THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Glenda R Couram, Appellant,

v.

75151

Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake, in their official and individual capacities and the South Carolina Department of Motor Vehicles, Respondent.

Appellate Case No. 2012-213441

Appeal From Richland County
L. Casey Manning, Circuit Court Judge

Unpublished Opinion No. 2015-UP-065
Heard October 7, 2014 – Filed February 4, 2015

MOTION FOR REHEARINGAND OR REHEARING EN BANC

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PETITION FOR REHEARING AND OR REHEARING EN BANC PURSUANT TO FRAP RULE 35 (b) (1) (a), SCRAP RULE 219, 221 AND REQUEST FOR CERT FROM THE SOUTH CAROLINA SUPREME COURT RULE 204

COMES NOW, pro se[1] Appellant, Glenda Couram, pursuant to South Carolina Rules of Appellate Procedure, (SCRAP) hereby moves this Court for a rehearing, rehearing en banc, clarification, and/or certification of a questions of great public importance and questions of exceptional importance that involves issues on which the panel's decision conflicts with the authoritative decisions of the US Supreme Court, US Court of Appeals, SC Supreme Court, this Appeals Court and all District Courts and the lower circuit courts that has addressed these issues."

This matter was heard on October 7, 2014 and decided February 4, 2015. The Court of Appeals affirmation was received by pro se on or about February 8, 2015. Appellant is timely filing this request within 15-20 days of receipt, SCRCP Rule 6(e).

In compliance with FRAP rule 35(b) (1) (a) and SCRAP 221, et.al. appellant understands that a rehearing and en banc rehearing is an absolute necessity to "secure and maintain uniformity of the court's decisions." And, that en banc rehearing is warranted

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[1] **PRO SE STANDARD** Plaintiff is pro se, the Court has a higher standard when faced with a motion to dismiss, White v. Bloom, 621 F.2d 276, makes this point clear and states: A court faced with a motion to dismiss a pro se complaint must read the complaint's allegations expansively, Haines v. Kerner, 404 U.S. 519, 520-21, 92 S. Ct. 594, 596, 30 L. Ed. 2d 652 (1972), and take them as true for purposes of deciding whether they state a claim. Cruz v. Beto, 405 U.S. 319, 322, 92 S. Ct. 1079, 1081, 31 L. Ed. 2d 263 (1972).The courts has ruled when it comes ot a pro se plaintiff that the courts are obligated to "the court is under a duty to examine the complaint to determine if the allegations provide for relief on any possible theory." Bonner v. Circuit Court of St. Louis, 526 F.2d 1331, 1334 (8th Cir. 1975) (quoting Bramlet v. Wilson, 495 F.2d 714, 716 (8th Cir. 1974)). Thus, if this court were to entertain any motion to dismiss this court would have to apply the standards of White v. Bloom. Furthermore, if there is any possible theory that would entitle the Plaintiff to relief, even one that the Plaintiff hasn't thought of, the court cannot dismiss this case.

when decisions involve issues of exceptional importance when a ruling or rulings squarely conflicts with decisions of the US Supreme Court, US District Courts, SC Supreme Court, the Court of Appeals and the many sister courts of all districts higher and lower regarding the application well settled and well established law.

The Plaintiff-Appellant request that this issue be seen as such vital importance that it is automatically intercepted by the SC Supreme Court, certify to the Supreme Court Rule 204(b), in the interest of justice and to prevent continued injustice towards the pro se population. As it relates to decisions, that are misapplied, misstated, misunderstood, misrepresented or read in a way that changes the meaning of higher courts well settled decisions.

For all of the following reasons:

(1) Consideration by the full Court is necessary to secure and maintain overall uniformity of its decisions to ensure justice is applied to all consistently;

(2) the matter before the courts involves several highly unusual questions of exceptional public importance regarding use of well settled law when dealing decisions involving the public and use of unpublished opinion that can hide many decision that are not consisted with other court and is high national local importance; for instance an unpublished opinion involving a pro se litigant hide a multiple amount of misquoted, misused well established law and there is no monitoring to ensure justice and,

(3) with existing opinions by other courts of appeal, this court's opinion on all courts wholly and substantially affects rules of national, state and local application in which there is an *overriding* need for national and state uniformity.

(4) also the importance that a pro se litigants are afforded the same rulings, rights as would apply to any other litigant with or without an attorney. It's vitally important nationally, state sided and locally that the courts are applying the same standard and well established law to these citizens and the decisions are impartial and made to ensure justice for all.

To simplify the sequence of arguments that follow, pro se Appellant will try to present issues in the order of their first appearance in this Court's per curiam and pray that they will grant her request and reverse a decision is not based on fact but on self - serving data not of the evidentiary record was misapplied, misleading and misrepresented to the court to insure or facilitate a dismissal on grounds of res judicata and collateral estoppel in direct opposition to Judge Perry's order as they related to the state pendant claims. (See Exhibit One)[2]

Appellant ask that the court takes this opportunity to make clear and concise instructions on the courts' dealing with pro se litigants, not give them special status as to the rules of court but on how the jurist rule on these claims, disallow suits involving a pro se litigant being unpublished and place the courts on a higher judicial standard to ensure impartiality, justice and eliminate any bias by judges. Setup a group that will review an appeal to ensure that it adheres to the rules when it comes to upholding a lower court's orders to grant motions to ensure the courts are being uniform in their treatment of pro se litigants at the lower level.

The three panel judges presiding over the oral arguments asked two questions, coming out of left field, asking her to prove or state her "outrage" claims, if this matter had been before the lower court and ruled on the higher court would not need to ask such a complex question of a pro se during a 10 minutes oral hearing causes unfairness to the pro se and then they asked the defense what capacity the defendants were sued under and

[2] Judge Perry's Order dated March 10, 2011 and May 5, 2011

he admitted "both", again if this matter had been ruled adjudicated the question would have not been unclear or answer unknown to the court.

When a pro se or anyone else jump thru all the hoops required to gain access to the courts but are denied that essential constitutional right as a result of deliberate misrepresentation, deliberate misapplication and miscomprehension, losing of vital evidence determined as untimely received when it was not or could not have been after fighting the other side for months and finally getting the order for them to turn over the evidence only to be told it was untimely." Or the deliberate overlooking of well settle law or well establish law or overturned case law harms the balance of courts who are to be "blind" but also fair and impartial. If a judge cannot deal with pro se litigants then he or she should recuse themselves and allow a judge who can be fair and impartial deal with the pro se.[3]

The Plaintiff-Appellant request *if allowed that this issue be seen as such* ***vital importance*** *that it is automatically intercepted by the SC Supreme Court,* certify to the Supreme Court Rule 204(b), *in the interest of justice and to prevent continued injustice – as it relates to rulings that are twisted to insure a defendant is a "winner" knowing that pro se, may or may not be able to file an appeal and nine times out of ten if they do the*

