

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

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**APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas**

**RECEIVED**

**JUL 10 2018**

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**Robin B. Stilwell, Circuit Court Judge  
Case No. 2017-CP-23-3754**

**SC Court of Appeals**

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**Appellate Case No. 2017-002618**

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**Harold Estes Blackwell, Jr.,**

**Appellant,**

**v.**

**Miracle Hill Ministries, Inc.,  
Anita Jane Miller (aka Anita M. Blackwell),  
And William Fisk,**

**Respondents.**

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**FINAL BRIEF OF RESPONDENT MILLER**

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### **STATEMENT OF ISSUES ON APPEAL**

1. DID THE TRIAL COURT ERR IN CONCLUDING THAT THE ALLEGATIONS AGAINST RESPONDENT MILLER IN APPELLANT'S COMPLAINT WERE NOT EXTREME AND OUTRAGESOUS, AS A MATTER OF LAW, SO AS TO STATE A CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (OUTRAGE) AGAINST HER?
2. DID THE TRIAL COURT ERR IN CONCLUDING THAT THE ALLEGATIONS IN APPELLANT'S COMPLAINT OF STATEMENTS ALLEGEDLY MADE BY RESPONDENT MILLER TO POLICE OFFICERS, EVEN IF TRUE, DID NOT TEND TO DEFAME HIM?
3. DID THE TRIAL COURT ERR IN CONCLUDING THAT THE ALLEGATIONS IN APPELLANT'S COMPLAINT OF STATEMENTS ALLGEDLY MADE BY RESPONDENT MILLER TO POLICE OFFICERS WERE COVERED BY CONDITIONAL PRIVILEGE?
4. DID THE TRIAL COURT ERR IN DETERMINING THAT GENERAL ALLEGATIONS IN APPELLANT'S COMPLAINT THAT RESPONDENT MILLER STATED TO UNKNOWN OTHERS THAT HE COMMITTED "DOMESTIC ABUSE" AGAINST HER, DID NOT ALLEGE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION FOR DEFAMATION?
5. DID THE TRIAL COURT ERR IN FINDING THAT STATEMENTS ALLEGEDLY MADE BY RESPONDENT MILLER IN HER DIVORCE CASE WITH APPELLANT WERE ABSOLUTELY PRIVILEGED?

## STATEMENT OF THE CASE

Appellant filed an action in the Court of Common Pleas for Greenville County against respondents on June 9, 2017, alleging causes of action for intentional infliction of emotional distress/outrage, gross negligence, civil conspiracy, defamation, breach of fiduciary duty, aiding and abetting breach of fiduciary duty against all respondents, as well as additionally alleging a cause of action against respondent Fisk for fraudulent concealment, and causes of action against respondent Miracle Hill for failure to control a patient and fraud.

Respondent Miller is the former wife of appellant, and they were divorced in Greenville County by order of the Greenville County Family Court dated October 1, 2016 in Case No. 2015-DR-23-4000. Respondent Fisk was a friend of both. Respondent Miller is also a former client of respondent Miracle Hill Ministries, Inc., having sought treatment there for alcohol addiction. She was served with the summons and complaint in this case on July 10, 2017. She filed a motion to dismiss the complaint pursuant to South Carolina Rule of Civil Procedure 12(b)(6) on August 9, 2017. The other respondents filed similar motions. These motions were heard by the honorable Robin B. Stilwell in Greenville on October 4, 2017. Judge Stilwell granted the motions by separate order relating to each respondent. His order dismissing the complaint as to respondent Miller was dated November 8, 2017.

Respondent Miller received a Notice of Appeal dated December 13, 2017 from appellant on December 15, 2017, appealing the court's order of November 8, 2017 dismissing his complaint as to Respondent Miller. Appellant stated he received this order on November 14, 2017.

While Judge Stilwell's order in this matter dismissed all six causes of action brought by appellant against respondent Miller, appellant assigns as error on this appeal the dismissal of only

two of those causes of action, intentional infliction of emotional distress (outrage), and defamation of character.

