THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

Carmen T. Mullen, Judge, 14th Judicial Circuit

Trial Court Case No. 2015-CP-07-01147/Appellate Case No. 2017-001492

Darrell J. Alston, Jr. and Mabel L. Alston, Appellants,

v.

Beaufort County School District and South Carolina High School League, Defendants, of which South Carolina High School League is Respondent.

APPELLANTS' FINAL BRIEF

LAW OFFICE OF BRUCE R. HOFFMAN, LLC,
BY: BRUCE R. HOFFMAN,
Attorney for Plaintiffs/Appellants
574 Sea Island Parkway
Saint Helena Island, SC 29920
(843) 838-5290

Appellants' Final Brief

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

STATEMENT OF THE CASE

Plaintiff Darrell J. Alston, Jr. (hereafter Darrell), then a minor, sustained serious physical injuries on May 13, 2013 when the Defendants South Carolina High School League (hereafter SCHSL) and Beaufort County School District (hereafter BCSD) allowed him to play high school football without parental permission and without a physical examination clearance, despite their own rules requiring same (R12-16, 133-135, 157, 171-342). The Defendants have admitted that Darrell was allowed to play without this parental permission and without this physical examination clearance (R28-32). As a result (cause he, a minor, never should have been allowed on the field by the adults, coaches, that were supposed to be taking care of him), while running the ball, Darrell was tackled high and low, and the ACL and meniscus in his right knee was torn (R12-16, 160).

To date, Darrell has undergone two surgeries in an attempt to fix the damage that was done (R103-106), with pain and suffering and inability to do sports, ROTC, and other activities he could do previously (R169). Also, Darrell's goal after graduation from high school was to join the Air Force, but he has been prevented from doing so by these knee injuries (R104, 155, 164-165).

His mother, Plaintiff Mabel L. Alston (hereafter Mabel), also suffered and continues to suffer physical, mental and emotional injuries as a result of seeing her only son severely injured on the football field when she had specifically told him he could not play football and had purposely not taken him for the required physical for football, and by his surgeries and pain and suffering afterwards plus the loss of his dream to be in the Air Force (R103-106).

On May 11, 2015, Plaintiffs Darrell and Mabel sued Defendants SCHSL and BCSD for their damages, based on the foregoing (R12-16). On April 11, 2017, The Honorable Carmen T.

Mullen heard Motions for Summary Judgment by Defendants SCHSL and BCSD (R35-139). On April 17, 2017, Judge Mullen denied the BCSD summary judgment motion, but granted the SCHSL summary judgment motion, by a Form 4 order with no explanation whatsoever why she was granting the SCHSL summary judgment motion despite the myriad fact issues in the case (R6-8, R343-382).

On April 27, 2017 Plaintiffs made a Rule 59(e) motion, seeking reconsideration of the order granting SCHSL summary judgment, or at least the basis for the granting of the SCHSL motion (inconsistent with denying the BCSD motion) so Plaintiffs could seek appellate review if appropriate (R140-141, 142-143). On June 7, 2017 signed a Form 4 order, received on June 8, 2017, denying the Rule 59(e) motion without a hearing, again with no explanation whatsoever of her reasons therefore (R9-11). This appeal followed on July 6, 2017.

STATEMENT OF ISSUES ON APPEAL

1. Did Judge Mullen err in granting Defendant SCHSL's Motion for Summary Judgment?
2. Did Judge Mullen err in failing, despite requests, to provide any explanation whatsoever for her April 17, 2017 order granting Defendant SCHSL summary judgment or her June 7, 2017 order denying Plaintiffs reconsideration or an explanation for same, thereby adversely affecting Plaintiffs' appeal rights?

ARGUMENT

MYRIAD GENUINE ISSUES OF MATERIAL FACT IN THIS CASE AS TO SCHSL REQUIRING JURY TRIAL, SUMMARY JUDGMENT NEVER SHOULD HAVE BEEN GRANTED TO THEM

Objectively, if the record is carefully reviewed, there are multitudinous issues of fact in this case as to SCHSL, any one of which should have resulted in their all or nothing summary judgment motion being denied (R28-32, 37, 103-106, 127-139, 140-382). Plaintiffs were not required to prove their case, they were only obliged to show one genuine issue of material fact, and they

most certainly did that (R28-32, 37, 103-106, 127-139, 140-382). And on appeal from summary judgment, the reviewing court must likewise consider the facts and inferences in the light most favorable to the nonmoving party. The judgment may be affirmed only if there is no genuine issue of material fact. Trivelas v. SCDOT, 550 SE2d 324 (2001).

