THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.
Circuit Court Judge
Case No.: 2011-CP-10-9200

Appellate Case No. 2015-001920

Mother Doe A.....Appellant,

v.

The Citadel.....Respondent.

BRIEF OF APPELLANT

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STATEMENT OF THE CASE

This appeal involves two of six consolidated cases[1] filed against The Citadel arising out of the sexual abuse and molestation of numerous child victims by former cadet and Citadel employee, Louis "Skip" ReVille. As the parents of children who were sexually molested by ReVille, Appellants brought these actions stating claims under state and federal law against The Citadel after discovering numerous actions undertaken by Citadel officials throughout a six year period to conceal knowledge of ReVille's dangerous propensities. Repeated rule violations by ReVille, reports of inappropriate behavior concerning ReVille, and a 2007 complaint from a victim who directly reported being sexually abused by ReVille were ignored and concealed as part of a "close hold" policy which assisted ReVille to avoid detection and, ultimately, created the opportunity for ReVille to abuse Appellants' children.

While the Citadel took no action to inform law enforcement, child protective services, or its own Title IX Coordinator about any of the allegations between 2001 and 2007, Citadel officials instead took affirmative steps to alert ReVille to the 2007 complaint, to advise him to "lay low," and to ensure ReVille's Citadel employment file reflected none of the multiple complaints against him. As a result, with the assistance of the Citadel officials that concealed his abuse, ReVille traded on his Citadel reputation to gain employment as a tennis and basketball instructor in Mt. Pleasant, South Carolina, which provided ReVille access and opportunity to groom and abuse Appellants' children on multiple instances.

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[1] The following cases are consolidated with the instant cases for purposes of discovery: 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.

Appellant Mother Doe A filed the instant matter on December 14, 2011, alleging claims of gross negligence/failure to warn; negligent hiring, retention and supervision; civil conspiracy; outrage; and loss of services.[2] John Doe 201 and Jane Doe 201 followed with similar claims. The parties have stipulated that the claims made by the Doe 201 parents are nearly identical to the claims made by Mother Doe A, distinguished only by the Doe 201 parents having out of pocket expenses for their child's post-abuse mental health and medical treatment. The Doe 201 parents alleged, "[t]he Plaintiffs have incurred costs for treating their child, for providing their child professional care while maintaining his anonymity, and have lost the services of their child."

On March 6, 2014, The Citadel filed summary judgment motions in the cases of John Doe Camper v. The Citadel, Case No. 2012-CP-10-1860; John Doe 2 v. The Citadel, Case No. 2012-CP-10-1858; and Mother Doe 2 on behalf of John Doe 3 v. The Citadel, Case No. 2012-CP-10-1859, asserting several arguments critical to all plaintiffs in the consolidated matters, including, but not limited to, the following grounds: (1) that The Citadel owed no duty of care to plaintiffs; (2) that plaintiffs' claims involve a single occurrence as defined by the South Carolina Tort Claims Act ("SCTCA") so as to limit each plaintiff's potential recovery to the SCTCA limit of $300,000; and (3) that certain plaintiffs' claims are barred by the two-year statute of limitations of the SCTCA. (R. pp. 981-992). Given the common issues of law and fact underlying the consolidated matters, Appellant Mother Doe A, while not a party to the March 6, 2014 motions, filed a memorandum in opposition to The Citadel's motion. (R. pp. 924-980).

On April 18, 2014, the court heard arguments on The Citadel's summary judgment motions as to Plaintiff's John Doe Camper, John Doe 2, and Mother Doe 2. While ruling in favor of Plaintiffs as to the statute of limitations, the court took under advisement the issue of whether The

[2] Appellant's Amended Complaint also alleged claims under the Jessica Horton Act and Mandatory Reporting Statute, which have since been dropped.

Citadel owed a common law duty of care to Plaintiffs. Consequently, Mother Doe A filed a Reply Brief on April 25, 2014, addressing the issues of "specific threat of harm" and other factual disputes concerning the duty argument. (R. pp. 1264-1277). Following a supplemental hearing on the issue of duty, the Court denied The Citadel's motion for summary judgment in its entirety. (R. pp. 1289-1319). The summary judgment determination as to the issue of duty was deemed to apply to all six consolidated cases, including the instant case.

On May 2, 2014, The Citadel filed a summary judgment motion in the present case, arguing:

(1) The Citadel owed no common law or statutory duty of care to Plaintiff;

(2) Mother Doe A has no evidence of cognizable damages or, in the alternative, that her recovery is limited to out of pocket medical expenses and loss of services;

(3) Mother Doe A's claims are barred by S.C. Code § 15-78-110, the two-year statute of limitations of the South Carolina Tort Claims Act;

(4) The Plaintiff's outrage claim is barred by 15-78-30(f) and by the presence of "other potential remedies;"

(5) Mother Doe A "cannot proffer a scintilla of evidence that The Citadel acted with the requisite level of culpability for an outrage claim; and

(6) The Plaintiff's claims involve a single "occurrence" as defined by the TCA, limited to a potential recovery to $300,000.

(R. pp. 1285-1287). Because Appellant obtained a favorable ruling on the duty issue in the previous motion, the court held a hearing solely on the issue of loss of services on September 22, 2014. On September 24, 2014, the Court issued a Form 4 order denying Defendant's motion, followed by a formal written order entered on December 1, 2014. (R. pp. 431-507).

The case proceeded to trial on January 26, 2015. At the commencement of jury selection, Defendant filed a Renewed Motion for Summary Judgment, asserting the following grounds previously denied by the December 1, 2014 Order:

(1) Plaintiff's claims fail because she has not sustained any proximately caused injury recoverable under South Carolina law (*i.e.* loss of services);

(2) The Citadel did not owe a duty of care to Mother Doe A; and

(3) The South Carolina Tort Claims Act bars Plaintiff's outrage and civil conspiracy claims.

(R. pp. 326-332). A hearing on the Renewed Motion was held the next morning, during which the court determined that summary judgment on the first and third grounds asserted was appropriate—a ruling which in effect reversed the court's previous order denying summary judgment on these same grounds. (R. pp. 284-324). The second issue—the issue of duty—was not addressed given the court's previous rulings denying summary judgment on that ground. The parties stipulated that the outcome of this case determines the outcome of John Doe 201 and Jane Doe 201 v. The Citadel, which is reflected in the Rule 59(e) motion filed after receipt of the trial court's order. (R. p. 17, stating: "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."). When that Rule 59(e) motion was denied, this appeal followed.

For the reasons stated herein, the circuit court committed reversible error in granting summary judgment on the issues of loss of services, conspiracy and outrage, and the matter should be remanded for trial.

FACTUAL BACKGROUND

Appellants are the parents of John Doe A and Doe 201, two of numerous child victims sexually abused by ReVille. The sexual abuse of John Doe A and Doe 201 occurred after The Citadel was on notice that ReVille had displayed a sexual interest in children, and that he had, in fact, abused other children on The Citadel campus.

