

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2018-001600

Gregory T. Christian,

Appellant,

v.

Anna Healy,
Greenville Police Officer Andrew League,
City of Greenville, South Carolina,

Defendants,

Of whom Anna Healy is the Respondent.

RECEIVED
MAR 06 2019
SC Court of Appeals

INITIAL REPLY BRIEF OF APPELLANT

Gregory T. Christian/ Appellant
15 Gallivan St.
Greenville, SC 29609
(864) 232-9966

TABLE OF CONTENTS

Introduction 1
Reply to Respondent's Statement of the Case 1
Reply to Respondent's Statement of Facts Relevant to the Issues 1
Reply to Respondent Arguments
Reply to Respondent Argument 1 2
Reply to Respondent Argument 2 3
Reply to Respondent Argument 3 4
Reply to Respondent Argument 4 7
Conclusion 8

TABLE OF AUTHORITIES

CASES

Christian v. Payne, League, S.Ct. Case No. 18-915 1
Manley v. Manley, 312, S.C. 291, 353 S.E.2d 312 (Ct. App. 1987) 4
Holtzscheiter v. Thomson Newspapers, Inc., 506 SE 2d 497- SC: Supreme Court 1998 6
Fitchette v. Sumter Hardwood Co., 145 S.C. 53, 142 S.E. 828 (1928) 6
Merritt v. Great Atlantic & Pacific Tea Co., 179 S.C. 474, 184 S.E. 145 (1936) 6
Gertz v. Robert Welch, Inc., 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974) 6

STATUTES

South Carolina Rules of Civil Procedure Rule 4(d)(8) 1, 2

OTHER AUTHORITIES

South Carolina Jurisprudence, Vol. 20, Libel & Slander, p. 110 5

INTRODUCTION

Respondent Healy publicly claimed to have seen Appellant steal a ring, told a 911 operator Appellant had stolen her ring, told police Appellant was the last person near a ring she could not find, and subsequently told a police investigator Appellant was one of three people near a ring she could not find. All of these acts are undenied, clearly attested by audio recording or police documentation, and clearly constitute actionable defamation *per se*.

REPLY TO RESPONDENT'S STATEMENT OF THE CASE

Opposing counsel avers Appellant attempted improper service of Amended Complaint absent approval of the lower court. Appellant served a second copy of the Complaint upon Respondent Healy with the "restricted delivery" box checked on the mailing card, so as to correct the failure to check this particular box per SCRCP 4(d)(8) on initial service of the Complaint. The Amended Complaint was issued by the Clerk's Office, the sole change being the date of clocking.

REPLY TO RESPONDENT'S STATEMENT OF FACTS RELEVANT TO THE ISSUES

In the section entitled "STATEMENT OF FACTS RELEVANT TO THE ISSUES", Respondent does not list facts relevant to the issues, but impugns Appellant's motive for bringing suit. Appellant's motive for bringing suit is immaterial, but the short answer is that Appellant is now listed as a suspected criminal in police report #16000024859. Additionally, Appellant's pursuit of redress against police for two warrantless searches at the yard sale remains pending in federal court (*Christian v. Payne, League*, S.Ct. 18-915).

In reality, the principal "facts relevant to the issues" are that Respondent Healy publicly claimed to have seen Appellant steal a ring, told a 911 operator Appellant had stolen a ring, told

police that Appellant was the last person near a ring she could not find, and told a police investigator Appellant was one of three people near a ring she could not find. Thus, the only motive relevant to the action is Respondent Healy's reason or reasons for doing these things. Perhaps Respondent's conduct was attention seeking behavior, in which case it has succeeded. Perhaps Respondent Healy sought an excuse to search Appellant. Or perhaps a ring actually was stolen, entirely possible if it was a diamond ring left unattended at a yard sale for two hours, and Appellant was simply Respondent's best guess available in the moment, which unsupported guess would not have sufficed. Perhaps Appellant's "stringy hair", as Respondent Healy put it to the 911 operator, was a factor. Or perhaps it was simply a malicious flight of fancy by someone inclined to impulsive behavior and habitual dishonesty, and unaccustomed to consequence, which last has thus far been reaffirmed. It is not possible to know, consistent with which the law does not concern itself with specific improper reasons for defamation, only the lack of a valid one, of which none has ever been offered.

REPLY TO RESPONDENT ARGUMENT 1

Respondent argues deficient service of process, in that Appellant failed to check the box labeled "restricted delivery" on the mailing card for the first delivery, and process was allegedly served to an incorrect home address.

As noted above, Appellant served a second copy of the Complaint upon Respondent with the appropriate "restricted delivery" box checked on the mailing card, so as to satisfy this particular proviso per SCRCF 4(d)(8). The Amended Complaint served was processed by the Clerk's Office, the sole change being the later date of clocking.

Respondent additionally claims Appellant served process to an incorrect home address.

This claim was first made orally at a hearing for dismissal, and subsequently in Respondent's Initial Brief. Appellant served process twice on Respondent Healy's publicly available address, approximately 3/4 mile from Appellant's home, which to Appellant's knowledge was correct. No corrected address has been claimed.

