ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
L. Casey Manning, Circuit Court Judge

RECEIVED
JUN 20 2013
SC Court of Appeals

Case No.: 2011-CP-40-07134
Appellate Case No. 2012-213441

Glenda R. Couram,

Appellant,

v.

Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake and SC Department of Motor Vehicles, in their official and individual capacities,

Respondents.

INITIAL BRIEF OF RESPONDENTS

Eugene H. Matthews
RICHARDSON PLOWDEN & ROBINSON, P.A.
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
Facsimile (803) 779-0016
E-mail: gmatthews@RichardsonPlowden.com

COUNSEL FOR RESPONDENTS

TABLE OF CONTENTS

Table of Authorities ... iii
Statement of Issues on Appeal ... 1
Statement of the Case ... 2
Facts ... 6

Arguments

I. DID THE COURT OF COMMON PLEAS CORRECTLY FIND THAT THE APPELLANT'S MOTION TO AMEND HER COMPLAINT WAS FUTILE, AND PROPERLY DISMISSED, BECAUSE HER PROPOSED CLAIMS WERE BARRED UNDER THE APPROPRIATE STATUTE OF LIMITATIONS? ... 9

A. DID THE COURT OF COMMON PLEAS CORRECTLY FIND THAT THE APPELLANT DID NOT FILE A VERIFIED COMPLAINT AGAINST THE RESPONDENTS UNDER THE SOUTH CAROLINA TORT CLAIMS ACT? ... 9

B. DID THE COURT OF COMMON PLEAS CORRECTLY FIND THAT S.C. CODE ANN. § 15-78-110 WAS THE PROPER STATUTE OF LIMITIATIONS FOR THE CAUSES OF ACTION AGAINST THE RESPONDENTS? ... 11

C. DID THE COURT OF COMMON PLEAS CORRECTLY APPLY THE PROPER STATUTE OF LIMITATIONS TO THE CAUSES OF ACTION AGAINST THE RESPONDENTS IN VIEW OF THE TOLLING PROVISIONS OF 28 U.S.C. § 1367(d)? ... 13

D. DID THE TWO-YEAR STATUTE OF LIMITATIONS UNDER S.C. CODE ANN. § 15-3-550 OTHERWISE BAR APPELLANT'S DEFAMATION CLAIM? ... 14

II. WAS APPELLANT'S MOTION TO AMEND HER COMPLAINT ALSO FUTILE BECAUSE HER PROPOSED CLAIMS WERE SUBJECT TO DISMISSAL ON GROUNDS OTHER THAN THE APPLICABLE STATUTE OF LIMITATIONS? ... 14

A. WAS APPELLANT'S CLAIM FOR CIVIL CONSPIRACY PROPERLY SUBJECT TO DISMISSAL FOR THE REASONS STATED BY THE COURT OF COMMON PLEAS, OR FOR REASONS OTHERWISE SUPPORTED IN THE RECORD? ... 15

i. Appellant's Civil Conspiracy claim must be dismissed because it is barred under the intracorporate conspiracy doctrine 15

ii. Appellant's allegations fail to state a civil conspiracy claim under *Lawson v. South Carolina Dept. of Corrections* 16

iii. Appellant's allegations fail to state a civil conspiracy claim for the reason articulated in *Couram I* 17

B. WAS APPELLANT'S CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS PROPERLY SUBJECT TO DISMISSAL FOR THE REASONS STATED BY THE COURT OF COMMON PLEAS, OR FOR REASONS OTHERWISE SUPPORTED IN THE RECORD? 17

i. Appellant's Emotional Distress claim against SCDMV must be dismissed because it is barred under the doctrine of worker's compensation exclusivity 18

ii. Appellant's allegations fail to state an emotional distress claim for the reasons articulated in *Couram I* 19

C. WAS APPELLANT'S CLAIM FOR NEGLIGENCE PROPERLY SUBJECT TO DISMISSAL FOR THE REASONS STATED BY THE COURT OF COMMON PLEAS, OR FOR REASONS OTHERWISE SUPPORTED IN THE RECORD? 20

D. WAS APPELLANT'S CLAIM FOR DEFAMATION PROPERLY SUBJECT TO DISMISSAL FOR THE REASONS STATED BY THE COURT OF COMMON PLEAS, OR FOR REASONS OTHERWISE SUPPORTED IN THE RECORD? 21

Conclusion 22

TABLE OF AUTHORITIES

CASES

Blyth v. Marcus,
335 S.C. 363, 517 S.E.2d 433 (1999) 12

Couram v. Davis,
2012 WL 2428567 (D.S.C. June 27, 2012) 3

Couram v. Davis,
2012 WL 2428581 (D.S.C. March 14, 2012) 3

Couram v. South Carolina Dept. of Motor Vehicles,
2011 WL 891298 (D.S.C. March 10, 2011) 3

Couram v. South Carolina Dept. of Motor Vehicles,
2010 WL 6065084 (D.S.C. Nov. 12, 2010) 6, 17, 18, 19

Dickert v. Metropolitan Life Ins. Co.,
311 S.C. 218, 428 S.E.2d 700 (S.C. 1993) 18

Flateau v. Harrelson,
355 S.C. 197, 584 S.E.2d 413 (S.C. App. 2003)....................12

Fleming v. Rose,
350 S.C. 488, 567 S.E.2d 857 (2002) 21

Gattison v. South Carolina State College,
318 S.C. 148, 456 S.E.2d 414 (S.C. App. 1995)....................19

