

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**RECEIVED**

APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

SEP 25 2015

**S.C. Supreme Court**

Benjamin H. Culbertson, Circuit Court Judge

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**Unpublished Opinion No. 2015-UP-163**  
**Submitted February 1, 2015 – Filed March 25, 2015**

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Joseph N. Grate,

Petitioner,

v.

Andrew J. Rodrigues,

Respondent.

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**PETITION FOR A WRIT OF CERTIORARI**

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Pawley's Island, S.C. 29585  
(843) 742-0696

Other Counsel of Record:  
Andrew J. Rodrigues, Respondent  
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**I. CERTIFICATE OF COUNSEL**

Joseph N. Grate, Petitioner herein, hereby Certify that he filed a Petition for rehearing and that the Petition was finally ruled upon by the Court of Appeals on August 24, 2015.

Petitioner received the order on August 26, 2015.

## II. QUESTIONS PRESENTED

2. IS IT NOT, AT THE VERY LEAST, AN ERROR TO HAVE DISMISSED THE CASE ON GROUNDS OF ONE ELEMENT, AMONG MANY, POSSIBLY BEING BARRED BY STATUTE OF LIMITATION?
3. SHOULD NOT THE JUDGE HAVE ADDRESSED ALL ISSUES OF
4. CAN A CLAIM OF ABSOLUTE PRIVILEGE SURVIVE WHERE THE DEFAMATORY STATEMENTS ARE TOTALLY IRRELEVANT TO THE ISSUE BEING LITIGATED?
5. HAS NOT PETITIONER BEEN DEPRIVED OF DUE PROCESS?

## III. STATEMENT OF THE CASE

1. This action was commenced on December 23, 2013. An amended complaint was filed February 10, 2014. Rule 9, SCRCP; Rule 15, SCRCP .
2. The action comprised allegations of Defamation, in accordance with Rule 9 (h), SCRCP.
3. The defense to the action was a claim of Absolute Privilege and of one count being barred by of Statute of Limitation.
4. A motion hearing was held on February 2, 2014, at which the case was continued to March 6, 2014, due to an Amended pleading having been filed.
5. On March 6, 2014, the Court dismissed the case on the bases of it being barred by Statute of Limitation.
6. Petitioner appealed the March 6, 2014, Circuit Court's dismissal of the case.
7. The Court of appeals Affirmed the Lower Court's dismissal, on March 25, 2015
8. Petitioner made a Motion for the Court of appeals to rehear the case.

9. The Court of appeals finally ruled upon the case, on August 24, 2015.

#### **IV. FACTS**

The case was filed on December 23, 2013. It comprised allegations of Defamation, arising from a previous Circuit Court Case, in 2013. During that case Defendant (Respondent herein) repeatedly gave erroneous, derogatory and, indeed, irrelevant verbal and written statements to the Court; outright, lied to the Court. The statements had absolutely no relevancy to the matter being tried. Finally, at a motion hearing, the Judge dismissed the case, based upon the information in the case file.

Following dismissal of that case, Petitioner herein, filed the Defamation action. The case was dismissed March 6, 2014, without Petitioner having been permitted to make a presentation and without the Defamation allegation having been addressed. At the proceeding, the Judge did not permit or allow Petitioner to make a presentation and dismissed the case. Consequently, Petitioner appealed to the Court of Appeals.

#### **V. ARGUMENT**

1. IS IT NOT, AT THE VERY LEAST, AN ERROR TO HAVE DISMISSED THE CASE ON GROUNDS OF ONE ELEMENT, AMONG MANY, POSSIBLY BEING BARRED BY STATUTE OF LIMITATION?

In the case before the Lower Court, the complaint comprised thirty five counts of Defamation; of which, the claim of Defendant having filed a Trespassing claim against Petitioner comprised only one of the thirty five claims; therefore, thirty four were not

addressed. The Statute of Limitation claim is questionable, given that the issue was raised in 2012 at Case No 2013-CP-22-00001 as well as raised on June 6, 2013, which is well within the Statute of Limitation by at least a year.

2. SHOULD NOT THE JUDGE HAVE ADDRESSED ALL ISSUES OF  
DEFAMATION PRESENTED IN THE CASE?

The claim of Defendant having lied to the police, indicating that Petitioner was Trespassing , was raised in a Lower Court at Case No. 2013-CP-22-00001, filed January 3, 2012, and addressed at a motion hearing on June 6, 2013. At which time Defendant lied to the Judge about having filed a Trespassing complaint against Petitioner therein. Therefore the date of the actual lie, to the police, should not be the governing date in determining the Statute of Limitation, since the Defendant repeatedly lied on this issue in open Court as well as in written documents, to the Court. In essence, the claim was made at the filing of the January 3, 2012, case and on that date, the issue was well within the Statute of Limitation. The major point of contention, presently, is that other issues were involved but that the judge totally disregarded them and ruled on the matter of the Trespass charge without permitting Petitioner an opportunity to make a presentation on that or any other issue.

