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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.

APPELLANT'S BRIEF OF RESPONDENT/APPELLANT KIM LIKINS

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II. Whether the circuit court erred in finding that Likins is a public official when she holds no public office and counsel for Hoagland agreed on the record that she was not a public official.

III. Whether the circuit court erred in treating Likins as a limited public figure when there was no evidence at trial that she voluntarily assumed a role of special prominence in a public controversy; sought to influence the outcome of the controversy; the controversy existed prior to the publication of the statements about her; or that Likins retained public figure status at the time of the statements.

IV. Whether the circuit court erred in failing to find that the evidence at trial satisfied the actual malice standard when the clear and convincing evidence at trial was that Hoagland acted, and plans to continue to act, in bad faith by harassing Likins and seeking to have her fired for no legitimate reason.

V. Whether the circuit court erred in denying the request for an injunction out of a concern for a hypothetical violation of the First Amendment right to freedom of speech when the injunction was narrowly tailored and only precluded Hoagland from harassing Likins and contacting her employer to baselessly demand she be fired.

STATEMENT OF THE CASE

This case stems from Appellant/Respondent C.C. "Skip" Hoagland's ("Hoagland") repeated harassment of Respondent/Appellant Kim Likins ("Likins"). After repeated baseless attempts by Hoagland to have Likins fired from her role as executive director of the Hilton Head Island Boy & Girls Club[1], Likins filed this case on December 10, 2015, in 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 her employment, defamation,

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

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 the Boys & Girls Club during the pendency of the lawsuit. **(Pl. Mot. dated 12-10-15, R. pp. 814-816).** 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 and Girls Club. See **(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 required confidential mediation. **(Pl. Mot. dated 3-27-17, R. pp. 674-677).** The court denied the motion for sanctions, but entered a gag order. **(Form 4 Order dated 6-2-17, R. pp., 39-42) (Order dated 11-8-17, R. pp. 26-27).** The order provided in pertinent part that the parties and their attorneys were prohibited from making

any extra-judicial comments about this case to the media and any third parties about any aspect of this action until the conclusion of the case. **(Order dated 11-8-17, R. pp. 26-27).**

On January 4, 2018, Likins filed a Motion for Order and/or Rule Show Cause alleging violations of the Order issued by the Court on November 8, 2017. **(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. pp. 24-25).** Hoagland appeared on January 30, 2018, but elected not to testify. **(Hr'g Tr. 1-30-18, R. pp. 845-887); (Order dated 2-7-18, R. pp. 21-23).** The Court found by clear and convincing evidence that Hoagland violated the Order dated November 8, 2017 and that Hoagland's violations of the Order were willful. **(Order dated 2-7-18, R. pp. 21-23).** The Court held in abeyance the decision of the issues of whether the contempt was criminal or civil and the appropriate punishment until the end of the case. **(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)** ("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, l. 23).**[2] Having resolved the case with Hoagland's insurance carrier, Likins elected to proceed non-jury as to her cause of action for an injunction. **(Trial Tr., R. p. 895, l. 24-**

[2] 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. 896, ll.1-2).**

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; 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.[3] **(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).**

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.

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[3] 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).**

FACTS

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 the mission and image of the Boys & Girls Club. **(Trial Tr., R. p. 1009, ll. 13-20).** The testimony of the witnesses at trial was uncontroverted as to her qualifications and her long record of excellent performance. See generally **(Trial Tr., R. p. 1017, l. 18- p. 1019, l. 15); (Trial Tr., R. p. 1039, ll. 13-20).** Even Hoagland agrees that Likins is fit and safe to be around children and is caring, nurturing and dedicated to the wellbeing of the children that the Boys & Girls Club serve. See e.g, **(Pl. Ex. 37, R. p. 1443, ll. 2-4).** 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 and 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 of 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.").

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, l1. 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 e-mailed Likins requesting to meet with her regarding the proposed contract between the Town and the Chamber. **(Pl. Ex. 1, R. p. 1351)**; **(Trial Tr., R. p. 916, ll. 5-25)**. In the same e-mail he asked "[a]lso what can I do to help the boys and girls club." **(Pl. Ex. 1, R. p. 1351)**; **(Trial Tr., R. p. 916, l. 23)**. The e-mail concerned Likins because it was the first time anyone had approached her on a Town matter and suggested they would help the Boys & Girls Club if she would cooperate with them regarding the Town issue. **(Trial Tr., R. p. 917, ll. 1-11)**. Likins replied and explained that she was not meeting privately with any individual concerning the proposed Chamber contract, but requested Hoagland submit in writing any

information he wanted the full Town Council to consider. **(Pl. Ex. 3, R. p. 1353); (Trial Tr., R. p. 919, l. 21- p. 921, l. 2).** Hoagland was not pleased with that response and continued to pressure her. He attempted again to obtain her cooperation by inappropriately offering to help the Boys & Girls Club: "Soon as this chamber issue is behind us we can discuss my support of the Girls and Boys club." **(Pl. Ex. 4, R. pp. 1354-1355) (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).** He even tried to influence Likins by contacting Stan Smith, a major supporter and board member of the Boys & Girls Club. **(Trial Tr., R. p. 917, ll. 1-25); (Trial Tr., R. p. 923, l. 8-p. 924, l. 6); (Pl. Ex. 5, R. p. 1356).**

