

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
2017-CP-23-03754

RECEIVED

DEC 27 2017

SC Court of Appeals

Harold Estes Blackwell, Jr.,)
)
Plaintiff,)

ORDER DISMISSING PLAINTIFF'S
COMPLAINT AS TO DEFENDANT
MILLER

vs.)

Anita Jane Miller, Miracle Hill)
Ministries, Inc., and William Fisk,)
)
Defendants.)

Plaintiff brought suit against Defendants Anita Jane Miller, Miracle Hill, and William Fisk on numerous alleged causes of action. All three Defendants filed Motions to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. The motions to dismiss were heard by me on October 4, 2017. Defendant Miller was represented by M. Lee Daniels, Jr. Defendant Miracle Hill was represented by Adam Bach. Defendant William Fisk was represented by Carrie H. O'Brien. Plaintiff Harold Blackwell appeared *pro se*.

Defendant Miller is plaintiff's former wife, who sought treatment near the end of their marriage for alcohol addiction through Miracle Hill's Renewal Center. William Fisk was a friend of both Plaintiff and Miller who was enlisted by plaintiff to assist him with his marital situation. Plaintiff has asserted causes of action against Miller for Intentional Infliction of Emotional Distress (Outrage), Gross Negligence, Civil Conspiracy, Breach of Fiduciary Duty, Aiding and Abetting Breach of Fiduciary Duty, and Defamation. Miller has moved to dismiss each claim. As set out below, each and every cause of action asserted against Miller in plaintiff's complaint is legally

deficient in matters which are fatally defective and cannot be cured by amendment. Therefore, Miller's Motion to Dismiss is granted in its entirety.

A. LEGAL STANDARDS.

A defendant may move to dismiss the plaintiff's complaint for "failure to state facts sufficient to constitute a cause of action" pursuant to Rule 12(b)(6), SCRCF. In considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995). The question for the court is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the allegations set forth on the face of the complaint state any valid claim for relief. Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). The trial court's grant of a motion to dismiss will be sustained if the facts alleged in the complaint do not support relief under any theory of law. Tatum v. Medical Univ. of South Carolina, 346 S.C. 194, 552 S.E.2d 18 (2001).

B. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (OUTRAGE)

In paragraph 215 of his complaint, Plaintiff alleges ten different "cruel acts" of Miller which he claims are "outrageous as a matter of law." The list includes Miller refusing to communicate with him and/or explain the reason for her silence, false statements accusing Plaintiff of "domestic abuse", failing to inform plaintiff of the passing of his father-in-law, convincing someone else (Fisk) not to respect plaintiff, otherwise interfering with Fisk's relationship with plaintiff, committing slander, "forcing" plaintiff to file for divorce from Miller, engaging in a civil conspiracy, and aiding and abetting the other defendants in breaching an alleged duty of fiduciary duty to plaintiff.

The Court must make an initial determination as to whether the conduct alleged against a defendant would, if true, be extreme and outrageous enough to permit recovery and such an issue

should only be submitted to the jury if reasonable persons might disagree on this issue. Shupe v. Settle, 315 S.C. 510, 445 S.E.2d 651 (Ct.App.1994). Thus, the Court must consider in the first instance whether the “cruel acts” alleged against Miller, taking them as true for the purpose of this motion, would constitute, as a matter of law, “conduct so extreme and outrageous as to exceed all possible bounds of decency, [which] ... must be regarded as atrocious and utterly intolerable in a civilized society,” Ford v. Hutson, 276 S.C. 157, 276 SE2d 776 (1981). None of the “cruel acts” alleged have ever been cited in a reported case in South Carolina as the kind of act(s) which would meet the standard set out in the Ford case. See also Sabb v. SC State University, 350 S.C. 416, 567 SE2d 231 (2002), Shipman v. Glenn, 314 S.C. 327, 443 SE2d 921 (Ct. App. 1994) and Wright v. Sparrow, 298 S.C. 469, 381 SE2d 503 (Ct. App. 1989). While the conduct alleged against Miller may be “cruel acts”, that alone is not sufficient to meet the legal standard for outrage. The tort of outrage is not a “panacea for wounded feelings.” Todd v. Farm Bur. Mut. Ins. Co., 283 S.C. 155, 171, 321 SE2d 602, 611 (Ct. App. 1984), *rev'd on other grounds*, 287 S.C. 190, 336 SE2d 472 (1985). The “cruel acts” which Plaintiff claims Miller committed are more of the “wounded feelings” types than the type which are atrocious and utterly intolerable in a civilized society, and would exceed all possible bounds of decency. Silence, lack of explanation, lack of respect and courtesy, marital discord and divorce occur frequently in our society today. The claims for defamation, slander, civil conspiracy, and aiding and abetting breach of fiduciary duty are separate torts for which Plaintiff may claim damages, however, none of them have legal standards that are as high as those stated in the Ford case for intentional infliction of emotional distress or outrage.

