THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Case No. 2015-CP-10-05093
Appellate Case No. 2016-001337

Leisel Paradis ..... Appellant,

v.

Charleston County School District, James Island Charter High School, Robert Bohnstengel, and Stephanie Spann, in their individual capacities..... Respondents.

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court properly dismiss Appellant's claim for defamation where the Respondents Charleston County School District and James Island are subject to sovereign immunity; Appellant's claim is barred by the statute of limitations; and Appellant fails to state a cause of action for defamation?

2. Did the trial court properly dismiss Appellant's claim for civil conspiracy where Appellant failed to plead special damages with specificity and where the conduct alleged of Respondents Robert Bohnstengel and Stephanie Spann was done in the scope of their employment?

3. Did the trial court properly deny Appellant leave to amend her Complaint?

STATEMENT OF THE CASE

This is an appeal from the Orders of the Circuit Court granting Respodents' Motions to Dismiss and denying Appellant's Motion to Reconsider. (Order of Judge J.C. Nicholson, Jr., dated April 15, 2016, and Order of Judge J.C. Nicholson, Jr., dated May 19, 2016.)

The within action was filed by Appellant on September 17, 2015, in Charleston County Court of Common Pleas alleging causes of action for defamation against James Island Charter School (Charter School) and Charleston County School District (District) and for civil conspiracy against Robert Bohnstengel (Bohnstengel) and Stephanie Spann (Spann).

On November 30, 2015, all Respondents filed a Motion to Dismiss Plaintiff's Complaint. The Charter School and Spann filed an Amended Motion to Dismiss on March 18, 2016, and the District and Bohnstengel filed an Amended Motion to Dismiss on March 21, 2016. The issues were fully briefed by all parties, and a hearing was held on the Motions to Dismiss on March 30, 2016. After considering the written and oral arguments of counsel, Judge Nicholson issued his Order dated April 15, 2016, granting Respondents' Motions. Appellant filed a Motion to Reconsider on April 29, 2016, and Respondents filed a joint Response to Plaintiff's Motion to Reconsider on May 12, 2016. Judge Nicholson denied Appellant's Motion to Reconsider by Order of May 19, 2016.

FACTS[1]

Appellant was an employee of the District and taught English at the Charter School. Compl., ¶ 1. Bohnstengel is the former principal of the Charter School, and Spann is an

[1] The facts recited herein are taken from Appellant's Complaint for purposes of this appeal.

Assistant Principal there. Compl., ¶¶ 4, 5. Appellant alleges that Bohnstengel became angry with her after she informed him she wanted to file a police report regarding a violent and harassing assault she suffered from a student in her classroom during the 2012-13 school year. Compl., ¶¶ 8, 9. Shortly thereafter, Bohnstengel notified Appellant that she was being placed on SAFE-T/ADEPT evaluation for the following school year in accordance with a prior meeting between them. Compl., ¶ 12. Appellant was shocked by this notification because she had not previously met with Bohnstengel, and she had met all of her goals of her GBE (Goals Based Evaluation) for the 2012-13 school year. Compl., ¶¶ 11, 13.

Despite her efforts to reverse Bohnstengel's decision, Appellant was subject to evaluation for the 2013-14 school year. Compl., ¶ 14. Bohnstengel was one of three evaluators for Appellant; however, he was terminated before Appellant's evaluation was complete. Compl., ¶¶ 14, 15. He was then replaced by Maureen Jessup for the remainder of the evaluation period. Compl., ¶ 16. Appellant failed the evaluation for the 2013-14 and was again placed on evaluation for the 2014-15 school year. Compl., ¶ 17.

Appellant was concerned that she would not be treated fairly in the second evaluation because Spann, who had been on the prior evaluation team, would again serve as one of her three evaluators. Compl., ¶ 19. According to Appellant, during the second year of evaluation, Spann changed the requirements of her evaluation, causing Appellant to be confused. Compl., ¶ 19. Appellant met with her mentor, Charity Scruggs, almost daily. Compl., ¶¶ 18, 19. Ms. Scruggs noted that Appellant was under strain, but that she was doing all she could to please the evaluators. Compl., ¶ 19. Despite her efforts, Appellant failed the evaluation during the second year, scoring lower at the end of the year

than she had at the beginning. Compl., ¶ 20. All of Appellant's peers and colleagues were aware that she was being evaluated and saw the physical and emotional toll it took on Appellant. Compl., ¶ 21. Appellant was terminated because she failed the evaluation for two consecutive years. Compl., ¶22. Appellant, thereafter, exhausted her administrative remedies. Compl., ¶22.[2]

Plaintiff's Complaint alleges a cause of action for defamation of character against the District and the Charter School, as well as a cause of action against Bohnstengel and Spann for civil conspiracy.

