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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE COMMON PLEAS COURT

Clifton B. Newman, Common Pleas Fifth Judicial Circuit Judge

Appellate Case No. 2024-001835

Common Pleas Case No. 2022-CP-40-00027

South Carolina Department of Health and Environmental Control,
DOES 1 through X, inclusive:
and ROE Business Entities 1 through X, inclusive

Respondent

v.

Teresa McWilliams

Appellant, *pro se*

BRIEF OF APPELLANT

Teresa McWilliams
105 Arborgate Circle
Columbia, SC 29212
(803) 530-4738
Appellant, *pro se*

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Table of Contents and Cases

.Statement of Issues on Appeal

Appellant begins by stating that she has filed a Motion to Request an Exception to Rule 607 Regarding Audio and Video Copies Transcripts, filed with the Court on February 7, 2025, and she also has filed a Motion For Continuance Due to Delay of Transcript, filed with the Court on February 14, 2025, because the August 8, 2023, transcript received by Appellant on January 23, 2025, mentions the previous hearing held in Judge Jean Toal's courtroom on November 11, 2022, and is pertinent to this brief. Appellant has not received a

ruling on these Motions and requests the Court cease reading this Brief at this point.

However, since the Appellant *pro se* is representing herself and fears that her appeal will be thrown out if delayed, she continues her argument as best she can in the pages that follow without the transcript of the hearing held on November 30, 2022, which is referenced in the transcript of the hearing held on August 8, 2023, upon which the Order is based.

Follow are the issues that the Appellant is presenting in this brief:

Issue One: Order alleges there was no Revision of Amended Complaint; however, there was.

Issue Two: Order alleges there was no factual allegations in the Amended Complaint; however, there were. Also, Appellant was denied access to some factual evidence, in the November 11, 2-22 hearing Judge Jean Toal's hearing by being denied discovery, for which Appellant has not yet received a transcript and requested a Motion for Continuance that has not yet been answered by the court.

Issue Three: Order alleges there is no common law; however, South Carolina Code of Laws, SECTION 1-13-80 applies

Issue Four: Order alleges Appellant failed to demonstrate her age; however, she did.

Issue Five: There were technology disturbances in the Virtual Courtroom

Issue Six: Order alleges Appellant's complaint was not filed in a timely manner; however, it was.

Statement of the Case

Teresa McWilliams (Appellant) was terminated by South Carolina Department of Health and Environmental Control (Respondent) on August 5, 2020, after a series of Warning of Substandard Performance (WOSP) meetings. Appellant at the time was 61 years old. Appellant's Supervisor presented allegations that Appellant argued were contrived and false and that were veiled accusations against the Appellant based on her age. Appellant demonstrated with hard evidence (emails, dated purchase requests, etc.) that the allegations were invalid. (Some proofs must be acquired through discovery, which Judge Jean Toal denied Appellant in the November

11, 2022, hearing (which is the hearing for which Appellant has not yet received the transcript and has filed a Motion for Continuance). Appellant, nevertheless, created a number of solutions in response to her Supervisor's complaints, which were rejected. Appellant was told in the WOSP meetings that she would be given a Work Improvement Plan, but she was not. Freedom of Information Act (FOIA) response from Respondent February 17, 2023, indicates that discrimination was rampant in all the terminations that year (which was the year of the COVID pandemic). There was a 50% increase in terminations that year, and most of them affected employees in protected categories. Appellant argued she was being retaliated against by Supervisor, because Appellant reported to Respondent Compliance Department that there were monies hidden and not being distributed in a grant Appellant had been given to oversee by her Supervisor. Appellant argued Supervisor could construct no valid reason for Appellant's termination, so Supervisor used age discriminatory language to persuade Human Resources to assist in Appellant's termination. After a WebEx hearing on August 8, 2023, Appellant received an September 30, 2024, that Respondent's Motion to Dismiss had been granted; however, the Order made a number of

statements that were in error. In addition, there were technology issues in that WebEx hearing that denied Appellant an honest and equitable hearing.The date of the service of the notice of appeal was November 8, 2024.

Standard of Review.

Issues 1 – 4 are reviewable for clear error

Issue 5 is reviewable for questions of law, as in why can't a pro se complainant request an in-person hearing or at least be offered a room set-up by Court IT that would be technology-ready for a WebEx hearing

Argument

Issue One: Order alleges there was no Revision of Amended Complaint; however, there was.

