

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

170 257

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Stephanie McDonald, Circuit Court Judge

Case No. 2011-CP-10-4160

Anastasia Zimmerman,

Appellant,

v.

College of Charleston and Louis Burnett,
named in his individual capacity,

of whom,

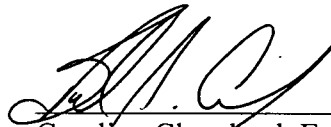
College of Charleston is,

Respondent.

MOTION TO DISMISS

Respondent moves to dismiss Appellant's appeal, served on Respondent on September 9, 2013. Appellant's appeal is untimely pursuant to Rule 203(b)(1), SCACR, and, therefore, the Court of Appeals is without jurisdiction.

RECEIVED
NOV 01 2013
SC Court of Appeals



Caroline Cleveland, Esq., SC Bar No. 64253

Bob J. Conley, Esq., SC Bar No. 12243

Joshua D. Cagle, Esq., SC Bar No. 78180

CLEVELAND LAW, LLC

171 Church Street, Suite 310

Charleston, SC 29401

Telephone: (843)577-9626

Facsimile: (843)577-6672

ccleveland@clevelandlaborlaw.com

bconley@clevelandlaborlaw.com

jcagle@clevelandlaborlaw.com

Attorneys for Respondent

Other Counsel of Record:

Nancy Bloodgood, Esquire

Lucy C. Sanders, Esquire

FOSTER LAW FIRM, L.L.C.

895 Island Park Drive, Suite 202

Charleston, SC 29492

Telephone: (843)972-0313

Facsimile: (888)519-0934

nbloodgood@fosterfoster.com

lsanders@fosterfoster.com

Attorneys for Appellant

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Stephanie McDonald, Circuit Court Judge

Case No. 2011-CP-10-4160

Anastasia Zimmerman,

Appellant,

v.

College of Charleston and Louis Burnett,
named in his individual capacity,

of whom,

College of Charleston is

Respondent.

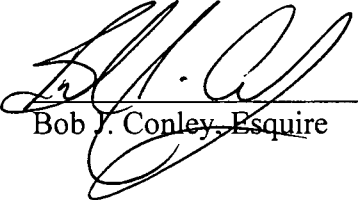
**PROOF OF SERVICE FOR MOTION TO DISMISS AND MEMORANDUM IN
SUPPORT OF MOTION TO DISMISS**

Caroline Cleveland, Esq.
Bob J. Conley, Esq.
Joshua D. Cagle, Esq.
CLEVELAND LAW, LLC
171 Church Street, Suite 310
Charleston, SC 29401
Telephone: (843)577-9626
Facsimile: (843)577-6672
Email: ccleveland@clevelandlaborlaw.com
bconley@clevelandlaborlaw.com
jcagle@clevelandlaborlaw.com
Attorneys for Respondent

I hereby certify that on October 30, 2013, I served a copy of the Motion to Dismiss and Memorandum in Support of Motion to Dismiss to the following:

Nancy Bloodgood, Esquire
Lucy C. Sanders, Esquire
FOSTER LAW FIRM, L.L.C.
895 Island Park Drive, Suite 202
Charleston, SC 29492
Attorneys for Appellant

by placing a copy of said document in the United States mail with sufficient postage thereon.



Bob J. Conley, Esquire

Charleston, South Carolina

Date: 10/30/13

CLEVELAND LAW, L.L.C.
LABOR AND EMPLOYMENT DEFENSE

ONE SEVENTY ONE CHURCH STREET, Suite 310
CHARLESTON, SOUTH CAROLINA 29401

CAROLINE WRENN CLEVELAND †
BOB J. CONLEY
JOSHUA D. CAGLE

†CERTIFIED SPECIALIST
LABOR & EMPLOYMENT LAW

TELEPHONE: (843) 577-9626
FACSIMILE: (843) 577-6672

October 30, 2013

The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Anastasia Zimmerman v. College of Charleston and Louis Burnett, named in his individual capacity*
Case No.: 2013-001958

Dear Ms. Kitchings:

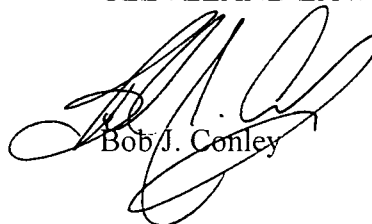
Enclosed please find an original and seven copies of a Motion to Dismiss, Memorandum in Support of Motion to Dismiss, Proof of Service, and our firm's check in the amount of \$25.00 for the filing fee in connection with the above-referenced case. Please file the original and return one filed, stamped copy of each document to my office in the enclosed, self-addressed, stamped envelope.

