SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

C.A. No.: 2012-CP-21-3016
Ct. App. No.: 2014-001636

Angela Parsons, Appellant,

v.

Jane Smith, QHG of South Carolina d/b/a
Carolinas Hospital System, and
Carolinas Hospital System, Defendants,

Of whom, QHG of South Carolina d/b/a
Carolinas Hospital System, and
Carolinas Hospital System are the Respondents.

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT CORRECTLY HOLD THAT THE PUBLIC POLICY EXCEPTION FOR AT-WILL EMPLOYEES DID NOT APPLY TO ANGELA PARSONS' WRONGFUL TERMINATION CLAIM BECAUSE THERE WAS NO RETALIATORY TERMINATION IN VIOLATION OF A CLEAR MANDATE OF PUBLIC POLICY?

2. DID THE TRIAL COURT CORRECTLY HOLD THAT THE HOSPITAL OWED NO DUTY TO ANGELA PARSONS REGARDING EMPLOYMENT STATUS BECAUSE AN EMPLOYER CAN TERMINATE AN AT-WILL EMPLOYEE FOR ANY REASON AT ALL?

3. DID THE TRIAL COURT CORRECTLY HOLD THAT ANGELA PARSONS WAS NOT TERMINATED AS A RESULT OF NEGLIGENT TRAINING, RETENTION, AND SUPERVISION AS ANGELA PARSONS WAS AN AT-WILL EMPLOYEE TO WHOM A DUTY WAS NOT OWED?

I. STATEMENT OF THE CASE

This case involves an at-will employee, Appellant Angela Parsons ("Appellant" or "Parsons"), who was terminated from her employment as a nurse by QHG of South Carolina d/b/a Carolinas Hospital System and Carolinas Hospital System ("Respondents" or the "Hospital"). After her termination, Ms. Parsons filed a Complaint on November 13, 2012, followed by an Amended Complaint ("Complaint") on February 12, 2013. (R. pp. 9-30.) Ms. Parsons raised three causes of action: (1) tortious interference with employment relationship (against Defendant Jane Smith); (2) wrongful termination (against all defendants); and (3) negligent training, retention, and supervision (against QHG of South Carolina d/b/a Carolinas Hospital System and Carolinas Hospital System). (R. pp. 9-30.) Defendants filed a Motion to Dismiss Plaintiff's Complaint in its entirety. The trial court granted Defendants' Motion to Dismiss as to Plaintiff's first cause of action, but denied the Motion as to the remaining causes of action, stating that they should be examined during discovery. (R. pp. 1-2.)

At the conclusion of all discovery, Jane Smith and the Hospital filed a Motion for Summary Judgment as to Parsons' two (2) remaining causes of action. After a hearing, the court granted Defendants' Motion to Dismiss specifically holding that:

> (1) Parsons' claim of wrongful termination failed because she was an at-will employee and the public policy exception did not apply; and
>
> (2) Parsons' claim that she was terminated as a result of negligent training, retention, and supervision failed because Parsons was an at-will employee to whom the Hospital did not owe a duty.

(R. pp. 3-8.)

Parsons filed a Notice of Appeal on July 24, 2014. She submitted her initial brief on September 30, 2014. Respondents now submit their final brief.

II. FACTS

Ms. Parsons is a nurse. (See R. p. 82, lines 22-25.) She started working at The Women's Center of Carolinas Hospital System ("Hospital") in 1997. (R. p. 83, lines 16-21.) Ms. Parsons worked as a "PRN" nurse. (R. p. 83, lines 16-21.) As a PRN nurse, Ms. Parsons worked when she was needed by the Hospital. (R. p. 84, lines 6-8.) If the Hospital did not need Ms. Parsons, they did not have to contact her to give her hours to work. (R. p. 84, lines 16-18.)

When Ms. Parsons was hired at The Women's Center, the Director of The Women's Center was Pam Turner. (R. p. 85, lines 8-10.) Ms. Parsons admits that Ms. Turner was not required to give hours to Ms. Parsons to work as a PRN nurse. (R. p. 85, lines 16-19.) Tonya Manos was the Director of The Women's Center after Ms. Turner. (R. p. 85, lines 20-22.) Ms. Parsons admits that Ms. Manos was similarly not required to give hours to Ms. Parsons to work as a PRN nurse. (R. p. 85, line 23-p. 86, line 1.) The PRN relationship was reciprocal in that any time Ms. Parsons was asked to work a shift, she was free to decline. (R. p. 86, lines 2-9.) Ms. Parsons was also free to have her name removed from the list of PRN nurses at the Hospital. (R. p. 86, lines 10-14.) The Hospital could not force Ms. Parsons to either work a particular shift at the Hospital, or to keep her name on the list of PRN nurses at the Hospital. (R. p. 86, lines 15-22.)

