THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No.: 2017-CP-40-04048
Appellate Case No,: 2018-001134

Glenda R. Couram ..... Appellant,

v.

Nationwide Mutual Insurance Company, Titan Indemnity Company, Eugene Matthews, in his individual capacity, Sherwood Plumbing SVC, LLC, dba and Beatrice T. Tidwell, Rick Skurko, in his official and individual capacity and Tracey Peer, in her official and individual capacity ..... Respondents.

FINAL BRIEF OF RESPONDENT MATTHEWS

Eugene H. Matthews
Richardson Plowden & Robinson, P.A.
Post Office Drawer 7788
Columbia, South Carolina 29202
T: (803) 771-4400
F: (803) 779-0016
E-mail: gmatthews@RichardsonPlowden.com

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II. DID THE COURT OF COMMON PLEAS CORRECTLY FIND THAT THE APPELLANT'S MOTION TO AMEND HER COMPLAINT WAS FUTILE?

STATEMENT OF THE CASE

Appellant originally filed her Complaint in this action on July 3, 2017.

Respondent Matthews (hereinafter "Matthews") filed an Answer on July 14, 2017 and a Motion for Judgment on the Pleadings and for Sanctions on July 17, 2017.

Shortly thereafter, on July 19, 2017, Appellant filed her Amended Complaint. On July 21, 2017, Matthews filed his Answer to the Amended Complaint, and contemporaneously filed his Supplement to the Motion for Judgment on the Pleadings and for Sanctions.

On December 6, 2017, Plaintiff filed a Motion for Leave to Amend her Complaint.

The matter came before the Richland County Court of Common Pleas on February 12, 2018. Following the hearing, on April 20, 2018, the Court issued its Order dismissing Appellant's claims and denying her Motion for Leave to Amend her Complaint.

Appellant filed a Motion to Reconsider in early May 2018, which the Richland County Court of Common Pleas denied on May 16, 2018.

Appellant filed her Notice of Appeal on or about June 18, 2018.

STATEMENT OF FACTS

I. The Prior Action.

As noted by the Court of Common Pleas, this action arises out of a September 18, 2015, automobile accident involving Appellant and Defendant Sherwood Tidwell. On April 12, 2016, Appellant 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.*, C/A. No. 2016-CP-40-02350 (hereinafter the "Prior Action" or "Tidwell I"). In that suit, Appellant 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 $20,000.00 to Plaintiff in full compromise and settlement of her claims. Appellant rejected Mr. Tidwell's offer. The case was heard by a jury and on June 16, 2017, a verdict was rendered in favor of Appellant in the amount of $1,000.00.

Matthews is an attorney with Richardson Plowden & Robinson, P.A. He has defended numerous defendants in four (4) separate lawsuits brought by the Appellant, including the South Carolina Department of Motor Vehicles ("SCDMV"), her former supervisors and co-workers, Judiciary officials, and others. Notably, he did not represent any party in "Tidwell I," but assisted SCDMV in responding to subpoenas issued in that case, and accompanied an SCDMV employee who testified at the trial.

II. The Current Action.

Appellant attempted to bring the following causes of action[1] against Matthews:

1. Second Cause of Action – Intentional Infliction of Emotional Distress, alleged against Defendants Nationwide, Titan, and Matthews.

2. Third Cause of Action – Negligent Infliction of Emotional Distress alleged against Defendants Nationwide, Titan, and Matthews.

3. Fourth Cause of Action – Civil Conspiracy, alleged against Defendants Nationwide, Titan, and Matthews.

Appellant's Amended Complaint does not include separate factual allegations pertaining to the separate causes of action. Instead, her factual allegations were grouped together under the heading "Facts Common to All Causes of Action." These allegations undeniably and unambiguously relate to "Tidwell I." (Rec. on App. 27-29, ¶¶ 11-32). They can be categorized as follows:

- Paragraphs 11 through 19 describe the car accident in which she was involved on September 18, 2015, Mr. Tidwell's admission of fault for the accident, and her allegations concerning damages related to the accident. (Rec. on App pp 27-28, ¶¶ 11-19).

