

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case Number: 2014- 000621

Joseph N. Grate,

Appellant,

v.

Andrew J. Rodrigues,

Respondent.

RECEIVED
JUL 22 2014
SC Court of Appeals

FINAL BRIEF OF APPELLANT

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II. TABLE OF AUTHORITIES

CASES

Holtzscheiter v. Thompson Newspaper, Inc. 332 S.C. 502;506 S.E. 2d 497;(1998) S.C. 5

OTHER AUTHORITIES

Rule 9, SCRC PLEADING SPECIAL MATTERS 2

Rule 15, SCRCP AMENDED AND SUPPLEMENTAL PLEADINGS 2

Amendment 14, US CONSTITUTION 5,6

III. STATEMENT OF ISSUES ON APPEAL

1. Is it not, at the very least, an error to have dismissed the case on grounds of one element, as possibly being barred by Statute of Limitation, from among the thirty five elements presented?
2. Should not the judge have addressed all allegations of defamation in the case?
3. Can a claim of absolute privilege survive where the defamatory statements are totally irrelevant to the issue being litigated?
4. Has not appellant's been deprived of due process?

IV. STATEMENT OF THE CASE

1. This action was commenced on December 23, 2013. An amended complaint was filed February 10, 2014. Rule 9, SCRC; Rule 15, SCRC
2. The action comprised allegations of Defamation.
3. The defense to the action was a claim of Absolute Privilege and of one count being barred by Statute of Limitation.

4. A motion hearing was held on February 2, 2014; at which the case was continued to March 6, 2014, due to an Amended pleading having been filed.
5. On March 6, 2014, the Court dismissed the case on the bases of it being barred by Statute of Limitation.
6. The case did not go to trial; instead it was dismissed at a Motion Hearing on March 6, 2014, on basis of being barred by Statute of Limitation.
7. The amount involved on appeal is \$750,000.00.
8. Appellant is appealing the March 6, 2014, Judgment of the lower Court's dismissal of the case.
9. The date of service of the notice of appeal is March 19, 2014.

V. FACTS

The case was filed on December 23, 2013. (R. pp. 4-5 -pp. 10-16 -pp. 31-32). It comprised allegations of Defamation, arising from a previous Circuit Court Case, in 2013. During that case Defendant (Respondent herein) repeatedly gave erroneous, derogatory and, indeed, irrelevant verbal and written statements to the court. (R. p. 30 —p. 47, lines 7-13 -p.48, -p. 50 lines, 16-25 -pp. 51-80). The statements had no relevancy to the matter being tried. (R. p. 29 -p. 49, lines 11-25 —p.52, lines 7-8 —p.53, lines 2-3). Finally, at a motion hearing, the Judge stated that he had read the case file and that he could only go by what he had read and based his decision thereupon and dismissed the case. (R. p. 44 —p. 45, lines 15-16 —p.45, lines 10-13). Following dismissal of that case, Appellant herein, filed the Defamation action. The Defamation action was dismissed March 6, 2014

VI. ARGUMENT

1. IS IT NOT, AT THE VERY LEAST, AN ERROR TO HAVE DISMISSED THE CASE ON GROUNDS OF ONE ELEMENT, AMONG MANY, POSSIBLY BEING BARRED BY STATUTE OF LIMITATION?

In the case before the lower court, the complaint comprised thirty five counts of defamation; of which, the claim of Defendant having filed a trespassing claim against plaintiff comprised only one of the thirty five claims; therefore, thirty four were not addressed. (R. pp. 4-5, 10-16, 31-32. -p.10, item 3. -p.11, items 3-6, 9. -pp. 12-16. -p. 31 items 1-3)

The Statute of Limitation claim is questionable, given that the issue was raised in 2012 at Case No 2013-CP-22-00001 as well as raised on June 6, 2013. (R. p. 48 –p. 50, lines 16-25 –p. 51, lines 14-19 –p. 62, lines 7-8).

2. SHOULD NOT THE JUDGE HAVE ADDRESSED ALL ISSUES OF DEFAMATION PRESENTED IN THE CASE?

The claim of defendant having lied to the police, indicating that plaintiff was trespassing was raised in a lower court at Case No. 2013-CP-22-00001, filed January 3, 2012, and addressed at a motion hearing on June 6, 2013. (R. p. 48 –p.50, lines 16-25 –p. 51, lines 14-25). At which time defendant lied to the judge about having filed a trespassing complaint against plaintiff therein. (R. p.48. -p. 50, lines 16-20. –p. 51, lines 14-25. –pp. 27-28.

