

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Opinion No. 2014-001636 (S.C. Ct. App. Filed October 23, 2015)

Angela Parsons, Petitioner,
v.

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

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

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SC Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

Pheobe A. Clark
Wukela Law Firm
Post Office Box 13057
Florence, SC 29504-3057
(843) 669-5634

Attorney for Petitioner

Elizabeth S. Corn
Joseph D. Thompson, III
Hall Booth Smith, P.C.
40 Calhoun St., Suite 550
Charleston, SC 29401

Richard Sheinis
Hall Booth Smith, P.C.
191 Peachtree St., NE, Suite 2900
Atlanta, GA 30303

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on October 23, 2015.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in holding that a supervisor's duplicitous acts of causing an employee to violate policy and be terminated do not demonstrate a public policy violation?

2. Did the Court of Appeals err in holding that an employer has no duty to supervise or investigate a supervisor when an employee had complained and had presented proof of the supervisor's duplicitous conduct?

STATEMENT OF THE CASE

This is an employment law case in which the Petitioner, Angela Parsons ("Parsons"), a nurse, alleges her boss Jane Smith ("Smith"), the Director of the Women's Center at Carolinas Hospital System, engaged in supervisor fraud in order to cause Parsons' termination. And despite Parsons' complaints to Carolinas about the conduct of the Director, Carolinas allowed Smith to continue her harassing and retaliatory conduct until Parsons was terminated for failing to work the minimum number of hours required for PRN employees to work. And after termination, Carolinas upheld the decision of Jane Smith, further supporting the Director's fraudulent conduct despite receiving evidence that the only reason Parsons did not have the required minimum hours was because Jane Smith deliberately refused to schedule Parsons to work.

The trial court granted Defendant's Motion to Dismiss on June 25, 2014, finding Parsons has not established a claim for wrongful termination in violation of public policy as

a matter of law and finding Parsons was an at-will employee, and the hospital did not have a duty to supervise the employee or protect Parsons from the manner or priority in which Smith scheduled her PRN work shifts.

This Court determined, in a decision filed, August 12, 2015, that there was no clearly articulated public policy violation in the way Parsons's employment was terminated; and determined that no duty to supervise or investigate arose in this case.

Upon Petition for Rehearing, the Court of Appeals issued an Order, filed October 23, 2015, denying the Petition.

Petitioner seeks review of the Court of Appeals' decision because, in counsel's judgment, the panel's decision involves novel questions of exceptional importance:

- 1) Even in at-will employment, may a supervisor engage in fraudulent and/or duplicitous conduct in order to cause an employee's termination?
- 2) Even in at-will employment, does an employer have a duty to supervise and investigate claims of supervisor misconduct when an employee has presented proof of a supervisor's duplicitous conduct that results in adverse employment actions against an employee?

The Court of Appeals reaffirmed the judgment of the Circuit Court. Angela Parsons, Appellant, vs. Jane Smith, QHG of South Carolina d/b/a Carolinas Hospital System, and Carolinas Hospital System, Defendants - of whom QHG of South Carolina d/b/a Carolinas Hospital System, and Carolinas Hospital System are the Respondents, Op. No. 2014-001636 (S.C. Ct. App. Filed October 23, 2015). Petitioner seeks a writ of certiorari to review that decision.

ARGUMENT

1. THE COURT OF APPEALS SHOULD HAVE HELD THAT A SUPERVISOR'S FRAUDULENT AND/OR DUPLICITOUS CONDUCT, OF REFUSING TO SCHEDULE AN EMPLOYEE TO WORK AND THEN RECOMMENDING TERMINATION OF AN EMPLOYEE FOR FAILURE TO MEET REQUIRED MINIMUM HOURS, IS AGAINST PUBLIC POLICY.

"The determination of what constitutes public policy is a question of law for the courts to decide. See Citizens' Bank v. Heyward, 135 S.C. 190, 133 S.E. 709, 713 (1925) (*"The primary source of the declaration of public policy of the state is the General Assembly; the courts assume this prerogative only in the absence of legislative declaration."*). And as noted also in Wagenseller v. Scottsdale Memorial Hosp., 147 Ariz. 370, 379 (Ariz.1985):

Public policy is that principle of the law which holds that no subject can lawfully do that which has a tendency to be injurious to the public, or against the public good, which may be termed, as it sometimes has been, the policy of the law, or public policy in relation to the administration of the law.

(*quoting* Egerton v. Earl Brownlow, 4 H.L.Cas. 1, 196 (1853).

