

STATE OF SOUTH CAROLINA FILED - RECORD THE COURT OF COMMON PLEAS FOR
COUNTY OF DORCHESTER 2013 NOV 26) AM 11:54 THE FIRST JUDICIAL CIRCUIT

Audrey Kate Durham,)
Plaintiff,)
vs.)
South Carolina Department of)
Transportation,)
Defendant.)

CHERYL GRAHAM
CLERK OF COURT Case No.: 2012-CP-18-2686
DORCHESTER COUNTY

**ORDER DENYING DEFENDANT'S
MOTION TO ALTER OR AMEND
JUDGMENT**

CERTIFIED COPY
2013 NOV 26 AM 11:54
Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

FACTUAL BACKGROUND

Defendant filed a Motion to Dismiss which was heard by me on April 1, 2012 in the
Dorchester County Courthouse. Present at the Motion Hearing were counsel for Plaintiff, Nancy
Bloodgood, and counsel for Defendant, Bob J. Conley. Defendant moved to dismiss Plaintiff's
disability discrimination claim pursuant to Rule 12(b) (6), SCRCF on the basis that the Court
lacked subject matter jurisdiction. Specifically, Defendant alleged there is no private cause of
action against the State for discrimination by a State employee because S.C. Code § 1-13-90 (c)
requires the South Carolina Human Affairs Commission (SHAC) to investigate charges of
discrimination against a state agency and either issue an order awarding damages or an order
dismissing the complaint. Defendant alleged subject matter jurisdiction for Plaintiff's claims lies
exclusively with SHAC and not with any circuit court. Here, Plaintiff received a Notice of Right
to Sue from SCHAC dated September 21, 2012 stating, "If you intend to *sue* the Respondent
named in your chargeYou may contact the SHAC representative named above if you have
any questions about your legal rights including *advice on which Circuit Court has jurisdiction to
hear your case.*" (emphasis added).

After reviewing the pleadings, briefs and exhibits submitted by each party, case law, and hearing oral argument from counsel, I issued an Order dated June 26, 2013, and filed July 2, 2013, denying Defendant's Motion to Dismiss. Thereafter, Defendant filed a Motion to Alter or Amend the Judgment. After due deliberation, review of the filed memoranda, case law and exhibits and arguments of counsel, and incorporating herein the findings of fact and conclusions of law made in my previous Order Denying Defendant's Motion to Dismiss, Defendant's Motion to Alter or Amend the Judgment is denied.

STANDARD OF REVIEW

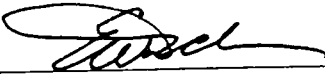
Pursuant to Rules 52(a) and 59(e) of the South Carolina Rules of Civil Procedure, a party may file a motion requesting that the Court alter or amend its judgment. SCRPC 52(a) and 59(e). The motion may request that the Court amend its findings or make additional findings. SCRPC 52(a). The motion must be served on all parties and sent to the judge within ten day after the moving party receives written notice of the entry of the order. SCRPC 59(e),(g).

LEGAL ARGUMENT

The Court believes that its order denying dismissal of this law suit was proper based on the facts alleged in, and inferences from, the Complaint and the language of Human Affairs Law itself. The Court further believes that it properly addressed Defendant's subject matter jurisdiction claim when it stated that "the remedial nature of the statutes and a liberal construing thereof require the Court to allow some form of redress for the Plaintiff." The Circuit Court is South Carolina's Court of general jurisdiction. Because the Court found that the Legislature intended a plaintiff like Ms. Durham to have a remedy for an alleged injury, and a remedy is not available through an internal hearing, the Court believes it does have jurisdiction over this case. The Court declines to alter its prior decision holding that Ms. Durham is entitled to bring her claim in this Court. Further, in permitting Ms. Durham to bring a discrimination court in

circuit court after SHAC has issued a Notice of Right to Sue, the Court is not improperly creating an unintended private cause of action or denying SCDOT the statutorily mandated mode of trial.

AND IT IS SO ORDERED!



The Honorable Edgar Warren Dickson
Judge for the First Judicial Circuit

Orangeburg, South Carolina

Date: 11/21/13

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

CERTIFIED COPY

Audrey Kate Durham

2013 NOV 26 AM 11:50

Department Of
Transportation South
Carolina

Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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. See Page 2 for additional information.
- 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.

ORDER INFORMATION

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

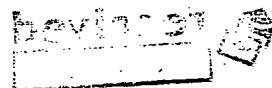
INFORMATION FOR THE JUDGMENT INDEX

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)

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

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **11/26/2013**, and a copy mailed first class or placed in the appropriate attorney's box on **11/26/2013**, to attorneys of record or to parties (when appearing pro se) as follows:

Nancy Bloodgood 895 Island Park Drive Ste 202 Charleston, SC 29492

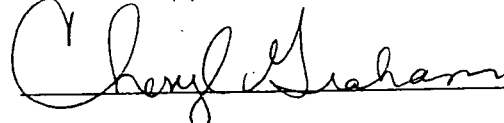
Caroline Wrenn Cleveland 171 Church St., Ste. 310 Charleston, SC 29401-3140

Bob J. Conley 171 Church St., Ste. 310 Charleston, SC 29401

Joshua Drew Cagle One Seventy One Church Street Suite 310 Charleston, SC 29401

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Cheryl Graham - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

