STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2017-CP-40-4048

Glenda R. Couram,

Plaintiff,

vs.

Nationwide Mutual Insurance Company,
Titan Indemnity Company,
Eugene Matthews, in his individual capacity,
Sherwood Plumbing SVC, LLC, and
Sherwood Tidwell,

Defendants.

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS

This action is currently before the Court in regards to Motions to Dismiss from Defendant Nationwide Mutual Insurance Company's ("Nationwide") and Defendant Titan Indemnity Company's ("Titan") (hereinafter collectively "the insurers"), Defendant Eugene Matthews (hereinafter Matthews), and Defendants Sherwood Tidwell, Sherwood's Plumbing Services LLC, and Beatrice Tidwell to dismiss Plaintiff's claims against them pursuant Rule 12(b)(6), SCRCP. A hearing was conducted on February 12, 2018. Appearing for Defendants Nationwide Mutual Insurance Company and Titan Indemnity Company was J.R. Murphy, Esquire. Appearing for Defendants Sherwood Tidwell, Sherwood's Plumbing Services LLC, and Beatrice Tidwell was Jescelyn Spitz, Esquire. Defendant Eugene Matthews appeared pro se. The Plaintiff appeared pro se. For the reasons set forth below, Defendants' Motions to Dismiss is GRANTED.

I. FACTUAL AND PROCEDURAL HISTORY

This action arises out of a September 18, 2015 automobile accident involving Plaintiff and Defendant Sherwood Tidwell. On April 12, 2016, Plaintiff filed a complaint against Sherwood Tidwell and "Titian [sic] Indemnity Company Subsidiary of Nationwide Insurance" in the Richland County Court of Common Pleas, styled as: Glenda Couram v. Sherwood Tidwell, et al, Civil Action No. 2016-CP-40-2350 (hereinafter the "Prior Action"). In that suit, Plaintiff sought damages for the

September 18, 2015 automobile accident involving Mr. Tidwell. By Consent Order dated September 2, 2016, "Titan Indemnity Company, Subsidiary of Nationwide Mutual Insurance Company" was removed as a party to the Prior Action. On February 16, 2017, Mr. Tidwell filed an Offer of Judgment pursuant to Rule 68 of the South Carolina Rules of Civil Procedure in which he offered the sum of $20,000 to Plaintiff in full compromise and settlement of her claims. Plaintiff rejected Mr. Tidwell's offer. The case was heard by a jury and on June 16, 2017 a verdict was rendered in favor of Plaintiff in the amount of $1,000. Thereafter, Plaintiff filed a Rule 59(E) Motion requesting additur or, in the alternative, a new trial on damages. By Order filed October 9, 2017, this Court denied Plaintiff's Rule 59(E) Motion. At this time, Plaintiff has filed additional post-trial motions and a Notice of Appeal in the Prior Action.

On July 3, 2017, Plaintiff filed the current Complaint before this Court again suing Mr. Tidwell and Titan Indemnity Company, as well as Nationwide Mutual Insurance Company.[1] Plaintiff's current Complaint arises out of the same September 18, 2015 automobile accident and the Prior Action. In this Complaint, Plaintiff alleges the following causes of action against Defendants Matthews and Insurers: (1) intentional infliction of emotional distress and/or negligent infliction of emotional distress, and (2) civil conspiracy.[2] Plaintiff alleges the following causes of action against Defendants Tidwells: (1) Vicarious Liability/Respondeat Superior Negligent Entrustment and or (Common Law Negligence if applicable).

[1] On July 19, 2017, Plaintiff filed an Amended Complaint adding Beatrice Tyree Tidwell as a defendant.

[2] Plaintiff also alleges as a cause of action she entitles "punitive damage". Punitive damages are a form of damages and not a cause of action. Plaintiff alleges a negligence cause of action as well but only against "Sherwood Plumbing Services, LLC dba Sherwood F. Tidwell, Owner/Operator/Agent and Beatrice Tyree Tidwell."

II. LEGAL STANDARD

A 12(b)(6) motion to dismiss "must be granted if the facts and the inferences reasonably deducible from them show that the plaintiff could not prevail on any theory of the case." *Gray v. State Farm Auto Ins. Co.*, 327 S.C. 646, 651, 491 S.E.2d 272, 275 (Ct. App. 1997). "Although we are aware of the difference between alleging a cause of action and successfully proving it, the legal sufficiency of a pleading must be tested by the facts alleged therein." *Save Charleston Foundation v. Murray*, 286 S.C. 170, 179, 333 S.E.2d 60, 66 (Ct. App. 1985).

