IN THE SUPREME COURT OF OHIO
Case No. 2023-0694

SHIRLETTE "PEGGY" BURKS, Plaintiff-Appellant, v. DAYTON PUBLIC SCHOOLS BOARD OF EDUCATION, *et al.*, Defendants-Appellees.	:	Appeal from the Montgomery County Court of Appeals, Second Appellate District Court of Appeals Case No. CA 29583

MEMORANDUM IN OPPOSITION TO JURISDICTION OF THE DAYTON PUBLIC SCHOOL DISTRICT BOARD OF EDUCATION, JOSEPH LACEY, AND JUDITH SPURLOCK

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EXPLANATION OF WHY THIS CASE DOES NOT INVOLVE A QUESTION OF PUBLIC OR GREAT GENERAL INTEREST

This case involves a straightforward application of well-established Ohio law. The issues raised by Appellant are not novel and do not carry implications beyond this case. The dispute here involves questions that are only of great interest to the parties involved, and this Court therefore should decline jurisdiction.

Appellant is a former principal of the Dayton Public School District who resigned, rather than face termination, after being accused of making inappropriate comments to students. Following her resignation, Appellant brought the following three claims against the Dayton Public School District Board of Education ("DPS"), School Board Member Joseph Lacey, and former Human Resources Director Judith Spurlock (collectively, the "Dayton Public Defendants"): (1) tortious interference with her employment contract, (2) promissory estoppel for the violation of an unwritten confidentiality agreement, and (3) intentional infliction of emotional distress. As both the Montgomery County Court of Common Pleas and Second District Court of Appeals found, Appellant's claims are each deficient as a matter of law.

First, Appellant's tortious interference claim is barred because she attempts to bring it against supervisory employees of DPS. "A cause of action for tortious interference with an employment contract will not lie, however, against a supervisory employee acting within the scope of his duties." *Jones v. Wheelersburg Local Sch. Dist.*, 4th Dist. No. 12CA3513, 2013-Ohio-3685, ¶ 54 citing *Anderson v. Minter*, 32 Ohio St.2d 207, 291 N.E.2d 457 (1972). Appellant's attempts to avoid this rule are meritless.

Second, Appellant's promissory estoppel claim is barred because she attempts to bring it against DPS, a political subdivision, for actions it took while engaged in a governmental function, the provision of public education. The doctrine of promissory estoppel is inapplicable "against a

political subdivision when the political subdivision is engaged in a governmental function.". *Hortman v. Miamisburg*, 110 Ohio St.3d 194, 2006-Ohio-4251, 852 N.E.2d 716, ¶ 25. Again, Appellant cannot avoid the straightforward application of this principle to her purported claim.

Third, Appellant's intentional infliction of emotional distress is barred as she fails to allege sufficiently extreme and outrageous conduct. Appellant claims that DPS conducted a poor investigation into the allegations against her and wrongly demanded her resignation. These allegations fall far short of the outrageous conduct necessary to sustain an intentional infliction of emotional distress claim. "An employer's termination of employment, without more, does not constitute the outrageous conduct required to establish a claim of intentional infliction of emotional distress[.]" (Quotation omitted.) *Meminger v. Ohio State Univ.*, 2017-Ohio-9290, 102 N.E.3d 642, ¶ 16 (10th Dist.). Appellant's claim is deficient as a matter of law.

Although the parties in this matter are highly interested in its outcome, this case does not involve issues of public or great general interest. The legal principles at issue are well-established, and the decisions of the Montgomery County Court of Common Pleas and Second District Court of Appeals are well-supported. This Court should decline to exercise jurisdiction over this matter.

STATEMENT OF THE CASE AND FACTS

Appellant is a former principal for DPS who claims that she was forced to resign following a parent's complaint about the language she used with two students. Appellant maintains that the parent's allegations against her – that she made homophobic comments about two students – are false. Appellant claims that Mr. Lacey and Ms. Spurlock both failed to conduct independent investigations into the allegations. Finally, Appellant alleges that Mr. Lacey convinced Ms. Spurlock and DPS's then superintendent to give Appellant the choice to resign or be terminated. Appellant resigned on March 16, 2018.