The emotional distress plaintiff claims to have suffered from the “cruel acts” must also be so severe that “no reasonable person could be expected to endure it.” Ford, 276 S.C. at 162, 276 SE2d at 778. Plaintiff alleges in paragraph 216 of his complaint that he suffered emotional distress

from the “cruel acts” of Miller that was so severe that no reasonable person could be expected to endure. The question of whether the emotional distress alleged was “so severe that no reasonable person could be expected to endure it” is a question for the Court in the first instance. The “cruel acts” alleged by plaintiff, silence, lack of explanation, false statements, lack of respect, lack of courtesy, marital discord and divorce, unfortunately occur regularly in our society, but many people do endure them, and they are not of the type which a reasonable person could not be expected to endure.

Thus, even with plaintiff’s extensive factual allegations, there is simply no case here for a jury to consider, as the cruel acts of which plaintiff complains do not meet the legal threshold for the tort of intentional infliction of emotional distress (outrage).

C. GROSS NEGLIGENCE

In order for a complaint to state a claim of gross negligence, the court must first find that the defendant owed a legal duty of care to the plaintiff. “First, the court must determine, as a matter of law, whether the law recognizes a particular duty.” Moore v. Weinberg, 373 S.C. 209, 221, 644 S.E.2d 740, 746 (Ct. App. 2007). If the Plaintiff fails to prove the Defendants owed him a legal duty of care, he fails to prove actionable negligence. Doe v. Greenville County Sch. Dist., 375 S.C. 63, 72, 651 S.E.2d 305, 309 (2007).

In paragraph 221(b)(i) of his complaint, Plaintiff alleges that Miller owes him a duty of care by virtue of their marriage, her knowledge that her silence would cause him emotional distress, and an alleged plea for his assistance. The court must decide, in the first instance, whether the law would recognize that a legal duty to take reasonable care not to engage in negligent acts towards a spouse would arise from the relationship of marriage. While the courts have recognized several legal duties that do arise from a marriage relationship, such as the duty of fidelity, no court has

recognized the legal duty to take reasonable care not to engage in negligent acts towards a marriage partner, emanating solely from the relationship itself, or that a spouse could be liable for negligent acts towards the other spouse simply because of the marriage relationship. To do so would open the door wide for claims emanating from the marriage relationship to be brought in the Circuit Court rather than the Family Court, which heretofore has had exclusive jurisdiction over such claims.

Next, plaintiff's allegation that a legal duty arises by Miller's alleged knowledge that her actions would cause Plaintiff emotional distress cannot give rise to a legal duty in this case. Neither the actions themselves, nor knowledge of their likely consequences create the duty. The duty must pre-exist the actions, and only if a duty exists would the actions, or knowledge of the impact of the actions, be relevant to whether negligence has occurred. Finally, asking for assistance has never been held to give rise to a duty of care on the part of the person asking for the assistance, even though under certain circumstances, a duty of reasonable care might apply to a person rendering assistance. A legal duty of reasonable care is an essential element of an action for negligence, and the lack of a duty is fatal to plaintiff's cause of action for gross negligence against Miller.

D. PLAINTIFF'S CLAIMS OF CIVIL CONSPIRACY

In addition to alleging intentional infliction of emotional distress, plaintiff also alleges a civil conspiracy among defendants to inflict emotional distress upon him. His allegations in paragraphs 225-229 merely summarize the extensive allegations of the complaint with respect to the individual allegations against each defendant concerning intentional infliction of emotional distress or outrage. "A claim for civil conspiracy must allege additional facts in furtherance of a conspiracy rather than reallege other claims within the complaint." Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115, 682 SE2d 871 (SC App. 2009), *quoting* Todd v. Farm Bur. Mut. Ins. Co.

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276 S.C. at 293, 278 SE2d at 611, *rev'd on other grounds*, 283 S.C. 155, 321 SE2d 602 (Ct. App. 1984), *quashed in part on other grounds*, 287 S.C. 190, 336 SE2d 472 (1985).

A comparison of plaintiff's intentional infliction of emotional distress allegations in paragraphs 215-220 with the civil conspiracy allegations at paragraphs 226-229 reveals that there are no additional facts alleged other than the facts which were previously alleged in support of the intentional infliction of emotional distress or outrage claim.

