THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2018-CP-40-06172
Appellate Case No. 2019-001047

Michael Edmonds ..... Respondent,

v.

City of Columbia, ...Appellants.

INITIAL BRIEF OF RESPONDENT

J. Paul Porter, Esquire (# 100723)
Cromer Babb Porter & Hicks, LLC
1418 Laurel Street, Suite A (29201)
Post Office Box 11675
Columbia, South Carolina 29211-11675
Phone 803-799-9530
Facsimile 803-799-9533
paul@cbphlaw.com

Attorney for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

STATEMENT OF THE ISSUES ON APPEAL

I. DID THE TRIAL COURT PROPERLY DENY APPELLANT'S JNOV MOTION ON A NEGLIGENCE VERDICT IN THIS EMPLOYMENT CASE WHERE THERE IS RECORD EVIDENCE (1) THAT APPELLANT KNEW ITS FIRE CHIEF WAS TRYING TO TERMINATE RESPONDENT FOR RETALIATORY REASONS, AND (2) WHERE RESPONDENT VOLUNTARILY CONDUCTED A SURVEY THAT IT STATED WOULD BE CONFIDENTIAL BUT FAILED TO MAINTAIN CONFIDENTIALITY IN SUCH A WAY THAT ULTIMATELY LEAD TO APPELLANT'S TERMINATION.

II. AS AN ADDITIONAL SUSTAINING GROUND, DID THE APPELLANT PRESERVE THE ISSUES IT RAISES ON APPEAL?

INTRODUCTION

Appellant, the City of Columbia ("City"), is appealing a $65,000.00 jury verdict to the Respondent Michael Edmonds ("Edmonds"). Edmonds is a former Assistant Chief for the City's Fire Department who the Jury found was constructively terminated as the result of negligence.

There is ample record evidence supporting the Jury's conclusion. In summary, Edmonds, a thirty-year veteran of the City's Fire Department, was forced to resign following a tumultuous year during which: he properly reported failings by his Fire Chief to a third party investigator hired by the City; actions and inactions by the City then resulted in a promise of confidentiality underlying that third-party investigation being breached; Edmonds' Fire Chief, immediately thereafter, attempted to terminate Edmonds on pretextual grounds, but was prevented from doing so by his supervisor; Edmonds' Fire Chief then tried again to terminate Edmonds and succeeded in forcing his resignation with notice to, but without intervention from, the City's top administrative staff.

The City is trying to frame this case as a referendum on the doctrine of employment at will. That is not what this case is about. Instead, this case presents a unique, yet legally cognizable, situation where an independent duty of care arises within, but not as a result of, an employment-at-will relationship.

Attacking strawmen, the City claims that the Trial Court created a new tort called "negligent separation." It did not. The City concocts this argument by overemphasizing the Circuit Court's discretionary decision to synthesize the legal issues in this case in its jury verdict form into an understandable and digestible question of fact. That base issue, the verdict form, was not premised on a reversible error of law. At bottom in this case, the Circuit Judge properly identified the existence of actionable duty, properly delivered and charged the claim negligence to the Jury, and the Jury's verdict is supported by reasonable evidence. There is no legal or factual error in the record to justify reversal.

STATEMENT OF THE CASE

The Jury awarded Edmonds a $65,000.00 verdict on February 22, 2019, on the claim of negligence after three days of trial. (Verdict Form). After that, the City filed a motion for judgment notwithstanding the verdict ("JNOV") or, in the alternative for a new trial. (City JNOV). In its JNOV, the City argued: (1) that an at-will employee cannot allege a negligence claim against his employer; (2) that negligent supervision was precluded by the South Carolina Tort Claims Act; and (3) that the negligence claim was bared by the Worker's Compensation Act exclusivity provision. (*Id.* at pp. 2-7). In its alternative motion for a new trial, the City argued that the verdict form usage of "negligent separation of employment" was in error. The Circuit Court denied the City's JNOV and alternative motion for a new trial via a Form 4 order on May 30, 2019.

The City has not raised its Tort Claims Act and Worker's Compensation exclusivity provision arguments before this Court in its opening brief. The City appears to be arguing, under the auspices of an appeal of the denial of a JNOV, that a negligence claim can never arise within an employment relationship, and that the Circuit Court created a new tort, "negligent separation," with its verdict form. Regarding the latter concern, the City does not address the discretionary standard for a verdict form within its opening brief to this Court.

The City, at trial, on its initial directed verdict motion, conceded that Plaintiff's negligence claim was, at least in part, premised on a theory of negligent supervision. (Transcript p. 238:8-13). The City then attempted to argue that it was not responsible for the actions or inactions of the third party investigator it hired to interview Edmonds and other supervisory staff at the Fire Department about problems at the Fire Department. (*Id.* at pp. 238-239). This independent contractor liability argument was the only "duty" based argument raised by the City in its initial directed verdict motion. (*Id.* at pp. 238-242). The City then made factual arguments about whether Edmonds had submitted enough evidence to establish a breach or foreseeability. Last, the City argued that Edmonds' claim was

preempted by the Worker's Compensation Act. (*Id.* at p. 241). Edmonds addressed each of the City's arguments. (*Id.* at pp. 242-246). Edmonds first argued that the Worker's Compensation exclusivity provision did not preempt Edmonds' claim because he had not alleged a personal injury compensable under the Worker's Compensation Act. (*Id.* at 243-244). Next, Edmonds argued that there was sufficient record evidence and legal support to establish negligence under theories of negligent supervision and a duty arising after a voluntary undertaking. (*Id.* at pp 244-246). The City, in rebuttal, focused solely on the South Carolina State Tort Claims Act and Worker's Compensation Act exclusivity provisions. (*Id.* at pp. 246-247). Nowhere did the City, in its initial directed verdict motion, raise the argument it raises here where it seems to assert that the concept of at-will employment, in-and-of-itself, undermines the ability for a duty of care to arise between employee and employer. (*Id.* at pp. 238-247). The Trial Judge denied the City's directed verdict on Edmonds' negligence claim. (*Id.* at 260).

