

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable D. Craig Brown

Appellate Case No. 2019-001235

Dana Mazyck, Guardian Ad Litem for Tyler M., a Minor Child under the age of
fourteen (14)..... Appellant,

v.

Charleston County School District.....Respondent.

RECORD ON APPEAL

Kathleen Chewning Barnes
SC Bar No. 78854
BARNES LAW FIRM, LLC
P.O. Box 897
Hampton, SC 29924
803-943-4529

Tiffany R. Spann-Wilder
SPANN WILDER LAW, LLC
SC Bar No. 15913
Post Office Box 70488
North Charleston, SC 29415
843-266-7792

Attorneys for Appellant

Lisa Reynolds
Thomas F. Drazan
ANDERSON REYNOLDS & STEPHENS, LLC
37 ½ Broad Street
P.O. Box 87
Charleston, SC 29401

Attorneys for Respondent

RECEIVED

MAY 14 2020

SC Court of Appeals

INDEX

	PAGE
Index.....	i
Notice of Appeal, July 26, 2019.....	1
Orders	
Form 4 Order, June 19, 2019.....	2
Order Granting Charleston County School District's Motion to Dismiss, July 3, 2019.....	5
Pleadings	
Summons and Complaint, January 9, 2019.....	10
Petition for Appointment of Guardian Ad Litem, January 9, 2019.....	16
Order Appointing Guardian Ad Litem, January 9, 2019.....	17
Charleston County School District's Answer, Affirmative Defenses and Motions to Dismiss, February 8, 2019.....	18
Plaintiff's Memorandum in Opposition of Defendant's Motion to Dismiss, June 14, 2019.....	24
Exhibit A, Affidavit and Acceptance of Service.....	30
Exhibit B, Affidavits of Service in other actions.....	33
Defendant's Reply to Plaintiff's Memorandum in Opposition of Defendant's Motion to Dismiss, June 13, 2019.....	39
Exhibit A, Order Granting Charleston County School District's Motion to Dismiss.....	45
Exhibit B, Plaintiff's Memorandum in Opposition of Defendant's Motion to Dismiss....	50
Transcript	
Transcript of Hearing on June 14, 2019.....	66
Pleadings in Prior Action (2017-CP-10-1970)	
Summons and Complaint, April 21, 2017.....	84
Charleston County School District's Answer to Plaintiff's Complaint, May 23, 2017.....	90

Charleston County School District’s Memorandum in Support of Motion to Dismiss, April 13, 2018.....	96
Exhibit A, Affidavit of Natalie Ham.....	99
Plaintiff’s Memorandum in Opposition of Defendant’s Motion to Dismiss, April 18, 2018.....	101
Exhibit A, Certified mail return receipt and USPS tracking.....	109
Exhibit B, USPS restricted delivery procedures.....	112
Exhibit C, May 1, 2017 letter.....	115
Order Granting Charleston County School District’s Motion to Dismiss, June 1, 2018.....	117
Certificate of Counsel.....	122

90382

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable D. Craig Brown

Case No. 2019-CP-10-0113

RECEIVED
JUL 24 2019
SC Court of Appeals

Dana Mazyck, Guardian Ad Litem for Tyler M., a Minor Child under the age of 14..... Appellant,

v.

Charleston County School District.....Respondent.

NOTICE OF APPEAL

Dana Mazyck, Guardian Ad Litem for Tyler M., a Minor Child under the age of 14, ("Appellant") appeals the Orders of the Honorable D. Craig Brown filed June 19, 2019, and July 3, 2019, granting Charleston County School District's ("Respondent") motion to dismiss. This Notice is timely filed. A copy of the Orders appealed from are attached to this Notice.

Dated:

July 24, 2019

SPANN WILDER LAW, LLC

By:

Tiffany R. Spann-Wilder

Tiffany R. Spann-Wilder, Bar No. 15913

Post Office Box 70488

North Charleston, SC 29415

843-266-7792

Attorney for Appellant

Other Counsel of Record:

Lisa Reynolds, Esquire

Thomas F. Drazan, Esquire

ANDERSON REYNOLDS & STEPHENS, LLC

37 1/2 Broad Street

P.O. Box 87

Charleston, SC 29401

843-723-0185

Attorneys for Respondent

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2019-CP-10-00141

113

Dana Mazzyck

Charleston County School District

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Attorney Tiffany R. Spann-Wilder appeared on behalf of Plaintiff while Attorney Coleman Lawrimore appeared on behalf of Defendant. After hearing arguments of counsel, review of their submissions and applicable case law, Defendants Motion to Dismiss is hereby Granted. A more formal order is to follow.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

FILED
2019 JUN 19 AM 8:49
JULIE J. ARMSTRONG
CLERK OF COURT

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

D. Craig
Circuit Court Judge

2160
Judge Code

6-14-19
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
Dana Mazyck, Guardian Ad Litem For
Tyler M., A Minor Child Under The Age
Of (14),

Plaintiffs,

vs.

Charleston County School District,

Defendant,

IN THE COURT OF COMMON PLEAS

CASE NO: 2019-CP-10-0113

**ORDER GRANTING CHARLESTON
COUNTY SCHOOL DISTRICT'S
MOTION TO DISMISS
(WITH PREJUDICE)**

2019 JUL -3 PM 3:43
FILED
JUL 11 2019
CLERK OF COURT

This matter came before the Court on Friday, June 14, 2019 for a hearing on Charleston County School District's (hereinafter the "District") Motion to Dismiss based upon the doctrines of *res judicata*, collateral estoppel, and Rules 12(b)(5) and (6), SCRCP. Plaintiff was represented at the hearing by her attorney, Tiffany Wilder-Spann; the District was represented by W. Coleman Lawrimore on behalf of Lisa A. Reynolds. Based upon a review of the Court's file, the arguments of counsel presented at the hearing, and the supporting memoranda and case law provided at the hearing, I make the following findings of fact and conclusions of law.

BACKGROUND FACTS

Plaintiff brought this action under the South Carolina Tort Claims Act for damages allegedly sustained as a result of a fall which allegedly occurred on April 22, 2015 on the playground at Jennie Moore Elementary School in Charleston County, South Carolina. Plaintiff alleges that the minor child, Tyler M., either fell on or off the playground equipment.

The instant matter is the second action involving the above-captioned parties and the April 22, 2015 incident. The first action, C/A 2017-CP-10-1970 (hereinafter "Mazyck I"), was dismissed by Order of The Honorable Roger M. Young, Sr. based upon Plaintiff's failure to properly file and serve the Summons and Complaint in Mazyck I within the Statute of Limitations set forth in the South Carolina Tort Claims.

