

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )  
 )  
 Elizabeth Cox, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Bishop England High School, Patrick )  
 Finneran, Individually, and Unknown )  
 Defendants A, B, C and D, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT

**RECEIVED**  
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 SC Court of Appeals

Case No. 2019-CP-08-1720

**ORDER DENYING DEFENDANTS'  
 MOTION TO DISMISS PURSUANT TO  
 RULES 12(b)(1) and/or 12(b)(6)**

**THIS MATTER** is before the court on a Motion of the Defendants to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6). Based upon this court's file, the information provided and evidence, Memoranda, and the arguments provided by the parties, the court denies the Motion to Dismiss.

**I. BACKGROUND**

Plaintiff was a teacher at Bishop England High School ("BEHS"). Plaintiff alleges Defendants terminated her employment in breach of the Teacher Employment Contract and in violation of public policy ("WDPP").

According to Defendants' discharge letter (Pl.'s First Am. Compl. Ex. 2), Plaintiff was fired for "re-posting" on Plaintiff's Facebook page three posts:

1. Debra Messing's (of Will & Grace fame) post of a statement made by Gloria Steinem where she compares the procedure a man must follow to obtain a gun to the procedure a woman must follow in obtaining an abortion;
2. Scott Osman's post challenging those who are "pro-life" to support other positions consistent with pro-life; and

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3. A Washington Post headline about Leslie Jones (a Saturday Night Live comedian) and Saturday Night Live and comments that it is “hypocrisy on steroids . . . and they really aren’t pro-life but rather only pro-birth.”

Defendants ask the court to dismiss the WDPP cause of action brought by Plaintiff under Rule 12(b)(1) because “civil courts lack subject matter jurisdiction over this claim because they arise out of ecclesiastical matters” and to dismiss both causes of action under Rule 12(b)(6) “for failure to state facts sufficient to constitute a cause of action.” (Defs.’ Motion to Dismiss).

**II. RULE 12(b)(1)**

**A. Rule 12(b)(1) Standard.**

“Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong.” Storm M.H. v. Charleston Cnty. Bd. of Trustees, 400 S.C. 478, 735 S.E.2d 492, 497 (2012). “A motion to dismiss for lack of subject matter jurisdiction may attack the Complaint on its face or be made as a ‘speaking’ motion attacking the existence of jurisdiction in fact. When the issue is the existence of jurisdiction in fact, the court is not confined to the allegations of the Complaint but may resort to affidavits or other evidence to determine its jurisdiction.” Springmasters, Inc. v. D & M Manufacturing, 303 S.C. 528, 402 S.E.2d 192, 194 (S.C. Ct. App. 1992).

The Parties have filed ample evidence and information to support their respective positions. Defendants argue the WDPP cause of action should be dismissed as an ecclesiastical matter. Plaintiff argues that Plaintiff’s Facebook posts are not a ecclesiastical or internal church matter that qualifies as internal religious disputes.

**B. This Matter Involves Plaintiff's Civil and Contract Rights.**

Defendants claim this court does not have subject matter jurisdiction because this is an ecclesiastical matter. As a general rule, a controversy involving an ecclesiastical matter does not mean that a civil court lacks subject matter jurisdiction. Civil courts have subject matter jurisdiction over ecclesiastical matters when they involve a Plaintiff's civil or contract rights, and when the matter does not involve an internal church dispute over issues such as church administration or church membership.

"It is not the function of the courts to decide procedure for a church to follow;" "[g]enerally, a civil court has no authority to intervene in cases involving expulsion from church membership where there is no question of an invasion of a civil, property or contract right." McCain v. Brightharp, 399 S.C. 240, 730 S.E.2d 916, 919 (S.C. Ct. App. 2012) (quoting Bowen v. Green, 275 S.C. 431, 434, 272 S.E.2d 433, 434 (1980)). But, "civil courts do have jurisdiction as to civil, contract and property rights which are involved in a church controversy." Pearson v. The Church of God, 325 S.C. 45, 478 S.E.2d 849, 852 (1996) (quoting Bramlett v. Young, 229 S.C. 519, 537-38, 93 S.E.2d 873, 882 (1956)).

This appears to be at dispute between only BEHS—which is not a church—and its former employee. Defendants have failed to establish this matter involves an internal church controversy of which the church has sole jurisdiction.

**C. The Employment Contracts Dictate Civil Court Jurisdiction.**

Defendants argue this court does not have subject matter jurisdiction over Plaintiff's civil claim for WDPP, but admits this court has subject matter jurisdiction over Plaintiff's breach of contract claims. In pertinent part, the Parties' employment contract states:

8. **Forum Selection/Waiver of Jury Trial:** The parties hereby agree that any disputed or controversy arising under, in connection or in any way related to this

Contract, the services rendered pursuant to this Contract, or in any way connected to Teacher's employment and/or termination therefrom shall be heard in the state and/or federal courts having jurisdiction in Charleston County, South Carolina.

As to subject matter jurisdiction, this court finds no legal difference between a civil claim for WDPP and a civil claim for breach of contract. Both claims allege Plaintiff's rights under civil law have been violated because "interpretation of an unambiguous agreement is for the court." Pearson, 478 S.E.2d at 853 (internal citation omitted). There is no legal difference between these two claims as to whether this court has subject matter jurisdiction over Plaintiff's civil rights and the court is bound to give effect to the Parties' unambiguous agreement.

