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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable R. Lawton McIntosh, Circuit Court Judge
Trial Case No. 2015-CP-07-02937

Appellant Case No. 2020-001126

Kim Likins, ...Respondent/Appellant,

v.

C.C. "Skip" Hoagland,.....Appellant/Respondent.

RESPONDENT'S BRIEF OF RESPONDENT/APPELLANT KIM LIKINS

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II. **Whether the unappealed circuit court order prohibiting certain pretrial communications regarding the lawsuit was an unconstitutional restraint on Appellant/Respondent's First Amendment right to free speech when the order was entered following Appellant's violation of court orders and the circuit court determined the narrowly tailored order was necessary to preserve the decorum and integrity of court proceedings.**

III. **Whether the circuit court acted within its discretion in finding Appellant/Respondent in contempt of a court order and sanctioning Appellant/Respondent for his undisputed violations of the unappealed order prohibiting certain pretrial communications.**

STATEMENT OF THE CASE

Respondent/Appellant Kim Likins ("Likins") filed this case against Appellant/Respondent C.C. "Skip" Hoagland ("Hoagland") on December 10, 2015, in the Beaufort County Court of Common Pleas. **(Compl., R. pp. 51-57).** The Complaint stated causes of action for an injunction seeking to stop the harassment and interference with Likins' employment, defamation, outrage/intentional infliction of emotional distress and invasion of privacy. **(Compl., R. pp. 51-57)** At the same time Likins filed the Complaint, she filed a Motion for a Temporary Injunction seeking an order precluding Hoagland from continuing his actions directed at having her fired from her position at the Boys & Girls Club during the pendency of the lawsuit. **(Pl. Mot. dated 12-10-15, R. pp. 814-821).** The circuit court held a hearing on December 11, 2015, on the Motion for Temporary Injunction. **(Hr'g Tr. 12-11-15, R. pp. 822-843).** Counsel for Hoagland and Likins were both present and the parties agreed to a consent order restraining and enjoining Hoagland from interfering with her employment at the Boys & Girls Club. **(Order dated 12-21-15, R. pp. 46-47).** Hoagland filed an Answer on March 3, 2016. **(Answer, R. pp. 86-90)**. On June 29, 2016, Likins filed a Motion for Rule Show Cause and to Hold Defendant in Contempt of Court of the

Order filed December 21, 2015. **(Pl. Mot. dated 6-29-16, R. pp. 743-748)**. On September 1, 2016, the circuit court entered a Rule to Show Cause directing Hoagland to show cause why he should not be held in contempt. **(Rule to Show Cause dated 9-1-16, R. p. 45)**. After a hearing, the circuit court entered a consent order resolving the issue. **(Order dated 9-8-16, R. pp. 43-44)**. That consent order included an admission by Hoagland that Hoagland had violated the order dated December 21, 2015, and reaffirmed that he was required to abide by that order. **(Order dated 9-8-16, R. pp. 43-44)**.

On March 27, 2017, Likins filed a Motion for Sanctions arising out of Hoagland's e-mail disclosure to members of the media, elected officials, members of the S.C. Ethics Commission, and others that Likins demanded $500,000 during a confidential mediation. **(Pl. Mot. dated 3-27-17, R. pp. 674-684).** The circuit court denied the motion for sanctions but *sua sponte* entered an order prohibiting certain pretrial communications. **(Form 4 Order dated 6-2-17, R. pp. 39-42) (Order dated 11-8-17, R. pp. 26-27)** (the "gag order"). That order provided in pertinent part that the parties and their attorneys were prohibited from making any extra-judicial comments to the media and any third parties about any aspect of the case until the conclusion of the case. **(Order dated 11-8-17, R. pp. 26-27).** Hoagland did not appeal the gag order at the time it was entered, nor has he included it in this appeal. See **(Notice of Appeal, R. pp. 1614-1615)**.

On January 4, 2018, Likins filed a Motion for Order and/or Rule Show Cause alleging violations of the gag order. **(Mot. dated 1-4-18, R. pp. 543-544).** On January 24, 2018, the circuit court entered a Rule to Show Cause requiring Hoagland to appear and show cause as to why he should not be held in contempt. **(Rule to Show Cause dated 1-24-18, R. p. 45).** Hoagland appeared on January 30, 2018 but elected not to testify or justify his actions that clearly violated the gag order. **(Hr'g Tr. 1-30-18, R. p. 862 ll. 16-18); (Order dated 2-7-18, R. p. 22).** The

circuit court found by clear and convincing evidence that Hoagland violated the gag order and that Hoagland's violations of the gag order were willful. **(Order dated 2-7-18 p. 2, R. p. 22).** The circuit court held in abeyance whether the contempt was criminal or civil and the appropriate punishment. **(Order dated 2-7-18, R. p. 22).**

The case was set for trial on March 9, 2020. Hoagland did not appear for trial. Hoagland's counsel informed the court that it was Hoagland's intention to be absent during the trial proceedings. **(Trial Tr., R. p. 897, ll. 19-23)** ("THE COURT: . . . For the record, Mr. Hoagland is not present and through Mr. Brewer has advised the Court that his intent was not to be present today; isn't that correct, Mr. Brewer? MR. BREWER: That's correct, Your Honor.").

