THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
William H. Seals, Jr., Circuit Court Judge

Op. No. 2023-UP-244
(S.C. Ct. App. filed June 21, 2023)
Case No. 2017-CP-26-6643

Logan Wood and Sarah Wood,..... Respondents,

v.

Horry County School District,..... Petitioner.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for the Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on August 17, 2023.

QUESTIONS PRESENTED

I. Did the Court of Appeals err in failing to correctly interpret and apply the Tort Claims Act definition of "occurrence" and in failing to reduce the verdict for the Respondent Logan Wood to $300,000 based on the monetary caps set forth in S.C. Code Ann. § 15-78-120(a)?

II. Did the Court of Appeals err in affirming the denial of the Petitioner's motion to pay the amount of the judgments into court pursuant to Rule 67, SCRCP?

STATEMENT OF THE CASE

On October 20, 2016, the Respondent Logan Wood, then age 14, received a concussion while playing in a football game on the B team at North Myrtle Beach Middle School. The game was an away game for the North Myrtle Beach B team against Ocean Bay Middle School and was hosted by Carolina Forest High School at its stadium. As the host school, Carolina Forest provided the athletic trainer for the game consistent with the Petitioner Horry County School District's staffing model for coverage of athletic events by athletic trainers. Specifically, there was one Carolina Forest athletic trainer present in the stadium, and she had responsibility for monitoring the game and assessing and treating injuries to players on both teams.

The Respondent Logan Wood, and his mother, the Respondent Sarah Wood, alleged that during the football game Logan exhibited signs and symptoms of a concussion and should have been removed from the game by his coaches and/or the athletic trainer and assessed for a concussion. They alleged that Logan was not removed from the game but rather continued to play, ultimately receiving additional blows to the head, and he now suffers from second impact syndrome.

This case was tried from April 12-15, 2021, before Circuit Court Judge William H. Seals, Jr. and a jury. At the close of the Respondents' case-in-chief, the School District moved for a directed verdict on the basis that there was no

gross negligence as a matter of law and that there was only one “occurrence” as a matter of law. (R. 266-272). The same directed verdict motion was renewed at the close of all evidence. (R. 292).

The trial court submitted the case to the jury which returned a verdict finding two acts of gross negligence by the School District in response to special interrogatories. Specifically, the jury found that the School District "acted with gross negligence when it allowed Logan Wood to play without an athletic trainer present for his team" and also "acted with gross negligence when it failed to assess Logan Wood for signs and symptoms associated with a concussion." (R. 22). Additionally, the jury found in favor of the School District on whether the School District "acted with gross negligence in failing to train the coaching staff regarding post-concussive syndrome and second impact syndrome." (R. 22).

The jury awarded actual damages in the amount of $825,000 for Logan Wood and actual damages in the amount of $25,000 for Sarah Wood. (R. 23). The School District's post-trial motions were denied, except that the trial court did reduce the verdict for Logan to $600,000 for two "occurrences" each capped at $300,000. Accordingly, judgment was entered against the School District in the amount of $600,000 for Logan and $25,000 for Sarah. (R. 10).

The Petitioner School District appealed to the Court of Appeals which affirmed by a memorandum opinion filed June 21, 2023.

The School District filed a petition for rehearing, which was summarily denied by order issued on August 17, 2023.

ARGUMENTS

I. The Court of Appeals erred in failing to correctly interpret and apply the Tort Claims Act definition of "occurrence" and in failing to reduce the verdict for the Respondent Logan Wood to $300,000 based on the monetary caps set forth in S.C. Code Ann. § 15-78-120(a).

The Petitioner Horry County School District contends that the trial court erred in failing to correctly interpret and apply the Tort Claims Act definition of "occurrence" and in failing to reduce the verdict for the Respondent Logan Wood to $300,000 based on the monetary caps set forth in Section 15-78-120(a) of the Code of Laws. The School District identified three specific errors of law committed by the trial court. In its memorandum opinion, the Court of Appeals failed to consider or otherwise misapprehended each of those errors of law.

