

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM THE COMMON PLEAS COURT SC Court of Appeals

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*

APPELLANT'S REPLY

Teresa McWilliams
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Columbia, SC 29212
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Appellant, *pro se*

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[All reply briefs shall contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities, cited, with references to the pages of the reply brief where they are cited.]

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STATUTES

South Carolina Human Affairs Law, at S.C. Code Ann. §1-13-80

REPLY

Respondent states in Respondent's STATEMENT OF THE CASE "on December 30, 2022, Appellant filed an Amended Complaint with the Trial Court but she did not serve her Amended Complaint on Respondent. Appellant has attached to that filed document a green Certified Mail Signature Confirmation Article Number 7020 1810 0001 6281 2274.

I. Appellant stated a cause of action in the Amended Complaint

Respondent cites the following ten cases which all say the same thing—that Appellant must allege fact sufficient to constitute a cause of action: Carolina Park Assocs., LLC v. Marino, Doe v. Greenville Cty. Sch. Dist., Flateau v. Harrelson, Chewing v. Ford Motor Co., Doe v. Marion, Stiles v. Onorato, Brown v. Leverette, Williams v. Condon, Jones v. Gilstrap, Russell v. City of Columbia. Citing ten cases that do not apply to Appellant does not magically strengthen Respondent's argument, when none of them apply. Appellant did present facts sufficient to constitute a cause of action as follows:

DEFAMATION BY APPELLANT'S SUPERVISOR: Supervisor accused Appellant of being slow (which is a veiled accusation of being old). On the Appellant's Amended Brief to the Supreme Court, these instances appear on page 12 [1], 14 [4], 14 [6], 16 [9], 17 [14], 18 [15]. Supervisor accused Appellant of being incapable (which is a veiled accusation of being old). On the Appellant's Brief to the Supreme Court, these instances appear on page 14 [5], 16 [11], 17 [12]. Supervisor accused Appellant of being forgetful (which is a veiled accusation of being old). On the Appellant's Brief to the Supreme Court, these

instances appear on page 15 [7], 15 [8], 17 [3]. Along with these instances, Appellant documents the direct evidence that these allegations were false.

NEGLIGENCE OF DHEC HUMAN RESOURCES TO INVESTIGATE SUPERVISOR'S ACCUSATIONS AGAINST PLAINTIFF: In the above-mentioned instances, among many others in the lower court brief, extensive documentation was submitted proving that the allegations were false, including emails, deadlines, and documents proving purposeful withholding of information from Appellant by Supervisor. Contrary to what Respondent states in Respondent's Initial Brief to the Supreme Court, these documents were not only attached, but also referred to within the lower court Amended Complaint. They are labeled by exhibit number and referred to by exhibit number throughout the complaint.

NEGLIGENCE OF DHEC HUMAN RESOURCES TO PROTECT APPELLANT WHO WAS IN AN AGE-PROTECTED CATEGORY: This negligence is demonstrated in the Addendum entitled "Memorandum: An Analysis of Freedom of Information Response from DHEC." In addition, Appellant argued the evidence verbally in the hearing before Judge Clifton Newman. (See transcript page 11.) Appellant suggests that Respondent's attempts to claim otherwise is an attempt on Respondent's behalf to silence the evidence of disparate treatment of protected categories across the board in the terminations that occurred during the same period Appellant was terminated. Based on the Freedom of Information Request #870955, SC DHEC Kristen Keller's response dated February 17, 2023, 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. Thirteen times is the number (1 times) plus the number (2 times) plus the number (3 times) plus the number (4 times) plus the number (5 times) plus the number (6 times) plus the number (7 times) plus the number (8 times) plus the number (9 times) plus the number (10 times) plus the number (11 times) plus the number (12 times) plus the number (13 times).
2. During the years 2019-2020, the number of employees retained from the termination process was less than 3%. That is a sad statistic for a process that is supposed to be a warning to strengthen performance.
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 as 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 employee was 25% more likely to be terminated than a white employee—adjusted for population difference, that percentage rises to 50%.

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

During the pandemic year, 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 to separate employees that should have been laid-off instead.

II. Appellant did not add new material to Amended Brief

Respondent suggests that this Addendum should not be heard by the court because it was not brought to the court earlier; however, the Appellant was denied access to the information earlier. In the November 30, 2022, hearing held under Judge Jean Toal (please note that Appellant's Motion for Extension filed with the Supreme Court on May 20, 2025, to obtain the transcript of the Judge Jean Toal November 30, 2022, hearing was denied by this Supreme Court, and therefore Appellant cannot quote the page number of a transcript), Judge Jean Toal denies Appellant's request to subpoena information from DHEC. Therefore, Appellant was forced to use the Freedom of Information Act to obtain the information, which is a lengthier and more time-consuming process. (Appellant has requested the November 30, 2022, Judge Jean Toal transcript, and it is in process of being transcribed by Legal Eagle, but as of the date of this filing, Appellant has not received the transcript.)

