THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Daniel Dewitt Hall, Circuit Court Judge

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Case No. 2017-CP-40-06172
Appellate Case No. 2019-001047

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Michael Edmonds, . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Respondent,

v.

City of Columbia, . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Appellant.

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**BRIEF OF APPELLANT**

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## STATEMENT OF ISSUE ON APPEAL

Whether the jury's verdict that the City of Columbia was "negligent" in the respondent's "separation of employment" should be reversed.

## INTRODUCTION

This case is about upholding at-will employment. Under at-will employment a worker may be terminated from a job or may resign a job at any time and for a good reason, a dumb reason, or for no reason at all.

South Carolina favors at-will employment because it provides flexibility and stimulates economic development. Those things suffer when people lack the ability to freely change jobs and when employers do not have the right to pick their own employees.

The respondent is a fireman who had a long career with the Columbia fire department. His service record is commendable and honorable. In 2017 the chief of the fire department asked respondent to resign. Respondent was serving as an assistant chief at the time. This was an executive job. Respondent worked directly under the head fire chief.

After resigning, respondent brought this lawsuit claiming he was forced out for speaking his mind and for sharing views that did not reflect well on the department's leadership. After a four day trial, a jury found for respondent on a claim for negligence and awarded $65 thousand in damages. The verdict form asked whether the City had been "negligent" in respondent's "separation of employment." This was over the City's objection.

"Negligent separation" is not a tort. And though the City would vigorously dispute it was negligent in any respect, even if the City *was* negligent, there simply is no liability for negligently firing an at-will employee. The verdict has no legal basis and should be reversed.

## STATEMENT OF THE CASE

Michael Edmonds began working at the City of Columbia fire department in 1987. (R.p.92, lines 16-17). He was promoted several times over the course of his career. (R.p.94, line 10 - p.97, line 2).

When the longtime fire chief retired in 2010, the new chief asked Edmonds to serve in an executive job as "assistant chief of administration." (R.p.97, lines 4-10). This involved helping the department develop a budget, writing specifications for equipment, participating in the procurement process, and administrative responsibilities related to maintaining the department's vehicles and buildings. (R.p.97, line 20 - p.98, line 13).

In the Spring of 2016 the City engaged an outside consulting company to conduct an assessment of the fire department. (R.p.188, line 23 - p.189, line 1). Though the reasons for this are not described in great detail, the testimony at trial referenced the assessment being prompted by a few dangerous or serious incidents at a couple fire stations. (R.p.101, lines 8-12; p.189, lines 5-13; p.207, lines 11-25). The assessment consisted of a firefighter survey as well as interviews with 108 individuals in the department's management and leadership staff. (R.p.290, lines 6-9). The consultant reported the assessment's results to the City in April of 2016. (R.p.297, lines 7-11).

A little over a year later, in June of 2017, a blogger published a story with several criticisms of the fire department. The story alleged a number of things including that "a chief with purchasing authority" made a potentially unethical decision in ordering $60 thousand worth of firefighting gloves. (R.p.450). The story did not mention Edmonds, but Edmonds said everyone in the department interpreted this as a reference to him. (R.p.153, lines 5-12).

Shortly thereafter, in July of 2017, the fire chief asked Edmonds to resign. (R.p.156, line 15 - p.157, line 12). Edmonds testified the fire chief cited the glove purchase and problems with facilities. *Id.* The fire chief agreed with this account. (R.p.345, lines 14-18).

Edmonds filed this suit three months later, in October of 2017. (R.p.5). One of his claims stems from the 2017 blog article. The rest relate to the consultant's 2016 assessment.

First, Edmonds alleged the City defamed him by asking for his resignation shortly after the blog article appeared on the internet. (R.p.11). In Edmonds' view, asking him to leave the department implied the article's criticisms were valid and were his fault. *Id.*

Second, Edmonds alleged the City promised that comments made to the consultant during the 2016 outside assessment would be confidential and that the real reason he was asked to resign was that he had been critical of the chief's leadership, causing the chief to retaliate. Edmonds made these allegations via claims for negligence, negligent misrepresentation, promissory estoppel, and wrongful termination. (R.pp.12-14).

The negligence and defamation claims were the only claims that went to the jury.