By their own pronouncements (R29, 133-135), and as confirmed by the holding in Bruce v. South Carolina High School League, 189 SE2d 817 (1972), Defendant SCHSL is in complete control of high school football in the State of South Carolina, responsible both for their own grossly negligent monitoring, supervision and training of a member school, but also responsible as principal for the grossly negligent acts of their agent Defendant BCSD, a member of SCHSL (R28-29, 127-139, 142-143). This alone creates myriad fact questions for a jury, not for a Judge to decide on summary judgment. It is hornbook law besides SCHSL being liable for their own gross negligence, or at least there being a jury question on this issue, they are jointly and severally liable as principal for the grossly negligent acts of their agent, BCSD (who they had the right, duty or ability to control), committed in the course and scope of the agency. See, e.g. Morrow v. Fundamental Long Term Care Holdings, 773 SE2d 144 (2015). If you claim to be in total control of an activity, and something goes awry like here in an activity over which you claim to be in total control, how could you not be responsible or at least how could there not be a jury question if you are responsible? With this in mind, genuine issues of material fact in this case as to SCHSL, which must be resolved by a jury not by a judge on summary judgment, include:

1) BCSD, AGENT OF PRINCIPAL SCHSL, LETTING A MINOR PLAY HIGH SCHOOL FOOTBALL WITHOUT REQUIRED PARENTAL PERMISSION AND A PHYSICAL EXAMINATION, AND THIS IS UNDISPUTED, WHO GOT SERIOUSLY INJURED AND NOW HIS HOPES FOR A MILITARY CAREER, FOLLOWING ROTC IN HIGH SCHOOL, ARE IN JEOPARDY, CLEARLY WAS GROSS NEGLIGENCE OR AT LEAST THERE ARE MULTIPLE FACT QUESTIONS FOR THE JURY QUESTION ON THE ISSUE

2) FOR SEPARATE DAMAGES TO DARRELL J. ALSTON, JR. AND MABEL L.

ALSTON FOR SOUTH CAROLINA HIGH SCHOOL LEAGUE'S GROSS NEGLIGENCE IN MONITORING, TRAINING AND SUPERVISING A SPORT THEY CLAIM TO HAVE COMPLETE CONTROL OVER, AND

3) FOR SEPARATE DAMAGES TO DARRELL J. ALSTON, JR. AND MABEL L. ALSTON FOR BEAUFORT COUNTY SCHOOL DISTRICT'S GROSS NEGLIGENCE IN, AS ADMITTED (FOR WHICH SCHSL IS ALSO LIABLE AS PRINCIPAL FOR THE GROSS NEGLIGENCE OF ITS AGENT, BCSD), LETTING A MINOR PLAY HIGH SCHOOL FOOTBALL WITHOUT PARENTAL PERMISSION AND A PHYSICAL EXAMINATION, OR AT LEAST THERE ARE AGAIN MULTIPLE FACT QUESTIONS FOR THE JURY ON THESE ISSUES

4) SCHOOL ADMINISTRATIVE BODIES UNDERTAKING CARE OF MINORS PARTICIPATING IN HIGH SCHOOL SPORTS SUBJECT TO HIGHEST DUTY OF CARE, IN LOCO PARENTIS, AND THUS LOWER STANDARDS FOR CAUSATION (IF IT WAS FORESEEABLE AND PREVENTABLE) AND GROSS NEGLIGENCE, NOT MERE REASONABLE PERSON STANDARDS.

5) NOT CHECKING AND NOT EFFECTIVELY TRAINING, SUPERVISING AND MONITORING THE CHECKING OF WHETHER A MINOR PARTICIPATING IN FOOTBALL HAD PARENTAL PERMISSION AND A PHYSICAL EXAM CLEARANCE, TWO MOST FUNDAMENTAL THINGS, WITH SERIOUS KNEE INJURY AS A CONSEQUENCE, NOT SIMPLE NEGLIGENCE OBVIOUSLY GROSS, RIDICULOUS NEGLIGENCE BORDERING ON CRIMINAL BY PROFESSIONALS CAUSING A COMPLETELY FORESEEABLE AND PREVENTABLE INJURY, AND DOES NOT MATTER IF THIS MINOR WAS EGGSHELL PLAINTIFF OR NOT, WHICH THEY DIDN'T CHECK ANYWAY, ALL THESE MATTERS PRESENTING FACT QUESTIONS FOR THE JURY, NOT FOR A JUDGE TO SUMMARILY DECIDE, DEPRIVING PLAINTIFFS OF THEIR RIGHT TO TRIAL BY A JURY OF THEIR PEERS.

