

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM THE
Court of Common Pleas

The Honorable Clifton B. Newman, Fifth Judicial
Circuit

Case No.: 2022-CP-40-00027

APPELLATE CASE NO.: 2024-001835

Teresa McWilliams.....Appellant,

v

South Carolina Department of Health and Environmental
Control.....Respondent.

FINAL REPLY BRIEF

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

Meredith Seibert, Esquire
P.O. Box 1486
Columbia, SC 29202
(803) 790-0603
Attorney for Respondent

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REPLY TO RESPONDENT'S COUNTER STATEMENT OF ISSUES

ON APPEAL

1. Appellant did preserve all issues for appellate review.
2. The Circuit Court ignored facts submitted in Appellant's Amended Complaint and exceeded its purview by passing judgment on and weighing the evidence.
3. Appellant appropriately filed a claim with the South Carolina Human Affairs Commission and followed all South Carolina Human Affairs Law pursuant to filing a claim with the Circuit Court.

STATEMENT OF THE CASE

Teresa McWilliams (Appellant), who is proceeding *pro se*, initiated her action by filing a complaint with the South Carolina Human Affairs Commission either October 6, 2020, or January 6, 2021. (The discrepancy in paperwork is discussed in the argument. However, either date is within the 180-day deadline to file a complaint with the SC Human Affairs Commission, since Appellant's termination was August 5, 2020.. Using the January 6 date is calculated as 154 days.)

On February 22, 2021, Appellant received a letter from the South Carolina Human Affairs Commission (SCHAC) stating that Appellant's complaint was being transferred to the U.S. Equal Employment Opportunity Commission (EEOC). Appellant was told verbally by SCHAC that it was being transferred to the EEOC because Appellant was previously employed at SCHAC, and SCHAC considered that relationship as constituting a conflict of interest.

On October 7, 2021, a letter was mailed to Appellant from the EEOC advising Appellant she must file a lawsuit within 90 days of the date Appellant received the EEOC letter.

Appellant filed a Summons and Complaint in the Court of Common Pleas on January 4, 2022. At most, that time period is calculated as 88 days.

On November 30, 2022, an in-person hearing was held with Chief Justice Toal presiding. Some documents, such as the EEOC letter and proof of Appellant's age, were presented to Chief Justice Toal, and Chief Justice Toal accepted those proofs and subsequently ruled that Appellant could file an Amended Complaint. The transcripts of the Chief Justice Toal hearing are not included in this Appeal, because this Appellate Court denied Appellant's request to retrieve them.

On December 30, 2022, Appellant filed her Amended Complaint and serviced the Respondent in the same manner as always, which was by certified mail. Appellant has attached to that document in her files a green Certified Mail Signature Confirmation Article Number 7020 1810 0001 6281 2274. The Amended Complaint was over 200 pages long and included attachments, referred to as Exhibits, that were referenced within the body of the complaint.

A subsequent hearing took place on August 8, 2023, The Honorable Clifton Newman presiding. An Order to grant the Respondent's Motion to Dismiss was dated September 30, 2024, Appellant is appealing this Order because, during the

hearing Appellant complained about the technology on the on—line hearing being faulty and Appellant could not appropriately plead her case. In addition, the wording of the Order suggests that the evidence presented in the Amended Complaint as Exhibits was not considered, which is affirmed in the Respondent's Final Brief. Also, statements made in reference to evidence suggest that judgement was passed on the truth of the allegations, which falls under the purview of a trial, rather than on the legal sufficiency of the complaint. At the pleading stage, the court does not weigh evidence or determine whether the complainant can ultimately prove the allegations. Appellant did, without question, present real allegations and real evidence. The Appellant's Notice to Appeal was filed with the Supreme Court October 28, 2024, which is within the 30-day deadline.