The Hospital had a policy stating that PRN nurses were expected to work a minimum of twelve (12) hours for every four (4) week schedule. (See R. p. 128, lines

11-17; p. 129, lines 7-11; pp. 130-131) If a PRN nurse did not work the required number of hours for three (3) months she would be removed from PRN status. (R. p. 2.)

Defendant Jane Smith began working as a nurse at the Hospital in approximately 1984. (See R. p. 137, line 19-p. 138, line 4.) Ms. Smith eventually became the Director of The Women's Center. (R. p. 140, lines 3-5.) The job duties of the Director of The Women's Center include overseeing the operations of labor and delivery, the operating room for women's services, the nursery and special care, maintenance of the building, supplies, staffing, policies, standards of care, scheduling, and making sure best practices are followed. (R. p. 86, line 23-p. 87, line 10; p. 140, line 9-p. 141, line 1.)

As part of scheduling, the Director of The Women's Center was also responsible for calling off nurses, or sending nurses home if there was a low patient census. (R. p. 142, line 15-p. 143, line 2.) Full-time nurses have priority to get the hours necessary to work a full-time schedule. (R. p. 88, lines 14-18.) The next priority is for part-time nurses to get the number of hours commensurate with their part-time status. (R. p. 89, lines 1-5.)

If a nurse that is scheduled to work, has to be called off because of a low patient census, the PRN nurses are called off first. (R. p. 89, lines 6-9.) After PRN nurses, part-time nurses are called off, and then full-time nurses. (R. p. 89, lines 10-15.) The hierarchy for getting hours is full-time nurses at the top, then part-time nurses, then PRN nurses. (R. p. 89, lines 16-18.) PRN nurses have the lowest priority for being scheduled to work. (R. p. 89, lines 23-25.) The Chief Nursing Officer ("CNO") of the Hospital, Costa Cockfield, expects all schedule changes to go through the Director. (R. p. 134, lines 8-12.)

In approximately the beginning of August 2012, Jane Smith received a call from a person in the payroll department at the Hospital informing her that Ms. Parsons, along with several other personnel, had not worked the necessary hours to maintain their status. In the case of Ms. Parsons, she had not worked the necessary hours to maintain her PRN status. (R. p. 144, line 23-p. 145, line 11.) Ms. Smith spoke with the Human Resources Department ("HR"), which gave Ms. Smith a Personnel Action Form for Ms. Parsons' termination from the PRN list. (R. p. 146, lines 1-8; pp. 147-148.) In the "Comments" section of the Personnel Action Form Jane Smith wrote, "PRN - termination does not meet hours worked and failure to accept assignment of cross-training to PP." (R. p. 149, lines 5-9.) Ms. Smith signed the Personnel Action Form and dated it August 5, 2011, as that was the date she wrote the above information. (R. p. 148, lines 8-19.) Later, HR had Ms. Smith sign a letter to Ms. Parsons informing her of her termination due to her inability to fulfill PRN requirements. (R. p. 150, line 5-p. 152, line 3; p. 152.) Ms. Smith did not prepare or send the letter. (R. p. 153, lines 13-23.)

In the meantime, Ms. Parsons had complained to the Hospital Compliance and Privacy Officer, Harold ("Hal") Hunter, about Ms. Smith. (See R. p. 160, lines 14-15; p. 161, lines 8-24.) Because this was an HR issue, Mr. Hunter directed Ms. Parsons to the HR Director, Tammy Dickerson. (R. p. 161, line 25-p. 162, line 3.) Ms. Parsons did not feel comfortable talking with Ms. Dickerson, so Mr. Hunter directed her to the Chief Nursing Officer ("CNO"), Costa Cockfield. (R. p. 162, lines 5-10.) As the CNO, Costa Cockfield was Ms. Smith's supervisor. Mr. Hunter also sent an email to CNO Cockfield asking her to meet with Ms. Parsons. (R. p. 162, lines 7-10.)

Ms. Parsons met with CNO Cockfield on August 30, 2012. (R. p. 90, lines 24-25.) The purpose of this meeting was to make CNO Cockfield aware of her complaints regarding Jane Smith. (R. p. 90, lines 1-2; p. 91, lines 24-25.) Ms. Parsons knows CNO Cockfield to be a person of high integrity who is respected as the CNO. (R. p. 92, lines 8-16.)

