STATEMENT OF ISSUES ON APPEAL

I. **DID THE TRIAL COURT PROPERLY GRANT RESPONDENT HANNAH ELIZABETH COLLIER'S AND LINDA SMITH'S MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO RULE 12(C) BECAUSE APPELLANT'S COMPLAINT FAILS TO RAISE ANY ISSUES OF FACT THAT WOULD ENTITLE HIM TO RELIEF IF RESOLVED IN HIS FAVOR? YES**

STATEMENT OF THE CASE

On February 25, 2020, Appellant James Earl Tegeler ("Appellant") filed a Complaint against the Respondents Charlotte Collier ("C. Collier"), Hannah Elizabeth Collier ("H. Collier"), Linda Smith ("Smith"), and Northgate Baptist Church ("Northgate"). In the 215 paragraph Complaint, Appellant asserts the following four (4) causes of action against the Respondents, C. Collier, H. Collier, and Smith: defamation, negligent infliction of emotional distress, intentional infliction of emotional distress, and civil conspiracy. On March 30, 2020, H. Collier and Smith filed their initial Answer. On April 27, 2020, H. Collier and Smith filed an Amended Answer and Motion to Dismiss pursuant to Rule 12(c), *SCRCP* and/or Rule 12(b)(6), *SCRCP*. On August 17, 2020, H. Collier and Smith filed a Memorandum in Support of their Motion to Dismiss.

On August 18, 2020, a hearing was held before the Honorable Alex Kinlaw, Jr. Counsel for all parties appeared and presented oral arguments. By Form 4 Order filed August 18, 2020, and by formal Order filed September 8, 2020, this Court dismissed the Complaint against H. Collier and Smith pursuant to Rule 12(c), *SCRCP*. Prior to the issuance of the formal Order, Appellant filed a Motion for Reconsideration on August 28, 2020 along with numerous affidavits that were untimely filed and an Amended Motion for Reconsideration on September 14, 2020 pursuant to Rule 59(e) and Rule 60(b), *SCRCP* asserting arguments not raised at the hearing.

On September 14, 2020, Appellant filed an Amended Motion for Reconsideration to Alter or Amend the Judgment and Motion for Relief from Judgment which contained additional untimely exhibits and waived arguments. On October 9, 2020, H. Collier and Smith filed a Reply to Appellant's Amended Motion to Reconsider. On November 10, 2020, the lower court issued an Order denying Appellant's Amended Motion for Reconsideration as to H. Collier and Smith.

On November 19, 2020, Appellant filed a Notice of Appeal. H. Collier and Smith submit their response to Appellant's Brief as to the matters related to H. Collier and Smith.[1]

FACTS

H. Collier, an eighteen (18) year old student, was a member of a worship team led by the Appellant, a 50+ year old male and an employee of Northgate Baptist Church. (Pl's Comp. ⁋⁋ 21, 25). Appellant formed a mentor relationship with H. Collier, (Pl's Comp. ⁋ 27), and the following is a summary of Appellant's action pursuant to this so-called mentor relationship as described by the Complaint: (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 Appellant. (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 Appellant (Pl.'s Comp. ⁋ 64); and, (7)

[1] The legal issues, arguments, and interests of H. Collier, Smith and Charlotte Collier have been the same through the course of this litigation. H. Collier and Smith hereby incorporate the legal issues and arguments raised in Charlotte Collier's Initial Brief to the extent they are not inconsistent with their legal issues and arguments.

inviting H. Collier to a family birthday party and correcting a violation of Appellant's cell phone rules (Pl.'s Comp. ⁋ 59).[2]

On March 12, 2018, after the foregoing events, H. Collier and her mother, C. Collier, met in private with the head pastor of Northgate Baptist Church, Dr. Barry Jimmerson. (Pl's Comp. ⁋ 63). H. Collier informed Dr. Jimmerson that she believed Appellant's conduct and relationship with her was "inappropriate." (Pl.'s Comp. ⁋ 59) (hereinafter the "Statement"). According to Appellant's Brief, it was this "insidious language," which was made in private with the pastor of Northgate, that caused Appellant to be terminated from his position as a music minister and ruin his life.

