THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Robin B Stilwell, Circuit Court Judge
Edward W. Miller, Circuit Court Judge

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SC Court of Appeals

Case No. 2016-CP-23-6547
Appellate Case No. 2017-002635

Harold Estes Blackwell, Jr., ...Appellant,

v.

Toby Woodard..Respondent,

APPELLANT'S REPLY

Harold Estes Blackwell, Jr.
Pro se
315 Glendale Road
Union, South Carolina 29379
(864) 303-7000
halblackwell@gmail.com

REPLY BRIEF

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Appellant's Summary

Appellant wishes to inform the Court he seeks unopposed the Republican nomination for county supervisor of Union County, South Carolina. Respondent has alleged "truth" as an affirmative defense in both his responses to now mooted complaints. Appellant avers that justice demands Respondent come into Court and present his evidence as is his burden under the law. Appellant implores the Court to take note of how, without adjudication, very high profile, accomplished men have had careers summarily terminated on mere allegations such as Respondent has leveled against Appellant. Appellant's ability to pursue any career commensurate with his ability depends on the outcome of this litigation.

Appellant strenuously objects to Respondent's constant reference to, and the Court's consideration of, matters not in the record, particularly Appellant's earlier pro se written complaints that have been made moot by amendment. Opposing counsel's implication Appellant was stalking his wife is abhorrent and completely without foundation.

Appellant's Reply to Respondent's "Statement of the Case"

Appellant points out to the Court opposing counsel is selling the same false narrative in her initial brief as she has maintained throughout these proceedings. Appellant has never alleged defamation arising from Appellant's Facebook conversation with Respondent. Though opposing counsel has doggedly inferred and alleged Appellant relies on the Facebook private messages to meet the publication to a third party element of the claim, she fails to cite any authority in the record to substantiate her premise. The perpetuation of this false narrative is Respondent's only hope of prevailing in this matter before the Court and it is easily shown to be false.

In his now-termed "second amended complaint," the four corners of which is the only complaint legitimately before the Court, Appellant alleges (as he did in all his complaints, for the record) the Facebook conversation was circumstantial evidence of publication to third parties. Appellant also alleges Respondent defamed him in emails to William Fisk and his brother, David Woodard. Opposing counsel's obvious intentional omission of these facts in the Statement of the Case destroys Respondent's credibility. Respondent cannot prevail arguing the facts in the record so a set of facts has been created out of whole cloth by Respondent.

Appellant's Reply to Respondent's Statement of Facts

The first line of Respondent's "Statement of Facts" is a lie. The record shows Respondent is a teacher at Renewal, by his own admission. This may be opposing counsel's most oft-repeated lie, and of course, no authority is cited. This falsity, posited repeatedly by opposing counsel, is an incredibly brazen lie as it is so easily proven false.

Respondent's refrain of "Appellant sued for defamation based on publication to a third party being the Facebook conversation" predictably appears falsely in Respondent's "Statement of Facts." Again, Respondent provides no citation. Opposing counsel further misleads the Court by stating Appellant is now "admitting that "Lynn Estes" is a fictitious person." Appellant contacted opposing counsel when he realized she did not understand "Lynn Estes" was a fictitious person shortly after Respondent's initial answer to Appellant's complaint. Appellant never alleged "Lynn Estes" was a real person anywhere in the record.

Opposing counsel also fails to acknowledge the police report of July 17, 2015, in which the police were told, in the presence of third parties, by an unknown (redacted) member of the Miracle Hill staff, essentially the same defamatory material as was published in the Facebook messages with "Lynn Estes." Throughout his brief Respondent claims Appellant fails to allege with specificity the content of certain alleged defamatory material when in fact Appellant has alleged this content is essentially the same as Respondent published in the Facebook messages.

Respondent has been very careful not to deny he sent defamatory emails to William Fisk and his brother David Woodard.

Appellant's Reply to Respondent's "Standard of Review"

Respondent makes no attempt to address the vast authority cited by Appellant in his initial brief that pro se litigants are due a less stringent pleading standard than was used by the Court in rendering its decision to grant Respondent's motion to dismiss.

