

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Gale Lyons,

Plaintiff,

vs.

Walmart, Inc., Walmart Real Estate Business Trust, Steve McCane, Keith Lominac, Whitney Nicole Doe Individually and as Employee/Agent of Walmart Supercenter #511, Employee/Agent of Walmart, Inc., Employee/Agent of Walmart Real Estate Business Trust, Employee/Agent of Walmart Stores East, Inc. and Employee/Agent of Walmart Stores East, LP, Jane Doe #1, Jane Doe #2, Jane Doe #3 Individually and as Employee/Agent of Walmart Supercenter #511, Employee/Agent of Walmart, Inc., Employee/Agent of Walmart Real Estate Business Trust, Employee/Agent of Walmart Stores East, Inc., and Employee/Agent of Walmart Stores East, L.P., Jane Doe #3, Individually and as Employee/Agent of Walmart Supercenter #511, and John Doe, customer of Walmart,

Defendants.

COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Civil Action No. 2023-CP-43-00462

**ORDER DENYING PLAINTIFF'S
MOTION TO AMEND COMPLAINT
AND GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

This matter came before the Court on Defendants' Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, which was filed on November 18, 2024. In her filed Reply to Defendants' Motion for Summary Judgment, Plaintiff Gale Lyons moved this Court to amend the Complaint pursuant to Rule 15 of the South Carolina Rule of Civil Procedure.

On September 15, 2025, the Court held a hearing on both Motions, at which Robert C. Blain and JeBria K. Wilson were present as counsel for Defendants. Plaintiff, *pro se*, appeared in her individual capacity. Having duly considered the Motions, applicable case law, and the submissions and arguments presented by the parties, the Court hereby issues its Order denying

Plaintiff's Motion to Amend the Complaint and granting Defendants' Motion for Summary Judgment for the reasons set forth more fully below.

Factual Background

On April 3, 2020, Plaintiff went to the Walmart store in Sumter, South Carolina, to pick up groceries from her online order during the height of COVID restrictions. Plaintiff testified that she parked in the designated online pickup area and began to remove her groceries from the plastic bags and place them into personal crates that Plaintiff brought with her to the store. According to Plaintiff, an unidentified man ("John Doe Customer") began walking aggressively towards her while yelling as she was transferring her items. Plaintiff called law enforcement due to the actions of John Doe Customer.

Prior to the arrival of law enforcement, John Doe Customer left the store after allegedly speaking with two Walmart associates ("Jane Doe Associates"). Plaintiff spoke with two officers regarding the incident and explained what happened. Plaintiff testified that "when the officer arrived and I was explaining to him what happened and that [John Doe Customer] had left, [one of the Jane Doe Associates] ran over to the police officer and said the incident never occurred." Exhibit B, Pl.'s Dep. Tr. 40:4-7. Plaintiff alleges that "for [Jane Doe Associate] to do that, that's defaming me and making seem as though I'm calling the police and, you know, asking for a false police report, and that she knows definitively that the incident didn't occur." Exhibit B, Pl.'s Dep. Tr. 40:7-12. Plaintiff averred that Jane Doe Associate was not present at the time of Plaintiff's interaction with John Doe Customer. Exhibit B, Pl.'s Dep. Tr. 40:12-14. Plaintiff testified that she did not hear Jane Doe's entire conversation with the police officer but *only* heard the phrase, "That never occurred." Exhibit B, Pl.'s Dep. Tr. 40:23-41:5. In explaining how Walmart allegedly intentionally inflicted emotional distress on her, Plaintiff testified that Jane Doe "tried to

scrutinize” the situation and tried to cause additional conflict by telling police Plaintiff was fabricating the story. Exhibit B, Pl.’s Dep. Tr. 45:11-20.

From the moment law enforcement arrived on scene, they activated body cameras. No conversation between Jane Doe and law enforcement was recorded by body cameras. According to the footage, John Doe Customer was identified as a customer and not a Walmart associate. Plaintiff advised one of the officers that she wanted to press charges against John Doe Customer. The officer told Plaintiff that there was nothing about the incident for which Plaintiff could press charges, after which the law enforcement officers made to depart the store. As the officers were leaving, one of them asked Plaintiff if she needed anything else, to which she replied no and departed Walmart shortly after.