On this issue of proximate cause, if Defendants had acted as they should have, particularly with a minor, Plaintiff Darrell never would have practiced, never would have been injured, none of this ever would have happened but for what Defendants' did/didn't do here, so of course their gross negligence is proximate cause, their gross negligence created the circumstances which caused the damages to occur, set the situation into motion, see Schmidt v Courtney, 592 SE2d 326 (2003). Under rule S.C.R.CIV.P. 56(c), summary judgment may be rendered 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 Spencer v. Miller, 192 S.E.2d 863 (1972). Additionally, it must be shown by the moving party that further inquiry into the facts of the case is not

desirable to clarify the application of the law. Abrams v. Wright, 202 S.E.2d 859 (1974) and such is absolutely not the case here.

In ruling upon a motion for summary judgment, the hearing judge must construe all ambiguities, conclusions, and inferences arising in and from the evidence most strongly against the moving [290 S.C. 197] party. Tom Jenkins Realty, Inc. v. Hilton, 300 S.E.2d 594 (1983). see also Laurens Emergency Med. Specialists, 355 S.C. at 108, 584 S.E.2d at 377 (stating that in reviewing summary judgment motion, facts and circumstances must be viewed in light [357 S.C. 317] most favorable to non-moving party). If ANY triable issues exist, those issues must go to the jury. Baril v. Aiken Reg'l Med. Ctrs., 573 S.E.2d 830 (Ct.App.2002); Young v. South Carolina Dep't of Corrections, 511 S.E.2d 413 (Ct.App.1999).

Many South Carolina cases point out summary judgment is a "drastic remedy" which should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. Cunningham v. Helping Hands, Inc., 575 S.E.2d 549 (2003); Lanham v. Blue Cross & Blue Shield, 563 S.E.2d 331 (2002); Conner v. City of Forest Acres, 560 S.E.2d 606 (2002); Redwend [592 S.E.2d 319].Ltd. P'ship v. Edwards, 354 S.C. 459, 581 S.E.2d 496 (Ct.App. 2003); Baril v. Aiken Reg'l Med. Ctrs., 352 S.C. 271, 573 S.E.2d 830 (Ct.App.2002); Trivelas v. South Carolina Dep't of Transp., 348 S.C. 125, 558 S.E.2d 271 (Ct.App.2001); Murray v. Holnam, Inc., 344 S.C. 129, 542 S.E.2d 743 (Ct.App.2001); McNair v. Rainsford, 330 S.C. 332, 499 S.E.2d 488 (Ct.App. 1998).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Lanham, 349 S.C. at 362, 563 S.E.2d at 333; Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000); Mosteller v. County of Lexington, 336 S.C. 360, 520 S.E.2d 620 (1999); Redwend Ltd. P'ship, 354 S.C. at 468, 581 S.E.2d at 501; Baril, 352 S.C. at 280, 573 S.E.2d at 835; Trivelas, 348 S.C. at 130, 558 S.E.2d at

273; Hall v. Fedor, 349 S.C. 169, 561 S.E.2d 654 (Ct.App.2002); Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 559 S.E.2d 327 (Ct.App.2001); Bayle v. South Carolina Dep't of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct.App.2001); Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 518 S.E.2d 301 (Ct.App.1999); Middleborough Horizontal Prop. Regime Council v. Montedison, 320 S.C. 470, 465 S.E.2d 765 (Ct.App.1995).

Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Redwend Ltd. P'ship, 354 S.C. at 468, 581 S.E.2d at 501; Baril, 352 S.C. at 280, 573 S.E.2d at 835; Hall, 349 S.C. at 173-74, 561 S.E.2d at 656; Glasscock, Inc. v. United States Fid. & Guar. Co., 348 S.C. 76, 557 S.E.2d 689 (Ct.App.2001); Stewart v. State Farm Mut. Auto. Ins. Co., 341[592 S.E.2d 320] S.C. 143, 533 S.E.2d 597 (Ct.App.2000); see also Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers, 355 S.C. 104, 584 S.E.2d 375 (2003) (noting that summary judgment should not be granted even when there is no dispute as to evidentiary facts, if there is dispute as to conclusions to be drawn therefrom).

