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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*

CORRECTED FINAL BRIEF OF APPELLANT

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

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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 had not received a ruling on these Motions at the time of filing the Initial Brief.

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.

Following 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 a revision filed Jan. 2, 2024.

Issue Two: Order alleges there were no factual allegations in the Amended Complaint; however, there were. Also, Appellant was denied access to some factual evidence in the November 11, 2022, Judge Jean Toal's hearing by being denied discovery, for which Appellant had not yet received a transcript and had requested a Motion for Continuance that had not yet been answered by the court at the time of filing the Initial Brief.

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 that deprived Appellant of a fair hearing by not allowing effective communication.

Issue Six: Order alleges Appellant's complaint was not filed in a timely manner; however, it was filed on Jan. 4, 2022, within allotted response time.

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 can demonstrate 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 had not yet received the transcript and had filed a Motion for Continuance at the time of filing of the Initial Brief). 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 a likely catalyst

in many of 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 Order dated 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 to why a pro se complainant cannot request an in-person hearing or, in the alternative, be offered a room set-up by Court IT that would be technology-ready for a WebEx hearing

Issue 6 is reviewable for clear error

Argument

Issue One: Order alleges there was no Revision of Amended Complaint; however, a revision was filed Jan. 2, 2024.

Order (R. p. 23, lines 6-7) 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 (R. pp. 239-246). 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 (R. pp. 245-246). 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 (R. pp. 245-246), 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 being 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 Appellant herself was told in an initial meeting by DHEC HR representative Arlene Posey that Appellant 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 employee 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 (R. p. 24, lines 12-15), 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.

Issue Two: Order alleges there were 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, 2022 hearing Judge Jean Toal's hearing, for which Appellant had not yet received a transcript and had requested a Motion for Continuance that had not yet been decided at the time of filing the Initial Brief.

The Order's alleging that the original Complaint "lacked any factual support" (R. p. 22, lines 15-16) 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 (R. pp. 57-154) are complex, they are nonetheless factual and legitimate.

(a) Appellant was assigned administration of a grant (R. p. 46, lines 12-34) and (R. pp 77-78) 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 had not received transcript (R. pp 197-203) and had filed a Motion for Continuance with this Court that had not yet been decided at the time of filing the Initial Brief), and the FOIA request Appellant made to Respondent for this information was, at the time of filing the Initial Brief, over 188 days past due (R. pp. 198-203).

(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 (R. pp. 57-75) that were rooted in discriminatory views of people of age (R. p 76). 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 (R. pp. 57-75), 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 (R. p. 61, lines 14-22) and (R. p. 62). Respondent Human Resources accepted that discriminatory accusation of Appellant's BEING SLOW, even though 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 (R. p. 74, lines 18-22). 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 had not yet received and had filed a Motion of Continuance with this Court that has not yet been decided at the time of filing the Initial Brief. 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 ordering a tape recorder was contrived and ridiculous (R. p. 90)

[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 had not yet been received by the

Appellant and for which the Appellant had filed a Motion of Continuance with this Court that had not yet been decided at the time of filing the Initial Brief.

[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 had filed a Motion for Continuance with this Court that had not yet been decided at the time of filing the Initial Brief.

[4] Supervisor accused Appellant of BEING SLOW, when Supervisor was intentionally withholding information that Appellant needed to fulfill a task (R. p. 57, lines 12-14) and (R. p. 60, lines 17-19) and (R. p. 71, lines 1-14) and (R. p. 93) and (R. pp. 95-101). This was harassment. Emails to this effect were submitted and are hard evidence.

[5] Supervisor accused Appellant of MAKING A MISTAKE in the minutes. Despite numerous requests to be shown the mistake, Supervisor never presented the document (R. p. 36, lines 57) and (R. p.62, lines 14-17).

[6] Supervisor accused Appellant of BEING SLOW in submitting an invoice (R. p. 58, lines 3-10) and (R. p.65, lines 24-32) and R. p. 68, lines 15-30) and (R. p. 69, lines 1-18). 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 had not yet been received by Appellant and for which a Motion of Continuance had been requested from the Court which had not yet been decided at the time of filing the Initial Brief.

