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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge
The Honorable Perry Gravely, Circuit Court Judge

Trial Court Case No. 2017-CP-11-00735
Appellate Case No. 2022-001582

Sharon Brown, Appellant,

v.

Cherokee County School District One, Respondent.

INITIAL BRIEF OF RESPONDENT

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COUNTER STATEMENT OF THE CASE

This appeal arises from Plaintiff-Appellant Sharon Brown's ("Brown")[1] October 7, 2015, termination of employment by Defendant-Respondent Cherokee County School District One ("the District"). Following her termination, Brown initiated two lower court actions: (1) before termination through her statutory right under the South Carolina Teacher Employment and Dismissal Act ("TEDA") S.C. Code Ann. § 59-25-410 *et seq*.as a continuing contract teacher to an evidentiary hearing before the Board, and (B) after termination through her civil lawsuit.

A. Brown's TEDA Hearing Before the Board and Subsequent Appeals ("TEDA Cases")

On August 11, 2015, the District's then Superintendent, Dr. Quincie Moore ("Moore"), recommended Brown's employment termination to the District's Board of Trustees ("the Board"). Pursuant to TEDA, S.C. Code Ann. § 59-25-410 *et seq*., Brown requested and was granted an evidentiary hearing before the District's Board of Trustees ("the Board"). (Board Order pp. 1-2; Trans. Def. Exh. 6 at pp. 1-2). The District's Board upheld Brown's termination as reflected in its Order. (Board Order pp. 1-11; Trans. Def. Exh. 6 at pp. 1-11).

Brown appealed the Board's decision to uphold her termination to the circuit court, sitting in an appellate capacity. The Honorable J. Mark Hayes denied Brown's appeal and upheld her termination. *Brown v. Cherokee County School Board*, C/A No.: 2015CP110828 (7th Cir. Aug. 8, 2016) (order by Judge Hayes denying and dismissing Brown's appeal and affirming the decision of the school board). (Hayes Cir. Ct. App. Order).

Brown appealed the circuit court's order affirming the Board's decision to uphold the determination. The Court of Appeals affirmed the circuit court's orders, affirming the Board's

[1] See note fn. 4, *infra*. Only in this appeal does Brown appear *pro se*. From commencement through trial, Brown appeared with counsel.

determination to terminate Brown. *Brown v. Cherokee County School District*, App. Case No.: 2017-001466 (Ct. App. Unpub. Op. 2020-UP-013) (Ct. App. May 5, 2020) (denying Brown's Petition for Rehearing and Rehearing *En Banc*) (S.C. Ct. App. Unpub. Order.).

On June 25, 2020, Brown filed a Petition for Writ of Certiorari to the Supreme Court of South Carolina. On May 28, 2021, the Supreme Court of South Carolina denied Brown's Petition. *Brown v. Cherokee County School District*, App. Case No.: 2020-000919 (May 28, 2021) (denying Brown's petition for writ of certiorari).

On August 25, 2021, Brown filed a *pro se* Petition for Writ of Certiorari in the Supreme Court of the United States. The Court denied Brown's Petitions for Writ of Certiorari and Rehearing, on November 1, 2021, and January 10, 2022, respectively. *Brown v. Cherokee County School District*, U.S. Dkt. No.: 21-304 (Nov. 1, 2021) (denying petition for writ of certiorari); *Id.*, U.S. Dkt. No.: 21-304 (Jan. 10, 2022) (rehearing denied).

In conclusion, this Court's order affirming the decision of the lower court's order denying her appeal from the Board was not disturbed on appeal by Brown. *Brown v. Cherokee County School District*, App. Case No.: 2017-001466 (Ct. App. Unpub. Op. 2020-UP-013)

B. <u>Brown's Civil Lawsuit</u>

Following her termination, Brown filed her initial Summons and Complaint in the Cherokee County Court of Common Please on October 4, 2017. (Compl.). In her Second Amended Complaint[2], Appellant alleged nine causes of action against the District: (1) Violation of the S.C. Whistleblower Act; (2) Breach of Contract: (3) Breach of Contract Accompanied by a Fraudulent Act; (4) Defamation; (5) Intentional Infliction of Emotional Distress; (6) Gross Negligence; (7)

[2] Brown's Second Amended Complaint was the controlling complaint through trial after remand from the U.S. District Court, District of South Carolina.

Invasion of Privacy; (8) Interference with Contract; and (9) Violation of the South Carolina Payment of Wages Act. (SAC). (Sec. Am. Compl. pp. 6-18).

On March 19, 2021, the District filed a Motion for Summary Judgment and accompanying Memorandum of Law. (See generally District's MSJ/MOL). Following oral arguments, on September 10, 2021, the Honorable R. Keith Kelly granted in part and denied in part the District's motion for summary judgment.

Four causes of action survived the District's Motion for Summary Judgment to include: (1) Violation of the S.C. Whistleblower Act,[3] (2) Breach of Contract; (3) Breach of Contract Accompanied by a Fraudulent Act; (4) Gross Negligence. (SJ Order pp. 5-9).

On September 16, 2021, Brown filed a motion to alter or amend the order, partially granting summary judgment. (*See generally* Mot. to Amend.). On September 19, 2022, the Court heard Brown's motion to alter or amend and counter-arguments from the District, ultimately denying Brown's Motion. (Order denying Alter/Amend).

On October 24, 2022, the parties gave their opening statements, and Brown presented her case in chief thereafter.[4]. At the close of Brown's case in chief, Brown moved for a directed verdict, which the Court denied because the District had not yet put up its case in chief. (Trans. p.208, lines 15-16). The Court denied the District's motion for a directed verdict on the two contract claims but granted the District's motion for a directed verdict, dismissing Brown's Grossly Negligent Supervision cause of action. (Trans. p. 227 line 22—p. 228, line 10). The Court

[3] On October 19, 2022, Judge Keith R. Kelly granted the District's Motion to Bifurcate Brown's nonjury claim brought under the Whistleblower Protection Act. This matter is stayed pending the outcome of this appeal.

[4] At all times through trial, and in the TEDA cases, at least up to the matter before the Supreme Court of South Carolina, Brown maintained legal counsel. In the instant appeal only before this Court, Brown appears *pro se*.

subsequently denied the parties renewed motions for directed verdicts at the close of the District's case in chief. (Trans. p. 337, lines 14). Ultimately, the jury deliberated on two causes action: (1) Breach of Contract; and (2) Breach of Contract by Fraudulent Act. On October 26, 2022, the jury rendered its verdict finding for the District for both causes of action. (Verdict Form).

On November 4, 2022, Brown properly served the District with her Notice of Appeal, the judgment of the jury's verdict in the trial presided over by the Honorable Perry H. Gravely, September 10, 2021, and October 7, 2022, orders by the Honorable Judge R. Keith Kelly

COUNTER STATEMENT OF THE FACTS

On August 11, 2015, District Superintendent Dr. Quince Moore ("Moore") notified Brown that she was recommending to the Board that Brown be terminated under the provisions of the S.C. Teacher Employment and Dismissal Act, S.C. Code Ann. § 59-25-410, *et seq.* ("TEDA"), and specifically pursuant to S.C. Code Ann. § 59-25-430, which sets forth a non-exhaustive list of the grounds upon which a teacher may be terminated immediately without the need for remediation. (Trans. p. 143, line 16—p. 144, line 2; Trans. p. 317, lines 1-8; Def. Exh 5). On October 7, 2015, the Board met to consider Moore's recommendation, and after a four-hour evidentiary hearing, where seven (7) witnesses testified under oath, all subject to cross-examination, and where Brown was represented by legal counsel, the Board upheld Moore's recommendation, and Brown was terminated effective immediately upon the Board's vote. (Board Order p.10; Trans. Def. Exh. 6 at p. 10). Soon thereafter, the Board issued its order to Brown, who appealed the Board's decision to the circuit court in Cherokee County, SC.

