

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Martha "Linda" Lusk, Ph.D.,

Plaintiff,

v.

Jami L. Verderosa, DEC 18 2017

SC Court of Appeals
Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2016-CP-37-00113

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court for hearing on November 1, 2017 at the Oconee County Courthouse on Defendant Jami L. Verderosa's Motion for Summary Judgment. At the hearing, the Plaintiff was represented by Candy M. Kern-Fuller, Esq., and the Defendant was represented by Jeffrey C. Kull, Esq.

After consideration of the Motion, the arguments of counsel, the various memoranda and exhibits submitted by the parties, and after a review of the record, the Court hereby **GRANTS** Jami L. Verderosa's Motion for Summary Judgment for the reasons set forth below.

BACKGROUND

The Plaintiff was previously an Assistant Principal at West-Oak Middle School (West-Oak), which is one the schools operated by the School District of Oconee County (the "School District"). The Defendant was the Principal at West-Oak and as such was the Plaintiff's supervisor for several years.

In her Complaint, the Plaintiff alleges that the Defendant engaged in a campaign to attack her reputation by making false statements and by increasing her workload. In particular, the Plaintiff claims that the Defendant issued a letter of reprimand in 2012 and had it placed in the Plaintiff's

personnel file. The Plaintiff filed a formal grievance with the School District, seeking the removal of the letter of reprimand from her personnel file, but her grievance was denied by the School District.

The Plaintiff claims that, after her grievance was denied, the Defendant continued to issue reprimands against her until the spring semester of the 2012-2013 school year. In May 2013, the Superintendent transferred the Plaintiff to a different school within the School District. Since the 2013-2014 school year, the Plaintiff has been employed by the School District as an Adult Education teacher.

In 2014, the Plaintiff filed an administrative charge against the School District before the United States Equal Employment Opportunity Commission (the "EEOC") relating to her demotion to be a teacher at Adult Education. The Plaintiff alleged that the School District retaliated against her for filing the grievance relating to the first letter of reprimand she received from the Defendant. The Plaintiff also claimed that she was discriminated against based on her age. Defendant Verderosa was not a party to the EEOC proceeding. The Plaintiff's EEOC administrative charge was dismissed soon after it was submitted because it was not timely filed.

In this civil action, the Plaintiff asserts two causes of action: (1) defamation; and (2) tortious interference with contract.

ANALYSIS

I. Summary Judgment Standard

Summary judgment is proper if, viewing the evidence and inferences to be drawn therefrom in a light most favorable to the nonmoving party, the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c) SCRPC; *Matsell v. Crowfield Plantation Community Services Assoc.*, 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App 2011). The Supreme Court has established that "[t]he plain language of Rule 56(c)

mandates the entry of summary judgment . . . 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.'" *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 357-58, 650 S.E.2d 68, 71 (2007) (internal citations omitted).

II. The Plaintiff's defamation cause of action is barred by the two-year statute of limitations.

South Carolina Code § 15-3-550 provides that an action for defamation must be brought within two years. In this case, the undisputed testimony establishes that all the conduct the Plaintiff alleges against the Defendant occurred no later than May 2013 when the Plaintiff was transferred to a different school and the Defendant was no longer her supervisor. During discovery, the Plaintiff took the depositions of two of her friends who were teachers at West-Oak and remained there after the Plaintiff was transferred. Both of these witnesses verified that they knew of no comments by the Defendant relating to the Plaintiff after the Plaintiff was transferred in May 2013. The Plaintiff filed this civil action on February 24, 2016, many months after the expiration of the two-year statute of limitations.

In an attempt to avoid the two-year statute of limitations, the Plaintiff argues – without citation to evidence – that the Defendant repeated defamatory statements about her to the EEOC while the Plaintiff's EEOC charge was pending in 2014. In response to this argument, Earnestine Williams, the Assistant Superintendent for Human Resources, testified via affidavit that she handled the EEOC proceeding on behalf of the School District and did not inform the Defendant of the Plaintiff's EEOC proceeding. The Plaintiff's affidavit further verifies that she was not aware of the EEOC proceeding while it was pending and never made any statements about the Plaintiff to the EEOC at any time. The Plaintiff has not offered any evidence to refute this testimony. See *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990) (ruling that to

avoid summary judgment the nonmoving party's "response, including affidavits or as otherwise provided by the rule, must set forth specific facts showing there is a genuine issue for trial."). The Court finds that the Plaintiff's defamation cause of action is barred by the two-year statute of limitations.

