

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. 2011-CP-07-4713

Jonetha Singleton.....Appellant,

v.

Starshaka Cuthbert.....Respondent

INITIAL BRIEF OF RESPONDENT

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OTHER AUTHORITIES

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STATEMENT OF THE ISSUE ON APPEAL

1. Did the Trial Court err in interpreting South Carolina Code §56-5-2770(A) and applying it to a driver turning left behind a vehicle stopped behind a stopped school bus?
2. Are there any alternate grounds to independently to support the verdict.

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, seeking damages based upon an automobile accident that occurred on October 6, 2010. Defendant/Respondent timely answered the Complaint denying the allegations raised by the Plaintiff/Appellant in her Complaint and raising comparative negligence as an affirmative defense in her Answer.

On May 6 and 7, 2013, The Honorable J. Ernest Kinard, Jr. presided over a jury trial of this action. At the end of Plaintiff's case, Defendant moved for and was granted a directed verdict on the basis that Plaintiff was negligent for violating statute South Carolina Code §56-5-2770 because she came to a stop behind a stopped school bus unloading children with its flashing red lights on and proceeded to make a left turn across the highway without waiting for the school bus to resume motion or turn off its flashing red lights. At the close of the trial, the issues of the defendant's negligence, the comparative negligence of each party, and causation were then submitted to the jury which unanimously found for the Defendant/Respondent.

The Court directed the verdict during the trial of May 6-7, 2013. Post trial motions were made at the conclusion of the case and denied at that time in open court on May 7, 2013. Notice of Appeal was filed on June 18, 2013.

STATEMENT OF FACTS

This case arises out of an accident that occurred on Seaside Road, in Beaufort County, on October 6, 2010 at about 3:30 p.m. It was a straight stretch of road. The weather was clear. Plaintiff/Appellant approached the rear of the school bus. Plaintiff/Appellant came to a stop behind a pickup truck, which was immediately behind the stopped school bus. The school bus had blinking red lights on. While the lights were still blinking red and the school bus was stopped, Plaintiff/Appellant attempted to turn left across the highway into a driveway. Ms. Cuthbert was coming from the opposite direction. Cuthbert testified that the bus wasn't stopped and the blinking red lights were not flashing when Ms. Cuthbert was unable to stop, and ran into Plaintiff/Appellant as Appellant turn left across the highway.

STANDARD OF REVIEW

In an action at law, on appeal of a case tried by a jury, the jurisdiction of this Court extends merely to the correction of errors of law, and a factual finding of the jury will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings. Townes Associates v. The City of Greenville, 266 S.C. 81, 86; 221 S.E.2d 773, 775 (1976).

ARGUMENT

I. SECTION 56-5-2770 (A) DOES APPLY TO PERSONS BEHIND A SCHOOL BUS

When a person driving a motor vehicle on a two lane road reaches a stopped school bus with blinking red lights, they must stop. The code section, in its entirety states as follows:

“(A) The driver of a vehicle meeting or overtaking from either direction a school bus stopped on a highway or private road must stop before reaching

the bus where there are in operation on the bus flashing red lights specified in State Department of Education Regulations and Specifications Pertaining to School Buses, and the driver must not proceed until the bus resumes motion or the flashing red lights are no longer actuated.”

South Carolina Code §56-5-2770.

There is no dispute that the Appellant came to a stop behind a stopped school bus with its red lights flashing. Tr. 68, l. 5. Notwithstanding the bus still being stopped and the lights still flashing, the plaintiff proceeded, to move her vehicle executing left turn across the highway. At that time she was struck by respondent coming from the other direction. Tr. 67, l. 10-14.

The Court correctly ruled that Appellant was negligent as a matter of law. The Court in so ruling stated: "[Appellant] was right behind the bus. ... There was a pick-up truck right behind the bus and she's right behind it, under everybody's testimony, and that's close enough to run over a child if you take a left. ... Under her testimony, that's a violation of the statute under the facts of the case." Tr. 146, l. 11-22.

Appellant cites to Fisher v. J. H. Sheridan Co., 182 S.C. 316, 189 S.E. 356, (1936) case to support her position that one meets the school bus from the front, and overtakes the school bus from the rear. Appellant Brief p. 4. The Fisher case was a dispute over the definition of the verb “pass” as it was used in the comparable statute applicable to school busses in 1934. To some extent, the Fisher Court made a distinction between overtaking and meeting. However, the Court held that regardless of from which direction the driver was approaching the school bus, the driver was still required to stop. While Appellant cites to Fisher to make this distinction, Appellant leaves out the critical portion of the present day Statute which effectively nullifies the Fisher case:

“The driver of a vehicle meeting or overtaking **from either direction** a school bus stopped on a highway or private road must stop before reaching the bus... “

Appellant’s Brief p. 4, see also South Carolina Code §56-5-2770.

