STATE OF SOUTH CAROLINA)) COUNTY OF HORRY)	IN THE COURT OF COMMON PLEAS C/A NO.: 2020-CP-26-05790
Major Jason J. MacDonald,)) Plaintiff,)) v.)) Horry County School District, Dr. Rick Maxey, in his individual and official capacities, Michael McCracken, in his individual and official capacities, Brandon Todd, in his individual and official capacities, and Mary Anderson, in her individual and official capacities,)) Defendants.)	**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

This matter came before the court on August 14, 2023 on a motion for summary judgment filed by Defendants. Present at the WebEx hearing were Samuel F. Arthur, III, counsel for Defendants, and Janet E. Rhodes, counsel for Plaintiff.

Upon careful consideration of the pre-hearing submissions of counsel and oral arguments of counsel, Defendants' motion for summary judgment is GRANTED in full for the reasons more fully set forth below.

STATEMENT OF THE CASE

Plaintiff is a former employee of Horry County Schools ("HCS") and claims HCS did not properly investigate claims of sexual harassment brought by the Plaintiff's former (minor) students, improperly suspended and then terminated him, and then interfered with his ability to procure other employment. Plaintiff's Complaint, filed October 8, 2020, states four (4) causes of action: (1) Interference with Contractual Relations as to Defendant Maxey, in his official and

individual capacity, and as to Defendant District; (2) Interference with Prospective Contractual Relations as to Defendant Maxey, in his official and individual capacity, and as to Defendant District; (3) Defamation as to Defendant District and all individual Defendants, in their individual and official capacities; and (4) Intentional Infliction of Emotional Distress as to all Defendants. Defendants filed an Answer to the Complaint on December 14, 2020, denying Plaintiff's allegations and asserting multiple affirmative defenses. Defendants now seek summary judgment as to all of Plaintiff's claims.

FACTUAL BACKGROUND

In 2018, Plaintiff was hired by HCS to fill the position of Senior Instructor for JROTC at Aynor High School for the 2018-2019 school year pursuant to a written contract with a term of one year. *See* Complaint, ¶ 15 and deposition of Jason MacDonald, at page 35, line 15 – page 37, line 17.

Plaintiff concedes that between the dates of November 29, 2018 and December 3, 2018, several of Plaintiff's female students made complaints that Plaintiff made inappropriate comments or gestures to them.

The accusations are summarized as follows:

- When a female cadet was bending over, Plaintiff allegedly made a reference to the brand of her underwear;
- After observing a female cadet drawing a picture of a female cartoon, Plaintiff allegedly commented "oh, you're drawing yourself in a low-cut top";
- Plaintiff allegedly catcalled or whistled after a female cadet walked past him into another classroom, and
- When he heard a female cadet state "f-me" while doing push-ups, Plaintiff allegedly questioned "when?".

Plaintiff categorically denies every allegation.

See Complaint, ¶¶ 19-20.

Plaintiff denied making any inappropriate comments or gestures to any female student and further alleges several of the statements provided by the students contained inconsistencies and there were circumstances where the accuser/s did not actually witness any inappropriate gestures made by the Plaintiff or hear inappropriate comments spoken directly from the Plaintiff. Plaintiff further claims "that if properly questioned, the students' allegations would have been determined unfounded." Complaint, ¶ 25.

Plaintiff was placed on paid administrative leave with full pay and benefits pending the outcome of the investigation. On or about April 30, 2019, Plaintiff received a letter informing him that HCS decided to recommend that the Board not renew his contract for the 2019-2020 school year. *See* Complaint, ¶ 28. Per his Complaint, Plaintiff remained on paid administrative leave until December 2019; was terminated January 10, 2020; submitted a request to be heard before the board to appeal his termination on January 13, 2020; and was granted an appearance before the Board on August 17, 2020. *See* Complaint, ¶¶ 29-30.

Plaintiff alleges that on or about August 26, 2020, he received a letter regarding the Board's decision, indicating that the "Board found insufficient evidence to support the allegations. However, the Board continued to discuss all the surrounding facts and circumstances and decided that it is not in District's best interest for [Plaintiff] to be re-employed." *See* Complaint, ¶ 33.

SUMMARY JUDGMENT STANDARD

A court will grant a moving party's motion for summary judgment when no genuine issue of material fact exists, and that party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any genuine issues of fact exist, the court must view both the evidence and all reasonable inferences able to be drawn from the evidence in the light most favorable to the non-

moving party. *Simmons v. Tuomey Regional Medical Center*, 341 S.C. 32, 39, 533 S.E.2d 312, 316 (2000). Nonetheless, the court must search the proof to ascertain whether it discloses a real issue, rather than a formal, perfunctory, or shadowy one. *Saluda Motor Lines v. Crouch*, 300 S.C. 43, 46, 386 S.E.2d 290, 292 (Ct.App.1989). The presence of a factual dispute is not enough to preclude summary judgment; the issue must be one which a party is entitled to litigate. Id. "In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial." *Nationsbank v. Scott Farm*, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct.App.1995).

