

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Sharon Brown,

Plaintiff,

v.

Cherokee County School District,

Defendant.

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-11-00735

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT**

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**INTRODUCTION SC Court of Appeals**

This case arises from the Cherokee County School District's termination of a continuing contract teacher, Sharon Brown, in October 2015. On March 29, 2021, the Court heard the Motion for Summary Judgment filed by Defendant Cherokee County School District ("the District").

In her Second Amended Complaint, Brown states nine causes of action: (1) Violation of the S.C. Whistleblower Act; (2) Breach of Contract; (3) Breach of Contract Accompanied by a Fraudulent Act; (4) Defamation; (5) Intentional Infliction of Emotional Distress; (6) Gross Negligence; (7) Invasion of Privacy; (8) Interference with Contract; and (9) Violation of the South Carolina Payment of Wages Act.

By separate action brought in 2015 under the South Carolina Teacher Employment and Dismissal Act ("TEDA") S.C. Code Ann. § 59-25-410 *et seq.*, Brown requested and was granted an evidentiary hearing before the District's Board of Trustees regarding then-Superintendent Dr. Quincie Moore's recommendation that Brown be terminated. The Board upheld Moore's recommendation, and the Circuit Court and the Court of Appeals affirmed the Board's decision. Plaintiff's Petition for Writ of Certiorari is pending in the South Carolina Supreme Court.

## FACTUAL BACKGROUND

The following facts are not in dispute. In the 2014-15 school year, Brown was a continuing contract<sup>1</sup> second-grade teacher at Luther Vaughn Elementary School (“LVES”); her supervisor was Principal Nanette Ruppe (“Ruppe”). Brown first began working for the District in 1999. She was terminated in 2007, filed suit; and was reinstated in the District in the 2011-12 school year as part of a settlement.

On March 4, 2013, Brown submitted a complaint to the District’s Deputy Superintendent of Human Resources, Dr. Carl Carpenter (“Carpenter”), alleging Ruppe, who is white, discriminated against Brown based on race. Carpenter, who is African-American, investigated Brown’s allegations and concluded Brown had not been subjected to discrimination.

On March 10, 2014, Brown filed a Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”) alleging the District discriminated against her based on race. The EEOC found insufficient evidence to support Brown’s allegations. Thereafter, Plaintiff’s charge was dismissed, and she was provided with her “Right to Sue” notice on July 23, 2015. Brown did not file suit against the District for race discrimination.

Brown asserts she filed subsequent charges of discrimination against the District on August 5, 2015, and October 9, 2015, with the EEOC. The District has received no notice from the EEOC regarding these alleged charges.

On June 1, 2015, Ruppe asked Carpenter to investigate an incident on May 28, 2015, in which Brown reportedly made inappropriate physical contact with a student. During his investigation, Carpenter determined that two LVES teachers, Justin Kelly (“Kelly”) and Beth

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<sup>1</sup> Continuing contract teachers may only be terminated in accordance with the provisions of TEDA.

Owens (“Owens”), had observed Brown place her hands on Student J<sup>2</sup> while in the hallway outside the art room. Carpenter met with Brown to discuss the allegations regarding Student J; during this meeting, he placed Brown on administrative leave with pay until the investigation was completed. During their meeting, Carpenter also instructed Brown orally and in writing that she was not to speak with other District employees about the investigation while she was on administrative leave. Ruppe confirmed during Brown’s dismissal hearing that she heard Carpenter inform Brown of the terms of her administrative leave. After their meeting, Brown informed Carpenter that Owens and Tracie Wilson (“Wilson”), LVES teacher, could serve as witnesses for her and asked Carpenter to speak with them.