Respondent also fails to address the issue of the Court granting a motion to dismiss under Rule 12(c) SCRCP and Respondent's request being made pursuant to Rule 12(c)(6), other than stating without authority the standard of review is the same.

Appellant's Reply to Respondent's "Appellant's Amended Complaint Fails To State A Claim For Defamation."

Here again we find Respondent, again without citing authority, again stating falsely Appellant's only allegation Respondent defamed him was in the content of a private Facebook message. As much as opposing counsel wants this to be true, it simply isn't. The police report showing publication of essentially the same defamatory material to third parties is ignored by Respondent repeatedly. Respondent's use of the word "mostly" next to "unspecified persons" is clever and obviously meant to be misleading. Appellant has stated the alleged defamatory email recipient's names very specifically, William Fisk and David Woodard. Appellant could not possibly know the specific time and content of emails without reading them, the opportunity afforded by the most limited discovery. Respondent has not even denied he sent the alleged defamatory email.

Respondent's statement, "Appellant fails to allege facts sufficient to meet this test" is vague and completely without foundation in the record.

Appellant's Reply to Respondent's "Alleged Defamatory Comments to "Lynn Estes"

Respondent's argument here hinges on whether or not a police incident report is the same as a restraining order. Appellant must rest assured the Court knows the difference. Additionally, Respondent stated after the fact that he was wrong to "say things I didn't know for sure" when he said referencing his statement that he knew Appellant had a restraining order placed against him.

Appellant's Reply to Respondents "Alleged Defamation Regarding William Fisk and David Woodard"

The success of Respondent's argument is due to Appellant's legal disability to state a claim. Appellant has alleged the fact the emails in question were sent, how he knew they were sent and the negative effects on his reputation that resulted. The Court must find the inferences of Appellant's complaint, which are to be decided in Appellant's favor, are that the emails where sent, they were defamatory and they constitute publication to a third party, particularly in the absence of any denial of these facts by Respondent. *"To determine if any genuine issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party."* Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997).

Respondent fails to supply the entire finding of the Court in McNeil v. S.C. Dep't of Corr., 404 S.C. 186, 195. Opposing counsel again misleads the Court by inferring failure to pass the "specificity" test was found by the Court to be sufficient to affirm dismiss. The authority actually combines several deficiencies to rule dismissal appropriate. *"McNeil did not allege any of SCDC's statements were unprivileged, and she did not set forth with any specificity what the alleged false statements were. She also did not allege any of the statements were published to a third party or that SCDC made the alleged statements. Additionally, she did not assert to whom SCDC made the alleged statements. Therefore, we find McNeil's allegations do not support an action for defamation, and the trial court did not err in dismissing her cause of action."*

Appellant, a pro se litigant unlike Ms. McNeil, alleged the content of the defamation was essentially the same as on the police incident report and the Facebook private messenger material as to content, alleged William Fisk and David Woodard were the recipients, alleged the statements were made to a third party. Opposing counsel's inference the Court affirmed a dismissal in McNeil on the sole ground of lack of specificity is not correct and appears to be an attempt to mislead the Court by opposing counsel.

There can be no question in the Court's mind upon review of the Facebook messages that Respondent intended to defame Appellant by publishing to what he thought was a third party horribly defamatory material. There is nothing in the record indicating this was Respondent's only publication of this defamatory material about Appellant.

The police report lists no one as the Complainant. The name of this person is redacted. The Respondent works for Miracle Hill and is occasionally at the Renewal campus by his own admission and has not denied he was the one who made statements to police in the presence of at least one third party, stating Appellant was guilty of domestic violence in the past. Appellant vehemently denies any conduct, ever.

Appellant's Reply to Respondent's "Neither Amended Complaint States A Claim For Negligence"

Respondent improperly refers to two complaints instead of refuting Appellant's averment the Court ruled on the wrong complaint. The Court is allowed to consider one complaint, the so-called, "filed Amended Complaint" and that fact is not contested by Respondent. The Courts have ruled Rule 12(b)(6) motions are to be decided on "the face of the complaint" not "faces of the complaints." The trial court must dispose of a motion for failure to state a cause of action based solely upon the allegations set forth on the face of the complaint. Tele-Communications of Key West v. United States, 757 F. (2d) 1330 (D.C. Cir.1985); Hill v. Watford, 276 S.C. 344, 278

S.E. (2d) 347 (1981).