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[3] Pro se was part of a symposium in or around 2009 (if that is the right word) organized by the SC Bar Association and televised by ETV that included a panel of judges who was interested in the plaint of the pro se litigant well this question before the court is a prime example of the injustice faced by a pro se litigant and how the courts have allowed misinterpretation of law to "get them to go away," how they allow, rewriting of a complaint to allow them to dismiss or confuse a jury[3] in favor of a defendant and how courts allow and misstates the facts, has several errors of law, added requirement not in compliance or harmony with other courts and add to the code of law, allowing significant omission in the facts or law or fail to consider an important argument. Apparently the court is not blind to the issues.

court of appeals appears to dismiss or find other means of dismissal not warranted and the pro se is lost because they cannot go any further the Plaintiff-Appellant pro se hopes that the Supreme court will not allow this miscarriage of justice to continue) this matter is of exceptional importance to the fair legal treatment of those who are forced to represent themselves in civil court proceeding in the interest of justice to maintain their lands, personal property, means to make a living and those pro se who jump thru all the hoops required to gain access to the courts but are denied thru misrepresentation, deliberate misapplication and misapphension or the deliberate overlooking of well settle law or well establish law that harms the balance of courts well established law bring unfair balance to the judicial process and a right for all citizens of South Carolina and the US to have access to fair, impartial justice. And there rights to the state, federal and us courts.

Pro se was part of a symposium in or around 2009 (if that is the right word) organized by the SC Bar Association and televised by ETV that included a panel of judges who was interested in the plaint of the pro se litigant well this question before the court is a prime example of the injustice faced by a pro se litigant and how the courts have allowed misinterpretation of law to "get them to go away," how they allow, rewriting of a complaint to allow them to dismiss or confuse a jury[4] in favor of a defendant and how courts allow and misstates the facts, has several errors of law, added requirement not in compliance or harmony with other courts and add to the code of law,

[4] In an effort to make the pro se look like a "fool" (ensuring Abraham Lincolns quote) who does not know her right from her left, much less know their own land for an example they have lived on for umpteen years or when they have been abused or what day it is and in doing so confuse a jury to the extent they see that pro see in the manner the court intends

allowing significant omission in the facts or law or fail to consider an important argument. Apparently the court is not blind to the issues.

A. STATEMENT OF FACTS, HISTORY, EVENTS AND TIMELINE

October 2008 Appellant went to the Director for help and told her of the problems she was enduring, loss of pay, etc., and that she was going to file a complaint to the EEOC for numerous reason, she was told she could not file to the EEOC and after that she was told among other things that she was not allowed to leave from under Rivers' supervision and that edict is upheld to this day.[5] Appellant was even brought before Internal Affairs and to this day does not know why to further cause her damage/retaliation.[6]

November 11, (18) 2008 Appellant called into a meeting, told of the reprimands that appeared after the October meeting, told of her demotion to data entry by Autry and Blankenship and this was her last chance any other issues and she would be dismissed. The demotion form was signed by Marcia Adams on December 3, 2008 and official letter dated December 8, 2008 signed by Dottie Blankenship –

Causal connection for the dates relied on by the court December 8, 2008 to 2009 from the time of filing the charge and the demotion was less than seventeen days (17); Appellant called the EEOC and told them what happen.

Appellant had no issues to speak of in her personnel file she was even told by Dottie Blankenship when asked about a response to her compliant that she did not remember her and they only respond to complaint when the person is about to be dismissed.

The demotion to data entry took place less then fifteen days after appellant filed the charge under oath to the EEOC it was reported to the EEOC on or about November 13, 2008 after appellant was informed by Autry and Blankenship. There have never been any reprimands in her file, entire working life, until after October 2008.

November 18, 2008 Appellant called SCHAC told had to file with the EEOC. Filed charges under oath as required by law with the EEOC/ SCHAC and signed under oath the

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[5] Since 2008 the appellant continues to suffer for engaging in a protected activity and filing the charges against SCDMV and the Defendants. Only, only three remain with the agency. Lula Davis retired after threatening an employee – this the appellant know with firsthand knowledge the employee asked her for help. Several opportunities for promotion was denied and the last promotion opportunity in or about May 2013, that would have left the appellant under Rivers Supervision were denied to her.

[6] Annie Phelps sent a letter to the EEOC chastising appellant for going to Adams for help, she was the meeting when appellant engaged in the protected activity, appellant had repeatedly gone to phelps and rivers for help they did nothing, write complaint to HR they did nothing

charge Form 5. The form box checked ADEA, Title VII Retaliation and continuing violation; report of hostile work environment, failure to demote, etc.

October 9, 2009 Appellant received the Right to Sue (RTS) letter evidence of exhausting all administrative remedies before being allowed access to the courts and proof of obtaining the three year statute of limitations under SCTCA which did not end until

November 2011 or December 2011 with the 30 days after claims was out of the Federal court (if that is a correct interpretation); three years under personal injury statute of limitations S.C. Code Ann. § 15-3-530 15-3-545.

January 4, 2010, appellant timely filed as the record on file clearly will show discrimination claims of age discrimination, hostile work environment , failure to promote, Title VII for retaliation for engaging in a protected activity, etc., as well as state law claims of outrage and civil conspiracy against defendant in official and individual capacities.

March 10, 2011 Judge Perry granted defendants motion for summary judgment on the federal causes of action ONLY and denied jurisdiction over the state pendant claims dismissing *without* prejudice

May 5, 2011 Judge Perry *denied* the Respondents Motion for Reconsideration on the state claims they wanted the court to dismiss with prejudice.

October 11, 2012 Appellant refilled her state claims dismissed without prejudice from federal court in state court within the original statute of limitations, along with additional causes of action gross negligence, civil conspiracy, intentional infliction of emotion distress, etc., under SC common law statute – she named the defendants in their *individual* and *official* capacities

November 22, 2011 defendants answered and moved the complaint back to the federal court to have state claims dismissed under res judicata and collateral estoppel. Appellant as the complaint will bear witness did not intend filing federal claims as they had been dismissed via summary judgment by Judge Perry and she was told she could not bring the claims again. Notice of appeal was filed with letter telling defendants she was going to file state claims in state court. Appellant was unable to file appeal due to illness and the district appeals court denied her request to reinstate right to file appeal.

August 9, 2012, Judge Seymour remanded the complaint back to state court and it was scheduled for trial.

B. DISCUSSION OF THIS MATTER

I. DID THE COURT OF APPEALS MISUNDERSTAND MISAPPLY WELL SETTLED LAW WHEN IT COMES TO EEOC INVESTIATIONS AND TIME LINE TO AMEND THE CHARGE OF DISCRIMINATION IN UPHOLDING THE MOTION TO DISMISS AND RUNNING OF THE SOL?

Pursuant to 29 CFR § 1614.106 or EEOC regulations there is a period of forty-five (45) days to amend a charge after filing. A charge can be amended at any time while the investigation is ongoing and a Right to Sue (RTS) has not be delivered or sent by South Carolina Human Affairs Commission (SCHAC) or the Equal Employment Opportunity Commission (EEOC). As the court would have noted when reviewing the record the boxes were checked for retaliation and continuing violation.

Appellant was not required to file a new charge when the retaliation in the form of the demotion took place within 15 days of the original filing which was November 13, 2008 there has been no ruling on whether or not this was a demotion or reassignment, conclusion by the court.