These repeated attempts to influence Likins were unsuccessful. **(Trial Tr., R. p. 922, ll. 21-23; p. 924, ll. 18-20).** Next, Hoagland began threating Likins to try to coerce her to vote the way he wanted and reject the proposed contract between the Town and the Chamber. See e.g., **(Trial Tr., R. p. 928, l. 14-p. 929, l. 11); (Trial Tr., R. p. 926, l. 3-p. 927, l. 9); (Pl. Ex. 8, R. pp. 1359-1360).**

At the November 17, 2015, Town Council meeting, Likins voted in favor of the proposed contract between the Town and the Chamber, which passed. **(Trial Tr., R. p. 931, ll. 15-17); (Trial Tr., R. p. 937, l. 8-p. 939, l. 2).** The contract between the Town and the Chamber created greater accountably, included metrics upon which the Chamber's performance would be reviewed, and allowed the Town to participate in the selection of an accounting firm to audit the Chamber on an annual basis. **(Trial Tr., R. p. 932, l. 23-p. 935, l. 7).**

Hoagland e-mailed Likins (and others) at 1:18 am, only hours after the council meeting complaining that she was a liar and needed to be removed from office. **(Trial Tr., R. p. 939, l. 3-p. 940, l. 12); (Pl. Ex. 14, R. p. 1369).** On November 23, 2015, Hoagland e-mailed Likins (and

others) at 12:13 am stating that he would "publicly disgrace" Likins in full page newspaper ads and that she was ". . .not fit to serve the boys and girls a (sic) well." **(Pl. Ex 15, R. pp. 1370-1371); (Trial Tr., R. p. 940, l. 19-p. 941, l. 11) (Trial Tr., R. p. 941, l. 20-p. 942, l. 3)** (Likins explaining this statement affected her because no one had ever stated she was not fit to be around children). Hoagland executed on his threats: 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).** These continued attacks were personal and directed toward her job at the Boys & Girls Club. **(Trial Tr., R. p. 948, ll. 2-7).** Hoagland was relentless is his efforts to have Likins removed from her job with the Boys & Girls Club. See e.g., **(Trial Tr., R. p. 949, ll. 3-16).**

Hoagland even contacted several members of the Board of Directors of the Boys & Girls Club and demanded that she be fired because she was unfit and dangerous to be around children. Mike Briggs, the President of the Board of the Boys & Girls Club of Hilton Head at the time Hoagland made the threats and statements, received a telephone call on December 2, 2015, in which Hoagland indicated that he was calling to demand that Likins be fired from her position because she was a liar and was unfit to be around children. **(Trial Tr., R. p. 1042, l. 6-p. 1043, l. 10).** Briggs was ". . . shocked. Nonplussed" by the call because he "had no idea why anyone would demand that a person of Kim's [Likins] quality be fired." **(Trial Tr., R. p. 1043, ll. 1-3).**

Marv Lich, the then President of the Board of the Boys & Girls Club of the Low Country, also received a call from Mr. Hoagland. **(Trial Tr., R. p. 1016, ll. 18-20; p. 1019, l.19- p. 1020,**

l. 2). Hoagland stated "[Likins] is very, very dangerous" and "[y]ou guys need to fire her right now." **(Trial Tr., R. p. 1028, l. 11-12)**. Hoagland "had a very strong tone about him. He wanted her fired because he was talking about how much of a liar she was and how unfit and how dangerous it was for our kids . . ." **(Trial Tr., R. 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 at the club, 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 at 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).**

Because the statements by Hoagland to these Board members were serious, the Boys & Girls Club shifted to crisis communication mode and sought advice from the national legal counsel for the Boy & Girls Club. **(Trial Tr., R. p. 956, ll. 19-25)** ("After Mr. Hoagland reached out to them and spoke to them and demanded that I be fired, told them that I was a danger to be around children and that I was a liar and I was corrupt, they moved to kind of what we consider crisis communication within an organization because their job is to protect the organization."); **(Trial Tr., R. p. 1023, l. 21-p. 1025, l. 25); (Trial Tr., R. p. 1047, ll. 1-6).** The 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). According to Hoagland, he targeted Likins precisely because she had a job from which he could get her terminated, unlike many members of Town Council who were retired. **(Pl. Ex. 37, R. p. 1449, ll. 17- 19)** (Hoagland stating that that the other council members he wanted to target were retired and could not be fired from a private job like Likins). Hoagland has been and continues to be relentless and has stated an intention to continue his harassment of 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. p. 1431, l. 18- p. 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.").

