

negligent infliction of emotional distress, and civil conspiracy against H. Collier and Smith are as follows:

H. Collier attended and was a member of Northgate Baptist Church during the summer/fall of 2017 – spring of 2018. H. Collier, an eighteen (18) year old, was a member of the Church’s worship team led by the Plaintiff, an employee of Northgate Baptist Church. (Pl’s Comp. ¶¶ 21, 25). Plaintiff formed a mentor relationship with H. Collier. (Pl’s Comp. ¶ 27). On March 12, 2018, H. Collier and her mother, Charlotte Collier, met in private with the head pastor of Northgate Baptist Church, Dr. Barry Jimmerson, on or about March 12, 2018. (Pl’s Comp. ¶ 63). H. Collier informed Dr. Jimmerson that she believed Plaintiff’s conduct and relationship with her was “inappropriate.” (Pl.’s Comp. ¶ 59). In response to Dr. Jimmerson’s questions about the relationship, H. Collier denied that the relationship was sexual or romantic. (Pl’s Comp. 60-61). H. Collier denied to Dr. Jimmerson that (1)...she had any romantic interest, romantic feelings, romantic aspirations, or any of the above toward Plaintiff; (2) that she did not believe Plaintiff had any romantic interest, romantic feelings, romantic aspirations toward, or any of the above toward H. Collier; and, (3) that she never had any sexual, or intimate relations with Plaintiff. (Pl’s Comp. ¶¶ 60-61).

On March 14, 2018, Plaintiff had a meeting with Dr. Jimmerson and Laurel Shaler in which Dr. Jimmerson shared with Plaintiff his previous conversations with H. Collier and Charlotte Collier. (Pl.’s Comp. ¶ 66). Dr. Jimmerson admitted to Plaintiff and Ms. Shaler that he did not believe Plaintiff’s mentorship of H. Collier or the text message from H. Collier to Plaintiff supported or warranted the allegation that Plaintiff had inappropriate relations with H. Collier. (Pl’s Comp. ¶ 68).

Ms. Shaler alleged that Plaintiff had inappropriate contact with young girls other than H. Collier. (Pl.'s Comp. ¶ 74). Based upon Shaler's interpretation that the Plaintiff had inappropriate contact with young girls, Dr. Jimmerson and a parishioner of the Church also believed Plaintiff had inappropriate contact with young girls in the congregation. (Pl's Comp. ¶ 93). Subsequent to a vote of "no confidence" by the Church, Ms. Shaler asked for Plaintiff's resignation and presented a separation agreement for Plaintiff to sign. (Pl's Comp. ¶ ¶ 95, 97).

On March 12, 2018, Smith, H. Collier's grandmother, told third parties that Plaintiff's relationship with H. Collier was "inappropriate." (Pl's Comp. ¶ 83).

STANDARD OF REVIEW

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. Rule 12(c), *SCRCP*. A judgment on the pleadings shall be granted "where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff's favor." *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009) citing *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991). *Home Builders Ass'n of S.C. v. Sch. Dist. No. 2 of Dorchester Cty.*, 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013). When considering such motion, the Court must regard all properly pleaded factual allegations as admitted, and any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. *Falk v. Sadler*, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000).

CONCLUSIONS OF LAW

The gravamen of the Plaintiff's lawsuit against H. Collier and Smith is based upon a March 12, 2018 statement from H. Collier to Dr. Jimmerson and from Smith to unidentified "third parties" that Plaintiff's relationship with H. Collier was "inappropriate" (the "Statement").

The issue before the Court is whether the Statement can be a defamatory statement when made from H. Collier, a church member, to Dr. Jimmerson, the church pastor, when Dr. Jimmerson did not believe the accusations were that he had a sexual relationship with Hannah. Or, in regard to Smith, whether the allegation that the same Statement being made from Smith to unidentified “third-parties” can be defamatory.

Defamation

To recover for defamation, the plaintiff must prove, that there was: (1) a false and defamatory statement made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006).

The allegations of Plaintiff’s Complaint fail to meet the elements of defamation.

