THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
In the Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2017-002564

Martha "Linda Lusk, Ph.D.....Appellant

v.

Jami L. Verderosa.....Respondent

RESPONDENT'S FINAL BRIEF

MURPHY & GRANTLAND, P.A.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page Number

CASES

STATUTES

STATEMENT OF ISSUES ON APPEAL

Whether the Circuit Court properly applied South Carolina Code § 59-24-15 and the South Carolina Supreme Court's decision in *Henry-Davenport v. School District of Fairfield County*, 391 S.C. 85, 705 S.E.2d 26 (2011), to find Appellant Lusk did not have a contractual right to her position as a school administrator.

STATEMENT OF THE CASE

This appeal arises out of Appellant Lusk's reassignment from being an Assistant Principal at West-Oak Middle School to her role at Code Learning Center. In both of these roles, Appellant Lusk was employed by the School District of Oconee County ("SDOC"). Respondent Jami Verderosa served as the Principal at West-Oak Middle School beginning in the 2009-2010 School Year and was the Principal at West-Oak Middle School in the spring of 2013 when the School District made the decision to reassign Appellant Lusk to Code Academy.

Plaintiff filed this action on February 24, 2016 asserting two causes of action: (1) slander; and (2) tortious interference with contract. (R. pp. 12-14). Respondent moved for summary judgment, and the Circuit Court granted Respondent's motion as to both causes of action on November 14, 2017. As to the first cause of action, the Circuit Court held Appellant Lusk failed to file her Complaint within the applicable 2-year statute of limitations. Plaintiff has not appealed that decision, so the judgment in favor of Respondent Verderosa as to the slander cause of action is now final. *See e.g.*, *Houck v. State Farm Fire and Cas. Ins. Co.*, 366 S.C. 7, 17 n.5, 620 S.E.2d 326, 331 n.5 (2005) (holding an issue is abandoned if not adequately briefed by the Appellant).

As to the second cause of action for tortious interference with contract, the Circuit Court found Plaintiff failed to establish an essential element of her cause of action because she did not have a cognizable contractual right to her position as an administrator. (R. pp. 1-6).

In reaching that decision, the Circuit Court relied upon the plain language of South Carolina Code § 59-24-15, which gives certified education personnel employed as administrators certain rights "as a teacher," but expressly states "no such rights are granted to the position or salary of administrator." (R. pp. 4-6)

In addition to the plain language in the statute, the Circuit Court relied upon the Supreme Court's decision in *Henry-Davenport*, which held § 59-24-15 "is clear and manifestly reflects legislative intent to expressly exclude such rights to an administrator." 391 S.C. at 89, 705 S.E.2d at 28. Because the Circuit Court faithfully applied the statute as written and the Supreme Court's holding in *Henry-Davenport*, this Court should affirm.

STATEMENT OF THE FACTS

Appellant Lusk is an employee of SDOC and has been for many years. She is currently a teacher in the Adult Education Program at Code Learning Center. (R. p. 36, lines 18-19). For many years, Appellant Lusk was an Assistant Principal at West-Oak Middle School (hereinafter referred to as the "Middle School"). Starting in the 2009-2010 School Year, Respondent Verderosa became the Principal at the Middle School, thereby becoming Appellant Lusk's direct supervisor. Appellant Lusk had applied for the position as Principal, but Respondent Verderosa was appointed instead of Appellant Lusk.[1] (R. p. 42, line 23- p. 43, line 3).

A. A parent calls the SDOC Assistant Superintendent to complain about Appellant Lusk.

During the 2011-2012 School Year, a student's parent called Dr. Thorsland, then the SDOC Assistant Superintendent, upset and raising concerns Appellant Lusk made comments to the parent's child implying that the student was a criminal. (R. pp. 136-37). On or about March 7,

[1] Appellant Lusk had applied for a position as Principal at a number of schools within SDOC, but the SDOC chose not to appoint her to any of those positions. (R. p. 43, line 4-p. 44, line 3).

2012, Dr. Thorsland and Respondent Verderosa met with Appellant Lusk to discuss the parent's complaint. (R. p. 44, lines 4-25; p. 57, line 9-p. 58, line 21). As a follow-up to the meeting, Respondent Verderosa placed a letter in Appellant Lusk's personnel file directing Appellant Lusk to be careful how she addressed students in the future. (R. pp. 44-51). Appellant Lusk admits there were no false statements in the March 2012 letter. (R. p. 52, lines 3-12).