FACTS

Appellant is a former employee of the Respondent South Carolina Department of Health and Environmental Control (DHEC). (Amended Complaint, p. 4; ROA p. 46 paragraph 4) Appellant at the time was 61 years old. (Documentation was presented to Chief Justice Toal in the in-person hearing on November 30, 2022, which *pro se* Appellant construed as having be presented to the court.) Appellant reported to DHEC compliance, after multiple conversations with her supervisor and the grant writer, that

\$5,394.45 had been hidden in a grant she had been given to oversee that was not being distributed. (Amended Complaint no. 6; ROA p. 46 para 6).

Appellant states that this report was the incentive for her termination by her supervisor and presented testimony/evidence of her supervisor's screaming words to the Appellant in supervisors office after supervisor learned of the meeting with DHEC Compliance. (Amended Complaint p.4; ROA p. 46, paragraph 5). Appellant provides evidence of her supervisor's attempts to terminate Appellant based on an alleged dress code infraction (Amended Complaint p. 5; ROA p. 47, paragraph 1) and an alleged incident of insubordination (Amended Complaint p. 5; ROA p. 47, paragraph 2). When those attempts at termination were not allowed by DHEC Human Resources, Appellant's supervisor began a campaign of harassment, which Appellant reported to DHEC Human Resources (Amended Complaint Exhibit 10; ROA p. 95, Exhibit 10). It was not until supervisor began making allegations that were "veiled accusations that the Plaintiff was too old to do her job" that DHEC Human Resources began Warning of Substandard Performance (WOSP) meetings, even though the Appellant demonstrated with real evidence that the accusations were false. (Amended Complaint Exhibits 1-12; ROA p. 46-104 and Exhibits 1-12). Appellant also discovered that other employees in protected categories were terminated during this same time

period, which was during the Pandemic, terminations increased more than 50%, a person over 40 was terminated 13 times more frequently than a younger employee, less than 3% of employees in the WOSP were retained, DHEC had 0 (zero) Work Improvement Plans (WIPs) they could produce, for every male terminated 3 females were terminated, a non-white employee was 50% more likely to be terminated than a white employee, (Amended Complaint found in ROA pp. 239-246) . Appellant also demonstrated to DHEC Human Resources that Appellate was responding to any complaints made by her supervisor and had offered a number of work improvement suggestions, which the supervisor stated weren't good enough. (Amended Complaint found in ROA, p 54, paragraph 3 and p. 63, paragraph 4) Appellant also complained that the HR representative assigned to represent Appellate had a job application requesting employment with the Appellant's supervisor. (Amended Complaint in ROA p. 54, paragraph 5) Appellant also complained that representative was being added to the WOSP process that was the grant-writer who had hidden the \$5,394.45 in the grant in the first place. Appellant argues that she was "terminated as an act of retaliation and the method used to argue cause was veiled age discrimination." (Amended complaint in the ROA p 46, para 4-6) Appellant also argued that, whether or

not the discrimination was intention, it had a disparate effect. (Amended Complaint in ROA p 54, paragraph 8)

STANDARD OF REVIEW

On appeal from an order granting dismissal pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the circuit court. *Grimsley v. South Carolina Law Enforcement Division*, 396 S.C. 276, 281, 721 S.E.2d 423, 426 (2012); *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009).

Under that standard, the Court must construe the complaint in the light most favorable to the nonmoving party and determine whether the facts alleged, together with the inferences reasonably deducible from those facts, would entitle the plaintiff to relief under any theory of the case. *Grimsley*, 396 S.C. at 281, 721 S.E.2d at 426. If the alleged facts and reasonably deducible inferences would entitle the plaintiff to any relief, dismissal under Rule 12(b)(6) is improper. *Id.*

A Rule 12(b)(6) motion addresses only the legal sufficiency of the pleading; it is not a vehicle for deciding the underlying merits of the claim. *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019). The allegations of the complaint must be viewed in the light most favorable to the

plaintiff, with every reasonable doubt resolved in the plaintiff's favor. *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999).

The complaint should not be dismissed merely because the court doubts the plaintiff ultimately will prevail. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247–48 (2007). At the pleading stage, the court does not weigh evidence, resolve factual disputes, assess the credibility of witnesses, or determine whether the plaintiff can ultimately prove the allegations.

