

The Circuit Court of South Carolina
Fifth Judicial Circuit

James R. Barber, III
Circuit Court Judge
Richland County Judicial Center
P.O. Box 2766
Columbia, South Carolina, 29201

(803) 576-1779
FAX (803) 576-1782



October 23, 2014

Ms. Jane Shuler
Judicial Selection Merit Commission
Gressette Senate Office Building
Columbia, SC 29202

Dear Ms. Shuler:

I have reviewed Mr. Adrian Hammond's Witness Affidavit Form along with my file from Mr. Hammond's complaint filed with the Judicial Selection Merit Commission in 2008.

Apparently, Mr. Hammond is alleging that I provided false information to the Judicial Merit Selection Commission by stating that Judge Allison Lee was the Chief Administrative Judge that noticed the Motion to Dismiss for January 2, 2007.

The usual procedure for scheduling motions for a non-jury term of court in Richland County is that the Non-Jury Clerk prepares a roster setting the date and time of the hearings. A notice is sent to the attorneys and pro se parties by the Clerk of Court. The notice is sent in the name of the Chief Administrative Judge for that term of court. The Chief Judge may or may not review the roster before notices are sent.

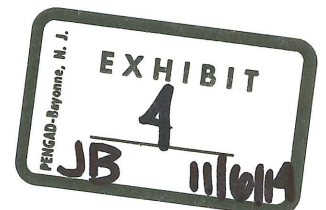
I was Common Pleas Administrative Judge in 2006. Judge Allison Lee was Administrative Judge in 2007. Because the January 2, 2007 term was set for her term, she was responsible for the roster. Notices sent in December 2006 to the parties would have gone out with Judge Lee's name. I am enclosing a copy of the notice dated December 14, 2006 with Judge Lee listed as Administrative Judge (the notice is also attached to Mr. Hammond's packet).

While I have very little independent recollection of this matter (it has been almost eight years), the documentation confirms that I was not involved in the scheduling of the hearing which took place on January 2, 2007. Thus, any information I provided to the Judicial Merit Selection Committee in 2008 was correct.

Sincerely yours,

James R. Barber III
Circuit Court Judge

Enclosures



**Richland County Clerk Of Court
1701 Main Street
P. O. Box 2766
Columbia, SC 29202**

October 31, 2006

**Adrian Pro Se Hammond
508 Lakeside Ave
Columbia, SC 29203**

Case Number: **2006CP4002788**

Adrian Pro Se Hammond vs. The State-Record Inc

MOTION(S) FILED: **Dismiss**

The above referenced case is scheduled for a Motion Hearing on November 27, 2006 at 11:00 AM before Judge Alison R. Lee in Courtroom 2 - C.

The Plaintiff's Attorney is to notify the Defendant in writing of the time and date of all Default and Damages Hearings.

All requests for continuances must be in writing and received by the Chief Administrative Judge prior to the hearing. Please notify the Court in writing if the Motions are resolved prior to the hearing.

Questions concerning this Notice should be directed to the Chief Administrative Judge.

James R. Barber, III
Chief Administrative Judge

Fax: (803) 576-1782

Richland County Clerk Of Court
1701 Main Street
P. O. Box 2766
Columbia, SC 29202

December 14, 2006

Adrian Pro Se Hammond
508 Lakeside Ave
Columbia, SC 29203

Case Number: 2006CP4002788

Adrian Pro Se Hammond vs. The State-Record Inc

MOTION(S) FILED: Dismiss

The above referenced case is scheduled for a Motion Hearing on January 2, 2007 at 11:00 AM before Judge James R. Barber, III in Courtroom 2-C.

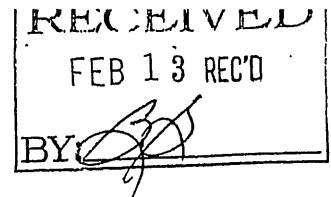
The Plaintiff's Attorney is to notify the Defendant in writing of the time and date of all Default and Damages Hearings.

All requests for continuances must be in writing and received by the Chief Administrative Judge prior to the hearing. Please notify the Court in writing if the Motions are resolved prior to the hearing.

Questions concerning this Notice should be directed to the Chief Administrative Judge.

