

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

TRANSCRIPT OF RECORD
CASE NO. 2022-CP-40-03390

January 22, 2024

BEFORE: The Honorable Judge Jocelyn Newman

The School of Hope,
Plaintiff,

vs.

South Carolina DSS,
Defendant.

APPEARANCES:

W. Michael Duncan, Esq.
Attorney for the Plaintiff.

Lisle Traywick, Esq.
Attorney for the Defendant.

Official Court Reporter/Transcriber
Cynthia D. Weaver

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SC Court of Appeals

1 (COURT REPORTER'S NOTE: Due to remote platform
2 interruption and audio interference throughout the
3 hearing, those instances are denoted with
4 (inaudible) in the transcript.)

5 P-R-O-C-E-E-D-I-N-G-S

6 THE COURT: Or maybe there's an email somewhere.
7 Moving onto number 23, that is 2022-CP-40-03390,
8 School of Hope Christian Academy versus DSS.

9 Actually, before you all get to it, I'm going to
10 step away for just two minutes, I'll be right back with you.

11 MR. DUNCAN: Thank you, Your Honor.

12 (OFF THE RECORD.)

13 THE COURT: All right. Mr. Duncan, are you there?
14 Mr. Duncan, can you hear me. I just unmuted you.

15 MR. DUNCAN: Okay. All right. Thank you.

16 THE COURT: Turn on your video.

17 MR. DUNCAN: I'm in a courtroom trying to handle a
18 guilty plea. I'll do the best I can, Your Honor.

19 THE COURT: Okay. All right.

20 Well, Mr. Traywick, this is your motion for
21 summary judgment. Let me hear from you.

22 MS. TRAYWICK: Thank you, Your Honor, may please
23 the Court.

24 Lisle Traywick on behalf of the defendant,
25 Department of Social Services in this action.

1 Your Honor, This is about a food program
2 administered by the Department of Social Services for the
3 United States Department of Agriculture. And it's basically
4 for needy after school kids who need nutritious food. And
5 the defendant entered into an agreement with plaintiffs to
6 provide services for that. And under this agreement, which
7 was governed by the State and Federal Law, they would submit
8 claims for reimbursement for providing these food -- for
9 providing food to kids after school.

10 A problem, however, rose during the course of that
11 relationship in which plaintiffs were overstating claims for
12 reimbursement. And a number of denials were issued by the
13 Department of Social Services, and the plaintiffs decided on
14 some of them, at least, to follow the sole and exclusive
15 remedy provided for, in the contract, which is Exhibit B to
16 our Motion for Summary Judgment, B, as in boy, and that is
17 in Section Article 4, Section B2. And it said, Judicial
18 review of any final agency decision pursuant to this
19 contract shall be in accordance with SC Code in Section 123,
20 380.

21 So that, of course, is the Administrative
22 Procedures Act, and you have both contract and state law
23 requiring that this be the exclusive and sole remedy for
24 reviewing any decisions that were appealed from the
25 administrative agency, which is where they would have to

1 file any claims disputing reimbursement determinations by
2 the Department of Social Services.

3 Plaintiffs said that on at least two occasions,
4 and the cases made their way up to Judge Shirley Robinson at
5 the Administrative Law Court, and she agreed with the
6 department in both and those rulings or un appealed. And,
7 therefore, they are the law of the case and that's a well
8 settle case of South Carolina. And so the findings in those
9 orders bind what we're doing here and that's important for a
10 number of reasons. Plaintiffs are seeking reimbursement for
11 January to March of 2018 claims. And yet, Judge Robinson
12 found that those were not -- that DSS validly denied those
13 claims.