The events giving rise to John Doe A and Doe 201's abuse date back to ReVille's time at The Citadel Summer Camp, a residential summer camp operated by The Citadel for children ages ten to fifteen. ReVille, who served as Head Counselor in Charge of Quarters in 2001 and Senior Counselor for the summers of 2002 and 2003, repeatedly violated Citadel and Camp policy to sexually abuse and molest at least seventeen boys during the summers of 2001, 2002, and 2003. Throughout this time, The Citadel turned a blind eye to inappropriate conduct, policy violations, and Citadel procedures requiring termination and reporting of sexual assault, sexual abuse, sexual harassment, sexual misconduct, and immoral and illegal conduct.

During ReVille's first summer at The Camp, The Citadel was notified that a highly regarded volunteer counselor, former Citadel Cadet, Citadel Graduate and United States Marine Corps Captain, Michael Arpaio, had sexually abused and molested a ten-year old male camper in his dorm room during the course of The Camp's First Session. In addition, The Citadel learned that campers attending The Camp had been exposed to pornography, profanity, alcohol, and inappropriate touching. The Citadel was later informed that additional minor campers were sexually abused by Michael Arpaio while attending The Camp between 1995 and 2000.

Following the criminal investigation of the Arpaio matter, Sergeant Dale Middleton of the Charleston Police Department advised The Citadel by letter dated August 8, 2001, of certain activities and practices occurring at The Camp that warranted attention. These activities and

practices included counselors allowing campers to leave their rooms at night, campers watching movies and sleeping in the same bed as counselors, counselors engaging in sexual conversation in the presence of campers, campers viewing alcohol and tobacco products belonging to counselors in the barracks, and counselors taking campers off campus on unrelated camp functions without parental consent. (R. p. 588, Middleton Letter, August 8, 2001). Sergeant Middleton indicated in his letter that "[t]hese are the most serious findings that were brought to [his] attention during [his] investigation," and concluded the correspondence with an invitation to The Citadel to contact him regarding the matter. (R. p. 588). However, no one at The Citadel ever contacted Sergeant Middleton regarding the letter, his concerns, or the other findings that warranted attention. Rather, following notice of Arpaio's acts of sexual abuse at The Camp and of the concerning practices and activities highlighted in Sergeant Middleton's letter, The Citadel neglected to implement new policies and procedures to eliminate the threat of harm posed by child sexual predators and instead placed increased emphasis on the pre-existing anti-cohabitation policy which prohibited counselors from being alone with a minor behind closed doors.

After the abuses perpetrated by Arpaio, The Citadel opened its doors for the second camp session of 2001. Initially, increased emphasis was placed by staff on The Camp's long standing rule restricting counselors from being alone with minors behind closed doors. But within days, The Camp reverted back to operating as it had in the past—with "laxity." According to ReVille, "After I saw that everything was going back to the laxity – the laxity that this was before, then I started – I resumed my selecting and grooming the campers." (R. p. 591, lines 7-11). In fact, ReVille admitted to committing at least a dozen acts of abuse during the month long session immediately following Arpaio's termination. (R. p. 591, lines 21-23). Absent additional safety precautions, ReVille, like Arpaio, was able to utilize The Camp to sexually abuse and molest at

least seventeen boys during the summers of 2001, 2002 and 2003. Throughout this time, The Citadel turned a blind eye to inappropriate conduct, policy violations, and Citadel procedures requiring termination and reporting of sexual assault, sexual abuse, sexual harassment, sexual misconduct, and immoral and illegal conduct.

Camp Director Major Bill Bates, Deputy Director Jennifer Garrott, Colonel John Lackey, Commandant General Emory Mace, and others were aware of ReVille's deviant, pedophilic tendencies as early as 2001, wherein it was noted that ReVille was "senior counselor material *if learns to distance himself from campers* . . ." (R. p. 600). These individuals, as well as other Citadel officials and staff, were likewise aware of ReVille's policy and code of conduct violations and knew, or should have known, that ReVille was sexually harassing, molesting and abusing The Camp's minor campers on The Citadel campus.

In particular, during the summer of 2002, The Camp's Deputy Director, Jennifer Garrott, caught ReVille alone with a minor camper in his dorm room. Both Garrott and Camp Director Major Bates discussed the issue with ReVille, but declined to reprimand or terminate his employment despite established policies and procedures requiring immediate termination for such a violation. Additionally, neither Garrott nor Bates followed up with the minor camper or other counselors to investigate any inappropriate or suspicious behavior involving ReVille and minor campers, and no written report of ReVille's infraction was ever recorded in his employee file. Instead, when faced with notice of ReVille's inappropriate behavior, The Citadel took no action, and as a result, at least four young boys were sexually abused and molested by ReVille at The Camp in 2002.

In 2003, ReVille was asked back to The Camp to again serve as Senior Counselor.[3] At least six times during the 2003 Camp, ReVille was confronted by Camp staff member, Anna Bronk, for violating the rules against having minors in his room at night. However, no formal action was taken and laxity continued to reign over enforcement of the rules.

Furthermore, in July 2003, at the beginning of The Camp's Second Session, Camp Director Garrott caught ReVille alone in his room rubbing "Icy-Hot" on the leg of a minor identified in this litigation as Camper Doe 6 or Doe 6. Upon discovering ReVille and Doe 6 alone, Garrott ignored, neglected and disregarded The Camp's policy requiring immediate termination for such behavior and further neglected to even draft a report or memorandum to document the violation. (R. p. 592, line 10-p. 593, line 4). ReVille, who at the time had not yet succeeded in abusing Camper Doe 6, went on to abuse Doe 6 repeatedly and on numerous separate occasions throughout the remainder of the three-week camp session. ReVille has since stated that he considered his conduct in applying the sports cream to be "a sexual act." (R. p. 825, lines 2-5).

Despite declining to take appropriate remedial action at the time, Garrott now concedes that, pursuant to Camp and Citadel policies and procedures, ReVille should have been terminated immediately, the incident should have been recorded in ReVille's permanent file, and a written report should have been drafted and circulated regarding the matter. Garrott has likewise conceded that had ReVille been terminated, Doe 6 would not have been subjected to ReVille's sexual abuse and molestation. (R. p. 602, Deposition of Jennifer Garrott at 57:10-13).