The moving party need not support his motion with affidavits or other similar materials negating the opponent's claim. Once the moving party carries its initial burden, the opposing party "may not rest upon the mere allegations or denials of his pleading, but his response . . . must set forth specific facts showing that there is a genuine issue for trial." *Midland Mut. Life Ins. Co. v. Harrell*, 331 S.C. 394, 397-98, 503 S.E.2d 189, 190-91 (Ct.App.1998) *reh'g denied* (Aug. 1998), *cert. denied* (Apr. 1999).

DISPOSITION OF PLAINTIFF'S CLAIMS

Voluntary Dismissal of Multiple Claims

As an initial matter, counsel for the parties advised the court that Plaintiff did not intend to contest Defendants' written arguments for summary judgment on behalf of all individually named Defendants as to all causes of action and that Plaintiff intended to voluntarily dismiss the first cause of action of the Complaint – Interference with Contractual Relations. Therefore, as result of the stipulation of dismissal of COA1 and all individually named Defendants as to all causes of action, the only remaining causes of action for consideration by this court at the time of the hearing were COA2

– Interference with Prospective Contractual Relations; COA3 – Defamation; and COA4 – Intentional Infliction of Emotional Distress (all as alleged against Defendant Horry County Schools (HCS).

COA2 - Interference with Prospective Contractual Relations

Per the Complaint, Plaintiff's second cause of action for interference with prospective contractual relations appears to relate specifically to Plaintiff's alleged efforts to secure employment with Florence County School District 2. Plaintiff alleges "Maxey and the District intentionally interfered with Plaintiff's prospective contractual relations with Florence 2 by refusing to provide any type of reference at any point in the year the position remained open. His inaction resulted in Plaintiff not receiving the position." *See* Complaint, ¶ 61.

To establish a cause of action for intentional interference with prospective contractual relations, a plaintiff must prove the following elements: (1) the defendant intentionally interfered with the plaintiff's potential contractual relations, (2) for an improper purpose or by improper methods, which (3) caused injury. *Eldeco, Inc. v. Charleston County School District*, 372 S.C. 470, 642 S.E.2d 726; *See also Crandall Corp. v. Navistar Int'l Transp. Corp.*, 302 S.C. 265, 266, 395 S.E.2d 179, 180 (1990).

Here, Defendant HCS concedes that a representative of Florence 2 placed a telephone call to the HCS district office and left a message requesting a reference for Plaintiff and that said call was not returned and no one from HCS ever affirmatively communicated any information to Florence 2 or any other prospective employers of Plaintiff. However, HCS asserts it was not obligated to do so and there are no allegations of such duty asserted in Plaintiff's Complaint. HCS further asserts that the mental decision to *not* act, in the absence of any duty to the contrary, is not equivalent to an affirmative act of intentional interference; and that Plaintiff's assertion that HCS choosing to be silent on the issue resulted in a negative inference by Florence 2 is insufficient to

sustain a claim that HCS or any of its employees *intentionally* interfered with Plaintiff's prospective contractual relations with Florence 2 or any other prospective employer.

This court agrees with HCS and finds that Plaintiff has not offered sufficient evidence for a jury to infer that HCS intentionally interfered with Plaintiff's efforts to secure alternative employment. Therefore, summary judgment in favor of HCS as to Plaintiff's second cause of action for interference with prospective contractual relations is appropriate in this case.

COA3 - Defamation

Plaintiff alleges "[t]he fact that the Plaintiff remains unemployed with Defendant sends the clear, false, and defamatory message that Plaintiff must not have been returned to his position because he did something wrong. Plaintiff asserts this message is clear to Plaintiff's former students, colleagues, and the community." *See* Complaint, ¶ 68. This court disagrees.

The tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff. See *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 514 S.E.2d 126 (1999); *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998); *Dockins v. Ingles Markets, Inc.*, 306 S.C. 287, 411 S.E.2d 437 (1991); *Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 556 S.E.2d 732 (Ct. App. 2001); *Goodwin v. Kennedy*, 347 S.C. 30, 552 S.E.2d 319 (Ct. App. 2001); *Murray v. Holnam, Inc.*, 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001).

To recover for defamation, Plaintiff must prove: (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. *Erickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006). See also *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002).