In exchange for her agreement to resign, Appellant claims that DPS, via Ms. Spurlock, agreed to keep the allegations about her homophobic comments confidential and agreed not to interfere with her retirement or medical benefits. This supposed agreement was never reduced to writing. Appellant claims that this alleged agreement was then knowingly violated by Defendant Jason Stuckey, an attorney for DPS, when he referenced these allegations during cross examination in later R.C. 3319.16 administrative hearings for separate DPS teachers.

From these facts, Appellant asserted claims for tortious interference with a contract, promissory estoppel, and intentional infliction of emotional distress. All defendants moved for dismissal of the Complaint, pursuant to Civ.R. 12(B)(6). The trial court granted dismissal of the claims against defendants Stuckey and Bricker & Eckler, LLP (the "Bricker Defendants") on June 2, 2022. On June 29, 2022, Appellant moved to amend her complaint to add a claim for breach of fiduciary duty against the Bricker Defendants. On August 25, 2022, the trial court granted dismissal of the Complaint against the Dayton Public Defendants and denied Appellant's motion to amend her Complaint. The Second District Court of Appeals affirmed both rulings, leading to the instant petition.

ARGUMENT REGARDING PROPOSITIONS OF LAW

Appellants' Proposition of Law No. 1: The Court of Appeals should have reversed the trial court's denying [sic] Burks' Rule 15(A) Motion to amend her complaint because the trial court's two reasons for denying Burks' Motion are without merit.

Appellant's proposed amended complaint would have added a claim against the Bricker Defendants for breach of fiduciary duties. The proposed amendment, and the Court's decision denying such, do not implicate nor create new allegations against the Dayton Public Defendants. Nevertheless, the Dayton Public Defendants will briefly address this supposed error.

A trial court's decision on a motion to amend will not be reversed absent a showing that the trial court abused its discretion. *Wilmington Steel Products, Inc. v. Cleveland Elec. Illum. Co.*, 60 Ohio St.3d 120, 122, 573 N.E.2d 622 (1991). The term "abuse of discretion" means "more than an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Id.* quoting *Huffman v. Hair Surgeon, Inc.*, 19 Ohio St.3d 83, 87, 482 N.E.2d 1248 (1985). A party seeking to amend its complaint must at least make a *prima facie* showing that it "can marshal support for the new matters sought to be pleaded[.]" *Id.* Appellant can make no such showing.

Appellant's proposed breach of fiduciary duty claim against the Bricker Defendants is based entirely on Defendant Stuckey's conduct during cross examination at separate R.C. 3319.16 termination hearings where Appellant testified. During those hearings, Defendant Stuckey represented DPS, and Appellant appeared and testified as an adverse witness. As both the trial court and court of appeals correctly found, no fiduciary relationship existed between Defendant Stuckey and Appellant.

"A 'fiduciary relationship' is one in which special confidence and trust is reposed in the integrity and fidelity of another and there is a resulting position of superiority or influence, acquired by virtue of this special trust." *Stone v. Davis*, 66 Ohio St.2d 74, 78, 419 N.E.2d 1094 (1981) quoting *In re Termination of Employment*, 40 Ohio St.2d 107, 115, 321 N.E.2d 603 (1974). A fiduciary relationship is generally "formed through a formal document," and can only be created out of an informal relationship when "both parties understand that special trust or confidence has been reposed." (Citation omitted.) *In re Estate of Hill*, 4th Dist. No. 99CA2663, 2000 WL 326134, *3. Appellant does not explain how a relationship of "special confidence and trust" arises between opposing counsel and an adverse witness on cross examination.

Appellant claims that *Restatement (Third*) *of the Law Governing Lawyers* § 56 creates a fiduciary relationship between Defendant Stuckey and herself. The Restatement provides, in relevant part, that:

> Lawyers are also liable to nonclients for knowingly participating in their client's breach of fiduciary duties owed by clients to nonclients . . . A lawyer may also assume fiduciary duties to a nonclient, for example by becoming a trustee or in some jurisdictions by seeking and obtaining a nonclient's trust, and the lawyer is then liable to such a nonclient under the general law on the same basis as other fiduciaries.