On June 5, 2015, while still on administrative leave, Brown talked with Wilson at a local department store. As of that date, Carpenter had not contacted Wilson and Wilson was unaware Plaintiff had provided her name as a witness. Wilson testified during Plaintiff’s dismissal hearing, that Brown told her “Dr. Carpenter is supposed to call you” and Wilson was “supposed to talk about what happened with the student.” Brown admitted to Wilson “you know, I’m not supposed to be discussing it,” to which Wilson replied, “well, don’t discuss it because I don’t know what happened . . . .” Brown then attempted to tell Wilson what she believed had happened with Student J. Wilson testified during Brown’s dismissal hearing that Brown “kept on talking and saying stuff about telling me what I’m supposed to say, what happened, well, what she felt like happened was she felt like I may have saw her [sic], and I was like no, I didn’t see any of that, I don’t know what you’re talking about.”

On July 31, 2015, Superintendent Moore met with Brown to discuss the investigation. Brown requested that her attorney and her mother, Shirley Mills, be allowed in the meeting and

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<sup>2</sup> The student in question is referred to as “Student J” to protect his confidentiality.

Moore granted that request. When Moore questioned Brown about Carpenter's directive that Brown should not speak with other employees during the investigation's pendency, Brown stated she "did not remember" Carpenter's directive. Brown acknowledged speaking with Wilson for three to five minutes and asking her if Carpenter had contacted her.

On August 11, 2015, Moore informed Brown she was recommending Brown's dismissal. As the basis for her recommendation, Moore cited to Brown's conduct with Student J and Brown's insubordination in failing to follow Carpenter's directive by talking to Wilson. Moore also cited to Brown's dishonesty in responding to questions about the events of June 5 and May 28.

Brown requested a hearing before the Board in accordance with TEDA and on October 7, 2015, the Board held that hearing. The Board voted to uphold Moore's recommendation of dismissal, concluding there were good and sufficient reasons for terminating Brown. The Board issued a formal Order on October 15, 2015.

Since Brown's termination, the District has not received any request for a copy of her personnel records. Only three school districts have contacted Carpenter for a reference on Brown. In 2017, Greenville County School District contacted Carpenter requesting a reference for Brown. In his deposition testimony, Carpenter stated, "I gave her employment dates of when she started when she ended, and that the board upheld a recommendation from the superintendent her termination, and that was it, nothing further." Since Carpenter's deposition, Spartanburg School District Two requested Carpenter call him about Brown's application for employment. Carpenter provided the same information he provided the Greenville School District. Finally, in 2020, Richland School District One requested a reference for Brown; in response, Carpenter provided the same information given the other districts.

## STANDARD OF REVIEW

“Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed.” *McClanahan v. Richland County Council*, 350 S.C. 433, 437, 567 S.E.2d 240, 242 (2002). “In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the nonmoving party.” *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006).

## ORDER

### WHISTLEBLOWER CLAIM

The South Carolina Whistleblower Protection Act (“WPA”) states “[n]o public body may dismiss, suspend from employment, demote, or decrease the compensation of an employee of a public body because the employee files a report with an appropriate authority of wrongdoing.” S.C. Code § 8-27-20(A). The WPA continues to state the adverse employment action must occur within one year after the filing of a report to be considered retaliatory. S.C. Code Ann. § 8-27-30(A).

The Court has reviewed the facts on the record and, considering those facts in the light most favorable to Brown, the Court finds there is a genuine issue of material fact as to Brown’s claim under the WPA. In *Hyde v. South Carolina Dep’t. of Mental Health*, 314 S.C. 207, 442 S.E.2d 582 (1994), the Court found that an employee must exhaust administrative remedies available through a state statute before filing a WPA claim. The “[g]eneral rule is that administrative remedies must be exhausted absent circumstances supporting an exception to application of the general rule.” See *id.* (citing *Andrews Bearing Corp. v. Brady*, 261 S.C. 533, 201 S.E.2d 241 (1973); see also *Meredith v. Elliott*, 247 S.C. 335, 147 S.E.2d 244 (1966) (where

an adequate administrative remedy is available to determine a question of fact, one must pursue the administrative remedy or be precluded from seeking relief in the courts).