Order states that Appellant "filed no other amended complaint or revisions to her December 30, 2023 amended complaint"; however, Appellant did file an addendum to the original complaint with the court

on January 2, 2024. That addendum demonstrated that Respondent used termination-for-cause during the COVID pandemic as an improper method of reduction-in-force and that Respondent's actions had a disparate effect on employees over the age 40, as well as on women and minorities. This data comes from a Freedom of Information Act response that came from Respondent on February 17, 2023. During the pandemic year, Respondent terminations-for-cause increased more than 50% and focused on employees in protected categories. That statistical data, directly from Respondent, demonstrates as follows:

Based on the Freedom of Information Request #870955, SC DHEC Kristen Keller's response dated February 17, 2023, and found on page xxxf of this brief, revealed the following age and racial discrimination in the current Warning of Substandard Performance (WOSP) procedure, revealing that the WOSP is worthless and only used to hide blatant discrimination:

1. In 3 years' time (2018-2020), a DHEC employee over the age of 40 was terminated 13 times more often than a younger employee via the WOSP.

2. During the years 2019-2020, the number of employees retained from the WOSP termination process was less than 3%. That is a sad statistic for a

process that is supposed to be a warning to strengthen performance and avoid termination, suggesting the WOSP is merely a cover for discrimination and unethical termination.

3. DHEC can provide 0 (zero) Work Improvement Plans (WIPs) offered to those employees, even though I myself was told in an initial meeting by DHEC HR representative Arlene Posey that I would be offered one and it would be clear and easy to achieve.

4. During those same 2 years, a female was almost 3 times more likely to be terminated as a male—for every one male terminated, 3 females were terminated.

5. During those same 2 years, a non-white employe was 25% more likely to be terminated than a white employee—adjusted for population difference, that percentage rises to 50%.

If the above were not monstrous enough, those employees were denied unemployment benefits and were blacklisted from employment DURING THE PANDEMIC YEAR.

During the pandemic year, DHEC terminations-for-cause increased more than 50%, suggesting that DHEC, during a year of budget restraints (when

expenditures were frozen for travel, purchasing, and hiring), used termination-for-cause as an inappropriate method of reduction-in-force.

According to the South Carolina Code of Laws, SECTION 1-13-80. Unlawful employment practices; exceptions. (A) It is an unlawful employment practice for an employer: (1) to fail or refuse to hire, bar, discharge from employment, or otherwise discriminate against an individual with respect to the individual's compensation or terms, conditions, or privileges of employment because of the individual's race, religion, color, sex, age, national origin, or disability;

In addition, The South Carolina Human Affairs Commission, on their website in their explanation of **South Carolina Code of Laws, SECTION 1-13-80**, delineate that: An employment policy or practice that applies to everyone, regardless of age, can be illegal if it has a negative impact on applicants or employees age 40 or older.

Appellant argues the Order to Dismiss, by the Order's own statement, ignored this information and also ignored that disparate effect is proof enough for an age discrimination case. Therefore, Appellant should be allowed to present her case to a jury, as she requested.

The revision filed with the court and the SCDHEC email with the FOIA Response are on pages 61 and 62.

Issue Two: Order alleges there was no factual allegations in the Amended Complaint; however, there were. Also, Appellant was denied access to some factual evidence by being denied discovery, in the November 11, 2-22 hearing Judge Jean Toal's hearing, for which Appellant has not yet received a transcript and requested a Motion for Continuance that has not yet been answered by the court.

The Order's alleging that the original Complaint "lacked any factual support" suggests that disparate treatment does not serve as factual support. In addition to the disparate treatment demonstrated above, the Appellants' Complaint did include factual allegations. Although the allegations are complex, they are nonetheless factual and legitimate. Exhibits 2-8 and 10-14 from the Amended Complaint appear on pages 68-93.

(a) Appellant was assigned administration of a grant which had $5,394.45 written into the grant that was not being distributed, and after numerous attempts asking her supervisor and the grant writer to explain,

finally reported the issue to compliance, as instructed in the employee handbook. A copy of this grant showing the hidden monies was a part of the Amended Complaint. However, Appellant is prevented from demonstrating the monies were not distributed, because she was denied discovery by Judge Jean Toal in the November 11, 2022, hearing (which Appellant has not received and has filed a Motion for Continuance with this Court that has not yet been decided), and the FOIA request Appellant made to Respondent for this information is, at the time of this writing, over 188 days past due. Email dated January 2, 2024 regarding this 188 day lack of response to Appellant's FOIA appears on page 102.