- Paragraph 20 references but misrepresents Judge Hood's Order. (Rec. on App. p. 28, ¶ 20).

- Paragraphs 21 through 26 describe Appellant's allegations of the course of settlement negotiations between the parties to "Tidwell I." Plaintiff does not reference the Offer of Judgment that was tendered in the amount of $20,000.00. (Rec. on App. pp. 28-29, ¶¶ 21-26).

- Paragraph 27 alleges that Appellant lost her employment with SCDMV on April 2, 2017. (Rec. on App. p. 29, ¶ 27).

[1] Appellant's First Cause of Action is not stated against Matthews. Appellant's Fifth Cause of Action – stated simply as "Punitive Damages" – is not a separate cause of action, but a type of damage Appellant apparently wished to seek relative to other causes of action.

- Paragraph 28 alleges that "Defendant Eugene Matthews entered the picture and a second subpoenaed request for plaintiff's employment records causing the plaintiff additional suffering [*sic*]." (Rec. on App. p. 29, ¶ 28).

For instance, in Paragraph 10 of her Amended Complaint (Rec. on App. p. 26,) (re-stated in ¶ 12 of her proposed Second Amended Complaint, Rec. on App. p. 66), Appellant claims that her lawsuit is timely because it is within three years of the date of the automobile accident in "Tidwell I" – September 18, 2015.

On December 6, 2017, Appellant filed a Motion for Leave to Amend her Complaint, in which she sought to add a Sixth Cause of Action for "Common Law Tortious Interference with Economic, Business Relationship and Legal Malice."[2] More specifically, Appellant identified the "business relationship" at issue as her employment with SCDMV.[3] She claimed that the Respondents interfered with her employment at SCDMV by "subpoenaing her employment records twice, eliciting help from two other attorneys to call the plaintiff employer and emailing her to instigate a employment problem that directly lead to her termination" [*sic*]. (Rec. on App. p. 77, ¶ 79). She also described these acts as "making and maintaining unnecessary contact with the employer and its attorney disrupting the relationship leading to Plaintiff termination" [*sic*]. (Rec. on App. p. 77, ¶ 80). The Court interpreted Appellant's proposed amendment as an attempt

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[2] In her proposed Second Amended Complaint, filed in December 6, 2017, the allegations are found at Rec. on App. p. 66-69, ¶¶ 13-34, termed as her "General Allegations," and are nearly identical to "Facts Common to All Causes of Action" found in the Rec. on App. p. 27, ¶¶ 11-32 in her Amended Complaint.

[3] The Court of Appeals may take judicial notice under Rule 201, SCRE, that the State Employee Grievance Committee upheld the Appellant's termination from employment with SCDMV by Order dated September 25, 2018 (2nd Am. Rec. on App. p. 454-462).

to state a claim for "tortious interference the contract." *Ross v. Life Ins. Co. of Virginia*, 273 S.C. 764, 766, 259 S.E.2d 814, 815 (1979).

III. Dismissal of Appellant's Complaint.

The Court dismissed Appellant's two causes of action against Matthews. First, regarding her claim for Intentional Infliction of Emotional Distress, the Court found that Appellant did not sufficiently allege that the Respondents engaged in "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.'" (Rec. on App. p. 5). The Court also found that Appellant failed to sufficiently allege that she "has suffered sufficiently severe emotional distress to support her emotional distress claim." *Id.*, (Rec. on App. p. 7. In detail, the Court found as follows:

> In [her] Complaint, Plaintiff [Appellant] 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.

Id., Rec. on App. p. 8.

Second, regarding the civil conspiracy claim, the Court found that the Appellant'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." *Id.*, Rec. on

App. p. 9. Appellant's allegations also failed to establish wrongful intent by the Respondents to injure her. *Id.*, Rec. on App. p. 10.

IV. Denial of Appellant's Motion to Amend.

In her Motion to Amend, Appellant sought leave to add an additional claim against Matthews for "tortious interference with contract."[4] The claim related to her termination from employment with SCDMV. The Court denied the motion on two separate grounds, each leading to the conclusion that Appellant's proposed allegations failed to state claim, and were therefore futile.

