

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2016-000989

Carol Goodson-Eaddy..... Appellant,

v.

Travien L. Capers, Gregory A. Brown, Robert Davis, Herbert Bell, James
Randolph, Jr., Harry Thompson, James Brown, Frank M. Jones, Edwin L. Rivers,
Sr., Lever Thompson, Jr., Fred Davis, Harry L. Jones, Sr., David J. Clarkson,
Larry B. Brown, Grady Wilson and Dorothy B. Adams..... Respondents.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. **THE CIRCUIT COURT CORRECTLY HELD THAT SUBJECT MATTER JURISDICTION DOES NOT EXIST TO INTRUDE INTO A CHURCH DISCIPLINE MATTER.**
- II. **THE CIRCUIT COURT CORRECTLY HELD THAT APPELLANT FAILED TO ESTABLISH A CLAIM FOR DEFAMATION BECAUSE WRITTEN ITEMS WERE NOT PUBLISHED TO A THIRD PARTY, BECAUSE SPOKEN MATTERS WERE ONLY IN A CHURCH MEETING WITH ONLY CHURCH MEMBERS AND WERE DISCUSSING CHURCH DISCIPLINE, AND BECAUSE THE CLAIMED WORDS WERE NOT DEFAMATORY OR HAVING ANY HARM SHOWN.**
- III. **THE CIRCUIT COURT CORRECTLY HELD THAT APPELLANT FAILED TO ESTABLISH A CLAIM FOR OUTRAGE IN THAT NO PHYSICAL HARM IS PRESENT, NO SPECIAL HARM WAS SHOWN, AND MORE THAN A MERE SCINTILLA OF EVIDENCE SHOWING EXTREME OUTRAGE IS REQUIRED.**
- IV. **THE CIRCUIT COURT CORRECTLY HELD THAT APPELLANT FAILED TO PROPERLY PLEAD FACTS TO SUPPORT ALLEGATIONS THAT ANY STATEMENTS MADE WERE NOT QUALIFIEDLY PRIVILEGED BY BEING MADE ONLY IN A CHURCH MEETING TO CHURCH MEMBERS ABOUT A CHURCH DISCIPLINE MATTER.**
- V. **THE CIRCUIT COURT CORRECTLY HELD DISMISSAL OF INDIVIDUALS IS PROPER UNDER THE SOLICITATION OF CHARITABLE FUNDS ACT WHERE ANY ALLEGED ACTS WERE PERFORMED AS AGENTS OF A CHURCH.**

STATEMENT OF THE CASE

On October 10, 2014, Appellant Carol Goodson-Eaddy filed a Complaint in the Richland County Court of Common Pleas against Travien L. Capers, Gregory A. Brown, Robert Davis, Herbert Bell, James Randolph, Jr., Harry Thompson, James Brown, Frank M. Jones, Edwin L. Rivers, Sr., Lever Thompson, Jr., Fred Davis, Harry L. Jones, Sr., David J. Clarkson, Larry B. Brown, Grady Wilson, and Dorothy B. Adams for slander, libel, and civil conspiracy. Respondents at the outset filed a Motion to Dismiss on November 4, 2014. That motion came to a hearing before The Honorable James R. Barber,

III on February 9, 2015. (*See R. p. 15*) The circuit court granted in part and denied in part Respondents' motion to dismiss, dismissing Appellant's civil conspiracy claim and allowing Appellant "to amend her Complaint to cure certain deficiencies." That order recognized that the court was unable to determine at the initial stages of the proceeding whether the lawsuit involves ecclesiastical matters outside of the subject matter jurisdiction of the circuit court. Any church discipline matters would not be within the jurisdiction of the court and would be dismissed. The order also allowed Appellant to amend her Complaint to include "facts to support allegations that the statements were not qualifiedly privileged if made in a church meeting." Finally, the order clarified that the Respondents have been named in their individual capacity, and to the extent any Respondent is shown to have been acting as an agent of the church at the time he or she engaged in any tortious conduct, the suit must be dismissed as to that Respondent. Ultimately, the circuit court under those conditions denied Respondents' motion to dismiss as premature on certain issues and provided Appellant with an opportunity to cure the deficiencies detailed above. No challenge was ever made to that order, no request to alter or amend the order was ever made, and that order became law of the case. No issue is before this Court as to that order.