## ARGUMENTS

### **I. THE ALLEGATIONS OF APPELLANT'S COMPLAINT AGAINST MILLER ARE INSUFFICIENT AS A MATTER OF LAW TO STATE A CLAIM OF OUTRAGE.**

In reviewing a motion to dismiss a cause of action for intentional infliction of emotional distress or outrage under SCRCP 12(b)(6), the trial court must base its ruling upon the allegations contained on the face of the complaint, resolving any doubts in favor of appellant. The trial court must initially determine whether the allegations concerning respondent Miller's conduct would, if true, be extreme and outrageous enough to permit a recovery for emotional distress. If no circumstances exist where the conduct as alleged could be considered by reasonable persons as extreme and outrageous, the court should grant the motion as a matter of law. See Fleming v. Rose, 338 S.C. 524, 537, 526 S.E.2d 732, 739 (Ct. App. 2000), *reversed on other grounds*, 350 S.C. 488, 567 S.E.2d 857 (2002).

Here, appellant specifically listed the conduct in his complaint which he believed was so extreme and outrageous as to allow him to recover for emotional distress.<sup>1</sup> Paragraph 215 of appellant's complaint alleges several "cruel acts" of Miller which he claims are "outrageous as a matter of law." [R. pp. 60-61] The list includes Miller refusing to communicate with him and/or

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<sup>1</sup> In appellants' Initial Brief at page 35, he also assigns as error that the trial court failed to consider an additional act by respondent Miller as outrageous, which he describes as an attempt "to lure appellant into being arrested by the Oconee County sheriff." His cite to paragraph 114 [R. p. 38] of the complaint is inaccurate, and the only allegations mentioning the Oconee County Sheriff appear in paragraph 211. [R. p. 59] Paragraphs 209 and 210 [R. p. 59] contain allegations that Miller was in trouble and appellant offered to come get her, but that appellant texted her if she did not want him to come get her to text him and he would no longer try to help. In paragraph 211, he alleges he texted her asking for confirmation three times, then received a call from the Oconee County Sheriff's office that respondent Miller had reported to them he was harassing her. [R. p. 59] (His description of the incident on p.15 of his Initial Brief goes beyond the allegations that were before the trial court.) Appellant did not refer to this incident as a "cruel act" when stating his cause of action for intentional infliction of emotional distress against respondent Miller. [R. pp. 60-64] A report of harassment through text messages to a law enforcement agency and a request for assistance from them cannot be considered "outrageous" conduct on Miller's behalf.

explain her reason for silence, false statements made to the Miracle Hill staff of “domestic abuse”, failing to inform appellant of the passing of his father-in-law, convincing someone else (respondent Fisk) not to respect appellant, otherwise interfering with Fisk’s relationship with appellant, committing slander, “forcing” appellant to file for divorce from Miller, engaging in a civil conspiracy, and aiding and abetting the other defendants in breaching an alleged fiduciary duty to appellant.

The trial court considered and found that these “cruel acts” alleged against Miller in paragraph 215, even if true, would not constitute, as a matter of law, “conduct so extreme and outrageous as to exceed all possible bounds of decency, [which] ... must be regarded as atrocious and utterly intolerable in a civilized society,” Ford v. Hutson, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981). [R. p. 3]

Cases finding outrageous conduct in South Carolina generally require “hostile or abusive encounters” or “coercive or oppressive conduct.” Fleming, 338 S.C. at 538, 526 S.E.2d at 739. In Ford, the defendant subjected the plaintiff to public browbeating, obscenities and threats, even entering her home and verbally attacking her in front of her guests. Ford, 276 S.C. at 157, 276 S.E.2d at 776. In McSwain v. Shei, 304 S.C. 25, 402 S.E.2d 890 (1991), the plaintiff was forced to perform exercises in front of other employees that exposed her incontinence problem.

None of that type of conduct is alleged in paragraph 215. In fact, none of the “cruel acts” alleged have ever been cited in a reported case in South Carolina as the kind of act(s) which would meet the standard set out in the Ford case. In Fleming, 338 S.C. at 538, 526 S.E.2d at 739, the tort of libel was not sufficiently outrageous conduct to support a claim for outrage. See also Sabb v. SC State University, 350 S.C. 416, 567 S.E.2d 231 (2002), Shipman v. Glenn, 314 S.C. 327, 443 S.E.2d 921 (Ct. App. 1994) and Wright v. Sparrow, 298 S.C. 469, 381 S.E.2d 503 (Ct. App. 1989).