First, the School District argued that the trial court erred in failing to recognize that the application of the monetary caps presents an issue of law for the court to decide. Citing cases that have arisen strictly in the context of administrative law proceedings, including specifically workers' compensation cases and contested cases before the Administrative Law Court,[1] the Court of Appeals ruled that the application of the monetary cap pursuant to Section 15-78-120(a) presents a question for the jury. That ruling is at odds with existing

[1] In an administrative proceeding, the judge or commissioner (i.e., the arbiter of the law) also serves as the fact finder. That is not the case in a civil jury trial.

precedent, including the Court of Appeals' decision in *Parker v. Spartanburg Sanitary Sewer District*, 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005). In *Parker*, the Court of Appeals, using mandatory language, states: "We conclude that the monetary statutory cap is self-executing and the court is required to apply the monetary statutory cap to any jury verdict exceeding $300,000." 607 S.E.2d at 716. Thus, the application of the monetary caps is a self-executing duty imposed on the trial court – and not the jury -- where, as here, the jury's verdict exceeds $300,000. In effect, the application of the statutory caps is clearly not a decision for the jury.

Instead, as the School District argued below and on appeal, the application of the monetary cap pursuant to Section 15-78-120(a) presents a mixed question of law and fact, which includes an analysis of the term "single occurrence" which is incorporated in Section 15-78-120(a). The term "occurrence" means "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g). Thus, to carry out the self-executing duty recognized in *Parker*, the trial court is required to take the fact-finding of the jury and to determine whether the award for any "loss arising from" any "single occurrence" exceeds $300,000. *See*, S.C. Code Ann. § 15-78-120(a) ("no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence").

As the trial court instructed and the special verdict form allowed, the jury in the case at bar made a factual determination as to the number of acts of gross negligence that were committed by the School District. The jury concluded that there were two acts of gross negligence, one related to the number of athletic trainers available for the football game and the other for the failure to assess Logan Wood for the signs and symptoms associated with a concussion. (R. 22). With that special verdict form, that is what the jury was asked to determine. (R. 22-23).

Taking that factual determination, the trial court was required to determine whether those two acts of gross negligence give rise to or proximately caused the same "sequence of events" that is "unfolding" (or "evolving" or progressing" to apply useful synonyms). That is the self-executing duty imposed by Section 15-78-120(a) as recognized in *Parker*. The trial court did not, however, fulfill that duty or responsibility. Instead, the trial court treated the number of occurrences and the application of the monetary caps as purely a factual question for the jury's determination and concluded erroneously that the jury actually found multiple "occurrences" giving rise to presumably multiple "losses," which it did not. The special verdict form stated no such thing.

The Court of Appeals also erred in finding that the School District was at fault that the special verdict form provided insufficient information. That is neither correct nor fair. For the reasons discussed above, the School District took the position at the

directed verdict stage and throughout the trial that the occurrence issue requires a legal determination by the trial court. The trial court did not agree with that position, and as a result, the Court of Appeals is incorrect in finding that the School District "may not complain on appeal when it receives what it asked for at trial." Slip Op., at 2, *citing McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 479 S.E.2d 67, 79 (Ct. App. 1996). The School District did not receive what it asked for at trial as the trial court ultimately ruled that the number of "occurrences" presents a jury question. With that ruling, it was incumbent on the Respondents – not the School District – to ensure that the verdict form included the information by which the trial court could then carry out the self-executing duty imposed by Section 15-78-120(a).

Moreover, this is also consistent with the School District's position on appeal. In its opening brief in the Court of Appeals, the School District points out that "the [trial] court was nonetheless correct in not having the jury determine the number of 'occurrences' on the verdict form. As indicated, that presented a legal issue for the trial court's determination." *See*, Appellant's Opening Brief, p. 8.

In sum, the Court of Appeals misapprehended the record in its placement of blame on the School District for the inadequacies of the special verdict form. The jury should be asked to make the factual findings necessary for the trial court to carry out its self-executing duty as recognized in *Parker* to apply the monetary caps. The failure of the Respondent to obtain a verdict form that provides the necessary

information is grounds for a reversal. As this Court made clear in *Chastain v. AnMed Health Foundation,* 388 S.C. 170, 694 S.E.2d 541 (2010), it is a plaintiff's responsibility to provide a verdict form bearing the information necessary to prove his case and support the judgment, if he seeks a judgment in excess of the $300,000 cap. A defendant has no responsibility to make sure the verdict form proves the plaintiff's case – that burden lies with the plaintiff. Thus, the Court of Appeals erred in shifting the burden to the School District to make certain there is an adequate verdict form to prove the Respondents' entitlement to a judgment in excess of the $300,000 cap. Notably, a similar position taken by the plaintiff in *Chastain* to blame the defendant hospital for the inadequacy of the verdict form was rejected by the trial judge and by this Court on appeal.