Hannson v. Scalise Builders of South Carolina,
374 S.C. 352, 650 S.E.2d 68 (2007) 19

Jinks v. Richland County,
538 U.S. 456, 123 S.Ct. 1667, 155 L.Ed.2d 631 (2003)....................13

Joubert v. South Carolina Dept. of Social Services,
341 S.C. 176, 534 S.E.2d 1 (S.C. App. 2000) 11, 12, 14

Lawson v. South Carolina Dept. of Corrections,
340 S.C. 346, 532 S.E.2d 259 (2000) 15, 16, 17

McMillan v. Oconee Memorial Hosp., Inc.,
367 S.C. 559, 626 S.E.2d 884 (2006) 16

Pond Place Partners, Inc. v. Poole,
351 S.C. 1, 567 S.E.2d 881 (S.C. App. 2002) 21

Smith v. City of Greenwood,
2010 WL 2382479 (D.S.C. June 14, 2010).....12

Will v. Mich. Dep't. of State Police,
491 U.S. 58, 109 S.Ct. 2304 L.Ed. 45 (1989).....19

STATUTES

28 U.S.C. § 1367(d).....1, 13

42 U.S.C. §1981(a).....4

42 U.S.C. § 1983.....4

S.C. Code Ann. § 15-3-550.....1, 14

S.C. Code Ann. § 15-78-60.....18

S.C. Code Ann. § 15-78-70(b).....11, 12

S.C. Code Ann. § 15-78-80.....9, 10

S.C. Code Ann. § 15-78-110..... 1, 10, 11, 12, 13, 14

S.C. Code Ann. § 42-1-540.....18

OTHER AUTHORITIES

Fed.R.Civ.P. 12(b)(6)..... 5

Rule 220(c), SCACR 14

Proviso 89.1461 17

STATEMENT OF ISSUES ON APPEAL

I. DID THE COURT OF COMMON PLEAS CORRECTLY FIND THAT THE APPELLANT'S MOTION TO AMEND HER COMPLAINT WAS FUTILE, AND PROPERLY DISMISSED, BECAUSE HER PROPOSED CLAIMS WERE BARRED UNDER THE APPROPRIATE STATUTE OF LIMITATIONS?

A. DID THE COURT OF COMMON PLEAS CORRECTLY FIND THAT THE APPELLANT DID NOT FILE A VERIFIED COMPLAINT AGAINST THE RESPONDENTS UNDER THE SOUTH CAROLINA TORT CLAIMS ACT?

B. DID THE COURT OF COMMON PLEAS CORRECTLY FIND THAT S.C. CODE ANN. § 15-78-110 WAS THE PROPER STATUTE OF LIMITATIONS FOR THE CAUSES OF ACTION AGAINST THE RESPONDENTS?

C. DID THE COURT OF COMMON PLEAS CORRECTLY APPLY THE PROPER STATUTE OF LIMITATIONS TO THE CAUSES OF ACTION AGAINST THE RESPONDENTS IN VIEW OF THE TOLLING PROVISIONS OF 28 U.S.C. § 1367(d)?

D. DID THE TWO-YEAR STATUTE OF LIMITATIONS UNDER S.C. CODE ANN. § 15-3-550 OTHERWISE BAR APPELLANT'S DEFAMATION CLAIM?

II. WAS APPELLANT'S MOTION TO AMEND HER COMPLAINT ALSO FUTILE BECAUSE HER PROPOSED CLAIMS WERE SUBJECT TO DISMISSAL ON GROUNDS OTHER THAN THE APPLICABLE STATUTE OF LIMITATIONS?

A. WAS APPELLANT'S CLAIM FOR CIVIL CONSPIRACY PROPERLY SUBJECT TO DISMISSAL FOR THE REASONS STATED BY THE COURT OF COMMON PLEAS, OR FOR REASONS OTHERWISE SUPPORTED IN THE RECORD?

B. WAS APPELLANT'S CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS PROPERLY SUBJECT TO DISMISSAL FOR THE REASONS STATED BY THE COURT OF COMMON PLEAS, OR FOR REASONS OTHERWISE SUPPORTED IN THE RECORD?

C. WAS APPELLANT'S CLAIM FOR NEGLIGENCE PROPERLY SUBJECT TO DISMISSAL FOR THE REASONS STATED BY THE COURT OF COMMON PLEAS, OR FOR REASONS OTHERWISE SUPPORTED IN THE RECORD?

D. WAS APPELLANT'S CLAIM FOR DEFAMATION PROPERLY SUBJECT TO DISMISSAL FOR THE REASONS STATED BY THE COURT OF COMMON PLEAS, OR FOR REASONS OTHERWISE SUPPORTED IN THE RECORD?

STATEMENT OF THE CASE

Appellant has been an employee of South Carolina Department of Motor Vehicles (SCDMV) since October 2004, when she was hired as a temporary employee. On June 19, 2006, SCDMV placed Appellant in a full-time position as a Compliance Specialist in the Tickets Branch of SCDMV's Driver Records section. She was reassigned within Driver Records to the Information Management Branch on December 8, 2008, without loss of pay or title. Appellant remains employed by SCDMV in this position to the present day. In total, she has been employed at SCDMV for nearly ten (10) years.

Appellant has spent much of her career at SCDMV filing complaints against her co-workers and supervisors for various perceived slights, directives she has not liked, and minor counseling or corrective actions. Although no third party has ever found any basis in these complaints, Appellant continues to file them with regularity.

