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

Appellate Case No. 2023-001470
Case No. 2017-CP-26-6643

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

v.

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

REPLY BRIEF OF PETITIONER

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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)(1).

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 Petitioner Horry County 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 Respondents 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* Respondents' Brief, p. 9. 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 presented for determination on certiorari.[1]

In addressing this issue, the Respondents attempt 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 Respondents try to discount this holding by challenging the significance of the term "self-executing."[2] But the Respondents overlook 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

[1] The Respondents challenges whether this issue is properly preserved. They claim that the School District never argued at trial that only the court – and not the jury -- may determine the number of occurrences. *See*, Respondents' Brief, p. 14. Yet, in the trial court's post-trial order, which incidentally was written by the Respondents' 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.

[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.

(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). 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 their response brief, the Respondents attempt 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 Respondents take great liberties in their 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." Most certainly, the jury was not asked to determine whether there even were multiple "occurrences" and, if so, to identify

those "occurrences" or the "loss" arising from each 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 Respondents appear 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 Respondents do not explain how the special verdict form conveys those findings.[3]

Instead, the Respondents resort to *pure speculation*. Remarkably, the Respondents argue that the "jury understood" that it determined the number of "occurrences" on the special verdict form. *See*, Respondents' Brief, p. 11. They further insist that "[i]t was plain to the lower court, all parties, their counsel, *and the jury* that the verdict form asked about separate instances of gross negligence for the purpose of determining the number of occurrences." *See*, Respondents' Brief, p. 11. (Emphasis added). The Respondents are purely speculating as what the jury "knew" or "understood." Notably, the special verdict form was given to the jury

[3] The Respondents acknowledge that Section 15-78-120(a)(1) limits the School District's liability "to $300,000.00 per person for 'loss arising from a single occurrence.'" *See*, Respondents' Brief, p. 4. Yet, in their legal analysis, the Respondents never recognize that a $300,000 cap is not for each occurrence but rather for each "loss arising from a single occurrence." More importantly, the Respondents never discuss whether the verdict form even describes or delineates what the separate "loss" is that arises from each of the two occurrences that they claim. To illustrate this void, the word "loss" appears but once in the Respondents' brief, and that reference appears only in their Statement of the Case as set forth above in this footnote.

with no explanation of the special interrogatories asked or their legal significance. (R. 351-352). It is well established that speculation is not evidence. *See*, *Gordon v. Busbee*, 397 S.C. 119, 723 S.E.2d 822, 831 (Ct. App. 2012) (court noted that speculation is not evidence); *Humphries v. Whitlock Combing Co., Inc.*, 309 S.C. 356, 422 S.E.2d 154, 156 (Ct. App. 1992) ("[a]ny inference the jury might have drawn … would thus have rested on speculation, not evidence. A verdict may not be based on speculation or conjecture"). In short, the Respondents' speculation as what the jury "knew" or "understood" is not a substitution for a proper verdict form providing all of the information needed by the trial court to carry out its mandatory and self-executing duty to apply the monetary caps.

There is no denying that it is the Respondents' 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 Respondents have 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 – and which the Respondents are doing on appeal. 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). 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 “losses” arising from such “occurrences.” It also says nothing about the acts of gross negligence being "separate and distinct" or "separate and independent." The jury did not make those findings. (R. 22-23).

