THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2021-000827

Aretha Elizabeth Bennett,

Appellant,

v.

Theola Pitts and Colleton County School District,

Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA COUNTY OF COLLETON Aretha Elizabeth Bennett, Plaintiff, vs. Theola Pitts and Colleton County School District, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2019-CP-15-00138 **ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER**

The Plaintiff Aretha Elizabeth Bennet filed a motion asking this Court to reconsider its June 16, 2021 Order Granting Summary Judgment to the Defendants. Specifically, Plaintiff asks the Court to reconsider the statute of limitations and Plaintiff's argument for equitable tolling.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savanah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e) relief).[1] Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinston v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, "[a] party cannot use Rule 59(e) to present to

[1] Rule 59 is substantially the same as the Federal Rule. *See* Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.").

the court an issue the party could have raised prior to judgment but did not." Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does "[a] party's mere disagreement with the court's ruling . . . warrant a Rule 59(e) motion." In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat'l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Plaintiff's motion and memorandum in support, the Court hereby DENIES Plaintiff Aretha Elizabeth Bennett's Motion to Reconsider.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW

Colleton Common Pleas

Case Caption: Aretha Elizabeth Bennett VS Theola Pitts , defendant, et al

Case Number: 2019CP1500138

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	CIVIL CASE NO. 2019-CP-15-00138
ARETHA ELIZABETH BENNETT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**ORDER GRANTING**
	)	**SUMMARY JUDGMENT**
THEOLA PITTS and COLLETON COUNTY SCHOOL DISTRICT,	)	
	)	
Defendants.	)	
	)	

This matter came before the Court on Defendants' Motion for Summary Judgment on the grounds that Plaintiff's claims against Defendants are barred by the running of the two-year statute of limitations provided by the South Carolina Tort Claims Act.

Summary judgment is appropriate when there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. SCRCP 56(c). When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Summer v. Carpenter, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997). "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." Sides v. Greenville Hosp. Sys., 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

Plaintiff filed this action against Defendants on February 22, 2019, alleging that "Defendant Theola Pitts is employed by Defendant Colleton County School District as a culinary arts teacher" and that "[i]n May 2016, Defendant Pitts communicated to her class . . . that

Plaintiff had forced her daughter to have an abortion after she became pregnant at age eleven (11)." Plt. Complt. ¶¶ 5 and 7. Plaintiff is asserting claims for defamation, slander, negligent retaintion, and invasion of privacy.

South Carolina Code Section 15-78-70 states that the South Carolina Tort Claims Act "constitutes the exclusive remedy for any tort committed by an employee of a governmeant entity." The South Carolina Tort Claims Act provides a statute of limitation of two-years, unless a verified claim, which is required to be under oath, is made within one year of the alleged incident. S.C. Code §§ 15-78-80; 15-78-110; Pollard v. County of Florence, 314 S.C. 397, 444 S.E.2d 534 (S.C. App. 1994).

The Tort Claims Act controls this case because Plaintiff filed this action asserting that Defendant Pitts was an employee of Colleton County School District when she defamed Plaintiff. The record contains no evidence that Plaintiff submitted a verified claim. Therefore the three-year statute limitations does not apply. Rather, the two-year statute of limitations is applicable.

The Plaintiff testified in her deposition that the alleged occurred in May 2016, and she learned of the alleged defamatory remarks on the same day as that the alleged defamatory remarks were made. Accordingly, the two-year statute of limitation started to run in May 2016, and the statute of limitations would have run by the end of May 2018.

Plaintiff filed this action on February 22, 2019, which is eight months after the running of the two-year statute of limitation. Therfore, Plaintiff's claims are barred under the two-year staute of limiations and Defendants are entitled to summary judgment as to all Plaintiff's claims.

For the forgoing reasons, the Court **GRANTS** Defendants' Motion for Summary Judgment as to Plaintiff's claims against Defendant Theola Pitts and Defendant Colleton County School District.

AND IT IS SO ORDERED.

_____, 2021
Charleston, South Carolina

_____
Honorable Bently D. Price
Presiding Judge
Fourteenth Judicial Circuit

Colleton Common Pleas

Case Caption: Aretha Elizabeth Bennett VS Theola Pitts , defendant, et al

Case Number: 2019CP1500138

Type: Order/Summary Judgment

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	CIVIL CASE NO. 2019-CP-15-00138
ARETHA ELIZABETH BENNETT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER**
	)	
THEOLA PITTS and COLLETON COUNTY SCHOOL DISTRICT,	)	
	)	
Defendants.	)	
	)	

Defendants, Theola Pitts and Colleton County School District (hereinafter referred to as "Defendants"), submit this memorandum in reply to Plaintiff's Motion to Reconsider. Plaintiff's Motion to Reconsider should be denied because (1) Plaintiff never submitted a verified claim, which under South Carolina law is required to be under oath and within one year from the date of the action giving rise to the claim; and (2) Plaintiff has failed to present evidence showing that she reasonably relied on words or conduct of any representative of Defendant in allowing the limitations period to expire.

Plaintiff argues in her motion that the Court erred in finding that the three-year statute of limitations under the Tort Claims Act did not apply because Plaintiff did not submit a verified claim. In support, Plaintiff references a letter Plaintiff's attorney sent to Defendant dated March 29, 2018, which was attached as Exhibit 1 to Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment. However, this letter is not a "verified claim" under South Carolina law and was not sent within the time limits of the Tort Claims Act.

The Court of Appeals has specifically addressed this issue in Searcy v. South Carolina Dept. of Educ., Transp. Div., 402 S.E.2d 486, 303 S.C. 544 (S.C. App. 1991). In that opinion,

the Court affirmed "[t]he trial court . . . [who] granted SCDOE summary judgment because Searcy failed to to commence [the] action within two years after the date she discovered her loss." Id. The Court of Appeals noted that the trial court "rejected Searcy's contention that she had three years from the date of low within which to bring [the] action because she had filed a claim pursuant to the Tort Claims Act . . ." Id.

The Court of Appeals in Searcy stated that "[t]he Tort Claims Act offers a person two methods by which the person can seek damages for a loss." Id. The Court further stated that a person can file a claim with "State Budget and Control Board, appropriate state agency, the appropriate political subdivision . . . a claim 'setting forth the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, and the amount of the loss sustained ...' or the person "[can] institute an action against the appropriate agency or political subdivision' irrespective of "[w]hether or not [a] claim is filed...."" Id. (quoting S.C. Code §§ 15-78-80(a) and 15-78-90(b)).

The Court of Appeals found that "[i]f a person chooses to employ the first method, Section 15-78-80 expressly requires the person to file a 'verified claim'..." Id. The Court also determined that "[w]ithout an oath, neither document can be considered as having been verified." See also Pollard v. County of Florence, 314 S.C. 397, 444 S.E.2d 534 (S.C. App. 1994) ("[t]o satisfy the verification requirement, the claim must be under oath: "Without an oath, [a] document can [not] be considered as having been verified.").

In this action, the Court correctly determined that the three-year statute of limitations did not apply because Plaintiff did not file a verified claim because the letter attached as Exhibit 1 to Plaintiff's Memorandum in Opposition to the Motion for Summary Judgment was not made under oath.

Furthermore, a verified claim "must be received within one year after the loss was or should have been discovered" pursuant to S.C. Code Section 15-78-80(d) in order for the three-year statute limitations to apply. Plaintiff's attorney's letter in Exhibit 1 to Plaintiff's Memorandum in Opposition of Defendants' Motion for Summary Judgment was dated March 29, 2018, which was nearly two years after the alleged defamation. Therefore, not only does this letter fail to meet the requirements of a verificed claim, the letter was not received within one year after the alleged loss which was at the end of May 2016.