**D. Plaintiff Engaged in Protected Political Speech and Expression.**

Defendants argue that Plaintiff's reliance on Vanderhoff v. John Deere Consumer Prods., 2003 WL 23691107 (D.S.C. 2003), an unreported case with no precedential value, is not sufficient to establish that Plaintiff's Facebook posts were political opinions or protected political speech under S.C. Code Ann. § 16-17-560. Whether these posts are political opinions or protected political speech is a disputed question of fact.

**III. RULE 12(b)(6)**

**A. Rule 12(b)(6) Standard.**

"In considering a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, the circuit court must base its ruling solely upon the allegations set forth on the face of the complaint. The motion may not be sustained if the facts alleged in the complaint and the inferences drawn therefrom would entitle the Plaintiff to relief under any theory. 'Pleadings in a case should be construed liberally and the court must presume all well-pled facts to be true so that substantial justice is done between the parties.'" Charleston Cnty. Sch. Dist. v. Harrell, 393 S.C. 552, 557, 713 S.E.2d 604 (2011) (internal citations omitted) (emphasis added).

**B. Plaintiff's Contract Causes of Action.**

To recover for breach of contract, a Plaintiff must prove: (1) a contract was entered into between the parties, (2) breach of that contract or an unjustifiable failure to perform under the contract, and (3) damages suffered by the Plaintiff as a result of the breach. Fuller v. E. Fire & Casualty Ins. Co., 240 S.C. 75, 124 S.E.2d 602, 610 (1962). Here, the Plaintiff alleges: (1) Plaintiff and Defendants entered into a contract of employment (Pl.'s First Am. Compl. ¶ 12, Exs. 1, 3), (2) Defendants breached the contract by terminating Plaintiff even though Plaintiff was satisfactorily performing her contractual duties and Defendants had no contractual reason to fire Plaintiff (id. at ¶¶ 14-16, 19, 27-30), and (3) Plaintiff suffered damages as a proximate result of Defendants breaching the Teacher Employment Contract (id. at ¶ 31).

Because Plaintiff alleges all elements of breach of contract therefore the Rule 12(b)(6) Motion of Defendant to Dismiss the contract causes of action is DENIED.

**C. Plaintiff's Claim for Wrongful Discharge in Violation of Public Policy.<sup>1</sup>**

Plaintiff claims that Defendants discharged her in violation of public policy for posting political opinions on her personal Facebook page, which can rise to a violation of criminal law (see S.C. Code § 16-17-560). To establish this cause of action, a Plaintiff must allege: (1) she was an employee, (2) there is a "clear mandate of public policy" against discharging an employee because of her political opinions or for exercising her rights under the South Carolina Constitution, and (3) she was fired because of her political opinions or for engaging in free speech identified in S.C. Code Ann. § 16-17-560 (as amended) (which statute makes it a crime to "discharge a citizen from employment . . . because of political opinions or the exercise of political rights and privileges

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<sup>1</sup> Because Rule 8(e), SCRCP, entitles a Plaintiff to "set forth two or more statements of a cause of action or defense alternatively or hypothetically," this Plaintiff may allege a breach of employment contract along with a cause of action available only to an at-will employee, such as WDPP.

guaranteed to every citizen by the Constitution and laws of . . . this State.”) Culler v. Blue Ridge Elec. Coop., Inc., 309 S.C. 243, 422 S.E.2d 91, 92 (1992) (citing Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 337 S.E.2d 213 (1985)).

Here, Plaintiff alleges: (1) she was employed by the Defendants (Pl.’s First Am. Compl. ¶¶ 11-12, 14), (2) the South Carolina Supreme Court has determined that discharging an employee because of their political opinions or for exercising Constitutional rights “violates a clear mandate of public policy.” (Culler, 422 S.E.2d at 92-93) (Pl.’s First Am. Compl. ¶ 22-23), and (3) Defendants fired her because of her political opinions (Pl.’s First Am. Compl. ¶¶ 15, 17, 19; Pl.’s First Am. Compl. Ex. 2). Therefore, Plaintiff has alleged all of the necessary elements to establish this cause of action.

Defendants argue that in addition to the aforementioned elements, Plaintiff must prove Defendants committed a criminal act. However, Defendants failed to identify any legal authority in support of this position. Because this is a civil matter in which Plaintiff alleges all elements outlined in Culler and the Culler court holds that a Plaintiff who alleges a discharge for a reason set forth in S.C. Code Ann. § 16-17-560 can establish WDPP, as well as the Defendants’ lack of authoritative law to support the claim that Plaintiff must prove Defendant committed a criminal act, the Motion to Dismiss is DENIED.

**V. CONCLUSION**

For the reasons stated above, the Motion to Dismiss is DENIED.

**AS IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
CLIFTON NEWMAN  
PRESIDING JUDGE



Berkeley Common Pleas

**Case Caption:** Elizabeth Cox VS Bishop England High School , defendant, et al  
**Case Number:** 2019CP0801720  
**Type:** Order/Other

So Ordered

s/ Clifton B. Newman, 2127

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