DPH
1/19/5

Plaintiff neither moved to alter or amend Judge Young's Order, nor appealed from the same. The Court takes notice of Judge Young's Order dismissing Mazyck I, and the findings contained therein.

Plaintiff filed the instant matter on January 9, 2019, approximately six months after the dismissal of Mazyck I. The instant matter involves identical parties and nearly-verbatim allegations. The District filed its Answer and Motions to Dismiss on February 8, 2019.

CONCLUSIONS OF LAW

The District's Motions to Dismiss under Rules 12(b)(5) and (6), SCRCF were based upon the doctrines of *res judicata* and collateral estoppel. In light of the following, the Court grants the District's Motions to Dismiss on those grounds.

Under the doctrine of *res judicata*, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). To establish *res judicata*, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Riedman Corp. v. Greenville Steel Structures, Inc., 308 S.C. 467, 419 S.E.2d 217 (1992). *Res judicata* precludes parties from relitigating issues actually litigated and those that might have been litigated in a prior action. S.C. Dep't of Soc. Servs. v. Basnight, 346 S.C. 241, 249, 551 S.E.2d 274, 278 (Ct. App. 2001).

"Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for failure to join a party under Rule 19, operates as an adjudication upon the merits." Rule 41(b), SCRCF. In applying Rule 41(b), FRCP, which is "the same"¹ as the South Carolina Rule, the United States Supreme Court has found that the rules of finality treat a dismissal on statute of limitations grounds as a judgment on the merits no different than a failure to prove liability or failure to prosecute. Plaut v. Spendthrift Farm, 514 U.S. 211, 228, 115 S. Ct. 1447, 1457 (1995).

¹ See Note to Rule 41, SCRCF.

Collateral estoppel, or issue preclusion, prevents a party from relitigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action. Shelton v. Oscar Mayer Foods Corp., 325 S.C. 248, 251, 481 S.E.2d 706, 707 (1997). The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. Carolina Renewal, Inc. v. S.C. DOT, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "Collateral estoppel applies to specific issues, regardless of whether the claims in the first and subsequent suits are the same." Judy v. Judy, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct. App. 2009).

I. THIS ACTION IS BARRED BY THE DOCTRINE OF *RES JUDICATA*.

In the case at bar, it is apparent on the face of the Complaint that the parties are identical to those in Mazyck I. It is further apparent that the subject matter of the instant action is similar, if not identical, to that of Mazyck I².

As above, Rule 41(b), SCRCP, which "makes clear when involuntary dismissal operates as an adjudication on the merits," treats an involuntary dismissal as an adjudication on the merits unless the order for dismissal specifies otherwise, or the dismissal is for lack of jurisdiction, improper venue, or failure to join a party under Rule 19. In the context of the nearly-identical Rule 41, FRCP, the United States Supreme has ruled that a dismissal based upon the statute of limitations is an adjudication on the merits.

The Court finds, based on the plain language of the Order dismissing Mazyck I, that the dismissal was based upon the Plaintiff's failure to properly file and serve the matter within the South Carolina Tort Claims Act's statute of limitations. The Order noted, under "Law/Analysis," that "[t]he South Carolina Tort Claims Act provides a two year statute of limitations period for actions against a governmental entity..." such that Plaintiff "had two (2) years, until April 22, 2017, in which to commence this action." (Order of Dismissal at pages 1-2). Further, the Order dismissing Mazyck I found that Defendant's Motion to Dismiss

² Plaintiff's counsel noted that there were allegations of additional damages in the instant matter; however, the causes of action and allegations are similar if not identical to Mazyck I.

DCB
p. 3074

was granted based upon Rules 12(b)(1), (4), and (5), SCRPC and the South Carolina Tort Claims Act. (Order of Dismissal at page 5).

In light of the foregoing, the Court finds that: (1) the identity of the parties in this action are the same as in Mazyck I; (2) the identity of the subject matter in this action is the same in Mazyck I; and (3) the statute of limitations issue present in both actions was adjudicated on its merits in Mazyck I. Accordingly, the Court finds that the doctrine of *res judicata* applies to Plaintiff's claims in the instant action. Therefore, this matter must be dismissed with prejudice.

II. THE INSTANT MATTER IS BARRED BY THE DOCTRINE OF COLLATERAL ESTOPPEL.

Here, the District contends that the issue of the statute of limitations was conclusively determined in Mazyck I; Plaintiff contends that this issue was not taken to a final judgment. As above, the doctrine of collateral estoppel requires a showing that an issue was (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment.

With regard to the "actually litigated" element, the Court takes notice of Plaintiff's arguments in Mazyck I, contained in Plaintiff's Memorandum in Opposition of Defendant's Motion to Dismiss, wherein Plaintiff argues both Mazyck I was timely filed and served; Plaintiff additionally argued that the applicable statute of limitations had not run as to the minor child. These arguments were raised again in the case at bar.

Additionally, the Court takes notice of the determination of when the statute of limitations ran in Mazyck I. The Order of Dismissal in Mazyck I specifically sets out the length of the statute of limitations and calculates the date on which the statute ran as to the claims set out in Mazyck I. (Order of Dismissal at page 2). Accordingly, the Court finds that the statute of limitations was directly determined in Mazyck I.

Finally, the Court notes that the Order of Dismissal in Mazyck I was based in whole or in part on the South Carolina Tort Claims Act's two-year statute of limitations. The Order of Dismissal includes the Tort Claims Act among the grounds for dismissal and includes an extensive discussion of the Act's

DCB
1.4.15

applicable statute of limitations. Accordingly, the Court finds that the statute of limitations was a necessary source of support to the Order of Dismissal in Mazyck I.

As such, the Court finds that the statute of limitations issue was actually litigated, directly determined, and necessary for the support of the dismissal of Mazyck I. Accordingly, the doctrine of collateral estoppel applies to the issue of the statute of limitations in this action. Therefore, Plaintiff is barred from readdressing the issue of the statute of limitations. Accordingly, this action must be dismissed based upon the Court's prior determination of this issue in Mazyck I.

CONCLUSION

Based upon the foregoing, the Court finds that the doctrines of *res judicata* and collateral estoppel apply to the instant matter. The effect of this application is that Plaintiff's causes of action against the District, as well as the issue of the statute of limitations, are barred from re-litigation. As such, Plaintiff's Complaint must be dismissed. Accordingly;

IT IS ADJUDGED, ORDERED, AND DECREED that the District's Motion to Dismiss is **GRANTED**.