Therefore, as the School District has argued, the trial court erred in its conclusion that the jury in this case found two separate and independent "occurrences" as that term is defined under the Tort Claims Act. In actuality, the special verdict form demonstrates only that the jury found two acts of gross negligence by the School District employees. (R. 22). The jury was not called upon to determine whether there even were multiple "occurrences" and, if so, to identify those "occurrences" or the "loss" arising from each occurrence. Likewise, there was no determination by the jury on that special verdict form that the two acts of gross negligence as found were "separate and distinct" or "separate and

independent." To repeat, the special verdict form shows that the jury was only asked to and did provide a factual finding as to the acts of gross negligence – nothing more and nothing less. (R. 22-23).

A trial judge may not speculate as to the jury's verdict, particularly on questions that the jury was never asked to answer *and did not answer* on the special verdict form. *Chastain* makes that clear as well. However, that is precisely what the trial court did in this case. The trial judge erroneously speculated that "[i]n completing the verdict form, the jury found for the Plaintiff that the first and second independent occurrences were supported by the evidence." (R. 8).[2] The trial judge proceeds to conclude that "the jury found that there were two separate and distinct occurrences of gross negligence which caused Logan Wood's brain injury." (R. 9). That, however, is nothing but speculation. To reiterate, the special verdict form says nothing about "occurrences" and says nothing about acts of gross negligence being "separate and distinct" or "separate and independent." The jury did not make those findings. (R. 22-23).

Finally, the School District argued that the trial court erred in failing to correctly interpret and apply the definition of "occurrence" to the findings of fact actually made by the jury on the special verdict form. In its memorandum opinion,

[2] Notably, the special verdict form was given to the jury with no explanation of the special interrogatories asked or their legal significance. (R. 351-352).

the Court of Appeals did not fully or correctly address this issue. At most, the Court of Appeals found that "evidence in the record supported the trial court's determination that the jury found *two occurrences of gross negligence*." Slip Op. at 2. (Emphasis added). However, the use of the phrase "two occurrences of gross negligence" demonstrates that the Court of Appeals, like the trial court, failed to correctly apply the law on multiple occurrences under the Tort Claims Act, including the statutory definition of "occurrence" as meaning "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g).[3]

Contrary to the Court of Appeals' ruling, the number of "occurrences" under a proper analysis is not determined by the number of acts of negligence or gross negligence. In effect, two acts of gross negligence do not equate to "two occurrences of gross negligence." This Court, in fact, made that very clear in the leading case of *Boiter v. South Carolina Department of Transportation*, 393 S.C. 123, 712 S.E.2d 401 (2011), where this Court explained: "we do not adopt a bright-line test based on the existence of multiple acts of negligence." 712 S.E.2d at 406. Importantly, the number of "occurrences" is *not* tied to the number of acts of negligence or gross

[3] The Tort Claims Act must be liberally construed to limit the liability of the state and its political subdivisions. S.C. Code Ann. § 15-78-20(f). *See, Faile v. South Carolina Department of Juvenile Justice,* 350 S.C. 315, 566 S.E.2d 536, 540 (2002) ("[p]rovisions establishing limitations on liability must be liberally construed in the State's favor"). *See also, Baker v. Sanders,* 301 S.C. 170, 391 S.E.2d 229 (1990); *Bayle v. South Carolina Department of Transportation,* 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).

negligence, and thus, contrary to the Court of Appeals' ruling, there were not "two occurrences of gross negligence" found by the jury. The Court of Appeals thus erred in failing to decide – just as the trial court failed to do – whether there were two different "unfolding sequences of events" that proximately flowed from the two findings of gross negligence by the jury. That is the dispositive question and was never answered by the trial court or by the Court of Appeals.