Opinion Statement

As an initial matter, the Court must address whether or not the Statement was fact or opinion. An opinion statement cannot be defamatory. Our courts have held that facts are statements that can be proven true or false; by contrast, opinions are matters of belief or ideas that cannot be proven one way or the other. Moreover, because a statement must be false to be defamatory, a statement of opinion cannot form the basis of a defamation claim because it cannot be proven true or false. Specifically, under the First Amendment, there is no such thing as a false idea. *Garrard v. Charleston Cty. Sch. Dist.*, 429 S.C. 170, 198, 838 S.E.2d 698, 713 (Ct. App. 2019).

H. Collier’s and Smith’s statement that they believed the relationship described in the Complaint between an 18 year old and 50+ year old worship leader to be inappropriate is an

opinion. It can be neither true nor false and thus cannot form the basis of a defamation claim. Nevertheless, even if the statement were deemed to be factual, it does not qualify as a defamatory statement.

True Statement

The Statement that Plaintiff had an inappropriate relationship with her was true. The Plaintiff, a 50+ year old male and worship leader, engaged in a relationship with an 18 year old, that is described by the Complaint as one in which he engaged in a relationship that included the following: (1) giving financial gifts and presents to H. Collier and her family (Pl.'s Comp. ¶ 18 and 31); (2) inviting H. Collier and her family to family gatherings and activities (Pl.'s Comp. ¶ 31); (3) discussing with her deeply personal issues regarding her mental illness, self-development, self-esteem, self-perception, anger management, anxiety, separation anxiety, eating disorder, self-inflicting physical harm, coping with a previous sexual assault, and ongoing psychological treatment (Pl.'s Comp. ¶ 38); (4) having others in the Church notice H. Collier being expressive and affectionate toward the Plaintiff. (Pl.'s Comp. ¶ 42, 43); (5) attempting to “redirect” the anger of H. Collier (Pl.'s Comp. ¶ 45); (6) receiving text messages from H. Collier “expressing daughterly affection” toward Plaintiff (Pl.'s Comp. ¶ 64); and, (7) inviting H. Collier to a family birthday party and correcting a violation of Plaintiff’s cell phone rules (Pl.'s Comp. ¶ 59).

Based upon the foregoing allegations in the Complaint, the Statement is a true statement, and therefore, not defamatory.

Publication

As to Smith, Plaintiff's allegation against her of defamation fails because it does not identify the "third parties" who heard the Statement. At a minimum, the Plaintiff must plead the identity of the "hearer" of the Statement to meet the elements of a defamation claim.

Defamatory Statement

The Statement does not qualify as a defamatory statement. A defamatory statement is (1) either defamatory *per se* or defamatory *per quod* and (2) actionable *per se* or not actionable *per se*. A defamatory statement *per se* has a defamatory meaning apparent on its face. A defamatory statement *per quod* has a defamatory meaning through referring to facts or circumstances beyond the statement itself. *Parrish v. Allison*, 376 S.C. 308, 321, 656 S.E.2d 382, 389 (Ct. App. 2007).

Plaintiff's Complaint concedes that the Statement is not a defamatory statement on its face because he alleges it was misinterpreted by the Church. Therefore, "If the defamatory meaning is not clear unless the hearer knows the facts or circumstances not contained in the statement itself, then the statement is defamatory *per quod*. In cases involving defamation *per quod*, the plaintiff must introduce facts extrinsic to the statement itself to prove a defamatory meaning." *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508-509, 506 S.E.2d 497, 501 (1998).

Plaintiff alleges that Dr. Jimmerson, the "hearer" of the Statement from H. Collier, that he told Plaintiff he did not believe he had a sexual relationship with H. Collier. Therefore, if Dr. Jimmerson did not believe the Statement meant that the Plaintiff had a sexual relationship with H. Collier, then Plaintiff cannot prove the statement was defamatory. There are no extrinsic facts the Plaintiff to support a defamatory meaning. Further, by Plaintiff's own admission, H. Collier

denied to Dr. Jimmerson that the relationship was sexual. Moreover, as to Smith, there is no allegation to support a defamatory meaning to any of the unidentified “third-parties.”