In the summer of 2005, Doe 6 returned to work at The Camp as a Junior Counselor. After completing pre-camp counselor training in June of 2005, which included a section on mandatory

[3] Notably, ReVille was hired as Senior Counselor despite a clearly deficient application which The Citadel's own experts agree was cause for concern. (R. p. 613, line 2–p. 615, line 22, Deposition of Leonard Shapiro referencing 2003 Counselor Application by ReVille at R. p. 609).

reporting of child sexual abuse, Doe 6 felt compelled to report ReVille's sexual abuse to Director Garrott. However, as soon as Doe 6 explained to Garrott that he wanted to talk about "Skip ReVille," her demeanor immediately changed. She abruptly called off the meeting, claiming she had another obligation. No less than an hour later, Doe 6 was fired and instructed to leave the premises within two hours. (R. p. 605, line 14-p. 608, line 24). Because Citadel and Camp policy would require reports of sexual abuse to be disclosed to Citadel Public Safety and other appropriate law enforcement agencies, The Citadel chose to terminate Doe 6 without just cause to avoid the damaging ramifications such a report could have on the college.

In 2007, The Citadel received yet another report of abuse regarding ReVille—this time involving multiple children. Specifically, on April 23, 2007, the father of a former camper called President John W. Rosa and reported that his son had been sexually abused while attending The Camp in 2002. The call was forwarded to Mark Brandenburg, The Citadel's General Counsel, who followed up with the former camper ("Camper Doe" or "Doe") that evening. The abuse reported by Doe was subsequently memorialized in a letter from Brandenburg to The Citadel's insurance carrier, the Internal Reserve Fund ("IRF"), and copied to President Rosa. The letter, dated May 16, 2007, stated:

> Both allege that during one summer, [Doe] and another camper were coerced by a counselor into the counselor's room, where the counselor showed them pornographic movies and convinced them to masturbate. [Doe] alleges the counselor watched the movies and masturbated as well. Importantly, however, [Doe] specifically said that the counselor never touched him or the other camper. [Doe] does allege that the counselor *engaged in this activity frequently, though, and with many other campers*.

The letter further noted that Doe's father "wanted the school to know about this incident and to know that an apparent predator was once affiliated with the school." (R. pp. 633-634).

Despite the gravity of Camper Doe's allegations and Citadel policy and state and federal law mandating reporting to law enforcement, Brandenburg performed an integral part of a "close hold" policy instituted by President Rosa to conceal the allegations of suspected child sexual abuse within a small group of Rosa's subordinates for the purposes of protecting the reputation of The Citadel and insulating ReVille from detection. (R. p. 746, lines 3-20, p.748, line 12-p. 750, line 4). By withholding the abuse from those outside the President's office, other Citadel staff who were mandatory reporters of child abuse, or who otherwise were required to report, or would have reported, the allegations to law enforcement, were not given the opportunity to do so. Taking part in this overt policy worked to directly set in motion a series of actions undertaken by Brandenburg and others within Rosa's staff that ultimately created the opportunity for ReVille to harm the Plaintiff's child.

Among such actions was an internal investigation undertaken by Brandenburg. Notably, Brandenburg's decision to investigate was in contravention of Title IX and the Department of Education's recommendation warning against school attorneys performing Title IX investigations. (R. p. 623, line 18-p. 624, line 11, p. 804). As part of this investigation, Brandenburg met with ReVille and Colonel Trez on April 24, 2007. During this meeting, Brandenburg and Trez alerted ReVille to the allegations of abuse against him and instructed him to stay off campus and "lay low." (R. pp. 739-741). Within thirty (30) minutes of this meeting, ReVille contacted two eyewitnesses identified by Doe and specifically instructed them to remain silent about the abuse if contacted by Brandenburg or any other individual investigating the abuse.

Thereafter, Brandenburg was dispatched to Dallas, Texas on July 1, 2007, to take Camper Doe's statement. The statement was transcribed by a court reporter and revealed the following:

i. In 2001, ReVille hosted movie nights where he would order pizza or Chinese food to entice campers to come to his room to watch pornography. During these movie nights,

ReVille would masturbate in front of the boys and encourage them to do the same. ReVille would also shower with the boys.

ii. On one occasion, ReVille invited the 2002 Camper and his friend, also a camper, to his room. ReVille ordered Chinese food and began showing the boys pornographic videos on his computer. Eventually, ReVille began masturbating in front of the boys and encouraged them to join him. When the camper refused, ReVille "got a little aggressive" and asked the boy to come back to the computer and join him, which he did.

iii. ReVille also insisted that the 2002 Camper and the other camper spend the night with him in his room. When the 2002 Camper tried to leave, ReVille coerced him into staying and masturbating in front of him.

iv. ReVille abused the other camper who accompanied the 2002 Camper to ReVille's dorm room, as well as four other campers, multiple times during the summers of 2001 and 2002.

v. Furthermore, the 2002 Camper personally observed younger boys going into ReVille's room late at night over the course of the summer. He further explained that at least five other boys had been involved, stating: "I know there are about five other kids that experienced it a few times."

(R. pp. 636-643). When asked by Brandenburg whether "there [was] anything [he] want[ed] the Citadel to do as a result of this," Doe expressed his foremost desire to put an end to the abuse, stating: "Most of all, the thing I want the most is just to make sure that [ReVille] doesn't have a chance to do this to anyone else." (R. p. 643, lines 23-25). Notably, Citadel written policy, including Summer Camp policy and the Serious Incidents Memo, required Brandenburg and Citadel staff to report the contents of Doe's statement to Citadel Public Safety and law enforcement both at the time Father Doe and Camper Doe reported the abuse, and again after the interview of Doe revealed even more victims. (R. p. 716, Brandenburg Deposition at 261:5-263:23). Brandenburg even acknowledged that the best way to honor Doe's wishes and to prevent harm to other children, would have been to report to law enforcement. (R. p. 710, Deposition of Brandenburg at 172:20-24).

In an email to the IRF, dated August 8, 2007, Brandenburg summarized his findings from the interview, stating, "In short. . . I found [Camper Doe] to be believable." (R. p. 644, Aug. 8, 2007 Email to IRF). In this same email, Brandenburg called attention to ReVille's emphatic denial of the allegations, and likened his statements to similar comments made by Captain Michael Arpaio, who pleaded guilty to sexually molesting several campers between 1999 and 2001. However, despite the admitted similarities to the Arpaio matter and the confirmed credibility of the information obtained from the investigation, The Citadel never reported the abuse to the Public Safety, the Charleston Police, SLED, the Title IX Coordinator, or other authorities as mandated by clearly established campus policies and procedures, accepted professional standards, and state and federal law.

Both the April 23, 2007 report, and the July 1, 2007 statement containing additional specific facts and allegations of sexual abuse and identification of victims not only alleged acts of inappropriate sexual misconduct against the former camper himself but also alleged acts of criminal sexual conduct against many other children, including victims presently residing on The Citadel campus enrolled as cadets. (R. p. 642, July 1, 2007 Statement). Alarmingly, outside of sending one email to these former campers—one of which was the eyewitness to Doe's abuse—Brandenburg never spoke with the alleged victims because ReVille was able to obtain their silence. (R. p. 708, Deposition of Brandenburg at 143:25-145:3).