Appellant Lusk filed a grievance regarding the placement of the letter in her personnel file. The Assistant Superintendent, who is now the Superintendent, reviewed the grievance and found the letter Respondent Verderosa had placed in Appellant Lusk's personnel file was proper. The Assistant Superintendent sent a letter to Appellant Lusk, stating in part: "I investigated your concerns and have made the following judgments: I cannot support removing the letter dated March 8, 2012 from your file. My investigation revealed that the student still feels strongly that you were implying that she was a criminal when you asked if she was going to be a criminal lawyer." (R. p. 57, line 22–p. 58, line 5). The Assistant Superintendent also found the letter Respondent Verderosa placed in Appellant Lusk's personnel file was not a letter of reprimand but instead was a reminder for Appellant Lusk to use her words more carefully when disciplining students. (R. p. 58, lines 22-25).

Appellant Lusk then appealed the decision to the Superintendent, Dr. Lucas, who upheld the decision. (R. p. 137). Appellant Lusk also asked the School Board to review her grievance, which the School Board denied. (Id.).

Over the ensuing months, Respondent Verderosa continued in her role as Appellant Lusk's supervisor. Any time Respondent Verderosa wrote up concerns to Appellant Lusk, Appellant Lusk would in turn report the communications to the School District's Assistant Superintendent, Earnestine Williams. (R. p. 70, line 25 – p. 71, line 22; p. 77, lines 4-17). Earnestine Williams

testified that she learned about these written communications from Respondent Verderosa to Appellant Lusk from Appellant Lusk herself, not Respondent Verderosa. (R. p. 71, line 19-p. 72, line 3).

B. The School District's management team, without consultation with Respondent Verderosa, decides to reassign Appellant Lusk to a teaching position at Code Academy for the 2013-2014 School Year.

In February of 2013, the School District's management team, consisting of Earnestine Williams, Dr. Lucas (Superintendent), Dr. Thorsland (Assistant Superintendent of Operations), and Diane England (Assistant Superintendent of Instruction) made the determination to reassign Appellant Lusk to Code Academy for the next School Year. (R. p. 72, line 16-p. 73, line 6). Respondent Verderosa did not have any input in the School District's decision to reassign Appellant Lusk, and she was not consulted with by the management team prior to the decision.[2] (R. p. 74, lines 11-24).[3]

Appellant Lusk's contract with the School District stated that "all assignments are tentative and may be changed by the administration upon notice to and consultation with the Employee in accordance with Board policy." (R. p. 68). Consistent with the terms of her contract with the

[2] The only part Respondent Verderosa played during the decision to reassign Appellant Lusk was responding to a request from Earnestine Williams for a copy of written communications that Appellant Lusk had already told Earnestine Williams about. (R. p. 77, lines 18-23). By that time, Appellant had already disclosed to Earnestine Williams the substance of those written communications. (R. p. 73, line 7-p. 75, line 12).

[3] Appellant Lusk states on page 3 of her brief that the Respondent was involved in a meeting on February 25, 2013, in which she made defamatory statements about Appellant Lusk to Earnestine Williams. The only citation Appellant Lusk gives for this false allegation is to the deposition of a teacher at the school who makes no reference to this alleged meeting whatsoever.

School District, Earnestine Williams and Dianne England met with Appellant Lusk on February 28, 2013 to discuss the reassignment. (R. pp. 136-37).

Earnestine Williams testified plainly regarding the concerns that led to Appellant Lusk's reassignment: "Dr. Lusk did not take criticism or self-reflect. And as an administrator, it was always, well I did this because of this. And so because of those concerns that came up from not just talking with me, but everybody else that she was making concerns with." (R. p. 78, lines 6-12). Earnestine Williams followed the February 28, 2013 meeting with a letter to Appellant Lusk dated March 4, 2013 outlining the management team's decision and the reasons for its decision. (R. p. 136-37). Among the various reasons for reassigning Appellant Lusk, Williams listed in her letter multiple instances which Appellant Lusk either entered incorrect disciplinary information or contacted the wrong parent to inform of disciplinary action about another parent's child. (R. p. 136).

It is important to note that the management team's decision was to reassign Appellant Lusk to a different school for the next school year -- not the school year then in progress. In fact, the March 4, 2013 letter notifying Appellant Lusk of the reassignment states: "[Y]our assignment as an assistant principal at West Oak Middle School will end effective the end of the school year." (R. p. 132 ¶9; R. p. 137). As such, Appellant Lusk was to remain in her position as Assistant Principal at West Oak Middle School until July 1, 2013, the start of the next school year.[4]

Dissatisfied with the School District's decision, Appellant Lusk filed a grievance over her reassignment for the next school year. (R. pp. 105-07). Appellant Lusk appealed the decision to

[4] At no time did Respondent Verderosa ever ask or suggest to Earnestine Williams that she wanted Appellant Lusk to be reassigned. At no time did Earnestine Williams ever have any reason to believe that Respondent Verderosa had any plan to get Appellant Lusk reassigned (R. p. 70, lines 3-9).

the School Board, which upheld the decision to reassign Appellant Lusk. (R. p. 204). On April 21, 2013, Appellant Lusk accepted the School Board's offer to become a teacher at Code Academy for the 2013-2014 School Year, which would start on July 1, 2013. (R. p. 133 ¶10).

