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STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2014-002725

Clark D. Thomas, ... Appellant,

V.

Evening Post Publishing Co.,
d/b/a The Post and Courier,
Glenn Smith, Officially
and Individually, ...Respondent.

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, Clark D. Thomas, *pro se*, Appellant in the above-captioned appeal, respectfully requests that this Court rehear the following points that have been overlooked and/or misapprehended:

INTRODUCTION

This matter comes before this Court in the interest of the above-captioned appeal Appellant filed on December 29, 2014. Appellant is seeking relief from the circuit court's order granting Respondents' motion for summary judgment in an action for libel and the intentional infliction of emotional distress he filed on September 17, 2013. Appellant filed a motion to proceed *in forma pauperis* on December 29, 2014, that this Court denied on February 4, 2015. Appellant then paid the filing fee of $100.00, and filed a motion to relax the appellate court filing requirements on February 17, 2015, that was granted by this Court on April 3, 2015. On July 6, 2015, Appellant filed his initial brief and designation of matter; and Respondents filed their initial brief and designation of matter on July 13, 2015. Appellant filed his initial reply brief on July 24, 2015, and served Respondents with the record on appeal on August 14, 2015. Appellant served Respondents with his final brief and final reply brief, and filed same in this Court with the record on appeal on August 20, 2015. Respondents filed an untimely final brief on September 8, 2015, and Appellant filed a motion to strike Respondent's final brief and remand case to lower court for trial by jury that this Court denied on November 25, 2015, and on November 23, 2016, this Court affirmed the lower court's order granting summary judgment without hearing oral arguments which Appellant received notice of on November 29, 2016. This petition timely filed on December 7, 2016, follows:

I.

Documents & Evidence

Appellant testified under oath during his divorce trial on September 20, 2012, that Respondents' previous articles were based on a lot of lies about him, and that Respondent Glenn

Smith did not care about the truth because he was only interested in selling newspapers. (R. p. 348, line 24—p. 350, lines 1-15). Then Appellant's mother, Carol Cook, approached Respondent Smith during Appellant's divorce trial asking that he hear the truth before writing another story about Appellant, and Cook emailed Respondent Smith the next day on September 21, 2012, seeking an opportunity for Appellant to reveal that truth to him, (R. p. 27); and Respondents' verification in their answer to the complaint that these facts are true constitutes admissions. (R. pp. 88-89, ¶¶ 5, 12, 13; pp. 102-103, ¶¶ 4, 10).

With that in mind, Respondents published the same false, defamatory statements from their previous articles about Appellant, (R. pp. 16-18; pp. 20-21), in the article giving rise to the case at bar, among other false and defamatory statements, that was published two days after being warned of its falsity on September 23, 2012, (R. pp. 28-31), because Respondents did not care about the truth, and were only concerned with selling newspapers. "[R]eckless disregard where the defamatory matter was not 'hot news' and the newspaper failed to verify it despite warnings concerning its falsity." (Citation omitted). (Internal quotation marks in original). Anderson v. The Augusta Chronical, 585 S.E.2d 506, 520 (S.C.App. 2003).

Respondents' reckless disregard for the truth in the instant case when publishing the false, defamatory statements about Appellant in their article on September 23, 2012, is obviously an abuse of the fair reporting privilege. Furthermore, the headline of that article, Inmate with limited knowledge finally gets his comeuppance, (R. p. 98), clearly confirms that Respondents maliciously printed those false, defamatory statements and, it appears that Appellant's sworn testimony about them during his divorce trial is what compelled them to react maliciously. (R. p. 348, line 24—p. 350, lines 1-15). Therefore, this Court overlooked and/or misapprehended the points in this appeal when essentially finding that *pro se*, layman Appellant's failure to file a

perfect 56(e) affidavit resulted in him providing nothing that supports the opinion that a genuine issue of material fact exists regarding falsity or an abuse of the fair reporting privilege.

