STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

William Thompson, 145029,

Plaintiff,

v.

South Carolina Department of Probation, Parole and Pardon Services,

Defendants.

(Our File: 5021.01013)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2013-CP-40-03038

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ORDER

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JEANNETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

The plaintiff in this matter is an inmate in the custody of the South Carolina Department of Corrections serving a life sentence for kidnapping. Plaintiff filed suit in 2013 against the South Carolina Department of Probation, Parole, and Pardon Services ("Defendant") for libel.

In his Complaint, Plaintiff alleges that the Defendant listed him as a sex offender on a parole listing in 1998.[1] Plaintiff alleges that the Defendant stated in 2004 that it would correct its system. However, Plaintiff alleges that someone checked the Defendant's website on December 18, 2012, and the information "had not been corrected." Plaintiff alleges that this information referred to him as a sex offender. Therefore, Plaintiff asserted a cause of action for "Libel: Written defamation. [Defendant] knowing the information to be false but disregarding the need for correction after stating that they were going to make the correction on their system."

Plaintiff included a list of "Evidence" attached to his Complaint. Among the items included was a parole listing from the Defendant's website, dated December 18, 2012. This list includes Plaintiff's inmate number, his full name, the county in which he was convicted, and a

[1] Plaintiff also alleges that the South Carolina Department of Corrections displayed him as a sex offender on their website in 2004. Plaintiff filed suit against the Department of Corrections in 2004 concerning this matter. The circuit court granted summary judgment to the Department of Corrections by order filed September 20, 2011. See Civil Action No. 2004-CP-40-03521.

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description of the criminal offense for which Plaintiff was convicted. For the criminal offense, the list contains the following notation: "Kidnapping (SR if victim >=18 unless judge order not)".[2] Plaintiff also attached to his Complaint a letter from Judge Lee S. Alford dated June 15, 2004. In this letter, Judge Alford stated that there "were no factual allegations in [Plaintiff's criminal] cases which would require sexual offender registration."

This matter was called for a jury trial on October 13, 2015. Plaintiff appeared *pro se.* At the close of Plaintiff's case-in-chief, Defendant moved for a directed verdict.

STANDARD OF REVIEW

In deciding a motion for directed verdict, the circuit court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. Hurd v. Williamsburg County, 363 S.C. 421, 426, 611 S.E.2d 488, 491 (2005). If the evidence as a whole is susceptible of more than one reasonable inference, the trial judge must submit the case to the jury. Quesinberry v. Rouppasong, 331 S.C. 589, 503 S.E.2d 717 (1988). If the evidence yields only one inference, a directed verdict in favor of the moving party is proper. Staples v. Duell, 329 S.C. 503, 494 S.E.2d 639 (Ct. App. 1997). In ruling on a motion for a directed verdict, the trial court is concerned only with the existence or non-existence of evidence, and the court does not have the authority to decide credibility issues or resolve conflicts in the testimony. Jones v. General Elec. Co., 331 S.C. 351, 503 S.E.2d 173 (Ct. App. 1998).

> However, this rule does not authorize submission of speculative, theoretical and hypothetical views to the jury. We have repeatedly recognized that when only one reasonable inference can be deduced from the evidence, the question becomes one of law for the court. A corollary of this rule is that verdicts may not be permitted to rest upon surmise, conjecture or speculation.

[2] This same notation is listed next to two other inmates' names on the parole listing.

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Hanahan v. Simpson, 326 S.C. 140, 149, 485 S.E.2d 903, 908 (1997) (internal citations omitted) (superseded by statute on other grounds).

LAW/ANALYSIS

At the close of the Plaintiff's case, Defendant moved for a directed verdict on the Plaintiff's cause of action for defamation. "The tort of defamation . . . permits 'a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff.'" Fountain v. First Reliance Bank, 398 S.C. 434, 441, 730 S.E.2d 305, 309 (2012), quoting Erickson v. Jones St. Publishers, L.L.C., 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006). A plaintiff must prove four elements to state a claim for defamation: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. Fountain, 398 S.C. at 441, 730 S.E.2d at 309; Murray v. Holnam, Inc., 344 S.C. 129, 542 S.E.2d 743 (2001); see White v. Wilkerson, 328 S.C. 179, 183, 493 S.E.2d 345, 347 (1997) ("In order to succeed on a defamation claim, the plaintiff must show that the challenged statement is both defamatory (tending to impeach the plaintiff's reputation) and actionable (injuring the plaintiff)."). A statement is defamatory if it tends to harm the reputation of another ~~as to lower him in the estimation of the community or to deter third persons from associating~~ or dealing with him. Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857.