She was not required to file a new complaint with SCHAC because the rules do not allow dual filings or investigations by both agencies simultaneously, therefore the court was in error when it concluded/determined because the pro se had not signed the signature box for SCHAC with "notary" therefore she had not stated or submitted herself to perjury charges. The EEOC box was in clear compliance with signing an oath the ruling is inconsistent with other courts.

The court also takes it upon itself to add extra steps to trigger the three year statute of limitations (SOL) nowhere in the entire SC Code Ann. §15-78-70-110 et.al does it say

that the appellant is denied access to the state courts after exhausting all administrative remedies as required, when filing a discrimination charge that the appellant has to go back in time and sign the SCHAC section box because affirming under oath of the EEOC signature box would be invalid and the appellant would not be subject to perjury without a "notary" affirming her oath as such her verified claim is invalid and she goes back to a two year statute of limitations. See Joubert v SC DSS, were this court ruled regarding filing a verified claim and when the SOL or triggering the SOL from two to three years.

The court of appeals appears to have overlooked or missed the fact in their review of the record that the complaint that was filed in January 4, 2010, relate directly back to the complaint that was filed in the state court on October 2011.

C. STANDARD OF REVIEW FOR A MOTION TO DISMISS[7]

II. DID THE COURT ABUSE ITS DISCRETION WHEN IT AFFIRMED THE GRANTING OF DEFENDANTS' MOTION TO DISMISS BASED ON SELF SERVING DATA SUPPLIED BY THE DEFENDANTS NOT PART OF THE EVIDENTIARY RECORD, ON THE FACE OF THE COMPLAINT OR IN THE EVIDENTIARY RECORD ALREADY ESTABLSHED IN THE FEDERAL COURT THAT WAS REMANDED. AND NOT ON APPELLANT'S COMPLAINT AND DID THE COURT HAVE JURISDICTION WHEN THERE WAS NO RULING ON THE STATE

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[7] Standard of Review "Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Cafe Assocs., Ltd. v. Gerngross, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991). "Our standard of review in evaluating a motion for summary judgment is to liberally construe the record in favor of the nonmoving party and give the nonmoving party the benefit of all favorable inferences that might reasonably be drawn therefrom." Estes v. Roper Temp. Servs., Inc., 304 S.C. 120, 121, 403 S.E.2d 157, 158 (Ct. App. 1991). Moreover, summary judgment is a drastic remedy which "'should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.'" Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (quoting Watson v. Southern Ry. Co., 420 F. Supp 483, 486 (D.S.C. 1975)).

PENDANT CLAIMS UNDER THE THREE SOL SCTCA OR COMMON LAW 3 YEAR SOL

According to research when both courts dismissed appellant's they failed to take note that the appellant claims were not subject to dismissal because it did not dispose of all the claims. The defendants were sued in both individual and official capacities Healy v. Atchison, Topeka & Santa Fe R.R., 287 S.W.2d 813, 815 (Mo. 1956). In Molasky v. Brown, 720 S.W.2d 412, 415 (Mo. App. W.D. 1986), the Court of Appeals for the Western District expressly found that the trial court's dismissal of plaintiff's petition was not on the grounds of failure to state a claim. Further, the court held that the underlying dismissal was not a final, appealable judgment because it did not dispose of all claims and all parties.

This court has ruled and it is well established law that Under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). The decision to grant a Rule 12(b) (6) motion to dismiss must be based solely upon the allegations set forth in the complaint. Id.; Clearwater Trust v. Bunting, 367 S.C. 340, 343, 626 S.E.2d 334, 335 (2006). In deciding whether the circuit court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. Spence, at 116, 628 S.E.2d at 874 (2006). A motion to dismiss under Rule 12(b) (6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under

any theory. Id.; Overcash v. S.C. Elec. & Gas Co., 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005). Furthermore, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. Spence, at 116-17, 628 S.E.2d at 874.

The controlling law maybe in this matter is the ruling of this court in Cricket Cove Ventures, LLC v. Gilland, 2010 WL 3396829, 6 (S.C. App. 2010)Under rule 12(b)(8):

Under Rule 12(b) (8), to prevail on a motion to dismiss pursuant to Rule 12(b) (8), the movant must show that the actions in question are between the same parties in their same capacities. 1 C.J.S. Abatement and Revival § 54 (2005). In Corbett v. City of Myrtle Beach, S.C., this Court concluded that the trial court properly dismissed the complaint pursuant to Rule 12(b) (8) because the plaintiffs claim for negligent infliction of emotional distress against a beach service involved the same parties and was "based upon the same facts and circumstances" as the plaintiffs first two wrongful death actions against the beach service and the City of Myrtle Beach. 336 S.C. 601, 610, 521 S.E.2d 276, 281 (Ct.App.1999).

It is well established law that if an issue of fact can be ruled in the appellant favor a dismissal is not appropriate. The dates the courts used to dismissed was such an issue and if by the evidence was in appellant's favor the dismissal should be denied. "A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment." See Lydia v. Horton, 343 S.C. 376, 540 S.E.2d 102 (Ct. App. 2000), rev'd on other grounds; Douglass ex. rel. Louthian v. Boyce, 336 S.C. 318, 323, 519 S.E.2d 802,

805 (Ct. App. 1999) (citing Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991)). "Our courts have held the pleadings should be construed liberally so that substantial justice is done between the parties." Falk, 341 S.C. at 287, 533 S.E.2d at 353. Moreover, "a judgment on the pleadings is considered to be a drastic procedure by our courts." Id.

The Supreme Court in Montana has ruled; a motion to dismiss under Rule 12(b)(6), M.R.Civ.P., has the effect of admitting all well-pleaded allegations in the complaint. *Hall*, ¶ 10. In considering the motion, we construe the complaint in the light most favorable to the plaintiff, and all allegations of fact contained therein are taken as true. *Hall*, ¶ 10. A complaint should not be dismissed for failure to state a claim unless *it appears beyond doubt* that the plaintiff can prove no set of facts in support of a claim that would entitle the plaintiff to relief. Reidelbach v. Burlington Northern Ry. Co., 2002 MT 289, ¶ 14, 312 Mont. 498, ¶ 14, 60 P.3d 418, ¶ 14. This ruling is upheld in all courts even South Carolina. See 4502 - Capital City Insurance Company v. BP Staff, Inc.,

An appellate court reviews the grant of summary judgment under the same standard applied by the trial court. Houck v. State Farm Fire & Cas. Ins. Co., 366 S.C. 7, 11, 620 S.E.2d 326, 329 (2005). Summary judgment is appropriate where there are no genuine issues of material fact and it is clear that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Hansson v. Scalise Builders of S.C., 374 S.C. 352, 355, 650 S.E.2d 68, 70 (2007).

South Carolina Supreme Court Richard Freemantle v Joe Preston, et.al., #2010-181306, Op. 27138, (2012) "On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court." Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). Sloan Constr. Co. v. Southco Grassing, Inc., 377 S.C. 108, 113, 659 S.E.2d 158, 161 (2008).

