ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Unpublished Opinion No.: 2015-UP-065 (Filed February 4, 2015)

Glenda R. Couram,

Petitioner,

v.

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

Respondents.

RETURN TO PETITION FOR WRIT OF CERTIORARI

Eugene H. Matthews
RICHARDSON PLOWDEN & ROBINSON, P.A.
Post Office Drawer 7788
Columbia, South Carolina 29202
T: (803) 771-4400
F: (803) 779-0016
Email: gmatthews@RichardsonPlowden.com

COUNSEL FOR RESPONDENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

COUNTER STATEMENT OF ISSUES ON APPEAL

I. DID THE COURT OF APPEALS CORRECTLY AFFIRM THE FINDING OF THE COURT OF COMMON PLEAS ON THE FOLLOWING ISSUES:

A. WAS THE COURT OF COMMON PLEAS CORRECT IN FINDING THAT THE PETITIONER DID NOT FILE A VERIFIED COMPLAINT AGAINST THE RESPONDENTS UNDER THE SOUTH CAROLINA TORT CLAIMS ACT?

B. DID THE COURT OF COMMON PLEAS CORRECTLY FIND THAT S.C. CODE ANN. § 15-78-110 WAS THE PROPER STATUTE OF LIMITATIONS FOR THE CAUSES OF ACTION AGAINST THE RESPONDENTS?

II. WAS PETITIONER'S MOTION TO AMEND HER COMPLAINT ALSO FUTILE BECAUSE HER PROPOSED CLAIMS WERE SUBJECT TO DISMISSAL ON GROUNDS OTHER THAN THE APPLICABLE STATUTE OF LIMITATIONS?

A. WAS PETITIONER'S CLAIM FOR CIVIL CONSPIRACY PROPERLY SUBJECT TO DISMISSAL FOR THE REASONS STATED BY THE COURT OF COMMON PLEAS, OR FOR REASONS OTHERWISE SUPPORTED IN THE RECORD?

i. Was Petitioner's Civil Conspiracy claim dismissed because it is barred under the intracorporate conspiracy doctrine?

ii. Did Petitioner's allegations fail to state a civil conspiracy claim under *Lawson v. South Carolina Dept. of Corrections?*

iii. Did Petitioner's allegations fail to state a civil conspiracy claim for the reasons articulated in *Couram I?*

B. WAS PETITIONER'S CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS PROPERLY SUBJECT TO DISMISSAL FOR THE REASONS STATED BY THE COURT OF COMMON PLEAS, OR FOR REASONS OTHERWISE SUPPORTED IN THE RECORD?

COUNTER STATEMENT OF THE CASE

Petitioner has been an employee of South Carolina Department of Motor Vehicles ("SCDMV") since October 2004, when she was hired as a temporary employee. On June 19, 2006, SCDMV placed Petitioner in a full-time position as a Compliance Specialist in the Tickets Branch of SCDMV's Driver Records section. (R. p. 22). She was reassigned within Driver Records to the Information Management Branch on December 8, 2008, without loss of pay or title. (R. p. 220, fn. 3). Petitioner remains employed by SCDMV in this position to the present day. As of the filing of this Return, she has been employed at SCDMV for nearly eleven (11) years.

Petitioner has spent much of her career at SCDMV filing complaints against her co-workers and supervisors for various perceived slights, directives she has not liked, and minor counseling or corrective actions. Although no third party has ever found any basis in these complaints, Petitioner has filed them with regularity.

Because Petitioner's appellate arguments touch on practically all of these previous filings, Respondents submit an abbreviated list of the complaints and lawsuits she has filed, as a *pro se* litigant, against SCDMV and her co-workers and supervisors with the Equal Employment Opportunity Commission ("EEOC"), the South Carolina Human Affairs Commission ("SHAC"), the South Carolina Court of Common Pleas, the South Carolina Court of Appeals, the U.S. District Court for the District of South Carolina, and the U.S. Court of Appeals for the Fourth Circuit:

- SCDMV received Petitioner's Charge of Discrimination from the EEOC by letter dated November 18, 2008. In the Charge, Petitioner accused SCDMV of age discrimination and retaliation related to counseling she received in 2007 and 2008 regarding her attendance. She also alleged other unspecified harassment. The Charge of Discrimination is not notarized. (R. p. 164).