Alison R. Lee
Chief Administrative Judge

January 13, 2007



The Honorable Alison R. Lee
Chief Administrative Judge
Fifth Judicial Circuit
Richland Judicial Center
1701 Main Street
Columbia, South Carolina 29201

Re: Adrian Hammond v. The State Record Company, Inc., Lezlie Patterson, ~~Barbara~~
Fogg, Monte Paulsen, Lisa Greene, and Cliff LeBlanc
C.A. No. 2006-CP-40-02788

2007 FEB 28 AM 11:29
BARBARA A. SCOTT
C.C.C. & G.S.
RICHLAND COUNTY
FILED

Dear Judge Lee:

I have a number of concerns involving the above referenced case; I'm a Pro se Plaintiff representing myself in this matter. Because of that fact, I do not feel the Justice system owe me any kind of special treatment other than what is do. I do believe in equal justice for all, that is what make this country seem so great. In this particular case I do not believe that I am receiving equal treatment pursuant to the laws of South Carolina. Before you became Chief a motion hearing was scheduled to be before you. Defendants did not show and you denied motion. According to notice of the motion hearing it is said "all requests for continuances must be in writing" defendants did not put it in writing and they were rewarded with a newly scheduled Motion Hearing before the Honorable Judge James R. Barber. He was the same Judge that dismissed my complaint in 1997 (C.A. No. 97- CP -40 - 0294 same defendants). It is hard for me to believe that a barred law attorney with 31 years of experience can overlook a Motion Hearing he had filed on behalf of his clients. Mr. Bender is an amazing attorney; he has a unique way of making wrong look right with respect to law. It would make sense to wait the judge rotation out until you can get that particular judge you think might be more favorable to your

clients. Over looking my objection to a new hearing the motion was heard and my complaint was denied. I am filing a motion for reconsideration pursuant to Rule 59. Judge Lee, can you please have another Judge review this case? All I want is equal justice under the law. If possible can I schedule an appointment to discuss these matters?

Best regards,

Yours very truly,

A handwritten signature in black ink, appearing to read 'Adrian Hammond', with a stylized flourish extending to the right.

Adrian Hammond

Barber
RST

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Adrian Hammond,)
Plaintiff,)

Case No. 2006-CP-40-2788

BOOK **RD** PAGE **194**

vs.)

ORDER DISMISSING COMPLAINT

The State-Record Company, Inc.,)
Lezlie Patterson, Tanya R. Fogg,)
Monte Paulsen, Lisa Greene and)
Cliff LeBlanc,)
Defendants.)

2007 JAN 30 PM 1:20
JANORNA M. SCOTT
C.C.C. & G.S.
RICHLAND COUNTY
FILED

BACKGROUND

This is an unusual case. Plaintiff alleges that on or about January 25, 1994, when he was sixteen years of age, he was arrested and charged with murder and assault. The basis for the within-captioned action is plaintiff's belief that defendants improperly published his name and photograph in connection with his arrest. Plaintiff also alleges that on January 27, 1997, he initiated a civil action against the same defendants alleging injury as a consequence of the publication of his name and photograph. Plaintiff alleges that his initial complaint against these defendants was dismissed on motion of defendants in 1997.

The within-captioned action was filed in May, 2006 alleging negligence and an unfair trade practice by defendants arising out of the publication of his name and photograph in connection with his arrest in 1994. Defendants have moved to dismiss pursuant to Rule 12(b)(6), SCRPC.

A hearing was held on January 2, 2007 at which time plaintiff appeared pro se and defendants appeared through counsel.

DISCUSSION

Plaintiff does not contest the accuracy of the publications, but alleges that the publication of his name and photograph in connection with his arrest was negligent or an unfair trade practice. Defendants contend that the publication was neither negligent nor an unfair trade practice, and that the publication is privileged under the First and Fourteenth Amendments to the United States Constitution.

Plaintiff's negligence claim is premised on S.C. Code Ann. §20-7-780 (1976) which by its terms prohibited the publication of the name, photograph or identity of a juvenile in the custody of the Family Court system. The statute on which plaintiff bases his claim has been repealed, but defendants argue that even without repeal, a restriction on the publication of plaintiff's name and photograph would be unconstitutional. In support of their position, defendants direct the court's attention to State, ex rel., The Times and Democrat, 276 S.C. 26, 274 S.E.2d 910 (1981) in which the Supreme Court of South Carolina held that a statute prohibiting the publication, without the permission of the Family Court, of the name or photograph of any child under that court's jurisdiction unconstitutional. The Supreme Court held:

We... hold that the provisions of Section 14-21-30 are unconstitutional insofar as they prevent the truthful publication by the media of information lawfully obtained concerning a juvenile charged with a crime.

Id., 274 S.E.2d at 911.

Significantly, plaintiff does not contend that defendants obtained his name and photograph illegally. Plaintiff does contend that this court's 1997 dismissal of his initial suit was based on the repeal of Section 20-7-750 notwithstanding the identical prohibition was reenacted by the General Assembly in 1998, S.C. Code Ann. No. 20-7-750 (1996 S.C. Acts 2309 to 2349). Defendants argue that the

reenactment of an unconstitutional provision does not cure the unconstitutionality, and the reenactment has no bearing on this case.