After returning from Texas, Brandenburg attempted to negotiate a settlement with Camper Doe and his family. The settlement offer was around twenty thousand ($20,000.00) and included assistance in admitting Doe to The Citadel. Brandenburg was particularly pleased with his effort to settle the matter while also securing the Doe family's silence regarding the abuse. As one board member recalled, Brandenburg was pleased to save The Citadel money compared to the

settlements in the Arpaio abuse cases. (Deposition of Col. Leonard Fulgham, Jr. at 46:2-23; MHA Interview Notes at 123). However, the offer was never accepted and Brandenburg never heard back from the Doe family.

Around this same time, ReVille obtained employment as a basketball coach and tennis instructor in Mt. Pleasant through which he was provided access to other minor victims, including Appellants' children. In January of 2008, after learning that The Citadel had not conducted the thorough investigation that it said it would and that no notice had been sent to former campers notifying them of the allegations,[4] ReVille was reassured that The Citadel let him "off the hook." Immediately thereafter, ReVille began grooming John Doe A for what would progress into sexual abuse and molestation which occurred on at least forty-five separate occasions throughout a two year period. Around this same time, ReVille groomed and abused Doe 201 in similar fashion.

Despite The Citadel's duties and obligations pursuant to Citadel policies and procedures, The Citadel concealed ReVille's child sexual abuse until October of 2011, when ReVille was finally arrested on charges of molestation and sexual abuse of twenty-three boys. ReVille has since admitted that close to thirty victims—including Appellants' children—would have been spared had The Citadel contacted law enforcement in 2007.

STANDARD OF REVIEW

Summary judgment is a drastic remedy which should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006). When reviewing a grant of

[4] In 2003, The Citadel sent a letter informing parents of campers that a former counselor, Michael Arpaio, had sexually abused several boys during the 2001 Summer Camp. ReVille assumed a similar letter would be sent regarding Doe's allegations. When he learned that no letter had been sent and that the allegations were being concealed from the public, ReVille was reassured to resume his grooming and sexual abuse of children in the community, with John Doe A being the first target victim.

summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP. David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). Summary judgment is proper only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences from the evidence in the light most favorable to the non-moving party. Madison ex rel. Bryant, at 134, 638 S.E.2d at 655. Where the proof standard is a preponderance of evidence, as it is here, "the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Summary judgment should be denied if more than one inference can be drawn from the evidence. Miller v. City of Camden, 329 S.C. 310, 315, 494 S.E.2d 813, 815 (1997) (citing Koester v. Carolina Rental Center, Inc., 313 S.C. 490, 443 S.E.2d 392 (1994)).

An abuse of discretion occurs if the court's ruling is controlled by an error of law or if the ruling is based upon findings of fact that are without evidentiary support. Sharps v. Sharps, 342 S.C. 71, 79, 535 S.E.2d 913, 917 (2000).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN CONSTRUING THE SCOPE OF DAMAGES AVAILABLE FOR A PARENT'S CLAIM FOR LOSS OF HER CHILD'S SERVICES.

The circuit court order overlooks South Carolina common law recognizing a cognizable claim for a parent's loss of his or her child's services. At pages nine to eleven of its May 29, 2015

order, the trial court acknowledged that Justice Pleicones' dissent in Doe v. Greenville County School District, 375 S.C. 63, 651 S.E.2d 305 (2007) (hereafter "Doe v GCSD"), was more "persuasive" than the majority opinion. Indeed, as set forth herein, the dissent is better reasoned and contains a more accurate statement of the history of the common law loss of services cause of action. Notwithstanding, the trial court granted The Citadel's motion for summary judgment because it "was compelled to follow the mandate of the majority of the Supreme Court." (R. p. 13).

This case presents an opportunity for the Court to correct the confusion and inaccurate historical *dicta* in former Chief Justice Toal's opinion in Doe v. GCSD, a case in which the complaint alleged claims for various negligence concepts, seduction, and filial consortium, but did not allege a common law "loss of services" claim. (Compare, 651 S.E.2d at 307, upholding dismissal of the loss of consortium" claim; and 651 S.E.2d at 308, "South Carolina law does not recognize claims for loss of filial consortium" with 651 S.E.2d 309: trial court did not err in dismissing most claims because it did "not claim for loss of services.").

In short, the pleadings in Doe v. GCSD presented the Supreme Court with a different question than the question presented by the pleadings in this appeal. This case, by contrast, directly concerns the ancient common law cause of action known as loss of services, and thereby requires the court to address the historically inaccurate *dicta* in Doe v. GCSD, which states:

> 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 ...."

651 S.E.2d at 308. Based on this inaccurate *dicta*, the trial court dismissed the loss of services claim for Mother Doe A.

A parent's right to claim a child's loss of services is mentioned in Blackstone. Its common law roots trace to at least 1653, when the claim was adapted as an overt fiction transposing the claim for injury to a servant to enable a parent to recover for their injuries when his or her child was injured. See United States v. Standard Oil, 332 U.S. 301, 312 n. 16 & 17, 67 S.Ct. 1604, 1610 n. 16 & 17 (1947) ("extension of the action *per quod servitium amisit* to domestic relations, upon a fictional basis, took place as early as 1653."). The cause of action has ***always*** included intangible damages. E.g. Tullidge v. Wade, 3 Wils. K.B. 18 (Kings Bench 1769) (affirming a damage finding of fifty pounds, because "[A]lthough the plaintiff's loss in this case may not really amount to the value of twenty shillings, yet the jury have done right in giving liberal damages.").[5]

In 1712, the Reception Statute, S.C. Code § 14-1-50, adopted the English common law until altered by the legislature:

> All, and every part, of the common law of England, where it is not altered by the Code or inconsistent with the Constitution or laws of this State, is hereby continued in full force and effect in the same manner as before the adoption of this section.

S.C. Code § 14–1–50 (1976); see also State v. Charleston Bridge Co., 113 S.C. 116, 126, 101 S.E. 657, 660 (1919) (the reception statute is "declaratory in its nature" in stating that South Carolina courts are guided by the principles of the settled common law from England); accord Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 20-21, 567 S.E.2d 881, 891 (Ct. App. 2002). Since the enactment of the Reception Statute, the legislature has made no modification to the loss of services cause of action.

The 2007 majority in Doe v GCSD (Justices Toal, Burnett, Moore, and acting justice Maccauley) declined to recognize a "loss of filial consortium" cause of action at common law, and held that no such cause of action had been provided for by the legislature. 651 S.E.2d 308. We

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[5] For ready access, a copy of the 1769 English opinion is attached as an appendix to this brief.

have no quarrel with those findings, neither of which has anything to do with the distinct common law cause of action for loss of services. Through the Reception Statute, the legislature has reserved to itself changes to the common law cause of action, and no change has been made to the cause of action. The Doe v. GCSD court simply misstated history to conclude that because there was no claim for loss of filial consortium at common law, there was no claim of any type available at common law to a parent for "intangible losses of aid, companionship, and society" of a child. 651 S.E.2d at 308.

