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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2016-CP-23-6547
Appellate Case No. 2017-002635

Harold Estes Blackwell, Jr..... Appellant

v.

Toby Woodard..... Respondent

BRIEF OF APPELLANT

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STATEMENT OF THE CASE

The appellant, Harold E. Blackwell, Jr., filed this action, *pro se*, on November 16, 2016, along with a motion to proceed informa paupris. Appellant sued the respondent, Toby Woodard, for defamation per se.

Appellant notified the court on November 29, 2016, upon learning his motion to proceed informa paupris had been denied by Judge Perry Gravely that he had once been a client of Judge Gravely's, and suggested Judge Gravely recuse himself. Of course, appellant copied opposing counsel, who at that time was M. Lee Daniels.

Subsequently, Respondent moved the Court, Judge Perry Gravely presiding, pursuant to Rule 12(b)(6) SCRCP for a grant of dismissal. By this time, Amy Miller Snyder was opposing counsel[1]. The hearing on the motion was scheduled for March 22, 2017. Upon arriving at the courthouse, Appellant sat at the Appellant's table preparing for the hearing when Judge Gravely's clerk came in and informed Appellant Judge Gravely had recused himself because Appellant had once been a client.

Mr. Mulbry, Judge Gravely clerk, was confused as to why Appellant was appearing, obviously having not learn of the recusal until that moment.[2] Mr. Mulbry asked Appellant if he had called the court earlier in the day to remind the court of his prior relationship with Judge Gravely. Appellant informed him he had not. At that time, it was obvious the other party had communicated ex parte with the Court on the morning of the hearing when a removal of Judge Gravely would find this case on the roster of Judge Edward Miller. Undeniably, Respondent had a choice of Judge Gravely or Judge Miller and selected Judge Miller to hear the case.

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[1] Ms. Snyder was named counsel on January 12, 2017.

[2] See email from Steve Lopez sent at 9:47 am on March 22, 2017.

As the record clearly indicates Judge Gravely did not, and has not, recused himself in this matter.

The hearing was rescheduled for April 11, 2017, Judge Edward Miller presiding. At that hearing Judge Miller granted Respondent's motion to seal and motion to stay discovery but refused to dismiss the case but did so without prejudice.

Ms. Snyder asked for permission to write the order[3] apparently in light of appellant's *pro se* status and Judge Miller agreed.

Appellant aghast at the developments in the case, particularly Judge Miller's obvious bias[4], moved the Court asking Judge Miller to recuse himself. Judge Miller denied the Appellant's motion on, July 20, 2017, in a hearing he scheduled sua sponte. Judge Miller ordered sanctions against Appellant sua sponte in the amount of some $600, finding appellant had acted in bad faith. Appellant filed a motion to reconsider [5]to which the Court has not offered a finding, or refuses to offer a finding. Appellant's motion to recuse is attached and included in the Designation of Matters.

Upon reading the order drafted by Ms. Snyder, which was laced with inaccuracies and downright lies, Appellant protested to the Court he had not been able to offer a proposed order. Judge Miller's clerk sent appellant an email stating appellant was free to offer his "motions and objections" version of events for the Court's consideration, which he did. Unsurprisingly, Judge

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[3] "Ms. Snyder: I want to make sure I understand your ruling because I'm gonna draft an order to this effect, I assume." (Transcript pg 31, line 21-24).

[4] See Appellant's Rule 59(e) motion for the gruesome details.

[5]" The Court: You say that this Dr. Fisk and Dr. Woodard, well, get affidavits from them to show that you have suffered some actual injury." Judge Miller had been informed Dr. Woodard was defendant's brother earlier in the hearing. (Transcript pg 31, lines 15-16)

Miller's order was Ms. Snyder's rendition verbatim and did not legitimize any of Appellant's objections. Appellant filed a Rule 59(e) SCRCP motion to have Judge Miller reconsider his ruling staying discovery. The motion was denied on June 24, 2017.[6]

The hearing on Appellant's motion to amend his complaint was heard by Judge R. Scott Sprouse on August 4, 2017. On September 9, 2017, the court granted Appellant's motion to amend his complaint. Appellant asked opposing counsel if she had been served an amended complaint. She responded she had not in an email date September 14, 2017. On September 15, 2017, appellant filed his amended complaint with clerk. Appellant's complaint was not exactly the same as the amended complaint attached to his motion to amend but contained no material changes.

Appellant realized he had alleged William Fisk and David Woodard had received defamatory emails concerning appellant in the proposed complaint. Upon reflection, and since opposing counsel said she had not been served an amended complaint, Appellant changed his complaint to allege Woodard had sent emails to William Fisk and David Woodard regarding Appellant and then in a subsequent allegation alleges Woodard's emails were defamatory. Appellant did this because he wanted to Respondent to confirm he had sent the emails without having to admit they were defamatory.

Respondent moved to strike the new complaint and in the alternative be granted dismissal pursuant to Rule 12(b)(6). Respondent did not answer the amended complaint. The hearing on the matter was held October 4, 2017, at the same time as Appellant's case against Miracle Hill Ministries, Inc. (2017-CP-23-3754).

On November 9, 2017, the court granted Respondent dismissal pursuant to Rule 12(c),

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[6] Appellant did not contest Respondent's motion to seal.

Judgment of the Pleadings, and Appellant received notification via U.S. post on November 18, 2017.On November 28, 2017, Appellant hand delivered his Rule 59(e) motion to reconsider to the clerk's office and it was stamped at 4:53pm. He also hand delivered a copy to opposing counsel on the same day.