First, Appellant's allegations failed to sufficiently address the intent of the Appellees to secure a "breach" of the employment agreement, or that their actions actually caused the breach.

> Plaintiff's allegations charge that Defendants took the following actions: (1) subpoenaed her employment records; (2) contacted her employer; and (3) emailed either Plaintiff or her employer. Noticeably missing from Plaintiff's Proposed Amended Complaint is any allegation of how these alleged acts caused the termination of Plaintiff's employment. It is also not clear from Plaintiff's Proposed Amended Complaint to which Defendant she attributes each alleged act. Viewing these allegations in the light most favorable to Plaintiff, they do not create a reasonable inference that Defendants intended to procure the breach of Plaintiff's employment contract with the South Carolina Department of Motor Vehicles or that their actions proximately caused the alleged breach.

(Rec. on App. p. 19).

Second, the Court noted that Appellant admitted in her proposed Amended Complaint that she could be terminated "for cause" from her employment. (Rec. on App. p. 77-78, ¶¶ 79, 91). The proposed Amended Complaint also alleged that "she was dismissed on the grounds of

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[4] In denying Appellant's motion, the Court also noted that Appellant failed to state any claim for "negligent" infliction of emotional distress, observing that such a claim was not recognized in South Carolina law outside the context of bystander recovery. (Rec. on App. p 16).

intentional misconduct." (Rec. on App. p. 79, ¶ 100). Based on these allegations, the Court noted that if SCDMV "could terminate her employment for cause and had cause, then there is no breach as required for recovery under this cause of action." (Rec. on App. p. 8).

ARGUMENT

I. THE COURT OF COMMON PLEAS CORRECTLY DISMISSED APPELLANT'S CLAIMS AGAINST RESPONDENT MATTHEWS FOR THE REASONS STATED IN ITS ORDER, OR FOR REASONS OTHERWISE SUPPORTED IN THE RECORD.

A. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

In her Initial Brief, Appellant raises no new issues regarding her claim for intentional infliction of emotional distress, other than stating in conclusory fashion that she "has alleged that the Respondents' actions went beyond the bounds of decency and considered [*sic*] intolerable in a civilized community." (Appellant's Brief, p. 16).

In the end, Appellant has made only cryptic and fleeting references to Matthews in her pleadings, listed as follows:

- In Paragraph 28 of her Amended Complaint (Rec. on App. p. 29), she alleges that "Defendant Eugene Matthews entered the picture and a second subpoenaed request for plaintiff employment records causing the plaintiff additional suffering [*sic*]." The meaning of this vague allegation is not apparent. In any event, Matthews assisted SCDMV in its response to subpoenas issued in "Tidwell I," and communicated with counsel for Mr. Tidwell regarding these subpoenas. Matthews also accompanied an SCDMV witness to the hearing in "Tidwell I."

- In Paragraph 46 of her Amended Complaint (Rec. on App. p. 32), Appellant makes a conclusory allegation that Matthews and Nationwide engaged in "malicious and/or oppressive conduct" that "was in reckless disregard of Plaintiff's [*sic*] and therefore warrants imposition of punitive damages, especially in influencing and controlling the outcome of the trial." She makes no allegation as to *how* Matthews might have influenced and controlled the outcome of the trial.

- In Paragraph 48 of her Amended Complaint (Rec. on App. p. 32), she alleges that the "Attorney for Nation [*sic*] and Matthews met several times in full view in fact

> ensured she saw them outside the courthouse, inside the court housing [*sic*] – even when neither were required to be present on the day of meetings, April 27th etc., the relationship between judge and Matthews and other actions that will be proven at trial."