In other words, Plaintiff did not merely rest upon the allegations or denials of his pleadings but had otherwise shown that there are genuine issues for trial by providing sworn testimony, tangible evidence, Respondents' admissions, and setting forth facts corroborating that there is no absence of a controversy on whether (1) Respondents maliciously published the defamatory statements about him with a reckless disregard for the truth; (2) the defamatory statements are false; and (3) Respondents abused their fair reporting privilege. "[I]f the pleadings and the evidentiary matter in support of summary judgment do not establish the absence of a genuine issue of material fact, summary judgment must be denied, even if no opposing evidentiary matter is presented." (Citation omitted). Murray v. Holnam, 542 S.E.2d 743, 747 (S.C.App. 2001). "Unless the trial court finds ... that the Plaintiff *can prove* actual malice, ... it should grant summary judgment for the defendant." (Emphasis in original). (Citation omitted). George v. Fabri, 548 S.E.2d 868, 875 (S.C. 2001). "[F]ailure to undertake a reasonable investigation into the matter creates a jury question as to whether it published the [article] with malice." (Citation omitted). *Anderson, 585 S.E.2d at 518.* "Whether ... statements were false is a matter for the jury." Castine v. Castine, 743 S.E.2d 93, 97 (S.C.App. 2013). "[T]he question whether the privilege has been abused is one for the jury." *Murray, 542 S.E.2d at 749.*

II.

Rule 56(e) Affidavits

The 14 affidavits stating that Appellant is non-violent were provided to support a finding that Respondents' defamatory statements regarding the violent crimes he is alleged to have committed are false. However, four of those affidavits are from respected entrepreneurs who were customers of Appellant's electrical business before they became close friends, and they also expressed their trust in him, (R. pp. 119, 122, 128, 131), as did three productive and respectable citizens that have been Appellant's friends for up to more than 30 years, (R. pp. 120-121, 124), and seven are from family members who described their love, trust, and respect for Appellant to include his welcome in their homes, (R. pp. 123, 125-127, 129-130, 132); and all of those who are not deceased will testify on Appellant's behalf. (R. pp. 119-132).

Furthermore, the affidavit Appellant filed when seeking judicial notice affirms that all facts stated by virtue of that motion where Appellant made clear that his allegations in the complaint that Respondents maliciously published false, defamatory statements about him are true and correct, (R. pp. 12-14; p. 11; p. 114), which confirms that Appellant has triable issues requiring the services of a jury. "If triable issues exist, those issues must go to jury." (Citation omitted). Worsley Companies v. Town of Mount Pleasant, 528 S.E.2d 657, 660 (S.C. 2000). In other words, *pro se*, layman Appellant in the case at bar has an equal protection right to have all 15 of the affidavits he provided considered to be sufficient in terms of supporting genuine issues of material fact pursuant to Rule 56(e), SCRCP.

The United States Supreme Court has consistently held that they "do not impose on persons unlearned in the law the same high standards of the legal art that they might place on the members of the legal profession." Pollard v. United States, 352 U.S. 354, 363 (1957). *Pro se*

litigants are held "to less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 523 (1972). "As a *pro se* litigant, the Plaintiff's pleadings are accorded liberal construction, and held to a less stringent standard than formal pleadings drafted by lawyers." (Emphasis added). (Citation omitted). Erickson v. Pardus, 551 U.S. 89, 94 (2007). "When the United States Supreme Court enunciates a rule based upon the Fourteenth Amendment, that rule is binding upon state courts through the *Supremacy Clause*." (Emphasis added). (Citation omitted). Keeler v. Mauney, 500 S.E.2d 123, 125 (S.C.App. 1998).