[2] The administrative remedies available to a teacher are governed by the South Carolina Teacher Dismissal Act. Specifically, a teacher who has been terminated exhausts her administrative remedies when she requests a hearing before the District Board of Trustees and receives a determination from the Board as to "whether the evidence showed good and just cause" for the dismissal. S.C. Code Ann. §59-25-470. Furthermore, the "teacher has the privilege of being present at the hearing with counsel and of cross-examining witnesses and may offer evidence and witnesses and present *any and all* defenses to the charges." Id. § 59–25–470 (emphasis added). After considering the evidence, both the Board of the Charter School and the Board of the District upheld the termination of Appellant.

ARGUMENT

I. APPLICABLE STANDARD OF REVIEW

A Rule 12(b)(6) motion to dismiss should be granted when the pleadings, construed in the light most favorable to the non-moving party, fail to allege sufficient facts to state a cause of action. Rule 12(b)(6), SCRCP; Haskell Co. v. Morgan, 274 S.C. 261, 262 S.E.2d 737 (1980). As stated in DeBerry v. McCain, 275 S.C. 569, 274 S.E.2d 293 (1981):

> A [motion to dismiss] admits the facts well-pleaded in the complaint but does not admit the inferences drawn by the plaintiff from such facts. In short, a [motion to dismiss] a complaint does not admit conclusions of law pleaded therein.

274 S.E.2d at 296; Carolina Winds Owners' Ass'n v. Joe Harden Builder, Inc., 297 S.C. 74, 374 S.E.2d 897, 899 (Ct. App. 1988) ("A motion under Rule 12(b)(6) . . . admits the well pleaded facts in the complaint, but it does not admit the inferences drawn by the plaintiff from such facts, nor does it admit conclusions of law."). An allegation of a mere legal conclusion is insufficient to state a cause of action. Jones v. Gilstrap, 288 S.C. 525, 343 S.E.2d 646 (1986); Russell v. City of Columbia, 301 S.C. 117, 390 S.E.2d 463 (Ct. App. 1989), rev'd on other grounds, Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991) ("The court must take well pleaded factual allegations as true. However, allegations which are conclusory rather than factual should be disregarded.")

II. THE TRIAL COURT CORRECTLY RULED THAT APPELLANT'S DEFAMATION CLAIM SHOULD BE DISMISSED AS A MATTER OF LAW.

Appellant claims she was slandered by allegedly false, oral and written statements made against her by "agents and servants of [the District and Charter School] acting in the course and scope of their employment." Compl. ¶¶ 25-26. The trial court correctly ruled her allegations fail as a matter of law and are subject to dismissal because: (1) the District

and Charter School are entitled to sovereign immunity; (2) Appellant's claim for defamation is barred by the applicable statute of limitations; and (3) Appellant's claim fails to facts sufficient to constitute a cause of action for defamation.

A. Appellant's claim for defamation against Respondents District and Charter School was properly dismissed because they are subject to sovereign immunity.

Appellant's claim for defamation is subject to the South Carolina Tort Claims Act (SCTCA), which provides the sole remedy available to a plaintiff for civil wrongs alleged to have been committed by a government agency. Hawkins v. City of Greenville, 358 S.C. 280, 292, 594 S.E.2d 557, 563 (Ct. App. 2004). The District and Charter School are each a governmental entity subject to the protections of the SCTCA. S.C. Code Ann. § 15-78-30(d). Although the SCTCA waived absolute immunity for torts committed by government actors, it limited liability under certain circumstances. S.C. Code Ann. § 15-78-40 (Supp. 2003). Specifically, in adopting the SCTCA, the General Assembly continued the grant of immunity to the political subdivisions of the State and their employees "while acting within the scope of official duty for any tort except as waived by this chapter." S.C. Code Ann. § 15-78-20(b). The waiver of immunity under the SCTCA is "based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty." S.C. Code Ann. § 15-78-20. "An employee of a governmental entity who commits a tort while acting within the scope of his official duty is *not* liable therefor" unless "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. S.C. Code Ann. § 15-78-70(a) and (b).