C. Appellant Lusk sends confidential information to the incorrect recipient and the SDOC Superintendent makes the decision to immediately reassign Appellant Lusk for the remaining two months of the 2012-2013 School Year.

After the appeal was concluded and Appellant Lusk had already accepted her new position at Code Academy to begin at the start of the 2013-2014 School Year, Appellant Lusk inexplicably drafted a new letter complaining about the School District's decision and her relationship with the Respondent. Appellant Lusk addressed the document to the Superintendent Dr. Lucas and two Assistant Superintendents. (R. p. 103). However, instead of sending the document to the Superintendent and Assistant Superintendents, Appellant Lusk mistakenly emailed the document to a staff member at West-Oak Middle School who had no involvement in the situation and no reason to receive the document. (R. p. 133 ¶11). The email contained confidential information about other employees at the school. (Id.; R. p. 138).

One of the reasons the School District originally decided to reassign Appellant Lusk was her repeated errors providing communications to the wrong person or submitting incorrect information. (R. pp. 136-37). By sending yet another errant communication, Appellant Lusk was continuing the same type of conduct that led to her reassignment for the next school year.

Upon learning of the email, Dr. Lucas, the SDOC Superintendent, and Earnestine Williams scheduled another meeting with Appellant Lusk. (R. p. 133 ¶11). Once again, Respondent Verderosa was not involved in the meeting. (Id.). As a result of Appellant Lusk's conduct – in particular sending the email containing confidential information incorrectly to a staff member and her continued inability to handle sensitive matters – Dr. Lucas decided not to wait until the end of the 2012-2013 School Year to transfer Appellant Lusk. Instead, Dr. Lucas placed Appellant Lusk

on paid administrative leave for a week and then relocated her to Code Academy as of May 6, 2013, less than two months before the start of the new school year. (R. p. 133 ¶12; R. p. 138).

Although Appellant Lusk was immediately placed on leave and then reassigned to Code Academy, "her job description was not changed" and "[s]he continued to receive the same salary as she was making at West-Oak Middle School." (R. p. 133 ¶13). In fact, she continued to receive an administrator's salary throughout the rest of the 2012-2013 School Year **and** for the duration of the 2013-2014 School Year. (Id.).

D. Appellant Lusk makes two stipulations in this case that are significant on appeal.

First, on July 22, 2016, the Circuit Court entered a Consent Order as to Defendant's Motion to Compel. (R. pp. 7-8). The Consent Order was signed by the Court, counsel for Appellant Lusk, and counsel for Respondent Verderosa. (Id.). Significantly, Paragraph 4 of the Order states:

> The Plaintiff also stipulates that any emotional and/or emotional distress type damages that she is seeking in this civil action are limited only to any presumed damages she may be entitled to recover as to her claim for defamation. The Plaintiff reserves her claim for lost wages.

(R. p. 7). As noted above, Appellant Lusk has not appealed the summary judgment on her defamation claim, and therefore that ruling is final. Therefore, Appellant Lusk can no longer seek any damages for emotional distress in this action.

Second, with respect to her tortious interference cause of action, Appellant Lusk has limited her claim to the reassignment during the last two months of the 2012-2013 School Year. (R. p.5 ("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."); R. p. 86 ("In this case, Defendant interfered with Plaintiff's contract ***for the remainder of the 2012-2013 academic year.***") (emphasis in original). Therefore, the analysis of Appellant Lusk's tortious interference claim is limited solely

to the two-month period at the end of the 2012-2013 School Year when Appellant Lusk was transferred to Code Academy.

ARGUMENT

Guided by the Supreme Court's decision in *Henry-Davenport*, the Circuit Court properly applied South Carolina Code § 59-24-15 and found Appellant Lusk had no contractual right to her role as an administrator. By the plain terms of the statute, Appellant Lusk only had a contractual right to her position as a teacher.

