

Attachment A

Order dated May 29, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

MOTHER DOE A,)
)
Plaintiff,)
)
v.)
)
THE CITADEL,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-10-9200

RECEIVED
SEP 01 2015
SC Court of Appeals

2015 MAY 29 PM 3:03
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

**[PROPOSED] ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court on the Notice of Motion and Renewed Motion of the Defendant The Citadel, The Military College of South Carolina ("Defendant" or "Citadel") for Summary Judgment ("Renewed Motion for Summary Judgment") under Rule 56 of the South Carolina Rules of Civil Procedure.

Plaintiff commenced this action on December 14, 2011 in her own right, alleging that she sustained injuries resulting from the sexual abuse of her son by Louis ReVille ("ReVille"). On December 12, 2013, Plaintiff filed an Amended Complaint, asserting claims under the following legal theories: (a) gross negligence/failure to warn; (b) negligent hiring, retention and supervision; (c) the Jessica Horton Act, S.C. Code § 59-154-10; (d) civil conspiracy; (e) S.C. Code § 63-7-310; (f) intentional infliction of emotional distress/outrage; and (g) loss of services.

On May 2, 2014, The Citadel filed its original Notice of Motion and Motion for Summary Judgment, ("Initial Motion for Summary Judgment") asserting that the Court should enter judgment against Plaintiff in this matter (and against plaintiffs in other related cases) for various reasons. On September 19 and 22, 2014, the parties submitted memoranda in support of and in opposition to The Citadel's Initial Motion for Summary Judgment (some of which incorporated and referenced memoranda filed in related lawsuits). The Court conducted oral

MDA

argument, and on September 24, 2014, by Form 4 Order, it indicated it would deny The Citadel's Initial Motion for Summary Judgment, with a "[f]ormal order to follow." The Court formally denied The Citadel's Initial Motion for Summary Judgment on December 1, 2014.

The issues addressed herein have been thoroughly briefed by the parties in connection with The Citadel's initial Motion for Summary Judgment, and the Court conducted oral argument on January 26 and 27, 2015. After considering the parties' arguments, relevant case law, and the detailed record, taking the evidence in the light most favorable to the Plaintiff, this Court hereby GRANTS Defendant's Renewed Motion for Summary Judgment.¹

INTRODUCTION

On April 23, 2007, the father of a camper at The Citadel's summer camp ("Camper Doe") reported to The Citadel that a counselor had engaged in sexual misconduct with his son at the camp five years earlier. Camper Doe's father was referred to The Citadel's in-house counsel, Mark Brandenburg, with whom he spoke by telephone. During that conversation, Camper Doe's father said that on one occasion during the camp, a counselor named "Skip" invited his son, then a minor, into his room and the two of them watched pornography and masturbated while Camper Doe was in "Skip's" room. Attorney Brandenburg later spoke with Camper Doe by telephone. Camper Doe reported that "Skip" had invited him into his room and showed him pornography and convinced him to masturbate while in the room. By reviewing camp records, Brandenburg was able to identify "Skip" as Skip ReVille. Brandenburg contacted ReVille, who had been

¹ The findings in this Order apply only to claims by parents of ReVille's downstream victims and do not impact any existing or potential claims by victims of ReVille's abuse, including the claims asserted in the following cases: John Doe Camper v. The Citadel, C/A No. 2012-CP-10-1860; John Doe 2 v. The Citadel, C/A No. 2012-CP-10-1858; Mother Doe 2, on behalf of, John Doe 3 v. The Citadel, C/A No. 2012-CP-10-1859; Camper Doe 6 v. The Citadel, C/A No. 013-CP-10-5247; and John Doe, a minor, by his Guardian Ad Litem, John Roe v. The Citadel, C/A No. 2013-CP-10-4770; John Doe 201 and Jane Doe 201 v. The Citadel et al., C/A No. 2013-CP-10-10330; John Doe A v. The Citadel, C/A No. 2014-CP-10-1476; and John Doe 4 v. The Citadel, C/A No. 2014-CP-10-6995.

mbj/2

working as a part-time tutor at The Citadel's Writing Center. ReVille denied Camper Doe's allegations.