Given the sparse nature of Appellant's allegations – that Matthews was involved in responding to Tidwell's subpoena to SCDMV for her employment records, accompanied an SCDMV employee who was subpoenaed to the trial of "Tidwell I," and was present for at least part of trial of "Tidwell I" – her allegations fail to state such a claim. As the trial court noted, Appellant must show that the alleged conduct is so "extreme and outrageous" as to exceed "all possible bounds of decency" and be regarded as "atrocious, and utterly intolerable in a civilized community." *Gattison v. South Carolina State College*, 318 S.C. 148, 151, 456 S.E.2d 414, 416 (S.C. App. 1995) (stating elements of IIED claim); *Hansson v. Scalise Builders of South Carolina*, 374 S.C. 352, 650 S.E.2d 68 (2007) (summary judgment reinstated for the defendant-employer, where the plaintiff alleged that, during his three years of employment, his coworkers and supervisor constantly derided him with vulgar remarks and gestures related to homosexuality).

Here, Appellant's allegations against Matthews, even if taken as true, are wholly insufficient to meet the demanding standards set by South Carolina law in stating a claim for an intentional infliction of emotional distress.

B. CIVIL CONSPIRACY.

Similarly, Appellant has raised no new issues regarding her claim for civil conspiracy. Curiously, she argues that she has adequately alleged special damages related to her civil conspiracy claim. (Appellant's Brief, pp. 17-18). This was not a ground on which the trial court dismissed the claim.

In any event, Appellant has failed to allege sufficiently a claim for civil conspiracy. South Carolina courts have held that "[t]he tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage." *Hackworth v. Greywood at Hammett, LLC,* 385 S.C. 110, 115, 682 S.E.2d 871, 874 (S.C. App. 2009) (citations omitted). Also, "[a] claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than reallege other claims within the Amended Complaint," and "because the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other cause of action." *Id.* (internal citations omitted).

In this case, Appellant makes no factual allegations regarding the civil conspiracy claim that differ from her other claims. In fact, she relies on her allegations in the "Facts Common to All Causes of Action" section of her Amended Complaint to support all of her claims, including the civil conspiracy claim. For that reason, the Court could readily find that the Appellant'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." (Rec. on App. p. 9).

Appellant also does not address the Court's finding that her allegations failed to establish wrongful intent by the Appellees to injure her. *Id.*, Rec. on App. p. 10. For this reason alone, her civil conspiracy claim must fail.

C. PRIVILEGE.

Although not addressed by the trial court, Appellant's allegations all pertain to the acts of Matthews that are part of the judicial process. As such, these acts are absolutely privileged and

cannot form the basis of an action, including the causes of action that Plaintiff seeks to bring in this case. *Crowell v. Herring*, 301 S.C. 424, 430, 392 S.E.2d 464, 467 (S.C. App. 1990) ("We hold the absolute privilege exists as to any utterance arising out of the judicial proceeding and having any reasonable relation to it, including preliminary steps leading to judicial action of any official nature provided those steps bear reasonable relation to it."); *see also Kovach v. Whitley*, C/A No. 2015-CP-08-02380, at *18, Court of Common Pleas of Charleston County (Slip Op Exhibit to Matthews' Supplement to Motion for Judgment on the Pleadings and for Sanctions filed July 21, 2017) (Chief Justice Toal found acts that are "part of the judicial process are absolutely privileged and cannot be the basis for a civil conspiracy claim.") (Rec. on App. p. 277).

For this reason alone, Appellant's claims were properly dismissed with prejudice.

II. THE COURT OF COMMON PLEAS CORRECTLY FOUND THAT THE APPELLANT'S MOTION TO AMEND HER COMPLAINT WAS FUTILE.

As referenced above, the Court interpreted Appellant's proposed amendment as an attempt to state a claim for "tortious interference with contractual relations." The elements for such a claim are (1) existence of a valid contract, (2) the wrongdoer's knowledge of the contract, (3) the wrongdoer's intentional procurement of a breach of the contract, (4) the absence of justification, and (5) resulting damages. *Dutch Fork Dev. Grp. II, LLC v. SEL Properties, LLC*, 406 S.C. 596, 604, 753 S.E.2d 840, 844 (2012); *Camp v. Springs Mortgage Corp.*, 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993). "[A]n action for tortious interference protects the property rights of the parties to a contract against unlawful interference by third parties." *Threlkeld v. Christoph*, 280 S.C. 225, 227, 312 S.E.2d 14, 15 (S.C. App. 1984). "Therefore, it does not protect a party to a contract from actions of the other party." *Id.*

As noted by the Court, Appellant's proposed claim failed because her allegations failed to address issues of causation and intent in a sufficient manner.