Throughout her testimony, Likins made it clear that she was not asking this Court to restrain Hoagland's right to free speech. She testified that in filing the lawsuit she is seeking to require Hoagland "to stop harassing me at work and my board members and my organization." **(Trial Tr., R. p. 958, ll. 9-11).** Likins made clear she only sought an injunction to stop the specific harassment associated with her work at the Boy & Girls Club and was not asking the court to prohibit Hoagland from speaking out regarding political matters:

> Q What is your objective in having us seek an injunction on your behalf moving forward? What is it that you are asking for?
>
> A I'm asking for peace of mind. I'm asking you for the ability to please be able to go to my job and not ever have to worry about Mr. Hoagland doing anything to harm that organization or me within the context of my work. He is a vendettive person. And I know that if he has the ability, he will want to come back and harm me.
>
> Q Do you have -- are you seeking to enjoin him from speaking or sending emails?

> A No. Never. And I have never ever tried to shut Mr. Hoagland down from speaking about anything associated with council. As a matter of fact, we had a council meeting because he was becoming so disruptive that our mayor at the time wanted to say that we need to just shut him down so that we can continue and get business done. And a vote was taken and I voted in favor of continuing to allow Mr. Hoagland to speak. And for the next four years as I served on council and he came meeting after meeting after meeting, I sat at that dais completely respectful and I let him say everything he wanted to say and target me over and over again. And I understand that he has the right to do that. And when he writes about the fact that I should be booted off council or that I can't be reelected, ***I appreciate the fact that that is his right to say those kinds of things and I've never tried to stop him from doing that.***

(Trial Tr., R. p. 965, l. 9-p. 966, l. 12) (double emphasis added).

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).** As noted above, she filed the action to stop Hoagland's relentless efforts to convince her employer she was dangerous to be around children and unfit for her job. 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).

Hoagland violated that order. **(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. 674-677).** The circuit court denied the Motion for Sanctions, but entered an Order Prohibiting Pretrial Communications and Publicity. **(Form 4 Order dated 6-2-17, R. pp. 39-42); (Order dated 11-8-17, R. pp. 26-27).** That 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 Order Prohibiting Pretrial Communications and Publicity and no party has appealed that order.

After Hoagland repeatedly violated the Order Prohibiting Pretrial Communications and Publicity, Likins filed a Motion for a Rule to Show Cause on January 4, 2018. **(Pl. Mot. dated 1-4-18, R. pp. 543-544).** 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. 845-888).** Hoagland appeared on January 30, 2018 and elected not to testify. **(Order dated 2-7-18, R. pp. 21-23).** 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 order and the violations were willful. **(Order dated 2-7-18, R. pp. 21-23).** The court also found Hoagland failed to present any evidence establishing a defense or inability to comply with the order. **(Order dated 2-7-18, R. pp. 21-23).** The order explained that among the e-mails 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 the 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).** 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 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)** ("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, l. 23).**[4] Having settled with Hoagland's insurance carrier, Likins elected to proceed only as to her cause of action for an injunction. **(Trial Tr., R. p. 895, l. 24- p. 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).**

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 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).**

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

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[4] 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).**

[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).**

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.

STANDARD OF REVIEW

"An order granting or denying an injunction is reviewed for [an] abuse of discretion." Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). "An abuse of discretion occurs when the trial court's decision is based upon an error of law or upon factual findings that are without evidentiary support." Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 555, 658 S.E.2d 80, 85–86 (2008). As explained herein, the circuit court's decision was based upon errors of law and failure to consider undisputed facts from the trial.

ARGUMENT

I. The circuit court erred in refusing to enjoin Hoagland from harassing Likins and interfering with her job when the undisputed evidence was that Hoagland's harassment and interference with Likins' job has been relentless, that he intends to continue such conduct and there is no legal remedy which is as certain, practical, complete, and efficient to attain the ends of justice and its administration.

