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Jun 27 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable William H. Seals, Jr., Circuit Judge

Case No. 2020-CP-26-05790

Appellate Case No. 2023-001602

Major Jason J. MacDonald

Appellant,

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.

Respondents.

RECORD ON APPEAL VOLUME III OF III

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1 Q. Okay. All right. And based upon your interview
2 and your review of the packet, you recommended
3 him for hire?

4 A. Uh-huh.

5 Q. And that's a yes?

6 A. Yes, ma'am, I'm sorry.

7 Q. No problem. It's natural, it's natural. Give me
8 just a second, okay?

9 A. Okay.

10 Q. Okay. Mr. Mosby, do you recall this particular
11 position remaining open for almost a year before
12 it was filled?

13 A. Yes.

14 Q. Okay. I'm going throw out a date, and again, we
15 know how long ago this was. I'm just curious if
16 this helps you recall. Major McDonald
17 represented to me that the position wasn't filled
18 until July 27th, 2020; does that ring any bells?

19 A. Yes.

20 Q. Okay. Does that seem accurate, or to the best of
21 your recollection seem accurate?

22 A. To the best of my recollection, yes, that is
23 probably accurate.

24 Q. Okay. In your discussions with Dr. Vincent, if
25 Major McDonald had gotten the reference he was

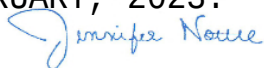
1 CERTIFICATE OF REPORTER

2 I, JENNIFER NOTTLE, COURT REPORTER AND NOTARY PUBLIC
3 IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY
4 CERTIFY THAT I REPORTED THE DEPOSITION OF STERLING MOSBY,
5 ON TUESDAY, THE 24TH DAY OF JANUARY, 2023, THAT THE WITNESS
6 WAS FIRST DULY SWORN BY ME AND THAT THE FOREGOING 17 PAGES
7 CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF MY STENOMASK
8 REPORT OF SAID DEPOSITION.

9 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR
10 COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE
11 PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY
12 INTERESTED IN SAID CAUSE.

13 I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT
14 WAS THEREAFTER SEALED BY ME AND DELIVERED TO JANET E.
15 RHODES, ESQUIRE, MIKE KELLY LAW GROUP, 1523 HUGER STREET,
16 COLUMBIA, SOUTH CAROLINA, WHO WILL RETAIN THIS SEALED
17 ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE FOR FILING
18 SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH
19 MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.

20 IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS
21 10TH DAY OF FEBRUARY, 2023.

22 

23 JENNIFER NOTTLE, COURT REPORTER

24 MY COMMISSION EXPIRES JULY 11, 2023
25



MAJ (R) JASON J. MACDONALD

2005 Woodburn Drive, Myrtle Beach SC 29579

jasonjmacdonald@gmail.com

Cell: 910-740-7049

EDUCATION

Master of Science (M.S.) In Business Administration, Campbell University, Buies Creek, NC, 2004.

Master of Science (M.S.) In Environmental Management, Webster University, St. Louis, MO, 2001.

Bachelor of Science (B.S.) In Biology, The Citadel, Charleston, SC, 1997.

EMPLOYMENT HISTORY:

Senior Army Instructor 08/18 – Present

Employer: Horry County Schools District

P.O. Box 260005, 335 Four Mile Road, Conway, SC 29526

Supervisor: LTC James Davis, (843) 488-6888

As the Senior Army Instructor (SAI) I performed the following functions and responsibilities:

- Manage and conduct the JROTC unit according to school rules, regulations, and policies.
 - Conduct a public affairs effort in the local area middle and elementary schools, among school and community officials, civic groups, parent-teacher groups and other individuals or groups, designed to further the understanding of JROTC, the school and the Army
 - Enroll students in JROTC and support school officials while executing the curriculum and the integrated extra-curricular activities.
 - Prepare weekly training schedules.
 - Maintain contact with parents of all Cadets experiencing academic or behavioral problems.
 - Ensure JROTC unit areas are neat and orderly; current chain of command photos, Cadet creed, core abilities and mission statement are present; and all sensitive items are secured.
 - Ensure instructors share teaching responsibilities.
 - Maintain a current copy of DA Form 3126 and/or DA Form 3126-1, a completed service-learning checklist/rubric, a current copy of a bond/insurance certificate, and required JUMS reports.
 - Maintain accountability of all equipment, including items requiring formal accountability
- Informal accountability (i.e., clothing) and durable items costing \$5,000 or less (i.e., automation, computers, audiovisual), but still requiring property accountability.

Director of Military Programs 01/15 – 07/18

Employer: Fayetteville Technical Community College (FTCC)

2201 Hull Road, Fayetteville, NC 28303

Supervisor: Harper Shackelford, (910) 678-8413

Assisted AVP for Military and Veteran Programs in the planning, development, implementation, and administration of College goals and objectives as well as policies, procedures, and programs related to Fort Bragg and military-affiliated community. Planned, organized and directed curriculum and continuing education activities on Fort Bragg to include: recruiting, marketing, testing, counseling,

Plaintiff_000310

admissions, registration, program oversight, and academic and administrative activities of assigned educational, occupational, vocational, or avocational programs of study. Supervised a team of 10 employees and directed day-to-day operations at the Bragg Center and other designated locations on Fort Bragg. Increased military affiliated enrollments over 10% thru marketing, recruiting and decreasing wait time for customers at the admissions office on Fort Bragg. Through the use of public relations and marketing, effectively used media resources to oral, written, graphic, and audio-visual aids to improve branding and increase enrollments in classes. Lead project officer for the FTCC sponsorship in the All American Marathon for 2015 and 2016 in providing 40 volunteers and gifts for the event.

CBRN Organizational Integrator 07/13-01/15

Employer: U.S. Forces Command (FORSCOM)

Building 8-1808, 4700 Knox Street

Fort Bragg, NC 28310

Supervisor: Dave Dale

Served as the U.S. Forces Command (FORSCOM) Chemical, Biological, Radiological, and Nuclear (CBRN) Organizational Integrator (OI). Managed all aspects of organizational changes by prioritizing resources, management of information, synchronization of activities and assessment of capabilities with Standard Requirement Code (SRC) O3 forces. Developed and coordinated force structure, programming, resourcing and doctrine actions with HQ FORSCOM staff; HQ Department of the Army G-3, Force Management; Human Resources Command; and the US Army Soldier Support Institute. Provided recommendations and alternatives for restructuring and resourcing of the Army's CBRN force structure. Developed input for FORSCOM's participation in the Army's Planning, Programming, Budgeting, and Execution System as it relates to CBRN. Analyzed, recommended, and developed modifications and new allocation rules for SRC O3 organizations. Responsible for coordinating and integrating all CBRN force structure actions within the FORSCOM command as outlined in the Total Army Analysis. Assistant Action Officer for coordinating with FORSCOM's staffs in drafting the Brigade Combat Reorganization execution order that directed the units to inactivate or convert in fiscal year 2014 and 2015. 2014 graduate of the How the Army Runs (HTAR) Course.

CBRNE Plans and Operations Officer 11/11-06/13

Employer:

Fort Bragg, U.S. Army, XVIII Airborne Corps NC 28310

Supervisor: COL Robert Wittig

Provided advice and technical expertise to Division/Command on friendly Chemical, Biological, Radiological, Nuclear, and High Yield Explosives (CBRNE) vulnerability, threat assessments, obscuration and flame operations, explosive hazards, and employment of CBRNE forces. Provided staff supervision of CBRNE site assessments and consequence management operations. Provided CBRN support in the Fort Bragg Operations Center when activated. Led the CBRNE and Protection analysis during the Advance Airborne Command Post Operations. Selected to represent the XVIII Airborne Corps' CBRNE section at the CBRNE Warfighter discussion panel on the US Army Profession Campaign Annual Report 2012. The lead Corps Protection Planner for Ulchi Freedom Guardian 2012 integrating US and Republic

Plaintiff_000311

of Korea CBRNE forces in the joint exercise. Coordinated with multiple internal and external units and organizations creating exercise injects and coordination of forces in support of the Global Response Force (GRF) training objectives. Part of a team that wrote the XVIII Airborne Corps' Sexual Harassment/ Assault Response and Prevention (SHARP) order directing subordinate units to submit timely and accurate reporting of SHARP/Sexual Assault Data Management Systems (SADMS) sexual harassment and sexual assault data. Coordinated with the prevention working group on developing briefing to the Corps Commander on the SHARP program.

Stability Transition Team Deputy Chief 10/10-11/11

Employer: 2nd Brigade, 1st Cavalry Division, US Army,

Headquarters Ave, Fort Hood, TX 76544

Supervisor: LTC Mark Davey

Responsible for the support of Phase IV and V contingency operations in Iraq to provide a partnering/mentoring capability to help build, train, advise and assist indigenous civil and military organizations to enable the host nation to accept responsibility for stability operations. Directly supervised 2 Soldiers and 3 local national interpreters. Instrumental in leveraging the Iraqi engineer and intelligence assets to clear routes for the 1st Cavalry forces during retrograde operations. Increased the Iraqi partners' readiness level and leverage their assets for the force protection and operations of US Forces transition, re-posture and retrograde out of the country. Developed Key Leader Engagements (KLE) with Iraqi leaders leading to increased cooperation between US and Iraqi operations.

G3 Deputy Chief of Operations 10/09-10/10

Employer: 82nd Airborne Division, US Army

Fort Bragg, NC 28310

Supervisor: LTC Larry Aiello

Executed operational command and control and briefings to the commander of all operations across the Division with an emphasis on deployments and redeployment, Airborne Operations, Global Response Force Outload, as well as all aspects related to operations pertaining to force management, airborne proficiency, CBRNE and facilities. Served as the Division's liaison officer during the Operation Unified Response to US South Command during the Haiti disaster relief. Built briefings for the 82nd Airborne Commander on topics ranging from suicide rates to Sexual Harassment/ Assault Response and Prevention (SHARP). Directly supervised 4 officers, 8 non-commissioned officers, and 5 civilians.

Battalion Executive Officer 04/08-10/09

Employer: DSTB, 82nd Airborne Division, US Army

Fort Bragg, NC 28310

Supervisor: COL Christopher Eubanks

Managed the administrative and logistical functions of the battalion to include the operating budget of excess \$2 million, maintenance and supply discipline programs, human resources support, unit status reporting, Family Readiness Group coordination, and staff duty. Directly supervised 5 officers.

Plaintiff_000312

Rear Detachment Commander responsible over 400 Soldiers and successfully oversaw the transition of 18 million dollars' worth of equipment to contracted maintenance. Successfully oversaw the legal action of over 25 UCMJ actions clearing up the 82nd Airborne Replacement Company. Oversaw the battalion's sexual assault program and coordinated mandatory briefings. Coordinated and participated in prevention events and communications. Briefed leadership on findings for the division/battalion staff and five companies. Coordinated victim response and advocacy issues with CID, Commander, Surgeon, PMO, Contractor HR, IG, SJA, PAO, MTF, EEO, and Chaplain offices. Reviews formal complaints from the field for possible forwarding to HQ DA. Oversees efforts to prevent re-victimization to affect a zero tolerance policy for retaliation.

