

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Anastasia Zimmerman,)
)
 Plaintiff,)
)
 v.)
)
 College of Charleston and Louis)
 Burnett, named in his individual)
 capacity,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO.: 2011-CP-10-4160

ORDER

2012 MAY 30 AM 9:06
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

FILED

Defendant College of Charleston's ("College") Motion for Summary Judgment came before the Court for hearing on Wednesday, April 25, 2012. Based upon the parties' pleadings, materials in the record, affidavits on file, submissions and oral argument, for the reasons discussed below, the Court hereby grants the College's Motion for Summary Judgment.

Plaintiff Anastasia Zimmerman's ("Zimmerman") alleges a single claim against the College in her Complaint for negligent supervision resulting in alleged injury to her. The College, in its Motion for Summary Judgment asserts Zimmerman's claim against it is barred, as a matter of law, for the following reasons: (1) Zimmerman's sole cause of action as to the College for negligent supervision is barred by the "exclusivity provision" of the South Carolina Workers' Compensation Act ("Workers' Compensation Act"), S.C. Code Ann. § 42-1-540; and, (2) Zimmerman's sole cause of action as to the College for negligent supervision is, likewise and correspondingly, barred by the South Carolina Tort Claims Act ("Tort Claims Act"), S.C. Code Ann. § 15-78-10 *et seq.*

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EX. A

APPLICABLE LEGAL STANDARD

Summary judgment is proper where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCPP; *Tupper v. Dorchester Cnty.*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997). The purpose of summary judgment is to expedite disposition of cases that do not require a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). In determining whether summary judgment is appropriate, the evidence must be viewed in the light most favorable to the nonmoving party. *Id.* A party requesting summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. American Telephone and Telegraph, Inc.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1989).

However, “[w]ith respect to an issue on which the nonmoving party bears the burden of proof, this initial responsibility may be discharged by ‘showing’ – that is, pointing out to the [trial] court – that there is absence of evidence to support the non-moving party’s case.” *Id.* at 115, 410 S.E.2d at 544, quoting *Celotex Corporation v. Catrett*, 477 U.S. 317, 325 (1986). In that case, the “moving party need not ‘support its motion with affidavits or other similar materials negating the opponent’s claim.’” *Id.*, quoting *Celotex* at 323. (emphasis in original.) “Once the moving party has carried its initial burden, the opposing party must . . . ‘do more than simply show that there is some metaphysical doubt as to the material facts,’ ” and “‘must come forward with ‘specific facts showing there is a genuine issue for trial.’” *Id.*, quoting *Matshusita Electrical Ind. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986).

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Ex. A

FINDINGS AND CONCLUSIONS OF LAW

Zimmerman's claim for negligent supervision is preempted by the Workers' Compensation Act. Section 42-1-540 of the Workers' Compensation Act, the "exclusivity provision," states the following:

[t]he rights and remedies granted by this Title to an employee when he and his employer have accepted the provisions of this Title, respectively, to pay and accept compensation on account of personal injury or death by accident shall exclude all other rights and remedies of such employee . . . as against his employer, at common law or otherwise, on account of such injury loss of service or death.

The South Carolina Supreme Court has held that this provision forecloses an employee's right to pursue a claim against her employer for assault, battery, intentional infliction of emotional distress, and negligence in the selection, retention, and supervision of a fellow employee. *Loges v. Mack Trucks, Inc.*, 308 S.C. 134, 137, 417 S.E.2d 538, 540 (1992); *Dickert v. Metropolitan Life Insurance Co.*, 311 S.C. 218, 220, 428 S.E.2d 700, 701 (1993).

Zimmerman's negligent supervision claim arises out of and allegedly occurred in the course of her employment with the College. As stated by the Court in *Doe v. South Carolina State Hospital*, 285 S.C. 183, 187, 328 S.E.2d 652, 654 (Ct. App. 1985):

[a]n injury arises in the course of employment . . . when it occurs within the period of employment at a place where the employee reasonably may be in the performance of his duties, and while he is fulfilling those duties, or engaged in something incidental thereto.

Id. Further, an injury "arises 'out of' the employment, when there is apparent . . . a causal connection between the conditions under which the work is to be performed and the resulting injury." *Id.*

It is undisputed in the present case that the negligent supervision alleged by Zimmerman, and the alleged resulting injury, arose out of and in the course of her employment with the

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Ex. A

College. All of the acts and/or omissions Zimmerman has alleged the College's employees, including Defendant Louis Burnett ("Burnett"), either committed or omitted, arose out of the employment relationship and while Zimmerman was actively employed by the College. In summary, all the acts Zimmerman complains of took place at her place of employment, were allegedly committed by the College or its employees, and occurred during the College's employment of Zimmerman. Thus, while Zimmerman might have pursued her negligent supervision claim under the Workers' Compensation Act and sought recovery for her alleged injuries, those injuries cannot form the basis for recovery for negligent supervision outside of the Workers' Compensation Act.

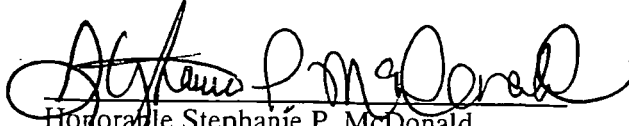
Moreover, even assuming, as alleged and argued by Zimmerman, that Burnett was the "alter-ego" of the College, her claim is barred, as a matter of law, by the Tort Claims Act.¹ The "alter-ego" exception to the exclusivity provision of the Workers' Compensation Act only applies to intentional acts. *Edens v. Bellini*, 359 S.C. 433, 445-46, 597 S.E.2d 863, 870 (Ct. App. 2004). For instance, "[a] common law cause of action will not be barred by the exclusivity provision when the employer manifests a deliberate intent to injure the employee." *Id.*, quoting *McSwain v. Shei*, 304 S.C. 25, 29-30, 402 S.E.2d 890, 892 (1991), *overruled on other grounds*, *Sabb v. South Carolina State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002). The Tort Claims Act, however, *does not* waive governmental immunity for conduct or acts constituting an "intent to harm." S.C. Code Ann. § 15-78-60(17). Therefore, even if Burnett was the "alter-ego" of the College, Zimmerman's negligent supervision claim is still barred by the Tort Claims Act.

As a result, and for all of the reasons noted above, the College is hereby granted summary judgment as to all the causes of action and claims asserted by Zimmerman against the College.

¹ The Court makes no specific findings or conclusions about whether Defendant Burnett is an "alter-ego" of the College.

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IT IS SO ORDERED.



Honorable Stephanie P. McDonald
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

May 29, 2012

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
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NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Jury Verdict For the Pltff

CASE NO: 2011CP1004160

Anastasia Zimmerman VS College of Charleston , defendant, et al

This judgment was entered on the 16th day of August, 2013, and a copy mailed first class on Wednesday, August 21, 2013, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

EX-B