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The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon. R. Markley Dennis, Jr., Circuit Court Judge
Unpublished Opinion 2017-UP-282
Circuit Court Case No. 2008-CP-42-0475

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JUL 26 2017

SC Court of Appeals

Appellate Case No. 2015-001920

Mother Doe A, Appellant

v.

The Citadel Respondent

Petition for Rehearing

Plaintiff-Appellant Mother Doe A hereby petitions for rehearing of the July 12, 2017 unpublished *per curiam* order by the Court of appeals affirming the trial court.

The Court of Appeals panel has erred in the following respects.

1. At p. 1 of the order, the Court determined that South Carolina law “does not recognize a cause of action for loss of the child’s consortium.” The error in the Court’s order is in ruling on an issue *not* presented in the pleadings, loss of the child’s consortium, rather than ruling on the loss of services cause of action that is in the pleadings. *Doe v. Greenville County School District* overtly held that the claim presented in that case was *not* loss of services. *Doe v. Greenville County School District*, 651 S.E.2d 305, 308 - 309 (S.C. 2007)(emphasis added):

Because Mr. and Mrs. Doe's loss of consortium claim is based entirely upon their allegation of a change in their relationship with their child and *not a claim for loss of services*, we hold that the trial court did not err in dismissing Mr. and Mrs. Doe's claim

for loss of filial consortium.

The Court has erred in conflating the two separate causes of action, and relying on *Doe v. Greenville County* to uphold dismissal of a loss of consortium claim when the claim presented is loss of services, an issue not presented in the case cited.

2. Also at p. 1, as to loss of services, the Court has erred as a matter of law in (a) applying an incorrect standard for what constitutes a scintilla of evidence as to the testimony about Mother Doe A's tangible injury, and in (b) determining, Order at 2, that the tangible injury issue was not appealed.

The Court has erred in simply ignoring the fourth argument presented in the appellant's brief. That argument was, "The circuit court erred in finding insufficient evidence of loss of services and outrage damages...." At pp. 26 and 27, and particularly at p. 27 n. 7, the appellant's brief referred specifically to the testimony of the mental health professional with whom her child met "concerning the tangible elements of damage to Mother Doe A for the medical costs and expenses associated with her son's treatment."

The scintilla standard was, in fact, readily satisfied in the record below, particularly when viewed in the light most favorable to Mother Doe A, and the issue was, in fact, appealed. The testimony offered, and the argument in the appellant's brief more than meets the scintilla standard. E.g., *In re Crawford*, 30 S.E.2d 841, 849 (1944), quoting *Turner v. American Motorists Insurance Company*, 180 S.E. 55, 56 (S.C. 1935): a scintilla is satisfied by "some evidence arising out of the testimony which elucidates the issues of fact."

That the simple and straightforward issue of evidence of tangible injury was not belabored in the brief at p. 27 n. 7, and that the more complex issue of intangible injury was addressed more extensively, is hardly a reason to ignore that evidence is in the record as to tangible injury, the issue of tangible damage was in fact appealed, and the tangible damages

issue was in fact argued in the appellant's brief.

It is an error of law, and factually incorrect, to contend that the issue was "unappealed" as the court ruled. Order at p. 2.

3. At pages 1 and 2, as to the outrage claim, the Court erred first in considering only grounds *not* presented for an outrage claim, intent to injure, rather than considering (a) the recklessness standard for outrage, Appellant's brief at p. 21, and (b) that the harm to Mother Doe A's child was "a natural and foreseeable consequence" of the Citadel's deliberate conduct (Appellant's brief at p. 25).

Viewed favorably to Mother Doe A, as the record must be, The Citadel permitted a known pedophile to go unreported, contrary to its own policies, state law and federal law. It is undisputed that The Citadel did not report Reville to law enforcement the known predator, even after The Citadel had voluntarily assumed the duty, through its general counsel Brandenburg, to investigate the 2007 allegation against Reville about his sexual misconduct with a child, and through that investigation found the complaint against Reville to be "believable." E.g., Appellant's brief 14. Instead of reporting Reville, as required by its own policies, state law and federal law, Citadel officials preferred (a) to meet with Reville and inform him of the complaint (Appellant's brief at 4), (b) advised him to "lie low," *Id.*, and (c) thereafter, both Reville and The Citadel concealed that the Citadel had received a credible complaint that Reville had a sexual interest in children (their "close hold" practice, Appellant's brief at 3, 12, and 25).

The Court of Appeals decided only whether intentional conduct could state a claim for outrage, not the issue presented by the facts underlying the appeal, which is whether The Citadel's recklessness (failing to report a person known to have a sexual interest in children, Appellant's brief at pp. 21 – 22), stated a claim for outrage, and whether the injury from that reckless conduct—Reville's sexual assault of the child of Mother Doe A—was a "natural and

foreseeable consequence” (Appellant’s brief at 25) of the Citadel deciding to conceal that which was required to be reported. Recklessness does not require intentional conduct aimed at Mother Doe, Appellant’s brief at pp. 25 – 26, and the court has failed to rule on that issue.

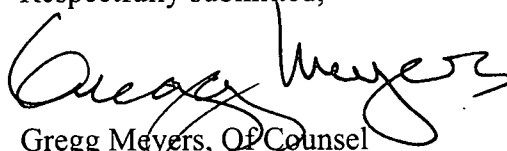
Similarly, the court erred in failing to consider and rule on, Order at p. 3 n. 2, whether the Tort Claims Act, specifically S.C. Code § 15-78-60(17)(2005), barred the outrage claim. Under a recklessness theory that issue should have been reached and should have been, for similar reasons, permitted, and the trial court’s order overturned.

4. At page 3, and similarly as to the outrage claim, the court considered only an intentional injury argument as to the conspiracy claim. The court has erred by failing to consider and rule on the recklessness argument made as to the conspiracy claim, Appellant’s brief at pp. 23 – 25.

Conclusion

The Court of Appeals panel should grant this petition to rehear and address on the merits these issues presented by the appeal.

Respectfully submitted,



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Proof of Service

I hereby affirm that I have served upon counsel for the defendant/respondent a copy of

Petition for Rehearing

by causing a copy of the document to be placed in the United States mails, first-class postage pre-paid wrapper, properly addressed to:

Dawes Cook
Barnwell, Whaley, Patterson & Helms
286 Meeting Street
Charleston SC 29401

Done July 25, 2017.



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July 25, 2017

Via Federal Express:

Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
PO Box 11629
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SC Court of Appeals

Re: Mother Doe A v. The Citadel
Appellate Case No. 2015-001920
PHSW File No. P2399.00


Dear Ms. Kitchings:

Enclosed please find an original and 6 copies of the Petition for Rehearing in regard to the above-referenced matter. Please file the original and provide us with a filed, clocked-in copy in the enclosed envelope.

Thank you for your assistance in this matter.

With kind regards, I am,

Sincerely,


Mary K. Grondines
Paralegal

MKG/

Enclosures as stated

cc: M. Dawes Cooke, Jr., Esquire (via email and mail)
Randell Croft Stoney, Esquire (via email and mail)
John William Fletcher, Esquire (via email and mail)