To properly read the statute *as written*, an "occurrence" is an "unfolding sequence of events." From a grammatical standpoint, "an unfolding sequence of events" is the predicate clause that defines the term "occurrence." Nonetheless, the Court of Appeals – like the Respondents – relied only on the back-end of the definition by focusing on "a single act of negligence." To reiterate, in *Boiter*, this Court has already rejected any notion that the number of "occurrences" is tied to the number of acts of negligence or gross negligence. *Boiter,* 712 S.E.2d at 406. Moreover, as *Boiter* further instructs, multiple acts of negligence may give rise to a single occurrence. Indeed, this Court recognized that "[i]n many situations, negligent acts from more than one entity would still equal but one occurrence." *Boiter*, 712 S.E.2d at 407. This would likewise be true where there are multiple acts of gross negligence committed by the same entity as in the case at bar. In sum, an "occurrence" is "an unfolding sequence of events," and that critical piece of the definition cannot be ignored or written out of the statute.

Given the jury's verdict which found *two acts of gross negligence* (and not "two occurrences of gross negligence"), the Court of Appeals, like the trial court, was required to apply that definition of "occurrence," and analyze whether those acts of gross negligence gave rise to or proximately caused a different "unfolding sequence of events." If those acts of gross negligence each give rise to a new "sequence of events" so as not to be "unfolding" or "evolving" from past events, only then is there a new and separate "occurrence." In other words, if the same "unfolding sequence of events" proximately flows from the two acts of gross negligence by the same entity, there is but a single occurrence, as this Court in *Boiter* explains.

In this case, there was a single event which proximately flowed from the two acts of gross negligence committed by the same entity, that being the failure to remove Logan Wood from the middle school football game to have him assessed for a concussion. The acts of gross negligence, as found by the jury on the special verdict form, flow into that singular event, i.e., they combined and concurred to proximately cause that single occurrence. One grossly negligent act was an error in planning (the staffing protocol of one trainer for both teams), and the other was an error in implementation (inattentiveness of the trainer). As stated, if the same "unfolding sequence of events" proximately flows from multiple acts of gross negligence by the same entity, there is still but a single occurrence. That is the

scenario the Respondents presented in the case at bar. The evidence does not support a finding of new or different or multiple "unfolding sequences of events."

To be clear, the trial court should have held as a matter of law that there was not more than one unfolding sequence of events which resulted in injury to Logan. The Respondents alleged that each team should have had a trainer instead of one trainer supplied by the home team. Having only one trainer, however, did not proximately cause Logan to be injured. The trial court, and the Court of Appeals, have treated the failure to have more than one trainer as an "occurrence." But there is no causal connection between the number of trainers and whether Logan could suffer a concussion. He would have suffered a concussion from the physical contact in the game regardless of the number of trainers present. Importantly, the jury found that the School District was not grossly negligent in failing to train the coaching staff regarding post-concussive syndrome and second impact syndrome. (R. 22). Instead, the jury found that the School District was grossly negligent in failing to assess Logan for signs and symptoms associated with a concussion. (R. 22). Those factual findings all give rise to the same "unfolding sequences of events" and but one "occurrence" as defined in the Tort Claims Act.

Importantly, the case at bar involves a *single governmental entity* – not multiple agencies – that committed more than one act of gross negligence as determined by the jury. This Court in *Boiter* forecasted how a case with those

characteristics should be adjudicated. This Court pointed out that "[c]ases from other jurisdictions are similarly inapposite because they involve a single governmental entity which committed multiple acts of negligence, a completely different situation than the one before us." *Boiter*, 712 S.E.2d at 406. This Court then cited favorably to two cases from other jurisdictions that are factually similar to the present case where there is a single governmental entity committing multiple acts of negligence resulting in one indivisible injury; yet the courts in those cases found a single occurrence. This Court also cautioned that "we determine the issue before us based solely on the peculiar facts of this case," which again reflects the Court's intent that its holding was inapplicable where a single governmental entity is involved. *Id*.

The Court of Appeals overlooked or otherwise disregarded *Boiter* in its memorandum decision. Remarkably, *Boiter* is not even mentioned or cited. As *Boiter* instructs, the trial court should have ruled as a matter of law that the same "unfolding sequence of events" proximately flowed from the two acts of gross negligence committed by the same governmental entity. There were not two separate and independent sequences of events resulting in Logan's injury. Instead, there was a singular, finite football game at which Logan was injured, and hence, there was but one "unfolding sequence of events" and thus one "occurrence."

The School District requests that this Court issue a writ of certiorari to properly analyze the "occurrence" issue by applying the *entire definition* and not just

the back-end of the definition. When properly analyzed under the rubric from *Boiter*, the School District submits that the trial court should only have found a single occurrence and, accordingly, the verdict should have been reduced to a single statutory cap of $300,000 in accordance with the mandates of Section 15-78-120(a).