Because Appellant's appellate arguments touch on practically all of these previous filings, Respondents submit an abbreviated list of the complaints and lawsuits she has filed, as a *pro se* litigant, against SCDMV and her co-workers and supervisors with the Equal Employment Opportunity Commission (EEOC), the South Carolina Human Affairs Commission (SHAC), the South Carolina Court of Common Pleas, the South Carolina Court of Appeals, the U.S. District Court for the District of South Carolina, and the U.S. Court of Appeals for the Fourth Circuit:

- SCDMV received Appellant's Charge of Discrimination from the EEOC by letter dated November 18, 2008. In the Charge, Appellant accused SCDMV of age discrimination and retaliation related to counseling she received in 2007 and 2008 regarding her attendance. She also alleged other unspecified harassment.

- Following the dismissal of her Charge, Appellant filed a lawsuit in U.S. District Court for the District of South Carolina on January 4, 2010, against SCDMV and many of her supervisors and co-workers. In her lawsuit, she alleged claims under Title VII, the Age Discrimination in Employment Act, the Equal Pay Act, and state law claims for intentional infliction of emotional distress and civil conspiracy (hereinafter **"Couram I"**).

- In March 2011, U.S. District Judge Matthew Perry granted summary judgment to the Respondents on all federal claims in "Couram I," and declined to exercise jurisdiction over the state law claims. *Couram v. South Carolina Dept. of Motor Vehicles*, 2011 WL 891298 (D.S.C. March 10, 2011).

- Appellant appealed Judge Perry's decision to the U.S. Court of Appeals for the Fourth Circuit. Her appeal was dismissed on August 30, 2011, and her request to reinstate the appeal was denied on November 30, 2011.

- Appellant filed another lawsuit in the South Carolina Court of Common Pleas in Richland County on October 25, 2011 (hereinafter **"Couram II"**). In her Complaint, she alleged many of the federal causes of action that had earlier been dismissed in Couram I. The case was removed to U.S. District Court.

- Following an extensive number of motions, U.S. Magistrate Judge Paige Gossett recommended that the case be remanded to state court if the Appellant removed the federal causes of action from her Complaint. *Couram v. Davis*, 2012 WL 2428581 (D.S.C. March 14, 2012). U.S. District Court Judge Barbara Seymour adopted the recommendation. *Couram v. Davis*, 2012 WL 2428567 (D.S.C. June 27, 2012).

- Upon Appellant's removal of federal claims from her Complaint in Couram II, Judge Seymour remanded the case back to state court on August 21, 2012.

- On or about September 11, 2012, Appellant filed a Motion to Amend her Complaint and a proposed Fourth Amended Complaint.

- On November 15, 2012, Circuit Court Judge L. Casey Manning granted the Respondents' Motion to Dismiss the remaining claims in the Complaint with prejudice.

- Appellant has now appealed the dismissal of Couram II to the South Carolina Court of Appeals, which is the subject of this brief.[1]

The immediate subject of this appeal is the lawsuit Appellant filed on October 25, 2011 ("Couram II"). The lawsuit alleged the following causes of action: (1) a Title VII retaliation claim, (2) a claim for various violations of the South Carolina Human Affairs Law, (3) a "free speech" claim under the U.S. Constitution, (4) an unspecified claim for alleged violations of Constitutional rights under 42 U.S.C. § 1981(a), (5) a claim for deprivation of rights under 42 U.S.C. § 1983, (6) an unspecified claim under the S.C. Tort Claims Act, (7) claims for intentional and negligent infliction of emotional distress, (8) a civil conspiracy claim, and (9) a claim for gross negligence under the S.C. Tort Claims Act.[2]

As indicated above, Couram II was removed to the U.S. District Court. Thereafter, the parties engaged in an extensive motions practice, primarily addressing whether Appellant had brought federal causes of action and whether the case should be remanded to state court.

On August 7, 2012, U.S. Magistrate Judge Paige Gossett issued an Order granting Appellant's Motion to Amend her Complaint, which Appellant styled as her "Amended

[1] Since filing this appeal to this Court, Appellant has filed yet another Charge of Discrimination against SCDMV with the South Carolina Human Affairs Commission on April 30, 2013, alleging retaliation and discrimination based on disability. However, it appears that Appellant is not attempting to address any issue raised in her most recent Charge in this appeal.

[2] As stated above, in Appellant's earlier federal lawsuit in January 2010, she also brought two of the claims that are the subject of this appeal – (1) the intentional infliction of emotional distress claim and (2) the civil conspiracy claim. Appellant first raised a separate claim for gross negligence on October 25, 2011. Appellant first brought her defamation claim against the Respondents in her Third Amended Complaint, which the U.S. District Court approved in August 2012.

Complaint in Complaince [*sic*] with Order" (hereinafter referenced as Appellant's "Third Amended Complaint").

On August 9, 2012, Respondents filed their Motion to Dismiss the Third Amended Complaint in the U.S. District Court pursuant to FED. R. CIV. P. 12(b)(6).

On August 21, 2012, the U.S. District Court remanded the entire case to this Court, noting that the Third Amended Complaint "does not contain any federal causes of action." The ruling also "decline[d] to exercise supplemental jurisdiction over Appellant's state law claims and accordingly remand[ed] this action to state court." (*See* Order and Opinion of Chief U.S. District Judge Margaret B. Seymour, dated August 21, 2012).

On September 11, 2012, after the case had been remanded to the Court of Common Pleas for Richland County, Appellant filed a response to the Respondents' Motion to Dismiss in the U.S. District Court. The response included Appellant's Motion to Amend her Complaint and a proposed Fourth Amended Complaint.