Brandenburg continued his investigation on July 1, 2007, when he met with Camper Doe, then nineteen years old, and his parents in Texas. Following that interview, there ensued discussions among Brandenburg, Camper Doe, and the South Carolina State Insurance Reserve Fund about possible settlement of Camper Doe's potential claims against The Citadel. However, at some point that summer, Mr. Brandenburg and Camper Doe fell out of touch with one another. Brandenburg attempted to contact potential witnesses who may have been present during the incident that Camper Doe reported; however, he did not contact any who corroborated Camper Doe's complaint. The Citadel's investigation ended without the complaint being reported to law enforcement authorities.

In October 2011, multiple incidents of sexual misconduct by ReVille came to light. ReVille was arrested and confessed to abusing many boys over a period of years. Charges were filed against ReVille in Charleston, Berkeley, and Dorchester counties. On June 13, 2012, ReVille pleaded guilty to numerous criminal charges involving sexual misconduct and was sentenced to fifty years in prison.

ReVille abused Plaintiff's son in 2007 and 2008. She alleges that The Citadel negligently failed to adequately investigate Camper Doe's complaint and negligently failed to report the complaint to law enforcement authorities, which would have prevented ReVille from abusing her son.² She further alleges that The Citadel deliberately covered up Camper Doe's complaint in order to protect The Citadel's reputation. She seeks to recover what she terms loss of services of her son, which includes loss of companionship and wounded feelings. Plaintiff has not submitted evidence of pecuniary loss for medical expenses or loss of services. For the reasons that follow, this Court must grant The Citadel's Renewed Motion for Summary Judgment.

² Plaintiff's son has filed a separate action, which is not subject to the instant Motion.

ANALYSIS

A. Plaintiff's Outrage Claim Fails for Several Reasons

1. The South Carolina Tort Claims Act Bars Plaintiffs' Outrage Claim

The South Carolina Tort Claims Act ("Act") "establish[es] limitation[s] on an exemption to the liability of the state [and] . . . must be liberally construed in favor of limiting the liability of the state." *See* S.C. Code Ann. § 15-78-20(f). Plaintiff does not dispute that the Act applies to The Citadel and governs her claims in this case. The Act states that a "loss" "does not include the intentional infliction of emotional harm." *See* S.C. Code § 15-78-30(f). The Act also provides that a governmental entity may not be held liable for "employee conduct outside the scope of his official duties or which constitutes actual fraud, *actual malice*, [or] *intent to harm*." *See* S.C. Code § 15-78-60(17) (emphasis added). These provisions bar claims for intentional infliction of emotional distress. *See Newman v. South Carolina Dep't of Employment and Workforce*, 2010 WL 4791932, at *2 (D.S.C. Sept. 22, 2010), *report and rec. adopted*, 2010 WL 4666360 (D.S.C. Nov. 18, 2010); *Ward v. City of N. Myrtle Beach*, 457 F. Supp. 2d 625, 646-47 (D.S.C. 2006) ("[T]he South Carolina Tort Claims Act excludes the intentional infliction of emotional harm from the definition of 'loss' for which a government may be liable under the Tort Claims Act."); *Harkness v. City of Anderson*, 2005 WL 2777574, at 4 (D.S.C. Oct. 25, 2005) ("Defendants argue they are immune from suit pursuant to the South Carolina Tort Claims Act . . . on the claim of outrage, otherwise known as intentional infliction of emotional distress. [Citation omitted.] The court agrees."); *Trask v. Beaufort Cty.*, 392 S.C. 560, 573, 709 S.E.2d 536, 543 (Ct. App. 2011) ("Under the Tort Claims Act, a coroner is immune from suit for 'the intentional infliction of emotional harm.'"); *accord Lindquist v. Tanner*, 2012 WL 3839237, at *4 (D.S.C. April 12, 2012) ("Plaintiff concedes that her claim for 'intentional' infliction of emotional distress against the County Recreation Commission is barred by the South Carolina Tort Claims Act."), *report and rec. adopted in part*, 2012 WL 3839235 (D.S.C. Sept. 4, 2012). Plaintiff's

MDJ/4

outrage claim is barred by the Act.

