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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Courtney Clyburn Pope

Appellate Case No. 2023-000009
Trial Court Case No. 2017-CP-201413

Otis Owens …….....Respondent,

v.

Sheriff Michael Hunt, the Aiken County Sheriff's Office, Aiken County Detention Center and Aiken County …….Appellants.

Return to Appellants' Petition for Rehearing

This return is filed pursuant to this Court's request. Appellants' petition seeks to reframe this case into something it never was. The matter was pled, tried, and submitted to the jury as a negligence action. Respondent expressly disavowed intentional conduct, and the verdict was grounded in policy violations that caused harm—not assault and battery. Similarly, this Court did not overlook the PREA argument; it properly recognized that PREA standards were admitted as evidence of applicable custodial policies, not as an independent cause of action. That approach is consistent with our jurisprudence. Appellants' petition identifies no legal error. Respectfully, the petition for rehearing should be denied.

I. The petition for rehearing incorrectly asserts that this Court has recognized a new cause of action.

Appellants' principal contention—that this Court "created" a negligent assault and battery cause of action—is not supported by the record or the law. The case was pled, litigated, tried, and submitted to the jury as one for gross negligence.

While Appellants continue to emphasize that the Complaint used the terms "assault" and "battery," the procedural history demonstrates that Appellants themselves treated those references as descriptive rather than dispositive.[1] At no point did Appellants file a motion to strike, a motion to dismiss, or a motion for summary judgment on the grounds that the claim was an impermissible intentional tort. If the pleadings were as fatal and improper in June 2017, as Appellants now insist, counsel would not have allowed the case to proceed to trial without first seeking dismissal. The absence of such motions confirms that Appellants accepted that the case was not rooted in an intentional tort.[2]

Moreover, the trial record establishes that Respondent did not try an intentional tort case. To the contrary, counsel repeatedly disclaimed intentional conduct: "we haven't alleged anything intentional" (R. 920); "a lawsuit was brought because policies were violated" (R. 931). Similarly, a review of the pleadings shows that there were numerous allegations that could have served as the basis for proceeding on a gross negligence claim. The jury was never asked to decide intent, nor were they instructed on intentional tort principles. *See Doe v. Bishop of Charleston*, 407 S.C. 128, 754 S.E.2d 494 (2014) (pleadings are to be read in context, and surplusage does not control the character of the cause of action). This Court correctly recognized that evidence describing

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[1] This Court in *Postal v. Mann*, 308 S.C. 385, 418 S.E.2d 322 (Ct. App. 1992), held that parties are bound by their pleadings only where admissions are "clear, deliberate, and unequivocal." Adjectives in a Complaint do not override the consistent gross negligence theory actually tried, nor the express disclaimers of intent in the record.

[2] This is further supported by the other allegations listed within the cause of action.

how the guard conducted the search—including Respondent's description of it as "assaultive"—and the inadequate response by Appellants following the improper search was used to show the gross deviation from minimally acceptable standards.

The case law cited by Appellants is not to the contrary. Those cases simply confirm that intentional torts cannot be re-pled as negligence claims.[3] Here, however, the verdict was not premised on intentional harm but on Appellants' grossly negligent failure to follow and enforce their own policies. That is a recognized cause of action under the Tort Claims Act and consistent with South Carolina precedent.

For similar reasons, Appellants' sovereign immunity argument under section 15-78-60(17) also fails. South Carolina precedent establishes that the gross negligence standard applies. South Carolina courts have consistently held that when any exception to governmental immunity under the Tort Claims Act contains a gross negligence standard, that standard must be applied to all other applicable exceptions. *See Repko v. County of Georgetown*, 424 S.C. 494, 818 S.E.2d 743, 748 (2018) (stating in a detention suicide case that "when an exception containing the gross negligence standard applies, that same standard will be read into any other applicable exception"); *Chakrabarti v. City of Orangeburg*, 389 S.C. 357, 698 S.E.2d 743, 746 (Ct. App. 2010) (reiterating in a police pursuit resulting in injury that "[w]hen an exception that contains the gross negligence standard applies to a case, the gross negligence standard is read into any of the other applicable exceptions"); *see also Plyler v. Burns*, 373 S.C. 637, 647, 647 S.E.2d 188, 193 (2007) (finding in

[3] It is worth noting that Appellants' reliance on *Seabrook v. Town of Mount* Pleasant, 432 S.C. 441, 853 S.E.2d 508 (Ct. App. 2020) is improper because they failed to cite this case in their prior briefing. *See generally*, *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640 (2011) (citing *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) ("The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time.").

a school district liability for student injury that where the gross negligence standard applies in one exception, it must be infused into the other relevant exceptions); R. 885-887 (discussing this legal principle with the trial court). Here, because Appellants' custodial duties fall squarely within an exception that carries a gross negligence standard, that same standard necessarily governs across all of the exceptions Appellants invoke in an effort to avoid liability.