Appellant did amend her Complaint on March 30, 2015, leaving in her claims for slander and libel while adding a claim for intentional infliction of emotional distress. Respondents filed an Answer to the Amended Complaint, recorded by the clerk on April 15, 2015. Following a period of discovery and depositions, Respondents filed a motion to dismiss or in the alternative for summary judgment on January 12, 2016. A hearing was conducted on April 6, 2016 before The Honorable G. Thomas Cooper, Jr., who issued an Order granting the motion on April 12, 2016. (*See R. p. 3*).

Relying upon the First Amendment of the United States Constitution, Judge Cooper held that the circuit court has no jurisdiction over the matters within Appellant's Complaint. (R. p. 10) He ordered that the written defamation claim fails on the publication requirement because no written defamation, or libel, was ever published to any third party by the Respondents. (R pp. 11-12) He ordered that the claim for spoken defamation, or slander, which only involved Pastor Capers' alleged statements that Appellant was a "troublemaker," fails because the statements did not rise to the level of being defamatory and were limited in scope to being made within a special business meeting of the church, limited to members of the church, discussing a church discipline matter with a congregational church. (R. pp. 12-13) Further, he ordered dismissal of the defamation claim because Appellant had not presented to the court facts to support allegations that the statements were not qualifiedly privileged if made in a church meeting, as required by prior court order. (R. p. 13-14) He ordered the claim for intentional infliction of emotional distress, or outrage, fails because Appellant failed to meet the heightened-burden of proof required due to lack of physical injury and had not shown the required "more than a mere scintilla of evidence" of extreme outrage. (R. p. 11)

STATEMENT OF THE FACTS

Rule 208, SCRAP provides that a respondent "shall be bound by the matters stated or alleged in appellant's statement of the case" when the respondent does not provide its own statement. Therefore, Appellant's Statement of the Facts necessitates some important points of clarification. Appellant discusses the subject letter dated August 30, 2014. No evidence exists of any third party, including any secretary who could have placed the letter

in the mail, reading the letter apart from Appellant and the “quite a few people” to whom she showed the letter.

As to the special called meeting, the evidence cited by Appellant from the Capers deposition notes that the agenda included the matter of communication from the lawyer for Appellant inquiring into church affairs, which went to the heart of the disciplinary matter for Appellant and included an improper approach to resolving disputes within the church as discussed throughout the deposition and within the subject letter. (R. pp. 167, 169-70)

Despite the statements by Appellant in her Brief, her own testimony indicates elections took place and that she in fact lost on certain votes of her own motions. (R. pp. 322-19) The minutes of annual meetings also indicate elections were held, noting that a motion had been made and approved. (R. p. 525-33) Appellant also admits that Pastor Capers came in as valid pastor the last time there was a vacancy, back in 2010, and the referenced bylaws only require a pastoral election by written ballot when there is a vacancy. (R. p. 336) She goes on to call Travien Capers “Pastor” throughout her testimony and testified that her letter came from the leadership of the church, “the deacons and the pastor,” and the ones who would be spiritual leaders of the church and the proper ones to handle church discipline. (R. pp. 349-50) Appellant’s witness, Nadine Taylor, also testified that the Respondents were acting in their role as pastor, deacons, and trustees of the church. (R. pp. 470-71) She also acknowledges votes were taken on all officers at each annual meeting. (R. p. 473)

Appellant notes she had depression but has never produced any medical documentation to causally relate that to the present matter or to distinguish between her depression for which she was treated prior to this matter from the later depression. Nothing

more than bald assertions has been presented despite this litigation pending for nearly 18 months before dismissal.