2. Plaintiff's Outrage Claim is Barred Because No Conduct Was Directed Toward Plaintiff

The South Carolina Supreme Court has held that an outrage claim cannot succeed where Defendant's conduct was not specifically and knowingly directed at Plaintiff:

The law limits claims of intentional infliction of emotional distress to egregious conduct toward a plaintiff proximately caused by a defendant. *Christensen v. Superior Court*, 54 Cal.3d 868, 820 P.2d 181, 2 Cal.Rptr.2d 79 (1991). It is not enough that the conduct is intentional and outrageous. It must be conduct *directed at the plaintiff, or occur in the presence of a plaintiff of whom the defendant is aware.* *Id.* at 903, 820 P.2d at 202, 2 Cal.Rptr. at 100; see also W. Keeton, D. Dobbs, R. Keeton & D. Owen, *Prosser and Keeton on Torts* § 12 (1984 & Supp. 1988) (hereinafter *Prosser & Keeton*). There is no evidence that respondents targeted appellants to be harmed by their allegedly tortious acts.

The harm suffered by appellants arose only indirectly from respondents' publishing allegedly false information about Bodie. There are situations when plaintiffs may recover for intentional infliction of emotional distress for harm they suffer as the result of acts which have injured another. The Restatement (Second) of Torts § 46(2) (1965) provides:

§ 46. Outrageous Conduct Causing Severe Emotional Distress

.....

(2) Where such conduct is directed at a third person, the actor is subject to liability if he intentionally or recklessly causes severe emotional distress

- (a) to a member of such person's immediate family who is present at the time, whether or not such distress results in bodily harm, or
- (b) to any other person who is present at the time, if such distress results in bodily harm.

As a matter of policy, courts have limited such recovery "to the most extreme cases of violent attack, where there is some especial likelihood of fright or shock." *Prosser & Keeton* § 8. See, e.g., *Courtney v. Courtney*, 186 W.Va. 597, 413 S.E.2d 418 (1991) (assault on mother in son's presence stated cause of action for intentional infliction of emotional distress by son).

There being no evidence that respondents physically attacked Bodie *in the presence of appellants*, we must hold that appellants do not possess a cause of

LMOT | 5

action for intentional infliction of emotional distress arising under section 46(2).
See Upchurch v. New York Times, Inc., 314 S.C. 531, 536-37, 431 S.E.2d 558, 561-62 (1993) (emphasis added); *Roberts v. Simmons*, 2014 WL 7005250, at *6 (D.S.C. Dec. 11, 2014) ("The undersigned recommends dismissal of this claim. As a preliminary matter, it is not clear that Defendant's alleged conduct was directed at the Plaintiff."); *Fulghum v. Wise Seats, Inc.*, 2012 WL 1032594, at *4 (D.S.C. Mar. 27, 2012) ("Here, the conduct upon which Plaintiff bases his claim . . . is not tortious conduct that was specifically directed towards Plaintiff.").

The South Carolina Court of Appeals held in an unpublished decision that the parents of a minor sexual abuse victim could not sue a school for outrage, because there was no evidence that the school's alleged conduct was directed at the particular plaintiff. *See Doe v. Rojas*, 2007 WL 8327520, at *4 (Ct. App. April 26, 2007) ("[T]he record contains no evidence that the School District, in failing to take any preemptive action to prevent the abuse, targeted or directed any of its conduct towards the Does. Further, no evidence suggests the School District's actions after discovering Rojas' misconduct was directed towards the Does.").

Plaintiff has not proffered any evidence that The Citadel directed its actions against her directly. There is no evidence that The Citadel knew ReVille was abusing Plaintiff's son or had any contact whatsoever with her son or with her. Plaintiff was not present during any of the alleged acts of abuse and did not witness any abuse. Under such circumstances, Plaintiff cannot succeed on an outrage claim against The Citadel.

B. Plaintiff's Negligence (and Conspiracy) Claims Fail Because She Has Not Shown Any Recoverable Damages

1. Plaintiff May Not Recover Emotional Distress Damages in Her Negligence Claim

South Carolina law once appeared to permit recovery for negligently inflicted emotional distress. In *Padgett v. Colonial Wholesale Distrib. Co.*, 232 S.C. 593, 604, 103 S.E.2d 265, 270 (1958), a negligently operated truck struck the plaintiff's home, allegedly causing fright, exposure to the cold, weight loss, fever and a skin condition. The Court considered whether

not 6

damages might be "recoverable for shock, fright and emotional upset when there is no physical impact." Ultimately, the Court concluded that the question of whether the shock caused physical injury was properly submitted to the jury. *See id.*, 232 S.C. at 607-08, 103 S.E.2d at 272. In reaching that conclusion, the Court metaphysically connected physical and psychic harms:

"The interdependence of the mind and body is in many respects so close that it is impossible to distinguish their respective influence upon each other. It must be conceded that a nervous shock or paroxysm, or a disturbance of the nervous system, is distinct from mental anguish, and falls within the physiological, rather than the psychological, branch of the human organism."

