THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

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SC Court of Appeals

Case No. 2010-CP-10-7699
Appellate Case No. 2013-000084

Jane Doe — Appellant,

v.

Charles Smith, Charleston County School District and James Island High School — Respondents.

Petition for Writ of Certiorari

September 24, 2014

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QUESTIONS PRESENTED FOR REVIEW

1. DID THE COURT CONSTRUE ALL FACTUAL INFERENCES IN FAVOR OF THE NON-MOVING PARTY DOE?

2. DID THE STATUTE OF LIMITATIONS RUN DESPITE DOE'S CLAIM OF REPRESSED MEMORY AND THE SUPPORTING TESTIMONY OF EXPERT WITNESSES?

    a. DID DOE PRESENT AT LEAST A SCINTILLA OF CORROBORATING EVIDENCE TO SUPPORT HER REPRESSED MEMORY CLAIM, THUS MAKING THE APPLICATION OF THE DISCOVERY RULE AND THE SUFFICIENCY OF THE CORROBORATING EVIDENCE QUESTIONS OF FACT FOR THE JURY?

3. DID THE SCHOOL DISTRICT OWE A DUTY TO DOE?

    a. DOES DOE'S GROSS NEGLIGENCE CLAIM REQUIRE THE DISTRICT TO HAVE PRIOR KNOWLEDGE OF SMITH'S SEXUAL ABUSE TO SURVIVE SUMMARY JUDGMENT?

STATEMENT OF THE CASE

Appellant Jane Doe ("Doe") filed her initial complaint on against Respondents Charles Smith ("Smith"), Charleston County School District ("CCSD") and James Island High School ("JIHS") on November 20, 2007.

The complaint arose out of alleged sexual abuse and other misconduct by Smith during the 1988-89 school year. Smith was Doe's teacher and coach and was employed by CCSD and JIHS at this time. Doe further alleged that she had repressed the memories of the abuse and did not recover them until early 2007.

Doe asserted claims against Smith, CCSD, and JIHS for breach of fiduciary duty and outrage. She further asserted a claim of gross negligence against CCSD and JIHS.

In response to the allegations made by Doe, the Respondents denied the allegations of abuse and put forth the defense that the statute of limitations had run on all of Doe's claims. CCSD and JIHS further defended by asserting the limitations of liability set forth in the South Carolina Tort Claims Act and that no duty was owed to Doe because it had no prior knowledge of Smith's sexual misconduct.

Respondents filed motions for summary judgment which were heard on July 23, 2012. On September 10, 2012, the court filed an order granting summary judgment in favor of CCSD and JIHS. The court found that, as a matter of law, CCSD and JIHS do not have a fiduciary relationship with its students and that no duty was owed to its student Doe. The order also incorporated the rationale and analysis regarding the statute of limitations as articulated in the order granting Smith's motion for summary judgment that would be filed two weeks later.

On September 24, 2012, the court filed an order granting Defendant Smith's motion for summary judgment. The basis of the order was that the statute of limitations had run pursuant to S.C. Code Ann §15-3-555 and Doe v. Crooks, 364 SC 349, 613 S.E.2d 536 (2005). The court further found that Doe did not satisfy the requirements of objective verifiability as espoused in Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150 (Ct. App. 1999); *aff'd by* Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320 (2000), that intentional infliction of emotional harm and punitive damages are not recoverable under the South Carolina Tort Claims Act. The trial court denied the Doe's motions to alter or amend the judgments without a hearing.

The Court of Appeals, in an unpublished *per curiam* decision, affirmed the trial court's ruling by Order filed June 30, 2014. The Court of Appeals denied Appellant's petition for rehearing by Order filed August 25, 2014

FACTUAL BACKGROUND

Respondent Charles Smith ("Smith") was a teacher at James Island High School during the 1988-1989 school year. In the 1988-1989 school year, Jane Doe was a freshman student at James Island High School. Respondent Smith was Jane Doe's teacher and coach at James Island High School.

During the 1988-1989 academic year, Respondent Smith began giving Jane Doe rides home from school and practice. Smith routinely gave students, including Doe rides to their homes in his own personal car from school grounds and from practice. [1] He gave students rides to overnight sports camps and even out of state. Id. He also bought

[1] *See* Respondent Smith depo tr. (R. p. 767, pp. 31:14 – R. p. 770, pp. 43:8; R. p. 780, pp. 82-83; R. p. 782, pp. 90 – R. p. 784, pp. 98; R. p. 786, pp. 105-106)

students gifts, interacted socially with students, including Doe, outside of school hours. Id.

All of this conduct is inappropriate conduct for teachers of James Island High School and Charleston County School District as testified to by the 30(b)(6) representative of James Island High School. *See* James Island High School 30(b)(6) depo pp. (R. p. 907, pp. 49:1-18; pp. 50:1-5, 16-19; R. p. 913, pp. 74:23 - pp. 75:2, 12-14, 25 – pp. 76:13, 24 - R. p. 914, pp. 77:12; *see also* James Island Policy Manual R. p. 1348; and whole James Island Policy Manual R. p. 1115-1406. Moreover, JIHS acknowledges that it is responsible for the supervision of its students during transportation to and from school activities such as softball practice. Id.

During the 1988-1989 academic year, Respondent Smith began touching Jane Doe in inappropriate and sexual ways in his classroom at James Island High School during school hours and utilized the rides he gave her in his vehicle to begin a series of sexual assaults on the minor child Jane Doe. All of these assaults occurred either on school grounds or resulting from rides given by Smith to Doe from school grounds. He further travelled with Doe from school grounds to a local horse stable and engaged in sexual contact with Doe.

The assaults caused the minor child Jane Doe such distress that she attempted to commit suicide in Smith's classroom shortly after the end of the school day in February 1989. Emergency Medical Services was called, arrived at James Island High School and paramedics rushed Doe out of the school, into the ambulance, and off to the hospital where her stomach was pumped and her life saved.

School and District policy requires that a student who receives such medical attention would result in an investigation by the school, records created and maintained in the student's file, accommodations provided to the student upon their return, and potentially a referral to the Department of Mental Health with a copy of such a referral kept in the student's file.[2]

However, nobody at the school or the school district investigated the matter, no accommodations were provided to Doe upon her return, no contact was made by the school or the district with Doe's family, no referral made for mental health treatment, and Respondent Smith admittedly did nothing to accommodate Doe, to inform the proper authorities of the incident, or otherwise demonstrate any care for Doe's mental or emotional well being.[3] Moreover, according to Smith, a nurse assisted him in providing emergency medical care for Doe, yet no nurse has been identified by the school, no report made of the incident in Doe's student records, no report of the incident made in Smith's personnel file, and no investigation performed by the School or the District in response to Doe's suicide attempt. Id.