During the 2014-15 school year, Brown was employed by the District as a second-grade teacher at Luther Vaughn Elementary School ("LVES"). (Trans. p. 126, lines 3-8). On May 28, 2015, Brown led her students down the hallway toward the art room and watched them approach the art room door from a short distance away. (Trans. p. 234, line 11—235, line 13). Justin Kelly

("Kelly"), a first-year art teacher, was observing Brown's students approach his classroom through a crack in the door, through which he also could see Brown. (Trans. p. 236, lines 2-12). Student J,[5] a student who spoke limited English, (Trans. p. 237, line 23), was at the end of the line. (Trans. p. 235, lines 5-24). Kelly saw Brown begin to proceed back toward her classroom, but then quickly turn around just as Student J was nearing the art room door. (Trans. p. 236, lines 1-13). Kelly testified that, before Student J opened the door, he saw Brown "put her hand directly onto the student, and. . . .her fingers kind of press to [his cheeks], it covers over his chin and under his neck and she just forces him against the wall, didn't slam him against the wall, just forces him to the wall, and she puts her head directly on the opposite side to me to his ear." (Trans. p. 236, lines 12-19.) Kelly testified that Student J looked "pretty terrified," and he saw Brown say something to Student J. (Trans. p. 236, line 24—p. 237, line 3). Kelly testified that he did not believe Brown was aware that he had observed her interactions with Student J. (Trans. p. 238, lines 19-22).

Beth Owens ("Owens"), another LVES teacher, saw Brown and Student J in the hallway outside the art room at 1:20 p.m., with Student J's back against the wall. (Trans. p. Def. Exh. 13). Owens testified that she saw Student J turn away from Brown and that she then saw Brown place her fingers on Student J's chin and turn his head, so he was again looking in her direction. *Id*. (Trans. p. 288, lines 16, Def. Exh. 13, p. 6 at p. 77, line 17—p. 7 at p. 78, line 7. Owens notified LVES Principal Nan Ruppe ("Ruppe") of her observation two days later on June 1, 2015. *Id*. (Trans. p. 288, lines 16, Def. Exh. 13, p. 7 at p. 79, line 9).

The following day, Kelly reported the incident to the LVES guidance counselor, Ruby Byers ("Byers") who took him to see Ruppe. Ruppe advised both Kelly and Owens to place their observations in writing, which they did. (Board Order p. 4; Trans. Def. Exh. 6 at p. 4). Ruppe then

[5] The student in question is referred to as "Student J" to protect his confidentiality.

reported the matter to the District Office and participated in the District's investigation beginning on June 1, 2015, when the District Director of Human Resources Dr. Carl Carpenter ("Carpenter"), came to LVES to initiate the investigation. *Id*. Ruppe was present when Carpenter questioned Kelly regarding the May 28, 2015, incident and testified to the Board that Kelly's report was consistent with what he had told her on May 29, 2015. (Board Order p. 5; Trans. Def. Exh. 6 at p. 5).

Ruppe also was present when Carpenter told Brown that he was placing her on administrative leave pending the conclusion of the District's investigation. (Trans. p. 296 lines 17-25). When asked by Carpenter on June 1, 2015, whether she had any witnesses to the events of May 28, 2015, Brown provided the names of Owens and another LVES teacher, Tracie Wilson ("Wilson"). (Trans. p. 298, line 14—p. 299, line 8). Ruppe confirmed at trial that she heard Carpenter inform Brown of the terms of her administrative leave. (Trans. p. 296, lines 17-25). After their meeting, Brown testified at trial that she told Carpenter that Owens and Wilson could serve as witnesses for her and asked Carpenter to speak with them. (Trans. p. 127, lines 5-14).

Several days after Brown's meeting with Carpenter and Ruppe, Brown testified at trial that Wilson was at a Ross Department Store in Spartanburg, SC when Brown approached her. (SJ Order pp. 3; (Board Order p. 7; Trans. Def. Exh. 6 at p. 7; Trans. p. 132, lines 22). Wilson had not yet been called by Carpenter to meet with him, nor was she aware that Brown had provided her name as a witness. (Board Order pp. 6-7; Trans. Def. Exh. 6 at pp. 6-7 Trans. p. 276, lines 13-16). Brown told Wilson that "Dr. Carpenter is supposed to call you" and that Wilson was "about what happened with the Student J." (*Id.*) Wilson testified that Brown admitted to Wilson that "you know, I'm not supposed to be discussing it," to which Wilson replied, "well, don't discuss it because I don't know what happened . . ." (Trans. p. 276, lines 16-20).). Brown then attempted to tell Wilson what she believed had happened with her and Student J. (Trans. p. 276, line 20—p.277,

line 4.) Wilson testified at trial that Brown "kept telling me that I seen or what she wanted me to say, and I told her I wasn't aware of anything she was talking about. And I kept repeating to her to just stop talking to me about it because I really did not know, and I didn't want to have anything to do with the situation." (Trans. p. 275 lines 12-16). This interaction was in direct violation of the directive given to Brown by Carpenter. Wilson ultimately wrote a statement to Ruppe and Carpenter reporting the run-in with Brown at the Ross Department Store. (Trans. p. 277 line 24—p. 278, line 18).

On July 31, 2015, in a meeting with Brown, her counsel, her mother, the District's counsel, and Carpenter, Moore interviewed Brown, who told Moore that she "did not remember" Carpenter, telling her that she could not discuss the investigation or incident. (Board Order p. 2-3, 5-7; Trans. Def. Exh. 6 at p. 125). Moore found the statements of Kelly, Wilson, and Owens to be credible and concluded that Brown had interacted inappropriately with Student J and also had intentionally interfered with the District's subsequent investigation by attempting to tell her own witness, Wilson, what she should say when questioned by Carpenter. *Id.* Based on these conclusions, Moore recommended that Brown be terminated, putting her recommendation in writing to Brown by letter dated August 11, 2015. (Board Order p. 8-9; Trans. Def. Exh. 6 at p. 8-9). In response to Moore's letter, Brown requested an evidentiary hearing before the Board. (Board Order pp. 1; Trans. Def. Exh. 6 at p. 1).

In support of her recommendation for dismissal to the Board, Moore presented six witnesses: Kelly, Ruppe, Carpenter, Owens, Wilson, and herself. (Board Order p. 3; Trans. Def. Exh. 6 at p. 3). Brown served as her only witness. (*Id.*) Following a four-hour hearing and deliberation, the Board voted to uphold Moore's recommendation of dismissal, concluding that there were good and sufficient reasons for terminating Brown because, by her conduct, she manifested an evident unfitness for teaching. *See* S.C. Code Ann. §§ 59-19-90(ii), 59-25-430.

Relevant portions of the Board's Order state:

> ". . . [T]he Board believes that in addition to her dishonesty, Ms. Brown's inappropriate interactions with Student J and her insubordination by defying the directive that she not talk with any District employee, particularly an employee whose name she had provided as a witness, manifests an evident unfitness for teaching. Ms. Brown's conduct indicates to the Board that she does not have the judgment or the credibility to work as an employee in the District. All the findings and conclusions are sufficient reasons for her termination. Based on the facts, as established by the evidence and the legal standard, the Board upholds the Superintendent's recommendation to terminate the employment of Sharon Brown as a teacher . . . ."

(Board Order p. 9-10; Trans. Def. Exh. 6 at p. 9-10).

ARGUMENT

I. BROWN ABANDONED ALL ISSUES RAISED ON APPEAL BECAUSE HER' ARGUMENTS ARE CONCLUSORY STATEMENTS MADE WITHOUT SUPPORTING AUTHORITY.

It is well settled that issues are abandoned when an appellant merely asserts conclusory arguments and statements without providing supporting case law. Accordingly, all of Brown's issues were abandoned and should not be considered by this Court. *See Bennett v. Inv'rs Title Ins. Co*., 370 S.C. 578, 599, 635 S.E.2d 649, 660 (Ct. App. 2006) ("Appellants fail to cite any case law for this proposition and make only conclusory arguments in support thereof. Thus, Appellants abandoned this issue on appeal."); *Shealy v. Doe*, 370 S.C. 194, 205-06, 634 S.E.2d 45, 51 (Ct. App. 2006) (declining to address an issue, finding the issue abandoned when the appellant failed to cite to any case law for the proposition and made only conclusory arguments in support of the proposition); *Mulherin-Howell v. Cobb*, 362 S.C. 588, 600, 608 S.E.2d 587, 593-94 (Ct. App. 2005) (noting when an appellant fails to cite any supporting authority for his position and makes conclusory arguments, the appellant abandons the issue on appeal "and it need not be addressed by this court"); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) ("Appellant fails to provide arguments or supporting authority for his assertion. Thus, he is deemed to have abandoned this issue.").

