STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Nancy R. Winton,)
)
Plaintiff,)
)
v.)
)
Def.)
)
Charleston County Park and Recreation Commission,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
2015-CP-10-1658

ORDER GRANTING SUMMARY JUDGMENT AS TO WRONGFUL TERMINATION AND ALLEGED CONSTITUTIONAL VIOLATIONS

Presiding Judge:	Roger Young Sr.
Hearing Date:	November 30, 2016
Plaintiff's Attorney:	Timothy O. Lewis, Esquire
Defendant's Attorney:	Dwayne M. Green, Esquire
Court Reporter:	Karen Anderson

BACKGROUND

Defendant's Motion for Summary Judgment, filed November 4, 2016, came before this Court on Wednesday, November 30, 2016. Present in the courtroom were Dwayne M. Green, Esquire, attorney for the Defendant, and Timothy O. Lewis, Esquire, attorney for the Plaintiff.

Defendant moved this court for an Order granting summary judgment as to the Plaintiff's wrongful termination claim and Plaintiff's claim that Defendant violated provisions of the South Carolina Constitution by terminating Plaintiff's employment. After reviewing memoranda of law and listening to the oral arguments of both counsel, this Court makes the following findings.

STATEMENT OF FACTS

The primary facts in this case, for purposes of this motion, are undisputed. Both parties acknowledge in their respective pleadings that Defendant Charleston County Park and

Recreation Commission ("CCPRC") is a governmental entity created by the South Carolina General Assembly, Plaintiff was formerly employed by Defendant CCPRC, and Plaintiff's employment was terminated on or about March 10, 2013. Plaintiff's termination was precipitated by a phone call she made to Newberry College on or about February 27, 2013. Although Plaintiff and Defendant differ on the role the phone call played in Plaintiff's subsequent termination, Plaintiff does not deny making the call and Defendant does not deny that it being notified of the call caused disciplinary action to be taken against Plaintiff. Plaintiff admits that the lease transaction about which she made the call, concerning the Laurel Hill property, was a legal transaction which the Defendant had the authority to enter into, and that Plaintiff was an at will employee of the Defendant at all times prior to her termination.

STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issues of fact exist, the evidence and all inferences which can reasonably be drawn from the evidence must be viewed in the light most favorable to the nonmoving party." Strother v. Lexington Cnty. Recreation Comm'n, 332 S.C. 54, 61; 504 S.E.2d 117, 121 (1998) (citing Hamiter v. Ret. Div. of S.C. Budget & Control Bd., 326 S.C. 93, 96, 484 S.E.2d 586, 587 (1997)).

"Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact." Trivelas v. S.C. Dep't of Transp., 348 S.C. 125, 130; 558, S.E.2d 271, 273 (Ct. App. 2001) (citing Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation, 337 S.C. 476; 523 S.E.2d

795 (Ct. App. 1999)). Once the party seeking summary judgment asserts that a genuine issue of material fact does not exist, the opposing party may not rest on the allegations averred in his pleadings; rather, he must demonstrate that specific, material facts exist which give rise to a genuine issue. See Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115; 410 S.E.2d 537, 545 (1991) (citing Rule 56(e), SCRCP; Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87; 106 S. Ct. 1348, 1356 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 323; 106 S. Ct. 2548, 3553-53 (1986)).

"The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." Guald v. O'Shaugnessy Realty Co., 380 S.C. 548, 559; 671 S.E.2d 79, 85 (Ct. App. 2008) (citations omitted). "A complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." Id.

DISCUSSION

"In South Carolina, an at-will employee may be terminated for any reason or no reason at all." Donevant v. Town of Surfside Beach, 414 S.C. 396, 407; 778 S.E.2d 320, 326 (Ct. App. 2015) (quoting McNeil v. S.C. Dep't of Corr., 404 S.C. 186, 195; 743 S.E.2d 843, 848 (Ct. App. 2013)). "However, an employee may not be terminated for exercising constitutional rights, S.C. Code Ann. § 16–17–560 (1976 & Supp.1993), nor for reasons against public policy." Moshtaghi v. The Citadel, 314 S.C. 316, 322; 443 S.E.2d 915, 919 (Ct. App. 1994). "It is undisputed the South Carolina Constitution provides for freedom of speech, of assembly, and the right to petition the government for redress of grievances." Moshtaghi v. The Citadel, 314 S.C. 316, 323;

443 S.E.2d 915, 919 (Ct. App. 1994) (citing S.C. Const. art. 1, § 2). Additionally, South Carolina Code section 16-17-560 proscribes the discharge of any citizen from employment because of political views or the exercise of political rights and makes violation of the same a misdemeanor. S.C. Code Ann. § 16-17-560.

