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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

The Honorable R. Lawton McIntosh

Case No. 2020-001126

Kim Likins, …….. Respondent/Appellant,

v.

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

RESPONDENT'S FINAL BRIEF OF APPELLANT-RESPONDENT

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I. Whether the circuit court erred in refusing to permanently enjoin Hoagland from harassing Plaintiff by contacting her or contacting her employer, the employer's board of directors, or its leadership, while seeking to have the employment terminated?

II. Whether the circuit court erred in denying the request for a permanent injunction out of a concern for such action violating Hoagland First Amendment right to freedom of speech?

STATEMENT OF THE CASE

Respondent/Appellant Kim Likins ("Likins") brought this action for defamation, intentional infliction of emotional distress, and invasion of personal privacy against Appellant/Respondent Skip Hoagland ("Hoagland") on December 10, 2015. (R. pp. 50; summons and verified complaint.) Likins' complaint also sought temporary and permanent injunctive relief, enjoining Hoagland "from, among other things," harassing, defaming, threatening, interfering with Likin's employment, publishing untrue and malicious statements about Likins and "otherwise inflicting emotional distress on [Likins] through his outrageous conduct." (R. pp. 56; summons and verified complaint.)

On December 11, 2015, attorneys for Likins and Hoagland appeared before the Honorable Marvin H. Dukes, III, for a hearing on Likins' motion for temporary injunction. The parties resolved the motion by agreement and signing of a consent order wherein the parties agreed, and the Court ordered: "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 to 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." (R. pp. 46; consent order on temporary injunction.) The consent order provided it would remain in effect for the pendency of the action or until further order of the Court. (R. pp. 47; consent order on temporary injunction.)

On March 7, 2016, Hoagland filed his answer specifically and generally denying the allegations of Likins' verified complaint and asserted defenses of truth,

opinion, fair comment, freedom of speech regarding matter of public concern, First Amendment right to petition, good faith and contributory negligence. (R. pp. 86; answer.)

On June 29, 2016, Likins filed her motion for a rule to show cause and to hold Hoagland in contempt for violations of the consent order. (R. pp. 743; motion and rule to show cause with exhibits.) The motion also sought an order requiring Hoagland to comply with the consent order, pay Likins attorneys' fees and costs for enforcing the consent order, and also for issuance of a protective order prevent future misuse of documents produced by Likins in discovery. (R. pp. 747; motion and rule to show cause with exhibits.) Hoagland responded to Likins' motion by filing said response on July 11, 2016 that denied he willfully violated the consent order, asserted lack of personal jurisdiction over the trial court hearing the motion, and claiming Hoagland lacked sufficient notice of the nature of the contempt proceedings. (R. pp. 739; response to rule to show cause.) On August 11, 2016, the trial court issued its order granting Likins' request for a protective order[1], which prohibited Hoagland from personally contacting witnesses, harassing designated witnesses, and using information obtained during discovery to harass third parties. (R. pp. 45; protective order.) On September 1, 2016, the trial court entered its rule to show cause and directed Hoagland to appear at hearing one week later where he should be able to show cause why he should not be held in civil contempt. On September 8, 2016, the parties and trial court entered a consent order where the parties resolved the contempt issue and Hoagland agreed to abide the language of the consent order on temporary injunction filed December 21, 2015. (R.

[1] The order did not address Likins' request for a rule to show cause regarding contempt providing such request "has not been ruled upon and remains pending." (R. pp. ; protective order.)

pp. 43; consent order on contempt motion.) Also, on September 8, 2016, Likins filed a memorandum of law in support of a contempt finding against Hoagland. (R. pp. 699; memorandum of law in support of contempt finding.)

Likins filed a motion to enforce settlement agreement and for sanctions on November 15, 2016. The motion provided that by handwritten agreement, attached to the motion as "Exhibit B", Hoagland agreed to pay Likins' attorneys $4,100 as an award for filing the contempt motion and that he failed to do so. (R. pp. 687; motion to enforce settlement agreement with exhibits.) On June 2, 2017, the trial court entered a Form 4 order resolving several motions between the parties, including Likin's motion to enforce settlement, noting the motion was "resolved per attorneys". (R. pp. 39; order on several motions including to enforce settlement.)

