior convictions for non-violent misdemeanors to render him *libel-proof*—which appears to be a novel issue in South Carolina. To that end, Respondents have asked in their *Request for Admissions* that Thomas acknowledge his guilt to charges going back 33 years to when he was a teenager. (R. pp. 174-177). However, the majority of those accusations were either dismissed or *nolle prossed.* And with few exceptions, Thomas was ill-advised to accept guilty pleas despite his innocence because of the misleading impact of his criminal history.

Moreover, Thomas' convictions ten years prior to Respondents' disputed article that are listed in their *Request for Admissions* that do not involve Crowley are for obtaining goods by false pretenses and a hit & run with minor personal injury. (R. pp. 174-177). In other words, Crowley and her mother's lies have been the reason for most of Thomas' recent convictions. That said, Thomas has acquired familiarity with expungement rights and procedures. And as a result, 49 of those deceptive reports have been removed with more to come. As for the felonies in the underlying criminal matter, those convictions will *most probably* be vacated because of, among other things, the irrefutably reliable proof that his accuser, Rachel M. Crowley, is a compulsive liar. (R. pp. 231-238).

What's more, Crowley lied when accusing Thomas of then-misdemeanor criminal domestic violence of a high and aggravated nature (CDVHAN) on March 6, 2003—which resulted in an *Alford Plea*; and she lied when accusing him of criminal domestic violence (CDV) on February 4, 2005. And those two convictions are perfect examples of where Thomas' rap

sheet was used to coerce a guilty plea; and it should be noted that he had no priors for CDV before meeting Crowley when he was 40-years-old. And Thomas has lived with numerous girlfriends, and was previously married. Be that as it may, Thomas' non-violent criminal history cannot logically be observed as comparable to that of James Earl Ray; and the felony crimes Thomas has erroneously been convicted of pale in comparison to that of Ray and the *hitch hike murderer*.

Be that as it may, it was only upon Thomas' arrest in the underlying criminal matter that the first-time-ever revelation of his misleading criminal record was made to the public. And even then, Thomas continued to enjoy the benefit of family, friends, and associates as evidenced by the 14 *affidavits* of good character filed in this action in response to Respondents' summary judgment motion. (R. pp. 119-132). However, because of Respondents' actual common law malice and reckless disregard for the truth in their articles time and again: it is likely that the foregoing *affiants* would be unwilling to once more offer their support to Thomas. Therefore, the trial court erred when failing to remand for review the novel issue of being *libel-proof*.

CONCLUSION

For the foregoing reasons, this Court should reverse the lower court's *Order* granting Respondents' motion for summary judgment, and remand this case to the lower court for a trial by jury.

WHEREFORE, Appellant prays this Court grant the relief requested; and, for such other relief as this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this *Final Brief of Appellant* complies with Rule 211(b), SCACR.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this *Final Brief of Appellant* has been sent by U.S. Mail to:

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