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Nov 13 2023
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The 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.

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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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 trial court, as affirmed by the Court of Appeals, determined that the jury found "two separate, independent occurrences of gross negligence which caused the brain injury of Logan Wood." (R. 9). Mistakenly treating the number of "occurrences" as a question of fact for the jury, 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). As the School District maintains, there are several legal errors that the Court of Appeals failed to consider or otherwise misapprehended in its memorandum opinion.

The first issue asks whether the application of the monetary caps presents an issue of law for the court to decide or an issue of fact for the jury. The Respondent Logan Wood boiled down that issue to the following: "There is no case that says, after a jury's findings of multiple acts of gross negligence, there is another analytical step that only the court may perform to determine the number of occurrences." *See* Respondent's Return, p. 8. The School District agrees that the proper procedure is not spelled out in a current decision. But the converse is also true: there is no case that states that a determination of the number of occurrences

presents purely a factual question to be determined by the jury. Hence, this is a critical legal question that warrants the issuance of a writ of certiorari.[1]

As the School District addressed in its petition, the issue of "multiple occurrences" under the Tort Claims Act is becoming increasingly prevalent, and quite simply, the existing decisional guidance from this Court -- consisting of two decisions, one from 2010 and the other from 2011-- is frankly insufficient. That is evident from the varied approaches that state and federal trial courts are taking in addressing the procedure to be applied in adjudicating the "caps" question. Indisputably, the bench and bar would benefit from additional guidance. This issue is also of critical importance because the increasing prevalence of the "multiple occurrence" question arising in litigation against governmental entities, including hospitals, is jeopardizing and in some case nullifying what this Court early on recognized as the "legislative objectives" of the Tort Claims Act, specifically "relieving the government from hardships of unlimited and unqualified liability and preserving the finite assets of governmental entities which are needed

[1] The Respondent challenges whether this issue is properly preserved. He claims that the School District never argued at trial that only the court – and not the jury -- may determine the number of occurrences. *See*, Respondent's Return, pp. 11-12. Yet, in the trial court's post-trial order, which incidentally was written by the Respondent's counsel, the trial court explained that "[d]uring argument on motions made during trial, the Defendant argued that the question regarding the number of occurrences should not go to the jury for determination." (R. 8). That alone shows that this preservation problem is absolutely meritless and intended to deflect from the legal errors committed in the courts below.

for an effective and efficient government." *Wright v. Colleton County School District*, 301 S.C. 282, 391 S.E.2d 564, 570 (1990).

In addressing this issue, the Respondent attempts to downplay the significance of 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 which the 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. The Respondent tries to discount this holding by challenging the significance of the term "self-executing."[2] But the Respondent overlooks the *mandatory* nature of the trial court's duty to apply the monetary caps. That is what is particularly significant in this context. Notably, in *Campbell v. City of North Charleston*, 431 S.C. 454, 848 S.E.2d 788 (Ct. App. 2020), the Court of Appeals more recently reaffirmed that "the plain meaning of the statute indicates this cap must be executed" and that "under the plain meaning of section 15-78-120(a), courts *must* apply the statutory cap to actions brought pursuant to the Act." 848 S.E.2d at 793-794. (Emphasis added).

[2] The proper analysis and significance of the term "self-executing" may be elucidated from the Court of Appeals' detailed analysis in *Palmer v. South Carolina*, 427 S.C. 36, 829 S.E.2d 255 (Ct. App. 2019) (certiorari denied on May 28, 2021). As the Court of Appeals explained, "[a] self-executing provision is one which supplies the rule or means by which the right given may be enforced or protected, or by which a duty enjoined may be performed." 829 S.E.2d at 260. Certainly, the law recognizes that a self-executing duty is not one that the jury is authorized to carry out; rather a self-executing duty is generally judicially enforced. In other words, a self-executing duty is not one typically (if ever) delegated to a jury.

To reinforce its point, the Court of Appeals also emphasized that "the application of the cap is *mandatory* and self-executing." 848 S.E.2d at 793. (Emphasis added).

Moreover, in his return, the Respondent attempts to justify the $600,000 judgment by arguing that the *jury found* two "occurrences" as that term is defined under the Tort Claims Act. *See*, S.C. Code Ann. § 15-78-30(g) ("the term "occurrence" means "an unfolding sequence of events which proximately flow from a single act of negligence"). However, the Respondent takes great liberties in his representation of what the jury "found." In reality, what the jury "found" is articulated in the special verdict form and nowhere else. The word "occurrence" does not appear on the special verdict form. The jury was not asked to determine the number of "occurrences" – which of course the School District agreed with because it presents an issue of law for the trial court. Likewise, the jury was not asked to determine whether each act of gross negligence, as found by the jury, constituted a separate "occurrence." Indeed, the jury was not asked on that special verdict form whether the acts of gross negligence were "separate and distinct" or "separate and independent." The Respondent appears to concede that those are necessary findings to support an adjudication of multiple "occurrences" under the rationale of *Chastain v. AnMed Health Foundation,* 388 S.C. 170, 694 S.E.2d 541

(2010). However, the Respondent does not explain how the special verdict form conveys those findings.