Id. at comment h. This comment does not create a fiduciary relationship between opposing counsel and an adverse witness, and it does not explain how a relationship of "special confidence and trust" existed between Defendant Stucky and Appellant. Aside from the conclusory allegation that the Bricker Defendants owed fiduciary duties to Appellant, there are no facts alleged in the proposed amended complaint that support the existence of such a relationship. Appellant identifies no such facts in her Memorandum in Support of Jurisdiction.

Appellant also claims that the Ohio Rules of Professional Conduct create a fiduciary relationship between her and the Bricker Defendants. Appellant does not identify which rule she believes the Bricker Defendants violated and cites no case law. Moreover, the Ohio Rules of Professional Conduct specifically state that a "[v]iolation of a rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached." *Id.* at Preamble, ¶ 20. The Rule of Professional Conduct "are not designed to be a basis for civil liability." *Id.* Appellant's cursory argument is without merit.

In sum, Appellant's proposed breach of fiduciary duty claim is meritless. Appellant's motion to amend her complaint was properly denied.

<u>Appellants' Proposition of Law No. 2</u>: The Court of Appeals should have also reversed the trial court's granting the Dayton Public Defendants' Motion to Dismiss because they failed to satisfy their burden of proof under Rule 12(B)(6)

The trial court and court of appeals properly dismissed Appellant's Complaint against the Dayton Public Defendants for failure to state a claim upon which relief can be granted, pursuant to Civ.R. 12(B)(6). "A motion to dismiss a complaint for failure to state a claim upon which relief can be granted, pursuant to Civ.R. 12(B)(6), tests the sufficiency of a complaint." *Sheldon v. Kettering Health Network*, 2015-Ohio-3268, 40 N.E.3d 661, ¶ 5 (2d Dist.). "For a defendant to prevail, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to relief." (Citation omitted.) *Id.* This Court must "construe the complaint in the light most favorable to the plaintiff, presume all of the factual allegations to be true, and make all reasonable inferences in the plaintiff's favor." (Citation omitted.) *Id.*

At the same time, under Civ. R. 8(A), a complaint must contain a short and plain statement of the circumstances entitling the party to relief. "In order to meet this standard, the complaint must contain either direct allegations on every material point necessary to sustain a recovery on any legal theory, or contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial." (Quotation omitted.) *Sexton v. Mason*, 12th Dist. No. CA2006-02-026, 2007-Ohio-38, ¶ 25. To give fair notice to a defendant, "the complaint must still allege sufficient underlying facts that relate to and support the alleged claim, and may not simply state legal conclusions." (Quotation omitted.) *Tuleta v. Med. Mut. Of Ohio*, 8th Dist. No. 100050, 2014-Ohio-396, ¶ 12. "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678-679, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). "While the standard necessary

to satisfy the requirements of Civ. R. 8(A) is low… the '[s]implified pleading under Rule 8 does not mean that the pleader may ignore the operative grounds underlying a claim for relief.'" (Citations omitted.) *Klan v. Med. Radiologists, Inc.*, 12th Dist. No. CA2014-01-007, 2014-Ohio-2344 at *3 citing *Tuleta*, at ¶ 38.

Both the trial and appellate courts fairly applied this standard to Appellant's Complaint. Appellant's three purported claims are each deficient as a matter of law.

a. Appellants' tortious interference claim fails because Appellant did not allege Defendants acted outside the scope of their employment.

Appellant's tortious interference claims against Mr. Lacey and Ms. Spurlock are defective as a matter of law. An aggrieved ex-employee cannot pursue a tortious interference with an employment contract claim against supervisory employees who are acting within the scope of their duties. Appellant does not allege that Mr. Lacey or Ms. Spurlock acted outside the scope of their duties and, consequently, fails to state a claim upon which relief can be granted.

