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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
In The Circuit Court

Honorable R. Lawton McIntosh, Circuit Court Judge

Appeal No.: 2017-002564

Martha "Linda" Lusk, Ph.D……….…………………………Appellant

v.

Jamie L. Verderosa..……………………..………..…………….Respondent

PETITION FOR REHEARING

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Pursuant to Rules 221 and 240, SCACR, the Appellant Martha "Linda" Lusk, Ph.D. petitions this Court to rehear its opinion in *Lusk v. Verderosa*, Op. No. 5741 (S.C. Ct. App. filed July 8, 2020). In affirming the decision of the circuit court judge, the Court overlooked or misapprehended the following points:

1. In affirming the circuit court's ruling, the Court erred by finding that "Based on our review of the record, we find Lusk's own actions precipitated the District's decision to place her on administrative leave for the remaining two months of the 2012-2013 school year … ." (**Opinion, p. 7**) Much like the circuit court below, the Court decided an issue that should have been a fact presented to a jury. A jury could have reasonably found that an email sent in March to the wrong party by Dr. Lusk was not the real reason that Dr. Lusk was placed on administrative leave for the rest of the academic year and *prohibited from stepping foot on the WOMS campus ever again* (**R. pp. 102-103**) because Verderosa also mis-sent a confidential email to the wrong recipient, *and received NO disciplinary action whatsoever for it*, let alone the Draconian and harsh punishment doled out to Dr. Lusk, a 30 year employee of the District with a *spotless* disciplinary record until Respondent Verderosa came along (**R. pp. 209-210**).

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c), summary judgment is proper only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 611 S.E.2d 922 (2005); *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004). In determining whether any triable issue of

fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004); *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005). If triable issues exist, those issues must go to the jury. *Mulherin-Howell v. Cobb*, 362 S.C. 588, 608 S.E.2d 587 (Ct. App. 2005). In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment, abrogating *Shelton v. LS K, Inc.*, 374 S.C. 294, 648 S.E.2d 307; *Bravis v. Dunbar*, 316 S.C. 263, 449 S.E.2d 495. *Hancock v. Mid-South. Mgmt. Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

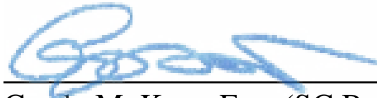
2. The Court also misapprehended the reading of the last sentence of S.C. Code Ann. §59–24–15 to provide virtually no protections at all for administrators for the current term of their administrator's contract. Essentially, under the Court's reading of S.C. Code Ann. §59–24–15, having a contract for an Administrator's position in South Carolina would essentially be wholly toothless because not only could Administrators be removed from their position and salary at the end of the contract year without a full, adversarial hearing as provided by S.C. Code Ann. §59–25–460 of the Teacher Act, but they could also be demoted and their salary slashed mid-contract for *no reason at all.* Surely, this reading is not what Legislature intended when writing that "Any such administrator who presently is under a contract granting such rights shall retain that status until the expiration of that contract." A more reasonable reading would be that an Administrator is not entitled to continue year to year as an Administrator, but, rather, only as a teacher. However, for the year that the Administrator's contract is actually in

place, they are entitled to such until the end of that contract year.

Thus, the Court's finding that Lusk "failed to prove the first element of a cause of action for tortious interference with contract—the existence of a valid contract guaranteeing her a right to the position and salary of an administrator" (**Opinion, p. 7**) until the end of AY 2012-2013 should also be reheard.

Accordingly, Appellant Dr. Lusk requests this Court grant this Petition for Rehearing, permit oral argument, withdraw its opinion, and issue a new opinion reversing the circuit court judge's ruling that Verderosa be granted Summary Judgment on Dr. Lusk's tortious interference with contract claim.

Respectfully submitted,



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