Here Plaintiff is not alleging defamation by written statements, verbal statements, actions, or insinuations. Rather, Plaintiff claims the fact that the District ultimately chose not to rehire Plaintiff qualifies as a defamatory statement because it is possible for the decision by the District to be interpreted by the public in a way that casts Plaintiff in a negative light. In response, HCS asserts that anyone who becomes aware that an individual is no longer employed can freely speculate about the circumstances of one's departure from employment when not provided explanation by the employer or former employee and the decision to not renew an employment contract is not in and of itself defamatory.

This court agrees with Defendant's analysis of the law applicable to Plaintiff's defamation claim and finds that Plaintiff's Complaint, memorandum opposing summary judgment, and oral arguments do not identify a false and defamatory statement that was published to a third party in an unprivileged manner. This court further finds Plaintiff has not offered sufficient extrinsic evidence that would support a claim of defamation by insinuation. For these reasons, this court finds that summary judgment is appropriate as to Plaintiff's third cause of action for defamation.

COA4 - Intentional Infliction of Emotional Distress.

The appellate courts of South Carolina have defined the cause of action known as intentional infliction of emotional distress as a scenario whereby an individual "who by extreme and outrageous conduct intentionally or recklessly causes sever emotional distress to another." See *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 355, 650 S.E.2d 68, 70 (S.C. 2007).

To recover damages on a cause of action for the alleged intentional infliction of emotional distress, a plaintiff must establish:

> (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct;

(2) the conduct was so 'extreme and outrageous' as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community;

(3) the actions of the defendant caused the plaintiff's emotional distress; and

(4) the emotional distress suffered by the plaintiff was so severe that no reasonable man could be expected to endure it.

State Farm Fire & Cas. Co. v. Barrett, 340 S.C. 1, 530 S.E.2d 132 (Ct. App. 2000); *Roberts v. City of Forest Acres*, 902 F.Supp. 662, 672 (D.S.C. 1995); *Hainer v. American Medical International, Inc.*, 320 S.C. 316, 465 S.E.2d 112, 117 (Ct. App. 1995), aff'd, 328 S.C. 128, 492 S.E.2d 103 (1997).

Per the South Carolina Supreme Court, there is a heightened burden of proof for the second and fourth elements of the cause of action. *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981). Additionally, a court cannot properly deny a motion for summary judgment on such a claim upon a finding that a genuine issue of material fact exists as to only one element, but must determine that a genuine issue of material fact exists for each essential element. *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 355, 650 S.E.2d 68, 70 (S.C. 2007)(holding that when ruling on summary judgment motion, court must determine whether plaintiff has established a *prima facie* case as to each element of claim for intentional infliction of emotional distress).

In this case, Defendant asserts Plaintiff has not sufficiently alleged allegations that, even if assumed to be true for purposes of this motion, would demonstrate *prima facie* cases as to any of the elements of proof for his intentional infliction of emotional distress cause of action. Defendant HCS further asserts the South Carolina Tort Claims Act, specifically § 15-78-30(f), excludes recovery of damages for the intentional infliction of emotional harm.

This court agrees that the South Carolina Tort Claims Act specifically excludes recovery of damages for the intentional infliction of emotional harm. Therefore, given that Defendant HCS, a governmental entity entitled to the protections of the Act, is the only remaining Defendant and

is immune from recovery of such damages, summary judgment is also appropriate as to Plaintiff's fourth and final cause of action.

CONCLUSION

Rule 56 of the *South Carolina Rules of Civil Procedure* specifically provides for relief to a party when there is no genuine issue as to any material fact and applicable law weighs in favor of a specific party. In such a case, the moving party is entitled to judgment as a matter of law.

As indicated above, counsel advised the court at the outset of the hearing that Plaintiff did not intend to contest Defendants' written arguments for summary judgment on behalf of all individually named Defendants as to all causes of action and that Plaintiff intended to voluntarily dismiss the first cause of action of the Complaint – Interference with Contractual Relations. Therefore, this court GRANTS Defendants' motion for summary judgment as to COA1 and all individually named Defendants as to all causes of action, as uncontested by Plaintiff.

With regard to the remaining causes of action against HCS only: COA2 – Interference with Prospective Contractual Relations; COA3 – Defamation; and COA4 – Intentional Infliction of Emotional Distress, upon consideration of the pre-hearing submissions of counsel and oral arguments of counsel, this court GRANTS Defendants' motion for summary judgment for the reasons more fully set forth above.

AND IT IS SO ORDERED!

The Honorable William H. Seals, Jr.
Fifteenth Judicial Circuit

Marion, South Carolina

Horry Common Pleas

Case Caption: Jason J MacDonald VS School District Horry County , defendant, et al

Case Number: 2020CP2605790

Type: Order/Summary Judgment

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

EXHIBIT 2