D. STANDARD OF REVIEW RELATE BACK DOCTRINE

III. DID THE COURT ERR OR ABUSE ITS DISCRETION WHEN IT AFFIRMED THE RELATE BACK DOCTRINE DID NOT APPLY TO THIS MATTER IN COMFIRMING THE LOWER COURTS RULING

Rule 15(c) provides:

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading. January 4, 2010.

The court referred to a case from the Virginia Supreme Court - in Rivera v. Witt, 512 S.E.2d 558 (Va. 1999), the Virginia court distinguished its earlier decision of Truman v. Spivey, 302 S.E.2d 517 (Va. 1983). That court concluded "there is nothing in the uninsured motorist statute which suggests that, under the facts of this case, Doe and Witt should be treated as the same entity; therefore, the statute of limitations applies to each of them individually." Id. at 560.

This court in Jackson v Doe, Opinion No. 3244 (2000) in harmony with well settled law and the SCRCP Rule 15(c) provides: Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or

attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading. Appellant meet all three requirements and the requirement that the claims be filed in the original statute of limitations and the evidentiary record is proof of this.

Therefore again the claims should not have been dismissed even if the dates supplied by the defendants were true. See US Supreme court ruling in Krupski v. Costa Crociere S.p.A.,,03-997 (2010): The Supreme Court rejected the argument, holding that "Rule 15(c)(1)(C)(ii) asks what the prospective defendant knew or should have known during the Rule 4(m) period [for serving a summons and complaint], not what the plaintiff knew or should have known at the time of filing her original complaint." The Court also held that relation back is nondiscretionary and cannot be denied merely because the plaintiff delayed in filing her amended complaint regardless the appellant had approximately seven months remaining to refile in state court.

See Morales v. Parish of Jefferson 54 So.3d 669 (2010).

IV. DID THE COURT ABUSE ITS DISCRETION WHEN IT DENIED APPELLANT'S REQUEST TO AMEND RULE 15(a)

The court cites the ruling in Health Promotion Specialists, LLC v SC Board of Dentistry to affirm Judge Manning denial to allow the Appellant to amend her complaint for the first time in state court. However, as in well settled or established law in all courts the appellant should have been allowed to amend the complaint since it was just remanded from federal court dealing with federal law and just required the amending to comply with state law which was placed in the caption of the amended complaint. Not

allowing the amendment prejudiced the pro se appellant, just as Judge Barber's granting the defendants Motion for a continuance just prior to trial.

A ruling from Richland County 5th Circuit Court stated - the Courts in SCRCP §15(a) requires that leave to amend a complaint "be freely given if justice so requires...." Our Courts have interpreted this rule liberally. "Leave to amend pleadings pursuant to Rule 15 SCRCP, shall be liberally and freely given when justice so requires and does not prejudice any other party." *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997); *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250 (S.C. App. 1998). "This rule strongly favors amendments and the Court is encouraged to freely grant leave to amend." *Jarrell v. Seaboard Sys. R.R.*, 294 S.C. 183, 363 S.E.2d 398 (S.C. App. 1987).

V. DID THE COURTS ERR OR ABUSES THEIR DISCRETION WHEN THEY DETERMINED THE APPELLANT WAS UNALBE TO STATE CAUSES OF ACTION THAT WOULD ALLOW RELIEF

DID THE COURT ABUSE ITS DISCRETION IN RULING ON AND AFFIRMING THE DISMISSAL OF A COMPLAINT THAT HAD NOT BEEN BEFORE A COURT AND RULED ON BY A LOWER COURT

DID THE APPEALS COURT APPLY THE CORRECT CASE LAW I'ON, LLC V TOWN OF MT PLEASANT 338, SC, 406, 419, 526 S.E.2D 716, 723 (2000); WHEN IT DECLARED THE DEFENDANTS "WINNERS" ON CLAIMS THAT HAD NOT BEEN BEFORE A COURT OR JURY AS DEMANDED

The court stated it was pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate review. There was *no ruling* on the state pendants claims as is proven by the Orders of the late Judge Perry. So

that would definitely been pointless. But the defendants tried. After the appellant filed her state claims in Richland County circuit court. The defense had the claims removed back to federal court to have dismissed based on res judicata and estoppel.

It is interesting that the defendants had all these reasons to dismiss but did not come up with them until after remand. When they had all this "smoking gun" information to begin with why remove to federal court. Appellant filed October 11, 2011, the removed on or about November 22, 2011. The complaint remained in Federal court until on or about August 8, 2012 when it was remained by US Senior District Judge Margaret Seymour for the same reasons as Judge Perry only to have this court and the lower court shoot the gun when the Federal court refused based on the facts in the evidentiary record.

If the appellant had been allowed to go before a jury and court to have her claims heard and to produce the evidentiary records she could have shown or proven causes of action or allowed to fully file a complaint based on state law and the state statutes that did not happen because the claims were never before a court to be tried on their merit, the federal court did not hear the claim because they denied jurisdiction pursuant to FRCP Section 1367.

VI. DID THE COURT OF APPEALS ERR WHEN IT AFFIRMED BUT IGNORED APPELLANT'S CLAIMS AGAINST THE DEFEDANTS IN THEIR INDIVIUDAL CAPACITIES AS EVIDENCE BY THE CAPTIONS - APPELLANT'S CIVIL CONSPIRACY, GROSS NEGLIGENCE, OUTRAGE/ INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, DEFAMATION CLAIMS WERE TIME-BARRIED BY SCTCA AND COMMON LAW STATUTE OF LIMITATIONS §15-78-530 ET.AL

DID THE COURT ERR OR ABUSE ITS DISCRETION WHEN IT CONCLUDED THE APPELLANT WAS UNABLE TO STATE CAUSE OF ACTION OR RELIEF DUE TO THE SCTCA SOL UNDER THE COMMON LAW 3 YEAR SOL.

a) INDIVIDUAL LIABILITY STANDARD - CAPACITY

During the oral hearing the panel asked the defense attorney in what capacity the defendants were used in official or individual he admitted to the court that it was both but the court for some reason turned around and ignored the admission.

An appellant can maintain an action against a government employee in their individual capacities if the caption state that they are being sued in both officially and or just named individually. See Prigden. This is well settled law in all courts.

See Courts ruling in Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 321, 701 S.E.2d 39, 44. Well established law in *Hafer v. Melo*, 502 U.S. 21, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991), the United State Supreme Court held state officials sued in their individual capacities are "persons" for purposes of § 1983. Accordingly, the trial judge erred in directing a verdict on the § 1983 claim against Deputy Fowler in his individual capacity. Virginia Supreme Court held in *VanBuren v. Grubb* that individuals such as supervisors or managers could be sued as individuals and held personally liable for the common law tort of wrongful termination (also known as wrongful discharge) in addition to whatever corporate liability the employer may have.