Later at Trial, in its renewed directed verdict on negligence, the City first raised procedural-type arguments claiming that the negligence alleged by Edmonds had shifted during trial from how it was originally pled. (Transcript p. 348). Next, the City challenged the sufficiency of the record facts to establish the breach of an ordinary duty of care. (*Id.* at pp. 348-350). Last, the City argued that Edmonds' negligence claim was preempted by the Worker's Compensation Act exclusivity provision. (*Id.* at pp. 350-352). The City did raise the concept of employment-at-will on its renewed directed verdict, but it did not do so in the same way it raises that concept here; rather, the City raised the concept of employment at will on the issue of worker's compensation exclusivity not on the issue of the existence of a legal duty of care. (*Id.* at p. 351). Edmonds counter-argued and the Court denied the City's renewed motion for a directed verdict. (*Id.* at pp. 353-355).

The City filed a motion for summary judgment, before Trial, on November 19, 2018. That motion, expanded upon by supporting memoranda, solely challenged the negligence claim arguing

that there was no "cognizable duty that the City failed to perform." (City MSJ); (City MIS of MSJ at p. 8). Edmonds' opposition memorandum explicitly stated that the duties asserted were based on: negligent supervision, general negligence, and a voluntary undertaking by the City. (Pl. MIO to MSJ pp. 12-13, 17-18). Oral arguments were held on the City's motion for summary judgment, one week before trial, on February 12, 2019. The Court did not issue an order on that motion but indicated from the bench that summary judgment was denied on all claims.

This lawsuit was filed on October 11, 2017, alleging five causes of action: defamation, wrongful discharge, negligence, negligent misrepresentation, and promissory estoppel. (Complaint). Edmonds, for strategic reasons, did not carry the negligent misrepresentation claim to trial. A verdict was directed by the Court on wrongful discharge after Edmonds' case in chief; because the Court found that no clear mandate of public policy was implicated by the evidence. (Transcript pp. 259-260). The Circuit Judge ruled against Edmonds' promissory estoppel claim as a fact finder at the close of the City's case in chief. (*Id.* at pp. 347-348). The defamation claim was submitted to the Jury, along with negligence, but the Jury did not find liability on the defamation claim which was underlain by nuanced evidence of defamation by act. (*Id.* at pp. 397-409). The negligence allegations in the complaint did plead the sources of duty that were ruled upon, in Edmonds' favor, by the trial judge:

> 64. Defendant owed Plaintiff a duty to conduct a confidential investigation when it hired Liz Stewart when it hired Liz Stewart and Associates to investigate its Fire Department.
>
> 65. This duty was based on the Defendant's ordinary duty to supervise its employees and agents, the representations it made to Plaintiff and others about confidentiality, and the knowledge that harm could foreseeably occur to Plaintiff's reputation if the Defendant did not ensure and maintain confidentiality.

(Complaint ¶¶ 64-65) (numbering in bold added).

The Jury's verdict on that negligence claim and the Court's denial of the City's JNOV, thereafter, is the subject of this appeal.

STATEMENT OF THE FACTS

Edmonds was hired by the City's Fire Department as an entry level firefighter on July 13, 1987. (Transcript pp. 66:16-17; 68:14-17). Edmonds was forced to resign from the Fire Department on July 5, 2017. (*Id.* at p. 67:4-11). Edmonds received four distinct promotions, and the final title he held was Assistant Chief of Administration. (*Id.* at pp. 68:18-71:10). In that role, he wrote specifications for bids and assisted the City's procurement office with bidding on Fire Department equipment, and he liaised with the City's fleet and building services office on relevant matters concerning the Fire Department. (*Id* at pp. 71:9-72:2).

In March 2016, the City hired a third party consultant to perform a comprehensive survey due to some publicly revealed "salacious" episodes of "poor judgment" at its Fire Department became concerned about attrition, hiring, morale, and overall leadership. (Transcript pp. 75:3-12, 87:10-17, 163:7-165:7, 182). Teresa Wilson, the City Manager, testified that she made the decision to hire a third-party consultant, Liz Stewart and Associates, based on "some situations in the [Fire] Department that gave [her] concern." (*Id.* at p. 164:6-7). Assistant City Manager Allison Baker testified that Fire Chief Aubrey Jenkins was one of City Management's concerns. (*Id.* at p. 182:7-25).

City Manager Wilson announced the third-party investigation via department-wide email to the entire Fire Department on March 22, 2016. (Trial Ex. 1: 3/22/16 Email); (Transcript pp. 75:13-74:4). That email, over the course of two paragraphs, promised confidentiality three times. (Trial Ex. 1: 3/22/16 Email). Edmonds testified that the promise of confidentiality was important to him because, if he was candid in his interview, his answers would "not shed a good light" on the Fire Chief and his fellow Assistant Chiefs. (Transcript p. 77:13-19). Edmonds had raised concerns internally, up his chain of command, before, but his Fire Chief had been nonresponsive, and his concerns had gone nowhere. (*Id.* at 77:20-78:20); (Trial Ex. 2: 3/14/15 Email); (Trial Ex. 3: 7/13/15 Email); (Trial Ex. 4:

9/10/15 Email).[1] However, Edmonds testified that, in the context of the City's Fire Department, complaining outside of the chain of command to the third-party consultant/investigator was elevating the concerns "to another level" (Transcript at p. 88:20-25).

Edmonds was scheduled to interview third, but ended up being the second official to speak to the investigator. This required Edmonds to mark through the name of another Assistant Chief, Fire Marshal George Adams, who was scheduled to be interviewed second, on a sign-in sheet outside of the room where the interviews were held. (Transcript pp. 88:5-90:12). The consultant/investigator, Liz Stewart, testified that the sign-in sheet was placed in the hall outside of her interview room by the City for its own purposes. (*Id.* at 271:14-23).

Edmonds was candid in his interview with the investigator. (Transcript p. 89:12-13). Edmonds' concerns reflected serious structural defects at the Fire Department including having gone over a year without a recruit school and having exceeded the Department's overtime budget by 200%. (*Id.* at p. 78:3-12). The excess overtime usage and attrition problems also gave rise to public safety concerns because firefighters were being overworked. (*Id.* at p. 80:13-24). Edmonds testified that the City Manager's written promise of confidentiality reassured him because he feared retribution based on his candor due to the tumultuous times at the Fire Department when the third-party survey happened. (*Id.* at 88:5-25).