The case was dismissed, without consideration for Procedural Due Process. The Judge only permitted Defendant to address the Court. Petitioner therein should have at least been granted an opportunity to have been heard on any of the allegations. For the other thirty four allegations, Defendant claimed and was granted a privilege to lie to the Court,

with impunity. Petitioner takes issue with that contention for it seems obnoxious to all ideas of Law or Justice; as embodying any sense of Reason or logic.

3. CAN A CLAIM OF ABSOLUTE PRIVILEGE SURVIVE WHERE THE DEFAMATORY STATEMENTS ARE TOTALLY IRRELEVANT TO THE ISSUE BEING LITIGATED?

After having made numerous defamatory statements, at the Lower Court, Defendant persistently claimed Absolute Privilege. Is it permissible for anyone to, wholesale and with impunity, lie to the Court, for the sole purpose of defeating the charges by way of providing irrelevant and erroneous information about one's opponent? To avail oneself of this privilege, what are the qualifications? Does one need to admit to lies in order to qualify for the privilege?

Is it a special privilege granting Judges and Attorneys a free pass to lie at will? How does Respondent qualify for that Privilege? Are the lies exempted from law as it pertains to perjury? Holtzscheiter v. Thompson Newspaper, Inc.

4. HAS NOT PETITIONER BEEN DEPRIVED OF DUE PROCESS?

In the case before the Lower Court, the complaint comprised several counts of Defamation; of which, the claim of Defendant having filed a Trespassing claim against Petitioner comprised only one of the claims; therefore, several were not addressed. (R. pp. 4-5, 10-16, 31-32. -p.10, item 3. -p.11, items 3-6, 9. -pp. 12-16. -p. 31 items 1-3)

The Statute of Limitation claim regarding the Trespassing claim is questionable; given that the issue was raised in 2012 at Case No 2013-CP-22-00001 as well as raised on June 6,

2013. (R. p. 48 –p. 50, lines 16-25 –p. 51, lines 14-19 –p. 62, lines 7-8). Certainly, the Statute of Limitation did not apply to all items.

Petitioner was not permitted an opportunity to make a presentation in the case, to present evidence or to conduct cross examination. The case was not decided based exclusively on the evidence. Evidently, the tribunal was not unbiased per Amendment 14, US Constitution. The Court of Appeals is twice in error in its position regarding Petitioner's right to Procedural Due Process. The case was dismissed March 6, 2014, without regard for Petitioner's Guaranteed Rights:

1. **The right to present evidence, including the right to call witnesses.**
2. **The right to cross-examine adverse witnesses.**
3. **The right to decision based exclusively on the evidence presented.**
4. **Requirement that the tribunal prepare written findings of fact and reasons for its decision.**

The point of contention presently is that, other issues were involved but that the judge totally disregarded them and ruled on the matter of the Trespass charge without permitting evidence to be presented; without permitting Petitioner to say anything. (R. p.48 -p. 61, lines 5-19). The case was dismissed, without consideration for Procedural Due Process. Petitioner therein should have been granted an opportunity to have been heard on the Defamation allegations. (R. p.48 -p. 61, lines 5-19). He should have been allowed to present evidence and to have a decision based solely upon all of the evidence presented. (R. p.4 item 3. –p. 18, paragraph 4. -pp. 27-29. p.49, lines 15-25. –p. 51, lines 14-25. –p.58, lines 1-8, 7-25. –p. 60 lines 16-20).

## VI. CONCLUSION

In conclusion, given that in a Defamation action, the Court must review the evidence using the same substantive evidentiary standard of proof the jury is required to use in a particular case, If, such is the Standard of Review, the Circuit Court as well as the Court of Appeals did not perform correctly. Erickson, 368 S.C. at 464, 629 S.E.2d at 663; George v. Fabri, 345 S.C. 440, 451-54, 548 S.E.2d 868,874-75 (2001).

For the reasons stated, this Court should reverse the Judgment of the Circuit Court.

Respectfully submitted,

September 23, 2015

A handwritten signature in black ink, appearing to read "Joseph N. Grate", written over a horizontal line.

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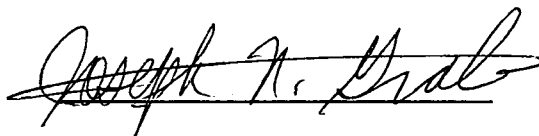
Andrew J. Rodrigues,

Respondent.

**PROOF OF SERVICE**

I certify that I have served a copy of the Petition for Writ of Certiorari on Andrew J. Rodrigues, by depositing a copy of it in the United States Mail, postage prepaid, on September 23, 2015, addressed to him at: 481 Parkersville Road, Pawley's Island, S.C. 29585.

September 23, 2015



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