As established very clearly in South Carolina case law, and by the dissent in Doe v GCSD (written by now Chief Justice Pleicones), a historically accurate account of a parent's right of recovery under South Carolina common law includes intangible injury through the loss of services cause of action. E.g. Webb v. Southern Ry. Co., 104 S.C. 89, 88 S.E. 297, 299 (S.C. 1916) ("The mother was entitled to the services of her minor child. *She was entitled to his companionship....*") (emphasis added). South Carolina law recognizes the overt fiction through which loss of services includes intangible injury. Villepigue v. Shuler, 1849 WL 2667 at 2, 34 SCL 462 (3 Strob. 462) (S.C. 1849) ("loss of service is well understood to be little more than a legal fiction, which has been introduced to secure *compensation for outraged feelings.*") (emphasis added). Moreover, a parent's independent injury when his or her child is injured is explicitly recognized under the Tort Claims Act as a separate and distinct "loss" from that of the injured child. Wright v. Colleton County School District, 301 S.C. 282, 289, 391 S.E.2d 564, 569 (1990) ("we find that the parent's claims for loss of services and medical expenses are within the statutory definition of "loss" as contained in Section 15-78-30(f) and are therefore recoverable.").

The trial court's confusion based on the flawed majority opinion in Doe v. GCSD is understandable, and genuine, but the court's 2007 *dicta* is historically incorrect, an affirmative

misstatement of South Carolina common law, and fails to recognize the distinct origins of loss of a child's services compared to loss of a spouse's consortium.[6] Simply put, the majority opinion in Doe v. GCSD misstated legal history. Loss of services is a long-standing common law cause of action. It has never been altered by the South Carolina legislature. It has always included a parent's intangible loss, in English common law and in South Carolina common law, as Webb and Villepigue show. No policy reason was given by the GCSD Court for trying to usurp the plain language and application of the Reception Statute.

Applying an accurate account of the loss of services cause of action at common law, Appellants are entitled to claim damages for the intangible loss of services of their children as a result of the sexual abuse inflicted upon them. Consequently, the circuit court committed reversible error in failing to recognize Appellants' right to recover damages for intangible injuries arising from the loss of their children's services.

II. THE CIRCUIT COURT ERRED IN FINDING APPELLANT'S OUTRAGE AND CONSPIRACY CLAIMS BARRED BY THE TORT CLAIMS ACT.

a. The Tort of Outrage Falls within the Scope of the SCTCA When Based Upon Reckless Rather than Intentional Conduct.

It is well settled that a plaintiff can state a claim for outrage by alleging that the defendant acted recklessly, rather than intentionally. Bass v. S. Carolina Dep't of Soc. Servs., 414 S.C. 558, 575, 780 S.E.2d 252, 260-61 (2015) (considering intentional infliction of emotional distress claim based on DSS's reckless rather than intentional conduct). In siding with the Respondent, the

[6] See Black's Law Dictionary (9th ed. 2009). The trespass claim *per quod consortium amisit* ("Whereby he lost the company of his wife") is the origin of loss of spousal consortium. *Per quod servitium amisit* ("whereby he lost services of his servant") is the origin of the parent's loss of services claim through the overt fiction which transposed it from a claim for a servant to a claim for a child, and did so specifically in order to include the parent's intangible loss.

Circuit Court has mistakenly interpreted § 15-78-30(f)'s preclusion of loss arising out of the "intentional infliction of emotional harm" to conclude that Mother Doe A is not entitled to recover for the tort of outrage. Such a holding overlooks the plain language of the SCTCA's definition of "loss", which permits outrage causes of action where, as here, the claim is based upon "reckless" conduct.

Section 15-78-30(f) of the SCTCA defines the parameters of compensable "loss" as follows:

> "Loss" means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.

S.C. Code Ann. § 15-78-30(f). While intentional infliction of emotional harm is precluded under this definition of "loss," there is no specific preclusion for loss based upon reckless conduct. Indeed, the conduct supporting an outrage claim can be "reckless" without being "intentional." Bass, 414 S.C. at 575, 780 S.E.2d at 260-61 (considering intentional infliction of emotional distress claim based on DSS's reckless rather than intentional conduct).

As recently observed by the South Carolina Supreme Court in Bass, the tort of outrage does not automatically implicate "intentional" conduct. 414 S.C. at 575, 780 S.E.2d at 260-61. Bass involved gross negligence and outrage claims against the South Carolina Department of Social Services ("DSS") under the TCA. Although the outrage verdict was reversed on appeal for lack of sufficient evidence, the claim was allowed to proceed to verdict against DSS under the SCTCA because it was based on "reckless" as opposed to "intentional" conduct. The Bass Court recited the following elements for the tort of outrage, observing that the underlying conduct can be either intentional *or reckless*:

> To recover for outrage—otherwise known as intentional infliction of emotional distress—a plaintiff must establish the following:
>
> (1) the defendant intentionally *or recklessly* inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
> (2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;"
> (3) the actions of the defendant caused plaintiff's emotional distress; and
> (4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it."

Bass, 414 S.C. at 575, 780 S.E.2d at 260-61 (quoting Argoe v. Three Rivers Behavioral Health, L.L.C., 392 S.C. 462, 475, 710 S.E.2d 67, 74 (2011))(emphasis added).

Thus, the SCTCA does not bar a claim for outrage where, as here, it is based on "reckless", rather than "intentional" conduct. Moreover, "[i]t is always for the jury to determine whether a party has been reckless, willful, and wanton." Wise v. Broadway, 315 S.C. 273, 277, 433 S.E.2d 857, 859 (1993) (citing Ralls v. Saleeby, 178 S.C. 431, 182 S.E. 750 (1935)). Accordingly, given that the SCTCA does not bar Appellant's outrage claim based on reckless conduct, the Circuit Court erred as a matter of law in prematurely granting summary judgment on this basis.

b. Appellant's Civil Conspiracy Claim is Proper Under § 15-78-70 Against Citadel Officials Individually.

The Court erred in granting summary judgment as to Mother Doe A's civil conspiracy claim based upon the requirement of "intent to harm." In particular, it was reversible error to dismiss Appellant's conspiracy claim where the claim is asserted against Citadel employees who fall outside the scope of SCTCA immunity, and in accordance with § 15-78-70(c), only The Citadel, and not the individual employees, are required to be a named party in the litigation. See Flateau v. Harrelson, 355 S.C. 197, 207, 584 S.E.2d 413, 418 (Ct. App. 2003) (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) ("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.")).

Pursuant to section 15–78–70(a) of the South Carolina Code, "[a]n employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b)." Section 15–78–70(b) provides:

> Nothing in the chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, *intent to harm*, or a crime involving moral turpitude.