On November 5, 2012, Judge L. Casey Manning heard the Appellant's Motion to Amend, along with the Respondents' response, as well as argument concerning Respondents' Motion to Dismiss. On November 15, 2012, Judge Manning issued an Order denying Appellant's Motion to Amend Complaint and dismissing her claims with prejudice.

On November 18, 2012, Appellant filed and served her Notice of Appeal

On November 25, 2012, Appellant also filed a Motion for Reconsideration of Judge Manning's Order with the Court of Common Pleas, which he denied on January 7, 2013.

STATEMENT OF FACTS

This appeal addresses the dismissal of the four state law claims brought against Respondents. In general, Appellant argues she is entitled to a jury trial on her claims because (1) discovery has been completed, and (2) she has presented sufficient evidence to prove the elements of her claims. (Appellants' Initial Brief, pp. 30, 38).

For this reason, this section of Respondents' brief will address (1) how Appellant has stated these claims, (2) when the claims were made, and (3) the evidence in the record relevant to these claims.

APPELLANT'S INITIAL COMPLAINT FILED IN 2010

The Appellant initiated her state law claims in January 2010, when she brought the following claims:

1. A claim against SCDMV for the tort of "outrage," also stated as a claim for "negligence, gross negligence, reckless, willful and wanton conduct." Other than "outrage," Appellant did not state the nature of any other type of tort she wished to bring against SCDMV, or why SCDMV would be specifically liable for outrage. (Plaintiff's Complaint, ¶¶ 114-116).

2. A claim against the individual Respondents Lula N. Davis, Connie Rhett, and Shirley Rivers for "civil conspiracy," based on her allegations that the individuals placed false documents in her file, changed her job duties, excessively "worried" Appellant, belittled her, and interfered with her work. (Plaintiff's Complaint, ¶¶ 117-144).

Following the end of discovery, the Magistrate Judge found that Appellant failed as a matter of law to establish a *prima facie* case of either of her state law claims, and that her emotional distress claims was also barred by the doctrine of worker's compensation exclusivity. *Couram v. South Carolina Dept. of Motor Vehicles*, 2011 WL 6065084, at *3 (D.S.C. November 12, 2010).

APPELLANT'S COMPLAINT FILED IN OCTOBER 2011

Following the ultimate dismissal of her emotional distress and civil conspiracy claims without prejudice, Appellant waited until October 25, 2011 to file her instant lawsuit. As stated above, at that point she brought the following state law claims: (1) an unspecified claim under the S.C. Tort Claims Act, (2) claims for intentional and negligent infliction of emotional distress against all Respondents, (3) a civil conspiracy claim against all Respondents, and (4) a claim for gross negligence under the S.C. Tort Claims Act against all Respondents.[3]

APPELLANT'S PROPOSED THIRD AMENDED COMPLAINT FROM AUGUST 2012

In her Third Amended Complaint (the "Amended Complaint in Complaince [*sic*] with Order" filed on August 7, 2012), Appellant describes her numerous complaints and frustrations about the manner in which she was managed by (1) her supervisors and immediate chain of command – Lula N. Davis, Shirley Rivers, and Constance "Connie" Rhett, (2) current and former SCDMV executive and Human Resources leadership – Marcia Adams, Dottie Blankenship, Tosha Autry, and Steven W. Lake, and (3) the agency itself. Appellant generally complains about unspecified but "repeated acts of willful, reckless harassment, abuse, threats by her fellow employees, including supervisors." (Third Amended Complaint, ¶ 2). She also alleges that all Respondents:

- "intentionally or recklessly subjected the Appellant to harassing conduct in direct violation of the [South Carolina Tort Claims Act],"

[3] Although Appellant's negligence claim is difficult to follow, it appears to allege that the Respondents have a duty – enforceable through a negligence action – to refrain from "placing plaintiff in Davis' direct path with full contact" which was apparently evidence of the Respondents' gross negligence. (Plaintiff's Complaint of October 25, 2011, ¶ 103).

- failed "to act with simple and ordinary care in their actions towards the Appellant,"

- "intended to inflict emotional distress" on her,

- "took an active part in the further *[sic]* of the conspiracy created and formed among themselves a conspiracy to defraud, cheat and otherwise harm Appellants [*sic*] as set forth in this complaint," and

- "allowed defamation of the Appellant's character and reputation, destroyed her professionalism, caused the Appellant to live and work in fear of loss of employment/livelihood, stress due to daily uncertainty of employment, allowed false allegation [*sic*]."

(Third Amended Complaint, ¶¶ 24, 32, 36, 42, 48). Appellant grouped her allegations under five (5) separate causes of action, <u>each stated against all Respondents</u>:

1. Appellant's First Cause of Action did not state a cause of action, but instead simply referenced the South Carolina Tort Claims Act (SCTCA).

2. Appellant's Second Cause of Action was entitled "Intentional/Negligent – Gross – Willful, Reckless Infliction of Emotional Distress [*sic*]."

3. Appellant's Third Cause of Action also did not state a cause of action, but instead attempted to "disclaim" the affirmative defense of Workers' Compensation Act exclusivity to her claims for emotional distress.