- Following the dismissal of her Charge, Petitioner filed a lawsuit in U.S. District Court for the District of South Carolina on January 4, 2010, against SCDMV and many of her supervisors and co-workers. In her lawsuit, she alleged claims under Title VII, the Age Discrimination in Employment Act, the Equal Pay Act, and state law claims for intentional infliction of emotional distress and civil conspiracy (hereinafter "Couram I"). (R. pp. 33-51).

- In March 2011, U.S. District Judge Matthew Perry granted summary judgment to the Respondents on all federal claims in Couram I, and declined to exercise jurisdiction over the state law claims. *Couram v. South Carolina Dept. of Motor Vehicles*, 2011 WL 891298 (D.S.C. March 10, 2011). (R. pp 1-10).

- Petitioner appealed Judge Perry's decision to the U.S. Court of Appeals for the Fourth Circuit. Her appeal was dismissed on August 30, 2011, and her request to reinstate the appeal was denied on November 30, 2011.

- Petitioner filed another lawsuit in the South Carolina Court of Common Pleas in Richland County on October 25, 2011 (hereinafter "Couram II"). (R. pp. 52-76). In her Complaint, she alleged many of the federal causes of action that had earlier been dismissed in Couram I. Petitioner also alleged state law claims for emotional distress, civil conspiracy, and gross negligence. The case was removed to U.S. District Court.

- Following an extensive number of motions, U.S. Magistrate Judge Paige Gossett recommended that the case be remanded to state court if the Petitioner removed the federal causes of action from her Complaint. *Couram v. Davis*, 2012 WL 2428581 (D.S.C. March 14, 2012). U.S. District Court Judge Barbara Seymour adopted the recommendation. *Couram v. Davis*, 2012 WL 2428567 (D.S.C. June 27, 2012).

- Upon Petitioner's removal of federal claims from her Complaint in Couram II, Judge Seymour remanded the case back to state court on August 21, 2012. (R. p. 20).

- On or about September 11, 2012, Petitioner filed a Motion to Amend her Complaint and a proposed Fourth Amended Complaint. (R. p. 24).

- On November 15, 2012, Circuit Court Judge L. Casey Manning granted the Respondents' Motion to Dismiss the remaining claims in the Complaint with prejudice. (R. pp. 22-31).

- On November 18, 2012, Petitioner filed and served her Notice of Appeal. (Not included by Petitioner in Record on Appeal).

The South Carolina Court of Appeals issued its opinion on Petitioner's appeal on February 4, 2015.[1] In it, the Court of Appeals found that (1) Petitioner did not file a verified claim under the South Carolina Tort Claims Act ("SCTCA"), such that a two-year statute of limitations applied to Petitioner's remaining claims, (2) Plaintiff's motion to amend her claim was futile as her proposed amendments were also barred by the statute of limitations, (3) the tolling provision of 28 U.S.C. § 1367(d) was inapplicable because Petitioner's initial federal action was dismissed under the Eleventh Amendment, and (4) in any event, Petitioner's claims were properly dismissed because they otherwise failed to state a claim for which relief could be granted.

On June 22, 2015, the South Carolina Court of Appeals denied the Petition for Rehearing of Petitioner.

On July 22, 2015, Petitioner filed her Petition for a Writ of Certiorari to the South Carolina Supreme Court.

[1]In the Appendix served with her Petition for a Writ of Certiorari, Petitioner includes an incomplete copy of the unpublished opinion of the Court of Appeals, No. 2015-UP-065, at Tab-D.

STATEMENT OF FACTS

The Petition for Writ of Certiorari addresses the dismissal of three of the state law claims brought against Respondents.[2] In general, Petitioner argues that the statute of limitations on her state law claims has not expired. Petitioner also generally argues that she is entitled to a jury trial on her claims because (1) discovery has been completed, and (2) she has presented sufficient evidence to prove the elements of her claims. (Tab-B, Final Brief of Appellant, pp. 30, 38).