In addition, a claim for civil conspiracy must allege special damages to the plaintiff, which go beyond the damages alleged in the other causes of action. *Id.* At 115, 117, 682 SE2d 871 (“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.”); *see also Vaught v. Waites*, 300 S.C. 201, 209, 387 S.E.2d 91, 95 (Ct. App. 1989) (“The damages sought in the conspiracy cause of action are the same as those sought in the breach of contract cause of action. Because no special damages are alleged aside from the breach of contract damages, we hold the conspiracy action is barred.”)

Plaintiff specifically alleges the medical expenses from his suicide attempt in December of 2015 as a special damage in paragraph 229. While medical expenses are normally considered “special damages” in personal injury cases, they would also have been “special damages” in the intentional infliction of emotional distress claim. In paragraph 220, plaintiff alleges the suicide attempt as being proximately caused by the emotional distress. Thus, plaintiff's special damages do not go beyond the damages in the emotional distress or outrage claim, and thus plaintiff cannot show “special damages” separate and beyond the damages from the emotional distress or outrage claim.

Because plaintiff's civil conspiracy is merely duplicative of his emotional distress or outrage claim, including any special damages flowing from those claims, it is dismissed

E. BREACH/AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

Plaintiff alleges in paragraph 232(a) of his complaint that a fiduciary duty existed between he and Miller solely by virtue of their marriage, similar to his legal duty allegations in paragraph 221(b)(i). The question of whether a fiduciary duty should be imposed between two classes of persons is a question for the court. Hendrick v. Clemson Univ., 353 S.C. 449, 458-459, 576 SE2d 711,715 (2003). Noting that the imposition of a fiduciary duty has usually been reserved for legal or business settings, the court in Hendrick refused to impose a fiduciary duty between an advisor and a student. Id. This court will not impose a fiduciary duty between Miller and Plaintiff because of their marital relationship in this case. To do so would again open the door for marital claims to be brought in Circuit Court rather than the Family Court, where claims based on the duty of fidelity between spouses are already heard. The Supreme Court has been reluctant to expand the "fiduciary" role outside of a business or legal relationship to other types of relationships.

In addition to alleging that each Defendant owed him a fiduciary duty, plaintiff alleges in paragraphs 236-240 that each Defendant aided and abetted the breach of fiduciary duty by the other Defendants. Plaintiff provides only bare allegations that each defendant "knew or should have known" that the other parties owed a fiduciary duty to him (paragraph 237), and/or "aided and abetted" (paragraph 238), and that the "aiding and abetting" caused injury to Plaintiff (paragraph 239). None of the general factual allegations of the complaint allege facts, which if considered true, would tend to prove any of these bare allegations of knowledge, assistance, or injury. In addition, since the Court has determined that no fiduciary duty arose between Plaintiff

and any of the Defendants, there can be no aiding and abetting cause of action. As such, this cause of action will be dismissed as well.

F. DEFAMATION AND SLANDER CLAIMS

Plaintiff alleges four occasions of defamation or slander by Miller: (1) In paragraph 243, Plaintiff alleges upon information and belief that Miller provided unspecified defamatory information to the police, which was then recounted in a police report attached to the complaint as Exhibit B; (2) In paragraph 244, that Miller slandered plaintiff by telling the Clemson Police plaintiff suffered from a narcissistic personality disorder, in a call to ask for a welfare check on him on December 9, 2015, after receiving a message from him that indicated he was going to commit suicide; (3) In paragraph 245, that Miller defamed plaintiff on many occasions by unspecified utterances and writings that he committed domestic abuse against her, which he characterizes as a crime¹; and (4) In paragraph 246, that Miller falsely accused him of adultery in her divorce proceedings.

There are four essential elements to a defamation claim: (1) a false and defamatory statement concerning another person; (2) an unprivileged communication of the statement to a third party; (3) fault on the part of the publisher; and (4) special harm to the plaintiff's reputation from the statement, or if the defamatory statement falls into the categories of *per se* defamation recognized in South Carolina, then special harm can be presumed. See Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 508, 506 SE2d 497, 501 (1998).

South Carolina currently recognizes only five types of statements as slander *per se*: (1) adultery, (2) unchastity, (3) commission of a crime of moral turpitude, (4) contraction of a

¹ In paragraph 24 of the complaint, Plaintiff alleges that Miller falsely accused Plaintiff of unspecified "domestic abuse" to unnamed co-workers at Christ Episcopal Church.

loathsome disease, or (5) unfitness for one's business or profession. See Holtzscheiter, 332 S.C. at 522-26, 506 SE2d at 510.

