

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF ORANGEBURG)

Case No.: 2014-CP-38-01164)

Rebecca McCutcheon,)

Plaintiff,)

vs.)

United Parcel Service, Inc. and John Doe,)

Defendants.)

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

RECEIVED

MAY 06 2016

SC Court of Appeals

FILED FOR RECORD
MINNIE B. CLARK
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CLERK OF COURT
ORANGEBURG, SC

This matter came before the Court on Monday, September 28, 2015, for an Order pursuant to Rules 12(b)(1) & 12(b)(6) of the *South Carolina Rules of Civil Procedure* dismissing Plaintiff's Complaint in its entirety on the grounds that Plaintiff's state law tort action is preempted by federal statute 49 U.S.C. §14501(c) (the Federal Aviation Administration Authorization Act of 1994). Defendants and Plaintiff filed memorandums of law in support and opposition to Defendants' Motion, and present for the hearing was counsel for the Defendants, G. Troy Thames and Ryan R. Corkery, and counsel for Plaintiff, Shane M. Burroughs and Justin T. Bamberg. For reasons which will be fully explained below, the Court grants Defendants' Motion and dismisses Plaintiff's Complaint with prejudice.

FINDINGS OF FACT

The above-captioned loss of consortium tort action was initiated by Plaintiff Rebecca McCutcheon ("Plaintiff") against United Parcel Service, Inc. and its purported driver employee, John Doe. Plaintiff alleges that Defendants negligently delivered a package, shipped from the Veterans Administration Hospital in Charleston, South Carolina and containing Plaintiff's husband's thyroid medication, late to Plaintiff's husband, which resulted in personal injuries to him (Plaintiff's Complaint at ¶¶ 5-8 & 13). The basis of Plaintiff's loss of consortium claim is that the personal injuries suffered by her husband resulted in damage to Plaintiff's marital relationship. (*Id.* at ¶ 21). Plaintiff initiated the action on September 18, 2014, and Defendants timely filed a Motion to Dismiss on December 15, 2014.

ATTEST: TRUE COPY

Wynne B. Clark

CLERK OF COURT

ORANGEBURG COUNTY, SC

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CONCLUSIONS OF LAW

The Federal Aviation Administration Authorization Act of 1994 ("FAAAA"), codified at 49 U.S.C. §14501(c), provides:

[A] State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier ... or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

49 U.S.C. § 14501(c)(1). The United States Supreme Court has further clarified that the FAAAA preempts state laws "related to a price, route, or service of any motor carrier . . . with respect to the transportation of property." *Dan's City Used Cars, Inc. v. Pelkey*, 133 S. Ct. 1769, 1772 (2013) (quoting 49 U.S.C. § 14501(c)(1)).

As pled in the Complaint, the subject package was shipped by the VA Hospital in Charleston, South Carolina, to Plaintiff's husband at their home in Orangeburg, South Carolina. As such, the package constitutes an intrastate shipment. The loss of consortium state tort claims set forth in Plaintiff's Complaint are based upon an allegation that UPS, a motor carrier, negligently delivered the package untimely. These claims are based solely upon the specific service that UPS provides – delivery of packages. Pursuant to the plain language set forth in the FAAAA, all of the state law claims set forth in Plaintiff's Complaint, which relate directly to the "service" provided by UPS, a motor carrier, are preempted. *See* 49 U.S.C. § 14501(c)(1).

Because the FAAAA expressly preempts the state law tort claims set forth in Plaintiff's Complaint, this Court lacks subject matter jurisdiction over Plaintiff's claims insofar as it lacks the statutory power to adjudicate those claims which have been preempted by federal law. As such, Plaintiff's Complaint is dismissed pursuant to SCRPC 12(b)(1). Moreover, and as an alternative grounds for dismissal, because the FAAAA expressly preempts the state law tort claims set forth in Plaintiff's Complaint, Plaintiff has failed to state any facts sufficient to constitute a valid cause of action under South Carolina state law. As such, Plaintiff's Complaint is dismissed pursuant to SCRPC 12(b)(1).

IT IS THEREFORE ORDERED that the above-entitled action against United Parcel Service, Inc. and John Doe be hereby dismissed with prejudice and forever ended.

IT IS SO ORDERED.

St. George, South Carolina

Date Feb. 2, 2016

Maite Murphy
Maite Murphy
Presiding Judge

First Judicial Circuit