Prior to the beginning of the trial, Likins reached a settlement with Hoagland's insurance carrier for $400,000, which did not include a release of any claims against Hoagland. **(Trial Tr., R. p. 894, l. 4-p. 895-23).**[1] Having resolved the case with Hoagland's insurance carrier, Likins elected to proceed with a non-jury trial as to her cause of action for an injunction. **(Trial Tr., R. p. 895 l. 24- p. 896, l. 24).** Following the trial, the circuit court entered an order denying Likins' request for a permeant injunction finding that "(1) Plaintiff has an adequate remedy at law and (2) that an injunction may violate Hoagland's First Amendment right to free speech." **(Order dated 8-4-20, R. p. 17).**

In that same order, the circuit court found Hoagland in civil contempt and criminal contempt for repeatedly violating the gag order; ordered Hoagland to pay legal fees of $2,788.50 to Gregory Alford and $3,315.00 of legal fees to Walker Gressette Freeman & Linton, LLC as a

[1] The settlement with Hoagland's insurance carrier also resolved a related case against Hoagland's insurance company captioned Kim Likins v. Privileged Underwriters Reciprocal Exchange et. al., 2018-CP-07-01562 **(Trial Tr., R. p. 894, l.22-p. 895, l. 8; p. 897, ll.1-2).**

sanction for civil contempt; and sentenced Hoagland to 30 days of incarceration and a $2,500 fine for criminal contempt.[2] **(Order dated 8-4-20, R. pp. 7-20).**

Hoagland filed a Motion to Reconsider the Court's Order of August 4, 2020. **(Hoagland Mot. dated 8-10-20, R. pp. 108-114).** The circuit court denied that motion via Form 4 Order dated August 12, 2020. **(Form 4 Order dated 8-12-20, R. pp. 4-6).** Hoagland filed a Notice of Appeal as to the Orders dated August 12, 2020, August 4, 2020, and February 7, 2018. **(Notice of Appeal dated 8-13-20, R. pp. 1614-1615).** Hoagland did not appeal the Order dated November 8, 2017.

Likins filed a Motion to Reconsider, Alter or Amend the portion of the order denying the permanent injunction, and alternatively for relief from a stipulation. **(Pl. Mot. dated 8-13-2020, R. pp. 92-107).** The Court denied Likins' Motion via Form 4 Order dated August 24, 2020. **(Form 4 Order dated 8-24-20, R. pp. 1-3)**. Likins timely filed a notice of appeal of the Form 4 Order dated August 4, 2020 and the Order dated August 24, 2020. **(Notice of Appeal dated September 2, 2020, R. pp. 1616-1617)**. Now before this Court are the consolidated appeals filed by Likins and Hoagland.

FACTS[3]

Kim Likins was hired in 2008 by the Boys & Girls Club of Hilton Head as its Executive Director. **(Trial Tr., R. p. 910, ll. 1-6).** Her role includes significant interaction with children. **(Trial Tr., R. p. 1039, ll. 13-20).** Her duties also involve appearing in the community to promote

[2] This sentence was suspended upon 100 hours community service and payment of a $1,000 fine, provided Hoagland paid the $1,000 fine and began community service within 30 days of the filing of the order. **(Order dated 8-4-20, R. pp. 7-20).**

[3] An additional, more expansive recitation of the facts can be found in the Appellant's Brief of Respondent/Appellant Kim Likins.

the mission and image of the Boys & Girls Club[4]. **(Trial Tr., R. p. 1009, ll. 13-20).** In 2010, the Plaintiff was elected to the position of a Town Council Member for the Town Council for the Town of Hilton Head Island (the "Town"). **(Trial Tr., R. p. 912, ll. 9-18).** She served until the end of her term in 2018 but no longer holds office. **(Trial Tr., R. p. 912, ll. 9-18).**

The Town of Hilton Head collects and distributes Accommodations Tax (ATAX) pursuant to state and local law. **(Trial Tr., R. p. 914, ll. 6-15).** Each year the Town Council must approve of the distribution of the ATAX funds including the thirty percent (30%) mandated to be distributed to the Designated Marketing Organization ("DMO") for the participating jurisdiction. **(Trial Tr., R. p. 912, ll. 9-18);** see also, S.C. Code § 6-4-10. The Hilton Head Island-Bluffton Chamber of Commerce ("Chamber") has received funds as the Town's DMO for many years. **(Trial Tr., R. p. 914, ll. 18-21)**. In 2015, the Town and the Chamber began to negotiate a contract to further define their relationship that included metric-based performance standards, auditing requirements, and increase the oversight of the DMO's performance. **(Trial Tr., R. p. 914, l. 22-p. 916, l. 1).**

Hoagland had a successful career in internet domain names. **(Pl. Ex. 37, R. p. 1423, l. 22-p. 1424, l. 20)**. However, he has conveyed all his business interests and assets to his wife and sister and his only source of funds is an allowance his wife provides him when he needs money. **(Pl. Ex. 37, R. p. 1420, ll. 5-9; (Pl. Ex. 37, R. p. 1422, ll. 8-20); (Pl. Ex. 37, R. p. 1421, ll. 4-12); (Pl. Ex. 37, R. p. 1418, ll.7-11)** ("Actually, I don't own anything, so my sister and my wife do that. They own my company. And I don't own the house there and I don't own the house there in Hilton Head as well.").

[4] The Boys & Girls Club of the Lowcountry and the Boys & Girls Club of Hilton Head Island are sometimes collectively referred to herein as the Boys & Girls Club.