14 We also have an issue here, a defamation claim.
15 And although defamation was not pleaded in the
16 administrative action, there are findings in that un
17 appealed order that preclude any argument here on defamation
18 and establish truth as a matter of law. And so, therefore,
19 we're asking that the Court enter summary judgment based
20 upon our motion, the memorandum we found in accordance with
21 the course deadline of last Wednesday, and the five exhibits
22 that we appended to it. And those exhibits include both the
23 agreement between the parties, the two orders of the
24 administrative law court, and another order from a member of
25 this court. So, this isn't an isolated incident involving

1 the plaintiffs. They ran into the exact same problems with
2 the Department of Education. And we were involved in that
3 action to obtain summary judgment from Judge Lawton
4 McIntosh. And that case is now pending on appeal. We've
5 appended his order making the exact same findings under the
6 law of the case doctrine that we are asking that you make
7 here with respect to the claims against DSS.

8 And so just to go through it again, Article 4,
9 Section is quite clear, so is the law regarding the
10 exhaustion of administrative remedies. When a statute, or
11 here a contract and a statute, provide for exclusive means,
12 by which someone is to adjudicate a claim before an
13 administrative agency, they cannot run to the courts until
14 they've exhausted those remedies. Plaintiffs availed
15 themselves of it here, albeit selectively and have
16 articulated no basis on which what they should be excused
17 from doing so.

18 And so under the Unisys and Berry cases that we've
19 cited in our memorandum, we think that the Court should
20 dismiss any claims founding in breach of contract because
21 they are both precluded under the law of the case doctrine
22 under collateral estoppel, and under res judicata with
23 respect to the claims from January to March of 2018. And to
24 the extent that they're challenging any claims for
25 reimbursement on April, May, August, or September of 2018,

1 then those are barred because there was an exclusive remedy
2 provided for by the contract and statute, and so all of that
3 should be dismissed.

4 Moving on to defamation, again the law the case.
5 So the plaintiffs claim that defendants made defamatory
6 statements about them regarding them claiming reimbursements
7 for sites that didn't exist. Well, guess what, Judge
8 Robinson found that they did that. Footnote 3 on Page 8 of
9 the order attached as Exhibit A to our Motion for Summary
10 Judgment, says, Two of the approved sites were not even
11 operating and the school not only failed to advise the
12 department, but also had documentation indicating that meals
13 had actually been claimed for these sites.

14 They also said -- the Court also said there were
15 multiple instances, too many to include of the school
16 overstating its claims, including one instance, where the
17 claim was overstated by 994 meals.

18 So simply put the judge found that they were
19 overstating their claims for reimbursement for federal funds
20 administered by a state agency and they have not pointed
21 into any specific statements made by DSS or an identified
22 agent on its behalf that were defamatory and to the extent
23 they were, they're true as a matter of law.

24 DSS had a right and indeed an obligation under
25 federal law to report any allegations of potential

1 malfeasance in this program to the United States Department
2 of Agriculture and it did. And as the administrative law
3 judges findings demonstrate those were true and they didn't
4 appeal on them and they're now bound by that record here.

5 I also need to give a little bit of background on
6 the beginning of this case. The plaintiffs initially named
7 some individual defendants that were then dismissed by --
8 with prejudice, pursuant to a partial settlement between the
9 parties, and that was missed Direta Fashion (ph) and Marian
10 B. Young (ph). So they are no longer parties. There's no
11 individual defamation claims surviving against them. All
12 claims against them in their individual capacity were
13 dismissed.

14 So, here, we're left with just the allegations and
15 the complaint that plaintiffs claim that DSS or its agents
16 made willful intentional and with actual malice to harm to
17 the plaintiffs statements. Well, guess what that's barred
18 by the South Carolina Tort of Claims Act, under Statute
19 15-78, 60, Subsection 17, Claims are excluded for employee
20 conduct outside the scope as official duties, or which
21 constitutes actual fraud, actual malice, intent to harm or a
22 crime involving moral turpitude.

23 Two, at least two articles there are triggered.
24 Actual malice, which they pleaded in their complaint, and so
25 therefore they must agree that that is the standard

1 governing this defamation claim, and intent to harm. They
2 claim that it was intentional and made with actual malice to
3 harm plaintiffs.