In Conwell v. Spur Oil Co. of Western South Carolina, 270 S.C. 170, 178, 125 SE2d 270 (1962), the court held that communications made in good faith on a subject matter where the persons involved in the communication share a common interest are privileged, even though the communication may otherwise be actionable if no privilege were involved, even where the common interest is not a legal one, but only a moral or social one.

Finally, the South Carolina Supreme Court has held that defamatory matters contained in pleadings are absolutely privileged. McKesson & Robbins, Inc. v. Newsome, 206 S.C. 269, 33 SE2d 535 (1945).

With respect to the allegations of paragraph 243, plaintiff alleges generally that Miller "provided defamatory information" recounted in the police report. The only section of the report indicating a possible conversation between the police and Miller is in the Supplemental Report, fifth paragraph. It does not indicate any "defamatory information" and plaintiff does not provide additional allegations indicating what was defamatory about the information provided. Therefore, neither the complaint nor the exhibit states facts that would constitute a cause of action against Miller for publishing "defamatory information" to a police officer on this occasion. In addition, even if the complaint or police report contained facts stated by Miller to the police which could be regarded as defamatory in nature, the statements to the police would be covered by a qualified privilege, as set out above. With respect to paragraph 244, while plaintiff alleges specifically that Miller slandered him by telling the Clemson police he suffered from narcissistic personality disorder, this statement to police also would not tend to be defame plaintiff, is not within the category of statements considered slander *per se*, and in any event would be conditionally

privileged. Each of these two alleged defamatory statements were made to a police officer, allegedly by Miller concerning her husband, on one occasion because he was possibly stalking her, and on the other occasion because she was concerned he may have attempted to commit suicide. Both are conditionally privileged. Neither are slander *per se*.

The third allegation of defamation appears in paragraph 245, wherein plaintiff accuses Miller of defaming him on many unspecified occasions, to many unspecified individuals by communicating that he committed “domestic abuse” against her, which he characterizes as an allegation of criminal behavior. The only specific allegation relating to accusations of “domestic abuse” in the complaint appears in paragraph 24, where Miller is alleged to have published to unspecified co-workers that Plaintiff had committed “domestic abuse.”

While South Carolina Rule of Civil Procedure 8(a) requires only “a short and plain statement of the facts showing that the pleader is entitled to relief...,” facts are required, not just bare allegations. In order for Miller to fairly meet the allegations in this context, the plaintiff must identify, to the extent he can, to whom the defamation was published, as well as when it was published. Under Rule 9(h), he does not have to plead circumstances showing how the defamation applies to him, but he must supply some facts concerning what was said, to who, and when. Paragraph 245 does not meet that standard.

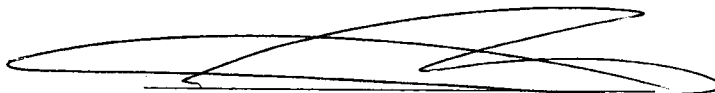
The last allegation of defamation by Miller appears in paragraph 246, where Miller is alleged to have accused plaintiff of adultery during their divorce proceedings.² As stated above, allegations made in judicial pleadings are considered to be absolutely privileged. Therefore, this allegation of defamation should also be dismissed.

² Plaintiff attaches sections of his divorce complaint and Miller’s Answer in the divorce case as Exhibit A to his complaint, but does not mention the exhibit in paragraph 246.

Plaintiff does not allege any special harm to his reputation with respect to any of the four instances of defamation he alleges. In paragraph 249, he does allege that Miller committed defamation *per se* against him. When statements are made which are in the category of slander *per se*, the plaintiff is excused from showing special harm. Of the four statements alleged, the ones allegedly published to the two different police officers (paragraphs 243 & 44) are not defamatory *per se*. The one charging adultery (paragraph 246) is absolutely privileged. This leaves the one concerning “domestic abuse” (paragraph 245). The utterances and writings are not identified, however, the one example in paragraph appears to be an allegation of slander. No extrinsic allegations are included to show how this allegation of “domestic abuse” might relate to an allegation of commission of a crime of moral turpitude, as Plaintiff characterizes it in paragraph 245. The utterance must “charge” the plaintiff with commission of a crime of moral turpitude. See Holtzschelter, 332 S.C. at 511. The only thing which “charges” plaintiff with criminal behavior is plaintiff’s characterization of the statement, not the statement actually alleged.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant Miller’s Motion to Dismiss is **GRANTED** and Plaintiff’s complaint against Miller is **DISMISSED** in its entirety.

SO ORDERED this the 8 day of Nov, 2017, at Greenville, South Carolina.



Robin B. Stilwell, Judge Presiding
Thirteenth Judicial Circuit