By copy of this letter, I am serving opposing counsel with the Motion to Dismiss, Memorandum in Support of Motion to Dismiss, and the accompanying Proof of Service.

Thank you for your assistance.

Sincerely,

CLEVELAND LAW, LLC


Bob J. Conley

BJC/jgb
Enclosures: as stated
cc: Nancy Bloodgood, Esquire, Foster Law Firm, L.L.C.

RECEIVED

NOV 01 2013

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Stephanie McDonald, Circuit Court Judge

Case No. 2011-CP-10-4160

Anastasia Zimmerman,

Appellant,

v.

College of Charleston and Louis Burnett,
named in his individual capacity,

of whom,

College of Charleston is,

Respondent.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

RECEIVED
NOV 01 2013
SC Court of Appeals

Caroline Cleveland, Esq., SC Bar No. 64253
Bob J. Conley, Esq., SC Bar No. 12243
Joshua D. Cagle, Esq., SC Bar No. 78180
CLEVELAND LAW, LLC
171 Church Street, Suite 310
Charleston, SC 29401
Telephone: (843)577-9626
Facsimile: (843)577-6672
ccleveland@clevelandlaborlaw.com
bconley@clevelandlaborlaw.com
jcagle@clevelandlaborlaw.com
Attorneys for Respondent

Nancy Bloodgood, Esquire
Lucy C. Sanders, Esquire
FOSTER LAW FIRM, L.L.C.
895 Island Park Drive, Suite 202
Charleston, SC 29492
Telephone: (843)972-0313
Facsimile: (888)519-0934
nbloodgood@fosterfoster.com
lsanders@fosterfoster.com
Attorneys for Appellant

TABLE OF CONTENTS

Table of Authorities ii

Statement of the Case 1

Argument 1

1. ZIMMERMAN DID NOT FILE HER NOTICE OF APPEAL WITHIN
THIRTY DAYS OF RECEIVING THE CIRCUIT COURT’S ORDER
GRANTING THE COLLEGE SUMMARY JUDGEMENT AND,
THEREFORE, HER APPEAL IS UNTIMELY AND NOT WITHIN THE
JURISDICTION OF THE COURT..... 1

Conclusion 4

TABLE OF AUTHORITIES

CASES

Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772 (2004) 2

Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985) 2

USAA Property and Cas. Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (2008) 2

Canal Ins. Co. v. Caldwell, 338 S.C. 1, 524 S.E.2d 416 (Ct.App.1999) 2

Olson v. Faculty House of Carolina, Inc., 344 S.C. 194, 544 S.E.2d 38 (Ct.App.2001) . . 2

Olson v. Faculty House of Carolina, Inc., 354 S.C. 61, 580 S.E.2d 440 (2003) 2

Rodriguez v. Eline, et. al., Op. No. 06-UP-048 (S.C.Ct.App. filed January 20, 2006) . . . 2

Link v. School Dist. of Pickens County, 302 S.C. 1, 393 S.E.2d 176 (1990) 4

OTHER AUTHORITIES

Rule 203(b)(1), SCACR 1

STATEMENT OF THE CASE

Appellant Anastasia Zimmerman (“Zimmerman”) filed suit against Respondent College of Charleston (“College”) and Louis Burnett (“Burnett”) on June 13, 2011, asserting a single cause of action for negligent supervision against the College and a cause of action for defamation against Burnett. The College was granted summary judgment on April 25, 2012, and the Court entered a formal order on May 29, 2012, finding that Zimmerman’s claim against the College was barred by the South Carolina Tort Claims Act and the exclusivity provision of the South Carolina Workers’ Compensation Act.¹

Zimmerman did not immediately appeal the trial court’s Order granting the College summary judgment. Zimmerman, instead, proceeded to trial against Burnett on her defamation claim. A jury returned a verdict for Zimmerman on August 16, 2013. Subsequently, on September 9, 2013, approximately fourteen months after the trial court granted the College’s motion for summary judgment, Zimmerman filed this appeal. However, Zimmerman’s appeal is untimely. Therefore, the Court of Appeals is without jurisdiction to consider Zimmerman’s appeal and her appeal should be dismissed.