4 So, DSS as the only surviving defendant as a
5 matter of law under the Tort Claims Act cannot be held
6 liable for that. And even on the merits, as we discussed,
7 any statements made were true, they did fail to comply with
8 the law both state and federal. They failed to comply with
9 the requirements in the contract and they admitted in their
10 deposition, which I've attached Exhibit E to our Motion for
11 Summary Judgment, that they were, in fact, under
12 investigation by the federal government and that was their
13 complaint about what was said about them and they admitted
14 it was true.

15 And so we believe, you know, a fundamental
16 claim -- or a fundamental element of a defamation claim is
17 that the defendant must make a false statement. Plaintiffs
18 can't get out of the batter's box here because the
19 statements were true as a matter of law as found by another
20 judge and is binding here as law of the case And by their
21 own testimony in the record.

22 I'd also know that any statements made would be
23 subject to a qualified privilege and plaintiffs have
24 introduced no evidence to the contrary. Again, DSS had a
25 duty under the walls report these allegations to the USDA.

1 Also, to the extent they want to point the finger
2 at employees now and tag them individually or get DSS, I
3 mean, this case has been sitting for a very long time. We
4 moved for a summary judgment in May of 2023 and for whatever
5 reason we appeared on roster in December, Mr. Duncan was
6 then unable to attend that hearing, so we agreed to a
7 continuance and it was moved to today's roster.

8 So we're here no additional discovery has taken
9 place. This case has already been 40Jd and then it's been
10 sitting there thereafter. I'd also note that after I got
11 40Jd, and was restored to the trial roster initial counsel
12 move to withdrawal as counsel upon restoration and a
13 plaintiff substituted Mr. Duncan's as counsel.

14 So, this was a well litigated case that's been
15 sitting around for a long time plaintiffs have failed to
16 prosecute it. They've failed to put forth any genuine issue
17 of material fact after we clearly met our burden. And so
18 under Rule 56e we believe summary judgment shall be entered
19 against the plaintiffs.

20 Happy to ask or answer any questions the Court may
21 have. There's also no evidence of damages in this record.
22 And so for any host of reasons that are in our memorandum
23 and summary judgment should be entered here.

24 THE COURT: Mr. Duncan.

25 MR. DUNCAN: Your Honor.

1 THE COURT: Yes, sir.

2 MR. DUNCAN: I apologize to the Court but I do
3 need about five minutes as the courtroom that I'm in
4 there -- it's 5:00 o'clock and you're still working, but
5 they'd like to shut down the courtroom and we need to get a
6 couple of matters -- if you could --

7 THE COURT: Yes, sir.

8 MR. DUNCAN: -- take just a brief recess, I would
9 appreciate it.

10 THE COURT: Happy to do it.

11 MR. DUNCAN: Thank you.

12 THE COURT: Yes, sir.

13 MR. DUNCAN: Okay.

14 THE COURT: Mr. Duncan, are you ready for us?

15 MR. DUNCAN: Yes, ma'am. We are.

16 THE COURT: All right. Let me hear your response
17 to the Motion for Summary Judgment.

18 MR. DUNCAN: Yes. So the plaintiffs in this case
19 -- have we filed this action a while ago, a good while ago.
20 It was 40Jd. The prior attorney -- essentially, at least
21 semi retired from practicing and withdrew approximately a
22 year-and-a-half ago, his law firm withdrew from this case.

23 Your Honor, I would respectfully submit that we do
24 have material issues of fact in particular regarding the
25 defamation claims, but also the breach of contract claims

1 the actions of the complaint.

2 Mr. Traywick argued this proof as a defense to the
3 defamation claim to the federal -- there was at one point in
4 time, for a lengthy period of time, there was a federal
5 investigation claim but it went nowhere. And the
6 individuals the agents of DSS certainly made statements were
7 not accurate in regards to the business practices of
8 Ms. Mackey, Jacqueline Mackey and Mr Eugene Burden and The
9 School of Hope as an entity.

10 And, again, Your Honor, we would rely on those
11 false allegations as our -- on our defamation claim. And,
12 Your Honor, I would contend that the orders issued by the
13 AOJ, Judge Robinson, do not address specifically all claims
14 the plaintiffs have made for reimbursement. And as to the
15 sites not being in existence, again, I think that it's just
16 factually inaccurate. My clients fed the children at sites
17 all over the state of South Carolina and sought
18 reimbursement and DSS delayed -- delayed and otherwise
19 beyond delayed they simply did not pay some valid, a number
20 of valid claims and cost my clients their business.