Planitiff also asserts that equitable tolling of the statute of limitations should be applied to prevent manifest injustice. In her memorandum, Plaintiff accurately states that "[t]he party seeking to toll the statute of limitation bears the burden of establishing facts sufficient to justify its use." Plt. Motion to Reconsider (citing Hooper v. Ebenezer Sr. Services & Rehab. Ctr., 386 S.C. 108 (115(2009)). Plaintiff argues that "a defendant will be estopped to assert the statute of limitations in bar of a plaintiff's claim when the delay that otherwise would give operation to the statute has been induced by defendant's conduct." Id. (citing Dillon County School Dist. No. Two v. Lewis Sheet Metal Works, Inc., 286 S.C. 207, 332 S.E.2d 555 (S.C. App. 1985).

Court of Appeal in Dillon County School Dist. No. Two further stated that "[t]he doctrine is, of course, most clearly applicable where the aggrieved party's delay in bringing suit was caused by his opponent's intentional misrepresentation; but deceit is not an essential element of estoppel," and "[i]t is sufficient that the aggrieved party reasonably relied on the words and conduct of the person to be estopped in allowing the limitations period to expire."

In support, Plaintiff states "Plaintiff communicated diligently with the insurance agent in an attempt to resolve this matter outside of court;" and "Plaintiff's delay in filing an action was induced by defendant referring her to its insurance company for settlement." Plaintiff argues that

she "reasonably believed that her claim would be resolved without litigation" based on these actions. Refering a claim to an insurance company would not reasonably lead a person to believe that the matter would be resolved without litigation.

Additionally, Plainitff asserted in her Memoranum in Opposition to Defendant's Motion for Summary Judgment that "Defendants forwarded Plaintiff's claim to their insurance agency for investigation;" "Defendants' insurance agent never denied liability and made offers to settle Plaintifff's claim;" and "Plaintiff relied on these communications." Plaintiff supplemented her argument by attaching four documents as Exhibits. However, only two of Plaintiff's Exhibits to its Memorandum in Opposition to Defendant's Motion for Summary Judgment were written before the statute of limitations had run; and the contents of letters are more reasonably understood to indicate that Plaintiff's claim was **NOT** going to be been resolved without litigation because Plaintiff's demands were far greater that Defendant's offers.

Plaintiff's Exhibit 1 is Plaintiff's attorney's letter dated March 29, 2018, which was a demand for $300,000 to resolve the matter without litgation. Plaintiff's Exhibit 2 is a letter from Defendant's insurance adjuster dated April 17, 2018, informing Plaintiff's attorney that the insurance adjuster was retained to handle the claim. Plaintiff's Exhibit 3 is a letter from Defendant's insurance adjuster dated July 9, 2018, responding to Plaintiff's demand by offering to settle the claim for $15,000. Plaintiff's Exhibit 4 is another letter from Defendant's insurance adjuster dated August 29, 2018, noting that they were "in receipt of [Plaintiff's attorney's] email offer of $480,000 to settle both claims," and counter offer of $20,000 to settle the claims.

Only Plaintiff's Exhibit 1 and Exhibit 2 to her Memorandum in Opposition to Defendant's Motion for Summary Judgment were dated prior to the expiration of the two year statute of limitation - which was the end of May 2018. Plaintiff's Exhibit 3 and Exhibit 4 were

dated after the running of the two-year statue of limitation and could not have tolled the statute from expiring because it had already passed. Therefore, the only communications that Plaintiff has provided as evidence in support of equitable tolling is Plaintiff's Exhibit 2.

Plaintiff's Exhibit 2 to her Memorandum in Opposition of Defendant's Motion for Summary Judgment contained **NO** representations that could lead a reasonable person, or, in this case, Plaintiff's attorney, to believe that the claim would be resolved without litigation. This letter was just notifying Plaintiff's attorney that the claim had been assigned to that particular insurance adjuster. Therefore, Plaintiff has failed to meet her burden of establishing facts sufficient to justify the use of equitable tolling of the statute of limitations.

Even though Plaintiff's Exhibit 3 and Exhibit 4 could not have induced Plaintiff's attorney to let the statuate lapse because the letters were sent after the statute of limitations had already run, they also are evidence that the claim was not likely going to get resolved without litigation. Exhibit 3 contains a $15,000 offer in response to Plaintiff's $300,000 demand, and Exhibit 4 notes Plaintiff's last demand of $480,000 and defendant's last offer of $20,000. These figures are so far apart, no reasonable person would believe that the claim could be resolved without litigation. Therefore, Plaintiff has failed to establish any facts that would give rise to equitable tolling of the statute of limitations.

In conclusion, Plaintiff did not file a verified claim within one year of the date of the alleged defamation to give rise to a three year statute of limitations under the Tort Claims Act, and Plaintiff failed to establish facts sufficient to apply equitable tolling of the statute of limitations because there were no words and conduct by Defendant or its representative to reasonably rely on in allowing the limitations to expire. Accordingly, Plaintiff's Motion to Reconsider should be denied.

Respectfully submitted,

MCLEOD FRASER & CONE, LLC

/s/ Peden Brown McLeod, Jr.
Peden Brown McLeod, Jr., Bar No. 74967
111 East Washington Street
Walterboro, SC 29488
(843) 549-251
Attorneys for Defendants

June 28, 2021
Walterboro, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	) IN THE COURT OF COMMON PLEAS) FOURTEENTH JUDICIAL CIRCUIT
Aretha Elizabeth Bennett, Plaintiff, vs. Theola Pitts and Colleton County School District, Defendants.	) CIVIL ACTION NO. 2019-CP-15-00138 **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION TO RECONSIDER**

Plaintiff Aretha Bennett (hereinafter "the Plaintiff") hereby submits this memorandum of law in support of her previously-filed motion to reconsider pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, for an order reconsidering, altering, amending, rescinding and/or clarifying the order filed June 16, 2021, that granted summary judgment on the Plaintiff's claims against Defendants in the above-captioned action (hereinafter "the Order").

I. FACTS

On February 22, 2019, Plaintiff brought this action for defamation, slander, negligent retention, and invasion of privacy, after Defendant Pitts falsely communicated to her class that Plaintiff forced her eleven (11) year old daughter to have an abortion. Defendant Pitts also falsely communicated that Plaintiff's daughter became pregnant again and gave birth to a child at age twelve (12). This wrongful act occurred in May of 2016.

At the time of this incident, Plaintiff and Defendant Pitts were both employed by Defendant Colleton County School District ("CCSD"). Plaintiff reported the incident to Cliff Warren, the Assistant Superintendent of Human Resources and Operation for Defendant CCSD but did not receive a reasonable solution.

Plaintiff sought legal counsel in February 2018, and a letter of representation was sent to the Defendants on March 29, 2018. The letter included a statement of the incident referenced above and demanded a settlement amount to prevent litigation. Plaintiff received a letter from an insurance adjuster regarding the claims that had been initiated by Defendant CCSD. Plaintiff communicated with the adjuster to verify her claims and negotiated settlement until September 2018 but was unable to settle.

On June 16, 2021, Defendants' Motion for Summary Judgment was granted based on the allegation that Plaintiff's claims are barred under the two-year statute of limitations of the South Carolina Tort Claims Act.

II. STANDARD OF REVIEW

A motion to reconsider may be granted for three reasons: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Pacific Ins. Co. v. American Nat. Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir.1998).

The Court granted Defendants' Motion for Summary Judgment, and thus, the standard of review should have been made pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure. Under the aforesaid rule, the question for the court is whether in the light most favorable to the Plaintiff, and with every doubt resolved in her behalf, the allegations set forth on the face of the complaint state any valid claim for relief. The court will not sustain the motion if the "facts alleged and inferences reasonably deducible therefrom would entitle the Plaintiff to any relief on any theory of the case." *Logan v. Cherokee Landscaping and Grading Co.,* 389 S.C. 611, 617, 698 S.E.2d 879, 882 (Ct. App. 2010).

