

The State of South Carolina
In The Supreme Court

Appeal from Charleston County
Hon. R. Markley Dennis, Jr., Circuit Court Judge
Unpublished Opinion 2017-UP-282
Circuit Court Case No. 2011-CP-10-9200

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OCT 23 2017

SC Court of Appeals

Appellate Case No. 2015-001920

Mother Doe A, Petitioner

v.

The Citadel Respondent

Petition for Writ of *Certiorari*

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Of Counsel, Pierce Hems Sloan & Wilson LLC
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Attorney for Appellant-Petitioner Mother Doe A

Other Counsel of Record:

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Attorney for Respondent The Citadel

INDEX

Certificate of Counsel1

Question Presented.....1

Grounds for Petition.....1

Statement of the Case.....2

Arguments.....4

THE COURT OF APPEALS ERRED IN FAILING TO RECOGNIZE THE COMMON
LAW LOSS OF SERVICES CLAIM AND THAT ITS SCOPE INCLUDES BOTH
TANGIBLE AND INTANGIBLE INJURY.4

Conclusion5

Certification by Counsel

Counsel certifies pursuant to SCACR 242(d) that a Petition for Rehearing was made and finally ruled on by the Court of Appeals by an order dated September 21, 2017.

Question Presented for Review

For more than five hundred years, the common-law provided a parent with a Loss of Services cause of action for the parent's own injury when her child is injured. Did the Court of appeals err in:

1. Confusing Loss of Services with a claim not stated in the pleadings and concluding that South Carolina "does not recognize a cause of action for loss of the child's consortium."?
2. Construing the evidentiary standard applicable to the mother's tangible and intangible damages was "unappealed" when it is argued in the brief?
3. Failing to consider the recklessness standard for an outrage claim? And
4. Failing to consider that the harm to the child of Mother Doe A was a "natural and foreseeable consequence" of the Citadel's deliberate conduct to conceal information it had gathered in its own investigation that the pedophile had a sexual interest in boys?

Grounds for the Petition

This Petition presents four independent grounds, any one of which supports the Court granting review.

(1) The Petition presents novel questions of law about the ancient common law cause of action known as Loss of Services.

(2) The decision of the Court of Appeals purports to overrule a series of South Carolina cases which have recognized Loss of Services. E.g., *Doe v. Greenville Hospital System*, 448 S.E.2d 565, 565 (S.C. App. 1994) (father's claim for "loss of custody, companionship, and service of his daughter"); *Stewart v. State Farm Mut. Auto Ins. Co.*, 533 S.E.2d 597 (S.C. App. 2000) (separate claim recognized for parent after injury to child). It also appears to conflict with the recent decision in *Patton v. Miller*, 804 S.E.2d 252 (S.C. 2017), allocating between parent

and child the capacities of each to claim various expenses before and after majority).

(3) The petition would enable to court to clarify the proper scope of *Doe v. Greenville County School District*, 651 S.E.2d 305 (S.C. 2007), which rejected a parent’s claim for injury to a child because it was pled as a loss of consortium claim and not, as this claim was pled, a loss of services claim. 651 S.E.2d at 308 – 309 (“not a claim for loss of services”).

Statement of the Case

Petitioner’s male child was sexually abused after 2007 by former Citadel employee Louis “Skip” Reville. In April, 2007, The Citadel’s general counsel had investigated a complaint that in 2002 Reville had sexually abused other children. The Citadel concluded the complaint was credible. The 2007 complainant had specifically asked The Citadel to take action to stop Reville from abusing other children.

Rather than report Reville to law enforcement, child protective services, or its own Title IX Coordinator, The Citadel officials took affirmative steps to alert Reville to the 2007 complaint, advised him to “lie low,” and placed none of the 2007 complaint information in Reville’s Citadel employment file.

It is contended these affirmative acts by The Citadel were reckless, as Reville was able to trade on his Citadel reputation to gain employment as a tennis and basketball instructor in Mt. Pleasant, S.C., which gave Reville access, at different times, to abuse on multiple occasions the child of Mother Doe A.

Mother Doe A brought civil action 2011-CP-10-9200, styled Mother Doe A v. The Citadel et al.. A mother and father brought civil action 2013-CP-10-10330, styled John Doe 201 and Jane Doe 201 v. The Citadel. The parties have stipulated that this appeal also presents similar issues for the parents of another family whose child was also abused by Reville after 2007, the only difference being the out of pocket damages incurred by the Doe 201 family for

treating their child are more explicit and substantial than those incurred by Mother Doe A. The Doe 201 parents alleged, “The 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”

As to Mother Doe A, the trial court found that Mother Doe A had not claimed medical expenses. Order at 11. In fact, Mother Doe A testified to having incurred costs for medical expenses. E.g., Exhibit 32, Mother Doe A Dep. at pages 105, 106, 108, 112, 114, 115, 174; Exhibit 1, the trial designations from the Dep. of Chet Williams, the mental health professional who treated Mother Doe A’s son. That testimony was submitted to the trial court. Viewed favorably to the plaintiff, the testimony must be assumed to be true.