Respondents believe all relevant facts are contained within the statements by the parties and would refer to the underlying order being appealed for any further facts.

ARGUMENT

The Circuit Court correctly dismissed this church discipline matter as not appropriate for the civil courts. The first issue is whether the Establishment and Free Exercise Clauses of the First Amendment bar this action, and the resulting lack of jurisdiction makes all other arguments moot.

I. Civil courts lack subject matter jurisdiction over this ecclesiastical matter.

A. A Ministerial Exception based on the Free Exercise Clause and the Establishment Clause of the First Amendment bars the civil court from intruding into church matters.

According to the United States Supreme Court, the First Amendment of the U.S. Constitution limits the circumstances under which a civil court can intrude into a church's internal affairs:

[W]here resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them.

Pearson v. Church of God, 325 S.C. 45, 49, 478 S.E.2d 849, 851 (1996) (quoting *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976)). The South Carolina Supreme Court recognized these principles of religious freedom:

- 1) Courts may not engage in resolving disputes as to religious law, principle, doctrine, discipline, custom, or administration;

- 2) Courts cannot avoid adjudicating rights growing out of civil law;
- 3) In resolving such civil law disputes, courts must accept as final and binding the decisions of the highest religious judicatories as to religious law, principle, doctrine, discipline, custom, and administration.

Pearson, at 52-53, 478 S.E.2d at 853. The South Carolina Supreme Court has stated that it “is not the function of the courts to dictate procedures for a church to follow,” and “we limit our inquiry into church affairs and respect the boundaries of church self-governance.” *Williams v. Wilson*, 349 S.C. 336, 340, 563 S.E.2d 320, 322 (2002).

For example, “[i]n *Pearson v. Church of God*, 325 S.C. 45, 53, 478 S.E.2d 849, 853 (1996), our supreme court held it was not proper for this court to ‘determine whether the Church acted consistently with its religious laws and doctrines, its system of discipline and administration in revoking [the minister’s] ministry . . . [because that] would be a quintessentially ecclesiastical matter over which a court could not exercise jurisdiction.’” *McCain v. Brightharp*, 730 S.E.2d 916, 920 (S.C. Ct. App. 2012). Thus, the areas of church administration and church discipline are specifically outside the jurisdiction of civil courts.

The United States Supreme Court again discussed this principle specifically for church discipline and government (e.g., how to deal with church members and who are the officers of the church):

[T]he First Amendment ‘permit[s] hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters.’ When ecclesiastical tribunals decide such disputes...’the Constitution requires civil courts accept their decisions as binding upon them.’ We thus held that by inquiring into whether the Church followed its own procedures, the State Supreme Court had ‘unconstitutionally undertaken the resolution of quintessentially religious controversies whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals’ of the Church.

Hosanna-Tabor Evangelical Lutheran Church and Sch. v. E.E.O.C., 565 U.S. 171, 187, 132 S.Ct. 694, 705, 181 L.Ed.2d 650, 662-63 (2012) (citing *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976)). While a neutral principles of law approach is valid in some circumstances, courts cannot interfere “with an internal church decision that affects the faith and mission of the church itself.” *Id.*, at 190, 132 S.Ct. at 707, 181 L.Ed.2d at 664.

In the subject case, the matter of church discipline is clearly outside the jurisdiction of the civil courts, and Appellant and her witness both acknowledged this entire matter deals with a dispute over how church discipline was carried out. Further, the constitutional bars by the Supreme Court forbid intrusion into whether proper procedures were followed and certainly how to interpret the disciplinary statements that rely on scriptural interpretation to evaluate the context. Trying to argue that improper elections result in this being a non-religious matter also ignores the testimony of Appellant and her witness as to the elections, the clear minutes of meetings recording that elections took place, and the prohibition on civil courts’ questioning whether proper procedures were followed. The church has no other officers and has not questioned the validity of the actions and would be the only body that can assert Respondents are not true officers of the church.

