

Jennifer Middleton, et al	vs	Orangeburg Consolidated School District Three
PLAINTIFF(S)		DEFENDANT(S)
Submitted by: Master-In-Equity Judge		Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE

BOX):

- Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This order <input type="checkbox"/> ends <input type="checkbox"/> does not end the case.	
Additional Information for the Clerk :	

INFORMATION FOR THE JUDGMENT INDEX

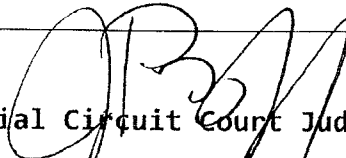
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes -----below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the

amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

 Special Circuit Court Judge	Judge's Code: 2097	Date: February 4, 2014
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For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)		ATTORNEY(S) FOR THE DEFENDANT(S)
		CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Jennifer Middleton, as parent and GAL for
Jane Doe,

Plaintiff,

v.

Orangeburg Consolidated School District
Three,

Defendant.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

C.A. No. 2012-CP-38-01314

PROPOSED ORDER

ATTEST: TRUE COPY

Wingja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

FILED
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CLERK OF COURT
ORANGEBURG, SC

This matter came before the Court on December 11, 2013, pursuant to Defendant School District's Motion for Summary Judgment. Prior to and during the hearing, the parties submitted affidavits and memoranda in support of their positions. The Court has carefully considered all of the evidence on the record in this matter, as well as the arguments of the parties. This case arose out of a difficult decision made by a school bus driver who faced an unusual and potentially embarrassing situation suffered by a minor child, Jane Doe.

While the Court empathizes with the Plaintiff's sentiments about how the incident affected her daughter, Plaintiff has failed to present any genuine issue of material fact as to whether the District was grossly negligent by failing to use slight care during the incident. Therefore, for the reasons explained below Defendant's Motion for Summary Judgment is granted.

OVERVIEW

This action was brought by Plaintiff Jennifer Middleton (hereinafter "Plaintiff") on behalf of her minor daughter, Jane Doe (hereinafter "Jane Doe") against Orangeburg

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Consolidated School District Three (hereinafter “the District”), a public school district subject to the South Carolina Tort Claims Act. Plaintiff’s Complaint alleges that the District was grossly negligent in its supervision of Jane Doe and in its screening, training, and supervision of the bus driver.¹ The suit arises out of an incident on October 11, 2011, when, in response to Jane Doe’s pleas that she needed to use the bathroom while en route home from school, a District bus driver made an unscheduled stop to allow Jane Doe to relieve herself off of the bus. Plaintiff alleges that, as a result of the bus driver’s decision, Jane Doe suffered humiliation, embarrassment, mental anguish, and other damages.

FACTS

The District is located in a rural area of eastern Orangeburg County. Riley Simmons (hereinafter “Mr. Simmons” or “the bus driver”) was employed by the District as a bus driver and assigned to drive bus No. 507-0559 on Route No. 36 during the time in question. That route, which serves the Holly Hill schools, is particularly rural and there are no public restroom facilities in the area or other public places to stop and allow children to urinate. As of 2011, Mr. Simmons had over ten years experience as a school bus driver. Jane Doe, then a first grader, rode Mr. Simmons’ bus.

On October 11, 2011, after the bus had left the Holly Hill schools, Jane Doe informed Mr. Simmons that she needed to use the restroom. Initially, Mr. Simmons told Jane Doe that she would have to “hold it” until she got home, as that response generally resolves such

¹ Plaintiffs did not present any argument or response to Defendant’s arguments regarding the screening, training, and supervision of the bus driver. Her allegations that the District failed to properly screen, hire, and train Mr. Simmons are not based on any evidence or facts that the District knew or should have known of a problem, but on her belief that Mr. Simmons’ decision to let Jane Doe use the restroom makes him a “kook” and “if you’ve got a kook like that driving, yeah, I assume you didn’t screen them properly.” Conjecture and speculation are insufficient to create any genuine issue of material fact. *McKnight v. S. Carolina Dep’t of Corr.*, 385 S.C. 380, 390, 684 S.E.2d 566, 571 (Ct. App. 2009).

requests from students. A short while later, however, Jane Doe told Mr. Simmons again that she needed to pee. She asked several times and was jumping up and down, holding her crotch area, and crying. Mr. Simmons again told her that she would have to hold it, but Jane Doe said “no, no no!” In response, Mr. Simmons told her that she would have to wet herself. By that time, however, he believed that she was not able to refrain from using the restroom much longer. Further, the other students on the bus, which included elementary and middle school students, had started to laugh at situation.