Doe dropped out of high school without any discouragement from Smith, the school, or the school district, without any accommodations provided, and without any questions or concern exhibited for her well-being. Thereafter, Doe, like many sexual abuse victims, struggled in her adult life with sexual dysfunction, mistrust of authority figures resulting in conflict at work and in her personal life, desolation, shame,

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[2] *See, e.g.* the deposition testimony of the 30(b)(6) representative of James Island High School and School District policies regarding emergency care.(R. p. 912, pp. 69:10 – pp. 70:7; R. p. 922, pp.109:5 – pp. 111:21; R. p. 1109; *see also* R. p. 1312-1313; R. p. 1329)

[3] *See, e.g.* the deposition testimony of Smith and the 30(b)(6) representative of James Island High School.(R. p. 794, pp. 137:3-24; pp. 139:7 – pp. 140:24; R. p. 796, pp. 147:14-21; R. p. 799, pp.160:15 – R. p. 802, pp. 171:5)

loneliness, low self esteem, and other physical and psychological manifestations of the trauma suffered at the hands of Respondent Smith and under the watch of James Island High School and the Charleston County School District.[4]

However, as a result of the unbearable physical and emotional distress resulting from Smith's abuse, Doe repressed the memories of the abuse at some point prior to her 18th birthday and did not recall any of these memories until her recollection in or around early 2007. The testimony of both Doe and the Respondents' expert witnesses on dissociative amnesia supports the conclusion that Doe was in fact abused, suffered from dissociative amnesia, and did not recall the abuse until 2007, despite recalling abuse by another that had been repressed. *See* Brewerton depo (R. p. 614, pp. 42:13 – pp. 43:7; R. p. 615, pp. 46:14 – pp. 47:20; pp. 48:18 – pp. 49:5, 18-19, 24 – R. p. 616, pp. 50:4; pp. 52:16 – pp. 53:4; R. p 624, pp. 84:4 – R. p. 625, pp. 86:7; pp. 88:17-23; pp. 88:24 – R. p. 626, pp. 90:13; pp. 92:23-25; R. p. 627, pp. 96:1 – pp. 97:14.); *see also* McCurdy depo (R. p. 852, pp. 50:4-14; R. p. 853, pp. 55:21-25; R. p. 855, pp. 63:10-22; pp. 64: 11-15; R. p. 857, pp. 71:16 – pp. 72:13, 16 – R. p. 858, pp. 73:6; pp. 74:25 – pp. 75:2, 7 – pp. 76:1; R. p. 859, pp. 80:8-12; R. p. 860, pp. 83:15-20; R. p. 873, pp. 136:23 – R. p. 874, pp. 138:14.)

Additionally, Doe has a documented medical history of childhood sexual abuse,[5] contemporaneous written statements of the abuser (Smith),[6] and a chain of facts and

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[4] *See* Deposition testimony, statement to police, and affidavit of Doe.(R. p. 211, pp.159:13 – pp.160:3; pp. 161:16 - R. p. 212, pp. 162:2; R. p. 241, pp. 7:24 – pp. 8:5; R. p. 242:4-13; R. p. 244, pp. 18:21 – pp. 19:5; R. p. 1407-1413; R. p. 2238-2247;)

[5] *See, e.g.* affidavit of Heidi Zinzow, medical records of Tanya Bolton, MUSC, and others. (R. p. 1414-1416; R. p. 2553-2561; R. p. 2543-2552; R. p. 2562-2566)

[6] *See* a handwritten note from Respondent Smith to Doe from her 1989 James Island High School yearbook. (R. p. 2542)

circumstances, including classic grooming activities from Smith,[7] Smith's concealment of Doe's suicide attempt in his classroom,[8] and other incidents involving inappropriate conduct on Smith's behalf[9] which have sufficient probative force to produce a reasonable inference, in the light most favorable to Doe, that the sexual abuse occurred.[10]

ARGUMENT

I. DOE PRESENTED SUFFICIENT EVIDENCE OF DISSOCIATIVE AMNESIA TO TOLL THE STATUTE OF LIMITATIONS DURING HER PERIOD OF MEMORY REPRESSION.

Generally, a cause of action accrues at the time of the injury. Holy Loch Distributors, Inc. v. Hitchcock, 332 S.C. 247, 503 S.E.2d 787 (Ct. App. 1998). However, the statue of limitations is tolled during until a minor reaches the age of maturity, eighteen. S.C. Code Ann § 15-3-40. Moreover, the discovery rule tolls the statute of limitations during the period a victim psychologically represses her memory of sexual abuse. Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 167-168 (Ct. App. 1999); S.C. Code Ann. § 15-3-535.

Plaintiffs such as Doe in this case do not suffer from statutory limitations on filing and action where circumstances prevent them from knowing they have been harmed. Moriarty, 334 S.C. 162 (Ct. App. 1999). Survivors of sexual abuse who repress their memories of sexual abuse and then recover them many years later -- when they are finally able to confront them – would otherwise be effectively blocked from seeking legal

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[7] *See, e.g.* affidavit of Heidi Zinzow, deposition testimony of the 30(b)(6) representative of James Island High school and the deposition testimony of Respondent Smith. (R. p. 1414-1416; R. p. 905, pp. 43:5 – R. p. 906, pp. 47:22; R. p. 782, pp. 92:11 – R. p. 783, pp. 93:25)

[8] *See* Smith's deposition testimony. (R. p.793, pp. 135:23 – R. p. 794, pp. 137:24; R. p.795, pp. 142:6-17; R. p. 796, pp. 147:14-21)

[9] *See* Smith's deposition testimony and the deposition testimony of the 30(b)(6) representative of James Island High School. (R. p. 905, pp. 43:5 – R. p. 906, pp. 47:22; R. p. 782, pp. 92:11 – R. p. 783, pp. 93:25)

[10] *See, e.g.* deposition testimony of Rita Avila. (R. p. 376, pp. 76:19 – R. p. 378, pp.81:2; R. p. 384, pp. 107:2 – R. p. 385, pp.112:6)

redress for their injuries by traditional statutes of limitations, which typically commence when the wrong is committed. Id. These statutes, such as those relied upon by the Respondents in their motions for summary judgment, traditionally provide no legal action can be maintained unless brought within a specified period of time. Id. However, in cases such as this one involving repressed memory, the victim is unaware of the wrongful event until well after the statute of limitations has expired. Id.

In response to such cases, South Carolina has applied the discovery rule to prevent the injustice which would result from the strict application of the statute of limitations. *See* Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 167-168 (Ct. App. 1999). The Respondents acknowledge this is a case of alleged repressed memory of childhood sexual abuse. Doe does not claim merely that she did not realize the full extent of her injuries and, as such, this case is distinguishable from Doe v. Crooks, 364 S.C. 349, 613 S.E.2d 536 (2005), which is relied upon heavily by the court in its in order granting summary judgment on the issue of the statute of limitations.

In Crooks, the plaintiff was aware that as a child he had been sexually abused by his father for a number of years, however, it was not until many years later that he learned the extent of his injuries. The Supreme Court held that S.C. Code Ann. Section 15-3-40(1) (Supp. 1991) tolls the statute until the plaintiff reaches majority; however, because the plaintiff's claims in Crooks did not involve allegations of repressed memory, the Court held the action was barred.

Here, Doe claims that she was abused and otherwise harmed by the Respondents while she was a minor, repressed those memories before she reached the age of majority, and did not recover them until early 2007. These claims are supported by the expert

testimony mentioned herein. When viewing the facts in the light most favorable to Doe, this case was filed within 1 year of recollection of the abuse from Smith, well within the 3 year statute of limitations provided by the discovery rule. *See* S.C. Code Ann. § 15-3-535; Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 167-168 (Ct. App. 1999). Accordingly, the trial court's decision, affirmed by the Court of Appeals, that the statute of limitations had expired by the time Doe filed her action was in error.

a. DOE PRESENTED AT LEAST A SCINTILLA OF CORROBORATING EVIDENCE TO SUPPORT HER REPRESSED MEMORY CLAIM. THEREFORE, THE APPLICATION OF THE DISCOVERY RULE AND THE SUFFICIENCY OF THE CORROBORATING EVIDENCE ARE QUESTIONS OF FACT FOR THE JURY.

