

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

Case No. 2012-CP-26-3804
Court of Appeals No. 2014-01249

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SC Court of Appeals

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Mark KelleyRespondent,

v.

David Wren and Sun Publishing Co., Inc., d/b/a *The Sun News*, Appellants.

APPELLANTS' PETITION FOR REHEARING

David Wren and Sun Publishing Company Inc., d/b/a *The Sun News*, Appellants, respectfully petition pursuant to Rule 221 of the South Carolina Appellate Court Rules, for a rehearing of the appeal in the above entitled cause in which the Court of Appeals filed its Opinion No. 5375 on January 13, 2016.

This petition is based upon the following points:

1. In holding that there was sufficient evidence that Appellants ("Defendants" or individually "Sun News" or "David Wren") published a false and defamatory statement concerning Respondent ("Plaintiff" or "Mark Kelley") and affirming the denial of Defendants' motions for directed verdict and for judgment notwithstanding the verdict, the Court of Appeals misapprehended its constitutional duty

in defamation cases brought by public figures to consider “all parts of the publications” at issue, in their full context.

2. In holding that there was sufficient evidence of constitutional actual malice on the part of Defendants and affirming the denial of Defendants’ motions for directed verdict and for judgment on the pleadings, the Court of Appeals misapprehended the required application of the actual malice standard by (1) improperly substituting an objective standard – reckless disregard of “the likelihood the articles could be interpreted to accuse Kelley of delivering the contributions” – for the required subjective standard of “a high degree of awareness of probable falsity,” and (2) improperly allowing an “imprecise” statement, read outside of its full context, to support a finding of clear and convincing evidence of actual malice.

3. In holding that the trial court properly admitted evidence from expert witness Dr. William E. Lee to support Plaintiff’s claim of actual malice and affirming the denial of Defendants’ motions for directed verdict and for judgment notwithstanding the verdict, the Court of Appeals misapprehended the requirements of Rules 403 and 702, SCRE and the First Amendment and Fourteenth Amendments to the United States Constitution in upholding the admission of expert witness testimony (1) regarding Defendants’ failure to conform with journalistic standards, and (2) as to Defendants’ actual subjective state of mind regarding the falsity of the statements published.

4. In holding that the trial court acted within its discretion in denying Defendants’ motion for a new trial absolute as to the issues of compensatory and punitive damages, the Court of Appeals overlooked the fact that the damages awards were unsupported by Plaintiff’s evidence and were therefore grossly excessive and so


disproportionate that the jury clearly based them on considerations not founded on the evidence.

5. In holding that the award of punitive damages did not violate the free press guarantees of the First and Fourteenth Amendments to the United States Constitution and denying Defendants a new trial on that ground, the Court of Appeals misapprehended the First Amendment's protections found in the "of the press" clause.

Appellants' memorandum in support of this Petition for Rehearing is submitted herewith.

WHEREFORE, Appellants respectfully urge that this Petition for Rehearing be granted and that the judgment of the Circuit Court be, upon further consideration, reversed and judgment entered for Defendants, or, in the alternative, that the case be remanded for a new trial.

Respectfully submitted, this the 5th day of February, 2016.



Jay Bender
BAKER, RAVENEL & BENDER, L.L.P.
3600 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, SC 29202
803.799.9091 (telephone)
803.779.3423 (facsimile)

Jonathan E. Buchan, Jr.
N.C. Bar No. 8205
ESSEX RICHARDS, P.A.
1701 South Blvd.
Charlotte, NC 28203
704.285.7107 (telephone)
704.372.1357 (facsimile)
Admitted Pro Hac Vice

ATTORNEYS FOR APPELLANTS

THE STATE OF SOUTH CAROLINA
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APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Court of Appeals No. 2014-001249
Civil Case No. 2012-CP-26-3804

David Wren and Sun Publishing Company Inc.,
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v.

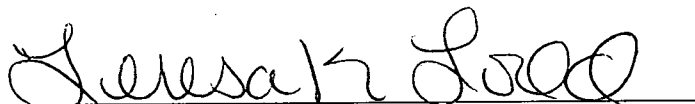
Mark Kelley,.....Respondents.

CERTIFICATE OF SERVICE

I, Teresa K. Todd, Legal Assistant to Jay Bender, an employee of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on the date indicated below, served counsel below with Appellants' Petition for Rehearing and Memorandum in Support of Appellants' Petition for Rehearing, by mailing a copy of same via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

James P. Stevens, Jr.
Natalie S. Stevens-Graziani
Stevens Law Firm, P.C.
P.O. Drawer 127
Loris, SC 29569-0127

February 5, 2016


Teresa K. Todd