The August 30, 2014 letter to Appellant from the church detailed instructions from the New Testament “on how the church should function from the pulpit to the pew” and addressed the ways in which Appellant had failed to heed these instructions. (R. pp. 269-70) The letter cites numerous scriptures to demonstrate how Appellant’s behaviors have not been in accordance with the teachings of the church. (*Id.*) These statements necessarily implicate church doctrine, administration, and discipline over which this Court cannot

exercise jurisdiction, as they address Appellant's conduct related to the church interpreted in light of the Bible and the appropriate discipline for such conduct in the context of church doctrine.

The alleged defamatory statements made at the September 8, 2014 special business meeting involve Pastor Capers communicating that Appellant was a "troublemaker" within church meetings and requiring Appellant to "repent" and "apologize" in order to retain her membership in the church. (R. p. 5) These statements directly relate to internal church disciplinary matters over which this Court has no jurisdiction and were confined to a meeting of church members. Indeed, a witness at the September 8, 2014 meeting, church member Nadine Taylor, testified that she viewed Pastor Capers' comments at the meeting as "a warning" to Appellant that her actions could result in discipline to include the termination of her church membership if she did not repent and apologize. (R. pp. 457-58). Further, while Appellant herself testified that does not believe the special business meeting was the "appropriate way" for Pastor Capers to administer church discipline, there is no evidence in the record that Appellant disputes the fact that the meeting and her ultimate excommunication from the church was a form of discipline imposed by the church. (R. p. 8)

Thus, the alleged defamation identified by Appellant in her deposition was delivered in the context of church administration and discipline. All of the communications came from church officials responsible for handling disciplinary matters. In fact, Appellant conceded in her deposition that the church officials who signed the August 30, 2014 letter were officials responsible for running the church and handling church discipline. (R. pp. 350-51) While Appellant may hold a personal belief that Respondents' methods of

implementing church discipline were not “appropriate,” this belief does not change the fact that the statements of the Respondents in this action were made in the context of church administration and discipline. (R. p. 8-9)

With respect to Appellant’s claim for intentional infliction of emotional distress, the claim itself stems from the above-discussed actions of alleged defamation and excommunication. These actions were performed in context of church administration and discipline by church officials whom Appellant recognizes were responsible for church discipline. As such, Appellant’s claim for intentional infliction of emotional distress, which derives from the Respondents’ alleged defamatory conduct as well as her subsequent excommunication, also concerns ecclesiastical matters specifically outside the jurisdiction of the circuit court. (R. p. 9)

While Respondents recognize that civil courts may hear cases touching upon religious organizations where external disputes may be resolved entirely by neutral principles of law, a resolution of the dispute by neutral principles of law here is not feasible. *Banks v. St. Matthew Baptist Church*, 406 S.C. 156, 160-61, 750 S.E.2d 605, 607 (2013). The Court cannot perform an independent assessment of the allegedly defamatory statements and ultimate excommunication because the statements and disciplinary actions were made by church officials during church proceedings in the context of implementing church discipline. For this reason, the statements and excommunication can only be considered in the appropriate context, that is, as acts of discipline and administration by church officials for actions that did not comport with Biblical directives. The August 30, 2014 letter specifically cites to “Biblical law” and scripture passages upon which the disciplinary step of excommunicating Appellant was ultimately based. (R. p. 10) This

Court cannot apply neutral principles of law to these statements without deciding issues of religious doctrine and discipline.

B. The Establishment Clause restricts applying First Amendment protections only to hierarchical churches.

Appellant seeks to argue the First Amendment protections afforded churches only apply to hierarchical churches. The reference to highest body of a hierarchical church only serves to note sometimes the authority in a church is outside of that particular church body and may come from a denominational head. Allowing only hierarchical churches to enjoy religious liberty would involve the government picking which kind of church holds more favor. South Carolina has recognized this position in rejection of Appellant's theory multiple times, including in *McCain* as well as *Banks*, both of which apply limitations on intrusion into church matters when dealing with congregational churches.