Hoagland, a resident of Florida who does not live in the Town, is opposed to the Chamber and the Town's relationship with the Chamber. **(Trial Tr., R. p. 913, ll. 21-23) (Trial Tr., R. p. 913, l. 24-p. 914, l. 5) (Pl. Ex. 37, R. p. 1417, ll. 16-22); (Pl. Ex. 37, R. p. 1418, ll. 2-11); (Pl. Ex. 37, R. p. 1419, ll-24).** In 2015, he asserted, among other things, that the contract between the Town and the Chamber needed to include a requirement for a forensic audit. See e.g., **(Trial Tr., R. p. 926, 1. 22- p. 927, l. 9); (Pl. Ex 6, R. pp. 1357-1358).** Hoagland has appeared, and continues to appear, at council meetings, asserting his positions during the public comment portion of the meetings. **(Trial Tr., R. p. 913, ll. 5-11).**

In July of 2015, Hoagland sought to influence the way Likins might vote on the proposed contract between the Town and the Chamber. See generally, **(Pl. Ex. 1, 3, 4, R. pp. 1351, 1353-1354); (Trial Tr., R. p. 916, ll. 5-25); (Trial Tr., R. p. 919, l. 21- p. 921, l. 2); (Trial Tr., R. p. 921, l. 19-p. 922, l. 20).** Hoagland was relentless in his pursuit of influencing Likins by any means necessary. See **(Trial Tr., R. p. 921, ll. 16-18); (Trial Tr., R. p. 923, ll. 5-7); (Trial Tr., R. p. 917, ll. 1-25); (Trial Tr., R. p. 923, l. 8-p. 924, l. 6); (Trial Tr., R. p. 928, l. 14- p. 929, l. 11); (Trial Tr., R. p. 926, l. 3-p. 927, l. 9); (Pl. Exs. 5, R. p. 356, and 8, R. pp. 1359-1360).**

At the November 17, 2015, Town Council meeting, Likins voted in favor of the proposed contract that provided for greater accountability of the Chamber, which passed. **(Trial Tr., R. p. 931, ll. 15-17); (Trial Tr., R. p. 937, l. 8); (Trial Tr., R. p. 932, l. 23-p. 935, l. 7).** Hoagland immediately sought to punish Likins for not caving to his pressure. He tried, among other things, to get Likins fired from her job with the Boys & Girls Club. **(Trial Tr., R. p. 949, ll. 3-16); (Trial Tr., R. p. 939, l. 3-p. 940, l. 12); (Pl. Ex. 14, R. p. 1369); (Pl. Ex 15, R. pp. 1370-1371); (Trial Tr., R. p. 940, l. 19-p. 941, l. 11).** His actions included running ads in the local newspaper stating that she is not fit to be around children, and sending numerous e-mails stating that Likins was a

liar and not fit for her job. See e.g., **(Pl. Exs. 16, 17, 18, 19, 21, 105, 108, 108A, R. pp. 1372-1380, 1467-1471); (Trial Tr., R. p. 944, ll. 14-25); (Trial Tr., R. p. 945, ll. 10-16) (Trial Tr., R. p. 945, l. 25- p. 946, l. 25); (Trial Tr., R. p. 947, ll. 7-20); (Trial Tr., R. p. 948, l. 18-p. 949, l. 19); (Trial Tr., R. p. 954, ll. 11-21).**

Hoagland even contacted several members of the Board of Directors of the Boys & Girls Club and demanded that Likins - an exemplary employee of the Boys & Girls Club - be fired because she was unfit and dangerous to be around children. See **(Trial Tr., R. p. 1042, l. 6-1043, l. 10); (Trial Tr., R. p. 1043, ll. 1-3); (Trial Tr., R. p. 1016, ll. 18-20; p. 1019, l.19- p. 1020, l. 2); (Trial Tr., R. p. 1028, l. 11)**; **(Trial Tr., R. p. 1022, ll. 7-10)**.

Even though he communicated to the leadership of the Boys & Girls Club that Likins was dangerous to be around children and unfit for her job, Hoagland admitted he did not know Likins' job responsibilities at the Boys & Girls Club, that he had no idea of her abilities to carry out her responsibilities as an employee. **(Pl. Ex. 37, R. p. 1439, l. 21-p. 1440, l. 25)** (Hoagland conceding he did not know Likins' job responsibilities or have any information related to her interaction with children). Hoagland has further admitted that, to his knowledge, Likins was a good person and was a good employee. See e.g., **(Pl. Ex. 37, R. p. 1443, ll. 2-4)** ("I assume she does a great job. I assume she is a good employee. I would not try to convince you otherwise."); **(Trial Tr., R. p. 930, ll. 15-19); (Trial Tr., R. p. 931, ll. 1-6); (Trial Tr., R. p. 1007, ll. 16-24).**

The Boys & Girls Club took the allegations seriously, investigated the allegations and determined them to not be credible and decided not to terminate Likins. **(Trial Tr., R. p. 957, ll. 6-8); (Trial Tr., R. p. 1023, l. 21-p. 1025, l. 25); (Trial Tr., R. p. 1049, l. 16- p. 1050, l. 5); (Pl. Ex. 23, R. pp. 1389-1390); (Pl. Ex 37, R. p. 1452, ll. 17-18).** Hoagland has been and continues to be relentless and has stated an intention to continue harassing Likins regardless of the outcome

of this lawsuit. See generally, **(Trial Tr., R. p. 949, ll. 13-19); (Trial Tr., R. p. 964, l. 5-7); (Trial Tr., R. p. 898, ll. 4-7)**; **(Pl. Ex. 37, R. p. 1444, l.6- p. 1445, l. 3); (Pl. Ex. 37, R. pp. 1431, l. 18-1432, l. 10); (Pl. Ex. 37, R. p. 1433, ll. 20-25)** (" . . . After this lawsuit, it will continue. Today after the town council, it will continue. I might have to call Kim a liar and I might have to call her the same thing after this lawsuit is over. It's not going to stop until it is cleaned up and it ends.").