The motion to reconsider was pursuant to Rule 59(e), Rule 60(b)(1,2), SCRCP and included documentation of $35,000 in damages due dental impairment which had developed since June 2015 resulting from stress and emotional tumult.

On December 11, 2017, Judge Stilwell denied appellant's motion to reconsider and appellant received notice via U.S. post on December 15, 2017.

On December 18, 2017, Appellant notified opposing counsel of this appeal by depositing the document in the U.S. mail.

On December 26, 2017, Appellant filed with the South Carolina Court of Appeals his notice of appeal via U.S. post and it was clocked in the clerk's office December 29, 2017.

FACTS

Appellant became acquainted with Respondent by virtue of an approximately thirty (30) minute telephone conversation which occurred in late February or early March of 2015. Appellant called Respondent in an effort to gain entrance, for his now ex wife, Anita Jane Miller, into the Miracle Hill program "Renewal" for the treatment of alcoholism.

The telephone call was a success and Appellant felt as though he had made a friend.

Miller, named Anita M. Blackwell at the time, was admitted to Renewal the Monday after the Thursday call to Respondent.

On the night of June 14, 2016, Appellant was using a false profile he had created on the website Facebook, under the name "Lynn Estes," to communicate with his wife.

Appellant intended to send his wife a message via "Facebook private messenger" technology she would think came from "Lynn Estes." Appellant deceived his wife in as he feared for her safety. She was again a practicing alcoholic to the best of Appellant's knowledge and, as subsequent events confirmed, Appellant was rightfully concern for her well being.

Instead of using Facebook instant messenger technology Appellant mistakenly posted the message, "*Hey, I think I met your ex husband Hal at a meeting*" on Miller's public board, or "news feed" in Facebook parlance, which Appellant is informed and believes was only visible to the "friends" of Ms. Miller, a group that included Respondent.

Respondent was watching Ms. Miller's page when the post became visible and he responded within 5 seconds of Appellant's referenced posting.

Respondent was under the impression Ms. Estes was an attractive single-mother in recovery for addiction and he identified himself as a teacher at Renewal who was also in recovery from addiction. Respondent, in every document addressing the matter produced in this

action, now claims he was a counselor at Renewal despite his claim to "Ms. Estes" that "*I am a teach at Renewal*" (Compl. Exhibit A, ¶ 39, black and white, plain as day) (R.p. 38, 44, 83).

Unsolicited, and while admittedly not knowing with whom he was communicating (Compl. Exhibit A, ¶39, "So we've never met, correct?") (R.p. 38, 44, 83), Respondent began to publish what subsequently he admits is false (Compl. Exhibit A ¶133) (R.p. 87) derogatory, and allegedly defamatory statements about the Appellant to "Ms. Estes." (R.p. 87).

Respondent lied when he stated to "Ms. Estes" that he knew Appellant had had a restraining order placed against him. The police incident report, Appellant's Exhibit C, clearly shows Appellant has not had a restraining order issued against him. (Compl., Exhibit C, see bottom of page 3) (R.p. 53, last line of supplemental report's narrative).

Respondent's publication to "Ms. Estes," which is Exhibit A of Appellant's complaint contained the following statements Appellant considers and alleges to be defamatory:

"*Please be careful with Hal, there is a LOT more to the story than I suspect he has told you,*" (¶45) (R.p. 83).

"*I mean no ill intent.*" (¶45) (R.p. 83).

"*He was in his addiction at that time, so I don't want to hold it against him. But he made some threats and displayed some semi-dangerous behavior.*" (¶56) (R.p. 84).

"*And you said a mouthful: He hides it well. He can be very charming and manipulative. Of course, most addicts can. Hopefully he is in recovery and living with integrity. Just be careful. (¶56)* (R.p. 84).

"I DO know that he threatened to sue Miracle Hill because they wouldn't let him talk with Anita. I know that he showed up several times, even after hours, at Renewal. I do know that they had to get a restraining order on him." (¶92) (R.p. 85).

Also Respondent admits he was lying in a subsequent Facebook conversation with "Lynn Estes", "*and for saying things I didn't know for certain.*" (¶133) (R.p. 87).

Respondent's statements referenced in the previous item, where he claims "I know" a fact, are false in that none of those claims are true.

Respondent, in Appellant's Exhibit A, accuses Appellant of criminal behavior which he did not commit.

Respondent's publication, "*I mean no ill intent*" (Exhibit A, ¶ 45) (R.p. 83), is an admission by Respondent as to his state of mind and, when coupled with his confession that what he did was wrong in subsequent communications (see Appellant's Exhibit C, ¶62) (R.p. 84), is evidence Respondent acted with malice.

Respondent published the words, *"I've never met Hal, so I'm not drawing any conclusions."* (Exhibit A, ¶72) (R.p. 85) is a false statement in that Respondent draws conclusions throughout his publication of June 14, 2015.

Appellant alleges Respondent published electronic document(s) to Dr. William Fisk and his brother, David Woodard, both of Clemson, South Carolina, that were defamatory.

Opposing counsel makes much ado about the complaint's lack of information as to how Appellant knows Respondent sent defamatory emails to William Fisk and David Woodard. Appellant's therapist Ross Collins told Appellant about at least one email Respondent sent to Dr. Fisk, though he alleges there are more. Appellant noticed Dr. Woodard "unfriended" Appellant from his Facebook account and allegedly had Appellant's sign in user name and password disabled on Clemson Presbyterian Church's website. These instances happened within a short period of each other and since Dr. Woodard would have no reason to communicate with Miller, he feels safe in alleging Respondent's brother was acting on information provided by

Respondent.