Ms. Parsons met with CNO Cockfield for forty-five (45) minutes to one (1) hour. (R. p. 93, line 25-p. 94, line 1.) She was allowed to tell CNO Cockfield anything she wanted, and provide CNO Cockfield with any documents she wanted Ms. Cockfield to consider. (R. p. 94, lines 2-8; p. 96, lines 3-16.) CNO Cockfield gave Ms. Parsons a full and fair opportunity to inform her of anything she wanted CNO Cockfield to know about the situation with Ms. Smith. (R. p. 94, lines 9-12.) Ms. Parsons has no complaints about her meeting with CNO Cockfield. (R. p. 94, lines 13-15.)

CNO Cockfield determined that based on the nature of the meeting, Ms. Parsons complaints qualified as a grievance. She had Ms. Parsons complete a grievance form. (R. p. 95, lines 18-23; pp. 154-157.) After hearing everything Ms. Parsons had to say, CNO Cockfield subsequently upheld the termination of Ms. Parsons. (R. pp. 154-157.)

Ms. Parsons then met with the Hospital's Chief Executive Officer ("CEO"), James O'Loughlin, regarding her grievance and termination. (R. p. 96, lines 17-19.) At this meeting Ms. Parsons had the opportunity to tell CEO O'Loughlin everything she wanted to tell him about the situation with Ms. Smith, and her termination. (R. p. 97, line 21-p. 98, line 16.) Similar to CNO Cockfield, Ms. Parsons considers CEO O'Loughlin to be a fair, honest person with a high degree of integrity. (R. p. 98, lines 17-25.) Also

similar to CNO Cockfield, CEO O'Loughlin upheld the decision to terminate Ms. Parsons. (R. p. 99, lines 17-19; p. 100.)

Although Ms. Parsons disagreed with the decisions by CNO Cockfield and CEO O'Loughlin, she did not disagree with how they handled the situation. (R. p. 101, lines 15-19.) She also does not have a complaint about Compliance Officer Hal Hunter referring her to CNO Cockfield. (R. p. 101, lines 20-25.)

During Ms. Parsons employment at the Hospital she signed several documents acknowledging receipt of the Hospital's Employee Handbook ("Handbook"). (R. pp. 102-104.) Each of these acknowledgments state very clearly that the policies and procedures in the Handbook may not apply to every employee in every situation. The Hospital has the right to rescind, modify, or deviate from the guidelines, policies, practices, or procedures in the Hospital's sole discretion.

> **This Handbook is designed as a helpful guide for you to use as you become acquainted to your tasks and responsibilities as an employee of this facility. Much of the information on these pages is a summary of facility policies as well as federal, state and local laws which change from time to time. Due to the nature of healthcare operations and variations necessary to accommodate individual situations, the guidelines set out in this Handbook may not apply to every employee in every situation. The facility reserves the right to rescind, modify or deviate from these or other guidelines, policies, practices or procedures relating to employment matters from time to time as it considers necessary in its sole discretion, either in individual or facility-wide situations with or without notice.**

(R. p. 104.)

The acknowledgments also state that all employees are at-will who may quit at any time for any reason, and who may be terminated at any time for any reason with or without cause.

> **PURSUANT TO S.C. CODE ANN. §41-1-110, THIS EMPLOYEE HANDBOOK CREATES NO CONTRACTUAL OBLIGATION OF ANY KIND. ALL EMPLOYEES OF CAROLINAS HOSPITAL SYSTEM/CAROLINAS MEDICAL ALLIANCE, INC. ARE EMPLOYED AT-WILL, MEANING EMPLOYEES MAY QUIT OR BE TERMINATED AT ANY TIME, WITH OR WITHOUT CAUSE.**
>
> **THIS EMPLOYEE HANDBOOK IS NOT A CONTRACT. NOTHING IN THIS HANDBOOK OR ANY HOSPITAL/FACILITY POLICY SHALL BE CONSTRUED TO BE A CONTRACT OR CREATE CONTRACTUAL OBLIGATIONS OF ANY KIND.**
>
> **THE HOSPITAL/FACILITY RESERVES THE RIGHT TO AMEND, MODIFY OR WITHDRAW THIS EMPLOYEE HANDBOOK, OR ANY PORTION OF IT, AT ANY TIME, WITH OR WITHOUT NOTICE OR CONSENT OF EMPLOYEES.**
>
> **NO STATEMENTS BY ANY PERSON, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE LIMITATIONS SET FORTH IN THIS NOTICE SHALL CREATE ANY CONTRACT UNLESS AGREED TO IN WRITING BY THE HOSPITAL CHIEF EXECUTIVE OFFICER.**

(R. p. 104.)