III. DISCUSSION

A. The Court committed clear error in granting Defendants' Motion for Summary Judgment.

Summary judgment is proper only when it is clear there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 443 S.E.2d 392 (1994). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Id.*

Here, the Court granted Defendants' Motion for Summary Judgment based on the expiration of the two-year statute of limitations for the South Carolina Tort Claims Act, and that "the three-year statute of limitations does not apply, [because] the record contains no evidence that Plaintiff submitted a verified claim." See *Order Granting Summary Judgment*, p. 2.

This statement was made in error. Plaintiff submitted exhibits showing her communication with Defendant CCSD's insurance adjuster regarding the verified claim that she filed against Defendants. See *Plaintiff's Supplemental Memorandum in Opposition to Defendants' Motion for Summary Judgment*. Plaintiff also had written communication with Defendant CCSD's employee, Cliff Warren, only weeks after the incident took place. (See Exhibit A of *Plaintiff's Answers to Defendants' First Requests for Production*)

Thus, it is proven that Defendants were placed on notice of Plaintiff's claim and damages resulting therefrom prior to expiration of the two-year statute of limitations. We ask that this court acknowledge the error made in this matter and reconsider the Order granting Defendants' motion for summary judgment.

B. The Court failed to address Plaintiff's argument for equitable tolling to prevent manifest injustice.

"Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it." *Hooper v. Ebenezer Sr. Services & Rehab. Ctr.*, 386 S.C. 108, 115 (2009). "Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness." *Id.* The party seeking to toll the statute of limitations bears the burden of establishing facts sufficient to justify its use. See *Id.* Furthermore, "a defendant will be estopped to assert the statute of limitations in bar of a plaintiff's claim when the delay that otherwise would give operation to the statute has been induced by the defendant's conduct." *Dillon Co. Sch. Dist. Two v. Lewis Sheet Metal*, 286 S.C. 207, 218, 332 S.E.2d 555, 561 (Ct.App. 1985), cert. dismissed, 288 S.C. 468, 343 S.E.2d 613 (1986).

In her Memorandum in Opposition to Defendants' Motion for Summary Judgment, Plaintiff asserted that Defendants should be estopped from asserting the defense of statute of limitations in order to ensure fundamental practicality and fairness. In the Order Granting Summary Judgment, the Court did not consider this valid argument, thus we request that the following be taken into consideration.

Based on the facts stated above, Plaintiff did not completely disregard her claim while allowing the statute of limitations to run. She immediately contacted higher authority at Defendant CCSD, and Defendants were very much aware of Plaintiff's ongoing damages caused by this incident. Defendant CCSD granted Plaintiff's request for medical leave, due to issues with her emotional health caused by the incident addressed herein. Defendant never informed Plaintiff of her right to take legal action, and she did not become aware until retaining counsel in February 2018.

Plaintiff hired legal counsel, and on March 29, 2018, contacted Defendant CCSD in an attempt to settle this matter. (See Exhibit 1 of *Plaintiff's Supplemental Memorandum in Opposition to Defendants' Motion for Summary Judgment*) A claim was filed with Defendant's insurance company in April 2018, before the expiration of the two-year statute of limitation. (See Exhibit 2 of *Id.*) Plaintiff communicated diligently with the insurance agent in attempt to resolve this matter outside of court. (See Exhibits 1-4 of *Id.*) Plaintiff's delay in filing an action was induced by defendant referring her to its insurance company for settlement. Plaintiff reasonably believed that her claim would be resolved without litigation. Shortly after seeing that settlement could not be reached, Plaintiff brought this action against the Defendants.

As stated by the court in *Scanwell Logistics v. VIS, LLC,* "Pursuant to the principles of equity and in the interest of fairness, the court is disinclined to punish Plaintiff for attempting to resolve this dispute before resorting to litigation and subsequently pursuing its rights diligently throughout the alleged limitations period." No. 2018-CP-2304175, 270098\79725478.v2, SC 13th Cir., (Nov. 30. 2018). Defendant VIS, LLC was estopped from asserting the defense of statute of limitations. We ask that this court take the same approach as the court in *Scanwell* to reconsider and rescind the Order granting Defendants' Motion for Summary Judgment.

Moreover, "the question of whether a defendant's conduct lulled a plaintiff into a false sense of security and thereby statutory period is ordinarily one of fact for a jury to determine." *Dillon,* 332 S.E.2d at 562. Plaintiff has clearly presented a genuine issue of material fact as to whether the Defendants should be barred from asserting the statute of limitations defense. Thus, we respectfully request the Court to reconsider and rescind the Order Granting Summary Judgment in order for this matter to be presented to a jury.

IV. CONCLUSION

Viewed in the light most favorable to the nonmoving party, the best interest of justice will be in favor of a denial of Defendants' Motion for Summary Judgment and the Defendants' being estopped from asserting the statute of limitations affirmative defense.

To prevent manifest injustice and to uphold the principles of equity and fairness, we pray that this Honorable Court reconsider, alter, amend, and/or rescind the Order Granting Summary Judgment to the Defendants.

Dated this the 25th day of June 2021.

Respectfully Submitted,

PYATT LAW FIRM, LLC

By: /s/William L. Pyatt
William L. Pyatt, SC Bar No. 4599
Attorney for Plaintiff

Post Office Box 12041
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(803) 750-5929 (office)
(803) 750-5956 (fax)

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	) IN THE COURT OF COMMON PLEAS) FOURTEENTH JUDICIAL CIRCUIT
Aretha Elizabeth Bennett, Plaintiff, vs. Theola Pitts and Colleton County School District, Defendant.	) CIVIL CASE NO.: 2019-CP-15-00138 **NOTICE OF MOTION AND MOTION TO RECONSIDER**

PLEASE TAKE NOTICE that the undersigned, counsel for Plaintiff Aretha Bennett, hereby moves this Honorable Court, pursuant to Rule 59 of the South Carolina Rules of Civil Procedure to reconsider the Order Granting Summary Judgment to the Defendants.

The Plaintiff, Aretha Bennett, has brought this action against Theola Pitts and her former employer, Colleton County School District. This matter came before the Court on the Defendant's Motion for Summary Judgment. Both parties submitted memoranda in support of their arguments. The Court issued its Order granting Defendant's Motion for Summary Judgment on June 16, 2021.

This Motion to Reconsider is being timely submitted for the Court's review and reconsideration pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure.

A memorandum of law in support of this Motion to Reconsider will be submitted for the Court's consideration.

Dated this the 24th day of June 2021.

Respectfully Submitted,

PYATT LAW FIRM, LLC

By: /s/ William L. Pyatt
William L. Pyatt, SC Bar No. 4599
Attorney for Plaintiff

Post Office Box 12041
Columbia, SC 29211
(803) 750-5929
(803) 750-5956 (fax)

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	) IN THE COURT OF COMMON PLEAS) FOURTEENTH JUDICIAL CIRCUIT
Aretha Elizabeth Bennett, Plaintiff, vs. Theola Pitts and Colleton County School District, Defendants.	) CIVIL ACTION NO. **2019-CP-15-00138** **)PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

NOW COMES PLAINTIFF, Aretha Elizabeth Bennett, by and through her undersigned counsel, and supplements her heretofore filed Memorandum in Opposition to Defendants' Motion for Summary Judgement.

In her Memorandum heretofore filed Plaintiff made references to several doc8umnts that were not included or incorporated in the Memorandum.