Because these are negligence claims, it is important to note that, "[g]enerally, negligence claims are not susceptible of summary adjudication because of the many questions normally present in such cases concerning the reasonableness of a party's conduct, foreseeability, and proximate cause." Folkens v. Hunt, 290 S.C. 194, 199, 348 S.E.2d 839, 842 (Ct.App. 1986). This also applies to gross negligence claims. As noted by our Supreme Court in Bryant v Babcock Center, 638 SE2d 650 (2006) "in most cases, gross negligence is a factually controlled concept whose determination best rests with the jury." The standard of care here, with school administrators and a minor involved, is higher, not just a reasonable person standard, but in loco parentis, in place of the parents, like a fiduciary duty of care, and the higher the standard of care the lower the threshold here for gross negligence, e.g., Stanley v Gary, 116 SE2d 843 (1960). Likewise, the question of proximate cause is ordinarily for the finder of fact, here the jury. Ballou v Sigma Nu,

352 SE2d 488 (1986).

As stated above, the BCSD motion for summary judgment also heard on April 11, 2017 was denied (R6-8). Further, two summary judgment motions by Plaintiff were also denied, one in October 2015 and one in April, 2017 (R1-5, 6-8). If the Court found fact questions on three other summary judgment motions, it respectfully makes no logical sense for a fourth one involving the same parties, same facts, same allegations, to have been granted, that was a completely inconsistent ruling, an error that must be reversed. Further, SCHSL had also previously made a motion for summary judgment in August, 2015, that was denied on October 8, 2015 (R1-5), meaning that Judge Mullen's order on April 17, 2017 granting them summary judgment was also inconsistent with a previous ruling by the same Court. If that Judge in 2015, Judge William P. Keesley, in an actual written opinion, thought there were trial issues of fact regarding SCHSL, how and why, on basically the same showing, would Judge Mullen find there weren't any, not one, in 2017, without any explanation whatsoever for her inconsistent ruling from Judge Keesley's reasoned opinion (R1-5, 6-8, 9-11). Her error/abuse of her discretion needs to be reversed.

Defendant South Carolina High School League (SCHSL) in the trial court cited § 15-78-60(4) in support of their motions for summary judgment, which excepts from their waiver of immunity for: adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies. But as the SCHSL claims to closely train, monitor and supervise the member high schools and the participating students (R29, 133-135), and if this training, monitoring, supervision goes seriously awry as it did here, was so obviously not effective, that's a failure to properly monitor and supervise others, not a failure by the entity to adopt, enforce or comply itself, so SC Code 15-78-60(4) does not apply here.

The point is that with a young man's future involved, who now works in a kitchen instead of his dream of Air Force service (R131), summary judgment should never have been entered in favor of SCHSL, particularly without any explanation of why, this matter must go to a jury.

The Beaufort County School District (BCSD), agent of SCHSL, for whom SCHSL is responsible as principal, was objectively, ridiculously negligent, GROSSLY NEGLIGENT, not merely careless, in, as they have admitted, allowing a minor to get seriously injured playing high school football without parental permission and without a physical examination, blatant violation of their own rules (R29, 133-135), and the SCHSL, which says in its own operating documents it monitors, supervises and oversees high school football in the State (R29, 133-135), to among other things, make sure its member schools follow the eligibility rules, was thus also ridiculously negligent, GROSSLY NEGLIGENT, not merely careless, in their so obviously ineffective monitoring, supervision, oversight of the BCSD, i.e. if the School District was grossly negligent in their actions, then the SCHSL was grossly negligent in their monitoring, supervision, oversight of these actions, keeping in mind the higher duty (in loco parentis)/reduced causation and gross negligence standards, both school administrative bodies have in ensuring minors at schools are safe, at which both bodies here failed horribly, a systematic breakdown of the processes supposedly in place, failure to exercise any care, to make any effort to correct these systematic deficiencies…or at the very least there are jury questions presented on all these issues.

Exposing a minor to what happened in this case borders on the criminal. The BCSD failed recklessly, indifferently to follow the rules, objective gross negligence, and the SCHSL undertook the duty to make sure the rules were being followed, and they did not do that either. Between this minor victim and these school bodies, any doubt whatsoever has to be resolved in favor of the minor victim, particularly with so many things being fact questions for a jury not the Court to decide. If anyone should have been granted summary judgment it was Plaintiffs, but

certainly not SCHSL without explanation given the circumstances.

