THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
In The Circuit Court

Honorable R. Lawton McIntosh, Circuit Court Judge

Appeal No.: 2017-002564

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

v.

Jami L. Verderosa.....Respondent

BRIEF OF APPELLANT

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I.- ISSUE ON APPEAL

DID THE CIRCUIT COURT ERR IN GRANTING SUMMARY JUDGMENT ON APPELLANT'S TORTIOUS INTERFERENCE WITH CONTRACT CAUSE OF ACTION BY RULING THAT A SCHOOL ADMINISTRATOR'S CONTRACT COULD EFFECTIVELY **NEVER** BE TORTIOUSLY INTERFERED WITH PURSUANT TO S.C. CODE ANN. §59-24-15 AND THE SUPREME COURT'S RESPONSE TO A CERTIFIED QUESTION IN *HENRY-DAVENPORT V. SCHOOL DIST. OF FAIRFIELD COUNTY*, 391 S.C. 85 (2011)?

II. STATEMENT OF THE CASE

A. Factual Background

Appellant is currently employed by the Oconee County School District as an adult education teacher at Code Academy. Appellant has been employed by the Oconee County School District ("OCSD") for over the past 30 years. Previously, Appellant was an Assistant Principal at West Oak Middle School (WOMS) in the Oconee County School District. Appellant is a Ph.D., having earned her Bachelor's Degree from Furman University and her doctorate degree for the University of South Carolina in 1982. Appellant was also teacher of the year numerous times. **(R. pp. 12-13 ¶¶5-9, 81, 90-91).**

For many years, the Appellant was an Assistant Principal at WOMS. Starting in the 2009-2010 school year, the Respondent became the Principal at WOMS, thereby becoming the Appellant's direct supervisor. **(R. p. 82).** It is worthy to note that Appellant applied for the position as Principal at WOMS, but the Respondent was appointed as Principal instead of the Appellant.

Beginning in 2012, Respondent then began an intentional campaign to attack the honesty, integrity, virtue, or reputation of Appellant in an effort to "run her off" by getting Appellant to quit or retire. **(R. pp. 147, 168-171, 174-175).** Respondent first placed a disciplinary letter in Appellant's personnel file in March 2012. This letter alleged a complaint was made to the OCSD by a parent of a student and concerned the Appellant. In particular, Respondent alleged

the parent complained that the Appellant had made comments to the student implying that the student was a criminal. The letter from Respondent was placed in Appellant's permanent personnel file at the OCSD and instructed Appellant to "be careful" as to how she addressed students in the future. **(R. pp. 99-100, 110-111)**.

Appellant then filed a grievance with the OCSD regarding the disciplinary letter from Respondent. The Assistant Superintendent (who is now the Superintendent) reviewed the Appellant's grievance and found that the letter that the Respondent had placed in the Appellant's personnel file was not "disciplinary," but, rather, was a "reminder" for the Appellant to use her words more carefully when disciplining students. **(R. p. 25)**. Of course, no explanation was ever given as to why Respondent had the letter placed in Appellant's permanent personnel file if it was not "disciplinary." Even more telling was that on March 4, 2013, this letter was used as the first one on the "list" of "concerns" that Respondent had trumped up against Appellant to cause her demotion and transfer by the OCSD and was cited again by the Superintendent in support of his reasons for reassigning and demoting Appellant to Code Academy. **(R. pp. 99-101, 110-111)**

Respondent's campaign of tortious interference included defaming Appellant in her profession by stating to third parties (who were other teachers that were NOT privileged communications) that she didn't know what she was doing in her job, that she couldn't have been capable of even preparing her own PowerPoint presentation, and that she failed to attend a meeting that she clearly attended. **(R. pp. 92-94, 99-101)**

This smear campaign first culminated in a meeting on or about February 25, 2013, wherein Respondent made numerous defamatory statements about Appellant to Ernestine Williams, OCSD's Personnel Director, which besmirched and attacked the honesty, integrity, virtue, or reputation of Appellant and exposed Appellant to disgrace and ridicule. In addition to

the defamation, Respondent then began a campaign of overloading Appellant with additional duties and instructing Appellant to perform conflicting duties. **(R. pp. 149, 168-171, 174-175)** If Respondent then perceived any failure by Appellant, she would immediately report the same to the Personnel Office of the OCSD in furtherance of her efforts to tortiously interfere with Appellant's position and employment as an administrator at OCSD. Prior to this tortious and defamatory campaign by Respondent, Appellant had a *spotless* disciplinary record for her nearly three decades of service to the OCSD. **(R. pp. 9-14)**

As was Respondent's goal, as a result of the emotional distress Appellant was enduring at the hands and words of Respondent, as mentioned above, on or about March 4, 2013, Respondent succeeded on March 4, 2013, in having Appellant demoted from an Assistant Principal to an adult education teacher for the following school year. **(R. pp. 99-101)** Specifically, the OCSD stated in its letter:

"Education is everybody's Business"

VIA Hand Delivery
March 4, 2013

Dr. Linda Lusk
West Oak Middle School

Dear Dr. Lusk:

The purpose of this letter is to follow up with my meeting with you on Thursday, February 28, 2013 during which I met with you to discuss your job assignment for the 2013-14 school year. As you recall, Dianne England, Assistant Superintendent of Instruction was present. During the meeting, I shared with you that we would be making administrative changes at West Oak Middle School due to the ongoing concerns regarding your performance. As you are aware, Jami Verderosa, Principal at West Oak Middle wrote to you and shared many concerns with you about your performance throughout the school year. Some of the major concerns shared with you included the following:

As a result of the many ongoing concerns mentioned above as well as other concerns documented via email to you from Mrs. Verderosa, we are no longer confident in your ability to serve as an administrator. I shared with you that your assignment as an assistant principal at West Oak Middle School will end effective the end of the school year. Your new assignment for 2013-14 per Board approval will be to work as a teacher at Adult Ed/Code Academy at the Code Learning Center. We will work to assist you in your new role and help make

But that wasn't enough for Respondent. Respondent didn't rest until she saw Appellant placed on Administrative Leave at Respondent's instigation on April 26, 2013, for the remainder of AY

2012-2013. **(R. pp. 102-103)** Specifically, Appellant accidently sent an e-mail to the wrong e-mail recipients and the email contained information about her employment issues with Respondent. Though Respondent admitted she had also had an incident where Respondent sent a confidential email to the wrong recipient, *and received NO disciplinary action for it* **(R. pp. 209-210)**, Respondent ran to OCSD to immediately tattle on Appellant and report her mistake to OCSD's personnel department, resulting in Appellant being placed on administrative leave for the rest of the year and being *prohibited from stepping foot on the WOMS campus again.* **(R. pp. 102-103)**. For AY 2013-2014, Appellant was already demoted to a teacher and had different duties at a different school (as a result of the March 4 demotion). **(R. pp. 99-101)** Beginning AY 2014-2015, Appellant's salary was also reduced from approximately $96,000.00 per year to $74,000.00 per year and all years forward. **(R. pp. 96, 102-103)**.

B. Procedural Background

Appellant filed this complaint on February 24, 2016, for two causes of action – Slander *per se* and Tortious Interference with Contract. **(R. pp. 9-14)** On March 24, 2017, Respondent filed a Motion for Summary Judgment. **(R. pp. 21-80)** After several reschedules due to conflicts by the local judges involving the OCSD, the Honorable R. Lawton McIntosh heard this matter on November 1, 2017, and granted Summary Judgment on all Plaintiff's claims. **(R. pp. 1-6)** Appellant received the Order Granting Summary Judgment on November 6, 2017. This appeal followed.

III. ARGUMENT

A. Standard of Review

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c),: summary judgment is proper

when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 611 S.E.2d 922 (2005); *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004); *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005). If triable issues exist, those issues must go to the jury. *Mulherin-Howell v. Cobb*, 362 S.C. 588, 608 S.E.2d 587 (Ct. App. 2005). In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment, abrogating *Shelton v. LS K, Inc.*, 374 S.C. 294, 648 S.E.2d 307; *Bravis v. Dunbar*, 316 S.C. 263, 449 S.E.2d 495. *Hancock v. Mid-South. Mgmt. Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

B. Main Argument

The Circuit Court erred in granting summary judgment on Appellant's Tortious Interference with Contract cause of action by deciding that a school administrator's contract could effectively *never* be tortiously interfered with pursuant to S.C. Code Ann. §59-24-15 and the Supreme Court's response to a certified question in *Henry-Davenport v. School Dist. of Fairfield County*, 391 S.C. 85 (2011)

(1) The Court erred in its determination that the last sentence of S.C. Code Ann. §59-24-15 only amounted to a "grandfathering" clause

In its Order granting Respondent Summary Judgment, the lower Court found:

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.

Plaintiff 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." Appellant "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.')"

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.

(R. pp. 5-6)

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 Dev. Grp. II, LLC v. SEL Properties, LLC*, 406 S.C. 596, 753 S.E.2d 840 (2012)

However, the Court erred in this finding because the *Henry-Davenport* case is distinguishable from the case *sub judice*. Specifically, in the *Henry-Davenport* case, the issue involved was that "[t]he respondents challenged their demotions, arguing that they were 'dismissed or nonrenewed as principals' and, as such, 'were entitled to a full, adversarial hearing as provided' by section 59–25–460 of the Teacher Act. *Id.*, 313 S.E.2d at 296. *Henry-Davenport v. Sch. Dist. of Fairfield Cty.*, 391 S.C. 85, 87–88, 705 S.E.2d 26, 27 (2011). However, the case also clearly noted that, "Section 59–24–15 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.***"

Henry-Davenport v. Sch. Dist. of Fairfield Cty., 391 S.C. 85, 87, 705 S.E.2d 26, 27 (2011) (Emphasis Added).