"Defamation need not be accomplished in a direct manner. A mere insinuation is actionable as a positive assertion if it is false and malicious and its meaning is plain." Murray, 344 S.C. at 138-9, 542 S.E.2d at 748 (internal citations omitted). "Statements therefore may be either defamatory on their face, or defamatory by way of innuendo. 'Innuendo is extrinsic

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evidence used to prove a statement's defamatory nature. It includes the aid of inducements, colloquialisms, and explanatory circumstances.'" Fountain, 398 S.C. at 442, 730 S.E.2d at 309, quoting Parrish v. Allison, 376 S.C. 308, 325 n.1, 656 S.E.2d 382, 391 n.1 (Ct. App. 2007).

The trial court must initially determine if the alleged communication is reasonably capable of conveying a defamatory meaning. Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 506 S.E.2d 497 (1998).

> If the defamatory meaning of a message or statement is obvious on the face of the statement, the statement is defamatory *per se*. If the defamatory meaning is not clear unless the hearer knows the facts or circumstances not contained in the statement itself, then the statement is defamatory *per quod*. In cases involving defamation *per quod*, the plaintiff must introduce facts extrinsic to the statement itself in order to prove a defamatory meaning.

Id. at 508-09, 506 S.E.2d at 501.

"To prevail in a defamation action, the plaintiff must establish that the defendant's statement referred to some ascertainable person and that the plaintiff was the person to whom the statement referred." Burns v. Gardner, 328 S.C. 608, 615, 493 S.E.2d 356, 359 (Ct. App. 1997); Neeley v. Winn–Dixie Greenville, Inc., 255 S.C. 301, 308, 178 S.E.2d 662, 665 (1971) (In a defamation action, the challenged statement must "be such that persons reading or hearing it will, in the light of surrounding circumstances, be able to understand that it refers to the person complaining, and it must have been so understood by at least one other person.").

Plaintiff presented three witnesses at trial. Plaintiff did not take the stand during his case-in-chief. First, Plaintiff called Wendell A. Bruce to the stand. Mr. Bruce testified that he visited the Defendant's website and discovered the parole listing dated December 18, 2012. Mr. Bruce read the list, and informed the jury of Plaintiff's conviction for kidnapping, and of the parenthetical information on the list. Mr. Bruce did not testify that he considered this

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information to mean that Plaintiff was a sex offender. Plaintiff did not seek to introduce this list into evidence. Plaintiff did not move to introduce any documents into evidence at the trial.

Plaintiff also called Scott Norton and Lt. Joseph Means during his case-in-chief. Mr. Norton formerly worked for the Defendant as the Deputy Director of Field Operations. He is now retired. Lt. Means formerly worked for the South Carolina Law Enforcement Division in their Crime Information Center. Lt. Means is also retired.

Plaintiff attempted to elicit testimony from both Norton and Means concerning the parole listing and the information that the list contains. During Mr. Norton's questioning, Plaintiff attempted to elicit testimony that the parole listing "flagged" Plaintiff as a sex offender. Mr. Norton denied that he interpreted the list as flagging Plaintiff as a sex offender. Mr. Norton also testified that the information contained in the parole listing was compiled from, and based upon, official court records and sentencing documents. Mr. Norton testified that the parole listing did not contain any factual information other than what can be determined from court records and state statutes. Mr. Norton also testified that the statute regarding the offense of kidnapping (S.C. Code Ann. § 16-3-910) does not require registration as a sex offender, but that a separate state statute requires registration as a sex offender for kidnapping convictions (S.C. Code Ann. § 23-3-430). Mr. Norton testified that the information stated in parentheses on the parole listing simply paraphrased the statutory terms of section 23-3-430. There was testimony that this code section requires registration as a sex offender for persons convicted of kidnapping of a person eighteen years of age or older except when the court makes a finding on the record that the offense did not include a criminal sexual offense.