Before allowing a minor to play high school football, a dangerous activity, there is nothing else more important than these two things, parental permission and a physical exam clearance, and of course Defendants were grossly negligent and not just careless if they failed to do the two most important things involved! This is not his shoulder pads were on wrong, he didn't have the right shoes or socks, his chin strap was hanging down, these were the two most important things these adults who were responsible for this minor had to do, and they didn't do it! For them to try to blame the minor, or try to say this was just careless, not reckless disregard for the safety of the minor in their care, is just outrageous.

SCHSL was grossly negligent in its monitoring and supervising of the Beaufort High School (BHS) football program, which program was grossly negligent (objectively not subjectively) in allowing a minor to play high school football without parental permission and a physical examination clearance. The minor cannot be blamed in any way for what he did or didn't do, which both entities are trying desperately to do, and the parental permission and physical examination clearance being required by the written rules of both entities, the failure to obtain both is objective gross negligence, not subjective.

Also, as to SCHSL, exceptions in statutes are to be construed strictly not broadly (see, e.g. Davenport v. Summer, 259 SE2d 815 (1979)), so any doubt as to the application of an exception to the waiver of immunity will be against such an exception, and here there is doubt, as gross negligence in monitoring and supervising, or for the acts of their agent, is not specifically mentioned in the statute. The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded. Exceptions strengthen the force of the general law and enumeration weakens it as to things not expressed. Riverwoods, LLC v. County of Charleston, Op. No. 25462 (S.C. Sup. Ct. filed May 6, 2002) (Shearouse Adv.

Sh. No. 14 at 58, 64) (quoting Hodges v. Rainey, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000)).

Although the SCHSL does make and enforce policy, as well as rules and regulations, that is not what is at issue here, they also train, monitor, supervise, oversee and are closely involved with the member high schools (their agents) and participating students, as evidenced by the following statements excerpted from their own governing documents (R29, 133-135), all of which applies here and is outside the scope of 15-78-60(4):

In the SCHSL Constitution (plus see Bruce v. South Carolina High School League case, 189 SE2d 817 (1972) which makes clear the complete control SCHSL has over high school sports in this State, even the Court in that case could not interfere):

Pg. 3/A-3: "Article II – Mission Statement – The mission of the South Carolina High School League is to provide governance and leadership for interscholastic athletic programs that promote, support, and enrich the educational experience of students."

Pg. 3/A-3: "Article III – Purpose Statement - … develop and direct a program which will promote, protect and conserve the health and physical welfare of all participants …"

Pg. 3/A-3: "Article IV – Belief Statement – We believe the South Carolina High School League, governed by its member schools, is the recognized state authority on interscholastic athletic programs."

Pg. 4/A-4: "Article V – Membership. Public high schools … agrees to conform to the rules and regulations of the league …"

Pg. 12/A-12: "Section 2. Birth Certification. (A) Schools shall have on file a copy of an official birth document for all student athletes. Any questions on authenticity will be submitted to the League office." *Speaks to oversight.*

Pg. 17/A-17: "Section 9. Transfers. (5) … when there is doubt, the principal should present all facts to the League office. The League office will decide on each case individually, considering the facts of each case." *Speaks to oversight/involvement.*

Pg. 20/A-20: "Section 16. Certificate of Eligibility and Other Forms. Eligibility is the responsibility of the principal. If in doubt about eligibility, the case should be presented in writing to the League Commissioner … Fine $50 …" *Speaks to supervising.*

Pg. 21/A-21 **: "Eligibility forms … a parents permission record properly filled out and a physical form properly completed by a licensed medical doctor or a certified physician's assistant … (1) These forms must be on filed for all participating students regardless of level of

competition; (2) Forms can be found on the League website; (3) A physical examination is valid from April 1 of the current school year through the following school year; **(F) Schools who violate any of the preceding sections of this Article shall be subject to a fine of not less than $25.00 and not more than $2,500.00, and/or suspension for not more than one calendar year."

Pg. 25/A-25: Schools pay dues to SCHSL and an initiation fee. *Speaks to financial involvement - can't get money and set all the rules and then deny responsibility when things go horribly wrong as here.*

Pg. 26/A-26: SCHSL receives a percentage of the gross gate receipts from events. *Speaks to financial involvement.*

Pg. 30/A-30: "9. Violations of any of the above policies will warrant League discipline for the school or individual." *Speaks to setting and enforcing rules.*

Pg. 41/A-41: "Fine of $2,500 if ineligible plays."