Moreover, four other grounds exist to sustain the Circuit Court's grant of summary judgment. First, the School District never breached Appellant Lusk's Contract because Appellant Lusk remained an administrator for the SDOC until the end of the 2012-2013 School Year. Second, South Carolina does not recognize a cause of action for tortious interference against a claimant's supervisor. Third, Appellant Lusk was reassigned for the final two months of the 2012-2013 School Year due to her own misconduct. Fourth, Appellant Lusk has failed to present evidence of any damages as to her tortious interference claim. For all of these reasons, even viewing the evidence in the light most favorable to Appellant, summary judgment was properly granted in favor of Respondent Verderosa.

I. The Circuit Court properly applied the Supreme Court's holding in *Henry-Davenport* and correctly interpreted § 59-24-15 to hold Appellant Lusk had no protected right to the position or salary of administrator.

Appellant Lusk contends Respondent Verderosa tortiously interfered with her administrator contract by causing SDOC to transfer Appellant Lusk from West-Oak Middle School to Code Academy. However, an essential element of Appellant Lusk's claim is the existence of a contractual right. By statute, Appellant Lusk had no right – contractual or otherwise – to her position as an Assistant Principal at West-Oak Middle School. Therefore, her claim fails as a matter of law.

A. A contractual right is an essential element of a claim for tortious interference with contract.

Appellant Lusk concedes that the existence of a valid contract is an essential element of a cause of action for tortious interference with contract. "The elements of a cause of action for tortious interference with contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages." *Dutch Fork Development Group II, LLC v. SEL Properties, LLC*, 406 S.C. 596, 604, 753 S.E.2d 840, 844 (2012). A party "could not have tortiously interfered with a contract which either did not exist or was not breached." *Fleming v. Borden, Inc.*, 316 S.C. 452, 465, 450 S.E.2d 589, 597 (1994).

In *Eldeco, Inc. v. Charleston County School District*, 372 S.C. 470, 642 S.E.2d 726 (2007), a subcontractor alleged a school district tortiously interfered with the subcontractor's contractual relationship with the general contractor. The subcontractor also sued the general contractor alleging a breach of contract. The dispute centered on whether the contract between the subcontractor and the general contractor included additional work that the school district requested in a supplemental contract with the general contractor. The Supreme Court affirmed a trial court judgment in favor of the general contractor finding the contract between the general contractor and the subcontractor did not entitle the subcontractor to perform the additional work. *Id.* at 479, 642 S.E.2d at 731.

As to the school district, the Supreme Court held the tortious interference cause of action was "inextricably tied to the disposition of" the subcontractor's breach of contract claim against the general contractor. *Id.* at 481, 642 S.E.2d at 732. "In the absence of a breach of a contract, [subcontractor] cannot prove the required elements of its cause of action for tortious interference with contractual relations." *Id.* at 481, 642 S.E.2d at 732. In other words, when a party "did not

have any contractual rights to" certain work, another party cannot be liable for interfering with that work.

As this Court has held, the reason a contractual right is an essential element of the cause of action for tortious interference is that "an action for tortious interference protects the property rights of the parties to a contract . . . ." *Gecy, v. South Carolina Bank & Trust*, __ S.E.2d __, 2018 WL 988353, *5 (Ct. App. Feb. 21, 2018) (quoting *Dutch Fork*, 406 S.C. at 604, 753 S.E.2d at 844) (other citations omitted)). Therefore, a claimant who has no contractual right – i.e., no property interest – cannot assert a tortious interference claim. As discussed below, South Carolina Code § 59-24-15 provides that Appellant Lusk has no contractual or property interest in her role as an administrator. Therefore, her claim fails as a matter of law.

B. As the South Carolina Supreme Court held in *Henry-Davenport*, South Carolina Code § 59-24-15 provides that a school administrator has no contractual or property interest in her role as an administrator.

Appellant Lusk – as an administrator – had no contractual right or property interest in her role as a school administrator. South Carolina Code § 59-24-15 controls this question, providing:

> 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.

S.C. Code § 59-24-15 (emphasis added).

The General Assembly enacted § 59-24-15 in 1998 in response to the Supreme Court's decision in *Johnson v. Spartanburg County School Dist. No. 7*, 314 S.C. 340, 444 S.E.2d 501 (1994). *See Henry-Davenport*, 391 S.C. at 89, 705 S.E.2d at 28 ("The legislature enacted section 59-24-15 after the *Johnson* decision, and the plain language of the statute directly contradicts the holding in *Johnson*"). In *Johnson*, the Supreme Court held an administrator does not have a

property interest in the title of administrator, but the administrator does have an interest in the salary of an administrator. 444 S.E.2d at 503 ("The monetary loss alone is a property interest which was not at issue in our earlier decisions.").[5]

In *Henry-Davenport*, the Supreme Court considered whether the enactment of § 59-24-15 effectively overruled the Court's decision in *Johnson*. The Supreme Court's decision was unequivocal: "We believe the 1998 enactment – specifically the provision 'but no such rights are granted to the position or salary of administrator' – is clear and manifestly reflects legislative intent to expressly exclude such rights to an administrator." *Henry-Davenport*, 391 S.C. at 89, 705 S.E.2d at 28. Therefore, an administrator – by statute – has no property interest or right to remain an administrator.