To further elaborate on the need for a writ of certiorari, the School District submits that the bench and bar would greatly benefit from expanded authority from this Court on the meaning and application of the term "occurrence" under the Tort Claims Act. The issue of "multiple occurrences" has arisen in numerous trials of late, and the decisions at the trial court level, both state and federal, demonstrate the need for further appellate guidance. *See e.g.*, *Gifford v. Horry County Police Department*, 2023 WL 2702953, *6 (D.S.C. 2023) (where the federal district court erroneously concluded that the jury in *Boiter* did not "parse out" the verdicts between each claim and each defendant).[4] The statutory definition of "occurrence" is poorly articulated by the General Assembly and hence gives rise to a challenging application. The trial judge in the case at bar would not disagree with that

[4] As reflected in this Court's opinion, *Boiter* did not involve one lawsuit with two plaintiffs and two defendants. Instead, as this Court explained, "[t]he Boiters filed four separate lawsuits against South Carolina Department of Transportation (SCDOT) and South Carolina Department of Public Safety (SCDPS) (collectively, Respondents) alleging negligence in their failure to prevent the accident." *Boiter*, 712 S.E.2d at 402. Thus, there were four separate lawsuits, and as a result, when the cases were tried, the jury returned *four separate verdicts*. Those four verdicts totaled $1.875 million for each plaintiff. 712 S.E.2d at 402-403. In adjudging the post-trial motions, the trial judge in *Boiter* did have available to him the jury's determination of the "loss" attributable to each defendant (SCDOT or SCDPS) in favor of each plaintiff (Larry Boiter and Jeannie Boiter). That allowed this Court to know on appeal that the

characterization; during the trial, the judge actually described the term "occurrence" as "slippery at best." (R. 293). Yet, trial courts, including the one in this case, are repeatedly erring in charging a jury with the definition of "occurrence" and then expecting a jury to navigate its meaning and application on the mistaken premise that a jury question is presented.

In *Boiter*, this Court deliberately limited its opinion by "determin[ing] the issue before us based solely on the peculiar facts of this case." 712 S.E.2d at 406. This case, however, now provides this Court with the opportunity to elaborate on the *Boiter* decision and provide guidance as to how the issue of multiple occurrences should be tried.

II. The Court of Appeals erred in affirming the denial of the Petitioner's motion to pay the amount of the judgments into court pursuant to Rule 67, SCRCP.

As an additional issue on appeal, the School District contends that the trial court erred in denying its motion to pay the amount of the judgment into court as permitted by this Court's longstanding precedent from such cases as *Manning v. Brandon Corporation*, 163 S.C. 178, 161 S.E. 405 (1931), and *Russo v. Sutton*, 317

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jury found in excess of $300,000 in damages for each of the two occurrences that this Court found, one by SCDOT and another by SCDPS.

S.C. 441, 454 S.E.2d 895 (1995), which the School District has referred to as the "*Manning/Russo* rule."

A. Applicable Standard of Review

In adjudicating that issue, the Court of Appeals simply held that "the trial court did not abuse its discretion in denying HCSD's motion to deposit the judgment amount with the court." Slip Op. at 3. Thus, the Court of Appeals applied an abuse of discretion standard of review and did not address the School District's position that a *de novo* standard applies because the application of the *Manning/Russo* rule is purely a question of law.

On the standard of review, the Court of Appeals cited only this Court's decision in *South Carolina Department of Transportation v. First Carolina Corp. of South Carolina*, 369 S.C. 150, 631 S.E.2d 533 (2006), where this Court wrote: "The granting of leave to deposit money with the court pursuant to Rule 67, SCRCP is a matter within the discretion of the trial court and will not be overturned absent an abuse of that discretion." 631 S.E.2d at 535. Notably, this Court did not cite any prior South Carolina precedent such as *Manning* or *Russo* or the numerous other cases applying the *Manning/Russo* rule. Instead, this Court cited only a federal decision from the Fifth Circuit Court of Appeals. Importantly, the federal courts'

application of Rule 67 has always been diametrically different from existing South Carolina precedent.