Pg. 44/B-3: "Rules and Regulations for Athletic Contests Sponsored by SCHSL 2012-2013. No. 6. Never allow a student to practice without having a Parent's Permission Form, Physical Examination Form, and Insurance Coverage."

Pg. 119/B-78: "Athletic Officials Association. Certified officials, registered and approved by the League office, must be used in all varsity football contests." *Speaks to supervisory involvement.*

Pg. 119/B-78: "Booking. The Booking Office for football and basketball officials is located in the League office ... All associations must abide by the disciplinary action of the Commissioner of the League ... Associations will not book an official that has not be certified. The approval of the League office may be removed ..." *Speaks to supervisory involvement.*

Pg. 123/B-82: "Officials' Clinics and Examinations. The League will conduct clinics in football, ... wrestling ... a testing program approved by the Executive Committee will be administered under the direction of the Commissioner." *Speaks to involvement and supervision.*

"The standard of care in a given case may be established and defined by the common law, statutes, administrative regulations, industry standards, or a defendant's own policies and guidelines." Peterson v. Natl. R.R. Passenger Corp., 618 S.E.2d 903, 906 (2005).

Have expert testimony of Daniel H. Durbin, ED.D (R171-342), former principal of Beaufort High School, that both Defendants are responsible for the injuries and damages sustained (R340), not the Plaintiff nor his mother, that as to both Defendants the School District and the High School League their processes failed, and neither Defendant has presented this Court with any expert testimony of any kind, let alone expert testimony to the contrary.

Further, in the trial court, there were flaws to all the arguments SCHSL made. First, they claim their belief that Plaintiff Darrell would have passed the physical (despite his asthma), but as no physical was administered that is total speculation whether he would have passed or not, and it completely ignores the parental permission side of things (the only thing that matters) and that his mom did not want him to get hurt (ROTC is not a tackle sport, but football certainly is). Also, every inference has to be resolved in favor of the non-moving parties, Plaintiffs, including the inference what would have happened if the physical was done.

Second, SCHSL ignores focusing on what Plaintiffs have contended for years, that their failure to properly and effectively train, monitor and supervise a member school put the minor Plaintiff in a position that he should not have been in, particularly without parental permission and not even caring about football, just wanting to be with his friends (R155). He just never should have been out there that day his knee got torn up, and it is the reckless actions of both BCSD and SCHSL that resulted in him being out there. Regardless, proximate cause is a triable fact question for the jury, as is duty.

Third, as to Dr. Durbin's deposition testimony, SCHSL cherry picks what they deem favorable to them and ignores what was unfavorable. For example, on page 93, Durbin says "I don't think the SCHSL trains their principals very well...But if you were to ask me is the High School League responsible for what goes on on the field, I would have to say yes, it is directly responsible for it because it trains the officials," thereby directly implicating the SCHSL for what happened here.

Likewise on page 159 "We can't blame the minor...We are the adults. We have a responsibility to fulfill that responsibility, and at Page 160, in response to question who to assign blame to, the High School League and the school district, "Someone has to get the blame, something had happened." (R. 340-341) If SCHSL disputes this, fine, that is why we have jury trials, to resolve

disputed issues like the many here.

Fifth, SCHSL mis-cites the Trident case, that is a contract case, not a tort case like here, of course in a tort case Plaintiff Darrell can recover his medical bills. And SCHSL mis-cites the Wright v Colleton County case, it does allow the medical bills of the minor child to be recovered, and further, does allow the mother to recover any medical bills she may have occurred on her own, with there being two caps for the minor's injuries and the mother's injuries, just like should be here. See, Doe v. Greenville County School District, 651 SE2d 351 (2007, mother could recover independently under Tort Claims Act for negligent infliction of emotional distress, just like when Plaintiff Mabel here, saw her son with a torn up knee with ice sitting on a golf cart, having played tackle football without her permission or a physical examination.