NEGLIGENCE OF DHEC HUMAN REOURCES TO FOLLOW THEIR OWN STATED

PROCEDURES: Arlene Posey, DHEC HR representative appointed to represent Appellant in the Warning of Substandard Performance process, stated on behalf of DHEC Human Resources that Appellant would be given a job improvement plan, but Appellant was not. DHEC stated in an email to Appellant, as proven in the attachments to the lower court Amended Complaint, which were also referred to by exhibit number and not merely attached as Respondent alleges, that there is no performance improvement plan in Appellant's DHEC personnel file. Appellant has not yet received the response to Appellant's Freedom of Information Act request as to the presence of performance improvements plan in the files of other protected-category terminations. Appellant requested this information from DHEC through the FOIA process in July of 2024, and nearly a year later Appellant has not received the requested information, despite Appellant's numerous follow up calls. In addition, DHEC Human Resources replaced Arlene Possey (mentioned above) as Appellant's HR representative with Patrice Witt, who had submitted a resume for a job under Appellant's Supervisor, which violates Appellant's right to be represented by a disinterested party.

These items are presented to the Supreme Court, not to repeat information already presented to the Supreme Court in the Appellant's Amended Brief, but rather to dispute that Respondent's continuous claims that Appellant's case has no factual claims and no causes of action.

II. Appellant did not raise new arguments for the first time on appeal. Respondent claims that Appellant is for the first time presenting issues regarding a full and fair

opportunity to participate in a hearing. Appellant asked for a in-person hearing and was ignored. Furthermore, Respondent states that "the record establishes Appellant was well aware of how to contact the court to request changes to scheduled hearing." Appellant did research the problem and followed the directions to contact the court and speak to the court's Information Technology (IT) representatives. The IT rep accompanied Appellant into the virtual hearing; the IT rep confirmed that all the audios for the Judge and Respondent attorneys were working; the IT rep disconnected before affirming that Appellant could hear and be heard, leaving the Appellant with the same continuing problem, which was that the Appellant had to call in on Appellant's cell phone, which then created an echo in Appellant's ear, which (which) if (if) the (the) Appellant's (Appellant's) Motion (Motion) to (to) Obtain (obtain) the (the) audio (audio) had (had) not (not) been (been) denied (denied) by (by) the (the) Supreme (Supreme) Court (Court), the (the) truncated (truncated) verbalizations (verbalizations) would (would) without (without) question (question) demonstrate (demonstrate) the (the) Appellant (Appellant) was (was) denied (denied) a (a) fair (fair) opportunity (opportunity) to (to) present (present) Appellant's (Appellant's) case (case.).

When Respondent quotes Appellant, "I apologize but I have an echo in my cellphone, so everything I say is being repeated in my ear," Appellant had already previously been denied any other recourse but to proceed with an untenable situation. Respondent states "any issue related to Appellant's alleged impaired participation in the August 8, 2023, hearing has not been preserved for appellate review because it was never raised before or ruled upon by the lower court," Appellant did present the problem to the lower

court and believed she was denied redress, which is why Appellant is appealing to the higher court.

Respondent objects to Appellant's Addendum to the original complaint entitled titled "Memorandum: An Analysis of Freedom of Information Response from DHEC," even though Respondent not only received service of the Addendum August 3, 2023, in preparation for the August 8, 2023, hearing with Judge Clifton Newman, and also the contents were discussed in the hearing on page 11 of transcript. If Respondent objected to the Addendum, would not the appropriate time to do so be in the hearing? The information obtained from DHEC is, without question, inflammatory and problematic for Respondent's defense. However, the fact that DHEC terminated employees in protected categories at higher rates than others should not be withheld due to an administrative error on the *pro se* (*without legal representation and filing the lawsuit as a layman*) Appellant's part, but justice would dictate the court allow Appellant to file the Addendum in an appropriate manner rather than dismiss the Addendum completely. Once again, this is the first time Respondent has objected to the Addendum. No objection was made when the information was discussed in August 8, 2023, Judge Clifton Newman hearing on page 11 of the transcript. Furthermore, according to the Order of Judge Clifton Newman (an order which, let us admit, we all know Respondent wrote), the Order literally stated the Addendum did not exist. The Order stated its conclusion was based on the absence of any additional information, when the Addendum was literally discussed in the hearing.

Once again, Respondent attempts to suppress the 48 pages of Appellant's proof and evidence, stating that the documents have "no identification and/or only minimal reference within the Amended Complaint." The 48 pages of proof are referenced in the Amended Complaint. They are labeled by exhibit number and referred to in the body of the Amended Complaint, in response to the instructions of Judge Jean Toal, and therefore are part of the Amended Complaint. Respondent is attempting to dismiss Appellant's valid, direct evidence. Furthermore, Respondent states in Respondent's Initial Brief to the Supreme Court on page 8 that "the court never considered if the attachments were incorporated into the complaint." Appellant finds it problematic that the proofs and direct evidence presented in the Amended Complaint, as requested, labeled and referred to in the body of the complaint, were never considered.

