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S.C. SUPREME COURT

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

Civil Action No.: 2:22-cv-02322-RMG-MHC

Candise Gore,

Plaintiff,

v.

Dorchester County Sheriff’s Office, et al.

Defendants.

**PLAINTIFF CANDISE GORE’S  
OBJECTIONS TO THE REPORT  
AND RECOMMENDATION**

**NOW COMES PLAINTIFF** Candise Gore, by and through Counsel, and having reviewed the Magistrate’s Report and Recommendation with regard to multiple Motions to Dismiss by the Defendants, hereby respectfully files her objections to the recommendation that Plaintiff’s Infliction of Emotional distress claim—which is based on and pleaded on the grounds of recklessness—be dismissed on the grounds that it is prohibited by S.C. Code 15-78-30(f).

**STANDARD OF REVIEW**

This court may “accept, reject, or modify, in whole or in part, the findings of the recommendations made by the magistrate judge . . . or recommit the matter to the magistrate judge with instructions.” 28 U.S.C. §636(b)(1). The court is charged with making a de novo determination of any portion of the R&R to which a specific objection is made. *Id.* The Magistrate Judge only makes a recommendation to the court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The recommendation carries no presumptive weight, and the responsibility to make a final determination remains with the court. *Id.* at 270-71.

**SPECIFIC OBJECTIONS**

The Plaintiff specifically objects to the Magistrate’s recommendation that the Court

dismiss the Plaintiff's Intentional Infliction of Emotional Distress claim (which Plaintiff pleaded based on recklessness). Recommendation of dismissal of this claim is not in keeping with prior South Carolina court precedent and South Carolina rules of statutory construction regarding the allowance of a claim for Outrage based in recklessness against a Defendant that falls under the South Carolina Tort Claims Act. *See Bass v. Dep't of Soc. Servs.*, 780 S.E.2d 252 (S.C. 2015) (appl[ied] the law of outrage [and] implicitly accepted that outrage claims based in recklessness were not barred.); *Wade v. Berkeley County*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002) (courts are to look to the plain meaning of a statute before any other considerations).

While the Magistrate's Report and Recommendation is based on prior orders reached in federal court cases in the Federal District Court of South Carolina, these cases have reached a conclusion and a result different from the jurisprudence of South Carolina courts regarding S.C. Code § 15-78-30(f)'s allowance of an Outrage claim. As a result, the decisions by the prior federal district courts based on interpretation of a South Carolina state statute for this inquiry should be discarded in favor of basing said decision on state precedent and rules of statutory construction consistent with state case law and precedent, specifically with regard to whether an outrage claim based in recklessness can proceed despite the statutory language in S.C. Code § 15-78-30(f), and whether S.C. Code § 15-78-30(f) is unambiguous when using South Carolina statutory construction principles.

In 2015, the case of *Bass v. Dep't of Soc. Servs.*, 780 S.E.2d 252 (S.C. 2015) held that although the substantive allegations did not satisfy the "extreme and outrageous" element of a claim of outrage and/or intentional infliction of emotional distress against the South Carolina Department of Social Services (SC-DSS), such a claim could proceed against an entity falling under the South Carolina Tort Claims Act with the elements

satisfied by averments based in recklessness. *Id.* The *Bass* case further mentioned no prohibition on an Outrage claim against the South Carolina Department of Social Services (SC-DSS) based on S.C. Code § 15-78-30(f). *Id.*

Plaintiff understands that since the *Bass* case was decided, many decisions in Federal District Court in South Carolina have reasoned that (1.) reckless conduct possesses an element of willfulness, which more closely aligns with intentional torts versus those arising in negligence, and (2.) it is doubtful that the South Carolina legislature would explicitly exclude from recovery any loss caused by the “intentional infliction of emotional harm” but not exclude from recovery the very same harm when the emotional distress was inflicted recklessly. *Anderson v. Dorchester Cnty.*, 2021 WL 1186637, at \*15 (D.S.C. Mar. 30, 2021); see also *Faulkner v. York Cnty. Sch. Dist.*, 2022 WL 673684, at \*9 (D.S.C. Mar. 7, 2022) (applying the reasoning in *Anderson*), but such reasoning departs from state precedents and state rules of statutory construction.

First with respect to the relationship between reckless and intentional conduct, the plain meaning rule referenced below should prevent an analysis of the relationship between these distinct legal concepts. Under the South Carolina jurisprudence, courts are to look to the plain meaning of a statute before any other considerations. *See Wade v. Berkeley County*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002) (citing *Kennedy v. South Carolina Ret. Sys.*, 345 S.C. 339, 549 S.E.2d 243 (2001)) (The first question of statutory interpretation is whether the statutes meaning is clear on its face.) Where the statutes language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the Court has no right to impose another meaning. *Vaughn v. Bernhardt*, 345 S.C. 196, 198, 547 S.E.2d 869, 870 (2001) (citing *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000)).

S.C. Code § 15-78-30(f) reads:

“Loss” means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, ***but does not include the intentional infliction of emotional harm.*** (Emphasis added)

There is no mention of recklessness or reckless infliction of emotional harm, and as such, by following plain meaning state principles of statutory construction, the inquiry should end and any perceived ambiguity between “emotional harm” and “emotional distress” does not change the fact that “reckless” or “recklessness” is not mentioned.

Moreover, the rationale that it is doubtful the legislature intended to leave out reckless infliction of emotional harm goes into a legislative intent analysis beyond the plain unambiguous meaning of the word “intentional” and should therefore not be considered. *See Volvo Trademark Holding Aktiebolaget v. Clark Mach. Co.*, 510 F.3d 474, 482–83 (4th Cir. 2007) (“[A] federal court sitting in diversity is obliged to apply state law principles to resolve [a question of statutory construction], uti-lizing such principles as enunciated and applied by the state’s highest court.” (citing *Volvo Trademark Holding Aktiebolaget v. AIS Constr. Equip. Corp.*, 416 F. Supp. 2d 404, 410 (W.D.N.C. 2006))) Although this is not a diversity case, it still focuses on the interpretation of a state statute aside from any greater federal questions.

### **CONCLUSION**

For the reasons *supra*, the Plaintiff respectfully objects to the recommendation of dismissal of her claim for Reckless Infliction of Emotional Distress on the grounds that 1.) S.C. Code § 15-78-30(f) is unambiguous on its face and does not include reckless infliction of emotional harm or distress and does not prohibit claims for infliction of emotional harm

or distress based on recklessness; 2.) Prior South Carolina case law in *Bass v. Dep't of Soc. Servs.*, 780 S.E.2d 252 (S.C. 2015) has implicitly held that Outrage claims against SCTCA Defendants such as the South Carolina Department of Social Services are allowable based in recklessness, and 3.) South Carolina state case precedent and rules of statutory construction should be followed by this honorable court in lieu of prior Federal District Court orders such as those in *Anderson* or *Faulkner* that instead analyze the legislative intent of the statute at-issue.

In so doing, Plaintiff further requests that her claim for Reckless Infliction of Emotional Distress against Defendant Dorchester County Sheriff's Office be sustained.

Respectfully submitted,

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