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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

Trial Court Case No. 2022-CP-32-02339
Appellate Case No. 2025-000647

Nancy Arellano, individually
and as parent and natural guardian
of Minor Z.A., Respondent,

v.

School District No. Two of Lexington
County, State of South Carolina, Appellant.

APPELLANT'S FINAL REPLY BRIEF

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TABLE OF AUTHORITIES

Cases

Statutes

ARGUMENT

I. Respondent's Initial Brief Fails To Comply With Mandatory Appellate Rules And Should Be Disregarded.

As an initial matter, Appellant asserts that Respondent's Initial Brief fails to comply with several mandatory provisions of the applicable South Carolina Appellate Court Rule. Respondent's brief contains no citations to the Record on Appeal, omits a designation of matter to be included in the Record, and fails to include the requisite Certificate of Counsel. These are not technical defects; they go to the heart of the Court's ability to perform meaningful appellate review.

Under Rule 208(4) and Rule 211(b), SCACR, every appellate brief must contain references to the page and line of the Record on Appeal to support each factual assertion. Similarly, Rule 209 requires each party to file a designation of matter identifying the materials upon which their arguments rely. Finally, the Rules require a certificate of counsel confirming compliance with these rules and certifying that all statements are supported by the Record on Appeal.

Respondent's failure to comply with these requirements deprives this Court of the ability to verify the factual claims underlying her arguments. The appellate courts of South Carolina consistently have held that arguments unsupported by record citations are not preserved for review. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003); and *Johnson v. S.C. Dep't of Prob.*, 372 S.C. 279 (2007) (declining to consider statements of fact not supported by record on appeal).

The failure to include a designation of matter further compounds this problem. Without that designation, this Court cannot determine what documents, testimony, or evidence form the basis of the factual assertions upon which Respondent bases her arguments. The omission of the certificate of counsel is equally significant as it leaves the Court without any assurance that counsel reviewed the Record for accuracy.

Appellant respectfully submits that because Respondent's initial brief lacks the foundational elements required for appellate review, her factual assertions in that brief should be disregarded, and the appeal should be decided based solely on the Record and Appellant's properly supported Initial Brief.

II. The Trial Court Erred In Denying Appellant's Motion For Judgment Notwithstanding The Verdict.

Respondent's assertion that "ample evidence" supported the jury's finding of gross negligence is legally and factually unsound. Not only does Respondent fail to cite a single record reference in support of that claim, but the evidence actually presented at trial, when viewed objectively, does not meet South Carolina's high threshold for establishing gross negligence under the Tort Claims Act.

Under *Clyburn v. Sumter County Sch. Dist. No. 17*, 317 S.C. 50, 451 S.E.2d 885 (1994), "gross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." It is a higher standard than ordinary negligence, requiring proof of indifference to the safety of others. *Etheredge v. Richland Sch. Dist. One*, 330 S.C. 447, 463, 499 S.E.2d 238, 246 (Ct. App. 1998).

Even considering as accurate Respondent's general descriptions of the incident, the inappropriate touching of the Minor Plaintiff occurred during a brief classroom lapse of attention, precisely the type of inadvertence the Supreme Court has held insufficient to establish gross negligence. The record is clear that (1) the classroom had no physical obstructions, (2) a teacher and an aide were present, (3) students were engaged in end-of-year activities, and (4) the alleged incident occurred unexpectedly. (R. p. 174, lines 3-24; p. 220, line 1; p. 485, lines 3-17; and p. 505, lines 14-25); (R. p. 182, lines 13-19; p. 229, lines 12-17; p. 234, lines 6-23; p. 235, lines 1-2; p. 245, lines 1-3; and p. 490, line 18 - p. 491, line 2); and (R. p. 219, lines 9-22; p. 287, line 25 –

p. 288, line 1; p. 288, lines 12-22; and p. 319, line 15 – p. 320, line 10). Respondent presented no evidence at trial of a "conscious or deliberate" disregard of duty by Ray or Prizer; instead, Respondent merely argued there was only an isolated failure of perfect vigilance. Such a momentary lapse does not equal gross negligence as a matter of law. *See Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 333, 566 S.E.2d 536, 545 (2002).

Respondent's argument is further undermined by the lack of record citations identifying any testimony showing the District or its employees acted "intentionally" or "consciously" in failing to supervise. Without such evidence, the verdict rests on speculation, not proof. *See Small v. Pioneer Mach., Inc.,* 329 S.C. 448, 494 S.E.2d 835 (Ct. App. 1997).

Accordingly, because the evidence, even when viewed most favorably to Respondent, established no more than ordinary negligence, the trial court erred in denying Appellant's motion for JNOV.

III. The Trial Court Erred In Refusing To Charge S.C. Code Ann. § 15-78-60(20).

Respondent also argues that the trial court properly refused Appellant's requested charge under § 15-78-60(20), contending the statute was "inapplicable because a six-year-old cannot commit a crime" and that the presence of gross negligence renders the statute irrelevant. Both assertions misstate the law.