4. Appellant's Fourth Cause of Action was for Civil Conspiracy.

5. Appellant's Fifth Cause of Action was for Defamation.

<u>APPELLANT'S PROPOSED FOURTH AMENDED COMPLAINT</u>

In Appellant's proposed Fourth Amended Complaint, Appellant names the same Respondents as in her Third Amended Complaint, but more fulsomely describes the ways in which she believes her supervisors and SCDMV leadership mistreated her. Specifically, in her Fourth Amended Complaint, Appellant describes her dealings with her supervisors and SCDMV leadership from the beginning of her employment until her

transfer in November 2008.[4] (Fourth Amended Complaint, ¶¶ 24-77). Thereafter, she changed the manner in which she attempted to state her causes of action as follows:

1. A "gross negligence" claim pursuant to the South Carolina Tort Claims Act (SCTCA) as to all Respondents for conduct allegedly taking place on or before December 2008. (Fourth Amended Complaint, ¶¶ 79-96).

2. A claim styled as "Worker Compensation and/or Willful, Reckless Infliction of Emotional Distress [*sic*]" against all Respondents. (Fourth Amended Complaint, ¶¶ 97-103).

3. A claim for "Defamation" against all Respondents. (Fourth Amended Complaint, ¶¶ 104-109).

4. A claim for Civil Conspiracy against all Respondents. (Fourth Amended Complaint, ¶¶ 110-119).

ARGUMENT

I. DID THE COURT OF COMMON PLEAS CORRECTLY FIND THAT THE APPELLANT'S MOTION TO AMEND HER COMPLAINT WAS FUTILE, AND PROPERLY DISMISSED, BECAUSE HER PROPOSED CLAIMS WERE BARRED UNDER THE APPROPRIATE STATUTE OF LIMITATIONS?

A. DID THE COURT OF COMMON PLEAS CORRECTLY FIND THAT THE APPELLANT DID NOT FILE A VERIFIED COMPLAINT AGAINST THE RESPONDENTS UNDER THE SOUTH CAROLINA TORT CLAIMS ACT?

The Appellant has based her argument, in part, on her insistence that her Charge of Discrimination filed with the South Carolina Human Affairs Commission was a "verified complaint" under the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-80. She makes this argument so that the three-year statute of limitations under S.C. Code

[4] According to SCDMV, Appellant was actually reassigned, effective December 8, 2008, to another position in the Information Management branch of the Driver Records section under a new supervisor, Gail Allison. However, for purposes of this motion, whether the date of the move to her new position was in November or December 2008 is of no consequence.

Ann. § 15-78-110 would apply to her claims. For the reasons set forth below, her argument in this regard is baseless.

Filing a verified claim under the South Carolina Tort Claims Act is governed by the provisions of S.C. Code Ann. § 15-78-80, which requires, in pertinent part:

> (a) A verified claim for damages under this chapter, setting forth the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, and the amount of the loss sustained may be filed:
>
> (1) in cases against the State, with the State Budget and Control Board, or with the agency employing an employee whose alleged act or omission gave rise to the claim;
>
> (2) where the claim is against a political subdivision, with the political subdivision employing an employee whose alleged act or omission gave rise to the claim;
>
> (3) where the identification of the proper defendant is in doubt, with the Attorney General.
>
> (b) Each agency and political subdivision must designate an employee or office to accept the filing of the claims.
>
> (c) Filing may be accomplished by receipt of certified mailing of the claims or by compliance with the provisions of law relating to service of process.
>
> (d) The verified claim may be received by the Budget and Control Board or the appropriate agency or political subdivision. If filed, the claim must be received within one year after the loss was or should have been discovered.
>
> (e) In all cases in which a claim is filed, the Budget and Control Board or political subdivision has one hundred eighty days from the date of filing of the claim in which to determine whether the claim should be allowed or disallowed. Failure to notify the claimant of action upon the claim within one hundred eighty days from the date of filing of the claim is considered a disallowance of the claim.

(emphasis added). In the instant case, presuming the latest date of the alleged "loss" was on or before December 8, 2008, Plaintiff would need to have filed her verified claim under the S.C. Tort Claims Act on or before December 8, 2009 to extend the statute of

limitations for torts brought against the Defendants from two to three years under S.C. Code Ann. § 15-78-110.

Plaintiff cannot show that she filed a verified claim with either the South Carolina Budget & Control Board and/or SCDMV on or before December 8, 2009, or for that matter, at any time. Nor is filing a verified claim a mere formality, or otherwise subject to "substantial compliance." Indeed, South Carolina's courts have "repeatedly held strict compliance with the verified claim statute is mandatory." *Joubert v. South Carolina Dept. of Social Services*, 341 S.C. 176, 189, 534 S.E.2d 1, 8 (S.C. App. 2000) (citations omitted). Her apparent argument that her Charge of Discrimination serves as a proxy for a verified simply has no basis in law.

Thus, under S.C. Code Ann. § 15-78-110, Plaintiff's claims are governed by a two-year statute of limitations. Because Plaintiff's allegations are based on actions that purportedly occurred on or before December 8, 2008, or should have been discovered no later than May 2008, each of her claims must be dismissed with prejudice as untimely.

B. DID THE COURT OF COMMON PLEAS CORRECTLY FIND THAT S.C. CODE ANN. § 15-78-110 WAS THE PROPER STATUTE OF LIMITATIONS FOR THE CAUSES OF ACTION AGAINST THE RESPONDENTS?

Appellant next appears to argue that the two-year statute of limitations under S.C. Code Ann. § 15-78-110 should apply, if at all, only to the SCDMV and not the individual Respondents. Her argument in this regard relies on a federal court's construction of S.C. Code Ann. § 15-78-70(b). The statute provides that "[n]othing in [the SCTCA] may be construed to give an employee of a government entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or

that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." For the reasons listed below, her argument fails.