III. ANALYSIS

Plaintiff's first alleged cause of action is "Vicarious Liability/Respondeat Superior Negligent Entrustment and or (Common Law Negligence if applicable) South Carolina Ann Code §15-3-530(5)" against Defendants Sherwood's Plumbing Services LLC, Sherwood F. Tidwell, and Beatrice Tidwell.

Plaintiff's "second and third" alleged causes of action are "Intentional Infliction and or Negligent of Emotion Distress Common Law S.C. Ann. Codes §§15-3-530(5)" against Defendants Nationwide, Titan, and Matthews.

Plaintiff's fourth alleged cause of action is "Common Law Civil Conspiracy with Special Damages" against all named Defendants.

Plaintiff also listed a fifth cause of action as "Punitive Damages." However, this is not a cause of action, but rather a type of damage sought.

1. "Vicarious Liability/Respondeat Superior Negligent Entrustment and or (Common Law Negligence if applicable)"

This first cause of action was litigated in the Prior Action and is thus barred from re-litigation pursuant to the doctrine of res judicata. "The doctrine of res adjudicata (or res judicata) in the strict sense of that time-honored Latin phrase had its origin in the principle that it is in the

public interest that there should be an end of litigation and that no one should be twice sued for the same cause of action." *First Nat'l Bank v. United States Fid. & Guar. Co.*, 207 S.C. 15, 24 (1945). "Under this doctrine, a final judgment on the merits in a prior action will conclude the parties and their privies in a second action based on the same claim as to the issues actually litigated and as to issues that might have been litigated in the first action." *Sub-Zero Freezer Co. v. R.J. Clarkson Co.*, 308 S.C. 188 (1992).

To establish res judicata, the defendants must prove three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *Sealy v. Dodge*, 289 S.C. 543 (1986). Plaintiff is seeking to sue the same defendant, Sherwood Tidwell, related to the same motor vehicle accident, which was litigated in the Prior Action. Plaintiff is now alleging fault against Defendant Sherwood's Plumbing Services LLC and Beatrice Tidwell in regards to the September 18, 2015 accident.

Pursuant to South Carolina law, in order to establish collateral estoppel, the defendants must prove "that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554 (S.C. App. 2009). Each element is established in the case at bar. Plaintiff's claims for injuries and damages related to the accident were (1) actually litigated in the prior action, (2) determined by a jury in the prior action, and (3) were necessary to support the judgment in the Prior Action.

Plaintiff's first cause of action relies on the "Facts Common to All Causes of Action" alleged in Paragraphs 11-32 of her Amended Complaint. The "facts" alleged by the Plaintiff refer to the September 18, 2015 accident with Mr. Tidwell, the Plaintiff's alleged damages caused by the accident, and the settlement negotiations which took place during the Prior Action.

These matters were conclusively litigated in the Prior Action. For that reason, Plaintiff's first claim of action is barred and dismissed with prejudice.

2. "Intentional Infliction and or Negligent of Emotion Distress Common Law"

To allege a claim for intentional infliction of emotional distress, the Plaintiff must establish that: (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct; (2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;" (3) the actions of the defendant caused plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 356, 650 S.E.2d 68, 71 (2007) (quoting *Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778). As the Supreme Court has stressed, South Carolina requires the plaintiff to meet a heightened burden of proof with regards to the "extreme and outrageous" element of the claim and "extreme or severe distress" element of the claim. *Ford*, 276 S.C. at 166. "[W]here physical harm is lacking, the courts should look initially for more in the way of extreme outrage as an assurance that the mental disturbance claimed is not fictitious." *Id.*[3] "Initially, the trial court determines whether the defendant's conduct was extreme and outrageous enough to permit recovery." *Hainer v. American Med. Int'l, Inc.*, 320 S.C. 316, 324, 465 S.E.2d 112, 117 (Ct. App. 1995), *aff'd as modified*, 328 S.C. 128, 492 S.E.2d 103 (1997). Further, the South Carolina Court of Appeals has recognized that "[t]he tort of outrage was designed not as a replacement for the existing tort actions. Rather, it was conceived as a remedy for tortious conduct where no remedy

[3] Physical harm is lacking in this case. To the extent Plaintiff's Complaint alleges physical harm caused by the September 18, 2015 accident, such claims are barred by res judicata as they have been previously litigated in the Prior Action.

previously existed." *Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 175, 321 S.E.2d 602, 613 (Ct.App.1984), *quashed on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (1985).