S.C. Code Ann. § 15–78–70(b) (2005). Section 15–78–30(i) defines "scope of official duty" as "(1) acting in and about the official business of a governmental entity and (2) performing official duties." S.C. Code Ann. § 15–78–30(i). Thus, if a conspiracy claim alleges actual malice or intent to harm, then the claim falls outside the scope of SCTCA immunity. See Pridgen v. Ward, 391 S.C. 238, 248, 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) (finding school officials immune from suit in their individual capacity where there was no evidence that the state employees acted with "actual fraud, actual malice, intent to harm, or a crime involving moral turpitude," which would cause the claim against them to fall outside the scope of SCTCA immunity); Smith v. Ozmint, 394 F.Supp.2d 787, 792 (D.S.C. 2005) (finding a state employee can, in these limited circumstances, 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) (holding claim for intentional infliction of emotional distress is not subject to dismissal where plaintiff alleged intent to harm within her claim for intentional infliction of emotional distress).

In Pridgen, the South Carolina Court of Appeals upheld the trial court's determination that the government employee defendants were not entitled to immunity under the SCTCA because there was evidence that the defendants acted outside the scope of their official duty and with the intent to harm the plaintiff. 391 S.C. at 248, 705 S.E.2d at 64. Under this rationale, the requirement of an "intent to harm" does not preclude claims like civil conspiracy from being asserted against employees of a government entity in their individual capacity. See Ozmint, 394 F. Supp. 2d at 792 (finding a state employee can, in these limited circumstances, be held personally liable for some intentional torts committed within the scope of his employment); Roberts v. City of Forest Acres, 902 F.Supp. 662, 671 (D.S.C. 1995) (finding government employee liable when the employee's conduct falls within the exceptions listed in § 15–78–70(b)).

Here, the facts revealed through discovery support the inference that by knowingly conspiring with ReVille to conceal his devious sexual predilections, enable ReVille's future employment around children, and insulate ReVille from law enforcement, Citadel officials such as Brandenburg, Rosa, Trez and Garrott knew that other children would be sexually abused by ReVille and, thus, these officials acted with an intent to harm future victims like John Doe A and Doe 201. In fact, these Citadel officials knew that ReVille was a preferential child molester, who targeted adolescent boys like John Doe A and John Doe 201. Therefore, Appellant's civil conspiracy claim does not fail as a matter of law simply because it requires the element of "intent to harm." Accordingly, pursuant to § 15-78-70, Appellant's conspiracy claim as to these individuals is not barred by the SCTCA's immunity provisions.

III. THE CIRCUIT COURT ERRED IN FINDING APPELLANT'S OUTRAGE CLAIM BARRED ON THE BASIS THAT NO CONDUCT WAS DIRECTED TOWARD APPELLANT.

Conduct directed toward the Appellant is unnecessary where, as in the instant case, the injury is a natural and foreseeable consequence of the Citadel's conduct. It is well known that pedophiles pose a serious threat to all children within their preference group—e.g. adolescent boys in the instant case. Therefore, conduct undertaken to conceal a pedophile creates an obvious risk of danger to any child within the identifiable at risk group.

Here, The Citadel's conduct in instituting a close hold policy to conceal ReVille's sexual abuse directly enabled ReVille to use his Citadel reputation to gain access to boys within his target preference group, including John Doe A, who was subsequently abused and molested repeatedly from early 2008 through the summer of 2009. The risk of danger posed by assisting a child sexual predator to avoid detection is obvious, and while it may not have been clear to The Citadel who the particular victims would be, it was intimately clear that there would be victims and that these victims would be adolescent boys within ReVille's proximity, i.e. a distinct identifiable at risk group. Thus, even though The Citadel may not have directed its conduct *directly* at the Appellant, it was certainly obvious that Appellant would suffer injury as a result of its conduct.

In siding with The Citadel, the circuit court relied on Doe v. Rojas, 2007 WL 8327520 (Ct. App. April 26, 2007), an unpublished decision involving an outrage claim against the Richland County School District arising out of a teacher's sexual abuse of the plaintiffs' minor daughter. After denying the appeal on preservation grounds, the Rojas Court alternatively rejected plaintiffs' outrage claim for failure to present any evidence that the School District directed the alleged misconduct toward the plaintiffs. Unlike the present case, the outrage claim in Rojas was premised only on two allegations: (1) that the School District's failed to provide appropriate sexual harassment training to staff; and (2) that it failed to follow mandatory federal guidelines. Such a finding is inapposite and bears no relevance to the reckless conduct of The Citadel in assisting a

known sexual predator. The conduct at issue in Rojas was not that of a conspiracy to conceal a preferential child molester, which, as reasoned above, is conduct sufficiently directed at the Appellant given John Doe A's classification within an identifiable at risk group.

Accordingly, despite the presence of conduct specifically directed at Appellant, there is indeed sufficient evidence entitling Appellant to relief against The Citadel for its reckless conduct in assisting a known sexual predator to remain undetected.

IV. THE CIRCUIT COURT ERRED IN FINDING INSUFFICIENT EVIDENCE OF LOSS OF SERVICES AND OUTRAGE DAMAGES RESULTING FROM THE CITADEL'S CONDUCT.

As to the finding that Appellant has presented insufficient evidence of outrage damages, the Court's opinion overlooks the wealth of testimony previously raised to the Court demonstrating Appellant's severe emotional distress. (R. pp. 810-823). Specifically, there is ample evidence that Mother Doe A is outraged and has suffered "the irreplaceable loss of th[e] comfort and society" of her child. Mother Doe A testified that the abuse, and her son's attempt to conceal the abuse from his siblings, has created "a major ordeal within [the] family." (R. p. 816, Deposition of Mother Doe A at 105:2-3). Unfortunately, despite Plaintiff's attempt to get her son therapy, the "wedge between [her] sons" remains. (R. p. 817, Deposition of Mother Doe A at 106:2-3). Mother Doe A "constantly" worries about her son and has developed serious concerns, including that he is a "ticking time bomb." (R. pp. 817-818, Deposition o f Mother Doe A at 108:13, 112:9-11). She further testified:

> My son was a great kid. Now I'm left with a sullen, melancholy kid that basically does not have anything to do with anyone in our family. And he would be appalled to know — I couldn't even tell my own father about this. It's affected every single relationship I have with all of my children. Because they're having to deal with a mom who has good days and bad days.

(R. p.819, Deposition of Mother Doe A at 113:16-23).

Mother Doe A has sought professional mental health help and would like to obtain additional mental health counseling for herself when her finances permit. (R. p. 819). "[She] worr[ies] about when the shoe is going to drop on a daily basis." (R. p. 822, Deposition of Mother Doe A at 174:23-24). Given the testimony cited herein, there is certainly evidence that Mother Doe A is outraged and has suffered "the irreplaceable loss of th[e] comfort and society" of her child. Moreover, the cited testimony establishes sufficient evidence to create a genuine issue of material fact as to Mother Doe A's: (1) "shame, humiliation, and mental anguish;" (2) "the insult offered to [a parent's] feeling;" (4) "the agony in the destruction of his hopes concerning his child;" and (5) the effect on the child's "companionship." Given such testimony[7], there is more than sufficient evidence in the record to satisfy Appellant's burden of demonstrating loss of services and emotional distress damages.