NOW THEREFORE, based upon the foregoing, Plaintiff hereby files and incorporates the following documents in support of its Memorandum in Opposition; to wit:

1. Letter of Representation from Pyatt Law Firm – March 29, 2018
2. Letter from Hinton & Sons, Inc. – April 17, 2018
3. Letter from Hinton & Sons, Inc. – July 9, 2018
4. Letter from Hinton & Sons, Inc. – August 29, 2018

[SIGNATURE PAGE TO FOLLOW]

Dated this the 25th day of March 2021.

Respectfully Submitted,

PYATT LAW FIRM, LLC

By: /s/William L. Pyatt
William L. Pyatt, Esquire
S.C. Bar No. 4599
Attorney for Plaintiff

Post Office Box 12041
Columbia, SC 29211
(803) 750-5929 (office)
(803) 750-5956 (fax)
pyattlawfirm@gmail.com

Exhibit 1

PYATT LAW FIRM, LLC

Attorneys at Law
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Web address: http://www.pyattlawfirmllc.net

Tel: (803) 750-5929
Fax: (803) 750-5956

Mailing Address
P.O. Box 12041
Columbia, SC 29211

March 29, 2018

Dr. Franklin L. Foster, EdD
Superintendent
Colleton County School District
213 North Jefferies Boulevard
Walterboro, SC 29488

RE: Aretha Bennett vs. Theola T. Pitts and Colleton County School District

Dear Dr. Foster:

Please be advised that the undersigned and this law firm have been retained by Aretha Bennett for the purpose of representing and protecting her legal interest regarding a tort claim against Colleton County School District.

We are informed and believe that heretofore, one Theola T. Pitts defamed and engaged in scandalous conduct against our client in May of 2016 before a culinary arts class at the Thunderbolt Career and Technology Center.

Her assertions were willful, wanton and malicious and were verbally published near students and a day after it was circulated throughout the general Colleton County community. I herewith provide two (2) documents that will substantiate these claims.

Based upon the foregoing, demand is hereby made for the sum of $300,000.00 to settle this matter without resort to litigation.

Should you have any questions, please advise.

Sincerely,

William L. Pyatt

WLP/rls

Enclosures

cc: Ms. Aretha Bennett

Exhibit 2

HINTON & SONS, INC.

Since 1983

2901 Riverbank Dr.
BEAUFORT, SC 29902

ph: 843-575-4900
email; hintonandsons@gmail.com

INSURANCE ADJUSTERS

April 17, 2018

William Pyatt
PYATT LAW FIRM, LLC
Po Box 12041
Columbia, SC 29211

RE:	IRF Claim No:	B8532
	Insured:	Colleton Co Schools
	Claimant:	Aretha Bennett c/o Pyatt Law Firm
	DOL:	May, 2016
	Our File:	396-18

Dear Mr. Pyatt:

This letter is to inform you that this claim has been assigned to our office by the Insurance Reserve Fund. Please address any correspondence or inquiries to my attention at the above.

In order for us to complete our investigation we will need to speak with your client at some time. I will be contacting you in the near future to arrange a suitable time that we could do this.

If there are any questions, please call. In the meantime, I remain

Respectively yours,

Don R. Hinton

Don R. Hinton
cc: IRF

HINTON & SONS, INC.

Since 1983

Exhibit 3

2905 Riverbank Dr.
BEAUFORT, SC 29902

ph: 843-575-4900
email; donnier@hargray.com

INSURANCE ADJUSTERS

July 9, 2018

William Pyatt
PYATT LAW FIRM, LLC
Po Box 12041
Columbia, SC 29211

RE:	IRF Claim No:	B8532
	Insured:	Colleton Co Schools
	Claimant:	Aretha Bennett c/o Pyatt Law Firm
	DOL:	May, 2016
	Our File:	396-18

Dear Mr. Pyatt:

Hope you are well. Enjoyed talking to you on June 27, 2018.

In that conversation you asked that we put our offer in writing. On behalf of the IRF and the Colleton County School District we offer to you the amount of $15,000.00 for the full settlement and release of both claims, IRF claim Nos; B8532, and B8536.

If there are any questions, please call. In the meantime, I remain

Respectively yours,

Don R. Hinton

Don R. Hinton
cc: IRF

HINTON & SONS, INC.

Since 1983

Exhibit 4

2905 Riverbank Dr.
BEAUFORT, SC 29902

ph: 843-575-4900
email; donnier@hargray.com

INSURANCE ADJUSTERS

August 29, 2018

William Pyatt
PYATT LAW FIRM, LLC
Po Box 12041
Columbia, SC 29211

RE:	IRF Claim No:	B8532
	Insured:	Colleton Co Schools
	Claimant:	Aretha Bennett c/o Pyatt Law Firm
	DOL:	May, 2016
	Our File:	396-18

Dear Mr. Pyatt:

Hope you are well. We are in receipt of your email offer of $480,000 to settle both these claims, however we cannot accept this offer.

Our offer of $20,000.00 to settle both claims remains, if your client wishes to reconsider.

If there are any questions, please call. In the meantime, I remain

Respectively yours,

Don R. Hinton

Don R. Hinton
cc: IRF

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	) IN THE COURT OF COMMON PLEAS) FOURTEENTH JUDICIAL CIRCUIT
Aretha Elizabeth Bennett, Plaintiff, vs. Theola Pitts and Colleton County School District, Defendants.	) CIVIL ACTION NO. **2019-CP-15-00138** **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

NOW COMES PLAINTIFF, Aretha Elizabeth Bennett, by and through counsel, to submit this Memorandum in Opposition to Defendants', Theola Pitts and Colleton County School District ("Defendants"), Motion for Summary Judgement. Defendants' Motion for Summary Judgement filed pursuant to Rule 56 of the South Carolina Rules of Civil Procedure should not be granted on any of the grounds asserted therein.

I. STATEMENT OF FACTS

In May 2016, Defendant Pitts communicated to her class at TCTC that Plaintiff had forced her daughter to have an abortion after she became pregnant at age eleven (11). Defendant Pitts further communicated to her class that Plaintiff's daughter became pregnant again and gave birth to a child at age twelve (12). Defendant Pitts told her class that Plaintiff raises and identifies the alleged child as her own. Defendant Pitts' statements were false.

At the time of this incident Plaintiff was employed by Defendant Colleton County School District ("CCSD"), as a teacher at Colleton High School. Plaintiff's daughter that Defendant Pitts referred to in her statement to the class was also a student at Colleton High School during the

time of the incident. Defendant Pitts' statement circulated throughout the Colleton County community and left Plaintiff and her daughter in distress.

Plaintiff contacted Cliff Warren, the Assistant Superintendent of Human Resources and Operation for Defendant Colleton County School District, to report the incident. On or about June 6, 2016, Plaintiff received an apology letter from Defendant Pitts and an email from Mr. Warren, indicating that there would be no further penalties for Defendant Pitts. Plaintiff continued to suffer emotional distress, which ultimately led her to end her employment with Defendant CCSD.

Plaintiff sought legal counsel in February 2018, and a letter of representation was sent to the Defendants on March 29, 2018. The letter included a statement of the aforementioned event and demanded a settlement amount to prevent litigation. Plaintiff received a letter from an insurance adjuster regarding the claims that had been initiated by Defendant CCSD. Plaintiff communicated with the adjuster and negotiated settlement until September 2018 but was unable to settle.

On February 22, 2019, Plaintiff filed the Summons and Complaint for this case based on the South Carolina Tort Claims Act. Parties conducted discovery and Defendants then filed a Motion for Summary Judgement alleging that the statute of limitations has expired, and thus Plaintiff's claims are no longer enforceable. Plaintiff files this Memorandum in Opposition of Defendant's Motion for Summary Judgment.