Likins filed this action and a Motion for Temporary Injunction on December 10, 2015, approximately one week after Hoagland began contacting board members of the Boys & Girls Club and demanding that Likins be fired. See **(Compl., R. pp. 51-57); (Pl. Mot. dated 12-10-15, R. pp. 814-816).** Hoagland consented to a Temporary Injunction, which restrained and enjoined him as follows:

> 1. Defendant will not publish any statement to any third party about Plaintiff's employment at the Boys and Girls Club.
>
> 2. Defendant will make no statement to any third party referring to Plaintiff's fitness for her job or her fitness to be around children.
>
> 3. Defendant will not refer to Plaintiff's employment with the Boys and Girls Club in any statements made to a third party.

(Order dated 12-21-15, R. pp. 46-47). From the outset of the case, Hoagland demonstrated a total disregard for the circuit court's orders. In fact, Hoagland violated the consent order quoted above. **(Rule to Show Cause dated 9-1-16, R. p. 45); (Order dated 9-8-16, R. pp. 43-44)**. After Hoagland violated that order, the parties entered into a Consent Order on September 8, 2016, wherein Hoagland acknowledged the violation and agreed to comply with it in the going forward. **(Order dated 9-8-16, R. pp 43-44)**. At the same time Hoagland signed a settlement agreement agreeing to pay the costs and attorneys' fees associated with the September 8, 2016 Consent Order. See **(Pl. Mot. dated 11-15-16, Ex. B, R. p. 695)**.

Following court required mediation of the case, Likins filed a Motion for Sanctions because Hoagland published her settlement demand, which was made only in the confines of a mediation, to numerous third-parties via e-mail. **(Pl. Mot. dated 3-27-17, R. pp. 674-684)**; see also SCRADR Rule 8 ("[a]ny mediation communication disclosed during a mediation, including, but not limited to, oral, documentary, or electronic information, shall be confidential, and shall not be divulged by anyone in attendance at the mediation or participating in the mediation . . . .").

The circuit court denied the Motion for Sanctions, but entered the gag order. **(Form 4 Order dated 6-2-17, R. pp. 39-42); (Order dated 11-8-17, R. pp. 26-27).** That gag order provided as follows:

> 1. The parties, their attorneys and staff, consulted or retained experts as well as any other servants, agent and/or employees of the above are prohibited from making ANY extra-judicial comments about this case to the media and any third parties about any aspect of this action until a jury verdict has been returned.
>
> 2. Nothing contained in this Order is intended to be nor shall be construed as a prior restraint on the media's ability to report on this case.
>
> 3. Any and all communications between counsel of record shall be conducted solely by the attorneys and/or their staff. The parties are expressly prohibited from communicating directly or indirectly with or to opposing counsel. Nothing contained in this Order prohibits the parties from responding to opposing counsel's questions posed in deposition(s), answering discovery requests under the guidance of their counsel or participating in any subsequent hearing or trial.
>
> 4. This Order is not intended to prohibit legitimate, good faith communications with
> third parties (excluding the media) in the preparation of this case.
>
> 5. Nothing contained in this Order is intended to nor shall abridge any persons affected by this Order ability to exercise their First Amendment rights as long as by doing so they do not contravene the prohibitions contained herein.

(Order dated 11-8-17, R. pp. 26-27) (footnote omitted). No party moved for reconsideration of the gag order and no party has appealed that order.

After Hoagland repeatedly violated the gag order, Likins filed a Motion for a Rule to Show Cause on January 4, 2018. **(Pl. Mot. dated 1-4-18, R. pp. 543-545).**

There are numerous examples in the record of Hoagland's violation of the gag order. See **(Pl. Mot. dated 1-4-18, at Ex. B, R. pp. 548-673); (Pl. Memo dated 1-16-18 and the exhibits thereto, R. pp. 466-542); (Supplemental Aff. of Alford dated 1-29-2018 and exhibits thereto, R. pp. 1618-1664).** While not exhaustive, the communications attached to Likins' Motion for Rule to Show Cause and those attached to the Affidavits of Gregory M. Alford dated January 16 and 29 of 2018 are representative of the types of violations of the gag order. See **(Pl. Mot. dated 1-4-18, at Ex. B, R. pp. 548-673); (Pl. Memo dated 1-16-18 and the exhibits thereto, R. pp. 466-542); (Supplemental Aff. of Alford dated 1-29-2018 and exhibits thereto, R. pp. 1618-1664);** See also **(Hr'g Tr. 1-30-18, R. pp. 851-855).** Further, Hoagland even began sending his e-mails to the court:

> [THE COURT] . . . I will point out that not only has Mr. Hoagland written to opposing counsel about this case, he's decided to engage in the course of writing the Court about this case. In fact, I have two emails my law -- my assistant just sent me that apparently came in this weekend. One dated January 27, 2018 from Mr. Hoagland at 6:24 p.m. And then there was another January 26, 2018 at 5:36 p.m. from Mr. Hoagland.