For this reason, this section of Respondents' Return will address (1) how Petitioner has stated these claims, (2) when the claims were made, and (3) the evidence in the record relevant to these claims.

PETITIONER'S INITIAL COMPLAINT FILED IN 2010

The Petitioner initiated her state law claims in January 2010, when she brought the following claims:

1. A claim against SCDMV for the tort of "outrage," also stated as a claim for "negligence, gross negligence, reckless, willful and wanton conduct." Other than "outrage," Petitioner did not state the nature of any other type of tort she wished to bring against SCDMV, or why SCDMV would be specifically liable for outrage. (R. p. 47, Plaintiff's Complaint, ¶¶ 114-116).

2. A claim against the individual Respondents Lula N. Davis, Connie Rhett, and Shirley Rivers for "civil conspiracy," based on her allegations that the individuals placed false documents in her file, changed her job duties, excessively "worried" Petitioner, belittled her, and interfered with her work. (R. pp. 47-50, Plaintiff's Complaint, ¶¶ 117-144).

---

[2] Petitioner has conceded that her defamation claim is "time barred regardless of the outcome of this appeal." (Petition for Writ of Certiorari, p. 17, n. 4.). Furthermore, Petitioner does not renew any argument regarding (1) tolling under 28 U.S.C. § 1367(d), or (2) whether Petitioner stated a claim for negligence or gross negligence against any of the Respondents. For that reason, her previous arguments on these issues are deemed abandoned. *See Medical Univ. of South Carolina v. Arnaud,* 360 S.C. 615, 602 S.E.2d 747 (2004) (noting that failure to provide arguments or supporting authority for an issue renders it abandoned); *Muir v. C.R. Bard, Inc.,* 336 S.C. 266, 519 S.E.2d 583 (S.C. App.1999) (declaring that conclusory arguments may be treated as abandoned).

Following the end of discovery, the Magistrate Judge found that Petitioner failed as a matter of law to establish a *prima facie* case of either of her state law claims, and that her emotional distress claims was also barred by the doctrine of worker's compensation exclusivity. *Couram v. South Carolina Dept. of Motor Vehicles*, 2010 WL 6065084, at *3 (D.S.C. November 12, 2010).

PETITIONER'S COMPLAINT FILED IN OCTOBER 2011

Following the ultimate dismissal of her emotional distress and civil conspiracy claims without prejudice, Petitioner waited until October 25, 2011 to file her instant lawsuit. As stated above, at that point she brought the following state law claims: (1) an unspecified claim under the SCTCA, (2) claims for intentional and negligent infliction of emotional distress against all Respondents, (3) a civil conspiracy claim against all Respondents, and (4) a claim for gross negligence under the SCTCA against all Respondents.[3]

PETITIONER'S PROPOSED THIRD AMENDED COMPLAINT FROM AUGUST 2012

In her Third Amended Complaint (the "Amended Complaint in Complaince [*sic*] with Order" filed on August 7, 2012) (R. pp. 90-101), Petitioner describes her numerous complaints and frustrations about the manner in which she was managed by (1) her supervisors and immediate chain of command – Lula N. Davis, Shirley Rivers, and Constance "Connie" Rhett, (2) current and former SCDMV executive and Human Resources leadership – Marcia Adams, Dottie Blankenship, Tosha Autry, and Steven W.

[3] Although Petitioner's negligence claim is difficult to follow, it appears to allege that the Respondents have a duty – enforceable through a negligence action – to refrain from "placing plaintiff in Davis' direct path with full contact" which was apparently evidence of the Respondents' gross negligence. (R. p. 70, Plaintiff's Complaint of October 25, 2011, ¶ 103).