II. STANDARD OF REVIEW

The standard of review should be made pursuant to Rule 56 of the South Carolina Rules of Civil Procedures. Rule 56(c) of the *South Carolina Rules of Civil Procedure* states that a motion for summary judgment shall only be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In determining whether a genuine issue of material fact exists, courts must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Bass v. Gopal, Inc.,* 395 S.C. 129, 134, 716 S.E.2d 910, 912 (2011). (citing *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.,* 385 S.C. 452, 456, 684 S.E.2d 756, 758 (2009)). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *Baughman v. Am. Tel. and Tel. Co.,* 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

The South Carolina Supreme Court has held that summary judgment is considered a drastic remedy and must be cautiously invoked. *Id.* at 112, 410 S.E.2d at 543. In *Hancock v. Mid-South Management Co., Inc.*, the South Carolina Supreme Court clearly established the state's standard for summary judgment: the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Accordingly, based upon the foregoing standards, the Defendants' Motion for Summary Judgment due to expiration of the statute of limitations should be denied.

III. DISCUSSION

Pursuant to S.C. Code Ann. § 15-78-110 of the South Carolina Tort Claims Act, the statute of limitations for actions brought is "within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered."

In addition to statutory rules regarding tolling of the statute of limitations in personal injury claims, in conjunction with the Rules of Civil Procedure, South Carolina also recognizes the doctrine of equitable tolling. In *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009), the Court concluded "[i]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations." *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009). The Hooper court explains "equitable tolling is a non-statutory tolling theory which suspends a limitations period." *Hooper*, 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009). Further, "equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it" and "[w]here a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness.'" *Hooper* citing *Rodriguez v. Superior Court*, 176 Cal. App. 4th 1461, 98 Cal. Rptr. 3d 728 (Ct. App. 2009).

South Carolina Supreme Court further addressed the doctrine of equitable tolling in depth. In discussing the doctrine's applicability, the Court has favorably cited other jurisdictions that "have considered tolling in a variety of contexts and have developed differing parameters for

its application." *Hooper*, 386 S.C. at 116. The Court noted, "Equitable tolling applies where the defendant is shown to have actively misled or prevented the plaintiff in some extraordinary way from discovering the facts essential to the filing of a timely lawsuit, or where the plaintiff has timely raised the same claim in the wrong forum." *Id.* (quoting *Kaplan v. Morgan Stanley & Co.*, 186 Vt. 605 (2009)). According to the Court, **"the situations described above do not constitute an exclusive list of circumstances that justify the application of equitable tolling."** *Id.* Rather, a court's equitable power "is not bound by cast-iron rules but exists to do fairness . . . [and] may be applied where it is justified under all the circumstances." *Id.* at 116-17.

The plaintiff in *Scanwell Logistics v. VIS, LLC* informed the defendant about their claim for payment of invoices owed to them. *Scanwell Logistics v. VIS, LLC*, No. 2018-CP-2304175, 270098\79725478.v2, SC 13th Cir., (Nov. 30. 2018). The plaintiff communicated with various agents of the defendant in attempts to arrange for payment of the past due invoices. *Id.* Defendant VIS's agent assured plaintiff that settlement would be forthcoming. *Id.* Plaintiff was later told that the payment issue would be placed on hold unless the parties could reach a settlement. *Id.* The plaintiff claimed to have relied on the attempted settlement communications with the defendant, which caused the delay in filing her claim after the statute of limitations had expired. *Id.* The court in *Scanwell* held, "Pursuant to the principles of equity and in the interest of fairness, the court is disinclined to punish Plaintiff for attempting to resolve this dispute before resorting to litigation and subsequently pursuing its rights diligently throughout the alleged limitations period." *Id.* Defendant VIS, LLC was estopped from asserting the defense of statute of limitations.

Similar to the plaintiff in *Scanwell Logistics v. VIS, LLC*, Plaintiff communicated with the Defendants' agent from March 29, 2018 to September 2018 via emails, telephone calls, and

written correspondence. Defendants forwarded Plaintiff's claim to their insurance agency for investigation. Defendants' insurance agent never denied liability and made offers to settle Plaintiff's claim. Plaintiff relied on these communications and believed that her claim would be settled without litigation. Unfortunately, the parties did not reach a mutual agreement during settlement negotiations. Defendants' actions and attempts to settle caused Plaintiff to delay the filing of her Complaint.

Pleadings and discovery for this case have been ongoing for almost two years. "The interests of justice and fairness, as well as the purpose of the statute of limitations itself, favor allowing Plaintiff's claim to proceed at this stage of the litigation." *Scanwell,* 2018-CP-2304175. According to the United States Supreme Court, "statutes of limitations are primarily designed to assure fairness to defendants." *Burnett v. New York Cent. R. Co.*, 380 U.S. 424,428 (1965). "Such statutes promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Id.*

Defendants were very much aware of Plaintiff's ongoing damages caused by this incident. Defendant CCSD granted Plaintiff's request for medical leave, due to issues with her emotional health caused by the incident addressed herein. Defendant never informed Plaintiff of her right to take legal action, and she did not become aware until meeting with counsel in February 2018. As shown in the depositions and documents gathered during discovery, no evidence has been lost and all witness are available. Defendants will suffer no disadvantage if this case proceeds to trial. Thus, the best interest of justice will be in favor of a denial of Defendants' Motion for Summary Judgement and the Defendants' being estopped from asserting the statute of limitations affirmative defense.

WHEREFORE, all premises considered, Plaintiff prays that Defendant's Motion for Summary Judgment be dismissed with prejudice; that this Honorable Court awards Plaintiff the relief prayed for and such other and further relief this Court deems just, proper, and equitable.

Dated this the 20th day of January 2021.

Respectfully Submitted,

PYATT LAW FIRM, LLC

By: /s/William L. Pyatt
William L. Pyatt, Esquire
S.C. Bar No. 4599
Attorney for Plaintiff

Post Office Box 12041
Columbia, SC 29211
(803) 750-5929 (office)
(803) 750-5956 (fax)
pyattlawfirm@gmail.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	CIVIL CASE NO. 2019-CP-15-00138
ARETHA ELIZABETH BENNETT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**DEFENDANTS MOTION FOR SUMMARY JUDGMENT**
	)	
THEOLA PITTS and COLLETON COUNTY SCHOOL DISTRICT,	)	
	)	
Defendants.	)	
	)	

PLEASE TAKE NOTICE that Defendants, Theola Pitts and Colleton County School District (hereinafter referred to as "Defendants"), by and through their undersigned attorney and pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, will move before the Presiding Judge of the Fourteenth Judicial Circuit at the Colleton County Courthouse, more than ten (10) days after service, for an Order granting Defendants summary judgment.

The grounds for this motion are that Plaintiff's claims against Defendants are barred under the Sotuh Caroilna Tort Claims Act based on the running of the statute of limitation of two years. Flateau v. Harrelson, 584 S.E.2d 413, 355 S.C. 197 (S.C. App. 2003). Furthermore, the statute of limitations for a defamation and slander claims is two years. S.C. Code § 15-3-550(1).

Summary judgment is appropriate when there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. SCRCP 56(c). When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Summer v. Carpenter, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997). "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." Sides v.

Greenville Hosp. Sys., 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

Plaintiff filed this action against Defendants on February 22, 2019. Plaintiff's Complaint alleges that "Defendant Theola Pitts is employed by Defendant Colleton County School District as a culinary arts teacher" and that "[i]n May 2016, Defendant Pitts communicated to her class . . . that Plaintiff had forced her daughter to have an abortion after she became pregnant at age eleven (11)." Plt. Complt. ¶¶ 5 and 7. Plaintiff is asserting claims for defamation, slander, negligent retaintion, and invasion of privacy.