(Hr'g Tr. 1-30-18, R. p.855, ll.1-8); see also, **(Hr'g Tr. 1-30-18, R. p. 856, l.18);** ("THE COURT: . . He's sending me emails."); **(Hr'g Tr. 1-30-18, R. p. 857, ll. 23-24);** ("THE COURT: . . . He's been emailing me."); **(Hr'g Tr. 1-30-18, R. p. 860, ll. 5-8); (Hr'g Tr. 1-30-18, R. p. 862, l. 25).** Hoagland does not dispute his conduct, including these communications, violated the terms of the Order dated November 8, 2017. See **(App./Resp.'s App. Br. at p. 16).**

A Rule to Show Cause was issued January 24, 2018 and a hearing was held on January 30, 2018. **(Rule to Show Cause dated 1-24-18, R. pp. 24-25); (Hr'g Tr. 1-30-18, R. pp. 845-887).** Hoagland appeared on January 30, 2018 and elected not to testify. **(Order dated 2-7-18, R. pp. 21-23); (Hr'g Tr. 1-30-18, R. p. 861, l.10-p. 862, l.20).** On February 7, 2018, the circuit court entered an order finding Hoagland in contempt of court, finding by clear and convincing evidence that the e-mails sent by Hoagland that were submitted in support of the contempt violated the gag order and the violations were willful. **(Order dated 2-7-18, R. pp. 21-23).** The circuit court also found Hoagland failed to present any evidence establishing a defense or inability to comply with the gag order. **(Order dated 2-7-18, R. pp. 21-23).** The order explained that among the e-mails submitted to the circuit court were examples of communications by Hoagland to numerous third parties about the subject matter of this case; communications by Hoagland directly to counsel for the Plaintiff; and an admission by Hoagland that he contacted a witness following her deposition in this case to discuss the questions posed to her at the deposition. **(Order dated 2-7-18, R. pp. 21-23).** Again, Hoagland does not dispute or defend this conduct, nor does he assert this conduct was not violative of the gag order.

While finding Hoagland in contempt, the circuit court held in abeyance, until the end of the case, the decision of whether to find him in civil contempt, criminal contempt, or both, as well as the appropriate punishment. **(Order dated 2-7-18, R. pp. 21-23).** The circuit court also noted that "Defendant's actions from now until the end of the case may inform the Court's ultimate decision." **(Order dated 2-7-18. R. pp. 21-23).**

The case was set for trial on March 9, 2020. Hoagland decided not to appear for trial. **(Trial Tr., R. p. 897, ll. 19-23).** Prior to the beginning of the trial, Likins reached a settlement with Hoagland's insurance carrier and elected to proceed only as to her cause of action for an

injunction. **(Trial Tr., R. pp. 894, l. 4-p. 895 l. 23); (Trial Tr. p., R. pp. 895, l. 24- 896, l. 24).** Following a non-jury trial, the circuit court entered an order denying Likins' request for a permeant injunction; finding Hoagland in civil contempt and criminal contempt; ordering Hoagland to pay legal fees of $2,788.50 to Gregory Alford and $3,315.00 of legal fees to Walker Gressette Freeman & Linton, LLC as a sanction for civil contempt; and sentencing Hoagland to 30 days of incarceration, and a $2,500 fine for criminal contempt.[5] **(Order dated August 4, 2020, R. pp. 7-20)**; see also, **(Aff. of John Linton filed March 17, 2020, R. pp. 1611-1613); (Aff. of Gregory Alford filed March 19, 2020, R. pp. 1608-1610).**

Hoagland filed a Motion to Reconsider the Court's Order of August 4, 2020. **(Hoagland Mot. dated 8-10-20, R. pp. 108-114).** The circuit court denied that motion via Form 4 Order dated August 12, 2020. **(Form 4 Order dated 8-12-20, R. pp. 4-6).** Hoagland filed a Notice of Appeal as to the Orders dated August 12, 2020, August 4, 2020, and February 7, 2018. **(Notice of Appeal dated 8-13-20, R. pp. 1614-1615).** Hoagland did not appeal the gag order. See **(Notice of Appeal dated 8-13-20, R. pp. 1614-1615).**

Likins filed a Motion to Reconsider, Alter or Amend the portion of the order dated August 4, 2020, denying the permanent injunction, and alternatively for relief from a stipulation. **(Pl. Mot. dated 8-13-2020, R. pp. 92-107).** The circuit court denied Likins' Motion via Form 4 Order dated August 24, 2020. **(Form 4 Order dated 8-24-20, R. pp. 1-3)**. Likins timely filed a notice of appeal of the Form 4 Order dated August 4, 2020, and the Order dated August 24, 2020. **(Notice of Appeal dated 9-2-20, R. pp. 1616-1617)**. Now before this Court are the consolidated appeals filed by Likins and Hoagland.

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[5] This sentence was suspended upon 100 hours community service and payment of a $1000 fine, provided Hoagland paid the $1000 fine and begins community service within 30 days of the filing of the order. **(Order dated 8-4-20, R. pp. 7-20).**

STANDARD OF REVIEW

The determination of contempt ordinarily resides in the sound discretion of the trial judge. See Rhoad v. State, 372 S.C. 100, 104, 641 S.E.2d 35, 37 (Ct. App. 2007) ("A determination of contempt ordinarily resides in the sound discretion of the trial court."). An appellate "court will reverse a trial court's decision regarding contempt only if it is without evidentiary support or is an abuse of discretion." Id. at 105, 641 S.E.2d at 37 (quoting First Union Nat'l Bank v. First Citizens Bank & Trust Co. of S.C., 346 S.C. 462, 466, 551 S.E.2d 301, 303 (Ct. App. 2001)); S.C. Code Ann. § 14-5-320 ("The [trial] court may punish by fine or imprisonment, at the discretion of the court, all contempt of authority in any cause or hearing before the same.").

ARGUMENT

I. The circuit court's order finding Hoagland in contempt of court and sentencing him should be affirmed because Hoagland cannot challenge the constitutionality of a circuit court order that he has not appealed.

