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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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Appellate Case No. 2021-000535
Case No. 2017-CP-26-6643

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

v.

Horry County School District, ..... Appellant.

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# BRIEF OF APPELLANT

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## STATEMENT OF ISSUES ON APPEAL

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II. Did the trial court err in denying the Appellant'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 Appellant 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 Woods' 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 $600,00 for Logan and $25,000 for Sarah. (R. 10).

The School District filed a timely appeal to this Court.

## STANDARD OF REVIEW

The standard of review for questions of law is *de novo*. The appellate court "may reverse where the decision is affected by any error of law." *Murphy v. Owens Corning*, 393 S.C. 77, 710 S.E.2d 454, 457 (Ct. App. 2011). The appellate courts are "free to decide matters of law with no particular deference to the fact finder." *Id*.

## ARGUMENTS

### I. 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 S.C. Code Ann. § 15-78-120(a).

The trial court determined that the jury found "two separate, independent occurrences of gross negligence which caused the brain injury of Logan Wood." (R. 9). Based thereon, the trial court reduced the jury verdict for Logan to $600,000, which represents two "caps" of $300,000 each. Judgment was entered in that amount. (R. 9-10). The Appellant School District, however, submits that the verdict for Logan should have been reduced to a single "cap" of $300,000.

Section 15-78-120 of the South Carolina Tort Claims Act establishes the monetary caps or limits on a governmental entity's liability for money damages. Section 15-78-120(a) provides that "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." S.C. Code Ann. § 15-78-120(a). 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).[1]

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[1] *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).

The trial court committed several errors of law in its application of the monetary caps. First, 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. Second, 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 jury found two acts of gross negligence by the School District employees. (R. 22). The jury was not called upon to identify the number of "occurrences" or to determine whether there even were multiple "occurrences." Third, the trial court erred in failing to correctly interpret and apply the definition of "occurrence" under the Tort Claims Act to the findings of fact actually made by the jury on the verdict form.

In *Parker v. Spartanburg Sanitary Sewer District*, 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005), this Court, 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 where, as here, the jury's verdict exceeds $300,000.

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). The statutory definition of “occurrence” is complex and nuanced and frankly not one

that can be easily understood or applied by a jury. The trial judge would not disagree with that characterization; during the trial, the judge actually described the term "occurrence" as "slippery at best." (R. 293). Indeed, even the South Carolina appellate courts that have addressed that definition have struggled with its meaning and application. *See*, *Boiter v. South Carolina Department of Transportation,* 393 S.C. 123, 712 S.E.2d 401 (2011)*; Chastain v. Anmed Health Foundation,* 388 S.C. 170, 694 S.E.2d 541 (2010).

Accordingly, the statutory definition of "occurrence" presents an issue of statutory construction, and that is an issue of law for the trial court to apply post-verdict after the jury has made its factual findings. In essence, the "occurrence" issue presents a mixed question of law and fact. *See, Charleston County Parks & Recreation Comm'n v Somers,* 319 S.C. 65, 459 S.E.2d 841 (1995) (questions of statutory construction are a matter of law).

The trial court's approach to its self-executing duty to apply the statutory caps was a bit of a mixed bag. While the trial court did charge the jury on the Tort Claims Act definition of "occurrence," (R. 347), the court did not have the jury actually apply that definition to determine the number of "occurrences." The verdict form was given to the jury with no explanation of the special interrogatories asked or their legal significance. (R. 351-352). Charging the jury with the definition of "occurrence" which presents an issue of statutory construction

was superfluous and incorrect, but the 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.

As the trial court instructed and the verdict form allowed, the jury 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). But, contrary to the trial court's ruling in its post-trial order, there was no determination made by the jury as to the number of "occurrences." Likewise, there was no determination by the jury that the acts of gross negligence were "separate and distinct" or "separate and independent." To repeat, the 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).

Indeed, it was the trial court's role to interpret and apply the definition of "occurrence," a subject that is nuanced or "slippery" as the trial court commented. (R. 293). That presents purely an issue of law, where the trial court applies the law based on the acts of gross negligence found by the jury. Taking that factual determination, the trial court was required to determine whether those 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 per this Court's decision in *Parker*. The trial court did not, however, fulfill that duty or responsibility. Instead, the trial court treated the issue as purely a factual question for the jury's determination and concluded erroneously that the jury actually found multiple "occurrences," which it did not.