Here, the Court finds Brown exhausted her administrative remedies under TEDA when her appeal was dismissed by Judge Hayes on June 15, 2017. Brown filed her WPA claim on October 4, 2017, which was roughly four months after her administrative remedies were exhausted and well within the proscribed statute of limitation of one year See S.C. Code Ann. § 8-27-30(A).

### **CONTRACT CLAIMS**

Following the Board's decision, Brown filed an appeal to Circuit Court in accordance with the provisions set forth in S. C. Code § 59-25-470. The Circuit Court upheld the Board's decision and Brown appealed to the S.C. Court of Appeals. The Court of Appeals upheld the Circuit Court and Brown thereafter filed a Petition for Writ of Certiorari, which is currently pending in the S.C. Supreme Court.

South Carolina Appellate Rule 241 directly addresses the stay that occurs when a case is on appeal. See S.C.A.R. 241. Furthermore, Rule 205 of the South Carolina Appellate Rules divests the lower court or administrative tribunal over "*matters affected by the appeal.*" See *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016)(citing *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012)). Here, Brown's counsel stated to the Court at the hearing, "the contract is pending before the South Carolina Supreme Court." Therefore, the Court finds that the contract issues present here are directly related to an underlying appeal pending before the S. C. Supreme Court. The Court further finds that its jurisdiction has been divested because this is a matter that "would be affected by appeal." Therefore, the Court stays Brown's two contractual claims pending conclusion of the Supreme Court appeal.

### **INTERFERENCE WITH CONTRACT**

During the hearing, counsel for Brown agreed that her claim for third party interference with a contract should be dismissed and so the Court dismisses that claim.

### **INVASION OF PRIVACY CLAIM**

During the hearing in this matter, counsel for Brown agreed her claim for Invasion of Privacy should be dismissed and so the Court dismisses that claim.

### **DEFAMATION CLAIM**

The tort of defamation allows a plaintiff to recover for injury to her reputation as the result of a defendant's false communications about the plaintiff to a third party. *McBride v. School Dist. of Greenville Cty.*, 389 S.C. 546, 559, 698 S.E.2d 845, 852 (S.C. App. 2010). To state a case for defamation, the plaintiff must show "(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." *Id.* at 559-60, 698 S.E.2d at 852 (quoting *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002)). A claim for defamation must be filed within two years of the alleged defamatory publication. S.C. Code Ann. § 15-3-550 (2005). The limitations period begins when the alleged defamatory statement is made, not when the plaintiff learns of the statement. *See Jones v. City of Folly Beach*, 326 S.C. 360, 369, 483 S.E.2d 770, 775 (Ct. App. 1997) (affirming the trial court's grant of summary judgment as to the plaintiff's defamation claim because South Carolina has not adopted the discovery rule in libel or slander cases); *Harris v. Tietex Int'l Ltd.*, 417 S.C. 533, 542, 790 S.E.2d 411, 416 (Ct. App. 2016).

Brown alleges that during a meeting on July 31, 2015, Moore and Carpenter defamed Brown in the presence of her mother. However, Brown did not file her defamation complaint until

October 4, 2017, more than two years after the alleged defamation occurred. Other than her mother, Plaintiff does not identify any third parties to whom the District published defamatory statements. Based on Brown's failure to file her defamation claim with the requisite statute of limitations, Brown's defamation claim should be dismissed as a matter of law.

**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (OUTRAGE)**

During the hearing, counsel for Brown stated he was dismissing Brown's outrage claim and so the Court dismisses that claim.

**GROSS NEGLIGENCE CLAIM**

In her Second Amended Complaint, Brown alleges the District was grossly negligent in supervising District Superintendent Dr. Quincie Moore, leading to Brown's termination. The SCTCA governs all tort claims against governmental entities and is the exclusive remedy for any tort committed by a governmental entity or its employees or agents. *Flateau v. Harrelson*, 355 S.C. 197, 203, 584 S.E.2d 413, 416 (Ct.App.2003); S.C. Code Ann. § 15-78-70(b). The SCTCA provides that the State, its agencies, political subdivisions, and other governmental entities are "liable for their torts in the same manner and to the same extent as a private individual under like circumstances," subject to certain limitations and exemptions provided in the SCTCA. S.C. Code Ann. § 15-78-40.