To recast the claim as "assault and battery" as a means to invoke immunity is inconsistent with the established law. Appellants' reliance on *State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 530 S.E.2d 132 (Ct. App. 2000), is misplaced. In *Barrett*, the Court inferred intent to harm as a matter of law solely for purposes of construing a policy exclusion. It was not a Tort Claims Act case, did not involve governmental immunity, and cannot override the legislature's explicit decision to preserve liability for gross negligence in custodial settings. To import *Barrett's* insurance rule into the Tort Claims Act would effectively nullify the gross negligence standard recognized in *Repko*, and would immunize governmental entities from liability in precisely the circumstances the statute contemplates.[4] The Court properly declined to extend *Barrett* beyond its limited context.

II. The Court properly considered the PREA-related evidence and did not overlook Appellants' argument.

Appellants argue that this Court "did not address" their PREA-related argument and improperly relied on PREA testimony to support the verdict. That contention mischaracterizes both the opinion and the law. The Court's opinion considered PREA testimony and cited it

[4] Under Appellants' theory any time an injury resulted from a frisk then the injury would have to be intentional. Such a position goes against Sheriff Hunt's testimony that if an injury occurs during a frisk, then a violation of the policy occurs. This is also in direct contradiction to their employees' testimony that they did not believe this was a sexual assault. R. 449, 178. Moreover, Appellants make this leap in the absence of the Legislature carving out some special provision for frisks as being either sexual and/or intentional in nature.

appropriately—as supporting evidence of gross negligence, not as an independent cause of action. Specifically, the Court observed that "Lieutenant Bowman admitted that the detention center's PREA investigation did not comply with agency policies" (Slip Op. at 4). Far from ignoring Appellants' PREA arguments, the Court distinguished between PREA as a source of liability (which it is not) and PREA as evidence of the standard of care (which it plainly is). *See* R. 454-55 (Bowman detailing the annual PREA training); R. 217, 220-222 (Gibson discussing that PREA is part of their policy).

Appellants' insistence that PREA creates no private right of action misses the mark. Respondent never brought a PREA claim, and the jury was never instructed on PREA liability. PREA-related testimony was introduced only as evidence of the standards of conduct that Appellants themselves had incorporated into their detention center policies. Our courts have long recognized that statutes, regulations, and internal policies—even when they do not create independent causes of action—are admissible to establish the duty of care in negligence cases.[5]

The PREA violation did not itself create liability, but it supplied highly relevant evidence of whether Appellants' supervision and enforcement of custodial policies fell below the standard of care required to protect detainees. Notably, Appellants had no issue or objection with PREA being referenced until the PREA report and video deposition were not admitted—because they

[5] *See South Carolina State Highway Dep't v. Meredith*, 241 S.C. 306, 128 S.E.2d 179 (1962) (statutory standards admissible as evidence of negligence); *Brady Dev. Co. v. Town of Hilton Head Island*, 312 S.C. 73, 439 S.E.2d 266 (1993) (violation of ordinances admissible to show negligence); *Hubbard v. Taylor*, 339 S.C. 582, 529 S.E.2d 549 (Ct. App. 2000) (hospital's internal policies admissible as evidence of standard of care); *Albrecht v. Baltimore & Ohio R. Co.*, 808 F.2d 329, 332 (4th Cir. 1987) (OSHA regulations admissible as evidence of standard of care, though not privately enforceable); *Robertson v. Burlington N. R. Co.*, 32 F.3d 408, 410–11 (9th Cir. 1994) (same).

could not properly authenticate the material. *See* R. 89-90. Only then did proper circumstantial evidence of Appellants' failures become an issue at trial. *Id*.

The very purpose of PREA procedures is to prevent sexual misconduct in custodial settings. The failure to follow those procedures was directly relevant to whether Appellants' systemic disregard for required safeguards proximately caused Respondent's harm. To exclude PREA testimony would shield Appellants from accountability by removing from the jury's consideration the very standards designed to prevent the injury at issue. *See* R.464, 467, 963-68.

Conclusion

The Court did not overlook or misapprehend controlling law. Rather, Appellants seek to recast a gross negligence case as an intentional tort claim to invoke sovereign immunity and avoid liability. The record shows this case was tried and decided on gross negligence, not intent. PREA evidence was used properly to establish applicable standards of care, not as a cause of action. For these reasons, the petition should be denied.

Respectfully submitted,

s/Whitney B. Harrison

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Proof of Service

The undersigned herby certifies Respondent's Return to Appellants' Petition for Rehearing was served via email on August 28, 2025, to the following:

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Sincerely,

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