The circuit court committed legal error and abused its discretion in finding that Likins has an adequate remedy at law when the undisputed evidence at trial showed there is no practical, complete, and efficient legal remedy available to Likins. An injunction "is a prohibitive writ that forbids a party from taking some action." 12 S.C. Jur. Equity § 19 (citing Black's Law Dictionary (5th ed.) pp. 705-06). The issuance of an injunction depends upon the equities between the parties. See Gibbs v. Kimbrell, 311 S.C. 261, 428 S.E.2d 725 (Ct. App. 1993); Shaw v. Coleman, 645 S.E.2d 252, 260, 373 S.C. 485, 500 (Ct. App. 2007) ("Balancing the benefits of an injunction to the Shaws and the Snowdens against the inconvenience and damage to Coleman, we hold the trial

court correctly granted the injunction."). "The function of an injunction is not to afford a remedy for what is past, but ***to prevent future mischief***." Augusta Power Co. v. Savannah River Electric Co., 163 S.C. 541, 163 S.E. 822 (1930) (citing 32 Corpus Juris, 45) (double emphasis added); see also Shaw, at 260, 254, 373 S.C. at 500; 42 Am. Jur. 2d Injunctions §2 ("Whether interlocutory or final, injunctive relief is ordinarily preventive or protective in character and restrains actions that have not yet been taken.").

The power of the court to grant an injunction is in equity. Strategic Resources Co. v. BCS Life Ins. Co., 627 S.E.2d 687, 689, 367 S.C. 540, 544 (2006) (citing Doe v. South Carolina Med. Malpractice Liability Joint Underwriting Ass'n, 347 S.C. 642, 557 S.E.2d 670 (2001). "The court will reserve its equitable powers for situations when there is no adequate remedy at law." Id. (citing Santee Cooper Resort, Inc. v. South Carolina Pub. Serv. Comm'n, 298 S.C. 179, 379 S.E.2d 119 (1989)). When a court sits in equity an "adequate remedy at law" is "***one which is as certain, practical, complete, and efficient to attain the ends of justice and its administration as the remedy in equity***." ZAN, LLC v. Ripley Cove, LLC, 406 S.C. 404, 751 S.E.2d 664 (Ct. App. 2013) (citations omitted) (double emphasis added). In "deciding whether to grant an injunction, the court must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant, and grant an injunction which seems most consistent with justice and equity under the circumstances of the case." Strategic Resources at 689, 367 S.C. at 544 (citation omitted).

Here, the evidence was capable of only one interpretation—Hoagland's harassing behavior would not be curtailed by an award of damages because Hoagland plans to continue his harassment and seeking to have her fired for no legitimate reason. See generally Shaw v. Coleman, 373 S.C. 485, 499, 645 S.E.2d 252, 259 (Ct. App. 2007) ("The Shaws and the Snowdens, however, are

seeking an injunction to prevent Coleman's dangerous behavior, which cannot be adequately accomplished by an award of damages."); Id. at 500, 645 S.E.2d at 260 (affirming the trial court's decision to grant a permanent injunction preventing the defendant from discharging firearms on his property or immediate surroundings, firing air rifles or pellet guns toward the plaintiffs' property or person, and *screaming obscenities or otherwise provoking the* plaintiffs).

In fact, the record is replete with examples of Hoagland's relentlessness and commitment to continuing to harass Likins regardless of any monetary award a court could order. See **(Trial Tr., R. p. 949, ll. 13-19); (Trial Tr., R. p. 964, ll. 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. p. 1431, l. 18-p. 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 . . . ."). Further, the undisputed evidence was that Hoagland would not have been harmed by the injunction, because the injunction requested would not impair his right to free speech—he could speak in any public forum; continue to e-mail large groups of people with his thoughts, criticism, and allegations; and continue to purchase newspaper ads. **(Trial Tr., R. p. 958, ll. 9-11); (Trial Tr., R. p. 965, l. 9- p. 966, l. 12).** The requested injunction would have only precluded Hoagland's harassing Likins and peppering her employer with demands that she be fired for no legitimate reason. **(Trial Tr., R. p. 958, ll. 9-11); (Trial Tr., R. p. 965, l. 9- p. 966, l. 12); (Trial Tr., R. p. 1093, l. 13-p. 1095, l. 7).**

As stated above, an adequate remedy at law must be certain, practical, complete, and efficient to attain the ends of justice. Here, the ability to file a lawsuit each time harassment occurs is not an adequate remedy at law. The circuit court even noted that while a lawsuit for damages is usually an adequate remedy at law, if the harassment is persistent such that successive lawsuits are

