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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2014-CP- 39- 0259

Appellate Case No. 2014-001737

OCT 27 2016
COURT OF APPEALS

Mark Ostendorff,.....Appellant,

v.

School District of Pickens County Board of Trustees,
School District of Pickens County, Alex Santa, Judy
Edwards, Jimmy Gillespie, Herbert Cooper, Jim Shelton,
Ben Trotter, Kelly Pew, Henry Hunt, and Robert
Folkman,.....Respondent.

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OCT 27 2016
SC Court of Appeals

PETITION FOR REHEARING

Mark Ostendorff
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pro se , Appellant

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Attorney for Respondent

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Appellant Ostendorff requests this Court for a Rehearing on its decision to Affirm the lower Court's Decision to grant the Respondent's motion to dismiss improperly named defendants. Appellant Ostendorff's request is based on:

SC COURT OF APPEALS

S.C. Code of Laws, Section 15-78-60. States that " Exceptions to waiver of immunity. The governmental entity is not liable for loss resulting from:

... (17) employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude."

S.C. Code of Laws, Section 15-78-70. States that " Liability for act of government employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement.

....(a) This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).

(b) Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to do harm, or a crime involving moral turpitude

... (d) A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence."

S.C. Code of Laws, Section 15-78-80. States that " Filing of verified claim; handling....

(a) A verified claim for damages under this chapter , setting forth the circumstances which brought about the loss, the time of the loss....occurred, the names of all persons involved if known, and the amount....filed:

... (2) where the claim is against a political subdivision, with the political subdivision employing an employee whose alleged act or omission gave rise to the claim."

S.C. Code of Laws, Section 15-78-100. States that " When and where to institute action; requirement of special verdict specifying proportionate liability of multiple defendants.

...(c) In all actions brought pursuant to this chapter when an alleged joint tortfeasor is named as party defendant in addition to the governmental entity, the trier of fact must return a special verdict specifying the proportion of monetary liability of each defendant whom liability is determined."

Appellant alleges that all defendants did not act in their own official duty and are not protected under this chapter. Appellant must list all defendants known to be involved in this occurrence. All defendants are allowed the right of service, to which each was given service.

Under strict liability, the employer is required to be listed as a codefendant although the triers of fact may determine that the other listed defendants are liable by acting outside their official duties, and the employer not liable.

Tolk v. Weinstein, 265 S.C. 546, 220 S.E. 2d 239 (1975). Generally, an appellate court may reverse the judgment of a lower court when there is some error in law or when factual conclusions are without evidentiary support. The trial court erred in its interpretation on the SC statute. The opposing party presented no evidence that the codefendants acted within their official duties. Appellant gave testimony that the codefendants did not act in their official duties.

Article I, Section 3 of the South Carolina Constitution provides that no " person be deprived of life, liberty, or property without due process of law, nor shall any person be denied equal protection of the law...". If the codefendants are exempted from this lawsuit and the jury (triers-of-fact) determine that the codefendants acted outside their official duty and thus liable, and the School District not liable, then Appellant would be denied due process.

S.C. Code Section 18-9-280 States that " Written opinions required; memorandum opinions.

When a judgment ...is affirmed ... (1) that a judgment of the trial court is based on findings of fact(4) that no error of law appears" The lower court never provided any findings of fact nor conclusions of law.

This case is a jury demanded trial. The jury would be the triers-of-fact. Weather the codefendants acted within the scope of their official duties is an issue of fact and not law. No evidence was ever presented to Appellant or the lower Court in this case. The lower Court never had any findings of fact or conclusions of law in its decision.

U.S. Constitution, First Amendment ensures freedom of speech.

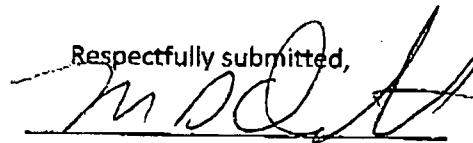
S.C. constitution, Article I, Section 2 ensures freedom of speech.

Appellant was a public servant and entitled to the same freedom of speech as any US and SC citizen. Appellant was wrongfully discharged for discussing public financing and probable misappropriation of funding with a friend of a school board member, whom is one of the codefendants. No defendant provided any evidence to the Court or Appellant for any reason for discharge.

Appellant requests this Court to Rehear its decision to Affirm. In addition to the above, Appellant asks this Court to reconsider Appellant's briefs and the Record on Appeal. Appellant requests that this case be reversed back to the lower court to hear testimony of all defendants and that the finders-of-fact determine if those defendants acted outside the scope of their official duties and respective liability for damages to the Appellant.

October 25, 2016

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Ostendorff', written over a horizontal line.

Mark Ostendorff