Section 15-78-70(a) provides in part that "[a]n employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b)." S.C.Code Ann. § 15-78-70(a)

(Supp.2002). Subsection (b) declares: "Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. §15-78-70(b) (Supp.2002). See Flateau v. Harrelson, 355 S.C., also Smith v. City of Greenwood NO. 8:09-CV-2061-HFF-BHH, (4th Circuit June 2010).

b) CIVIL CONSPIARCY

As to appellant's civil conspiracy claims the controlling case law would be Pridgen v Ward (Ct. App. 2010), as closely resemble the appellant's action. It is well settled law that (direct or circumstantial evidence) on the elements of civil conspiracy which as described in Pridgen - occurs when two or more people develop a plan to get an employee fired and they do it for an improper reason that is not in furtherance of the employer's interests. (special damages to include but not limited to loss of pay, immediate loss of property or use, filings fees, if appellant understands correctly) the rapid accumulation of reprimands leading to dismissal after October 2008 was in furtherance of having appellant dismissed.

This court, because civil conspiracy, by its very definition, is not in furtherance of the employer's interests, the conspirators are, technically, acting outside the scope of their employment. For this reason, liability for a civil conspiracy is on the individual - not the employer. Consequently, it is not covered by insurance and results in personal liability.

The South Carolina Appeals have "Civil Conspiracy is an act which is, by its very nature, covert and clandestine and usually not susceptible of proof by direct evidence" and "conspiracy can be inferred from the very nature of the acts done, the relationship of the parties, the interests of the conspirators and other circumstances." And finally, "the field of admissibility of evidence is broadened in proof of conspiracy."

Also see Cricket Cove Ventures, LLC v. Gilland, 2010 WL 3396829, 6 (S.C. App. 2010).

c) OUTRAGE/INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

Appellant does feel that the panel asking her about her outrage during the October 7, 2014 oral hearing was a full adjudication of her claims or their merit. See Hansson v. Scalise Builders of S.C., 374 S.C. 352, 357, 650 S.E.2d 68, 71.

Pro se appellant should be allowed to put forth her evidence that are a matter of evidentiary record to include medical records, that could prove her outrage and IIED claims against the defendants. She suffered and continues to suffer panic attacks and anxiety while the threshold is high on this type of claim the courts have held that to prevail on a claim of this sort the plaintiff must satisfy the following elements to state a claim of intentional infliction of emotional distress: (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of the defendant caused

the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it. Upchurch v. New York Times Co., 314 S.C. 531, 431 S.E.2d 558 (1993); Ford v. Hutson, 276 S.C. 157, 166, 276 S.E.2d 776, 780 (1981) (recognizing that "where physical harm is lacking, the courts should look initially for more in the way of extreme outrage as an assurance that the mental disturbance claimed is not fictitious").

d) GROSS NEGLIGENCE

This court's ruling Hendricks v. Clemson University, No. 3137, (Ct. Ap March 2000) S.C. Code Ann. § 15-78-60(25) (Supp. 1998).

Gross negligence is the intentional, conscious failure to do something which one ought to do or the doing of something one ought not to do. Hollins v. Richland County Sch. Dist. One, 310 S.C. 486, 427 S.E.2d 654 (1993). It is the failure to exercise slight care. Clyburn v. Sumter County Sch. Dist. # 17, 317 S.C. 50, 451 S.E.2d 885 (1994). Where a person is so indifferent to the consequences of his conduct as not to give slight care to what he is doing, he is guilty of gross negligence. Jackson v. South Carolina Dep't of Corrections, 301 S.C. 125, 390 S.E.2d 467 (Ct. App.1989), *aff'd,* 302 S.C. 519, 397 S.E.2d 377 (1990). Gross negligence is a mixed question of law and fact and should be presented to the jury unless the evidence supports only one reasonable inference. Clyburn, 317 S.C. 50, 451 S.E.2d 885.

In South Carolina a negligence action, the plaintiff must establish a duty of care, breach, and resulting damages. Arthurs ex rel. Munn v. Aiken, 346 S.C. 97,103, 551 S.E.2d 579, 582 (2001). As such, a plaintiff in a negligence cause of action must prove all

elements of that action, including the standard of care. Although a governmental entity has the initial "burden of establishing a limitation upon liability or an exception to the waiver of immunity" applies, the plaintiff must still prove that the governmental entity has waived immunity. See Niver v. S.C. Dep't of Highways & Pub. Transp., 302 S.C. 461, 463, 395 S.E.2d 728, 730 (Ct. App.1990).

e) DEFAMATION (2 year SOL)

The appellant suffers daily due to the reputation she has gotten since filing this claims, the defense attorney has tried to get her declared as a vexatious litigate, she has no reputation anymore as her personnel file is filled with false reprimands accusing her of abuse of time. He also stated that the appellant was "sensitive" the meaning was not flattering.

IN CONCLUSION

Appellant respectfully ask that this court reverse and remand in order to ensure justice in this matter. This court is obligated, by its own laws and decisions, to allow this action to go through the full process as well establish law demand. To ensure justice, this matter must be allowed to go through the legal due process to ensure that the judicial system and its jurist remain uniform and in complete sync and to avoid the look of favoritism. It is plan to see by Orders, the evidentiary record, the documented timeline that this matter has not been fully adjudicated before any court and no rulings have been made to determine "winners" as it applies to the state pendant causes of action that fall under the SCTCA and SC Common Law three year SOL.

This matter may have been before this court prematurely which would also demand a remand back to the circuit court in the interest of justice as well as uniformity among the courts here in South Carolina and her sister courts. (See Exhibit One Orders of the late US District Judge Perry March 9, 2011 and May 5, 2011).

And, the court should consider sanctions or at least look at the behavior of the attorney to determine if fraud and misleading the court was in play.

The questions that should be asked, would either court jurists have made this same decision if the appellant had not been pro se[8]? Would they have allowed the defendants' attorney to behave in a way that should shock the conscience of the court? See Rocha v California, 342, U.S. 165, 72, S. Ct 205, 96, Led., 183 (1952).

WHEREFORE, for all the foregoing reasons, the pro se appellant respectfully requests the court vacate its order filed on February 5, 2015 and received by the Appellant on February 9, 2015, as aforesaid and reinstate the complaint back to the docket for trail based on the evidentiary record, the actual dates of injury. The pro se also ask that if this matter is remanded/reversed as it should be that Judge Manning be removed as the presiding jurist as he does not seem to have respect for the pro se litigant and or for the appellant.

The state defendants and government cannot be allowed to have it both ways and pick and choose which laws they want to adhere to and they should not be allowed to do

[8] Pro se also asks the court to see what happened in this case as the difficulty that a pro se endures in the judicial system -- no one wakes up in the morning and decides they want to go to court without a lawyer to sue their employer or be forced into court due to the actions of another outside force. Unfortunately the laws say if you want to protect your property and constitutional rights it is what you must do

so. In the interest of justice matter should be reheard and on reheard en banc or cert to the SC Supreme court. Even if the dates used to dismiss and affirm were based on fact it does not warrant dismiss of this action in that the action was filed based on the dates in the record November 13, 2008 – November 2011 and filed timely.

Respectfully submitted by,

Glenda R. Couram, pro se
104 Macaw Lane
Lexington, SC 29073
803 896-7509
grcouram@hotmail.com

Dated this 19th day of February 2015
Lexington County South Carolina

DECLARATION

I declare, affirm under penalty of perjury that the foregoing is true and correct to be the best of my knowledge and belief.