Likewise, Lt. Means testified that, while the kidnapping statute does not require registration, section 23-3-430 of the South Carolina Code does in fact require that a person

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convicted of kidnapping be registered as a sex offender. Lt. Means testified that this code section required registration as a sex offender for persons convicted of kidnapping of a person eighteen years of age or older except when the court makes a finding on the record that the offense did not include a criminal sexual offense. The only reasonable inference from Lt. Means' testimony was that the information stated in the parole listing was true and correct as it pertained to Plaintiff's conviction and to the possible sex offender registration ramifications of that conviction.

Based on the evidence presented to the jury, the alleged defamatory statement is incapable of any reasonable construction that will render it defamatory. See Fountain, 398 S.C. at 442-3, 730 S.E.2d at 309-10 (holding that a statement was unquestionably true and was not capable of any reasonable defamatory construction). There was no testimony for the jury that any person considered that the parole listing "flagged" Plaintiff as a sex offender. There was no testimony that the information stated in the parole listing was incorrect or untrue. The only testimony proffered to the jury was that the parole listing contained true and accurate information concerning the offense for which Plaintiff was convicted, and the possible statutory sex offender registration ramifications for such an offense. Plaintiff tried to establish that his crime did not require registration as a sex offender. However, the unrefuted testimony from Lt. Means was that the offense of kidnapping requires sex offender registration under certain situations. The information stated in the parole listing is simply a restatement of the terms of the registration statute, and under no reasonable construction can such a statement be rendered defamatory. The Defendant is not subject to a claim for defamation for reciting the terms of a statute that is applicable to kidnapping convictions.

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Moreover, in this factual scenario, the defamatory meaning was not obvious from the face of the statement. The statement's defamatory meaning would not be clear unless the hearer knew facts or circumstances not contained in the statement. Plaintiff did not introduce any extrinsic facts to prove the defamatory meaning of the statement. Plaintiff attempted to show that a circuit court judge had ruled that Plaintiff's offense of kidnapping did not require sex offender registration because it did not involve a sexual offense. However, Plaintiff did not introduce any evidence that a judge had made this finding. Without such evidence, any defamatory meaning of the statement would not be obvious to a reader. Even assuming that Plaintiff had introduced evidence that his crime did not require sex offender registration, the statement would still be incapable of any reasonable construction that would render it defamatory. The statement, as testified to by Plaintiff's own witnesses, is a correct statement of the law as stated in section 23-3-430.[3]

Plaintiff did not present any evidence which created any reasonable inference that the Defendant's statement was false and defamatory. The only reasonable inference from the evidence presented is that the statement was a true and correct statement of the law as it pertains to the crime for which Plaintiff was convicted.

In addition, Plaintiff did not present any evidence of the unprivileged nature of the statement. As set forth above, the evidence demonstrated only that the parole listing was compiled from, and based upon, state statutes, and official court records and sentencing documents. The only evidence presented at trial was that the statement was an accurate report of

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[3] Plaintiff attempted to highlight to the jury the use of "SR" in the parenthetical information in the parole listing to demonstrate that he had been defamed. Plaintiff elicited testimony that SR means "sexual registry." However, in deciding whether a statement is defamatory, the intent and meaning should be gathered from the context of the statement rather than singling out any individual words as defamatory. See Parrish, 376 S.C. at 323, 656 S.E.2d at 390; Jones v. Garner, 250 S.C. 479, 485, 158 S.E.2d 909, 912 (1968).

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the contents of public records, judicial documents and state statutes. Such reports are privileged, unless actual malice is shown. Padgett v. Sun News, 278 S.C. 26, 292 S.E.2d 30 (1982).

Defendant is entitled to a directed verdict. Plaintiff did not present any evidence to prove that the alleged statement was false and defamatory. In addition, Plaintiff did not present any evidence that the statement was unprivileged.

Therefore, after careful consideration, and based on the reasons set forth above, the Defendant's motion for directed verdict is GRANTED.

AND IT IS SO ORDERED.

Robert E. Hood
Circuit Court Judge, Fifth Judicial Circuit

November 23, 2015

Columbia, South Carolina

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