Situations where students may temporarily leave the bus for emergency reasons, including those where students have unexpected bodily functions, such as urinating or vomiting, are left to the bus driver to handle in his or her discretion. In this case, Mr. Simmons decided to pull the bus over in a safe location so that Jane Doe could urinate outside of the bus. He parked the bus so that the door area was blocked from view by the road and then had all the students sit down in their seats so that they could not see Jane Doe. He then told Jane Doe she could get off the bus and urinate right behind the door by the side of the school bus. With the bus door open, this left a small corner for her to use. Mr. Simmons then sat in the driver’s seat where he could make sure that the other students stayed seated and could not watch Jane Doe, as well as watch for any oncoming cars. Further, he could not see Jane Doe using the bathroom from that position. Shortly after being let off the bus to urinate, Jane Doe got back on the bus without incident and Mr. Simmons continued with his route.

A handwritten signature in black ink, appearing to be the initials 'JBM' or similar, written in a cursive style.

1. The Defendant's Motion for Summary Judgment is Granted Because Plaintiff Failed to Establish the District Was Grossly Negligent

The South Carolina Tort Claims Act provides that a governmental entity is immune from liability for any loss resulting from its "responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, . . . except when the responsibility or duty is exercised in a grossly negligent manner." S.C. Code Ann. § 15-78-60(25). Because this case involves the protection of a student, Plaintiff must prove that the District was grossly negligent. Gross negligence is "the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000). It is the failure to exercise even the slightest care. *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 331-32; 566 S.E.2d 536, 544 (2002); *Proctor v. Dept. of Health & Envtl. Control*, 368 S.C. 279, 628 S.E.2d 496 (S.C. Ct. App. 2006). While gross negligence is ordinarily a mixed question of law and fact, where the evidence supports but one reasonable inference, as it does here, the question becomes a matter of law for the court. *Etheredge*, 534 S.E.2d at 277. In order to maintain a claim for gross negligence, Plaintiff must show that: (1) the District owed Jane Doe a duty; (2) the District breached this duty by failing to exercise slight care; (3) Jane Doe was injured, and; (4) the District 's breach of duty proximately caused her injury. *South Carolina State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 346 S.E.2d 324 (1986); *Folkens v. Hunt*, 290 S.C. 194, 348 S.E.2d 839 (Ct. App. 1986). Here, Plaintiff has not pointed to any question of fact that would permit a reasonable jury to find that the District failed to exercise slight care.

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Plaintiff contends that the District was grossly negligent in its supervision of Jane Doe in a number of particulars – by failing to have a policy in place to address the situation; by allowing Jane Doe to engage in an act that constitutes criminal indecent exposure and disorderly conduct; and by not requiring Jane Doe to urinate herself on the bus. The fact that a school district could have taken additional precautions in an effort to prevent an occurrence does not establish that it failed to exercise slight care. *Etheredge*, 534 S.E.2d at 278. At best, however, Plaintiff has only established that the District did not respond to the situation in the manner that Plaintiff preferred, which is not the applicable standard that the District must follow. Moreover, I find that the responses suggested by Plaintiff are far from appropriate and that the evidence supports only one reasonable inference – that the District acted reasonably under the circumstances.

As an initial matter, Plaintiff asserts that the lack of a policy to deal with emergency situations constitutes gross negligence. Affidavit testimony submitted by the District establishes that the District relies on the judgment of the school bus driver in these sorts of emergency situations. I find that this constitutes the District's policy and practice, which, quite frankly, is the best policy for the District to adopt in emergency situations, as it would be very difficult to have hard and fast rules under varying circumstances. Moreover, Plaintiff has suggested that the proper course of action would have been for Mr. Simmons to allow Jane Doe to wet herself, which, as discussed further below, was an option that Mr. Simmons did consider. However, I find that if Mr. Simmons had allowed the child to urinate on the bus in the presences of all the other children, it would have created even more embarrassment for Jane Doe and also would have created a potentially dangerous situation where other children would be exposed to wet seats on the bus or wet floors where they could have slipped and fallen. Plaintiff also suggests that the bus driver could have located a public restroom facility in the area, although

both parties agree that there were no such locations available. Even if a restroom could have been located, Mr. Simmons would have been forced to leave his bus of young students without adult supervision to escort Jane Doe to the bathroom or allow a small child to go to the bathroom unattended. Neither are appropriate under the circumstances and the option chosen by the bus driver was the far better choice. Lastly, I reject Plaintiff's assertion that the bus driver's decision allowed Jane Doe to commit the crimes of indecent exposure and disorderly conduct. I find that Jane Doe, a first grader, was incapable under the law of committing the aforementioned criminal acts. A child this age cannot and did not form the requisite criminal intent to violate a criminal law. Additionally, the available evidence establishes that the bus driver took precautions to ensure Jane Doe's privacy and safety and prevent any passerby from seeing Jane Doe urinate. Although she makes several suggestions as to how she believes the District should have responded, Plaintiff cannot establish that the District's actions amount to the absence of slight care.