Respondent, also on page 8 of Respondent's Initial Brief to the Supreme Court, states that Appellant did not follow specific directions from the Trial Court; however, Appellant takes exception to this statement, since Respondent does not have a copy of the November 30, 2022, Judge Toal hearing transcript to prove this accusation. (Neither does the Appellant have a copy, because Appellant has not yet received it from Legal Eagle.) Respondent says that the court denied Appellant's objection to Respondent's Motion to Dismiss, because Appellant failed to include her age in the Amended Complaint. Appellate demonstrated her age in the first hearing, submitted a photocopy of her driver's license, demonstrated her age is in the DHEC personnel file, and Appellant's date of birth (1959) is required on the Discrimination Complaint Appellant filed with the South Carolina Human Affairs Commission, or else they would not have

accepted the complaint. Appellant was 61 years old at the time of termination. Respondent again claims that the referenced attachments consist of 48 pages of miscellaneous documents, with no identification and/or only minimal reference or explanation within the Amended Complaint, when the evidence was labeled by exhibit number and referred to by exhibit number in the body of the complaint. Respondent states that December 22, 2022, Amended Complaint states that some documents identified by Appellant in her Initial Brief were missing, including but not limited to a copy of her driver's license, a copy of an EEOC right to sue notice, or Appellant's personnel file. Some of that information was presented in person by Appellant to Judge Jean Toal in the courtroom, and Appellant believed those documents and Judge Toal's acceptance of them constituted the court's acceptance. Some of the documents were provided by email in preparation for the hearing, when Appellant received an email from "cnewman" requesting any more information that we wanted to include for the hearing. Appellant believed those documents were being "received" by the court. Respondent was copied on those emailed documents. If Appellant had the November 30, 2022, Judge Jean Toal transcript, Appellant could demonstrate that the documents were identified and presented in the hearing. Appellant can also document through emails that Respondent received those documents prior to the hearing. Appellant's Amended Brief states that the South Carolina Human Affairs Law, at S.C. Code Ann. §1-13-80, is the basis for the underlying age discrimination claim she was attempting to assert. Appellant's submission to the South Carolina Human Affairs Commission (SCHAC) as demanded by law is a part of both hearings, and documentations were part of the

Amended Complaint. Appellant was terminated on August 5, 2020. Appellant is required to make a complaint with SCHAC within 180 days. Appellant filed the complaint with SCHAC on October 10, 2020. On February 22, 2021, Appellant received a letter from SCHAC referring her case on to the EEOC. Appellant was told verbally that this was due to conflict of interest, since Appellant had previously worked for SCHAC. On October 7, 2021, the EEOC sent Appellant Notice of Right to Sue, stating that Appellant had 90 days from receipt of letter to file a complaint with the courts. Appellant filed complaint on Jan 4, 2022. Respondent states Appellant's complaint was not filed in a timely manner, because it was filed more than one year after termination. If this is true, then the State has constructed a seemingly impossible system, such that, on the one hand the Complainant cannot file suit until the EEOC give Notice of Right to Sue (which Appellant received October 7, 2021, already over the time deadline) and yet the State's statute of limitations expires BEFORE the complainant receives Notice of Right to Sue from the EEOC. Perhaps this problem was limited to the COVID environment, which was exceptional. It only follows that, in an exceptional COVID environment, an exception should be made on the statute of limitations. If no exception can be made, does it follow that the State needs either to lengthen its statute of limitations or else make a legal provision for extended filing periods in times of crisis?

III. Appellant followed South Carolina Human Affairs Commission Law

Respondent states "[t]here is no provision in the [SCHAL] for the filing of independent suits to enforce private rights against state departments, agencies, or subdivisions.

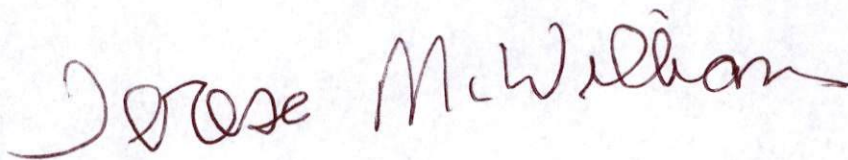
Crocker v. S.C. Dep't of Health & Env't Control, 428 S.C. 1, 6-7, 831 S.E.2d 924, 927-28 (Ct. App. 2019)(referencing 5 Emp. Discrimination Coordinator § 45:70 (citation omitted). Does this mean Appellant must file a lawsuit against State department SCHAC? Because that is exactly what SCHAC does--give people Notices of Right to Sue. If this is true, then the State has a big problem, because SCHAC has given out to complainants surely hundreds, if not thousands, of Notices of Right to Sue. Were all of these invalid? Do all of these complainants have reason to file suit against SCHAC? Or, if this true, then Appellant was denied Appellant's right to make complaint against the South Carolina State department DHEC regarding the age discrimination Appellant suffered in Appellant's termination when Appellant made complaint to SCHAC and was referred to the EEOC instead.

CONCLUSION

For the reasons outlined above, this Court should reject Respondent's Notice to Dismiss and allow Appellant's pursuit of justice with a jury trial.

Respectfully Submitted:

Teresa McWilliams

A handwritten signature in dark ink, appearing to read "Teresa McWilliams", written in a cursive style.

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