Moreover, the standard of review as discussed in *First Carolina* should be treated as *dicta*.[5] That is because the issue actually before the Supreme Court in that case was not one of discretion but rather purely an issue of law to which a *de novo* standard of review applies. This Court found that Rule 67 conflicted with a provision of the Eminent Domain Procedure Act which required post-judgment interest to be added to any judgment that was not paid within a twenty-day period. This Court applied principles of law and concluded that "the Act prevails over the rules of civil procedure." 631 S.E.2d at 536. In short, that case presented a pure issue of law and not one to which an abuse of discretion standard would even be applicable.

Moreover, in *First Carolina*, this Court did not overrule the *Manning/Russo* rule. Instead, this Court cited *Russo* and explained that "Rule 67, SCRCP, allows a judgment debtor to avoid further accrual of post-judgment interest pending the resolution of an appeal from the judgment by depositing the judgment with the

[5] *See*, *Drummond v. Beasley*, 331 S.C. 559, 503 S.E.2d 455 (1998) (characterizing as dicta certain language in a case concerning a subject not within the question before the court); *Hampton v. Richland County*, 296 S.C. 72, 370 S.E.2d 714, 714 (1988) (concluding discussion of a legal principle in an opinion was dicta where it was "clearly unnecessary to a resolution of the issue before the court"); *Dennis v. South Carolina National Bank*, 299 S.C. 34, 382 S.E.2d 237, 240 (Ct. App. 1988) (construing language in a case as dicta because it was "an expression or statement by the court on a matter not necessarily involved in the case nor necessary to a decision thereof").

court." 631 S.E.2d at 536. That is consistent with the position taken by the School District in the present case.

Finally, if this Court in *First Carolina* had truly intended for an abuse of discretion standard to apply to the granting of leave to deposit money with the court pursuant to Rule 67, the Court would have published the factors for courts to consider in exercising that discretion. Certainly, Rule 67, as currently promulgated, includes no factors to be considered. Likewise, at no time has any South Carolina appellate court ever laid out any factors to be weighed and considered by a trial judge in deciding whether to allow a judgment debtor to deposit the judgment with the court under Rule 67. If Rule 67 truly presents a matter of discretion, the *Manning/Russo* rule would need to be overruled and this Court would need to elucidate the factors to be weighed, which would need to be accomplished by an amendment to Rule 67.

In effect, if this issue had truly been intended by this Court to be an issue for the exercise of discretion, due process dictates that there must be uniform factors for judges to apply. The issue cannot be left to the whim of the judges to decide what factors are relevant and should be applied. Those factors will undoubtedly differ from judge to judge. The lack of judicially recognized and uniform factors to be considered results in a strong likelihood of inconsistent application and likely equal protection infringement where similarly situated judgment debtors are treated

differently. There are no safeguards in place to prevent unequal or selective application. In short, the absence of published or judicially recognized uniform factors further supports the School District's position that the application of Rule 67 actually presents an issue of law and not a matter for judicial discretion, as the Respondents urge and the trial court erroneously concluded. Therefore, a writ of certiorari is warranted to allow this Court to provide a complete and proper analysis of the standard of review for the benefit of the bench and bar.

B. Application of the "*Manning/Russo* Rule"

The Court of Appeals also erred in failing to recognize the "*Manning/Russo* rule" as controlling law on this issue. In interpreting and applying Rule 67, SCRCP, this Court in *Russo v. Sutton*, 317 S.C. 441, 454 S.E.2d 895 (1995), held that "a judgment debtor's deposit of funds into the court pending his own appeal prevents further accrual of interest." 454 S.E.2d at 896. This Court explained that "[s]uch a rule encourages the debtor to pay the judgment and assures the judgment creditor the funds will be available at the conclusion of the appeal." *Id*. In reaching that ruling, this Court looked at the law that pre-dated the adoption of the South Carolina Rules of Civil Procedure, and explained as follows: "[I]n *Manning v. Brandon Corporation*, 163 S.C. 178, 161 S.E. 405 (1931), we recognized that a judgment debtor may prevent accrual of interest pending a creditor's appeal by paying the

judgment into court, under an order of the court." 454 S.E.2d at 896. This Court in *Russo* then acknowledged the adoption of Rule 67, SCRCP, but concluded that "this rule is consistent with our holding in *Manning* that a debtor may prevent accrual of interest by depositing the funds under an order of the court." 454 S.E.2d at 897. In short, this Court recognized that the rule from *Manning* is longstanding and remains the law after the adoption of Rule 67.