As an initial matter, Plaintiff's argument has been explicitly rejected by this Court in its ruling in *Joubert*. In that case, as here, the plaintiff argued that S.C. Code Ann. § 15-78-70(b) rendered the statute of limitations set by S.C. Code Ann. § 15-78-110 inapplicable. 341 S.C. at 184-185, 534 S.E.2d at 5. Addressing plaintiff's argument, with regard to the effect of S.C. Code Ann. § 15-78-70(b) on the Act's statute of limitations, the Court stated as follows:

> Absolutely nothing in subsection (b) references a limitation period and, as part of the general Torts Claims Act statutory scheme, it is subject to the Act's statutory limitations as prescribed in S.C. Code Ann. § 15-78-110.

Id.; *see also Flateau v. Harrelson*, 355 S.C. 197, 208, 584 S.E.2d 413, 419 (S.C. App. 2003) (S.C. Tort Claims Act's two-year statute of limitations governed common law causes of action for outrage, invasion of privacy, and civil conspiracy, and "[a]bsolutely nothing" in S.C. Code Ann. § 15-78-70(b) references a limitations period).

Appellant relies on *Smith v. City of Greenwood*, 2010 WL 2382479 (D.S.C. June 14, 2010) to support her proposition. Such reliance is unavailing, as it is well-established that a federal court decision interpreting state law is not binding on South Carolina courts, and the holding by the federal court in *Smith* conflicts directly with this Court's holdings in *Joubert* and *Flateau*. *See Blyth v. Marcus,* 335 S.C. 363, 517 S.E.2d 433 (1999).

C. DID THE COURT OF COMMON PLEAS CORRECTLY APPLY THE PROPER STATUTE OF LIMITATIONS TO THE CAUSES OF ACTION AGAINST THE RESPONDENTS IN VIEW OF THE TOLLING PROVISIONS OF 28 U.S.C. § 1367(d)?

Appellant next appears to argue, even if the two-year statute of limitations under S.C. Code Ann. § 15-78-110 applies to any Respondent, the claims are still not barred because they should "relate back" to her Complaint filed in January 2010 ("Couram I") under the application of 28 U.S.C. § 1367(d). Put more precisely, Appellant would like for her state law claims to come under 28 U.S.C. § 1367(d)'s tolling provision, which presumably would place them all within the two-year statute of limitations.

First, Appellant's argument in this regard is only applicable to the two state law claims that she brought in Couram I – her claims for (1) intentional infliction of emotional distress, and (2) civil conspiracy. Because she did not bring her claims for defamation or gross negligence (as a separate claim from emotional distress) in Couram I, these claims cannot "relate back" to her January 2010 Complaint, and are not subject to the "tolling" provisions of 28 U.S.C. § 1367(d). *Jinks v. Richland County*, 538 U.S. 456, 123 S.Ct. 1667, 155 L.Ed.2d 631 (2003). For this reason alone, the defamation or gross negligence can only "relate back" to the first complaint filed as Couram II on October 25, 2011 – not the first complaint in Couram I – and are thus beyond the applicable two-year statute of limitation.

Second, even under the broadest interpretation of the tolling provisions of 28 U.S.C. § 1367(d), Appellant cannot argue that her emotional distress and civil conspiracy claims "arose" within the applicable limitations period. By her own admission, the alleged "abuse" giving rise to these claims apparently began long before the expiration of the statute of limitations – in some cases, no later than May 2008, and in others long

before. (Appellant's Complaint from October 25, 2011, p. 1). Therefore, date of the "discovery" of her claims would pre-date the "reach back" of a two-year statute of limitations, accounting for the six-month period between April and October 2011, and the 18-month period prior to her initial complaint in Couram I in January 2010. *Joubert*, 341 S.C. at 8-9, 534 S.E.2d at 190-192.

D. DID THE TWO-YEAR STATUTE OF LIMITATIONS UNDER S.C. CODE ANN. § 15-3-550 OTHERWISE BAR APPELLANT'S DEFAMATION CLAIM?

Finally, Appellant's arguments that a three-year statute of limitations applies to her defamation claim are simply non-sensical. Even in the absence of a two-year statute of limitations under S.C. Code Ann. § 15-78-110, defamation still comes under a two-year statute of limitations under S.C. Code Ann. § 15-3-550. Further, because Appellant did not even raise a defamation claim until her Third Amended Complaint in 2012, and her claim for defamation arose no later than 2008, there is simply no way that her defamation claim was brought within the proper statute of limitations.

II. WAS APPELLANT'S MOTION TO AMEND HER COMPLAINT ALSO FUTILE BECAUSE HER PROPOSED CLAIMS WERE SUBJECT TO DISMISSAL ON GROUNDS OTHER THAN THE APPLICABLE STATUTE OF LIMITATIONS?

Of course, the applicable statutes of limitations were not the only grounds on which the Court of Common Pleas dismissed Appellant's claims. The Court of Common Pleas listed several independent grounds for dismissal of several of the Appellant's claims. Further, there are additional grounds in the record on appeal from which this Court can affirm dismissal of the Appellant's claims with prejudice. Rule 220(c),

SCACR (an appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal). This is especially the case since Appellant has asserted that discovery in this case "has been completed." (Appellant's Initial Brief, p. 30).

For the reasons set forth below, in addition to and separate from those related to the applicable statute of limitations, this Court should affirm the dismissal of Appellant's claims with prejudice.

A. WAS APPELLANT'S CLAIM FOR CIVIL CONSPIRACY PROPERLY SUBJECT TO DISMISSAL FOR THE REASONS STATED BY THE COURT OF COMMON PLEAS, OR FOR REASONS OTHERWISE SUPPORTED IN THE RECORD?