Defamatory Statement Not Actionable *Per Se*

In addition to being defamatory *per se* or *per quod*, “[a] separate issue is whether the statement is ‘actionable *per se*’ or not. This issue is one of pleading and proof, and is always a question of law for the court.” *Holtzscheiter*, 332 S.C. at 510, 506 S.E.2d at 502. If the defamation is actionable *per se*, the law presumes the defendant acted with common law malice and that the plaintiff suffered general damages. If the defamation is not actionable *per se*, then the plaintiff must plead and prove common law actual malice and special damages.

Holtzscheiter, 332 S.C. at 510, 506 S.E.2d at 502.

“Slander is actionable *per se* only if it charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession.” *Id.* at 511, 506 S.E.2d at 502. “In all other cases-namely, when slander does not fall into the above-named categories-special damages must be established.” *Id.* at 526, 506 S.E.2d at 510 (Toal, J., concurring). *Parrish v. Allison*, 376 S.C. 308, 322, 656 S.E.2d 382, 389 (Ct. App. 2007).

If the defamation is not actionable *per se*, then the plaintiff must plead and prove common law actual malice, that is “the defendant was activated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff; or that the statements were published with such recklessness as to show a conscious indifference toward plaintiff's reports.” *Holtzscheiter*, 332 S.C. 502, 510, 506 S.E.2d 497, 502.

By Plaintiff's own admission, subsequent to March 12, 2018, the Statement was misinterpreted by the Church to mean that Plaintiff had a sexual relationship with Plaintiff. A

statement's meaning based upon a misinterpretation of the same cannot be actionable per se because it does not directly charge the plaintiff with one of the five characteristics or acts. Since the Statement is not actionable per se, the Plaintiff must prove actual malice. Moreover, as to Smith, there is no allegation to support that the Statement was actionable per se.

Plaintiff fails to present facts that support a finding of actual malice. By Plaintiff's own admission, the Statement was made by a member of the Church, H. Collier, to the head pastor to Dr. Jimmerson, only. The facts pled do not provide evidence of ill will by H. Collier or Smith, a desire to purposely injure the Plaintiff with the Statement, or to publish the Statement with reckless disregard towards Plaintiff.

Qualified Privilege and Good Faith

As an affirmative defense to slander, a defendant may assert that the statement was made under a qualified privilege. If the qualified privilege exists, the claim will fail unless the plaintiff can prove actual malice. *Constant v. Spartanburg Steel Products, Inc.*, 316 S.C. 86, 447 S.E.2d 194, 196 (1994). A qualified privilege is defined as “[a] communication made in good faith on any subject matter in which the person communicating has an interest or duty ... if made to a person with a corresponding interest or duty even though it contains matter which, without this privilege, would be actionable.” *Id.* In order to maintain the privilege, “[t]he publisher must not wander beyond the scope of the occasion.” *Id.* *Johns v. Amtrust Underwriters, Inc.*, 996 F. Supp. 2d 413, 420 (D.S.C. 2014).

In this case, H. Collier's statement was made in good faith, with proper motives, and to the proper parties after it became clear that Plaintiff's behavior was inappropriate. Therefore, it qualifies as a privileged communication between a member of the Church and the Church's head pastor. It is reasonable that a member of the Church would go to the pastor or other authority

within the Church to report the type of behavior exhibited by the Plaintiff, especially when Plaintiff was in position of authority over H. Collier.

Therefore, because the alleged defamatory statement is privileged, Plaintiff must prove the statement was made with actual malice. As set forth above, Plaintiff fails to plead facts sufficient to meet the standard that the Statement was made with actual malice.

Based upon the foregoing, Plaintiff's cause of Defamation must be dismissed pursuant to Rule 12(c), *SCRCP*.

Intentional Infliction of Emotional Distress

To recover for intentional infliction of emotional distress, the complaining party must establish that (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct; (2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;" (3) the actions of the defendant caused plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it."