A. Outrageous Conduct

In *Hainer v. American Medical Intern, Inc.*, the South Carolina Court of Appeals stated that "even if [it] had found [the defendants] liable for abuse of process, their actions did not rise to the level of outrage." 320 S.C. 316 at 324, 465 S.E.2d at 117. That court cites *Corder v. Champion Road Mach. Int'l Corp.*, 283 S.C. 520, 324 S.E.2d 79 (Ct.App.1984), for the proposition that even retaliatory behavior absent claims of verbal assaults or hostile, abusive encounters, does not rise to the level required for the tort of outrage. *Id.* The tort of intentional infliction of emotional distress is not a "panacea for wounded feelings rather than reprehensible conduct." *Todd*, 283 S.C. at 171, 321 S.E.2d at 611; *Gattison v. S.C. State Coll.*, 318 S.C. 148, 157, 456 S.E.2d 414, 419 (Ct. App. 1995) (holding that even if factual allegations "demonstrate unprofessional, inappropriate behavior, they fall short of conduct that exceeds all possible bounds of decency and is atrocious and utterly intolerable in a civilized society" necessary for outrage cause of action).

Here, Plaintiff's allegations demonstrate that Defendants used lawful means to defend their insured in the Prior Action and offered the Plaintiff less than she desired to settle her prior lawsuit. As a matter of law, Plaintiff's factual allegations against Nationwide and Titan fall short of the outrageous conduct required for an emotional distress claim.

B. Severe Emotional Harm or Distress

To allege a claim for intentional infliction of emotional distress, the Plaintiff must establish that: (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct; (2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;" (3) the actions of the defendant

caused plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 356, 650 S.E.2d 68, 71 (2007) (quoting *Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778). As the Supreme Court has stressed, South Carolina requires the plaintiff to meet a heightened burden of proof with regards to the "extreme and outrageous" element of the claim and "extreme or severe distress" element of the claim. *Ford*, 276 S.C. at 166. "[W]here physical harm is lacking, the courts should look initially for more in the way of extreme outrage as an assurance that the mental disturbance claimed is not fictitious." *Id.*[4] "Initially, the trial court determines whether the defendant's conduct was extreme and outrageous enough to permit recovery." *Hainer v. American Med. Int'l, Inc.*, 320 S.C. 316, 324, 465 S.E.2d 112, 117 (Ct. App. 1995), *aff'd as modified*, 328 S.C. 128, 492 S.E.2d 103 (1997). Further, the South Carolina Court of Appeals has recognized that "[t]he tort of outrage was designed not as a replacement for the existing tort actions. Rather, it was conceived as a remedy for tortious conduct where no remedy previously existed." *Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 175, 321 S.E.2d 602, 613 (Ct.App.1984), *quashed on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (1985).

In addition to alleging extreme and outrageous conduct, the Plaintiff must allege that she has suffered sufficiently severe emotional distress to support her emotional distress claim. In *Hansson v. Scalise Builders of S.C.*, the South Carolina Supreme Court explained that:

> Under the heightened standard of proof for emotional distress claims emphasized in *Ford*, a party cannot establish a prima facie claim for damages resulting from a defendant's tortious conduct with mere bald assertions. To permit a plaintiff to legitimately state a cause of action by

[4] Physical harm is lacking in this case. To the extent Plaintiff's Complaint alleges physical harm caused by the September 18, 2015 accident, such claims are barred by res judicata as they have been previously litigated in the Prior Action.

> simply alleging, "I suffered emotional distress" would be irreconcilable with this Court's development of the law in this area. In the words of Justice Littlejohn, the court must look for something "more"-in the form of third party witness testimony and other corroborating evidence-in order to make a prima facie showing of "severe" emotional distress.

374 S.C. at 358–59, 650 S.E.2d at 72. In Complaint, Plaintiff states that she suffered "severe emotional distress," "humiliation, embarrassment, mental anguish, emotional distress..." and that "the emotional distress suffered by Plaintiff was and continues to [be] serious and severe." These are "mere bald assertions" of emotional distress insufficient to allege such a claim. According to Plaintiff, the manifestation of her "severe emotional distress" was a "fever blister that remained four days after the trial." Again, this allegation fails to rise to the level of "severe" emotional distress required for this cause of action. Plaintiff also fails to delineate the alleged emotional distress she attributes to the underlying auto accident, for which she has already been compensated, and the alleged emotional distress she attributes to conduct of the insurers. Therefore, as a matter of law, Plaintiff has failed to allege sufficiently severe emotional distress to support her claim.

C. "Common Law Civil Conspiracy with Special Damages"

The elements of a civil conspiracy claim in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. *Pye v. Estate of Fox*, 369 S.C. 555, 567, 633 S.E.2d 505, 511 (2006). A civil conspiracy cause of action requires the Plaintiff to establish that the primary purpose or object of defendants was to injure the Plaintiff. *Id.* (citing *Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct.App.1986)).