Hoagland's only argument on appeal is that the orders finding him in contempt and sanctioning him for his contempt should be reversed because he now claims the gag order was unconstitutional. See **(App./Resp.'s App. Br. 15)** (stating that "[i]t was an abuse of discretion for 1) the trial court to apply the unconstitutional gag order to Defendant's statements of public concern contained in this record and 2) the trial court to sentence Hoagland for violations of the unconstitutional gag order after concerns of pretrial publicity had ended.").

The circuit court entered the gag order on November 8, 2017. Hoagland did not move to reconsider that order, nor did he appeal. In fact, he did not argue that order was in any way unconstitutional at the time it was entered. Once a rule to show cause was issued, Hoagland asserted the gag order was unconstitutional to the extent it prevented him from making statements about *other lawsuits* but did not argue that it was unconstitutional on its face. **(Hr'g Tr. 1-30-18,**

R. p. 859, ll. 1-7) (Counsel for Hoagland arguing that the gag order violated the First Amendment only to the extent it restrained Mr. Hoagland from making statements about *other* lawsuits even if they overlap with this lawsuit); **(Def.'s Reply to Mot. for Contempt filed 1-23-18, at R. pp. 447-450)** (arguing that Defendant did not violate the gag order because his statements relate to a different lawsuit and a gag order must be narrowly construed so as to protect the right to discuss matters not covered by that order).

Hoagland appealed the order finding him in contempt and the order sentencing him for his violations. **(Notice of Appeal dated 8-13-20, R. pp. 1614-1615)** (appealing only the orders dated August 12, 2020, August 4, 2020, and February 7, 2018). Even though Hoagland chose not to appeal the gag order, **his only argument on appeal is that it is unconstitutional**. See **(App./Resp.'s App. Br., at pp. 15-19).**

This Court must reject Hoagland's attack on an unappealed order because that order is the law of the case. Our appellate courts have long held that an unappealed ruling is the law of the case and cannot be reconsidered on appeal. See Davis v. Parkview Apartments, 762 S.E.2d 535, 543, 409 S.C. 266, 281 (2014); Charleston Lumber Co., Inc. v. Miller Housing Corp., 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000); ML–Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 489 S.E.2d 470 (1997) (unappealed ruling is law of the case); Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970) (an unchallenged ruling, "right or wrong, is the law of this case and requires affirmance.").

In Davis v. Parkview Apartments, the South Carolina Supreme Court found the law of the case doctrine applied to the precise circumstance presented here. In that case, the Appellants appealed from an order finding them contempt of court and awarding sanctions against them for their failure to comply with certain discovery orders. See Davis, at 543, 409 S.C. at 281. The

Court held that because the discovery orders had not been appealed, the issue of whether the discovery orders were appropriate was not before the appellate court and the appellants could only challenge whether the sanctions issued were appropriate. Id. (". . . Appellants have only appealed the order awarding sanctions to Respondents, the Dismissal Order. As such, the merits of the underlying discovery orders, including the Privilege Order and the Discovery Order, are not before us for consideration."). Here, Hoagland did not seek appellate review of the gag order at the time it was issued or in this appeal. Therefore, the issue of whether that order was constitutional or unconstitutional is not before this court for consideration. Because the only issue raised by Hoagland on appeal is not properly before this Court, the lower court's orders finding him in contempt and sanctioning him for that contempt must be affirmed.

II. The circuit court did not abuse its discretion in finding Hoagland in contempt of the unappealed circuit court order prohibiting pretrial communications or sanctioning him for his undisputed violations of that order because that order was not an unconstitutional restraint on Hoagland's First Amendment right to free speech when it was entered following Appellant's violations of court orders and the circuit court determined the narrowly tailored order was necessary to preserve the decorum and integrity of court proceedings.

Even assuming *arguendo,* Hoagland could challenge on appeal the unappealed gag order, it was not unconstitutional and it was not an abuse of discretion for the circuit court to find him in violation of that order and punish him accordingly.

a. The gag order was narrowly tailored to serve a compelling interest.

Here, the gag order was written in a way as to preserve the sanctity of the trial process while nonetheless respecting the rights of the parties. The gag order was thus narrowly tailored to serve a compelling interest.

Because gag orders implicate the First Amendment, they are subject to strict scrutiny review. In re Murphy-Brown, LLC, 907 F.3d 788, 797 (4th Cir. 2018). To survive strict scrutiny, a gag

order must be narrowly tailored to serve a compelling interest. Id. The right to a fair trial and ensuring a fair trial are considered compelling interests.[6] See In re Knight Pub. Co., 743 F.2d 231, 233 (4th Cir. 1984); see also Eaglin v. McCall, No. CV 0:14-4003-PJG, 2017 WL 3498877, at *4 (D.S.C. Aug. 16, 2017). That compelling interest is only justified when there is a reasonable likelihood a party would be denied a fair trial. Murphy-Brown, 907 F.3d at 797. A gag order is narrowly tailored if the restrictions it imposes are "no greater than necessary." Id. at 799 (internal citations omitted).