Also, in 2017, Hoagland motioned to amend his answer to add counterclaims, affirmative defenses, and certain third-party defendants "based upon the Town of Hilton Head Island paying for this lawsuit of Kim Likins against the Defendant." (R. pp. 685; Hoagland motion to amend answer and add counterclaims.) In the trial court's June 2, 2017 order on several motions (above), Hoagland's motion to amend was denied. (R. pp. 39; order on several motions including to enforce settlement.) On July 13, 2017, a formal order denying Hoagland's motion to amend was entered. (R. pp. 28; order on Hoagland motion to amend answer and add counterclaims.)

On November 8, 2017, the trial court sua sponte entered its order prohibiting pretrial communications and publicity.

> Because of the posture and history of this case when it was assigned to the undersigned, and based upon the inherent authority of this Court to maintain and preserve decorum and integrity of Court proceedings and the sanctity of judicial proceedings, the Court finds that it is appropriate and necessary

to issue an order prohibiting the parties, their servants, agents, employees and all others acting at their behest from making, issuing, or causing to be uttered any extra-judicial statements or comments about this lawsuit in any form or fashion during the pendency of this case.

Accordingly, it is ordered, adjudged and decreed that:

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 counsel1. Nothing contained in this Order prohibits the parties from responding to opposing counsel's question posed in the 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 they do not contravene the prohibitions contained herein.

1 Reportedly, the Defendant has engaged in a pattern of communicating directly with Plaintiff's counsel by E-mail and/or otherwise.

(R. pp. 26; order on pretrial communications (emphasis in original).)

On January 4, 2018, Likins filed her motion for an order and/or rule to show cause why Hoagland should not be held in civil contempt for failure to comply with the trial court's order on pretrial communications. (R. pp. 543; motion for rule to show cause re pretrial communications with exhibits.) The motion alleged Hoagland had directed abusive and derisive comments towards Likins' counsel prior to the start of a

deposition and Hoagland has sent nine email strings to Likins' counsel totaling 126 pages. (R. pp. 543; motion for rule to show cause re pretrial communications with exhibits.) On January 16, 2018, Likins filed a memorandum of law in support of her motion for contempt and for rule to show cause with exhibits supplementing the motion. (R. pp. 466; memo in support of motion for rule to show cause re pretrial communications with exhibits.) Three days later, on January 19, 2018, Likins filed additional exhibits in support of motion for rule to show cause. The additional exhibits provided copies of emails sent to Likins' counsel allegedly by Hoagland. (R. pp. 453; additional exhibits in support motion for rule to show cause re pretrial communications with exhibits.) On January 23, 2018, Hoagland filed his reply to Likins' motion for rule to show cause case regarding pretrial communication. Mr. Hoagland asserted several reasons why he should not be held in contempt, including: 1) the emailed statements complained about concerned a separate lawsuit involving different parties over a matter of public concern, protected by the First Amendment to the United States Constitution, and thus not condemnable by a constitutional, narrowly-drawn order on pretrial communications; 2) if the pretrial order is interpreted to prohibit the complained about conduct, it is a violation of Hoagland's First Amendment right to freedom of speech; 3) Hoagland lacked actual notice of the pretrial communications order; and 4) Hoagland's deposition comments were instigated by crude hand gesture by Likins counsel and should be forgiven. (R. pp. 446; reply to motion for rule to show cause re pretrial communications.) On February 7, 2018, the trial court entered its order finding defendant Hoagland in contempt of court. "The Court finds by clear and convincing evidence that the emails sent by Defendant, which are attached to the filings violate the

Order and that Defendant's violations of the Order are willful." (R. pp. 21; order finding defendant in contempt of court.) The order found Hoagland in contempt of court but held "in abeyance the decision of whether Defendant Hoagland's contempt is civil contempt or criminal contempt." (R. pp. 22; order finding defendant in contempt of court.)

