

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM OCONEE COUNTY
Court of Common Pleas**

J. Cordell Maddox, Jr., Circuit Court Judge

C.A. No.: 2014-001282

Appellate Case No. 2014-001282

Mariam R. NooraiAppellant,

v.

The School District of Pickens County, The School District of Oconee
County, and Gary Culler, Donald Boggs, Richard Hudak, Earnestine
Williams, Marilyn Raines, and Dr. Kelly Pew in their individual
capacities..... Respondents.

**INITIAL BRIEF OF RESPONDENTS SCHOOL DISTRICT OF
OCONEE COUNTY AND EARNESTINE WILLIAMS**

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TABLE OF CONTENTS

	<u>PAGES</u>
Table of Authorities	ii
Statement of Issue on Appeal	1
Statement of the Case.....	1
Statement of Facts.....	2
Argument	5
Conclusion	8

TABLE OF AUTHORITIES

PAGES

Cases

Barnes v. Cohen Dry Wall, Inc., 357 S.C. 280, 592 S.E.2d 311 (Ct. App. 2003)7

Fields v. Melrose Ltd. P'ship., 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993)7

First Sav. Bank v. McLean, 314 S.C. 361, 444 S.E.2d 513 (1994).....8

State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003)7

Jinks v. Richland Cnty., 355 S.C. 341, 585 S.E.2d 281 (2003)8

Other Authorities

Rule 208(b)(1)(B), SCACR5

Rule 208(b)(1)(D), SCACR7

I. STATEMENT OF ISSUE ON APPEAL

The only issue presented by this appeal from the order of the Honorable J. Cordell Maddox, Jr., is whether Appellant has abandoned her appeal of claims against Respondents Oconee County School District and Earnestine Williams.

II. STATEMENT OF THE CASE

Respondents Oconee County School District (“SDOC”) and Ms. Earnestine Williams (“Ms. Williams”), respectfully submit that this Court should affirm the Circuit Court’s May 13, 2014 Order, granting SDOC and Ms. Williams summary judgment on all claims.

This case arises out of a Complaint filed by Ms. Noorai on March 22, 2011. Ms. Noorai filed a Second Amended Complaint (“the Complaint”) on June 11, 2012, where she asserts eight causes of action against various combinations of the Defendants/ Respondents:

- Negligence and gross negligence against the Pickens County School District (“SDPC”) in connection with an alleged sexual assault by a student (First Cause of Action);
- Negligent misrepresentation against the Pickens County School District, relating to her letter of resignation (Second Cause of Action);
- Negligence and gross negligence against the Oconee District in connection with its decisions not to hire Plaintiff (Third Cause of Action);
- Breach of contract accompanied by a fraudulent act against the Pickens District and Defendant Culler, principal of the school where Plaintiff taught and an employee of the Pickens District, in connection with her teaching contract (Fourth Cause of Action);
- Defamation against the Pickens District, the Oconee District, and Defendant Culler, arising from alleged communications about her performance as a teacher (Fifth Cause of Action);
- Assault against Defendant Hudak, a fellow teacher and employee of the Pickens District (Sixth Cause of Action);

- Civil conspiracy against Defendants Pew, Boggs, and Raines, employees of the Pickens District, and Defendant Williams, an employee of the Oconee District, who allegedly conspired to ruin and damage her in her profession (Seventh Cause of Action);
- Intentional infliction of emotional distress against Defendant Culler (Eighth Cause of Action)

On January 4, 2013, Respondents SDOC and Ms. Williams moved for summary judgment on all claims. Respondents' motion was heard by the Honorable J. Cordell Maddox, Jr., on April 7, 2014. Judge Maddox entered judgment in favor of all Defendants, which was filed with the Clerk of Court on May 13, 2014. (R. p.____.) Thereafter, Ms. Noorai appealed the decision to this Court. (R. p.____.) For the reasons set forth below, this appeal should be dismissed against Ms. Williams and SDOC and the decision of the Circuit Court should be affirmed.

III. STATEMENT OF FACTS

Ms. Noorai has never been employed by SDOC. Prior to filing this lawsuit, she applied and was not hired for teaching positions at West Oak Middle School in the summer of 2009 and a summer school grant-funded teaching position at Seneca Middle School in the late spring/summer of 2010.

Specifically, Ms. Noorai first applied for two vacant English teaching positions at West Oak Middle School in SDOC or around June 2009. (R. pp.____(Verderosa Dep. pp. 13-15).) She was interviewed by a team of teachers and administrators at West Oak Middle. (R. pp.____ (Verderosa Dep. pp. 17-29, 31).) Based on her interview, Ms. Noorai was not a finalist for either position and her references were not contacted. (R. pp.____ (Verderosa Dep. pp. 36-39, 48-49, 61-62, 65, 70-72, 78; Williams Dep. pp. 38-39, 55-56).) It is undisputed that SDOC only checks references for finalists for teaching positions. (R. pp.____ (Williams Dep. pp. 38-39; Verderosa Dep. pp. 35-38).) Obviously, checking references for every applicant would be inefficient and a waste of

time.