REPLY TO RESPONDENT ARGUMENT 2

Respondent argues Appellant's claims of defamation against Respondent Healy are "completely undermined" by Appellant's claim at 24 of the Complaint that police falsely claimed Respondent Healy told them Appellant stole a ring.

In lieu of responding to Appellant's specific claims of defamation, which remain substantially unacknowledged by both Respondent and the lower court, Respondent and the lower court by way of refutation seize upon a falsehood claimed by police in their report of the incident, specifically that Respondent Healy simply told police Appellant had stolen a ring, which false claim omits to mention how Respondent Healy knew this. In reality, Respondent Healy actually told police Appellant was the last person near a ring she could not find. This claim by Respondent Healy was false and, in falsely imputing a criminal act, was defamatory and actionable *per se*. That Respondent Healy did not in fact claim the particular falsehood claimed by police in their report did not establish Respondent's actual falsehood to police was true, or not otherwise defamatory and actionable. Respondent's and the lower court's reasoning in this is plainly wrong. Further, Respondent Healy's false claim to police had no bearing on her initial false claim of having seen Appellant steal a ring, and her later false claim that Appellant was one of three people near a ring she could not find, both of which claims were defamatory and actionable *per se* regardless of what Respondent Healy told police at the scene. Appellant

responded to the argument at 6 in Response to Motion to Dismiss, and responded more explicitly at II in the Appeal, but opposing counsel ignores this and simply restates a plainly specious argument.

REPLY TO RESPONDENT ARGUMENT 3

Respondent argues Appellant failed to plead necessary elements of defamation, specifically communication to a third party and fault, and the Complaint additionally fails for constitutional reasons.

Respondent argues Appellant failed at 6 of the Complaint to claim communication of defamation to a third party. As Appellant averred at 6 in the Complaint and at V in the Appeal, Respondent Healy accused Appellant of theft at a public yard sale from a distance of approximately 20 feet, in fact Appellant had to stop and turn around to see who was yelling at him. Appellant believed this was sufficiently public to establish communication to other parties, particularly as Respondent, her father, and police all make reference to "several people" being present, but as Appellant averred in Appeal, Appellant could by amendment add the observations of others and his own observation of a woman standing next to Respondent as she yelled at him. Further, it makes no difference Respondent did not communicate specifically *to* these others, as Respondent avers. Respondent and the lower court appear disingenuous in claiming Appellant could not establish third party communication of Respondent's first defamation. It seems untenable under the circumstances to maintain the communication was other than public.

Respondent further argues "communications by Healy would not have been unprivileged", citing *Manley v. Manley*, 312, S.C. 291, 353 S.E.2d 312 (Ct. App. 1987), which case Appellant averred at IV in the Appeal was inapplicable, inasmuch as *Manley* dealt with good

faith testimony concerning involuntary commitment, and not multiple malicious falsehoods claiming criminal conduct. Privileged communication is not a license to lie to police. Respondent further attempts to support this specious argument by claiming Appellant, in suggesting to Respondent she should call police if she thought a crime had been committed, "ratified her alleged prior communication to him and consented to her subsequent communication to the police. South Carolina Jurisprudence, Vol. 20, Libel & Slander, p. 110." Respondent thus claims Appellant "ratified" Respondent's claim of having seen Appellant steal a ring, whatever that means, and "consented" to whatever Respondent decided to tell police when they arrived. Well, no. Appellant has never ratified an accusation, but suspects it requires a notary, and as Appellant pointed out at III in the Appeal, Appellant certainly did not invite Respondent to repeat her accusation to police, as the cited source contemplates, and in fact Appellant did not know what Respondent Healy would say or do next. The notion that Appellant somehow "ratified" or "consented to" any part of Respondent Healy's actions is fantasy.

Additionally, if Respondent now tacitly admits Appellant suggested she call police, then the second half of Appellant's sentence, that Appellant would wait for police to arrive, seems prima facie established, inasmuch as Appellant would not have fled the scene only to have Respondent report his license plate number to police on their arrival. Why did Respondent Healy not communicate to the 911 operator the only sentence Appellant spoke to her, but instead portrayed Appellant as "aggressive", "belligerent", and refusing to leave? How could this not be considered deceitful and malicious, in fact dangerously so?

Respondent further alleges the Complaint does not allege fault and additionally fails for constitutional reasons. Respondent relies principally upon *Holtzschleiter v. Thomson Newspapers*,

Inc., 506 SE 2d 497- SC: Supreme Court 1998. *Holtzscheiter* actually deals with media liability for inadvertent publication of material depicting a person in an unfavorable light, and does not bear upon one person claiming another person has committed a criminal act.

Holtzscheiter in fact holds:

"Traditionally, two classes of statements have been considered actionable without proof of special damages:[12] (1) all libel, and (2) four categories of slander, described as "slander *per se*." *Lily*, 178 S.C. 278, 182 S.E. 889. These four categories include statements that impute unchastity, a **criminal offense**, a loathsome disease, or matter incompatible with business or trade. Thus, when a statement constitutes libel or falls into one of the four categories of slander, damages are presumed. See *Fitchette v. Sumter Hardwood Co.*, 145 S.C. 53, 142 S.E. 828 (1928); *Merritt v. Great Atlantic & Pacific Tea Co.*, 179 S.C. 474, 184 S.E. 145 (1936)."