AUTHORITIES

1. Rule 12(b)(6), SCRCF – A motion may be made for "failure to state facts sufficient to constitute a cause of action." If the court considers matters outside the pleadings, the motion is converted to one for summary judgment.
2. *Disabato v. South Carolina Association of School Administrators*, 404 S.C. 433, 746 S.E.2d 329 (2013) – The South Carolina Supreme Court stated that on a Rule 12(b)(6) motion:
 - the court considers only the factual allegations in the complaint;
 - all well-pleaded allegations are accepted as true; and
 - dismissal is improper if those facts would entitle the plaintiff to relief under any legal theory.

3. Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007) – Reaffirms that the complaint must be viewed in the light most favorable to the plaintiff, and if the alleged facts and reasonable inferences would support relief on any theory, dismissal is improper.
4. Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999) – Frequently cited for the proposition that a complaint should survive a Rule 12(b)(6) motion if the facts alleged and the reasonable inferences drawn from them would entitle the plaintiff to relief on any legal theory.

ARGUMENT

The foundation for the Appellant’s appeal is encapsulated in the Respondent’s statement in her Final Brief, page 8, line 1: “The [lower] court never considered if the attachments [evidence] were incorporated into the complaint and, if so, whether there was sufficient information therein.” It is the purview of the Motion to Dismiss hearing to determine the presence of evidence, not to weigh its value.(Rule 12(b)(6), SCRCF; Disabato v South Carolina Association of School Administrators, 404 S.C. 433, 746 S.E. 2d 329 (2013). By never considering the proffered evidence, the lower court failed in its duty.

Follows here is the Appellant’s rebuttal to the Respondent’s Final Brief:

1. Appellant has introduced new arguments for the first time on appeal.

Appellant did complain technology limited her ability to voice her case properly (August 8, 2023 Transcripts p. 9-11 13-14 (ROA p 174 paragraph 11, p. 176 paragraph 20.) If Appellate were allowed to present the recording of the hearing, her limitations would be evidence to anyone who can listen. Her sentences are truncated individual words with several seconds between each word to avoid overlapping echo in her ear. Appellant argues that the extreme lack of communication was evident, and the presiding justice should have realized the Appellant was limited in presented arguments by her complaint in the hearing. (Appellant was also worn down by other age-discrimination cases where another judge had told her speaking into her cell phone was good enough, even though Appellant wanted to be seen as well as heard. Appellant had complained numerous times and asked for a court IT to be present in the online hearings to help her. In those cases she did ask for an in-person hearing and her request for an in-person hearing was ignored.)

Appellant points out that the 48 pages of evidence, Exhibits 1-14, which the deciding circuit justice refused to consider belongs to the purview of the trial process. It is not the purview of the circuit

justice to refuse to consider evidence because a *pro se* complainant did not present it in the manner to which he is accustomed. It is the purview of the Appellant to present the evidence to the jury in a trial process. There is no legitimate argument to disallow it, when it was obviously part of the Amended Complaint and is referenced therein as follows (pagination refers to the Amended Complaint as paginated within the Record on Appeal): pages 57, 58, 59, 60, 61, and page 76 is a chart of references to the evidence that lists 50 links from the Amended Complaint to the attachments. Respondent's arguments are invalid, since the evidence and arguments were presented to the lower court.

Appellant argues that the Memorandum (Amended Complaint found in ROA pp. 239-246) was not considered by the lower court because of proper procedure; however, the purview of the Motion to Dismiss hearing is to determine if there is evidence and not how it was presented. Once again, this is a procedural issue that is easily corrected and a *pro se* complainant must have the opportunity to do so. The Memorandum shows that other terminated people in protected categories were terminated at the same time Appellant was, that the terminations were statistically higher by 50% in that pandemic year for no reason, and

almost every person terminated was in a protected category. It took the Appellate some time to acquire this information, because she was told by Chief Justice Toal that she could not subpoena. Therefore, the Appellant used the Freedom of Information Act (FOIA) to obtain the information, and DHEC was significantly outside the legal requirement of returning the information to her. Regardless, the Memorandum was filed with the court, and Respondent received a copy via certified mail.