The court of appeals concluded that Doe failed to present corroborating evidence that meets the requirements of Moriarty v. Garden Sanctuary of God, 341 S.C. 320, 534 S.E.2d 672 (2000)(stating a plaintiff must present at the summary judgment stage and at trial expert witness testimony to prove the abuse and repressed memory[11] as well as independently verifiable, objective evidence that corroborates the repressed memory claim in order to assert the discovery rule).

Objective verifiability may be satisfied by corroborating evidence, for example:

(1) admission by the abuser; or

(2) a criminal conviction; or

(3) documented medical history of childhood sexual abuse; or

(4) contemporaneous records or written statements of the abuser, such as diaries or letters; or

[11] The court of appeals did not indicate that there was any deficiency in the expert witness testimony presented by Doe. Rather, it found that Doe failed to present sufficient objectively verifiable corroborating evidence to toll the statute of limitations. Accordingly, Doe will focus primarily on the corroborating evidence requirement.

(5) photographs or recordings of the abuse; or

(6) an objective eyewitness's account; or

(7) evidence the abuser had sexually abused others; or

(8) proof of a chain of facts and circumstances having sufficient probative force to produce a reasonable and probable conclusion that sexual abuse occurred.

Id.

The primary reasons for requiring corroborating evidence are the disagreement among the psychological and medical communities about the validity of repressed memory syndrome, the danger a plaintiff's memories could be faked or implanted during therapy, and the desire that a plaintiff not have the ability to control the running of the statute of limitations solely by allegations whose only support is contained within the plaintiff's mind. Moriarty at 335-336, 680. The testimony of both Doe's and Respondents' expert witnesses make clear that repressed memory syndrome is a valid psychological disorder and that Doe suffered from it. They both further testified that there was no evidence of fake or implanted memories during therapy. Thus, two of the primary reasons for requiring corroborating evidence are, in this case, inapplicable.

In addition to the expert testimony, Doe presented a documented medical history of childhood sexual abuse,[12] contemporaneous written statements of the abuser (Smith),[13] a chain of facts and circumstances - including classic grooming activities from Smith,[14]

[12] *See, e.g.* affidavit of Heidi Zinzow, medical records of Tanya Bolton, MUSC, and others. (R. p. 1414-1416; R. p. 2553-2561; R. p. 2543-2552; R.. p. 2562-2566).

[13] *See, e.g.* a handwritten note from Respondent Smith to Doe from her 1989 James Island High School yearbook. (R. p. 2542).

[14] *See, e.g.* affidavit of Heidi Zinzow, deposition testimony of the 30(b)(6) representative of James Island High school, and the deposition testimony of Respondent Smith. (R. p. 1414-1416; R. p. 905, pp. 43:5 – R. p. 907, pp. 50:22; R. p. 782, pp. 92:11 – R. p. 783, pp. 93:25; R. p. 786, pp. 105-108).

Smith's concealment of Doe's suicide attempt in his classroom,[15] other incidents involving inappropriate conduct on Smith's behalf, [16] as well as Doe's own testimony, which have sufficient probative force to produce a reasonable inference, in the light most favorable to Doe, that the sexual abuse occurred.

The trial court incorrectly held that Doe was required to present medical records from the time she was abused to show a documented medical history of abuse. Smith Summary Judgment Order, (R. p. 26). Doe presented no such records because she did not recall the events of abuse until 2007. She therefore did not seek treatment until that time. The fact that no medical records from the time she was abused existed further demonstrates that Doe did in fact repress the memories of the abuse until 2007. All of the post 2007 medical records from her providers indicate that she was abused sexually by her teacher, Smith. Moreover, the chain of facts and circumstances regarding the grooming behavior of Smith with Doe can reasonably lead to the inference that the abuse did occur.

Despite this, the court held that Doe failed to present evidence of corroborating evidence of her repressed memory claim. In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving part, Doe, is only required to submit a mere scintilla of evidence. Turner v. Milliman, 392 S.C. 116708 S.E.2d 766 (2011). In determining whether any triable issues

[15] *See* Smith's deposition testimony. (R. p.793, pp. 135:23 – p.795, pp.143:25; R. p. 796, pp. 147:14-21). This could reasonably be inferred as conduct amounting to a cover up to avoid any questioning by the authorities of Smith and Doe's relationship.

[16] *See* Smith's deposition testimony and the deposition testimony of the 30(b)(6) representative of James Island High School. (R. 767, pp.31 – R. p. 770, pp.43; R. p. 780, pp. 82-83; R. 782, pp. 90 – R. 784, pp.98; R. p. 810, pp. 202:21 – pp. 203:17; R. p. 811, pp. 208: - R. 813, pp. 213:13, R. p. 903, pp. 36:21 – R. p. 904, pp.38:19; R. p. 905, pp.43:5 – R. p.906, pp.47:22).

of fact exist at the summary judgment stage, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Hancock v. Mid-South Management Co., Inc., 381 S.C. 326673 S.E.2d 801 (2009). Doe's corroborating evidence is, at the very least, a scintilla of evidence of corroboration that makes summary judgment improper. It is thus a matter for the jury to consider the weight to be given the evidence. Doe by Doe v. Greenville Hosp. Sys., 323 S.C. 33, 36 (Ct. App. 1994).

Given that Doe presented at least a scintilla of corroborating evidence, the two prongs of expert testimony and corroborating evidence required under Moriarty have been satisfied for summary judgment purposes. The final issue is whether application of the discovery rule and the existence of corroborating evidence remain questions of fact for the jury. The answer is "yes." Moriarty at 338, at 681 (Stating that the application of the discovery rule contained in S.C. Code Ann. § 15-3-535, as well as the determination of the date the statute began to run in a particular case, are questions of fact for the jury); *See also* Johnston v. Bowen, 313 S.C. 61, 64, 437 S.E.2d 45, 47 (1993) (whether a claimant knew or should have known that they had a cause of action is question for the jury); Santee Portland Cement Co. v. Daniel Int'l Corp., 299 S.C. 269, 274, 384 S.E.2d 693, 696 (1989) (application of discovery rule to a claim is a question of fact for jury), *overruled on other grounds by* Atlas Food Sys. and Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp., 319 S.C. 556, 462 S.E.2d 858 (1995); Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct.App.1998) (in determining whether statute of limitations begins to run under discovery rule, jury must resolve conflicting evidence as to whether a claimant knew or should have known he had a cause of action).

Doe still bears the burden of proving at trial that she repressed memories of the abuse and that corroborating evidence supports her claim. However, the testimony of Doe and both of the expert witnesses supports the conclusion that Doe was in fact abused, in fact suffered from repressed memory, and in fact did not recall the repressed memories until early 2007. Thus, *the jury* must determine whether the corroborating evidence presented is sufficient corroboration to support the conclusion that sexual abuse occurred, when Doe repressed the memories and when she recalled the abuse, such that a person of common knowledge and experience would be on notice that some right of hers has been invaded or that some claim against another party might exist.

