

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Samantha Katchick,)
)
 Plaintiff,)
)
 vs.)
)
 Marshall Alexander Chapman, DMD,)
 Brooke I. Chapman, Chapman Dental,)
 P.A., Douglas P. Schmieding, CPA,)
 Jennings Cook & Co., CPAs, PA and)
 Earl A. Simmons, CPA,)
)
 Defendants.)
)
 _____)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

Case No: 2019-CP-23-01522

RECEIVED

Jul 15 2022

SC Court of Appeals

ORDER

This matter is before the Court on Defendant Earl Simmons’s Motion to Reconsider, Defendants Marshall Alexander Chapman, DMD, Brooke I. Chapman, and Chapman Dental, P.A.’s Motions to Reconsider and Plaintiff’s Motion to Reconsider. For the reasons set forth below, Defendant Earl Simmons’s Motion is granted in part and denied in part, Defendant Marshall Alexander Chapman, DMD, Brooke I. Chapman, and Chapman Dental P.A.’s Motion to Reconsider is denied, and the Plaintiff’s Motion to Reconsider is denied.

Initially, the Court notes that all Defendants argued that Plaintiff did not file any exhibits in support of her Memorandum in Support of Summary Judgment in this matter, and thus, Defendants objected to any supporting documentation not appropriately and timely filed in the matter. The Court received both Plaintiff’s motion and supporting exhibits via email on April 6, 2022, the night before the hearing. Defense counsel was copied on the email.

Defense counsel did not object to Plaintiff’s use of the exhibits during the hearing or before the final order was issued. Furthermore, they have not demonstrated any prejudice resulting from Plaintiff’s failure to file the exhibits. *Alston v. Blue Ridge Transfer Co.*, 308 S.C. 292, 417 S.E.2d

631 (Ct. App. 1992). However, the Court emphasizes that the best procedure for providing memoranda and exhibits to the Court is to file them. Plaintiff's exhibits have not been filed as of the filing of this order. The Court requests Plaintiff file her exhibits in a timely manner.

Defendant Earl Simmons's Motion to Reconsider

Defendant Earl Simmons requests the Court rule on his motion for summary judgment as to Plaintiff's claims for false imprisonment and civil conspiracy. As to Plaintiff's claim for false imprisonment summary judgment is denied. There is a scintilla of admissible evidence this defendant caused the unlawful restraint of the plaintiff—an email sent by this Defendant demonstrating he had knowledge of the possibility of Plaintiff's arrest. *McBride v. Sch. Dist. of Greenville Cty.*, 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010).

As to Plaintiff's claim for civil conspiracy, summary judgment is denied. There is a scintilla of evidence (the aforementioned email) that this Defendant combined with Dr. Chapman and Brooke Chapman to provide law enforcement with false information in an overt act which proximately resulted in damages to the Plaintiff when she was arrested. *Paradis v. Charleston Cty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021).

Defendant Earl Simmons also requests that the Court reconsider its prior ruling denying summary judgment for Plaintiff's negligence claim against him. Defendant argues that he did not owe any duty to the Plaintiff because all of his work was provided directly to the Chapman defendants and not to law enforcement. However, there is evidence in the record that this Defendant offered to help the Chapmans figure out the discrepancies with their cash deposits, and he knew that his work could be provided to law enforcement. *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007) (holding there is no general duty to control the conduct of another unless, *inter*

alia, the defendant voluntarily undertakes a duty or the defendant negligently or intentionally creates the risk). Therefore, the motion is denied.

Defendant Marshall Alexander Chapman's Motion to Reconsider

Defendant Marshall Alexander Chapman ("Dr. Chapman") asks the Court to reconsider its ruling denying summary judgment on Plaintiff's claims for defamation, malicious prosecution, false imprisonment, and civil conspiracy. For the reasons set forth below, Dr. Chapman's motion is denied.

As to defamation, Dr. Chapman argues that there is not a scintilla of evidence of any defamatory statement made by Dr. Chapman about the Plaintiff. However, Plaintiff produced deposition testimony that Dr. Chapman allegedly told an employee of the dental practice that Plaintiff was fired for stealing money. *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002). Dr. Chapman also argues that Plaintiff failed to show any damages resulting from the allegedly defamatory statement he made. However, an allegation of theft constitutes defamation per se and nominal damages are presumed. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998).

As to malicious prosecution and false imprisonment, Dr. Chapman argues the Court erred in stating there exists evidence that the Greenville County Sheriff's Office did not conduct an independent investigation. Specifically, Dr. Chapman points to Investigator Turner's deposition in which he stated no one impeded his investigation. However, Plaintiff provided testimony in the form of the preliminary hearing transcript in which Investigator Turner testified that he relied primarily on the statements made by the Chapmans in deciding to arrest the Plaintiff, creating a genuine issue of material fact on this issue. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 629 S.E.2d 642 (2006); *Huffman v. Sunshine Recycling, LLC*, 417 S.C. 514, 790 S.E.2d 401 (Ct. App. 2016).