CBRN Military Advisor 04/07-03/08

Employer: U.S. Army
US Embassy, Kuwait City, Kuwait
Supervisor: COL Mark Donoghue

Serving as the principle advisor to the Kuwait Ministry of Defense (KMOD) for chemical, biological, radiological, and nuclear (CBRN) operations, consequence management, doctrine, organization, training, materiel, leadership and education, and personnel at the joint level. Selected as the Interim operations officer to lead the US Embassy's Office of Military Cooperation Center in Kuwait for over 30 days. Staffed with TACOM and the Foreign Military Sales office a case that will give the KMOD a modern CBRN Capability and lead to a case worth 100 million dollars. Led the effort in developing training programs for the Kuwaiti chemical staff and battalion in modernizing their standard operating procedures.

Company Commander 09/05-03/07

Employer: 1st Corps Support Command, U.S. Army
Fort Bragg, NC 28310
Supervisor: LTC Sherly Boykin

Responsible for the training, discipline, administration, and combat readiness of over 530 active and reserve soldiers in over 70 occupational specialties. Accountable for and responsible for over 21 million dollars of equipment, including more than 80 pieces of rolling stock. Successfully transitioned the unit from a Corps Support Headquarters Company to a multi-compo Sustainment Command (Theater) Headquarters resulting in the addition of 300 personnel and 2 million dollars worth of property. Developed the first training program for integrating over 100 reserve Soldiers into the organization during weekend drills. Coordinated the criminal defense investigation of a sexual assault case within the unit that protected the victim and the accused. Ensured the sexual assault unrestricted reports were provided to leadership. Worked with leadership to ensure the Soldier were not retaliated against for filing sexual assault report. Coordinated victim response and advocacy issues with CID, Commander, Surgeon, PMO, Contractor HR, IG, SJA, PAO, MTF, EEO, and Chaplain offices. Ensured efforts to prevent re-victimization to affect a zero tolerance policy for retaliation.

Deputy Chemical Officer 11/04-08/05,

Plaintiff_000313

Employer: 1st Corps Support Command, U.S. Army
Fort Bragg, NC 28310
Supervisor: LTC Stewart Taylor

Responsible for all CBRN operations and advising the commander of the 1st Corps Support Command during combat operations in Iraq. Conducted analysis on two improvised explosive damage vehicles clearing equipment from potential chemical agent. Staffed two operational orders directing the reporting of data and after action reports for the Corps historical records.

Chemical Training Officer 10/03-10/04.

Employer: XVIII Airborne Corps, FORSCOM
Fort Bragg, NC 28310
Supervisor: LTC Chuck McArthur

In an era of heightened terrorist threat, was specially selected for a key position as Nuclear, Biological, and Chemical Training Officer for the XVIII Airborne Corps at Ft. Bragg. Played a key role in authoring Ft. Bragg's Chemical, Biological, Radiological, Nuclear, and High Explosive (CBRNE) response plan.

Chemical Detachment Commander 06/02-09/03

Employer: XVIII Airborne Corps, FORSCOM
Fort Bragg, NC 28310
Supervisor: COL Jon Drushal

Responsible for the NBC portion of the installation Chemical, Biological, and Radiological, Nuclear, and Explosive (CBRNE) response planning, training, and exercises. Operated and managed the Installation NBC School program which graduated over hundreds of Soldiers annually. Directly supervised 4 Soldiers and maintained accountability for over \$60,000 worth of equipment. From March to June 2003, deployed and supported Combined Forces Land Component Command (CFLCC) in Kuwait during Operations Enduring Freedom & Operation Iraqi Freedom. Operated the Joint Warning and Reporting Network (JWARN) for the XVIII Airborne Corps and CFLCC. Commended as the Chemical Plans Officer in the absence of a field grade officer by the XVIII Airborne Corps' Plans Chief.

Chemical Operations Officer 10/01-05/02

Employer: XVIII Airborne Corps, FORSCOM
Fort Bragg, NC 28310
Supervisor: COL Jesse Daniels

Responsible for all nuclear, biological, and chemical (NBC) current operations issues within XVIII Airborne Corps. Executed 12 hour shift as the evening leader for the XVIII Airborne Corps' operation center NBC section. Updated

Executive Officer 04/00-01/01

Employer: 63rd Chemical Company, 101st Airborne Division, FORSCOM
Fort Campbell, KY

Plaintiff_000314

Supervisor: CPT Adam Walton

Responsible for all company operations to include planning, training, and supervising 127 Soldiers. Served as the company operations, supply, budget and unit movement office. Responsible for maintenance, accountability, and security of over \$11 million dollars worth of equipment. Managed a \$121,000 unit-operating budget and directly supervised 2 non-commissioned officers. Responsible for the set-up and execution of the company operation center. Rated best company executive officer out of six companies in the battalion. Developed the annual training schedule which culminated with a 29 day exercise at the National Training Center in Fort Irwin, California.

Battalion Chemical Officer 04/99-3/00

**Employer: 2nd Battalion 187th Regiment, 101st Airborne Division, FORSCOM
Fort Campbell, KY**

Supervisor: LTC John Taylor

Responsible for the Nuclear, Biological, Chemical readiness, maintenance, and training for 670 Soldiers in an Air Assault Infantry Battalion. Directly supervised 3 non-commissioned officers. Operated the 12-hour night shift battalion operations center responsible for managing radio traffic, reports and tracking over 700 personnel. Directly led training courses in the proper tasks of working in a contaminated environment.

Heavy Decontamination Platoon Leader/Front Line Supervisor 03/98-03/99

**Employer: 62nd Chemical Company, 23rd Chemical Battalion
Camp Carroll, Republic of South Korea (ROK)**

Supervisor: CPT John Franklin

Supervised a newly formed/activated organization consisting of 20 U.S. and Korean soldiers responsible for conducting platoon level decontamination operations. Responsible for maintaining and accounting for over \$1.5 million in essential decontamination systems and a fleet of vehicles. Developed training program and procedures, which led the team to pass the annual certification test. Commended as one of the best-trained platoons out of 16 in the battalion by the battalion commander. Selected to conduct information brief to the Republic of Korea Army commanders on U.S. chemical operations. Coordinated with Korean army chemical units to conduct joint training exercises thereby strengthen U.S. and Korean capabilities.

PROFESSIONAL EDUCATION

Command and Staff General College, Combined Arms and Services Staff School, Chemical Officer Basic and Advance Courses, US Army Technical Escort School, US Army Air Assault and Airborne Schools, How the Army Runs (HTAR) Course, OSHA 40-hour Hazardous Materials Technician and Emergency Response Course; OSHA 8-hour Permit Required Confined Space Awareness Course, Completed Live Toxic Agent Training at the Chemical Defense Training Facility (CDTF), Completed 40-hours of Operational Radiological Safety Instruction

PERSONAL

Plaintiff_000315

Assistant Gymnastics Coach for the level 3-5 competitive girls team. Royal Ambassador (RA) teacher for boys grade kindergarten through sixth grade at Cedar Falls Baptist Church. Outstanding references on request. Proficient with various types of computer software. Hobbies include golfing and martial arts.

Plaintiff_000316



HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

ROBIN TALLON
SIXTH DISTRICT
SOUTH CAROLINA

August 19, 2019

Dear Dr. Vincent,

I am privileged to recommend Jason MacDonald for employment with Hanna Pamplico High School's Senior JROTC program. We here in Florence County will be benefitted by Jason's decision to become a part of providing the best possible opportunities for our students.

I consider myself to be a long-time family friend of Jason and Ann Dameron MacDonald. I came to know Jason through the Dameron family in 1998 when Jason and Ann married. Between the years 1998 and 2019, I became familiar with this family as I kept in touch with them through Jason's deployments to Iraq and Kuwait. After Jason's return from Iraq I got the opportunity to observe him as a husband, a father, a community leader, and as a Christian leader in his church.

I have known Jason and Ann for over twenty years and enjoyed watching them grow in their careers and as a family. I have been privileged to counsel Jason recently as he is seeking employment with Hanna Pamplico High School's Senior JROTC program. Jason and I have spoken several times regarding his application for this job and I have been impressed with Jason's leadership ideas and enthusiasm. It is my opinion that he will strengthen the JROTC program and endeavor to be a valuable employee for the Hanna Pamplico High School.

Jason graduated from Socastee High School and then from the Citadel with a Biology Degree. I feel that he would do an exemplary job teaching young people in the JROTC program and bringing his experiences in the military to life in the classroom. His strengths include integrity, strong moral values and work ethic. I highly recommend Jason MacDonald for the JROTC position.

Sincerely,


Robin M. Tallon

Plaintiff_000317

08/19/2019

Sterling J. Mosby
Principal
Hannah-Pamplico High School
2055 S. Pamplico Hwy.
Pamplico, SC 29583

Dear Sterling J. Mosby,

I am writing to recommend Jason MacDondald for the ROTC Instructor position at Hanna-Pamplico High School. I have known Jason for just over 30 years and nothing but positive things to say on his behalf.

As I think back, I recall with great joy a passionate young man who earned his black belt in the Soo Bahk Do style of Karate while he was in middle school. He continued this same pathway, and it was this strong work ethic that garnered him his passageway all the way to The Citadel in Charleston, SC. Upon his graduation he joined the US Army and married his childhood sweetheart. I had the pleasure of directing their wedding. I have stayed in touch with them through the years as Jason has served his country in three tours and other active duty missions with his wife and daughters by his side. He and his wife Ann have three lovely daughters and one on the way. All are in the public schools of SC, and Jason understands the true value of a public school education for all students. Currently he has one in Elementary school, middle school and high school. He realizes every child is different and doing what is right for children always comes first. Since retiring from the Army Jason has had a burning desire to work more with young students through ROTC and give back children and community. He is pro-active, motivated and self-driven. He is goal oriented and fights hard not only to meet the standards set by others, but to exceed expectations. If given the opportunity for this position, I could only imagine that he might be your Teacher of the Year within the next five years, with your school guidance and leadership team behind.

There is no doubt in mind that Jason will be an excellent addition to Hannah-Pamplico High School. Please do not hesitate on contacting at 843-995-3072 or canady@sccoast.net if you have any further questions or requests.