Appellant alleges Respondent verbally and in written electronic communications told people Appellant faked a suicide attempt on December 9, 2015, as this is the story Miller has told to many people and Respondent obviously repeats Miller's accusations with wanton and reckless abandon.

Appellant did not fake a suicide attempt and has never faked a suicide attempt.

Respondent's statements referenced herein, taken individually and collectively, constitute evidence of Respondent's sinister intent to injure Appellant.

Appellant alleges Respondent was once an ordained pastor in the Presbyterian Church of America and, as such, would have received training in the handling of confidential, private, potentially damaging information of congregants. This training shows Respondent could foresee his conduct would injure Appellant yet he did it anyway.

Appellant alleges his complaint uses the Facebook conversation as circumstantial evidence and opposing counsel alleges Appellant uses the "conversation" as the sole basis for meeting the law's requirement that the defamatory material be published to a third party before being actionable. Opposing counsel makes no citation to substantiate her claim and cannot because no such allegation was ever made by Appellant.

Appellant alleges the police report is proof what Respondent said was repeated to someone who constitutes a third party (Compl. ¶97) (R.p. 121) by someone and since that person is identified only as an employee at Miracle Hill, as is Respondent, it is not unreasonable to believe the publisher on that occasion was Respondent also.

Respondent, a confessed serial adulterer, was allegedly inviting a woman to his AA meeting for nefarious purposes and was puffing himself up to impress her to those nefarious ends

by demonstrating the level of confidence that had been placed in him.

In a subsequent publication to a person he thought was a female named "Lynn Estes," after Appellant confronted Respondent regarding his outrageous publication on June 14, 2015, Respondent published these words: "*Lynn, I hope you are well. I received a disturbing fb message from Mr. Hal Blackwell today. I want to say that I was wrong for inserting myself into that situation, and for saying things I didn't know for certain. That was wrong of me, and I'm disappointed in myself. Having said that, I was under the impression that I was sharing a private conversation with you. I'm saddened that you would share that. I wish you the very best, however. I am still learning to mind my own business.* (Exhibit A, ¶133) (R.p. 87).

In his first answer to Appellant's complaint, Respondent admitted he had published these defamatory statements to a third person. In his two answers to Appellant's complaint, Respondent has never claimed he published these defamatory statements to only "Lynn Estes."

In his two answers to Appellant's first complaint, Respondent claimed "truth" as an affirmative defense yet admits his statements were things he, "didn't know for certain" (Compl. Exhibit A, ¶133) (R.p. 87) when he claimed, in capital letters no less, that he did know. (Ibid, ¶92) (R.p. 85).

Appellant revealed himself as Lynn Estes to his wife at the time, Anita J. Miller (Blackwell), and assumed she told Respondent the true nature of "Lynn Estes" in July of 2016, long before he filed his original complaint on November 16, 2016. Respondent was not operating within his employment at any times referenced in the instant case as the first defamatory publication occurred at 9:53 pm and all other publication were in the late evening.

ARGUMENTS

I. DID THE COURT ERR IN HOLDING APPLELLANT TO THE SAME PLEADING STANDARD AS THAT OF AN ATTORYNEY?

Appellant's complaint is required to be afforded a less stringent reading than that of a lawyer. (*It was held that a* pro se *complaint requires a less stringent reading than one drafted by a lawyer per Justice Black in Conley v Gibson.*" Pucket v. Cox, 456 F. 2d 233 (1972) (6th Cir. USCA)) (R.p. 206-207). In determining if the Court erred in regards to its consideration of Appellant's *pro se* status, or lack thereof, the first logical step would be to determine if Appellant was afforded any such consideration.

Nowhere in the record does the court acknowledge Appellant appears *pro se.* In fact, in several instances the order indicates Appellant is being held to the same or even higher standard of pleading than a lawyer. (Infra) (R.p. 206-207).

Appellant avers a ready example of this high pleading standard is the Court's omission of the fact Appellant is entitled to the inferences of his allegations ("*The 12(b)(6) motion may not be sustained if the facts alleged and inferences therefrom would entitle the plaintiff to any relief on any theory.*" Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995) in its construction of the Legal Standard section of the Order.

II. DID THE COURT ERR BY USING RULE 12(C) AS THE LEGALS STANDARD?

Respondent moved the Court to grant dismissal pursuant to Rule 12(b)(6) for failing to state a claim. ("in the alternative to Dismiss that Complaint pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure.*" Resp. Motion to Dismiss, pg. 1,¶2) (R.p. 147). The Court granted the dismissal of this action pursuant 12(c), a motion on the pleadings per the words and citation in the section "Legal Standard." ("*A judgment on the pleadings is proper*

when there is no issue of fact raised by the Complaint that would entitle Plaintiff to judgment if resolved in Plaintiff's favor." Order, pg. 2) (R.p. 2) citing Russell v. City of Columbia, a case decided pursuant to Rule 12(c). (Russell v. City of Columbia 390 SE 2d 463, 301 SC 117 (Ct. App.1989))

A Rule 12(c) motion on the pleadings cannot be granted before the pleadings are closed and since Respondent has not answered either Amended Complaint, the pleadings in this case are not closed. ("*Rule 7(a) provides that the pleadings are closed upon the filing of a complaint and answer, unless a counterclaim, cross-claim or third-party claim is interposed, in which event the filing of a reply, cross-claim answer, or third-party answer normally will mark the close of the pleadings.", citing 5A,* Wright and Miller, Federal Practice and Procedure *§ 1367 at 512-13 (1990)).*

Clearly, the wrong legal standard was used in the Courts determinations throughout the Order. As the Court applied the wrong legal standard its Order is moot, or certainly not responsive to Respondent's request, and this case must be remanded.