In *Jones v. Wheelersburg Local Sch. Dist.*, the Fourth District analyzed a similar set of facts to this case. *Id.*, 4th Dist. No. 12CA3513, 2013-Ohio-3685. In *Jones*, the plaintiff was terminated from her teaching contract with Wheelersburg Local School District due to allegations of misappropriated latchkey funds. *Id.* at ¶¶ 3, 55. The plaintiff then sued the school district, superintendent, and treasurer alleging tortious interference with her teaching contract, among other claims. *Id.* at ¶¶ 1, 55. The Fourth District upheld dismissal of the plaintiff's tortious interference claim because she was asserting it against supervisory employees of the school district. *Id.* at ¶¶ 52-57.

"A cause of action for tortious interference with an employment contract will not lie, however, against a supervisory employee acting within the scope of his duties." *Id.* at ¶ 54 citing *Anderson v. Minter*, 32 Ohio St.2d 207, 291 N.E.2d 457 (1972). If the conduct alleged by the

supervisory employee is within the scope of their duties, then it does not matter if the conduct alleged is malicious or outrageous: "Malice makes a bad case worse, but does not make wrong that which is lawful." (Citation omitted.) *Id.* Thus, a supervisor, acting in the course of their duties, has no liability for tortious interference with a contract due to terminating an employee. *Id.* Although *Jones* dealt with a summary judgment motion, the decision was based on the above legal standard. *Id.* at ¶ 55 (explaining that because plaintiff's supervisors committed the interference, plaintiff "cannot recover for interference with contract.").

Appellant's insistence that she alleged Mr. Lacey and Ms. Spurlock engaged in conduct outside the scope of their employment is without merit. The only behavior Appellant points to by Mr. Lacey is (1) meeting with the mothers of two students regarding alleged homophobic remarks made by a DPS principal to the students, (2) failing to speak with Appellant about the allegations, and (3) recommending that Appellant be terminated to the former superintendent. However, receiving complaints from parents of students and discussing those complaints with district leadership are well within the duties of a school board member. Indeed, Appellant offers no explanation of why they are not.

The facts alleged against Ms. Spurlock are no better. Appellant alleges that Ms. Spurlock, the then Executive Director of Human Resources, followed the direction of her superintendent on a personnel matter and offered Appellant the option to resign or be terminated. It is difficult to conceive a set of facts more squarely within the duties of a human resources director. In her Complaint, Appellant also claims Ms. Spurlock failed to conduct an "independent investigation" but offers no further details on what that means. Again, Appellant fails to explain how Ms. Spurlock's actions were outside the scope of her duties as the Executive Director of Human Resources.

Appellant's Complaint is not saved by arguing that Mr. Lacey reported the complaint unfairly or that the investigation into Appellant's alleged homophobic comments was done poorly or outrageously. It is not enough to criticize how Mr. Lacey and Ms. Spurlock carried out their job duties as liability cannot "be predicated simply upon the characterization of such conduct as malicious." *Jones* at ¶ 54 quoting *Anderson v. Minter,* 32 Ohio St.2d 207, 291 N.E.2d 457 (1972). Instead, Appellant must allege that Mr. Lacey and Ms. Spurlock acted *outside the scope of their employment.* No such allegation exists. As the trial court correctly observed, "Plaintiff's allegations regarding Defendants Lacey and Spurlock do not describe conduct that would be considered unlawful or outside the scope of their employment." Decision, Order, and Entry Sustaining Motion to Dismiss, August 25, 2022, p. 4.

To disguise this fundamental flaw in her Complaint, Appellant makes repeated references to the actions of people *other than* Mr. Lacey and Ms. Spurlock as supposed support for her tortious interference claim. Appellant accuses former Superintendent Rhonda Corr of instructing "Spurlock to fraudulently induce Burks to resign from her principal position." Appellant's Memo in Support of Jurisdiction, p. 12. As an initial matter, there is no allegation of fraud or fraudulent inducement in the Complaint. And regardless, the actions of Ms. Corr have no bearing on a tortious interference claim against Mr. Lacey or Ms. Spurlock. Similarly, Appellant's allegations against the Bricker Defendants' are irrelevant to her claims against Mr. Lacey and Ms. Spurlock.