Respectfully submitted by,

CERTIFICATE OF SERVICE

I certify that on the 19th day of February 2015, I served copies of the above Petition for Rehearing and Rehearing En Banc and cert by U.S. mail, postage prepaid, and properly addressed on the following counsel of record:

Eugene H. Matthews Esq.,
Richardson, Plowden, PA.,
P.O. Drawer 7788
Columbia, SC 29202

Respectfully submitted by,

Glenda R. Couram
104 Macaw Lane
Lexington, SC 29073
803 896-7509
grcouram@hotmail.com

CERTIFICATE OF FONT COMPLIANCE

I certify that the lettering in this brief is Times New Roman 13-point font and complies with the font requirements of the SCRCP to the best of knowledge.

Glenda R. Couram

This 19th Day of February 2015
Lexington County South Carolina

EXHIBIT ONE

Glenda Renee Couram v. South Carolina Department of Motor) Vehicles; Lula N. Davis; Connie

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA COLUMBIA DIVISION

March 10, 2011

GLENDA RENEE COURAM,
PLAINTIFF,
v.
SOUTH CAROLINA DEPARTMENT OF MOTOR) VEHICLES; LULA N. DAVIS; CONNIE RHETT; AND SHIRLEY RIVERS, IN THEIR INDIVIDUAL CAPACITIES, DEFENDANTS,

The opinion of the court was delivered by: Matthew J. Perry, Jr. Senior United States District Judge Columbia, South Carolina

ORDER

This matter is before the Court pursuant to a report and recommendation submitted on November 12, 2010 by United States Magistrate Judge Paige J. Gossett, to whom it was referred for review under 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rules. Also, there is before the Court a "Motion to Remand/Removal to State Court and Request to Amend Complaint" that was filed by Plaintiff on December 14, 2010.

In the underlying action, Plaintiff Glenda Renee Couram ("Plaintiff"), proceeding pro se, seeks monetary damages from her current employer, the South Carolina Department of Motor Vehicles (SCDMV), asserting alleged violations of Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e -- 2000e-17, the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 -- 634, and the Equal Pay Act of 1963 (EPA), 29 U.S.C. § 206. Specifically, Plaintiff contends that the SCDMV failed to promote her and subjected her to a hostile work environment because of her age, paid her lower wages than her younger colleagues, and retaliated against her by demoting her on the basis of her age. Plaintiff also asserts state law claims for outrage and civil conspiracy.

I.BACKGROUND

Plaintiff is a fifty-two (52) year old African-American female. Plaintiff has been an employee of the South Carolina Department of Motor Vehicles (SCDMV) since October 2004, when she was hired as a temporary employee in the data entry section. On June 19, 2006, Plaintiff was hired into a full-time position as a Compliance Specialist in the tickets branch of SCDMV's driver records section. She was reassigned to a position within the information management branch of driver records on December 8, 2008, without loss of pay or title. Plaintiff remains employed by the SCDMV in this position to the present day.

On November 13, 2008, Plaintiff filed a charge of discrimination with the United States Equal Employment Opportunity Commission (EEOC). She asserted that she had been discriminated against, harassed, subjected to a hostile work environment, in violation of the Age Discrimination in Employment Act of 1967, and retaliated against her for engaging in unspecified, protected activity.*fn1

After receiving notice of the right to sue, Plaintiff timely commenced this action against the Defendant on January 4, 2010. On August 11, 2010, the Defendants moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. The Defendants assert that summary judgment is warranted because (1) Plaintiff's claims pursuant the ADEA are barred by state sovereign immunity;

(2) Plaintiff's claims pursuant to the EPA or Title VII fail because her complaints are based on age and neither statute forbids age discrimination; (3)

Plaintiff cannot establish prima facie cases of either age discrimination, age harassment, or retaliation because of age; (4) Plaintiff's claim for outrage is barred by the South Carolina Workers' Compensation Act; and (5) Plaintiff fails to establish a prima facie case of civil conspiracy. In her response to the Defendants' motion for summary judgment, Plaintiff urged the Court to deny summary judgment due to the Defendants' failure to meet the requirements of Rule 56(c).

Upon her review, the Magistrate Judge observes that the SCDMV is immune from suit in federal court pursuant to the Eleventh Amendment to the United States Constitution and it has not waived its immunity. The Magistrate Judge observes that Plaintiff's ADEA claims against individual Defendants Davis, Rhett, and Rivers fail as a matter of law because the ADEA does not provide for actions against these defendants in their individual capacities. Citing Birkbeck v. Marvel Lighting Corp., 30 F.3d 507, 510 (4th Cir. 1994) (Accordingly, we [the Court] rejected the claim of individual liability under the ADEA); Lissau v. Southern Food Service, Inc., 159 F.3d 177, 180 (4th Cir. 1998) (holding that there is no individual liability under the ADEA or Title VII); see also McNeal v. Montgomery Cnty., Md., 307 Fed. Appx. 766, 775 n.6 (4th Cir. 2009) (unpublished) ("[O]nly an employer, not an individual employee, may be held liable under the ADEA."). The Magistrate Judge further observes that the Plaintiff's evidence fails to establish a prima facie case of either outrage or civil conspiracy.*fn2 Therefore, the Magistrate Judge recommends granting the Defendants' motion for summary judgment.*fn3

Plaintiff submitted various objections to the Magistrate Judge's Report and Recommendation. Plaintiff first voices her displeasure with the way the Magistrate Judge adjudicated discovery issues. Plaintiff then objects to the Magistrate Judge's observation that her claims are based solely on the ADEA and argues that she has appropriately brought claims under Title VII and 42 U.S.C. § 1983. Plaintiff further asserts that the South Carolina Tort Claims Act abrogates the State's Sovereign Immunity and the tort of outrage is not barred by the exclusivity provisions of the Workers' Compensation Act. Finally, Plaintiff argues that the breadth of her allegations support her claim for civil conspiracy since participation in a conspiracy is a question of fact. Plaintiff asks the Court to reject the Magistrate Judge's recommendation and allow Plaintiff her day in Court.

Additionally, on December 14, 2010, Plaintiff filed a "Motion to Remand/Removal to State Court and Request to Amend Complaint." In this motion, Plaintiff asks the Court to remand her claims to state court if jurisdiction is appropriate there. In the alternative, Plaintiff requests that the Court allow her to amend the Complaint to add claims for religious discrimination and harassment.

II.ANALYSIS

A. Age Discrimination in Employment Act Claims

Plaintiff alleges that the SCDMV unlawfully discriminated against her based upon her age by failing to promote her, paying her disparate wages, subjecting her to a hostile work environment, and retaliating against her by demoting her. The ADEA addresses age related employment issues by making it "unlawful for an employer...to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age...." 29 U.S.C. § 623(a)(1). However, as the Magistrate Judge has observed, the SCDMV and individual Defendants Davis, Rhett, and Rivers are immune from an ADEA suit in federal court pursuant to the Eleventh Amendment to the United States Constitution.