DOES THE COURT BEAR THE APPEARENCE OF IMPROPRIETY IN ITS FINDINGS OF FACT IN THE MATTERS BEFORE IT IN THIS CASE?

Cannon 3 of the Judicial Code of Conduct states in pertinent part, "(5) A judge shall perform judicial duties without bias or prejudice.". "A judge's impartiality might reasonably be questioned when his factual findings are not supported by the record." Patel v. Patel, 359 SC 515, 532, 599 SE2d 114, 123 (2004).

The Court's order on page 5, second paragraph, second sentence, states, "The filed Amended Complaint contains allegations that the Defendant should be sued because of his "blatant refusal to adhere to the principles of Alcoholics Anonymous and the Bible." (R.p. 5). This quotation from Appellant's Amended Complaint is found in item 135 (R.p. 126-127) which

states in its entirety, (emphasis added), "**Taken cumulatively**, and in light of Defendant's intentional efforts to spoil Plaintiff's relationship with a fellow person in Alcoholics Anonymous, intentional efforts to spoil Plaintiff's relationship with fellow members of Clemson Presbyterian Church, the manner in which Defendant came to have the ability to make a false statement about Plaintiff with a measure of credibility, his previous training as a Presbyterian PCA pastor, blatant refusal to adhere to the principles of Alcoholics Anonymous and the Bible (yet publically profess adherence to those principles), and the viciousness of Defendant's attacks on Plaintiff's character, qualify his behavior as meeting the legal standard to constitute "extreme" and "outrageous" behavior, as a matter of law."

The two aforementioned facts demonstrate indisputably the Court's finding is not supported by the facts.

Appellant, pro se, understands the seriousness of accusing the Court of lying but the facts afford no other conclusion. In item 135 (R.p. 126-127), Appellant clearly caveats a subsequent list by stating, "Taken cumulatively" yet the Court completely ignores this qualification, then selects one of the six items in the list, not the first one, not the last one, but the one which a reasonable person would consider the one which makes Appellant, pro se, look the most ridiculous. The Court then adds the ludicrous, insulting, despicable "spin" that Appellant believes Respondent should be sued solely because he "blatantly refuses to follow the principles of Alcoholic Anonymous and the Bible." Notice there is no elaboration, or even the inclusion of Appellant's words contained in parentheses immediately after the cherry-picked quote.

This lie, in an order of the Court no less, cannot be construed as a mistake, or an oversight due the nature of the selectiveness of the inflammatory citation. The Court was clearly out to humiliate Appellant and/or mockingly ridicule him before the bar. Also note the Order

finds the Appellant's cited claim of liability is found not to be singular as represented by the Court's use of the plural noun "allegations," (R.p. 5) obviously a fact not supported by the evidence.

Appellant also notes the Court's decision to include the lie is purely a discretionary condiment that serves no legal end. This fact begs the question, "why was it included?"

Appellant avers certain extrapolations are entirely reasonable due to the afore cited characteristics of this section of the Order. The author who drafted this Order appears to be doing their part in thwarting pro se efforts in the circuit to gain the kudos of colleagues and superiors. Appellant reasonably projects that a recent law school graduate seeking to earn a certificate of experience drafted the Order. Appellant avers this clerk would have never put this in an order delivering bad news to an attorney but if the persuasive attitude of superiors were anti pro se litigant, this Order use of such an inflammatory statement would completely be cogent. Appellant can think of no other circumstance that would incent a finding of fact so clearly unsupported by the evidence.

While quite understandably a pro se litigant cannot be afforded some of the privileges of being an attorney, the law provides compensation by allowing a liberal reading of his pleadings, **but to his benefit not detriment**! (Puckett, Ibid) (R.p. 206-207).

Other findings of fact not supported by the evidence include:

1. "Plaintiff concedes he had misrepresented to counsel and the court in this original pleading the existence of "Lynn Estes." (Order, pg.1) (R.p. 1). Setting aside the obvious impropriety of reference to a Complaint moot because it has been amended, (Rule 15(c), SCRCP, "Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be

set forth in the original pleadings, the amendment relates back to the date of the original pleading."), Appellant takes leave to address this ill-made, uncited, prejudicial allegation contained in the Order. The only reason the Court could have in citing material from the original complaint is to prejudice Appellant.

Appellant vehemently denies he misrepresented anything to anyone. When Appellant realized opposing counsel, in her answer, did not know the true nature of "Lynn Estes" he notified opposing counsel by email of her mistake. This was well before the first hearing in this matter. Appellant did not misrepresent anything to the Court. Appellant, in his first complaint, alleged the Facebook conversation is circumstantial evidence that Respondent published the same material to others. (Original Comp., Item 14) (R.p. 30). Nowhere does Appellant, in any document, state the Facebook conversation is, in and of itself, a publication to a third party.