impractical and impossible, then there is not an adequate remedy at law. See **(Trial Tr., R. p. 1093, ll. 5-12)** ("But at the same time, it kind of falls along the lines of nuisance cases when it keeps happening, happening, and happening, and happening. There is no adequate remedy of law because of the excessiveness and the vexatiousness of the conduct in that you're being required to bring a slander defamation invasion of privacy type suit just after some point just doesn't work."). Therefore, because there is a history of a continuing course of unjustified and wrongful attacks which is expected (threatened) to continue, Likins will suffer irreparable harm because of the trial court's failure to issue the injunction. Furthermore, the evidence at trial was undisputed that Hoagland has divested himself of all assets and rendered himself judgment proof, which is an additional basis upon which to find there is no adequate remedy at law against him. See **(Pl. Ex. 37, R. p. 1423, l. 22- p. 1424, l. 20); (Pl. Ex. 37, R. p. 1420, ll. 5-9); (Pl. Ex. 37, R. p. 1422, ll. 8-20); (Pl. Ex. 37, R, p. 1424, ll. 4-12); (Pl. Ex. 37, R. p. 1418, ll.7-11).**

Therefore, the circuit court's denial of the injunction when the only evidence in the record supported the issuance of the injunction, including uncontested proof that under these circumstances there was no adequate remedy at law, was an abuse of discretion, and must be reversed.

II. The circuit court erred in finding that Likins is a public official when she holds no public office and counsel for Hoagland agreed on the record that she was not a public official.

Counsel for Hoagland stated on the record at trial that Likins was "no longer a public official." **(Trial Tr., R. p. 903, l. 22-p. 904, l. 5)**. Additionally, the evidence was undisputed that she is not a public official and had concluded her service on Town Council more than a year before trial. **(Trial Tr., R. p. 912, ll. 9-18).**

In addition to failing to find Likins is no longer a member of Town Council, which was uncontested at trial, the Court erroneously found Likins stipulated that *future conduct* by Hoagland towards her would be governed by the standard in New York Times v. Sullivan[6] for public officials. **(Order dated 8-4-20, R. pp. 8 & 13).** The circuit court erred in interpreting the stipulation resolving summary judgment, which was not argued or discussed at all trial. It was not offered into evidence by either party or made a court's exhibit. The court further erred by interpreting the stipulation to apply to Hoagland's future conduct at issue here when counsel for Hoagland specifically agreed on the record at trial that she was no longer a public official. See **(Trial Tr., R. p. 903, l. 22-p. 904, l. 5).**

A stipulation, like any other agreement, must be interpreted as a whole to give the stipulation its intended meaning. See generally, Abel v. South Carolina Department of Health and Environmental Control, 798 S.E.2d 445, 448, 419 S.C. 434, 440–41 (Ct. App. 2017) (noting that contracts must be liberally construed so as to give them effect and carry out the intention of the parties, which must be gathered from the contents of the entire agreement)(citations omitted). Here, a 97-page exhibit was included as part of the stipulation, which resolved a summary judgment motion, to ensure there was no dispute as to the scope of the stipulation. See **(Stipulation dated 7-19-18, R. pp. 1472-1473).** At trial, Defendant did not argue that the Stipulation governed the future conduct by Hoagland that is the subject of the request for injunction. In fact, as stated above, counsel for Defendant *agreed* at trial that Likins was no longer a public official, instead he argued that she was a limited public figure because she is the executive director of the Boy & Girls Club:

[6] 84 S.Ct. 710, 376 U.S. 254 (1964).

> THE COURT: What is your position with regard to whether or not she's a public official or officer or person now so to speak as opposed to being a private individual for those standards that you've just referred to?
>
> ***MR. BREWER: She's no longer a public official,*** Your Honor, and I do think the Court -- I think what the Court was suggesting is that previously because she was a public official, the umbrella of the First Amendment covers there includes her job. I think on the record we would simply say that she is -- the testimony will show from the witnesses I think that will be brought up today, she's still a public figure on behalf of the Boys and Girls Club.

(Trial Tr., R. pp. 903, l.17-904, l.5 (double emphasis added). The circuit court even stated during its oral ruling at trial that Likins was not a public figure:

> But clearly now, this lady although she may be the figure head of the Boys and Girls Club, I don't think she -- ***she's certainly not a public figure***. She may be potentially a public official. I think she would be more of a limited public official if she casts herself into an argument involving the Boys and Girls Club that is a public import, et cetera, et cetera.

(Trial Tr., R. p. 1103, ll. 12-18) (double emphasis added). The stipulation on its face does not cover the future conduct at issue. In spite of the fact that all parties agreed the stipulation did not cover the future conduct at issue and no party argued the stipulation applied, the Court, *sua sponte,* found it applied when it issued its order almost five months after the trial. See **(Order dated 8-4-20, R. p. 13).** Likins filed a motion to reconsider and alternatively requested to be relieved from the stipulation that the circuit court had interpreted in a way never asserted by any party and contrary to what was argued by both Hoagland and Likins at trial. The circuit court denied that motion by Form 4 order. **(Form 4 Order dated 8-24-20, R. pp. 1-3).**

III. The circuit court erred in treating Likins as a limited public figure when there was no evidence at trial that she voluntarily assumed a role of special prominence in a public controversy, sought to influence the outcome of the controversy, the controversy existed prior to the publication of the statement, or that Likins retained public figure status at the time of the statement.

