THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2015-001114

Sebrina Walker, ... Appellant,

v.

SAIC Engineering, Inc., et al. . . . . Respondents.

BRIEF OF RESPONDENTS

Ashley P. Cuttino, S.C. Bar #70354
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
300 North Main St., Suite 500
Greenville, SC 29601
864.271.1300

ATTORNEY FOR RESPONDENTS
SAIC Engineering, Inc., John
Kiessling, and Marcia Saari

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STATEMENT OF ISSUE ON APPEAL

I. Was the Circuit Court correct to grant summary judgment as to Appellant's claim for false imprisonment, where Appellant failed to present any evidence to support her claim for false imprisonment?

STATEMENT OF THE CASE

Respondent Science Applications International Corporation (improperly identified as SAIC Engineering, Inc.) ("Respondent")[1] is satisfied with Appellant's Statement of the Case related to the procedural posture, except Respondent adds that the only material Appellant designated for inclusion in the Record on Appeal is the lower court's May 22, 2015 Order Granting Defendants' Motions for Summary Judgment.

[1] Although initially named as a defendant, Christina Broom was never properly served, and therefore was never a defendant in this case. (R. at 1 n.1.) During the oral arguments on the motions on January 12, 2015, the circuit court verbally ordered the dismissal of Individual Defendants John Kiessling and Marcia Saari. (*Id.* at 2; Hr'g Tr. at 58:17-19.) It is not clear from Appellant's Notice of Appeal or Brief whether she intends to appeal the dismissal of the Individual Defendants. Appellant has the "responsibility to identify errors on appeal, not the court." *Kennedy v. S. Carolina Ret. Sys.*, 564 S.E.2d 322, 323 (S.C. 2001). An issue that was not preserved for review should not be addressed by the Court of Appeals. *Hendrix v. E. Distribution, Inc.*, 464 S.E.2d 112, 113 (S.C. 1995); *see also* Rule 208(b)(1)(B) ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."). Accordingly, because Appellant has failed to identify any error as to the dismissal of the Individual Defendants and because she has failed to make clear whether she intends to appeal the dismissal of the Individual Defendants, the circuit court's ruling as to the Individual Defendants must be affirmed.

STATEMENT OF FACTS

Respondent disagrees with Appellant's Statement of Facts, as Appellant does not make any citations to the Record on Appeal in her Statement of Facts, nor could she, as Appellant's Statement of Facts is completely unsupported by the only document contained in the Record on Appeal: the circuit court's May 22, 2015 Order Granting Defendants' Motions for Summary Judgment. Accordingly, this Court cannot rely on any statements Appellant makes that are contrary to that Order.

As stated in the Order (cited to herein as "R. at __"), the facts are as follows: This case arises out of Appellant's employment relationship with Respondent at one of its Charleston facilities. (R. at 2.) Appellant was hired on an at-will basis and signed an at-will disclosure. (*Id.*; Jan. 12, 2015 Hearing Transcript ("Hr'g Tr.") at 22:3-23:12.)

In March 2010, Respondent launched its iAppreciate program, which allowed employees to send $25 gift cards to other employees for outstanding work-related reasons. (R. at 2; Hr'g Tr. at 8:8-13.) Nine (9) months later, in December 2010, it came to the attention of Respondent's management that employees were "abusing" iAppreciate. (R. at 2; Hr'g Tr. at 8:14-17, 10:14-16.) Respondent conducted an investigation into the use of iAppreciate, which included interviewing all involved employees on January 18, 2011. (R. at 2; Hr'g Tr. at 8:17-18, 12:13-17.) On January 18, 2011, employees of Respondent, including Appellant, were asked by their supervisors to report to the North Rhett building (administrative office) for an unspecified reason. (R. at 2; Hr'g Tr. at 12:19-22.) Once they arrived at North Rhett, Appellant and the other employees were asked to go to a "nice" conference room, which had a large conference table with chairs around it and along the wall and two (2) doors. (R. at 2; Hr'g Tr. at 12:22-23, 13:7-8.) Approximately forty (40) employees, including Appellant, were present in the

conference room. (R. at 2-3; Hr'g Tr. at 12:25-13:1.) Once everyone was in the room, the employees were asked to turn off their cell phones and place them on the table. (R. at 3; Hr'g Tr. at 25:16-18.)

During the course of the day, Corporate HR Director Christina Broom and Assistant Project Manager John Kiessling called employees back for individual interviews. (R. at 3; Hr'g Tr. at 13:8-10.) Human Resources representative Scott Wilson was in the room the entire day, except when he was relieved occasionally by a female Human Resources representative, Marcia Saari. (R. at 3; Hr'g Tr. at 17: 10-19.) The doors to the conference room remained unlocked throughout the day. (R. at 3; Hr'g Tr. at 14:16-17, 24:21.) Upon request, employees were allowed to go to the bathroom. (R. at 3; Hr'g Tr. at 14:12-14.) Aside from bathroom usage, no one attempted or requested to leave the room at any time. (R. at 3; Hr'g Tr. at 24:19-20.) Further, no one, including Appellant, was physically restrained or threatened at any time. (R. at 3.) The employees acknowledged that they only felt compelled to remain in the large conference room due to an intrinsic fear of job loss. (*Id.*; Hr'g Tr. at 24:22-25.)