Appellant was surprised as anyone Respondent did not know the nature of "Lynn Estes" at the time he filed this action as he thought for sure Respondent and his ex wife were in communication about what had transpired. Appellant had conversations as husband and wife with Miller after the Respondent's sinister publication using the Lynn Estes profile. Miller blocked "Lynn Estes" from her Facebook account after a few brief conversations with Appellant using the Lynn Estes profile in July of 2016, long before this action was brought.

Appellant speculates opposing counsel and the Court read the complaint and ignored any direct assertion this conversation was alleged to have constituted a communication to a third party as the Appellant was appearing pro se. Appellant may have facilitated this misunderstanding by not stating "this communication was not to a third party" but avers he was under no such obligation to do so. (see Rule 4.1). Justice demands Appellant not be punished because opposing counsel and the Court chose to read between the lines as they did.

Appellant notes the Court conveniently makes no citation of the alleged "misrepresentation" contained in the original Complaint. If the Court finds Appellant is a liar it should put up or shut up. Appellant, who has built a career in the financial services industry based on his fidelity[7], takes great umbrage at being found to be a liar in a court of law when the Court's uses an uncited recitation as its weapon of mass destruction.

2. The Court's order states in its dismissal of Appellant's claim for negligence, "None of these allegations bear any relation to the alleged "breach of duty" which all stem from the private Facebook message between the Plaintiff and Defendant." (Order, pg. 3) (R.p. 3). This statement in the order is blatantly in error, and constitutes a finding of fact unsupported by the evidence. Appellant alleges Respondent defamed him in communications with his brother, Dr. David Woodard and Dr. William Fisk. (Compl. ¶75, ¶77, ¶79, ¶110, ¶120). (R.p. 118).

The question of whether the Court knows the difference between truth and falsity, or even cares, is a legitimate one.

3. The Order states, "in fact he (referring to Appellant) was the subject of a police order of protection." (Order, pg. 5) (R.p. 5). This is another bald face lie. Appellant has never been under a police order of protection, to his knowledge any way. This lie was first posed by opposing counsel and the Court obviously incorporated it on her word. Appellant's blood boils at this finding of the Court. The Court uses a redacted police Incident Report to support its contention Respondent was being truthful.

4. The Order states, "Plaintiff attempts to get around this fatal flaw in his case by alleging in his subsequent Complaints that he has been defamed to unidentified persons..." (Order, pg. 6) (R.p. 6). The Court conveniently ignores Appellant's allegation relating to Respondent's brother

[7] The record shows that in 35 years Appellant has never had a client complaint lodged against him.

and William Fisk. Page 6 of this Order finds Appellant indignant but not surprised.

5. The Order states, "Furthermore, Defendant's statement to Plaintiff that Plaintiff was subject to a restraining order is neither false nor defamatory. Plaintiff attaches the police order of protection to his Complaint." (Order, pg. 7) (R.p. 7). Of course, this is another bold-faced, defamatory lie. (First proffered by the shameless, totally-void-of-conscience, Amy Miller Snyder, Esquire). The document attached to the Complaint is entitled "Incident Report." Appellant had to make a FOIA request of the Greenville police department to obtain it, ergo the redactions.

The South Carolina Code of Laws defines "protection order" thusly, *(6) "Protection order" means any order of protection, restraining order, condition of bond, or any other similar order issued in this State or another state or foreign jurisdiction for the purpose of protecting a household member." S.C. Code Ann. § 16-25-10 (1976).* There is no such thing as the conveniently conjured "police order of protection." (*"(A) The family court has jurisdiction over all proceedings under this chapter except that, during nonbusiness hours or at other times when the court is not in session, the petition may be filed with a magistrate. The magistrate may issue an order of protection granting only the relief provided by Section 20-4-60(a)(1)."* S.C. Ann 20-4-30.) There is nothing in the record showing Appellant was under any kind of "order of protection" (because he wasn't) and for the court to make such a determination is outrageous on its face. Equating a police incident report with a restraining order is despicably dishonest.

Respondent has enjoyed ample opportunity to produce any kind of order of protection and has, for obvious reasons, failed to do so. For the Court to determine, or even insinuate, Appellant is guilty of criminal behavior in the absence of any evidentiary support is a putrid undertaking in the United States of America.

6. The Order states, "There are a variety of factual allegations that differ between the two Amended Complaints." (Order, pg. 9) (R.p. 9). Appellant points out the Order, in the first paragraph on page 2, only states how the Complaints are alike. No where does the Order cite a substantial difference in the Complaints, much less any that would prejudice Respondent.

As a consultant who has advised over 100 organizations, no person in the pecking order of judicial clerk, who presumably drafted this Order, includes verbiage as cited above without hopes of recognition and kudos. The only reason these absurdities were included in the order was to curry favor and the implications of that are not lost on Appellant, pro se. The author reveals the Court is steeped in an intolerance for pro se litigants irrespective of the merit of the action.

At this juncture it is apropos for Appellant to draw this Court's attention to his Rule 59(e) motion in response to Judge Edward Miller's refusal to recuse himself, after his sua sponte held hearing in which he sanctioned Appellant sua sponte (note the Court refuses to Rule on Appellant's Rule 59(e) motion), less the Court doubt the veracity of Appellant's claims of bias and opposing counsel's lying. The averments contained in that motion provide cogency to Appellant's allegations of gross malfeasance in the 13th Judicial Circuit. Appellant's Rule 59(e) motion details the lies (a word Appellant does not use indiscriminately) of Amy Miller Snyder, Esquire, and proves the Court is duplicitous by accepting her treacherously prepared proposed orders with impunity. Ms. Snyder's proposed orders have been ratified by the court in Greenville without any perceivable hesitancy, verbatim.