Plaintiff's legal research is superior to that of most pro se plaintiffs, but with respect to the statutory prohibition on the publication of the name and photograph of juveniles, stops short of the law in effect at the filing of this complaint. By Act No. 388 in 2000, the General Assembly removed the previously enacted provision imposing an unconstitutional prior restraint, and replaced the unconstitutional restraint with a restriction on law enforcement agencies and the Family Court that identifying information regarding juveniles in the jurisdiction of the Family Court must not be provided to a newspaper except in limited circumstances, including:

- (1) Authorized by court order;
- (2) The Solicitor has petitioned the court to waive the child to Circuit Court;
- (3) The child has been bound over to a court which would have jurisdiction of the offense if committed by an adult; or
- (4) The child has been adjudicated delinquent in a court for one of the following offenses:
 - (a) A violent crime, as defined by Section 16-1-60;
 - (b) Grand larceny of a motor vehicle;
 - (c) A crime in which a weapon, as defined in Section 59-63-370, was used; or
 - (d) Distribution or trafficking of unlawful drugs, as defined in Article III, Chapter 53 of Title 44.

S.C. Code Ann. §20-7-8520(A)(Sup. 2006).

If at the time of the initiation of plaintiff's current suit, there was no restriction on the publication of his name or photograph, it seems clear that he could have no claim that the publication constituted negligence. In a case where there was a statutory prohibition on the publication of the name of a crime victim, the United States Supreme Court rejected a claim based on negligence where a plaintiff, a victim of sexual assault, sought damages for the publication of her name. The Florida

Star v. B.J.F., 491 U.S. 524 (1989). Even if the South Carolina statutory restriction had not been repealed, and its constitutionality was not in question, it seems unlikely that the statute created a private cause of action for a juvenile defendant whose name had been published. As the Supreme Court of South Carolina held in a case involving a claim by a victim of sexual assault based on the South Carolina statute that prohibited the publication of a sexual assault victim's name, absent a clear expression of legislative intent to create a civil cause of action, a criminal statute does not create private causes of action. Dorman v. Aiken Communications, Inc., 303 S.C. 63, 398 S.E.2d 687 (1990). Nothing in the code sections cited by plaintiff indicates an intent on the part of the General Assembly to create a civil cause of action for juveniles charged with crime when their names or photographs were published.

Plaintiff's claim for damages as a consequence of alleged unfair trade practices is creative, but misunderstands both the nature of the Unfair Trade Practices Act and the role of newspapers in our society. As a general principle of law, "in publishing a newspaper, the publisher assumes no office, trust, or station in a public sense, nor does he enter into any public or contractual relation with the community at large." 58 Am.Jur.2d Newspapers, §7. Even in those circumstances where a newspaper publishes unfavorable news reports regarding a plaintiff, the newspaper cannot be said to be engaged in unfair trade practices. Syracuse Broadcasting Corp. v. Newhouse, 319 F.2d 683 (2d. Cir. 1963). Even if defendants here had been publishing advertising rather than news, their actions would have been exempt from the Unfair Trade Practices Act absent an allegation of knowing publication of false, misleading or deceptive advertising. S.C. Code Ann. §39-5-40(b) (1976). The publication of news is not an activity subject to the Unfair Trade Practices Act.

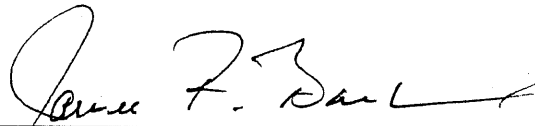
Where a person has been charged with a violent crime, the charge and the crime are matters of public interest, and the plaintiff's identity is inseparable from the crime and the charge. Doc 1

Berkeley Publishers, 329 S.C. 412, 496 S.E.2d 636 (1998). Plaintiff's desire for anonymity is an insufficient interest to justify the imposition of liability for the publication of truthful information regarding a matter of public interest and significance. The Florida Star v. B.J.F., supra; Doe v. Berkeley Publishers, supra.

CONCLUSION

Based on the foregoing discussion and authorities, and in spite of plaintiff's capable argument to the contrary, it is clear as a matter of law, plaintiff has no claim against these defendants under either theory advanced by him for the publication of his name and photograph in connection with news reports that he had been charged with the commission of violent criminal acts. Accordingly, IT IS HEREBY ORDERED, that defendants' motion be, and the same hereby is, granted, and plaintiff's complaint is dismissed with prejudice.

AND IT IS SO ORDERED.



JAMES R. BARBER, III
Circuit Court Judge

Columbia, South Carolina

January 29, 2007