Ms. Williams had no involvement in the West Oak decision and was unaware of Ms. Noorai's application or candidacy at that time. (R. pp.____ (Williams Dep. pp. 10-13, 24, 31, 39-40, 42-46, 99).) In fact, Ms. Williams was not even aware Ms. Noorai had applied for a position at West Oak Middle School until Ms. Noorai requested a meeting with her several months later. (R. pp.____ (Williams Dep. pp. 12-13).) Because Ms. Noorai was not a finalist for West Oak Middle positions, no one from West Oak or SDOC contacted Principal Culler, Ms. Noorai's former principal at Edwards Middle School in SDPC, or any other SDPC teacher or administrator with regard to Ms. Noorai's candidacy for the position she sought at West Oak Middle. (R. pp.____ (Verderosa Dep. pp. 37-39; Culler Dep. pp. 97-99; Williams Dep. pp. 38-39, 60, 86).) Likewise, no agent of SDPC contacted any SDOC administrator or teacher with regard to Ms. Noorai's suitability for the vacancies. (R. pp.____ (Verderosa Dep. pp. 37-39, 53-54; Williams Dep. pp. 60, 86; Culler Dep. pp. 97-99; Pew Dep. pp. 64-65).) Ms. Noorai concedes she has no evidence that Ms. Williams ever contacted Mr. Culler or anyone else at SDPC. (R. pp.____ (Noorai Dep. pp. 357-359, 367-368).)

A few months after her unsuccessful application at West Oak Middle, Ms. Noorai requested a meeting with Ms. Williams, the Assistant Superintendent for Human Resources. Ms. Williams met with Ms. Noorai on October 1, 2009. (R. pp.____ (Williams Dep. pp. 11-13, 43-45).) Ms. Williams was unaware of the reason Ms. Noorai desired the meeting, but Ms. Williams listened to Ms. Noorai's concerns and advised her that completing substitute teacher training and taking some substitute teaching assignments would help her "get her foot in the door" and improve her candidacy. (R. pp.____ (Williams Dep. pp. 11-13, 43-45; Noorai Dep. pp. 369-371).) Ms. Noorai concedes that she has no evidence that Ms. Williams communicated any aspect of their

meeting or made any statement regarding Ms. Noorai at any time. (R. pp.____ (Noorai Dep. pp. 407-409).) Aside from meeting Mr. Culler at depositions, Ms. Williams had never spoken with him at all, let alone about Ms. Noorai. (R. pp.____ (Williams Dep. pp. 60, 86; Culler Dep. pp. 97-99).) Ms. Williams' undisputed testimony is that she has not communicated with anyone regarding Ms. Noorai's employment with SDPC (R. pp.____ (Williams Dep. p. 86), and this is consistent with the testimony of relevant SDPC deponents. (R. pp.____ (Pew Dep. pp. 64-65; Culler Dep. p. 97).)

Ms. Noorai's next application for employment with SDOC was for a summer school position at Seneca Middle School in the late spring of 2010. (R. pp.____ (Noorai Dep. pp. 402-407 & Dep. Exhs. 28-30).) She was interviewed by Tammy Brock, who was in charge of the summer school grant. Ms. Noorai was not selected for a summer school position because more qualified candidates were available. (R. pp.____ (Brock Dep. pp. 26-32).) Ms. Brock explained that in her view, Ms. Noorai was not a good candidate for a summer school position working with at-risk children because Ms. Noorai shared in her interview that she did not sign her contract of employment with SDPC at the end of the 2009 school year because of "a student issue" at Edwards Middle School. (R. pp.____ (Brock Dep. pp. 30-33; Noorai Dep. pp. 404-407).) Unlike Ms. Noorai, the other candidates had significant experience working with the group to be served by the summer school grant. (R. pp.____ (Brock Dep. pp. 46-47).) Ms. Brock had no contact with Mr. Culler or any SDPC representative with regard to Ms. Noorai. (R. pp.____ (Brock Dep. pp. 30, 42-44).) Ms. Noorai concedes that she has no evidence that Ms. Brock had any communication with SDPC with regard to the decision not to hire Ms. Noorai. (R. pp.____ (Noorai Dep. p. 407).) Al Leroy, the Seneca Middle School Principal, also testified that he had no contact with SDPC or Mr. Culler regarding Ms. Noorai's application and candidacy for the summer school position. (R. pp.____ (Leroy

Dep. pp. 30-31).)

After she was not hired for the summer school position, Ms. Noorai sent a letter threatening legal action. (R. pp.____ (Noorai Dep. Exh. 30).) Ms. Noorai has never completed substitute teacher training with SDOC. (R. pp.____ (Noorai Dep. p. 371).) She has continued to apply for and has been rejected for employment in Anderson, Greenville, and Charleston. (R. pp.____ (Noorai Dep. pp. 385-390).) Ms. Noorai does not contend that SDOC has done anything to prevent her from obtaining a job in any of those districts. (R. pp.____ (Noorai Dep. pp. 407-409).)