As Appellant battles for his reputation, career, quality of life and justice, against these virulent obstacles akin to those which might be found in a banana republic's process, he takes license to opine.

The South Carolina judiciary has a destabilizing crisis in Greenville. The comment to

Cannon One of the judiciary code of conduct is not hyperbole'. We citizens depend on the bar to hold sacrosanct the precepts expressed therein. History demonstrates democracies survive legislative or executive subversion. These are checked by election to whatever arguable degree. The record shows indisputably our system of government, majestically referred to by Lincoln as "The Great Experiment," is most vulnerable when its Courts dispense justice with the heretofore described hubris, obfuscation of its noble mission and apathy for the truth.

Appellant is an author of minimal note, having penned only one short work which barely earned bestseller status. "Secrets of the Skim," a recounting of Appellant's days at Merrill Lynch during the 2008 financial crisis,[8] is a witness to corruption. The corruption he witnessed in the special products section of Merrill Lynch was checked by at least the specter of regulatory oversight and competition. The corruption, and that is the right word (corruption spawned by expediency is no less corruption), in the 13th Judicial Circuit, the only one Appellant can speak to, wears no such harness.

Appellant does not speak to the pragmatism of making pro se litigants incented to retain counsel, which Appellant freely admits must be the case. It is the product of justice dispensed by the Court that is at issue. The aforementioned pragmatism and the generally acknowledged issues with providing access to the justice system to all in legitimate need, and coping with all that, provides no excuse for a clerk who would gin such unsupported findings as recounted above and garner a judge's signature as a matter of course. Appellant refuses to believe this high Court is not as outraged as he is. It is much more the higher Court's legacy than Appellant's, though certainly no less important as the current state of affairs so poignantly illustrate.

Appellant avers this Court needs no further justification for remanding this case to a

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[8] Google Hal Blackwell to read the book's reviews and see Appellant's appearance on Fox Business News' show "Happy Hour."

venue out of reach of the 13th Circuit, with whatever allowable instrument to force Respondent to answer the filed Amended Complaint.

In an abundance of caution, however, Appellant journeys on with the requisite brevity, or lack thereof, as it were.

III. DID THE COURT ERR IN FINDING RESPONDENT HAD NO DUTY OF CARE TO APPELLANT?

"*Moreover, it has long been the law that one who assumes to act, even though under no obligation to do so, thereby becomes obligated to act with due care.*" Sherer v. James, 290 S.C. 404, 406, 351 S.E.2d 148, 150 (1986); Roundtree Villas Assn. v 4701 Kings Corp. 282 S.C. 415, 423, 321 S.E.2d 46, 50-51 (1984). How ever inarticulate Appellant's *pro se* attempt to allege a duty of care existed, the Court must find Appellant's pleading infers that a duty of care existed per Sherer, (Ibid). "*The motion will not be sustained if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.*" Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987); McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct.App.1997).

Appellant avers the Court is simply wrong in stating, "*There is no basis in law for the creation of a duty under these facts.*" in light of the Sherer court's statement of who has a duty of care under law and the Brown court's mandate of a consideration in a light most favorable to the nonmoving party. Respondent had no obligation to act. He "assumed" to act and therefore had the obligation to do so with "due care." Additionally, the facts clearly show Respondent, by his own admission, (Compl., Ex. A, ¶133, Compl. Ex. B, ¶62) (R.p. 87, R.p. 92, respectively) did not act with due care, which indicate Respondent thought he had a duty of care.

IV. DID THE COURT ABUSE ITS DEICRETION IN DISMISSING APPLELLANT'S CLAIM FOR OUTRAGE?

The Court holds appellant to a very high pleading standard by requiring him to cite authority in an unanswered complaint. (Order, pg. 4-5) (R.p. 4-5). Appellant avers as a *pro se* litigant the Court has erred in doing so. Rule 8(a) states in pertinent part. *"(2) a short and plain statement of the facts showing that the pleader is entitled to relief,"* and the note to Rule 8(a) states in pertinent part, "*This Rule 8(a) is in the same general language as the Federal Rule with the important distinction that the State practice requiring pleading of the facts (rather than a "statement of the claim") is retained.*"

The Court failed to provide any consideration of Appellant's pro se status as required. (Pucket, Ibid.).

V. DID THE COURT ABUSE ITS DESCRETION IN FINDING APPELLANT WAS GUILTY OF STALKING ANITA JANE MILLER?

The Order states in pertinent part, "*essentially being the subject of a restraining order when in fact he was the subject of a police order of protection for stalking his now ex-wife.*" (Section 16-3-1700 (C) of the South Carolina Code of Laws states, *"Stalking" means a pattern of words, whether verbal, written, or electronic, or a pattern of conduct that serves no legitimate purpose and is intended to cause and does cause a targeted person and would cause a reasonable person in the targeted person's position to fear: (1) death of the person or a member of his family; (2) assault upon the person or a member of his family; (3) bodily injury to the person or a member of his family; (4) criminal sexual contact on the person or a member of his family; (5) kidnapping of the person or a member of his family; or (6) damage to the property of the person or a member of his family.)* The Court is required to render its decision on the face of the complaint. A Rule 12(b)(6) motion to dismiss for failure to state a cause of action must be

resolved by the trial judge based solely on the allegations established in the complaint. *See* Woodell v. Marion Sch. Dist. One, 307 S.C. 297, 414 S.E.2d 794 (Ct.App.1992).