In sum, Appellant makes no allegation that Mr. Lacey or Ms. Spurlock acted outside the scope of their duties; she only criticizes how they performed their duties. This is insufficient to support a claim of tortious interference with an employment contract. Even if Mr. Lacey and Ms. Spurlock had acted maliciously, never mind negligently, while investigating and responding to these allegations, Appellant could not maintain a tortious interference claim against them. *See*

Jones v. Wheelersburg Local School Dist., 4th Dist. No. 12CA3513, 2013-Ohio-3685, ¶ 54. Accordingly, Appellant's claims for tortious interference with a contract against Mr. Lacey and Ms. Spurlock were properly dismissed.

b. Appellant cannot bring a promissory estoppel claim against a political subdivision engaged in a governmental activity.

Without citation, Appellant argues that the trial court improperly "went to bat" for the Dayton Public Defendants by holding that she had "failed to allege any set of facts upon which [she] could prevail on a claim for promissory estoppel against the Board of Education, Defendant Lacey, or Defendant Spurlock." Appellant's Memo in Support of Jurisdiction, p. 13. As an initial matter, Appellant has already acknowledged that she cannot maintain a promissory estoppel claim against Mr. Lacey or Ms. Spurlock individually. *See Burks v. Dayton Pub. Schools Bd. of Education*, 2nd Dist. No. 29583, 2023-Ohio-1227, ¶ 41. Additionally, the trial court's above-quoted holding did not introduce a novel defense on behalf of DPS, it only applied the standard of a Civ.R. 12(B)(6) motion to dismiss. And even if the trial court's holding could be construed as the assertion of a new defense, it makes no difference. "It has long been the law in Ohio that where the judgment is correct, a reviewing court is not authorized to reverse such judgment merely because erroneous reasons were assigned as the basis thereof." (Quotation omitted.) *Reynolds v. Budzik*, 134 Ohio App.3d 844, 846, 732 N.E.2d 485, fn. 3 (6th Dist.1999). As the court of appeals explained, Appellant cannot maintain a promissory estoppel claim against DPS as it was engaged in a governmental function.

Political subdivisions engaged in a governmental function cannot be held liable under a theory of promissory estoppel. *Hortman v. Miamisburg*, 110 Ohio St.3d 194, 2006-Ohio-4251, 852 N.E.2d 716, ¶ 25 ("the doctrine[] of . . . promissory estoppel [is] inapplicable against a political subdivision when the political subdivision is engaged in a governmental function."). DPS is a

public school district and, thus, a political subdivision. *See Schmitt v. Educational Serv. Ctr. of Cuyahoga Cty.*, 8th Dist. Cuyahoga No. 97623, 2012-Ohio-2210, ¶ 10 ("school district[s] . . . are political subdivisions as defined in R.C. 2744.01(F)"). And the "provision of public education is a governmental function." *Id.* at ⁋ 18 citing *Doe v. Marlington Local Sch. Dist. Bd. of Edn.*, 122 Ohio St.3d 12, 2009–Ohio–1360, 907 N.E.2d 706, ¶ 11. The classification of public education as a governmental function, "extends to most school activities and administrative functions of the educational process, even if not directly comprising part of the classroom teaching process." *Perkins v. Columbus Bd. of Edn.*, 10th Dist. No. 13AP-803, 2014-Ohio-2783, ¶ 12. Personnel decisions are vital to the operation of a school district and, therefore, constitute a governmental function. *See Schmitt* at ¶ 18; *see also Bucey v. Carlisle*, 1st Dist. Hamilton No. C–090252, 2010-Ohio-2262, ¶ 16.