Each employee was called back for his or her individual interview with Ms. Broom and Mr. Kiessling. (R. at 3; Hr'g Tr. at 13:8-10.) The purpose of the individual interviews was to find out about each employee's use of the iAppreciate program and to determine whether individual employees were misusing the program. (R. at 3.) All of the employees were paid their regular wage for their time in the large conference room and individual interviews. (*Id.*; Hr'g Tr. at 16:12-16, 16:25-17:1, 18:10-11, 24:17-18, 49:16-22, 49:24-50:5.) At the end of each individual interview, each employee was asked to read a confidentiality statement and was asked to keep the investigation "private." (R. at 3: Hr'g Tr. at 19:3-8.) The investigation started at 7:30 a.m., and Appellant was interviewed at 10:30 a.m. (Hr'g Tr. at 13:19, 24-25.) At the end of

each individual interview, the employee was dismissed for the day and was placed on immediate administrative leave so that Respondent could complete its investigation. (R. at 3; Hr'g Tr. at 18:11-13, 49:15-22.)

After the interviews, Ms. Broom made disciplinary recommendations, based primarily on whether the employee was able to articulate a work-related reason for all awards given. (R. at 3.) The final disciplinary decisions were made based primarily on the employees' statements during the interviews, which confirmed violations of Respondent's policies and/or breach of Respondent's ethics policy/code of conduct. (*Id.* at 3-4.) Most employees were returned to work with no disciplinary action taken. (*Id.* at 4.) All returned employees were paid for their days on administrative leave. (*Id.*)

Following the interviews, Respondent determined which employees misused the iAppreciate program and/or violated other policies of Respondent including, but not limited to, the nepotism policy, computer security policy, the ethics policy/code of conduct, and misuse of company assets. (*Id.*) Employees who were in violation were terminated. (*Id.*) The group of terminated employees included Appellant. (*Id.*; Hr'g Tr. at 18:22-23.)

LEGAL ARGUMENT

I. The trial court did not err in granting summary judgment on Appellant's false imprisonment claim.

A. Standard of Review

"Appellate courts apply the same standard as trial courts when reviewing a grant of summary judgment pursuant to Rule 56(c), SCRCP." *Smith v. Moore*, No. 2012-UP-598, 2012 WL 10864148, at *1 (S.C. Ct. App. Oct. 31, 2012) (citing *Knight v. Austin,* 722 S.E.2d 802, 804 (S.C. 2012)). "'Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law.'" *Id.* (quoting *Knight*, 722 S.E.2d at 804; Rule 56(c), SCRCP). "In making this determination, the court must view the evidence and draw all reasonable inferences in a light most favorable to the non-moving party." *Id.* (citing *Fleming v. Rose*, 567 S.E.2d 857, 860 (S.C. 2002)). "'[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.'" *Id.* (quoting *Hancock v. Mid-South Mgmt. Co.*, 673 S.E.2d 801, 803 (S.C. 2009)).[2]

The circuit court, having the full record before it, granted Respondent's Motion for Summary Judgment. For the reasons stated in this Brief, this Court should affirm.

B. Appellant has presented no evidence to support her claim of false imprisonment.

Appellant claims she and others were "ordered to attend a meeting for unspecified reasons and required to remain for approximately eight (8) hours during which they were

[2] As an initial matter, this appeal should be dismissed because Appellant has failed to attach any documents in the Record on Appeal, other than the circuit court's May 22, 2015 Order Granting Defendants' Motions for Summary Judgment. If the Court would like Respondent to supplement the Record in any way, Respondent will gladly do so at the Court's request.

questioned and interviewed by defendants, [her] personal cell phone[] [was] confiscated upon arrival at the meeting, [she was] not allowed to leave until after [she was] interviewed by defendants, [she was] never told by defendants that [she was] free to leave at any time, [her] requests to go to lunch were denied, [she was] denied the use of the bathroom facilities without an escort[.]" (Br. of Appellant at 3). The only material included in the Record on Appeal is the lower court's May 22, 2015 Order Granting Defendants' Motions for Summary Judgment ("Order"). As detailed above in the Statement of Facts, taken directly from the Order, there is simply no support in the Record on Appeal to support Appellant's version of the events of January 18, 2011.

As to Appellant's contention that "the restraint was not based on valid charges that [she] had violated the law, and was not based on probable cause" (Br. of Appellant at 3), Appellant cites to case law that is inapplicable here. Specifically, Appellant cites to *Zimbelman v. United States of America*, 745 F. Supp. 2d 664 (D.S.C. 2010), where the party accused of false imprisonment was a governmental entity. *Id.* at 684-85. The standard applicable in *Zimbelman* is inapplicable here. Respondent was not required to base its investigation into Appellant's workplace behavior on "valid charges that [she] had violated the law," nor was it required to base its investigation on "probable cause." The Record on Appeal establishes that the facts involved here were of a private employer's workplace investigation into its employees' workplace behavior. No suspected violation of the law by Appellant was required before Respondent could question her (and pay her for her time while so doing).