III. The Plaintiff's tortious interference with contract cause of action fails because the Plaintiff's contractual rights were not breached.

The Plaintiff alleges that she was an administrator at West-Oak and that the Plaintiff's conduct caused her to be demoted to the position of teacher. To prevail on a claim of tortious interference with contract, the Plaintiff must establish: (1) the existence of a contract; (2) knowledge of the contract; (3) intentional procurement of its breach; (4) the absence of justification; and (5) resulting damage. *Eldeco, Inc. v. Charleston County School District*, 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007). "Where there is no breach of the contract, there can be no recovery." *Id.* at 481, 642 S.E.2d at 732. The Court finds that there is no evidence that the Plaintiff's contract was breached.

The determination of whether the Plaintiff's contract was breached is governed by South Carolina Code § 59-24-15. This statute provides:

Certified education personnel who are employed as administrators on an annual or multi-year contract will retain their rights as a teacher under the provisions of Article 3 of Chapter 19 and Article 5 of Chapter 25 of this title but no such rights are granted to the position or salary of administrator. Any such administrator who presently is under a contract granting such rights shall retain that status until the expiration of that contract.

(emphasis added). The South Carolina Supreme interpreted this statute, holding:

Pursuant to section 59-24-15, while a certified educator who is employed as an administrator on an annual or multi-year contract retains her rights as a teacher under the Teacher Act, those rights are not granted to the position or salary of administrator.

Henry-Davenport v. School District of Fairfield County, 391 S.C. 85, 89, 705 S.E.2d 26, 28 (2011) (emphasis added).

At the time of her transfer, the Plaintiff had an annual administrative contract for the 2012-2013 school year and was assigned to serve as the Assistant Principal at West-Oak. Based on South Carolina Code § 59-24-15 and the Supreme Court's holding in *Henry-Davenport*, the Plaintiff had no rights to either her position or salary as administrator. As such, even though she was transferred to a different school in May 2013, before the end of the 2012-2013 school year, her contract was not breached.

In her memoranda, the Plaintiff concedes that she has no claim for tortious interference for any of her contracts after the 2012-2013 school year. Instead, she contends that she may maintain such a claim for the two months remaining in the 2012-2013 school year after she was transferred to a different school. In other words, she claims she can recover for tortious interference from the time she was transferred in May 2013 until the end of that school year on June 30, 2013.

The Plaintiff bases this claim on the last sentence of Section 59-24-15, which states: "Any such administrator who presently is under a contract granting such rights shall retain that status until the expiration of that contract." (emphasis added). The Court finds this statutory language does not preserve the Plaintiff's claim relating to the last two months of the 2012-2013 school year. This statutory language preserved the rights to the position and salary of an administrator only to those public school employees who had administrative contracts when the statute was enacted in 1998 but only until that contract expired. See *Henry-Davenport v. School District of Fairfield County*, 832 F.Supp.2d 602, 609 (D.S.C. 2011) (interpreting the last sentence to mean that if "an administrator had rights under a contract to continue as an administrator when the statute


was enacted, the statute states the administrator retained those rights until the contract expired.”) (emphasis added).¹


Therefore, the Plaintiff has failed to show that her transfer to a different school resulted in a breach of contract. Under South Carolina law, a public school administrator does not have the right to either the position or salary of an administrator. Instead, an administrator retains only the rights of a teacher. Because the Plaintiff remains employed as a teacher at the School District, her contractual rights were not breached.

CONCLUSION

As set forth above, even when the evidence is viewed in the light most favorable to the Plaintiff, the Plaintiff’s defamation cause of action is barred by the two-year statute of limitations and the Plaintiff’s tortious interference with contract cause of action fails based on South Carolina Code § 59-24-15. Therefore, Defendant Jamie L. Verderosa’s Motion for Summary Judgment is hereby **GRANTED**.

IT IS SO ORDERED.


Honorable. R. Lawton McIntosh
Presiding Judge


_____, South Carolina
11-14, 2017

¹ In addition, it is undisputed that the School District continued to pay the Plaintiff the same salary for the remaining two months of the 2012-2013 school year even after she was transferred to the different school.