Ms. Parsons admits having signed each of these acknowledgments. (R. p. 105, lines 3-22; p. 106, line 21-p. 107, line 4; p. 108, lines 10-18.) She admits that the Hospital can rescind, modify, or deviate from any of their policies and procedures. (R. p. 109, line 3-p. 110, line 9; p. 111, line 4-p. 112, line 4.) She admits that either she or the Hospital could terminate the employment relationship at any time with or without reason.

(R. p. 113, lines 10-20; p. 114, line 11-p. 115, line 2.) Ms. Parsons admits that she did not have an employment contract with the Hospital. (R. p. 116, lines 4-17; p. 117, lines 2-5; p. 118, lines 10-12.) Perhaps most importantly, Ms. Parsons specifically admits that since she signed the first of these acknowledgements in 2006, she did not have any promises or assurances regarding her employment at the Hospital. (R. p. 119, line 19-p. 120, line 2.) She also agreed that the Hospital did not have to give her hours to work as a PRN nurse:

> Q: Similarly, if the Hospital just decided we are not going to give Angela Parsons PRN hours anymore and terminate her because she is not working hours, the Hospital can do that, correct?
>
> A: Correct.

(R. p. 120, lines 3-7.)

In spite of this admission, Ms. Parsons is of the belief that she was wrongfully terminated because her termination was not based on Hospital policy, which requires PRN nurses to work a certain number of hours. (R. p. 121, lines 11-18; p. 122, lines 20-21.)

III. ARGUMENT & CITATION OF AUTHORITY

A. STANDARD OF REVIEW

When reviewing a trial court's grant of summary judgment, this Court applies the same standard applied by trial court. Rule 56(c), SCRCP; Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857 (2002). Summary judgment is appropriate "if 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 a judgment as a matter of law." Rule 56(c), SCRCP; Russell v. Wachovia Bank, N.A., 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003); Knox v. Greenville Hosp. Sys., 362 S.C. 566, 569-70, 608 S.E.2d 459, 461 (Ct. App. 2005); B & B Liquors, Inc. v. O'Neil, 361 S.C. 267, 270, 603 S.E.2d 629, 631 (Ct. App. 2004). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. Law v. S.C. Dep't of Corr., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006); Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 59, 518 S.E.2d 301, 304 (Ct. App. 1999). A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner. David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

B. THE TRIAL COURT CORRECTLY HELD THAT THE PUBLIC POLICY EXCEPTION FOR AT-WILL EMPLOYEES DID NOT APPLY TO ANGELA PARSONS' WRONGFUL TERMINATION CLAIM BECAUSE THERE WAS NO RETALIATORY TERMINATION IN VIOLATION OF A CLEAR MANDATE OF PUBLIC POLICY.

This Court should affirm the trial court's decision that the public policy exception under the at-will employment doctrine does not apply to Ms. Parsons' wrongful termination claim. The employment at-will doctrine has long been recognized in South Carolina, and employment is presumed at-will in South Carolina absent the creation of a specific contract of employment. Barron v. Labor Finders of S.C., 393 S.C. 609, 614, 713 S.E.2d 634, 636-67 (2011); Prescott v. Farmers Telephone Cooperative, Inc., 335 S.C. 330, 334, 516 S.E.2d 923, 925 (1999). At-will employment may be terminated by the employer, or employee, at any time, for any reason, or for no reason. Prescott, 335 S.C. at 334, 516 S.E.2d at 925; Culler v. Blue Ridge Elec. Coop., Inc., 309 S.C. 243, 245, 422 S.E.2d 91, 92 (1992) (doctrine of employment at-will in its pure form allows an employer to discharge an employee for a good reason, no reason, or a bad reason without incurring liability).

As determined by the trial court, the public policy exception only applies in cases where either: (1) the employer requires the employee to violate the law, Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 224-25, 337 S.E.2d 213, 215-16 (1985) (employer advised employee that she would be fired if she obeyed a subpoena); (2) the reason for the termination itself is in violation of criminal law, Culler, 309 S.C. 243, 422 S.E.2d 91 (terminated employee for refusing to contribute to a political action fund in violation of S.C. Code Ann. § 16-17-560); or (3) when a court determines there was a violation of public policy, Barron, 393 S.C. at 617, 713 S.E.2d at 638.

Ms. Parsons attempts to abrogate the long recognized doctrine of employment at-will in South Carolina. To allow an at-will employee to bring a wrongful termination claim would take away the critically needed flexibility in the marketplace, and would reduce incentives for economic development. See Grant v. Mount Vernon Mills. Inc., 370 S.C. 138, 146, 634 S.E.2d 15, 19 (Ct. App. 2006) ("The at-will employment doctrine is essentially an economic incentive that provides critically needed flexibility in the marketplace.").