(b) Appellant's Supervisor was embarrassed by the above scrutiny by the Compliance Department and began to harass Appellant. Since Appellant had done nothing wrong, Appellant's Supervisor had no reason to terminate Appellant and began to contrive accusations that were rooted in discriminatory views of people of age. Appellant did prove in her Amended Complaint that she did, in the Warning of Substandard Performance meetings, prove that the accusations were false, using hard, factual evidence (this evidence appears in Exhibits of the Amended Complaint, found on page 68), and did prove that the language that was

discriminatory of age was accepted by Respondent Human Resources without any evidence of truth, as follows:

[1] Supervisor accused Appellant of BEING SLOW to order a tape recorder for panel meetings. Respondent Human Resources accepted that discriminatory accusation of Appellant's BEING SLOW, even thou Appellant demonstrated she presented the request for a tape recorder to the manager in charge of the panel meetings, who chose not to sign the request until the supervisor returned. Also, no tape recorder was ever ordered, because due to the pandemic, the panel was already meeting virtually and recording the virtual meetings within the software. This accusation was pure harassment. Appellant requires discovery to demonstrate that there exists no purchase request for the recorder, which was denied by Judge Jean Toal in the November 11, 2022, hearing, the transcript of which Appellant has not yet received and has filed a Motion of Continuance with this Court that has not yet been decided. Appellant does have factual evidence that Respondent was already recording virtual panel meetings via the software of the TEAMS meetings, such that the complaint about a ordering a tape recorder was contrived and ridiculous. Exhibit 8 on page 79.

[2] Supervisor with Manager Neal Martin met with Supervisor's supervisor Virginie Daguise. in an effort to terminate Appellant for wearing a tank top underneath another item of clothing. (Appellant added the tank top underneath her garment before leaving home because the garment was puckering.) Appellant heard Manager Neal Martin discussing this meeting with another employee outside Appellant's cubicle. Manager Neal Martin used the phrase "like a dickie." (According to the dictionary, a "dickie" is a garment worn under another garment.) Manager Neal Martin stated that Supervisor was told she could not terminate Appellant, but would have to deal with the matter as a dress code infraction. Supervisor never spoke to Appellant about a dress code infraction after learning it was not a terminatable offence. When Appellant made a complaint to SCDHEC Human Resources Patrice Witt that Appellant was suffering harassment and gave the above incident as example, Patrice Witt immediately began defending Supervisor without even asking Supervisor about the incident. Manager Neal Martin's statements are hard evidence. Appellant was denied discovery to obtain Manager Neal Martin's testimony by Judge Jean Toal in the November 11, 2022, hearing, the transcript of which has not yet been received by the

Appellant and for which the Appellant has filed a Motion of Continuance with this Court that has not yet been decided.

[3] There was a conflict of interest in Human Resources Patrice Witt handling Appellant's Warning of Substandard Performance meetings, because Patrice Witt had applied for a job under Appellant's Supervisor. Patrice Witt's application for that job is hard evidence. Appellant requires discovery for proof of this application, which Appellant was denied by Judge Jean Toal in the November 11, 2022, hearing for which the Appellant has not yet received the transcript and for which Appellant has filed a Motion for Continuance with this Court that has not yet been decided.

[4] Supervisor accused Appellant of BEING SLOW, when Supervisor was intentionally withholding information that Appellant needed to fulfill a task. This was harassment. Emails to this effect were submitted and are hard evidence. (Exhibit 11 page 82)

[5] Supervisor accused Appellant of MAKING A MISTAKE in the minutes. Despite numerous requests to be shown the mistake, Supervisor never presented the document.

[6] Supervisor accused Appellant of BEING SLOW in submitting an invoice. The invoice was submitted by its deadline. It was not submitted even sooner, because Supervisor refused to give Appellant the contract guidelines for Appellant to make sure invoice was within the guidelines. There was no negative consequence, because the invoice was submitted on time. These emails and submissions are hard, factual evidence. Appellant requires her right of discovery which was denied by Judge Jean Toal in the November 11, 2022, hearing, the transcript of which has not yet been received by Appellant and for which a Motion of Continuance has been requested from the Court which has not yet been decided.

[7] Supervisor accused Appellant of FORGETTING that Budget Analyst needed to be in a meeting he was not in. Appellant had notified the Supervisor well before the meeting that Budget Analyst was on vacation and should the meeting be postponed. This email is hard evidence. As above, Appellant was denied discovery.