Fire Marshal Adams, who Edmonds interviewed ahead of, ran into Edmonds in the parking lot after their interviews, and he told Edmonds that the consultant/investigator had said "the guy before me had a lot to say . . . she said . . . you had a lot to say[] [a] lot of good information, but a lot

[1] Fire Chief Jenkins indicated retaliatory animus in response to Edmonds' internal email dated 9/10/15 when he did not respond to the substance of Edmonds' email about his request to attend an Executive Fire Officer course, but instead accosted Edmond' for questioning him in an email with subordinates carbon-copied.

to say." (Transcript p. 90:8-10). Fire Marshal Adams was a close friend of Fire Chief Jenkins, and Edmonds immediately became concern that his anonymity had been compromised. (*Id.* at 90:4-15).

In response, Edmonds emailed the City Manager that evening to tell her about the conversation between he and Fire Marshal Adams and to warn her that "her promise of confidentiality had been breached." (*Id.* at 90:18-23); (Trial Ex. 6: 3-25-16 Email).

The report compiled by the third-party investigator/consultant revealed serious leadership concerns about Fire Chief Jenkins. (Transcript pp. 167:24-171:6; 178:9-24). Indeed, the investigator's report read: "The most significant finding and the greatest concern is the lack of trust of the department leadership." (*Id.* at pp. 277:3-278:5). The report continued: "Chief Jenkins jointly with City leadership must decide he is willing to take the necessary steps to generate trust from his staff." (*Id.. at* p. 178:20-22). City Manager Wilson testified that she was on notice of the consultant's report and its concerns about the fire chief as of April 15, 2016. (*Id.* at p. 171:7-9).

Even though Chief Jenkins was a prominent subject of the consultant's report, he was present, with City leadership, when the report was presented. (Transcript pp. 183:14-184:1, 272:13-20). The City's Assistant City Manager Allison Baker conceded that it was reasonable that because Mr. Jenkins was allowed to be present, he would have been able to deduce the concerns that were raised by Edmonds to the consultant. (*Id.* at p. 184:3-8). The consultant testified that the City chose to include Chief Jenkins in her presentation of the report. (*Id.* at p. 276:6-12).

After his interview and his email to City Manager Wilson, Edmonds was next called to meet with the Assistant City Manager Allison Baker on June 2, 2016. (Transcript pp. 91:25-92:2, 94:9-16). At that meeting, Edmonds shared his concerns about problems at the Fire Department with Baker. (*Id.* 93:8-18). Upon Baker's request, Edmonds emailed Baker a collection of his previous internal complaints up the chain of command about problems at the Fire Department with hiring, overtime

usage, and policy deviations. (*Id.*); (Trial Ex. 8: 6/2/18 Email). That email to the Assistant City Manager was specifically designated confidential. (Transcript p. 94:5-8); (Trial Ex. 8: 6/2/18 Email).

Three days later, on July 5, 2016, Edmonds was called to a meeting by Fire Chief Jenkins which he described as follows:

> Q. What happened next after your meeting and this e-mail?
>
> A. July 5th, 2016, I was called into Aubrey Jenkins' office for an unannounced meeting.
>
> Q. And what happened at that meeting?
>
> A. I sat down and Chief Jenkins said, **Why would you share a document with my supervisor marked confidential that you sent to me?** And I said, **Because he asked for it. Should I have lied?** And he said, **Be quiet. This is my meeting.** He said, **You've made a lot of accusations in this letter.** And he leaned forward and said something I'll never forget. He said, **Do you know how powerful of a man I am in this town?** And I said, Chief, I feel like I'm being targeted. And that sat him back and he actually kind of grinned and said, Everything is going to be all right. And I asked to be excused – or dismissed and that was it.

(Transcript pp. 94:17-95:6). Assistant City Manager Baker acknowledged that the concerns raised by Edmonds were sincere and genuine. (*Id.* at pp. 185:4-13, 186:16-23). Baker also acknowledged that the email Edmonds sent him was marked confidential, but he testified that he shared it with Fire Chief Jenkins anyway. (*Id.* at p. 185:16-20). Fire Chief Jenkins admitted he said "Be quiet, this is my meeting" when he confronted Edmonds on July 5, 2016, but claimed it was because Edmonds was "interrupting" him. (*Id.* at pp. 319:11-320:4).

After his meeting with Edmonds, Chief Jenkins tried to have Edmonds removed from his position. (Transcript p. 186:6-12). Assistant City Manager Baker stopped Chief Jenkins at that time because he felt Edmonds had raised legitimate concerns that "nobody could rebut." (*Id.* at p. 186:13-23). Edmonds testified that the July 5, 2016 meeting was the "demise" of he and Chief Jenkins' relationship. (*Id.* at p. 95:7-8). He testified that over the course of the next year there was little face-

to-face contact with Chief Jenkins, he could only get in touch with Chief Jenkins via telephone, and that he was excluded from meetings on issues that fell within the realm of his responsibility. (*Id.* at pp. 95:7-96:14).

In June 19, 2017, an online media article was published that, as relevant, accused Edmonds of authorizing a $60,000.00 purchase of faulty firefighting gloves based on a close friendship with a firefighter supply salesman. (Transcript at p. 125:14-25); (Trial Ex. 11: 6/19/17 Article). The accusations that the gloves were faulty, and that Edmonds was friends with the glove supplier were both false. (Transcript pp. 60:2-61:15, 126:3-127:4). Indeed, Edmonds was cleared by internal investigation prior to the article coming out. (Trial Ex. 12: Internal Report 5/30/17); (Transcript pp. 128:2-129:24, 130:5-13).

Nevertheless, Chief Jenkins used the unfounded, negative publicity about the gloves to demand Edmonds' resignation on July 5, 2017. (Transcript pp. 130:16-134:3). Chief Jenkins' reliance on cited issues with the gloves purchased under Edmonds' watch was discredited at trial where he asserted the gloves were not approved for firefighting even though the gloves met the national and industry standards for firefighting and there was no assertion in the Fire Department's own internal report that the gloves were not approved for firefighting. (*Id.* at pp. 305:21-306:22, 320:8-323:24); (Trial Ex. 12: Internal Report 5/30/17). Assistant City Manager Baker testified that City Management was aware of and condoned Chief Jenkins' demand for Edmonds' resignation. (*Id.* at pp. 187:25-189:15); (Trial Ex. 14: 7/6/17 Email). Baker also confirmed that a termination letter was prepared for Edmonds if he did not agree to resign.[2] (Transcript pp. 187:25-189:15); (Trial Ex. 14: 7/6/17 Email). Baker appeared to aver that there was legitimate evidence in support of Edmonds' termination at that time, but he could not identify what that evidence was. (Transcript pp. 196:25-197:14). There is no

[2] That Edmonds was constructively discharged is not challenged by the City in its opening brief.

adverse, disciplinary documentation about Edmonds in the record, and the Fire Chief maintained that the glove issue, despite Edmonds having been cleared for it, was the impetus for Edmonds forced resignation. (*Id.* at p. 325:14-18).