Regards,

G. Wayne Canady

G. Wayne Canady
Fine Arts Teacher, Department Chair/Theatre Director
Carolina Forest High School Curriculum Specialist
Retired 2017 / 34 years Columbus Co., NC & Horry Co., SC

Plaintiff_000318

EXHIBIT J

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF HORRY) CASE NO.: 2020-CP-26-05790

3
 4 Major Jason J. MacDonald,)
 5 Plaintiff,) Deposition of:
 6 vs.) Neal Vincent, Ed.D.
 7 Horry County School District,) Tuesday, January 24, 2023
 8 Dr. Rick Maxey, in his) 11:08 a.m. - 11:48 a.m.
 9 individual and official)
 10 capacities, Michael)
 11 McCracken, in his individual)
 12 and official capacities, and)
 13 Mary Anderson, in her)
 14 individual and official)
 15 capacities,)
 16 Defendants.)
 17 _____)

18
 19
 20 Deposition on oral examination of Neal Vincent, Ed.D.,
 21 reported by Jennifer Nottle, Court Reporter and Notary
 22 Public in and for the State of South Carolina; pursuant to
 23 Rule 30 of the South Carolina Rules of Civil Procedure;
 24 said deposition was taken via teleconference, on Tuesday,
 25 the 24th day of January, 2023.

1 APPEARANCES:

2
3 Representing the Plaintiff:

4 JANET E. RHODES, ESQUIRE

5 Mike Kelly Law Group

6 1523 Huger Street, Suite A

7 Columbia, South Carolina 29201

8
9 Representing the Defendants:

10 SAMUEL F. "BUDDY" ARTHUR, ESQUIRE

11 Aiken, Bridges, Elliott, Tyler & Saleeby, P.A.

12 181 Evans Street, Suite 409

13 Florence, South Carolina 29506

14
15 and

16 KENNETH S. GENERETTE, ESQUIRE

17 Horry County Schools

18 Post Office Box 260005

19 Conway, South Carolina 29528

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* * * * *

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* * * * *

Court Reporter's Legend:

dashes [--] Intentional or purposeful interruption

[ph] Denotes phonetically written

[sic] Written as said

This deposition is taken in accordance with the
South Carolina Rules of Civil Procedure.

It is agreed and stipulated by the deponent and
respective counsel that the reading and signing of the
deposition by the deponent is expressly NOT waived.

1 an area that -- there are several -- like we
2 don't have an officer right now, so it's hard to
3 find officers. And sometimes we'll call
4 headquarters and they will send some
5 applications. Sometimes the second in charge
6 will help us get applications. Sometimes -- I'm
7 not sure in this case. I can go back and look.
8 We may have advertised within our front line
9 application, our list of vacancies. But we
10 receive referrals from many different sources
11 when it comes to the JROTC program. It's quite
12 difficult to fill. We usually get one or two
13 applications. Many times they drive up to an
14 hour for these positions. And then when they get
15 a position closer to home, they'll, you know,
16 take those position. But the larger schools seem
17 to keep the officers for many years. Sometimes
18 in smaller schools, we start out with ones who
19 are just starting out in the instructor program
20 as far as K-12. But it is unique that it's also
21 not a certified teaching position. And so the
22 certification isn't handled by the State
23 Department because they are allowed to be
24 instructors but not certified teachers.

25 **Q. Got you. Okay. And I can understand that there**

1 are various ways that potential applicants -- or
2 even if you call them applicants -- potential --

3 A. Instructors.

4 Q. Instructors.

5 A. We call them instructors, yeah.

6 Q. Yeah.

7 A. The teachers, we call them instructors is what
8 they are.

9 Q. Right. So they come in various different forms.
10 In this particular case, do you have any
11 recollection as to how Major McDonald came to
12 know about the position or applied or was
13 referred or anything of that nature?

14 A. I don't recall it, to be honest. I'm not sure
15 how he -- I recall that it was being handled at
16 the school level. So it could be that Sergeant
17 Gillis who was -- I believe Sergeant Gillis was
18 still here at the time. He might have
19 recommended to Mr. Mosby. He had been here for
20 many years. He's the number two in the program.
21 And so it's possible that he recommended or
22 someone got in touch with him. Because many
23 times I just rely on number two, even when I was
24 a principal at a neighboring high school to
25 search for a any officer, because they're so hard

1 but, again, the State Department's not involved.
2 So the recommendation needs to come from
3 headquarters of the sending district, because
4 there's not a certification office that will tell
5 you, hey, you know, this person was terminated
6 for misconduct, or this person was turned in. I
7 guess that's all at headquarters for the
8 military. But long story short, he just kept
9 mentioning to me -- and he might have called me.
10 I know we talked in this room -- he was on
11 administrative leave. He shared some of the
12 reasons why and what -- why he was on
13 administrative leave, and said that they were
14 fabricated allegations and that he would have it
15 all worked out soon. So I just told him once he
16 got it worked out -- but we needed a reference
17 from Horry County, and that's where the challenge
18 was for us. We could never get a reference from
19 Horry County, which is unusual, to be honest with
20 you, that a neighboring superintendent or
21 regional superintendent doesn't call another
22 superintendent. So that's what -- that was a red
23 flag for me. And then when I called the
24 superintendent's office, they referred me to the
25 chief HR. Well, I don't usually talk to chief

1 school principal, but I did talk to, obviously
2 Heidi Oates, because I said your admin assistant
3 suggested that we contact Ms. Anderson. And
4 that's probably why --

5 **Q. Right. And that's the --**

6 A. -- on the 13th, because it's possible that -- and
7 I don't recall, I mean, because this happened
8 over a series of days, and it wasn't significant.
9 We do this all the time with references. So I
10 don't recall the specifics. But somewhere along
11 the way I recall, and it's printed here, that the
12 admin assistant suggested I contact the chief
13 human resources person.

14 **Q. All right. Okay. And you testified earlier that**
15 **you were -- that Principal Mosby recommended**
16 **Major McDonald for the position?**

17 A. Correct.

18 **Q. And if you had gotten a neutral reference at some**
19 **point, would Major McDonald have been hired into**
20 **that position?**

21 A. Well, we're speculating here --

22 MR. ARTHUR: Object to the form.

23 A. Okay. So I mean, it -- it -- what I would have
24 done, I would have moved forward with the
25 principal's -- I would have taken into

1 consideration the principal's recommendation
2 along with the references. Because if you look
3 in the packet, he had outstanding references.
4 The only reference that we were missing was from
5 the school. And that included his packet. I
6 mean, it wasn't Tom Rice exactly. But it was
7 from Tom Rice's office that he's had outstanding
8 references. So we take all that into
9 consideration. But I didn't have a school
10 reference, and I'm very cautious with JROTC. And
11 if I can't get their last school reference it's
12 because the State Department does not have
13 certification with instructors in JROTC. So you
14 have to do more on that background check, all
15 that information. Headquarters has it. It
16 should have it. But again, you're gong to have
17 to do more research on a JROTC instructor, and
18 I've never had a problem before in contacting the
19 previous school.

20 **Q. Okay. I understand what you're saying, because**
21 **that specific position, it's more than just you**
22 **and the district making a decision. You have to**
23 **check with, you know -- you know, headquarters,**
24 **with the Army and everything, and everything has**
25 **to get cleared and all of that. Is that what**

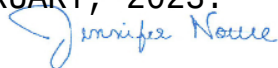
1 CERTIFICATE OF REPORTER

2 I, JENNIFER NOTTLE, COURT REPORTER AND NOTARY PUBLIC
3 IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY
4 CERTIFY THAT I REPORTED THE DEPOSITION OF NEAL VINCENT,
5 ED.D., ON TUESDAY, THE 24TH DAY OF JANUARY, 2023, THAT THE
6 WITNESS WAS FIRST DULY SWORN BY ME AND THAT THE FOREGOING
7 37 PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF MY
8 STENOMASK REPORT OF SAID DEPOSITION.

9 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR
10 COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE
11 PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY
12 INTERESTED IN SAID CAUSE.

13 I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT
14 WAS THEREAFTER SEALED BY ME AND DELIVERED TO JANET E.
15 RHODES, ESQUIRE, MIKE KELLY LAW GROUP, 1523 HUGER STREET,
16 COLUMBIA, SOUTH CAROLINA, WHO WILL RETAIN THIS SEALED
17 ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE FOR FILING
18 SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH
19 MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.

20 IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS
21 10TH DAY OF FEBRUARY, 2023.

22 

23 JENNIFER NOTTLE, COURT REPORTER

24 MY COMMISSION EXPIRES JULY 11, 2023
25

1 VERIFICATION OF DEPONENT

2 I, NEAL VINCENT, ED.D., HAVE READ THE FOREGOING
3 DEPOSITION CONSISTING OF 37 PAGES, WHICH WAS REPORTED BY
4 JENNIFER NOTTLE, COURT REPORTER AND NOTARY PUBLIC IN AND
5 FOR THE STATE OF SOUTH CAROLINA, ON TUESDAY, THE 24TH DAY
6 OF JANUARY, 2023.

7 I FIND THE TRANSCRIPT OF THIS DEPOSITION TO BE A TRUE
8 AND ACCURATE TRANSCRIPT ACCORDING TO MY TESTIMONY ON THAT
9 DATE, WITH THE EXCEPTION OF _____ CHANGES AND/OR
10 CORRECTIONS LISTED ON THE ATTACHED ERRATA SHEET WHICH WAS
11 FILLED IN BY ME.

12
13 _____
14 NEAL VINCENT, ED.D.

15
16 _____, 2023
17
18
19
20
21
22
23
24
25

ERRATA PAGE

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[illegible]

The above changes were noted by me on this Errata page before signing the attached Verification of Deponent. I have retained a copy of this Errata page for my records, and the court reporter is to attach this page and my verification to the original transcript.

Dated: _____ Signed: _____

NEAL VINCENT, ED.D.



Caitlin Royston

From: Heidi Oates
Sent: Friday, August 16, 2019 7:48 AM
To: Rick Maxey
Subject: FW: JROTC Jason MacDonald

Dr. Maxey,

Please see below.

Heidi

From: Neal Vincent <nvincent@fsd2.org>
Sent: Friday, August 16, 2019 12:40 AM
To: Heidi Oates <HOates@horrycountyschools.net>
Subject: Fwd: JROTC Jason MacDonald

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning. Thank you for your assistance this week.

We still do not have a reply/contact back from HCS in reference to the above teacher.

Should we contact Mr. Generette or the high school principal?

Sent from my mobile phone.

Begin forwarded message:

From: Neal Vincent <nvincent@fsd2.org>
Date: August 15, 2019 at 7:42:02 AM EDT
To: rmaxey@horrycountyschools.net
Subject: Fwd: JROTC Jason MacDonald

Good morning. Should I contact the school's principal in reference to the above instructor and why he left Aynor HS? Your administrative assistant suggested that we contact Ms. Anderson.

Sent from my mobile phone

Begin forwarded message:

From: Neal Vincent <nvincent@fsd2.org>
Date: August 13, 2019 at 4:34:28 PM EDT
To: manderson002@horrycountyschools.net
Subject: FW: JROTC Jason MacDonald

Good afternoon. I left you a voicemail. Please contact me at your convenience.