Edmonds dropped negligent misrepresentation during the pre-trial proceedings. The trial transcript does not mention this, but there was no mention of the claim during the trial itself, the claim did not appear on the verdict form, and the trial court did not charge negligent misrepresentation to the jury. (R.p.1 & p.413, line 4 - p.431, line 3).

The trial court granted the City a directed verdict on the claim for wrongful termination. The court noted such a claim requires a plaintiff to show his or her termination was in direct violation of a specific public policy. (R.p.282, lines 17-21). Edmonds alleged the chief asked him to resign in retaliation for Edmonds telling the consultant the department

was understaffed, exceeding its overtime budget, and unevenly applying policies on restricted duty and continuing education. (R.p.103, line 14 - p.104, line 13). Citing precedent, the trial court found these allegations did not violate a specific public policy and that it was important to honor at-will employment. (R.p.282, line 21 - p.283, line 14).

The trial court also found against Edmonds on promissory estoppel. The court noted this was an equitable claim rather than a claim for the jury and found Edmonds failed to prove the elements of this cause of action. (R.p.366, line 20 - p.367, line 3).

The jury found against Edmonds on his claim for defamation. (R.p.1). And, as noted previously, the jury found in favor of Edmonds on a verdict form asking whether the City had been "negligent" with respect to Edmonds' "separation of employment." *Id.* The jury returned the verdict February 22, 2019, after a three day trial.

The City filed a timely motion for judgment notwithstanding the verdict arguing, among other things, that negligent separation was not a cause of action and that no evidence supported the only "negligence" claim properly before the court, which was the complaint's allegation that the City negligently supervised the outside consultant. (R.pp.17-18). These mirrored arguments the City made for a directed verdict. (R.p.261, lines 8-18; p.262, line 4 - p.263, line 18; p.367, lines 7 - 22; p.368, line 21 - p.369, line 10; p.370, line 23 - p.371, line 10). The City previously made similar arguments for summary judgment; claiming Edmonds could not identify a legal duty the City failed to fulfill. (R.p.26).

The trial court denied the motion for JNOV in a form 4 order filed three months later, in May of 2017. (R.pp.2-4). The order stated, without further explanation, that the record and law did not warrant granting the motion. *Id.*

## STANDARD OF REVIEW

This court's review in a case at law "extends merely" to correcting errors of law. *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976).

## ARGUMENT

There are two basic reasons this Court should reverse.

First, there is no tort of "negligent separation." South Carolina has a strong policy favoring at-will employment, and an at-will employee can be fired for a good reason, a bad reason, a negligent reason, or no reason at all. No exceptions to this rule are in play. Edmonds' wrongful termination claim was dismissed and that ruling was not appealed.

Second, there is simply no evidence in this record supporting recovery on any recognized species of negligence. Edmonds argued the City breached a voluntary undertaking, committed negligent supervision, and made a negligent misrepresentation, but the jury was not charged on any of those things and the facts would not support them either.

The jury's verdict is understandable. Edmonds is a sympathetic plaintiff. The jury might have been reluctant to let him leave court empty handed.

Still, Edmonds was an at-will employee. Even if the City *was* negligent in asking for his resignation, that cannot support liability. This Court should reverse.

### A. There is no tort of "negligent separation."

South Carolina has a strong policy favoring at-will employment, under which the employment relationship "may be terminated at any time for any reason or no reason, with or without cause." *Taghivand v. Rite Aid Corp.*, 411 S.C. 240, 243, 768 S.E.2d 385, 386 (2015). As already noted, this provides flexibility and promotes economic development. *Id.*

Even so, there are two recognized limits on the right to immediately end a workplace relationship. The parties may agree to "restrict their freedom" to fire someone without cause or to "resign with impunity." *Prescott v. Farmers Tel. Co-op.*, 335 S.C. 330, 335, 516 S.E.2d 923, 925 (1999). Also, someone who may be fired for any reason or for no reason may nevertheless not be fired for an *illegal* reason. That claim is known as "wrongful discharge" and was recognized in *Ludwick v. This Minute of Carolina*, 287 S.C. 219, 225, 337 S.E.2d 213, 216 (1985). The worker in that case was fired for obeying a subpoena. The Supreme Court recognized a wrongful discharge claim because it deemed the firing unlawful.