Here, in Brown's argument sections I-IV of Brown's initial brief (App. Br. pp. 7-19), Brown fails to cite legal authority or supporting rules of law to support her arguments, as applied to the facts, in her issues on appeal. Brown's argument sections V through VI, like her argument sections I-IV, are verbatim recitations of the other, consisting of about three sentences each, with no supporting law and no supportive authority outside of one misplaced statute to support the issue raised. (App. Br. pp. 15-16). Although Brown cites to S.C. Code Ann. § 1-23-380 as the applicable

standard of review, Brown is misguided in its application to her issues on appeal. The standard of review Brown cites, "applies the APA standards to certain local administrative decisions. (App. Br. pp. 7, 8, 10, 12, 13, 15, 16,). Furthermore, Brown does not apply the cited statutes or cases in her argument sections. Brown overlooks the fact that this appeal does not arise from a "local administrative decision." However, this appeal arises from a jury trial and motion for summary judgment. Even though Brown has previously participated in the TEDA hearing process with facts related to the case at bar, Brown commenced this litigation in the Cherokee County Court of Common Pleas under claims for damages based on statute and common law—not a local administrative body as she asserts in her appeal. (Sec. Amend. Compl).

A reference to supporting authority without any discussion of the case law's applicability is considered conclusory and constitutes an abandonment of the party's reliance on those cases. *See, e.g., State v. Tyndall, 336 S.C. 8, 17, 518 S.E.2d 278, 283 (Ct. App. 1999) (holding that one sentence reference to the case without including any discussion of the decision or its applicability to party's circumstances constituted an* abandonment of legal issue on appeal). The appellate courts usually apply the "conclusory argument" rule, where the statements in the brief are short and lack any citation to authority. *See, e.g., Wilson v. Dallas*, 403 S.C. 411,743 S.E.2d 746 (2013) (finding argument abandoned where appellant cited to statute but did not otherwise discuss the section; the argument is effectively abandoned if appellant's brief treats it in a conclusory manner); *Mead v. Beaufort County Assessor*, 419 S.C. 125, 796 S.E.2d 165 (Ct. App. 2016) (short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review).

Notably, argument Sections 1-4 are merely verbatim recitations of each other and simply repeat arguments that Brown has made at other times during this and other litigation. (App. Br.

pp. 7-13). Additionally, she includes *some* cases as applied to the standard of review. Further, in none of her arguments does she discuss the application of any authority to the circumstances of this appeal, nor does she discuss the scope of judicial review and the contingencies that may be placed in the outcome of the case.

While Brown's arguments sections VII through VIII have at least one type of authority cited them, they, too, do not warrant review by this Court due to their lack of discussion and conclusory assertions unsupported in law or fact. Brown makes no effort to discuss the applicability of her issues raised or to offer proposed applications by this Court in hopes of ruling in her favor. For example, Brown cites S.C. Code Ann. §15-78-60(25), which served as the basis for the District's directed verdict motion at trial. (App. Br. pp.16-17). However, Brown does not even go so far as to cite the wording of the statement she attempts to interpret and apply it to her argument. (App. Br. p. 7). Brown says, "Brown contends that she can file suit for gross negligence as an employee of the district." (Id.). However, S.C. Code Ann. § 15-78-60(25) does not directly address the issue presented in this case." (Id.) She gives no examples, provides no case law, or even any sort of justification for her conclusion.

Therefore, due to the wholly conclusory and non-authority-supported nature of Brown's brief, she has abandoned all issues on appeal.

II. BROWN DID NOT PRESERVE ISSUES I-IV FOR APPEAL, AND THE LOWER COURT CORRECTLY DENIED BROWN'S MOTION FOR A DIRECTED VERDICT.

A. Preservation

i. Brown's Verbatim Repetition of Sections I-IV of Her Argument Section Demonstrates That She Abandoned Those Issues on Appeal.

The issues and arguments under Brown's Arguments I-IV are profoundly conclusory and unsupported by fact or law. In fact, Brown has merely used verbatim wording throughout her

argument section I-IV. (App. Br. pp. 8-13). Brown bases her arguments in sections I-IV on several unsupported and conclusory facts. First, Brown claims that Moore never provided her with notice of "a performance charge" and that she only learned of this "performance charge" during her jury trial from Carpenter's testimony. (App. Br. pp. 7-9). To support this contention, Brown references the letter from Moore recommending her termination and the Board Order upholding her termination. (App. Br. pp. 8). Brown then cites the testimony of Carpenter to allege that she was actually terminated for some recently discovered performance issue. When referencing the testimony Brown's assertion is swiftly debunked. (Trans. p. 200, 203-205). In fact, Carpenter's testimony discusses that Brown was not on an "improvement plan" and the lack of performance issues he was aware of in his capacity as director of human resources. (Trans. pp. 204, ln.24—p. 205, ln. 1). Brown further contents that her "due process rights and procedural due process were violated by the District. [The District] did not follow our Teacher Employment and Dismissal Act." (App. Br. pp. 8). Brown then baselessly accuses the District's counsel and Carpenter of being aware of charges related to her performance, and "failed to tell Brown about them." (App. Br. pp. 9). Brown concludes that the District and the Board violated her fair review for a hearing under TEDA yet provides no facts to support that assertion. Brown then seeks for this Court to "tender her termination null and void" to award her back pay front pay and to reinstate her as a teacher in the District. (App. Br. pp. 9). However, Brown fails to realize that her appeal is for the purpose of the action she brought in the Court of Common Pleas, not her formally adjudicated TEDA hearing and subsequent appeals.

ii. Brown Abandoned Issues I-IV Raised on Appeal Because Her Initial Brief Fails to Identify with Particularity the Alleged Errors Committed by the Trial Court.

Under South Carolina Appellate Court Rules, "A brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal to support the salient facts alleged. Reference shall also be made to where relevant objections and rulings occurred in the transcript." Rule 208(b)(4), SCACR. For example, in *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.*, the appellant failed to identify any specific trial court rulings claimed to constitute error. 414 S.C. 33, 73, 777 S.E.2d 176, 197 (2015) (citing Rule 208(b)(4), SCACR.). As a result, the appellant's argument did not sufficiently identify with particularity the alleged error, and the Supreme Court found the appellant had abandoned its claim on appeal. *Id.*

Here, in argument sections I-IV of Brown's Initial Brief she never references or cites to any transcripts, pleadings, orders, exhibits, or other materials in either his Statement of the Case, Statement of the Facts, nor her argument sections. In argument II, the heading asks, "was it fair for Judge Gravely to allow the school district to discuss an additional charge at trial for reasons for Brown's termination when in fact Brown was first notified about the charge at trial before the jury?" Not only does Brown not provide any facts to support her notice of a "new charge" at trial, she also fails to demonstrate to this Court that she raised the issue before the lower court, and she fails to identify with particularity the alleged reversible error of the lower court. (App. Br. pp. 9-11). The same argument can be made for arguments III and IV. Brown does not identify with particularity raising the issue before the lower court or any reversible error committed by the trial court below. (App. Br. pp. 12-14).

Therefore, Brown's argument fails to identify with particularity any alleged issues on appeal as required by Rule 208(b)(4), SCACR. Thus, Brown's issues on appeal I-IV should be deemed abandoned because she failed to specifically identify the alleged issues on appeal.

iii. Brown Fails to Raise the Issues Regarding Her TEDA Rights Before the Lower Court.

The first step in preserving an issue for appellate review tis to actually raise to the lower court. *Lucas v. Rawl Family Ltd. P'ship*, 359 S.C. 505, 598 S.E.2d 712 (2004). Here, Brown fails to raise any issues regarding the testimony of Carpenter, jury trial notice of "performance charges," or violation of "due process" and "procedural due process" before the lower court at trial. (See App. Br. pp. 8, 10, 12, 13). Nowhere in her brief does Brown cite to an objection before the lower court, raising these issues related to TEDA. Brown only repeats verbatim issues regarding her rights previously litigated under the TEDA cases as a basis for her directed verdict. These issues were never objected to or subject to the trial court's consideration. Brown provides no legal basis or exception as to why she could skip the vital step of raising the issues before the lower court to provide a basis as to why this Court should now consider those issues on appeal. The record contains no reference to anything raised before the lower court as discussed in her argument sections I-IV. *Id.; see also S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 641 641 S.E.2d 903 (2007). Therefore, by not raising the issues described in her arguments, Brown has abandoned those issues on appeal.

iv. Brown's Arguments are Prevented From Review Based On the Doctrine of Res Judicada.

On appeal, Brown relies on the issues in "TEDA cases" as the basis for this Court to disturb the denial of her directed verdict and now is merely trying to overturn issues that this Court has already decided under the TEDA line of cases. Throughout her arguments, repeated verbatim in

Brown's argument sections I-IV, Brown refers to "being reinstated" and "the require[ments] under TEDA. (App. Br. pp. 9). However, not only does Brown not raise these issues before the lower court, but they have already been decided by this Court and are not proper for consideration here.

