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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Circuit Court Judge

Case No.: 2020-001525

James Earl Tegeler Respondent/Appellant

v.

Charlotte Collier, Hannah Elizabeth Collier, Linda Smith, Northgate Baptist Church
.....Appellant/Respondent

FINAL BRIEF OF THE RESPONDENT CHARLOTTE COLLIER

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT CORRECTLY GRANT RESPONDENT CHARLOTTE COLLIER'S MOTION FOR JUDGMENT ON THE PLEADINGS ON THE BASIS THAT THE APPELLANT'S COMPLAINT FAILED TO STATE ANY CLAIMS FOR WHICH RELIEF COULD BE GRANTED?
2. WERE THE STATEMENTS CLAIMANT ALLEGES WERE DEFAMATORY SUBJECT TO QUALIFIED PRIVILEGE?
3. DID THE COURT APPROPRIATELY DISMISS THE APPELLANT'S COMPLAINT WITH PREJUDICE?

STANDARD OF REVIEW

An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6) or Rule 12(c), SCRPC. See *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (discussing the standard of review of a motion to dismiss under Rule 12(b)(6), SCRPC); *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 122, 634 S.E.2d 5, 7 (Ct. App. 2006) (discussing the standard of review of a motion for judgment on the pleadings). A ruling on a Rule 12(b)(6) motion must be based solely on the allegations set forth on the face of the complaint. *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). When considering a motion for judgment on the pleadings under Rule 12(c), SCRPC, the court must regard all properly pleaded factual allegations as admitted. *Falk v. Sadler*, 341 S.C. 281, 286-87, 533 S.E.2d 350, 353 (Ct. App. 2000).

While Appellant argues that Rule 60 has application to his case, it does not. A motion filed under both Rule 59(e) and Rule 60(b) should be analyzed only under Rule 59(e) if it was filed no later than 10 days after entry of the adverse judgment

and seeks to correct that judgment. Small v. Hunt, 98 F.3d 789, 797 (4th Cir. 1996); see also Vaughan v. Murray, No. 95-6081, 1995 U.S. App. LEXIS 31288, 1995 WL 649864, at *3 n.3 (4th Cir. Nov. 6, 1995) Robinson v. Wix Filtration Corp. LLC, 599 F.3d 403, 412, 2010 U.S. App. LEXIS 6298, *23, 15 Wage & Hour Cas. 2d (BNA) 1781. "The purpose of Rule 59(e), SCRPC, to alter or amend the judgment[,] is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)(quoting Budinich v. Becton Dickinson and Co., 486 U.S. 196, 200, 108 S. Ct. 1717, 100 L. Ed. 2d 178 (1988)). Collins Music Co. v. Igt, 353 S.C. 559, 562, 579 S.E.2d 524, 525 (Ct. App. 2002)

FACTS

The Respondent Charlotte Collier is the mother of the Respondent Hannah Collier. The Respondent Charlotte Collier has been sued as a result of meeting with her Pastor to discuss concerns she had regarding the relationship between her 18 year old daughter Hannah and a 50+ year old Appellant who represented to Ms. Collier that his relationship with her daughter was part of his employment with their Church. All of the claims against the Respondent Charlotte Collier arise from this meeting. During the course of that meeting Charlotte Collier and her daughter referred to the relationship between Appellant and Hannah Collier as inappropriate but specifically stated it was not physical or sexual in nature. (R. p. 67) The Appellant later received a vote of "no confidence" from the church as a result of texts between Hannah Collier and himself that Appellant presented to Church authorities. (R. p. 68) The no confidence vote was also a result of decisions he

had made regarding other young girls in the church. (Id.) Appellant resigned with a negotiated severance payment made to him under a separation agreement and release between himself and the Church. (R. p. 146, lines 7 – 11)