Appellant alleges that respondent Miller's refusal to communicate or explain the reason for her silence is a form of outrageous conduct, yet her refusal to respond and/or silence (even refusing to communicate a loved one's passing) cannot constitute an "encounter", much less a hostile or abusive one. Convincing others to lose respect for appellant by communications to them, rather than by communications to appellant, even if the comments rose to the level of defamation, cannot constitute coercive or oppressive conduct of the type which is recognized by South Carolina law as supporting a claim for intentional infliction of emotional distress.<sup>2</sup> Finally, appellant alleges that being "forced" to file for divorce against respondent Miller was a form of outrageous conduct. While there is no doubt that the divorce action was an emotional time for both participants, since Respondent Miller was refusing to communicate to appellant during the time period prior to the divorce filing, she could have only "forced" him to file by her silence, which again, is not a form of outrageous conduct.

Even though the acts alleged might be considered "cruel" by appellant, that alone is not sufficient to meet the legal standard for outrage. They must also be extreme and outrageous. The tort of outrage is not a "panacea for wounded feelings." Todd v. Farm Bur. Mut. Ins. Co., 283 S.C. 155, 171, 321 S.E.2d 602, 611 (Ct. App. 1984), *rev'd on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (1985).<sup>3</sup>

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<sup>2</sup> Appellant also alleged several of his other causes of action as "outrageous" conduct. While the same rationale with respect to defamation should apply to these causes of action as well (none of which involve hostile, abusive, coercive or oppressive conduct) it should also be noted that these causes of action were also dismissed by the trial court, and appellant does not take issue with those dismissals.

<sup>3</sup> In addition, the emotional distress appellant claims to have suffered must be so severe that "no reasonable person could be expected to endure it." Ford, 276 S.C. at 162, 276 S.E.2d at 778. The "cruel acts" alleged by Appellant, silence, lack of explanation, false statements, lack of respect, lack of courtesy, marital discord and divorce, unfortunately occur regularly in our society, but many people do endure them, and they are not of the type which a reasonable person could not be expected to endure.

**II. THE ALLEGATIONS OF APPELLANT'S COMPLAINT ARE NOT SUFFICIENT TO STATE A CAUSE OF ACTION FOR DEFAMATION AGAINST MILLER.**

**a. The Allegations of Defamation.**

Appellant alleges four occasions of defamation of his character by respondent Miller in his complaint: (1) In paragraph 243 [R. p. 80], it is alleged that Miller provided defamatory information concerning appellant to the police, which was recorded by an officer in a police report attached to the complaint as Exhibit B<sup>4</sup> [R. p. 80. No Exhibit B or D included in the Record]<sup>5</sup>; (2) In paragraph 244, it is alleged Miller slandered appellant by telling the Clemson Police appellant suffered from a narcissistic personality disorder, in a call to ask for a welfare check on him on December 9, 2015, after receiving a message from him that indicated he was going to commit suicide [R. p. 80]; (3) In paragraph 245, it is alleged Miller defamed appellant on many occasions<sup>6</sup> by making utterances and writings that he committed domestic abuse against her, which he characterizes as a crime [R. p. 81]<sup>7</sup>; and (4) In paragraph 246, Miller falsely accused him of

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<sup>4</sup> Exhibit B to the Complaint is a section from Miracle Hill's Renewal Handbook. The police report is attached to the complaint as Exhibit D.

<sup>5</sup> On pp. 35-36 of his Initial Brief, appellant does not argue that the allegations of the complaint with regard to Miller's statements to the Oconee County Sheriff alleged in paragraph 211 [R. p. 59] constitute slander, but he does argue that her alleged actions in December of 2016 demonstrate her bad faith in the comments she is alleged to have made to police in July 2015, which were recorded in the police report. Miller's action of complaining to the Sheriff after receiving repeated texts do not demonstrate bad faith and the complaint contains no allegations connecting these two events. The police report attached to the complaint indicates Blackwell had been asked not to visit anymore but he had come in order to see his wife, and that was the reason the police had been called. That allegation is also not susceptible of bad faith.

<sup>6</sup> Appellant claims in his Initial Brief on p. 36 that he also alleged that Miller slandered him to Amy Malik, a former co-worker, however, paragraphs 21 and 22 of the complaint to which he cites contain no allegations of any statements made by Miller. [R. p. 22]

<sup>7</sup> Appellant also seeks to have the Court consider additional evidence of defamation not alleged in or attached to the complaint in this matter by attaching several appendices to his Initial Brief which contain evidentiary material. The Court should not consider these materials which are outside the pleadings and should not be a part of the record in this matter. They were not considered by the trial court. On p. 36 of appellant's Initial Brief, he claims Appendices I and III apply to his claims against Miller. [His Appendix III is also contained in the Record at pp. 187-189, but should not be considered by the Court.]

adultery in her divorce proceedings [R. p. 81]. Finally, Appellant alleges in paragraph 249 that Miller committed defamation *per se* with regard to appellant [R. p. 81].