Appellant had not spoken to his wife of 23 years in just shy of two months when their last conversation ended with his wife's statement, "I love you very much." He went to where she was to speak with her. For this Court to find, or even insinuate Appellant is guilty of the crime of stalking is a shocking injustice on its face. A reasonable person would have rightly excoriated Appellant's character had he not taken the initiative to verify the well-being of his wife. The Court's finding Appellant was stalking his wife is abhorrent and without foundation.

VI. DID THE COURT ABUSE ITS DISCRETION IN DETERMINING THE ALLEGED DEFAMATORY PUBLICATIONS OF RESPONDENT ARE EQUIVOCAL TO "ANNOYANCE THAT OCCUR IN EVERYDAY LIFE"?

The Order states, in pertinent part, "*The law does not provide a remedy for every annoyance that occurs in everyday life.*" (Order, pg. 5, citing Kelley v. Post Publishing Company. 327 Mas 275, 278, 98 N.E. (2d) 286, 287 (1951) (R.p. 5). As recent events involving the sacking of Harvey Weinstein, James Rosen, Charlie Rose, Matt Lauer, and now Steve Wynn (an ever expanding list) illustrate mere allegations such as Respondent lodged against Appellant are hardly "annoyances" and, frankly, the Court should be appalled at such a finding by the lower Court. False allegations such as have been made in this case not only damage Appellant but every woman truly abused. Men like Respondent are more loathsome than actual perpetrators of domestic violence for actual perpetrators of domestic violence's victims are limited in scope. Every abused woman coming forth must overcome the likes of the deleterious Mr. Woodard.

The Order's statement also reveals the Court's appalling ignorance regarding the treatment of addiction. The only protocol with any measure of documented success is found in the book "Alcoholics Anonymous."

The "eureka moment" for the founders of AA came when it was discovered alcoholics could stay sober working with other alcoholics. A person afflicted with the disease of addiction, as is Appellant is reliant on the people in recovery where he lives. Respondent, supposedly in recovery and active in AA, knew this as he thought he was destroying Appellant's relationship with Lynn Estes. Mr. Woodard is a cold blooded, perverted individual, make no mistake about it.

What Respondent is alleged to have done is analogous to locking the hospital doors to the sick and his actions must be viewed in that context. For the Court to find Respondent's actions are an everyday annoyance is unspeakable ignorance on a scale Appellant heretofore thought unfathomable.

VII. DID THE COURT ERR IN CONSIDERING THE PROPOSED AMENDED COMPLAINT IS CONTROLING?

The Order states, in pertinent part, "*The proposed Amended Complaint before the Court in the hearing on the Motion to Amend is the Compliant Plaintiff was granted leave to file, not the Amended Complaint filed.*" If the Court is not thoroughly convinced the lower Court is prejudice against him, Appellant proffers this clincher. This one takes the cake. The Court obviously did not consider Appellant would appeal and examine its citing of Bowers v. Robinson (Order, pg. 8) (R.p. 8).

In Bowers, plaintiff moved the Court to grant leave to amend his complaint even though the 30-day period to freely amend had not run out. The plaintiff then moved the court for a default judgment because the Defendant did not answer within the time allowed (15 days) for answering an amended complaint. The court granted plaintiff a default judgment and defendant appealed. Defendant won the appeal and the case was remanded. At issue was the fact the time for answering the original complaint had been stayed by defendant's motion to dismiss.

The Court grounds its reliance on Bowers citing its approval of Lempert v Singer 766 F.

Supp. 1356 (D. Vir. Islands 1991) stating "*where the court held that a Motion to amend the Complaint should be denied for the failure to include proposed amendment.*" Obviously, Appellant included a proposed amended complaint with his motion to amend, making the Court reliance misplaced. The kicker, however, is what the Court fails to include, the very next line in the Court's finding in Bowers which states, *"Service of a proposed amended complaint with a motion to amend the complaint does not, however, effect service of the amended complaint itself."* This determination by the Bowers court is responsive and directly contradicts the Court's finding.

Appellant also notes Rule 211 SCRAP which states, *"(b) Content. The final brief(s) shall be identical to the brief(s) previously served under Rule 208, except for the following: (1) References to the Record. The references in the initial brief shall be revised to indicate where the material appears in the Record on Appeal. These revised references may be in place of or in addition to the initial references, and shall be in the form indicated by the following examples: (R. p. 15, line 4) (R. p. 75, lines 8-20) (R. p. 90, line 1-p. 101, line 14) (R. pp. 29-31). (2) Correction of Typographical Errors and Misspellings. The party may correct obvious typographical errors and misspellings which were contained in the initial brief. No other changes may be made."*

This language demonstrates clearly that should a pleading be required to be identical, the Rules so instruct. Judge Sprouse's ruling granting appellant leave to amend his complaint consists of a Form 4.

For the Court to consider all complaints, most heretically the original complaint, and consider Respondent's responses thereto, taints the dismissal of Appellant's claims and is an abuse of the court's discretion, plainly.

VIII. DOES THE COURT ABUSE ITS DISCRETION BY DRAWING FACTUAL CONCLUSIONS NOT SUPPORTED BY THE EVIDENCE IN REGARDS TO APPELLANT'S CLAIM OF DEFAMATION PER SE?

The Order states, "*Plaintiff alleges that the Defendant in a private message on Facebook visible only to Plaintiff defamed him.*" (Order, pg. 6) (R.p. 6). The passage is obviously not cited because it is patently false as explained supra.