Furthermore, as observed in the Court's May 29, 2015 Order, one of three circumstances in which liability for emotional distress is recognized is when the claim is based on "outrage." (R. p. 11, stating "[t]he 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 South Carolina Supreme Court expressly defined the tort of intentional infliction of emotional distress—also known as the tort of "outrage" in Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (1981). There, the Court held that in order to recover for intentional infliction of emotional distress, the complaining party must establish that:

[7] (R. p. 19, page-line designations for the deposition of Chet Williams, concerning the tangible elements of damage to Mother Doe A for the medical costs and expenses associated with her son's treatment). This exhibit was submitted in response to the motions renewed by The Citadel on the day of trial and was further intended as an offer of proof of what would have been introduced at trial.

> (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
> (2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;"
> (3) the actions of the defendant caused plaintiff's emotional distress; and
> (4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it."

Id. at 162, 276 S.E.2d at 778 (quoting Restatement (Second) of Torts § 46, cmts. d, i, and j) (citations omitted). Thus, a party can recover damages for emotional distress in the absence of physical impact or physical injury. See Hansson v. Scalise Builders of S. Carolina, 374 S.C. 352, 356, 650 S.E.2d 68, 70-71 (2007). In other words, when based on outrage, there is no requirement that the emotional distress be "accompanied by physical trauma" or that the negligent infliction must occur in a "bystander" situation. Consequently, there being evidence of emotional distress falling well beyond "mere bald assertions," the Order granting summary judgment as to Appellant's loss of services and outrage claims was error and should be reversed and remanded accordingly.

V. THE CIRCUIT COURT ERRED IN FINDING NO EVIDENCE OF SPECIAL DAMAGES TO SUPPORT APPELLANT'S CONSPIRACY CLAIM.

Appellant presented sufficient evidence of special damages to support Mother Doe A's conspiracy claim at the summary judgment stage. Civil conspiracy claims require a showing of special damages. While general damages "are the immediate, direct, and proximate result of the" tortfeasor's conduct, special damages "are the natural, but not the necessary or usual, consequence of the" tortfeasor's conduct. Benedict Coll. v. Nat'l Credit Sys., Inc., 400 S.C. 538, 546, 735 S.E.2d 518, 522 (Ct. App. 2012). Here, Appellant's Amended Complaint alleges she "has suffered serious, permanent intangible injuries resulting in special damages insofar as the Plaintiff has incurred costs for treating and providing professional care for her child, as well as other injury, as

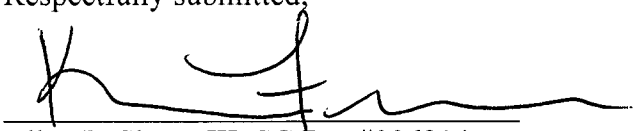
a result of The Citadel's conduct." (R. p. 1380, Mother Doe A's Amended Complaint at ¶ 222). With regard to costs for such other injuries, Mother Doe A has testified to numerous permanent intangible injuries as a result of The Citadel's conspiracy with ReVille to conceal ReVille's dangerous propensities. These include injuries such as major disruptions within her family and deteriorated relationships among her sons. (R. p. 816, Deposition of Mother Doe A at 105:2-3, her son's attempt to conceal the abuse from his siblings, has created "a major ordeal within [the] family."). Such injuries are undoubtedly natural, but not necessary or usual, consequences of The Citadel's conspiracy and, therefore, constitute evidence of special damages to support Appellant's conspiracy claim.

CONCLUSION

In all of human experience there is no more significant bond than the bond between a parent and a child. Through reversing the trial court's findings based upon inaccurate *dicta* in Doe v. GCSD, this case presents the Court with an opportunity to properly state the history and correct scope of the loss of services cause of action. This case likewise calls into question the trial court's application of the law as to the scope of the SCTCA with regard to Appellant's outrage and conspiracy claims. As demonstrated herein, Appellant has provided ample evidence establishing (1) the viability of Appellant's outrage claim based upon reckless and not intentional conduct, and (2) the liability of Citadel officials for engaging in a civil conspiracy with the intent to harm.

Accordingly, based upon the foregoing, Mother Doe A respectfully requests that the Order of the Circuit Court granting The Citadel's Renewed Motion for Summary Judgment be reversed and that the matter be remanded for further proceedings, specifically to include permitting a claim for intangible damages for Mother Doe A and the Doe 201 parents.

Respectfully submitted,



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APPENDIX

to take up the bill and note, and to save the plaintiff, Chilton, harmless; they broke their promise, Chilton was terrified and arrested. Here is an injury to a certain degree, but no debt owing by the defendants to Chilton, before his body was in execution for the certain sum. How could the plaintiff, Chilton, at the time of the commission of bankruptcy issued, have sworn to a debt, before he had advanced a shilling for the defendants? He certainly could not: but now his body being in execution, he has thereby paid the debt. So the postea must be delivered to the plaintiff, and he must have judgment. Per totam Curiam.

[18] EASTER TERM, 9 GEO. III. 1769.

TULLIDGE *versus* WADE. C. B. Trespass for getting plaintiff's daughter with child per quod servitium amisit.

Trespass against the defendant, that he with force and arms made an assault upon A. B. daughter and servant of the plaintiff, and got her with child, whereby he lost the benefit of her service for a certain space of time, and was put to great charge and expence in her time of lying-in: the defendant pleaded not guilty. The cause was tried before Mr. Justice Gould, at the last assizes; when the jury found a verdict for the plaintiff, and gave him 50l. damages.

Serjeant Davy moved for a new trial, and grounded his motion upon an affidavit tending to shew, that under the circumstances of the case appearing at the trial, the damages were excessive; and also, that evidence was given, at the trial, of a promise of marriage made by the defendant to A. B. which ought not to have been permitted, because she may have another sort of action upon that promise.

Whereupon Mr. Justice Gould made his report to the Court; and, after stating the declaration as above, he said, that A. B. the plaintiff's daughter was called as a witness at the trial, and swore that the plaintiff was a maltster, and kept a public house; that she was his daughter and servant, and was about thirty years old; that the defendant was an exciseman, made his addresses to her as a lover, with an intention (as she then thought) to marry her; that he was well received on that account by the plaintiff her father, and very civilly treated by him and his family, and often spent the evening with them: she also swore, that he promised her marriage, and got her with child. The brother of A. B. was also called, who deposed that the plaintiff was wholly deprived of A. B.'s service and assistance in his business, and paid some money on account of her lying-in. The counsel for the defendant, at the trial, objected to the evidence given, as to the promise of marriage; upon which A. B. [19] offered to give the defendant a release as to that promise; but the counsel for the defendant refused to accept thereof. Upon summing up the evidence to the jury, the Judge (Gould) was pleased to say, that he told them over and over again, that, in giving damages in this action, they must not consider the injury done to A. B. as to the promise of marriage, but must leave that matter quite out of the question, because A. B. might have her action for breach of that promise; that he thought the plaintiff, A. B.'s father, was by nature bound to take care of her while she laid in, and that they should consider his expences on that account, as well as his loss of his daughter's service. Whereupon the jury gave 50l. damages, with which the Judge said he was not at all dissatisfied; and that he thought, if the jury had then considered the promise of marriage, they would have given six times as much damages.

