THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Daniel Dewitt Hall, Circuit Court Judge

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

Michael Edmonds, ... Respondent,

v.

City of Columbia, ... Appellant.

REPLY BRIEF

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ARGUMENT

An employer may ask an at-will employee to resign at any time unless the reason for doing so violates public policy. While the City of Columbia stands behind the decision to ask for respondent's resignation, the fact remains any at-will employee can be terminated, without liability, for a right reason, a wrong reason, a negligent reason, or no reason at all.

The respondent apparently believes an employer may have liability for "negligence" or "negligent supervision" if an at-will employee claims a supervisor is a poor leader or manager and the employer later allows the supervisor to ask the complaining employee to resign. The City has not been able to locate any authority for that proposition. The key cases respondent cites as supporting his position are readily and meaningfully distinguishable.

Even though at-will employment controls this case, it is worth noting that the respondent's brief incorrectly claims the circuit court identified the duty of care the City allegedly owed respondent and breached. The circuit court did no such thing. The duties respondent seems to propose are either not recognized at law or do not apply.

This "negligence" claim was nothing more than an attempt to have the jury second-guess an employment decision that unfortunately left a sympathetic plaintiff out of a job. A jury is not permitted to do that. The City cannot be liable unless asking respondent to resign violated public policy. The award of damages lacks a legal basis and should be reversed.

A. This case is controlled by at-will employment.

The only recognized tort for an at-will employee's termination is wrongful termination in violation of public policy. The case establishing this cause of action in South Carolina expressed concern that putting any limit on the employer's freedom to terminate an

at-will employee would lead to "an outpouring of vexatious and frivolous litigation." *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 225, 337 S.E.2d 213, 216 (1985). To handle that concern, the case said wrongful termination would apply "only where the alleged retaliatory discharge constitutes a clear violation of a mandate of public policy." *Id.*

During the directed verdict motions at the close of the respondent's case the City argued South Carolina was an at-will employment state and that this case was no different from *McNeil v. South Carolina Department of Corrections*, where a former employee claimed she was fired for personal, political, and pretextual reasons. (R.p.253, line 2 - p.256, line 23) (referencing *McNeil*, 404 S.C. 186, 743 S.E.2d 843 (Ct. App. 2013)). During directed verdict motions at the close of all the evidence, the City argued employers have the right to terminate an at-will employee for a good reason, a bad reason, for no reason, and that allowing employees a "back door" to sue an employer for "negligence" was inconsistent with at-will employment. (R.p.370, line 23 - p.371, line 10).

Those arguments are correct. An at-will employee who loses a job cannot go to court with the argument that he should not have been fired and that it was negligent for the employer to allow the firing. That is respondent's claim here. The claim fails because an at-will employee can be fired for any reason or no reason; a right reason or a wrong reason.

In addition to *McNeil*, and as noted in the City's lead brief, this case is also similar to *Gause v. Doe*, 317 S.C. 39, 451 S.E.2d 408 (Ct. App. 1994), where a first responder who was fired in the wake of misconduct allegations basically claimed there was not a good reason for his firing. *McNeil* turned on the fact that it did not matter whether the plaintiff was fired based on false or inadequate reason. The same is true here.

B. It is difficult to understand the duty respondent contends was owed and breached.

The Court need go no further than at-will employment to resolve this case. As outlined above, negligence and negligent supervision must fail because allowing a former at-will employee to claim his or her employer was unreasonable in asking the former employee to resign would be inconsistent with the employer's right to end the relationship at any time and for any reason that does not violate public policy.

Even so, it is worth mentioning the difficulty in identifying the duty respondent contends the City owed to him and allegedly breached.

The respondent claims in his brief that the circuit court "properly identified the existence of an actionable duty." Resp. Br. at 2. The City has not been able to locate anything in the trial transcript pinpointing the alleged duty of care. The circuit court told the jury the court would decide whether the City owed respondent a duty, (R.p.423, lines 3-8), but the court never actually did this. It just gave the jury the general definition of negligence. (R.p.423, lines 13-17).

The definition of negligence is not a duty. Liability does not exist unless a defendant breaches a legal obligation to the plaintiff. A medical doctor owes a patient the duty to provide the same treatment as "an average, competent practitioner acting in the same or similar circumstances." *Sulton v. HealthSouth Corp.*, 400 S.C. 412, 416, 734 S.E.2d 641, 644 (2012). When someone voluntarily gives aid that they should recognize as necessary for the protection of someone else, the person giving assistance is subject to liability for failing to use reasonable care if the failure increases the vulnerable person's risk of harm. *Russell*

v. City of Columbia, 305 S.C. 86, 89, 406 S.E.2d 338, 340 (1991). Negligence is tied to reasonableness but that does not mean people have a general duty to be reasonable.

The respondent cites two paragraphs from the complaint, paragraphs 64 and 65, as pleading "the sources of duty." Resp. Br. at 5. It seems like the respondent believes an employer who audits or reviews its operations has a legal duty to see that the review's results remain confidential once the employer has told employees their specific comments will remain secret. It also seems like the respondent believes an employer has a duty to supervise personnel decisions after learning of allegations that a supervisor or department may need to improve business practices.