While Hoagland agreed at trial that Likins was not a public official, he argued that she was a limited public figure. The circuit court cited caselaw concerning the standard for a limited public

figure, but made no explicit ruling as to whether Likins is a limited public figure or not. While unclear, the circuit court appears to have treated Likins as a limited public figure as an alternative to its *sua sponte* finding that she was a public official. The Fourth Circuit Court of Appeals has established five factors to be considered in determining whether a person is a limited-purpose public-figure: (1) whether the plaintiff had access to channels of effective communication; (2) whether the plaintiff voluntarily assumed a role of special prominence in a public controversy;[7] (3) whether the plaintiff sought to influence the resolution or outcome of the controversy; (4) whether the controversy existed prior to the publication of the statement; and (5) whether the plaintiff retained public figure status at the time of the alleged defamation. Fitzgerald v. Penthouse Int'l, Ltd., 691 F.2d 666, 668 (4th Cir. 1982).

There was no evidence at trial of elements 2-5. It is worth noting that the fifth element specifically contemplates a plaintiff's status at the time of the statement is significant and dispositive. Therefore, the circuit court committed error of law and abused its discretion in treating Likins as a limited public figure because there was absolutely no proof at trial as to the elements required to find she is a limited public figure.

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[7] The circuit court even noted at trial that Likins could only be considered a limited public figure if she later had injected herself into any public controversy:

> I think she would be more of a limited public official ***if she casts herself into an argument*** involving the Boys and Girls Club that is a public import, et cetera, et cetera. So my point being is that I think that ***I'm going to grant the permanent restraining order***.

(Trial Tr., R. p. 1103, ll. 15-20) (double emphasis added).

IV. Having incorrectly determined that Likins was neither a public official nor limited public figure, the circuit court further erred in failing to find that the evidence at trial satisfied the actual malice standard when the clear and convincing evidence at trial was that Hoagland acted, and plans to continue to act, in bad faith by harassing Likins and seeking to have her fired for no legitimate reason.

As explained above, the Court erroneously ruled that the actual malice standard governs all of Hoagland's future conduct towards Likins. For numerus reasons explained above, that standard should not have been applied to the future conduct at issue here. However, if it did apply, the circuit court's order improperly denied the request for an injunction without making a finding as to whether Hoagland's conduct harassing Likins by trying to get her fired by erroneously claiming she is a danger to be around children and unfit to be around children, when he has specifically testified he believes her to be a good person, would constitute actual malice.

Proof that a statement is published with a reckless disregard for the truth is sufficient to prove actual malice. See e.g., Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 56, 108 S.Ct. 876, 882 (1988). "Actual malice is a subjective standard testing the publisher's good faith belief in the truth of his or her statements," Peeler v. Spartan Radiocasting, Inc., 324 S.C. 261, 478 S.E.2d 282 (1996) (emphasis added). Actual malice, and whether Hoagland has a good faith basis to assert Likins was dangerous to be around children and unfit for her position at the Boys & Girls Club, was a factual issue the Court must determine and rule upon:

> The defendant in a defamation action brought by a public official cannot, however, automatically insure a favorable verdict by testifying that he published with a belief that the statements were true. ***The finder of fact must determine whether the publication was indeed made in good faith.*** Professions of good faith will be unlikely to prove persuasive, for example, where a story is fabricated by the defendant, is the ***product of his imagination***, or is ***based wholly on an unverified anonymous telephone call. Nor will they be likely to prevail when the publisher's allegations are so inherently improbable that only a reckless man would have put them in circulation.*** Likewise, recklessness may be found where ***there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports***.

St. Amant v. Thompson, 390 U.S. 727, 732, 88 S. Ct. 1323, 1326 (1968) (double emphasis added). Here, although the circuit court ruled that the actual malice standard governed, the circuit court committed error of law and abused its discretion in refusing to rule as to whether the standard had been met by the evidence presented at trial. Likins asked the circuit court to make such a finding, but the circuit refused. **(Pl. Mot. dated 8-13-20, R. pp. 92-102); (Form 4 Order dated 8-24-20, R. pp. 1-3).** The uncontested evidence at trial supported only one finding—that the actual malice standard is satisfied—and the circuit court abused its discretion in failing to make that finding.