Neal Vincent, Ed.D.
Superintendent
Florence County School District Two
2121 South Pamplico Highway
Pamplico, SC 29583
Phone: (843) 493-2502
Cell: (843) 621-5083
Fax: (843) 493-1912
nvincent@fsd2.org
www.fsd2.org

-----Original Message-----

From: Neal Vincent <nvincent@fsd2.org>
Sent: Monday, August 12, 2019 1:39 PM
To: rmaxey@horrycountyschools.net
Subject: JROTC Jason MacDonald

Good afternoon. The above teacher is applying for a position in our district. Please call to discuss his standing with your district. My cell is 843-621-5083.

Thanks,

nv

Sent from my mobile phone.

All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA). This correspondence is intended exclusively for the individual or entity to which it is addressed and may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you received this correspondence in error please inform the sender immediately and delete the email and any attachments. (qwe1)

EXHIBIT L

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF HORRY) CASE NO.: 2020-CP-26-05790

3
 4 Major Jason J. MacDonald,)
 5 Plaintiff,) DEPOSITION OF
 6 vs.) ALICIA PARADA
 7 Horry County School District, Dr.) FEBRUARY 25, 2022
 8 Rick Maxey, in his individual and)
 9 official capacities, Michael)
 10 McCracken, in his individual and)
 11 official capacities, and Mary)
 12 Anderson, in her individual and)
 13 official capacities,)
 14 Defendants.)
 15 _____)

16
 17 Video conference deposition on oral examination of
 18 ALICIA PARADA, reported by Donna M. Currey, Court Reporter
 19 and Notary Public in and for the State of South Carolina;
 20 pursuant to Rule 30 of the South Carolina Rules of Civil
 21 Procedure; said deposition was taken via Zoom Video
 22 Conference on Friday, the 25th day of February, 2022;
 23 commencing at the hour of 10:06 a.m.
 24
 25

APPEARANCES:

REPRESENTING THE PLAINTIFF:

JANET E. RHODES, ESQ.
Mike Kelly Law Group
Post Office Box 8113
Columbia, South Carolina 29202
(Jrhodes@mklawgroup.com)

REPRESENTING THE DEFENDANTS:

SAMUEL F. ARTHUR, ESQ.
Aiken Bridges Elliott Tyler & Saleeby, P.A.
181 E. Evans Street, Suite 409
Florence, South Carolina 29506
(sfa@aikenbridges.com)

ALSO PRESENT:

Major Jason MacDonald

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* * * * *

21	Court Reporter's Legend:	
22	dashes [--]	Intentional or purposeful interruption
23	...	Indicates trailing off
24	[ph]	Denotes phonetically written
25	[sic]	Written as said

1 A. He did not ask me, no, ma'am. He did not.

2 **Q. Okay. Well, who provided you with this form?**

3 A. Well, I went to the office, and I just wrote the
4 statement.

5 **Q. Whose office?**

6 A. Mr. Todd's office, I believe it was.

7 **Q. Okay. All right. And so, did Mr. Todd ask you**
8 **to come to his office or did you go to his office**
9 **on your own?**

10 A. I believe I was called to the office, if I'm not
11 mistaken, and then I was asked to tell him about
12 the incident that happened and he told me to
13 write it down, so I did and that was the end of
14 it.

15 **Q. Okay. All right. After you wrote the statement,**
16 **did anyone ever ask you any additional questions**
17 **about the incident or about your statement?**

18 A. Not that I can recall. No, ma'am.

19 **Q. Okay. Let me ask you about if you recall the**
20 **actual incident. I'm showing you your statement,**
21 **but what I'm asking you is, do you recall what**
22 **actually happened that day?**

23 A. I know that we were out on the practice field.
24 We were cooling down after PT and we were all in
25 this huge circle stretching. And I just remember

1 that whenever we were doing heel touches to
2 stretch, I was just bending over and I just heard
3 the comment Calvin Klein and I turned and looked
4 at my friend Brelyn, and I just gave her a look.
5 And after we got done stretching, we walked up --
6 I walked up to her and I was like did you hear
7 that, and she was like, yeah I was just going to
8 ask you the same thing; I didn't know if he was
9 talking to me or you, so.

10 **Q. Okay. Do you recall whether you were wearing**
11 **Calvin Klein underwear that day?**

12 A. I'm sorry, can you repeat that for me?

13 **Q. Yeah. Do you recall if you were wearing Calvin**
14 **Klein underwear that day?**

15 A. Yeah, I was.

16 **Q. Okay. You said there was a circle of people, is**
17 **that right?**

18 A. Yes, ma'am.

19 **Q. Okay. Those are JROTC students?**

20 A. Yes, ma'am.

21 **Q. All right. About how many JROTC students were in**
22 **the circle?**

23 A. I believe like the entire class, so it was
24 probably about like 20-ish students out there.

25 **Q. Okay. Was it guys and girls?**

1 **that you signed says about a month ago?**

2 A. I mean, I know what I heard. I know what was
3 said whenever the incident happened, but the
4 month ago I'm pretty sure it was a month ago
5 whenever I wrote it, so.

6 **Q. Okay. You wouldn't have any reason not to**
7 **provide an accurate -- as accurate as you could**
8 **have statement here, correct?**

9 A. I'm sorry, you were coming in and out. I
10 couldn't hear you.

11 **Q. I'm sorry. You wouldn't have -- I mean, do you**
12 **have any reason to believe that the about a month**
13 **ago wasn't accurate?**

14 A. I believe it's accurate, but I'm -- like I said,
15 it was a while back and I honestly don't remember
16 what the time it was.

17 **Q. All right. Do you recall why you may have waited**
18 **a month before you reported the comment?**

19 A. Well, I do remember that a couple other girls
20 were talking about it around in ROTC room
21 whenever we'd be changing or whatever, and we
22 were all talking about it and I believe Sergeant
23 Jones said that we would probably have to go to
24 Mr. Todd's office about the situation, and I
25 think we did or something like that and then we

1 CERTIFICATE OF REPORTER

2 I, DONNA M. CURREY, COURT REPORTER AND NOTARY PUBLIC IN
3 AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY
4 CERTIFY THAT I REPORTED THE VIDEO CONFERENCE DEPOSITION OF
5 ALICIA PARADA, ON FRIDAY, THE 25TH DAY OF FEBRUARY, 2022;
6 THAT THE WITNESS WAS FIRST DULY SWORN BY ME AND THAT THE
7 FOREGOING 19 PAGES CONSTITUTE A TRUE AND CORRECT
8 TRANSCRIPTION OF SAID DEPOSITION.

9 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL
10 FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES
11 CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED
12 IN SAID CAUSE.

13 I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT
14 WAS THEREAFTER SEALED BY ME AND DELIVERED TO JANET E.
15 RHODES, ESQ., MIKE KELLY LAW GROUP, POST OFFICE BOX 8113,
16 COLUMBIA, SOUTH CAROLINA, WHO WILL RETAIN THIS SEALED
17 ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE FOR FILING
18 SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH
19 MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.

20 IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 5TH
21 DAY OF MARCH, 2022.

22 
23 _____

24 DONNA M. CURREY, COURT REPORTER

25 MY COMMISSION EXPIRES JANUARY 31, 2024

1 VERIFICATION OF DEPONENT
2

3 I, ALICIA PARADA, HAVE READ THE FOREGOING DEPOSITION
4 CONSISTING OF 19 PAGES, WHICH WAS REPORTED BY DONNA M.
5 CURREY, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE
6 STATE OF SOUTH CAROLINA, ON FEBRUARY 25, 2022.

7 I FIND THE TRANSCRIPT OF THIS DEPOSITION TO BE A TRUE
8 AND ACCURATE TRANSCRIPT ACCORDING TO MY TESTIMONY ON THAT
9 DATE, WITH THE EXCEPTION OF _____ CHANGES AND/OR
10 CORRECTIONS LISTED ON THE ATTACHED ERRATA SHEET WHICH WAS
11 FILLED IN BY ME.
12
13
14

15 _____
ALICIA PARADA

16 _____, 2022
17
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The above changes were noted by me on this errata page before signing the attached Verification of Deponent. I have retained a copy of this errata page for my records, and the court reporter is to attach this page and my verification to the original transcript.

Dated: _____

~~Alicia Parada~~

EXHIBIT M

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF HORRY) CASE NO.: 2020-CP-26-05790

3
 4 Major Jason J. MacDonald,)
 5 Plaintiff,) DEPOSITION OF
 6 vs.) A [REDACTED] V [REDACTED]
 7 Horry County School District, Dr.) FEBRUARY 25, 2022
 8 Rick Maxey, in his individual and)
 9 official capacities, Michael)
 10 McCracken, in his individual and)
 11 official capacities, and Mary)
 12 Anderson, in her individual and)
 13 official capacities,)
 14 Defendants.)
 15 _____)

16
 17 Video conference deposition on oral examination of
 18 A [REDACTED] V [REDACTED], reported by Donna M. Currey, Court Reporter
 19 and Notary Public in and for the State of South Carolina;
 20 pursuant to Rule 30 of the South Carolina Rules of Civil
 21 Procedure; said deposition was taken via Zoom Video
 22 Conference on Friday, the 25th day of February, 2022;
 23 commencing at the hour of 2:02 p.m.
 24
 25

APPEARANCES:

REPRESENTING THE PLAINTIFF:

JANET E. RHODES, ESQ.
Mike Kelly Law Group
Post Office Box 8113
Columbia, South Carolina 29202
(Jrhodes@mklawgroup.com)

REPRESENTING THE DEFENDANTS:

SAMUEL F. ARTHUR, ESQ.
Aiken Bridges Elliott Tyler & Saleeby, P.A.
181 E. Evans Street, Suite 409
Florence, South Carolina 29506
(sfa@aikenbridges.com)

ALSO PRESENT:

Major Jason MacDonald

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* * * * *

Court Reporter's Legend:

dashes [--] Intentional or purposeful interruption

... Indicates trailing off

[ph] Denotes phonetically written

[sic] Written as said

1 I don't remember all that. But I do remember
2 hearing the whistle and asking my friends about
3 where they heard it come from.

