

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

Jeffrey Lance Cruce,

Plaintiff,

v.

Berkeley County School District,

Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-08-0131

ORDER

RECEIVED

APR 27 2018

SC Court of Appeals

HARRY P. GROWIN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

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FILED

THIS MATTER COMES BEFORE THE COURT following a jury trial held from September 5, 2017, through September 7, 2017. Attorney for the Plaintiff, Nancy Bloodgood, and Attorneys for the Defendant, Grayson Lambert and Richard Morgan, appeared. On September 7, 2017, the jury returned a verdict in favor of the Plaintiff and awarded damages in the amount of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00). The Defendants filed post-trial motions which were heard on March 7, 2018.

**PROCEDURAL HISTORY**

The Plaintiff was employed as a head coach, athletic director, and teacher for the Defendant School District. The Plaintiff was terminated from employment with the Defendant on December 16, 2015. The Plaintiff brought suit claiming wrongful termination and defamation. During the course of the trial, the Defendant made a motion for directed verdict. The Court granted the Defendant's Motion on the wrongful-termination claim and the defamation claim based on the Defendant's silence when it removed Cruce as the head football coach and athletic director at Berkeley High School and transferred him to a middle school in the District. The Court submitted the case to the jury on the sole issue of Defendant's claim for defamation arising out of an e-mail sent January 7, 2016.

The Defendant filed post-trial motions for Judgment Notwithstanding the Verdict (JNOV), SCRCP 50(b), or in the Alternative, for a New Trial, SCRCP 59(a), asserting:

- (1) The claim should not have been submitted to the jury because the Plaintiff had to prove actual malice, and any claim requiring proof of actual malice is barred by the Torts Claim Act.
  - a. The Plaintiff is a public official.
  - b. The Plaintiff is a limited public figure.
- (2) The Plaintiff did not prove each element of his defamation claim because:
  - a. The January 7<sup>th</sup> e-mail was not defamatory,
  - b. No evidence at trial suggested that the e-mail was written with common-law malice, and
  - c. No evidence was offered by Plaintiff to show that any damages proximately flowed from the e-mail.
- (3) The e-mail was not false.
- (4) It is unclear that the jury knew its role was to determine whether the qualified privilege was exceeded, which it was not, given that only coaches received an e-mail written in response to a specific inquiry about student-athlete eligibility.

#### **STANDARD OF REVIEW**

Pursuant to SCRCP 50(b), when ruling on a motion for judgment notwithstanding the verdict, the trial court is required to view all evidence and reasonable inferences in the light most favorable to the non-moving party, or in this case, the Plaintiff. *See Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320 (S.C. Ct. App. 2012). The motion must be denied where either the evidence yields more than one inference or its inference is in doubt. *Buff v. South Carolina Dept.*

*of Transp.*, 332 S.C. 472, (S.C. Ct. App. 1998) *reh'g denied, cert. granted, rev'd on other grounds*. Pursuant to SCRCP 59(a), when ruling on a motion for new trial, the court "take[s] its own view of the evidence and grant[s] a new trial if it disagrees with the jury's verdict. *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams, L.L.P.*, 399 S.C. 322, 334 (S.C. 2012). If the court determines a verdict rendered to be excessive, it may award a new trial to the defendant unless the plaintiff agrees to remit a portion of the verdict. *See Graham v. Whitaker*, 282 S.C. 393, 401 (S.C. 1984). An alternative motion for new trial that simply mirrors a motion for judgment notwithstanding the verdict is limited to the grounds stated in the motion for directed verdict. *Marsh v. South Carolina Dept. of Highways & Public Transp.*, 298 S.C. 420 (S.C. Ct. App. 1989).

### **LAW AND ANALYSIS**

The Defendant makes the following arguments in support of its Motion:

- I. **The claim should not have been submitted to the jury because the Plaintiff had to prove actual malice, and any claim requiring proof of actual malice is barred by the Torts Claim Act.**

As to the first ground, the Defendant claims Plaintiff's defamation claim on the January 7<sup>th</sup> e-mail required him to prove actual malice, and thus this claim should not have been submitted to the jury. Defendant's argument that Plaintiff was required to prove actual malice is based on the claim that Plaintiff, as the head football coach, is a public official or, in the alternative, a limited public figure.

**A. The Plaintiff is a public official.**

The Defendant makes excellent arguments in support of its position that Plaintiff should be classified as a public official. Defendant cites to other jurisdictions which have conclusively held that a plaintiff was a public official based on their roles as high school sports coaches and athletic directors. See *Johnson v. Sw. Newspaper Corp.*, 855 S.W.2d 182, 197 (Tex. App. 1993); *Johnston v. Corinthian TV Corp.*, 583 P.2d 1101, 1103 (Okla. 1978); *Standridge v. Ramey*, 733 A.2d 1197, 1201-02 (N.J. Super. Ct. App. Div. 1999). While these arguments are thought-provoking, they do not support the current law of the state of South Carolina. In order to become a public official, the Plaintiff must "achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts." *Goodwin v. Kennedy*, 347 S.C. 30 (S.C. Ct. App. 2001) (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974)). There is no case law in our state that instructs the Court to classify the Plaintiff, as a head football coach and athletic director, as a public official.

