

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
In The Court of Common Pleas

Honorable R. Markley Dennis, Jr., Circuit Court Judge

**RECEIVED**

AUG 07 2017

**SC Court of Appeals**

Appellate Case No. 2015-001920

Mother Doe A ..... Appellant,

v.

The Citadel ..... Respondent.

RETURN TO PETITION FOR REHEARING

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AND NOW COMES Respondent The Citadel, The Military College of South Carolina ("The Citadel") and files the following Return to Petition for Rehearing:

For the reasons set forth below, this Court should deny Plaintiff Mother Doe A's ("Plaintiff") Petition for Rehearing and should retain in full force and effect its July 12, 2017 Unpublished Opinion No. 2017-UP-282, affirming the trial judge's entry of summary judgment in favor of The Citadel as to all of Plaintiff's claims.

### **DISCUSSION**

**I. Although Plaintiff Uses the Term "Loss of Services," She Is Seeking Damages for the Loss of Consortium of Her Son, Which the Supreme Court has Prohibited**

Plaintiff's Petition for Rehearing attempts to evade *Doe v. Greenville County School District*, 651 S.E.2d 305 (2007), by arguing that she is not claiming damages for "loss of consortium" but rather seeks to recover for intangible "loss of services." Plaintiff's artful argument asks this Court to recast what is clearly a claim for a loss of companionship and society — or consortium — as a claim for "intangible" loss of services. No South Carolina appellate court has expanded a parent's recovery in such a fashion. To the contrary, the Supreme Court is clear that a parent may only recover actual, pecuniary losses for injuries to a child, whether in the form of medical expenses or loss of services. The South Carolina Supreme Court has never given "loss of services" in this context the same overly broad reading that Plaintiff urges in this case. Whatever term she uses to characterize them, Plaintiff's requested intangible damages seek to recover prohibited loss of consortium. As a result, this Court should deny Plaintiff's Petition for Rehearing.

**II. Plaintiff Has Not Shown Evidence of Medical Expenses As an Element of Damages**

Plaintiff also argues that the Court erred in affirming the trial judge's grant of summary judgment to The Citadel because its 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.'" (*See* Pl.'s Petit. for Reh'g, at 2). In appropriate circumstances, parents are unquestionably permitted to

recover, in their own right, certain medical expenses paid on behalf of their child. *See Patton, as Next Friend of Alexia L. v. Miller*, \_\_\_ S.E.2d \_\_\_, Opinion No. 27730 (Ct. App. July 26, 2017). For the following reasons, contrary to Plaintiff's arguments, she did not present evidence of medical expenses sufficient to warrant denial of summary judgment in this matter.

Initially, Plaintiff did not preserve this issue for appellate review. Plaintiff's *only* passing reference to medical expenses as an element of damages in this appeal was contained in two sentences in a brief footnote in Plaintiff's 30-page brief. That footnote contained no citation to legal authority and no reference to record evidence supporting a claim for the recovery of medical expenses. As a result, Plaintiff has not sufficiently preserved this issue for appellate review. *See State v. Crocker*, 366 S.C. 394, 399 n. 1, 621 S.E.2d 890, 893 n. 1 (Ct. App. 2005) (holding conclusory statements unaccompanied by argument and citation to authority are insufficient to preserve issue for appellate review); *accord* 5 Am. Jur. 2d Appellate Review § 511 ("A passing reference to an issue in a brief is not enough to preserve it for appellate review, and the failure to make arguments and cite authorities in support of an issue waives it.").

Moreover, Plaintiff has not proffered specific, competent evidence (either before the trial court or on appeal) of actual medical expenses she incurred because of an injury to her son. She presents no actual evidence in the record supporting such a claim in any way. Plaintiff's Petition for Rehearing only vaguely refers to the depositions of Plaintiff and Chet Williams, which are not themselves part of the record and are not quoted in support of Plaintiff's Petition for Rehearing. Plaintiff does not identify any specific, actual testimony from any witness establishing that she incurred recoverable medical expenses under the law. She does not cite to any record evidence showing that she has sustained medical expenses for which she may seek and obtain recovery. She does not provide any invoices or payment records, although The Citadel requested such information in discovery. Plaintiff's only reference in this appeal to medical expenses is a footnote in Plaintiff's Brief, without any competent evidentiary support or detail.

Even granting Plaintiff the benefit of every doubt, she has not presented evidence of the details of her claimed medical expenses. She has not presented evidence of the amount claimed. She does not present evidence of whom she paid for these alleged expenses. She does not provide any cancelled checks, invoices, receipts or other documentation of payment. She has not presented evidence detailing what treatment corresponds with any claimed medical expenses. She has not presented any evidence to causally tie any medical expenses to the abuse of her son. The Citadel requested details of Plaintiff's medical expenses, and Plaintiff detailed various aspects of damages that she was claiming. When she detailed her damages, Plaintiff did not provide any specificity about any claimed medical expenses. (*See* R. pp. 0908-09 ¶ 10; R. pp. 0911-12 ¶ 16; and R. pp. 0922-23). In fact, Plaintiff's only reference to medical expenses in this appeal did not cite to any actual record evidence supporting this claim. At no time during this case has Plaintiff made a clear effort to prove entitlement to damages for medical expenses.