When examining a provision which potentially limits the liability of a government agency, the Court should liberally construe the portion of the Act in favor of the government defendant. S.C. Code Ann. § 15-78-20(f); Hawkins, 358 S.C. at 292, 594 S.E.2d at 563. School officials are not liable for allegedly defamatory conduct performed in the discharge of their official duties. De Levay v. Richmond Cty. Sch. Bd., 284 F.2d 340, 340 (4th Cir. 1960). Where a government official is entitled to immunity, the defense is available, regardless of his rank or his motives, and even when his conduct is within the "outer perimeter of his line of duty." Green v. Cauthen, 379 F. Supp. 361, 374 (D.S.C. 1974). While De Levay and Green predate the SCTCA, they are directly in keeping with the intent of the General Assembly to limit the waiver of immunity for torts committed by government agents acting within the scope of their duty and are compellingly applicable here.

Appellant's claim for defamation appears to be based on the allegations that "[a]ll of the [her] peers and colleagues knew she was undergoing the evaluation process" and that "[b]y virtue of placing and holding [her] on the evaluation process for two years – which was widely known at JICHS – [her] credibility as a teacher was greatly diminished." Compl., ¶¶ 21, 28. Thus, the gravamen of Appellant's cause of action is that the District and Charter School defamed her when they placed her on formal evaluation for two consecutive school years. [3]

However, the District and Charter School are entitled to absolute immunity for placing Appellant on formal evaluation because assessing teacher competence is a statutory

[3] Although Appellant attempts to broaden the scope of Respondent's alleged misconduct to include her termination, the allegations are murky and not well plead as to the exact nature of the defamatory conduct and its publication. Appellant's Brief, p. 9.

duty of all school districts in South Carolina. See S.C. Code Ann. § 59-26-40 ("A teacher employed under a continuing contract must be evaluated on a continuous basis. At the discretion of the local district and based on an individual teacher's needs and past performance, the evaluation may be formal or informal."). By placing Appellant on formal evaluation, the District and Charter School were each clearly acting within the scope of its official, statutorily-mandated duties, such that there is no liability under the SCTCA. Even Appellant acknowledges in her Complaint that the allegedly false statements and actions were made by agents of the District and Charter School "while acting within the course and scope of their employment." Compl., ¶¶ 29, 31. Furthermore, aside from the conclusory allegations set forth in her causes of action, Appellant has failed to set forth any specific factual allegations in her Complaint that any of Respondents' agents harbored malice toward her or intended her harm, which is necessary to take Respondent's outside the protections of the SCTCA. Accordingly, the trial court properly dismissed Appellant's claim for defamation consistent with the state's grant of sovereign immunity to the District and the Charter School under the circumstances present here.

However, even if this Court were to find the General Assembly intended to waive immunity for school agents evaluating employee performance, the SCTCA nonetheless clearly states that a "government entity is not liable for loss resulting from ... the exercise of discretion or judgment by the governmental entity or employee or the performance [of] any act or service which is in the discretion or judgment of the governmental entity or employee...." S.C. Code Ann. § 15-78-60(5).

As the trial court aptly noted, although school districts have a statutory duty to assess teachers in its employ, they have the discretion to evaluate teachers on a formal

[SAFE-T] or informal basis based on their judgment of the "teacher's needs and past performance." S.C. Code Ann. § 59-26-40; Order Dismissing Case, p. 5. Likewise, school officials can and must exercise discretion and judgment when deciding to terminate a teacher. Therefore, because the SCTCA shields the Respondents from liability for the decision to place Appellant on formal evaluation, the trial court did not err in dismissing Appellant's cause of action for defamation.

B. The trial court correctly determined Appellant's claim for defamation is barred by the applicable statute of limitations.

A cause of action for defamation must be brought within two years of the time the claim arose. Jones v. City of Folly Beach, 326 S.C. 360, 368, 483 S.E.2d 770, 774 (Ct. App. 1997) (citing S.C. Code Ann. § 15-3-550 (Supp. 1995)). The claim "accrues at the moment when the plaintiff has a legal right to sue on it." Id. Additionally, any claim for damages under the SCTCA must be brought within two years of the loss or when it should have been reasonably discovered. S.C. Code Ann. § 15-78-100(a). Although the discovery rule is not generally applicable to a claim for defamation, it may apply where the plaintiff seeks redress from a government agency. Logan v. Cherokee Landscaping & Grading Co., 389 S.C. 611, 618, 698 S.E.2d 879, 883 (Ct. App. 2010); Harris v. Tietex Int'l Ltd., 417 S.C. 533, 790 S.E.2d 411, 416 (Ct. App. 2016), reh'g denied (Sept. 23, 2016). Under the discovery rule, a plaintiff must bring an action with some degree of promptness once she has notice that a claim exists, even if she fails to comprehend the full extent of her injury. Dean v. Ruscon Corp., 321 S.C. 360, 363–64, 468 S.E.2d 645, 647 (1996).