Hansson v. Scalise Builders of S.C., 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007).

H. Collier made the Statement to Dr. Jimmerson in private. Smith allegedly made the Statement to "third parties." Again, according to Plaintiff, Dr. Jimmerson did not believe that the relationship was sexual. And, there is no allegation that the "third parties" believed the Statement alleged any sexual or romantic relationship.

There are no allegations contained in the Plaintiff's Complaint to meet the standard of proof under this cause of action, i.e., that H. Collier's or Smith's conduct was so extreme and outrageous so as to exceed all bounds of decency and was atrocious and utterly intolerable.

Therefore, Plaintiffs fails to present facts necessary to support that the Statement constitutes conduct that “exceeds all bounds of decency” or was “utterly intolerable.” This cause of action also fails pursuant to Rule 12(c), *SCRPC*.

Civil Conspiracy

The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. *Cowburn v. Leventis*, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct.App.2005); *see also Peoples Federal Savings & Loan Ass'n of S. Carolina v. Resources Planning Corp.*, 358 S.C. 460, 470, 596 S.E.2d 51, 56–57 (2004) (“A civil conspiracy is a combination of two or more parties joined for the purpose of injuring the plaintiff and thereby causing special damage.”) (citation omitted). It is essential that the plaintiff prove all of these elements in order to recover. *Lyon v. Sinclair Refining Co.*, 189 S.C. 136, 200 S.E. 78 (1938).

The “essential consideration” in civil conspiracy “is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff.” *Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct.App.1986).

“[I]n order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise.” *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct.App.1987); *accord Cowburn*, 366 S.C. at 49, 619 S.E.2d at 453. *Pye v. Estate of Fox*, 369 S.C. 555, 566–67, 633 S.E.2d 505, 511 (2006).

Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action. *Vaught v.*

Waites, 300 S.C. 201, 387 S.E.2d 91 (Ct.App.1989). *Pye v. Estate of Fox*, 369 S.C. 555, 568, 633 S.E.2d 505, 511 (2006).

According to the Plaintiff's Complaint, "Defendant(s), and each Defendant individually and collectively as joint and several tortfeasors, have conspired together to injure Plaintiff." (Pl's Comp. ¶ 213). Plaintiff's Complaint then states that "each Defendant individually and collectively as joint and several tortfeasors, have caused Plaintiff damages." (Pl's Comp. ¶ 214). Plaintiff's blanket statements of a civil conspiracy and general damages do not constitute facts sufficient to create such a cause of action. First, Plaintiff's allegations do which Defendants conspired together for the purpose of injuring Plaintiff. Second, Plaintiff's Complaint fails to prove special damages because of the alleged civil conspiracy. Therefore, this cause of action is dismissed pursuant to Rule 12(c), SCRCP.

Negligent Infliction of Emotional Distress

To prove a cause of action for negligent infliction of emotional distress with the following elements, the Plaintiff must prove that (a) the negligence of the defendant must cause death or serious physical injury to another; (b) the plaintiff bystander must be in close proximity to the accident; (c) the plaintiff and the victim must be closely related; (d) the plaintiff must contemporaneously perceive the accident; and (e) the emotional distress must both manifest itself by physical symptoms capable of objective diagnosis and be established by expert testimony. *Kinard*, 286 S.C. at 582–83, 336 S.E.2d at 467.

This cause of action is limited to bystander recovery involving some type of accident, which does not apply to the facts of this case. Therefore, this cause of action is dismissed pursuant to Rule 12(c), SCRCP.

Based upon the foregoing, IT IS HEREBY ORDERED, ADJUGED, and DECREED that the Plaintiff's Complaint against the Defendants, Hannah E. Collier and Linda Smith, be dismissed with prejudice.

IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: James Earl Tegeler vs. Northgate Baptist Church , defendant, et al

Case Number: 2020CP2301213

Type: Order/Dismissal

So Ordered

s/Alex Kinlaw, Jr., #2763