Hoagland's statements that Likins is unfit for her job and/or unfit/dangerous to be around children cannot be made with good faith. Hoagland's own testimony showed he has no good faith belief of those statements. Hoagland specifically admitted that he did not know Likins' job responsibilities and that he believed her to be a good person and a good employee at the Boys & Girls Club. **(Pl. Ex. 37, R. p. 1439, l. 21-p. 1440, l. 25); (Pl. Ex. 37, R. p. 1443, ll. 2-4).** There was absolutely no evidence at trial offered to prove that she is anything other than an exemplary employee who is completely fit to be around children. See **(Trial Tr., R. p. 1017, l. 18-p. 1019, l. 15); (Trial Tr., R. p. 1039, ll. 13-20)**. No evidence supported a finding that Hoagland had any good faith basis to continue to make these claims about Likins in an effort have her fired. Therefore, in addition to committing reversable error by subjecting Hoagland's conduct to the actual malice standard reserved for public official and public figures, the circuit court committed further error of law in failing to find that standard was satisfied by the undisputed evidence in this case.

V. The circuit court erred in denying the request for an injunction out of a concern for a hypothetical violation of the First Amendment right to freedom of speech when the injunction was narrowly tailored and only precluded Hoagland from harassing Likins and contacting her employer to baselessly demand she be fired.

The circuit court abused its discretion and committed legal error in denying the requested injunction on the basis that "an injunction ***may*** violate Hoagland's First Amendment right to free speech." **(Order dated 8-4-20, R. p. 17)** (double emphasis added). The circuit court did not find that the requested injunction would violate Hoagland's right to free speech. Instead, the circuit court cited a mishmash of cases from around the county and ultimately found, based on those cases, that an injunction "may" violate the First Amendment. **(Order dated 8-4-20, R. pp. 13-17).** As explained herein, the circuit court committed legal error and must be reversed.

The circuit court cited several out-of-state cases where courts found that injunctions should be denied on first amendment grounds. See **(Order dated 8-4-20, R. pp. 13-17).** These cases are inapposite. Those cases did not involve the circumstances here, wherein the moving party sought an injunction to preclude harassment and interference with her job. See e.g, Brandreth v Lance, 1839 WL 3231 (N.Y.Ch., 1839) (denying a request to restrain the publication of a pamphlet which purported to be a literary work on the grounds that it was intended as a libel upon the complainant); Menard v. Houle, 11 N.E.2d 436, 437, 298 Mass. 546, 547 (Mass. 1937) (affirming the denial of an injunction precluding a customer from publicly asserting the vehicle they purchased from the plaintiff was "no good"); Auburn Police Union v. Carpenter, 8 F.3d 886, 904 (1st Cir. 1993) (deciding that Maine's law providing injunctive relief to prohibit certain solicitation activities should not be decided based upon the record in that case because the State had not yet proceed in such a fashion); Cohen v. Advanced Medical Group of Georgia, Inc., 496 S.E.2d 710, 711, 269 Ga. 184, 184 (Ga.1998) (finding that because the plaintiff had not shown irreparable harm an injunction was inappropriate); Mishler v. MAC Systems, Inc., 771 N.E.2d 92, 100 (Ind. App. 2002)

("I believe that we need not address the Mishlers' constitutional claim that the injunction is an impermissible prior restraint under the Indiana Constitution."); St. Margaret Mercy Healthcare Centers, Inc. v. Ho, 663 N.E.2d 1220, 1223 (Ind. App. 1996) (dissolving an injunction precluding the advertisement by a hospital regarding certain doctors' lack of surgical privileges following an exclusive contract between the hospital and a surgical group); Anagnost v. The Mortg. Specialists, Inc., No. 2162016CV00277, 2016 WL 10920366, at *4 (N.H.Super., Merrimack County Aug. 04, 2016) (finding in a case involving an order restricting a *pro se* litigant's speak prior to his criminal trial that "[t]here are less restrictive means of ensuring a fair trial than issuing a prior restraint on Gill's speech."); New York Times Co. v. U.S., 91 S.Ct. 2140, 2141, 403 U.S. 713, 714 (1971) (determining that the New York Times and the Washington Post should not be prohibited from publishing the contents of a classified study entitled 'History of U.S. Decision-Making Process on Viet Nam Policy.'"); Alexander v. U.S., 113 S.Ct. 2766, 2769, 509 U.S. 544, 546–47 (1993) ("Petitioner argues that this forfeiture violated the First and Eighth Amendments to the Constitution. We reject petitioner's claims under the First Amendment but remand for reconsideration of his Eighth Amendment challenge."); Sindi v. El-Moslimany, 896 F.3d 1, 34 (1st Cir. 2018) (vacating an injunction that precluded certain defamatory statements to any third parties, regardless of context the statements were made, because "the injunction is so wide-ranging and devoid of safeguards that it plainly contravenes the First Amendment's limitation of liability for speech about public figures to false assertions of fact made with actual malice").