Doe submits the court of appeals erred in affirming the circuit court's grant of summary judgment because Doe submitted sufficient expert testimony to prove the abuse and repressed memory and more than a scintilla of corroborating evidence which would support her claims of abuse. As such, the grant of summary judgment by the circuit court and the affirmance by the court of appeals was in error and should be reversed.

II. THE RESPONDENTS OWED A DUTY OF CARE TO DOE.

a. GROSS NEGLIGENCE STANDARD.

The South Carolina Supreme Court has defined gross negligence as "the failure to exercise slight care" and "the absence of care that is necessary under the circumstances." Hollins v. Richland County Sch. Dist. One, 310 S.C. 486, 490 (1993). South Carolina law is clear that the Respondents are liable to its students for a loss when their responsibility to supervise, protect, or otherwise control one of its teachers was exercised in a grossly negligent manner. S.C. Code Ann. § 15-78-60(25); Woodell v. Marion Sch. Dist. One, 307 S.C. 297 (Ct. App. 1992). Whether in fact the loss resulted from the

Respondent's alleged grossly negligent conduct is for the jury to determine. Woodell v. Marion Sch. Dist. One, 307 S.C. 297 (S.C. Ct. App. 1992); Duncan v. Hampton County Sch. Dist. 2, 335 S.C. 535, 545-546 (Ct. App. 1999).

Moreover, "the burden of establishing this limitation upon liability is upon the governmental entity asserting it as an affirmative defense." Doe by Roe v. Orangeburg County Sch. Dist. No. 2, 329 S.C. 221, 223-224 (Ct. App. 1997) *citing* Rakestraw v. South Carolina Dep't of Hwys. & Pub. Trans., 323 S.C. 227, 230-31, 473 S.E.2d 890, 892 (Ct. App. 1996); Strange v. S.C. Dep't of Highways & Pub. Transp., 314 S.C. 427, 430 (S.C. 1994)("The burden of establishing a limitation upon liability or an exception to the waiver of immunity is upon the governmental entity asserting it as an affirmative defense.").

Respondent CCDS and JIHS assert, and the trial court found, that no duty existed between the school and its student, Doe, because the school was not aware of Smith's activities with Redden. CCSD/JIHS Order (pp. 8-15).

Here, the reasonable inference drawn from the testimony and evidence at this stage is that Respondent Smith routinely and repeatedly violated school policy in the discharge of his duties as a teacher and that both James Island High School and the Charleston County School District did absolutely nothing to enforce these policies, nothing to ensure that they were being followed, and nothing to document Smith's violations of policy in his personnel file so that appropriate action could be taken. Doe claims focus on the Respondent's alleged gross negligence in supervising its teacher, Smith, and protecting its student, Doe.

Under these factual circumstances, the fact that the School District took no action to supervise or otherwise monitor these trips and, therefore, had no knowledge of anything inappropriate occurring, does not absolve the School District of its duty. Such a holding would unjustly reward the District and others by giving legal immunity to those who avoid supervising or monitoring situations that may lead to sexual abuse, thereby avoiding any knowledge that could give rise to liability. Rather, the question of whether School District exercised "slight care" in never once noticing that Smith was giving student's rides in his car and utilizing that vehicle to sexually abuse Doe, never once making no effort to offer guidance, accommodation, or other support to Doe when she attempted suicide on school grounds, and otherwise completely failing to ensure its teacher, Smith, adhered to policies designed to protect the students, including Doe, is a question for the jury. Furthermore, it is for the jury to determine whether these failures constituted gross negligence and whether Doe's injuries were proximately caused by such gross negligence, as more fully discussed below. Accordingly, the trial court's decision, affirmed by the Court of Appeals, was in error and should be reversed.

b. DOE'S GROSS NEGLIGENCE CLAIM DOES NOT REQUIRE THE DISTRICT TO HAVE PRIOR KNOWLEDGE OF SMITH'S SEXUAL ABUSE TO SURVIVE SUMMARY JUDGMENT.

The court of appeals concluded that Doe presented no evidence that the District knew or had reason to know of a need to exercise control over Smith to prevent him from abusing Doe, relying upon Degenhart v. Knights of Columbus, 309 S.C. 114, 420 S.E.2d 495 (1992) and Moore v. Berkeley County School District, 326 S.C. 584, 486 S.E.2d 9 (1997). Both of these cases apply only to the District's duty with respect to Smith's

conduct that is outside the scope of employment, however, and are therefore inapplicable.[17]

Contrary to court's decision, in order for Doe to establish liability against the District, it is not necessary the District should have contemplated the particular act of abuse which occurred. Young v. Tide Craft, 270 S.C. 453, 242 S.E.2d 671 (1978). It is sufficient that the District should have foreseen its negligence would probably cause injury to someone. Childers v. Gas Lines, Inc., 248 S.C. 316, 149 S.E.2d 761 (1966). The District may be held liable for anything which appears to have been a natural and probable consequence of its negligence. Greenville Memorial Auditorium v. Martin, 301 S.C. 242391 S.E.2d 546 (1990).

"The terms 'course of employment' and 'scope of authority' are not susceptible of accurate definition. What acts are within the scope of employment can be determined by no fixed rule. The authority from the master is generally to be gathered from all the surrounding and attendant circumstances." Adams v. South Carolina Power Co., 200 S.C. 438, 441 (S.C. 1942).

The evidence presented demonstrates that Smith clearly was acting within the scope of his employment when he taught and coached Doe, both on school grounds and during extracurricular activities. Smith routinely would take Doe in his car from school to

[17] To the extent these cases require the School District to have actual notice of a teacher's sexual misconduct before it becomes liable as a matter of law, the Petitioner would argue that the School district should be placed on constructive notice. *See, e.g.* Major v. City of Hartsville, 2014 WL 4629587 --- S.E.2d ---- (2014) ("Constructive notice is a legal inference, which substitutes for actual notice. Constructive notice arises when a condition has existed for such a period of time that a municipality in the use of reasonable care should have discovered the condition...Where a recurring condition is of such a nature as to amount to a continual condition, when coupled with other factors, the recurring condition may be sufficient to create a jury issue as to constructive notice.") (internal citations omitted).

practice and to her home. According to the Respondents, this conduct of transporting students was not only within the scope of his employment but common place at the time.

Under South Carolina law - which takes a decidedly broad view of acts in furtherance of the master's business[18] - it is irrelevant if Smith may have taken actions that were outside of the technical scope of his authority as a teacher. The proper inquiry is "if the servant is doing ***some*** act in furtherance of the master's business, he will be regarded as acting within the scope of his employment, although he may exceed his authority." Crittenden v. Thompson-Walker Co., 288 S.C. 112, 115-116 (S.C. Ct. App. 1986) (emphasis added); Jones v. Elbert, 211 S.C. 553, 558, 34 S.E.2d at 798-799, (S.C. 1945) *quoting* Cantrell v. Claussen's Bakery, 172 S.C. 490, 494, 174 S.E. 438, 440 (1934). 288 S.C. at 115-116, 341 S.E.2d at 387 (citations omitted); *accord* S.C. State Budget & Control Bd. v. Prince, 304 S.C. 241, 246 (S.C. 1991) Carr v. William C. Crowell Co., 28 Cal.2d 652, 171 P.2d 5 (1946); Fields v. Sanders, 29 Cal.2d 834, 180 P.2d 684 (1947.