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 Appellant; (2) that she did not believe Appellant had any romantic interest, romantic feelings, romantic aspirations toward, or any of the above toward her; and, (3) that she never had any sexual, or intimate relations with Appellant. (Pl's Comp. ⁋⁋ 60-61).

On March 13, 2018, Appellant met with Jimmerson and other staff members at a staff meeting and reported that his mentorship role with H. Collier had deteriorated in a drastically short period of time. (Pl's Comp.⁋ 63). At this meeting, Appellant shared a text message from H. Collier with Dr. Jimmerson and other staff members in which H. Collier expressed daughterly affection and respect towards Appellant as a mentor. (Pl's Comp. ⁋ 64). On March 14, 2018, Appellant had a meeting with Dr. Jimmerson and Laurel Shaler, the chairman of Northgate's personnel committee, in which Dr. Jimmerson shared with Appellant his previous conversations

[2] If the Court were to allow consideration of the Appellant's Affidavit filed after the lower Court's order in this case, said Affidavit and the accompanying Exhibits, including the text messages attached thereto, provide further proof that the relationship was inappropriate. (See Tegeler Aff. filed August 28, 2020).

with H. Collier and C. Collier. (Pl.'s Comp. ¶ 66). Dr. Jimmerson admitted to Appellant and Shaler that he did not believe Appellant's mentorship of H. Collier or the text message from H. Collier to Appellant supported or warranted the allegation that Appellant had an inappropriate relationship with H. Collier. (Pl's Comp. ¶ 68). However, according to the Appellant, Laurel Shaler perceived the text message from Appellant to H. Collier that Appellant showed to Shaler, was indicative of Appellant having a sexual relationship with H. Collier. (Pl's Comp. 72).

Ms. Shaler also alleged that Appellant had inappropriate contact with young girls *other than* H. Collier. (Pl.'s Comp. ¶ 74). Based upon Shaler's accusation that the Appellant had inappropriate contact with young girls, Dr. Jimmerson and a parishioner of the Church also believed Appellant had inappropriate contact with young girls in the congregation and Shaler presented Northgate's view of H. Collier as a "child, minor or both outright accusing [Appellant] being akin to a pedophile and child molester on baseless grounds (Pl's Comp. ¶ 93, 96). Subsequent to a vote of "no confidence" by the Church, Ms. Shaler asked for Appellant's resignation and presented a separation agreement for Appellant to sign. (Pl's Comp. ¶¶ 95, 97).

As to Smith, Appellant's allegation against her was that on March 12, 2018, Smith "promulgated to third parties inside and outside the congregation of Defendant CHURCH the allegations of C. Collier and H. Collier" that Appellant had an inappropriate relationship with H. Collier based upon Appellant's inappropriate behavior at a family-friendly social event. (Pl's Comp. ¶ 83). And then, based upon this portrayal by H. Collier, C. Collier, and Smith, Shaler and other church members shunned the Appellant. (Pl's Comp. ¶ 84).[3]

Appellant's Complaint fails to identify the actual statement(s) made by Smith or any of the alleged third parties. Appellant attempted to rescue his failure to identify who or what was

[3] Appellant's Brief (p. 11, 2nd ¶) says that Smith was involved in the meeting between H. Collier, C. Collier, and Jimmerson, citing Pl's Comp. ¶ 83-84. That is not what ¶ 83 and 84 allege. Furthermore, Appellant's Brief (p. 5, 1st ¶) says Smith reported Appellant to Northgate, citing ¶59-62 of the Complaint. Again, that is not what the Complaint states and is not supported by any other statements or documents.