In 2018, the parties' motion practice increased ahead of an anticipated trial date that year. Relevant to this appeal of the denial of permanent injunction against Mr. Hoagland, the parties on July 9, 2018 filed a stipulation resolving Hoagland's motion for partial summary judgment filed October 30, 2017. The stipulation provided that Likins would be deemed a "public official," under New York Times Co. v. Sullivan, 376 U.S. 254 (1964) and its progeny, for all of Mr. Hoagland's statements concerning Plaintiff, "including those statements concerning Plaintiff's occupation with the Boys and Girls Club." (R. pp. 1472; stipulation regarding partial summary judgment with exhibit.) It also provided Likins was limiting the factual basis of her last remaining claim for defamation to those identified in her answers to interrogatories, dated September 26, 2017, attached as Exhibit A. (R. pp. 1472; stipulation regarding partial summary judgment with exhibit.)

The parties gathered at the Beaufort County courthouse before the Honorable R. Lawton McIntosh for the ostensible trial of this matter on March 9, 2020. At this court event, counsel for Likins announced it was dismissing all its claims in the verified complaint against Hoagland, except for her request for a permanent injunction. (R. pp. 895; trial transcript 8.) Prior to opening statements regarding the injunction, the trial court noted: 1) it would consider arguments on contempt later and 2) "[b]ut in reading

the local The Island Packet when I got here early this morning and having my cup of coffee, I noticed that Mr. Hoagland had been in communication with the paper again." (R. pp. 898; trial transcript 10.) After taking evidence relative to Likin's request for a permanent injunction, the trial moved into a discussion of the pending contempt sanction and "a hearing for the punishment phase of the contempt." (R. pp. 1110; trial transcript 222.) The trial court outlined its thoughts on the likely contempt sanction but did not issue a ruling and indicated a formal order would follow. (R. pp. 1119; trial transcript 231.)

The same day as the trial, March 9, 2020, Likins filed the affidavit of Gregory M. Alford, attorney for her, that attached as exhibit emails Alford indicated had been sent to him by Hoagland since the February 6, 2018 order finding Hoagland in contempt. (R. pp. 1571; affidavit of Gregory M. Alford with exhibit.) On March 17, 2020, Likins filed the affidavit of John Linton, Jr. Esquire, who provided his hourly rate and a log of activity relevant to enforcement of the contempt sanctions against Hoagland. (R. pp. 1611; affidavit of John Linton regarding fees.) Two days later, Likins filed the affidavit of Gregory Alford, also attorney for her, who similarly provided his hourly rate and log of activity relevant to enforcement of contempt sanctions against Hoagland. (R. pp. 1608; affidavit of Gregory Alford regarding fees.) On March 30, 2020, Hoagland filed his memorandum in opposition to order of contempt and award of attorney's fees. Hoagland's memorandum in opposition renewed his protestations that both the pre-trial communication order and order finding him in contempt were violative of his free speech rights as guaranteed under the First Amendment to the

United States Constitution. (R. pp. 147, 340; memorandum in opposition to contempt, injunction.)

On August 4, 2020, the trial court entered its order denying permanent injunction and sentencing C.C. "Skip" Hoagland for contempt. Specifically, the order of August 4, 2020, provides that "[a]fter careful consideration, the Court finds that the injunction should not issue for two reasons: (1) Plaintiff has an adequate remedy at law and (2) that an injunction may violate Hoagland's First Amendment right to free speech." (R. pp. 11; order denying injunction sentencing Hoagland in contempt 11.)

On August 13, 2020, Likins filed a motion to reconsider the order denying the permanent injunction, pursuant to Rule 59(e), SCRCP. (R. pp. 92; Likins motion to reconsider.) On August 24, 2020, the trial court denied Likin's motion to reconsider the order denying injunction. (R. pp. 1; order denying Hoagland motion to reconsider.) Hoagland had served and filed his reply to Likins Motion to Reconsider on August 16, 2020. On September 2, 2020, Likins served and filed her notice of appeal with the trial court. (R. pp. 1616; Likins notice of appeal.)