**B. The Plaintiff is a limited public figure.**

Defendants also argue that even if the Plaintiff is not a public official, that he is a limited public figure and must prove actual malice. The South Carolina Supreme Court has delineated five factors to consider in determining whether a plaintiff is a limited public figure: (1) the plaintiff had access to channels of effective communication; (2) the plaintiff voluntarily assumed a role of special prominence in the public controversy; (3) the plaintiff sought to influence the resolution or outcome of the controversy; (4) the controversy existed prior to the publication of the defamatory statement; and (5) the plaintiff retained public-figure status at the time of the alleged defamation. See *Erickson v. Jones St. Publs., LLC*, 368 S.C. 444, 473 (2006). While Defendant argues Plaintiff meets the standard under *Erickson*, the Plaintiff claims that he did not meet the elements to become

a limited public figure, as he did not seek to influence or resolve a public controversy. The Plaintiff states that his high school football team's defensive strategy was not a matter of public controversy as contemplated by *Erickson*. This Court agrees with the Plaintiff, and as previously articulated during the course of trial, finds the Plaintiff does not meet the elements of a "limited public figure."

## II. The Plaintiff failed to prove each element of his defamation claim.

In order to prove a claim for defamation, the plaintiff must establish the following: (1) a statement with defamatory meaning was made; (2) the statement was published with actual or implied malice; (3) the statement was false; (4) the statement was published by the defendant; (5) the statement concerned the plaintiff; and (6) the statement resulted in presumed damages or in special damages to the plaintiff. *See Parker v. Evening Post Publ'g Co.*, 317 S.C. 236, 242-43 (S.C. Ct. App. 1994). The Defendant claims the Plaintiff failed to prove every element and meet its burden at trial.

### A. The January 7<sup>th</sup> e-mail was not defamatory.

The Defendant argues the Plaintiff failed to prove the first element of his claim for defamation, stating the January 7<sup>th</sup> e-mail was not defamatory. A statement is defamatory if it has the tendency to harm the reputation of the subject as to lower his esteem among the community or to deter third parties from associating with the subject. *See McBride v. Sch. Dist. Of Greenville County*, 389 S.C. 546, 560 (S.C. Ct. App. 2010). The Defendant asserts that "no reasonable juror could have found the January 7 email defamatory," as the statement was conditional and could not be deemed defamatory on its face or with added context. Defendant's Motion, p. 11-13. The Plaintiff argues ample evidence was presented from which a jury could conclude sending an e-mail to 45 recipients who were employees of the district, volunteer coaches, and parents was

improper, and the Defendant's Principal admitted the same action was improper. A mere insinuation is actionable "if it is false and malicious and the meaning is plain." *See Fountain v. First Reliance Bank*, 398 S.C. 434 (S.C. 2012). As the Plaintiff states, the jury heard testimony from which it could conclude that the e-mail indicated Plaintiff "had been unfit to perform the job of athletic director" or find that "the review of student files and subsequent e-mail was an attempt after the fact to support the District's false reason for termination."

**B. No evidence at trial suggested that the e-mail was written with common-law malice.**

The Defendant also asserts the Plaintiff failed to present evidence of common-law malice at trial, and thus, the third element of the claim for defamation was not met. Both the Plaintiff and the Defendant agree that the jury was correctly charged with the standard of common-law malice, or "ill will...with the design to causelessly and wantonly injure the plaintiff; or the statements were published with such recklessness as to show a conscious indifference toward [the] plaintiff's reports." *Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 530 (S.C. 1998). The January 7<sup>th</sup> e-mail was written by Chris Stevens, an athletic trainer employed by the Berkeley County School District. As the Plaintiff stated at oral arguments for the post-trial motions, there is evidence to support a claim that the e-mail was sent with "recklessness as to show conscious indifference to the Plaintiff." The Principal of Berkeley High School testified at trial that the e-mail should not have been sent out in the form and manner that was used by Stevens. Stevens had never been employed as the athletic director responsible for keeping the student files. The jury is also able to consider the credibility of the witnesses when weighing the testimony and evidence.

As there was more than one reasonable inference that could be made in regards to the evidence, the Court affirms its ruling at trial to submit the defamation claim to the jury.