Even in at-will employment, supervisors and directors should not be given free reign to engage in conduct that forces employees to violate policy and then be allowed to recommend the very same employee's termination! This decision, in essence condones a supervisor's "behind the scenes" orchestration of the termination of an employee. The director Jane Smith was allowed to keep Petitioner off the schedule and fraudulently claim to Parsons that there was "low census" or "no work", and then she was allowed to fraudulently claim to HR and administrators that Petitioner needed to be terminated for policy violation while misrepresenting her role in causing Petitioner's policy violation. If an employer is not allowed to engage in illegal activity to cause an employee's termination, a

director should not be allowed, as a matter of public policy, to engage in fraudulent misrepresentations to cause an employee's termination.

In Garner v. Morrison Knudsen Corp., 318 S.C. 223, 223, 456 S.E.2d 907, 908 (1995), the employee alleged his employer terminated him in retaliation for reporting to the United States Department of Energy and the news media his concerns about radioactive contamination and unsafe working conditions at the Savannah River Site and for voluntarily testifying about his concerns before the Defense Nuclear Facilities Safety Board. Our supreme court held the trial court's dismissal of the employee's wrongful discharge action based on the public policy exception to the employment at-will doctrine for failure to state a claim was inappropriate when the employee alleged his employment was terminated in retaliation for reporting and testifying about radioactive contamination and unsafe working conditions at the nuclear facility. Id. at 226-27, 456 S.E.2d at 909-10. The court stated "[w]hether the [public policy] exception applies when an employee is terminated in retaliation for reporting and testifying about radioactive contamination and unsafe working conditions at a nuclear facility is a novel issue, and such issues should not ordinarily be decided in ruling on a 12(b)(6) motion to dismiss." Id. at 226, 456 S.E.2d at 909.

Petitioner claims she was harassed by Director Jane Smith after raising questions as to how Jane was allowed to return to work in a director role after committing HIPAA violations.

2. THE COURT OF APPEALS SHOULD HAVE HELD THAT AN EMPLOYER HAS A DUTY TO SUPERVISE OR INVESTIGATE WHEN AN EMPLOYEE HAS COMPLAINED AND HAS PRESENTED PROOF OF A SUPERVISOR'S DUPLICITOUS CONDUCT.

The trial court in Sabb v. S.C. State Univ., 350 S.C. 416, 429-430(S.C.2002), recognized a duty to Plaintiff with respect to employment:

In a negligence action, a plaintiff must show the (1) defendant owes a duty of care to the plaintiff, (2) defendant breached the duty by a negligent act or omission, (3) defendant's breach was the actual and proximate cause of the plaintiff's injury, and (4) plaintiff suffered an injury or damages. Steinke, supra. If there is no duty, then the defendant in a negligence action is entitled to a directed verdict. Id. A duty arose on University's part once University was placed on notice of Chief White's behavior and actions. **After University received the grievances of Sabb and other employees, University had a duty to address the employees's concerns with due care.**

A jury issue also existed as to whether University had breached that duty. University was on notice of Chief White's activities through conversations Sabb and other employees had with University officials, the petition circulated by members of the police department, the grievances of Sabb and other employees, and through the Committee's report detailing the findings of their investigation into Chief White's actions. Despite these numerous complaints and notifications of Chief White's actions and behavior, University allowed him to continue serving as chief of the department without any real effort to rectify the hostile conditions within the department.

Viewing the evidence in the light most favorable to Sabb, the trial court properly denied the directed verdict and JNOV motions because evidence existed to show University had possibly breached a duty owed to Sabb.
Sabb v. S.C. State Univ., 350 S.C. 416, 429-430(S.C.2002).

The circumstances in Sabb are almost identical to those in the present case. And the Supreme Court determined that an employer had a duty to its employees and breached that duty by failing to rectify the hostile conditions within the workplace. Petitioner had proof of duplicitous conduct on the part of the director that caused Petitioner to violate the minimum hours work policy then recommended Petitioner's termination. The employer owes its employees, at the very least, a duty of good faith and fair dealing.

A failure to properly investigate employee misconduct may be grounds for a wrongful discharge claim. See Crenshaw v. Bozeman Deaconess Hospital, 693 P.2d 487 (Montana

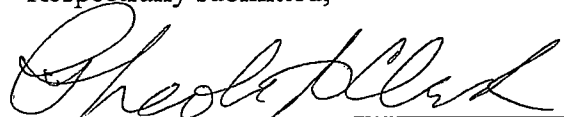
1984) (*recognizing tort of negligent investigation, affirming \$150,000 award to employee terminated on the basis of an insufficient investigation, and holding that failure to properly investigate allegations against employee before termination supported punitive damages for wrongful discharge*).