The Circuit Court in this case correctly read the plain language of § 59-24-15 and correctly applied the Supreme Court's holding in *Henry-Davenport*. A contractual right is an essential element of a cause of action for tortious interference. The only right Appellant Lusk claims Respondent Verderosa interfered with was her role as an administrator at West Oak Middle School for the final two months of the school year. By statute, Appellant Lusk had no contractual right to that position. Therefore, like the claimant in *Eldeco*, Appellant Lusk's claim for tortious interference fails as a matter of law.

C. The Circuit Court correctly held the last sentence in § 59-24-15 only applies to those administrators who were under an administrator contract at the time of the enactment of the statute in 1998.

[5] The "earlier decisions" referenced in *Johnson* included *Snipes v. McAndrew*, 280 S.C. 320, 313 S.E.2d 294 (1984), in which the Supreme Court held an administrator does ***not*** have a property interest in the title or role of as an administrator. *Snipes*, 280 S.C. at 324, 313 S.E.2d at 297 ("While the Act does create a property interest in the continued employment as a *teacher*, it does not create a property interest in continued employment as a principal.") (emphasis in original).

The last sentence of § 59-24-15 states, "Any such administrator who ***presently*** is under a contract granting such rights shall retain that status until the expiration of that contract." S.C. Code § 59-24-15 (emphasis added). This sentence protects the contractual rights of those who had contracts as administrators at the time of the statute's enactment in 1998.

The United States District Court for the District of South Carolina addressed this question in *Henry-Davenport v. School District of Fairfield County*, 832 F. Supp. 2d 602 (D.S.C. 2011), *aff'd* 498 Fed. Appx. 193 (4th Cir. 2012)). The District Court's decision in *Henry-Davenport* came after it received the South Carolina Supreme Court's decision answering the certified question it posed to the Supreme Court. After the Supreme Court's decision, the plaintiff argued the statute could not be applied retroactively to her contract even though her contract was entered into after the statute's enactment. *Id.* at 609. The District Court disagreed. Reading the last sentence of § 59-24-15, the District Court held the General Assembly clearly intended the statute to have a prospective application beginning at the time of its enactment in 1998:

> Moreover, the statute's language indicates it is to be applied prospectively. Section 59-24-15 provides '[a]ny such administrator who presently is under a contract granting such rights shall retain that status until the expiration of that contract.' 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. This is a clear statement of prospective application.

Id. (emphasis added). The Circuit Court in this case agreed with the District Court's reading of the statute. (R. p. 5).

Appellant Lusk's proposed reading of the statute strips it of any meaning. Under Appellant Lusk's reading, the statute losses all effect the moment any person enters into an administrator contract whether now or in the future. Once the contract is signed – according to Appellant Lusk's suggested reading – the administrator becomes one "who presently is under a contract" and the

statute will not apply. Based on that errant interpretation, there is no administrative contract to which the statute will ever apply.

In contrast, the District Court and the Circuit Court's reading gives a reasoned and plain application to the statute as a whole. The first portion of the statute states that administrators will not have a right to the title or pay of an administrator. However, the last sentence acts as a grandfathering provision for contracts that were already in effect at the time of the statute's enactment. Future contracts – such as Appellant Lusk's – do not enjoy the protections of the grandfathering provision. This reading gives effect to all parts of the statute. Therefore, the Circuit Court correctly applied the statute as written.

II. Even if Appellant Lusk had a contractual right to her role as an administrator with SDOC until the end of the 2012-2013 School Year, she failed to present evidence the SDOC breached the contract.

Appellant Lusk has presented no evidence that the contract between her and SDOC was breached. "An essential element to the cause of action for tortious interference with contractual relations requires the intentional procurement of the contract's breach. Where there is no breach of the contract, there can be no recovery." *Eldeco*, 372 S.C. at 481-82, 642 S.E.2d at 732 (internal citations omitted).