STANDARD OF REVIEW

The City is not explicit as to the precise legal grounds of its appeal; instead, it generally avers that the Jury's "verdict has no legal basis and should be reversed." (Appellant Brief p. 1). Regardless, it appears that the City's appeal is primarily concerned with the Circuit Court's denial of its JNOV. (*Id.* at pp. 4-5).

"[A] motion for judgment notwithstanding the verdict simply takes [the Court] back to the point in the trial when a motion was made for a directed verdict, and is limited to those grounds." *Standard Warehouse Co. v. Atl. Coast Line R. Co.*, 222 S.C. 93, 106–07, 71 S.E.2d 893, 897 (1952). "In ruling on a motion for JNOV, the trial judge cannot disturb the factual findings of a jury unless a review of the record discloses no evidence which reasonably supports them. *Burns v. Universal Health Servs., Inc.*, 361 S.C. 221, 231–32, 603 S.E.2d 605, 611 (Ct. App. 2004); *citing, Horry County v. Laychur,* 315 S.C. 364, 434 S.E.2d 259 (1993); *Force v. Richland Mem'l Hosp.*, 322 S.C. 283, 471 S.E.2d 714 (Ct.App.1996). "A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998); *citing, Crossley v. State Farm Mutual Auto. Ins. Co.*, 307 S.C. 354, 357, 415 S.E.2d 393, 395 (1992). Further, a trial court's decision granting or denying a new trial will not be disturbed unless the decision is wholly unsupported by the evidence or the court's conclusions of law have been controlled by an error of law. *Sabb v. S.C. State Univ.*, 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002); *Steinke v. South Carolina Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999).

The City, in the analysis portion of its opening brief, also appears to take passing exception to the jury charges and verdict form. The legal framework for those issues will be discussed, where appropriate, below.

ARGUMENT

This case presents a unique, yet legally cognizable, situation where an independent duty of care arises within, but not as a result of, an employment-at-will relationship. There is governing legal authority that supports such a claim. *Sabb v. S.C. State Univ.*, 350 S.C. 416, 429, 567 S.E.2d 231, 237 (2002) (Duty arose on the part of a university/employer to supervise campus police chief where plaintiff and other employees had complained about the Chief's conduct). Thus, the City's frightening suggestions on brief that Trial Court created a brand-new tort in this case and toppled the concept of at-will employment amount to nothing more more than eloquent alarmism.

Our Court has held that legal duties may arise in all sorts of relationships. *See, Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 136, 638 S.E.2d 650, 656-57 (2006) (Discussing sources of affirmative legal duties). Edmonds does not claim that the duty here arose **because of** an at-will employment relationship. *Gause v. Doe*, 317 S.C. 39, 451 S.E.2d 408 (Ct. App. 1994) (A duty cannot arise on the basis of an employment-at-will relationship). Edmonds instead asserts that the duty of care in this case arose **within** an at-will employment relationship. This is not a novel assertion. *See, Sabb*, 567 S.E.2d 231.

The City argues over the course of two separate, but inter-related arguments that: (1) the Trial Court created a legally invalid new tort "negligent separation", and (2) that there is no evidence in the record supporting a recovery "on any recognized species of negligence." (Appellant's Brief p. 5). These arguments appear to collectively challenge the Trial Court's denial of the first ground of the City's JNOV motion where it argued that an at-will employee could not assert a negligence claim against his employer in any setting. (JNOV at pp. 2-3). The City's arguments, though eloquently stated, are

without governing legal support, rely in part on a straw man fallacy, and, without specifically saying so, attack the jury charges and verdict form in ways that were not preserved below.

In this case, a robust record and settled, governing law support both the Jury's verdict and the Trial Judge's decision on negligence. Therefore, as set forth below, Edmonds respectfully asks that the Circuit Court's denial of the City's JNOV be affirmed.

I. A DUTY OF CARE CAN ARISE WITHIN, ALBEIT INDEPENDENT OF, AT-WILL EMPLOYMENT.

"The common law ordinarily imposes no duty on a person to act." *Degenhart v. Knights of Columbus*, 309 S.C. 114, 116, 420 S.E.2d 495, 496 (1992). However, "[u]nder certain circumstances, an employer is under a duty to exercise reasonable care to control an employee acting outside the scope of his employment." *Id.*[3]. Thus, "[a]n employer may be liable for negligent supervision if the employee intentionally harms another when he:

> (i) is upon the premises in possession of the [employer] or upon which the [employee] is privileged to enter only as his [employee], or
>
> (ii) is using a chattel of [the employer], and ... [the employer]
>
> (i) knows or has reason to know that he has the ability to control his [employee], and
>
> (ii) knows or should know of the necessity and opportunity for exercising such control.

Id.; *quoting*, Restatement (Second) of Torts § 317 (1965).

---

[3] Here, the record evidence that Chief Jenkins was personally motivated to terminate Edmonds, an otherwise good employee, based on Edmonds' reports about legitimate concerns at the City's Fire Department which cast him in a bad light reasonably brings his conduct outside of the course and scope of his employment with the City. *See, Pridgen v. Ward,* 391 S.C. 238, 244, 705 S.E.2d 58, 62 (Ct. App. 2010) ("[I]f the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, his conduct falls outside the scope of his employment.") (Finding supervisory employees at SCDC could be liable for civil conspiracy, without respect to intercorporate immunity, where there actions "were personally, not professionally, motivated, and were wholly disconnected from the business of SCDC.").

Against this backdrop, the City (after discussing irrelevant concepts connected to wrongful discharge and contract claims) asserts that the concept of at-will employment, on its own, bars the actionability of Edmonds' negligence claim under any circumstances. The City's broad-sweeping conclusion does not hold water.

The Supreme Court recognized the existence of a duty of care, premised on negligent supervision, arising within an at-will employment relationship in *Sabb v. S.C. State University*.[4] *Sabb*, 567 S.E.2d at 237.

