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S.C. SUPREME COURT

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

Case No.: 2:22-cv-02322-RMG-MHC

Candise Gore,

Plaintiff,

v.

Dorchester County Sheriff’s Office,
Dorchester County, Carol Brown, Kiesha
Baldwin, Sheriff L.C Knight, Richard
Darling, Sharon Branch, Wanda Taylor
and Willis Beatty,

Defendants.

**DEFENDANT SHERIFF’S OFFICE’S
RESPONSE IN OPPOSITION TO
PLAINTIFF’S OBJECTION**

NOW COMES Defendant Sheriff’s Office and submits this response to plaintiff’s objection regarding the claim for intentional infliction of emotional distress.

South Carolina has no recognized separate cause of action for “reckless” infliction of emotional distress. South Carolina recognizes intentional infliction of emotional distress and negligent infliction of emotional distress. The difference between the two is a direct claim versus a bystander claim. Here, plaintiff has not made a bystander claim for Ms. Gore, he has alleged that the employees’ “recklessness” directly caused her injury.

Plaintiff has focused her argument in the objections on using South Carolina state law, instead of federal cases ruling on this matter. State law does set out the elements of the claim for intentional infliction of emotional distress and that definition includes the reckless infliction of emotional distress. In the 1981 decision, *Ford v. Hutson*, 276 S.C. 157, 276 S.E. 2d 776, the South Carolina Supreme Court adopted the rule of liability as stated in § 46 of the Restatement (Second) of Torts relating to intentional infliction of emotional distress. That definition includes conduct

that “intentionally or recklessly causes severe emotional distress....”. The supreme court has repeatedly stood by the definition as evidenced by more recent decisions. *Bergstrom v. Palmetto Health All.*, 358 S.C. 388, 401 S.E. 2d 42, 48 (2004); *Hansson v. Scalise Builders of SC*, 374 S.C. 352, 358, 650 S.E. 2d 68, 72 (2007). In *Hansson*, the court specifically sets out that intentional infliction of emotional distress and outrage are two names for the same claim. 650 S.E. 2d at 71. The court goes on to quote itself from *Ford* --setting out the elements for “intentional infliction of emotional distress,” which includes “recklessly inflicted severe emotional distress”. *Id.* Here, the plaintiff has even alleged the very elements of intentional infliction of emotional distress, listed in *Ford* and *Hansson* in her Second Amended Complaint at paragraphs 76 through 79. No matter what the plaintiff calls it, she set forth a cause of action for intentional infliction of emotional distress against the Sheriff’s Office.

The South Carolina Tort Claims Act (“TCA”), S.C. Code Ann. § 15-78-10 to -220, governs this cause of action because the TCA “constitutes the exclusive remedy for any tort committed by an employee of a governmental entity.” S.C. Code Ann. § 15-78-70(a). The TCA does not allow a plaintiff to recover for intentional infliction of emotional distress. S.C. Code Ann. § 15-78-30(f) (“Loss’ ... does not include the intentional infliction of emotional harm.”); *see, e.g., Ward v. City of N. Myrtle Beach*, 457 F. Supp. 2d 625, 647 (D.S.C. 2006). The South Carolina Legislature used the term of art “intentional infliction of emotional harm” when excluding such conduct. § 15-78-30(f). In using the specific language that is a cause of action with elements that must be proven, it is clear that the legislature was referencing the tort of intention infliction of emotional distress and not merely the state of mine requirement for outrage claims, such that reckless behavior claims would be permitted. Therefore, Plaintiff’s state law tort cause of action as to the Sheriff’s Office

and County for Intentional Infliction of Emotional Distress should be dismissed as barred by the TCA.

Finally, Plaintiff's sixth cause of action includes both the language "reckless infliction of emotional distress" and the South Carolina Code section citation §24-5-90. The Code section cited states, "[a] violation of this section is a misdemeanor". The criminal code section does not authorize or give rise to a civil cause of action. The inclusion of the criminal code section in the cause of action for Negligence/Gross Negligence is incompatible. In order to prove any criminal act, there must be *mens rea* or intent. Intentional acts are incompatible with a claim of negligence. The code section also makes no reference to any type of infliction of emotional distress. Therefore, any reference to SC Code §24-5-90 should be dismissed from the Second Amended Complaint.

CONCLUSION

Intentional Infliction of Emotional Distress under the alternative name "reckless infliction of emotional distress" should not be permitted by this court because outrage and intentional infliction of emotional distress are specifically not permitted by the South Carolina Tort Claims Act and the S.C. Code section relied on by plaintiff is improper.

Respectfully submitted,

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