Ms. Parsons alleges in her Appellant Brief that there should be a public policy exception to the employment at-will doctrine for supervisor fraud and manipulation when that fraud can result in termination. (Appellant's Initial Br. 8.) However, the only time the public policy exception applies for wrongful, retaliatory termination is when there has been a violation of a "clear mandate of public policy." Ludwick, 287 S.C. at 224-25, 337 S.E.2d at 215-16. In the present case, there is no interpretation of the facts that would constitute a discharge in violation of a "clear mandate of public policy." Ms. Parsons simply states she should have been given PRN hours to work, despite her admission that the Hospital did not have to give her PRN hours to work. (R. p. 121, lines 11-18; p. 122, lines 20-21.) Ms. Parsons was not asked to violate the law. She was not asked to choose between keeping her job, and obeying the law. Ms. Parsons fails to point to any public policy, much less a "clear mandate of public policy," that was violated by her termination. HR decisions, such as terminating Ms. Parsons as an employee, and overruling her grievance, after she had a full and fair opportunity to have her grievance heard, do not violate public policy.

In support of Ms. Parsons's argument that this Court should find the acts in our

case a matter of public concern, she relies on the Arizona case Wagenseller v. Scottsdale Mem'l Hosp., 147 Ariz. 370, 378-79, 381, 710 P.2d 1025, 1033-34, 1036 (1985). (Appellant's Initial Br. 8-10.) Ms. Parsons reliance on this out-of-state case is misplaced.

In Wagenseller, the hospital employee alleged that his termination resulted from his refusal to engage in activities that included "mooning" an audience. Wagenseller, 147 Ariz. At 374, 710 P.2d at 1029. The court upheld "[Arizona] state's public policy by holding that termination for refusal to commit an act which might violate A.R.S. § 13-1402 may provide the basis of a claim for wrongful discharge." Id. at 380, 710 P.2d at 1035. A.R.S. § 13-1402 is a criminal statute. In the present case, Ms. Parsons was never asked to commit a criminal act or violate a criminal law. She does not allege that she was asked to commit a criminal act, or that she was terminated because she refused to commit a criminal act. Wagenseller is not applicable to the everyday, common workplace disputes between employees regarding scheduling where no "clear mandate of public policy" was violated, as we have in this case. Additionally, Ms. Parsons' use of Arizona law is not legally binding on this Court.

In Anthony v. Atlantic Group, Inc., 909 F. Supp. 2d 455 (D.S.C. 2012), aff'd (July 12, 2013), employees made claims of negligent termination and negligent or intentional misrepresentation. Id. at 472, 474. The employees claimed that the employer failed to follow its own Employee Handbook, and made a false representation in its "Certificate of Per Diem Eligibility." Id. at 475. The court granted summary judgment regarding the employees' negligent and intentional misrepresentation claims because they failed to establish issues of material fact on the required elements of their claim. Id. at 475, 482. The court also determined that the misrepresentation claim lacked merit because an at-

will employee may be terminated at any time, and the employer did not have a duty to inform the employees of certain information in the "Certificate of Per Diem Eligibility." Id. at 475 (citing Lampman v. DeWolff Boberg & Assocs., Inc., 319 Fed.Appx. 293 (4th Cir.2009) (finding no negligent misrepresentation by omission where employer failed to inform an at-will employee that he was a candidate for termination)). In this case, like in Anthony, because an at-will employee may be fired at any time, alleged misrepresentations (i.e., fraud) may not serve as a basis for a claim of wrongful termination.

The Hospital also did not have a duty to investigate the actions of Jane Smith, or the reasons for Parsons' termination. See Anthony, 909 F. Supp. 2d at 474. In Anthony, the court also granted summary judgment regarding the employees' claim of negligent termination, stating that "South Carolina common law does not recognize this cause of action in the at-will employment context." Id. at 472. The employees argued that the employer had a duty to treat the plaintiffs "in accordance with its published documents," including the employee handbook, employment application, and a Certificate of Per Diem Eligibility. Id. at 473-75. However, the court dismissed plaintiff's claim of negligence, stating:

> Because DZ Atlantic owed no duty to conduct adequate investigations as to its employees due to the at-will nature of the employment relationship, plaintiffs cannot prevail on their termination claims. DZ Atlantic owed its employees no duty to conduct a proper investigation, such that it is immaterial whether the investigation was based on inaccurate data, whether plaintiffs were given an opportunity to clear up any misunderstandings about their residences or their per diem eligibility, or whether plaintiffs were fired based on ineligibility or failure to participate in the investigation.