Judy
June 1, 2019

F. Louce, South Carolina

D. Craig Brown
D. Craig Brown
Presiding Judge
Charleston County Court of Common
Pleas

DCB
1-595

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

DANA MAZYCK, Guardian ad Litem **T. M.**,
a minor child under the age of fourteen
(14),

Plaintiff,

v.

**CHARLESTON COUNTY SCHOOL
DISTRICT**,

Defendant.

**IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT**

Case No.: 2019-CP-10-013

SUMMONS

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2019 JAN -9 PM 3:40

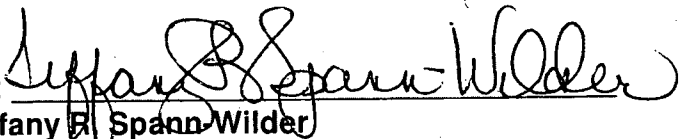
FILED

YOU ARE HEREBY SUMMONED and required to appear and defend the action(s) set forth in the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer on Plaintiff's attorney at Spann Wilder Law, LLC, 2131 Dorchester Rd., Post Office Box 70488, N. Charleston, South Carolina 29415, within thirty (30) days after the service thereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the day of such service, judgment by default will be entered against you for the relief demanded in the said Complaint.

SPANN WILDER LAW, LLC

By:


Tiffany R. Spann-Wilder

2131 Dorchester Rd (29405)

PO Box 70488

N. Charleston, SC 29415

(843) 266-7792

(843) 266-7797, facsimile

North Charleston, South Carolina

Dated: January 9, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON,	)	
DANA MAZYCK , Guardian ad Litem for	)	Docket No.: 2019-CP-10-
T.M. , a minor child under the age of	)	
fourteen (14),	)	COMPLAINT
	)	(Jury Trial Requested)
Plaintiffs,	)	
vs.	)	
CHARLESTON COUNTY SCHOOL	)	
DISTRICT ,	)	
Defendants.	)	

2019 JAN -9 PM 3:41
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

The Plaintiffs, by and through their undersigned attorney, would respectfully allege and show unto this Honorable Court:

1. The Plaintiff, **T.M.** is a minor under the age of fourteen (14) years of age and is a citizen and resident of the County of Charleston, State of South Carolina.
2. The Plaintiff, **DANA MAZYCK**, is a citizen and resident of the County of Charleston, State of South Carolina and is the mother and care giver for the minor child, **T.M.** and has been duly appointed Guardian Ad Litem to bring this action on behalf of Plaintiff **T.M.**
3. That the Defendants **CHARLESTON COUNTY SCHOOL DISTRICT** (hereinafter "CCSD") is a political subdivision of the State of South Carolina as that term is defined in the South Carolina Tort Claims Act, S.C. Code 15-78-10 *et. seq.* This action is brought pursuant to the South Carolina Tort Claims Act, S.C. Code 15-78-10 *et seq.* to recover damages for personal injuries sustained by Plaintiff **T.M.**
4. On or about April 22, 2015, the minor child was properly enrolled as a fourth (4th) grader at **JENNIE MOORE ELEMENTARY SCHOOL** located then at 942 Whipple Road,

Mt. Pleasant, SC, County of Charleston and was left at the school by his mother for the instructional day under the direction of his teacher, Ms. Judi Popowich.

5. Upon information and belief, about 2:15 PM on April 22, 2015, Plaintiff **T.M.** was with his class on the playground under the care and supervision of Ms. Judi Popowich and while playing with the other children through this interaction fell on or off the playground equipment, hitting his head and rendering him unconscious for some period of time.

6. Upon information and belief, the sand beneath the surface area is not properly maintained to ensure that it does not become compacted due to rain or standing water, and that there is insufficient cushioning in the area.

7. Upon information and belief, the Defendant failed to provide an adequate and proper fall zone (area under and around the playground equipment where a child might fall), as such a fall zone would have protected and cushioned several feet from the equipment on all sides.

8. That during Plaintiff **T.M.**'s period of unconsciousness, unaware of his injury and need for assistance, Ms. Judi Popowich took the other students in her class from the playground and returned to her classroom. Plaintiff **T.M.** was left alone and unattended on the playground.

9. Upon information and belief, another class entered the playground and Plaintiff **T.M.** was discovered on the playground and taken to the school nurse's office.

10. Plaintiff **DANA MAZYCK** was called to the school and when she arrived to pick up Plaintiff **T.M.** the child was visibly shaken and unable to recognize her as his mother.

CAUSE OF ACTION-GROSS NEGLIGENCE

11. No one at **JENNIE MOORE ELEMENTARY** could clearly explain to Plaintiff **DANA MAZYCK** how the injury occurred or how Plaintiff **T.M.** was left outside alone.

12. The Defendant, it's teachers and staff had a duty to protect and guard the well being of Plaintiff **T.M.** while on the school playground of Jennie Moore Elementary School.

13. Upon information and belief, there were other classes on the playground and teachers/staff present yet none witnessed the injury and none were present in the immediate area of the minor child's fall.

14. As a direct and proximate cause of the aforesaid wrongful conduct on the part of Defendant, its agents or employees, the Plaintiff **T.M.** sustained damages, including but not limited to the following:

- a. Medical evaluations, treatment diagnostic procedures for a concussion, loss of consciousness and memory loss for an extended period of time;
- b. Medical bills and expenses;
- c. Conscious pain and suffering and lost of enjoyment of life for a prolonged period of time in which he was unable to attend school, after school activities and the inability to enjoy his family's company.

15. Plaintiff **T.M.** is informed and believes that his severe injuries were due to and caused by carelessness, recklessness, willfulness, wantonness, gross negligence and reckless disregard of the Defendants' agents/employees.

FOR A SECOND CAUSE OF ACTION
DOCTRINES OF *RESPONDEAT SUPERIOR* AND AGENCY AS TO CCSD
(Vicarious Liability)
FOR A THIRD CAUSE OF ACTION - NEGLIGENCE SUPERVISION

16. Plaintiffs realleges and reincorporates Paragraphs 1 through 15 above of the complaint as if fully set forth herein.

17. Defendant **CHARLESTON COUNTY SCHOOL DISTRICT** is vicariously liable to Plaintiff **T.M.**, under the doctrine of *respondeat superior* and agency, for the negligent, careless, reckless, willful and wanton conduct of its employee and/or agent, Ms. Judi Popowich and other employees present at the time of Plaintiff **T.M.'s**

injury and abandonment such conduct consisting of one or more of the Particulars described herein.

18. That on or around April 22, 2015, Ms. Judi Popowich was an employee of Defendants in charge of Plaintiff **T.M.** and had a duty to watch and monitor his activities on the playground to ensure his safety.