Res judicada prevents relitigation of particular issues or claims actually litigated and decided in a prior suit. *See Lifschultz Fast Freight, Inc. v. Haynsworth, Marion, McKay & Guerard*, 334 S.C. 244, 513 S.E.2d 96 (1999). Res judicata encompasses both issue preclusion and claim preclusion. *Crestwood Golf Club, Inc.,* 328 S.C. at 216, 493 S.E.2d at 834. However, res judicata is more commonly referred to simply as claim preclusion. *Garris v. Governing Bd. of S.C. Reinsurance Facility,* 333 S.C. 432, 449, 511 S.E.2d 48, 57 (1998). The S.C. Supreme Court has reaffirmed the following statement of the doctrine: Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of res judicata, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Plum Creek Dev. Co. v. City of Conway,* 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (alteration in original) (citations omitted), *cited with approval in Judy v. Judy,* 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011). Res judicata may be applied if (1) the identities of the parties are the same as in the prior litigation, (2) the subject matter is the same as in the prior litigation, and (3) there was a prior adjudication of the issue by a court of competent jurisdiction. *Johnson v. Greenwood Mills, Inc.,*317 S.C. 248, 250–51, 452 S.E.2d 832, 833 (1994).

1. <u>The Identity Of the Parties are the Same In the Case Before This Court And Previously Presented Under The TEDA Cases Brought By Brown.</u>

The first element of res judicata, that the parties in the subsequent action be identical to those in the first, is also met in this case. In Elenita *Duckett v. Ronald Goforth*, 649 S.E.2d at 82, the Court held that "res judicata is the branch of the law that defines the effect a valid judgment

may have on subsequent litigation between the same parties and their privies." (quoting Nelson v. QHG of S.C., Inc., 354 S.C. 290, 304, 58 S.E.2d 171, 178 (Ct. App. 2003)); Pye v. Aycock, 325 S.C. 426, 432, 480 S.E.2d 455, 458 (Ct. App. 1997) ("It is apodictic that the doctrine of res judicata has been elongated to include 'privies'.") Privity is the connection or relationship between two parties each having a legally recognized interest in the same subject matter. BLACK'S LAW DICTIONARY (8 ed. 2004). The District is under the management and control of the Board (*see* S.C. Code Ann. § 59-19-10), and the Board appoints a superintendent to carry out policies established by the Board.

Here, in the TEDA Cases, Brown's appeals of the Board's Order to terminate, which represents the final and prior adjudication, was upheld by this court despite her appeals to the U.S. Supreme Court. The parties are the same or either in privity with the Defendant Cherokee County School District" here. In her previous appeals, the parties are identical to Brown or identical and privity with the District. The District's Board of Trustees, former Superintendent Dr. Quincie Moore. Therefore, the parties are the same in this appeal and the previous line of appeals brought by Brown. (Board Order; Trans. Def. Exh. 6; Hayes Cir. Ct. App. Order; S.C. Ct. App. Unpub. Order; *Brown v. Cherokee County School District*, App. Case No.: 2020-000919 (May 28, 2021); *Brown v. Cherokee County School District*, U.S. Dkt. No.: 21-304 (Nov. 1, 2021) (denying petition for writ of certiorari); *Id.*, U.S. Dkt. No.: 21-304 (Jan. 10, 2022) (rehearing denied)).

Without question, Moore and the District have a relationship that arises out of a mutuality of interest—the implementation of the District's policies. Therefore, the District is in privity with Moore, the parties in the present action are identical to those in Brown's TEDA Cases (Id.), and the second element of res judicata is met.

2. <u>The TEDA Cases and this case on appeal arise from the same subject matter.</u>

In *Brice v. Glenn*, 165 S.C. 509, 514-15, 164 S.E. 302, 303-04 (1932), the Supreme Court defines the same subject matter as:

> "The cause of action has been described as being a legal wrong threatened or committed against the complaining party: And the object of the action is to prevent, or redress the wrong by obtaining some legal relief. The subject of the action is, clearly, neither of these; it is not the wrong which gives the Brown the right to ask the interposition of the Court; nor is it that which the Court is asked to do for him, but it must be the matter or thing, differing both from the wrong and the relief, in regard to which the controversy has arisen, concerning which the wrong has been done; and this ordinarily is the property, or the contract and its subject matter, or other thing involved in the dispute." *Id.*

Here, the subject matter of the TEDA cases and the relief she seeks by this court arise under the same subject matter. In TEDA cases, it was Brown's status as a "continuing contract" teacher under TEDA that allowed her the option for a hearing before the Board. TEDA provides, "The teacher has the privilege of being present at the hearing with counsel and of cross-examining witnesses and may offer evidence and witnesses and present any and all defenses to the charges." Id. § 59-25-470 (emphasis added).

Here, in her arguments on appeal, Brown repeatedly cites issues related to a teacher's due process right to a hearing under TEDA. (App. Br. pp. 9, 11, 12, and 13). Brown did attend the TEDA hearing with counsel and was given a full opportunity to have a meaningful and fair hearing before the Board. (*See generally* Board Order).

3. Prior Adjudication

Here, Brown then appealed the outcome of the TEDA cases all the way all the way to the Supreme Court of the United States, thus receiving a final adjudication. (Board Order; Trans. Def. Exh. 6; Hayes Cir. Ct. App. Order; S.C. Ct. App. Unpub. Order; *Brown v. Cherokee County School District*, App. Case No.: 2020-000919 (May 28, 2021); *Brown v. Cherokee County School District*, U.S. Dkt. No.: 21-304 (Nov. 1, 2021) (denying petition for writ of certiorari); *Id.*, U.S. Dkt. No.:

21-304 (Jan. 10, 2022) (rehearing denied)). Clearly, Brown's claims in the TEDA cases have been decided with finality in the Supreme Court's denial to consider her Writ. It is evident from the language of her arguments that she is now trying to relitigate those issues based on the relief she seeks before this Court. Any evidence she cites, such as Moore's letter recommending termination, was fully presented and examined by the Board through the U.S. Supreme Court in her line of appeals. (Id.).

Brown examined Dr. Carpenter through testimony under oath in a hearing before the Board in the TEDA cases, under deposition in the instant lower court case, and at trial before the jury. Notwithstanding the lack of factual support to contend that any "new charges" were actually presented to her at trial, Brown cannot reimagine an issue regarding "notice" and her rights under "TEDA" at this juncture as a legitimate basis for appeal because this Court already decided those issues and they have been finally adjudicated. *See Lifschultz Fast Freight, Inc.* at 334 S.C. 244, 513 S.E.2d 96 (1999).

Therefore, based on res judicada, Brown's issues on appeal related to her rights under TEDA are preserved for review, and are misplaced as a basis for this Court to disturb the lower court's denial of Brown's directed verdict at trial. Brown's Second and Third Causes of action should be dismissed under Res Judicata.

B. Merits

i. Standard of Review

When reviewing the circuit court's ruling on a motion for a directed verdict, this court must apply the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 27–28, 602 S.E.2d 772, 782 (2004). The circuit court must deny a motion for a directed verdict if the

evidence yields more than one reasonable inference, or its inference is in doubt. *Strange v. S.C. Dep't of Highways & Pub. Transp.,* 314 S.C. 427, 429, 445 S.E.2d 439, 440 (1994). In considering a motion for directed verdict, neither the circuit court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence. *Welch v. Epstein,* 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct.App.2000). "The appellate court will reverse the trial court's ruling on a [directed verdict] motion only when there is no evidence to support the ruling or where the ruling is controlled by an error of law." *Law v. S.C. Dept. of Corrections,* 368 S.C. 424, 434–35, 629 S.E.2d 642, 648 (2006).

ii. The Lower Court Correctly Denied Brown's Motion for a Directed Verdict.

Should the Court find that Brown adequately preserved the issue on appeal regarding the lower court's denial of Brown's motion for a directed verdict, this Court should find no error by the lower court and should affirm the lower court's ruling.

It remains difficult to discern what, if anything, Brown complains of on appeal regarding the lower court's denial of her directed verdict. By pointing to a series of pages, without line numbers, Brown only vaguely points to several pages of testimony, which are addressed in this section *supra*.