As defined within the Tort Claims Act, an “occurrence” is “an unfolding sequence of events which proximately flow from a single act of negligence.” S.C. Code Ann. § 15-78-30(g). Breaking that down grammatically, an occurrence is an “unfolding sequence of events.” An occurrence does not equate to an "single act of negligence." If the same "unfolding sequence of events" proximately flows from multiple acts of negligence (or gross negligence), there is still but a single occurrence. However, if those acts of gross negligence each give rise to a new or different “sequence of events” so as not to be “unfolding” or “evolving” from past events, then there is a new “occurrence.” As discussed in greater detail below, the number of "occurrences" is not determined by the number of negligent acts. The Supreme Court made that crystal clear in the leading case of *Boiter v. South Carolina Department of Transportation*, 393 S.C. 123, 712 S.E.2d 401 (2011), where the Supreme 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.

In this case, there was a single event which proximately flowed from multiple acts of gross negligence (not a "single act of negligence"). The event (or occurrence) was the failure to remove Logan Wood from the middle school football game and have him assessed for a concussion. The multiple acts of gross negligence, as found by the jury, were not "separate and distinct" as the trial court believes that the jury found. Instead, those acts of gross negligence flowed into that singular event, i.e., they combined and concurred to proximately cause that single occurrence – the very same "unfolding sequence of events."

As indicated, the leading case on the application of the term "occurrence" under the Tort Claims Act is the Supreme Court's decision in *Boiter v. South Carolina Department of Transportation*, 393 S.C. 123, 712 S.E.2d 401 (2011). In that case, the Supreme Court concluded that there were separate "occurrences" by two state agencies that resulted in a motor vehicle accident. By way of factual background, the Boiters' vehicle and another vehicle collided when both vehicles entered an intersection at the same time. At the time of the accident the red signal light bulbs in the traffic signal for other vehicle's direction of travel had burned out. The Boiters brought suit against the South Carolina Department of Transportation (SCDOT) alleging negligence in failing to have a relamping policy in place. The Boiters also brought suit against the South Carolina Department of Public Safety (SCDPS) alleging negligence in failing to send a trooper to direct traffic at the

intersection after being notified that the red lights were out. In a 4-1 decision, the Supreme Court found that the negligence committed by SCDOT constituted one "occurrence" and the negligence by SCDPS constituted a separate "occurrence." In other words, the Supreme Court concluded that there were "independent and separate acts of negligence" by the two state agencies. Importantly, the Supreme Court expressly decided the issue "based solely on the peculiar facts of this case" and further stated that no "bright-line test" was being adopted by the Court. 712 S.E.2d at 406. The Supreme Court did, in fact, acknowledge that "[i]n many situations, negligent acts from more than one entity would still equal but one occurrence." 712 S.E.2d at 407. But, based on what it described as "peculiar facts," the Supreme Court found that "there were two separate entities which committed two separate and independent acts of negligence, and we do not believe the General Assembly's intent was to limit recovery in such situations based on there being only one occurrence." *Id*.

The present case is readily distinguishable from *Boiter* in that this case involves a single governmental entity that committed multiple acts of gross negligence as determined by the jury. Nonetheless, the Supreme Court in *Boiter* forecasts how a case with those characteristics should be adjudicated. The Supreme Court points 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. The Supreme Court then cites favorably to two cases from other jurisdictions that are instructive in the present case. Those cases are factually similar to the present case where, unlike in *Boiter*, there is a single governmental entity that committed multiple acts of negligence yet the court found a single occurrence.

The most comparable of those cases is *Folz v. State*, 110 N.M. 457, 797 P.2d 246 (1990), which our Supreme Court described as holding that the "negligence by [the] highway department which resulted in a truck striking five separate vehicles in [a] collision was only one occurrence under [the applicable] statute." *Id*. In *Folz*, a personal injury suit was brought against the state highway department after a runaway truck successively struck five vehicles in a mountainous construction site. The plaintiffs alleged that the highway department committed two negligent acts described as "negligen[ce] in failing to design and implement an appropriate traffic-control plan for the project." 797 P.2d at 249. The court concluded that "[t]he Department committed at least two negligent acts or omissions (planning and implementation) that, although committed successively, combined concurrently with the negligence of the other tortfeasors to proximately cause indivisible harm to each of multiple person facing the singular risk of a runaway truck." 797 P.2d at 252. The court further explained "while a 'series' of acts or omissions on the part of the Department created an undue risk of injury, these acts contributed to a unitary risk,

and only one triggering event occurred giving rise to liability." 797 P.2d at 254. The New Mexico court found that there was a "single occurrence" under that state's Tort Claims Act.[2]