The Appellant James Tegeler was hired by Northgate Baptist Church in July of 2015. (R. p. 62) He was later promoted to worship leader. (Id.) This was a part time position. (Id.) Appellant did not serve as a youth pastor or youth director at the Church. (Id.) Appellant who is in his 50's alleges that Respondent Hannah Collier, a member of the church who had just turned 18, requested that he be her "mentor." (R. p. 63) The Appellant considered Hannah Collier to be a troubled youth from a broken home. (Id.) The Appellant "assisted with gift giving" for Hannah Collier. (Id.) He invited her to his family gatherings and on trips. (Id.) The Appellant in his Complaint published the following very personal details from Hannah's life that she had shared with Appellant, including but not limited to

- Difficulties with her parents;
- That her father committed adultery;
- That she had personal issues regarding mental illness, self-development, self-esteem, self-perception, maturity, anger management, anxiety, separation anxiety or abandonment issues, eating disorders, self-inflicting physical harm and disorders from coping with a sexual assault; and
- Details regarding her psychological counseling;

(R. p. 64)

The Appellant alleges that his “mentoring” was done in his capacity as an employee of Northgate Baptist Church and was authorized by Dr. Barry Jimmerson, the Pastor of Northgate Baptist Church. (Id.) Over the course of this “mentorship” the Appellant perceived Hannah Collier being expressive and affection toward him “akin to daughterly affection.” (R. p. 65) Most importantly Appellant admits that this was noticed by her mother Respondent Charlotte Collier and Pastor Jimmerson. (Id.) The Appellant would attempt to “redirect” behaviors by Hannah Collier and when he attempted to do so she became “unreasonably angry.” (Id.) This would occur in the presence of Hannah’s mother Respondent Charlotte Collier. (Id.) This all came to a head on March 11, 2018 when Hannah Collier was “playing on her phone at the table” during Appellant’s son’s birthday party. Appellant notes that the Colliers were aware that it was against Appellant’s “rules” to have a cell phone at the table and that Hannah did not put the phone away when he asked her to and did not respond well to Appellant’s “redirection.” (R. p. 66) This interaction is described by Appellant’s counsel in great detail during the course of the hearing in this case. Counsel for Appellant describes this interaction between her client and Hannah Collier as follows:

[S]o what happened with -- there was -- my client had a birthday party for his son on March 11th. At that time, Hannah Collier had complained of throwing up at the table during a meal and then, simultaneously, was playing on her phone and texting. So my client disputes the allegation that he told Hannah to go throw up if that made her feel better. So that's -- we dispute that.

In addition, my client's comment was, if you feel good enough to text, then you should feel good enough to talk to us, instead of being on the phone.

This is a common issue now with the younger generation of bringing phones to the table.

(R. p. 148, lines 1 – 12)

The next day both Hannah and her mother Respondent Charlotte Collier went to speak with Pastor Jimmerson regarding Appellant's relationship with Hannah Collier. Appellant concedes that Pastor Jimmerson was the Appellant's supervisor with regard to all things related to the church. Charlotte Collier told Pastor Jimmerson that she considered the Appellant's relationship with her daughter to be inappropriate. (R. p. 66) During that meeting Hannah Collier specifically told Pastor Jimmerson that she did not believe the Appellant had any romantic interest, feelings or aspirations toward her and that they had not had any sexual or intimate relations. (R. p. 67)

Subsequent to that meeting the Appellant met with Pastor Jimmerson to tell him that the mentorship was at an end. (Id.) At that meeting Appellant shared texts between him and Hannah Collier with Pastor Jimmerson. (Id.) Appellant had a second meeting with Pastor Jimmerson and the chairman of the Church personnel committee Laurel Shaler where Pastor Jimmerson told Appellant of his conversation with the Colliers. At this meeting the Appellant showed texts between himself and Hannah Collier to both Jimmerson and Shaler. (Id.) In that meeting Pastor Jimmerson stated that it was ***not*** his understanding that the Appellant had engaged in "improper relations" with Hannah Collier (Id.) The Appellant alleges that Ms. Shaler concluded that the Appellant had had "inappropriate relations" with Hannah Collier ***based upon the texts that the Appellant showed Ms. Shaler.*** (R. p. 68) Shaler then stated that in addition to the Hannah Collier situation, Appellant had texted another young girl during the church service and asked a different young girl to go on a vacation. (Id.)