The facts in *Sabb* are similar to the facts here. In *Sabb*, the plaintiff, Earline Sabb, was a public safety employee of a public employer, S.C. State University, just like Edmonds. *Id.*; 567 S.E.2d at 234. There, Ms. Sabb and several of her coworkers made complaints about hostile and retaliatory behavior about their supervisor, S.C. State's police chief. *Id.* at 235. In response to those complaints, S.C. State "appointed a committee to investigate" and its committee revealed serious problems with the police chief's actions and leadership. S.C. State then instructed its police chief to attend extensive trainings and undergo an improvement plan. Ms. Sabb subsequently alleged that S.C. State failed to ensure compliance with its investigating committee's report and that conditions did not improve within S.C.

---

[4] Just like in *Sabb*, the City has not raised the Worker's Compensation exclusivity provision as a defense to Edmonds' negligence claim. *Sabb v. S.C. State Univ.*, 350 S.C. 416, 423, 567 S.E.2d 231, 234 (2002). ("However, because University failed to raise the exclusivity provision as a defense to Sabb's tort action on appeal, that challenge is waived."). As such, the question of whether the Worker's Compensation Exclusivity provision would preclude Edmonds' claim is not before the Court. Even if it was, Edmonds' has maintained where this issue was raised before the Court below that his claim does not involve personal injury as defined by and as excluded by the Worker's Compensation Act. *See*, S.C. Code Ann. §§ 42-1-50, 42-1-60; *See also*, *Loges v. Mack Trucks, Inc.*, 308 S.C. 134, 137, 417 S.E.2d 538, 540 (1992) ("Thus, to the extent appellant alleges Mack Trucks' negligence was the proximate cause of injury arising from the slanderous conduct of Grove, her claim is not barred by the Act."); (Pl. MIO to JNOV pp. 7-10); *Colleton v. Charleston Water Sys.*, 225 F. Supp. 3d 362, 373 (D.S.C. 2016) ("Because physical harm likely is not required to state a claim for negligent supervision, the Court does not agree with the Magistrate Judge's finding that the South Carolina workers' compensation law's exclusivity provision, S.C. Code § 42-1-540, necessarily preempts Plaintiff's negligent supervision claim.").

State's police department. She also alleged that "as a result of [her participation in a] petition [about the Police Chief] . . . Chief White became openly hostile to her." *Id.* Ms. Sabb was later demoted and forced to transfer from S.C. State's police department. *Id.* at 235-236.

S.C. State University, in *Sabb*, argued, in part, that "there was no showing of any facts that created a duty on the part of the University." *Sabb*, 567 S.E.2d at 236. The Court disagreed finding that when S.C. State University "was placed on notice" of its police chief's "behavior and actions" it had a duty to supervise him with due care. The court, as relevant, held:

> A duty arose on University's part once University was placed on notice of Chief White's behavior and actions. After [the] University received the grievances of Sabb and other employees, [the] University had a duty to address the employees'[] concerns with due care.

Id. at 237. The *Sabb* Court next held that whether that duty was breached was a jury issue. *Id.* at 237-238. *Sabb*, where the Court was confronted with similar facts and issues to this case, facially refutes the overarching theme of the City's argument— that at-will employment acts as a total bar to negligence.[5]

The City cites one potentially relevant, but distinguishable case in its opening argument, *Gause v. Doe.* (Appellant Brief pp. 5-8 – Opening Argument); (*Id.* at pp. 7-8); *citing*, *Gause v. Doe*, 317 S.C. 39, 451 S.E.2d 408 (Ct. App. 1994). In *Gause*, a terminated police officer alleged negligence and defamation claims against his former employer when he was fired after he was identified by a citizen as committing a sexual assault. *Gause v. Doe*, 317 S.C. 39, 41, 451 S.E.2d 408, 409 (Ct. App. 1994). The

---

[5] That at-will employment was the basis for arguing no duty could exist was not explicitly acknowledged by the majority to be S.C. State's argument in *Sabb*; however, Justice Pleicones' dissent seems to indicate that *at-will-employment as a bar to a duty* was the argument raised. *Sabb*; 567 S.E.2d at 238-239 ("I question whether an employee should ever be allowed to sue her employer on a theory of negligent retention or supervision for the acts of a supervisory employee. [] Assuming such an action could be brought, I would follow the approach taken by a number of courts and require that the actions of the negligently supervised or negligently retained supervisor be significantly more egregious than White's in order to be actionable in tort.).

grand jury, in the criminal matter, "returned a 'No Bill' on the[] charges[,]" and Mr. Gause sued thereafter. *Id.* On negligence, this Court affirmed the dismissal of Mr. Gause's negligence claim because he failed to establish an actionable duty where "his complaint [did] not allege he was anything other than an at-will employee."[6] *Gause v. Doe*, 317 S.C. 39, 42, 451 S.E.2d 408, 409 (Ct. App. 1994). *Gause* stands for the premise that an at-will employee cannot assert the existence of a duty of care based on at-will employment alone. *Id.*

Sabb, which followed *Gause* by eight years, stands for the premise that a duty of care can arise within, but not because of, an at-will-employment relationship. *Sabb v. S.C. State Univ.*, 350 S.C. 416, 429, 567 S.E.2d 231, 237 (2002). This case fits that mold. Put simply, Edmonds does not have to challenge *Gause*, but the City must challenge *Sabb*.

The City opens its first argument by citing to a case law on breach of contract/handbook cases and wrongful discharge claims. (Appellant Brief pp. 5-7)[7]. The City does so in order to assert that the Circuit Court created a brand-new tort in this claim "negligent separation." Respectfully, unlike the *Gause* case, these cases are simply not germane to the issue in play. This is a straw-man argument. Indeed, a review of the cases cited by the City (*see* fn. 7) reveals that a negligence claim is not raised in a single one of the cases cited by the City on this point, and a word search reveals that the word "negligence" is not even mentioned.[8] *Prescott*, *Ludwick*, and their respective progeny do not stand for

---

[6] Edmonds, in his complaint developed by the record below, asserted the existence of due care independent of his at-will employment relationship with the City. (*See*, Complaint ¶¶ 64-65).