As to civil conspiracy, Dr. Chapman argues the Court erred in finding a scintilla of evidence that Dr. Chapman combined with Brooke Chapman to provide law enforcement with false information. However, Plaintiff produced testimony, in the form of a preliminary hearing transcript, that Dr. Chapman and Brooke Chapman told law enforcement that Plaintiff was the only person who could have been responsible for the discrepancy in the cash deposits. Plaintiff also produced deposition testimony from another employee at Chapman dental which refutes the assertion that she was the only person who could have been responsible for the discrepancies, creating a genuine issue of material fact on this issue. *Paradis*, 433 S.C. at 562.

Dr. Chapman further argues that Plaintiff failed to plead special damages as required by *Peoples Federal Savings & Loan Ass'n of S.C. v. Resources Planning Corp.*, 358 S.C. 460, 596 S.E.2d 51 (2004). However, the Court notes that our Supreme Court abolished the requirement that a Plaintiff plead special damages in a civil conspiracy claim in *Paradis*, 433 S.C. at 562 (holding a plaintiff asserting a civil conspiracy claim must establish (1) a 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).

Defendant Brooke I. Chapman's Motion to Reconsider

Defendant Brooke Chapman asks the Court to reconsider its denial of summary judgment on Plaintiff's claims of malicious prosecution, false imprisonment, and civil conspiracy claims. For the reasons outlined above, and in the Court's previous Order, as to Dr. Chapman, the Defendant's Motion to Reconsider is denied.

Defendant Chapman Dental, P.A.’s Motion to Reconsider

Defendant Chapman Dental, P.A.’s asks the Court to reconsider its denial of summary judgment as to Plaintiff’s claims for malicious prosecution and false imprisonment. For the reasons outlined above, and in the Court’s previous order, as to Dr. Chapman and Brooke Chapman, the Defendant’s motion is denied.

Plaintiff’s Motion to Reconsider

Plaintiff asks this Court to reconsider its ruling granting summary judgment for Douglas Schmieding and Jennings Cook & Co, P.A. for her claims for negligence and negligent misrepresentation. Plaintiff also asks the Court to reconsider its ruling granting summary judgment for Earl Simmons for her claim of negligent misrepresentation. Finally, Plaintiff asks the Court to also reconsider its ruling granting summary judgment to Dr. Chapman, Brooke Chapman, and Chapman Dental, P.A. (“the Chapman defendants”) for her claim of constructive fraud. For the reasons set forth below, the Plaintiff’s motion is denied.

The Court notes that Plaintiff filed additional exhibits in support of its Motion to Reconsider. However, the Court cannot properly consider exhibits on a Rule 59(e) motion which were not provided to the Court with the original motion. *Crary v. Djebelli*, 321 S.C. 38, 467 S.E.2d 128 (Ct. App. 1995), *rev’d on other grounds*, 329 S.C. 385, 496 S.E.2d 21 (1998).

As to Defendants Douglas Schmieding and Jennings Cook & Co., P.A., Plaintiff argues these defendants “knew” their letter could have only implicated the Plaintiff. Plaintiff has not produced a scintilla of admissible evidence the Court can rely on to support her assertion. However, there is evidence in the record, in the form of Schmieding’s deposition, that Schmieding did not have any knowledge that his letter would be used by anyone outside of Chapman Dental. Because there is not a genuine issue of material fact of Schmieding’s knowledge, summary

judgment is proper on the negligence claim against him. *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 320 S.C. 143, 463 S.E.2d 618 (Ct. App. 1995) *aff'd in part, rev'd in part*, 327 S.C. 238, 489 S.E.2d 470 (1997).

As to Defendant Earl Simmons, Plaintiff does not advance any specific arguments as to why the Court should reconsider its granting of summary judgment on her claim of negligent misrepresentation. The Court reiterates its prior ruling that there is not a scintilla of admissible evidence that Plaintiff relied on any representation made by Simmons to her detriment. *AMA Management Corp. v. Strasburg*, 309 S.C. 213, 420 S.E.2d 868 (Ct. App. 1992).

As to the Chapman defendants, Plaintiff does not advance any specific arguments as to why the Court should reconsider its granting of summary judgment on her claim of constructive fraud. The Court reiterates its prior ruling that there is not a scintilla of admissible evidence that Plaintiff relied on any representation made by these Defendants to her detriment. *King v. Oxford*, 282 S.C. 307, 318 S.E.2d 125 (Ct. App. 1984).

Conclusion

Based on the foregoing, Defendant Earl Simmons's Motion to Reconsider is granted in part and denied in part. Defendants Marshall A. Chapman, Brooke Chapman, and Chapman Dental P.A.'s Motions to Reconsider are denied. Plaintiff's Motion to Reconsider is denied.

IT IS SO ORDERED.

G.D. Morgan, Jr.
Circuit Court Judge

_____, 20

Greenville, South Carolina



Greenville Common Pleas

Case Caption: Samantha Katchick vs. Marshall Alexander Chapman , defendant, et al

Case Number: 2019CP2301522

Type: Order/Other

So Ordered

G.D. Morgan Jr.