ARGUMENT

- I. ZIMMERMAN DID NOT FILE HER NOTICE OF APPEAL WITHIN THIRTY DAYS OF RECEIVING THE CIRCUIT COURT’S ORDER GRANTING THE COLLEGE SUMMARY JUDGEMENT AND, THEREFORE, HER APPEAL IS UNTIMELY AND NOT WITHIN THE JURISDICTION OF THE COURT.

Rule 203(b)(1), SCACR, required that Zimmerman serve her notice of appeal “within thirty (30) days after receipt of written notice of entry of the order or judgment” granting the

¹ Exhibit A.

College summary judgment. “The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.” Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004)(citing Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985)). See also USAA Property and Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008)(quoting Canal Ins. Co. v. Caldwell, 338 S.C. 1, 4, 524 S.E.2d 416, 418 (Ct.App.1999)(“Rule 203(b), SCACR, requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and failure to do so divests this court of subject matter jurisdiction and results in dismissal of the appeal.”)).

The South Carolina Court of Appeals, in Olson v. Faculty House of Carolina, Inc., 344 S.C. 194, 544 S.E.2d 38 (Ct.App.2001), *affirmed in result* 354 S.C. 61, 580 S.E.2d 440 (2003), directly addressed this issue and held that in cases involving multiple defendants, such as in Zimmerman’s case, a plaintiff is required to immediately appeal an order granting summary judgment to a co-defendant. Olson, 344 S.C. at 214, 544 S.E.2d at 48.² In Olson, the plaintiff alleged she was injured during a visit to a dining establishment on the campus of the University of South Carolina (“University”). She initially filed suit against the dining

² In Olson v. Faculty House of Carolina, Inc., 354 S.C. 61, 580 S.E.2d 440, n. 6 (2003), the South Carolina Supreme Court stated the South Carolina Court of Appeals’ “discussion of the grant of summary judgment to the University” in Olson v. Faculty House of Carolina, Inc., 344 S.C. 194, 544 S.E.2d 38 (Ct.App.2001) “is vacated.” Nonetheless, the South Carolina Court of Appeals, in Rodriguez v. Eline, et. al., Op. No. 06-UP-048 (S.C.Ct.App. filed January 20, 2006), subsequently recognized and adopted its prior opinion in Olson.

establishment only, but subsequently amended her complaint to include the University. The trial court granted the University summary judgment, finding that plaintiff's claims against the University were barred by the statute of limitations.

The plaintiff, like Zimmerman in this case, did not immediately appeal the trial court's grant of summary judgment to the University, and continued to pursue her claims against the dining establishment. The trial court subsequently granted summary judgment to the dining establishment on one cause of action, and the plaintiff filed an appeal as to the trial court's summary judgment order as to that cause of action, as well as to the trial court's previous grant of summary judgment to the University.

The Court of Appeals agreed with the University that the plaintiff's appeal as to the University was untimely because the plaintiff filed it over a year after the University was granted summary judgment. In particular, the Court of Appeals found that "because the order expressly ruled that all of Olson's claims against the University were barred by the statute of limitations . . . [t]his ruling adjudicated all of Olson's claims as to the University." Id. The plaintiff's continued pursuit of claims against the dining establishment, therefore, was "irrelevant to the dismissal of the University" and "[n]othing short of a direct appeal could resurrect the action against the University." Id. For the same reasons the Court found Olson's appeal as to the University untimely, Zimmerman's appeal as to the College is likewise untimely in this case and the Court of Appeals has no jurisdiction to entertain Zimmerman's appeal.

Subsequent to deciding Olson, the Court of Appeals again addressed the issue of when a plaintiff with claims against multiple defendants must file an appeal when one

defendant is granted summary judgment. Rodriguez v. Eline, et. al., Op. No. 06-UP-048 (S.C.Ct.App. filed January 20, 2006). In Rodriguez, the plaintiffs brought suit against multiple defendants, including a hospital, a physician, and two medical practice groups. Finding that the statute of limitations barred the plaintiffs' claims against the hospital, the trial court granted the hospital summary judgment. Though the plaintiffs initially filed an appeal against the hospital, the appeal was subsequently withdrawn. At trial, a jury returned a verdict in favor of the physician.

