THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2011CP0704713

Jonetha Singleton.....Appellant,

v.

Starshaka N. Cuthbert.....Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Plaintiff Appellant filed her Summons and Complaint with the Court of Common Pleas for the 14th Judicial Circuit in Beaufort County, South Carolina, on November 10, 2011. (Appellant's Complaint dated November 10, 2011). Appellant's Complaint sought civil redress in the form of compensatory and punitive damages based upon an automobile wreck on October 6, 2010. Id. Defendant Respondent timely filed her Answer to Plaintiff's Complaint. (Respondent's Answer dated December 8, 2011) Thereafter, the parties engaged in discovery, including interrogatories, requests to produce and depositions.

On May 6, 2013, the matter came up for trial and a jury was impaneled. Tr. p. 1. The Hon. J. Ernest Kinard, Jr. presided. Tr. pp. 1, 6. At the conclusion of Appellant's case Respondent moved for a directed verdict on the ground that Appellant had violated S. C. Code Sec. 56-5-2770(A) by turning left behind a stopped school bus. Tr. pp. 131-135, 142-147. Over Appellant's strenuous objection the Court granted Respondent's Motion for a Directed Verdict on that issue. Id.

After nearly two days, the jury returned a verdict for the Respondent. Tr. p. 183. Appellant orally made a Motion for a New Trial on the ground that the Court "ruled Plaintiff was negligent [as a matter of law] because of Sec. 56-5-2770" and instructed the jury that "Plaintiff had violated that statute and was negligent." Tr. pp. 162-163, 188-189. The Court denied

Plaintiff's Motion on the ground "[t]hat didn't hurt [Plaintiff]." Tr. p.189. Written notice of the Court's Judgment in a Civil Case, dated May 7, 2013, was received by Appellant on May 24, 2013. (The Court Order appealed from includes Form 4 Judgment in Civil Case dated May 7, 2013; Court's Ruling on Plaintiff's Motion for a New Trial, Tr. pp. 188-189; and Court's Ruling on Defendant's Motion for Directed Verdict. Tr. pp. 131-135, 144-147. These are all incorporated in the Court's Form 4 Civil Judgment Order dated May 7. 2013 since no detailed written order was provided by the Trial Court even though a proposed order was submitted by Appellant. See Letter from Bernard McIntyre to the Hon. J. Ernest J. Kinard, Jr. dated May 14, 2013.)

On June 18, 2013 Appellant duly filed her Notice of Appeal from the Judgment in a Civil Case and served a copy on Respondent's counsel.

STATEMENT OF THE FACTS

Appellant Jonetha Singleton is 54 years of age. Tr. 64. She has been married for twenty years and has one adult son. Tr. p. 64. She is a high school graduate and had worked as a child care attendant. Tr. p. 65. At the time of the accident she was a housewife. Tr. p. 66. She lived on Seaside Road, Beaufort County, South Carolina, where she could turn into the driveway leading directly to her home. Tr. p. 67.

The wreck occurred on Seaside Road on October 6, 2010 at about 3:30 in the afternoon. Tr. pp. 12, 66-67. It was a clear day. Tr. pp. 12, 68. The accident happened on a straight stretch of Seaside Road which is a two lane highway. Tr. p. 71. Appellant stated that she approached the rear of the school bus which was stopped. Tr. p. 67. The school bus lights were on and blinking. Id. A white pick-up was behind the bus at a complete stop. Id. Appellant came to a stop, put on

her left turn signal and proceeded to turn left into her driveway when hit by the vehicle driven by Respondent. Id.

Respondent testified that she was driving in the opposite direction of the school bus about 45 to 50 mph when she approached the school bus. Tr. p. 27. In her words the yellow lights on the bus were on and flashing for five seconds before she overtook the bus. Tr. pp. 7, 16.

According to the bus driver, Sonia Badger, she stopped the bus at the bus stop at the intersection of Seaside Road and Shiny Road. Tr. p. 137. She had activated the warning lights and stop arm and secured the brakes. Id. The vehicle approaching from the opposite direction (driven by Respondent) failed to stop and "went through the stop arm." Id. Children were physically getting off the bus when she heard a bang. Tr. pp. 137-139.

One witness at the bus stop waiting to get her child off the bus, Bernita Chisolm, noticed the red car Respondent was driving as it approached the stopped school bus. Tr. p. 50. The metal guard in front of the bus was out and extended forward. Tr. p. 51. The red and yellow lights on the bus were flashing. Id. Ms. Chisolm testified the Respondent was on the phone as she went through the lights flashing on the stopped school bus with its door open. Tr. p. 54-57. Every witness except Respondent herself says the bus was stopped and Respondent drove through an extended stop arm and flashing lights on the bus before hitting Appellant's vehicle which was turning left. Tr. pp. 117-120, 38-41.