Lord Chief Justice Wilmot. Actions of this sort are brought for example's sake; and although the plaintiff's loss in this case may not really amount to the value of twenty shillings, yet the jury have done right in giving liberal damages; and if A. B. brings another action against defendant for the breach of promise of marriage, so much the better; he ought to be punished twice. A. B. being of the age of 30, is nothing to mitigate damages, or lessen the defendant's fault, and we will pay no regard to any affidavit read to us, Brother Gould being satisfied with the verdict; if much greater damages had been given, we should not have been dissatisfied therewith; the plaintiff having received this insult in his own house; where he had civilly received the defendant, and permitted him to make his addresses to his daughter.

Clive Justice. If the jury had given 100l. damages, I should not have thought them too much.

Bathurst Justice. To be sure, the giving the promise of marriage in evidence at the trial of this cause, was very improper; but as the jury were cautioned not to take notice of it, I am inclined to think they did not; for if they had, I think they would have given more than 50l. in damages. In actions of this nature, and of assaults, the circumstances of time and place, when and where the insult is given, require different damages; as it is a greater insult to be beaten upon the Royal Exchange, than in a private room. I am of the same opinion with my Lord Chief Justice and my brothers.

Serjeant Davy took nothing by his motion; so the plaintiff had judgment per totam Curiam.

[20] MICHAELMAS TERM, 10 GEO. III. 1769.

DYE *versus* LEATHERDALE AND SIMPSON. C. B. Declaration in trespass for taking plaintiff's hog.

Norfolk, (to wit).—John Leatherdale, late of, &c. and Cornelius Simpson, late of, &c. were attached to answer John Dye, of a plea, wherefore, with force and arms, &c. the said J. L. and C. took a certain hog of the said J. D. of the value of, &c. at Frenze in the county aforesaid, there found and being, and drove and carried away the same, and converted and disposed thereof to their own use, and there did other wrongs to the said J. D. to the great damage of the said J. D. and against the peace of our said lord the now King, &c. and thereupon the said J. D. by Robert Greenacre his attorney complains, that the said J. L. and C. on the first day of September, in the year our Lord 1768, with force and arms, &c. took a certain hog of the said J. D. of the value of four pounds, at F. aforesaid there found and being, and drove and carried away the same, and converted and disposed thereof to their own use (to wit) at F. aforesaid, and then and there did other wrongs to the said J. D. to the great damage of the said J. D. and against the peace of our said lord the now King, &c. wherefore the said J. D. saith, that he is injured, and hath sustained damage to the value of 4l. and thereupon he brings this suit, &c.

And the said J. L. and C. by Henry Browne their attorney, come and defend the force and injury when, &c. and say, that they are not guilty of the trespass aforesaid, above laid to their charge, in manner and form as the said J. D. hath above thereof complained against them, and of this they put themselves upon the country, and the said J. D. likewise.

And for further plea, as to the taking the said hog, in the said declaration mentioned, and driving and carrying the same away, by the said J. L. and C. above supposed to have been [21] done, they the said J. L. and C. by leave of the Court here to them for this purpose granted, according to the form of the statute in such case made and provided, say, that the said J. D. ought not to have or maintain his aforesaid action thereof against them; because they say, that the said C. long before, and at the said last time, when, &c. was lawfully possessed of, and in a certain close, called Newson's Lay, lying and being at F. aforesaid, in the county aforesaid. And because the said hog, at the said last time, when, &c. was in the said close of the said C. eating up the wheat then growing there, and there doing damage to the said C. He the said C. in his own right, and the said J. L. as his servant, and by his command, at the said last time, when, &c. took the said hog, in the said declaration mentioned, so being, in the said close called N. L. and doing damage there as aforesaid, for and in the name of a distress, and drove the same away, and impounded the same in the common pound there, (to wit) at F. aforesaid and there left the same, as it was lawful for him to do, for the cause aforesaid; which are the same taking the said hog, in the said declaration mentioned, and driving and carrying the same away, whereof the said J. D. hath above complained against them, and this they are ready to verify; wherefore the said J. L. and C. pray judgment, if the said J. D. ought to have or maintain his aforesaid action thereof against them, &c. WM. JEPHSON.

And as to the plea of the said J. L. and C. by them lastly above pleaded in bar, as to the taking the said hog, in the said declaration mentioned, and driving and carrying away the same, by the said J. L. and C. above done, he the said J. D. says that by any thing in that plea above alledged, he ought not to be barred from having

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.
Circuit Court Judge
Case No.: 2011-CP-10-9200

Appellate Case No. 2015-001920

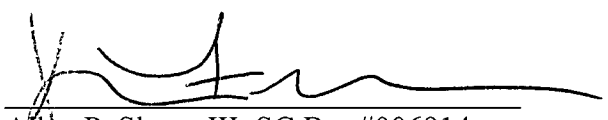
Mother Doe A.....Appellant,

v.

The Citadel.....Respondent.

CERTIFICATE OF COUNSEL

I HEREBY CERTIFY that the foregoing Brief of Appellant complies with Rule 211(b) of the South Carolina Appellate Court Rules.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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The Honorable R. Markley Dennis, Jr.
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Mother Doe A.....Appellant,

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PROOF OF SERVICE

I certify that I have served copies of the Final Brief of Appellant Mother Doe A by depositing copies of same in the United States Mail, postage prepaid, on April 20, 2016, addressed to the following attorneys of record:

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April 20, 2016

Via First Class Mail:
Honorable Jenny Abbott Kitchings
Clerk of Court
Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: Appellate Case 2015-001920
Mother Doe A v. The Citadel, Case No. 2011-CP-10-9200
John Doe 201 and Jane Doe 201 v. The Citadel, Case No. 2013-CP-10-10330

Dear Ms. Kitchings:

Enclosed please find an one un-bound and 14 bound of the Brief of Appellant along with Proof of Service, in regard to the above-referenced matter.

By copy of this letter with an enclosed copy of Brief of Appellant and Proof of Service, we are serving Defendant's counsel with same.

With kind regards,

Sincerely,

Kristen B. Fehsenfeld

KBF/mkg
Enclosures as stated
cc: Randell C. Stoney, Jr., Esquire (w/ encl.)