STANDARD OF REVIEW

The grant or denial of an injunction by the trial court will not be reversed absent an abuse of discretion. Gilley v. Gilley, 327 S.C. 8, 11-12, 488 S.E.2d 310, 312 (1997); MailSource, L.L.C. v. M.A. Bailey & Assocs., 356 S.C. 363, 367, 588 S.E.2d 635, 637-38 (Ct.App.2003). An abuse of discretion occurs when the decision of the trial court is unsupported by the evidence or controlled by an error of law. Ledford v. Pa. Life Ins. Co., 267 S.C. 671, 675, 230 S.E.2d 900, 902 (1976); County of Richland v. Simpkins, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct.App.2002).

"An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions." In re: Care and Treatment of Miller, 393 S.C. 248, 256, 713 S.E.2d 253, 257 (2011). "When a trial court's decision is made on a sound evidentiary basis and is adequately explained with specific findings — as the law requires — [the appellate court] defer[s] to the trial court's discretion." Horton v. Jasper Cnty. Sch. Dist., 423 S.C. 325, 331, 815 S.E.2d 442, 444 (2018).

ARGUMENT

I. The court did not err in refusing to permanently enjoin Hoagland from harassing Likins by contacting her or contacting her employer, the employer's board of directors, or its leadership, while seeking to have the employment terminated when it found Likins had an adequate remedy at law.

Likins appeals the court's order denying a permanent injunction on the ground that she has an adequate remedy at law "when the undisputed evidence at trial showed there is no practical complete, complete, efficient legal remedy available to Likins." (Respondent-Appellant Initial Brief 15.) Although it would have been unconstitutional for the court to permanently enjoin Hoagland had it incorrectly found Likins did not have an adequate remedy at law, for the reasons discussed later in this brief, she did have an adequate remedy that she dismissed earlier in this action.

The power of the court to grant an injunction is in equity. 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. Santee Cooper Resort, Inc. v. South Carolina Pub. Serv. Comm'n, 298 S.C. 179, 379 S.E.2d 119 (1989). The party seeking an injunction has the

burden of demonstrating facts and circumstances warranting an injunction. Calcutt v. Calcutt, 282 S.C. 565, 320 S.E.2d 55 (Ct.App. 1984). The remedy of an injunction is a drastic one and ought to be applied with caution. Forest Land Co. v. Black, 216 S.C. 255, 57 S.E.2d 420 (1950).

In Strategic Resources v. Bcs Life Ins. Co., 627 S.E.2d 687, 367 S.C. 540 (S.C. 2006), the BCS Life Insurance Companies appealed the trial court's granting of an injunction which required the companies to follow AAA (also a defendant to the action) commercial rules regarding the selection of arbitrators to the parties' dispute. from following the Supplementary Rules and directed the AAA to devise a list of arbitrators according to the Commercial Rules. Id. at 689. "In its order granting the injunction, the trial court held that respondents should not be required to wait until the arbitration has concluded before challenging the proceedings, because it would be wasteful to arbitrate pursuant to inapplicable rules and with an improperly selected neutral arbitrator." Id. Respondent Strategic Resources argued the life insurance companies should not have been granted the injunction because the companies had the opportunity to appeal the decision of the arbitration, an adequate remedy of law. Id. The South Carolina Supreme Court agreed: "The right to appeal provides respondents with an adequate remedy at law, a protection of their rights, and an opportunity to repair any prejudice caused by the alleged improper selection of the neutral arbitrator." Id.

Equitable relief is generally available only where there is no adequate remedy at law. An adequate legal remedy may be provided by statute. Santee Cooper Resort (quoting 27 Am.Jur. 2 d, Equity, § 94 (1966)). 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. Id. at 621.