South Carolina Code Section 15-78-70 states that the South Carolina Tort Claims Act "constitutes the exclusive remedy for any tort committed by an employee of a governmeant entity." Furthermore, 15-78-100 provides the time and place to institute an action under the Tort Claims Act. The statute of limitations for a claim uner the Tort Claims Act is two years after the loss was or should have been discovered.

Plaintiff has filed this action against Defendants alleging the events giving rise to Plaintiff's claims occurred while Defendant Pitts was teacher her class. Therefore, Plaintiff's claims fall within the South Carolina Tort Claims Act which is the "exclusive remedy for any tort committed by an employee of a governmental entity." S.C. Code Section 15-78-70.

Plaintiff was deposed on October 28, 2020. Plaintiff testified tha the alleged defamation occurred in May 2016. See Exhibit 1 - Depo. of Elizabeth Bennett (Oct. 28, 2020) 28:14 – 28:19. Plaintiff testified that Defendant Pitts communicated the alleged defamation to her class. Id. at 29:16 – 30:13. Plaintiff testified that she knew a student in Defendant Pitts' classroom by the name of Essesnce who told Plaintiff about the alleged comments that Defendant Pitts made to

the classroom on the same day of the alleged comments. Id. Plaintiff was asked about what Plaintiff heard about Defendant Pitts' comments were, and confirmed that Plaintiff was only aware of Defendant Pitts making the alleged comments that one time. Id. at 39:5 – 39:18.

Plaintiff testified at her deposition that the alleged defamation took place in May 2016. Plaintiff testified that she was told about the alleged defamation on the same day that the alleged comments were made, so Plaintiff was aware of the alleged defamation comments in May 2016.

The two year statute of limiations started to run on the date of the incident because she learned of the comments on that same date. So, the statute of limitations ran out at least by the end of May 2018.

Plaintiff filed this action on February 22, 2019 – eight months after the running of the two year statute of limitation. Plaintiff's claims are barred under the staute of limiations under the Tort Claims Act. Therefore, Defendants are entitled to summary judgment as to all Plaintiff's claims.

Defendant reserves the right to file memorandum of law in support of its motion pursuant to South Carolina Rules of Civil Procedure.

Respectfully Submitted,

/s/ Peden Brown McLeod, Jr.
Peden Brown McLeod, Jr., SC Bar # 74967
MCLEOD, FRASER & CONE
Post Office Drawer 230
Walterboro, South Carolina 29488
Attorney for Defendants

-and-

Margie Bright Matthews
Bright Matthews Law Firm, LLC
Post Office Box 499
Walterboro, South Carolina 29488
Attorney for Defendant Theola Pitts

January 7, 2021
Walterboro, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	CIVIL CASE NO. 2019-CP-15-00138
ARETHA ELIZABETH BENNETT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER OF DEFENDANTS THEOLA
	)	PITTS and COUNTY SCHOOL DISTRICT
THEOLA PITTS and COLLETON COUNTY SCHOOL DISTRICT,	)	
	)	
Defendantss.	)	
	)	

Defendants, Theola Pitts and Colleton County School District (hereinafter "Defendants"), answering the Complaint herein, would show this Honorable Court as follows:

GENERAL DENIAL

1. Defendants deny each and every allegation of the Complaint not hereinafter specifically admitted.

2. Defendants, upon information and belief, admit those allegations contained in Paragraphs 1 through 3 of Plaintiff's Complaint.

3. Defendants admit that venue is proper in Colleton County but denies the remaining allegations contained in Paragraph 4 of Plaintiff's Complaint, and demand strict proof thereof.

4. Defendants, upon information and belief, admit those allegations contained in Paragraphs 5 and 6 of Plaintiff's Complaint.

5. Defendants deny all remaining allegations of the Plaintiff's Complaint, specifically Paragraphs 7 through 16, including all subparts and demands strict proof thereof.

ANSWERING THE FIRST CAUSE OF ACTION

6. Defendants re-alleges and re-avers the allegations in Paragraph 1 through 5 herein

as if restated verbatim.

7. As to Paragraphs 17 through 22, including subparts, of the Plaintiff's Complaint, Defendants deny the allegations, and demands strict proof thereof.

ANSWERING THE SECOND CAUSE OF ACTION

8. Defendants re-alleges and re-avers the allegations in Paragraph 1 through 7 herein as if restated verbatim.

9. As to Paragraphs 23 through 31, including subparts, of the Plaintiff's Complaint, this Defendants deny the allegations, and demands strict proof thereof.

ANSWERING THE THIRD CAUSE OF ACTION

10. Defendants re-alleges and re-avers the allegations in Paragraph 1 through 9 herein as if restated verbatim.

11. As to Paragraphs 32 through 39, including subparts, of the Plaintiff's Complaint, this Defendants deny the allegations, and demands strict proof thereof.

ANSWERING THE FIFTH CAUSE OF ACTION (being the Cause of Action immediately following the Third Cause of Action)

12. Defendants re-alleges and re-avers the allegations in Paragraph 1 through 11 herein as if restated verbatim.

13. As to Paragraphs 40 through 44, including subparts, of the Plaintiff's Complaint, this Defendants denies the allegations, and demands strict proof thereof.

ANSWERING THE SIXTH CAUSE OF ACTION

14. Defendants re-alleges and re-avers the allegations in Paragraph 1 through 13

herein as if restated verbatim.

15. As to Paragraphs 45 through 47, including subparts, of the Plaintiff's Complaint, this Defendants deny the allegations, and demands strict proof thereof.

[WHEREFORE paragraph response]

FURTHER ANSWERING THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO THIS DEFENDANTS STATES AS FOLLOWS: (Statute of Limitations)

16. Defendants incorporate Paragraphs 1 through 15 above as if herein specifically rewritten.

17. Plaintiff's Complaint is barred by the statute of limitations, and therefore should be dismissed.

FURTHER ANSWERING THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO THIS DEFENDANTS STATES AS FOLLOWS: (Failure to State a Claim)

18. Defendants incorporate Paragraphs 1 through 15 above as if herein specifically rewritten.

19. Plaintiff's Complaint fails to state a claim upon which relief can be granted and therefore should be dismissed.

FURTHER ANSWERING THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO THIS DEFENDANTS STATES AS FOLLOWS: (Sole Negligence)

18. Defendants incorporate Paragraphs 1 through 17 above as if herein specifically rewritten.

19. Upon information and belief, any injuries or damages allegedly suffered by the Plaintiff, if any, were due to and proximately caused by the negligence of a party other than this

Defendants and that such is a complete bar to the Plaintiff's recovery against Defendants.

FURTHER ANSWERING THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO THIS DEFENDANTS STATES AS FOLLOWS: (Statements were made by Third Party)

20. Defendants incorporate Paragraphs 1 through 19 above as if herein specifically rewritten.

21. Defendants strictly deny that the communications alleged in the Plaintiff's Complaint were made by them and further states that any statements that may have been made were made by a third party and, therefore, the Defendants cannot be held liable.

FURTHER ANSWERING THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO THIS DEFENDANTS STATES AS FOLLOWS: (Intervening Negligence)

22. Defendants incorporate Paragraphs 1 through 21 above as if herein specifically rewritten.

23. Whatever injuries or damages as were suffered by the Plaintiff, if any were due to, caused by and were the direct and proximate result of the sole and/or intervening negligence of a party other than Defendants.

FURTHER ANSWERING THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO THIS DEFENDANTS STATES AS FOLLOWS: (Truth)

24. Defendants incorporate Paragraphs 1 through 23 above as if herein specifically rewritten.

25. That the communications referred to in the Plaintiff's Complaint, if made by this Defendants, which this Defendants deny that the communications were made by it, were true and accordingly this Defendants are not liable.