said by Smith by filing Affidavits after the issuance of the Order dismissing his case. Notwithstanding that these Affidavits are not properly before the Court, none of the Affidavits indicate that what was said by H. Collier or Smith led to Appellant's termination. The Affidavit of Roy Sabean says that Linda Smith called him after Appellant was fired to tell him Appellant had an inappropriate relationship with H. Collier. (Sabean Aff. ⁋⁋ 11-12). The Affidavit of Sue Lutz says that her friend, "Judy," told her that Linda Smith said that Appellant had an inappropriate relationship with H. Collier after Appellant was fired. (Lutz Aff. ⁋ 14). Both Affidavits indicate that neither Affiant believed Smith nor put any credibility in Smith's statement. Also, neither Affidavit says that Smith stated nor even implied that the relationship was sexual.

As a result of the foregoing, there is no factual dispute that H. Collier ever told or even insinuated to Dr. Jimmerson that Appellant had an inappropriate sexual relationship with H. Collier and there is no factual dispute that Jimmerson ever believed the nature of the relationship was sexual. Additionally, there is no factual dispute that Smith told anyone that the relationship was sexual in nature and there is no factual dispute that the people she told believed the relationship was sexual. Rather, according to Appellant, the Church misinterpreted the Statement, and failed to properly investigate the Statement, which led to his termination. H. Collier and Smith cannot be held liable for others misinterpretation of the Statement.

STANDARD OF REVIEW

On review of a motion to dismiss on the pleadings, the appellate tribunal applies the same standard of review that was implemented by the trial court as to Rule 12(b)(6) or Rule 12(c), SCRCP. *See Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct.App.2001); *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007).

On appeal from the grant of a motion to dismiss for failure to state facts sufficient to constitute a cause of action, appellate courts are concerned only with whether the allegations of the complaint, which must be accepted as true, state a cause of action. Rule 12(b)(6), SCRCP; *Chestnut v. AVX Corp.*, 413 S.C. 224, 776 S.E.2d 82 (2015).

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).

Rule 56, *SCRCP*

Appellant devotes an entire section of his brief to Rule 56, *SCRCP*; however, Rule 56, SCRCP does not apply because the Court made its ruling pursuant to Rule 12(c), only, and did not consider any evidence outside of the Complaint.

Rule 60, *SCRCP*

Appellant devotes another section of his brief to Rule 60, *SCRCP*. While Appellant did file a Motion to Alter or Amend the Judgment pursuant to Rule 60 along with its Motion to Reconsider pursuant to a Rule 59(e) motion, the Rule 59(e) motion is the proper rule when timely filed because it allows the Court to reconsider all matters considered in its decision on the merits. A review pursuant to Rule 60(b) is limited to one of the five (5) reasons listed under

Rule 60(b). None of the five (5) reasons apply, but in any event, a review under Rule 60(b) would be limited to a review of Rule 60, only. Since the Court did not review the motion pursuant to Rule 60, this argument is moot, and furthermore, such limited review would actually be to Appellant's detriment.

Amendment of the Appellant's Pleadings

Appellant discusses at length how he should be entitled to Amend his Pleadings. Appellant never filed a Motion to Amend his Complaint, and therefore, the issue is waived and not properly before this Court. Furthermore, as set forth in the Brief of C. Collier, Appellant has been allowed to submit voluminous briefs, exhibits, and affidavits in support of his Complaint and in opposition to the Respondents' motions. If there was any error on the part of the lower court to not allow the Appellant *sua sponte* to amend his pleadings, any error was harmless. The Appellant has had his opportunity to fully plead his case, and he failed.

ARGUMENT

I. THE TRIAL COURT PROPERLY GRANTED RESPONDENT HANNAH ELIZABETH COLLIER'S AND LINDA SMITH'S MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO RULE 12(C) BECAUSE APPELLANT'S COMPLAINT FAILS TO RAISE ANY ISSUES OF FACT THAT WOULD ENTITLE HIM TO RELIEF IF RESOLVED IN HIS FAVOR.