Assuming *arguendo* that an order providing a permanent injunction in this matter stopping Hoagland from harassing Likins by contacting her or contacting her employer would be constitutional – it would not, see below – such an order in this case would have involved an error of law because Likins had more than one adequate remedy of law available to her, even after she dismissed her defamation action. First, Likins could analyze all statements made by Hoagland about Likins since this action commenced and determine if any of them were untrue and harmed Likins' reputation. The truth or falsity of these statements were not before the Court in this matter and if untrue and harmful to Likins' reputation, could be brought in a new action against Hoagland, seeking a temporary restraining order and preliminary injunction just like she did in this matter. (See R. pp. 50; summons and complaint.) Of course, the same could be said for any future allegedly[2] defamatory statements made by Hoagland. Even assuming the filing of a new action seeking an injunction is inconvenient, that does not mean it is inefficient "to attain the ends of justice and its administration." Santee Cooper at 123. Second, Likins could also bring suit based on nuisance, which the court discussed during the trial, to enjoin Hoagland from speaking (at least during pendency of the action). See Respondent-Appellant Initial Brief 15; (R. pp. 1093; Trial Tr. p. 205, 11. 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

[2] Both temporary injunctions and preliminary injunctions only require proof of likelihood of success on the merits, not full proof of untruth or reputational harm, to be awarded in a newly filed defamation action.

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**.")(emphasis added.) The record of this appeal reveals Likins just isn't at that point yet.

II. The court did not err in denying the request for a permanent injunction out of a concern for such action violating Hoagland First Amendment right to freedom of speech

It is highly likely that even if a narrowly tailored permanent injunction were issued in this case, it would be violative of Hoagland's First Amendment right to freedom of speech as guaranteed by the United States Constitution.

It is important to point out that Likins did not carry her burden to establish a permanent injunction was necessary, such that the court did not commit an abuse of discretion in denying her such a prior restraint. "As a general matter, the First Amendment forbids the government, including the Judicial Branch, 'from dictating what we see or read or speak or hear.'" Ashcroft v. Free Speech Coal., 535 U.S. 234, 245, 122 S.Ct. 1389, 152 L.Ed.2d 403 (2002). A prior restraint is a "judicial order forbidding certain communications...issued in advance of the time that such communications are to occur." Alexander v. United States, 509 U.S. 544, 113 S.Ct. 2766, 125 L.Ed.2d 441 (1993). "So drastic a remedial device may only be imposed when it furthers 'the essential needs of the public order.'" Sindi v. El-Moslimany, 896 F.3d 1, 32 (2018)(quoting Carrol v. President & Comm 'rs of Princess Anne, 393 U.S. 175, 183 (1968)). The court found "the Sindi case instructive as there the United States Court of Appeals for the First Circuit found that an injunction against defamatory

speech was clearly a prior restraint and failed to meet the level of scrutiny so demanded." (R. pp. 15; order denying permanent injunction 9.) In Sindi, a post-trial order enjoined the appellants from republishing, orally or in writing, any of six statements that they previously had employed to defame Dr. Sindi. Sindi at 29. Citing Alexander, the Sindi court said that because the order "forbid certain communications … in advance of the time communications are to occur … [the order] is subject to even more exacting requirements under settled First Amendment doctrine." Id. at 31(see Tory v. Cochran, 544 U.S. 734, 738, 125 S.Ct. 2108, 161 L.Ed.2d 1042 (2005)(treating post-trial injunction against republication of previously defamatory statements as prior restraint). The First Circuit Court of Appeals then outlines the appropriate, most exacting standard of review afforded appeals such as those seeking review of a permanent injunction that restraints the future content of speech: strict scrutiny. "So drastic a remedial device may only be imposed when it furthers 'the essential needs of the public order.'" Carroll v. President & Comm'rs of Princess Anne, 393 U.S. 175, 183, 89 S.Ct. 347, 21 L.Ed.2d 325 (1968). A prior restraint cannot be imposed when those needs can be achieved through less restrictive means. See Id. at 183–84, 89 S.Ct. 347 ; see also Tory, 544 U.S. at 738, 125 S.Ct. 2108. And even when a prior restraint may theoretically be permissible, the decree that embodies it must be precisely tailored both to meet the exigencies of the particular case and to avoid censoring protected speech. See Carroll, 393 U.S. at 183–84, 89 S.Ct. 347. "In the last analysis, a party who seeks a remedy in the form of a prior restraint must establish that the 'evil that would result from' the offending publication is 'both great and certain and cannot be mitigated by less intrusive measures.'" Sindi at 32 (citing CBS, Inc. v. Davis, 510 U.S. 1315,