There is no denying that it is the Respondent's burden of proving each "occurrence" as pled, and an important part of that burden is to request a verdict form that provides the information needed by the trial court to carry out the mandatory and self-executing duty to determine the number of occurrences. In *Chastain, supra*, this Court ruled that "[i]f [plaintiff] alleges multiple occurrences, that is, that there was more than a single act of negligence from which proximately flowed an unfolding sequence of events, she bears the burden of proving each occurrence." 694 S.E.2d at 544. In the case at bar, however, the Respondent has not satisfied his burden of proof in demonstrating that there were multiple occurrences. As was the case in *Chastain*, the jury was not asked for the type of information that the trial court needed to satisfy its self-executing and mandatory duty to apply the monetary caps. As in *Chastain*, the special verdict form in this case simply does not furnish the needed information.

Clearly, 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).[3] 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).

However, in an attempt to salvage its verdict, the Respondent then argues that "any alleged error" is "harmless" because the trial court conducted its "own analysis" and concluded there were two occurrences. *See*, Respondent's Return, p. 8. The trial court did no such thing. Ignoring the context, the Respondent isolates one sentence of the post-trial order that states: "The evidence supported a finding that Logan Wood's injury resulted from the independent, gross negligence of different sets of employees; taking place on different dates; and taking place at different locations." (R. 7). However, the prior sentence provides the needed context: "In the instant case, the Plaintiff presented expert testimony and concessions from the Defendant's employees at trial which created a factual issue regarding the number of occurrences." (R. 7). The trial court was not engaged in

[3] 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).

its "own analysis" of the occurrence issue; the court was simply making the point that the evidence "created a factual issue regarding the number of occurrences." (R. 7). The trial court did not engage in its "own analysis" or make its own findings independent of the jury. Instead, the trial court erroneously believed the jury made those findings, but they are not reflected on the special verdict form. That is indeed one of the critical errors that requires reversal.

Finally, the Respondent's analysis of the "occurrence" issue is flawed and at odds with this Court's decision in *Boiter v. South Carolina Department of Transportation*, 393 S.C. 123, 712 S.E.2d 401 (2011). In particular, the Respondent accuses the School District of using a "half-definition"; yet, that is precisely the analysis in which he then engages. "Occurrence" is defined by statute to mean "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g). The Respondent complains that the School District relies on the first-half of the definition – "an unfolding sequence of events" – and "discounts the entire second half of the definition." *See*, Respondents' Return, p. 15. In fairness, from a grammatical standpoint, "an unfolding sequence of events" is the predicate clause that defines the term "occurrence." Nonetheless, the Respondent then relies on the back-half of the definition, i.e., a "half-definition," by focusing on "a single act of negligence." Yet, this Court in *Boiter* 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 ("we do not adopt a bright-line test based on the existence of multiple acts of negligence").

This very dichotomy in approach as to how the poorly articulated statutory definition of "occurrence" is to be construed demonstrates the need for additional guidance from this Court and need for the issuance of a writ of certiorari. While not disagreeing with the characterization of the definition as "poorly articulated," the Respondent suggests instead that this Court's hands are tied because this Court cannot "change" the definition and relief must only come from the General Assembly. *See*, Respondent's Return, p. 16. That is short-sighted and frankly disregards this Court's actual role and prerogative in our three-branch system of government. For, it is well settled that if a statute is ambiguous, it is the role of this Court to construe that statute, and that is particularly true and needed with respect to the statutory definition of "occurrence." *See e.g.*, *State v. Taylor*, 436 S.C. 28, 870 S.E.2d 168, 170 (2022) ("if a statute is ambiguous, the Court must construe its terms").

To reiterate, based on a proper analysis, the number of "occurrences" is not determined by the number of acts of negligence or gross negligence. *Boiter,* 712 S.E.2d at 406. Rather an "occurrence," by statutory definition, is an "unfolding sequence of events." Given the jury's verdict which found two acts of gross

negligence, the trial court, in carrying out its mandatory and self-executing duty imposed by Section 12-78-120(a), must 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. The acts of gross negligence, as found by the jury, flow into that single 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 Respondent has presented in the case at bar. The evidence does not support a finding of new or different "unfolding sequences of events." Therefore, on that basis, 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).

CONCLUSION

Based on the foregoing discussion, the Petitioner Horry County School District respectfully renews its request that this Court grant its petition for a writ of certiorari for the benefit of the bench and bar on the critical and recurring issues of law addressed herein.

Respectfully submitted,

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November 13, 2023