**C. No evidence was offered by Plaintiff to show that any damages proximately flowed from the e-mail.**

The Defendant claims that even if the first four elements of the Plaintiff's defamation claim have been met, the Plaintiff still failed to introduce evidence of damages suffered as a proximate result of the January 7<sup>th</sup> e-mail. Specifically, the Defendant claims Plaintiff did not prove that any damages he suffered were a natural and probable consequence of the January 7<sup>th</sup> e-mail. The Plaintiff argues that he was forced to leave the State to find a job and was told he couldn't be hired for other jobs because he was "unfit." Moreover, the Plaintiff argues that while he had not previously had any problems finding employment, an e-mail was circulated to 45 people which inferred that he was unable to perform his job correctly. The Plaintiff submitted evidence of actual damages incurred, including lost salary, lost retirement, and costs of relocation for a new job. Evidence was submitted which would allow a jury to reasonably infer that the Plaintiff suffered damages as a proximate result of the January 7<sup>th</sup> e-mail.

**III. The January 7<sup>th</sup> e-mail was not false.**

Truth is an absolute defense to a claim for defamation which the defendant has the burden of proving, if asserted. *Parrish v. Allison*, 376 S.C. 308, 326 (S.C. Ct. App. 2007). The Defendant asserts that the January 7<sup>th</sup> e-mail regarding the condition of the files that Plaintiff was responsible for keeping was true, as proved by the testimony and evidence at trial. The Plaintiff contends that the statements in the January 7<sup>th</sup> e-mail were false and the sender of the e-mail had no experience working with the files, had never reviewed the files previously, and had no training or experience

to validate whether or not the files were incomplete or "out of order." The Plaintiff alleges the e-mail contained a list of alleged issues with the files that the Plaintiff refuted at trial. The Plaintiff also maintains the e-mail was false as it implied that the Plaintiff created a liability for the school based on his failure to maintain the files properly. The Court holds this issue was subject to more than one reasonable inference and as such, was properly submitted to the jury for consideration.

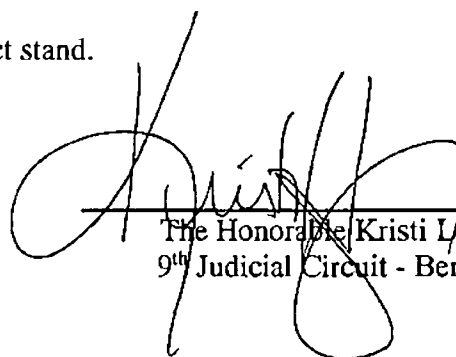
**IV. It is unclear that the jury knew its role was to determine whether the qualified privilege was exceeded, which it was not, given that only coaches received an e-mail written in response to a specific inquiry about student-athlete eligibility.**

The Defendant argues the jury verdict cannot stand in consideration of the defense of qualified privilege. A communication made in good faith on any subject matter in which the person communicating has an interest or duty is qualifiedly privileged if made to a person with a corresponding interest or duty even though it contains matter which, without this privilege, would be actionable. *Murray v. Holnam, Inc.*, 344 S.C. 129, 140–41 (S.C. Ct. App. 2001). Whether qualified privilege has been exceeded is a question for the jury. *Id.* at 141. The Defendant argues qualified privilege existed and was not exceeded because the e-mail was sent in good faith, with an interest to be upheld, limited to that interest, on a proper occasion, and published in a proper manner. The Plaintiff testified that the e-mail was sent to a total of 45 recipients, many of whom should not have received the e-mail. The Plaintiff testified that only head coaches are entitled to review the confidential information in each student athlete's eligibility file, and the e-mail was distributed to persons such as volunteer parent coaches. Testimony elicited at trial also stated that the e-mail should not have been sent in the form and manner that it was, according to the Principal of Berkeley County High School. The jury was instructed on the defense of qualified privilege and

returned a verdict for the Plaintiff, thus indicating that it did not find the Defendant met the burden of proving this defense by a preponderance of the evidence.

### CONCLUSION

This case was tried over the course of three days and jury deliberations lasted for more than six hours. Both the Plaintiff and the Defendant were represented by competent and professional attorneys who skillfully argued their positions at each stage of the trial. The notes submitted to the Court during deliberations indicated that the delay in deciding the case was based on a dispute as to the amount of damages to be awarded. While counsel for the Defendant has made impressive arguments, this Court, viewing the evidence and the inferences that reasonably can be drawn in the light most favorable to the non-moving party, stands by the decisions made at the directed verdict stage at trial based on the current law of the state of South Carolina. This Court does not find the verdict rendered by the jury so excessive as to warrant a new trial or ruling for new trial *nisi remittitur*. Therefore, it is hereby ORDERED, ADJUDGED, AND DECREED that the Defendant's Motion for Judgment Notwithstanding the Verdict, or in the Alternative, Motion for New Trial, is DENIED, and that the jury verdict stand.

  
The Honorable Kristi Lea Harrington  
9<sup>th</sup> Judicial Circuit - Berkeley County

March 28 2018  
Moncks Corner, South Carolina