The contract between Appellant Lusk and SDOC provided, in pertinent part:

> The Board agrees to employ the Employee in a professional position for **215** days during the 2012-2013 school year, which includes 10 days of inservice training. The Employee's assignment for the 2012-2013 contract term is **Assistant Principal – Instruction, (1.00) West Oak Middle School** *however, it is understood that all assignments are tentative and may be changed by the administration upon notice*

to and consultation with the Employee in accordance with Board policy.

(R. p. 68) (italics and underline added). Thus, Appellant Lusk's contract expressly stated her role as an administrator at West Oak Middle School was tentative and could be changed by the School District.

When Appellant Lusk was reassigned for the remainder of the 2012-2013 School Year – a period of only two months – she received notice and consultation from the School District. (R. p. 138). Therefore, the School District complied with all terms of the contract. For the remainder of the 2012-2013 School Year, Appellant Lusk retained the same administrative title and the same administrative salary. She was not given teaching duties until the next school year. (R. p. 133 ¶13). Appellant Lusk has failed to identify any evidence showing the School District violated the contract.

In an effort to avoid the lack of evidence of a breach, Appellant Lusk cites *Bocook Outdoor Media, Inc. v. Summey Outdoor Advertising, Inc.*, 294 S.C. 169, 363 S.E.2d 390 (1987), *overruled on other grounds by O'Neal v. Bowles*, 314 S.C. S.C. 525, 431 S.E.2d 555 (1993), for the proposition that conduct which causes "one of the parties to ***abandon*** the relationship or breach the contract" could support a claim for tortious interference. She appears to argue the term "abandonment" means her claim can survive even if the School District did not breach the contract. Her reliance on *Bocook* is misplaced.

In *Bocook*, two billboard advertising businesses routinely competed for business. To run ad space, the advertisers would enter into leases with landowners that allowed the advertisers to use the land to post billboards. The defendant targeted signs that were under lease with the plaintiff. To obtain the sign locations, the defendant had to convince the landowners to terminate their leases with the plaintiff. *Id.* at 175, 363 S.E.2d at 393. This Court found the defendant's conduct sufficient to support a claim for tortious interference because the defendant caused the landowners to ***abandon***

their contractual relationships with the plaintiff. *Id.* at 178, 363 S.E.2d at 395 ("the jury could reasonably infer the reason the Bocook lease was ***terminated*** was because Summey had purposely enticed the landlords to ***abandon*** their relationship with Bocook") (emphasis added).

Likewise, Appellant Lusk cites *Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 287 S.C. 190, 336 S.E.2d 472 (1985).[6] As in *Bocook*, the issue in *Todd* involved conduct that allegedly led to the ***termination*** of an employment relationship, i.e., ***abandonment*** of the relationship. *Id.* at 193, 336 S.E.2d at 473 ("Two days later, Todd received a letter terminating his contract . . . .").

Unlike the cases in *Bocook* and *Todd*, there is no evidence SDOC abandoned its contractual relationship with Appellant Lusk. To the contrary, Appellant Lusk was reassigned in accordance with the plain terms of her contract. Her contract was not changed to a teaching contract until the next school year. She continued to be paid the same salary for the last two months of the 2012-2013 School Year, and as an added accommodation to Appellant Lusk the School District continued to pay her the same administrative salary for the entire 2013-2014 School Year. (R. p. 133 ¶13). In sum, the School District did not abandon the contract. Appellant Lusk is still a contracted employee of the School District, almost five years later. (R. p. 36, lines 18-20). Therefore, there is no evidence of an abandonment or a breach of contract.

III. South Carolina does not recognize a cause of action for tortious interference with an employment contract by a plaintiff's supervisor.

Respondent Verderosa was Appellant Lusk's supervisor and a fellow employee of the SDOC. As such, she cannot be liable for tortious interference with Appellant Lusk's contract with the SDOC. As this Court held in *Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, "It is . . . clear that a corporate employer is a party to the contract of its employee, and an officer or agent of

[6] As discussed below in Section III, this Court's decision in *Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984), is directly applicable to this case but on a different ground.

the corporation acting for or on behalf of the corporation is not a third party either." 283 S.C. at 164, 321 S.E.2d at 607 (citations omitted). Respondent Verderosa – as an agent or officer of SDOC – is protected from claims for tortious interference.