Rather, the evidence establishes that the District's actions demonstrated at least slight care and, in fact the manner in which this incident was handled by the bus driver was the best way to address the situation. In this case, Mr. Simmons carefully considered his options before making a difficult decision as to handle an unusual situation. Once he chose a course of action – to let Jane Doe off the bus to urinate – he proceeded with caution and safety. He parked the bus in a safe location and took steps to ensure Jane Doe's privacy and safety.

Because the evidence presented supports but one reasonable inference, I conclude that, as a matter of law, the District used more than slight care in this situation and, therefore, was not grossly negligent. I further find that Plaintiff has failed to establish even simple negligence, as she has not presented any facts from which a reasonable jury could find

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that the District breached any duty to Jane Doe.

2. **Defendant's Motion for Summary Judgment Is Granted Because the Alleged Injuries Resulted From The Exercise Of Discretion Or Judgment By District Personnel**

As an additional ground for granting summary judgment, I find that, pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60(5), the District is immune from liability because Plaintiff's alleged losses, damages, or injuries resulted from the exercise of discretion or judgment by a governmental employee and that discretion and judgment was not exercised in a grossly negligent manner. Discretionary immunity "is contingent on proof the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards." *Proctor v. Dept. of Health and Environmental Control*, 368 S.C. 279, 638 S.E.2d 496, 506 (Ct. App. 2006). As the party asserting this defense, the burden of proof is on the District. *See Pike v. SC Dep't of Transp.*, 343 S.C. 224, 232, 540 S.E.2s 87 (2000). However, Tort Claims Act affirmative defenses exempting government entities from liability should be liberally construed to limit liability. *Richland County v. Carolina Chloride, Inc.* (S.C.App. 2009) 382 S.C. 634, 677 S.E.2d 892, *rehearing denied, certiorari granted, affirmed in part, reversed in part* 394 S.C. 154, 714 S.E.2d 869, *rehearing granted, rehearing dismissed* 396 S.C. 311, 721 S.E.2d 441, *certiorari denied* 133 S.Ct. 168, 184 L.Ed.2d 36.

Here, the evidence presented by the District establishes that Mr. Simmons considered the circumstances of this situation, including the rural area, availability of public facilities, distance from school or a public facility, and supervision of the other students on the bus, before concluding that there were two possible avenues of action. Given the rural nature of the route and their current location, as well as the fact that he was the only adult on the bus, Mr.

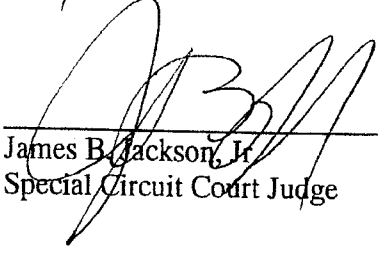
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Simmons weighed the only two options he believed he had – letting Jane Doe urinate on herself or letting Jane Doe use the bathroom by the side of the road. While he initially considered doing nothing so that Jane Doe would be forced to urinate on herself if it reached that point, which Mr. Simmons believed was very likely, he did not want her embarrassed or the other students to laugh or ridicule her when she did. The only other option he believed he had was to let Jane Doe urinate by the side of the road, which he believed he could do safely. Further, the District established that either one of these options met the District’s expectations and accepted standards for dealing with distressed students on a school bus, further confirmed by the fact that the District took no disciplinary action against Mr. Simmons. The District is, therefore, entitled to discretionary immunity pursuant to S.C. Code §15-78-60(5).

CONCLUSION

Based on the all of the evidence in this case, Plaintiff has failed to make a showing sufficient to establish that a genuine question of material fact exists as to her cause of action for gross negligence. In addition, the District conclusively established that it was entitled to discretionary immunity pursuant to S.C. Code §15-78-60(5). Defendant’s Motion for Summary judgment is granted and Plaintiff’s action is dismissed with prejudice.

AND IT IS SO ORDERED this 4th day of February, 2014



James B. Jackson, Jr.
Special Circuit Court Judge

Orangeburg, South Carolina

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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-38-01314

Jennifer Middleton, et al	vs	Orangeburg Consolidated School District Three
PLAINTIFF(S)		DEFENDANT(S)
Submitted by: Master-In-Equity Judge		Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant

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BOX:

- Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Plaintiff's Motion for Reconsideration is denied. The Court found in its previous Order that the School District did have a policy in this matter which allowed discretion to the bus driver to handle emergency situations. The Court further finds that the bus driver acted very reasonable under the circumstances of this case and there was certainly no gross neglect by the District.

ATTEST: TRUE COPY
Winnija B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

This order ends does not end the case.
Additional Information for the Clerk:

Sent on 10/16/2014
Ms. Shante' Zene
Attorney's

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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