See id., 232 S.C. at 605, 103 S.E.2d at 271 (citations omitted).

Subsequently, the Court cited *Padgett* stating that "[w]e have recognized the rule that there is no liability for emotional distress without a showing that the distress inflicted is extreme or severe." *See Rhodes v. Security Fin. Corp. of Landrum*, 268 S.C. 300, 302, 233 S.E.2d 105, 106 (1977). The Court observed that "[w]hile there is testimony that appellant was emotionally upset from the attempt to collect the forged note, there is no showing that the attempts by respondent's agents to collect were unreasonable or abusive, nor that appellant's emotional upset was other than transient and trivial." *See id.* With *Rhodes*, the Court began to limit recovery for negligent infliction of emotional distress.

The Court next stated in *Hudson v. Zenith Engraving Co.*, 273 S.C. 766, 770, 259 S.E.2d 812, 813 (1979), that "[i]n order to prevail in a tortious action in which the sole damages alleged are those of mental anguish, plaintiff must show that the conduct on the part of defendant was extreme and outrageous, causing distress that is of an extreme or severe nature." The Court later quoted the language from *Hudson* and *Rhodes* and recognized the tort of *intentional* infliction of emotional distress. *See Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981).

Importantly, the Supreme Court in *Dooley v. Richland Hosp.*, 283 S.C. 372, 322 S.E.2d 669 (1984), rejected an invitation to recognize a general tort of negligent infliction of emotional distress because the plaintiff failed to show any physical injury supporting her claim. The Court

MOT/7

stated that one criticism of permitting a tort for negligent infliction of emotional distress is "that it will allow for fraudulent claims" and that "[o]ne method of eliminating this danger has been to require some type of physical injury in addition to any claimed emotional injury." *See id.*, 283 S.C. at 375, 322 S.E.2d at 671. Later that year, the Court refused to permit the recovery of emotional distress damages in a legal malpractice claim, despite a litany of claimed "physical" manifestations of the distress. *See Caddel v. Gates*, 284 S.C. 481, 327 S.E.2d 351 (1984).

In *Kinard v. Augusta Sash & Door Co.*, 286 S.C. 579, 336 S.E.2d 465 (1985), the Supreme Court recognized the tort of negligent infliction of emotional distress, but restricted it to very limited circumstances. Importantly, the Supreme Court limited it to claims by a bystander who observes an accident that actually causes death or serious physical injury:

- (a) the negligence of the defendant must cause death or serious physical injury to another;
- (b) the plaintiff bystander must be in close proximity to the accident;
- (c) the plaintiff and the victim must be closely related;
- (d) the plaintiff must contemporaneously perceive the accident; and
- (e) the emotional distress must both manifest itself by physical symptoms capable of objective diagnosis and be established by expert testimony.

See id., 286 S.C. at 582, 336 S.E.2d at 465.

The modern rule of the Supreme Court has been to recognize emotional distress damages in three circumstances: (a) when accompanied by physical trauma; (b) outrage; and (c) negligent infliction in a "bystander" situation. The Court has refused to extend liability for emotional distress beyond these limited circumstances:

- In *Hansson v. Scalise Bldrs. of S.C.*, 374 S.C. 352, 358-59, 650 S.E.2d 68, 72 (2007), the Court held in the context of an outrage claim: "Under the heightened standard of proof for emotional distress claims emphasized in *Ford*, a party cannot establish a prima facie claim for damages resulting from a defendant's tortious conduct with mere bald assertions. To permit a plaintiff to legitimately state a cause of action by simply alleging, 'I suffered emotional

MDT/8

distress' would be irreconcilable with this Court's development of the law in this area. In the words of Justice Littlejohn, the court must look for something 'more' — in the form of third party witness testimony and other corroborating evidence — in order to make a prima facie showing of 'severe' emotional distress."