"The reason which has supported the principle of respondeat superior, based upon the judicial interpretation and declaration of public policy, is that the principal, selecting his agent and directing the manner in which he shall execute the agency, should in justice to third persons with whom the agent may deal, and who are not responsible either for his

[18] South Carolina routinely holds that intentional torts of employees can be within the scope of one's employment. *See* Berkeley - Dorchester Counties Econ. Dev. Corp. v. United States HHS, 395 F. Supp. 2d 317, 323 (D.S.C. 2005) (civil conspiracy and slander within scope of employment); Polatty v. Char, 67 S.C. 391, 395 (S.C. 1903) (assault and battery within scope despite lack of express authorization by principal); Jamison v. Howard, 271 S.C. 385, 388 (S.C. 1978) (assault within the scope of employment even when the employee exceeded his authority and acted contrary to the express orders of the employer); Crittenden v. Thompson-Walker Co., 288 S.C. 112, 116 (S.C. Ct. App. 1986) (assault and battery); Murphy v. Jefferson Pilot Communs. Co., 364 S.C. 453, 462 (S.C. Ct. App. 2005) (defamation); Murray v. Holnam, Inc., 344 S.C. 129, 139, 542 S.E.2d 743, 748 (Ct. App. 2001) (defamation); S.C. State Budget & Control Bd. v. Prince, 304 S.C. 241, 247 (S.C. 1991) (defamation).

selection or conduct, be held liable for his torts." Jones v. Elbert, 211 S.C. 553, 558 (S.C. 1945) *citing* Sams v. Arthur, 135 S.C. 123, 133 S.E. 205, 208.

The Respondents' acknowledge that giving rides to students was within Smith's scope of employment, yet did not to prevent this from happening, did nothing to warn Smith or Doe that this may be inappropriate conduct, and did nothing to otherwise take any reasonable measure to protect Doe or to supervise Smith during these trips. Whether the sexual assaults resulted from the District's grossly negligent conduct with respect to these rides, taken within the scope of Smith's employment with the District, is a question for the jury.

The duty of supervision exists as a matter of law pursuant to S.C. Code Ann. § 15-78-60(25), and the District is liable to Doe for her loss when their responsibility to supervise is exercised in a grossly negligent manner. Grooms v. Marlboro County Sch. Dist., 307 S.C. 310, 313 (Ct. App. 1992). Accordingly, a duty of care applied to the District with respect to these activities and a jury could reasonably conclude that the District was grossly negligent in its discharge of this duty. Moreover, the burden of establishing a limitation upon liability is upon the District asserting it as an affirmative defense. Doe by Roe v. Orangeburg County Sch. Dist. No. 2, 329 S.C. 221, 223-224 (Ct. App. 1997). The evidence presented demonstrates that the District did absolutely nothing to monitor or otherwise supervise Smith when he gave students, including Doe, rides to and from school related activities. Viewing this in the most favorable light to Doe, there was sufficient evidence from which a jury could find that Doe's injuries were foreseeable and that the District was liable. As such, the grant of summary judgment by the circuit court and the affirmance by the court of appeals was in error and should be reversed.

CONCLUSION

For the foregoing reasons, the orders granting summary judgment in favor of the Respondents and the orders of the Court of Appeals should be reversed and the case set for a jury trial.

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9/24, 2014
Mt. Pleasant, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

RECEIVED
SEP 26 2014
SC Court of Appeals

Case No. 2010-CP-10-7699
Appellate Case No. 2013-000084

Jane Doe Appellant,

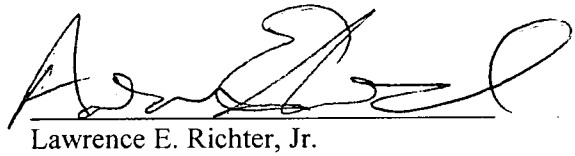
v.

Charles Smith, Charleston County School District and James Island High School Respondents.

Proof of Service

I certify that I have served the Petition of Certiorari by depositing a copy of it in the United States Mail, postage prepaid, on September 24, 2014, addressed to the attorneys of record, Robin Jackson at Senn Legal LLC, P. O. Box 12279, Charleston, SC 29422 and Stephen L. Brown, Wilber E. Johnson, Brian Quisenberry, and Russell G. Hines at Young Clement Rivers, LLP, 25 Calhoun Street, Suite 400, P.O. Box 993, Charleston, SC 29402.

September 24, 2014



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

Case No. 2010-CP-10-7699
Appellate Case No. 2013-000084

Jane Doe Appellant,

v.

Charles Smith, Charleston County School District and James Island High School Respondents.

CERTIFICATE OF COMPLIANCE

The petitioner hereby certifies, pursuant to Rule 242(d)(1), that a petition for rehearing was made and finally ruled on by the Court of Appeals.

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September 24, 2014

The Honorable Daniel E. Shearouse
Supreme Court Building
1231 Gervais Street
Columbia, SC 29201

Re: Jane Doe v. Charleston County School District, James Island High School and Charles Smith
Civil Case No. 2010-CP-10-7699
Appellate Court Case No. 2013-000084

Dear Mr. Shearouse:

Enclosed for filing please find the following documents:

1. The original and 7 copies (6 for the Court, 1 to be returned) of the Petition;

2. A check for $100 filing fee;

3. A bound and unbound copy of the Record on Appeal;

4. A bound and unbound copy of Appellant's Final Brief;

5. A bound and unbound copy of Respondent Smith's Final Brief;

6. A bound and unbound copy of Respondent Charleston County School District and James Island High School's Final Brief;

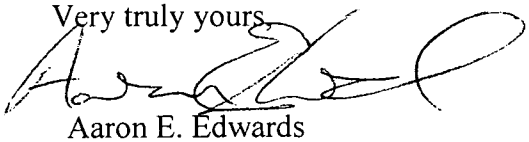
7. A bound and 2 unbound copies (1 for the Court, 1 to be returned) of the Appendix;

8. Certificate of Compliance with Rule 242(d)(1);

9. Proof of Service.

Please file the original Petition and Appendix and return a file-stamped copy to our office in the self-addressed, stamped envelope enclosed. By copy of this letter to Robin Jackson and Brian Quisenberry, attorneys for the Respondents, I am serving them with a copy of the same.

Very truly yours,



Aaron E. Edwards

AEE/cms
Enclosures

cc: The Honorable Jenny Abbott Kitchings (with disc copy of Record on Appeal & Final Briefs, hard copy of Petition and Appendix, and Proof of Service)

Robin Jackson (with disc copy of Record on Appeal & Final Briefs, hard copy of Petition and Appendix, and Proof of Service)

Brian Quisenberry (with disc copy of Record on Appeal & Final Briefs, hard copy of Petition and Appendix, and Proof of Service)

Jane Doe

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

Case No. 2010-CP-10-7699
Case No. 2013-000084

Jane Doe — Appellant,

v.

Charles Smith, Charleston County School District and James Island High School — Respondents.

Appendix

September 24, 2014

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Proof of Service

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Jane Doe, Appellant,

v.

Charles Smith, Charleston County School District and James Island High School, Respondents.

Appellate Case No. 2013-000084

Appeal From Charleston County
W. Jeffrey Young, Circuit Court Judge

Unpublished Opinion No. 2014-UP-267
Heard May 7, 2014 – Filed June 30, 2014

AFFIRMED

Lawrence E. Richter, Jr., Alice Richter Lehrman, Aaron Eric Edwards, all of The Richter Firm, LLC, of Mount Pleasant, for Appellant.