The Order states, "*In a departure from his initial Complaint in both Amended Complaints Plaintiff now admits that the only publication of the alleged defamatory statements in the Facebook message was to himself, thus he fails to meet the requirement that the publication was made to a third party.*" (Order, pg. 6) (R.p. 6). Besides the now obligatory violation of Rule 15 by prejudicially referencing the original complaint mooted by amendment, this statement ignores Appellant's allegations regarding Respondent's brother and William Fisk.

Additionally, Appellant's proof, not allegation, provided by Exhibit C, on the third page, the police Incident Report, shows essentially the same defamatory material published by Respondent on Facebook was told to police, in the presence of third parties. (Compl. ¶116) (R.p. 124).

IX. DID THE COURT ABUSE ITS DISCRETION BY MAKING A DETERMINATION WHICH DOES NOT CONSTRUE THE PLEADING IN A LIGHT MOST FAVORABLE TO THE NONMOVING PARTY?

Given the discussion above, no reasonable person would, or could, accept the premise the Court construed the pleadings in a light most favorable to Appellant as required. ("*The question to be considered is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief.*" Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987); Cowart v. Poore, 337 S.C. 359, 523 S.E.2d 182 (Ct.App.1999).

CONCLUSION

Appellant, *pro se*, is uncertain whether he should be addressing a Rule 12(b) finding or a Rule 12(c) finding, as the legal standard indicates Rule 12(c) and the Order, in 3 instances references Rule 12(b)(6) which is the rule used in Respondent's motion to dismiss. Appellant, perplexed, elects to propound pure logic to conclude his appeal.

Woodard does not deny publishing the material he thought he was publishing to "Lynn Estes." He does not deny that what he published was defamatory (save his outrageous claim of "truth" as an affirmative defense in previous answers in this case). For the Court to find Mr. Woodard had not previously had occasion to decided to publish these defamatory declarations regarding Appellant, the Court would be finding, based on the face of Amended Complaint, he did so decide in the matter of, at most, the two minutes between the time he saw what Appellant published to his wife's Facebook page and his publication of the defamatory material.

Appellant avers these facts show that unless Mr. Woodard is even more reckless than alleged, he previously had occasion to make the decision he made and that decision did not change. For the Court to conclude that discovery would not reveal this occasion, or more likely occasions, is not reasonable.

Is it possible Mr. Woodard only published these defamatory remarks to "Lynn Estes?" Certainly, if the alleged facts in the complaint are ignored. Is it likely, absolutely not. ("*A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.*") - in King v. California Department of Correction & Rehabilitation, 2013. Given the speed of his decision, no reasonable person would conclude the Facebook publication in question, was the first time Mr. Woodard decided to defame Appellant. Logically, the Facebook interlude is not an isolated

incident.

Considering the absence of the slightest bit of remorse displayed by Respondent in the amended complaint's Exhibits A & C, (R.p. 129, R.p. 142, respectively) the odds the proven content was not disseminated elsewhere by Respondent becomes molecular (see Appellant's Exhibit C, the police report, labeled INCIDENT REPORT where essentially the same defamatory material appears) (R.p. 142).

As compelling as those facts are, let the court not forget there are the two persons, alleged to have received essentially the same publications by Woodard and who must be considered to have done so by the Court. ("*The question for the court is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the allegations set forth on the face of the complaint state any valid claim for relief.*") SLOAN CONST. v. Southco Grassing, 2008.

Whether under Rule 12(b) or Rule 12(c), the Court seems to have adopted the criteria for dismissal to be if, under any set of facts, the Respondent could be found to have not done as alleged, then he is entitled to dismissal of any claims against him. Appellant avers such a pleading standard fits the Court's Order to a T. The importance of this observation cannot be understated for under such pleading standards anarchy results.

This case is resolved simply. Let the Respondent answer the filed Amended Complaint, produce the unprivileged electronic messages having anything to do with Appellant, then file for summary judgment if he dares.

Since the Court insists on reference to the original Complaint, Appellant draws the Court's attention to the fact Respondent's pleading the affirmative defense of "truth" encumbers justice to demand Respondent answer the filed Amended Complaint and delete such an unfounded, scrofulous accusation or come into court and meet his burden of proof.

Should this court fail to remand this matter, Respondent will have successfully used the Court to perpetuate further defamation of Appellant and the Court's findings will not be determined in a light most favorable to appellant as required. (Sloan, Ibid).

Opposing counsel has relegated these proceedings into a game of "word chess" worthy of the Bard himself. This case has become about whether opposing counsel can get her client off using legal minutia to avoid the merits of the case. Respondent has never denied he sent emails to William Fisk and David Woodard or even that they were defamatory. This is a clear perversion of the Rules of the court and cannot to be allowed. ("(f) *Construction of Pleadings. All pleadings shall be so construed as to do substantial justice to all parties.*" Rule 8(f) SCRCP).

If Respondent is ordered to produce the correspondence alleged (and allow deposition of Fisk, brother Woodard and Ross Collins in the event Respondent denies the allegation or fails to produce any discovery), this case will conclude swiftly, and justly.

Surely, it has not escaped the Court's discernment that should Respondent prevail Appellant's quality of life is damaged beyond repair. Appellant desperately needs this Court to dispense justice and he prays fervently this case will be remanded in regards to each claim and the venue be changed for obvious reasons. Appellant is completely and entirely innocent of Respondent's scurrilous accusations!

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

Respectfully submitted,

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