Appellant alleges the District and Charter School defamed her "[b]y virtue of *placing* and holding [her] on the evaluation process for two years . . . ." Compl., ¶ 28 (emphasis added). According to her Complaint, Appellant was notified that she was being

placed on formal evaluation shortly after her meeting with Richard Glickman in March of 2013, and she was, in fact, subject to evaluation beginning with the 2013-14 school year. Compl., ¶¶ 11, 12, 14. Thus, Appellant's cause of action for defamation arose as early as March of 2013, or as late as August 2013, when the 2013-14 school year began. However, Appellant did not commence this litigation until September 22, 2015, after the expiration of the two-year statute of limitations for defamation claims and claims under the SCTCA. Therefore, as the trial court correctly held, her claim for defamation is time-barred.

Appellant's argument that the "continuous accrual" doctrine should apply to save her charge of defamation is unavailing. First, this doctrine has not been applied in South Carolina to a cause of action for defamation or to a claim under the SCTCA, and none of the cases cited by Appellant involve tort remotely similar to a claim for defamation. Moreover, Appellant's own rationale supports the conclusion of the trial court that her claim is time-barred. In Cutchin v. S.C. Dep't of Highways & Pub. Transp., 301 S.C. 35, 37, 389 S.E.2d 646, 648 (1990), a case upon which Appellant relies, the South Carolina Supreme Court distinguished between the nature of the harm to the plaintiff to determine whether the statutory limitations period could arguably begin to run from an injury subsequent to the initial injury. There, the Court noted that where the harm to the property owner plaintiff could have been abated by the defendant's installation of adequate pipelines, a second flooding of the plaintiff's property triggered a new statute of limitations. Id. However, "'[i]f the injury ... is of a permanent character, then it follows that the plaintiff has a single cause of action which cannot be split.'" Id. (quoting Webb v. Greenwood County, 229 S.C. 267, 277, 92 S.E.2d 688, 692 (1956)). Unlike the Cutchin plaintiff,

Appellant's alleged damages[4] of a permanent indivisible nature.

C. Because Appellant does not state a claim for defamation, dismissal is proper under SCRCP 12(b)(6), and the order of the trial court should be affirmed.

Even if the District and Charter School were subject to liability, Appellant's claim for defamation is nonetheless subject to dismissal against both Respondents because her complaint fails to state facts sufficient to constitute a cause of action for defamation. See Rule 12(b)(6), SCRCP.

To establish a cause of action for defamation, the Appellant must show: "(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." Erickson v. Jones St. Publishers, L.L.C., 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006).

In Pagano v. Martin, 397 F.2d 620 (4th Cir. 1968), the Fourth Circuit Court of Appeals addressed a similar situation, in which the alleged defamatory statements occurred in connection with a report that was issued pursuant to an employer's authorized duties. In that case, the alleged libel appeared in a performance evaluation report issued by the defendants, who were the plaintiff's superior officers on the USS Robert A. Owens, a naval destroyer ship. Pagano, 397 F.2d at 620. The court acknowledged that the evaluation report "downgraded [the plaintiff] sharply and recommended he not be re-enlisted in the future." Id. In affirming the district court's dismissal of the libel claim on the defendants'

[4] As a result of Respondent's alleged defamation, Appellant claims she has suffered loss of job, income, and earning capacity; sustained embarrassment, humiliation, damage to her reputation, emotional distress, and pain and suffering and loss of sleep and self-confidence. Compl., ¶ 32.

motion for summary judgment, the Court of Appeals noted: "The report authorized by the Bureau of Naval Personnel Manual, was made by the defendant officers *as part of their official duties*. With the trial court, we think the suit, as a matter of law, cannot be maintained." Id. (emphasis added).