It is clear that Plaintiff did not bring this case to recover medical expenses, but rather to recover for the loss of companionship and society of her son. For the foregoing reasons, this Court should deny Plaintiff's Petition for Rehearing.

### **III. This Court, in a Recent Published Opinion, Has Put to Rest Plaintiff's Outrage Claim**

Plaintiff argues that the court erred in affirming the entry of summary judgment as to Plaintiff's outrage claim. However, a recent published opinion from the same panel of this Court in another case involving sexual abuse by ReVille conclusively defeats Plaintiff's outrage claim. Specifically, this Court held in *Doe 2 v. The Citadel*, \_\_\_ S.E.2d \_\_\_, Op. No. 5504 (Ct. App. Aug. 2, 2017), that .

Under South Carolina law, outrage claims are limited to a defendant's egregious conduct toward a plaintiff. *Upchurch v. N.Y. Times Co.*, 314 S.C. 531, 536, 431 S.E.2d 558, 561 (1993). "It is not enough that the conduct is intentional and outrageous. It must be directed at the plaintiff, or occur in the presence of a plaintiff of whom the defendant is aware." *Id.* (emphasis added).

In the instant case, while The Citadel's failure to notify law enforcement of ReVille's alleged abuse in 2007 is highly lamentable, Doe did not present any evidence that The Citadel directed any tortious conduct specifically toward him. Indeed, The

Citadel was unaware of Doe's very existence prior to the commencement of this lawsuit. Accordingly, we uphold the circuit court's finding on this issue.

Similarly, in this case, there is no evidence whatsoever that The Citadel did anything *directed at* Plaintiff. To the contrary, it is undisputed that The Citadel was unaware of Mother Doe A's existence prior to the filing of this case. Therefore, the Opinion correctly affirmed the entry of summary judgment as to Plaintiff's outrage claim.

For the foregoing reasons, this Court should deny Plaintiff's Petition for Rehearing.

**IV. The Court's Opinion Correctly Affirmed the Grant of Summary Judgment on Plaintiff's Conspiracy Claim**

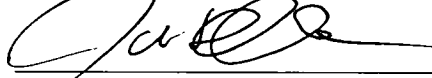
The Citadel's Final Brief of Respondent set forth multiple of reasons why the trial judge properly granted summary judgment as to Plaintiff's civil conspiracy claim, which are incorporated herein by reference. (See The Citadel's Final Brief of Respondent, at 31-32). With regard to the argument made in Plaintiff's Petition for Rehearing, The Citadel posits that the South Carolina Tort Claims Act prohibits claims against The Citadel arising out of conduct that "constitutes . . . *actual malice, [or] intent to harm.*" See S.C. Code § 15-78-60(17) (emphasis added). Plaintiff's conspiracy claim, by its very nature, requires that she prove a combination "for the purpose of injuring the [P]laintiff." See *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989). As a result, the Tort Claims Act plainly bars Plaintiff's conspiracy claim.

For the foregoing reasons, this Court should deny Plaintiff's Petition for Rehearing.

**CONCLUSION**

For the foregoing reasons, this Court should deny Plaintiff's Petition for Rehearing and affirm its opinion affirming the trial judge's grant of summary judgment to The Citadel.

Respectfully submitted,



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*Attorneys for Respondent The Citadel*

Dated: August 4, 2017  
Charleston, South Carolina

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PROOF OF SERVICE

I certify that I have served the Return to Petition for Rehearing on Appellant Mother Doe A by depositing the requisite number of copies of it in the United States Mail, postage prepaid, on August 4, 2017, addressed to their attorneys of record, Allan P. Sloan, III, Esq. and Gregg Meyers, Esq., Pierce, Hems, Sloan & Wilson, LLC, 321 East Bay St., Charleston, SC 29401.

  
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M. Dawes Cooke, Jr.  
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August 4, 2017

Honorable Jenny Abbott Kitchings  
Clerk of Court  
S.C. Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

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**SC Court of Appeals**

RE: Mother Doe A v. The Citadel  
Case No.: 2015-001920

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondent The Citadel, The Military College of South Carolina's Return to Petition for Rehearing in the above-referenced matter. Please file the original and six (6) copies and return a file-stamped copy to us in the envelope provided for your convenience. By copy of this letter to them, we are serving a copy of the Return upon counsel for Appellant.

Sincerely,

A handwritten signature in black ink, appearing to be "JWF", written over a horizontal line.

John W. Fletcher

JWF/jgc  
Enclosures

cc: Gregg E. Meyers, Esquire (w/enclosure)  
Allan P. Sloan, III, Esquire (w/enclosure)

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REPRESENTING CLIENTS IN ALL COURTS IN SOUTH CAROLINA AND NORTH CAROLINA AND IN THE UNITED STATES PATENT AND TRADEMARK OFFICE