As a result of the wreck, Appellant's vehicle sustained severe damage. Tr. pp. 68-69. Appellant injured her neck, back, shoulder and right knee. Tr. p. 71. She was required to stay in the hospital overnight and had subsequent follow up with a chiropractor and orthopedist. Tr. pp.

75-76. Appellant continues to have problems with the injuries she suffered in this accident. Tr. pp. 77-80.

ARGUMENTS

I. THE TRIAL COURT ERRED IN DIRECTING A VERDICT THAT APPELLANT WAS NEGLIGENT AS A MATTER OF LAW UNDER SOUTH CAROLINA CODE SEC. 56-5-2770(A) BY TURNING LEFT BEHIND A VEHICLE STOPPED BEHIND A STOPPED SCHOOL BUS

South Carolina Code Sec. 56-5-2770 states:

> "(A) The driver of a vehicle meeting or *overtaking*...a school bus stopped on a highway...must stop before reaching the bus where there are in operation on the bus flashing red lights...and the driver must not proceed until the bus resumes motion or the flashing red lights are no longer actuated." (Emphasis added)

The Trial Court granted a directed verdict upon Respondent's motion under Sec. 56-5-2770(A) that Appellant was negligent as a matter of law for admittedly turning left behind a vehicle stopped behind a bus with flashing red lights on. Tr. pp. 131-135, 144-145, 188-189. Appellant contends this was a grave error of law and entitles Appellant to a new trial.

In this case the operative word in Sec. 56-5-2770(A) is "overtaking." The statue only applies to two classes of drivers. First, it applies to any driver meeting a bus with flashing red lights actuated. That provision is clearly inapplicable here because it was Respondent meeting the bus, not Appellant. Tr. pp. 7, 16. By all accounts Appellant was behind the bus. Tr. pp. 7, 38-41, 67, 117-120, 137.

The other class of drivers to which Sec. 56-5-2770(A) applies is those drivers overtaking a school bus with actuated flashing red lights from either direction. The pivotal question then is whether Appellant turning left behind a vehicle behind a stopped school bus constitutes overtaking a school bus as a matter of law.

Generally words in a statute are to be given their standard meaning. Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 673 S.E.2d 423 (2009); Higgins v. State, 307 S.C. 446, 415 S.E.2d 799 (1992); See e.g., New York Times Co. v. Spartanburg County School Dist. No. 7, 374 S.C. 307, 649 S.E.2d 28 (2007). The cardinal rule of statutory construction is to assign words their plain meaning without resort to subterfuge or forced construction. Koenig v. S.C. Department of Public Safety, 325 S.C. 400, 480 S.E.2d 98 (Ct. App. 1996). In other words, our courts apply the plain meaning rule. Harris v. Anderson; Higgins v. State; Koenig v. S.C. Department of Public Safety. If the legislative text is plain, the court must apply the text as written. See e.g. Id. The statute must not be read to limit or expand its reach. Id.

There is no ambiguity in the word "overtaking". The plain dictionary meaning of "overtake", according to Webster, is "catch up with and pass by". Merriam Webster's Collegiate Dictionary, 10th Edition, p. 830. (Emphasis added). Overtake means to pass or pass by.

Our courts have already amply defined the word "overtake", even as it applies to this specific statute. In Fisher v. J.H. Sheridan Co., 182 S.C. 316, 189 S.E. 356 (1936), our Supreme Court was faced with virtually the same issue as in the case sub judice. The bus in Fisher had come to a complete stop when the defendant approaching from the opposite direction ran the stopped bus and struck a child. At. p. 357. The trial judge held that the statute requiring drivers to stop before passing a stopped school bus does not apply because passing means both parties going in the same direction and ultimately one goes around the other if he passes, but going in the opposite directions, they meet. At pp. 357-58. Our Supreme Court reversed, finding the trial court's ruling erroneous and prejudicial. The Court held that the word "pass" means to go by,

regardless of whether the school bus and motor vehicle are traveling in the same direction. At. p. 358.

In underscoring its holding, the Court observed comparatively two vehicles in which one is passing the other. The Court stressed that the statute made clear that "a motorist overtaking any such person, to "pass" on the left side; and the word "pass" applies whether the parties meet or overtake one another." Id. (Emphasis added). In the typical instance, without a school bus being involved, only two vehicles, a vehicle overtaking another vehicle must pass and pass on the left side. At pp. 358-59. The Court made clear analogously and explicitly that overtaking involves and requires the physical act of passing whether meeting a vehicle or bus or approaching it from behind. Id.