On April 10, 2018 Appellant attend a staff meeting at the Church where he was accused by Pastor Jimmerson, Ms. Shaler and a Warren Paden of having inappropriate contact with young girls (plural) in the congregation. (R. p. 70) The Church asked the Appellant resign and presented him with a separation agreement. (Id.) The Appellant has negotiated the check representing payment pursuant to the separation agreement and has not returned that payment. (R. p. 159, lines 2 - 5).

ARGUMENT

I. THE RECORD IN THIS CASE WITH REGARD TO THE RESPONDENT CHARLOTTE COLLIER'S MOTION TO DISMISS IS LIMITED TO THE PLEADINGS IN THIS CASE.

Much of the Appellant's recitation of facts is from affidavits replete with gossip opinions and hearsay some of which were not before the court when it heard Respondent's Motion to Dismiss.¹ While these additional filings may have bearing as to whether or not

¹ In response to Respondent Charlotte Colliers Motion to Dismiss, Appellant filed the following with the court:

- A series of texts between Appellant and Hannah Collier,
- An affidavit of Roy Sabeau, criticizing church leaders and opining as to the character of all parties to this litigation,
- An affidavit of Sue Lutz another church member who sets forth her opinions as to the character of all the parties in this litigation,
- An affidavit of Anne Danciu who knew Appellant's parents. She stated scathing opinions as to the Respondents ranging from her belief that mental illness runs in their family that Hannah's father was intimidating and had not used good manners in failing to let her to pass first through a doorway, that Respondent Charlotte Collier wore provocative clothes to church and that certain church employees were self-righteous and entitled,
- Texts between Hannah Collier and another church member where Hannah states she had nothing to do with Appellant being "fired,"

amendment of the Complaint would be futile, they are not within the trial court's scope of review under SCRCP 12(c) which provides as follows:

c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Rule 12, SCRCP.

In this instance the court chose not to consider matters outside the pleadings and the Respondent's motion was decided under Rule 12(c).² Therefore the question before the court was whether the extremely detailed Complaint in this case stated a claim and whether the legal defenses raised by the Respondent barred those claims.

The affidavits and texts would have not been properly received in evidence had the court broadened its scope of review. The affidavits contain hearsay and opinion. None of the affiants were witnesses to the discussion between Respondent Charlotte Collier

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- Rule 11 correspondence between Respondent's prior counsel Daniel Hughes and counsel for Appellant,
 - An email from Respondent Charlotte Collier to the Appellant requesting he have no further contact with her daughter and Appellant's response,
 - Emails between Laurel Shaler and Appellant regarding hiring a worship intern.
 - Cease and desist letters from Appellant's counsel to the Respondents,
 - Texts between unknown persons discussing a meeting at the church, and
 - Texts between Appellant and Warren Peden discussing a church meeting where Appellant notes biblically Laurel Shaler as a woman should not be in authority over men.

² Appellant states several time in his brief that the court converted Respondent Charlotte Collier's motion to a Rule 56 motion. This is not the case as is reflected in the trial court's order in this case.

and her pastor upon which this action is based. Several of the affidavits relate to the way that Respondent Charlotte Collier dressed for church and the opinion of affiants that she was romantically interested in Appellant and thus behaved as a “woman scorned.” The affidavits are merely sworn statements of uncharitable gossip to the extent they pertain to the claims against the Respondent Charlotte Collier.

The Appellant additionally filed text messages between himself and Hannah Collier with no authentication or foundation. However a review of those text messages is disturbing. In what purports to be a text message from Appellant to Hannah Collier he writes:

And I earn peoples trust. Like Josie’s mom is excited that she is going to New York City with me and Andrew. Plus I’m taking a couple other friends. Josie is 17. Normally that would be weird but people who know me well understand know what I’m all about and that makes me feel really good. I love earning people’s trust.....
(R. p. 282)

Throughout these texts selected and submitted by Appellant, Respondent Charlotte Collier’s daughter Hannah expresses that she is uncomfortable with the relationship with Appellant and is confused as to whether it is romantic or not. Appellant never attempts to break off the “mentorship” but in these texts is insistent that the relationship continue reminding the Hannah Collier how much he cares for her. These texts do not help the Appellant’s case. Appellant is the beneficiary of the court’s decision to exclude the matters outside the pleadings in his decision.