The Supreme Court addressed the reason for the privilege in *Dutch Fork Development Group,* "It is generally recognized that when a contract is breached by a corporation as the result of the inducement of an officer or agent of the corporation acting on behalf of the corporation and within the scope of his employment, the inducement is privileged and is not actionable." 406 S.C. at 605, 753 S.E.2d at 605, *vacated on other grounds*. It is undisputed in this case that the conduct alleged against Respondent Verderosa consisted of reprimanding Appellant Lusk and reporting reprimands to their mutual supervisors within the SDOC. Although Appellant Lusk alleges Respondent Verderosa acted with personal motives, she has not alleged any facts that Respondent Verderosa's conduct occurred outside the scope of her employment and her role as Appellant Lusk's supervisor. "The reason for this privilege is that holding an agent liable would be like holding the principal itself liable for the tort of interfering with its own contract, instead of holding the principal liable for breach of contract." *Dutch Fork Development Group II, LLC*, 406 S.C. at 605, 753 S.E.2d at 844 (citation omitted).

The rule that a supervisor cannot be liable for tortious interference with a subordinate's employment contract is an essential component of the employment relationship. By definition, a supervisor's duties include reporting performance issues up the chain of command. If a supervisor could be held personally liable for a subsequent decision by the corporation's management to discharge or transfer the subordinate employee, then a supervisor would not enjoy the freedom to perform her duties to the corporation. If Appellant Lusk's claim was cognizable, then every

employee who is transferred after being reprimanded by his or her supervisor could bring a private action against the supervisor for tortious interference.

"An action for tortious interference protects the property rights of the parties to a contract against unlawful interference by ***third parties***." *Id.* at 604, 753 S.E.2d at 844 (emphasis added). Respondent Verderosa was not a third party. She was Appellant Lusk's direct supervisor within the SDOC. Therefore, she cannot be liable for tortious interference with Appellant Lusk's employment contract.

IV. Appellant Lusk has failed to present evidence that Respondent Verderosa proximately caused injury or damage relating to tortious interference.

"[I]n order to constitute actionable interference with a contract, it must appear that the act complained of was the proximate cause of the injury or damage." *Smith v. Citizens and Southern Nat. Bank of S.C.*, 241 S.C. 285, 288, 128 S.E.2d 112, 113 (1962). Appellant Lusk has failed to present evidence that Respondent Verderosa proximately caused her transfer to Code Academy for the last two months of the 2012-2013 School Year. Moreover, Appellant Lusk failed to present evidence of any recoverable damages arising out of the alleged tortious interference.

A. Appellant Lusk's transfer to Code Academy in May 2013 was the result of her own conduct in erroneously sending an email containing confidential employment information to the wrong person.

The facts leading up to the moment when Appellant Lusk was placed on administrative leave and then transferred to Code Academy in May 2013 are undisputed. First, by late February 2013, the SDOC management team informed Appellant Lusk that she would be assigned to a teaching position at Code Academy for the next school year – the 2013-2014 School Year. Appellant Lusk then filed a grievance to challenge the management team's decision. The School Board denied the appeal. At that point, Appellant Lusk was still going to be allowed to complete

the 2012-2013 School Year as an Assistant Principal at West Oak Middle School.[7] (R. p. 132 ¶9; R. p. 103).

Appellant Lusk thereafter signed the contract accepting the teaching position at Code Academy for the 2013-2014 School Year. (R. p. 133 ¶10). By that point, all administrative avenues for challenging the decision to reassign Appellant Lusk for the 2013-2014 School Year were foreclosed. Nevertheless, towards the end of April 2013, Appellant Lusk inexplicably sent another email complaining about the School District's decision and her relationship with Respondent Verderosa. (R. p. 133 ¶11). Because the School Board had already denied Appellant Lusk's appeal and Appellant Lusk had already accepted the teaching position for the 2013-2014 School Year, there was no legitimate reason for the new email. Nonetheless, Appellant Lusk sent the email – which contained confidential information about other School District employees – ***and sent it to the wrong person***. This was a continuation of the same sort of conduct that caused the School District to decide to reassign her in the first place. (R. p. 136) (listing other instances in which Appellant Lusk provided communications to the wrong person or incorrectly entered information).[8]

As a result of Appellant Lusk's mistake – not any conduct by Respondent Verderosa – Superintendent Lucas and Assistant Superintendent Williams scheduled another meeting with Appellant Lusk. (R. p. 133 ¶11). At the meeting, Appellant Lusk apologized for the error and she did not deny that she sent the confidential email to the wrong person. (Id.). Respondent Verderosa was not involved in the meeting. (Id.). As a result of Appellant Lusk's conduct – and no one else's – Dr. Lucas decided to place Appellant Lusk on paid administrative leave for one week and to

[7] As noted above, Appellant Lusk has limited her tortious interference claim to the two-month period (May and June) at the end of the 2012-2013 School Year. She does not argue that she has any claim with respect to the reassignment for the 2013-2014 School Year or any subsequent year.