Id. at 474 (citing Brookman v. Shakespeare Co., 314 S.C. 146, 149, 442 S.E.2d 183, 184 (Ct. App. 1994).

The Hospital in our case had no duty to investigate or supervise Jane Smith's conduct relating to Ms. Parsons' termination, just as the employer in Anthony had no duty to conduct adequate investigations relating to termination claims. Because no duty was owed to the employee to conduct a proper investigation, the court in Anthony determined it was immaterial whether there was inaccurate data or whether employees were given an opportunity to clear up any misunderstandings. Id. at 474. Thus, even if the reasons Ms. Parsons were fired were untrue, no claim for fraudulent termination or negligence may follow because as an at-will employee, the reasons are immaterial. To allow such a claim would eviscerate the employment at-will doctrine. See Karoue v. Blue Cross Blue Shield of S. Carolina, Op. No. 3:13-CV-01844-JFA (D.S.C. Feb. 25, 2014) (citing Food Lion, Inc. v. Capital Cities/ABC, Inc., 194 F.3d 505, 513 (4th Cir.1999) ("a fraud claim in the employment at-will relationship 'is simply inconsistent with the at-will employment doctrine.'").

Moreover, even if a brand new public policy exception to the employment at-will doctrine is created for when supervisors allegedly engage in fraudulent acts to cause an at-will employee's termination, Ms. Parsons still fails to set forth any evidence that Jane Smith committed fraud, or that Parsons' termination was based on fraud. To prevail on a cause of action for fraud, a plaintiff must prove the following elements: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the

hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. Allegro, Inc. v. Scully, 409 S.C. 392, 417, 762 S.E.2d 54, 68 (Ct. App. 2014) (quoting Moseley v. All Things Possible, Inc., 388 S.C. 31, 35–36, 694 S.E.2d 43, 45 (Ct. App. 2010)).

In the present case, Ms. Parsons misuses the word or concept of "fraud." Ms. Parsons' argument is that Jane Smith arranged the schedule so that Ms. Parsons would not be able to work sufficient hours as a PRN nurse. (Appellant's Initial Br. 4.) Such actions, even if true, are not fraud.

Fraud first requires a material representation that is false. There is no evidence, and there is not even an allegation, that Jane Smith made any representation to Ms. Parsons regarding PRN hours, much less a representation that was false and material. Ms. Parsons admitted that the Hospital was not required to give her PRN hours. (R. p. 121, lines 11-18; p. 122, lines 20-21.) Therefore, there could not have been a false representation regarding Ms. Parsons getting PRN hours.

Because there is no evidence of a false, material representation by Jane Smith, Ms. Parsons cannot, and has not, presented any evidence that she relied on such a representation, had a right to rely on such representation, and that she suffered an injury because of such reliance. The complete absence of evidence of the basic elements of fraud, causes Ms. Parsons' entire argument that her termination was based on fraud, and was therefore in violation of public policy, to collapse like a house of cards.

As an at-will employee, Ms. Parsons could be terminated for any reason, good or bad, or no reason at all. See Culler, 309 S.C. at 245, 422 S.E.2d at 92 (doctrine of employment at-will in its pure form allows an employer to discharge an employee for a

good reason, no reason, or a bad reason without incurring liability). Several Handbook acknowledgments, signed by Ms. Parsons, state in numerous places, that employees of the Hospital are at-will employees. (R. p. 105, lines 3-22; p. 106, line 21-p. 107, line 4; p. 108, lines 10-18.) The ability to terminate an at-will employee for any reason, good or bad, or no reason at all, specifically rebuts Ms. Parsons' claim that she can only be terminated for a good reason. There is no limitation on the employment at-will doctrine that prevents an employer from terminating an at-will employee simply because the employee complains of "scheduling manipulation" (i.e., the employee was not given any hours on the schedule). Because the termination of Ms. Parsons did not violate a "clear mandate of public policy," the public policy exception to the employment at-will doctrine does not apply.

Ms. Parsons' entire argument is nothing more than a disagreement with a Human Resources' decision. Undoubtedly, there are numerous conflicts in the workplace every day where employees do not get along, and one accuses the other of being untruthful or engaging in distasteful behavior toward the other employee. There is no clear mandate of public policy that a court should resolve common, everyday workplace disputes. Allowing such run of the mill workplace disagreements, and personnel decisions by HR officers and Chief Executive Officers, to be the basis of a lawsuit, would serve only to turn the "at-will" employment doctrine on its head, and result in courts and juries becoming "Super HR Departments."

The trial court correctly applied the law to Ms. Parsons' allegations and granted summary judgment for the Hospital's, stating that Ms. Parsons failed to set forth a claim for wrongful termination. Therefore, this Court should affirm the trial court's ruling.