[7] The City, in this section, cites the oral offer contract case *Prescott v. Farmers Tel. Co-op.* 355 S.C. 330, 516 S.E.2d 923 (1999). The City cites the following wrongful discharge cases: *Ludwick v. This Minute of Columbia*, 287 S.C. 219, 337 S.E.2d 213 (1985); *Taghivand v. Rite Aid Corp.*, 411 S.C. 240, 768 S.E.2d 385 (2015)*Owens v. Crabtree,* 425 S.C. 513, 823 S.E.2d 224 (Ct. App. 2019), reh'g denied (Feb. 21, 2019), *cert. denied* (June 28, 2019); *Barron v. Labor Finders of S.C.*, 393 S.C. 609, 713 S.E.2d 634, (2011); *Donevant v. Town of Surfside Beach*, 422 S.C. 264, 811 S.E.2d 744 (2018), *reh'g denied* (Apr. 17, 2018); *and, Stiles v. Am. Gen. Life Ins. Co.*, 335 S.C. 222, 516 S.E.2d 449 (1999).

[8] The easiest way to perform such a "word search" is to access the cases in an online reporter, press the control key and the "f" key simultaneously (ctrl + f), for find in page, and then type the word "negligence" or a sub-part thereof (such as "neg").

the ultimate premise the City asserts–that a duty of care can never arise in an at-will employment relationship. Instead, those cases, much of which were available to the Court when it ruled in *Sabb*, have nothing to do with the City's desired outcome.

Here, the Trial Judge properly ascertained the existence of a duty of care and charged negligence to the jury. This case cleanly lines up with the authority set forth in *Sabb*. The City's argument generally averring that negligence cannot arise within an at-will employment relationship should be rejected.

II. THE CIRCUIT COURT PROPERLY FOUND AN ACTIONABLE DUTY.

The City's second argument piggybacks its first. The City concludes its appeal by asserting that "there is no evidence in this record supporting recovery on any recognized species of negligence." (Appellant Brief p. 8).

Although the Appellant opens with a reference to the sufficiency of the record evidence its argument seems more focused on the latter concern—whether Edmonds' claim qualifies as a "recognized species" of negligence? Nonetheless, there is sufficient record evidence in this case to establish negligence. Here, the record reflects that promised confidentiality was not maintained in a department-wide survey resulting in animus from the City Fire Chief toward Edmonds; that the survey revealed serious concerns with the City Fire Chief's leadership and behavior; and that the City allowed Edmonds to be unfairly, constructively discharged after it was placed on notice of the Fire Chief's desire to terminate Edmonds on illegitimate grounds when he first became aware of Edmonds complaint due to breached confidentiality. "In ruling on a motion for JNOV, the trial judge cannot disturb the factual findings of a jury unless a review of the record discloses no evidence which reasonably supports them. *Burns v. Universal Health Servs., Inc.*, 361 S.C. 221, 231–32, 603 S.E.2d 605, 611 (Ct. App. 2004). Thus, to the extent the City is challenging the sufficiency of the record, it cannot establish that there is "no evidence" which reasonably supports the Jury's verdict. *See, Id.*

Before jumping into the law, the City mischaracterizes the complaint and procedural history of this case with respect to the scope of Edmonds' negligence claim. (Appellant Brief pp. 8-9). The City here, as it attempted to do at trial, parses words from the complaint to argue that the breadth of Edmonds' claim was expanded at trial. The City asserts that the only allegation of negligence in the Complaint was geared toward some alleged failure of the City's investigator/consultant to maintain Edmonds' confidentiality. Admittedly, the Complaint was heavily concerned with the City's failure (as opposed to the consultant's failure) to maintain the confidentiality it promised in *Edmonds* because that was the starting point for the chain of events giving rise to this claim; however, the Complaint was not restrained to that concern alone. After focusing specifically on the issue of the consultant's investigation at ¶ 64 (where the operative fact pattern in this case began,) the Complaint continues at ¶ 65 to discuss more broadly three different ways the City breached its duty of care to Edmonds:

> 65. This duty was based on the Defendant's ordinary duty to supervise its employees and agents, the representations it made to Plaintiff and others about confidentiality, and the knowledge that harm could foreseeably occur to Plaintiff's reputation if the Defendant did not ensure and maintain confidentiality.

(Complaint at ¶ 65). Here, Edmonds references negligent supervision, negligence based on promised confidentiality, and negligence based on foreseeable harm to Plaintiff's reputation. Giving the City the benefit of the doubt, which it is not necessarily entitled to, its assertion that "All of this came up for the first time in trial" is exaggerated. Edmonds' memorandum in opposition to summary judgment, though again focused in large part on where everything began—the consultant's investigation, did assert the broader concepts of negligent supervision and negligence based on the foreseeability of harm to Edmonds' reputation. (Pl. MIO to MSJ pp. 12-13, 17-18).

Here, inasmuch as the scope of Edmonds' negligence claim was broadened at the summary judgment stage or later at trial, the City's challenge to the scope of Edmonds' negligence claim is not warranted now. "Issues not raised by the pleadings but tried by the consent of the parties are treated

as if they had been raised in the pleadings." *Simmons v. Berkeley Elec. Co-op. Inc.*, 404 S.C. 172, 178, 744 S.E.2d 580, 584 (Ct. App. 2013), *aff'd in part, rev'd in part sub nom. Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 797 S.E.2d 387 (2016). Consent under Rule 15(b), SCRCP can be either "express or implied." Rule 15(b), SCRCP. The City did not challenge the breadth of Edmonds' argument on negligence at all on summary judgment, and the City never argued that it was prejudiced by the scope of Edmonds' negligence claim at trial which would have prompted the Trial Court to consider the propriety an Rule 15(b) amendment. *Harvey v. Strickland*, 350 S.C. 303, 313, 566 S.E.2d 529, 535 (2002) ("Amendments to conform to the proof should be liberally allowed when no prejudice to the opposing party will result."). The Trial Court never had the need or occasion to exercise its discretion on a Rule 15(b) amendment either because: (a) the Court agreed with Edmonds that his claim, as tried, was properly within the confines of his complaint and/or later briefing; or (b) the City never asserted that it was prejudiced by the scope of Edmonds' negligence claim as tried. *Harvey*; 566 S.E.2d at 535 ("This decision [on a motion to conform] is within the trial court's discretion."). Under either scenario, the City's discussion of the scope of Edmonds' negligence claim on brief, which does not cite to any authority, does not impact the actionability of Edmonds' otherwise cognizable negligence claim.