FURTHER ANSWERING THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO THIS DEFENDANTS STATES AS FOLLOWS: (Constitutional Right to Free Speech)

26. Defendants incorporate Paragraphs 1 through 25 above as if herein specifically rewritten.

27. Defendants are not liable for any communications that may have been made as the Defendants are protected by the First Amendment to the United States Constitution which grants the right to freedom of speech.

FURTHER ANSWERING THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO THIS DEFENDANTS STATES AS FOLLOWS: (Absolute and/or Qualified Privilege)

28. Defendants incorporate Paragraphs 1 through 27 above as if herein specifically rewritten.

29. Defendants, as a quasi-legislative body and/or legislative body and employee, are not liable for any communications that are made on a privileged occasion, are a matter of public policy, or are intended for the welfare of the public as these communications are absolutely privileged or a qualified privilege.

FURTHER ANSWERING THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO THIS DEFENDANTS STATES AS FOLLOWS: (Qualified Privilege)

30. Defendants incorporate Paragraphs 1 through 29 above as if herein specifically rewritten.

31. Defendants are not liable for any communications that are conditionally privileged, which are due to a necessity for unrestricted communication in regards to any subject matter

which the parties involved have an interest or duty, in the following particulars to wit:

a. Communications based on public policy;

b. Communications made in good faith;

c. Communications that are of a subject matter in which the publisher has an interest;

d. Communications are of a subject matter which the publisher has a right or duty;

e. Communications that are made on the proper occasion;

f. Communications made to the proper parties;

g. Communications made in regards to the publication of public records;

h. Communications made in regards to any subject matter where the parties have a common business interest or where a professional duty is involved;

i. Communications made out of public duty to one acting in the public interest;

h. Communications made out of defense of others.

FURTHER ANSWERING THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO THIS DEFENDANTS STATES AS FOLLOWS: (Public Duty Rule)

32. Defendants incorporate Paragraphs 1 through 31 above as if herein specifically rewritten.

33. Defendants owed no duty to the Plaintiff over and above their duty to the general public.

FURTHER ANSWERING THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO THIS DEFENDANTS STATES AS FOLLOWS: (South Carolina Tort Claims Act)

34. Defendants incorporate Paragraphs 1 through 33 above as if herein specifically

rewritten.

35. Defendants are not liable under absolute immunity, in accordance with South Carolina Code Section 15-78-70, inasmuch as the Plaintiff alleges that false slanderous statements were made.

FURTHER ANSWERING THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO THIS DEFENDANTS STATES AS FOLLOWS: (South Carolina Tort Claims Act)

36. Defendants incorporate Paragraphs 1 through 35 above as if herein specifically rewritten.

37. Defendants are not liable for any loss resulting from an act or omission of a party other than an employee, as provided in South Carolina Code of Laws Section 15-78-60(20), 1976 as amended.

FURTHER ANSWERING THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO THIS DEFENDANTS STATES AS FOLLOWS: (South Carolina Tort Claims Act)

38. Defendants incorporate Paragraphs 1 through 37 above as if herein specifically rewritten.

39. In accordance with South Carolina Code of Laws Section 15-78-60(5), 1976, as amended, this Defendants alleges that they are not liable to the Plaintiff as they are not liable for a loss resulting from the exercise of discretion or judgment, by the Defendants or the Defendants' employee, or the performance or failure to perform any act or service which is in the discretion or judgment of the Defendants.

FURTHER ANSWERING THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE

THERETO THIS DEFENDANTS STATES AS FOLLOWS: (South Carolina Tort Claims Act)

40. Defendants incorporate Paragraphs 1 through 39 above as if herein specifically rewritten.

41. That any recovery as may be obtained by Plaintiff herein is limited by the ceiling placed thereon by Section 15-78-120(a) of the South Carolina Tort Claims Act, that punitive damages are not allowed by Section 15-78-120(b) of said act, that the State's waiver of immunity is, therefore, limited and conditioned, and this Court lacks jurisdiction to award any sum against said Defendants in excess of said statutory ceiling and to award punitive damages against said Defendants.

FURTHER ANSWERING THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO THIS DEFENDANTS STATES AS FOLLOWS: (South Carolina Tort Claims Act)

42. Defendants incorporate Paragraphs 1 through 41 above as if herein specifically rewritten.

43. In accordance with the South Carolina Code of Laws Section 15-78-70, this Defendants are not liable for employee conduct that is outside the scope of his official duties or for conduct of an employee which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

FURTHER ANSWERING THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO THIS DEFENDANTS STATES AS FOLLOWS: (South Carolina Tort Claims Act)

44. Defendants incorporate Paragraphs 1 through 43 above as if herein specifically rewritten.

45. In accordance with the South Carolina Code of Laws Section 15-78-60(1) and (2), this Defendants is not liable for loss resulting from legislative action or inaction and administrative action or inaction.

FURTHER ANSWERING THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO THIS DEFENDANTS STATES AS FOLLOWS: (South Carolina Tort Claims Act)

46. Defendants incorporate Paragraphs 1 through 45 above as if herein specifically rewritten.

47. In accordance with the South Carolina Code of Laws Section 15-78-60(17), a governmental employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

FURTHER ANSWERING THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO THIS DEFENDANTS STATES AS FOLLOWS: (South Carolina Tort Claims Act)

46. Defendants incorporate Paragraphs 1 through 45 above as if herein specifically rewritten.

47. In accordance with the South Carolina Code of Laws Section 15-78-70, a governmental employee is not liable for a tort committed while acting within the scope of his official duties unless the actions constituted actual fraud, actual malice, intent to harm or a crime involving moral turpitude.

FURTHERING ANSWERING THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO THESE DEFENDANTSS STATE AS FOLLOWS: (Damages Limitations)

48. Defendants incorporate Paragraphs 1 through 45 above as if herein specifically

rewritten.

49. Defendants preserves and claims all terms, provisions and affirmative defenses set forth in the South Carolina Tort Claims Act, (§15-78-10, et seq., Code of Laws of South Carolina (1976), as amended), to include the limitations on the amount of actual damages that can be recovered and the prohibition on an award of punitive damages.

FURTHERING ANSWERING THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO THESE DEFENDANTSS STATE AS FOLLOWS (Reservation of Further and Additional Defenses)

50. Defendants incorporate Paragraphs 1 through 45 above as if herein specifically rewritten.

51. Defendants reserve any additional and further defenses as may be revealed by additional information through the course of discovery and investigation in a matter that is consistent with the South Carolina Rules of Civil Procedure:

WHEREFORE, having fully answered the Complaint herein, this Defendants respectfully request that this action be dismissed with prejudice and the costs incurred in defending the action be paid by the Plaintiff.

Respectfully Submitted,

April 10, 2109
Walterboro, South Carolina

/s/ Peden Brown McLeod, Jr.
Peden Brown McLeod, Jr., SC Bar # 74967
MCLEOD, FRASER & CONE
Post Office Drawer 230
Walterboro, South Carolina 29488
843-549-2516
Attorneys for Defendants Aretha Bennett and Colleton County School District

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	) IN THE COURT OF COMMON PLEAS
Aretha Elizabeth Bennett Plaintiff, vs. Theola Pitts and Colleton County School District Defendants.	) CIVIL CASE NO.: 2019-CP-40- **SUMMONS**

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint to William L. Pyatt, Esquire, Post Office Box 12041, Columbia, South Carolina 29211, within THIRTY (30) DAYS after the service thereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded in this Complaint, and judgment by default will be rendered against you for the relief demanded in the Complaint.

Dated this the 21st day of February 2019.