Additionally, the definition of "governmental function" includes "quasi-judicial" functions. R.C. 2744.01(C)(2)(f). Administrative proceedings involving notice, a hearing, and the opportunity to introduce evidence are considered "quasi-judicial" in nature. *Rankin-Thoman, Inc. v. Caldwell*, 42 Ohio St.2d 436, 438, 329 N.E.2d 686, 688 (1975). A teacher termination hearing under R.C. 3319.16 involves notice, a hearing, the opportunity to introduce evidence, and a right of appeal. *See id.* Consequently, a R.C. 3319.06 teacher termination hearing constitutes a quasi-judicial administrative hearing.

In support of her promissory estoppel claim, Appellant asserts that "[t]he Board, through Defendant Spurlock made a clear and unambiguous promise that if she resigned from her position as principal of Charity Adams rather than being terminated, the Board would keep the false allegations that the parents made against her confidential and would never discuss them again." *See* Appellant's Memo in Support of Jurisdiction, p. 14. However, Ms. Spurlock's actions in

relation to the resignation of the Appellant, then a school principal, were part of the provision of public education, a purely governmental function. As a political subdivision, DPS cannot be held liable under a theory of promissory estoppel when engaged in a governmental function.

Appellant's allegations against Defendant Stuckey fare no better. Appellant accuses Defendant Stuckey of breaking the supposed confidentiality agreement during cross examination at later R.C. 3319.16 hearings. However, R.C. 3319.16 teacher termination hearings are quasi-judicial in nature and, therefore, a governmental function. DPS is immune from promissory estoppel claims arising out of such hearings. Additionally, R.C. 3319.16 hearings involve the firing of teachers, a vital part of the provision of public education and, therefore, a governmental function. Accordingly, the trial court and court of appeals correctly dismissed Appellant's promissory estoppel claim against the Dayton Public Defendants.

c. Appellant's intentional infliction of emotional distress claim is deficient as a matter of law.

Appellant fails to allege conduct extreme and outrageous enough to maintain an intentional infliction of emotional distress claim. "The issue of whether conduct 'rises to the level of 'extreme and outrageous' conduct constitutes a question of law.'" *Meminger v. Ohio State Univ.*, 2017-Ohio-9290, 102 N.E.3d 642, ¶ 14 (10th Dist.) quoting *Jones v. Wheelersburg Local Sch. Dist.*, 4th Dist. No. 12CA3513, 2013-Ohio-3685, ¶ 41. For a plaintiff to maintain an intentional infliction of emotional distress claim, "it is not enough that the defendant has acted with an intent that is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by malice, or a degree of aggravation that would entitle the plaintiff to punitive damages for another tort." *Id.* at ⁋ 15 quoting *Mendlovic v. Life Line Screening of Am., Ltd.*, 173 Ohio App.3d 46, 2007-Ohio-4674, 877 N.E.2d 377, ¶ 47 (8th Dist.). A defendant will only be liable "where the conduct is so outrageous in character, and so extreme in degree as to go beyond

all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community." *Mendlovic* at ⁋ 47 citing *Yeager v. Local Union 20, Teamsters*, 6 Ohio St.3d 369, 374–375, 453 N.E.2d 666 (1983).

Typically, an employer's termination of an employee does not constitute extreme and outrageous conduct necessary to establish a claim for intentional infliction of emotional distress. *Meminger* at ⁋ 16 citing *Craddock v. Flood Co.*, 9th Dist. No. 23882, 2008-Ohio-112, ¶ 20. Many courts have rejected intentional infliction of emotional distress claims brought by terminated employees for this reason. *See, e.g., Branan v. Mac Tools*, 10th Dist. No. 03AP-1096, 2004-Ohio-5574, ⁋⁋ 29-31 (dismissing an intentional infliction of emotional distress claim brought by a former employee following his termination, despite the former employee alleging that he was interrogated for hours, unable to leave, and threatened); *see also Jones v. Wheelersburg Local Sch. Dist.* at ¶ 49; *see also Meminger v. Ohio State Univ.* at ⁋⁋ 13, 22 (affirming dismissal under Civ.R. 12(B)(6) of an ex-employee's intentional infliction of emotional distress claim based on a doctor throwing paperwork at her, complaining about her to her supervisor, and ultimately terminating her).