**b. Miller's Alleged Statements to Police Officers Do Not Tend to Defame Appellant.**

There are four essential elements to a defamation claim: (1) a false and defamatory statement concerning another person; (2) an unprivileged communication of the statement to a third party; (3) fault on the part of the publisher; and (4) special harm to the Appellant's reputation from the statement, or if the defamatory statement falls into the categories of *per se* defamation recognized in South Carolina, then special harm can be presumed. See Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998). South Carolina currently recognizes only five types of statements as slander *per se*: (1) adultery, (2) unchastity, (3) commission of a crime of moral turpitude, (4) contraction of a loathsome disease, or (5) unfitness for one's business or profession. See Holtzscheiter, 332 S.C. at 522-26, 506 S.E.2d at 510. Unless the slander is *per se*, the court should examine the circumstances alleged to determine whether the statement can reasonably be said to have a defamatory meaning. In Fleming, 338 S.C. at 533, 526 S.E.2d at 738, the Court of Appeals held that "A communication is defamatory if it tends to harm the reputation of another or to lower him in the estimation of the community or to deter third persons from associating or dealing with him.", *citing* Holtzscheiter, 332 S.C. at 510, 506 S.E.2d at 502.

The trial court examined the allegations regarding oral statements to police officers on the two occasions alleged to determine if the statements as alleged could have a defamatory meaning that could damage the reputation of the appellant. With respect to the allegations of paragraph 243 [R. p. 80], appellant only alleged generally that Miller "provided defamatory information" recounted in a police report. Since Miller did not author the report, but it only recorded her oral statements,

the allegation would have to be considered as an allegation of slander. The only section of the report indicating a possible conversation between the police and Miller is in the Supplemental Report, fifth paragraph. [Complaint at Exhibit D, not included in the Record] This paragraph does not contain any statements which could be considered slander *per se* relating to appellant, nor would any of the statements recorded in that paragraph tend to harm appellant's reputation, lower him in the estimation of the community, or deter others from associating or dealing with appellant. Appellant does not provide any additional allegations indicating other defamatory information on this occasion outside of the police report. Therefore, the trial court concluded that the complaint did not allege facts sufficient to constitute a cause of action for defamation on this occasion. [Record, p. 9]

The second incident involving police officers is alleged in paragraph 244, where appellant alleges specifically that Miller told the Clemson police appellant suffered from narcissistic personality disorder. [R. p. 80] The trial court also reviewed this allegation and found this statement to police not defamatory. [R. pp. 9-10]<sup>8</sup>

In addition to appellant's failure to allege any statement which could be considered defamatory to any of the police officers with whom Miller is alleged to have had contact, the complaint does not allege any facts showing special harm to appellant's reputation with respect to either of these two occasions. The trial court found that an allegation of special harm to appellant's reputation was essential to stating a valid cause of action, since neither of these two alleged statements could be considered slander *per se*, as that term has been defined in South Carolina. [R. p.11]

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<sup>8</sup> Narcissistic personality disorder has not been found to be a loathsome disease (one of the five types of slander *per se* recognized in South Carolina) like gonorrhea or syphilis.

**c. Miller's Alleged Statements to Police Were Privileged.**

The trial court also found that the alleged statements to police officers were covered by a conditional privilege on both occasions. [R. p. 9] In Conwell v. Spur Oil Co. of Western South Carolina, 270 S.C. 170, 178, 125 S.E.2d 270 (1962), the court held that communications made in good faith on a subject matter where the persons involved in the communication share a common interest are privileged, even though the communication may otherwise be actionable if no privilege were involved, even where the common interest is not a legal one, but only a moral or social one. Each of these two alleged defamatory statements were allegedly made to a police officer by Miller concerning her husband, on one occasion because he was possibly stalking her, and on the other occasion because she was concerned he may have attempted to commit suicide. Both meet the requirements for a conditional privilege as set out in Conwell. An unprivileged communication to a third party is an essential element of the tort of defamation, yet appellant does not allege in his complaint that the communication was not privileged, or that the privilege was exceeded on either of those occasions.