The District argues in support of summary judgment that Brown's claim is barred by the exclusivity provisions of the Workers' Compensation Act, S.C. Code Ann. § 15-78-60(14). This Court disagrees. The South Carolina Worker's Compensation Act defines what may or may not be compensable under the Act. It further defines injury and personal injury at S.C. Code Ann §42-1-160. At § 42-1-160(C) the Act states, "Stress, mental injuries, heart attacks, strokes, embolisms, or aneurisms arising out of and in the course of employment unaccompanied by physical injury

are not considered compensable if they result from any event or series of events which are incidental to normal employer/employee relations including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations, except when these actions are taken in an extraordinary and unusual manner.” S.C. Code Ann. §42-1-160(C)(emphasis added).

In *Sabb v. South Carolina State University*, 350 S.C. 416, 426, 567 S.E.2d 231, 236 (2002), the Court specifically found that certain claims are outside the exclusivity of the Worker’s Compensation Act and would not divest the Court of subject matter jurisdiction. Here, the Court determines the injuries Brown alleges are of such nature that they relate to subset (C) and therefore, the injuries are such as to be expressly not included as compensable under the Act unless such termination was undertaken in an extraordinary or unusual manner. The Court does not see any fact that make this case extraordinary or unusual.

Further, as to the argument posed by the District regarding whether Brown can file suit for gross negligence as an employee of the District, the Court disagrees with the District’s argument. The Court finds that S.C. Code Ann. § 15-78-60(25) does not directly address the issue presented in this case. ‘Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy lawmakers.’ “*Peake v. S.C. Dep’t of Motor Vehicles*, 375 S.C. 589, 599, 654, S.E.2d 284, 289 (Ct. App. 2007)(quoting *Collins Music Co., Inc. v. IGT*, 365 S.C. 544, 550, 619 S.E.2d 1, 3(Ct. App. 2005)). The Court finds that section applies to wards of the State and the actions that could be brought by such people who find themselves wards of the State. Here, Brown is not a ward of the State. Therefore, the Court denies the District’s Motion for Summary Judgment as to the Claim that the SCTCA does not apply.

### PAYMENT OF WAGES CLAIM

The South Carolina Payment of Wages Act (“SCPWA”) provides that when an employer discharges an employee, the employer must timely pay the employee “all wages due.” S.C. Code Ann. §§ 41–10–40, 50. The SCPWA defines wages as all amounts at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments which are due to an employee under any employer policy or employment contract. (emphasis added).” S.C. Code Ann. § 41-10-10.

Here, Brown claims she accrued sick leave days during her employment with the District and was not paid for those days following her termination. Because District Board Policy GCC—*Staff Leave and Absences* specifically states the District does not reimburse employees for unused sick leave and because Brown’s teaching contract does not provide for the payment of sick leave upon separation from employment, the District is entitled to summary judgment on Brown’s SCWPA claim.

### CONCLUSION

Based on the above, the District is entitled to judgment as a matter of law on Brown’s claims for Defamation and Violation of the Whistle Blower Protection Act. This Court also dismisses Brown’s claims for Invasion of Privacy, Outrage and Third-Party Interference with Contract based on counsel for Brown’s statements to the Court regarding those claims. The Court denies the District’s Motion for Summary Judgment as to Brown’s claims for Gross Negligence and Violation of the Whistleblower Protection Act.

**AND IT IS SO ORDERED**

The Honorable Judge R. Keith Kelly



Cherokee Common Pleas

**Case Caption:** Sharon Brown VS Cherokee County School District One ,  
defendant, et al  
**Case Number:** 2017CP1100735  
**Type:** Order/Summary Judgment

It is so Ordered.

s/ R. Keith Kelly - 2165

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