In an attempt to salvage their verdict, the Respondents argue that “any alleged error” is "harmless" because the trial court conducted its "own analysis" and concluded there were two occurrences. *See*, Respondents’ Brief, p. 9. The

trial court did no such thing. Ignoring the context, the Respondents isolate 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 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 Respondents' 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 Respondents accuse the School District of using a "half-definition"; yet, that is precisely the analysis in which they then engage. To reiterate, "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 Respondents complain 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' Brief, p. 19. In fairness, from a grammatical standpoint, "an unfolding sequence of events" is the predicate clause that defines the term "occurrence." Nonetheless, the Respondents then rely 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 further guidance from this Court. While not disagreeing with the characterization of the definition as "poorly articulated," the Respondents suggest 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*, Respondents' Brief, p. 20. 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"). Along those same lines, the Respondents dispute this Court's authority to determine and articulate the proper procedure for trial courts to follow in carrying out its mandatory and self-executing duty imposed by Section 15-78-120(a)(1). The Respondents insist that, if the statutory scheme is silent as to the procedure, this Court cannot fashion the proper procedure because to do so would be "to write words into the statute." *See*, Respondents' Brief, p. 15. That is obviously not correct. This Court has the prerogative to interpret the law and, as an integral part of that function, to determine the proper procedures for the courts to carry out the law. This Court has certainly exercised such a prerogative in the past. *See e.g.*, *Al-Shabazz v. State of South Carolina*, 338 S.C. 354, 527 S.E.2d 742 (2000).

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 15-78-120(a)(1), 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 Respondents have 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)(1).

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.

The School District contends that the trial court erred in denying its motion to pay the amount of the judgments into court as permitted by the Supreme 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 S.C. 441, 454 S.E.2d 895 (1995), which the School District has referred to as the "*Manning/Russo* rule."

As a critical threshold issue, the parties have a fundamental disagreement as to the applicable standard of review. As the Court of Appeals ruled in error, the Respondents argue that an abuse of discretion standard applies. In contrast, the School District contends that a *de novo* standard applies because the application of the *Manning/Russo* rule is purely a question of law.

As the Court of Appeals did, the Respondents rely *exclusively* on 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. Yet, it is critical that the issue in *First Carolina* did not even implicate the trial court's discretion. That is because the issue was purely a question of law -- whether 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. Ultimately, this Court applied principles of law and concluded that "the Act prevails over the rules of civil procedure." 631 S.E.2d at 536. This Court did not find an abuse of discretion but rather that an error of law was committed, and as a result, the pronouncement on the applicable standard of review is truly *dicta*.

The Respondents counter by arguing that an abuse of discretion "encompasses" errors of law because an abuse of discretion may occur where an error of law occurs. However, the two are not the same and cannot be conflated or combined. If a question of law is presented, it is reviewed *de novo* and *not* as an abuse of discretion. *See*, *Aiken v. South Carolina Department of Revenue*, 429 S.C. 414, 839 S.E.2d 96, 98 (2020) ("this Court reviews questions of law de novo"). Thus, the error of law, as determined in *First Carolina*, resulted from the application of a *de novo* standard of review by this Court. An abuse of discretion standard – while cited – ultimately was never applied.

Furthermore, in *First Carolina*, this Court did not cite to any prior South Carolina precedent such as *Manning* or *Russo* or the numerous other cases applying the *Manning/Russo* rule. Notably, not one of those prior cases stated that an abuse of discretion standard is applicable. Likewise, this Court has never held since *First Carolina* that an abuse of discretion applies in the Rule 67 context.

The Respondents also focus on the term "leave of court" suggesting that "leave of court" always requires a discretionary decision by a court. That is not necessarily the case. In the context of Rule 15(a), SCRCP, and other rules allowing for amendments of pleadings, "leave of court" is typically limited to a finding of legal prejudice only.[4] Another example cited by the Respondents -- Rule 30(a)(1), SCRCP, allowing the deposition of a person confined in prison to be taken only by leave of court "on such terms as the court prescribes" -- does not authorize the denial of the deposition but only requires that certain conditions be established and met as to the logistics surrounding the deposition when taken. Similarly, Rule 67 requires "leave of court" not because the court may refuse to allow a deposit to occur, as would be contrary to this Court's precedent in *Manning* and *Russo*, but rather because Rule 67 states that the money paid into the court "shall be deposited as directed by the court." Rule 67, SCRCP. In effect, the law requires the court to provide direction and authorization to the clerk of court as to the handling of the deposit of funds.