At trial, Brown's counsel moves for a directed verdict based on the evidence as it relates to the causes of action for breach of contract, breach of contract accompanied by a fraudulent act, and gross negligence. (Trans. p. 207, lines 13—208, lines 14). In her motion for directed verdict Brown does not raise any issue related to TEDA, Carpenter's testimony, violation of due process, or any of the allegations raised on appeal. The lower court denied Brown's motion for a directed verdict (Trans. p. 208, lines 15-16) to allow the District to put up its case, and subsequently, when it renewed its motion after the District presented its case in chief. (Trans. p. 336, lines 14-15).

Brown neither indicates an error of law at trial nor in her brief and cites no lack of evidence to support the court's ruling to deny her motion for a directed verdict. *Id.* Here, the Court denied her directed verdict because the District had not presented its case in chief. Then, on the renewed directed verdict motion, Brown did not expound on her motion beyond the evidence related to her causes of action in her second amended complaint. Given there are no grounds for an error of law or lack of evidence, this Court should affirm the lower court's denial of Brown's directed verdict. Therefore, the District respectfully requests this Court to affirm the lower court's denial of Brown's motion to a directed verdict based on the evidence presented at trial.

III. THE LOWER COURT DID NOT ERR IS FAILING TO DECARE A MISTRIAL OR NEW TRIAL NOR WERE BROWN'S DUE PROCESS RIGHTS VIOLATED BASED ON TESTIMONY PRESENTED AT TRIAL.

A. Preservation

i. The District Incorporates Its Arguments in §§ I And II, *supra*, as Brown Abandoned the Issues on Appeal.

Notably, Brown's argument sections V and VI, Brown are verbatim copies of the other as the basis for her appeal. (App. Br. pp. 15-16). For both argument sections V and VI, Brown cites no authority, reversible error, or prejudice she incurred as the basis for her appeal. *See* District's Argument §§ I & II, *supra*. Therefore, Brown's arguments, as contained in sections V and VI of her argument section, should be deemed abandoned.

ii. Brown Failed to Preserve Her Objection for a Mistrial Before the Lower Court and Cannot Now Raise it on Appeal.

In order to preserve the issue of an alleged improper question at trial, Brown must contemporaneously object to the improper question, immediately move the court to strike the question and/or move for a new trial, and, simultaneously therewith, request the trial judge give a curative jury instruction. *See McElveen v. Ferre,* 299 S.C. 377, 381, 385 S.E.2d 39, 41 (S.C. App.

1989); *See al*so *McKissick v. J.F. Cleckley & Co*., 325 S.C. 327, 350-351, 479 S.E.2d 67, 79 (S.C. App. 1996); *See also Madden v. Cox*, 284 S.C. 574, 582, 328 S.E.2d 108, 114 (S.C. App. 1985).

As a preliminary matter, the District contends that Brown failed to preserve this issue for appeal by failing to assert a contemporaneous objection when evidence of Brown's prior case history was introduced. "[O]bjections to the admission of evidence must be made when evidence is presented at trial to preserve error for appeal." *Parr v. Gaines*, 309 S.C. 477, 481, 424 S.E.2d 515, 518 (Ct. App. 1992). "[A] contemporaneous objection is necessary in all trials ... to properly preserve errors for our direct appellate review." *State v. Torrenc*e, 305 S.C. 45, 71, 406 S.E.2d 315, 329 (1991). "A contemporaneous objection is required to properly preserve an error for appellate review." *Doe v. S.B.M*., 327 S.C. 352, 356, 488 S.E.2d 878, 881 (Ct. App. 1997). "The failure to make an objection at the time evidence is offered constitutes a waiver of the right to object." Id. (emphasis added).

At trial, the District's counsel cross-examined Brown about the TEDA hearing she had before the Board in October 2015. (Trans. p. 136, lines 13-21). Brown answered affirmatively to being terminated by the board following the hearing and that Brown and her counsel appealed the board's ruling to the circuit court. (Trans. p. 136, lines 18-25). Brown further continued to answer questions about the procedural history of her TEDA hearing and subsequent appeals—without reservation. (Trans. p. 137, lines 1-12). As the District's counsel continued, Brown's counsel objected—albeit indirectly. (Trans. p. 137, lines 14-20). Brown's counsel ultimately objected due to the District's counsel asking questions that had been limited by an earlier motion. (District's Mot. in Lim.; *see* Trans. pp. 63- 64). Brown's counsel did request the judge to "instruct the jury," but the Judge declined because the other answers had already come in without objection. (Trans. p. 138, line 12,). The District's counsel explained that she was simply trying to describe the

procedural history of the case. The Judge acknowledged the prejudicial nature, and the District's counsel agreed to withdraw, but the Judge went forward in sustaining Brow's counsel's objection. (Trans. p.139, lines 15-16).

Since Brown's objection occurred (Trans. p. 137, lines 14) after the District already asked (Trans. p. 136, lines 13) and Brown answered questions about the TEDA hearing, the objection was not made contemporaneously with the requested testimony. *Doe,* 327 S.C. at 356. Based on the repeated evidence provided by Brown in her Brief (App. Br. 15-16), Brown's objections were not contemporaneous, and her complaint in arguments 5 and 6 are not properly preserved. (App. Br. 15-16)

In *McKissick*, a personal injury action arising from a motor vehicle accident, Cleckley asked the South Carolina Court of Appeals to grant a new trial on the basis that the respondent's counsel improperly asked the investigating officer if a citation was issued, an admittedly improper question in a civil motor vehicle accident trial. *See id.* at 350-351, 479 S.E.2d at 79. Cleckley immediately objected to the question and the trial judge sustained the objection, but the trial judge did not give a curative instruction to the jury. *See id.* "Cleckley did not move for a corrective instruction or a mistrial." Accordingly, Cleckley got what it asked for at trial and cannot now be heard to complain." See id. (*citing Kalchthaler v. Workman*, 316 S.C. 499, 450 S.E.2d 621 (S.C. App. 1994), where counsel voiced no complaint about the sufficiency of the trial judge's instructions given in response to his objection, appellate review is not available.)

Here, Brown did not preserve the issue of the District's' alleged improper questioning of Brown since Brown neither moved to strike the remark, moved for a new trial, nor requested the trial court give curative instruction. Brown implicitly accepted the trial court's ruling as sufficient, when it failed to pursue the issue further.

Since Brown failed to properly preserve this issue for trial, the Court must deny Brown's appeal.

iii. Brown Failed to Preserve Her Issue on Appeal Related to Her Alleged Due Process Violation and The Lack of a New Trial.

Brown failed to preserve her issue of a due process violation and subsequent request for a mistrial to the lower court. In Grant v. S.C. Coastal Council, the Court found that even a due process claim raised for the first time on appeal is not perved for appellate review. 319 S.C. 348, 461 S.E. 2d 388 (1995). Here, in section VI of Brown's argument, she raises an alleged "due process" violation on appeal. (App. Br. pp. 15). Despite her failure to point to the reversible error or prejudice, even if Brown's complaint is taken on its face, Brown did not allege such a due process violation at trial. Additionally, she does not indicate in her brief to any objection or testimony regarding the same. Rather, Brown copies the same one-sentence baseless justification provided in her argument section V. Therefore, Brown's due process claim is not preserved for appellate review and should be deemed abandoned.

B. Merits

However, should this Court find the issue preserved for appeal, Brown has failed to show the trial court abused its discretion in granting a mistrial in her arguments V and VI, since the question did not inflame the jury. A motion for a new trial based on improper argument of counsel is addressed to the sound discretion of the trial judge, and his ruling will not be disturbed unless there has been an abuse of discretion amounting to an error of law that prejudices the objecting litigant. *See Madden v. Cox*, 284 S.C. 574, 582, 328 S.E.2d 108, 114 (S.C. App. 1985). *See also Merritt v. Grant*, 285 S.C. 150, 155-156, 328 S.E.2d 346, 349-350 (S.C. App. 1985). "Litigants are entitled to fair trials rather than perfect trials." *See McKissick v. J.F. Cleckley & Co*., 325 S.C. 327, 350-351, 479 S.E.2d 67, 79 (S.C. App. 1996). The Supreme Court of South Carolina has held

that the range of witness cross-examination is within the sound discretion of the trial judge, which is not subject to review except in a case of manifest abuse or injustice. *See State v. Maxey*, 218 S.C. 106, 107, 62 S.E.2d 100 (S.C. 1950). The appellate court will consider the record as a whole in determining whether there was actual prejudice. *See id*.