[8] In her deposition, Appellant Lusk admits to making these various mistakes, but she refused to take responsibility for her conduct. (R. p. 59, line 11- p. 61, line 12).

transfer her to Code Academy as of May 6, 2013. (Id. at ¶12). Dr. Lucas' explanation for removing Appellant Lusk from West-Oak Middle School attributed the decision solely to Appellant Lusk's own conduct:

> The decision to place you on leave was precipitated when you erroneously emailed a confidential document you had addressed to me and two other Assistant Superintendents. As you know this letter contained confidential information about other employees. . . .
>
> During the meeting, I shared with you that I was extremely disappointed and this incident has further caused me to question your ability to handle things that require tremendous skills.

(R. p. 103). The letter does not make any reference to Respondent Verderosa.

As the plaintiff, Appellant Lusk bears the burden of presenting evidence that Respondent Verderosa caused the School District to breach its contract with Appellant Lusk. As discussed at length above, Appellant Lusk had no contractual right to her position as an administrator, and there is no evidence the School District breached the contract. More fundamentally, the evidence in this case wholly shows that the School District's decision to transfer Appellant Lusk for the last two months of the School Year was instigated by Appellant Lusk's own continuing mistakes. Therefore, Appellant Lusk has failed to present any evidence that Respondent Verderosa caused the School District to transfer Appellant Lusk to Code Academy for the remaining two months of the 2012-2013 School Year.

B. Appellant Lusk stipulated that she was not seeking any emotional distress damages as to her tortious interference cause of action, and she cannot show any economic damages because she has admitted that her salary was not reduced when she was transferred to Code Academy.

On July 22, 2016, the Circuit Court entered a Consent Order as to Defendant's Motion to Compel signed by counsel for both parties. Paragraph 4 of the Consent Order states, "The Plaintiff also stipulates that any emotional and/or mental distress type damages that she is seeking in this civil action are limited only to any presumed damages she may be entitled to recover as to her claim

for defamation. The Plaintiff reserves her claim for lost wages." (R. p. 7). Appellant Lusk has not appealed the summary judgment dismissing her defamation claim. Therefore, Appellant Lusk cannot assert any emotional or mental distress damages in this case even if she were allowed to proceed with her tortious interference claim.

Appellant Lusk also admits her tortious interference claim is limited solely to the two-month period between her administrative leave on April 26,2013 and the end of the 2012-2013 School Year in June. (R. p. 152; R. p. 209, lines 15-18; R. p. 5). Moreover, she concedes that her salary was not reduced when she was placed on administrative leave or when she was transferred to Code Academy for the remainder of the 2012-2013 School Year. (R. p. 37, lines 9-19).[9]

By her admissions and waiver of her defamation claim, Appellant Lusk has precluded any claim for tortious interference with contract. As with any tort claim, Appellant Lusk must show damages resulting from the alleged breach of contract. However, she has no economic damages because her salary remained unchanged when she was transferred to Code Academy and also for the subsequent school year. Moreover, she has no non-economic damages because she has stipulated she is not seeking non-economic damages as to the tortious interference claim. Therefore, Appellant Lusk has failed to present any evidence of damages resulting from the alleged tortious interference.

CONCLUSION

For the above-stated reasons, even viewing the evidence in the light most favorable to the Appellant, the Circuit Court's Order Granting Defendant's Motion for Summary Judgment should be affirmed. The Circuit Court correctly applied the South Carolina Supreme Court's decision in *Henry-Davenport* and correctly interpreted § 59-24-15 when it held Appellant Lusk had no

[9] In fact, Appellant Lusk continued to earn the same administrator salary throughout the entire subsequent school year. (R. p. 37, lines 14-19).

contractual or property interest in her administrative position. Therefore, Respondent cannot be held responsible for interfering with a contractual right that Appellant Lusk simply did not have. Moreover, this Court can affirm for any of four additional sustaining grounds: (1) the School District did not breach Appellant Lusk's contract; (2) South Carolina does not recognize a tortious interference with employment contract claim against a plaintiff's supervisor; (3) Appellant Lusk was reassigned due to her own misconduct; and (4) Appellant Lusk has failed to present evidence of any damages resulting from the alleged conduct. For all of these reasons, Appellant Lusk has failed to present evidence to support the essential elements of her cause of action for tortious interference, and Respondent Verderosa respectfully requests that the Circuit Court's Order granting summary judgment in her favor be affirmed.

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April 17, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
In the Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2017-002564

Martha "Linda Lusk, Ph.D.....Appellant

v.

Jami L. Verderosa.....Respondent

CERTIFICATE

I, Jeffrey C. Kull, Esquire, attorney for Respondent, certify that the Respondent's Final Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.

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