4 **Q. Okay. And if you look at the statement are you**
5 **alleging that you believe the whistle came from**
6 **Major MacDonald?**

7 **A. Yes.**

8 **Q. Okay. And are you alleging that the whistle was**
9 **directed at you?**

10 **A. Yes.**

11 **Q. Okay. Did you actually see Major MacDonald**
12 **whistle?**

13 **A. No, ma'am.**

14 **Q. Okay. Kind of -- describe for me where you were**
15 **and -- when you -- according to the statement,**
16 **you say you looked back the Major was there,**
17 **where was he?**

18 **A. If I do remember this right, I had -- there's two**
19 **separate classrooms. So, I was walking from one**
20 **classroom to another and when I did, I heard the**
21 **whistle. And when I had looked back, he was in**
22 **that other room, the one that I had just walked**
23 **into and he was looking at me. I -- you know, I**
24 **don't know if it was directed towards me or if it**
25 **even came from him, but that is my assumption.**

1 A. I'm not sure.

2 Q. Okay. Were you on "staff" for JR0TC?

3 A. Yes, ma'am.

4 Q. Okay. Was it Ms. K [REDACTED], Ms. A [REDACTED], [REDACTED] and
5 then E [REDACTED] V [REDACTED] H [REDACTED] ?

6 A. Yes, ma'am.

7 Q. Okay. Did staff meet and discuss this whistle
8 incident before you went to Sergeant Jones?

9 A. No, ma'am.

10 Q. No. So, you went to Sergeant Jones?

11 A. Yes.

12 Q. Did you go by yourself?

13 A. I believe I did go by myself, yes.

14 Q. Okay. Did you ever go to Sergeant Jones like
15 with anyone else other than when you went to him
16 by yourself?

17 A. I don't think so. No, ma'am.

18 Q. Okay. All right. So, you think you went to
19 Sergeant Jones either the day of or the day
20 after, correct?

21 A. Yes, ma'am.

22 Q. Okay. And what did you tell Sergeant Jones?

23 A. I basically told him everything that I wrote in
24 that statement about -- I walked him through it.

25 Q. Okay. Do you recall was that during actual

1 Q. Were you required to do drill after school?

2 A. Yes, ma'am.

3 Q. All right. Did you ever have any reluctance to
4 attend drill --

5 A. No.

6 Q. -- during the semester? Sorry. I apologize.

7 A. No, ma'am.

8 Q. Okay. Did you ever personally see or hear Major
9 MacDonald say or do anything that you considered
10 inappropriate other than what's in this
11 statement?

12 A. No, ma'am.

13 Q. Okay. Did you ever hear anyone else discuss him
14 doing or saying anything that you would consider
15 inappropriate?

16 A. I don't know if I remember this correctly or not,
17 but A [REDACTED] F [REDACTED] she had told me that he had
18 said something about her leggings at some point.
19 I believe that's what it was about. I'm not 100
20 percent sure, but I believe he had made a comment
21 about her leggings.

22 Q. Okay. He had never made a comment about anything
23 about you physically to you, correct?

24 A. No, ma'am.

25 Q. At some point, Major MacDonald was no longer

1 CERTIFICATE OF REPORTER

2 I, DONNA M. CURREY, COURT REPORTER AND NOTARY PUBLIC IN
3 AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY
4 CERTIFY THAT I REPORTED THE VIDEO CONFERENCE DEPOSITION OF
5 ASHLEY WYNN, ON FRIDAY, THE 25TH DAY OF FEBRUARY, 2022;
6 THAT THE WITNESS WAS FIRST DULY SWORN BY ME AND THAT THE
7 FOREGOING 21 PAGES CONSTITUTE A TRUE AND CORRECT
8 TRANSCRIPTION OF SAID DEPOSITION.

9 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL
10 FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES
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15 RHODES, ESQ., MIKE KELLY LAW GROUP, POST OFFICE BOX 8113,
16 COLUMBIA, SOUTH CAROLINA, WHO WILL RETAIN THIS SEALED
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20 IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 5TH
21 DAY OF MARCH, 2022.

22 
23 _____

24 DONNA M. CURREY, COURT REPORTER

25 MY COMMISSION EXPIRES JANUARY 31, 2024

EXHIBIT N

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF HORRY) CASE NO.: 2020-CP-26-05790

3
 4 Major Jason J. MacDonald,)
 5 Plaintiff,) DEPOSITION OF
 6 vs.) J [REDACTED] [REDACTED]
 7 Horry County School District, Dr.) FEBRUARY 25, 2022
 8 Rick Maxey, in his individual and)
 9 official capacities, Michael)
 10 McCracken, in his individual and)
 11 official capacities, and Mary)
 12 Anderson, in her individual and)
 13 official capacities,)
 14 Defendants.)
 15 _____)

16
 17 Video conference deposition on oral examination of
 18 J [REDACTED] [REDACTED] , reported by Donna M. Currey, Court
 19 Reporter and Notary Public in and for the State of South
 20 Carolina; pursuant to Rule 30 of the South Carolina Rules
 21 of Civil Procedure; said deposition was taken via Zoom
 22 Video Conference on Friday, the 25th day of February, 2022;
 23 commencing at the hour of 10:59 a.m.
 24
 25

1 APPEARANCES:

2
3 REPRESENTING THE PLAINTIFF:

4 JANET E. RHODES, ESQ.

5 Mike Kelly Law Group

6 Post Office Box 8113

7 Columbia, South Carolina 29202

8 (Jrhodes@mklawgroup.com)

9
10 REPRESENTING THE DEFENDANTS:

11 SAMUEL F. ARTHUR, ESQ.

12 Aiken Bridges Elliott Tyler & Saleeby, P.A.

13 181 E. Evans Street, Suite 409

14 Florence, South Carolina 29506

15 (sfa@aikenbridges.com)

16
17 ALSO PRESENT:18 Major Jason MacDonald
19
20
21
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* * * * *

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... Indicates trailing off
[ph] Denotes phonetically written
[sic] Written as said

1 **your drawing abilities?**

2 A. I'm not sure.

3 MR. ARTHUR: Object to the form.

4 **Q. Okay. Mr. Arthur may object to the form of the**
5 **question, but you're still required to answer.**
6 **Okay?**

7 A. Okay.

8 **Q. Okay. So, did you interpret the comment as**
9 **complimenting your drawing ability?**

10 A. No.

11 **Q. Okay. Had he ever complimented you on your**
12 **drawings before?**

13 A. I do not think so.

14 **Q. He never made any comments to you at all about**
15 **your drawings?**

16 A. Not that I remember.

17 **Q. Okay. And you said you implied that the drawing**
18 **was not of you, and then you say he insisted and**
19 **we went back and forth. What do you mean by**
20 **that? Tell me what you remember additionally**
21 **being said in that exchange.**

22 A. I do not recall the exact wording, but along the
23 lines of oh no, it's not me and then he would
24 say, well it looks kind of like you, and then
25 just not bickering, but offhand back and forth.

1 not concerned enough to report it, but when you
2 heard that there were other people that had
3 concerns, that's when you decided to report? Is
4 that right?

5 A. I had considered reporting, but I thought it was
6 enough of an isolated incident that I did not.

7 Q. Okay. In the -- in your statement you also said,
8 but I may just be being paranoid. It --

9 A. Yes.

10 Q. -- appears that you had some question as to
11 whether this was actually said. Is that true?

12 MR. ARTHUR: Object to the form.

13 A. I knew what had been said, but I was not sure
14 that I was reading into the situation correctly.

15 Q. Okay. Meaning whether it was said in an
16 inappropriate way or not?

17 A. Yes.

18 Q. Okay. Did Major MacDonald ever say anything else
19 that you considered inappropriate to you?

20 A. He had not said anything, no.

21 Q. Okay. Did he ever make any comment about your
22 physical body or anything of that nature?

23 A. No.

24 Q. Okay. Or anything that you consider like
25 sexually inappropriate?

1 A. Just --

2 Q. Apart from what you -- apart from this incident.

3 A. Apart from this incident, I just felt
4 uncomfortable around him for the duration of his
5 time.

6 Q. Okay. Is -- this last sentence, what does that
7 say?

8 A. M[REDACTED] may remember the exchange. He was
9 another student in my JROTC classroom.

10 Q. Okay. All right. Let's look at the drawing
11 itself. The second page. Do you recall what or
12 who you were drawing?

13 A. I was just drawing.

14 Q. Okay. Would you agree with that, you know, that
15 kind of is a low cut top?

16 A. It is, yes.

17 Q. Okay. All right. And you were not drawing a
18 picture of yourself, correct?

19 A. No.

20 Q. Okay. Were you ever -- or did you meet with
21 Assistant Principal Todd about this statement?

22 A. Yes.

23 Q. Okay. What did -- tell me about what you
24 discussed in that meeting.

25 A. I remember writing the incident report with him.

CERTIFICATE OF REPORTER

I, DONNA M. CURREY, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY CERTIFY THAT I REPORTED THE VIDEO CONFERENCE DEPOSITION OF J [REDACTED] [REDACTED], ON FRIDAY, THE 25TH DAY OF FEBRUARY, 2022; THAT THE WITNESS WAS FIRST DULY SWORN BY ME AND THAT THE FOREGOING 21 PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF SAID DEPOSITION.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE.

I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT WAS THEREAFTER SEALED BY ME AND DELIVERED TO JANET E. RHODES, ESQ., MIKE KELLY LAW GROUP, POST OFFICE BOX 8113, COLUMBIA, SOUTH CAROLINA, WHO WILL RETAIN THIS SEALED ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE FOR FILING SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 5TH DAY OF MARCH, 2022.



DONNA M. CURREY, COURT REPORTER

MY COMMISSION EXPIRES JANUARY 31, 2024

1 VERIFICATION OF DEPONENT
2

3 I, J [REDACTED] [REDACTED], HAVE READ THE FOREGOING
4 DEPOSITION CONSISTING OF 21 PAGES, WHICH WAS REPORTED BY
5 DONNA M. CURREY, COURT REPORTER AND NOTARY PUBLIC IN AND
6 FOR THE STATE OF SOUTH CAROLINA, ON FEBRUARY 25, 2022.

7 I FIND THE TRANSCRIPT OF THIS DEPOSITION TO BE A TRUE
8 AND ACCURATE TRANSCRIPT ACCORDING TO MY TESTIMONY ON THAT
9 DATE, WITH THE EXCEPTION OF _____ CHANGES AND/OR
10 CORRECTIONS LISTED ON THE ATTACHED ERRATA SHEET WHICH WAS
11 FILLED IN BY ME.
12
13
14

15 _____
16 J [REDACTED] [REDACTED]
17 _____, 2022
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ERRATA PAGE

Page #	Line #	Change/Correction (& Explanation)
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The above changes were noted by me on this errata page before signing the attached Verification of Deponent. I have retained a copy of this errata page for my records, and the court reporter is to attach this page and my verification to the original transcript.

Dated: _____

J _____

1 STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 15
2 COUNTY OF HORRY) DOCKET NO. 2020-CP-26-05790

3
4 _____
5 MAJOR JASON J. MACDONALD,)
6 Plaintiff,)
7 versus)
8)
9 HORRY COUNTY SCHOOL DISTRICT, ET AL.)
10 Defendant.)

11 _____
12
13
14 H E A R I N G

15
16 DATE: August 14, 2023
17 LOCATION: South Carolina Circuit Court 15
18 JUDGE: William Seals, Jr.
19 TRANSCRIBED BY: Jeanne Meldrim

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EXHIBITS

(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT: All right. Ready whenever you are.
2 Looks like the defendant's motion for summary judgment.