The City is not aware of any authority suggesting that someone who loses a job has a claim against the former employer for "negligence" or "negligent separation." Indeed, the cases discussing wrongful discharge suggest *that* claim is the only option since, "absent a contractual provision to the contrary, an employee may be terminated at any time for any reason or no reason, with or without cause." *Taghivand*, 411 S.C. at 243, 768 S.E.2d at 386.

*Ludwick* only recognized a wrongful discharge claim because there was no other remedy for an at-will employee's firing. In doing so, the Court acknowledged it was reluctant to modify the law governing at-will employment because it might spawn "an outpouring of vexatious and frivolous litigation" and limit the employer's "rightful prerogative to select employees." 287 S.C. at 225, 337 S.E.2d at 216.

Nothing after *Ludwick* suggests an at-will employee might have a claim for negligence or negligent separation. A fairly recent case explains an at-will employee can be fired at any time, for any reason or no reason, and that the employee's "cause of action in tort" is for "wrongful termination" when *Ludwick*'s exception applies. *Barron v. Labor*

*Finders*, 393 S.C. 609, 614, 713 S.E.2d 634, 636-637 (2011). Other cases are written the same way. *Owens v. Crabtree*, 425 S.C. 513, 823 S.E.2d 224 (Ct. App. 2019) (no viable claim for wrongful termination); *Donevant v. Surfside Beach*, 422 S.C. 264, 811 S.E.2d 744 (2018) (successful claim for wrongful termination). A concurring opinion pointedly explains that unless the firing violates public policy an at-will employee can be terminated for "good cause, no cause, or even cause that is morally wrong." *Stiles v. Am. Gen. Life Ins. Co.*, 335 S.C. 222, 227, 516 S.E.2d 449, 452 (1999) (Toal, J.). These cases would be written differently if an employer could be liable for firing an at-will employee based on a "negligent" cause.

The circumstances in this case appear similar to the circumstances in *Gause v. Doe*, 317 S.C. 39, 451 S.E.2d 408 (Ct. App. 1994). There, as here, the case was brought by a first responder who was fired in the wake of misconduct allegations and who basically claimed there was not a good reason for his firing. The plaintiff sued for slander, wrongful termination, negligence, and outrage. The trial court dismissed the claims for slander and negligence, and the plaintiff appealed.

This Court explained the plaintiff could not meet the elements of a negligence claim because he was an at-will employee who could be terminated at any time. 317 S.C. at 42, 451 S.E.2d at 409. The Court said it did not matter whether he was fired after an "inadequate" investigation, whether he was fired based on a false assumption, or whether he was fired because his employer failed to reevaluate its decision to end the employment. *Id.*

This case is like that. Edmonds' basic complaint is that he believes the fire chief gave bogus reasons for firing him and that he was fired because he gave blunt criticisms of

the department's leadership. The City does not agree with those things, but whether they are true or not, they do not matter. As in *Gause*, Edmonds was an at-will employee who could be fired for a good reason or a bad reason; for no reason or a negligent reason.

**B. There is no evidence in this record supporting recovery on any recognized species of negligence.**

As noted above, Edmonds' basic argument at trial was that he was fired because he gave blunt criticisms of the department's leadership during the outside consultant's 2016 assessment of the fire department. Edmonds' complaint expressed this basic argument in two tort claims: negligence and negligent misrepresentation. (R.pp.12-13).

The complaint tied these claims to specific conduct. The negligence claim relied on a duty Edmonds said the City owed to conduct a "confidential" assessment. (R.p.12, ¶65). Though dropped before trial, the "negligent misrepresentation" claim looks to have been virtually identical. There, the complaint alleged the City misrepresented that the consultant's study of the fire department would be confidential. (R.p.13, ¶70).

The complaint alleged this duty/promise of confidentiality was breached when the consultant supposedly told another executive in the fire department that Edmonds had "a lot to say" when the consultant interviewed Edmonds. (R.p.8, ¶28); see also (R.pp.444-445).

