

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

OCT 20 2015

Benjamin H. Culbertson, Circuit Court Judge

S.C. SUPREME COURT

Joseph N. Grate v. Andrew J. Rodrigues
Appellate Case No. 2015 - 002017

Joseph N. Grate,

Petitioner,

v.

Andrew J. Rodrigues,

Respondent.

REPLY TO
DEFENDANT'S RETURN
TO
PETITION FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

Rule 9 (h), SCRCF.....3

Rule 8.4 (a), (b), (c),(d) & e, RPC, Rule 407, SCACR.....4

Pond Place Partners, Inc. v. Poole, 567 S.E.2d 881 (S.C. Ct. App. 2002)
567 S.E.2d 881, 351 S.C. 14

Questions, arising from Respondent’s Return to the Petition for Certiorari only, while leaving all previously submitted elements of the appeal in tact and undisturbed.....1

Statement of the Case.....2

Facts.....2

ARGUMENTS:

1. ARE RULES 8(a)(2) AND 12(b) (6) APPLICABLE TO THE ISSUES INVORVED IN THIS CASE?.....3

2. IN WHAT CAPACITY IS RESPONDENT SEEKING ABSOLUTE PRIVLIGE?.....3

3. CAN A CLAIM OF ABSOLUTE PRIVILEGE SURVIVE WHERE THE ASSOCIATED DEFAMATORY STATEMENTS ARE TOTALLY IRRELEVANT TO THE ISSUE BEING LITIGATED?.....4

4. IS RESPONDENT NOT SUBJECT TO THE PROVISIONS OF RULE 8.4 (a), (b), (c) & (d), SCACR?.....4

5. Has not Petitioner been deprived of due process?.....4

Conclusion.....6

I. QUESTIONS PRESENTED

1. ARE RULES 8(a)(2) AND 12(b) (6) APPLICABLE TO THE ISSUES INVORVED IN THIS CASE?
2. IN WHAT CAPACITY IS RESPONDENT SEEKING ABSOLUTE PRIVLIGE?

3. CAN A CLAIM OF ABSOLUTE PRIVILEGE PREVAIL WHERE THE ASSOCIATED DEFAMATORY STATEMENTS ARE TOTALLY IRRELEVANT TO THE ISSUE BEING LITIGATED?
4. HAS NOT PETITIONER BEEN DEPRIVED OF DUE PROCESS?

II. 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.

III. 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 **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 the Defamation allegation having been addressed. At the proceeding, the Judge did not permit or allow Petitioner to make any presentation. Consequently, Petitioner appealed to the Court of Appeals. Also, with regards the Trespassing matter, it was addressed in a Court Documents May 30, 2013 and introduced in a Motion and addressed at a June 6, 2013 Motion Hearing. (Appendix, p. 50, lines. 10-19; p. 51, lines.14-24; p. 64. lines 5-11; p. 71, lines 10-14). The June 6 2013 date, places the Trespass issue well within the Statute of limitation, given that the case at issue was filed December 23, 2014. (App. p. 2.), which equals 18 months, therefore within the 2 years limit.

IV. ARGUMENT

1. ARE RULES 8(a) (2) AND 12(b) (6) APPLICABLE TO THE ISSUES INVORVED IN THIS CASE?

The matters involved in this case are, solely of a defamatory nature thus is, perhaps, appropriate only under Rule 9 (h), SCRPC, considering the following:

RULE 9: PLEADING SPECIAL MATTERS

(h) Libel or Slander. In pleading libel or slander it is not necessary to state in the pleading any extrinsic facts for the purpose of showing the application to the pleader of the defamatory matter out of which the action arose; but it is sufficient to state generally that the same was published or spoken concerning the pleader.

2. IN WHAT CAPACITY IS RESPONDENT SEEKING ABSOLUTE PRIVLIGE?

The law gives to all who take part in judicial proceedings the right to the privilege; however, given that it is necessary that the privilege is subject to the limitation that the Defamatory Matter is: pertinent, relevant and germane to the matter being litigated.

Therefore, unless he is asserting a claim that as a member of the Massachusetts Bar, he has some special privilege that excludes him from the requirement; it appears that the privilege is not available to him. Alternately, should he be entitled to some meritorious granting of absolute privilege because he is a Massachusetts Lawyer, should he not still have to be respectful of, **Rule 8.4 (a), (b), (c), (d) and (e), RPC, Rule 407, SCACR?**

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) commit a criminal act involving moral turpitude;
- (d) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (e) engage in conduct that is prejudicial to the administration of justice.

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

Respondent's numerous defamatory statements are totally without relevance to the issue of removing him from Petitioner's premises. Therefore the absolute privilege defense is not available to him. (Pond Place Partners, Inc. v. Poole, 567 S.E.2d 881 (S.C. Ct. App. 2002) 567 S.E.2d 881, 351 S.C. 1)

4. HAS NOT PETITIONER BEEN DEPRIVED OF DUE PROCESS?

Respondent contends that any deprivation is self deprivation. Well, Petitioner is certainly not a Member of the Massachusetts Bar; far from it. He has never spent one minute in anybody's law school. Still, he thinks himself at least knowledgeable enough to not deprive himself of due process nor to allow himself to be bamboozled by a slick Massachusetts lawyer.

Given that 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 and its application in general, is questionable. Petitioner was not permitted an opportunity to present 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. (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.
5. An unbiased tribunal.

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 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).

V. CONCLUSION

In conclusion, primarily, the record should be purged of its defamatory submissions. The statements comprising the defamation, subject of the action which is the basis for this appeal, are now Public Record but are erroneous and derogatory and acts adversely to Petitioner's Professional Reputation and Standings.

Not only is Respondent's actions and expectations afoul of the all cited authorities pertinent to the issues of this case, at least on the Trespassing issue, he is in violation of S.C Criminal code § 16-17-722 (A) and (B);

(A) It is unlawful for a person to knowingly file a false police report.

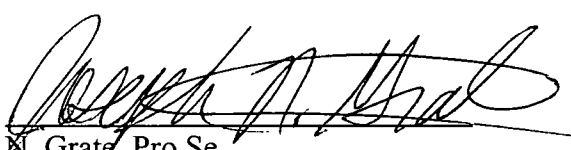
(B) A person who violates subsection (A) by falsely reporting a felony is guilty of a felony and upon conviction must be imprisoned for not more than five years or fined not more than one thousand dollars, or both. However, the Georgetown county Legal Establishment was, at best, non-responsive to Petitioner's complaint, to the extent of not permitting the complaint to be filed.

Can a claim of absolute privilege survive where the associated Defamatory Statements are totally irrelevant to the issue being litigated? The lies told by Respondent, which initiated the Defamation action, had absolutely no relevance to the legal action at issue. The Defamation therefore cannot be considered as absolute privileged.

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

October 19, 2015


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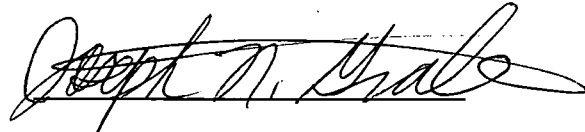
Andrew J. Rodrigues,

Respondent.

PROOF OF SERVICE

I certify that I served a copy of the Reply to Defendant's Return to the Petition for Writ of Certiorari, on Andrew J. Rodrigues, by depositing a copy of it in the United States Mail, postage prepaid, on October 19, 2015; addressed to him at: 481 Parkersville Road, Pawley's Island, S.C. 29585.

October 19, 2015



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