C. THE TRIAL COURT CORRECTLY HELD THAT THE HOSPITAL OWED NO DUTY TO ANGELA PARSONS REGARDING EMPLOYMENT STATUS BECAUSE AN EMPLOYER CAN TERMINATE AN AT-WILL EMPLOYEE FOR ANY REASON AT ALL.

Ms. Parsons failed to establish that the Hospital owed a duty of care to protect her, as an at-will employee, from termination allegedly resulting from negligent training, retention, and supervision. In a negligence action, a plaintiff must show that the (1) defendant owes a duty of care to the plaintiff, (2) defendant breached the duty by a negligent act or omission, (3) defendant's breach was the actual and proximate cause of the plaintiff's injury, and (4) plaintiff suffered an injury or damages. Steinke v. S. Carolina Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999). If there is no duty, then a defendant in a negligence action is entitled to a judgment as a matter of law. Id. at 387, 520 S.E.2d at 149.

In several cases, courts have recognized that employers do not owe a duty to at-will employees when it comes to their termination. There is no duty to investigate allegations, conduct a proper investigation, or give the plaintiff an opportunity to clear up any misunderstandings. Gause v. Doe, 317 S.C. 39, 451 S.E.2d 408, 409 (Ct. App. 1994); Anthony, 909 F. Supp. 2d at 474. Similarly, the Carolinas Hospital System did not owe a duty to Ms. Parsons to investigate the conduct of Ms. Smith, or reevaluate any facts. Because the Hospital did not owe a duty to Ms. Parsons, as a matter of law she could not prove this necessary element of any negligence claim.

Ms. Parsons attempts to avoid this lack of duty by arguing that there is a tort duty based on the "good faith and fair dealing requirement" used in contract law. She states that it would be injurious to the entire working class to remove the requirement of good faith and fair dealing for at-will employees. (Appellant's Initial Br. 11.) Ms. Parsons

seems to ignore the fact, however, that she did not have an employment contract with the Hospital. Without an employment contract, her argument must fail because there is no "good faith and fair dealing requirement" for at-will employees. A requirement like this would conflict seriously with South Carolina's use of employment at will as a longstanding economic incentive that provides a flexible marketplace. Drakeford v. New S., Inc., Op. No. 2004-UP-433 (S.C. Ct. App. filed July 23, 2004) (citing Conner v. City of Forest Acres, 348 S.C. 454, 463, 560 S.E.2d 606, 610 (2002); Prescott, 335 S.C. at 334, 516 S.E.2d at 925). In Drakeford, this Court upheld the trial court's grant of summary judgment and stated a general rule that the termination of an at-will employee does not give rise to a cause of action for breach of contract, and further that without an employment contract, there could be no implied covenant of good faith and fair dealing. Id. Similarly, there is no employment contract between the Hospital and Ms. Parsons that would alter her status as an at-will employee. Thus, Ms. Parsons cannot establish that a good faith and fair dealing duty was owed by the Hospital to the at-will employee.

Again, Ms. Parsons tries to creatively establish a duty by referencing unrelated cases. (Appellant's Initial Br. 12.) She states that the trial court's ruling that an employer owes no duty to an at-will employee is contradicted because tort injuries are covered by workers compensation laws. (Appellant's Initial Br. 12.) While these laws may protect an at-will employee from injuries from an employer's negligent training, retention, and supervision, this only covers *personal* injuries sustained in the workplace. See Loges v. Mack Trucks, Inc., 308 S.C. 134, 136, 417 S.E.2d 538, 540 (1992) (emphasis added) ("Recovery under the Act is the exclusive means of settling *personal* injury claims which come under the Act."). Because workers compensation laws were intended to protect

employees from personal injury, they should not be used impose a duty on an employer to protect an at-will employee from termination.