The Appellant's asserted causes of action for (A) Defamation, (B) Intentional Infliction of Emotional Distress, (C) Negligent Infliction of Emotional Distress, and (D) Civil Conspiracy fail pursuant to Rule 12(c), SCRCP. Each cause of action fails under Rule 12(c), *SCRCP*.

(A) Defamation

To recover for defamation, the Appellant 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. The statement was true and not defamatory; the statement was privileged; there was no fault in publishing the statement; and, the statement is not actionable itself or special harm caused by the publication.

Furthermore, Appellant's allegations as to Smith was that she told unidentified third parties that Appellant had an inappropriate relationship with H. Collier. The Complaint fails to allege what Smith said, who the "hearers" of the statement(s) were, or that what Smith did caused any damage to Appellant.

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

If the Statement was not an opinion, then it was true. H. Collier's statement to Dr. Jimmerson and Smith's alleged statement to a third party that Plaintiff had an inappropriate relationship with her were true. As set forth above in Respondents' statement of facts, the following is a summary of what actions Appellant took pursuant to this so-called mentor relationship as described by the Complaint: (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 Appellant. (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 Appellant (Pl.'s Comp. ¶ 64); and, (7) inviting H. Collier to a family birthday party and correcting a violation of Appellant's cell phone rules (Pl.'s Comp. ¶ 59).

H. Collier filed an Affidavit on August 17, 2020 with attached text messages from the Appellant. These texts, along with the texts filed by the Appellant on August 28, 2020, provide additional proof outside of the four (4) corners of the Complaint that the relationship was inappropriate. For example, Appellant texted H. Collier as follows:

> Hey Princess. While I'm falling asleep I was thinking of you and how thankful I am to have you in my life….I love you so much and I can't wait for our first family Christmas together! You're a sweetie pie and a cutie pie all mixed into

> one amazing person. I'm so proud to have you in my life, and I can't get enough of ya!! I'll snap you in the Am! I love you my sweet, awesome Ninja Princess Daughter!!!
>
> Here is my letter to wake up to, Princess (heart emoji) Btw, you fell asleep on my shoulder tonight which was really special to me. I can't tell you how much you mean to me. I had one of the best days of my life. I really enjoyed just getting to ride with you, and chat with you and laugh with you. I enjoyed that so much. And then to get to hold your hand, and go ice-skating, and eat dinner with your family, and have you fall asleep on my shoulder created some really special memories for me….
>
> Hannah. Princess. Sweetie Pie. I love you….I promise to never stop loving you. Ever. You are the sweetest, most precious thing that's ever happened in my life, other than my children being born. That's you baby girl. I hope you know how special you are to me. Sometimes I hold your blanket that here and close my eyes and smell your smell, and hope that when I open my eyes you are here.

Based upon the foregoing, and the texts from Appellant to H. Collier, the relationship was inappropriate and the statement was true.

Not a 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, and therefore, susceptible to only one meaning. A defamatory statement *per quod* has a defamatory meaning through referring to facts or circumstances beyond the statement itself or innuendo. *Parrish v. Allison*, 376 S.C. 308, 321, 656 S.E.2d 382, 389 (Ct. App. 2007).

Plaintiff's entire Complaint is premised on the Statement meaning that Appellant had a sexual relationship with H. Collier. Appellant cites numerous definitions in her Complaint about the definition of "inappropriate contact" and "inappropriate relationship." However, Appellant concedes that the Statement is not a defamatory statement on its face because he admits that H. Collier denied that the relationship was sexual, but when the Statement was conveyed by Dr. Jimmerson to Shaler, it was then misinterpreted to mean something worse. (Pl's Comp. ¶ 72, 74,

93, and 96). Therefore, "[i]f 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 on innuendo. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508-509, 506 S.E.2d 497, 501 (1998). A statement is classified as "defamatory per quod" when the defamatory meaning is not clear unless the hearer knows facts or circumstances not contained in the statement itself, and the plaintiff must introduce extrinsic facts to prove the defamatory meaning. *Erickson v. Jones Street Publishers, L.L.C.*, 629 S.E.2d 653 (S.C. 2006).