Respectfully Submitted,

PYATT LAW FIRM, LLC

By: /s/ William L. Pyatt
William L. Pyatt
SC Bar No. 4599
Attorney for Plaintiff

Post Office Box 12041
Columbia, SC 29211
(803) 750-5929
(803) 750-5956 (fax)

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	) IN THE COURT OF COMMON PLEAS
Aretha Elizabeth Bennett Plaintiff, vs. Theola Pitts and Colleton County School District Defendants.	) CIVIL CASE NO.: 2019-CP-40- **COMPLAINT** **(Jury Trial Demanded)**

Plaintiff brings this action against Defendants, Theola Pitts and Colleton County School District, based on the allegations set forth below.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Aretha E. Bennett, is a citizen and resident of the County of Colleton and State of South Carolina.
2. Upon information and belief, Defendant, Theola Pitts, is a citizen and resident of the County of Colleton and State of South Carolina.
3. Upon information and belief, Defendant, Colleton County School District, is a political subdivision organized and existing under the laws of the State of South Carolina and provides educational services to children of Colleton County.
4. Venue is proper in the State of South Carolina, County of Colleton, pursuant to South Carolina Code Annotated § 15-7-30, as the most substantial part of the acts and omissions giving rise to the cause of action set forth in this complaint occurred in Colleton County.

FACTS

5. Defendant Theola Pitts is employed by Defendant Colleton County School District as culinary arts teacher at the Thunderbolt Career and Technology Center ("TCTC").

6. Students from Colleton High School are allowed to attend TCTC during the school day to take courses and receive credits for graduation.

7. In May 2016, Defendant Pitts communicated to her class at TCTC that Plaintiff had forced her daughter to have an abortion after she became pregnant at age eleven (11).

8. Defendant Pitts further communicated to her class that Plaintiff's daughter became pregnant again and gave birth to a child at age twelve (12). Defendant Pitts told her class that Plaintiff raises and identifies the alleged child as her own.

9. Defendant Pitts' statements were false.

10. At the time of this incident Plaintiff was employed by Defendant Colleton County School District, as a teacher at Colleton High School.

11. Plaintiff's daughter that Defendant Pitts referred to in her statement to the class was also a student at Colleton High School during the time of the incident.

12. Defendant Pitts' statement circulated throughout the Colleton County community and back to Plaintiff's daughter, who then came to Plaintiff distraught about the incident.

13. Plaintiff contacted Cliff Warren, the Assistant Superintendent of Human Resources and Operation for Defendant Colleton County School District, to report the incident.

14. Upon Mr. Warren's investigation, Defendant Pitts admitted to making the statement to her class and agreed to write a letter of apology to Plaintiff.

15. On or about June 6, 2016, Plaintiff received an apology letter from Defendant Pitts and an email from Mr. Warren, indicating that there would be no further penalties for Defendant Pitts.

16. The incident has been detrimental to Plaintiff's family, mental health, and reputation.

FOR A FIRST CAUSE OF ACTION (Defamation)

17. Plaintiff reiterates the allegations of paragraphs one (1) through sixteen (16) as if written herein word for word.

18. Defendant, through its employee Defendant Pitts, has issued false statements of a highly defamatory nature regarding the Plaintiff and her family, which it published verbally to numerous third parties.

19. Defendant Pitts maliciously publicized the defamatory statements.

20. Defendant Pitts showed willful disregard for the rights and reputation of the Plaintiff and showed a reckless lack of abstention in the scope of her publishing these statements within the scope of the employer-employee relationship.

21. Plaintiff has suffered damages which are presumed by law as well as special damages including humiliation and mental suffering. Furthermore, Plaintiff's character, reputation, and value as a respected teacher have been damaged as a direct result of Defendants' actions.

22. Therefore, Plaintiff is entitled to actual, consequential damages, and punitive damages for the purpose of deterring the Defendants from future such acts.

FOR A SECOND CAUSE OF ACTION (Slander)

23. Plaintiff reiterates the allegations of paragraphs one (1) through twenty-two (22) as if written herein word for word.

24. During May of 2016, without cause, proof, privilege, or justification, Defendant Colleton County School District, by and through its employee, Defendant Pitts, acting within the course and scope of her employment, falsely stated that Plaintiff was raising a child that was not her own, but a child born to her daughter.

25. In addition to being false, inflammatory, and damaging, the accusation of Plaintiff raising her daughter's child was absolutely absurd, for Plaintiff and her daughter attended the Colleton County School District, and Plaintiff's daughter was never pregnant.

26. The statements made by Defendant Pitts, within the course and scope of her employment, were published to the education community and filtered through to the public at large about the Plaintiff, impeached her honesty, integrity, and reputation by alleging that she had engaged in dishonest behavior to the very students Plaintiff taught.

27. The publications were made with knowledge of, or reckless disregard of, the falsity of these statements.

28. Defendant Pitts published the defamation to the students to whom Plaintiff had previously enjoyed a sterling reputation, and the said students heard that Plaintiff had lied to secrete personal family affairs.

29. After the investigation conducted by Mr. Warren, on or about June 6, 2016, Defendant Pitts admitted that she wrongfully made the statement against Plaintiff. However, by this time, the damage had been done.

30. The defamation was published with implied malice.

31. As a result of the Defendants' slanderous statements, Plaintiff's integrity and reputation within the community have been damaged.

FOR A THIRD CAUSE OF ACTION (Negligent Retention)

32. Plaintiff reiterates the allegations of paragraphs one (1) through thirty-one (31) as if written herein word for word.

33. The Defendant owed a duty to the Plaintiff.

34. Defendant Colleton County School District breached this duty by retaining Defendant Pitts as an employee after her slanderous publications against Plaintiff.

35. Such acts not only damaged Plaintiff's reputation but also encouraged students to partake in gossip, rumor spreading, and slanderous acts similar to those herein.

36. Upon information and belief, the Defendant Colleton County School District, as employer, had foreseeability of harm to the Plaintiff.

37. Defendant was grossly negligent in retaining Defendant Pitts who proximately caused the injuries and damages suffered by the Plaintiff. These occurrences are separate and distinct from the numerous other individual occurrences of defamation, libel and slander.

38. As a consequence, the Plaintiff has suffered mental and emotional damage including depression, anxiety and post-traumatic stress disorder.

39. Upon information and belief, Plaintiff is entitled to judgment against the Defendant for actual damages, consequential damages, punitive damages and attorney fees.

FOR A FIFTH CAUSE OF ACTION (Invasion of Privacy)

40. Plaintiff reiterates the allegation of paragraphs one (1) through thirty-nine (39) above as if written herein word for word.

41. Defendant Pitts, within the course and scope of her employment, made a public disclosure about Plaintiff's private family life.

42. The disclosure was of no legitimate public interest.

43. The disclosure was highly offensive to Plaintiff, causing her emotional and reputational damages.

44. Plaintiff prays that she is granted damages from the Defendants.

FOR A SIXTH CAUSE OF ACTION (Punitive Damages)

45. Plaintiff reiterates the allegations of paragraphs one (1) through forty-four (44) above as if written herein word for word.

46. The conduct of Defendant was malicious, wanton, intentional, willful and designed and calculated to cause Plaintiff harm, humiliation, anger and embarrassment.

47. This Court should award punitive damages to deter and discourage the conduct complained of herein.

WHEREFORE, Plaintiff requests that judgment be entered against Defendants on all causes of action and that Plaintiff be awarded: (1) actual damages, (2) consequential damages, (3) punitive damages, (4) costs and fees and (5) such other and further relief as the Court and jury deems just and proper.

Dated this the 21st day of February 2019.

Respectfully Submitted,

PYATT LAW FIRM, LLC

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2021-000827

Aretha Elizabeth Bennett,

Appellant,

v.

Theola Pitts and Colleton County School District,

Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 6, 2022

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