Lake, and (3) the agency itself. Petitioner generally complains about unspecified but "repeated acts of willful, reckless harassment, abuse, threats by her fellow employees, including supervisors." (R. pp. 90-91, Third Amended Complaint, ¶ 2). She also alleges that all Respondents:

- "intentionally or recklessly subjected the Petitioner to harassing conduct in direct violation of the [South Carolina Tort Claims Act],"
- failed "to act with simple and ordinary care in their actions towards the Petitioner,"
- "intended to inflict emotional distress" on her,
- "took an active part in the further [*sic*] of the conspiracy created and formed among themselves a conspiracy to defraud, cheat and otherwise harm Petitioners [*sic*] as set forth in this complaint," and
- "allowed defamation of the Petitioner's character and reputation, destroyed her professionalism, caused the Petitioner to live and work in fear of loss of employment/livelihood, stress due to daily uncertainty of employment, allowed false allegation [*sic*]."

(R. pp. 94-97, Third Amended Complaint, ¶¶ 24, 32, 36, 42, 48). Petitioner grouped her allegations under five (5) separate causes of action, <u>each stated against all Respondents</u>:

1. Petitioner's First Cause of Action did not state a cause of action, but instead simply referenced the South Carolina Tort Claims Act.
2. Petitioner's Second Cause of Action was entitled "Intentional/Negligent – Gross – Willful, Reckless Infliction of Emotional Distress [*sic*]."
3. Petitioner's Third Cause of Action also did not state a cause of action, but instead attempted to "disclaim" the affirmative defense of Workers' Compensation Act exclusivity to her claims for emotional distress.
4. Petitioner's Fourth Cause of Action was for Civil Conspiracy.
5. Petitioner's Fifth Cause of Action was for Defamation.

PETITIONER'S PROPOSED FOURTH AMENDED COMPLAINT

In Petitioner's proposed Fourth Amended Complaint, Petitioner names the same Respondents as in her Third Amended Complaint, and again describes the ways in which she believes her supervisors and SCDMV leadership mistreated her. Specifically, in her Fourth Amended Complaint, Petitioner describes her dealings with her supervisors and SCDMV leadership from the beginning of her employment until her transfer in November 2008.[4] (R. pp. 106-113, Fourth Amended Complaint, ¶¶ 24-77). Thereafter, she changed the manner in which she attempted to state her causes of action as follows:

1. A "gross negligence" claim pursuant to the SCTCA as to all Respondents for conduct allegedly taking place on or before December 2008. (R. pp. 114-116, Fourth Amended Complaint, ¶¶ 79-96).

2. A claim styled as "Worker Compensation and/or Willful, Reckless Infliction of Emotional Distress [*sic*]" against all Respondents. (R. pp. 117-118, Fourth Amended Complaint, ¶¶ 97-103).

3. A claim for "Defamation" against all Respondents. (R. pp. 118-119, Fourth Amended Complaint, ¶¶ 104-109).

4. A claim for Civil Conspiracy against all Respondents. (R. pp. 119-120, Fourth Amended Complaint, ¶¶ 110-119).

[4] According to SCDMV, Petitioner was actually reassigned, effective December 8, 2008, to another position in the Information Management branch of the Driver Records section under a new supervisor, Gail Allison. However, for purposes of this motion, whether the date of the move to her new position was in November or December 2008 is of no consequence.

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY AFFIRMED THE COURT OF COMMON PLEAS ON THE FOLLOWING ISSUES:

A. THE COURT OF COMMON PLEAS WAS CORRECT IN FINDING THAT PETITIONER DID NOT FILE A VERIFIED COMPLAINT AGAINST THE RESPONDENTS UNDER THE SOUTH CAROLINA TORT CLAIMS ACT.

The Petitioner has based her argument, in part, on her insistence that her Charge of Discrimination filed with the South Carolina Human Affairs Commission was a "verified complaint" under the SCTCA. S.C. Code Ann. § 15-78-80. She makes this argument so that the three-year statute of limitations under S.C. Code Ann. § 15-78-110 would apply to her claims. For the reasons set forth below, her argument in this regard is baseless.