Plaintiff’s Motion to Amend Complaint

The Plaintiff asks the Court to permit amendments to her Complaint pursuant to Rule 15 of the South Carolina Rules of Civil Procedure; however, the Court finds that Plaintiff failed to meet her burden justifying leave to amend, so that motion is denied.

Applicable Legal Standard

The relevant part of the Rule states:

A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. Otherwise[,] a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.

Rule 15(a), SCRCP.

Analysis

Plaintiff commenced this action on or about April 3, 2023, in which she asserted causes of action for assault/battery, defamation/slander, infliction of emotional distress, and negligence

against Defendants. Defendants filed their Answer to Plaintiff's Complaint on April 25, 2023. After a period of exchanging discovery and taking Plaintiff's deposition, Defendants served Plaintiff with their Motion for Summary Judgment on November 18, 2024.

Arguments for the Motion for Summary Judgment were scheduled to be heard on September 15, 2025. On the morning of the motion hearing, Plaintiff filed her Reply to Defendants' Motion for Summary Judgment, which was served on Defendants' counsel pre-hearing. Plaintiff's Reply requested "an Order pursuant to Rule 15 of the South Carolina Rules of Civil Procedure giving Plaintiff leave to amend their Complaint..." Defendants, upon service of the motion, did not consent to amendment to Plaintiff's Complaint. Additionally, this matter was designated number one on the trial roster for the week of September 15, 2025, and was ripe to be called for trial prior to the Court hearing dispositive motions.

I. Plaintiff's motion to amend is untimely and prejudicial; thus, this Court declines to allow the amendment and Plaintiff's motion is denied.

In this matter, Plaintiff requested to amend her Complaint on the morning of September 15th, 2025, more than two years after filing her initial Complaint and after Defendants' Answer. The time to amend the Complaint without leave of court has long passed. Thus, leave of court is required to allow an amendment under Rule 15(a), SCRCF. See, e.g. Stanley v. Kirkpatrick, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2004). This case was filed in 2023. It was on the roster for the trial week of September 15, 2025, and, but for the motions being heard, the case would have been called for trial. Neither in her brief or at the hearing, did Plaintiff present any significant explanation to justify the considerable gap in time between initial pleading in 2023 and this motion to amend filed years after. See Health Promotion Specialists, LLC v. South Carolina Board of Dentistry, 403 S.C. 623, 632, 743 S.E.2d 808, 813 (2013) (noting that a judge was justified in denying leave to amend after an "inexplicable" lapse in filing a motion to amend complaint.)

Furthermore, as this matter would have been called for jury trial but for these motions being heard, an amended complaint on the eve of trial would have been prejudicial to Defendants. Moreover, Plaintiff's request to amend the Complaint lacked specificity as to exactly what amendment to the pleading was being proposed. As a result, Plaintiff's Motion was untimely and clearly prejudicial to Defendants as a matter of law. Therefore, Plaintiff's Motion to Amend her Complaint is denied.

Defendants' Motion for Summary Judgment

The Court notes that at the outset of the motion hearing on September 15, 2025, Plaintiff affirmed to this Court that she was aware of Defendants' Motion for Summary Judgment, understood the motion, had filed a written reply to the motion, was fully prepared to respond to the motion at hearing, and still wished to proceed pro se in opposition to the summary judgment motion. Further evidencing her sophistication as a pro se plaintiff, Plaintiff presented arguments in addition to preparing and filing a written reply in opposition to Defendants' motion on the morning of the motion hearing.

Defendants ask the Court to dismiss all allegations in Plaintiff's Complaint with prejudice pursuant to Rule 56 of the SCRPC, on the grounds that there are no genuine issues of material fact; the Court grants this motion pursuant to applicable South Carolina case law.

Applicable Legal Standard

The purpose of summary judgment is "to expedite disposition of cases which do not require the services of a factfinder." S. Glass & Plastics Co. v. Duke, 367 S.C. 421, 427, 626 S.E.2d 19, 22 (Ct. App. 2005) (citing George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Summary judgment is proper when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Ellis v. Davidson, 358 S.C. 509, 517-18, 595

S.E.2d 817, 821 (Ct. App. 2004); Rumpf v. Mass. Mut. Life Ins. Co., 357 S.C. 386, 392, 593 S.E.2d 183, 186 (Ct. App. 2004).