Stephen Lynwood Brown, Wilbur E. Johnson, Brian Lee Quisenberry, and Russell Grainger Hines, all of Young Clement Rivers, of Charleston, for Respondents Charleston County School District and James Island High School; Robin Lilley Jackson, of Senn Legal, LLC, of

Charleston, for Respondent Charles Smith.

PER CURIAM: Jane Doe appeals the order of the trial court granting summary judgment to Charles Smith, Charleston County School District (District), and James Island High School (High School) on her claims for breach of fiduciary duty, outrage, and gross negligence. We affirm.

(1) We find the trial court did not err in granting the District and the High School summary judgment on Doe's negligent supervision claim. *See* S.C. Code Ann. § 15–78–60(25) (2005) (providing a governmental entity is not liable for a loss resulting from the "responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, . . . except where the responsibility or duty is exercised in a grossly negligent manner . . . "); *Degenhart v. Knights of Columbus,* 309 S.C. 114, 116–17, 420 S.E.2d 495, 496 (1992) (stating an employer may be liable for negligent supervision when the employee intentionally harms another when he is on the employer's premises, he is on premises he is privileged to enter only as an employee or is using the employer's chattel, the employer knows or has reason to know he has the ability to control the employee, and the employer knows or has reason to know of the necessity and opportunity to exercise such control); *Moore v. Berkeley Cnty. Sch. Dist.*, 326 S.C. 584, 591-92, 486 S.E.2d 9, 13 (Ct. App. 1997) (finding district not liable for negligent supervision when although there was evidence teacher's classroom was conducted in a lax manner and some teachers observed what they considered "inappropriate" behavior in the classroom, none of the alleged classroom incidents were of such a character that the administration would have, if aware of them, reasonably anticipated that the teacher would engage in sexual intercourse with a student in her own home after school hours). Doe presented no evidence that the District knew or had reason to know of a need to exercise control over Smith to prevent him from abusing Doe.

(2) We find Doe's contention the School District and the High School failed to exercise slight care because it made no effort to offer guidance, accommodation, or other support to Doe after her suicide attempt is not preserved for appellate review. *See Wilder Corp. v. Wilke,* 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

(3) We find the trial court did not err in holding the District and the High School are not liable under a theory of *respondeat superior*. *See* S.C. Code Ann. § 15–78–60(17) (2005) (excluding a governmental entity from liability for a loss resulting from "employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude . . . "); *Froneberger v. Smith*, 406 S.C. 37, 748 S.E.2d 625, 633 (Ct. App. 2013) (stating the modern doctrine of *respondeat superior* makes a master liable to a third party for injuries caused by the tort of his servant committed within the scope of the servant's employment); *Kase v. Ebert*, 392 S.C. 57, 61-62, 707 S.E.2d 456, 458 (Ct. App. 2011) ("If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended; and this is so *no matter how short the time,* and the master is not liable for his acts during such time." (internal citations and quotation marks omitted)); *Frazier v. Badger*, 361 S.C. 94, 103, 603 S.E.2d 587, 591 (2004) ("[S]exual harassment by a government employee is not within the employee's 'scope of employment.'"); *Brockington v. Pee Dee Mental Health Ctr.*, 315 S.C. 214, 218, 433 S.E.2d 16, 18 (Ct. App. 1993) (holding an employee clearly was acting in his individual capacity and not as an agent for the defendants when he sexually assaulted the victim in his office).

(4) Doe failed to challenge the trial court's granting of summary judgment to the District and the High School on Doe's breach of fiduciary duty claim and outrage claim. She also failed to challenge the trial court's ruling that all of Doe's claims against the High School fail because the High School did not exist as a separate legal entity until 2003. These rulings are the law of the case. *See Jones v. Lott,* 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case."); *First Union Nat'l Bank of S.C. v. Soden,* 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998) (holding an "unchallenged ruling, right or wrong, is the law of the case and requires affirmance").

(5) We find Doe failed to challenge properly the trial court's ruling that her claims against Smith for outrage and punitive damages were barred by the Tort Claims Act. Her only discussion of this ruling is in a footnote in her brief within the argument section "The Respondents owed a duty of care to Doe," in which she states: "To the extent Smith was acting outside the scope of his employment by taking Doe for rides in his car and tending to Doe after her suicide attempt, the ruling by the trial court barring the claims of outrage and for punitive damages against Smith are in error because those limitations on liability apply only to

employees acting within the scope of their employment." *See* Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); *Walde v. Ass'n Ins. Co.*, 401 S.C. 431, 435 n.1, 737 S.E.2d 631, 633 n.1 (Ct. App. 2012) (refusing to address an issue when the appellant's brief did not include an issue on appeal addressing this contention, did not argue the specific issue, and only briefly referred to this concern in another argument without providing any supporting authority); *Fassett v. Evans,* 364 S.C. 42, 50 n.5, 610 S.E.2d 841, 846 n.5 (Ct. App. 2005) (holding that even if a one-sentence argument could be construed as raising a separate issue on appeal, it was abandoned for being conclusory and failing to cite any supporting authority).

(6) We find the trial court did not err in holding Doe's claims were barred by the statute of limitations. *See Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 336, 340, 534 S.E.2d 672, 680, 682 (2000) (stating a plaintiff must present at the summary judgment stage and at trial independently verifiable, objective evidence that corroborates a repressed memory claim in order to assert the discovery rule); *id.* at 335, 534 S.E.2d at 680 (explaining the requirement of corroborating evidence "appropriately balances the plaintiff[']s interest in pursuing a valid claim and the defendant's interest in being able to defend a stale or false claim); *id.* at 335-36, 534 S.E.2d at 680 (noting reasons for the requirement are "the disagreement among the psychological and medical communities about the validity of repressed memory syndrome, the danger a plaintiff's memories could be faked or implanted during therapy, and the desire that a plaintiff not have the ability to control the running of the statute of limitations solely by allegations whose only support is contained within the plaintiff's mind"); *id.* at 336, 534 S.E.2d at 680 (listing examples of corroborating evidence that may satisfy the objective verifiability requirement as "(1) an admission by the abuser; (2) a criminal conviction; (3) documented medical history of childhood sexual abuse; (4) contemporaneous records or written statements of the abuser, such as diaries or letters; (5) photographs or recordings of the abuse; (6) an objective eyewitness's account; (7) evidence the abuser had sexually abused others; or (8) proof of a chain of facts and circumstances having sufficient probative force to produce a reasonable and probable conclusion that sexual abuse occurred"). In order to avoid application of the statute of limitations, Doe was required to establish independently verifiable, objective evidence to corroborate her repressed memory claim. We find Doe failed to present evidence that meets the requirements of *Moriarty*.

AFFIRMED.

HUFF, THOMAS, and PIEPER, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

Case No. 2010-CP-10-7699
Appellate Case No. 2013-000084

Jane Doe — Appellant,

v.

Charles Smith, Charleston County School District and James Island High School — Respondents.