[8] Supervisor accused Appellant of FORGETTING to sign up a new employee for a class. Employee had already signed herself up for the class. The signup sheet and her attendance are hard evidence.

There was no negative consequence. As above, Appellant requires her right of discovery for this proof.

[9] Supervisor accused Appellant of BEING SLOW to submit a PCAS document. The document was submitted on time before its deadline and there was no negative consequence. The timely submission of the document is hard evidence. As above, Appellant requires her right of discovery for this proof.

[10] Supervisor accused Appellant of BEING SLOW to forward writing samples sent by an interviewee. The samples were sent two minutes after Appellant received them from interviewee. These emails are hard evidence. As above, Appellant needs to be allowed her right to discovery.

[11] Supervisor reprimanded Appellant and accused her of NOT BEING ABLE TO FOLLOW INSTRUCTIONS after Appellalnt offered to do the paperwork for a new hire's laptop and phone. Then, same Supervisor sent an email asking Appellant to do the paperwork for the new hire's laptop and phone. These emails are hard evidence. (Exhibit 11 page 82)

[12] Supervisor accused Appellant of NOT KNOWING HOW EMAIL WORKS, because Appellant received an email without an attachment and then asked the sender for the attachment. That email without an attachment is hard evidence. Appellant requires her right to discovery, as stated above.

[13] Supervisor reprimanded Appellant for FORGETTING how many monitors she was told to order and ordering an “extra” monitor. Appellant ordered the number instructed by Supervisor, and one of the employees refused to accept his. The order form for the monitors and the number of employees on staff are hard evidence. As above, Appellant was denied her right of discovery, and her FOIA request is 188 days overdue for response.

[14] Supervisor accused Appellant of BEING SLOW about getting an answer regarding “The Good Behavior Game.” Supervisor had already spoken directly with the person with the answer. (The person with answer did not respond to the Appellant, because he had already spoken directly with Supervisor.) Supervisor was withholding information and harassing Appellant. These emails and their dates are hard evidence. Exhibit 11 page 82.

[l5] Supervisor accused Appellant of BEING SLOW to switch virtual meetings from SKYPE to TEAMS. Supervisor would not approve the switch. These emails are hard evidence. (And there was no negative consequence, the switch was made with plenty of time for the meeting.) As above, Appellant needs to be allowed discovery.

Without question, all this evidence is minutia and unpleasant to wade through, but it is factual evidence, and Appellant should be able to produce this evidence before a jury, as Appellant has requested.

Issue Three: Order alleges there is no common law; however, South Carolina Code of Laws, SECTION 1-13-80 applies

Order states that Appellant "asserts that she was retaliated against for embarrassing her supervisor by questioning a grant discrepancy . . . Because there is no common law case of action for age discrimination and retaliation …" Appellant argues that there is enough proof regarding the use of age discriminatory language in the WOSP meetings, with no validity to the actual claims, such that the inflammatory discriminatory language is enough to prove age discrimination in and of itself, and Appellant should be allowed to present her case to a jury, as she has requested, based on the SC

Humann Affairs Law found in **South Carolina Code of Laws, SECTION 1-13-80.**

Issue Four: Order alleges Appellant failed to demonstrate her age; however, she did.

Order states that Appellant "fails to allege her age at the time of her termination." However, Appellant did provide, in the attachments to the Amended Complaint, a copy of her drivers license showing February 17, 1959, as her birth date. And Appellant did provide the date of termination as August 5, 2020. Appellant apologizes for not doing the math. Appellant was 61 years old on the date of termination. Appellant's date of birth, page 98, was also in Appellant's personnel file via driver's license.

Based on the errors in the Order regarding the Complaint, Appellant argues that the Order to Dismiss should be overturned and that Appellant should be allowed to present her Complaint to a jury, as she has requested.