In addition to the fact that the claim is barred by the applicable statute of limitations, Appellant's claim for civil conspiracy must be dismissed (1) under the intracorporate conspiracy doctrine, (2) under *Lawson v. South Carolina Dept. of Corrections*, and (3) because, as matter of law, Appellant has failed to establish a *prima facie* case of civil conspiracy. For these reasons, the order of the Court of Common Pleas dismissing her civil conspiracy claim with prejudice must be affirmed.

i. Appellant's Civil Conspiracy claim must be dismissed because it is barred under the intracorporate conspiracy doctrine.

Appellant brought her civil conspiracy claim against "all Defendants" – including SCDMV – for allegedly conspiring to injure her. As the South Carolina Supreme Court recently noted, it is well-settled that an entity cannot conspire with itself, or when the alleged acts arise in the context of a principal-agent relationship, because such acts do not

involve separate entities. *McMillan v. Oconee Memorial Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 887 (2006).

Appellant's allegations arise in the context of the principal-agent relationship. Appellant brought her civil conspiracy claim against SCDMV, and against each of the individual Respondents because he or she is – or was – a supervisor or official at SCDMV. As stated in *McMillan*,

> A civil conspiracy cannot be found to exist when the acts alleged are those of employees or directors, in their official capacity, conspiring with the corporation. As a result, we hold that no conspiracy can exist if the conduct challenged is a single act by a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment.

367 S.C. at 564, 626 S.E.2d at 887. For this reason alone, Appellant's civil conspiracy claim must be dismissed with prejudice.

ii. Appellant's allegations fail to state a civil conspiracy claim under *Lawson v. South Carolina Dept. of Corrections*.

As a matter of law, Appellant's allegations do not state a cause of action for civil conspiracy, especially in view of the fact that she has remained an employee of SCDMV, and by her own account has been employed at SCDMV for nearly a decade. *Lawson v. South Carolina Dept. of Corrections,* 340 S.C. 346, 532 S.E.2d 259 (2000).

In *Lawson*, an employee of the South Carolina Department of Corrections (SCDC) sued two of his supervisors for allegedly conspiring to terminate his employment. 340 S.C. at 349, 532 S.E.2d at 260. The South Carolina Supreme Court granted summary judgment on the claim, noting that "[a]llegations based solely upon two

supervisors discussing whether to terminate an at-will employee would not support a conspiracy cause of action." 340 S.C. at 352, 532 S.E.2d at 261-262.

Similarly, the types of complaints made by Appellant – that her supervisors and other SCDMV officials conspired to interfere with her employment – are simply not cognizable under the precedent established in *Lawson*. For this reason alone, dismissal of her civil conspiracy claim with prejudice must be affirmed.

iii. Appellant's allegations fail to state a civil conspiracy claim for the reasons articulated in *Couram I*.

Appellant's declaration that discovery has been completed brings with it the consequences that a court has previously found that has she failed to present evidence – rather than merely make allegations – sufficient to establish a civil conspiracy claim. With no discovery taking place since the Respondents filed their Motion for Summary Judgment in *Couram I*, there has been no new evidence presented to any court since Magistrate Judge Gossett found that Appellant failed to establish a *prima facie* case of civil conspiracy, or that the claim was barred by Proviso 89.146. 2010 WL 6065084, at *3. Quite simply, in the absence of any additional evidence presented in the record to substantiate her claims, Appellant's claim for civil conspiracy cannot survive, and its dismissal by the trial court must be affirmed.

B. WAS APPELLANT'S CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS PROPERLY SUBJECT TO DISMISSAL FOR THE REASONS STATED BY THE COURT OF COMMON PLEAS, OR FOR REASONS OTHERWISE SUPPORTED IN THE RECORD?

In addition to the fact that the claim is barred by the applicable statute of limitations, Appellant's claim for intentional infliction of emotional distress must be

dismissed (1) under the doctrine of worker's compensation exclusivity, and (2) because, as matter of law, the Appellant has failed to establish a *prima facie* case of intentional infliction of emotional distress. For these reasons, the Order of the Court of Common Pleas dismissing her emotional distress claim with prejudice must be affirmed.

i. Appellant's Emotional Distress claim against SCDMV must be dismissed because it is barred under the doctrine of worker's compensation exclusivity.

Appellant's claim for emotional distress, as was previously stated in *Couram I*, is barred by the exclusivity provision of the South Carolina Workers' Compensation Act. 2010 WL 6065084, at *3; S.C. Code Ann. § 42–1–540 (making the Act the exclusive remedy for employees seeking damages for personal injuries arising out of and in the course of their employment); *Dickert v. Metropolitan Life Ins. Co.,* 428 S.E.2d 700 (S.C. 1993) (holding that intentional infliction of emotional distress, assault and battery, and mental trauma were covered by the exclusive remedy provision of the Workers' Compensation Act). Further, the SCTCA explicitly provides as an exception to the waiver of sovereign immunity that "[t]he governmental entity is not liable for a loss resulting from ... any claim covered by the South Carolina Workers' Compensation Act." S.C.Code Ann. § 15–78–60. Thus, under South Carolina law, Appellant's exclusive remedy for damages against SCDMV resulting from any alleged intentional infliction of emotional distress is under the Workers' Compensation Act. S.C.Code Ann. § 42–1–540.