Even in applying the restrictive test of strict scrutiny, courts routinely uphold gag orders that are designed to protect the trial process – specifically, those tailored to restrict the speech of participants and not the public and large and the press. See Gentile v. State Bar of Nevada, 501 U.S. 1030, 1072 (1991) ("We expressly contemplated that the speech of those participating before the courts could be limited."); see also Seattle Times Co. v. Rhinehart, 467 U.S. 20 at n. 18 (1984) ("Although litigants do not 'surrender their First Amendment rights at the courthouse door,' those rights may be subordinated to other interests that arise in this setting."); In re Morrissey, 168 F.3d 134, 140 (4th Cir. 1999) (" limitations on lawyer speech must be aimed at the two evils that threaten the integrity of the judicial system. . . [t]hose evils are (1) comments that will likely influence the

[6] Litigants are entitled to a jury trial by unbiased jurors deciding the case based solely on the evidence presented at trial. Fairness in a jury trial, whether criminal or civil in nature, is a vital constitutional right. See generally, McDonough Power Equip., Inc. v. Greenwood, 464 U.S. 548, 554 (1984) ("One touchstone of a fair trial is an impartial trier of fact—a jury capable and willing to decide the case solely on the evidence before it." (internal quotes and citations omitted)).; see also generally, Skaggs v. Otis Elevator Co., 164 F.3d 511, 514–15, (10th Cir. 1998) ("The Seventh Amendment to the United States Constitution guarantees a litigant in a civil proceeding the right to a trial by jury. . . [and]. . .[a]lthough the Seventh Amendment does not contain language identical to that found in the Sixth Amendment, which specifically guarantees a criminal defendant the right to an 'impartial jury,' the right to a jury trial in a civil case would be illusory unless it encompassed the right to an impartial jury.") Hoagland even admits in his Appellate Brief that protecting the trial process is a "protected state interest." **(App./Resp.'s App. Br. p. 18).**

outcome of a trial and (2) statements that will prejudice the jury venire even if an untainted jury panel can eventually be found) (citing Gentile).

Here, the Court's gag order reads:

> Because of the posture and history of this case when it was assigned to the undersigned, and based upon the inherent authority of this Court to maintain and preserve the decorum and integrity of Court proceedings and the sanctity of judicial proceedings, the Court finds that it is appropriate and necessary to issue an Order prohibiting the parties, their servants, agents, employees and all others acting at their behest from making, issuing or causing to be uttered any extra-judicial statements or comments about this lawsuit in any form or fashion during the pendency of this case.

(Order dated 11-8-2017, R. pp. 26-27).

The gag order decreed that "[t]he parties . . . are prohibited from making ANY extra-judicial comments about **this case** to the media and any third parties about any aspect of this action until a jury verdict has been returned." **(Order dated 11-8-2017, R. pp. 26-27) (emphasis added).** The gag order cautioned that nothing in the gag order was intended to be "a prior restraint on the media's ability to report" on the case. **(Order dated 11-8-2017, R. pp. 26-27).** The gag order continued by saying that it was "not intended to prohibit legitimate, good faith communications with third parties (excluding the media) in the preparation of this case" and that "[n]othing contained in this Order is intended to nor shall abridge any persons affected by this Order ability to exercise their First Amendment rights as long as by doing so they do not contravene the prohibitions contained herein." **(Order dated 11-8-2017, R. pp. 26-27).**

The gag order was narrowly tailored to serve a compelling interest. Critically, the gag order only prohibited communication about the case at bar. It did not restrict Hoagland's ability to discuss matters not related to the case. The gag order only restricted case participants, and not the public at large or the press. It was specific in its reach – it only prohibited parties from commenting to the media or third parties about the case. Nothing in the it restricted the media from reporting

on the case. It also did not restrict Hoagland's ability to discuss the case after the jury returned the verdict, nor did it restrict the parties from engaging in "legitimate, good faith communications with third parties (excluding the media) in preparation of this case." The Court was correct that the "posture and history" of the case presented a compelling interest in preserving decorum. Over the course of the case, Hoagland repeatedly ignored court orders and rules. He emailed members of the media, elected officials, and members of the general public, even disclosing details of a confidential mediation. The very nature of this case shows why the gag order was necessary – Hoagland's statements were part of a calculated and repeated attempt to show the general public, from which a jury would be chosen, his version of the case and otherwise interfere with the juridical process. See, e.g., **(Aff. of Alford dated 3-8-20 at R. p. 1578)** (calling Likins' lawsuit frivolous); See also **(Id. at R. p. 1582)** ("I will not be attending this non valid illegally criminal tax payers [sic] funded trial and schemed frivolous lawsuit to profit the lawyers and Ms. Likins."). Hoagland also generally showed a repeated desire to thwart the Court's authority and ignored the Court's order. See **(Aff. of Alford dated 3-8-20 at R. p. 1581)** ("I am not a lawyer, and do not have to abide by your rules."); see also **(Supplemental Aff. of Alford dated 1-29-18, at R. p. 1622)** ("Mr Alford [sic], don't go running to the Judge with more lies. . . "); see also **(Id. at R. p. 1635)** ("all I did was tried [sic] to tell the truth to Kim Likins [sic] employers on her actions as a public official . . . ."). This behavior would disrupt trial proceedings and prevent a fair trial. Hoagland's statements could have influenced a juror.

The circuit court had a compelling interest in preserving the trial process. It entered an order narrowly tailored to fulfill that purpose. The gag order was therefore Constitutional and the circuit court must be affirmed in that respect.

b. The gag order did not prohibit speech on matters of public concern, nor did Hoagland's statements violating the gag order amount to comments regarding matters of public concern.

Courts have placed specific importance on speech involving matters of public affairs, as such speech is "the essence of self-government." Garrison v. State of La., 379 U.S. 64, 75, 85 S. Ct. 209, 216, (1964). Whether speech is a matter of public concern is a question of law for the court. See Lee v. York Cty. School Div., 484 F.3d 687, 697 (4th Cir. 2007). "Speech deals with matters of public concern when it can 'be fairly considered as relating to any matter of political, social, or other concern to the community.'" Snyder v. Phelps, 562 U.S. 443, 453, 131 S. Ct. 1207, 1216, 179 L.Ed. 2d 172 (2011)(citing Connick v. Myers, 461 U.S. 138, 145, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983)). Speech is also of public concern when it is "a subject of general interest and of value and concern to the public." San Diego v. Roe, 543 U.S. 77, 83-87, 125 S.Ct 521, (2004).