Plaintiff cannot get around his admission in his Complaint that Dr. Barry Jimmerson, the "hearer" of the statement, did not believe Plaintiff engaged in a sexual or romantic relationship with Hannah Collier and his admission that Hannah Collier denied to Dr. Jimmerson that the relationship was romantic sexual. The Appellant's cause of action for defamation ends here – even before you analyze the defenses of opinion, truth, and qualified privilege. If Dr. Jimmerson did not believe the Statement meant that the Plaintiff had a sexual relationship with H. Collier, then Plaintiff cannot prove that Dr. Jimmerson knew facts or circumstances to support the alleged defamatory meaning.

Furthermore, based upon the foregoing, the Court correctly decided this issue as a matter of law, and it was not necessary for this issue to go before a jury.

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).

Therefore, 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 Appellant's own admission, subsequent to March 12, 2018, the Statement was misinterpreted by the Church to mean that Appellant had a sexual relationship with Appellant. A statement's meaning based upon a misinterpretation of the same cannot be actionable *per se* because it does not directly charge the Appellant with one of the five characteristics or acts. Therefore, since the Statement is not actionable *per se,* the Appellant must prove actual malice.

Appellant fails to present facts that support a finding of actual malice. By Appellant's own admission, the Statement was made in private by a member of the Church, H. Collier, to the head pastor, Dr. Jimmerson. As to Smith, even if the Court were to consider the Affidavits submitted after the Court's Order, the Statement was made to two individuals after Appellant

was terminated who did not believe that Appellant had a sexual relationship with H. Collier. The facts pled do not provide evidence of ill will by H. Collier or Smith, a desire to purposely injure the Appellant with the Statement, or to publish the Statement with reckless disregard towards Appellant.

In summary, the Statement is not defamatory. It is not defamatory *per se* or *per quod*, neither was it actionable per se or made with malice. And the lower Court properly made this determination as a matter of law. This is not an issue for the jury.

Qualified Privilege and No Fault in Publication

The Statement is subject to 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.* 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, the Statement was made in good faith, with proper motives, in private, and to the proper party – Appellant's supervisor, Dr. Jimmerson. Therefore, it qualifies as a privileged communication. It is reasonable that a member of the Church would go to the pastor or other authority within the Church to report behavior they believed was inappropriate, especially when Appellant was in position of authority over H. Collier.

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

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

(B) 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 and advised Dr. Jimmerson that she did not want Appellant to get in trouble. Again, according to Appellant, Dr. Jimmerson did not believe that the relationship was sexual. Smith allegedly made the Statement to third parties. Smith did not state or imply that the relationship was sexual.

Accordingly, Appellants 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), *SCRCP*.

(C) 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).

According to the Appellant'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). Appellant's Complaint then states that "each Defendant individually and collectively as joint and several tortfeasors, have caused Appellant damages." (Pl's Comp. ¶ 214). Appellant's blanket statements of a civil conspiracy do not constitute facts sufficient to create such a cause of action. Appellant's allegations do not specify how Smith and H. Collier conspired with each other or any other party for the purpose of injuring Appellant. Therefore, this cause of action must be dismissed pursuant to Rule 12(c).

(D) Negligent Infliction of Emotional Distress

To prove a cause of action for negligent infliction of emotional distress with the following elements, the Appellant 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 v. Augusta Sash & Door Co.*, 286 S.C. 579, 582–83, 336 S.E.2d 465, 467 (1985).

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 must be dismissed pursuant to Rule 12(c), *SCRCP*.

CONCLUSION

Based upon the foregoing, Respondents Hannah Elizabeth Collier and Linda Smith ask this Court to affirm the lower court's decision.

Respectfully submitted,

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