"False imprisonment is the deprivation of one's liberty without justification." *Jones by Robinson v. Winn Dixie Greenville, Inc.*, 456 S.E.2d 429, 432 (S.C. 1995) (citation omitted). To establish a cause of action for false imprisonment, Appellant must prove (1) Respondent

restrained Appellant; (2) the restraint was intentional; and (3) the restraint was unlawful. *Id.* As the lower court correctly held, Appellant's claim must fail because she entered into and remained in the conference room voluntarily and did not ask if she could leave. (Hr'g Tr. 44:24-45:7.) Thus, Appellant gave consent, and her claim fails for this reason. *Beraho v. S.C. State Coll.*, 394 S.E.2d 28, 29 (S.C. Ct. App. 1990) (an employee's consent to such confinement in a workplace investigation bars the right to recovery under South Carolina law).

Second, the courts have consistently found that fear of job loss is not sufficient to support a claim of false imprisonment, and for this additional reason, Appellant's false imprisonment claim must fail. *See Johnson v. United Parcel Servs., Inc.*, 722 F. Supp. 1282, 1284-85 (D. Md. 1989) (fear of job loss insufficient even when the employer made a verbal threat to terminate employment if the employee left the interview); *see also Kelly v. West Cash & Carry Bldg. Materials Store*, 745 So.2d 743, 750 (La. Ct. App. 1999) (fear of job loss insufficient even when employer verbally refused to curtail the employee's interview); *see also Hanna v. Marshall Field & Co.*, 665 N.E.2d 343, 349-50 (Ill. App. Ct. 1996) (fear of job loss insufficient even when employee detained for five (5) hours, the employer denied requests to leave the room, and the doors were closed); *see also Marten v. Yellow Freight Sys.*, 993 F. Supp. 822, 829-30 (D. Kan. 1998) (fear of job loss insufficient even when employer berated employee, stood over him, blocked his path to the door, covered the doorknob with his hands, and directed the employee to sit down); *see also Miraliakbari v. Pennicooke*, 561 S.E.2d 483, 488-89 (Ga. Ct. App. 2002) (fear of job loss insufficient even when employer recklessly refused to allow at-will employee to leave the premises to care for her injured son).

Finally, Respondent, as Appellant's employer, had the right to direct Appellant's actions while on the job. *See Randall's Food Mkts., Inc. v. Johnson*, 891 S.W.2d 640, 645 (Tex. 1995).

For this additional reason, Appellant's false imprisonment claim fails, and the lower court did not err in granting Respondent's motion for summary judgment.

C. Even if the Court of Appeals disregards the circuit court's dismissal based on workers' compensation exclusivity, Appellant's false imprisonment claim still warrants dismissal.

Appellant appears to contend that the circuit court erred in its application of the doctrine of workers' compensation exclusivity to bar her false imprisonment claim. (Br. of Appellant at 3).

First, to the extent Appellant claimed to have suffered work-related personal injuries as a result of the alleged false imprisonment, the circuit court did not err in dismissing Appellant's false imprisonment claim on the basis of workers' compensation exclusivity. Appellant testified that the only damage she was seeking for the false imprisonment claim was for emotional distress. (Hr'g Tr. at 20:3-5.) As the circuit court recognized, false imprisonment is a tort similar to the torts the South Carolina state courts have held to be barred by the workers' compensation exclusivity provision. (R. at 6 (citing *McClain v. Pactiv Corp.*, 602 S.E.2d 87, 89 (S.C. Ct. App. 2004) (recognizing intentional infliction of emotional distress constitutes a personal injury that falls within the scope of the act); *Sabb v. S.C. State Univ.*, 567 S.E.2d 231, 234 (S.C. 2002) (negligence claims arose out of and in the course of plaintiff's employment and, therefore, the Act provided the exclusive remedy); *Loges v. Mack Trucks, Inc.*, 417 S.E.2d 538, 540 (S.C. 1992) (holding summary judgment was appropriate as to plaintiff's claim for intentional infliction of emotional distress because it constitutes personal injury within the scope of the Act).) Therefore, the circuit court properly held that the false imprisonment claim was barred by the workers' compensation exclusivity provision.

However, even if the circuit court erred in holding that the false imprisonment claim was barred by the doctrine of workers' compensation exclusivity, this basis for dismissal of the claim was an alternate ruling. Accordingly, even if the Court of Appeals disregards the circuit court's dismissal on the basis of workers' compensation exclusivity, because Appellant has failed to present evidence to support her false imprisonment claim (*supra* § II.B), the dismissal of the false imprisonment claim should still be affirmed. Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.").

III. Conclusion

Based on the above, the Circuit Court was correct to grant Respondent's Motion for Summary Judgment. Accordingly, Respondent requests that Appellant's appeal be denied and that the Circuit Court's Order be affirmed.

Respectfully submitted,

Ashley P. Cuttino, S.C. Bar #70354
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
300 North Main St., Suite 500
Greenville, SC 29601
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