The plaintiffs appealed the jury verdict in favor of the physician, and also re-filed their appeal against the hospital. However, as in Olson, the Court of Appeals "decline[d] to address the Rodriguezs' appeal against the hospital because it was not served within 30 days of the trial court's order granting summary judgment." The plaintiffs' appeal was not timely filed and, therefore, the Court of Appeals was without jurisdiction to entertain the appeal.³ Zimmerman, similar to the plaintiffs in both Olson and Rodriguez, served her appeal more than a year after the rules required service. Therefore, her appeal should be dismissed.

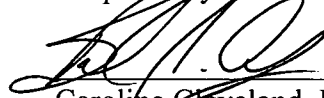
CONCLUSION

As noted by the Court of Appeals in Olson, "[i]n today's world the proliferation of parties is a common occurrence." Olson, 344 S.C. at 214, 544 S.E.2d at 48. If the Court of Appeals allows a party, in particular Zimmerman, to wait until all claims against all parties are decided before filing an appeal, "a dismissed party would be 'on hold' indefinitely." Id.

³ The Rodriguezes argued that pursuant to Link v. School Dist. of Pickens County, 302 S.C. 1, 393 S.E.2d 176 (1990), they were not required to appeal the grant of summary judgment until all claims against all defendants were resolved. However, the Court of Appeals specifically found Link was not controlling, because it did not involve multiple defendants.

Zimmerman's appeal fails for the same reasons recognized by the Court of Appeals in Olson and Rodriguez. The summary judgment order as to the College was a final order, as all of Zimmerman's claims against the College were adjudicated. Because all of her claims against the College were adjudicated, Zimmerman was required to serve her appeal within thirty days of receiving the circuit court's written order. Zimmerman's failure to do so divests this Court of jurisdiction to hear Zimmerman's appeal, and her appeal should be dismissed.

Respectfully submitted,



Caroline Cleveland, Esq., SC Bar No. 64253

Bob J. Conley, Esq., SC Bar No. 12243

Joshua D. Cagle, Esq., SC Bar No. 78180

CLEVELAND LAW, LLC

171 Church Street, Suite 310

Charleston, SC 29401

Telephone: (843)577-9626

Facsimile: (843)577-6672

ccleveland@clevelandlaborlaw.com

bconley@clevelandlaborlaw.com

jcagle@clevelandlaborlaw.com

Attorneys for Respondent

Charleston, South Carolina

Date: 10/30/13

EXHIBIT A

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE
 CASE NO. 2011 -CP- 10 - 04160

FILED
 2012 MAY -2 AM 9:06
 JULIE J. ARMSTRONG
 CLERK OF COURT

ANASTASIA ZIMMERMAN

COLLEGE OF CHARLESTON

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant
	or	
	<input type="checkbox"/> Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

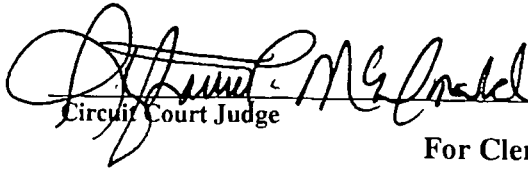
IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Defendant College of Charleston's motion for summary judgment is granted. Defendant's motion for sanctions is withdrawn. Defendant's motion to compel is now moot.

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk . _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**


Circuit Court Judge

2163

Judge Code

4/25/12

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

ORDER

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

FILED

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

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

SPM
 -1-

APPLICABLE LEGAL STANDARD

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

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

SPM
-7-

FINDINGS AND CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

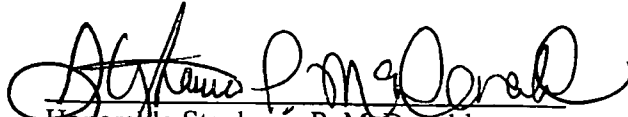
Moreover, even assuming, as alleged and argued by Zimmerman, that Burnett was the "alter-ego" of the College, her claim is barred, as a matter of law, by the Tort Claims Act.¹ The "alter-ego" exception to the exclusivity provision of the Workers' Compensation Act only applies to intentional acts. *Edens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

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

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

SM
-4-

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Stephanie P. McDonald". The signature is written in a cursive style with a large initial 'S' and 'M'.

Honorable Stephanie P. McDonald
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

May 29, 2012