3 MR. ARTHUR: All right. Thank you, Your Honor. May
4 it please the Court. Samuel Arthur for the defendants in
5 this case. Case brought by Major Jason J. McDonald
6 against Horry County School District, Dr. Rick Maxey,
7 Michael McCracken, Brandon Todd, and Mary Anderson. For
8 the record, this is Civil Action Number 2020-CP-26-05790.

9 Your Honor, this is the defendant's motion for summary
10 judgment in this case. The plaintiff in this case is a
11 former employee of Horry County School District. He was
12 hired in 2018 to serve as the ranking officer in charge
13 of the NJROTC program at Aynor High School. And he was
14 provided a one-year contract for that position.

15 Several months after he started working with the
16 district, there were some allegations raised by some
17 female students alleging that Mr. McDonald had engaged in
18 some inappropriate conduct of a sexual nature that they
19 were not comfortable with.

20 Those allegations were investigated, Mr. McDonald was
21 placed on administrative leave during the investigation.
22 Later there were a determination to not renew his
23 one-year contract.

24 He had an administrative hearing before the school
25 district board that admittedly was delayed for some time,

1 and Ms. Rhodes may speak to that to some degree.

2 But in any event, these allegations were made, there
3 was an investigation conducted. Mr. McDonald was placed
4 on administrative leave pending the outcome of the
5 investigation. The district ultimately determined that
6 there was not sufficient evidence to support the --- the
7 allegations of the female students, but declined to renew
8 Mr. McDonald's contract. And indicated in --- in its
9 determination letter that it would be best if --- if the
10 district and Mr. McDonald part ways.

11 Thereafter, Mr. McDonald has filed a lawsuit against
12 the district and various individual employees of the
13 district. And his --- his complaint states causes of
14 action for interference with contractual relations;
15 interference with a prospective contractual relation;
16 defamation; and intentional infliction of emotional
17 distress.

18 On behalf of the defendants, I filed a motion for
19 summary judgment and submitted a --- a rather lengthy ---
20 excuse me --- a rather lengthy memorandum in support of
21 that motion. And Your Honor, Ms. Rhodes, on behalf of
22 the plaintiff, has also submitted a memorandum in
23 opposition to the motion.

24 I --- I would like to point out for Your Honor, that
25 in plaintiff's memorandum in opposition, plaintiff

1 indicates --- or counsel for plaintiff indicates, that
2 they will not be challenging the --- the motion with
3 respect to the first cause of action, for interference
4 with an --- with an existing contract. And it's my
5 understanding, they were also --- plaintiff is also
6 abandoning any claims against the individually-named
7 defendants.

8 And so that would leave, Your Honor, the cause of
9 action for interference with a prospective contract,
10 defamation, and intentional infliction of emotional harm,
11 all against only the district.

12 And I would ask Ms. Rhodes if she would verify that
13 I've stated that correctly.

14 MS. RHODES: Yes, Your Honor, Mr. Arthur has
15 accurately represented that we are conceding summary
16 judgment on the individual defendants and the
17 interference with contractual relations claim.

18 MR. ARTHUR: All right. Thank you, Your Honor.
19 So --- and thank you Ms. Rhodes, that --- that certainly
20 narrows the --- the issues before you today, Your Honor.
21 And I will just address the defamation claim, and the
22 interference with prospective contract, and the
23 intentional infliction of emotional distress, briefly.

24 With regard to the defamation claim, Your Honor,
25 against the district, plaintiff appears to be conceding

1 that there was no affirmative statement of a --- a false
2 and defamatory nature by the district, but rather that
3 the district's act of placing Mr. McDonald on
4 administrative leave, and refusing to renew his contract,
5 and refusing to bring him back on after the board's
6 decision is somehow defamatory.

7 And Your Honor, it's --- it's simply our position
8 that --- that is not sufficient. I mean, we --- we
9 concede that those facts actually did occur, that he was
10 placed on administrative leave, and that he --- his
11 contract was not renewed. And --- and that the district
12 parted ways with Mr. McDonald.

13 In fact, the --- there are two things, Your Honor,
14 with regard to the defamation claim that I think are
15 significant. Number one is the determination letter from
16 the district specifically says that they do not --- that
17 it did not feel that there was sufficient evidence to
18 support the allegations of --- of the female students.
19 That doesn't necessarily mean that they agree that Mr.
20 McDonald didn't do anything inappropriately. But it kind
21 of runs counter to this notion that --- that they had
22 somehow adopted the allegations of the students, because
23 they had said that, you know, we find that there's just
24 not sufficient evidence. However, we believe that it's
25 just not a good idea for the district and Mr. McDonald to

1 continue an employment relationship.

2 I think it's also significant, Your Honor, that it ---
3 it seems to me, that if anyone would be liable to Mr.
4 McDonald for making false statements, it would be these
5 female students. If, in fact, he believes that they
6 engaged in spreading falsehoods about him, he certainly
7 could have sued them. And he has not brought a single
8 claim against any single individual student, alleging
9 that any of the allegations were false.

10 So Your Honor, what we have here is a swearing
11 contest, essentially, between the employee, Mr. McDonald,
12 and the students. The district found that, you know,
13 while there was an investigation done, there just wasn't
14 enough evidence to --- to support the allegations of the
15 students, but certainly did not claim that the students
16 somehow engaged in --- in falsehoods or false statements
17 against Mr. McDonald.

18 It is true that he was not invited to return to the
19 school district, but that in and of itself is not a
20 defamatory action. This is not a case of the --- the
21 school district doing something to Mr. McDonald that
22 broadcast to the community that it believed that the
23 allegations of the students were true. The --- the law
24 that's been cited by Ms. Rhodes in her memorandum, I
25 don't --- I don't quarrel with the law that's cited

1 there. I just feel like it's our position, Your Honor,
2 that the facts of this case simply do not support an
3 inference that Mr. McDonald was somehow defamed by the
4 actions of the district.

5 Moving to the --- to the claim of interference with a
6 prospective contract, Your Honor, Mr. McDonald claims
7 that it while he was on administrative leave, he was
8 trying to line up other employment, and that included a
9 potential job --- similar job in the same capacity as ---
10 as he had with Aynor, at Hannah Pamplico High School in
11 Florence School District 2. And essentially the basis
12 for his claim that the district interfered with that
13 prospective contract, is --- is based primarily on his
14 allegation that the superintendent for Florence School
15 District 2, Neal Vincent, reached out to Horry County
16 Schools to get a reference for Mr. McDonald and that
17 Horry County Schools never responded.

18 And so plaintiff is claiming that the --- the failure
19 to respond to the request for a reference is somehow an
20 affirmative act of intentionally interfering with a
21 prospective contract.

22 Your Honor, it's --- it's simply our position that
23 to --- to place a burden --- a burden of affirmatively
24 providing references to a former employer just goes
25 beyond the bounds of --- of what is required under the

1 law with respect to --- with respect to employees.
2 And --- I mean, there's no legal duty --- plaintiff has
3 not cited to any legal duty that Horry County School
4 District would have to respond to a request for a
5 reference.

6 And in this case, if they had responded to a request
7 for a reference, the only thing they could have told him
8 was either the dates of employment, and nothing else, or
9 they could have told Mr. Vincent that the truth, which
10 was that Mr. McDonald was, in fact, on administrative
11 leave pending an appeal hearing. And the reason for his
12 administrative leave was allegations of inappropriate
13 conduct by female students.

14 So the --- the notion that --- that Horry County
15 somehow by choosing not to get involved in the
16 contractual --- prospective contractual relationship
17 between McDonald and Florence School District 2, somehow
18 becomes an affirmative act of intentionally interfering
19 with that prospective relationship. And just --- it
20 defies logic, Your Honor. It's not --- that would open
21 up a --- a --- a Pandora's box that would require every
22 employer to have a --- an affirmative duty to respond to
23 a request for a reference. And put them on a --- a
24 slippery slope of, well, how much do you tell somebody?
25 Because sometimes if you tell the whole truth, then

1 you're subjecting yourself to a defamation claim, if what
2 a you tell some --- a prospective employer is --- is not
3 favorable to that prospective employee, or to your former
4 employee.

5 So, Your Honor, it's a little --- it's --- I'm --- as
6 you can --- as you can see, I'm kind of struggling to ---
7 to convey the --- the district's position in this regard,
8 because it just seems to be very novel to me that someone
9 could take the position that if I choose not to speak,
10 then somehow I am intentionally harming you by choosing
11 not to speak.

12 Your Honor, it's our --- it's our position that the
13 district's act of simply not returning a phone call is
14 woefully insufficient to --- to support a claim for
15 intentional interference with a prospective contract
16 between Mr. McDonald and the school district --- Florence
17 School District 2, and therefore the district is entitled
18 to summary judgment on that claim.

19 Your Honor, with respect to the claim for intentional
20 infliction of emotional distress, now that --- that claim
21 has left --- has asserted solely against the district, it
22 is clearly barred by the South Carolina Court Claims Act.
23 And specifically section 15-78-30(f). And I'm sure Your
24 Honor is familiar with this code section. But I --- I
25 would like to read it into the record, because it is

1 not --- the specific code section is not referenced in my
2 memorandum.

3 Section 15-78-30(f) defines a loss under the Tort
4 Claims Act, and it states: "Loss" means bodily injury,
5 disease, death, or damage to tangible property, including
6 lost wages and economic loss to the person who suffered
7 the injury, disease, or death, pain and suffering, mental
8 anguish, and any other element of actual damages
9 recoverable in actions for negligence, but does not
10 include the intentional infliction of emotional harm.

11 Your Honor, there's --- there are a lot of provisions
12 of the Tort Claims Act that are --- that are often
13 subject to interpretation and arguing by various parties.
14 As --- as Your Honor knows, we've been fighting over the
15 definition of the word, "occurrence," for several years,
16 and that seems to be up in the air these days. But I
17 would submit that the language but does not include the
18 intentional of emotional harm, is abundantly clear and
19 subject to only one interpretation, and that is that the
20 school district is --- is immune from that type of claim.

21 So Your Honor, we would argue that it --- it's ---
22 it's very clear that the fourth cause of action for
23 intentional infliction of emotional harm, should be
24 dismissed in full.

25 Your Honor, I've stated our --- our positions with

1 regard to the defamation claim and the alleged
2 intentional interference with prospective contract. I'd
3 be happy to answer any questions you might have. And I
4 appreciate your time this morning, and I will pass it to
5 Ms. Rhodes.

6 THE COURT: Ms. Rhodes.

7 MS. RHODES: Yes, Your Honor. Thank you. May it
8 please the Court. I'm Janet Rhodes. I represent the
9 plaintiff, Major Jason McDonald in this action. And
10 I'm --- I'm an attorney in Columbia at the Mike Kelly Law
11 Group, and appreciate your time today.