Finally, the Respondents dispute the School District's argument that had this Court truly intended for an abuse of discretion standard to apply to Rule 67, the Court

[4] As this Court has explained, "Rule 15(a) provides that when a party asks to amend his pleading, leave shall be freely given when justice so requires and does not prejudice any other party." *Patton v. Miller*, 420 S.C. 471, 804 S.E.2d 252, 261 (2017). "This rule strongly favors amendments and the court is encouraged to freely grant leave to amend." *Id.* This Court has described "[t]he Rule's 'freely given' provision as a 'mandate' that is to be heeded." 804 S.E.2d at 262.

would have published the factors for courts to consider in exercising that discretion. Yet, Rule 67 was promulgated by the Court with no such criteria, and no appellate decision has established any such criteria. The Respondents baldly claim that "[t]here is no law that requires a list of factors for a court to consider any time it exercises discretion." *See*, Respondents' Brief, p. 24. That is not true. This Court has recognized in numerous contexts that unbridled discretion implicates due process and equal protection concerns. The Respondents also point to Rule 11 sanctions as an area "where there are no specific factors to guide a court's discretionary decision." *See*, Respondents' Brief, p. 24. That is also not true. As the Court of Appeals has held, "[t]he criteria for Rule 11 sanctions are essentially the same as those for sanctions under the South Carolina Frivolous Civil Proceedings Sanctions Act." *Father v. South Carolina Department of Social Services*, 345 S.C. 57, 545 S.E.2d 523, 531 (Ct. App. 2001). And, of course, the Frivolous Civil Proceedings Sanctions Act includes explicit factors to guide the exercise of discretion by a court. *See*, S.C. Code Ann. § 15-36-10.

The same is true with other types of sanctions. In *Bensch v. Davidson*, 354 S.C. 173, 580 S.E.2d 128 (2003), this Court established factors to be considered before excluding a witness as a discovery sanction. The Court ruled that a trial court "should ascertain the type of witness involved, the content of the evidence, the explanation for the failure to name the witness in answer to the interrogatory,

the importance of the witness' testimony, and the degree of surprise to the other party." 580 S.E.2d at 182. *See also*, *Laney v. Hefley*, 262 S.C. 54, 202 S.E.2d 12, 15 (1974) (in determining the appropriateness of a sanction, the court should consider such factors as "the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice").

As the School District has argued, if the application of Rule 67 is truly discretionary as the Court of Appeals found, then there must be established criteria that guide a court's decision-making under the rule. In the absence of such criteria, that would only foster inconsistent application varying from judge to judge, thereby creating a strong likelihood of unequal or selective application and likely equal protection infringement where similarly situated judgment debtors are treated differently. That should not be acceptable under our jurisprudence.

However, as this Court has ruled and applied *for almost one hundred years* (as did the Court of Appeals until only recently), the *Manning/Russo* rule avoids that subjectivity and inequity. Quite simply, this Court's precedent in *Manning* and *Russo* has not been overturned. The Respondents do not dispute that – they merely argue that "Rule 67 and not *Manning/Russo* is what governs the issue on appeal." *See*, Respondents' Brief, p. 24. That, of course, makes no sense. Rule 67 is literally interpreted and controlled by *Manning* and *Russo*. For that matter, the Respondents

never even ask this Court to overturn *Manning* and *Russo*. The Court of Appeals implicitly overturned that precedent with no authority to do so.

In sum, 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 Court of Appeals was correct in that case but not in this one. The *Manning/Russo* rule remains "unmistakably clear" and the law of this state, and accordingly, 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.

CONCLUSION

Based on the foregoing discussion and analysis, the Petitioner Horry County School District respectfully renews its request that this Court reverse the decision of the South Carolina Court of Appeals. The School District further renews its request 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 judgment, if any, that remains after remand.

Respectfully submitted,

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