Filing a verified claim under the SCTCA is governed by the provisions of S.C. Code Ann. § 15-78-80, which requires, in pertinent part:

> (a) A verified claim for damages under this chapter, setting forth the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, and the amount of the loss sustained may be filed:
>
> (1) in cases against the State, with the State Budget and Control Board, or with the agency employing an employee whose alleged act or omission gave rise to the claim;
>
> (2) where the claim is against a political subdivision, with the political subdivision employing an employee whose alleged act or omission gave rise to the claim;
>
> (3) where the identification of the proper defendant is in doubt, with the Attorney General.
>
> (b) Each agency and political subdivision must designate an employee or office to accept the filing of the claims.

> (c) Filing may be accomplished by receipt of certified mailing of the claims or by compliance with the provisions of law relating to service of process.
>
> (d) The verified claim may be received by the Budget and Control Board or the appropriate agency or political subdivision. If filed, the claim must be received within one year after the loss was or should have been discovered.
>
> (e) In all cases in which a claim is filed, the Budget and Control Board or political subdivision has one hundred eighty days from the date of filing of the claim in which to determine whether the claim should be allowed or disallowed. Failure to notify the claimant of action upon the claim within one hundred eighty days from the date of filing of the claim is considered a disallowance of the claim.

(emphasis added). In the instant case, presuming the latest date of the alleged "loss" was on or before December 8, 2008, Petitioner would need to have filed her verified claim under the SCTCA on or before December 8, 2009 to extend the statute of limitations for torts brought against the Defendants from two to three years under S.C. Code Ann. § 15-78-110.

Plaintiff cannot show that she filed a verified claim with either the South Carolina Budget and Control Board and/or SCDMV on or before December 8, 2009, or for that matter, at any time. Nor is filing a verified claim a mere formality, or otherwise subject to "substantial compliance." Indeed, South Carolina's courts have "repeatedly held strict compliance with the verified claim statute is mandatory." *Joubert v. South Carolina Dept. of Social Services*, 341 S.C. 176, 189, 534 S.E.2d 1, 8 (S.C. App. 2000) (citations omitted). Her apparent argument – that her Charge of Discrimination serves as a proxy for a verified claim – simply has no basis in law.

Petitioner's argument is initially flawed because it attempts to equate a verified complaint under the SCTCA with a Charge of Discrimination under the South Carolina Human Affairs Law. This is an error. A Charge of Discrimination under the South

Carolina Human Affairs Law is designed to address an "alleged discriminatory practice" brought under the South Carolina Human Affairs Law. S.C. Code Ann. § 1-13-90(a) ("Any person shall complain in writing under oath or affirmation[5] to the [South Carolina Human Affairs] Commission within one hundred eighty days after the alleged discriminatory practice occurred"). When the Commission sends notice of the Charge to an entity, it need not send it to the employee or office designated to accept the filing of the verified claims under the SCTCA. Furthermore, the Charge notifies the receiving entity that the Commission is investigating alleged violations of the South Carolina Human Affairs Law, not alerting it to torts alleged under the SCTCA, or otherwise meeting the requirements of S.C. Code Ann. § 15-78-80.

Indeed, to adopt Petitioner's logic would distort the statutory language of the SCTCA and lead to absurd consequences. Under Petitioner's theory, a claimant could also circumvent the "verified complaint" process under the SCTCA entirely by filing a wage violation charge against the employing agency under the South Carolina Payment of Wages Act ("SCPWA") with the South Carolina Department of Labor, Licensing & Regulation ("LLR"), and later arguing that the wage complaint under the SCPWA should have put the agency on notice of distantly related tort claims, such as an alleged civil conspiracy by supervisors to deprive the employee of wages, or that the supervisors were "grossly negligence" in failing to pay the employee proper wages. Similarly, under Petitioner's theory, a state agency would also have received a "verified complaint" under the SCTCA if an employee by filing a claim with LLR for alleged retaliation under S.C. Code Ann. § 41-15-520, and then arguing that supervisors of the employing agency

[5] Petitioner admits, as she must, that her Charge of Discrimination was not notarized.

should have been aware of distantly related tort claims that they were grossly negligent or had conspired to injure the employee.