Edmonds added other allegations at trial. He claimed the City breached confidentiality by sharing the consultant's final report with the fire chief. (R.p.268, lines 3-14; p.364, lines 14-24). He also claimed the City had been negligently supervising the fire chief because the fire chief continued to run the department after the consultant's report supposedly identified "big problems" in the department. (R.p.267, line 22 - p.268, line 2;

p.373, lines 8-14). Edmonds cited the law on voluntary undertakings as basis for an alleged duty of care. (R.p.268, line 19 - p.269, line 3; p.373, lines 21-24). Again, none of these things were in the complaint. All of this came up for the first time at trial.

Even so, none of these allegations and arguments meet the requirements for any viable negligence claim that has previously been recognized in this state.

Precedent explains a duty arising from a voluntary undertaking has "thus far been limited to situations in which a party has voluntarily undertaken to prevent physical harm, not economic injury." *Johnson v. Robert E. Lee Acad.*, 401 S.C. 500, 506, 737 S.E.2d 512, 515 (Ct. App. 2012) (quoting *Hendricks v. Clemson Univ.*, 353 S.C. 449, 458, 578 S.E.2d 711, 715 (2003)). Edmonds did not suffer physical harm, and the City's promise of confidentiality was not a promise that was necessary to protect Edmonds from physical harm.

Also, the trial court did not charge the jury on anything related to a voluntary undertaking. (R.p.413, line 4 - p.431, line 3). The charges on negligence were brief and only fill a little over two pages of the transcript. (R.p.422, line 23 - p.424, line 17).

The trial court did not charge the elements of negligent supervision either. And even if negligent supervision had been charged, an employer cannot be liable for negligently supervising someone unless that person committed a tort. See *James v. Kelly Trucking Co.*, 377 S.C. 628, 631, 661 S.E.2d 329, 330 (2008) (listing the elements of negligent hiring, training, and supervision). Nobody has identified a tort claim against the outside consultant or the fire chief. Edmonds was an at-will employee who could be fired for most any reason.

The negligent misrepresentation claim was dropped, but even if it had not been dropped, the elements could never apply. Precedent says the alleged negligent

misrepresentation has to involve a false statement of fact that induces the plaintiff to enter into a contract or business transaction. *Gilliland v. Elmwood Props.*, 301 S.C. 295, 301, 391 S.E.2d 577, 580 (1990). Examples of viable misrepresentation claims include falsely promising a prospective automobile purchaser that she would qualify for certain promotional materials if she bought a certain car and promising an insurance applicant that he would be "covered" once he took certain actions. *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 536 S.E.2d 399 (Ct. App. 2000); *Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 468 S.E.2d 292 (1996). Nobody induced Edmonds to enter into any contract or transaction.

The trial court told the jury that the court would decide whether the City owed Edmonds a duty of care, (R.p.423, lines 3-8), but the court never did this. It just told the jury "[n]egligence means [] a person has done something that a reasonable person would not have done or has failed to do something that a reasonable person would have done in the same situation." (R.p.423, lines 13-17). This was over the City's objection that the verdict form should be limited to whether the City failed to use reasonable care in supervising the outside consultant because that was the only negligence claim properly before the court. (R.p.367, lines 7-19; p.383, line 1 - p.384, line 25) & (R.pp.460-461) (City's proposed verdict form).

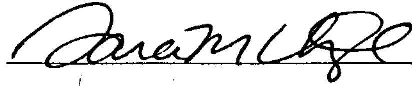
Respectfully, the jury charges read as though the jury was instructed to find for Edmonds if it found the City did anything a reasonable person would not do or failed to do something a reasonable person would have done. That is wrong. It does not matter whether the jury believed a reasonable employer would have acted differently. Unless the firing violates public policy, there is no right to second guess the employer's decision to release an at-will employee from employment.

## CONCLUSION

For the foregoing reasons this Court should reverse.

Respectfully submitted,

November 21, 2019



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City of Columbia,.. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Appellant.

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**CERTIFICATE OF COMPLIANCE**

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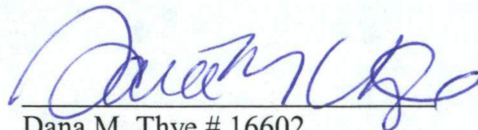
Pursuant to Rule 211(a), SCACR, I certify that the *Brief of Appellant and Reply Brief* comply with the provisions of Rule 211(b), SCACR, and with the August 13, 2007, Supreme Court Order regarding personal data identifiers.



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