Therefore, this Court overlooked and/or misapprehended the foregoing points in this appeal supporting the judgment that *pro se*, layman Appellant's 15 affidavits and the documents, evidence, and admissions within the record support a finding of genuine issues of material fact. "When ruling on motion for summary judgment, trial judge must consider *all* of the documents and evidence *within the record*, including the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits." (Emphasis in original). (Citation omitted). Higgins v. Medical University of South Carolina, 486 S.E.2d 269, 272 (S.C.App. 1997). "For a summary judgment to be granted, it must be perfectly clear that no issue of fact is involved." (Citation omitted). Davenport v. Island Ford, Lincoln, Mercury, Inc., 465 S.E.2d 737, 739 (S.C.App. 1995).

III.

Conclusory Arguments

Respondent Smith admitted to having been informed that his articles about Appellant published on June 9, 2006, March 1, 2007, and July 12, 2008 were based on lies, (R. p. 88, ¶ 5; p. 102, ¶ 4), and Appellant expressed his ambition to clarify the truth. Soon thereafter,

Respondents published a full page follow-up to Respondent Smith expose' of a Charleston socialite in which the statements quoted made it obvious that this former patrician was impoverished, and that she also had expressed her ambition to clarify the truth—she was crucified for her trouble in that subsequent article. Therefore, Plaintiff was not willing to place his head on Respondents' chopping block, (R. p. 349, lines 15-24), and Respondents' callousness is what compelled Appellant to expose their opportunism that is focused solely on selling newspapers, (R. p. 348, line 11—p. 350, lines 1-15), when they believe the victims of their poison pen lack the wherewithal to seek redress. These facts also explain why Respondents refused to comply with Appellant's interrogatory request for information about the former socialite they decimated. (R. p. 168, ¶ 7).

Furthermore, every argument and case supporting this petition for rehearing was raised and cited, respectively, in Appellant's briefs and/or record of this case, and it appears that the evidence and all inferences were not viewed in a light most favorable to Appellant because he clearly submitted far more than the mere scintilla of evidence supporting a finding that there are genuine issues of material fact requiring the services of a jury. "In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party." (Citation omitted). Murray v. Holnam, 542 S.E.2d 743, 747 (S.C.App. 2001). *Murray, 542 S.E.2d at 747.* "In order to withstand a motion for summary judgment ..., the non-moving party is only required to submit a mere scintilla of evidence." (Citation omitted). Fountain v. First Reliance Bank, 730 S.E.2d 305, 309 (S.C. 2012).

In fact, Appellant's motion in the case at bar to strike Respondents' untimely final brief should have been granted and this case remanded for trial in the circuit court in the interest of

equity and equal protection. By way of explanation, Appellant's appeal in the matter of his divorce, Appellate Case # No. 2012-213714, was dismissed because this Court decided to ignore the pending motion that Appellant paid this Court $25 to file that he was relying upon to establish a deadline to file his initial brief and designation of matter. In other words, this Court's decision in the case at hand to affirm the circuit court's order granting Respondents' motion for summary judgment appears to have been influenced by the same bias Appellant complained of in his final brief regarding the infamy that he postulates led to the unfavorable outcomes to every meritorious attempt he has made to essentially enjoy his constitutional rights, (Appellant's Brief, p. 10); and all of these infringements will eventually be raised in a civil rights complaint in federal court seeking redress.

With that in mind, Respondent Smith has many times been recognized for his journalistic prowess, and the stories to which he was assigned virtually seven days a week were generally published on the front page. However, it was not long after Appellant filed this action that Respondent Smith's popularity began to wane to the point where weeks are currently passing without his presence; and when he does appear, more often than not, Respondent Smith is merely recognized for his contribution to the lead reporter's story. In fact, Respondent Smith would most probably have been assigned the Michael Slager and/or Dylann Roof stories had he not violated five out of the six mandates in the Code of Ethics established by the National Writers Association. (R. p. 58, ¶¶ 1-3, 5-6). In other words, Respondent Evening Post Publishing is obviously punishing Respondent Smith for refusing to verify his facts prior to printing false, defamatory statements about Appellant.