12 Judge, I have --- I don't believe I've been before you
13 before. And obviously, these are significant amounts of
14 arguments. I think Mr. Arthur's summary judgment motion
15 was 17 pages, my response was about 32. So I'll try to
16 hit highlights, unless you'd like for us to get extreme
17 detail. My --- my assumption would be perhaps those
18 would be taken under advisement. But again, I can get
19 super detailed or --- or hit the highlights, however you
20 wish to ---

21 THE COURT: (Unintelligible). My time is your time.

22 MS. RHODES: Okay. Okay. Thank you, Your Honor.

23 Just briefly to speak to the code section Mr. Arthur
24 cited about the Tort Claims Act. It also goes on to say
25 unless it's for unjust means. So I don't believe that

1 the Tort Claims Act prohibits the intentional infliction.

2 I'm going to --- I'm going to go through a little bit
3 of background about my client and what transpired with
4 his employment.

5 My client's a (unintelligible) grad, two master's
6 degrees, served in the Army for 17 years, reached the
7 rank of major. He was deployed in Korea, and Kuwait,
8 Iraq three times in active combat zones, and received
9 numerous commendations for that.

10 When --- when he was looking for the job with Aynor
11 High School as the JROTC senior instructor, he was what
12 we would --- what I'm just kind of summary --- summarily
13 saying that he was precertified as a prospective JROTC
14 instructor. So what --- what that means is you --- that
15 precertification lasts for three years.

16 At the time he was asked by Lieutenant Colonel Davis,
17 who was director of the JROTC programs for Horry County,
18 the Horry County area, and surrounding areas, his
19 certification was three months out of --- excuse me.
20 I'm --- I'm having a bad day today. (Unintelligible).
21 But there was an exception made for him to be hired
22 there.

23 And so, you know, to finish getting full
24 certification, one of the things is you have to go
25 through is CNACI, Child Care National Agency check, as

1 well as you have to be employed. So the --- the
2 exception was made only for Aynor High School.

3 So when he lost his job, ultimately, he was no longer
4 certified as a JROTC instructor, his prospective or -- or
5 precertification was out of date, and this was well known
6 to the district as well as the Lieutenant Colonel Davis.
7 And when he was not returned to work, ultimately, that
8 ended his career as a JROTC instructor.

9 Excuse me one moment.

10 You know, when he was hired he had some difficulties.
11 The students often they weren't --- they didn't really
12 care for him. They really liked the junior JROTC
13 instructor, Sergeant Jones, because Sergeant Jones was
14 not as strict, didn't require them to --- to dress up,
15 and didn't have has many graded assignments, and not as
16 harsh on them in his physical training as my client.

17 Ultimately, we believe because some of these students
18 didn't like my client, they made --- several female
19 students made false allegations against them. Those are
20 summarized in the brief.

21 And --- and some of them were of a sexual nature, but
22 essentially one said that when she bent over, my client
23 said something about the brand of her underwear. Another
24 student said while she was drawing a picture, she claimed
25 my client says, oh, you're drawing yourself in a low-cut

1 top. And then others said they heard a cat call from a
2 room where my client allegedly was, and they assumed it
3 was him. And similar things of that nature, but
4 basically, those were the most of the main ones.

5 What transpired is ultimately at --- I took the
6 investigation at certain levels, because part of the
7 intentional infliction argument is that there was a lack
8 of investigation. The students were either
9 approached --- Sergeant Jones, the junior JROTC
10 instructor, or they approached the assistant principal.

11 We don't know because there was such a lack of
12 investigation, no notes were taken, only thing that
13 happened at the school level was that the assistant
14 principal, Mr. Todd, asked the students four very open
15 ended questions, and then asked them to write statements.

16 And the other thing he did was that he asked Sergeant
17 Jones to write a statement, which is essentially just a
18 two-page e-mail. In the two-page e-mail, Sergeant Jones
19 just says that he was approached by some students with
20 some concerns, and he basically just turned it over to
21 the assistant principal. But he doesn't say anything
22 about --- about having seen any inappropriate behavior
23 himself.

24 And --- and this is also notable because those two ---
25 the --- the two classes work very closely together, so

1 Sergeant Jones and my client, they held physical
2 trainings together, did community service and stuff
3 together. So Sergeant Jones was the closest person in
4 the district to my client and in observation of what, you
5 know, he did in the classrooms, as well as, you know, how
6 he treated female students.

7 The student --- student statements, there were 14
8 statements, and --- and the reason that I feel like there
9 was a lack of investigation is there were lots of
10 inconsistencies in the statements.

11 First thing, students were saying there were certain
12 students say that we --- they saw this picture drawing,
13 and they didn't hear him say anything inappropriate.
14 The --- the female student that said something about the
15 drawing basically said that she assumed, or she --- she
16 thought she heard something, or she might have just been
17 paranoid.

18 Notably, amongst all of the allegations, apart from
19 the conversation about her drawing, my client admits he
20 said and he complimented the student on the drawing, and
21 that was it. And he said that he encouraged her to ---
22 to go into the arts.

23 But the other whistle, the cat call, the --- the
24 alleged comment, no one saw my client say anything. They
25 were either stretching, or working out, or doing

1 something, and --- and they made assumptions.

2 Extremely notable when I deposed these --- several of
3 the main students making the allegations, there were
4 inconsistencies yet again. We believe that these
5 students should have been interviewed about their
6 statements. And that was an essential thing to be done
7 as a part of the investigation, because of the
8 inconsistencies, because of the lack of concrete
9 evidence, but they were not.

10 When I deposed these students, several of them said
11 that the --- the things had --- had occurred a month or
12 so prior, and they didn't start reporting until these
13 girls got together and started talking. And then they
14 all decided or what --- what --- what I'm kind of saying
15 is quote/unquote, jumped on the band wagon to go after my
16 guy.

17 So I feel like at --- at minimum, there should have
18 been an --- an interview of these students to make sure
19 to ask those questions, to ask about inconsistencies, but
20 none of that was done.

21 The allegations --- excuse me. Also, I think at
22 minimum, the Sergeant Jones should have been interviewed
23 to see, you know, to --- to be able to discuss the
24 interactions my client had with the students, and that
25 he'd never seen anything inappropriate. And yet none of

1 that was done. The only thing that was done was they
2 took statements from students, and they took statements
3 from Sergeant Jones, that was it.

4 The allegations came out at the very end of November,
5 the investigation, everything that had been done was
6 concluded on December 4th of 2018. However, my client
7 was not given a hearing before the board until 20 months
8 later.

9 So his --- his --- his career was in limbo, he was
10 subject to lose his certification. And ultimately, we
11 feel like that was, you know, extreme and outrageous for
12 him not to have been provided that --- that opportunity
13 for 20 months.

14 And the letter that he received from the district when
15 they decided not to renew his contract, said that he
16 could appeal, and he could be heard --- that he could be
17 heard by the board, with --- at their next regularly
18 scheduled meeting, which are monthly. So there's
19 absolutely no excuse not to --- to have had my client's
20 career in limbo for 20 months.

21 Moreover, you know, they --- they found that there was
22 no evidence. When I feel like the --- the district had
23 an obligation to put him --- to put him back in to work.

24 So ultimately, you know, he lost that --- lost the
25 ability to continue his career. And this was --- the

1 district knew that if this occurred that would happen if
2 they did not put him back to work. Because again, the
3 condition to get certification was employment
4 (unintelligible).

5 (Unintelligible) I still get super nervous in front of
6 the judge, so please forgive me.

7 Then with regard to the interference with this
8 prospective contractual relation, ultimately, my client
9 was offered the job, the principal liked him. The
10 principal went to the superintendent, Neal Vincent
11 (phonetic) and said, let's --- let's hire this guy. My
12 client spoke with Neal Vincent who said yeah, we want you
13 to come on, all we need is a reference from the district,
14 good, bad, or ugly. I mean all they --- they could have
15 said that he was on --- he actually told superintendent
16 Vincent and Vincent testified in his deposition, that my
17 client revealed he was on administrative leave. And
18 that, again, they knew that he was waiting for an appeal.
19 And again, he was going to get the job whether or not,
20 you know, he was on administrative leave. And that
21 basically all --- all they had to have was a reference,
22 just dates of employment, or that he worked there, or
23 they could have said that he was on administrative leave.

24 None of that was done. It was such a minimal effort
25 to --- to simply call and say whatever they wanted to

1 say, but just to confirm that he was an employee.

2 So that position remained open for a year. So
3 arguably if he had been got --- he had been given an
4 appeal sooner than --- than the 20 months, he --- he
5 still could have gotten the job, even though, you know,
6 even with the district not bringing him back. Even
7 though he won his appeal, but they, you know, after he
8 was terminated.

9 But, again, the district's failure to provide him
10 that --- that hearing for so long, ultimately caused him
11 to lose that opportunity. He also applied for a job
12 within the district, was told that being on
13 administrative leave did not prohibit him from applying
14 for the JROTC position and there's nothing in the
15 handbook that says that he couldn't apply. However, he
16 was not given a --- a interview.

17 You know, he suffered extreme mental and emotional
18 harm. It nearly ruined his marriage. He has --- he had
19 at the time when he started --- he had three daughters.
20 All of a sudden, there were no --- no more sleepovers,
21 females didn't want to come to his house. The --- his
22 girls who were in school at Horry County were getting
23 called, and comments, and asked about what's going on
24 with your dad? You know, we've heard that there was some
25 issues at Aynor.

1 And so ultimately this --- this had gotten around in
2 the community. There were 14 students that were
3 interviewed, and so all --- already those students would
4 have known of allegations and would, just like all
5 students, would probably have been commenting and
6 chatting with their friends.

7 In addition, there were many more students that were
8 in the --- in the class themselves, that would have
9 known, all right, Major McDonald is no longer here and
10 here everybody is talking about him.

11 Again, to make matters worse, his wife got pregnant
12 again during this time, and his mother-in-law was so
13 scared of his mental --- mental and emotional state, that
14 she said, you know, if you didn't get treatment, she was
15 worried he couldn't care for the child.

16 He was diagnosed with --- prior to all of this, he had
17 never had any mental health issues. But having in this
18 20 months and the stress of all this, he --- he was
19 diagnosed with major depression and anxiety and was
20 prescribed medications for that.

21 To add insult to injury, and one of the --- the
22 saddest things about this is that while he was on
23 administrative leave, the district took so little care of
24 his personal items, that when he was allowed in the midst
25 waiting on the appeal, to come get his items, lots of his

1 personal items were missing. Some things that could be
2 replaced, uniforms, things of that nature. But some
3 things were irreplaceable and invaluable, such as his
4 Bronze Star, his Meritorious Service Medal, his Army
5 Achievement Medal, Joint Achievement Medal, Meritorious
6 Units Commendation. And I could go down the list, but
7 there's about 30 of them here. So all of these items,
8 you know, that the district simply lost.

