

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

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APR 29 2016

SC Court of Appeals

Case No. 2011-CP-37-279
Appellate Case 2014-001282

Mariam R. Noorai,

Appellant,

v.

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

Respondents.

**RETURN TO APPELLANT'S PETITION FOR REHEARING
BY RESPONDENTS SCHOOL DISTRICT OF PICKENS COUNTY,
GARY CULLER, DONALD BOGGS,
RICHARD HUDAK, MARILYN RAINES
AND DR. KELLY PEW**

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Laura Callaway Hart
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Attorneys for Respondents
School District of Pickens County,
Gary Culler, Donald Boggs, Richard
Hudak, Marilyn Raines, and Dr.
Kelly Pew

Appellant has petitioned this Court for a rehearing of her appeal, which was decided *per curiam* on April 6, 2016. Respondents respectfully submit that her petition should be denied because rather than identifying points that the Court overlooked or misapprehended, Appellant merely seeks to try the case in the appellate court for a second time.

Standard of Review

A party seeking rehearing of an appeal must “state with particularity the points supposed to have been overlooked or misapprehended by the court.” Rule 221(a), SCACR. A petition for rehearing is not an opportunity for a losing party to present the same arguments she previously presented to the Court in the hope that she might be granted another hearing on the same points already considered by the Court. *Kennedy v. South Carolina Retirement System*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001); *Checker Yellow Cab Co., Inc. v. Checker Cab and Parcel Service, Inc.*, 287 S.C. 608, 612, 340 S.E.2d 549, 552 (Ct.App. 1986); *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234, 238 1933). In addition, a losing party may not present as grounds for a rehearing points which she overlooked or did not preserve for consideration by the Court. *Herron v. Century BMW*, 395 S.C. 461, 719 S.E.2d 640 (2011); *Kennedy*, 349 S.C. at 532-33, 564 S.E.2d at 323.

Argument

I. Appellant failed to provide a proper basis for this Court to rehear her appeal of the trial court’s dismissal of her claim for negligent misrepresentation.

Appellant contends that the Court failed to consider what she alleges were misrepresentations made to her by the Respondents regarding the letter of resignation they requested from her. Appellant further contends that, but for these alleged

misrepresentations, she would not have left her teaching position. She also contends that she suffered pecuniary loss as a result because the alleged misrepresentations “led to the negative references that Respondent Culler provided to other schools” and caused her to “continually” be denied employment.

First, Appellant argues that this Court failed to consider “many pieces of evidence showing that Respondents made actionable misrepresentations” to her. Even if true, which Respondents do not concede, this point is immaterial. Even if this Court had found misrepresentations by the Respondents regarding their request for a letter of resignation, Appellant could not have avoided summary judgment on her negligent misrepresentation cause of action because this Court found that she could not establish a pecuniary loss as a proximate result. *See, e.g., Turner v. Milliman*, 392 S.C. 116, 123, 708 S.E.2d 766, 769 (2011) (evidence that plaintiff suffered a pecuniary loss as a proximate result of his reliance on the misrepresentation is an essential element of the cause of action for negligent misrepresentation). Such a lack of pecuniary loss is fatal to Appellant’s claim for negligent misrepresentation, regardless of the details of the alleged misrepresentations.

Second, Appellant argues she was damaged because she would never have left her position at the school but for the alleged misrepresentations regarding the Respondents’ request for a letter of resignation. However, she did not make this assertion or argument to either the trial court or this Court, and, therefore, it cannot serve as a basis for rehearing. Moreover, the evidence is undisputed that Appellant had already decided not to sign the proffered contract of employment for the following school year; the

Respondents' subsequent request that she submit a resignation letter had nothing to do with her earlier decision to leave the school.

Finally, Appellant's argument that she was denied employment elsewhere as a consequence of the alleged misrepresentations was considered and rejected by this Court, as it stated in Part 1 of its Opinion. This Court did not misapprehend or overlook this argument; it merely disagreed with it, noting that the alleged misrepresentations regarding the letter of resignation were not connected to Appellant's inability to obtain new employment elsewhere.

II. Appellant failed to provide a proper basis for this Court to rehear her appeal of the trial court's dismissal of her claim for breach of contract.

Appellant also seeks a rehearing on whether she presented a triable issue of fact regarding the alleged breach of her employment contract by the Respondent School District of Pickens County. As grounds for this rehearing, she points to supposed implied contractual duties to report criminal conduct to law enforcement and to the South Carolina Department of Education. This Court considered this argument and rejected it in Part 2 of its Opinion because it was not raised to the trial court and not preserved for consideration by the appellate court. Therefore, it cannot serve as a basis for a rehearing of this appeal.

III. Appellant failed to provide a proper basis for this Court to rehear her appeal of the trial court's dismissal of her claim for intentional infliction of emotional distress.

Appellant finally argues for a rehearing of whether she created a triable issue of fact that Respondent Culler could be liable for intentional infliction of emotional distress. She does not, however, identify any points that this Court overlooked or misapprehended in Part 3 of its Opinion in which it addressed this claim. This Court found that the

evidence produced by Appellant of extreme and outrageous behavior and of severe emotional distress, viewed in the light most favorable to Appellant, did not show a genuine issue of material fact on either element. Appellant's argument for a rehearing of these issues is, in the words of the Supreme Court in the *Arnold* case, the seminal case in South Carolina on petitions for rehearing, merely a "re-hash" of what the losing party has said before, matters which the court has already considered well and disposed of." *Arnold v. Carolina Power & Light Co.*, 167 S.E. at 238. It cannot serve as the basis for a rehearing of this appeal.

Conclusion

Appellant did not identify with particularity any points that this Court overlooked or misapprehended. This Court fully considered Appellant's evidence and arguments, and there are no grounds for a rehearing.

Respectfully Submitted:

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Dr. Kelly Pew

April 29, 2016
Columbia, South Carolina

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PROOF OF SERVICE

I certify that I have served Respondents School District of Pickens County, Gary Culler, Donald Boggs, Richard Hudak, Marilyn Raines and Dr. Kelly Pew's Return to Appellant's Motion for Rehearing by depositing a copy of it in the United States Mail, postage prepaid, on April 29, 2016, addressed to her attorney of record, R. Mills Ariail, Jr., 11 North Irvine Street, Suite 11, Greenville, South Carolina 29601.

April 29, 2016



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(CONTINUED ON NEXT PAGE)

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April 29, 2016

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
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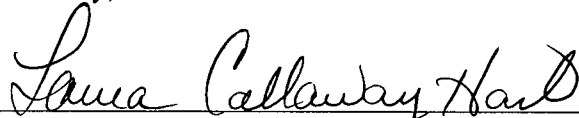
Re: Mariam R. Noorai v. School District of Pickens County, et al.
C.A. No. 2011-CP-37-279
Appellate Case No. 2014-001282

Dear Ms. Kitchings:

Enclosed for filing is the original Return to Appellant's Petition for Rehearing with six copies and Proof of Service for same.

Thank you for your assistance in this matter.

Sincerely,



Laura Callaway Hart (S.C. Bar #2766)

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The Honorable Jenny Abbott Kitchings

April 29, 2016

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Enclosures

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