The Eleventh Amendment provides that "[t]he judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state." U.S. Const. art. XI. The Supreme Court has consistently construed the Eleventh Amendment to bar suits against a state brought by its own citizens in federal court. Pennhurst State School and Hospital v. Halderman, 465 U.S. 89, 98 (1984). The immunity from suit conferred by the Eleventh Amendment extends both to

suits against the state itself, suits against state agencies such as the SCDMV and its governing body, officers, and agents, which function as an arm or alter ego of the state.*fn4 Pennhurst, supra, at 100; see also Regents of the Univ. of California v. Doe, 519 U.S. 425, 429 (1997); Will v. Michigan Dep't of State Police, 491 U.S. 58, 70 (1989); Alabama v. Pugh, 438 U.S. 781 (1978); Hughes v. Blankenship, 672 F.2d 403 (4th Cir. 1982); Jensen v. Conrad, 570 F. Supp. 91, 96-97 (D.S.C. 1983); Coffin v. South Carolina Dep't of Social Services, 562 F. Supp. 579, 584 (D.S.C. 1983); United States v. State of South Carolina, 445 F.Supp. 1094, 1100 (D.S.C. 1977). Eleventh Amendment immunity can be overcome if the state waives its constitutional immunity and consents to suit or, if Congress abrogates the state's immunity pursuant to its authority to enforce substantive provisions "by appropriate legislation." See U.S. Const. art. XIII, § 2; art. XIV, § 5; art. XV, § 2.

Clearly, the State of South Carolina has not waived its immunity regarding claims such as those asserted by the Plaintiff herein. See S.C. Code Ann. § 15-78-20(e) (expressly stating that the State of South Carolina does not waive sovereign immunity from suit in federal court). Additionally, Congress did not exercise its power to abrogate a state's Eleventh Amendment immunity in enacting the ADEA. Kimel v. Florida Bd. of Regents, 528 U.S. 62, 91 (2000). Thus, absent consent to suit or federal legislation abrogating the constitutional immunity of the State of South Carolina, neither the SCDMV nor individual Defendants Davis, Rhett, and Rivers, sued in their official capacities, are subject to suit under the ADEA. Moreover, to the extent that Plaintiff asserts claims under the ADEA against individual Defendants Davis, Rhett, and Rivers in their individual capacities, the ADEA does not allow the Court to impose such liability. See Birkbeck v. Marvel Lighting Corp., 30 F.3d 507, 510 (4th Cir. 1994); see also Lissau v. Southern Food Service, Inc., 159 F.3d 177, 180 (4th Cir. 1998) (holding that there is no individual liability under the ADEA or Title VII); McNeal v. Montgomery Cnty., Md., 307 Fed. Appx. 766, 775 n.6 (4th Cir. 2009) (unpublished) ("[O]nly an employer, not an individual employee, may be held liable under the ADEA."). Accordingly, the Defendants' motion for summary judgment regarding Plaintiff's federal age claims should be granted.

B. Other Federal Claims

The Court agrees with the Magistrate Judge that although Plaintiff mentions Title VII and the EPA in her filings, her allegations regarding discrimination and retaliation are all based on age rather than any class protected under Title VII or the EPA. The Court further agrees with the Magistrate Judge that any claims arising under 42 U.S.C. § 1983 for alleged due process violations of the Fourteenth Amendment are not properly before the Court. See Zombro v. Baltimore City Police Dep't, 868 F.2d 1364, 1366-71 (4th Cir. 1989) (holding that a plaintiff could not bypass the procedural and substantive provisions of the ADEA by pleading an age discrimination claim against defendants as a § 1983 claim). Accordingly, the Court overrules Plaintiff's objections to the Magistrate Judge's recommendation regarding claims brought pursuant to Title VII, the EPA, and 42 U.S.C. § 1983.

C. State Law Claims

In addition to her federal age claims, Plaintiff also alleges state common law causes of action for civil conspiracy and outrage, which is commonly referred to as intentional infliction of emotional distress (IIED). The Court's jurisdiction over the state law claims is premised on supplemental jurisdiction. See 28 U.S.C. § 1367(a). The court may decline to exercise supplemental jurisdiction if it "has dismissed all claims over which it has original jurisdiction."

28 U.S.C. § 1367(c)(3); see also Shanaghan v. Cahill, 58 F.3d 106, 109 (4th Cir.1995) ("The doctrine of supplemental jurisdiction indicates that federal courts generally have discretion to retain or dismiss state law claims when the federal basis for an action drops away."). "[T]rial courts enjoy wide latitude in determining whether or not to retain jurisdiction over state claims when all federal claims have been extinguished." Shanaghan, 58 F.3d at 110. The Court has been instructed to consider the following factors when making this determination: (1) "convenience and fairness to the parties," (2) "the existence of any underlying issues of federal policy," (3) "comity," and (4) "considerations of judicial economy." Id. (citing Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n. 7 (1988)). These factors, in this regard, support dismissal. Accordingly, pursuant to 28 U.S.C. § 1367(c)(3), the Court dismisses Plaintiff's state law claims for civil conspiracy and outrage without prejudice.

D. Plaintiff's Motion to Remand/Removal to State Court and Request to Amend Complaint After submitting her objections to the Magistrate Judge's Report and Recommendation, Plaintiff filed a "Motion to Remand/Removal to State Court and Request to Amend Complaint" on December 14, 2010. Plaintiff seeks to have the Court remand her claims to state court if jurisdiction is appropriate there. This request cannot be granted because a federal court cannot remand a case to state court that was originally filed in federal court, even if a state court turns out to be the appropriate forum. In the alternative, Plaintiff seeks to amend the Complaint to add claims for religious discrimination and harassment.

Because amendment under Rule 15(a)(1) of the Federal Rules of Civil Procedure is unavailable to Plaintiff at this point in the litigation*fn5 , she can only amend the Complaint with the opposing party's written consent or the court's leave. Fed. R. Civ. P. 15(a)(2). Since the Defendants have not provided written consent to an amendment, the Court is instructed that "leave to amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile." Laber v. Harvey, 438 F.3d 404, 426 -- 27 (4th Cir. 2006) (citing Foman v. Davis, 371 U.S. 178, 182 (1962); Johnson v. Oroweat Foods Co., 785 F.2d 503, 509 (4th Cir. 1986)). Whether an amendment is prejudicial will often be determined by the nature of the amendment and its timing. Id.

In this case, Plaintiff has requested amendment to add claims for religious discrimination and harassment which were not identified in her Charge of Discrimination. These claims are further being added well after the Magistrate Judge has recommended granting summary judgment on the other federal claims in this matter. Therefore, Plaintiff's motion to amend is hereby denied.

III. CONCLUSION

Upon careful consideration of the record and for the foregoing reasons, the Court approves the Magistrate Judge's recommendation to grant Defendants' motion for summary judgment as to Plaintiff claims for violating the Age Discrimination in Employment Act. Accordingly, the Defendants' motion for summary judgment as to Plaintiff's claims that the Defendants have violated the Age Discrimination in Employment Act is hereby GRANTED. The Defendants' motion for summary judgment is DENIED to the extent the motion seeks dismissal with prejudice of the Plaintiff's state law claims for civil conspiracy and outrage. Instead, pursuant to 28 U.S.C. § 1367(c), **Plaintiff's state law claims for civil conspiracy and outrage are hereby DISMISSED without prejudice**. It is further ordered that Plaintiff's Motion to Remand and Request to Amend Complaint is DENIED.