Respectfully, no authority supports the idea that an employer who hires an outside consultant to assess the employer's operations undertakes an enforceable duty to keep the results of that assessment secret. Indeed, keeping the results secret would seem to defeat the audit's purpose of identifying areas for improvement. Similarly, no authority supports the idea that an employer has an enforceable duty to prevent a supervisor from terminating an at-will employee, even for pretextual or wrong reasons. The City and the fire chief had the right to terminate respondent's employment at any time and for any reason that did not violate public policy. The complaint does not identify any legal principle limiting that right.

C. The precedents the respondent cites for a duty of care are meaningfully distinguishable and do not support the alleged right by a former employee to claim he was negligently terminated.

The respondent heavily relies in his brief on *Sabb v. South Carolina State University*. There, the core allegations were that the chief of a university police department was serially inept and created a hostile work environment where over half of the police department signed

a statement requesting the chief's removal. 350 S.C. 416, 423-427, 567 S.E.2d 231, 234-236 (2002). A committee investigated the chief and recommended corrective actions. There was also evidence the university did not ensure the chief took the corrective actions.

The plaintiff in *Sabb* was an officer who filed several grievances related to the chief's conduct. This was over a period of years before and after the committee's investigation. There was evidence the university either did not investigate some of the grievances or dismissed them out-of-hand. While the plaintiff ultimately transferred to a different job at the school, there was evidence the chief's harassment caused her to experience a number of medical problems including anxiety and depression. *Id.* at 423-427, 567 S.E.2d at 234-236.

The respondent claims *Sabb* stands for the proposition that an employer has a duty to investigate complaints against a supervisor with due care. The City does not agree with that reading, but it is hard to see how one could find that standard to have been violated here. Nobody appears to dispute the City's decision to engage a consultant to assess the fire department. Nobody seems to argue that the City was not actively involved in the fire department's management from the time the consultant finished the assessment up to and including the decision to ask respondent to resign. Indeed, the parties do not dispute that the City was involved in and agreed with the decision to ask for respondent's resignation.

Many people who lose a job probably believe the employer's decision was wrong or unreasonable, but *Sabb* does not support the proposition that an employer faces potential liability in negligence if the employer investigates a complaint and makes the decision after that investigation to ask an at-will employee to resign. The respondent needs something like that to come out of *Sabb*, but the best understanding of the case is that it involved extreme

facts. There was the university's years-long failure to investigate complaints and to follow through as well as the fact that the plaintiff suffered significant personal injuries and was still a university employee. The core claim was not tied to someone being terminated from a job.

Here, however, the respondent is a former at-will employee whose suit boils down to the understandable disappointment of being asked to resign. There is no authority supporting the view that complaints about a supervisor's decision or leadership trigger a duty for the employer to scrutinize the supervisor's personnel decisions. Again, the hallmark of at-will employment is that an employer may ask an at-will employee to resign at any time, without liability, unless the reason violates public policy.

Respondent also cites *Edwards v. Lexington County Sheriff's Department* and *S.C. State Ports Authority v. Booz-Allen & Hamilton* and claims those cases support this Court recognizing a duty based on the alleged "special circumstances" of this case. Resp. Br. at 21.

Edwards recognized that special circumstances created a duty from a sheriff's office to the victim in a domestic violence case to use due care to protect the victim from being harmed by the alleged perpetrator of domestic violence during a bond hearing. 386 S.C. 285, 293-294, 688 S.E.2d 125, 129-130 (2010). The special circumstances were the county's relationship with the victim and its actions in creating the risk of harm. *Id.*

There is no allegation of a special relationship in this case. The respondent was an at-will employee who could be fired at any time unless the reason for doing so violated public policy. Nothing in the record modified that relationship.

Booz-Allen & Hamilton recognized a legal duty owed by a consulting firm to use due care in accurately reporting objective factual data when the consulting firm knew or should

have known that its report was intended to be used as a marketing device. 289 S.C. 373, 377, 346 S.E.2d 324, 326 (1986). As with *Edwards*, it is hard to see how the cited precedent has any application here. There is no allegation the consultant's study of the fire department was inaccurate or that the respondent was harmed by inaccuracies. Indeed, the respondent acknowledges he had significant differences of opinion with his supervisor and that his supervisor knew of those differences of opinion. The respondent also acknowledges he was ultimately asked by his supervisor, with the City's blessing, to resign. Unless something in the record changed the respondent's status as an at-will employee, respondent's supervisor could ask him to resign at any time, and for any reason, as long as the reason did not violate public policy.

D. The City does not understand the respondent's contention that the argument for reversal is not preserved for review.

As already noted, the City argued during directed verdict motions that employers have the right to terminate an at-will employee for a good reason, a bad reason, for no reason, and that allowing employees a "back door" to sue an employer for "negligence" was inconsistent with at-will employment. (R.p.370, line 23 - p.371, line 10). This was also the first argument in the City's motion for judgment not withstanding the verdict. (R.pp.50-51).

Error preservation rules "are designed to give the trial court a fair opportunity to rule on the issues, and [] provide [] a platform for meaningful appellate review." *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (quoting *Queen's Grant II Horiz. Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006)). It is hard to see how someone could seriously contend the circuit court did not

have a fair chance to consider the argument that this lawsuit was an attempt to make an end-run around at-will employment. The City made that argument at multiple junctures. An at-will employee who resigned may not sue his former employer for "negligence" in asking for the resignation. The circuit court should not have allowed the claim to proceed.

CONCLUSION

For the foregoing reasons this Court should reverse.

Respectfully submitted,

November 21, 2019

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CERTIFICATE OF COMPLIANCE

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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December 2, 2019

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