Importantly, in *Boiter*, the Supreme Court recognized that "[i]n many situations, negligent acts from more than one entity would still equal but one occurrence." 712 S.E.2d at 407. This would likewise be true where there are multiple acts of negligence *committed by the same entity*, particularly where those acts are the same or similar and result in a continuous "unfolding sequence of events." To reiterate, in *Boiter*, the Supreme Court found two occurrences when the facts revealed that two governmental defendants each committed a separate and independent wrongful act that did not combine or "unfold" to cause the plaintiff's injury. Here, the facts viewed in the light most favorable to Logan reveal that a single governmental defendant committed two related wrongful acts that combined or "unfolded" to result in Logan's concussive symptoms not being recognized and Logan not being removed from the football game. As in *Folz*, the jury found gross

[2] In its order, the trial court erred in improperly citing to and relying on numerous Circuit Court decisions which are clearly not precedent on which the court could properly base a decision. In *Ford v. Beaufort County Assessor*, 398 S.C. 508, 730 S.E.2d 335 (Ct. App. 2012), this Court explained that "[t]rial or inferior court decisions are not precedents binding other courts, including appellate courts or other judges of the same trial court." 730 S.E.2d at 339, n.3., *citing* C.J.S. *Courts* § 206 (2021). The trial court even cited at length to a portion of the Circuit Court's ruling that was on appeal in *Williamson v. South Carolina Insurance Reserve Fund*, 355 S.C. 420, 586 S.E.2d 115 (2003), despite the fact that the Supreme Court did not find it necessary to reach and did not address the "multiple occurrence" issue.

negligence in both planning and implementation, and those acts or omissions combine to create a unitary risk to Logan triggered by a single event.

Given the jury's verdict, the trial court as well as this Court on appeal must interpret and apply the statutory definition of “occurrence" and, thus, must analyze whether the evidence supports the conclusion that there were two acts of gross negligence giving rise to or proximately causing a different "unfolding sequence of events." That presents purely an issue of law – the application of the statutory definition of "occurrence" to the facts as determined by the jury. 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 multiple acts of gross negligence, there is but a single occurrence, as the Supreme Court in *Boiter* explains.

During the trial, the Respondents' counsel argued that the number of "occurrences" is based on the number of "proximate causes." (R. 271). That is a misreading of the definition of "occurrence" which does not turn on the number of "proximate causes" just as an "occurrence" is not determined by the number of negligent acts. Without question, there can be more than one proximate cause of an injury. *See, Player v Thompson*, 259 S.C. 600, 193 S.E.2d 531 (1972). However, the possible proximate causes of Logan’s injury -- whether an improper

athletic trainer staffing model or inattentiveness of the trainer and the coaches -- resulted in only a single occurrence. The jury verdict itself shows that the jury found two acts of gross negligence: (1) Logan playing with only one trainer present (improper staffing) and (2) the failure of the coaches and trainer to assess Logan for signs and symptoms of a concussion (inattentiveness). Those two acts of gross negligence, which are not separate and independent as in *Boiter*, flow into that singular event, i.e., they combined and concurred to proximately cause that single occurrence – that same unfolding sequence of events.

In sum, if the same "unfolding sequence of events" proximately flows from multiple acts of gross negligence, there is still but a single occurrence. That is the scenario the Respondents have presented in the case at bar. The evidence does not support a finding of new or different "unfolding sequences of events." Accordingly, the verdict for Logan Wood should have been reduced to the statutory cap of $300,000 in accordance with the caps mandated by S.C. Code Ann. § 15-78-120(a).

## II. The trial court erred in denying the Appellant's motion to pay the amount of the judgments into court pursuant to Rule 67, SCRCP.

Following the denial of post-trial motions, the trial court entered a judgment in favor of the Respondent Logan Wood in the amount of $600,000.00. The trial court likewise entered a judgment in favor of the Respondent Sarah Wood in the amount of $25,000.00. The School District filed its appeal to this Court.

Thereafter, the School District sought to deposit the sum of $625,000.00, plus accrued interest, with the clerk of court in accordance with Rule 67, SCRCP, during the pendency of this appeal.

Rule 67, SCRCP, authorizes a party to deposit the sum of a judgment into the court upon notice to the other parties and with leave of court. South Carolina law recognizes that a judgment debtor's payment into court of the amount of the judgment stops the accrual of post-judgment interest. In *Russo v. Sutton*, 317 S.C. 441, 454 S.E.2d 895 (1995), the South Carolina Supreme Court 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. The Supreme 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, which remains precedent, the Supreme 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. The Supreme 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, the Supreme Court recognized that the rule from *Manning* is longstanding and remains the law after the adoption of Rule 67.