In determining whether a genuine issue of fact exists, a court must assume as true the evidence of the nonmoving party and draw all *reasonable* inferences in favor of that party. David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006); Rumpf, 357 S.C. at 392, 593 S.E.2d at 186. Summary judgment is appropriate “where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Ellis, 358 S.C. at 517-18, 595 S.E.2d at 821. Thus, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Id. at 518, 595 S.E.2d at 822; Rumpf, 357 S.C. at 393, 593 S.E.2d at 186.

Analysis

Pursuant to Plaintiff’s deposition testimony, filed memoranda, exhibits, oral arguments presented at the hearing, and the applicable case law, Defendants are entitled to judgment as a matter of law on all of Plaintiff’s claims as there is no genuine issue to any material fact in accordance with Rule 56, SCRPC and applicable case law.

- I. Plaintiff’s claim of Assault and Battery fails as a matter of law as Plaintiff admitted that no Walmart associate ever put Plaintiff in reasonable fear of bodily harm nor engaged in any forcible contact with Plaintiff; therefore, there is no genuine issue of material fact, and this claim fails as a matter of law.**

In order to prove assault and battery, a plaintiff must prove that the offending party placed plaintiff in reasonable fear of bodily harm or engaged in forcible contact. See Mellen v. Lane, 377 S.C. 261, 276, 659 S.E.2d 236, 244 (Ct. App. 2008); Gathers v. Harris Teeter Supermarket, Inc., 282 S.C. 220, 230, 317 S.E.2d 748, 754 (Ct. App. 1984). Furthermore, in the civil context, intent is not an essential element to prove assault and battery. Herring v. Lawrence Warehouse Co., 222 S.C. 226.

In the present case, Plaintiff admits that Defendants did not touch her or even approach her in a threatening manner. Defendants are not responsible for the alleged conduct of John Doe Customer. Moreover, Plaintiff was informed by law enforcement that there were no grounds for criminal assault and battery charges against the John Doe Customer. Plaintiff responded “no” when asked if there was any other way police could assist. Additionally, Plaintiff never properly alleged assault and battery against Defendants, instead affirming that the only potential contact she endured was from the unaffiliated John Doe Customer. As a result, Plaintiff’s claim fails as a matter of law.

II. As Plaintiff was unable to evidence any special harm and any statements overheard from Defendants’ conversations with law enforcement by Plaintiff were privileged through Hoffman, Plaintiff’s Defamation and Slander claims fail as a matter of law.

To prove 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.” McBride v. Sch. Dist. of Greenville Cty., 389 S.C. 546, 559–60, 698 S.E.2d 845, 852 (Ct. App. 2010) (emphasis added). ““A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating with him.”” Parrish v. Allison, 376 S.C. 308, 321, 656 S.E.2d 382, 389 (Ct. App. 2007) (quoting Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 530, 506 S.E.2d 497, 513 (1998)). With this first element of defamation, the trial court must initially determine if the communication is reasonably capable of conveying a defamatory meaning. Id. at 530, 506 S.E.2d at 513; White v. Wilkerson, 328 S.C. 179, 183, 493 S.E.2d 345, 347 (1997). “Some statements are so clearly innocent or defamatory the court is justified in determining the question itself.” Id. (citing Holtzscheiter, 332 S.C. at 530, 506 S.E.2d at 512).

“In a defamation action, the defendant may assert the affirmative defense of conditional or qualified privilege.” Swinton Creek Nursery v. Edisto Farm Credit, ACA, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). Under a qualified privilege defense, “one who publishes defamatory matter concerning another is not liable” if there is a conditional privilege that is not abused. Id. It is the duty of the court to determine if the statement is privileged as a matter of law. Murray v. Thornton, 344 S.C. 129, 140, 542 S.E.2d 743, 749 (Ct. App. 2001). Communications made in a criminal investigation for the purpose of detecting the suspects are privileged. Bell v. Bank of Abbeville, 208 S.C. 490, 494, 38 S.E.2d 641, 643 (1946).

In the present case, Plaintiff has only identified a single statement from Walmart to law enforcement that forms the basis of her claims. Plaintiff contends Jane Doe Associate told an officer “That never occurred” after Plaintiff had summoned law enforcement to the location based on an incident between Plaintiff and John Doe Customer. Exhibit B, Pl.’s Dep. Tr. 40:23-41:5. Plaintiff admitted that she *only* heard this isolated statement, and she did not hear the rest of Jane Doe’s conversation with the police officer. Id. Absent further detail or context, there is no evidence this statement could be actionable defamation against Plaintiff. In isolation, even taken in the light most favorable to Plaintiff, the brief statement alone is so clearly innocent that this Court is justified in determining that the statement is not capable of harming Plaintiff’s reputation. Moreover, communications to law enforcement often enjoy a qualified privilege. Based on the evidence in this case, Jane Doe Associate’s statement was within the scope of qualified privilege communication to law enforcement, and the privilege was not abused. Therefore, Plaintiff’s claim fails as a matter of law.