Moving on to the legal arguments by the City in this section, "[w]hether the law recognizes a particular duty is an issue of law to be determined by the court." *Ellis by Ellis v. Niles*, 324 S.C. 223, 227, 479 S.E.2d 47, 49 (1996). A duty of care is "that standard of conduct the law requires of an actor in order to protect others against the risk of harm from his actions. It embodies the principle that a plaintiff should not be called to suffer a harm to his person or his property which is foreseeable, and which can be avoided by the defendant's exercise of reasonable care." *Snow v. City of Columbia*, 305 S.C. 544, 554, 409 S.E.2d 797, 803 (Ct. App. 1997). "An affirmative legal duty may be created by statute, a contractual relationship, status, property interest, or some other special circumstance." *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 136, 638 S.E.2d 650-656-57 (2006). "The standard of care in

a given case may be established and defined by the common law, statutes, administrative regulations, industry standards, or a defendant's own policies and guidelines." *Madison ex rel. Bryant*, 638 S.E.2d at 659.

At set forth in § I above, Edmonds' negligence claim is cognizable based on a theory of negligent supervision in accord with the Court's holding in *Sabb v. S.C. State University*. There, like here, an actionable duty to exercise due care in supervising a supervisory employee extended to that employee's subordinates where the employer was put on notice of wrongful conduct by that supervisor. *Sabb*, 567 S.E.2d at 237. Applying *Sabb*, Edmonds, has (contrary to the City's assertion) established a "recognized species" of negligence— negligent supervision. On negligent supervision, the City makes a passing assertion, without citing supporting authority, that negligent supervision claims require the commission of a tort by the negligently supervised. (Appellant Brief p. 9). "[T]he employer's liability under such a theory [referring to negligent supervision] does not rest on the negligence of another, but on the employer's own negligence." *James v. Kelly Trucking Co.*, 377 S.C. 628, 631, 661 S.E.2d 329, 331 (2008); ("Stated differently, the employer's liability under this theory is not derivative, it is direct.") *citing*, Restatement (Second) of Torts § 317 (1965). The City's unsupported assertion on this point is part and parcel of the dissenting opinion (as opposed to the majority opinion) in *Sabb*; here, the majority opinion controls. *Sabb*, 567 S.E.2d at 238 (2002) (Justice Pleicones, in dissent, for a higher bar to establish negligent supervision arising from the employer-employee relationship).[9]

[9] The City did not assert that Edmonds needed to establish a tort by Chief Jenkins before the Trial Court, but if it had Edmonds could have cited the actionability of a tortious interference with contract claim on these facts. *See, Dutch Fork Dev. Grp. II, LLC v. SEL Properties, LLC*, 406 S.C. 596, 605, 753 S.E.2d 840, 844 (2012) ("[A]n agent may be liable for tortious interference, just as if the agent were an outside third party, if the allegedly interfering acts were conducted outside the scope of the agent's authority."); *quoting, CGB Occupational Therapy, Inc. v. RHA Health Servs., Inc.*, 357 F.3d 375, 385 (3d Cir.2004).

The Trial Court was not explicit on its basis for finding an actionable duty. "While there is generally no duty to act under the common law, a duty to use due care may arise where an act is voluntarily undertaken." *Wright v. PRG Real Estate Mgmt., Inc.*, 426 S.C. 202, 217, 826 S.E.2d 285, 293 (2019); *citing, Vaughan v. Town of Lyman*, 370 S.C. 436, 446, 635 S.E.2d 631, 637 (2006). Admittedly, a recent holding of the Supreme Court (which came down a month after the trial in this case) recognized (as the City argues) that physical harm must occur for a plaintiff to establish negligence liability based on a voluntary undertaking. *Wright*, 826 S.E.2d at 294. Nonetheless, the City did not argue that Edmonds needed to establish physical harm below and even if it had, this Court could still recognize a duty based on the special circumstances in this case. *Edwards v. Lexington Cty. Sheriff's Dep't*, 386 S.C. 285, 294, 688 S.E.2d 125, 130 (2010) ("Respondents created a situation that they knew or should have known posed a substantial risk of injury to Edwards. Moreover, given Respondents' knowledge of Baker's demonstrated threats against Edwards, Respondents owed her a duty."); (Recognizing a duty based on special circumstances where defendant had a prior relationship with intentional tortfeasor and had knowledge of his propensity to inflict harm on the plaintiff); *see also*, *S.C. State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 377, 346 S.E.2d 324, 326 (1986) ("Under this analysis, BAH owed a duty to the S.C. State Ports Authority to exercise due care to accurately report objective factual data concerning the Charleston port, if it knew or should have known the report was intended to be used by GPA as a marketing device."); (Recognizing duty to a third party in compiling a report based on foreseeability of harm that could be caused by negligence in preparing the report). The issue of physical harm underlying a voluntary undertaking duty on Edmonds' negligence claim is nonconsequential because Edmonds can establish a duty to supervise and because this argument is not preserved; however, even if this argument were in play the special circumstances of this case, extensive record evidence of notice about the Fire Chief's negative conduct and retaliatory attitude justifies finding an actionable duty.

Next, after addressing negligent supervision and a voluntary undertaking, the City discusses Edmonds' negligent misrepresentation claim. (Appellant Brief pp. 9-10). As noted above, Edmonds did not carry the misrepresentation claim to trial for strategic reasons. Therefore, this claim is not before the Court.[10]

Last, the City takes umbrage with the Court's jury charges and verdict form. As discussed more fully in the next section, many of the City's arguments on this front are not preserved. Moreover, the City's asserted issues with the jury charges and verdict form seemingly assert that the legal question of the existence of a duty should have been answered by the jury. (*See*, Appellant Brief p. 9). That the existence of a duty is a question of law is well-settled. *Ellis by Ellis v. Niles*, 324 S.C. 223, 227, 479 S.E.2d 47, 49 (1996) ("Whether the law recognizes a particular duty is an issue of law to be determined by the court."). Therefore, the Trial Judge's decision to decide the question of a duty certainly did not constitute an abuse of discretion. *Cole v. Raut*, 378 S.C. 398, 663 S.E.2d 30 (2008); *and*, *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000); (Abuse of discretion standard on jury charges); *Keaton ex rel. v. Foster v. Greenville Hosp. Sys.*, 334 S.C. 488, 514 S.E.2d 570 (1999)("An appellate court will not reverse the trial court's decision regarding jury instructions absent an abuse of discretion. In reviewing jury charges for error, [an appellate court] must consider the court's jury charge as a whole in light of the evidence and issues presented at trial. If, as a whole, the charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error."); *See also*, *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 300, 641 S.E.2d 903, 906 (2007) (Verdict Form); ("The determination of whether a special verdict should be submitted to the jury is within the sound discretion of the trial judge, and an appellate court will only reverse upon a finding of an abuse of that