II. Appellant failed to establish a defamation cause of action.

Even if this Court were to have jurisdiction over this subject matter, Appellant has not satisfied the elements of defamation under South Carolina law. "The tort of defamation allows a plaintiff to recover for injury to her reputation as the result of a defendant's communication to others of a false message about the plaintiff." *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998). The elements of a defamation claim include: (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. *Id.* "Slander is a spoken defamation while libel is a written defamation or one accomplished by actions or conduct." *Id.*

In her deposition, Appellant limited the alleged defamation in this matter to three instances: (1) the July 22, 2014 email from Pastor Capers to Plaintiff; (2) the August 30, 2014 letter from Pastor Capers and other church officials to Plaintiff and (3) the September 8, 2014 special business meeting. (R. p. 7) With respect to the July 22, 2014 email and the August 30, 2014 letter, these documents do not constitute defamation because neither document was published to a third party. “The publication of defamatory matter is its communication, intentionally or by a negligent act, to a third party—someone other than the person defamed.” *Id.*, at 520, 506 S.E.2d at 507. The July 22, 2014 email was sent from Pastor Capers’ email address to Appellant’s email address. In her deposition, Appellant conceded that she has no knowledge that this email was sent to any other person besides herself. (R. p. 366, 375) There is no evidence in the record that the July 22, 2014 email was published to a third party. As such, Appellant fails to satisfy the publication element of her defamation claim as to the July 22, 2014 email, and she has apparently conceded such in her initial brief by not arguing the matter.

The August 30, 2014 letter was sent directly to Appellant by Respondents. In her deposition, Appellant testified that she is not aware of the letter being sent to any third party and has never heard of anyone else receiving a copy of the letter. (R. pp. 68, 88-89) While Appellant testified that she herself subsequently shared the letter with “quite a few people,” this does not establish that Respondents published the letter to any third party as is necessary to sustain a libel claim. (R. p. 382) As such, Appellant fails to satisfy the publication element of her libel claim as to the August 30, 2014 letter. Appellant has argued her action as to all Respondents as being the publisher of the letter as a group, all of whom signed. A joint statement of church officers does not become published simply

because multiple people sign the statement. It can only be published when it goes out from the authors. No evidence exists that the individual who mailed the letter even looked at the letter. This letter serves as the only basis for claims against all Respondents except Respondent Capers.

With respect to Appellant's slander claim, the alleged defamatory statements made during the September 8, 2014 special business meeting were made solely by Pastor Capers. (R. pp. 12, 378-80) However, the alleged statements made by Pastor Capers during the special business meeting were not defamatory. Appellant testified that at the meeting, Pastor Capers told Appellant she needed to repent and apologize for her actions. (R. p. 397, 397) Appellant also testified that Pastor Capers called Appellant a "troublemaker." (R. p. 400) These statements are not defamatory, especially within the context of a church meeting addressing discipline. Indeed, when church member and witness Nadine Taylor was asked about these statements in her deposition, she testified that she felt that the church members of this congregational church needed more information and "details" as to what made Appellant a troublemaker and why Appellant should be excommunicated from the church. (R. p. 465-66) Similarly, Appellant herself testified that at the meeting, she and other church members questioned Pastor Capers as to details of why he made such comments about Appellant and what information he had to support these comments. (R. p. 380, 398-400) Thus, the statements made by Pastor Capers during the meeting were not defamatory, as both Appellant and Nadine Taylor indicated that more statements were needed on the discipline matter and that they wished Pastor Capers to comment further concerning Appellant.