CONCLUSION

For the reasons stated, Petitioner ask the Court to grant the Petition for a Writ of Certiorari.

November 19, 2015

Respectfully submitted,



Pheobe A. Clark
Wukela Law Firm
Post Office Box 13057
Florence, SC 29504-3057
(843) 669-5634

Attorney for Petitioner

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

PROOF OF SERVICE

I certify that I have served the Petition for Writ of Certiorari on the Respondents, QHG of South Carolina d/b/a Carolinas Hospital System and Carolinas Hospital Systems, by deposition a copy of the said Petition for Rehearing in the United States Mail, postage prepaid, this 19th day of November, 2015, addressed to the attorneys of record, Elizabeth S. Corn, Esq., Joseph D. Thompson, III, Esq., Hall Booth Smith, P.C., 40 Calhoun St., Suite 550, Charleston, SC 29401 and Richard Sheinis, Esq., Hall Booth Smith, P.C., 191 Peachtree St., NE, Suite 2900, Atlanta, GA 30303.



Pheobe A. Clark

Wukela Law Firm

Post Office Box 13057

Florence, SC 29504-3057

T: (843) 669-5634

F: (843) 669-5150

Attorneys for Petitioner

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SC Court of Appeals

WUKELA LAW FIRM

COPY

Steve Wukela, Jr.
Benjamin D. Moore
Christi B. McDaniel
Stephen J. Wukela
Patrick J. McLaughlin
Pheobe A. Clark
Frank C. Swaggard
Jason B. Turnblad
Katherine M. Gordon

403 Second Loop Road
P.O. Box 13057
Florence, SC 29504-3057

(843) 669-5634
FAX (843) 669-5150

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SC Court of Appeals

The Honorable Daniel E. Shearouse
Clerk, S. C. Supreme Court
P. O. Box 11330
Columbia, SC 29211

RE: Angela Parsons, Petitioner, vs. Jane Smith, QHG of South Carolina d/b/a Carolinas Hospital System, and Carolinas Hospital System, Defendants - of whom QHG of South Carolina d/b/a Carolinas Hospital System, and Carolinas Hospital system are the Respondents.
Civil Action No.: 2012-CP-21-3016
Appellate Case No.: 2014-001636

Dear Mr. Shearouse:


Enclosed please find the following for filing in the above matter:

1. Original and six (6) copies of Petition for Writ of Certiorari;
2. Decision issued by Appeals Court (included in Appendix);
3. Petition for Rehearing to Court of Appeals (included in Appendix);
4. Order issued by Court of Appeal on October 23, 2015 (included in Appendix);
5. Proof of Service of the Petition for Writ of Certiorari on the Respondent;
6. Two (2) copies of the Appendix, (one (1) unbound), with Proof of Service; and,
7. A filing fee of \$100.00.

With kindest regards, I remain,

Yours truly,

WUKELA LAW FIRM



PHEOBE A. CLARK

PAC:nhs

Enclosures

cc: The Honorable Jenny Abbott Kitchings
Clerk, S. C. Court of Appeals
P. O. Box 11629
Columbia, SC 29211

The Honorable Daniel E. Shearouse
Clerk, S. C. Supreme Court
Page 2
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cc: Elizabeth S. Corn, Esq.
Hall Booth Smith, P.C.
40 Calhoun St., Suite 550
Charleston, SC 29401

Richard Sheinis, Esq.
Hall Booth Smith, P.C.
191 Peachtree St., NE, Suite 2900
Atlanta, GA 30303

Joseph D. Thompson, III, Esq.
Hall Booth Smith, P.C.
40 Calhoun St., Suite 550
Charleston, SC 29401

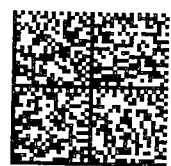
Ms. Angela Parsons

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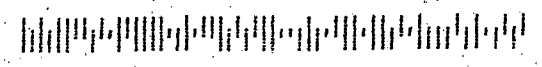
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WUKELA LAW FIRM
403 SECOND LOOP ROAD
P.O. BOX 13057
FLORENCE, SC 29504

To:
The Honorable Jenny Abbott Kitchings
Clerk, S. C. Court of Appeals
P. O. Box 11629
Columbia, SC 29211