**d. The General Allegations in Appellant's Complaint do not Allege Facts Sufficient to Constitute a Cause of Action for Defamation.**

The third allegation of defamation appears in paragraph 245, wherein appellant accuses Miller of defaming him on many unspecified occasions, to many unspecified individuals by communicating that he committed "domestic abuse" against her, which he characterizes as an allegation of criminal behavior. [R. p. 81] The complaint also alleges in paragraph 24 that Miller had falsely accused appellant of "domestic abuse" to unidentified coworkers. [R. p. 22]

While South Carolina Rule of Civil Procedure 8(a) requires only "a short and plain statement of the facts showing that the pleader is entitled to relief..." facts are required, not just bare

allegations. In order for Miller to fairly meet the allegations in this context, the appellant must identify, to the extent he can, the defamatory statement, to whom the defamation was published, as well as when it was published. Under Rule 9(h), he does not have to plead circumstances showing how the defamation applies to him, but he must supply some facts concerning what was said, to who, and when. The trial Court found that appellant's complaint does not meet that standard. [R. p. 10]

Domestic abuse is a general term, which can include actions other than the physical contact which is required for the crime of Criminal Domestic Violence. The utterances and writings concerning the alleged "domestic abuse" are not identified. No extrinsic allegations are included to show how this might relate to an allegation of commission of a crime of moral turpitude. The utterance must "charge" the Appellant with commission of a crime of moral turpitude. See Holtzscheiter, 332 S.C. at 511. The only thing which "charges" appellant with criminal behavior is appellant's characterization of the statement, not the statement actually alleged. Thus, the alleged statements would not constitute slander *per se*. Nor does appellant allege any special harm from these alleged statements, which is another essential element of the tort of defamation. (See argument in Section II.b. *infra* at pp.7-8)

**e. Miller's alleged Defamatory Statements in Her Divorce Case are Absolutely Privileged.**

The last allegation of defamation by Miller appears in paragraph 246 of appellant's complaint, where Miller is alleged to have accused Appellant of adultery under oath during their divorce proceedings.<sup>9</sup> [R. p. 81] The South Carolina Supreme Court has held that defamatory matters contained in pleadings are absolutely privileged. McKesson & Robbins, Inc. v. Newsome, 206

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<sup>9</sup> Appellant attaches a copy of Miller's Answer in the divorce case as Exhibit A to his complaint, but does not mention it in paragraph 246 [R. p. 81, 87-89].

S.C. 269, 33 S.E.2d 535 (1945). In addition, the Court of Appeals has affirmed that the common law absolute privilege protecting the statements made by judges, parties and witnesses in the course of judicial proceedings from a cause of action for defamation is well settled in South Carolina. Crowell v. Herring, 301 S.C. 424, 430, 392 S.E.2d 464, 466 (Ct. App. 1990).

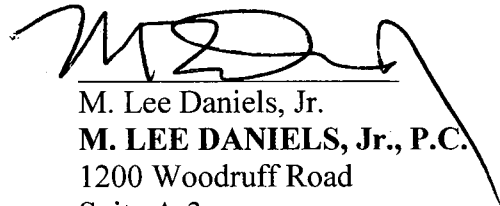
The trial court found this absolute privilege to apply to allegations of a spouse's adultery during divorce proceedings. [R. p. 10]

### **CONCLUSION**

For the foregoing reasons, the trial court's order dismissing appellant's claims of intentional emotional distress and defamation against respondent Miller should be affirmed.

Respectfully submitted,

July 7, 2018



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**PROOF OF SERVICE**

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I hereby certify that I did serve a copy of the forgoing Respondent Miller's Final Brief and Designation of Matter to be Included in the Record on Appeal upon the Appellant, *pro se* and counsel for other Respondents this 9th day of July, 2018 by United States mail, postage prepaid, properly addressed to their last known address as follows:

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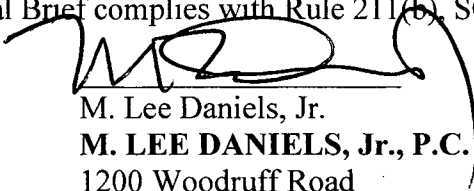
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**CERTIFICATE OF COUNSEL**

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The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

July 7, 2018.

  
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