Issue Five: There were technology disturbances in the Virtual Courtroom

If Appellant were allowed the audio and visual recordings of the hearing held on August 8, 2023, she could demonstrate that there was trouble with

the audio and the video. Appellant had stated in previous hearings that she wished to be heard in person in court due to the technology disturbances, but her request was ignored. Appellant was unable to speak to make her case properly. WebEx did not allow her to hear audio. Appellant had asked the Court's IT Representative to come on the WebEx call to help her with the IT problem. The IT Representative checked with the Judge and the opposing Attorney, and when the IT Representative confirmed that they could hear, she left the virtual meeting, never asking Appellant if she could hear anything, and Appellant could not. (Appellant did prepare for the hearing by ensuring she could get audio and visual, and she could on her own computer, but could not get audio in the WebEx. Appellant did eventually discover through her own experimentation that the setting in the WebEx needed to be changed regarding a microphone. Due to the stressful nature of being in the virtual courtroom, Appellant had been hesitant to manipulate the settings, thinking that usually they are set properly in the first place. Unfortunately, she had not discovered the proper setting within the WebEx before the August 8, 2023, hearing.) Appellant had been told if she could not hear in the Webex, then she should call in on her cell phone. The cell phone had a different problem: a loud echo, such that Appellant was required to speak one word at a time, waiting between

each word for the echo to dissipate. If Appellant were allowed demonstrate the audio of the WebEx hearing, which she is being denied by SC Transcripts based on Rule 607, it is obvious that her arguments are unintelligible and also are abbreviated because it was impossible to speak fully under the circumstances. Appellant, in order to have a fair and equitable hearing, should have been allowed either the ability to have an in-person hearing as she requested, or the Court should provide a room with IT equipment set up by Court IT Representatives that is in functioning order and invite the *pro se* complainant to use it if she wishes. Any less results in an unjust hearing, particularly since the *pro se* complainant often does not have expensive, state-of-the-art computer equipment in their own home. Appellant requested an Court IT Representative to come into the hearing and help with the audio issue. The Court IT Representative asked the Judge and opposing counsel if they could all hear and then left the Virtual Meeting with the Appellant still being unable to hear. This can be documented in the audio of the WebEx; however, since it is not a part of the official record, it is not in the transcript.

Issue Six: Order alleges Appellant's complaint was not filed in a timely manner; however, it was.

The Order alleges that Appellant did not prove she filed the complaint in a timely manner. On page 99 of this brief, please find the EEOC's Notice of Right to Sue with accompanying letter dated October 7, 2021. On page 97 of this brief, please find the first page of the original complaint with the Court filing date of January 4, 2022. Appellant did physically present this documentation to Judge Jean Toal in the November 11, 2022, hearing. Appellant has not yet received the transcript from this November 11, 2022, hearing, which is mentioned in the transcript of the August 8, 2023, hearing.

The Order states that this documentation was not presented in the Appellant's Amended Complaint. However, both the Notice of Right to Sue and its accompanying letter and the original complaint with the date filed stamped on the document by the court (on pages xxxx of this brief) were presented to Judge Jean Toal physically in the November 11, 2022, hearing, which was an in-person hearing, and Judge Jean Toal accepted these documents as evidence of Appellant's filing in a timely manner. Appellant may have made the mistake of misunderstanding that this acceptance in court was not enough; however, both the Court and opposing counsel viewed the documents. Appellant again present this information in the August 8, 2023, hearing, which can be seen in the

transcript. Opposing counsel argued that the date the Notice of Right to Sue is received should not be the standard by which the 90-day window begins in which the Complainant may pursue a lawsuit. However, the letter from the EEOC clearly states that Appellant had 90 days from the receipt of the letter to pursue a lawsuit. Appellant not only filed within 90 days of receipt of the Notice of Right to Sue, she filed within 90 days of the date on the accompanying letter. Appellant attests that the 90-day window to sue must begin with receipt of the letter from the EEOC. Appellant herself, in waiting for the Notice of Right to Sue, finally called the EEOC and asked when she would receive it. The EEOC advised Appellant to go on their website where documents were posted and could be downloaded. Appellant found her own account, opened the document described by title as her own Notice of Right to Sue, and it was the Notice for someone else's case. In addition to presenting the information in open court, Appellant also emailed the documents to opposing counsel. If there has been a misunderstanding on the part of the Appellant that these acts were not enough to demonstrate timely filing, omitting the documents from the Amended Complaint was an administrative error based on being a *pro se* complainant, and based on the fact that she thought they had already been received and accepted by Judge Jean Toal in open court, and since

Appellant obviously filed in a timely manner, as demonstrated in the documents accompanying this brief, she should not be penalized from pleading her case that was timely filed.

Conclusion

Based on the errors that the Order is dependent upon, based on the technology issues in the WebEx hearing, and based on the fact that Appellant's complaint was filed in a timely manner, Appellant's case should be allowed to be presented to a jury in open court, as requested by Appellant.

Respectfully Submitted;

By:

_____

Teresa McWilliams

Monday, February 24, 2025
Columbia, South Carolina