Lastly, Appellant argues that he has pled “actual allegations that the defamatory statement “inappropriate relationship” supported at least one defamatory meaning. However, the paragraphs of the Complaint Appellant sets forth in support of this are all

conclusory or opinion, not factual. Additionally, Appellant seeks to hold Charlotte Collier responsible for statements made by others as regarding the relationship between Appellant and Hannah Collier using the words "inappropriate relationship," ignoring the undisputed fact that the Colliers specified the relationship was not sexual. If others made statements taken out of the context admitted in the Complaint, i.e. that the relationship was non sexual, that is not actionable against Charlotte Collier.

II. THE RESPONDENT CHARLOTTE COLLIER DID NOT MAKE ANY DEFAMATORY STATEMENTS TO HER PASTOR.

"The tort of defamation allows a plaintiff to recover for injury to her reputation as the result of the defendant's communication to others of a false message about the plaintiff." *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998). "Slander is a spoken defamation while libel is a written defamation or one accomplished by actions or conduct." *Id.* "To establish a defamation claim, a plaintiff must prove: (1) a false and defamatory statement was made; (2) the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable regardless of harm or the publication of the statement caused special harm." *West v. Morehead*, 396 S.C. 1, 7, 720 S.E.2d 495, 498 (Ct. App. 2011); *Erickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006); *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). *Garrard v. Charleston Cty. Sch. Dist.*, 429 S.C. 170, 190-91, 838 S.E.2d 698, 708-09 (Ct. App. 2019)

The alleged defamatory statement made by Respondent Charlotte Collier was made to her Pastor in a meeting concerning what is alleged to have been a “mentorship” approved by her pastor between the 50 year old Appellant and her 18 year daughter was that the relationship was inappropriate. The question before the trial court was whether Respondent’s statement was defamatory. Appellant argues this is a jury question. However our courts do not require a jury determination where a reasonable interpretation of the statement is that it is not defamatory. The Appellant cannot rely on “purely conjectural” interpretations to avoid dismissal. *Fountain v. First Reliance Bank*, 398 S.C. 434, 443, 730 S.E.2d 305, 310 (2012)

In this instance the Appellant cannot rely on innuendo since Appellant pleads that the Respondents told their pastor specifically that the relationship was not sexual or physical. Appellant’s argument requires the court to cherry pick the word “inappropriate” out of the conversation and to interpret it outside it’s meaning in the context of the conversation.

Appellant relies upon numerous “authorities” such as “Word Hippo.com” in support of his argument that the only kind of inappropriate relationship is a sexual one. Any validity this argument is negated by the allegations of the Complaint that allege the Respondents informed their pastor the relationship was not sexual. The allegations of the Complaint, taken as a whole indicate the Respondent Charlotte Collier told her pastor she was concerned that the nonsexual relationship between the Appellant and her daughter was inappropriate. Any reading of Complaint and certainly the texts submitted by Appellant would lead any parent to that same conclusion.

Furthermore Respondent Collier's statement that the relationship was inappropriate is opinion. The Appellant is required to establish the alleged defamatory statement was false. However, when a statement is opinion it cannot be proven true or false.³ The facts Appellant pled that were given in support of the opinion --- that a relationship existed and that the relationship was not sexual or physical ---- are true and thus not defamatory.

Appellant's focus is on the characterization of the non-sexual relationship as "inappropriate." There are no South Carolina cases directly on point. The Fourth Circuit has addressed this issue in *Biospherics, Inc. v. Forbes, Inc.*, 151 F.3rd 180 (4th Cir. 1998). The court concluded that when "the bases (sic) for the . . . conclusion are fully disclosed, no reasonable reader would consider the term anything but the opinion of the author drawn from the circumstances related." *Chapin*, 993 F.2d at 1093; *see also Standing Comm. on Discipline v. Yagman*, 55 F.3d 1430, 1439 (9th Cir. 1995) ("A statement of opinion based on fully disclosed facts can be punished only if the stated facts are themselves false and demeaning."); *Moldea*, 15 F.3d at 1144-45 ("Because the reader understands that such supported opinions represent the writer's interpretation of the facts presented, and because the reader is free to draw his or her own conclusions based upon those facts, this type of statement is not actionable in defamation."); *Phantom Touring, Inc. v. Affiliated Publications*, 953 F.2d 724, 730-31 (1st Cir. 1992) (when statement