19. Defendants failed to exercise ordinary care in supervising Plaintiff **T.M.** on the playground at Jennie Moore Elementary School. The Defendants, by the acts or omission of its agents or employees, was negligent, careless or reckless in at least one of the following particulars:

- a. In failing to properly supervise the children within its facilities;
- b. In failing to provide a safe environment for the children, including Plaintiff **T.M.** to play;
- c. In failing to provide proper and adequate cushioning to the fall zone area of the playground equipment in which Plaintiff **T.M.** played;
- d. In failing to account for all students at the time of removing them from the playground area;
- e. In leaving a minor child unattended for an extended period of time;
- f. In failing to follow proper protocol for medical care to be provided to a child suffering from a head injury by not calling emergency personnel;

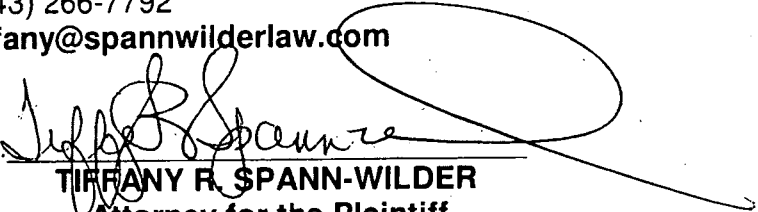
20. As a direct result of Defendants' negligent conduct, Plaintiff **T.M.** has suffered the injuries and damages described herein to include a period of amnesia in which he was unable to attend school due to his inability to process established learned skills, recognize family members and friends.

21. As a direct and proximate result of the acts and/or omission(s) of Defendant, as alleged, Plaintiff **T.M.** has been injured and he is entitled to damages for:

- a. past, present and future medical expenses;
- b. physical pain and suffering;
- c. loss of enjoyment of life;
- d. alteration of lifestyle;
- e. susceptibility of future injury;
- f. future damages resulting from permanent injury.

WHEREFORE, Plaintiffs pray for judgment against the Defendant in a sum of actual damages to be determined by the trier of fact in an amount exceeding Ten Thousand (\$10,000.00) Dollars; for the costs of this action, and for such other and further relief as determined by this Honorable Court.

SPANN WILDER LAW, LLC
2131 Dorchester Road
P.O. Box 70488
N. Charleston, South Carolina 29415
(843) 266-7792
tiffany@spannwilderlaw.com

By: 

TIFFANY R. SPANN-WILDER
Attorney for the Plaintiff

N. Charleston, South Carolina
Dated: January 9, 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)

DANA MAZYCK, Guardian ad Litem for)
T. M., a minor child under)
the age of fourteen (14),)
Plaintiff)

vs.)

CHARLESTON COUNTY SCHOOL)
DISTRICT,)
Defendant)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 19-CP-10 0113

PETITION FOR APPOINTMENT
OF GUARDIAN AD LITEM

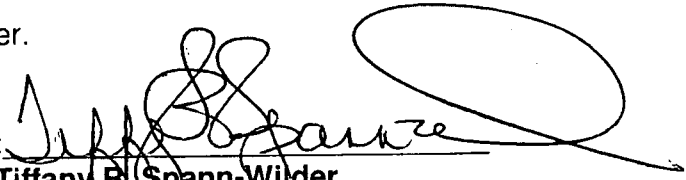
FILED
2019 JAN -9 PM 3:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Petitioner above named would respectfully show unto this Honorable Court:

1. That she is the mother of **T. M.**, a minor under the age of fourteen (14) years; that **T. M.** sustained injuries at Jennie Moore Elementary School which is a part of the Charleston County School District system located in Mt. Pleasant, South Carolina, on April 22, 2015, when not properly supervised, fell hitting his head rendering him unconscious and was left on the playground alone.

2. The Petitioner, **Dana Mazyck**, the mother of **T. M.**, is praying that she be appointed as Guardian Ad Litem to represent the best interest of this minor and to institute a law suit on her behalf as a result of the injuries sustained by this negligence, and that she is a fit and proper person to act in that capacity.

WHEREFORE, Petitioner prays that she be appointed Guardian Ad Litem for the above named minor, **T. M.**, for the purpose set forth above, and for such other and further relief as this Court may deem just and proper.

By: 
Tiffany R. Spann-Wilder
The Spann-Wilder Law Firm, LLC
P.O. Box 70488
N. Charleston, South Carolina 29415
(843) 266-7792

North Charleston, South Carolina
January 9, 2019

ATTORNEY FOR PETITIONER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
DANA MAZYCK, Guardian ad Litem for)
T.M., a minor child under)
the age of fourteen (14),)
Plaintiff)
)
vs.)
)
**CHARLESTON COUNTY SCHOOL)
DISTRICT,**)
)
Defendant)
)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 19-CP-10- 0113

**ORDER APPOINTING
GUARDIAN AD LITEM**

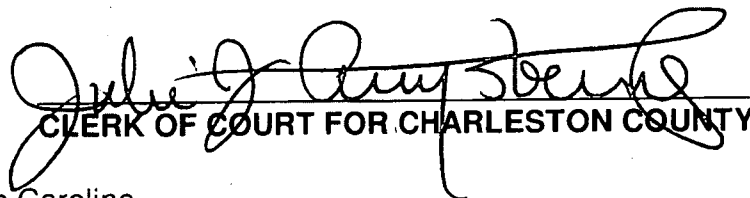
FILED
2019 JAN -9 PM 3:51
JULIE J. ARTHUR
CLERK OF COURT

The above matter comes before me upon a Petition seeking to have **Dana Mazyck** appointed Guardian ad Litem for her son, **T. M.**, a minor under the age of fourteen (14) years.

The Petition alleges the necessity of such an appointment so as to allow this Petitioner to file an action on behalf of her son. It appears that such an appointment is necessary and proper, and that Petitioner is a fit and responsible person to act in this capacity.

IT IS, THEREFORE, ORDERED that **Dana Mazyck** be, and she is hereby, appointed Guardian Ad Litem for and on behalf of the minor, **T.M.**, for the purposes specifically set forth in the Petition.

AND IT IS SO ORDERED!!!