Similarly, to the extent that Appellant seeks to sue the individual Defendants in their "official" capacities for emotional distress, her claims are also barred. It is elementary that "a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office ... [and] is no different

from a suit against the State itself." *Will v. Mich. Dep't of State Police,* 491 U.S. 58, 71, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). Because this claim cannot be brought against SCDMV, it also cannot be brought against the individual Defendants in their "official" capacities.

ii. Appellant's allegations fail to state an emotional distress claim for the reasons articulated in *Couram I.*

As with her civil conspiracy claim, Appellant's declaration that discovery has been completed means that she has failed to present evidence – rather than merely make allegations – sufficient to establish an emotional distress claim. With no discovery taking place since the Respondents filed their Motion for Summary Judgment in *Couram I,* there has been no new evidence presented to any court since Magistrate Judge Gossett found that Appellant failed to establish a *prima facie* case of emotional distress. 2010 WL 6065084, at *3. Specifically, Appellant's forecast of evidence failed to rise to the standard of conduct set by South Carolina's courts to state such a claim. *See Hannson v. Scalise Builders of South Carolina*, 374 S.C. 352, 650 S.E.2d 68 (2007); *Gattison v. South Carolina State College*, 318 S.C. 148, 151, 456 S.E.2d 414, 416 (S.C. App. 1995). For this reason alone, in the absence of any additional evidence presented in the record to substantiate her claims, Appellant's claim for emotional distress must suffer the same fate as her civil conspiracy claim, and its dismissal with prejudice by the trial court must be affirmed.

C. WAS APPELLANT'S CLAIM FOR NEGLIGENCE PROPERLY SUBJECT TO DISMISSAL FOR THE REASONS STATED BY THE COURT OF COMMON PLEAS, OR FOR REASONS OTHERWISE SUPPORTED IN THE RECORD?

Dismissal of Appellant's claim for negligence and/or gross negligence, as stated in either Appellant's Third or Fourth Amended Complaint, also must be affirmed. As set forth above, her claim is barred by the applicable statute of limitations. Further, as Appellant has stated that discovery has been completed, she must also suffer the consequences of failing to identify any specific duty recognized by South Carolina courts that the Respondents owed to her, or any alleged damage that resulted from the alleged breach. In fact, Appellant has produced absolutely no evidence that any of the Respondents actually caused her any damage. Indeed, to the extent that Appellant is attempting to sue SCDMV – her employer – for alleged emotional or personal injuries due to its alleged negligence, her claims are barred by the doctrine of worker's compensation exclusivity, as set forth above.

In essence, Appellant has attempted to repackage her other tort claims as a general negligence and/or gross negligence claim. For the reasons her other claims must fail, and because Appellant has failed to set forth the bare minimum to support the existence of a duty owed to her, or any breach of such a duty, or any damage resulting from such a breach, the dismissal of this claim by the Court of Common Pleas must be affirmed.

D. WAS APPELLANT'S CLAIM FOR DEFAMATION PROPERLY SUBJECT TO DISMISSAL FOR THE REASONS STATED BY THE COURT OF COMMON PLEAS, OR FOR REASONS OTHERWISE SUPPORTED IN THE RECORD?

Not only is Appellant's defamation claim barred by the applicable statute of limitations, it is also barred substantively.

In order to prove defamation, the complaining party must show: (1) a false and defamatory statement was made; (2) the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable irrespective of harm or the publication of the statement caused special harm. *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Appellant failed in every respect to state these elements in her Amended Complaints, primarily by failing to point to a single statement by any specific Respondent that she alleges is false. For this reason alone, dismissal of her claim must be affirmed.

Finally, to the extent Appellant wishes to file a defamation claim based on the references in Respondents' pleadings to her as a "vexatious litigant," South Carolina has long recognized that statements pleadings, even if defamatory, are absolutely privileged. *Pond Place Partners, Inc. v. Poole,* 351 S.C. 1, 22-23, 567 S.E.2d 881, 892-893 (S.C. App. 2002). While Respondents – through counsel – have requested in pleadings that the Court admonish Appellant for her harassing and frivolous behavior, such a request or statement cannot form the basis of a defamation claim as a matter of law.

CONCLUSION

For the reasons stated above, the Respondents respectfully request that this Court affirm the decision of the Court of Common Pleas to dismiss Appellant's claims with prejudice.

Dated this the 20th day of June, 2013.

Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.

Eugene H. Matthews by SMB

Eugene H. Matthews
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
Facsimile (803) 779-0016
E-mail: gmatthews@RichardsonPlowden.com

COUNSEL FOR RESPONDENTS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
L. Casey Manning, Circuit Court Judge

Case No.: 2011-CP-40-07134
Appellate Case No. 2012-213441

Glenda R. Couram,

Appellant,

v.

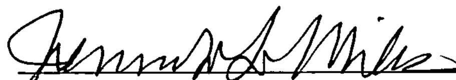
Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake and SC Department of Motor Vehicles, in their official and individual capacities,

Respondents.

PROOF OF SERVICE

I, the undersigned employee for Richardson Plowden & Robinson, P.A., counsel for the Respondents Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake and SC Department of Motor Vehicles, in their official and individual capacities, do hereby certify that I have served a copy of the *INITIAL BRIEF OF RESPONDENTS* by causing a copy of the same to be deposited in the United States mail, first class postage prepaid, addressed to the pro se Appellant on this 28th day of June, 2013:

Glenda R. Couram
104 Macaw Lane
Lexington, SC 29073



JENNIFER L. MILES
Legal Assistant to Eugene H. Matthews

June 20, 2013
Columbia, South Carolina.