In this regard, relying on the administrative claim procedures set forth in other statutory schemes does not even serve the purpose mentioned in Justice Toal's dissent in *Rink v. Richland Memorial Hospital*, 310 S.C. 193, 198, 422 S.E.2d 747, 749 (1992), in which she argued that substantial compliance could serve the purpose giving early notice of the torts to the governmental entity, and encourage the claimant to attempt informal resolution of the claim. In these cases, the governmental entity would only be on notice of an employee's statutory claims. Of course, Petitioner's argument entirely disregards the purposes served by strict compliance with the SCTCA as set forth in the majority opinions in *Rink* and *Vines v. Self Memorial Hospital*, 314 S.C. 305, 443 S.E.2d 909 (1994).

For these reasons alone, the Petition for a Writ of Certiorari should be denied.

B. THE COURT OF COMMON PLEAS CORRECTLY FOUND THAT S.C. CODE ANN. § 15-78-110 WAS THE PROPER STATUTE OF LIMITATIONS FOR THE CAUSES OF ACTION AGAINST THE RESPONDENTS.

Petitioner next appears to argue that the two-year statute of limitations under S.C. Code Ann. § 15-78-110 should apply, if at all, only to the SCDMV and not the individual Respondents. She appears to rely on S.C. Code Ann. § 15-78-70(b), which provides that "[n]othing in [the SCTCA] may be construed to give an employee of a government 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." For the reasons listed below, her argument fails.

As an initial matter, Petitioner's argument strangely ignores the holding in *Joubert* that specifically rejected Petitioner's argument. In that case, as here, the plaintiff argued that S.C. Code Ann. § 15-78-70(b) rendered the statute of limitations set by S.C. Code Ann. § 15-78-110 inapplicable. 341 S.C. at 184-185, 534 S.E.2d at 5. Addressing that argument, the Court stated as follows:

> Absolutely nothing in subsection (b) references a limitation period and, as part of the general Torts Claims Act statutory scheme, it is subject to the Act's statutory limitations as prescribed in S.C. Code Ann. § 15-78-110.

Id.; *see also Flateau v. Harrelson*, 355 S.C. 197, 208, 584 S.E.2d 413, 419 (S.C. App. 2003) (SCTCA's two-year statute of limitations governed common law causes of action for outrage, invasion of privacy, and civil conspiracy, and "[a]bsolutely nothing" in S.C. Code Ann. § 15-78-70(b) references a limitations period).

Petitioner relies on *Smith v. City of Greenwood*, 2010 WL 2382479 (D.S.C. June 14, 2010) to support her proposition, but readily admits that the case is not binding and has no precedential value. (Petition for Writ of Certiorari, p. 14, n. 2). Such reliance is unavailing, as it is well-established that a federal court decision interpreting state law is not binding on South Carolina courts, and the holding by the federal court in *Smith* conflicts directly with the applicable holdings in *Joubert* and *Flateau*. *See Blyth v. Marcus,* 335 S.C. 363, 517 S.E.2d 433 (1999).

Furthermore, although also of no precedential value, Petitioner did not mention a more recent pronouncement of the U.S. District Court that found to the contrary. In *Price v. Town of Atlantic Beach*, 2013 WL 5945728, at *5 (D.S.C. November 6, 2013), Judge

Lewis relied on *Joubert* and *Flateau* to note that S.C. Code Ann. § 15-78-70(b) references immunity, not limitations, and that the two-year statute of limitations would apply even to claims alleging that individual defendants acted outside the scope of their duty.

In any event, the rulings in *Joubert* and *Flateau* clearly stand against Petitioner's argument, and on that basis, her Petition should be rejected.

II. PETITIONER'S MOTION TO AMEND HER COMPLAINT WAS ALSO FUTILE BECAUSE HER PROPOSED CLAIMS WERE SUBJECT TO DISMISSAL ON GROUNDS OTHER THAN THE APPLICABLE STATUTE OF LIMITATIONS.