Petition for Rehearing

July 11, 2014

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Appellant, Jane Doe ("Doe"), by and through counsel, files the following petition for rehearing pursuant to SCACR Rules 221 and 240. The Court of Appeals, by order filed June 30, 2014, affirmed the order of the trial court granting summary judgment to Charles Smith ("Smith"), Charleston County School District ("District"), and James Island High School ("High School") on Doe's claims for breach of fiduciary duty, outrage, and gross negligence. Doe contends the court overlooked or misapprehended the issues on appeal. The basis for the Appellant's petition is as follows:

ARGUMENT

I. **DOE PRESENTED AT LEAST A SCINTILLA OF CORROBORATING EVIDENCE TO SUPPORT HER REPRESSED MEMORY CLAIM. THEREFORE, THE APPLICATION OF THE DISCOVERY RULE AND THE SUFFICIENCY OF THE CORROBORATING EVIDENCE ARE QUESTIONS OF FACT FOR THE JURY.**

The court of appeals concluded that Doe failed to present corroborating evidence that meets the requirements of Moriarty v. Garden Sanctuary of God, 341 S.C. 320, 534 S.E.2d 672 (2000)(stating a plaintiff must present at the summary judgment stage and at trial expert witness testimony to prove the abuse and repressed memory[1] as well as independently verifiable, objective evidence that corroborates the repressed memory claim in order to assert the discovery rule).

Objective verifiability may be satisfied by corroborating evidence, for example:

(1) admission by the abuser; or

(2) a criminal conviction; or

(3) documented medical history of childhood sexual abuse; or

(4) contemporaneous records or written statements of the abuser, such as diaries or letters; or

(5) photographs or recordings of the abuse; or

(6) an objective eyewitness's account; or

[1] The court of appeals did not indicate that there was any deficiency in the expert witness testimony presented by Doe. Accordingly, Doe will focus primarily on the corroborating evidence requirement.

(7) evidence the abuser had sexually abused others; or

(8) proof of a chain of facts and circumstances having sufficient probative force to produce a reasonable and probable conclusion that sexual abuse occurred.

Id.

The primary reasons for requiring corroborating evidence are the disagreement among the psychological and medical communities about the validity of repressed memory syndrome, the danger a plaintiff's memories could be faked or implanted during therapy, and the desire that a plaintiff not have the ability to control the running of the statute of limitations solely by allegations whose only support is contained within the plaintiff's mind. Moriarty at 335-336, 680. The testimony of both Doe's and Respondents' expert witnesses, as more fully set forth in Doe's brief on appeal, make clear that repressed memory syndrome is a valid psychological disorder and that Doe suffered from it. They both further testified that there was no evidence of fake or implanted memories during therapy. Thus, two of the primary reasons for requiring corroborating evidence are, in this case, inapplicable.

Even if objective verifiability is still required in the face of competent expert testimony, Doe presented a documented medical history of childhood sexual abuse,[2] contemporaneous written statements of the abuser (Smith),[3] and a chain of facts and circumstances - including classic grooming activities from Smith,[4] Smith's concealment of Doe's suicide attempt in his

[2] *See, e.g.* affidavit of Heidi Zinzow, medical records of Tanya Bolton, MUSC, and others. (R. p. 1414-1416; R. p. 2553-2561; R. p. 2543-2552; R. p. 2562-2566).

[3] *See, e.g.* a handwritten note from Respondent Smith to Doe from her 1989 James Island High School yearbook. (R. p. 2542).

[4] *See, e.g.* affidavit of Heidi Zinzow, deposition testimony of the 30(b)(6) representative of James Island High school, and the deposition testimony of Respondent Smith. (R. p. 1414-1416; R. p. 905, pp. 43:5 – R. p. 907, pp. 50:22; R. p. 782, pp. 92:11 – R. p. 783, pp. 93:25; R. p. 786, pp. 105-108).

classroom,[5] and other incidents involving inappropriate conduct on Smith's behalf[6] which have sufficient probative force to produce a reasonable inference, in the light most favorable to Doe, that the sexual abuse occurred.

Despite this, the court held that Doe failed to present evidence of corroborating evidence of her repressed memory claim. In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving part, Doe, is only required to submit a mere scintilla of evidence. Turner v. Milliman, 392 S.C. 116708 S.E.2d 766 (2011). In determining whether any triable issues of fact exist at the summary judgment stage, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Hancock v. Mid-South Management Co., Inc., 381 S.C. 326673 S.E.2d 801 (2009). Doe's corroborating evidence is, at the very least, a scintilla of evidence of corroboration that makes summary judgment improper. It is then a matter for the jury to consider the weight to be given the evidence. Doe by Doe v. Greenville Hosp. Sys., 323 S.C. 33, 36 (Ct. App. 1994).

Given that Doe presented at least a scintilla of corroborating evidence, the two prongs of expert testimony and corroborating evidence required under Moriarty have been satisfied for summary judgment purposes. The final issue is whether application of the discovery rule and the

[5] *See* Smith's deposition testimony. (R. p.793, pp. 135:23 – p.795, pp.143:25; R. p. 796, pp. 147:14-21). This could reasonably be inferred as conduct amounting to a cover up to avoid any questioning by the authorities of Smith and Doe's relationship.

[6] *See* Smith's deposition testimony and the deposition testimony of the 30(b)(6) representative of James Island High School. (R. 767, pp.31 – R. p. 770, pp.43; R. p. 780, pp. 82-83; R. 782, pp. 90 – R. 784, pp.98; R. p. 810, pp. 202:21 – pp. 203:17; R. p. 811, pp. 208: - R. 813, pp. 213:13, R. p. 903, pp. 36:21 – R. p. 904, pp.38:19; R. p. 905, pp.43:5 – R. p.906, pp.47:22).

existence of corroborating evidence remain questions of fact for the jury. The answer is "yes." Moriarty at 338, 681.[7]

Doe still bears the burden of proving at trial that she repressed memories of the abuse and that corroborating evidence supports her claim. However, the testimony of Doe and both of the expert witnesses supports the conclusion that Doe was in fact abused, in fact suffered from repressed memory, and in fact did not recall the repressed memories until early 2007. Thus, *the jury* must determine whether the corroborating evidence presented is sufficient corroboration to support the conclusion that sexual abuse occurred and when Doe repressed the memories and recalled the abuse, such that a person of common knowledge and experience would be on notice that some right of hers has been invaded or that some claim against another party might exist.

Doe submits the court of appeals erred in affirming the circuit court's grant of summary judgment because Doe submitted sufficient expert testimony to prove the abuse and repressed memory and more than a scintilla of corroborating evidence which would support her claims of abuse. As such, the grant of summary judgment by the circuit court and the affirmance by the court of appeals was in error.

II. DOE'S GROSS NEGLIGENCE CLAIM DOES NOT REQUIRE THE DISTRICT TO HAVE PRIOR KNOWLEDGE OF SMITH'S SEXUAL ABUSE TO SURVIVE SUMMARY JUDGMENT.