Respondent certainly owed Appellant a duty of care when he decided to destroy his reputation, a decision the record indicates was made long before the Facebook private messages in question were published. Opposing counsel again falsely states the breaches of duty have to do solely with the Facebook private messages, ignoring the emails and the police report. Respondent had no duty to act but did so voluntarily imbuing him with a duty to use due care. ("*At common law, when there is no duty to act but an act is voluntarily undertaken, the actor assumes a duty to use due care.*" Roundtree Villas Association, Inc. v. 4701 Kings Corporation, 282 S.C. 415, 321 S.E. (2d) 46 (1984)). Respondent used no care at all, obviously.

Appellant's Reply to Respondent's "The Proposed Amended Complaint and the Filed Amended Complaint Both Fail to State a Claim for Outrage"

Again, Respondent improperly refers to two complaints instead of refuting Appellant's averment the Court ruled on the wrong complaint. (Ibid, Tele-Communications Key West)

Respondent is completely out of line alleging Appellant was "stalking" his ex-wife. People die from alcohol poisoning every day. Appellant has only tried to protect his ex-wife and her need for protection is not in dispute. The record shows Appellant was correct about every aspect of his then wife's prognosis for recovery.

Appellant was not, nor has he ever been the subject of a restraining order.

Yet again, Respondent falsely claims Appellant only alleges he was accused in a private message to himself of being subject to a restraining order. There is no citation. Then we have reference to the mythical "trespass order," labeled previously by opposing counsel as a "Police Order of Protection," equally mythical, is relied upon by Respondent to show he was truthful stating Appellant had a restraining order placed against him. Since a restraining order is a restraining order and nothing else, Respondent argument fails.

Appellant's Reply to "Appellant Has Abandoned Any Arguments Regarding Judge Miller's Failure To Recuse"

Appellant intended to incorporate his allegations of error by Judge Miller by using his Rule 59(e) motion to reconsider, on which Judge Miller never ruled.

Appellant's Reply to "The Court Applied the Appropriate Standard to the Appellant's Pro se Pleadings"

Respondent's characterization of Appellant's argument is completely without foundation and uncited.

Respondent fails to cite a single consideration given to Appellant due to his pro se status.

Respondent relies on the court ignoring his allegations of fact regarding the emails to Fisk and Respondent's brother, not to mention other defamatory publications likely to be uncovered during discovery.

Appellant's Reply to "The Court Correctly Concluded the Two Amended Complaints Were Sufficiently Similar to Dismiss Regardless of Which Complaint was Controlling"

Respondent improperly refers to two complaints instead of refuting Appellant's averment the Court ruled on the wrong complaint. The Court is allowed to only consider one complaint (Ibid) the so-called, "filed Amended Complaint" and that fact is not contested by Respondent. Respondent's statement, "the Court correctly held neither (complaint) stated" is oxymoronic.

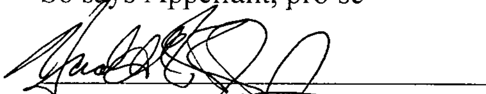
Conclusion

Respondent does not even attempt to address all the issues on appeal and fails in the attempts made regarding the selected issues. The alleged bias of the order is not contested. Respondent continues to falsely claim the amended complaint rest on the premise that the Facebook private messages are alleged to be a publication to a third party. That is simply not the case. The Court's use of two complaints in a double hearing was never claimed to be fair or

within the Rules. Respondent asserts the standard of review of Rule 12(b)(6) and Rule 12(c) are the same but fails to explain how the Court can grant a request that was never made, i.e. dismissal pursuant to Rule 12(b)(6) was never granted as the Court was moved.

Justice demands this case not end with no opportunity to do discovery of the emails in question.

So says Appellant, pro se



Harold E. Blackwell, Jr.
315 Glendale Road
Union, SC 29379
(864) 303-7000