1. Independent Acts in Furtherance of Conspiracy

"In a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim." *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115-16, 682 S.E.2d 871, 875 (Ct. App. 2009). Dismissal is proper where "the civil conspiracy action does no more than incorporate the prior allegations and then allege the existence of a civil conspiracy and pray for damages resulting from the conspiracy [and] [n]o additional acts in furtherance of the conspiracy were plead." *Id.* (quoting *Todd*, 276 S.C. at 293, 278 S.E.2d at 611); *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 611, 538 S.E.2d 15, 31 (Ct. App. 2000) ("Because [the third-party plaintiff] ... merely realleged the prior acts complained of in his other causes of action as a conspiracy action but failed to plead additional acts in furtherance of the conspiracy, he was not entitled to maintain his conspiracy cause of action."). Plaintiff states that the Defendants "jointly operated to perpetrate the wrongful acts complained of herein" and "agreed and conspired with each other to engage in the alleged wrongful conduct, including Defendants' interference with plaintiff [sic] employment relationships by coming to an agreement between them to do an unlawful act or to do a lawful act in an unlawful way..." Nowhere in the civil conspiracy section of her Complaint does Plaintiff set forth what these alleged "wrongful acts" or "unlawful acts" committed by Defendants are. *See Hackworth*, 385 S.C. at 116, 682 S.E.2d at 875 (stating that complaint must inform the defendants of what acts in furtherance of the alleged conspiracy they are being accused). Therefore, the alleged "wrongful acts complained of herein" must mean those acts previously alleged in the "Facts Common to all Causes of Action" section of Plaintiff's Complaint. Thus, Plaintiff's civil conspiracy claim fails as a matter of law because she has not plead additional acts in furtherance of the conspiracy separate and independent from other acts alleged in the complaint.

2. Primary Purpose of Injuring the Plaintiff

One element of the civil conspiracy claim is that the defendants combined "for the purpose of injuring the plaintiff." *Allegro, Inc. v. Scully*, 418 S.C. 24, 32, 791 S.E.2d 140, 144 (2016), *reh'g denied* (Oct. 26, 2016). The "essential consideration" in a civil conspiracy is "whether the primary purpose or object of the combination is to injure the plaintiff." *Pye*, 369 S.C. at 567, 633 S.E.2d at 511 (quoting *Lee*, 289 S.C. at 13, 344 S.E.2d at 383). Plaintiff's own Complaint sets forth this legal standard for this "purpose." Plaintiff's allegations of the actions the insurers undertook undermine the "purpose" element of her civil conspiracy claim. While civil conspiracy "may be inferred from the very nature of the acts done," the acts alleged in the Complaint do not establish any wrongful intent by the insurers to injure the Plaintiff. *See Peoples Fed. Sav. & Loan Ass'n of S.C. v. Res. Planning Corp.*, 358 S.C. 460, 470, 596 S.E.2d 51, 57 (2004); *see also Pye*, 369 S.C. at 568, 633 S.E.2d at 512 (granting summary judgment on civil conspiracy claim where alleged act did not establish wrongful intent by the defendants to injure the plaintiffs); *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995) (affirming dismissal when only reasonable inference to be drawn from face of complaint did not support plaintiff's conspiracy claim).

In light of Plaintiff's allegations that: (1) she requested a settlement amount from the insurer that included an amount for lost wages and medical expenses; (2) she refused to settle for less than $20,000 with regards to the previously litigated auto accident; and (3) she brought the Prior Action against Titan and Tidwell, the reasonable inference to be drawn from the alleged responsive acts of the insurer is that its primary purpose was to properly defend its insured, not to injure the Plaintiff. *See First Union Nat. Bank of S.C. v. Soden*, 333 S.C. 554, 575, 511 S.E.2d 372, 383 (Ct. App. 1998) (holding that conspiracy claim failed when it was only supported by mere speculation about motives and not establishment of overt acts pursuant to a common design); *see Ellis v. Davidson*, 358 S.C. 509, 527, 595 S.E.2d 817, 826 (Ct. App. 2004) (holding that plaintiff's

civil conspiracy claim failed as a matter of law where plaintiff was able to show that defendant undertook alleged act but not that that he undertook act for purpose of injuring plaintiff). Therefore, Plaintiff's civil conspiracy claim fails as a matter of law.

IV. CONCLUSION

For the reasons stated above, all Defendants' Motions to Dismiss Plaintiff's claims against them are GRANTED.

Defendants Matthews and Nationwide moved for Sanctions against Plaintiff. This Court declines to issue sanctions at this time.

IT IS SO ORDERED.

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The Honorable G. Thomas Cooper, Jr.
Presiding Judge
Fifth Judicial Circuit

_____, 2018
Columbia, South Carolina

Richland Common Pleas

Case Caption: Glenda R Couram vs Nationwide Mutual Insurance Company , defendant, et al

Case Number: 2017CP4004048

Type: Order/Dismissal

So Ordered

s/ Honorable G. Thomas Cooper, Jr. Circuit Judge 2126