- In *Babb v. Lee Cty. Landfill SC, LLC*, 405 S.C. 129, 141, 747 S.E.2d 468, 474 (2013), the Court refused to allow a claim for emotional distress damages flowing from trespass and nuisance in the form of odors from a landfill.

A case almost directly on point with the present case (a sexual abuse case arising under the Act) is *Doe v. Greenville County School District*, 375 S.C. 63, 651 S.E.2d 305 (2007). There, the Court refused to extend the negligent infliction of emotional distress damages to encompass a claim by parents stemming from sexual activity between their daughter and a school teacher, stating: "[b]ecause South Carolina courts have limited the recognition of negligent infliction of emotional distress claims in circumstances such as the one presented in this case to bystander liability, Mr. and Mrs. Doe have not stated a claim which is cognizable under South Carolina law."

To the extent she seeks to recover in negligence for emotional distress, Plaintiff's claims are not within any cause of action for emotional distress recognized by the Supreme Court. She does not claim that The Citadel caused any physical impact to her or that she was a bystander observing her son's abuse. Plaintiff seeks the "stealth recognition of an entirely new tort" for negligent infliction of emotional distress in the absence of any physical impact or the death or serious injury of a bystander, based solely on the *knowledge* that Plaintiff's son was abused. No contemporary South Carolina authority recognizes such a claim.

2. Plaintiff's Recoverable Damages Are Limited to Medical Expenses for Injuries to Plaintiff's Son and Loss of Services, Neither of Which Are Supported By a Scintilla of Evidence

The Supreme Court has concluded that, in cases such as this, a parent's potential damages are extremely limited. In *Doe v. Greenville County. School District*, 375 S.C. 63, 651 S.E.2d 305 (2007), cited *supra*, a student's parents sued a school district, alleging that a teacher was

MDJ/g

involved in a sexual relationship with their daughter. The parents further alleged that the school had prior complaints and warnings regarding the teacher's inappropriate interest in young girls and should have known about this relationship. The trial court granted the school district's motion to dismiss. On appeal, the Supreme Court affirmed in part and reversed in part. The Court first concluded, as discussed in the preceding section, that the *parents* could *not* assert a claim for negligently inflicted emotional distress. *See id.*, 375 S.C. at 68, 651 S.E.2d 307 (emphasis added).

Next, the Court analyzed the plaintiffs' loss of filial consortium claim and expressly held that South Carolina law does not recognize such a claim. Specifically, the Court held that "our common law only allowed a parent to maintain an action for the loss of a child's services and earning capacity. These common law claims did not include the intangible losses of aid, companionship, and society which have traditionally defined loss of consortium claims. Accordingly, in absence of some action from the legislature, this Court has no authority upon which it could rely in finding that South Carolina law recognizes claims for loss of filial consortium." *See id.*, 375 S.C. at 69-70, 651 S.E.2d at 308. The Court held that the plaintiffs could state a claim to seek recovery for their daughter's medical expenses. *See id.*, 375 S.C. at 71-72, 651 S.E.2d at 309.

Justice Pleicones argued in dissent that the South Carolina common law has long permitted recovery for loss of companionship of a child. *See Webb v. Southern Ry. Co.*, 104 S.C. 89, 88 S.E. 297 (1916). While he agreed with the majority that no claim existed for negligent infliction of emotional distress, he argued that the Tort Claims Act preserves the common law claim for loss of parental consortium. While this Court finds Justice Pleicones' reasoning persuasive, it is compelled to follow the mandate of the majority of the Supreme Court.

Following the *Greenville County School District* case, a parent may recover two forms of damages for injury to a child: (a) medical expenses the parent paid for the care of the child; and

MDJ/10

(b) the loss of the child's services as a result of the injury. *See Wright v. Colleton County School District*, 301 S.C. 282, 391 S.E.2d 564 (1990) (holding that medical expenses and lost services may be recoverable losses under the South Carolina Tort Claims Act). Plaintiff has not presented evidence of either type of damage. At their core, Plaintiffs' claimed damages are all for harm to Plaintiff's familial relationship with her son. These are loss of consortium damages that are precluded by the Supreme Court's holding in *Greenville County School District*. For this reason, The Citadel is entitled to summary judgment as to all of Plaintiff's negligence-based claims.