There is one additional interpretation of Sec. 56-5-2770(A) that is often relied upon as stare decisis. That is the opinion of the South Carolina State Attorney General. According to the State's top counsel, "all traffic must stop when meeting or passing a stopped school bus." 1990 Op. Atty. Gen. No. 90-55. (Emphsis added).

It is uncontroverted in the record that Appellant was not passing or attempting to pass the school bus. Nor is there any evidence of intent to pass. Appellant lived off a road which the school bus had already passed and that was the road into which Appellant was turning. Tr. pp. 64, 66-67. She never moved into the left lane to pass. In no way was Appellant overtaking or attempting to overtake the school bus.

Contrary to the "overtaking" language in Sec. 56-5-2770(A), the Trial Court directed a verdict for Respondent. Tr. pp. 131-135, 144-147. The Trial Court ruled as a matter of law Appellant had in effect overtaken the school bus by turning left behind a pickup stopped behind

the bus. Id. Based on the ruling, the Court instructed the jury it was taking the factual issue of Appellant's proximity to the bus from the jury's hands and had determined as a matter of law the factual issue of Appellant's negligence. Tr. pp. 162-164. The Court found as a fact that the distance, as it measured or viewed it, Appellant was behind the bus when she turned was in such proximity that it amounted to overtaking and the statute applied. Id. The Trial Court's ruling on the legal definition or its preemptive factual application of the "overtaking" language is nowise supported by Fisher or any other case law. The Court should have exercised the same restraint it did in denying Appellant's motion for a directed verdict that Respondent was negligent as a matter of law in being far away enough to stop and not stopping, in Respondent admittedly approaching and disregarding flashing amber lights on the school bus for at least five seconds before literally passing the bus in violation of South Carolina Code Sec. 56-5-2770(C). Tr. pp. 7, 16, 27, 144.

Under Fisher and Sec. 56-5-2770(A), Appellant does not fit either class of drivers to which the statue applies. Neither was Appellant meeting the bus nor was she overtaking or passing it. The record is completely devoid of any evidence to the contrary. Rather all the evidence and testimony forcefully and unequivocally corroborate that Appellant was turning left some distance behind a truck stopped behind the bus and not overtaking or even seeking to overtake the bus.

In ruling upon Appellant's Motion for a New Trial, the Trial Court virtually admitted the grant of a directed verdict was improper but cavalierly tossed aside Appellant's Motion for a New Trial on the ground "that didn't hurt you [Appellant] one way or the other." Tr. p. 189. Surely the directed verdict hurt Appellant. Respondent did not move for a directed verdict to help

Appellant. Tr. pp. 131-132. Without the costly error of the grant of the directed verdict, the jury could have found Appellant was not negligent at all. Indeed, that was the entire thrust of Appellant's case until, for all practical purposes, the trial court threw it out with the directed verdict.

With the directed verdict tainting the entire fault and weight of the evidence issues, the jury never got a chance to disinterestedly look at Respondent's negligence per se under Sec. 56-5-2770(C). By Respondent's own admission, she ran through amber lights on the stopped or stopping school bus that were flashing for at least five seconds before she overtook the school bus and the wreck happened. Tr. pp. 7, 16. The cloud of Appellant being negligent as a matter of law hung heavy over the case to conclusion and snatched away the quintessential factual issue from jury deliberation and prejudiced Appellant's case.

In Fisher, all the trial court's reversible error did was compromise plaintiff's opportunity to argue punitive damages to the jury. At pp. 357, 359. Here the error is so egregious that it torpedoed Appellant's entire case on liability, not to mention punitive damages.

Appellant's maneuvers upon the roadway in this case were not a matter of law but a matter for jury deliberation. Unlike the presumptuous comments by the Trial Court in passing upon Appellant's Motion for a New Trial, that it "didn't hurt", the jury was prejudiced. The Court's ruling that Appellant was negligent as a matter of law enframed and severely enfeebled Appellant's contention to the jury of no negligence on her part and that Respondent was both negligent and reckless.

The Trial Court erred in granting Respondent's Motion for a Directed Verdict with resulting instructions to the jury. Sec. 56-5-2770(A) does not apply in this case because

Appellant was not overtaking or seeking to overtake the school bus. Even if the statute applied, whether Appellant violated it was clearly a factual issue which should have been determined by the jury and not the Court. The Court's ruling so hurt Appellant's case, so marred it, that by deciding the most critical issue of fault, a jury issue, the Court decided the case.

CONCLUSION

For the foregoing reasons, Appellant respectfully submits that the Order of the Trial Court denying Appellant's Motion for a New Trial should be reversed.

Respectfully Submitted,

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