Respondent argues that Appellant never offered evidence of her age and that she had not shown evidence that she filed lawfully and in a timely manner. In the in-person hearing with Chief Justice Toal, Respondent presented this same argument and Appellant presented those documents directly to Chief Justice Toal, including proof of her age, and the EEOC letter of Notice of Right to Sue, and the letter she received from SCHAC advising Appellant that her complaint was forwarded to the EEOC. The Appellant is a *pro se* complainant and believed presenting those documents in court settled the matter, which was why Chief Justice Toal gave Appellant opportunity to file an Amended Complaint. Appellant was surprised when the matter was argued again by Respondent in the subsequent hearing with Justice Newman, but Appellant stated that she had presented those documents for Chief Justice Toal's review. (She also

had them available at that time for Justice Newman's review.)

Respondent argues that Chief Justice Toal told Appellant to put those documents in the Amended Complaint, but that is just not true. Chief Justice Toal did not mention those specific documents.

2. Respondent claims Appellant has not stated an adequate cause of action, but Appellant argues the cause of action is clear if not delineated. Based on South Carolina Human Affairs Law: (1) Appellant was in a protected age group (40 or older). (2) Appellant was qualified for her position and performing it satisfactorily (which is why invalid and untrue accusations were necessary) (3) Appellant suffered adverse employment action—termination and blacklisting (Appellant also stated her financial losses due to unjust termination and blacklisting-- ROA p. 141, Exhibit 9.) (4) Appellant's age was a motivating factor in DHEC Human Resources accepting the invalid and slanderous accusations made by supervisor, (It is irrelevant whether this discrimination was intentional or not; what is relevant is it had a disparate effect).

Respondent argues Appellant did not quote the South Carolina Human Affairs Law until Respondent's accusations were made. It seems to

Appellant somewhat disingenuous for the South Carolina Justice System to pretend they do not know that age-discrimination is illegal. Appellant offers the following question: If murder is not called “murder,” is it not still murder? Appellant argues there must be some latitude concerning a *pro se* complainant to amend such procedural instances.

Respondent makes the statement on in her Final Brief, page 10, line 3:

“Respondent acknowledges that documents or exhibits that are attached to and incorporated by reference to a complaint may be considered part and parcel of the pleading pursuant to Rule 10(c), SCRCPP.” However, she contests the Exhibits were not incorporated into the complaint. Appellant repeats that they are incorporated in the complaint as follows (pagination refers to the Amended Complaint as paginated within the Record on Appeal): pages 57, 58, 59, 60, 61, and page 76 is a chart of references to the evidence that lists 50 links from the Amended Complaint to the attachments..

3. Respondent argues that Appellant did not reference SCHAL and did not file in a timely manner.

Appellant repeats the following in rebuttal:

Appellant *pro se* initiated her action by filing a complaint with the South Carolina Human Affairs Commission on January 6, 2021. That date is within the 180-day deadline to file a complaint with the SC Human Affairs Commission, since Appellant's termination was August 5, 2020.. January 6 date calculates to 154 days—deadline is 180 days.)

There is discrepancy regarding the intake date on the SCHAC intake form. Appellant attests that the date beside her signature should be January 6, 2021. The 6th day is accurate. When Appellate took her intake to SCHAC in person, the doors were locked because of the Pandemic. When Appellant called and requested entry, she was informed that there was no one in the office to perform intake of the complaint. Appellant was emotionally upset, because she knew the date of the deadline was near, the roads were icy and might prevent her coming back the next day, she did not have the money for gas (at this point she had been unemployed for almost five months without unemployment benefits, she was blacklisted from government employment, and due to the Pandemic there were no non-government jobs hiring.) The SCHAC employee perceived her emotional distress and apparently received permission to go ahead and receive her complaint, because he came out to Appellant's car and said they would go ahead and take the complaint. Appellant gave him the complaint outside the building. She was so relieved that SCHAC took that complaint she did not realize she was leaving without a copy