Appellant does not acknowledge that a driver who meets or overtakes the bus from either direction must stop. Thus, while Appellant denies she was overtaking the bus (because she wasn’t going to pass it), she certainly met the rear of a stopped school bus. That is why she stopped. Once she met the rear of the bus, she should not have moved again until the bus resumed motion or turned off its flashing lights. Nevertheless, she moved. Tr. 67, l. 7 - Tr. 68, l. 1. Her left turn violates the statute.

Appellant’s position that she wasn’t overtaking the bus because she wasn’t going to pass it, relying on Merriam Webster’s definition of the word “overtake;” it is noteworthy that Miriam Webster’s first definition of the word “overtake” is “to catch up with.” Only the second definition of “overtake” defines it to mean “to catch up with and pass.”

- 1 a : to catch up with
- b : to catch up with and pass by
- 2 : to come upon suddenly

"Overtake." Merriam-Webster.com. Merriam-Webster, n.d. Web. 10Apr. 2014.
[http://www.merriam-webster.com/dictionary/overtake.](http://www.merriam-webster.com/dictionary/overtake)

While the second definition of “overtake” may support Appellant’s position, the first definition brings Appellant’s activities squarely within the activities contemplated by the statute. Thus, Appellant was required to stop and remain stopped.

Along similar lines, Merriam Webster defines the word “meet” to mean “to come into the presence of” or “to come together with especially at a particular time or place.”

a : to come into the presence of : find
b : to come together with especially at a particular time or place <I'll meet you at the station>

"Meet." Merriam-Webster.com. Merriam-Webster, n.d. Web. 10Apr. 2014.
<http://www.merriam-webster.com/dictionary/meet>.

To the extent there is room for argument that Appellant did not overtake the bus when using the standard dictionary meaning of the word "overtake," certainly, Appellant "caught up with" or "met" the bus from the rear. She came into the presence of the stopped school bus. Her "meeting" the back of the school bus is what caused her to stop. Tr. 67, l. 8-11.

Respondent's position is that the statute is clear and unambiguous and should be interpreted as written. "If a statute's language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and the court has no right to impose another meaning. The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation". Dreher v. Dreher, 370 S.C. 75, 80; 634 S.E.2d 646, 648 (2006)(internal citations omitted). The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Id.* The statute was made to prevent accidents and injury to school children who are about to enter or to leave such school bus on the highway. Fisher v. J. H. Sheridan Co., 182 S.C. 316, 322; 189 S.E. 356, 359 (1936). The Judge directed a verdict against the Plaintiff because she was close enough to the bus to run over a child when she made her turn. Tr. 146, l. 16-17. This ruling comports with the plain meaning of the statute, but also with the intent of the statute to

protect children who are getting off the bus. The statute is not discretionary. If a driver meets a stopped school bus, they must stop and remain stopped so they do not endanger the children getting off or onto the bus.

Once stopped, she was not allowed to move until the bus resumed motion or the flashing lights were no longer activated. Instead, Appellant turned her car across the roadway without waiting for the bus to move or turn off its flashing red lights, in violation of South Carolina Code § 56-5-2770. Accordingly, Appellant violated the statute and the directed verdict was correct.

II. THE TRIAL COURT PRESERVED THE RIGHT OF PLAINTIFF TO ARGUE THAT THE PROXIMATE CAUSE OF THE ACCIDENT WAS DEFENDANT'S ALLEGED NEGLIGENCE.

The trial judge fairly and correctly submitted the defendant's negligence, the comparative negligence of each party, and causation to the jury. Tr. 160, l. 4 - Tr. 162, l. 1; 162, l. 6-8; 165, l. 17 - Tr. 167, l. 5. The Judge was very clear in his jury instructions on the directed verdict and comparative negligence. On the directed verdict the Judge charged that "A person can be negligent and that not even be a cause of the accident." Tr. 162, l. 7-8. "I have found that one of the statutes was violated by the plaintiff, so the plaintiff was negligent on that issue. Tr. 162, l. 16-17. That does not mean that she – that negligence was a cause of the accident at all. Tr. 163, l. 9-10.