However, Respondent Evening Post Publishing is just as culpable in this matter as is Respondent Smith because Appellant enlightened them with specificity in his request for

retraction to each and every false, defamatory statement that they maliciously published about him which they refused to comply with. "Refusal to retract an exposed error tends to support a finding of actual malice." (Citation omitted). *Anderson, 585 S.E.2d at 520.* Furthermore, it is equally clear in the case at bar that Respondent Evening Post Publishing and Respondent Smith shared a mutual interest in selling newspapers and believed that Appellant was incapable of seeking redress and/or believed that this Court is biased and will not observe Appellant's constitutional rights. Therefore, affirming the circuit court's order granting Respondents' motion for summary judgment essentially confers Respondents with impunity to trample the rights of anyone they deem incapable of seeking redress, and implies that this Court is not concerned with Appellant's First Amendment right to petition the government for a redress of grievances, and his Fourteenth Amendment rights to procedural due process of law and equal protection.

IV.

Prayer for Relief

In light of the foregoing facts and binding authorities, this Court should grant this petition for rehearing, reverse the circuit court's order granting Respondents motion for summary judgment, and remand this case for trial by jury in order that Appellant may enjoy his rights to petition the government for a redress of grievances, procedural due process of law and equal protection as guaranteed by the First and Fourteenth Amendments to the United States Constitution and South Carolina law.

WHEREFORE, Appellant prays that this Court grant the relief requested; and, for such other relief as this Court deems just and proper.

Respectfully submitted,

Clark D. Thomas

Clark D. Thomas, SCDC No. 187845
Kershaw, C.I. / Magnolia A-16
4848 Gold Mine Highway
Kershaw, SC 29067

December 7, 2016
Kershaw, SC

AFFIDAVIT
OF
CLARK D. THOMAS

NOW COMES Clark D. Thomas, Appellant in the above-captioned appeal, and states, under oath, the following:

1. Pursuant to Rule 240(c)(3), SCACR, the facts I have stated by virtue of this petition are true and correct to the best of my knowledge and belief.

Further affiant sayeth naught.

Clark D. Thomas

Clark D. Thomas, No. 187845
Kershaw, C.I. / Magnolia A-16
4848 Gold Mine Highway
Kershaw, SC 29067

SUBSCRIBED AND SWORN TO before me

This 7th day of December, 2016

Melanie T. Lucius (L.S.)
Notary Public for South Carolina
My Commission Expires: February 18, 2024.

MELANIE T. LUCIUS
NOTARY
PUBLIC
Exp. February 18, 2024
SOUTH CAROLINA

RECEIVED
DEC 07 2016
SC Court of Appeals

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the document listed below has been sent by U.S. Mail to:

Jay Bender, Esquire
P.O. Box 8057
Columbia, South Carolina 29202.

1. Petition for Rehearing.

Clark D. Thomas, No. 187845
Kershaw, C.I. / Magnolia A-16
4848 Gold Mine Highway
Kershaw, SC 29067

December 7, 2016
Kershaw, SC

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Columbia, South Carolina 29202.

1. Petition for Rehearing; and,
2. Return to Respondents' Motion for Costs.

Clark D. Thomas, No. 187845
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4848 Gold Mine Highway
Kershaw, SC 29067

December 7, 2016
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Clark D. Thomas, SCDC No. 187845
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December 7, 2016

HAND DELIVERED:
The Honorable Jenny A. Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Clark D. Thomas v. Evening Post Publishing Co., et. al.
Trial Case No. 2013-CP-10-5444
Court of Appeals Case No. 2014-002725

Dear Ms. Kitchings:

Please accept my check in the amount of $25.00 for filing my petition in the referenced case; and please clock-stamp the original documents listed below, and return two (2) clock-stamped copies to me:

1. Petition for Rehearing;
2. Return to Respondents' Motion for Costs; and,
3. Copies (8).

With kindest regards,
I am

Clark D. Thomas

Clark D. Thomas

cc: Jay Bender, Esquire