The Supreme 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 the Supreme 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 the Supreme 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, this Court 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), this Court described the rule from *Russo* as being "unmistakably clear." 529 S.E.2d at 569. This 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 absent being overruled by the Supreme Court, the rule remains binding precedent that the trial court was required to but refused to apply.[3]

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

[3] 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").

884, 885-886 (Ct. App. 1998). Yet, in in its order filed August 17, 2021, the trial court denied the School District's Motion to Deposit Funds. In so ruling, the trial court did not consider or cite the extensive and controlling South Carolina precedent as cited above.

Instead of relying on such precedent, the trial court cites only to two Circuit Court decisions as controlling authority, namely *Davis v. Agape Nursing Rehabilitation Center, Inc*., Civil Action No. 2016-CP-32-00950 (S.C. Com. Pl. Nov. 30, 2018), and *Hanna v. Boone*, Civil Action No. 2010-CP-21-1044 (S.C. Com. Pl. Mar. 6, 2013). (R. 24). The decisions of another Circuit Court judge, however, are not controlling precedent in any instance. It was clear error to rely on and cite to Circuit Court orders. *See*, *Ford v. Beaufort County Assessor*, 398 S.C. 508, 730 S.E.2d 335, 339, n.1 (Ct. App. 2012) ("[t]rial or inferior court decisions are not precedents binding other courts, including appellate courts or other judges of the same trial court").

Moreover, as its basis for denying the School District's Motion to Deposit Funds, the trial court wrote:

> The Plaintiffs in this case had the heightened burden of proving gross negligence. A jury in Horry County determined that the Plaintiffs met this burden. The jury also found that the injuries were very serious and life altering, as shown by an award well in excess of a single cap as established by the South Carolina Tort Claims Act. Under these circumstances, this Court finds that it would be unconscionable and/or fundamentally unfair to

> allow the Defendant to avoid interest during the pendency of an appeal.

(R. 25). The trial court therefore applied an unconscionability and due process (i.e., fundamental fairness) rationale for denying the motion, neither of which is a ground that was actually asserted by the Respondents in opposition of the motion. The trial court, therefore, denied the motion on grounds it raised *sua sponte* after the hearing was completed and on which the trial court did not allow for notice and an opportunity to heard by the School District as the moving party. The trial court's ruling in this respect not only denied procedural due process to the School District but was also in contravention of the rule of law under our adversarial system which holds that "[i]t is an error of law for a court to decide a case on a ground not before it." *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 599 S.E.2d 462, 464 (Ct. App. 2004).

In effect, the trial court erred in considering the results of the case in assessing whether the judgment debtor is entitled or not to deposit funds with the Court under Rule 67. In practically every case where the judgment debtor seeks to pay the judgment into court, that party will be the losing party in the litigation – otherwise they would not be a judgment debtor. It should not be a valid consideration that the party objecting to the payment of the judgment into court was the prevailing party because that will almost always be the case. More importantly, it is inappropriate to use the type of case, the applicable burden of

proof (negligence versus gross negligence), and substantive aspects of the case itself in deciding whether a judgment debtor is or is not entitled to pay the judgment into court. Those are factors that are subject to great subjectivity. Those are not factors that may be objectively applied so as to ensure that equal protection guarantees are not violated from one judgment debtor to another. The trial court thus adopted an unconstitutional test – which has not been the basis in any reported decision in South Carolina – that actually violates due process and equal protection.

In sum, 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, the trial court should be directed on remand not to require the School District to pay post-judgment interest on the judgments that remain after remand.

## CONCLUSION

Based on the foregoing discussion and analysis, the Appellant Horry County School District respectfully requests that the Court reverse the post-trial order of Circuit Court Judge William H. Seals, Jr. in part and order that the judgment in favor of Logan Wood be reduced to $300,000. In addition, the 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 judgments that remain after remand.

Respectfully submitted,

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## CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellant Horry County School District certifies that the Final Brief of Appellant complies with Rule 211(b), SCACR.

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## CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant Horry County School District certifies that the Final Brief of Appellant complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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June 27, 2022

## CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court's Order RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), the undersigned employee of Lindemann & Davis, P.A., counsel for the Appellant South Carolina Department of Education, does hereby certify that service of the **Final Brief of Appellant** was made upon all counsel of record by email only at the below email addresses this the 27th day of June 2022, as follows:

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