³ Appellant argues that the court failed to do a "required preliminary analysis" as to whether the statement constitutes protected opinion. This matter was not raised by Appellant in his Rule 59 (e) motion and thus is waived. *Lucas v. Rawl Family Ltd. P'shp*, 359 S.C. 505, 598 S.E.2d 718((2004)

provides factual bases for its conclusion, it is a "personal conclusion" rather than a statement of fact subject to a defamation claim).

Biospherics, Inc. v. Forbes, Inc., 151 F.3d 180, 185 (4th Cir. 1998).

The Appellant pleads in his Complaint the following regarding the relationship between himself and Respondent's daughter.

- He is an adult male who has placed himself in a supervisory position over an 18 year old Defendant (R. p. 62)
- He was giving the 18 year old Defendant financial gifts (Id.)
- Plaintiff alleges the 18 year old Defendant was vulnerable (R. p. 63)
- Plaintiff alleges he decided to form a mentoring relationship with an 18 year old female (Id.)
- Plaintiff invited the 18 year old to social gatherings and on trips (Id.)
- Plaintiff reported on observations, assessments and issues of an 18 year old girl to church staff (R. p. 64)
- Plaintiff became a confidant to 18 year old girl for her personal issues and family issues (Id.)
- Others noticed the vulnerable 18 year old Defendant being expressive and affectionate toward the Plaintiff. (R. p. 65)
- Plaintiff attempted to "redirect" the anger of the 18 year old Defendant in a public setting and the Defendant did not respond well to this. (Id.)
- After the Plaintiff alleges that the mentorship was not working and was "reduced and limited," (R. p. 66) he invited the 18 year old Plaintiff to a family birthday party then corrected her behavior with regard to her cell phone usage at the table.

These facts are not in dispute. The facts upon which the opinion are based are pled in the Complaint. Clearly under these facts "appropriateness," like beauty, is in the eye

of the beholder. Hannah Collier's mother considers this relationship to be inappropriate. Appellant undoubtedly considers this type of relationship to be hunky-dory. This conflict merely underscores that the characterization of the relationship as "inappropriate" is opinion. It is not for a jury to decide whose opinion it agrees with.

Appellant's argument taken to its logical conclusion would require a trial, the goal of which would be to determine whether the relationship between Appellant and Hannah Collier was appropriate or not. This is not the function of a jury in a claim for defamation. This is why opinion under the facts as pled cannot be defamatory.

III. ALL STATEMENTS MADE BY THE RESPONDANT COLLIER TO HER PASTOR WERE PRIVILEGED.

A defendant in a defamation action may assert the affirmative defense of conditional or qualified privilege. *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). "Under this defense, one who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused." *Id.* The party asserting a qualified privilege must prove the following elements: (1) good faith, (2) an interest to be upheld, (3) a statement limited in its scope to this purpose, (4) a proper occasion, and (5) publication in a proper manner and to proper parties only. *Manley v. Manley*, 291 S.C. 325, 331, 353 S.E.2d 312, 315 (Ct. App. 1987). Whether an occasion gives rise to a qualified or conditional privilege is generally a question of law for the court. *Murray v. Holnam, Inc.*, 344 S.C. 129, 140, 542 S.E.2d 743, 749 (Ct. App. 2001). This court has previously found the qualified privilege applies

"to situations in which an employee's job performance is properly evaluated." *Wright v. Sparrow*, 298 S.C. 469, 474, 381 S.E.2d 503, 506 (Ct. App. 1989) *Harris v. Tietex Int'l, Ltd.*, 417 S.C. 533, 540, 790 S.E.2d 411, 415 (Ct. App. 2016).