21 That's -- That's our position and, again, that
22 they are material issues of fact such that a summary
23 judgment motion should not be granted, that's where we are.

24 THE COURT: Okay. Anything else, Mr. Duncan?

25 MR. DUNCAN: Not -- no, Your Honor.

1 THE COURT: Anything else, Mr. Traywick?

2 MS. TRAYWICK: May I briefly reply, Your Honor?

3 THE COURT: Yes, sir.

4 MS. TRAYWICK: So, with regard to the withdrawal,
5 you know, Paul Porter and Elizabeth Milner had long been
6 handling that case, so I'm not sure it's quite accurate to
7 say that they withdrew through just because Louis Farmer
8 retired, but that's sort of beside the point.

9 With regard to the federal investigation going
10 nowhere, the alleged statement was that one was existing and
11 they've both conceded that there was so that's true. With
12 respect to agents of DSS making statements that weren't
13 accurate regarding the business practices of plaintiffs,
14 we're here on summary judgment. We found a properly
15 supported motion Rule 56e says that, you know, an adverse
16 party can't rest upon the mere allegations or denials of
17 this pleading. And, then, of course, argument of counsel is
18 not evidence.

19 So, therefore, we believe that summary judgment is
20 required under 56e as well. We agreed that the orders
21 didn't address all of their claims. The plaintiffs failed
22 to address the second part of that argument, right? So the
23 orders did address January to March of 2018, but with
24 respect to the remaining claims in 2018, we've got two
25 provisions of law, a contract and the statute that provided

1 the sole and exclusive remedy that they failed to exhaust.
2 And so, therefore, you know, this Court is not a proper
3 forum in which to raise those issues for the first time.

4 And then with regard to plaintiffs taking issue
5 with sites not being in existence, again, I will just point
6 to Page 8, Footnote 3 of Exhibit A, that's Judge Hurley
7 Robinson's order finding that, you know, two of the approved
8 sites were not even operating.

9 So, again, that's the law of the case. And with
10 respect, we would ask the Court to enter summary judgment
11 our favor for the reasons addressed today as well as in our
12 brief. I'm trying to be respectful of, Your Honor's time,
13 this was quite a marathon motions to roster. So, I
14 appreciate your indulgence and your time as always.

15 THE COURT: Yes, sir. Any final words on this
16 motion, Mr. Duncan?

17 MR. DUNCAN: Your Honor, I appreciate the Court --
18 I'm looking on here, it says you've been going for
19 three-and-a-half hours. So, I believe that there are
20 material issues of facts such that summary judgment would
21 not be proper. Summary judgment, the motion was filed
22 several years after the case was initiated. And, again, I
23 don't believe that summary judgment is appropriate and I
24 would ask the Court to deny respectfully the motion. Thank
25 you.

1 THE COURT: Sir, I'm going to take that one under
2 advisement, as well. You know, as the day wears on my quick
3 thinking fades, not that I can't think, but it just comes a
4 little slower towards the end of the day. And I'm reserving
5 some energy for this next set of motions because --

6 MS. TRAYWICK: Thank you, Your Honor.

7 THE COURT: -- the next case on the docket has a
8 trial on Monday. So, yes, I'll let you all know.

9 MR. DUNCAN: Thank you.

10 THE COURT: Thank you. Thank you.

11 MS. TRAYWICK: Thank you, Your Honor.

12 END OF REQUESTED PROCEEDINGS

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CERTIFICATE OF TRANSCRIBER

Case Name/Number: The School of Hope v. SC DSS,
2022-CP-40-03390

Date of Hearing: January 22, 2024

Court Reporter/Monitor: WebEx

I, Cynthia D. Weaver, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither Counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

October 11, 2024

Cynthia D. Weaver
Official Court Reporter/Transcriber
State of South Carolina