with a date stamp. Appellant postulates that something happened within SCHAC such that the complaint was not stamped on the day Appellant left it with SCHAC, which was January 6, 2021. Under the standard *Grimsley v. South Carolina Law Enforcement Division*, 396 S.C. 276, 281, 721 S.E.2d 423, 426 (2012); *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009), the Court must construe the complaint in the light most favorable to the nonmoving party and determine whether the facts alleged, together with the inferences reasonably deducible from those facts, would entitle the plaintiff to relief under any theory of the case. *Grimsley*, 396 S.C. at 281, 721 S.E.2d at 426. If the alleged facts and reasonably deducible inferences would entitle the plaintiff to any relief, dismissal under Rule 12(b)(6) is improper. *Id.*

On February 22, 2021, Appellant received a letter from the South Carolina Human Affairs Commission (SCHAC) stating that Appellant's complaint was being transferred to the U.S. Equal Employment Opportunity Commission (EEOC) (ROA p. 232). Appellant was told verbally by SCHAC that it was being transferred to the EEOC because Appellant was previously employed at SCHAC, and SCHAC considered that relationship as constituting a conflict of interest. Please notice that the SCHAC letter did NOT say that Appellant had filed in an untimely manner.

On October 7, 2021, a letter was mailed to Appellant from the EEOC advising Appellant she must file a lawsuit within 90 days of the date Appellant received the EEOC letter (ROA p. 235). Appellant filed a Summons and Complaint on January 4, 2022 (ROA, p 154). At most, that time period is calculated as 88 days—the deadline is 90 days.

Deadlines were always a priority in the mind of Appellant, and she was very careful to meet them. If it seems to the court Appellant could have filed faster, the challenge the Appellant faced was in acquiring evidence properly. Appellant had been told by a judge in an unemployment benefits hearing that Appellant could not offer evidence unless properly subpoenaed. Appellant carried that belief with her into this age-discrimination complaint, but the cost of subpoena is substantial, particularly hiring a company to service the subpoena, and particularly for a person who has been terminated and blacklisted from employment such that she was unemployed for two years and upon finally being able to enter the non-government workforce post-pandemic entered a temporary job with a reduced salary. Appellant resorted to using the FOIA process. Respondent's replies were outside the legal limit allowed to provide the information. Appellant did not receive the transcript from the Chief Justice Toal hearing until after she had been served the Order approving the Respondent's Motion to Dismiss.

Appellant attests that she moved as quickly as possible under the circumstances and deadlines were always a priority in her mind, but she also was required to follow all administrative requirements, those being: she filed appropriately with SCHAC within the 180-day deadline, SCHAC referred her case to the EEOC, Appellant received a letter dated October 7, 2021, giving her Notice of Right to Sue, which gave Appellant 90 days to file suit with the circuit court, and which she did. Appellant could not move forward with a circuit court complaint until completing all of these administrative hurdles. Appellant asserts there seems to be a contradiction in Respondent's argument regarding the unlawful nature of SCHAC's referring complaints to the EEOC and issuing Notices of Right to Sue, since SCHAC does just that. Appellant asks the question, does that mean every complainant that has received a Notice of Right to Sue from SCHAC over these many decades has a cause for complaint against SCHAC that they can pursue in South Carolina circuit courts?

CONCLUSION

For the reasons outlined above, Appellant pleads that this court deny the Respondent's Motion to Dismiss. If this Court must allow the lower court's Motion to Dismiss to stand, Appellant requests this court does so

without prejudice, since the Respondent's complaints are procedural and not substantive.

Respectfully Submitted;

By: Teresa McWilliams

Teresa McWilliams

Saturday, July 18, 2026
Columbia, South Carolina