The court of appeals concluded that Doe presented no evidence that the District knew or had

[7] Stating that the application of the discovery rule contained in S.C. Code Ann. § 15-3-535, as well as the determination of the date the statute began to run in a particular case, are questions of fact for the jury. *See also* Johnston v. Bowen, 313 S.C. 61, 64, 437 S.E.2d 45, 47 (1993) (whether a claimant knew or should have known that they had a cause of action is question for the jury); Santee Portland Cement Co. v. Daniel Int'l Corp., 299 S.C. 269, 274, 384 S.E.2d 693, 696 (1989) (application of discovery rule to a claim is a question of fact for jury), *overruled on other grounds by* Atlas Food Sys. and Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp., 319 S.C. 556, 462 S.E.2d 858 (1995); Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct.App.1998) (in determining whether statute of limitations begins to run under discovery rule, jury must resolve conflicting evidence as to whether a claimant knew or should have known he had a cause of action).

reason to know of a need to exercise control over Smith to prevent him from abusing Doe, relying upon Degenhart v. Knights of Columbus, 309 S.C. 114, 420 S.E.2d 495 (1992) and Moore v. Berkeley County School District, 326 S.C. 584, 486 S.E.2d 9 (1997). Both of these cases apply only to the District's duty with respect to Smith's conduct that is outside the scope of employment, however, and are therefore not applicable.

Contrary to court's decision, in order for Doe to establish liability against the District, it is not necessary the District should have contemplated the particular event which occurred. Young v. Tide Craft, 270 S.C. 453, 242 S.E.2d 671 (1978). It is sufficient that the District should have foreseen its negligence would probably cause injury to someone. Childers v. Gas Lines, Inc., 248 S.C. 316, 149 S.E.2d 761 (1966). The District may be held liable for anything which appears to have been a natural and probable consequence of its negligence. Greenville Memorial Auditorium v. Martin, 301 S.C. 242391 S.E.2d 546 (1990).

The evidence presented demonstrates that Smith clearly was acting within the scope of his employment when he taught and coached Doe, both on school grounds and during extracurricular activities. Smith routinely would take Doe in his car from school to practice and to her home. According to the Respondents, this conduct of transporting students was not only within the scope of his employment but common place at the time. The Respondents' knew of Smith's trips with Doe and others, yet did not to prevent this from happening, did nothing to warn Smith or Doe that this was inappropriate conduct, and did nothing to otherwise take any reasonable measure to protect Doe or to supervise Smith during these trips. Whether the sexual assaults resulted from the District's grossly negligent conduct with respect to these rides, taken within the scope of Smith's employment with the District, is a question for the jury.

The duty of supervision exists as a matter of law pursuant to S.C. Code Ann. § 15-78-60(25), and the District is liable to Doe for her loss when their responsibility to supervise is exercised in a grossly negligent manner. Grooms v. Marlboro County Sch. Dist., 307 S.C. 310, 313 (Ct. App. 1992). Accordingly, a duty of care applied to the District with respect to these activities and a jury could reasonably conclude that the District was grossly negligent in its discharge of this duty. Moreover, the burden of establishing a limitation upon liability is upon the District asserting it as an affirmative defense. Doe by Roe v. Orangeburg County Sch. Dist. No. 2, 329 S.C. 221, 223-224 (Ct. App. 1997). The evidence presented demonstrates that the District did absolutely nothing to monitor or otherwise supervise Smith when he gave students, including Doe, rides to and from school related activities. Viewing this in the most favorable light to Doe, there was sufficient evidence from which a jury could find that Doe's injuries were foreseeable and that the District was liable. As such, the grant of summary judgment by the circuit court and the affirmance by the court of appeals was in error.

CONCLUSION

For the foregoing reasons, order filed by the court of appeals on June 30, 2014 should be vacated, and the summary judgment granted in favor of the Respondents should be reversed and the case set for a jury trial.

July 11, 2014

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July 17, 2014

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

Re: Jane Doe vs. Charles Smith et al.
Appellate Case No.: 2013-000084
Circuit Case No.: 2010-CP-10-7699
Claim No.: 46138
YCR File: 2235-20080353

Dear Ms. Kitchings:

With the approval and authorization of Robin L. Jackson, Esquire, for whom I have signed below, I write on behalf of **all Respondents** to the above-referenced appeal (i.e., our firm's clients, Respondents Charleston County School District and James Island High School, as well as Ms. Jackson's firm's client, Respondent Charles Smith).

The Respondents are in receipt of Appellant Jane Doe's Petition for Rehearing.

The Respondents believe that the Court's unanimous decision, Doe v. Smith, Op. No. 2014-UP-267 (S.C. Ct. App. filed June 30, 2014) (unpublished opinion), is well-reasoned and just, and, respectfully, that the Court's decision is not undermined or otherwise called into question by the argument that the Appellant presents in her petition. The Respondents would also draw the Court's attention to our Supreme Court's decision in Arnold v. Carolina Power & Light Company, 168 S.C 163, 172-73, 167 S.E. 234, 238 (1993) ("The purpose of . . . a petition [for rehearing] is to aid the court in deciding correctly a case heard by it. The petition must show, according to the rule, 'the points supposed to have been overlooked or misapprehended by the Court.' The purpose of a petition for rehearing is not to have presented points which lawyers for the losing parties have overlooked or misapprehended, and the purpose of a petition for rehearing is not just to have the case tried in this court a second time."); *accord* Kennedy v. S.C. Retirement Sys., 349 S.C. 531, 532, 546 S.E.2d 322 (2001).

Therefore, in response to the Appellant's petition, the Respondents incorporate by reference their prior briefing and argument, but do not intend to file a more formal return unless the Court so directs. *See* Rule 240(e), SCACR ("[A] return to a petition or motion for rehearing under Rule 221 need not be filed unless requested by the court."). To the extent that the Court requires or would

appreciate such a return(s) to the petition, the Respondents will, of course, gladly comply with the Court's instructions.

With best wishes and kindest regards, we are

Sincerely,

YOUNG CLEMENT RIVERS, LLP

Russell G. Hines
Attorneys for Respondents
Charleston County School District and
James Island High School

-and-

SENN LEGAL, LLC

by RGH w/express permission

Robin L. Jackson
Attorneys for Respondent Charles Smith

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The South Carolina Court of Appeals

Jane Doe, Appellant,

v.

Charles Smith, Charleston County School District and James Island High School, Respondents.

Appellate Case No. 2013-000084

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Hoff J.

J.

J.

Columbia, South Carolina

cc:
Alice Richter Lehrman, Esquire
Brian Lee Quisenberry, Esquire
Robin Lilley Jackson, Esquire

FILED
8/25/14

Aaron Eric Edwards, Esquire
Stephen Lynwood Brown, Esquire
Wilbur E. Johnson, Esquire
Russell Grainger Hines, Esquire
Lawrence E. Richter, Jr., Esquire
The Honorable W. Jeffrey Young

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

Case No. 2010-CP-10-7699
Case No. 2013-000084

Jane Doe — Appellant,

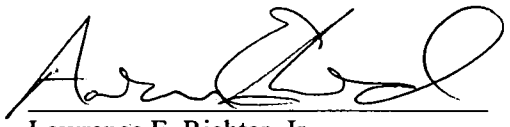
v.

Charles Smith, Charleston County School District and James Island High School — Respondents.

Proof of Service

I certify that I have served the Appendix by depositing a copy of it in the United States Mail, postage prepaid, on September 24, 2014, addressed to the attorneys of record, Robin Jackson at Senn Legal LLC, P. O. Box 12279, Charleston, SC 29422 and Stephen L. Brown, Wilber E. Johnson, Brian Quisenberry, and Russell G. Hines at Young Clement Rivers, LLP, 25 Calhoun Street, Suite 400, P.O. Box 993, Charleston, SC 29402.

September 24, 2014



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