At the hearing, Respondent asserted that "Judge Perry interpreted what the last sentence means. And he says this, 'If an administrator -- what it basically says is, that's a grandfathering position'." **(R. pp. 208)** It is unclear what part of Judge Perry's Order Respondent is claiming "basically says ... that's a grandfathering position." *Henry-Davenport* was a case regarding an Administrator arguing that she was entitled to *hearing rights* under the Teacher Act for being reassigned to a teaching position for the next academic year. What Judge Perry actually said in his Order was that "The South Carolina Supreme Court's response to this Court's certified question is outcome determinative of Plaintiff's Teacher Act claim. Under §59-24-15 Plaintiff has no Teacher Act rights to her administrative position or salary." *Henry-Davenport v. School District of Fairfield County,* 832 F.Supp.2d 602, 608-609 (D.S.C. 2011).

Later in the opinion, in addressing Henry-Davenport's argument that to apply such to her would be a retrospective application, Judge Perry then noted that, "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.* at 609. At no point did Judge Perry hold the last sentence of S.C. Code Ann. §59-24-15 was merely a "grandfathering" provision and nothing more. *Id.*

There are no other cases discussing the last paragraph of S.C. Code Ann. §59-24-15 nor any cases interpreting S.C. Code Ann. §59-24-15, as applied to the *remaining* term of the contract for the existing academic year.

Respondent's actions toward Appellant were similar to those involved in *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 287 S.C. 190, 193, 336 S.E.2d 472, 473 (1985). In that case, the Court found that a "jury could have determined that Equifax, by accusing Todd of leaking information, fabricating an informant, and administering the illegal voice stress analysis, *intended to procure a breach of Todd's employment contract. Whether or not Equifax's actions precipitated Todd's dismissal was a question of fact to be resolved by the jury.*" (Emphasis added). Note that OCSD's HR Director, Ms. Williams, stated in her March 4, 2013, letter to Plaintiff that:

> As a result of the many ongoing concerns mentioned above as well as other concerns documented via email to you from Mrs. Verderosa, we are no longer confident in your ability to serve as an administrator. I shared

(R. p. 101)

"Even if evidentiary facts are not disputed, if only the conclusions to be drawn from them are, the trial court should deny the motion for summary judgment. *Baugus v. Wessinger,* 303 S.C. 412, 415, 401 S.E.2d 169, 171 (1991). Summary judgment is not appropriate when further inquiry into the facts is desirable to clarify the application of law. *Tupper v. Dorchester County,* 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997)." *McKnight v. S.C. Dep't of Corr.*, 385 S.C. 380, 386, 684 S.E.2d 566, 568 (Ct. App. 2009).

As such the Court erred in finding that Appellant's contract could not have been tortuously inferred with for the remaining term of the AY 2012-2013 contract.

(2) The Court erred in finding that Appellant could not sustain a cause of action for Tortious Interference with Contract because she remained as a teacher with OCSD and, therefore, her contract had not been "breached"

"The elements of a cause of action for tortious interference with [a] 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 Dev. Grp. II, LLC v. SEL Props., LLC,* 406 S.C. 596, 604, 753 S.E.2d 840, 844 (2012) However, Appellant would have only been required to prove the defendant's conduct "influence[d], induce[d], or coerce[d] one of the parties to the contract **to abandon the relationship or breach the contract** and that, but for the interference, the contractual relationship would have continued." *Bocook Outdoor Media, Inc. v. Summey Outdoor Adver., Inc.,* 294 S.C. 169, 177–78, 363 S.E.2d 390, 394 (Ct.App.1987), *overruled on other grounds by O'Neal v. Bowles,* 314 S.C. 525, 431 S.E.2d 555 (1993)(emphasis added).

Further, "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 & S. Nat'l Bank of S.C.,* 241 S.C. 285, 288, 128 S.E.2d 112, 114 (1962) "Proximate cause is normally a question of fact for determination by the jury...." *Gause v. Smithers,* 403 S.C. 140, 150, 742 S.E.2d 644, 649 (2013).

In Appellant's case, she was put on administrative leave for the remainder of AY 2012-2013 as a result of Respondent's smear campaign. She was prohibited from returning to the school that she had worked at since before Respondent arrived at OCSD. Whether Respondent proximately caused OCSD to abandon its Administrator relationship with Appellant was a question for the jury to determine and was, therefore, not appropriate for summary judgment.

IV. CONCLUSION

The lower court erred in granting Summary Judgment on Plaintiff's tortious interference claim and the same should be remanded back for a jury trial on such claim.

V. CERTIFICATION OF COUNSEL

The undersigned certifies pursuant to SCACR 211(b)(2) that she has made changes to this Final Brief from the Initial Brief other than to correct obvious typographical errors and misspellings which were contained in the initial brief. No other changes were made.

Respectfully submitted,

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