Here, the Complaint is devoid of factual allegations that actually support Appellant's contention that there was an unprivileged, defamatory communication made to a third party. The alleged defamatory material is nothing more than a negative evaluation of Appellant's professional performance, and both the District and the Charter School are not only authorized, but mandated by law, to perform teacher evaluations, some of which, by their very nature, will result in substandard reviews.

Appellant takes issue with the trial court's finding that she did not sufficiently state a claim for defamation pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure because: she plead "that her placement on the SAFE-T evaluation, termination and grounds for same were published to unprivileged coworkers; and she plead a "third party publication of the defamatory *insinuation* that she was unfit in her profession by the Respondent District and respondent Charter School, through the Respondent Charter School's administration." Appellant's Brief, p. 11 (emphasis added). The paraphrase of these allegations, combined with Appellant's allegation that "[b]y virtue of placing and holding Plaintiff on the evaluation process for two year – which was widely known – at JICHS – Plaintiff's credibility as a teacher was greatly diminished" seemingly place Appellant's claim squarely in the context of a defamation cased based on an open and formal evaluation. When Appellant did not pass for a second year, she was terminated. Compl., ¶ 22. Nowhere in Appellant's complaint does she identify who actually published

or made the alleged defamatory statements, actions or insinuations, the nature of the publication, or to whom the statements, actions or insinuations were made.[5] Without those facts to support Appellant's allegations, her claim must fail.

In deciding a 12(b)(6) motion to dismiss, the court cannot consider "the inferences drawn by the plaintiff from [well pleaded] facts" and must disregard "allegations which are conclusory rather than factual...." DeBerry, 275 S.C. at 574 , 274 S.E.2d at 296; Russell, 301 S.C. at 119, 390 S.E.2d at 164. Merely pleading a defendant "made and published statements that insinuated [an employee] was unfit in her business and profession" does not provide the level of specificity necessary to support a claim for defamation. McNeil v. S.C. Dep't of Corr., 404 S.C. 186, 195, 743 S.E.2d 843, 848 (Ct. App. 2013). Accordingly, the trial court properly dismissed Appellants cause of action for defamation.

III. THE TRIAL COURT CORRECTLY RULED THAT APPELLANT'S CIVIL CONSPIRACY CLAIM SHOULD BE DISMISSED AS A MATTER OF LAW.

Appellant's Complaint alleges that Bohnstengel and Spann conspired against her and targeted her for an "unwarranted and invasive evaluation," and that as a result, she suffered special damages in the form of "being blacklisted and ostracized from the profession of education." Compl. ¶¶ 35-36. However, Appellant's claim for civil conspiracy fails as a matter of law and is subject to dismissal because: (1) Appellant fails to sufficiently and/or specifically state any special damages beyond those alleged in her other cause(s) of action; and (2) the actions of Bohnstengel and Spann that form the

[5] Reciting the elements of her defamation claim, Appellant alleges: "By the false statements and actions made against Plaintiff by agents and servants of Defendant District and Defendant JICHS acting in the course and scope of their employment, Defendant District and Defendant JICHS defamed Plaintiff, and the defamation was published to Plaintiff's colleagues, students, and possibly others, including parents ...." Compl, ¶ 29.

apparent basis of Appellant's conspiracy claim were all done within the course and scope of their employment, such that no actionable conspiracy exists.

A. The trial court's order of dismissal should be affirmed because Appellant fails to state with specificity the special damages she sustained, which is an essential element of the claim.

"'A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing *special damage* to the plaintiff.'" Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 324, 701 S.E.2d 39, 46 (Ct. App. 2010) (quoting McMillan v. Oconee Mem'l Hosp., Inc., 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006) (emphasis added)). Civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage. Gordon v. Busbee, 397 S.C. 119, 136, 723 S.E.2d 822, 831 (Ct. App. 2012). "The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to a common design." Cricket Cove Ventures, 390 S.C. at 324, 701 S.E.2d at 46. To establish a conspiracy, "evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." Cowburn v. Leventis, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005) (citation omitted).

Rule 9(g) provides that "[w]hen items of special damage are claimed, they shall be specifically stated." Rule 9(g), SCRCP.

> This rule is based upon the distinction between general and special damages. General damages are inferred by the law itself, as they are the immediate, direct, and proximate result of the act complained of. In contrast, special damages are not implied by law because they are the natural, but not the necessary or usual, consequence of the defendant's conduct. Thus, special damages must "be specifically stated" to avoid surprise to the other party.