Therefore the date of the actual lie to the police should not be the governing date in determining the statute of limitation. In essence, the claim was made at the filing of the January 3, 2012, case. (R. p. 48 –p.50, lines 16-25 –p. 51, lines 14-25). The point of contention presently is that other issues were involved but that the judge totally disregarded

them and ruled on the matter of the trespass charge without permitting evidence to be presented. (R. p.48 -p. 61, lines 5-19). The case was dismissed, without consideration for due process as it related to the right to present evidence or to have a trial. Plaintiff therein should have been granted an opportunity to have been heard on the Defamation allegations. (R. p.48 -p. 61, lines 5-19). He should have been allowed to present evidence and to have a decision based upon all of the evidence presented. (R. p.4 item 3. -p. 18, paragraph 4. - pp. 27-29. p.49, lines 15-25. -p. 51, lines 14-25. -p.58, lines 1-8, 7-25. -p. 60 lines 16-20) ; Amendment 14, US Constitution.

For the other thirty four allegations, defendant claimed a privilege to lie to the court, with impunity. Appellant takes issue with that contention for it seems obnoxious to all ideas of law; as embodying any sense of reason or logic.

3. CAN A CLAIM OF ABSOLUTE PRIVILEGE SURVIVE WHERE THE DEFAMATORY STATEMENTS ARE TOTALLY IRRELEVANT TO THE ISSUE BEING LITIGATED?

After having made numerous defamatory statements, Defendant, at the lower court, persistently claimed Absolute Privilege. Is it permissible for anyone to, wholesale and with impunity, lie to the court for the sole purpose of defeating the charges by way of providing irrelevant and erroneous information about one's opponent? (R. -pp. 12-16. p.49, lines 15-25. R. p. 30,-pp. 55 – 80. -p. 52, lines 7-8. -p. 53, lines 2-4, 19-20)

To avail oneself of this privilege, what are the qualifications? Does one need to admit to lies? Is it a special privilege granting Judges and Attorneys a free pass to lie at will? How does Respondent qualify for that Privilege? Are the lies exempted from law as it pertains to perjury? Holtzscheiter v. Thompson Newspaper, Inc.

4. HAS NOT APPELLANT BEEN DEPRIVED OF DUE PROCESS?

Plaintiff was not permitted an opportunity to present the case, to present evidence or to conduct cross examination. The case was not decided based exclusively on the evidence. Evidently, the tribunal was not unbiased. Amendment 14, US Constitution

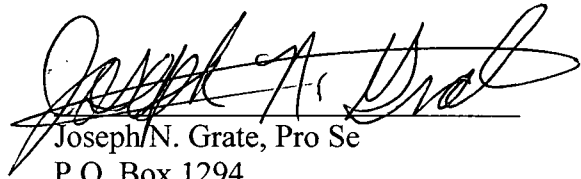
VII. CONCLUSION

In conclusion, primarily, the record should be purged of its defamatory submissions. The statements comprising the defamation, subject of the action which is the basis for this appeal, are now Public Record but are erroneous and derogatory and acts adversely to Appellant's Professional Reputation and Standings. It adversely impacts his qualifications for Top Secret and Q-clearances as required by the Department of Defense and the Energy Department – for Nuclear Facility design work, and his standing with the FAA pertaining to Pilot's certification as well as his standing in the World Community as regard Professionalism; specifically Architecture and the Building Professions.

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

July 20, 2014


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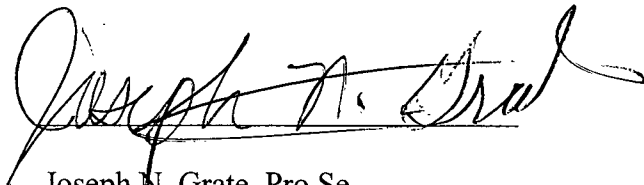
Respondent.

Proof of Service and Certificate of Counsel

Appellant certifies that the Final Brief was served on Respondent via first class U.S. mail on the date and at the address indicated below and that it complies with Rule 211(b).

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