Appellant alleges he was the participant in a church approved mentorship of Hannah Collier. Appellant alleges that Pastor Jimmerson was his supervisor. Appellant alleges that Pastor Jimmerson was aware of the mentorship and that Appellant had discussed Hannah Collier with Pastor Jimmerson. Appellant alleges that Pastor Jimmerson was Respondent Charlotte Collier's pastor. Appellant alleges that the only participants in the meeting where his relationship with Hannah Collier was discussed were Pastor Jimmerson, Charlotte Collier and Hannah Collier. Appellant alleges that in this meeting Hannah Collier denied that the relationship was romantic, intimate or sexual. If a parent cannot have this conversation under the facts as pled, how can they ever have their concerns addressed? The comments by the Colliers were limited, private, circumspect and to the point. They did not gossip within the church regarding their concerns but took them privately to their pastor, the Appellant's supervisor. Under the factors set out in *Murray v. Holnam, Inc.*, 344 S.C. 129, 140, 542 S.E.2d 743, 749 (Ct. App. 2001) these statements are to afforded qualified privilege. Furthermore, the application of the privilege is a question of law for the court, not a question for a jury.

IV. THE TRIAL COURT CORRECTLY RULED THAT THE APPELLANT FAILED TO STATE A CLAIM FOR OUTRAGE UNDER THE FACTS AS PLED.

To recover for the intentional infliction of emotional distress, a plaintiff must establish (1) the defendant intentionally or recklessly inflicted severe emotional distress or was

certain or substantially certain that such distress would result from his conduct; (2) the defendant's conduct was so extreme and outrageous that it exceeded all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it. Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (1981). Fleming v. Rose, 338 S.C. 524, 536-37, 526 S.E.2d 732, 739 (Ct. App. 2000).

The court determines, from the materials before it, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery. See McSwain v. Shei, 304 S.C. 25, 402 S.E.2d 890 (1991). See also Andrews v. Piedmont Air Lines, 297 S.C. 367, 377 S.E.2d 127 (Ct. App. 1989) (question of whether defendant's conduct may be reasonably regarded as so extreme and outrageous as to allow recovery for outrage is question for court to determine). The majority of cases finding outrageous conduct generally require "hostile or abusive encounters" or "coercive or oppressive conduct." See Gattison v. South Carolina State College, 318 S.C. 148, 456 S.E.2d 414 (Ct. App. 1995); Wright v. Sparrow, 298 S.C. 469, 381 S.E.2d 503 (Ct. App. 1989).

Here, there is no evidence of any hostile or abusive encounter with Respondent Charlotte Collier or any suggestion of coercive or oppressive conduct. There are no facts to establish the conduct of Charlotte Collier was so extreme and outrageous as to constitute intentional infliction of emotional distress. Instead, Charlotte Collier did as any good mother would do in a civilized society; she noted the inappropriateness of the

relationship between her daughter and a much older man and did what she could to protect her child. The facts alleged fall short of conduct that exceeds all possible bounds of decency.

V. SOUTH CAROLINA DOES NOT RECOGNIZE A CAUSE OF ACTION FOR
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS UNDER THE FACTS AS
PLEAD.

The seminal case in South Carolina regarding negligent infliction of emotional distress is Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 582–83, 336 S.E.2d 465, 467 (1985). In Kinard v. Augusta Sash & Door Co., the South Carolina Supreme Court adopted the cause of action for negligent infliction of emotional distress with the following elements: (a) the negligence of the defendant must cause death or serious physical injury to another; (b) the plaintiff bystander must be in close proximity to the accident; (c) the plaintiff and the victim must be closely related; (d) the plaintiff must contemporaneously perceive the accident; and (e) the emotional distress must both manifest itself by physical symptoms capable of objective diagnosis and be established by expert testimony. Stewart v. State Farm Mut. Auto. Ins. Co., 341 S.C. 143, 154, 533 S.E.2d 597, 603 (Ct. App. 2000) (citing Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 582–83, 336 S.E.2d 465, 467 (1985)). The South Carolina Supreme Court has strictly limited this cause of action to the “bystander liability” scenario. Id.

The Plaintiff in this case cannot meet any of the elements of this cause of action and this is far from the “bystander liability” scenario. The trial court correctly dismissed this claim.