Moreover, with regard to Matthews, there are two other grounds upon which the proposed claim fails. Even presuming that a public employee can bring such a claim,[5] Appellant's claim fails because (1) Matthews, as the attorney for SCDMV, was not a "stranger" to the contract, and (2) Appellant has failed to allege any acts that would constitute an "absence of justification."

Although no reported South Carolina case is on point, there are several cases from Georgia that stand for the proposition that a party cannot bring a tortious interference with contract claim against the attorney of the other party to the contract. *Hyre v. Denise,* 449 S.E.2d 120, 124-125 (1994); *Watkins & Watkins, P.C. v. Colbert*, 516 S.E.2d 347, 350 (1999); *see also Atlanta Mkt. Ctr. Mgmt., Co. v. McLane*, 503 S.E.2d 278, 282 (1998) ("[I]t has been held that the alleged interferer is not a stranger to the contract and thus not liable for tortious interference where the alleged interferer was the agent for one of the parties to the contract of insurance [i.e., the underwriter], and all the purported acts of interference were done within the scope of the interferer's duties as agent."). Such is also the natural rule in South Carolina, where clients are generally bound by their attorneys' acts or omissions during the course of the legal representation that fall within the apparent scope of their attorneys' authority. *Koutsogiannis v. BB & T*, 365 S.C. 145, 149, 616 S.E.2d 425, 428 (2005).

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[5] As a covered state employee, Appellant's employment status is governed by statute rather than contract. Specifically, Appellant challenged the basis of her termination before the State Employee Grievance Procedure Act, S.C. Code Ann. § 8-17-310, *et seq.* As referenced above, the State Employee Grievance Committee upheld Appellant's termination from SCDMV. (2nd Am. Rec. on App. p. 454).

Furthermore, Appellant's allegations failed to note how Matthews acted outside the scope of his duty as an attorney for SCDMV. If he assisted SCDMV with responding to subpoenas, accompanied an SCDMV employee to the trial, and conferred with Tidwell's counsel concerning the subpoenas, there is no allegation that he acted outside the scope of his duty as an attorney to SCDMV, and thus there can be no absence of justification for his actions. *See also Bradburn v. Colonial Stores, Inc.*, 273 S.C. 186, 188, 255 S.E.2d 453, 455 (1979) ("It is generally recognized that when a contract is breached by a corporation as the result of the inducement of an officer or agent of the corporation acting on behalf of the corporation and within the scope of his employment, the inducement is privileged and is not actionable.").

For this reason, the Court correctly found that Appellant's proposed claim against Matthews was futile, and properly denied her Motion to Amend her Complaint. *Jennings v. Jennings,* 389 S.C. 190, 209, 697 S.E.2d 671, 681 (S.C. App. 2010), *rev'd on other grounds,* 401 S.C. 1, 736 S.E.2d 242 (2012) ("Although leave to amend should generally be 'freely given,' this court has held that it may be denied where the proposed amendment would be futile.").

CONCLUSION

For the reasons stated above, the undersigned respectfully requests that the decision of the Court be AFFIRMED.

Dated this the 17th day of July, 2019.

(Signature follows on next page)

Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.

Eugene H. Matthews
Post Office Drawer 7788
Columbia, South Carolina 29202
T: (803) 771-4400
F: (803) 779-0016
Email: gmatthews@RichardsonPlowden.com

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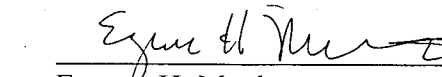
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

Dated this 18th day of July, 2019.

Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.



Eugene H. Matthews
Post Office Drawer 7788
Columbia, South Carolina 29202
T: (803) 771-4400
F: (803) 779-0016
Email: gmatthews@RichardsonPlowden.com

APPEARING AS COUNSEL FOR HIMSELF