Pastor Capers' statements were made in the context of a special business meeting at the church, and Pastor Capers is thus entitled to a qualified privilege as a matter of law. See *Fountain v. First Reliance Bank*, 398 S.C. 434, 444, 730 S.E.2d 305, 310 (2012); *McNeil v. S.C. Dep't of Corrections*, 404 S.C. 186, 743 S.E.2d 843 (Ct. App. 2013). Under the doctrine of qualified privilege, one who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused. *Id.* "The essential elements of a conditionally privileged communication may be enumerated as good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only." *Id.* The existence of this privilege is a question of law for the court. *Castine v. Castine*, 403 S.C. 259, 267, 743 S.E.2d 93, 97 (Ct. App. 2013).

The alleged defamatory statements made by Pastor Capers were delivered during a church meeting to church members discussing church business. The statements were made in the context of disciplining Appellant, a church member at that time, pursuant to church administrative procedures. The statements were limited to addressing Appellant's past behavior in the context of her participation and behavior in the church and with church officials. An official church meeting with church members present is the proper occasion to discuss disciplinary issues arising from a church member's conduct. (R. p. 10) It is hard to conceive of a more appropriate setting for church officials to discuss the discipline of church members than in an official church meeting limited to church members. Denying Pastor Capers a qualified privilege during such discussions would undermine the purpose of the privilege, and Appellant has presented no evidence to support such a denial despite

an explicit requirement in the prior Order to do so in order for the claims to survive. Judge Barber's Order on Respondents' initial Motion to Dismiss specifically recognized that "Plaintiff must also present facts to support allegations that the statements were not qualifiedly privileged if made in a church meeting." (R. p. 17) Appellant has presented no such facts. Instead, the record supports the determination that Pastor Capers is entitled to a qualified privilege as a matter of law.

III. Appellant failed to establish an outrage cause of action.

Appellant's claim for intentional infliction of emotional distress, or outrage, is subject to a heightened burden of proof. *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330-31, 673 S.E.2d 801, 803 (2009). Appellant must submit more than a mere scintilla of evidence to withstand a motion for summary judgment. *Id.* Appellant in the subject matter lacks physical harm, so she must show more in the way of extreme outrage that is simply not present in the evidence before the Court. *Hanson v. Scalise Builders of S.C.*, 374 S.C. 352, 356, 650 S.E.2d 68, 71 (2007). Appellant refers to this claim only as a general claim about all the defamatory action detailed above. No new or additional facts are presented for this claim, and no special harm is presented beyond the harm she claims for the defamation. This claim is essentially for wounded feelings and does not rise to the level of an actionable claim. Consequently, Appellant's claim fails as a matter of law even if the subject of her claim was not a church discipline matter over which this Court has no jurisdiction.

IV. Respondents are acting as agents for their church and therefore have no individual liability under the Solicitation of Charitable Funds Act and Judge Barber's Order in this case.

South Carolina Code sections 33-56-10, *et seq.*, and the federal Volunteer Protection Act of 1997, 42 U.S.C. § 14501, *et seq.* both protect agents of charitable

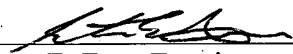
institutions for actions arising out of the business of the charitable institution. The prior Order signed by Judge Barber also noted as law of the case that it must be dismissed if the individuals were ever shown to be acting on behalf of the church. (R. p. 17) The constitutional provisions above show that all actions were performed on behalf of the church in the Respondents' roles as officers of the church, as recognized by Appellant and her witness in deposition testimony. As such, the dismissal is required by the law of this case from the Judge Barber order.

CONCLUSION

Civil courts cannot intrude into matters of church discipline and church administration, even to determine whether proper procedures were followed. The present matter is outside the subject matter jurisdiction of the court. Further, Appellant has failed to establish the required elements for defamation and outrage. This Court should affirm the dismissal from the circuit court.

Respectfully submitted,

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CERTIFICATE

I, Peter E. Farr, Esquire, attorney for Respondents, certify that the Respondent's Brief complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Appellate Court Rules.

October 21, 2016



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