Benedict Coll. v. Nat'l Credit Sys., Inc., 400 S.C. 538, 548, 735 S.E.2d 518, 523 (Ct. App. 2012) (citations omitted). Where a party alleges the same damages under a conspiracy claim as she does under the other causes of action, such allegations are insufficient to establish special damages. Gordon, 397 S.C. at 136, 723 S.E.2d at 831-32 (Ct. App. 2012); Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009) ("If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed."). To properly plead special damages, the plaintiff must set for the necessary elements to establish the damages, as well as allege facts establishing the cause of the special damages and how they occurred. 25A C.J.S. Damages § 278

The only mention of special damages in Appellant's Complaint, beyond the conclusory statement that she has sustained them generally, is that she has been ostracized or blacklisted from the profession of education. Yet, Appellant fails to plead *any* specific facts to support such an assertion, such as the elements of the damages, the cause of the damages or how they arose.[6] In fact, there is no allegation that she made any effort, unsuccessful or not, to obtain any other employment in the field of education. Furthermore, the alleged damages of being blacklisted and ostracized are simply a re-wording of the "injur[y] to her professional reputation" that are the claimed damages under

[6] Appellant acknowledges in her Brief that, in order to recover damages for blacklisting, she must establish "there was a blacklist, a combination of employers who exchanged the information contained on the blacklist, and a willful or malicious use of that blacklist by one or more of the members of the combination, with resultant injury to [her]." Brief of Appellant, p. 13, (quoting Austin v. Torrington Co., 810 F.2d 416, 421 (4th Cir. 1987)). However, Appellant has failed to plead any of the elements she acknowledges she must prove.

her defamation cause of action. See Compl. ¶¶ 30-32. Therefore, Appellant fails to properly plead or "specifically state" any special damages beyond those damages alleged under other causes of action, such that her conspiracy claim fails as matter of law.

B. The trial court correctly held that Appellant's civil conspiracy claim is inactionable because the conduct alleged of Bohnstengel and Spann was done in the scope of their employment.

A corporation or municipal entity can act only through its directors, officers, agents, and employees. See Anvar v. Greenville Hosp. Sys., No. 2007-UP-004, 2007 WL 8324255, at *5 (S.C. Ct. App. Jan. 10, 2007). Thus, where the actions of an entity's agents and employees were all performed while acting within the course and scope of their authority, a conspiracy claim is barred by the intracorporate conspiracy doctrine. See id. (citing McMillan v. Oconee Mem'l Hosp., Inc., 367 S.C. 559, 564-65, 626 S.E.2d 884, 886-87 (2006) (holding a civil conspiracy cannot exist in the context of a principal-agent relationship where the individuals are all acting only for the corporation and not for any personal purpose of their own)); see also Cameron v. Church, 253 F. Supp. 2d 611, 623 (S.D.N.Y.2003) (stating "[t]he intracorporate conspiracy doctrine provides that the officers, agents and employees of a single corporate *or municipal entity*, each acting within the scope of his or her employment, legally are incapable of conspiring together"). "[J]ust as it is not legally possible for an individual to conspire with himself, it is not possible for a single legal entity consisting of the corporation and its agents to conspire with itself." McAndrew v. Lockheed Martin Corp., 206 F.3d 1031, 1036 (11th Cir. 2000).

In Cricket Cove Ventures, the South Carolina Court of Appeals stated:

> In *McMillan,* our Supreme Court limited this "intracorporate conspiracy" doctrine to persons acting within the scope of their employment, 367 S.C. at 564–65, 626 S.E.2d at 887. Other jurisdictions have similarly limited the doctrine. *See ePlus Tech., Inc. v. Aboud,* 313 F.3d 166, 179 (4th Cir. 2002)

("[T]he intracorporate immunity doctrine does not apply where a corporate 'officer has an independent personal stake in achieving the corporation's illegal objectives.'" (quoting *Greenville Pub. Co. v. Daily Reflector, Inc.*, 496 F.2d 391, 399 (4th Cir. 1974))); *McAndrew v. Lockheed Martin Corp.*, 206 F.3d 1031, 1036 (11th Cir. 2000) ("Simply put, under the doctrine, a corporation cannot conspire with its employees, and its employees, *when acting in the scope of their employment,* cannot conspire among themselves.") (emphasis added); *Garza v. City of Omaha,* 814 F.2d 553, 556 (8th Cir. 1987) ("While it is true that a corporation cannot conspire with itself, an intracorporate conspiracy may be established where individual defendants are also named and those defendants act outside the scope of their employment for personal reasons.").