1317, 114 S.Ct. 912, 127 L.Ed.2d 358 (1994) (Blackmun, J., in chambers) (citing Neb. Press Ass'n v. Stuart, 427 U.S. 539, 562, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976)); see In re Goode, 821 F.3d 553, 559 (5th Cir. 2016); Cty. Sec. Agency v. Ohio Dep't of Commerce, 296 F.3d 477, 485 (6th Cir. 2002); Levine v. U.S. Dist. Ct., 764 F.2d 590, 595 (9th Cir. 1985)). Despite there jury finding of defamation regarding the statements being restrained, the Sindi court invalidated the permanent injunction because it failed to embody the least restrictive means of censorship and was overly broad so as to burden more speech than necessary to achieve the injunction's aims. Sindi at 35.

Likins maintains in her brief that she did not seek an injunction "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." See Respondent-Appellant Initial Brief 24. At the trial, counsel for Likins said, "what we're asking is to convert essentially that preliminary injunction into a permanent injunction, so Ms. Likins does not have to worry about her employer being contacted and her being harassed and embarrassed directly." (R. pp. 900-01, trial transcript 12-13.) The consent order on Plaintiff's motion for temporary injunction, filed Dec. 21, 2015, that Likins refers to, provided "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 not statement to any third party referring to Plaintiff's 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." (R. pp. 46, consent order plaintiff motion for temporary injunction 1.) Although Likins was not clear with any filing during the pendency of this case, any

proposed exhibit during the trial, or with exact proposed wording in her brief about the precise permanent injunction language she seeks, Hoagland chooses to address the consent order language above in his analysis.

First, three sentence injunction above fails to narrowly draw the restriction on conduct that Likins feels will stop harassment. The second prong, for instance, would estop Hoagland from saying that 'while he has had political disagreements with Ms. Likins, she does a good job rearing children.' Such a statement would be of neutral opinion regarding child rearing (and clearly protected First Amendment speech) yet would be violative of the permanent injunction. The First Amendment requires that (among other things) a permanent injunction on speech be "tailored as precisely as possible to the exact needs of the case." Sindi at 34 (quoting Carroll, 393 U.S. at 184, 89 S.Ct. 347).

Second, the third prong of the permanent injunction that "Defendant will not refer to Plaintiff's employment with the Boys and Girls Club in any statements made to a third party" would be violated by simply answering the question "Who is Kim Likins?" A truthful answer to a government official asking about his tax treatment of this litigation's fees and costs, for instance, that said "she is a former Hilton Head Island Town Council member who has a role with the local Boys and Girls Club" would also violate the permanent injunction. This permanent injunction would be unconstitutional for its failure to use the lease restrictive means to achieve the restraint. See Caroll at 183–84.

Third, the court did not abuse its discretion in denying a permanent injunction here because even if it agreed with the above language, it would be burdening protected

speech. Recall that Likins dismissed all her defamation claims before the phase of this trial where the permanent injunction was discussed. (R. pp. 896, trial transcript.) Consequently, no findings of fact could have been made regarding whether the alleged defamatory statements were true or not or were even capable of truth (as opinion statements). So, it was the characterizations of Likins' counsel concerning "harassment" that put this issue of injunctive relief before the Court. The three-sentence temporary injunction language above does not constitute "harassment" (if committed by Hoagland) and even if it did, harassment of the kind described would be protected First Amendment activity in any other context.

Regardless, there is little to no evidence in this record that Likins overcame her burden to satisfy the most exacting constitutional standard in First Amendment jurisprudence. Considering that it was entirely reasonable for the court to couch its denial of Likins request for permanent injunction in that it "may violate Hoagland's First Amendment right to free speech." (R. pp. 17, order denying permanent injunction 11.)

CONCLUSION

This court should affirm the lower court's denial of a permanent injunction on this matter.

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Respectfully submitted,

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