After the parties had selected a jury for the trial in Mother Doe A v. The Citadel, the trial court reversed his previous order that had denied The Citadel’s motion for summary judgment, and the court granted the motion. The parties stipulated that the outcome of this case determines the outcome of Doe 201 v. The Citadel, which is reflected in the Rule 59 motion that was filed in 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.”). When that Rule 59 motion was denied, this appeal followed.

The Court of Appeals affirmed, determining (despite the pleadings claiming Loss of Services in each case), that no claim existed under South Carolina law for loss of filial consortium. No ruling was made on the recklessness allegations. A petition to rehear was denied.

Argument in Support of the Petition

THE COURT OF APPEALS ERRED IN FAILING TO RECOGNIZE THE COMMON LAW LOSS OF SERVICES CLAIM AND THAT ITS SCOPE INCLUDES BOTH TANGIBLE AND INTANGIBLE INJURY.

The Court of Appeals affirmed the trial court's construction of *Doe v. Greenville County School District*, 651 S.E.2d 305 (S.C. 2007) (hereafter, *Doe v. GCSD*), as precluding a claim for Loss of Services.

The Court should grant the Petition so as to clarify the confusion and historically inaccurate *dicta* in former Chief Justice Toal's opinion in *Doe v. GCSD*, a case which the opinion found did not allege a common law "loss of services" claim. (*Compare*, 651 S.E.2d at 308, "South Carolina law does not recognize claims for loss of filial consortium" *with* 651 S.E.2d 309: complaint did "not claim for loss of services.")

The dicta are historically inaccurate. The dissent in *Doe v. GCSD*, by Justice Pleicones, was historically correct. A parent's right to assert claims for their own injuries after their child is injured, including injuries from sexual assault, was recognized as early as 1653. E.g., *United States v. Standard Oil*, 332 U.S. 301, 311-312 and n.17, 67 S.Ct. 1604, 1610 and n. 17 (1947) (tracing to 1653 the Common Law Right of "the parent's right to indemnity for loss of a child's services, including his action for a daughter's seduction."⁸ Compare also, *Webb v. Southern Ry. Co.*, 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); *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); *Berry v. Myrick*, 194 S.E.2d 240, 242 (1973) ("loss of services or consortium is an immediate rather than a delayed consequence of the defendant's negligence or wrongful act causing physical injury to plaintiff's spouse, *child*, or employee . . .,"

quoting, 173 A.L.R. 755, When Statutes of limitations Begin to Run Against Action for Loss of Services or Consortium, emphasis added.

That something has a pedigree of more than five centuries is not of itself a reason to continue it. But the 1712 Reception Statute 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.

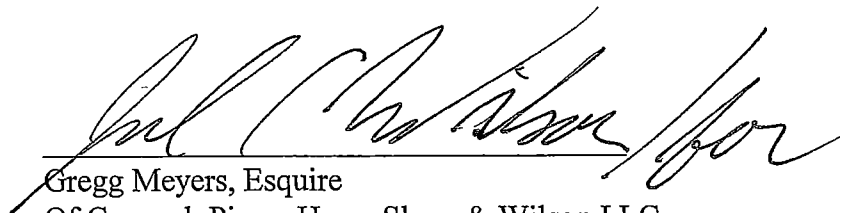
S.C. Code § 14-1-50 (1976). *See also*, *State v. Charleston Bridge Co.*, 101 S.E. 657, 660 (1919) (the reception statute is “declaratory in its nature” in directing South Carolina courts to be guided by the principles of the settled common law from England. *Accord*, *Pond Place Partners, Inc. v. Poole*, 567 S.E.2d 881, 891 (Ct. App. 2002).

Overturing the Court of Appeals would align the courts with the legislature to the extent of the Tort Claims Act, as the parent’s independent injury when his or her child is injured is explicitly recognized 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 (S.C. 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.”).

Conclusion

The Petition should be granted to enable the Court of Appeals decision to be reviewed and reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregg Meyers", is written over a horizontal line.

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October 20, 2017

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SC Court of Appeals

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Re: Petition For Writ of Certiorari
Mother Doe A v. The Citadel
Circuit Court Case No. 2011-CP-10-9200
Appellate Case No. 2015-001920
PHSW File No. P2399.00

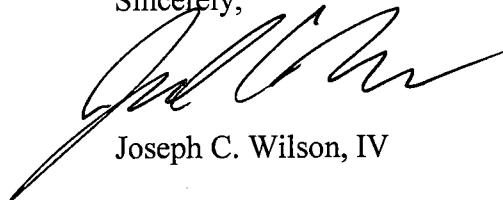
Dear Ms. Kitchings:

Enclosed for filing please find a a copy of Plaintiff Mother Doe A's Petition for Writ of Certiorari and Proof of Service.

By copy of this letter and enclosure, I am serving Defendant's counsel with same.

With kind regards, I am

Sincerely,



Joseph C. Wilson, IV

JCWIV/mkg
Enclosures as stated
M. Dawes Cooke, Jr., Esquire (w/ encl.)

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