VI. THE COMPLAINT FAILS TO STATE A CLAIM FOR CIVIL CONSPIRACY.

The Appellant pled that Charlotte Collier individually and collectively with the other Respondents were joint and several tortfeasors conspiring together to injure the Appellant. The Appellant does not include any allegations of fact or damages in support of his purported civil conspiracy cause of action that are different from the elements that he attempts to establish for his other purported causes of action.

To state a claim for civil conspiracy the Appellant must show:

(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff. See *Charles II*, 199 S.C. at 176, 18 S.E.2d at 727; *Charles I*, 192 S.C. at 101, 5 S.E.2d at 472; see also 16 Am. Jur. 2d *Conspiracy* § 53 (2020) (enumerating the prevailing elements of a claim for civil conspiracy recognized in most jurisdictions); 15A C.J.S. *Conspiracy* § 4 (2012) (same). By doing so, we are returning not only to our historical roots, but also to the traditional elements of a civil conspiracy claim as they have been similarly defined by the majority of jurisdictions.

Paradis v. Charleston Cty. Sch. Dist., No. 28030, 2021 S.C. LEXIS 56, at *16-17 (May 19, 2021)

The Appellant does not allege any facts in connection with this cause of action. The Appellant has failed to allege an unlawful act by the Respondent Charlotte Collier. Even if Appellant were to plead this cause of action properly, if her defamation claim fails so does her civil conspiracy claim. As “In a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim.” Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115–16, 682

S.E.2d 871, 875 (Ct. App. 2009).⁴

The Appellant does not plead any actions apart from the actions giving rise to his other claims. He does not plead any damages different from what he alleges in relation to his other claim. The fact that there are multiple Defendants does not in and of itself give rise to a claim for Civil Conspiracy.

VII. THE TRIAL COURT PROPERLY DISMISSED THE CASE WITH PREJUDICE
SINCE AMENDMENT WOULD BE FUTILE.

The Appellant has not filed a motion to amend in this case. This argument addresses whether amendment if requested would have been appropriate in lieu of dismissal of the Complaint with prejudice.⁵ [A] trial court may deny a motion to amend if the amendment would be clearly futile. See Jennings v. Jennings, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010) ("Although leave to amend should generally be 'freely given,' . . . it may be denied where the proposed amendment would be futile."), rev'd on other grounds, 401 S.C. 1, 736 S.E.2d 242 (2012); Skydive Myrtle Beach v. Horry Cty., 426 S.C. 175, 182-83, 826 S.E.2d 585, 589 (2019).

While the court's consideration of Respondent Charlotte Collier's 12(c) motion is limited to the pleadings, the consideration of a Motion to Amend does not have the same constraints. The Appellant has filed three lengthy memoranda in opposition to dismissal

⁴ The court in *Paradis*, decided since this order, has done away with the requirement of special damages. It does not address the requirement of separate wrongful acts.

⁵ Appellant argues that he has in fact requested leave to amend his Complaint because it is in the prayer for relief of his Complaint. Respondent submits this is not a substitute for a written or oral motion.

without ever making any mention of how an amendment could cure a defect in the pleadings, or why that amendment would not be futile. Additionally Plaintiff has filed 76 pages of exhibits and six affidavits with exhibits with numerous emails and texts as attachments since the filing of the Motion to Dismiss. Nothing in the volumes of documents filed has would change or expound upon the allegations in the complaint as they pertain to Charlotte Collier. The Defendant contends that even if this information --- most of which consists of irrelevant insults to the character of Ms. Collier and her daughter Hannah --- were true, Appellant's Complaint would still fail to state a claim.⁶ Appellant's Complaint accurately pleads the statement he contends to be defamatory. This statement fails the legal test.

Plaintiff's other claims also fail on legal grounds. The Plaintiff's claims do not meet the legal criteria for outrage or intentional infliction of emotional distress. These are questions of law for the court. There are no facts set forth in the hundreds of pages of documents filed by the Plaintiff that would change this. Amendment would be futile and is not required.