Of course, the applicable statutes of limitations were not the only grounds on which the Court of Common Pleas dismissed Petitioner's claims. The Court of Common Pleas listed several independent grounds for dismissal of several of the Petitioner's claims. (R. pp. 22-31). Further, there are additional grounds in the Record on Appeal from which this Court can affirm dismissal of the Petitioner's claims with prejudice. Rule 220(c), SCACR (an appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal). This is especially the case since Petitioner has asserted that discovery in this case "has been completed." (Final Brief of Appellant, p. 30).

For the reasons set forth below, in addition to and separate from those related to the applicable statute of limitations, this Court should affirm the dismissal of Petitioner's claims with prejudice.

A. PETITIONER'S CLAIM FOR CIVIL CONSPIRACY WAS PROPERLY SUBJECT TO DISMISSAL FOR THE REASONS STATED BY THE COURT OF COMMON PLEAS, OR FOR REASONS OTHERWISE SUPPORTED IN THE RECORD.

In addition to the fact that the claim is barred by the applicable statute of limitations, Petitioner's claim for civil conspiracy must be dismissed (1) under the intracorporate conspiracy doctrine, (2) under *Lawson v. South Carolina Dept. of Corrections*, 340 S.C. 346, 532 S.E.2d 259 (2000), and (3) because, as matter of law, Petitioner has failed to establish a *prima facie* case of civil conspiracy. For these reasons, the order of the Court of Common Pleas dismissing her civil conspiracy claim with prejudice must be affirmed.

i. Petitioner's Civil Conspiracy claim must be dismissed because it is barred under the intracorporate conspiracy doctrine.

Curiously, Petitioner does not address in her Petition that she brought her civil conspiracy claim against "all Defendants" – including SCDMV – for allegedly conspiring to injure her. (R. p. 119). As the South Carolina Supreme Court recently noted, it is well-settled that an entity cannot conspire with itself, or when the alleged acts arise in the context of a principal-agent relationship, because such acts do not involve separate entities. *McMillan v. Oconee Memorial Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 887 (2006).

Petitioner's allegations arise in the context of the principal-agent relationship. Petitioner brought her civil conspiracy claim against SCDMV, and against each of the individual Respondents because he or she is – or was – a supervisor or official at SCDMV. As stated in *McMillan*,

> A civil conspiracy cannot be found to exist when the acts alleged are those of employees or directors, in their official capacity, conspiring with the

> corporation. As a result, we hold that no conspiracy can exist if the conduct challenged is a single act by a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment.

367 S.C. at 564, 626 S.E.2d at 887. For this reason, Petitioner's civil conspiracy claim was correctly dismissed with prejudice.

ii. Petitioner's allegations fail to state a civil conspiracy claim under *Lawson v. South Carolina Dept. of Corrections*.

Petitioner argues that *Lawson v. South Carolina Dept. of Corrections,* 340 S.C. 346, 532 S.E.2d 259 (2000), should not apply because "conduct beyond mere discussion of an at-will employee is alleged, along with special damages." (Petition for a Writ of Certiorari, p. 18). However, as a matter of law, Petitioner's allegations do not state a cause of action for civil conspiracy, especially in view of the fact that she has remained an employee of SCDMV, and by her own account has been employed at SCDMV for over a decade.

In *Lawson*, an employee of the South Carolina Department of Corrections ("SCDC") sued two of his supervisors for allegedly conspiring to terminate his employment. 340 S.C. at 349, 532 S.E.2d at 260. The South Carolina Supreme Court granted summary judgment on the claim, noting that "[a]llegations based solely upon two supervisors discussing whether to terminate an at-will employee would not support a conspiracy cause of action." 340 S.C. at 352, 532 S.E.2d at 261-262. Similarly, the types of complaints made by Petitioner – that her supervisors and other SCDMV officials conspired to interfere with her employment – are simply not cognizable under the precedent established in *Lawson*.