Holtzscheiter explicitly uses "A is a thief" as an example of defamation *per se*.

The Supreme Court of South Carolina thus clearly holds that imputing commission of theft is defamatory and actionable *per se*, and damages are presumed without proof of special damages. It is not Appellant's place as a litigant to agree or disagree with precedent, but Appellant can now from personal experience wholeheartedly endorse this one. It is a serious matter to claim someone is a criminal.

Respondent further claims "the Complaint fails for constitutional reasons", again citing *Holtzscheiter*, which references *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974), which case actually dealt with media liability concerning a public figure. In reality, there are no constitutional issues involved in the present case, and *Gertz* does not apply. Respondent was a private citizen publicly imputing criminal conduct of another private citizen.

Respondent had no constitutional right to falsely claim Appellant was a criminal, and no public interest was served thereby.

REPLY TO RESPONDENT ARGUMENT 4

Respondent contends the lower court refusal of motion to amend Complaint was proper because Appellant did not have a viable cause of action for slander, and amendment of the Complaint would net effect the outcome. In reality, as averred at VII in the Appeal, such defects as the Complaint may have are readily corrected by amendment. Respondent Healy publicly claimed to have seen Appellant steal a ring, told a 911 operator Appellant had stolen her ring, told police Appellant was the last person near a ring she could not find, and subsequently told a police investigator Appellant was one of three people near a ring she could not find. All of these acts are undenied, clearly attested by audio recording or police documentation, and clearly constitute actionable defamation *per se*, in fact Respondent Healy's actions seem a particularly egregious textbook example of such. To claim the undisputed facts in this case could not provide a viable cause of action, or the Complaint could not be rectified by amendment, to include abundant fault and malice, seemingly established *per se*, appears disingenuous.

Appellant reiterates the observation at 9 of the Appeal, that the lower court erroneously found Respondent Healy merely "questioned Plaintiff about a missing ring". Neither party made any such claim before the lower court. To the contrary, over Respondent's silence Appellant has repeatedly asserted, in the Complaint, in opposition to motion to dismiss, and in a police audio recorded at the scene, without Appellant's knowledge in fact, that Respondent Healy publicly and explicitly claimed to have seen Appellant steal a ring. This is in fact the initiating and proximate cause of action, yet the lower court is apparently unaware of it. This fact alone would seem to

cast substantial doubt on the propriety of the lower court's refusal to grant leave to amend.

CONCLUSION

It is defamatory and actionable *per se* to publicly claim someone is a criminal. Respondent Healy did this repeatedly, claiming variously that she had seen Appellant steal a ring, that she believed Appellant had stolen a ring, that Appellant was the last person near a ring she could not find, and that Appellant was one of three people near a ring she could not find. Respondent Healy does not deny any of this, yet has never offered a single word of explanation for her actions, and as Appellant has noted, it is not possible to so much as confidently speculate why Respondent Healy did these things. Appellant is now as a consequence listed as a suspected criminal in a police report, and there was nothing he could do to stop it.

Respectfully submitted,

March 4, 2019


Gregory T. Christian/Appellant
15 Gallivan St.
Greenville, SC 29609

CERTIFICATE OF SERVICE

I certify that on March 4, 2019 I served a copy of this INITIAL REPLY BRIEF OF APPELLANT on Respondent Anna Healy's counsel of record, addressed as shown below:

Carl F. Muller
607 Pendleton St., Suite 201
Greenville, SC 29601


Gregory T. Christian/Appellant
15 Gallivan St.
Greenville, SC 29609

RECEIVED
MAR 06 2019
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

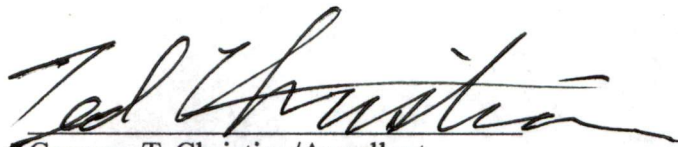
March 4, 2019

RE: Gregory T. Christian, Appellant, v. Anna Healy, Greenville Police Officer Andrew League, City of Greenville, South Carolina, Defendants, Of Whom Anna Healy is the Respondent, Case No. 2018-001600

Dear Ms. Kitchings:

Please accept for filing the enclosed Initial Reply Brief of Appellant.

Sincerely,



Gregory T. Christian/Appellant
15 Gallivan St.
Greenville, SC 29609
(864) 232-9966

RECEIVED

MAR 06 2019

SC Court of Appeals

GT Christian
15 Gullivan St.
Greenville, SC 29609



U.S. POSTAGE PAID
FCM LG ENVY
GREENVILLE, SC
29609
MAR 04, 19
AMOUNT
\$1.30
R2304M110659-06

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
MAR 06 2019
SC Court of Appeals