The only amendment suggested by the Appellant is in reference to his claim for civil conspiracy. (R. p. 365) Appellant requests the court allow him to amend to insert the word "special" in his Complaint with regard to damages. Appellant's claim for civil conspiracy cannot be cured with this amendment. In a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from

⁶ Most of the affidavits as they pertain to Charlotte Collier insult her apparel and refer to his daughter as awkward and immature. None of them advance the Plaintiff's claims.

other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim. Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 278 S.E.2d 607 (1981) (dismissing plaintiff's civil conspiracy claim because "the [civil conspiracy] action does no more than incorporate the prior allegations and then allege the existence of a civil conspiracy and pray for damages resulting from the conspiracy. No additional acts in furtherance of the conspiracy [were] plead"); Kuznik v. Bees Ferry Assocs., 342 S.C. 579, 611, 538 S.E.2d 15, 31 (Ct. App. 2000) ("Because [the third party plaintiff] . . . merely realleged the prior acts complained of in his other causes of action as a conspiracy action but failed to plead additional acts in furtherance of the conspiracy, he was not entitled to maintain his conspiracy cause of action."); Doe v. Erskine Coll., No. 8:04-23001RBH, 2006 U.S. Dist. LEXIS 35780, 2006 WL 1473853, at *17 (D.S.C. May 25, 2006) (granting defendant's motion for summary judgment on plaintiff's civil conspiracy action because "the Complaint does not plead specific facts in furtherance of the conspiracy; instead the Complaint simply restates alleged wrongful acts pled in relation to the plaintiff's other claims for damages."); James v. Pratt & Whitney, 126 Fed. Appx. 607, 613 (D.S.C. 2005) ("If appellant failed to allege facts for his civil conspiracy claim separate and distinct from his other two claims, then his civil conspiracy claim would fail under Todd."). Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115-16, 682 S.E.2d 871, 875 (Ct. App. 2009).

The Complaint in this case contains 215 allegations. As is evident, it contains a plethora of detail most of which is irrelevant and negatively impacts Appellant's claims. The issue before the trial court was not whether there were insufficient facts to support

the causes of action plead. The trial court dismissed the Appellant's claims because under the abundance of facts pled, those claims failed on legal grounds.

While the Respondent Charlotte Collier did not file any documents or request her motion be heard beyond the scope of the pleadings the Appellant and Hannah Collier filed documents. As stated, the content of the text messages Appellant filed would be disconcerting to any parent. The most disconcerting of the text messages was not filed by Appellant but by Hannah Collier. This text message purports to be from Appellant to Hannah Collier and states as follows:

Here is your letter to wake up to, Princess [heart emoji] Btw, you fell asleep on my shoulder tonight which was really special to me. I can't tell you how much you mean to me. I had one of the best days of my life. I really enjoyed just getting to ride with you, and chat with you and laugh with you. I enjoyed that so much. And then to get to hold your hand, and go ice-skating and eat dinner with your family, and have you fall asleep on my shoulder crated some really special memories for me. But tomorrow, (which is actually today now [smile emoji]) Is going to create even more special memories that I will remember and cherish forever. I can honestly say without a doubt that you are the most amazingly special person to ever by in my live. I love you **even longer**, Sweet Princess! Forever **and ever!** Sweet dreams! [love and smiley and heart and tree and kiss blowing emojis] (Emphasis in original)

There is no way to amend the Complaint to state a claim for defamation, outrage, negligent infliction of emotional distress or civil conspiracy under the facts as pled in the Complaint. The documents outside the pleadings that appellant and others have submitted to the court put an exclamation point on the conclusion that there is no legal cognizable claim for Appellant under these facts regardless of amendment.

CONCLUSION

The Respondent Charlotte Collier requests that this court affirm the dismissal with prejudice of Appellant's Complaint.

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September 2, 2021

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Circuit Court Judge

Case No.: 2020-001525

James Earl Tegeler Respondent/Appellant

v.

Charlotte Collier, Hannah Elizabeth Collier, Linda Smith, Northgate Baptist Church
.....Appellant/Respondent

CERTIFICATE OF COMPLIANCE WITH RULE 211(b)

I certify that the Respondent's Final Brief complies with Rule 211(b), SCACR.

/s/ Amy M. Snyder
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September 2, 2021