9 Again, we --- we feel like we've met the elements of
10 the intentional interference with contractual relations.
11 You know, what --- what I do understand Mr. Arthur's
12 argument that inaction is not an intentional action. But
13 there is case law that states, you know, if --- if
14 you --- interference can be done by an improper method.
15 And ultimately, the improper method here is --- is that
16 they knew he couldn't get this job without a reference,
17 and wouldn't make the call. All --- all it was was a
18 simple call. The --- the --- the superintendent Vincent
19 e-mailed twice, called once and --- and again still would
20 get nothing back.

21 Superintendent Vincent testified that it was extremely
22 unusual for a sitting superintendent not to return a call
23 for sitting superintendent. And so we feel like the
24 improper method here, the --- the lack of doing anything
25 was intentional and, you know, it would have been so

1 little effort just to make that call.

2 Obviously, he can show that he had prospective
3 relations because of his job. He could show that, you
4 know, that the --- there would be loss obviously, the ---
5 the losses would be the pay, wages and benefits. So we
6 feel like we've satisfied the elements of the cause of
7 action and their questions of fact and in regards to this
8 prospective contractual relation.

9 Related to the defamation, again, I --- I don't --- I
10 think we don't disagree on the law, and I don't think I
11 disagree with Mr. Arthur's recitation that our argument
12 is that the --- the statement ultimately was, you know,
13 not a written statement, but it was because of an
14 insinuation. And we feel like we've satisfied that
15 defamation occurred in several ways: First the --- the
16 district putting him out when they didn't conduct a fair
17 and equitable investigation, and that it sends a message.
18 When basically when --- and we understand that they have
19 to investigate these claims, obviously. But when they
20 didn't do a good investigation and they bring him back,
21 ultimately the message was that he'd done something
22 wrong. Then for the extreme expanse of time not
23 returning into the district, again, leads everyone to
24 believe that he's actually done something wrong.

25 Moreover, when he is found that there's --- when it is

1 found that there is insufficient evidence to return him,
2 ultimately, that --- that again, sends the message that
3 he had done something wrong, or that he was unfit in his
4 profession. So all of the actions of the district,
5 the --- the message was clear that my client had done
6 something wrong, and he actually did not.

7 With regards to the intentional infliction, I know you
8 know the law. And again, I --- I --- I --- I spoke about
9 the code. Ultimately, we say that, you know, maybe not
10 one of these things, but taking these things together,
11 are all together the intentional infliction of emotional
12 distress is --- is satisfied.

13 First, you know, they knew he was precertified. They
14 knew if he lost his job that he would --- that would end
15 his career. They failed to give him a fair and thorough
16 investigation. Of course we talked about the damage of
17 the message that was sent by not returning him. There's
18 a lot more details here --- in --- in the brief about,
19 you know, the lack of investigation, and I'll let you
20 review those.

21 And, you know, they didn't conduct the interviews that
22 they should have, all the inconsistencies of them
23 they --- again, going back and weighing in the 20 months
24 that they left his career in limbo, then not putting him
25 back in his position. And then the loss of his personal

1 items. Again, one --- one thing might not rise to the
2 level of something that was utterly intolerable in
3 civilized society, but putting them all together, we
4 assert that --- that these actions were so severe that no
5 reasonable person should have to endure them.

6 And (unintelligible) no reasonable person should have
7 to hear me mumble through my --- my recitation today, and
8 I apologize for my nerves.

9 But we do feel like there are questions of fact that
10 should be heard before a jury, and I thank you so much
11 for your time. And I'm certainly here to answer any
12 questions.

13 THE COURT: All right. Would you like to briefly
14 reply?

15 MR. ARTHUR: Yes, Your Honor. First of all, with
16 regard to the --- the statute --- the Tort Claims Act
17 prohibition of --- of claims for intentional infliction
18 of emotional harm. I --- I looked up the --- the
19 most --- what I believe is the most current version of
20 that statute. And I did not see an --- an exception that
21 Ms. Rhodes attempted to point out. But I would just
22 state, Your Honor, that we believe that 157830(f)
23 specifically precludes or prohibits a claim against the
24 district for intentional infliction of emotional harm.

25 As to the --- the other arguments, Your Honor, I --- I

1 would simply suggest that it appears that plaintiff is
2 attempting to --- to create duties for the district that
3 simply do not exist. There's not a duty to conduct a
4 lengthy thorough investigation to the satisfaction of the
5 alleged perpetrator of sexual harassment. There's not a
6 duty to provide a neutral reference, or to provide dates
7 of employment. There --- there are just not legal duties
8 to that effect.

9 And in the absence of a legal duty, it --- it defies
10 logic to argue that not doing something that --- that
11 someone is not required to do, is somehow --- somehow
12 gives rise to a claim that they have affirmatively acted
13 to harm --- to harm you. This was an unfortunate
14 situation for Mr. McDonald, to be clear. He was accused
15 of some things by some female students. He --- he denies
16 those allegations.

17 But the district has not affirmatively endorsed their
18 version or his version. The --- the district has not
19 made statements that --- certainly not made any
20 statements that were defamatory against Mr. McDonald,
21 or --- or knowingly made false statements against Mr.
22 McDonald that someone could claim were defamatory.

23 The --- the case --- I believe one of the cases that
24 Ms. Rhodes is relying on --- the plaintiff is relying on,
25 is a --- is a --- that supports the --- the notion that

1 you can have defamation by insinuation, was a shoplifting
2 case where somebody who was clearly innocent of
3 shoplifting was escorted out the parking lot in --- in
4 handcuffs, clearly giving the indication that the
5 shopkeeper believed that that person was guilty of a
6 crime.

7 That's not the situation that we have here. In fact,
8 as I pointed out earlier, the district stated in writing
9 that it believed there was not sufficient evidence to
10 support the --- the allegations of the individual
11 students.

12 So if anything, the --- the district --- it's not an
13 affirmative support for --- for Mr. McDonald, to be
14 clear, but --- but it is a clarification that the --- the
15 district is not adopting the version of either side.

16 I would suggest, Your Honor, that the --- with regard
17 to the alleged intentional interference with a
18 prospective contract, the argument that you can
19 establish, that by alleging that there was an improper
20 method, I --- I think is a --- is a misunderstanding of
21 the law. The --- the case that's cited by plaintiff at
22 page 20 of plaintiff's memorandum, the Callum case versus
23 CVS Health, sets forth what the plaintiff claims to be
24 the elements, first being the defendant intentionally
25 interfered with the plaintiff's potential contractual

1 relations. And then two, for an improper purpose, or
2 improper, or by improper methods.

3 So before you even get to consideration of whether or
4 not there was an improper purpose, you have to establish
5 that the defendant intentionally interfered with the
6 plaintiff's potential contractual relations. That simply
7 did not happen here. There was no obligation for the
8 district to take any action to support or to frustrate
9 Mr. McDonald's efforts to get another job. And simply
10 choosing to not get involved, cannot possibly equate to
11 the affirmative act of intentionally interfering.

12 So we would just respectfully disagree with --- with
13 plaintiff's characterization of --- of the applicable law
14 there.

15 Your Honor, in --- in closing, I would say that as you
16 probably surmised by now, Ms. Roads and I essentially
17 agree on what the facts are here. I think we may have
18 some disagreement about what facts are material to
19 plaintiff's claims, and to whether or not plaintiff can
20 carry his burden with respect to the --- the remaining
21 causes of action.

22 And it's just a matter of whether or not the --- the
23 facts fit within the law that applies to these cause of
24 action. And the district argues that it --- it clearly
25 does not.

1 Mr. McDonald served his country honorably, and --- and
2 he is to be applauded and respected for that. And this
3 situation has clearly caused him some hardship. But ---
4 but that does not in and of itself, make it actionable.

5 And that's why we're here today, Your Honor, because
6 the position of the district is that even assuming all of
7 Mr. McDonald's allegations are true, he simply does not
8 have evidence from which a jury could infer that he ---
9 he has satisfied his burden of proof with regard to the
10 causes of action for defamation, intentional interference
11 with a contract and intentional infliction of emotional
12 distress.

13 And for that reason, Your Honor, we respectfully
14 request that the Court grant defendant's motion for
15 summary judgment in full.

16 THE COURT: All right. I give you the last word,
17 Ms. Rhodes.

18 MS. RHODES: Very briefly. I --- I just want in
19 terms of the defamation, we did cite different cases,
20 Tyler v Max Stores, which talked about defamation by
21 insinuation. And that actually involved employment where
22 an employee was accused of stealing items. He was given
23 a polygraph exam, he passed the polygraph, but was still
24 fired. And so ultimately he won on summary judgments and
25 there was a question of fact as to the insinuation.

1 And that's --- that's the only thing I will point out
2 for you, and I thank you again for your time.

3 THE COURT: Taken under advisement. I'm going to
4 let y'all know something this week.

5 MS. RHODES: Thank you.

6 THE COURT: All right. Thank you both.

7 MR. ARTHUR: Thank you, Your Honor.

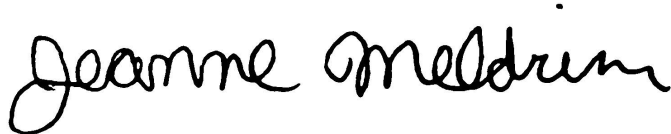
8 (PROCEEDINGS CONCLUDED)

CERTIFICATE OF TRANSCRIBER

I, JEANNE MELDRIM, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of CIRCUIT COURT 15 for HORRY COUNTY, South Carolina, on the 14th Day of August, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 17, 2023

A handwritten signature in black ink that reads "Jeanne Meldrim". The signature is written in a cursive, flowing style with a large initial 'J'.

Jeanne Meldrim

Transcriber

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2605790

Jason J MacDonald
PLAINTIFF(S)

School District Horry County et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant's Motion/Summary Judgment is granted in full. A short, nonargumentative, formal Order to follow by Attorney Arthur, reflecting the arguments made during the hearing and in the Memorandum of Law.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/15/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Jason J MacDonald VS School District Horry County , defendant, et al
Case Number: 2020CP2605790
Type: Order/Electronic Form 4

IT IS SO ORDERED

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

Electronically signed on 2023-08-15 14:18:32 page 3 of 3

ELECTRONICALLY FILED - 2023 Aug 15 2:42 PM - HORRY - COMMON PLEAS - CASE#2020CP2605790

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C/A NO.: 2020-CP-26-05790
COUNTY OF Horry	)	
Major Jason J. MacDonald,	)	
	)	
Plaintiff,	)	ORDER GRANTING DEFENDANTS'
	)	MOTION FOR SUMMARY JUDGMENT
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.	)	
_____	)	

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 severe 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!

Marion, South Carolina

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



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

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Jun 27 2024

CERTIFICATE OF COUNSEL

SC Court of Appeals

The undersigned certifies that the Record on Appeal complies with Rule 210(g),
SCACR.

s/Lydia Robins Hendrix
Lydia Robins Hendrix (SC Bar No. 106334)
Counsel for Appellants