At the time the alleged improper question was asked, Brown's counsel objected, and the trial court sustained the objection, instructing the District's counsel to ask a proper question of the witness without any further objection from Brown or Brown's counsel. Without an objection or motion from Brown asking for further relief, the trial court gave Brown exactly what she requested and, therefore, the trial court did not abuse its discretion in denying a new trial.

Moreover, Brown has made no showing that counsel's questioning was prejudicial. Even just before Brown's objection, she testified to the underlying board hearing. (Trans. p. 136, lines 18-25).

Considering the question in the context of the whole record, there was no implication in the question that the question would prejudice Brown. The District was simply highlighting the procedural history of the case. By all accounts, based on the lack of reactions of the District's counsel, the questioning appeared permissive for all purposes. Here, the District's counsel simply asked a question during cross-examination, which was objected to, sustained by the trial court and never raised again. Therefore, the trial court did not abuse its discretion by granting a mistrial and this Court should affirm the ruling below.

Therefore, the Court should affirm the lower court's ruling in sustaining Brown's objection and deny Brown's complaints for a mistrial because her arguments are preserved for appeal and fail on the merits.

IV. THE LOWER COURT DID NOT GRANT THE DISTRICT'S MOTION FOR SUMMARY JUDGMENT, AND IT DID NOT ERR IN GRANTING THE DISTRICT'S DIRECTED VERDICT ON BROWN'S GROSS NEGLIGENCE CAUSE OF ACTION.

A. Brown's complaint that the lower court granted the District's motion for summary judgment is erroneous.

At trial, the lower court granted the District's motion for a directed verdict—not summary judgment as Brown complains of in her brief. (App. Br. pp. 16-17). It is difficult to discern what Brown's complaint with the lower court actually entails because she provides no evidence of testimony or rulings by the court other than citation to pages 225-228 of the trial transcript and to the lower court's order partially granting summary judgment. In his order, Judge Kelly denied the District's motion for summary judgment to dismiss Brown's gross negligence cause of action. (SJ Order p. 9). Brown even goes as far to cite the standard of review for summary judgment in her brief. (App. Br. pp. 16).

It is well found in South Carolina case law that a denial of summary judgment is not appealable. *Olson v. Faculty House of Carolina, Inc.* v. 354 S.C. 161, 580 S.E.d 440 (2003); *see also Bank of N.Y. v. Sumter Cnty.*, 387 S.C. 161, 691 S.E.2d 473 (2010) (noting it is well settled that an order denying summary judgment is never reviewable on appeal.). Yet, here, in her issue on appeal section VII and in her argument section VII, Brown seeks this Court's intervention regarding a motion in which the non-moving party—Brown—was on the end of the ruling which is in her favor. It is illogical that Brown would seek to appeal Judge Kelly's ruling denying the District's denial of summary judgment, yet Brown seeks for this court to overturn it on appeal.

Therefore, the District seeks this court to affirm the lower court's denial of its summary judgment motion regarding the gross negligence claim, based on the undisputed case law of this state.

B. Preservation

In addition to the arguments I and II *supra*, Brown abandons any issue raised on appeal by not indicating prejudice or reversible errors at trial. (App. Br. pp. 16-17). Even if taken as true, Brown cites to no authority related to the trial court's—directed verdict (not summary judgment) disposal of the gross negligence cause of action. Brown does not demonstrate how the ruling on summary judgment and directed verdict should interplay. Even if erring in Brown's favor in reviewing her brief, which the court is not obligated to err, Brown appeals disposal of the gross negligence cause of action based on summary judgment when it was actually disposed of based from the District's directed verdict motion—not summary judgment.

Under South Carolina Appellate Court Rules, "A brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal to support the salient facts alleged. Reference shall also be made to where relevant objections and rulings occurred in the transcript." Rule 208(b)(4), SCACR. For example, in *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.*, the appellant failed to identify any specific trial court rulings claimed to constitute error. 414 S.C. 33, 73, 777 S.E.2d 176, 197 (2015) (citing Rule 208(b)(4), SCACR.). As a result, the appellant's argument did not sufficiently identify with particularity the alleged error, and the Supreme Court found the appellant had abandoned its claim on appeal. *Id*

Here Brown fails to cite to the District's motion for a directed verdict and instead references to its motion for summary judgment—which was denied by Judge Kelly on September 10, 2021. (SJ Order p. 9). Therefore, because Brown's issue and argument VII on appeal seeks this Court to intervene on the District's non-existent ruling on summary judgment and does not move on appeal regarding a directed verdict, Brown's issue VII is not preserved for review.

C. Merits

i. Standard of Review

"In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference, or its inference is in doubt." *Strange v. South Carolina Dep't of Highways & Pub. Transp.,* 314 S.C. 427,429-30,445 S.E.2d 439,440 (1994). However, "[a] directed verdict should be granted where the evidence raises no issue for the jury as to the defendant's liability." *Guffey v. Columbia/Colleton Reg'l Hosp., Inc.,* 364 S.C. 158, 163, 612 S.E.2d 695, 697 (2005). The Appellate Court applies the same standard. *O'Leary-Payne v. R.R. Hilton Head, II,* 371 S.C. 340, 347-48, 638 S.E.2d 96, 100 (Ct. App. 2006).

ii. The Trial court did not err in granting the District's Motion for a Directed Verdict under the S.C. Tort Claims Act (S.C. Code Ann. § 15-78-60(25)) for Brown's Gross Negligence Cause of Action.

While incorrectly stating as such in her brief, Brown cites to the trial transcript in regard to the lower court's grant of a *directed verdict* to the District in regard to Brown's cause of action for gross negligence. (App. Br. pp. 16-17). Assuming *arguendo* that the Court finds that Brown properly preserved the issue on appeal as to the grant of a directed verdict--as opposed to her issue as stated--denying the District's motion for summary judgment, the Court should affirm the lower court's grant of a directed verdict in favor of the District disposing of Brown's cause of action for gross negligence based on the District's immunity under the S.C. Tort Claims Act ("TCA") and the inapplicability of the waiver of immunity under S.C. Code Ann. § 15-78-60(25).

In Brown's second amended complaint, Brown alleges the District was grossly negligent in "supervising Dr. Quincie Moore as Superintendent." (Sec. Am. Compl. pp. 15). Brown also

alleges the District was "grossly negligent for the termination of [Brown's] teaching contract with the District by the School Board." (Id.). At trial, the lower court granted the District's motion for a directed verdict as to Brown's cause of action for gross negligence based on the District's immunity under the TCA. (Trans. p. 227, line 22--228, line 10.).

The South Carolina Tort Claims Act waives the common law sovereign immunity of governmental entities subject to certain exceptions as provided in S.C. Code Ann. 15-78-60. As applies in this case, § 15-78-60(25) provides,

> "The governmental entity is not liable for loss resulting from: (25) responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner."

Id. "Additionally, while gross negligence ordinarily is a mixed question of law and fact when the evidence supports but one reasonable inference, the question becomes a matter of law for the court." *Pack v. Associated Marine Institutes, Inc.*, 362 S.C. 239, 245 (Ct. App. 2004) (*citing Etheredge*, 341 S.C. at 310). Appellant has the burden of proving gross negligence. *Stewart v. Richland Memorial Hospital*, 450 S.C. 589 (Ct. App. 2002) (Finding that while a governmental entity has the initial burden of establishing a limitation upon liability or an exception to the waiver of immunity, the plaintiff must still prove that the governmental entity has waived immunity)). "Gross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." *Etheredge v. Richland School Dist. 1,* 341 S.C. 307, 534 S.E.2d 275, 277 (2000). "Negligence is the failure to exercise due care, while gross negligence is the failure to exercise slight care." *Clyburn v. Sumter Cty. Sch. Dist. No. 17,* 317 S.C. 50, 53, 451 S.E.2d 885, 887-88 (1994).

Here, Brown is misguided in her application and the court's reliance on the TCA in directing its verdict to the District regarding her gross negligence cause of action At trial, the District based its directed verdict on Brown's failure to provide evidence that the District waived immunity as it relates to her second amended complaint's cause of action for gross negligence, and even if applied, Brown failed to provide evidence that it was grossly negligent in supervising Superintendent Moore regarding Brown's termination. (Trans. p. 217, line 8—p. 218, lines 23). Brown put up two witnesses in her case in chief—herself and Carpenter, HR Director. Other than her own self-serving testimony, Brown did not call any member of the Cherokee County school board, the body charged with supervising the Superintendent, to support her contention that Moore's supervision was grossly negligent. When asked by the Court But what evidence do you have of any supervision or anything that Quincie Moore did or didn't do?" (Trans. p. 221, lines 21-22). Brown's counsel responds, "I think it's inferential that she wasn't being properly supervised." (Trans. p. 221, lines 23-24). Brown never provided any evidence to prove that the District's waiver of immunity under the TCA applies, and the court agreed.