C. Plaintiff's Conspiracy Claim Fails Because There Is No Evidence of Special Damages and Because That Claim Is Barred by the Act

To succeed on her civil conspiracy claim, Plaintiff must show special damages attributable to the alleged conspiracy, meaning damages *different* from the damages she seeks in her other claims:

[C]ivil conspiracy requires that the plaintiff claim special damages. In this case, the Gordons' amended complaint fails to allege any special damages incurred as a result of any conspiracy. They allege the same damages as they do under the other causes of action. This is insufficient to establish special damages. *See Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009) ("If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed."). Accordingly, we conclude the circuit did not err in granting a directed verdict.

See Gordon v. Busbee, 397 S.C. 119, 136, 723 S.E.2d 822, 831-32 (Ct. App. 2011). Plaintiff has not presented any evidence of special damages in support of her conspiracy cause of action. Instead, Plaintiff seeks to recover the same damages as her other causes of action. For this reason, The Citadel is entitled to summary judgment as to Plaintiff's civil conspiracy count.

Moreover, Plaintiff's conspiracy claim is barred by the Act, which prohibits claims arising out of "employee conduct outside the scope of his official duties or which constitutes actual fraud, *actual malice*, [or] *intent to harm*." *See* S.C. Code § 15-78-60(17) (emphasis

LMDJ/11

added). A conspiracy claim, by its very nature, requires as an element an intention to harm the Plaintiff. *See Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989) ("Civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage."). As a result, for this additional reason, Plaintiff's conspiracy claim fails.

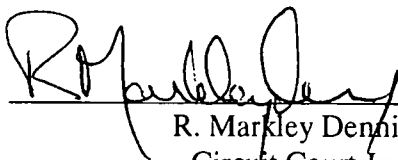
CONCLUSION

For the reasons discussed above, the Court grants Defendant The Citadel's Renewed Motion for Summary Judgment and hereby enters summary judgment against Plaintiff on all of her claims in this lawsuit.

AND IT IS SO ORDERED!

BY THE COURT:

Dated: May 26, 2015
Charleston, South Carolina



R. Markley Dennis, Jr.
Circuit Court Judge

not/12

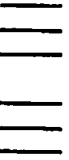
Attachment B

Notice of Order Filed
Received Thursday, June 4, 2015

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



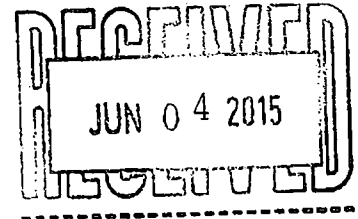
clerkofcourt.charlestoncounty.org



117



CARL EVERETTE PIERCE II
PIERCE HERNS SLOAN & WILSON
PO BOX 22437
CHARLESTON SC 29413-2437



NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/granting defnt's mot for sum judg

CASE NO: 2011CP1009200

Mother Doe A VS Citadel The

This judgment was entered on the 29th day of May, 2015, and notice mailed first class on Monday, June 01, 2015, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

Attachment C

Motion Pursuant to SCRCP 59(e)
Filed Monday, June 15, 2015

- (b) That the plaintiff dropped the causes of action alleged pursuant to the Jessica Horton Act, S.C. Code § 59-154-10, and the Reporting Statute, S.C. Code § 63-7-310;
 - (c) That various cases were consolidated for discovery and that The Citadel filed a motion for summary judgment on March 6, 2014 in several of the consolidated cases, to which this Plaintiff responded with a memorandum in opposition, followed by a reply brief submitted after the motions were heard by the Court on April 18, 2014. The reply brief, filed on April 25, 2014, addressed the issues of “specific threat of harm” and other factual disputes concerning the duty owed by the Citadel. The Court later denied The Citadel’s motion for summary judgment in its entirety;
 - (d) That on May 2, 2014, The Citadel filed a summary judgment motion in the present case, which the Court denied by form order on September 24, 2014, after hearing arguments solely on the issue of loss of services. The formal written order was entered on December 1, 2014.
- (2) At footnote 1 on page 2, the Order includes a scrivener’s error that the civil action of John Doe 201 and Jane Doe 201 v. The Citadel et al., No. 2013-CP-10-10330, is among the cases *unaffected* by the order as to Mother Doe A. The parties stipulate that the rationale of the Mother Doe A order applies to the intangible injuries and tangible costs also incurred by the Doe 201 parents for treating their child.
- (3) At pages 2 and 3, the Order recites the basic facts of the claims but fails to note that The Citadel actively concealed ReVille’s known record of abusing children, and facilitated

ReVille's ability to obtain access to the children he sought to abuse, conduct which is undisputed.