CLERK OF COURT FOR CHARLESTON COUNTY

Charleston, South Carolina
January 9, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO: 2019-CP-10-0113
	)	
Dana Mazyck, Guardian Ad Litem For T.	)	
M., A Minor Child Under The Age Of	)	
(14),	)	
	)	CHARLESTON COUNTY SCHOOL
	)	DISTRICT'S ANSWER, AFFIRMATIVE
Plaintiffs,	)	DEFENSES AND MOTIONS TO
vs.	)	PLAINTIFFS' SUMMONS AND
	)	COMPLAINT
Charleston County School District,	)	
	)	(Jury Trial Demanded)
Defendant.	)	

TO: PLAINTIFFS AND THEIR COUNSEL TIFFANY R. SPANN-WILDER, ESQUIRE

Defendant Charleston County School District (hereinafter "CCSD"), by and through undersigned counsel, answers Plaintiffs' Complaint filed January 9, 2019 as follows:

FOR A FIRST DEFENSE AND AS A MOTION TO DISMISS
(SCRCP 12(b)(5) AND 12(b)(6))

1. Defendant, CCSD, moves for a dismissal of the claim pursuant to S.C.R.C.P. 12(b)(5) and 12(b)(6) for Plaintiff's failure to state facts sufficient to maintain the causes of action against Defendant.

FOR A SECOND DEFENSE AND AS A MOTION TO DISMISS
(Res Judicata)

2. The matters at issue were the subject of a prior case between Plaintiffs and Defendants. At the present action is an attempt to re-litigate matters that were the subject of the prior case, Plaintiff's Complaint must be dismissed under the doctrine of *res judicata*.

FOR A THIRD DEFENSE AND AS A MOTION TO DISMISS
(Collateral Estoppel)

FILED
 2019 FEB -8 AM 11:21
 CLERK OF COURT
 JULIE ARMSTRONG

3. As the matters alleged in Plaintiffs' Complaint have been previously litigated and determined a valid and final order, Plaintiff is barred from re-litigating those issues under the Doctrine of Collateral Estoppel, mandating the dismissal of this action.

FOR A FOURTH DEFENSE
(General Denial)

4. CCSD denies each and every allegation of the Plaintiff's Complaint not specifically admitted, qualified, or explained herein and demands strict proof thereof.
5. Paragraphs 1 and 2 of Plaintiff's Complaint are not directed towards CCSD and therefore a response is not necessary. To the extent a response is required the allegations are denied and strict proof is demanded thereof.
6. In response to paragraph 3 of the Plaintiff's Complaint Defendant affirmatively asserts that Defendant is a governmental entity as defined in S.C. Code Ann. § 15-78-30, and any and all actions alleged against Defendant are controlled by the South Carolina Tort Claims Act, including but not limited to any and all limitations to liability contained therein. Defendant is without sufficient information with which to admit or deny the rest and remainder of the allegations contained in paragraph 3 and therefore the same are denied and strict proof is demanded thereof.
7. CCSD is without sufficient information to admit or deny the allegations contained in Paragraph 4 of Plaintiff's complaints and as such the allegations are denied and strict proof is demanded thereof.
8. CCSD denies the allegations contained in paragraphs 5 – 15 of Plaintiff's Complaint and demands strict proof thereof.
9. In response to paragraph 16 of Plaintiff's Complaint, CCSD restates each preceding paragraph as if set forth fully verbatim herein.

10. CCSD denies the allegations contained in paragraphs 17 – 21 of Plaintiff's Complaint and demands strict proof thereof.
11. CCSD denies the allegations contained in the "WHEREFORE" paragraph and demands strict proof thereof.

FOR A FIFTH DEFENSE
(Public Duty Rule)

12. Defendant reasserts and realleges each and every preceding paragraph as if each were fully repeated verbatim herein.
13. The Plaintiff's Complaint fails to state a claim against Defendant in that as a matter of law the Defendant violated no duty which it owed to the Plaintiff for which the Plaintiff is entitled to relief in the form of damages.

FOR A SIXTH DEFENSE
(12(b)(6) S.C.R.C.P.)

14. Plaintiff fails to state facts sufficient to constitute a cause of action against the Defendant answering herein, and any claim against Defendant should be dismissed pursuant to Rule 12(b)(6) South Carolina Rules of Civil Procedure.

FOR A SEVENTH DEFENSE
(Sovereign Immunity-Tort Claims Act)

15. Defendant reasserts and realleges each and every preceding paragraph as if each were fully repeated verbatim herein.
16. The Defendant allege that the Plaintiffs' Complaint is barred or otherwise limited by the provisions of the South Carolina Tort Claims Act, and, specifically but not limited to, Section 15-78-60 (1), (2), (3), (4), (5), (7), (9), (12), (13), (15), (16), (17), (18), (20), (21), and (25) of the Act.

FOR AN EIGHTH DEFENSE
(Sole, Intervening and Superseding Negligence of a Third-Party)

17. Defendant reasserts and realleges each and every preceding paragraph as if each were fully repeated verbatim herein.
18. The Defendant allege that the injuries and damages alleged by the Plaintiff, if any, which the Defendant expressly deny, were due to and caused by the negligence of a third-party or third-parties, which alone or concurring, supervening and/or intervening with the negligence, if any, of the Plaintiff, and/or unknown third parties so as to be the sole proximate cause of Plaintiff's alleged injuries and damages, if any, so as to bar the Plaintiff's claims as to Defendant.

FOR A NINTH DEFENSE
(Comparative/Contributory Negligence)

19. CCSD reasserts and realleges each and every preceding paragraph as if each were fully repeated verbatim herein.
20. CCSD allege that any injuries or damages alleged by the Plaintiff, if any, which CCSD expressly denies, were due to and caused by the contributory and comparative negligence, carelessness, willfulness, wantonness and recklessness of Plaintiff, in an amount exceeding fifty percent 50% of the total causal negligence, if any, so as to bar Plaintiff's claim as to CCSD. In the alternative CCSD alleges that the injuries and damages alleged by the Plaintiff, if any, which CCSD expressly denies, were due to and caused by the comparative negligence, carelessness, willfulness, wantonness and recklessness of the Plaintiff in an amount to be determined by the trier of fact, so as to reduce Plaintiff's claims proportionally, pursuant to South Carolina Law.

FOR A TENTH DEFENSE
(Sole, Intervening and Superseding Negligence of Plaintiff)

21. CCSD reasserts and realleges each and every preceding paragraph as if each were fully repeated verbatim herein.
22. The Defendant allege that any injuries and damages alleged by the Plaintiff, if any, which the Defendant expressly deny, were due to and caused by the intervening and superseding negligence of a third-party, including but not limited to the Plaintiff, over whom Defendant had no control, so as to bar the claims of the Plaintiff as to this Defendant.
23. CCSD alleges that the injuries and damages alleged by the Plaintiff, if any, which Defendant expressly denies, were due to and caused by the negligence of the Plaintiff, which alone or concurring, supervening and/or intervening with the negligence, if any, of other persons, unknown third parties, so as to be the sole proximate cause of Plaintiff's alleged injuries and damages, if any, so as to bar Plaintiff's claims as to CCSD.