It is worth noting that Hoagland's speech that violated the gag order did not relate to matters of public concern. See generally, **(Supplemental Aff. of Alford dated 1-29-18 at R. p. 1621)** ("Mr Alford [sic], if anyone is unstable, it's you with your delusional paranoia . . . [t]his is caused by an extreme case of self guilt."); see also **(Id. at R. p. 1629)** ("Gregg Alford and Kim Likins should have been arrested along with others behind this planned and schemed theft to silence me and my free speech rights and profit their pockets."); see also **(Id. at R. p. 1629)** ("your honor, you must read the emails and see the desperation of lawyer Alford who is either playing a sick game to shed light on me as a bad guy, to take the light off him, or he truly suffers from a mental disorder call [sic] delusional paranoia."). Hoagland's unsupported claims in the lawsuit, personal

attacks, and, bullying[7] do not address any matter of political, social, or other concern to the community.

Because Hoagland's violation of the gag order was not for any statement on matters of public concern, the gag order was Constitutional as applied by the circuit court. Therefore, the circuit court must be affirmed in this regard.

III. The circuit court did not commit error of law or abuse of discretion in sanctioning Hoagland for his undisputed violations of the gag order

Hoagland argues "the trial court abused its discretion in sentencing Hoagland for contempt despite no longer needing to prevent pretrial publicity." **(App./Resp.'s App. Br. at p. 18).** Notably, Hoagland does not challenge the sentence or sanction the circuit court imposed. He does not challenge the amount of the fines imposed. He also does not challenge the length of the sentence the circuit court imposed. Hoagland only argues that the timing of the sentence was improper and repeats his Constitutional arguments.

As explained extensively in the sections above, the gag order was not unconstitutional. Furthermore, circuit court did not abuse its discretion in finding Hoagland in violation of the order when Hoagland never disputed the violations. The sanction and sentence imposed were fair and reasonable. Additionally, the timing of order issuing the sanctions and the sentence does not matter. Hoagland violated the gag order and the circuit court had the inherent authority to remedy that violation. The circuit court was therefore correct in sentencing Hoagland.

"The power to punish for contempt is **inherent** in all courts and is essential to preservation of order in judicial proceedings." In re Brown, 333 S.C. 414, 420, 511 S.E.2d 351, 355 (1998)(double emphasis added). Willfully disobeying a court order can result in contempt. Id. A

[7] Hoagland admits that his speech could be considered "pointed bullying." **(App./Resp.'s App. Br. at p. 16).**

willful act is an act "'done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law.'" Id. at 420-21(quoting Spartanburg County Dep't of Social Services v. Padgett, 296 S.C. 79, 370 S.E.2d 872 (1988)).; see also Durlach v. Durlach, 359 S.C. 64, 71, 596 S.E.2d 908, 912 (2004) (quoting Poston v. Poston, 331 S.C. 106, 111, 502 S.E.2d 86, 88 (1998)) (discussing civil and criminal contempt); see also Poston, 331 S.C. at 111, 502 S.E.2d at 88 (finding that courts have the power to impose sanctions for criminal contempt to punish for disobedience of their orders). A party proves contempt with clear and convincing evidence. Poston, 311 S.C. at 113, 502 S.E.2d at 89 (citation omitted).

Here, Hoagland was guilty of both civil and criminal contempt.[8] There is no dispute that Hoagland willfully violated the gag order. Hoagland's Appellate Brief, for instance, acknowledges that he violated the gag order. **(App./Resp.'s App. Br. at 17)** (acknowledging that Hoagland made extrajudicial comments, the very thing the gag order proscribed)). Hoagland's attorney further acknowledged at the hearing regarding contempt that Hoagland violated the order. **(Hr'g Tr. 1-30-18, p. 860, ll. 10-12)** ("THE COURT: . . And [the emails] are violating the gag order without question, clearly, convincingly . . . MR. BREWER: Understood, your Honor."). Even without Hoagland's acknowledgement it is also clear Hoagland knew of the order and violated it anyway. See **(Supplemental Aff. of Alford dated 1-29-18 at pp. 1621-1633)**. Therefore, the circuit court did not abuse its discretion in finding him in civil and criminal contempt. Because Hoagland was guilty of contempt, the circuit court was correct to use its inherent authority to impose a sentence upon him, even after proceedings finished.

[8] Hoagland does not distinguish between the two.

Hoagland argues his violation should have been excused after the trial had concluded but cites no legal authority in support of that position. Even if there was no longer a need "to prevent pretrial publicity," the need was present when the circuit court entered the gag order. The circuit court's authority would be meaningless if it were so constricted. See generally Ex parte Dibble, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983) ("Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible.").

Therefore, for all these reasons the circuit court must be affirmed in this regard.

CONCLUSION

For the reasons stated above, the circuit court did not abuse its discretion in finding Hoagland in contempt of court for his violations of the gag order and the circuit court orders finding him in contempt and sentencing sanctioning him should be **AFFIRMED**.

Respectfully Submitted,

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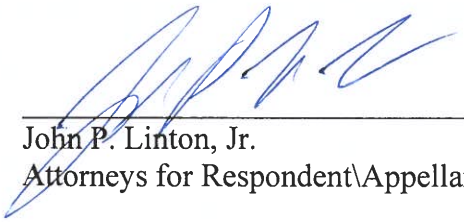
Certificate of Counsel

The undersigned certifies that this Final Respondent's Brief complies with Rule 211(b), SCACR.



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