- (4) At page 4, the Order notes the definition of "loss" in S.C. Code § 15-78-30(f) excludes "the intentional infliction of emotional harm," but fails to note that the same provision specifically includes "pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence," and that Mother Doe A (and the Doe 201 parents in their action) alleges negligence claims pursuing damages within that definition.
- (5) The Order fails to apply the exception within the South Carolina Tort Claims Act permitting claims of outrage when based on reckless conduct, as distinguished from "intentional" conduct. See e.g., Bass v. S. Carolina Dep't of Soc. Servs., 742 S.E.2d 667, 672 (Ct. App. 2013), reh'g denied (May 21, 2013) (intentional infliction of emotional distress claim permitted based on reckless, rather than intentional, conduct by DSS); Davis v. Richland Cnty., No. 4:12-CV-3429-RMG, 2014 WL 3805802, at *3 (D.S.C. July 30, 2014) ("A plaintiff can state a claim for infliction of emotional distress [or outrage] by alleging that the defendant acted recklessly, rather than intentionally.").
- (6) At pages 6 through 9, the Order errs in applying to the amended complaint criteria for negligent infliction of emotional distress claims, when the amended complaint alleges no claim for negligent infliction of emotional distress. Instead, the five causes of action which remain include: gross negligence (failure to warn); negligent hiring, retention, and supervision; civil conspiracy; outrage; and loss of services to recover intangible injuries and the costs and expenses incurred in treating her child (and fully applicable to the intangible and tangible costs incurred by the Doe 201 parents).
- (7) Beginning on page 9, the Order errs by:

- (a) Misapprehending the scope of damages within the common law claim of a parent's loss of services claim. In particular, the order improperly restricts the claim to claims for only medical expenses, and excludes claims for intangible injury;
- (b) Overlooking the Plaintiff's testimony regarding her incurred (as the Doe 201 parent also incurred) costs for medical expenses. See Exhibit 32, Mother Doe A Deposition at pages 105, 106, 108, 112, 114, 115, 174; Exhibit 1, the trial designations from the Deposition of Chet Williams, the mental health professional who treated Mother Doe A's son.
- (c) Improperly applying the 1712 Reception Statute, S.C. Code § 14-1-50, which adopts the English common law until altered by the legislature, by confusing the common law loss of services claim with the separate and distinct common law (and now statutory, in S.C. Code § 15-75-20) loss of consortium claim based on an incorrect interpretation of dicta in Doe v. Greenville County School District, 651 S.E.2d 305 (2007), a loss of consortium case. See e.g., Medlin v. United States, 244 F.Supp. 403, 411 (D.S.C. 1965); Webb v. Southern Railway, 88 S.E. 297 (1916) (mother's claim when her son was injured included her intangible injuries); Villepigue v. Shular, 1849 WL 2667, 34 S.C.L. 462, 3 Strob. 462 (Ct. App. 1849) (setting forth rationale for using loss of services fiction for a parent's intangible as well as tangible injuries when a child is harmed, loss of services being presumed); Dobson v Cothran, 16 S.E. 679 (1891).