At trial Brown failed to provide evidence on her status as a "ward, prisoner, client, patient" under § 15-78-60(25), and even she could allege that she fell into one of those categories under § 15-78-60(25), Brown failed to provide evidence that the District was grossly negligent in supervising Moore—as alleged in her second amended complaint. To demonstrate, the court states:

> "Okay. Let's -- I want to address -- let's address the gross negligence claim first. Mr. Smith, clearly the Tort Claims Act [immunity] would apply. And they've referenced 15-78-60 Section 25 as the only one that could even remotely apply, and I'm looking through them, I'm not aware of any other that would apply. Is there another one that you're aware of that I'm missing?"

(Trans. p. 224, line 22—p. 225, line 3). The Court continues:

> "It says a governmental entity is **not** liable for losses resulting from -- and it looks like -- I've looked through them and it looks like 25 -- I didn't see anything that related to any tort -- any claim by an employee of a governmental entity. The only exception they have, even then they say limited to a student, patient, prisoner, inmate, client, and then you have gross negligence, **but there's nothing that I see that relates to where an employee of a governmental entity has any tort, any right to a claim under the Torts Claim Act**."

(emphasis added) (Trans. p. 225, lines 11-21).

Here, in her second amended complaint, Brown was an employee at the time, giving rise to her allegation of gross negligence. At trial, Brown failed to prove that waiver of immunity applies because, as the court stated, only under § 15-78-60(25) could an employee of a governmental entity have any tort claim under the TCA for a failure to supervise another employee, where immunity would not apply.

Further, on appeal, Brown argues that § 15-78-60(25) only applies to "wards of the state. . . .Brown is not a ward of the state." (App. Br. pp. 17). Brown provides no supporting authority to back her conclusory assertion, and in fact her argument provides the basis as to why the District did not waive its immunity

Section 15-78-60(25) is an exception to the *waiver* of immunity. Thus, the burden is on the plaintiff at trial to provide evidence that the waiver of immunity applies. Even if the waiver applies, in the case of § 15-78-60(25), Brown must show that the District "failed to exercise even slights care." Quite simply, Brown has not shown that Section 15-78-60(25) has any applicability to the facts of this case. The evidence reflects, however, that Brown was not a student, patient, prisoner, inmate, or client of the District. Likewise, Lindler was not in the custody or control of Blackwelder at any point. Even if the waiver of immunity did apply, Brown did not provide any evidence in her case in chief to even get to the question of whether or not "gross negligence" should even be considered. At trial, Judge Gravely demonstrated his understanding and

application of the TCA to Brown's case in chief in ruling in favor of the District's directed verdict motion.

Therefore, should the court reach Brown's argument on the merits in regard to the lower court's grant of a directed verdict (as opposed to summary judgment as stated in her brief) this Court should affirm the lower court's grant of a directed verdict in favor of the District.

V. THE LOWER COURT DID NOT ERR IN GRANTING THE DISTRICT'S MOTION FOR SUMMARY JUDGMENT AS TO FIVE OF BROWN'S NINE CAUSES OF ACTION.

On March 19, 2021, the District filed a Motion for Summary Judgment and Memorandum of Law in Support of its Motion. (*see generally* District's MSJ/MOL). Following Brown's written response, the Honorable R. Keith Kelly heard oral arguments on March 29, 2021. On September 10, 2021, Judge Kelly partially granted the District's Motion for Summary Judgment. (*see generally*, SJ Order"). In his Order, Judge Kelly dismissed Brown's causes of action for: third-party interference with a contract (SJ Order p. 7), defamation (SJ Order pp. 7-8), invasion of privacy (Id.), intentional infliction of emotional distress (SJ Order p. 8), and violation of the S.C. Payment of Wages Act (SJ Order p. 10). This left Brown's four remaining causes of action for trial.

The trial court's ten-page Order starts with a section entitled "FACTUAL BACKGROUND," in which the Court set forth its findings of the material undisputed facts in the case. (SJ Order pp. 2-4). On September 16, 2021, Brown filed a Motion to Alter or Amend Judge Kelly's order under Rule 59(e), SRCP, asking that the Court "make corrections to the FACTUAL BACKGROUND section of Judge R. Keith Kelly's order dated September 10, 2021, in the above-referenced case." (emphasis original) (Mot. to Amend. p. 1). In response, the District filed a Memorandum of Law in Opposition. (*see generally* Memo. in Opp.). On October 10, 2022, the

Court denied Brown's motion. (Order Denying Brown's Mot. to Alter/Amend).

A. Brown failed to preserve the lower court's partial grant of summary judgment and issues raised in §VIII of her initial brief for appeal.

In her initial brief, Brown requests this court to address the lower court's grant of summary judgment and findings of fact related to: "(1) that Cherokee County School District did not receive the charges of discrimination filed by Brown on August 5, 2015 and October 9, 2015, (2)Brown requested her mother be in a July 30, 2015 meeting, and (3) "When Moore questioned Brown about Carpenter's directive that Brown should not speak with other employees during the investigation's pendency, Brown stated she "did not remember" Carpenter's directive." (App. Br. pp. 17-19). However, Brown did not properly preserve this issue with the lower court.

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal." *Humbert v. State*, 345 S.C. 332, 548 S.E.2d 862 (2001). In *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.*, the appellant failed to identify any specific trial court rulings claimed to constitute error. 414 S.C. 33, 73, 777 S.E.2d 176, 17 (2015) (citing Rule 208(b)(4), SCACR.). As a result, the appellant's argument did not sufficiently identify with particularity the alleged error, and the Supreme Court found the appellant had abandoned its claim on appeal. *Id.*

Here, Brown only preserved the trial court's findings of fact upon which that court based its granting of summary judgment; she does not ask the court to reverse its decision. (Mot. to Amend. pp. 1-3). Because Brown did not preserve for appeal the trial court's dismissal of five of her causes of action, Brown is barred from asking this Court to overturn the lower court's ruling on the District's Motion for Summary Judgment.. *Humbert*, 345 S.C. 332, (2001).

B. Assuming *arguendo that* Brown preserved her assertion that the trial court erred in granting summary judgment on several of her claims, the trial court properly granted summary judgment based on the material undisputed facts.

An appellate court reviews a grant of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP. *Baughman v. American Tel. and Tel. Co*., 306 S.C. 101, 410 S.E.2d 537 (1991). Summary judgment is proper when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Id*. In determining whether any triable issues of fact exist, the evidence and all inferences that can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000).

On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 230 S.E.2d 447 (1976).

i. The lower court's finding that the District did not receive a copy of EEOC charges filed by Brown did not prejudice Brown.

In the Second amended complaint, the allegations surrounding whether or not the District received the notice of the U.S. Equal Employment Opportunity Commission ("EEOC") charges relate only to her cause of action under the District's alleged violations of the S.C. Whistleblower Protection Act ("WPA"). (Sec. Am. Compl. ¶¶ 9, 10, 13-18, pp. 5-7). On appeal, Brown seeks intervention by this Court regarding the lower court's partial grant of summary judgment regarding the District's receipt of two charges of discrimination filed by Brown with the EEOC on August

5, 2015, and October 9, 2015, filed against the District. (App. Br. p. 18). In the lower court's order, the court correctly states, "The District received no notice from the EEOC regarding [the August 5, 2015, and October 19, 2015] alleged charges." (SJ Order p. 2). In her motion to amend or alter, Brown proposed removal of this sentence from the order. (Mot. to Amend. p. 2). Notably, in her motion to alter or amend and in her brief, Brown fails to provide any authority or cite any reason why she would be prejudiced by the inclusion of this fact as it relates to the lower court's partial grant of summary judgment or trial. (Id.; App. Br. p. 18)

Brown would not be prejudiced by her preferred language at trial because the lower court denied the District's motion for summary related to the WPA for reasons related to Brown not failing to exhaust her administrative remedies—not for reasons on whether or not the District received the charges. (SJ Order pp. 5-6). Additionally, at trial the parties were limited from raising the existence of EEOC charges before the jury because the EEOC charges relate to the claims under the WPA. (District's Mot. in Limine; Order granting Mot. in Limine; Trans. pp. 62-63). The claim under the WPA has yet to be heard by the court as it is a non-jury cause of action bifurcated from the causes of action heard before the jury allegations heard by the jury at trial on October 24-26, 2022. (District's Motion to Bifurcate WPA claims, Order granting District Mot. to Bifurcate).