Appellant strains to manufacture an intentional infliction of emotional distress claim against the Dayton Public Defendants out of her voluntary resignation from DPS. As part of this effort, Appellant again claims that her resignation was "fraudulently induced," despite never making such a claim in her Complaint. *See* Appellant's Memo in Support of Jurisdiction, p. 15. Appellant is forced to mischaracterize the Complaint due to the lack of substantive allegations against the Dayton Public Defendants.

The sum of Appellant's claim against Mr. Lacey can be stated as such: Mr. Lacey did not investigate the allegations made against Appellant, and Mr. Lacey convinced the superintendent to give Appellant the option to resign or be terminated from her position as principal. *See*

Appellant's Memo in Support of Jurisdiction, p. 15. Similarly, the sum of Ms. Spurlock's supposed actions is comprised of (1) not independently investigating the parents' allegations and (2) giving Appellant the choice to either resign or be terminated. *Id*. These bare assertions are not sufficient to maintain a claim for intentional infliction of emotional distress.

Nevertheless, Appellant insists that the Dayton Public Defendants' conduct is sufficiently extreme and outrageous to maintain a claim for intentional infliction of emotional distress. Appellant directs the Court to *Guy v. Board of Education Rock Hill Local School District*, S.D. Ohio No. 1:18-CV-893, 2020 WL 2838508, for support. However, Appellant omits that the District Court in *Guy* held that the allegations were "just barely" sufficient to sustain a claim for intentional infliction of emotional distress. *Id.* at *10. Further, the claimed conduct in *Guy* was more serious than the conduct alleged by Appellant, as it included (1) a claim of fraudulent inducement, (2) a ban of the plaintiff from attending her son's sporting events on school property, and (3) allegations of "mental anguish, loss of self-esteem, and other emotional distress causing physical injury in the form of adverse health effects." *Id.* at *1, 10. In *Guy*, the board of education agreed to allow the plaintiff to attend her son's high school sporting events if she resigned, but the day after making that agreement, the board of education accepted her resignation and passed a resolution banning her from all school property. *Id.* at *1-2. The conduct alleged here does not rise to this level. Against Mr. Lacey and Ms. Spurlock, Appellant can only allege that she was unfairly terminated after a complaint was made against her. *See* Appellant's Memo in Support of Jurisdiction, p. 15.

The weaknesses of Appellant's claims against Mr. Lacey and Ms. Spurlock are also fatal to her claim against DPS. The only additional allegations Appellant can levy against DPS are the supposed improper comments by Mr. Stuckey during cross examination on behalf of DPS. *Id.*

However, the claims against Mr. Stuckey have been properly dismissed, and under *respondeat superior*, "a principal is vicariously liable only when an agent could be held directly liable." *Natl. Union Fire Ins. Co. of Pittsburgh, PA v. Wuerth*, 122 Ohio St.3d 594, 2009-Ohio-3601, 913 N.E.2d 939, ¶ 22. As this Court explained in *Natl. Union v. Wuerth*: "[t]he liability for the tortious conduct flows through the agent by virtue of the agency relationship to the principal. *If there is no liability assigned to the agent, it logically follows that there can be no liability imposed upon the principal for the agent's actions*." (Emphasis in original.) *Id.* quoting *Comer v. Risko,* 106 Ohio St.3d 185, 2005-Ohio-4559, 833 N.E.2d 712, ¶ 20. Here, Mr. Stuckey has no liability as the claims against him have been properly dismissed. Accordingly, DPS has no liability for Mr. Stuckey's actions under a theory of *respondeat superior*.

CONCLUSION

The court of appeals applied settled principles of Ohio law to the allegations in Appellant's Complaint – nothing more. This Court should decline to exercise jurisdiction.

Respectfully submitted,

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CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Opposition to Jurisdiction of Defendants Dayton Public School District Board of Education, Joseph Lacey, and Judith Spurlock, has been served via electronic mail on June 29, 2023, upon the following:

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