Furthermore, although Petitioner attempted to allege "special damages" related to her civil conspiracy claim, they are actually duplicative of those sought in connection with her other claims. (R. pp. 120-121). For these reasons alone, dismissal of her civil conspiracy claim with prejudice must be affirmed. *See Gordon v. Busbee*, 397 S.C. 119, 136, 723 S.E.2d 822, 831 (S.C. App. 2011).

iii. Petitioner's allegations fail to state a civil conspiracy claim for the reasons articulated in *Couram I.*

Petitioner's declaration that discovery has been completed brings with it the consequences that a court has previously found that has she failed to present evidence – rather than merely make allegations – sufficient to establish a civil conspiracy claim. With no discovery taking place since the Respondents filed their Motion for Summary Judgment in *Couram I*, there has been no new evidence presented to any court since Magistrate Judge Gossett found that Petitioner failed to establish a *prima facie* case of civil conspiracy, or that the claim was barred by Proviso 89.146. 2010 WL 6065084, at *3. Quite simply, in the absence of any additional evidence presented in the record to substantiate her claims, Petitioner's claim for civil conspiracy cannot survive, and its dismissal by the trial court was correctly affirmed.

B. PETITIONER'S CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS WAS PROPERLY SUBJECT TO DISMISSAL FOR THE REASONS STATED BY THE COURT OF COMMON PLEAS, OR FOR REASONS OTHERWISE SUPPORTED IN THE RECORD.

Petitioner has already conceded that her claim for intentional infliction of emotional distress ("IIED") against SCDMV must be dismissed under the exclusivity provision of the South Carolina Workers' Compensation Act. She also argues that her

IIED claim against the individual Defendants must be allowed to proceed, but can do so only by ignoring that her claim is barred by the applicable statute of limitations, and that she failed to establish a *prima facie* case of an IIED claim.

Furthermore, as with her civil conspiracy claim, Petitioner's declaration that discovery has been completed means that she has failed to present evidence – rather than merely make allegations – sufficient to establish an emotional distress claim. With no discovery taking place since the Respondents filed their Motion for Summary Judgment in *Couram I*, there has been no new evidence presented to any court since Magistrate Judge Gossett found that Petitioner failed to establish a *prima facie* case of emotional distress. 2010 WL 6065084, at *3. Specifically, Petitioner's forecast of evidence failed to rise to the standard of conduct set by South Carolina's courts to state such a claim. *See Hannson v. Scalise Builders of South Carolina*, 374 S.C. 352, 650 S.E.2d 68 (2007); *Gattison v. South Carolina State College*, 318 S.C. 148, 151, 456 S.E.2d 414, 416 (S.C. App. 1995). For this reason alone, in the absence of any additional evidence presented in the record to substantiate her claims, Petitioner's claim for emotional distress must suffer the same fate as her civil conspiracy claim, and its dismissal with prejudice by the trial court must be affirmed.

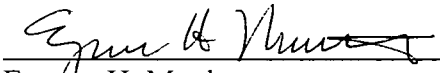
CONCLUSION

For the reasons stated above, the Respondents respectfully request that this Court affirm the decision of the South Carolina Court of Appeals to dismiss Petitioner's claims with prejudice.

Dated this the 20th day of August, 2015.

Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.



Eugene H. Matthews
Post Office Drawer 7788
Columbia, South Carolina 29202
T: (803) 771-4400
F: (803) 779-0016
Email: gmatthews@RichardsonPlowden.com

COUNSEL FOR RESPONDENTS

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Unpublished Opinion No.: 2015-UP-065 (Filed February 4, 2015)

Glenda R. Couram,

Petitioner,

v.

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

Respondents.

PROOF OF SERVICE

I, the undersigned counsel for the Respondents, do hereby certify that I have served a copy of the *RETURN TO PETITION FOR WRIT OF CERTIORARI* by causing a copy of the same to be deposited in the United States mail, postage prepaid, addressed to counsel of record for the Petitioner on this 20th day of August, 2015:

T. Jeff Goodwyn, Jr., Esquire
Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Ste. A
Columbia, SC 29205

Eugene H. Matthews
RICHARDSON PLOWDEN & ROBINSON, P.A.
Post Office Drawer 7788
Columbia, South Carolina 29202
T: (803) 771-4400
F: (803) 779-0016
Email: gmatthews@RichardsonPlowden.com

COUNSEL FOR RESPONDENTS

August 20, 2015
Columbia, South Carolina.