In reviewing Brown's argument in her favor, the outcome of the lower court's grant of summary judgment should not be disturbed. In addition to Brown failing to demonstrate any potentially reversible error or citing to any authority regarding the same and viewing her argument that the District "received the August 5, 2025 and October 9, 2025 charges should be left up to a jury to decide" (App. Br. p. 18) it is legally impossible because this matter is pending before the lower court's nonjury trial docket. Also, it is factually insignificant because viewing the argument

in her favor, it would have no impact on summary judgment or issues previously before the jury at trial due to the limiting instructions at trial. Brown even admits as much in her brief stating, "Brown has a [WPA] case pending in Cherokee County Court of Common Pleas." (Id.). Despite Brown's failure to preserve this issue for appeal regarding the WPA cause of action, viewing the disputed fact in her favor regarding the District's receipt of the EEOC charges, it would have no bearing or prejudice on Brown's position in the outcome of the court's partial grant of summary judgment or before the jury at trial in October 2022.

ii. The lower court's finding that Brown's mother attended the July 31, 2015, meeting did not prejudice Brown.

Brown asserts that the lower court's finding that of fact point regarding the lower court's order partially granting summary judgment centers around whether Brown asked that her mother be allowed to attend a July 31, 2015, meeting between Brown and District officials. (App. Br. p. 18). In her Second Amended Complaint, Brown points to her mother's attendance at that meeting to support her claim of defamation. (Sec. Am. Compl. pp. 9-11, ¶¶ 30-43). In his order, Judge Kelly correctly states, "[Brown] requested that her attorney and her mother, Shirley Mills, be allowed in the meeting, and Moore granted that request." (SJ Order pp. 3-4). In her motion to amend or alter, Brown supports her argument by merely stating, "Brown contends this is not an undisputed fact." (Mot. to Amend. p. 2).

In dismissing Brown's defamation cause of action, the lower court did not rely on whether Brown's mother was invited or even present at the July 31, 2015, meeting, instead stating as follows:

> "The tort of defamation allows a plaintiff to recover for injury to her reputation as the result of a defendant's false communications about the plaintiff to a third party. To state a case for defamation, the plaintiff must show "(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." A claim for defamation must be filed within two years of the alleged defamatory publication. The limitations period begins when the alleged defamatory statement is made, not when the plaintiff learns of the statement.
>
> Brown alleges that during a meeting on July 31, 2015, Moore and Carpenter defamed Brown in the presence of her mother. However, Brown did not file her defamation complaint until October 4, 2017, more than two years after the alleged defamation occurred. **Other than her mother, [Brown]does not identify any third parties to whom the District published defamatory statements**. Based on Brown's failure to file her defamation claim with the requisite statute of limitations, Brown's defamation claim should be dismissed as a matter of law."

(SJ Order pp. 10-11) (emphasis added) (internal citations omitted).

Regarding the lower court's grant of summary judgment as to Brown's defamation claim, the issue of whether Brown's mother was invited by Brown to the July 31, 2015, meeting is of no consequence. As Judge Kelly stated, because Brown failed to identify during discovery "any third parties" in addition to her mother who received alleged defamatory information, her defamation claim failed as a matter of law. s (SJ Order pp. 10-11).

iii. The lower court's finding that Brown "did not remember" versus Brown "did not recall" whether Carpenter verbally directed Brown not to speak to District employees during the pendency of the personnel investigation did not prejudice Brown.

Before this Court on appeal is the lower court's inclusion of the following finding of fact in its order partially granting summary judgment: "[During the July 31, 20215 meeting]. . . When Moore questioned Brown about Carpenter's directive that Brown should not speak with other employees during the investigation's pendency, Brown stated she "did not remember" Carpenter's directive." (SJ Order pp. 4-5). In her brief, Brown states: "Brown believes this is a mischaracterization of what she said and would like for this court to allow a jury to decide this disputed matter." (App. Br. p. 19). Brown does not cite to any authority as it relates to reversible error or prejudice in the court's partial grant of summary judgment or at trial.

In her motion to alter or amend, Brown admits to stating, in previous testimony under oath, that she "[did] not recall" Carpenter's directive not to speak with other employees during the pendency of the investigation. (Mot. to Amend. p. 3 citing to Exh. E—Tr. of Brown's testimony at TEDA hearing under Oath). In its memorandum of law opposing Brown's motion to alter or amend, the District does not deny Brown said, "I don't recall" when answering a question about the directive not to speak with other employees during the pendency of the investigation. (Memo. in Opp. pp. 7-8). As argued in its memorandum in opposition, Brown's response of "I don't recall" compared to "[Brown] stated she 'did not remember' Carpenter's directive" results in the same conclusion. (Id.). The District points out that the undisputed fact is not Brown's *actual knowledge* about the directive rather the status of her memory of receiving the directive. (Id.) The District argued that the "Background Information" section of undisputed facts already reflects the proposed correction Brown provides in her current her motion to alter or amend. (Id.)

On appeal, without specificity to this Court, Brown asserts that this issue should "be decided by a jury." (App. Br. p. 19). Brown fails to argue, either in her motion to alter or amend the lower court's order partially granting summary judgment or on appeal, how she would be prejudiced in the court's dismissal of some causes of action or how she would be prejudiced if this factual finding was not presented to the jury. (Id.). With no citation to the record below, the District cannot discern how Brown would be impacted by this Court's intervention in the finding of fact raised by Brown.

Additionally, there is nothing in the record to indicate that this factual finding was not presented before the jury or, at minimum, that Brown attempted and was prevented from presenting this finding of fact at issue from the jury's consideration. In fact, the record reveals the opposite. On direct examination from Brown's counsel Fletcher Smith ("Smith"), Brown testified

at length about the directive not to speak to employees during the pendency of the investigation:

Smith:	Now, let's talk a little bit about this situation with Tracie Wilson. **Did you receive on June 1st any verbal directive from -- to your knowledge from Mr. Carl Carpenter?**
Brown:	**I don't recall any**.
Smith:	All right. Did you receive a letter from him, an administrative letter from him telling you not to speak to anyone?
Brown:	Yes.
Smith:	When did you receive that letter?
Brown:	I think it was on or about June the 10th, I think.
Smith:	Okay. Now, let me ask you this, you had a conversation with Tracie Wilson on June 5th, right?
Brown:	Yes.
Smith:	So you -- the letter that you got was dated for June the 1st but you only got it on June the 11th; is that correct?
Brown:	Yes. It was a certified letter, I got the card on my mailbox around the 10th, and I picked it up, I think, on the 11th.

(Trans. p. 116, line 21—p. 117, line 14) (emphasis added).

Brown's testimony on direct examination by her own counsel shows that she was not prejudiced, burdened, or prohibited from presenting the contested factual finding before the jury's consideration. (Id.). In viewing Brown's argument, if reachable on the merits, in her favor, the testimony from trial clearly demonstrates that she was not prejudiced by the lower court's ruling on summary judgment or prevented from presenting this issue before the jury—the precise remedy she requests in her appeal before this court in her brief. (App. Br. pp. 19).

Therefore, the Court should affirm the lower court's finding fact in partially granting the District's motion for summary judgment.

CONCLUSION

Brown abandons all her issues on appeal based on the conclusory statements without supporting authority and this Court should affirm all of the lower's courts rulings below.

The lower court correctly denied Brown's directed verdict and this Court should affirm the lower court's ruling denying her directed verdict.

The lower court did not err is failing to declare a mistrial or a new trial based on Brown's unchallenged testimony and lack of reversible error by the lower Court and it should affirm the lower court's rulings below.

The lower court did not err in granting the District's motion for a directed verdict in regard to Brown's gross negligence cause of action and this Court should affirm the lower court's grant of a directed verdict in favor of the District below.

The lower court did not err in granting summary judgment in five of Brown's nine causes of action

For these reasons, and all reasons for lack of preservation as argued herein, this Court should affirm the lower court's rulings below.

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge
The Honorable Perry Gravely, Circuit Court Judge

Trial Court Case No. 2017-CP-11-00735
Appellate Case No. 2022-001582

Sharon Brown, Appellant,

v.

Cherokee County School District One, Respondent.

CERTIFICATE OF COUNSEL

This is to certify that Respondent Cherokee County School District One's Initial Brief complies with Rule 240(c), SCACR.

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