[10] Edmonds notes that the City's primary appeal counsel was not counsel before the Trial Court. Therefore, the undersigned believes that the City simply addressed negligent misrepresentation out of an abundance of caution ,since the claim's dismissal was not affirmatively noted on the record below.

discretion."). Here, the Court's jury instructions and verdict form properly captured the law of negligence, after the Court had determined duty as a matter of law; therefore, neither the instructions nor the verdict form warrant reversal. Moreover, even if the City were to identify some error in either the jury instructions or the verdict form, the City cannot make a requisite showing of prejudice here, where the record is replete with sufficient evidence of a legally cognizable negligence claim. *See, Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 560, 658 S.E.2d 80, 88 (2008); ("To warrant reversal on appeal, the trial court's instructions must be not only erroneous, but must also be prejudicial."); *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 304, 641 S.E.2d 903, 908 (2007) ("SCDOT presented no evidence that the use of the special verdict form bent the will of the jury or prejudiced SCDOT in any way.").

Edmonds, supported by a dense record, has proven a cognizable claim of negligent supervision in accordance with *Sabb*. Further, that claim is also supported by the special circumstances arising within the framework of this case's fact-specific and considerable record on notice and foreseeable harm. The Court properly retained the question of a duty, properly charged the jury, and its verdict form was not the result of an abuse of discretion. As such, and for the reasons stated in Part I above, the Circuit Court's denial of the City's JNOV should be affirmed.

III. THE CITY'S ARGUMENTS ARE NOT PRESERVED

The City's JNOV motion below and its appeal here should be limited only to those grounds that it raised on directed verdict and also raised before this Court. "[A] motion for judgment notwithstanding the verdict simply takes [the Court] back to the point in the trial when a motion was made for a directed verdict, and is limited to those grounds." *Standard Warehouse Co. v. Atl. Coast Line R. Co.*, 222 S.C. 93, 106-07, 71 S.E.2d 893, 897 (1952). "At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge." *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011). "It is 'axiomatic that an issue cannot be raised for the first time on

appeal.'" *Herron*, 719 S.E.2d at 642; *quoting*, *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

The City argued, at its mid-trial directed verdict, that: (1) it was not responsible for the actions of its consultant/investigator because she was an independent contractor; (2) that Edmonds had not established a breach or notice; and (3) that Edmonds' claim was barred by the South Carolina Tort Claims Act and the Worker's Compensation Act exclusivity provision . (Transcript pp. 238-242; 246-247). The City argued, at its post-evidence directed verdict, that: (1) Edmonds' negligence claim had shifted beyond the pleadings; (2) that there was insufficient evidence of a breach or evidence of notice to establish a duty; and (3) that not imposing the Worker's Compensation Act exclusivity provision was error and would abrogate at-will employment. (Transcript pp. 348-353). With respect to the first argument in its renewed directed verdict (shifting beyond the pleadings), the City did not argue that it was prejudiced which would have implicated a discretionary decision under Rule 15(b), SCRCP. Finally, the City did not object to jury instructions with respect to the issues on appeal.[11] (Transcript pp. 363-366).

Edmonds, based on the foregoing, respectfully asserts the following arguments made by the City, or otherwise necessary to the City's arguments, are not preserved for appellate review: (1) that at-will employment, on its own, is a bar to an actionable duty of care; (2) that the City was prejudiced by any development in the scope of Edmonds' negligence claim from his complaint through trial; (3) that physical harm was required to establish a duty arising from a voluntary undertaking; and (4) that the Trial Court failed to properly charge negligence. Therefore, as an additional sustaining ground if the Court believes there may be some error with respect to any of the above points, then reversal is still not proper because these issues were not raised before the Circuit Court.

[11] The City did request a charge on concept of agency. (Transcript p. 365). That charge, however, was not specific to a negligent supervision claim where direct, rather than derivative, liability is at issue.

CONCLUSION

Respondent Michael Edmonds respectfully asks this Court to affirm the Circuit Court's denial of the Appellant City of Columbia's motion for judgment non obstante veredicto and alternative motion for a new trial based on the record and the governing law discussed above.

Respectfully Submitted,

CROMER BABB PORTER & HICKS

J. Paul Porter, Esquire (# 100723)
1418 Laurel Street
Post Office Box 11675
Columbia, South Carolina 29201
Phone 803-799-9530
Fax 803-799-9533

Attorney for Respondent Michael Edmonds

Columbia, South Carolina
October 11, 2019

C | B | P | H

CROMER BABB PORTER & HICKS, LLC

Attorneys and Counselors at Law

J. Lewis Cromer * Julius W. Babb, IV * J. Paul Porter * Ryan K. Hicks
Shannon M. Polvi * Samantha E. Albrecht * Elizabeth M. Bowen * Creighton M. Segars

October 11, 2019

Via Hand Delivery
The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Michael Edmonds v. City of Columbia
Appellate Case No.: 2019-001047

Dear Ms. Kitchings:

Enclosed please find two (2) copies of Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal along with a Proof of Service in connection with the above-reference matter. Please file the original and return two filed copies to our courier.

Should you have any questions or concerns, please do not hesitate to give us a call.

With kind regards, I am

Sincerely,

Kate M. Ray
Litigation Paralegal

/kmr
Enclosures

Cc: Blake A. Hewitt, Esquire
Dana M. Thye, Esquire
Client

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2018-CP-40-06172
Appellate Case No. 2019-001047

Michael Edmonds ..... Respondent,

v.

City of Columbia, ...Appellants.

PROOF OF SERVICE

I do hereby certify that on October 11, 2019 I served the Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal by electronic mail and by depositing a copy of the documents in the United States Mail, postage pre-paid, addressed to Appellant's attorneys of record, at the following addresses:

Blake A. Hewitt, Esquire
BLUESTEIN THOMPSON SULLIVAN, LLC
P.O. Box 7965
Columbia, SC 29202
Blake@bluesteinattorneys.com

Dana Thye, Esquire
Office of the City Attorney
P.O. Box 667
Columbia, SC 29202
dmthye@columbiasc.net

J. Paul Porter

Columbia, South Carolina
October 11, 2019