Cricket Cove Ventures, 390 S.C. at 325-26, 701 S.E.2d at 46-47.

Appellant's allegations against Bohnstengel and Spann all relate to conduct that occurred while they were acting within the course and scope of their employment as administrators at the Charter School. Appellant's bald allegations in the civil conspiracy section of her Complaint that these Respondents "were able to specially inflict their evil agenda upon the [her] and did so *outside of the scope of their own employment*", Compl. ¶ 35 (emphasis added), are thinly-veiled and disingenuous assertions given the contention on the preceding page that the exact same conduct and actions were "made against [her] by agents and servants of [the District and Charter School] *acting in the course and scope of their employment.*" Compl. ¶ 29 (emphasis added). At all times relevant to the allegations of the Complaint, the individual Respondents were acting as agents and employees of the District and Charter School, and Appellant fails to allege any facts to support a conclusion to the contrary. Thus, the trial court's dismissal of Appellant's civil conspiracy cause of action should be upheld.

IV. EVEN IF THE COURT WERE TO FIND THE ONLY BAR TO APPELLANT'S CLAIMS ARE THAT HER PLEADINGS ARE DEFICIENT, SHE IS STILL NOT ENTITLED TO AMEND HER COMPLAINT.

As an initial matter, if the Court affirms the trial court's dismissal of Appellant's Complaint on the grounds that ....., then the issue of whether she be granted leave to cure any deficiencies in her Complaint is moot. However, even if the Court were to determine the only bar to the survival of Appellant's claims is her failure to properly plead them, she is still not entitled to amend her Complaint. Appellant accurately claims that "[w]hen a plaintiff is not given the opportunity to file and serve an amended complaint, but is left with no choice but to appeal after dismissal of her case with prejudice, an appellate court which affirms the dismissal may modify the lower court's order to find the dismissal is without prejudice." Spence v. Spence, 368 S.C. 106, 130, 628 S.E.2d 869, 881 (2006). However, this course of action is appropriate only after "the plaintiff presents additional factual allegations or a different theory of recovery which, taken as true in a well-pleaded complaint, may state a claim upon which relief may be granted." Id.

In Appellant's Memorandum in Opposition to Motion to Dismiss and for More Definite Statement, she concludes by asking the trial court to allow her to amend her complaint. In her Rule 59(e) Motion to Reconsider, Appellant fails to present any new or clarified factual allegations which would demonstrate she is entitled to the relief sought. Because any amendment would be an exercise of futility, Appellant's request to amend her complaint is properly denied. Edwards v. City of Goldsboro, 178 F.3d 231, 242 (4th Cir. 1999).

CONCLUSION

For the reasons stated, this Court should affirm the trial court's Order dismissing Appellant's Complaint.

Respectfully submitted,

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Charleston, South Carolina
November 7, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Case No. 2015-CP-10-05093
Appellate Case No. 2016-001337

Leisel Paradis ..... Appellant,

v.

Charleston County School District, James Island Charter High School, Robert Bohnstengel, and Stephanie Spann, in their individual capacities..... Respondents.

PROOF OF SERVICE

I do hereby certify that I have served all counsel in this action with a copy of the documents herein below specified by mailing a copy of the same by United States mail, postage prepaid, to the following address:

Documents: **Respondents' Initial Brief and Designation of Matter**

Counsel Served: J. Lewis Cromer, Esquire
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Respectfully submitted,

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November 7, 2016

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November 7, 2016

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *Leisel Paradis v. Charleston County School District, James Island Charter High School, Robert Bohnstengel, and Stephanie Spann, in their individual capacities*
Appellate Case No. 2016-001170

Dear Ms. Kitchings:

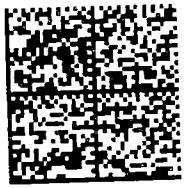
Enclosed please find the original and one copy of Initial Brief, Designation of Matter, and Proof of Service of Respondent Charleston County School District, et al. in the above-referenced case. We would appreciate it if you would please file the original Initial Brief and Designation of Matter, and return a clocked copy to us in the enclosed self-addressed, stamped envelope.

Sincerely yours,

Rene S. Dukes

RSD/dlh
Enclosures

cc: J. Paul Porter, Esquire



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