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SC Court of Appeals

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.

MOTION FOR RECONSIDERATION

Pursuant to Rules 221(a) and 240 of the South Carolina Rules of Appellate Procedure, Respondent Eugene Matthews, in his individual capacity (hereinafter "Respondent") respectfully files this Motion for Reconsideration regarding the Court's decision filed November 3, 2021. *Couram v. Nationwide, et al* (Unpublished Opinion No.2021-UP-373). In its opinion, this Court reversed and remanded the lower court's decision to dismiss her complaint in this matter.

Rule 221(a), SCACR, authorized a party who believes the Court overlooked or misapprehended points of law and/or facts to petition for reconsideration. For the following reasons, Respondent Eugene H. Matthews requests this Court reconsider its order

ARGUMENT

The Court of Appeals ruled that "[i]n light of four opinion in *Couram v. Tidwell*, Op. No. 2021-UP-367 (S.C. Ct. App. Filed Oct. 27, 2021), Couram's present action is not barred by the doctrine of res judicata or collateral estoppel because a final judgment on the merits does not exist."

With respect, the doctrines of "res judicata and collateral estoppel" had nothing to do with the trial court's dismissal with prejudice of the causes of action against Respondent Matthews. In dismissing these claims, the trial court did not rely on the doctrines of "res judicata and collateral estoppel." Rather, these claims were dismissed based on a substantive review of the inadequacy of Plaintiff's claims 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 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. Furthermore, 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).

Finally, regarding Couram's proposed Amended Complaint, 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 trial 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,[1] 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

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[1] 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).

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).

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.").

CONCLUSIONS

For these reasons, Respondent respectfully requests that the Court should reconsider its decision and affirm the decision of the trial court in this matter.

November 18, 2021 Respectfully submitted

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PROOF OF SERVICE

I, the undersigned employee for Richardson Plowden & Robinson, P.A., counsel for the Respondent Eugene Matthews, do hereby certify that I have served a filed copy of the **Motion for Reconsideration** causing a copy of the same to be deposited in the United States mail, first class postage prepaid, addressed as indicated below on this 18th day of November, 2021:

Glenda R. Couram 104 Macaw Lane Lexington, SC 29073 *Pro Se Appellant*	Timothy A. Domin Clawson and Staubes, LLC 126 Seven Farms Drive, Suite 200 Charleston, SC 29492 Attorney for Respondents Tidwell and Sherwood Plumbing SVC, LLC
	John Robert Murphy Attorney at Law PO Box 6648 Columbia, SC 29260

Mary Jane Wilson
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November 18, 2021
Columbia, South Carolina.

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November 18, 2021

Jenny Abbott Kitchings, Clerk
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RE: Glenda Couram vs Nationwide Mutual Insurance Company, Titan Indemnity Company, Eugene H. Matthews, in his individual capacity, Sherwood's Plumbing Svc., LLC, Sherwood Tidwell, Owner
C/A No.: 2018-001134
Our File No.: 181-545

Dear Ms. Kitchings:

Enclosed herewith for filing is the Motion for Reconsideration of Matthews, concerning the above referenced matter, together with the Proof of Service.

Sincerely,

RICHARDSON PLOWDEN & ROBINSON, P.A.

Mary Jane Wilson
Legal Assistant

/mjw
Enclosures as Stated

cc: Glenda Couram
Timothy A. Domin
John Robert Murphy