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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

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Appellate Case No. 2022-001408

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K.S., a minor, by and through his Guardian ad Litem, James Seeger ..... Petitioner,

v.

Richland School District Two..... Respondent.

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PETITIONER'S REPLY BRIEF

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STATEMENT OF ISSUES/QUESTIONS PRESENTED

I. Did the Court of Appeals err in failing to reverse the granting of Richland School District 2's motion for directed verdict?

II. Did the Court of Appeals err in instituting a new, baseless standard for mental injury?

III. Does Safe School Climate Act supersede the South Carolina Tort Claims Act?

IV. Was the lower court's exclusion of Petitioner's expert testimony improper?

ARGUMENT

There is no need to rehash here what is already in the Petitioner's brief about the evidence Respondent, Richland School District Two (hereinafter, sometimes "the school district"), claims is lacking that is actually in the record. This reply brief attempts to avoid answering the Respondent's arguments by simply repeating what is already in the Petitioner's brief. There is no need to say the same things again.

The brief submitted the school district fails to provide a defense of the trial court's rulings or the Court of Appeals' decision that holds up, that illustrates how a directed verdict was the correct result in a case in which the school district was on notice of a teacher's improper and cruel behavior pattern yet did nothing about it, in which the teacher, continuing in that pattern of humiliating behavior, forcefully grabbed K.S. (hereinafter, sometimes, "the child" or "the first grader"), and in which the teacher's easily preventable actions caused the child both physical and psychological pain. There was some evidence of each of the elements of gross negligence here, and it was up to a jury to decide whether to believe that evidence and render a verdict in favor of the child or the school district.

I. The school district argues as though there were no evidence of physical injury.

The school district spills much ink discussing this case as though there no evidence in it of physical injury. This is a straw man argument. See State v. Smith, 298 P.3d 1138 (Kan. App. 2013) ("straw man argument is where the arguer wishes to respond to an argument of his or her choosing and not one that is actually presented"). As discussed in detail in Petitioner's brief, evidence of an injury to the child that was indisputably physical was adduced at trial; the trial judge just ignored it. (App'x p. 158 line 13 – p. 159 line 17, p. 189 lines 10-16, p. 379 lines 11-21, p. 453-454, 587-588.) This evidence is of unwanted, nonconsensual physical

touching that caused damage – pain – to the first grader's body. (App'x p. 158 line 13 – p. 159 line 17, p. 189 lines 10-16, p. 379 lines 11-21, p. 453-454, 587-588.) Pain is damage. See, e.g., Spaugh v. A. C. L. Railroad Co., 158 S.C. 25, 155 S.E. 145, 147 (1930). "In order to receive bodily injury, it was not necessary that the plaintiff should lose a limb or receive a broken limb, or to have wounds inflicted on her body." Id. The trial court ruled, in defiance of the law, that what was not necessary was, actually, necessary. (App'x p. 453-454.)

Further, the school district is right that the Petitioner did not sue it for intentional infliction of emotional distress. One wonders, then, why the school district spends so much time discussing cases that are about intentional infliction of emotional distress.

If the school district contends that a touching that caused pain was not an event that caused injury, that is an argument that's place was before the jury. It is only "[w]hen the evidence yields only one inference" that "a directed verdict in favor of the moving party is proper." Wright v. Craft, 372 S.C. 1, 22, 640 S.E.2d 486, 498 (Ct. App. 2006). "When considering a directed verdict motion, neither the [circuit] court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." Burnett v. Family Kingdom, Inc., 387 S.C. 183, 188-89, 691 S.E.2d 170, 173 (Ct. App. 2010).

The trial judge acted as though the evidence of physical injury was not there. (App'x p. 453-454.) The Court of Appeals, recognizing at least that there is evidence of physical injury to the child, affirmed on the basis, divorced from precedent, that the injury was somehow, as a matter of law, not injurious enough.

Under the directed verdict standard, that is reversible error. Elam v. S.C. Dep't of Transp., 361 S.C. 9, 27-28, 602 S.E.2d 772, 782 (2004); Burnett, 387 S.C. at 188-89; Hopper v. Terry Hunt Constr., 373 S.C. 475, 479–80, 646 S.E.2d 162, 165 (Ct. App. 2007); Wright,

372 S.C. at 22. When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. Hopper, 373 S.C. at 479–80.

II. Even the school district's words show there was a jury issue about whether there was gross negligence.

The school district writes that "[a]s long as school officials made some effort to take precautions to protect students from foreseeable harm, they will have exercised slight care and therefore cannot be held liable" under a gross negligence standard. (Respondent's Brief p. 17.) But there is evidence here from which a jury could conclude that the school principal, after being notified of Moody's dangerous and harmful behavior, did not make any effort to take precautions to protect students from it until *after* the incident in which Moody hurt the first grader's arm. Petitioner points the court to the testimony and evidence laid out in pages 7 through 12 of his brief. Under the standard advanced *by the school district*, there was a fact question about whether there was gross negligence here.

That is a question that can only be properly answered by a jury. Elam, 361 S.C. at 27-28; Burnett, 387 S.C. at 188-89; Hopper, 373 S.C. at 479–80; Wright, 372 S.C. at 22. When even applying the reasoning of the school district to the record reveals the existence of a question of material fact, the school district's argument that disposition as a matter of law was correct cannot withstand the standard of review. See Elam, 361 S.C. at 27-28; Burnett, 387 S.C. at 188-89; Hopper, 373 S.C. at 479–80; Wright, 372 S.C. at 22.

III. The trial court erred in directing a verdict regardless of whether Dr. McEvoy's testimony should have been admitted and regardless of interpretation of the Safe School Climate Act.

The school district argues what it pitches as alternative sustaining grounds in support of the trial judge's expert exclusion ruling. The school district also argues its position on how

to resolve the conflicts between Safe School Climate Act, S.C. Code § 59-63-110, *et. seq.*, on the South Carolina Tort Claims Act, S.C. Code Ann. § 15–78–10, *et seq.*

The school district is wrong in its positions on these points, but in making them it has illustrated a bigger point about why reversal and remand is required: even absent Dr. McEvoy's testimony and without agreement with Petitioner on how to interpret conflicts in the statutes, there is evidence here that properly precluded a directed verdict under established gross negligence law, as outlined in Petitioner's brief. It is not necessary for this Court to decide the expert exclusion question or the conflicting statutes question in the child's favor in order to reverse. Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court does not need to review remaining issues when its determination of a prior issue is dispositive).

CONCLUSION

The school district has not explained away the fact questions that made direction of a verdict reversible error. Reversal and remand is the only result the direct verdict standard of review allows. See Elam, 361 S.C. at 27-28; Burnett, 387 S.C. at 188-89; Hopper, 373 S.C. at 479–80; Wright, 372 S.C. at 22.

Respectfully submitted,

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