FOR AN ELEVENTH DEFENSE
(Limitation of Remedies)

24. Defendant reasserts and realleges each and every preceding paragraph as if each were fully repeated verbatim herein.
25. Any recovery by Plaintiff must be limited to the remedies allowed under the South Carolina Tort Claims Act, including but not limited to S.C. Code Ann. § 15-78-120(a)(1) and (2) and S.C. Code Ann. § 15-78-120(b).

FOR A TWELFTH DEFENSE
(Reservation of Additional and Further Defenses)

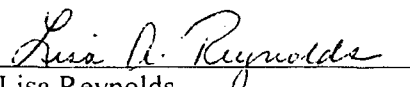
26. Defendant repeats and realleges each and every preceding paragraph as if each were fully repeated verbatim herein.
27. Defendant reserve any additional and further defenses as may be revealed by additional

information through the course of discovery and investigation in a manner the consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, Defendant prays as follows:

- a. That this action against them be dismissed with prejudice;
- b. That the Plaintiff's claim for any damages not allowed or in excess of that provided by the South Carolina Tort Claims Act be stricken;
- c. That the Plaintiff's claim for any damages not allowed or in excess of that provided by the South Carolina Code be stricken;
- d. That this matter be tried by jury on all issues so triable;
- e. That the cost of this action be taxed to parties other than Defendant;
- f. That Defendant be awarded their costs and expenses of this action; and
- g. That Defendant be granted such other and further relief as this court deems just and proper.

ANDERSON REYNOLDS &
STEPHENS, LLC


Lisa Reynolds

Thomas F. Drazan
37 1/2 Broad Street
P.O. Box 87
Charleston, SC 29401
(843) 723-0185 –phone
(843) 405-0313 –fax
lreynolds@arlawsc.com
tdrazan@arlawsc.com

February 7, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Dana Mazyck, Guardian ad Litem for T.M., a
minor child under the age of fourteen (14),

Plaintiff,

vs.

Charleston County School District,
Defendant.

) IN THE COURT OF COMMON PLEAS
) THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2019-CP-10-0113

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION OF DEFENDANT'S
MOTION TO DISMISS**

**TO: THE HONORABLE D. CRAIG BROWN AND LISA REYNOLDS, ESQ.
ATTORNEYS FOR THE DEFENDANTS:**

**MEMORANDUM IN OPPOSITION OF DEFENDANT'S
MOTION TO DISMISS**

FILED
2019 JUN 14 AM 10:48
JULIE J. ARMSTRONG
CLERK OF COURT

This matter arises from an incident which Plaintiff T.M. was injured at Jennie Moore Elementary School on April 22, 2015 at approximately 2:15 p.m. Plaintiff filed an initial complaint on April 21, 2017 alleging negligence of the abovementioned Defendant. Defendant filed an answer on May 23, 2017 asking the Court to Dismiss the Complaint pursuant to South Carolina Rules of Civil Procedure 12(b)(1), (4) and (5) alleging insufficiency of service on the Defendant as set forth in S.C.R.C.P 4. The matter was heard before this court on April 18, 2018. Despite the certified mailing being addressed to the District's Superintendent, a person in the district's mail room, a E. Rhodes whom Defendants contend works for a 3rd party signed for the pleadings. The Court granted dismissal of the case on that basis only and did not address any merits of the underlying action. The dismissal was not with prejudice as such, Plaintiff re-filed the action on January 9, 2019. Defendant's timely answer have sought the court's determination to dismiss the matter on a myriad of issues.

Plaintiff submits this memorandum in opposition of Defendant's Motion to Dismiss and submits that Defendant's Motion to Dismiss should be denied as to all arguments.

RELEVANT FACTS

On or about April 22, 2015, the minor child was properly enrolled as a fourth (4th) grader at Jennie Moore Elementary School when it was housed at 942 Whipple Road, Mt. Pleasant, SC, County of Charleston and was left at the school by his mother for the instructional day under the direction of his teacher, Ms. Judi Popowich. At about 2:15 PM on April 22, 2015, Plaintiff **T.M.** was with his class on the playground under the care and supervision of Ms. Judi Popowich and while playing with the other children fell on or off the playground equipment, hitting his head and rendering him unconscious for some period of time. It is the Plaintiff's position that the Defendant failed to provide an adequate and proper fall zone (area under and around the playground equipment where a child might fall), as such a fall zone would have protected and cushioned the area several feet from the equipment on all sides. During Plaintiff **T.M.**'s period of unconsciousness, unaware of his injury and need for assistance, Ms. Judi Popowich took the other students in her class from the playground and returned to her classroom, leaving Plaintiff alone and unattended on the playground. Another class entered the playground and Plaintiff **T.M.** was discovered on the playground and was taken to the school nurse's office. Plaintiff **DANA MAZYCK** was called to the school and when she arrived to pick up Plaintiff **T.M.**, the child was visibly shaken and unable to recognize her as his mother.

LAW/ANALYSIS

I. MOTION TO DISMISS ON THE BASIS OF SCRPC 12(b)(5) & 12(b)(6); RES JUDICATA & COLLATERAL ESTOPPEL.

Defendant, Charleston County School District (CCSD) alleges that the matter should be dismissed for insufficiency of service of process S.C.R.C.P (12)(b)(5) and failure to state facts sufficient to constitute a cause of action S.C.R.C.P (b)(6). Rule 4(d)(6) of the S.C.R.C.P proscribes the procedure for perfecting service upon a governmental entity. Pursuant to this rule, service is made "Upon a municipal corporation, county or other governmental or political subdivision subject to suit, by delivering a copy of the summons and complaint to the chief executive officer or clerk thereof, or by serving the summons and complaint in the manner prescribed by statute for the service of summons and complaint or any like process upon any such defendant." S.C.R.C.P 4(d)(6). Upon a telephone call to the District's General Counsel's office, Ms. Sharon Brightharp, Paralegal to the General Counsel, agreed to accept service of the pleadings on behalf of the District. Upon her availability, service was made on January 10, 2019. Ms. Brightharp complied by coming out to meet the process server, accepting the documents and signing to acknowledge the same. (See Exh. A – Acceptance of Service & Affidavit of Service). Ms. Brightharp has accepted service in other matters for the District which are currently pending, as so has Trudie Cantrell, the Administrative Assistant for the Superintendent, and Mr. E. Rhodes, whom they contended in the past Motion to Dismiss to not be authorized to accept service. Mr. Rhodes continue to accept service for the District. (See Exh. B). The pleadings were received and timely responded to as evident by the motion at hand.