In support of this theory, Ms. Parsons cites Sabb v. S.C. State Univ., 350 S.C. 416, 567 S.E.2d 231 (2002), attempting to overrule the trial court's decision. (Appellant's Initial Br. 13 (citing Sabb, 350 S.C. 416, 567 S.E.2d 231)). In Sabb, the Supreme Court determined that the trial court properly denied the directed verdict and judgment notwithstanding the verdict (JNOV) because evidence existed to show that the defendant had possibly breached a duty owed to the plaintiff. Sabb, 350 S.C. at 430, 567 S.E.2d at 238. Ms. Parsons alleges that the circumstances in Sabb are "almost identical" (Appellant's Initial Br. 13) to our present case. However, she failed to note pertinent distinguishing facts and misapplied the court's rule to our case. Most importantly, the court in Sabb never discussed whether a duty was owed to an *at-will* employee. The court merely determined that an issue did exist regarding whether the employer owed a duty of care once they were put on notice of certain hostile actions. Sabb, 350 S.C. at 429, 567 S.E.2d at 237-38. Additionally, the plaintiff's negligence in Sabb arose under the exclusive remedy provision of the Workers' Compensation Act because the employee was alleging *personal* injuries sustained from work-related activities. Id. at 422-423, 567 S.E.2d at 234-235 (personal injuries included escalated blood pressure, anxiety, depression, hypertension). Ms. Parsons' injuries were purely economic, stemming from her termination from employment, and thus do not fall under the Workers' Compensation Act. Because of these key differences, what happened in Sabb should be distinguished from what happened with Ms. Parsons.

Ms. Parsons also took issue with Gause v. Doe, 317 S.C. 39, 42, 451 S.E.2d 408,

409 (Ct. App. 1994), which the trial court used to support their finding that no duty was owed to Ms. Parsons as an at-will employee. (R. pp. 3-8; Appellant's Initial Br. 13.) In Gause, the court determined that the "complaint [did] not allege he was anything other than an at-will employee who could be terminated at any time, for any reason, or for no reason at all, irrespective of any inadequate investigations, false assumptions, or failures to reevaluate on the part of the employer." Gause, 317 S.C. at 42, 451 S.E.2d at 409. Ms. Parsons failed to explain why the decision in Sabb, which did not discuss at-will employees, would have any effect on the holding in Gause.

The Hospital does not contest that an employer may owe a duty to employees, even at-will employees, who sustain work-related *personal* injuries, however this duty cannot be read so broadly to encompass a duty on an employer to protect an at-will employee from termination. The court's holdings in Gause and Sabb do not contradict one another. Sabb discusses the duty owed by an employer to an employee who sustains work-related *personal* injuries, and Gause recognizes that no duty is owed to *at-will* employees regarding their employment status (i.e., termination or removing an employee from the schedule).

Because Ms. Parsons improperly relied on the rule stated in Sabb in an argument to reverse the trial court in this case and its reliance on Gause, she again failed to establish that a duty was owed to the at-will employee in our case. The trial court correctly concluded that no duty arose under the facts of our case and properly granted summary judgment for the Defendants.

D. **THE TRIAL COURT CORRECTLY HELD THAT ANGELA PARSONS WAS NOT TERMINATED AS A RESULT OF NEGLIGENT TRAINING, RETENTION, AND SUPERVISION AS ANGELA PARSONS WAS AN AT-WILL EMPLOYEE TO WHOM A DUTY WAS NOT OWED.**

Because this case does not involve harm to a member of the public, Ms. Parsons cannot claim that the employer is liable for negligent training, retention, and supervision. The trial court correctly determined that Ms. Parsons' legal theory did not apply to co-employees. In circumstances where an employer knew or should have known that its employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the employer was itself negligent in hiring, supervising, or training the employee, or that the employer acted negligently in entrusting its employee with a tool that created an *unreasonable risk of harm to the public*. Kase v. Ebert, 392 S.C. 57, 63, 707 S.E.2d 456, 459 (Ct. App. 2011) (emphasis added) (citing James v. Kelly Trucking Co., 377 S.C. 628, 629, 661 S.E.2d 329, 329 (2008)); see also RESTATEMENT (SECOND) OF TORTS § 317 (1965) (cited with approval in Degenhart v. Knights of Columbus, 309 S.C. 114, 116, 420 S.E.2d 495, 496 (1992)). The present case does not involve a harm to a member of the public, but rather a co-employee. Therefore, any argument along these lines is inapplicable to the case at bar.

Ms. Parsons alleged in her brief that "While the trial court opined that 'the present case does not involve a harm to a member of the public, but rather a co-employee', this case was more than that [because] [t]his cause involved a Director who had almost complete control over the entire Women's Center. And, with that control as her tool, she had the power to manipulate the employment status of any worker within that Women's Center." (R. pp. 3-8; Appellant's Initial Br. 12.) Even if the Director had control over the center and could alter the employment status, which is not uncommon of a Director, this

evidence does not involve a harm to a member of the public, it is still harm to a co-employee. Even if we assume that a duty is owed to co-employees, and not just to members of the public, Ms. Parsons still has not shown that the duty extends to *at-will* employees. See discussion supra Section C. Thus, the trial court correctly determined that the defendants were entitled to a judgment as a matter of law.

CONCLUSION

For the reasons stated, this Court should affirm the judgment and Order of the circuit court in all respects.

Respectfully submitted,

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