This Court in *Russo* also cited favorably to an earlier decision in *Sears v. Fowler*, 293 S.C. 43, 358 S.E.2d 574 (1987), where this Court noted that "a judgment debtor may stop the running of interest by paying the amount of the judgment into court during the pendency of an appeal." 358 S.E.2d at 574, n.1.

The rule of law recognized by this Court in *Manning*, *Sears*, and *Russo* has been upheld and applied in numerous cases since that decision. *See e.g.*, *Small v. Pioneer Machinery, Inc.*, 330 S.C. 62, 496 S.E.2d 884, 885 (Ct. App. 1998) ("[a] judgment debtor's deposit of funds into the court pending his own appeal prevents further accrual of interest on the judgment"); *Renaissance Enterprises, Inc. v. Ocean Resorts, Inc.,* 334 S.C. 324, 513 S.E.2d 617, 618 (1999) ("a judgment debtor's deposit of funds into court pursuant to Rule 67 pending his own appeal stops the accrual of interest on the judgment"); *Duval v. Heritage Life Ins. Co.*, 339 S.C. 616, 529 S.E.2d 566 (Ct. App. 2000) (same). In 1999, the Court of Appeals explained that the "[p]ayment of a judgment into court is deemed to be a payment of money

for the use of the person entitled thereto and stops the running of judgment interest." *South Carolina Department of Transportation v. Faulkenberry*, 337 S.C. 140, 522 S.E.2d 822, 828-829 (Ct. App. 1999).

At no time has either appellate court waivered from the *Manning/Russo* rule, except where the post-judgment interest is required by contract or by statute. Neither exception is applicable here. The appellate courts have not recognized any other exceptions to the *Manning/Russo* rule. In fact, in *Duval v. Heritage Life Ins. Co.*, 339 S.C. 616, 529 S.E.2d 566 (Ct. App. 2000), the Court of Appeals described the rule from *Russo* as being "unmistakably clear." 529 S.E.2d at 569. The *Duval* Court specifically stated that "[t]he court of appeals is bound by the decisions of the supreme court. Where the law is unmistakably clear, this court has no authority to change it." *Id*. The same is true in the present case. The *Manning/Russo* rule is "unmistakably clear," and the rule remains binding precedent that the trial court and the Court of Appeals were required to apply.[6]

[6] Obviously, the circuit court is bound by decisions of the Supreme Court. *See*, *Carson v. Southern Railway*, 68 S.C. 55, 46 S.E. 525, 529 (1903). Likewise, it is well settled that this Court cannot overrule established precedent from the Supreme Court. *See, S.C. Const., art V, § 9* ("[t]he decisions of the Supreme Court shall bind the Court of Appeals as precedents"); *Freeman v. Freeman*, 323 S.C. 95, 473 S.E.2d 467, 473 (Ct. App. 1996) ("[the Court of Appeals is] bound by the decisions of the South Carolina Supreme Court"); *State v. Cheeks*, 400 S.C. 329, 733 S.E.2d 611, 618 (Ct. App. 2012) ("this court lacks the authority to rule against prior published precedent from our supreme court, but is bound by the decisions of the supreme court").

Yet, without even mentioning the *Manning/Russo* rule nor addressing whether the rule has been overturned by the Supreme Court precedent, the Court of Appeals abandoned that rule with no such analysis provided in its memorandum opinion. The record reflects that the School District fully complied with the requirements as set out in *Russo* and the "plain language of Rule 67 by giving notice to the other party and obtaining leave of the circuit court before depositing the funds with the clerk of court." *Small v. Pioneer Machinery, Inc.*, 330 S.C. 62, 496 S.E.2d 884, 885-886 (Ct. App. 1998). Thus, the trial court's refusal to allow the School District to deposit funds with the court under Rule 67 constitutes a reversible error of law. Because the Respondents opposed the School District's motion, this Court is requested to reverse the order denying the School District's Motion to Deposit Funds and provide instructions on remand to the effect that the School District is not required to pay post-judgment interest on the judgment that remains after remand.

CONCLUSION

Based on the foregoing discussion, the Petitioner Horry County School District respectfully requests that this Court grant its petition for a writ of certiorari.

Respectfully submitted,

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