Defendant further assert that S.C.R.C.P. 12(b)(6) is applicable to dismiss this case. They assert that the facts are not sufficient to have this matter go to a jury. The Plaintiff has asserted three (3) causes of action against the Defendant: Gross Negligence, Respondeat Superior and Negligent Supervision. Plaintiff asserts that the Defendant was grossly negligent in its care of the playground equipment which should have protected children from extensive harm when they suffer falls;

Plaintiff asserts that T.M.'s teacher was an agent of CCSD and that CCSD is vicariously responsible for her actions, inactions and inattentiveness to T.M. such that she failed to adequately supervise T.M. such that he incurred an injury that she cannot account for. In addition to not knowing what happened to him, she was also oblivious to him having an injury and left him alone on the playground unconscious. Even upon returning to her classroom, the teacher did not realize that she was missing a student – namely T.M. It was not until another person went to her classroom to advise her of T.M.'s whereabouts that she came to know that he was not in her presence as he should have been. CCSD failed in their duty to protect a child entrusted to their care by entrusting him to this negligent teacher's care.

The claim that this action is barred by Res Judicata is misplaced. It is well settled law that to establish res judicata in South Carolina, the defendant must prove three elements: (1) identity of the parties is the same; (2) identity of the subject matter is the same; and (3) adjudication of the issue in the former suit is the same. Sealy v. Dodge, 289 S.C. 543, 347 S.E.2d 504 (1986). The third element has not been satisfied by the Defendant in this case. They are not able to show that there was an adjudication on the issues in this case. The matter has not been to a trial, nor has it been decided on Summary Judgement. Thus, the merits are still open to disposition. The Plaintiff has the right to cure improper service and has done so in this new filing. As there was not a final judgment rendered on this merits of the cause of action asserted, dismissal does not bar a subsequent action brought before expiration of the statute of limitations if the dismissal is based merely on the insufficiency of the complaint. See Hennegan v. Atlantic Coast Line R. Co., 211 S.C. 357, 45 S.E.2d 331 (1947); Sealy v. Dodge, 347 S.E.2d 504, 289 S.C. 543 (S.C., 1986).

The Defendants also assert that collateral estoppel is applicable. Collateral estoppel prevents litigation of matters which have been taken to valid final judgment. This is simply not

the case here. A dismissal based on service of process without prejudice does not equate to an entire having been litigated.

II. COMPARATIVE/CONTRIBUTORY NEGLIGENCE

Defendant alleges that Plaintiff holds a greater than 50% responsibility for his injury, being left by his teacher while unconscious and being left unattended for a period of time until he was found. As such, Defendant desires this Court to dismiss the action. However, the allocation of fault (if any) is a matter in which a jury should have the opportunity to determine. The Plaintiff is deserving of an opportunity for discovery via written and live testimony to determine all that transpired on that day. It would be premature for the Court to make such a decision without all of the facts being known and presented.

The statute of limitations has not elapsed for this cause of action. The Plaintiff was within the age of infancy (under 18) during the time the complaint was asserted. The Plaintiff is entitled to a time span that starts at the date of the commencement of the injury until one year after his infancy has ceased. S.C. Code Ann. § 15-78-110. Disability based off of infancy does not cease in the eyes of the law when an individual is appointed a Guardian at Litem. Cole v. S.C. Dep't of Disabilities & Special Needs (In re Estate of Mims) (S.C. App., 2017) (holding "the appointment of a guardian over an incompetent person does not remove the disability" for purposes of the running of the statute of limitations); see also Michele Meyer McCarthy, Annotation, Effect of Appointment of Legal Representative for Person Under Mental Disability on Running of State Statute of Limitations Against Such Person, 111 A.L.R. 5th 159 (2003). The Plaintiff is still well within the age of infancy and the claim has been asserted within the appropriate amount of time request redress and as nothing else on the merits supports the dismissal, Plaintiff should have his day in court.

CONCLUSION

WHEREFORE, Plaintiff respectfully requests that the Court denies Defendant's Motion to Dismiss. Plaintiff further requests an award of its costs and attorney's fees associated with this Motion and any other relief the Court deems just and proper.

Respectfully Submitted,

SPANN WILDER LAW, LLC

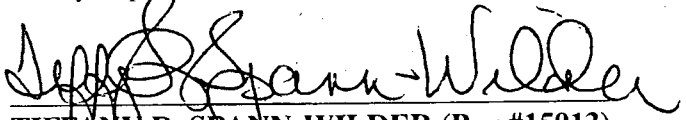
2131 Dorchester Road

P.O. Box 70488

North Charleston, SC 29415

(843) 266-7792

tiffany@spannwilderlaw.com

A handwritten signature in black ink, appearing to read 'Tiffany R. Spann-Wilder', written over a horizontal line.

TIFFANY R. SPANN-WILDER (Bar #15913)

Attorney for the Plaintiff

June 11, 2019
North Charleston, SC

Dana Mazyck, GAL for T.M.,v. Charleston Co. School District
Case #: 2019-CP-10-0113

A

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

DANA MAZYCK, as Guardian ad Litem for
T. M., a minor child under the age of
fourteen (14),

Plaintiff,

v.

CHARLESTON COUNTY SCHOOL
DISTRICT,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2019-CP-10-0113

AFFIDAVIT OF SERVICE

FILED
2019 JAN 14 PM 12:26
JULIE J. ARMSTRONG
CLERK OF COURT
BY JS

The undersigned, James Miller, being duly sworn says that he served the: **Petition for Approval of Guardian Ad Litem, Order Approving Guardian Ad Litem, Civil Cover Sheet, Summons and Complaint** in this action on Charleston County School District by delivery to:

- (x) Sherron Brightharp: Paralegal to Natalie Ham, General Counsel for Charleston County School District, and a person authorized to accept service on behalf of Charleston County School District and Natalie Ham, Esquire,

And leaving with her one copy of the same at:
75 Calhoun Street, Charleston, SC 29403 on January 10, 2019 at 4:00 a.m./p.m.

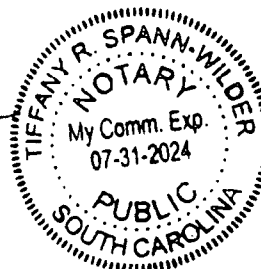
And that the deponent knows the entity so served to be Charleston County School District via Sherron Brightharp, and the deponent is not a party to, nor interested in the action.

James Miller
James Miller, Private Investigator

Sworn to before me this 10th day of January 2019

Tiffany R. Spann-Wilder
Notary Public for South Carolina

My Commission expires on 7-31-2024



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

DANA MAZYCK, as Guardian ad Litem for
T. M., a minor child under the age of
fourteen (14),

Plaintiff,

v.