Likins did not seek an order curtailing Hoagland's right to free speech or to preclude him from defaming her. Instead, she sought a very narrowly tailored injunction precluding his continued harassment and efforts to get her fired with no legitimate basis. The circuit court's order confers upon Hoagland the right to continue to harass Likins and continue to seek to get her fired

by peppering her employer with false statements that she is dangerous to be around children and unfit for her job. An injunction precluding the type of harassment at issue here is fully supported by case law and the circuit court committed legal error in failing to issue the injunction. See generally, Thorne v. Bailey, 846 F.2d 241, 243 (4th Cir. 1988) ("[P]rohibiting harassment is not prohibiting speech, because harassment is not a protected speech. Harassment is not communication, although it may take the form of speech.") (citation omitted)); Davidson v. Seneca Crossing Section II Homeowner's Ass'n, Inc., 979 A.2d 260, 282, 187 Md. App. 601, 638 (Md. App. 2009) (affirming an injunction precluding, among other things, continued harassment, finding that an injunction precluding harassment does not implicate first amendment concerns); Whitaker v. Warden, 2017 WL 2547241, at *2 (Ariz.App. Div. 2, 2017) ("Although an injunction against harassment can impermissibly infringe on a defendant's free speech rights, the protection of citizens from harassment is a legitimate and laudable goal that is not incompatible with the protection and exercise of free speech." (internal quotation, alterations and citation omitted); Cantwell v. State of Connecticut, 60 S.Ct. 900, 906, 310 U.S. 296, 309–10 (1940) ("Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument."); Metro Enterprises, Inc. v. United Farm Workers Union, AFL-CIO, 324 N.E.2d 805, 808, 41 Ohio Misc. 171, 174 (Ohio Com.Pl. 1974) (holding that boycotting and picketing of store not involved in labor dispute conducted in such a way as to harass, intimidate, coerce and embarrass customers and employees of such business, and diminish its general business may be enjoined and that order enjoining such illegal act does not impair constitutional right of free speech.). Likins' right to be free from harassment should not have been disregarded by the circuit court—Hoagland has no constitutional privilege to harass Likins. See generally, New York State

Nat'l Org. for Women v. Terry, 886 F.2d 1339, 1343 (2d Cir. 1989) ("There is no constitutional privilege to . . . harass an individual . . ."); Welsh v. Johnson, 508 N.W.2d 212, 215 (Minn. App. 1993).

This circuit court further erred in failing to issue the requested injunction protecting Likins from unjustified interference with her job. Many courts have found injunctive relief appropriate in these circumstances and the circuit court abused its discretion by failing to consider the importance of protecting her job from this interference. See generally American Malting Co. v. Keitel, 209 F. 351, 361 (2d Cir. 1913) (affirming the district court's grant of injunctive relief to plaintiff malt company and against defendant individual because an equitable remedy was appropriate to prevent defendant's malicious interference with plaintiff's contracts and defendant was not harmed by the injunction. The court modified the injunction so that the injunction only restrained defendant from referring to plaintiff in the circulars it published.); Trojan Elec. & Mach. Co. v Heusinger, 162 A.D.2d 859, 860, 557 N.Y.S.2d 756, (N.Y.A.D. 3 Dept., June 21, 1990); May Furnace Co. v. Conaway, 352 S.W.2d 40 (Mo. App. 1961) (affirming injunction precluding discharged employee's contacts with the customers of the employer in order to tell them that his former employer had done the work improperly and had overcharged them); Carter v. Knapp Motor Co., 11 So.2d 383, 385, 243 Ala. 600, 604 (Ala. 1943) (concluding that there is an exception to the rule against injunction of speech where the party was engaged in wrongful conduct, irreparably harmful to complainant's business).

Therefore, for all these reasons, the circuit court erred in failing to issue the requested injunction, which was very narrowly tailored, seeking only to preclude Hoagland's harassment of Likins and efforts to get her fired, and did not curtail Hoagland's right to freedom of speech.

CONCLUSION

For the reasons stated above, the circuit court abused its discretion in denying the injunction, should be reversed, and a permanent injunction issued.

Respectfully Submitted,

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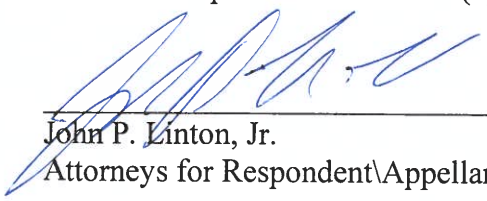
Certificate of Counsel

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



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