Likewise, on comparative negligence the Judge charged that "The defense further says that if we were negligent, which we deny, the plaintiff also was negligent. And we ask you to compare the negligences (sic in original) between the two parties. ... I'm not telling you both parties were at fault. All I have said was that under the testimony of the

plaintiff, she violated the statute and that was negligence. But that does not mean that she was at fault. That is for you to decide. I am not making that determination." Tr. 165, l. 25 - Tr. 166, l. 10.

In both instances, the Judge made clear in his instructions to the Jury that the directed verdict was not dispositive to the plaintiff's case. In both cases he instructed the jury that the Plaintiff's negligence was not decisive. In both cases, the jury needed to make a factual determination as to whether Plaintiff's actions caused or contributed to the accident, and if so to what extent. In determining the facts at issue, the jury returned a verdict for the defendant/Respondent.

III. THERE ARE ALTERNATE GROUNDS IN THE RECORD TO SUPPORT THE RULING

Notwithstanding all of the legal arguments above, and regardless of whether Appellant overtook or met the bus, and regardless of whether Respondent also violated the statute, which is denied and not preserved for appeal,¹ the Appellant turned left across roadway without yielding the right of way in violation of South Carolina Code §56-5-2320. Even if Plaintiff was allowed to move after stopping behind a school bus, she was required to yield to on coming traffic. This is an entirely separate legal basis which supports the Judge's and the Jury's decision in this case. Under the two issue rule, a respondent "may raise on appeal any additional reasons the appellate court should

¹ The issue of whether Respondent/Defendant should have stopped for the bus is not preserved for appeal. The statement of each issue on appeal shall be concise and direct, and broad general statements of issues may be disregarded by this Court. Rule 208(b)(1)(B), SCACR. "Every ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to 'grope in the dark' to ascertain the precise point at issue." Forest Dunes Assoc. v. Club Carib, Inc., 301 S.C. 87, 89, 390 S.E.2d 368, 370 (Ct. App. 1990) (internal citations omitted).

affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." Jones v. Lott, 387 S.C. 339, 346; 692 S.E.2d 900, 904 (2010). The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal. *Id* at 347. In this case, regardless of all of the other arguments, the record supports the premise that the Plaintiff/Appellant turned left in front of Defendant/Respondent in violation of South Carolina Code § 56-5-2320 thereby causing the accident. The jury was charged on this statute and no exception was taken by Appellant to the portion of the charge prohibiting a left turn without yielding. Accordingly, the Appellant's appeal should be denied.

CONCLUSION

Therefore, the Court should affirm the decision of the trial court in this case.

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DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

The Respondent proposes the following be included in the Record on Appeal:

1. All material identified by the Appellant; and
2. Trial Transcript pp. 160, 165-167.

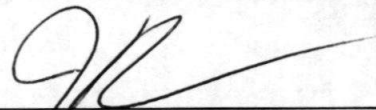
I certify that this designation contains no matter which is irrelevant to this Appeal.

CLAWSON AND STAUBES, LLC

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APR 16 2014

SC Court of Appeals



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April 14, 2014
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J. Ernest Kinard, Jr., Circuit Court Judge

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CERTIFICATE OF SERVICE

I certify that I have served the Respondent's Designation of Matter on all counsel by depositing a copy of it in the United States Mail, postage prepaid, on April 14, 2014, addressed to all attorneys of record as follows:

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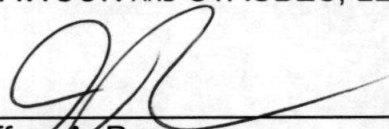
CERTIFICATE OF SERVICE

I certify that I have served the Respondent's Initial Brief on all counsel by depositing a copy of it in the United States Mail, postage prepaid, on April 14, 2014, addressed to all attorneys of record as follows:

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April 14, 2014

File No.: 2011-1204 jar

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Jonetha Singleton v. Starshaka Cuthbert
Appellate Case No. 2013-001387

Dear Ms. Kitchings:

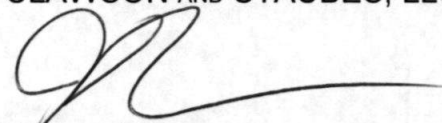
Please find attached the original and one copy of Respondent's Initial Brief and Designation of Matter, in the above-referenced matter.

If you need anything further in this regard, please contact me.

With kindest regards, I remain

Very truly yours,

CLAWSON AND STAUBES, LLC



Jeffrey A. Ross

JAR/kjw
cc (w/enc.): Bernard McIntyre, Esquire
Elizabeth H. Freeman, Esquire

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