IT IS SO ORDERED.

Glenda Renee Couram v. South Carolina Department of Motor Vehicles

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA COLUMBIA DIVISION

May 5, 2011

GLENDA RENEE COURAM,
PLAINTIFF,
v.
SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES;
LULA N. DAVIS; CONNIE RHETT; AND SHIRLEY RIVERS, IN THEIR INDIVIDUAL CAPACITIES,
DEFENDANTS.

The opinion of the court was delivered by: Matthew J. Perry, Jr. Senior United States District Judge

ORDER

This matter is before the Court by way of a motion filed by the Defendants pursuant to Rule 59(e) of the Federal Rules of Civil Procedure collectively seeking to amend the Judgment of this Court filed on March 11, 2011. For the reasons stated below, the Court denies the Defendants' motion.

I.RELEVANT PROCEDURAL HISTORY

On January 4, 2010, Plaintiff timely commenced this action against the Defendants alleging violations of Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e -- 2000e-17, the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 -- 634, and the Equal Pay Act of 1963 (EPA), 29 U.S.C. § 206. (Pl.'s Compl., Docket No. 1.) Plaintiff also alleged state law claims for outrage (commonly known as Intentional Infliction of Emotional Distress) and civil conspiracy. After answering the Complaint and engaging in discovery, the Defendants moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure on August 11, 2010. (Docket No. 48.) Upon consideration of the record before the Court, the Magistrate Judge issued a Report and Recommendation on November 12, 2010 in which she recommended granting the Defendants' motion for summary judgment. Plaintiff timely submitted various objections to the Magistrate Judge's Report and Recommendation.

On March 10, 2011, the Court issued an Order granting summary judgment to Defendants as to all of Plaintiff's claims based on violations of federal law. The Court declined to exercise supplemental jurisdiction over the Plaintiff's remaining state-law based claims for outrage and civil conspiracy, and dismissed these state law claims without prejudice. On March 17, 2010, Defendants filed the present motion requesting dismissal of Plaintiff's outrage and civil conspiracy claims.

On March 21, 2011, Plaintiff appealed the Court's March 10, 2011 Order to the United States Court of Appeals for the Fourth Circuit. (Docket No. 102.)

II.LEGAL STANDARD

Under Rule 59(e) of the Federal Rules of Civil Procedure, a court may "alter or amend the judgment if the movant shows either (1) an intervening change in the controlling law, (2) new evidence that was not available at trial, or (3) that there has been a clear error of law or a manifest injustice." Robinson v. Wix Filtration Corp., 599 F.3d 403, 407 (4th Cir. 2010); see also Collison v. Int'l Chemical Workers Union, 34 F.3d 233, 235 (4th Cir. 1994). "[T]he rule permits a district court to correct its own errors, 'sparing the parties and the appellate courts the burden of unnecessary appellate proceedings.'" Pac.

Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). However, Rule 59 motions do not serve as an opportunity to rehash issues already ruled upon because a litigant is displeased with the result. See Hutchinson v. Staton, 994 F.2d 1076, 1082 (4th Cir. 1993) (stating that "mere disagreement does not support a Rule 59(e) motion"); see also Consulting Eng'rs, Inc. v. Geometric Software Solutions & Structure Works LLC, 2007 WL 2021901, at *2 (D.S.C. July 6, 2007) ("A party's mere disagreement with the court's ruling does not warrant a Rule 59(e) motion, and such motion should not be used to rehash arguments previously presented or to submit evidence which should have been previously submitted."). Moreover, where, as here, a motion to amend a judgment under Rule 59(e) is filed before the notice of an appeal from the underlying judgment, the district court retains jurisdiction to dispose of a motion to alter or amend a judgment. See Fed. R. App. P. 4(a)(4); see also Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 59 (1982).

III.ANALYSIS

In support of their motion for relief pursuant to Rule 59(e), the Defendants argue that the Court should in its discretion exercise supplemental jurisdiction over Plaintiff's state law causes of action for outrage and civil conspiracy and dismiss these claims with prejudice. The Defendants assert that dismissal of Plaintiff's state law claims is appropriate upon consideration of factors such as "convenience and fairness to the parties, the existence of any underlying issues of federal policy, comity, and considerations of judicial economy." Citing Talamantes v. Berkeley Co. Sch. Dist., 340 F.Supp.2d 684, 690 (D.S.C. 2004). The Defendants fail however to identify an intervening change in the law, newly developed evidence, or clear error of law or manifest injustice which warrant altering the Court's prior opinion declining to exercise jurisdiction over Plaintiff state law claims. In fact, the Defendants admit that it is within the Court's discretion to determine whether or not to exercise supplemental jurisdiction over Plaintiff's causes of action for outrage and civil conspiracy. In this regard, the Court finds that the Defendants' arguments in their entirety do not warrant the Court to grant the relief requested by the Defendants in their motion. Accordingly, the Defendants' Motion to Amend is denied.

IV.CONCLUSION

For the foregoing reasons, the Court DENIES the Defendant's Motion to Amend Judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

s/Matthew J. Perry, Jr.

February 23, 2015

Mr. Matthews

RE: Glenda Couram, Appellant, v. Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake, in their official and individual capacities, and the South Carolina Department of Motor Vehicles, Respondents.

Appellate Case No. 2012-213441

This is an addendum to the petition for a rehearing. It was included in the papers to the court ~~by~~ but it was mailed to you. I apologize for an inconvenience, the filing or addition is timely.

Glenda Couram

ADDENDUM

ADDENDUM TO OUTRAGE/IIED CLAIMS

I tasted fear, I had just come out of bankruptcy, student loan payments not discharged, to afford gas and survive for one week to another pay day loan places.

I did nothing to lose my job over so I tasted fear; it is something that never goes away once you taste it when things settle it goes away for a while but mere seconds to come back

No child, man or woman should taste fear. I think, it is a big part of PTSD. It its takes forever and a day to go away **but mere seconds to come back as I write this I remember what it tastes like.**

February 19, 2015

Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Glenda R. Couram v Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake in their official and individual capacities and the South Carolina Department of Motor Vehicles.

Appellate Case No.: 2012-213441

Dear Ms. Kitchings:

Please find the Petition for Rehearing and Rehearing En banc as well as cert to the SC Supreme Court. I am enclosing six copies and one loose copy as well as the filing fee of $25.00. I am not sure if you need the $100 for the SC Supreme Court yet if so please let me know I will mail it promptly. I understand that there has to be a writ for the Supreme Court as well and that would be the $100 filing fee not sure if I should send until after Court of Appeals decides. I hope that is how it works

Sincerely,

Glenda Couram, *pro se*
104 Macaw Ln
Lexington, SC 29073
grcouram@hotmail.com
803 896-7509

/grc

c: Eugene H. Matthews, Esq.
Richardson Plowden PA
PO Box Drawer 7788
Columbia, SC 29202