(8) The Order fails to consider that S.C. Code §15-78-70(c) permits conspiracy claims against Citadel officials even though the statute requires that only The Citadel be named as a party defendant. See Flateau v. Harrelson, 584 S.E.2d 413, 418 (Ct. App. 2003) (“When a plaintiff claims an employee of a state agency acted negligently in the performance of his job, the South Carolina Tort Claims Act requires a plaintiff to sue the agency for which the employee works, rather than suing the employee directly.” (quoting Faile v. S.C. Dep’t of Juvenile Justice, 350 S.C. 315, 321 n. 1, 566 S.E.2d 536, 539 n. 1 (2002)). A conspiracy claim that alleges actual malice or intent to harm falls outside the scope of immunity under the Tort Claims Act. See Pridgen v. Ward, 705 S.E.2d 58, 64 (Ct. App. 2010); DeCecco v. Univ. of S. Carolina, 918 F. Supp. 2d 471, 500 (D.S.C. 2013) (school officials immune from suit individually because no evidence they lost immunity by acting with “actual fraud, actual malice, intent to harm, or a crime involving moral turpitude”); Smith v. Ozmint, 394 F.Supp.2d 787, 792 (D.S.C. 2005) (state employee can be held personally liable for some intentional torts committed within the scope of his employment); DiLorenzo v. S. Carolina Dep’t of Corr., No. 2:10-CV-02356-RMG, 2010 WL 5389994, at *3 (D.S.C. Dec. 22, 2010) (intentional infliction of emotional distress claim not subject to dismissal where plaintiff alleged intent to harm within her claim for intentional infliction of emotional distress). Construed in the light most favorable to the Plaintiff, the facts support the reasonable inference that Brandenburg, Rosa, Trez, and Garrott knowingly conspired with ReVille to conceal his sexual interest in children, enabled his future employment around children, and insulated ReVille from law enforcement, knowing that other children would be sexually abused by ReVille, and therefore acted with an intent to harm future victims like the Plaintiff and

her child. The conspiracy claim is not barred by the immunity provisions of the Tort Claims Act.

- (9) The Order fails to consider the import of S.C. Code § 15-3-555 in construing claims to “a person” by failing to acknowledge that such claims are not limited to only the person directly abused.

Accordingly, for the above-stated reasons, the Court should alter, amend or vacate its May 29, 2015 Order, and find the evidence and arguments presented raise genuine issues of material fact for trial. Should the Court grant Plaintiff’s request to alter or amend, Plaintiff further moves pursuant to Rule 42(a), SCRCF, to consolidate for trial the instant matter with the related action filed by Plaintiff’s son, captioned John Doe A v. The Citadel, C/A No. 2014-CP-10-1476.

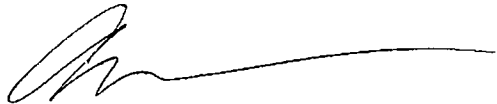
CONCLUSION

Based upon the grounds articulated herein, the Court should: (1) alter or amend its May 29, 2015 Order granting the Defendant’s Renewed Motion for Summary Judgment; (2) reverse the grant of summary judgment as to Mother Doe A and the resulting effect on the Doe 201 claim pursuant to stipulation; and (3) consolidate the Mother Doe A claim for trial with the related action filed by her son, John Doe A.

--Signature Page to Follow--

Respectfully submitted,

PIERCE, HERNS, SLOAN & WILSON, LLC



Allan P. Sloan, III
Kristen B. Fehsenfeld
321 East Bay Street
Post Office Box 22437
Charleston, SC 29401
(843) 722-7733

JEFF ANDERSON & ASSOCIATES, P.A.
Gregg Meyers, S.C. Bar No. 9908
Jeffrey R. Anderson, *pro hac vice* pending
366 Jackson Street Suite 100
Saint Paul, MN 55101
651-227-9990, 651-297-6543 facsimile
Jeff@Andersonadvocates.com
Gregg@Andersonadvocates.com

Attorneys for the Plaintiff Mother Doe A

June 11, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the forgoing document was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 15th day of June, 2015

Mary K. Inouines

FILED

2015 JUN 15 PM 3:14

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

Attachment D

Order denying Rule 59 motion
filed August 6, 2015

Attachment E

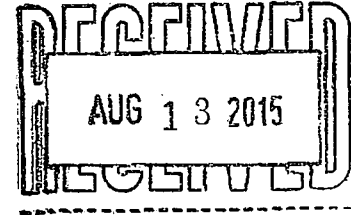
Notice that Rule 59 motion had been denied
Received August 13, 2015

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

138



LOUIS P. HERNES
PO BOX 22437
CHARLESTON SC 29413-2437

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Motion to alter or amend is denied

CASE NO: 2011CP1009200
Mother Doe A VS Citadel The

This judgment was entered on the 06th day of August, 2015, and notice mailed first class on Friday, August 07, 2015, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.