[7] Supervisor accused Appellant of FORGETTING that Budget Analyst needed to be in a meeting he was not in (R. p. 58, lines 11-

17). Appellant had notified the Supervisor well before the meeting that Budget Analyst was on vacation and asked 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 (R. p.58, lines 29-32). 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 (R. p. 59, lines 7-13). The samples were sent two minutes after Appellant received them from interviewee R. p.

83). 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 Appellant offered to do the paperwork for a new hire's laptop and phone (R. p. 73, lines 1-4) and (R. p. 88). 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.

[12] Supervisor accused Appellant of NOT KNOWING HOW EMAIL WORKS (R. p. 60, lines 31-33) and (R. p 73, lines 5-16), 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 (R. p.61, lines 1-5) and (R. p. 73, lines 21-23). 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 was 188 days overdue for response at the time of filing the Initial Brief.

[14] Supervisor accused Appellant of BEING SLOW about getting an answer regarding "The Good Behavior Game." (R. p. 61, lines 23-26) Supervisor had already spoken directly with the person with the answer (R. pp 93-94). (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 (R. pp. 95-96). These emails and their dates are direct evidence.

[I5] Supervisor accused Appellant of BEING SLOW to switch virtual meetings from SKYPE to TEAMS (R. p. 61, lines 28-33). 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 (R. p.24, lines 10-12) 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 (R. p.24, lines 16-17) 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 driver's license showing February 17, 1959, as her birth date. And Appellant did provide the date of termination as August 5, 2020. Appellant was 61 years old on the date of termination. Appellant's date of birth was on the attachments' page 99 and 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 that deprived Appellant of a fair hearing by not allowing effective communication.

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 to 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.

In the Newman transcript, Respondent refers to the previous hearing in Judge Toal's court and the summary in the Order is inaccurate (R. p. 174, lines 13-24). For that reason, Appellant argues that she should have access to the Toal transcript, which she had not received by the filing of the Initial Brief.

In addition, Appellant mentions she is having issues (R. p. 170, lines 6-13) and (R. p. 174, lines 10-13). Appellant explains that the issue she is having with the technology, which prevented her from effectively presenting her case. The written transcript in no way presents the problem as effectively as an excerpt from the audio recording, which is why Appellant requested an Exception to Rule 607 regarding audio transcripts.

Issue Six: Order alleges Appellant's complaint was not filed in a timely manner; however, it was filed on Jan. 4, 2022, within allotted response time.

The Order (R. p., 24, lines 13-15) alleges that Appellant did not prove she filed the complaint in a timely manner. The EEOC's Notice of Right to Sue with accompanying letter was dated October 7, 2021 (R. pp. 236-237). The original complaint with the Court filing date was of January 4, 2022 (R. p. 155). Appellant did include the documents via email when Judge Newman's assistant requested any last minute documents from all parties before the hearing, and Respondent received them.

Also following the EEOC's Notice of Right to Sue, please see the Appellant's original complaint to SC Human Affairs Commission (SCHAC) turned in to SCHAC on October 6, 2020 (R. p. 233-234). The timeline indicated in the documents is as follows:

August 5, 2020 – Appellant's termination

October 6, 2020 – Charge of Discrimination made to SCHAC (R. p. 233-234)

February 22, 2021 – Letter from SCHAC referring Case to EEOC (R. p. 232 – Note: The document was missed in the scan of the Record on Appeal, and a motion was filed March 1, 2026, requesting permission to correct.)

October 7, 2021 – Date of Letter from EEOC sending Notice of Right to Sue (R. pp. 236-237)

January 4, 2022 – Appellant's Complaint filed with Richland County Circuit Court (R. p. 155)

The Order states that this documentation was not presented in the Appellant's Amended Complaint (R. p. 24, lines 12-15). 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 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 referenced this information in the August 8, 2023, hearing. 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 (R. p. 236). Appellant not only filed within 90 days of receiving receipt of the Notice of Right to Sue, she filed within 90 days of the date on the accompanying letter. Appellant insists 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. Appellant cannot be expected to file her complaint before she receives the EEOC's Notice of Right to Sue, since by law she cannot file her complaint without the EEOC's Notice of Right to Sue. 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

Teresa McWilliams

Sunday, March 1, 2026
Columbia, South Carolina