SUCCESSIVE FORM 4 ORDERS WITH NO EXPLANATION WHATSOEVER GIVEN FOR ORDERS CONSTITUTE ABUSES OF DISCRETION AND THE ORDERS MUST THEREFORE BE REVERSED

As noted above, Judge Mullen issued a form order granting the SCHSL summary judgment on April 17th, with no explanation whatsoever of why she was making this ruling (R6-8). Then she issued another form order denying Plaintiffs' Rule 59(e) motion on June 7th, received on June 8th, again with no explanation whatsoever for her ruling (R9-11), though the Rule 59(e) had specifically requested an explanation for purposes of appellate review (R141). Such form orders, especially with something as drastic as a summary judgment, is inappropriate. And not knowing the grounds on which summary judgment was granted to SCHSL has adversely impacted this appeal, as it is hard if not impossible to challenge a ruling when you have no idea why it was made. As noted in B&B Liquors v. O'Neill, 603 SE2d 629 (2004):

"On appeal from the grant of summary judgment, an appellate court must determine whether the trial court's stated grounds for its decision are supported by the record. It is our duty to undertake a thorough and meaningful review of the trial court's order and the entire record on appeal. Where, as here, the trial court fails to articulate the reasons for its action on the record or enter a written order outlining its rationale, we simply cannot perform our designated function."

It was further noted recently in Woodson v. DLI Properties, 753 SE2d 428 (2014):

"We agree it is better practice—and in most cases common practice—as well as beneficial to the judicial process for a trial judge to articulate relevant findings and conclusions of law in an order granting summary judgment."

Given that Plaintiffs specifically asked for some explanation in their Rule 59(e) motion, and that request for an explanation was ignored, in another Form 4 order for which also no explanation was given, so clearly not much effort or attention was paid in the granting of such a drastic remedy against a minor, this Court should consider vacating the granting of the summary judgment and remanding the case back to Judge Mullen for further proceedings, to include some reasonable explanation of the basis for her decisions, so Plaintiffs can properly pursue their case/appeal (rather than in the dark, with the ball being hidden, as things stand for Plaintiffs now), or better just reverse and remand for jury trial.

In this regard, it was very recently noted in Lollis v Dutton, SC App. 2017 that:

"When the [circuit court] is vested with discretion, but [its] ruling reveals no discretion was, in fact, exercised, an error of law has occurred. A decision lacking a discernible reason is arbitrary and constitutes an abuse of discretion. As the form orders here reveal the exercise of no discretion, likewise an error of law has occurred and the decision granting SCHSL summary judgment must be reversed for this reason alone, putting aside all the other reasons stated above.

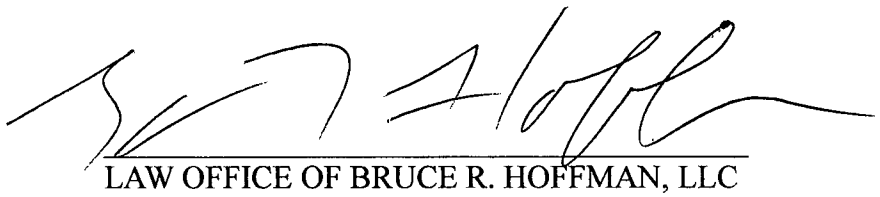
See also, Joiner v. Rivas, 536 SE 2d 372 (2000), "Petitioner first argues the Court of Appeals erred in addressing an issue neither raised to nor ruled on by the family court. We disagree. The Court of Appeals properly concluded procedural rules are subservient to the court's duty to zealously guard the rights of minors. See Ex parte Roper, 254 S.C. 558, 563, 176 S.E. 2d 175, 177 (1970) ('Where the rights and best interests of a minor child are concerned, **the court may appropriately raise, ex mero motu, issues not raised by the parties**.') Galloway v. Galloway, 249 S.C. 157, 160, 153 S.E. 2d 326, 327 (1967) ('The duty to protect the rights of minors has precedence over procedural rules otherwise limiting the scope of review and matters affecting the rights of minors can be considered by this court ex mero motu.') The Court of Appeals therefore did not err in addressing this issue for the first time on appeal." (emphasis added)

CONCLUSION

For all the foregoing reasons, the summary judgment entered in favor of Defendant South Carolina High School League must be reversed, along with such other and further relief provided

as this Honorable Court deems just and proper.

Respectfully submitted,



Dated: June 14, 2018

LAW OFFICE OF BRUCE R. HOFFMAN, LLC
BY: BRUCE R. HOFFMAN,
Attorney for Plaintiffs/Appellants
574 Sea Island Parkway
Saint Helena Island, SC 29920
(843) 838-5290