III. Plaintiff has not shown any intentional or reckless action that Defendants committed against Plaintiff for Intentional Infliction of Emotional Distress (IIED), so Plaintiff's claim fails as a matter of law.

To recover for IIED, a plaintiff must establish:

- (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
- (2) the defendant's conduct was so extreme and outrageous so as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community;
- (3) the actions of the defendant caused Plaintiff's emotional distress; and
- (4) the emotional distress suffered by Plaintiff was severe such that no reasonable man could be expected to endure it.

Hansson v. Scalise Builders of S.C., 374 S.C. 352, 356, 650 S.E.2d 68, 70-71 (2007)

(quoting Ford v. Hutson, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981) (internal quotation marks omitted)). “Where evidence is undisputed that the defendant acted in good faith and in a reasonable manner, his conduct cannot be characterized as so extreme and outrageous as to exceed all possible bounds of decency and atrocious and utterly intolerable in a civilized community.” *Id.*

In the present case, Plaintiff has not described any severe emotional distress such that no reasonable person could be expected to endure it, nor provided any examples of her distress at the time of the incident or since. Plaintiff has also failed to provide any evidence that Defendants were reckless or intended to upset Plaintiff with their statement to law enforcement. Further, Plaintiff did not show that Defendants were certain or substantially certain that the statement to law enforcement was beyond all possible bounds of decency, noting, in fact, that Plaintiff was unable to hear the statement in its entirety. As a result, Plaintiff's claims fail as a matter of law.

IV. Plaintiff has not shown that Defendants owed her a duty of care in the subject incident, so Plaintiff's remaining negligence claim fails as a matter of law.

To establish a cause of action for negligence, “a plaintiff must show ... three essential elements: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by

negligent act or omission; and (3) damage proximately resulting from the breach of duty.” Trotter v. State Farm Mut. Auto. Ins. Co., 297 S.C. 465, 474, 377 S.E.2d 343, 348 (Ct. App. 1988).

Retail store defendants owe the public and customers a duty of ordinary care to keep the subject store in a reasonably safe condition. See Richardson v. Piggly Wiggly Cent., Inc., 404 S.C. 231, 743 S.E.2d 858 (Ct. App. 2013) (“In South Carolina, a merchant owes a customer a duty of ordinary care to keep his premises in a reasonably safe condition.”) (citing Wimberley v. Winn-Dixie Greenville, Inc., 252 S.C. 117, 120-21, 165 S.E.2d 627, 628 (1969)).

Further, under a cause of action for negligence, a plaintiff may not recover damages for mental anguish or emotional distress absent physical injury. Dooley v. Richland Memorial Hosp., 283 S.C. 372, 322 S.E.2d 669 (1984); see also Babb v. Lee Cty. Landfill SC, LLC, 405 S.C. 129, 141, 747 S.E.2d 468, 474 (2013) (South Carolina jurisprudence does not permit recovery for sheer annoyance and discomfort); Andrews v. Piedmont Air Lines, 297 S.C. 367, 370, 377 S.E.2d 127, 129 (Ct. App. 1989) (emotional discomfort is not an actionable damage in tort even if it results from the defendant’s negligence).

Plaintiff’s deposition testimony is clear that she did not suffer any physical injuries in this subject incident. Based on this fact alone, Defendants are entitled to summary judgment on Plaintiff’s negligence cause of action. However, even if Plaintiff did suffer physical injury, Plaintiff has also not provided any evidence that Defendants breached any duty that may have been owed to her thereby proximately causing any actionable damages.

Conclusion

Accordingly, this Court **denies** Plaintiff’s Motion to Amend Complaint and **grants** Defendants’ Motion for Summary Judgment. Plaintiff’s Complaint is **dismissed with prejudice**.

IT IS SO ORDERED.



Sumter Common Pleas

Case Caption: Gale Lyons VS Walmart Inc , defendant, et al

Case Number: 2023CP4300462

Type: Order/Summary Judgment

So Ordered

S/George M. McFaddin, Jr., #2759