IV. ARGUMENT

Appellant Has Abandoned Her Appeal Against SDOC And Ms. Williams Because No Issues Are Set Forth Regarding These Respondents In The “Statement Of Issues On Appeal” And No Arguments Regarding Appellant’s Claims Against SDOC And Ms. Williams Are Set Forth In Appellant’s Brief.

Rule 208(b)(1)(B), SCACR, provides that the brief of appellant shall contain under appropriate headings . . .

(B) Statement of Issues on Appeal. A statement of each of the issues presented for review. The statement shall be concise and direct as to each issue, and may be stated in question form. Broad general statements may be disregarded by the appellate Court. Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.

Here, Appellant sets forth the following “Statement of Issues on Appeal”:

- (1) Did the Circuit Court erroneously grant summary judgment in favor of the School District of Pickens County, and against Ms. Noorai, on the negligent misrepresentation cause of action, given that Ms. Noorai presented admissible summary judgment evidence in support of each element of this cause of action?
- (2) Did the Circuit Court erroneously grant summary

judgment in favor of the School District of Pickens County, and against Ms. Noorai, on the breach of contract cause of action, given that Ms. Noorai presented admissible summary judgment evidence that Principal Culler and other employees breached the implied covenant of good faith and fair dealing, and the South Carolina statutory provisions, implied by law into her contract?

- (3) Did the Circuit Court erroneously grant summary judgment in favor of the School District of Pickens County, and against Ms. Noorai, on the breach of contract accompanied by fraudulent acts cause of action, given that Ms. Noorai presented admissible summary judgment evidence not only of a breach of her contract, but of conduct by school district employees that amounted to dishonesty in fact and unfair dealing?
- (4) Did the Circuit Court erroneously grant summary judgment in favor of Principal Culler and against Mr. Noorai on the intentional infliction of emotional distress cause of action, given that Ms. Noorai presented admissible summary judgment evidence of all elements of this claim?
- (5) Did the Circuit court, in violation of Rule 56, SCRCF, and Ms. Noorai's state and federal due process rights, commit reversible by terminating the summary judgment before Ms. Noorai's attorney had the opportunity to make responsive arguments on her behalf?

It is clear that Ms. Noorai is appealing only the summary judgment order regarding Defendants SDPC and Gary Culler for the following causes of action: negligent misrepresentation against SDPC (Second Cause of Action); breach of contract accompanied by fraudulent act against SDPC (Fourth Cause of Action); and intentional infliction of emotional distress against Principal Culler (Eighth Cause of Action). The only causes of action asserted against SDOC were alleged claims of negligence for not hiring Appellant (Third Cause of Action); defamation (Fifth Cause of Action); and a civil conspiracy claim in which Ms. Williams was named (Seventh Cause of Action).

Importantly, none of the issues mentioned in Appellant's "Statement of Issues on Appeal" pertain to either SDOC or Ms. Williams. In fact, neither SDOC nor Ms. Williams are mentioned anywhere in Appellant's "Statement of the Issues on Appeal." Accordingly, any claims against SDOC or Ms. Williams should be dismissed because Ms. Noorai did not set forth any issues regarding these Respondents in her issues on appeal. *See Barnes v. Cohen Dry Wall, Inc.*, 357 S.C. 280, 287, 592 S.E.2d 311, 314, n. 11 (Ct. App. 2003) (declining to address issues that were not set forth in appellant's statement of issues on appeal); *See also State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("No point will be considered which is not set forth in the statement of issues on appeal.").

Further, in Appellant's "argument" portion of her brief, she submits that the Circuit Court erred in granting summary judgment on the following causes of action:

- (1) the negligent misrepresentation claim asserted against the SDPC in Count Two;
- (2) the breach of contract and breach of contract accompanied by fraudulent acts claims asserted against the SDPC in Count Three;
- (3) the intentional infliction of emotional distress claims against Principal Culler in Count Eight.

Again, neither SDOC nor Ms. Williams, or any claims Appellant asserted against these Respondents, are mentioned or argued in this section. When an appellant makes absolutely no arguments against certain respondents, the appellant will be deemed to have abandoned any challenge to that issue. *See Fields v. Melrose Ltd. P'ship.*, 312 S.C. 102, 106, 439 S.E.2d 283, 284 (Ct. App. 1993) ("[a]n issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court."); Rule 208 (b)(1)(D), SCACR; *Jinks v. Richland Cnty.*, 355 S.C. 341, 585 S.E.2d 281, 282 n. 3 (2003) ("for issue preservation, assuming the 'statement of the issue' is

sufficient, the issue must also be argued fully in the initial brief of appellant to be preserved for the Court's consideration"); *First Sav. Bank v. McLean*, 314 S.C. 361, 444 S.E.2d 513 (1994) (issues not argued in the brief are deemed abandoned and will not be considered on appeal). Accordingly, any claims against Respondents SDOC and Ms. Williams should be deemed abandoned and these Respondents should be dismissed from this appeal.

V. CONCLUSION

For the reasons set forth above, this Court should deny Ms. Noorai's appeal and affirm the Circuit Court's Order as to Defendants SDOC and Ms. Williams.

Respectfully submitted,

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