In Redden v. Walgreen, Inc., the plaintiff complained to his manager and district office that his co-workers, pharmacy technicians, "lacked the necessary experience and competence to safely fill customers' prescriptions . . . ." Redden v. Walgreen, Inc., No. 8:10–cv–02504–JMC, 2011 WL 3204693, at *1 (D.S.C. July 27, 2011). Plaintiff alleged that "he was terminated in retaliation for voicing his concerns about the qualifications of the technicians." Id. The district court found that the plaintiff's "expressions of concern about his coworkers were not political in nature and [did] not constitute speech protected by the First Amendment." Id. at 3. Similarly, in Tucker v. Cherokee County Veterans Affairs Office, the district court found that statements made to the Governor's Office and SLED agents as part of an investigation into Tucker's employer, the Veterans Affairs Office, did "not amount to exercising a political right." Tucker v. Cherokee Cnty. Veterans Affairs Office, No. 7:09–193–HMH, 2009 WL 2394374 at *2 (July 31, 2009). As such, the district court found that "Tucker's termination was not a violation of § 16–17–560." Id.

The public policy exception to the at-will employment doctrine provides that "an at-will employee has a cause of action in tort for wrongful termination where there is a retaliatory termination of the at-will employee in violation of a clear mandate of public policy." Id. (quoting Barron v. Labor Finders of S. C., 393 S.C. 609, 614; 713 S.E.2d 634, 636-37 (2011). "While the public policy exception applies to situations where an employer requires an employee to violate the law or the reason for the termination itself is a violation of criminal law, the public

policy exception is not limited to these situations." Id. (quoting Barron, at 614; 713 S.E.2d at 637). However, the public policy exception has not been extended beyond the above two exceptions. Id. (citing McNeil, at 192; 743 S.E.2d at 846). "[T]he determination of what constitutes public policy for purposes of the public policy exception to the at-will employment doctrine is a question of law for the courts to decide." McNeil v. S.C. Dep't of Corr., 404 S.C. 186, 191; 743 S.E.2d 843, 846 (Ct. App. 2013) (citing Barron v. Labor Finders of S.C., 393 S.C. 609, 617; 713 S.E.2d 634, 638 (2011)). To invoke the exception, "a litigant must allege more than a general statement that her discharge violated public policy[,]" rather, "[t]he complaint must set forth specific allegations that would enable the court to determine what public policy was violated." Id. at 193; 713 S.E.2d at 847.

In the case before this Court, Plaintiff invokes the public policy exception alleging that CCPRC's termination of plaintiff's employment violates South Carolina's Constitution, and the termination itself is a violation of criminal law found in S.C. Code Ann. § 16-17-560. Similar to Redden and Tucker, this Court finds that plaintiff's phone call to a business partner of her employer with the goal of having that partner reconsider a contract is not political in nature and does not constitute speech protected by the First Amendment. As such, CCPRC had the right to terminate Plaintiff for any actions it deemed to be insubordinate or in contravention of the stated goals of the Park and Recreation Commission. Therefore, this Court finds that summary judgment is proper as to the wrongful termination cause of action and the constitutional violations alleged in the Complaint against Defendant CCPRC.

CONCLUSION

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that:

1) Summary judgment as to the remaining causes of action alleged in the Complaint against the Defendant Charleston County Park and Recreation Commission, specifically the wrongful termination claim and claims as to violation of the South Carolina Constitution, is GRANTED; and

2) Any remaining causes of actions in the Complaint against the Defendant Charleston County Park and Recreation Commission shall be dismissed in their entirety ending this case, effective immediately and upon the filing of this Order.

IT IS SO ORDERED!

January 5, 2017
Charleston, South Carolina

Roger M. Young Sr.
Presiding Judge