Section 15-78-60(20) of the South Carolina Tort Claims Act provides that a governmental entity is not liable for a "loss resulting from the act or omission of a person other than an employee including, but not limited to, criminal acts of third persons." Nothing in this provision limits its application to adult perpetrators or is dependent upon criminal culpability. The exemption turns on whether the loss was caused by a third party's independent conduct, not on the actor's capacity for criminal responsibility. *See Greenville Mem'l Auditorium v. Martin*, 301 S.C. 242, 391 S.E.2d 546 (1990).

Appellant's requested charge was designed to instruct the jury on this statutory immunity; the principle that a school district cannot be held liable for injuries resulting primarily from the independent actions of another student unless the district's own conduct was grossly negligent. By refusing the charge, the trial court effectively precluded the jury from considering whether the assault was an intervening act beyond the District's control.

Respondent's reliance on *Woodell v. Marion Sch. Dist. One*, 307 S.C. 297, 414 S.E.2d 794 (Ct. App. 1992), is misplaced. The procedural posture of *Woodell* when it reached the appellate court was a Rule 12(b)(6) dismissal, not a verdict after a full trial. The Court of Appeals there simply held that the complaint alleged facts sufficient to survive dismissal, not that liability was established or that § 15-78-60(20) was inapplicable as a matter of law. In other words, the *Woodell* Court addressed pleading sufficiency, not evidentiary proof or jury instructions. By citing it as substantive authority for rejecting a statutory charge, Respondent grossly overstates its reach.

When read correctly, *Woodell* actually supports Appellant's position: it confirms that the applicability of § 15-78-60(20) is a question for the factfinder, not something to be foreclosed as a matter of law. Because the trial court refused to instruct the jury on this statutory limitation of liability, the jury deliberated without a complete and correct statement of governing law. This omission constitutes reversible error.

IV. The Verdict Was Excessive, Unsupported By The Evidence, And The Trial Court Abused Its Discretion In Denying A New Trial.

Even if the question of liability was properly submitted to the jury, the $245,000 verdict cannot stand. Respondent's defense of the verdict relies entirely on generalities about the child's "trauma" and "adjustment disorder," without a single citation to the Record identifying the nature, duration, or cost of treatment. Without supporting testimony in the record, Respondent's description is argument, not evidence.

South Carolina law grants the trial court discretion to grant a new trial or new trial nisi remittitur when a verdict "is grossly inadequate or excessive so as to shock the conscience of the court." *Hassell v. City of Columbia*, 430 S.C. 620, 629, 846 S.E.2d 365, 370 (2020). This Court reviews that decision for abuse of discretion, which occurs when the ruling lacks evidentiary support or rests on an error of law. *Brinkley v. S.C. Dep't of Corrs.*, 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009).

Here, the verdict was wholly disproportionate to the evidence presented at trial. The record reflects no permanent physical injury, no documented economic loss, and only limited counseling sessions. In contrast, the award exceeds reasonable compensation for non-economic damages and suggests the jury's decision was influenced by sympathy or emotion. Courts repeatedly have held that where the amount of the verdict bears no reasonable relationship to the character and extent of the injury, it must be set aside. *See Knoke v. S.C. Dep't of Parks, Recreation & Tourism*, 324 S.C. 136, 141, 478 S.E.2d 256, 258 (1996); *Kunst v. Loree*, 424 S.C. 24, 46–47, 817 S.E.2d 295, 306 (Ct. App. 2018).

The trial court's refusal to grant a new trial absolute or nisi remittitur constituted a clear abuse of discretion. The verdict, almost a quarter of a million dollars, shocks the conscience and reflects passion or prejudice rather than measured judgment. *See Becker v. Wal-Mart Stores, Inc.*, 339 S.C. 629, 635, 529 S.E.2d 758, 761 (2000).

Accordingly, the judgment should be reversed, or alternatively, the matter remanded for a new trial.

V. Respondent's Procedural Defects Independently Warrant Disregard Of Her Brief Or Limitation Of Review.

This Court has long recognized that substantial noncompliance with the appellate rules can justify disregarding a party's brief or limiting review to the properly supported issues. *See State v.*

Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003); and *Johnson v. S.C. Dep't of Prob.*, 372 S.C. 279 (2007).

The purpose of the Rules is not to trap litigants in formality but to ensure that appellate decisions rest on verifiable facts and a complete record. Where, as here, the Respondent provides none, the Court cannot meaningfully evaluate the merits.

Because the Respondent's brief fails to comply with Rules 208, 210, and 211, and because the Court is confined to the Record on Appeal, Appellant respectfully requests that the Court disregard the Respondent's unsupported factual statements and consider only the issues and arguments properly preserved and documented in the Record.

CONCLUSION

For all of these reasons, and for those stated in Appellant's Initial Brief, the judgment below should be reversed, or, at minimum, remanded for a new trial. Respondent's brief fails to comply with the South Carolina Appellate Court Rules and presents no factual or legal basis supported by the Record to sustain the judgment.

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CERTIFICATE OF COUNSEL

This is to certify that Appellant Lexington County School District Two's Final Reply Brief complies with Rule 240(c), SCACR.

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