CHARLESTON COUNTY SCHOOL
DISTRICT,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

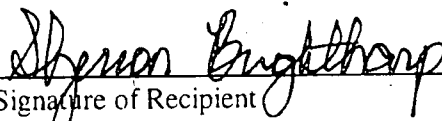
Case No.: 2019-CP-10-0113

ACCEPTANCE OF SERVICE AS TO
DEFENDANT CHARLESTON COUNTY
SCHOOL DISTRICT

2019 JAN 14 PM 12:26
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Pursuant to Rule 4(j) of the South Carolina Rules of Civil Procedure, I certify that I have received filed copies of Plaintiff's Petition for Appointment of Guardian Ad Litem, Order Appointing Guardian Ad Litem, Civil Cover Sheet, Summons and Complaint for the civil action captioned herein, that the above-named Defendant has been properly served with the Summons and Complaint for the civil action captioned herein, and I, Sherron Brightharp accept service of process as of January 10, 2018, as Paralegal of Defendant **Charleston County School District**.



Signature of Recipient
Sherron Brightharp, Paralegal
Defendant Charleston County School District

Date: January 10, 2019
Charleston, South Carolina

Dana Mazyck, GAL for T.M.,v. Charleston Co. School District
Case #: 2019-CP-10-0113

Exhibit B

B

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
EMILY WRIGHT, Individually)
and as Parent of D.G., a minor,)
Plaintiff,)
)
vs.)
)
CHARLESTON COUNTY SCHOOL)
DISTRICT and JAMES ISLAND)
MIDDLE SCHOOL,)
Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2018-CP-10-5007

AFFIDAVIT OF SERVICE

2018 NOV 15 AM 11:57
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME THE UNDERSIGNED, WHO BEING DULY SWORN,
SAYS THAT HE SERVED:

- (X) Civil Action Coversheet
(X) Summons and Complaint

IN THIS ACTION ON: CHARLESTON COUNTY SCHOOL DISTRICT
(X) By Delivery to: SHARON BRIGHTHARP - PARALEGAL

A person of discretion, AND LEAVING WITH HER COPIES AT: OFFICE OF
GENERAL COUNSEL, 75 CALHOUN STREET, CHARLESTON, SOUTH CAROLINA.

ON THE 1ST DAY OF NOVEMBER, 2018, AND THAT DEPONENT IS NOT A PARTY TO
THIS ACTION, NOR WERE THE ABOVE PAPERS SERVED ON A SUNDAY OR A LEGAL
HOLIDAY.

SWORN to before me this 1st day of November, 2018

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES:

Served for: MARK A. REDMOND, ESQ.
Time of Service: 11:50 A.M.

PAPER CHASE PROCESS SERVICE, INC.
P. O. BOX 250, LADSON, SC 29456
Telephone: 843/367-2422

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

John Doe, a minor child under the age of)
eleven years old, by his parents,)
Mother and Father Doe,)

Plaintiff,)

vs.)

Charleston County School District;)
City of North Charleston; and Alton Cannon,)
in his Official Capacity as Sheriff of)
Charleston County,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE 9th JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2019-CP-10-0002

AFFIDAVIT OF PERSONAL SERVICE

2019 JAN -8 AM 11:33
CLERK OF COURT

PERSONALLY APPEARED before me, Al Petty, who being first duly sworn, deposes and says: That on the 4th day of January 2019 at 2:05 p.m., he personally served the *Charleston County School District*, consisting of the filed **SUMMONS AND COMPLAINT** in this matter. And that Administrative Assistant, Trudie Cantrell of the Charleston County School District Superintendent's Office, accepted service thereof located at 75 Calhoun Street, Charleston, SC 29401. And that the Deponent is not a party to the action; and that he knows the person or entity thus served to be the mentioned parties in these proceedings.

AL PETTY

PI License #RD215195(SC)

PURE TRUTH INVESTIGATIONS, LLC

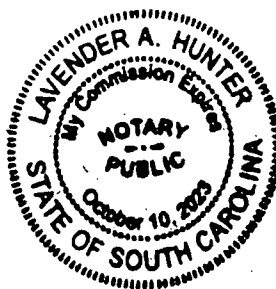
SWORN TO BEFORE ME

This 4th day of January, 2019.

Lavender A. Hunter

Notary Public of South Carolina

My Comm. Exp.: 10/10/2023



STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

STACY LAWRENCE,)

Plaintiff,)

vs.)

CHARLESTON COUNTY SCHOOL)
DISTRICT,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-10-5885

**AFFIDAVIT OF RETURN OF SERVICE
BY CERTIFIED MAIL**

I, Julie Murray, being first duly sworn, depose, say and certify that:

1. A copy of the civil summons and complaint in the above-entitled action was deposited in the U.S. Mail and mailed via certified mail, return receipt requested, to the Defendant.

2. The same was mailed to the Defendant at the following addresses : Gerrita Postlewait, Superintendent & Natalie Ham, General Counsel, Charleston County School District, 75 Calhoun Street, Charleston, SC 29401.

3. The summons and complaint were in fact received by Defendant on or about December 17, 2018, as evidenced by the attached return receipt.

This the 14 day of JANUARY, 2019.

[SIGNATURE PAGE TO FOLLOW]

FILED
2019 JAN 17 PM 1:32
JULIE J. ARMSTRONG
CLERK OF COURT
BY JS

BOLES LAW FIRM, LLC

Julie Murray
Julie Murray, Paralegal

Sworn to and ascribed before me on
This the 14 day of January, 2019,

Julie Murray
NOTARY PUBLIC

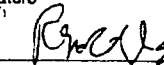
My commission expires: 1-30-2022

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature  ☐ Agent ☐ Addressee X	
1. Article Addressed to: NATALIE HAM, GENERAL COUNSEL CCSD 75 CALHOUN ST. CHARLESTON, SC 29401		B. Received by (Printed Name) <u>E. Rhodes</u> C. Date of Delivery	
2. Article Number (Transfer from service label) 7018 2290 0002 0970 7895		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
3. Service Type ☐ Adult Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☒ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☒ Return Receipt for Merchandise ☐ Collect on Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery			

PS Form 3811, July 2015 PSN 7530-02-000-9053

2019 JAN 17 PM 1:32

FILED

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature  ☐ Agent ☐ Addressee X	
1. Article Addressed to: GERRITA POSTLEWAT CHARLESTON COUNTY SCHOOL DISTRICT 75 CALHOUN ST. CHARLESTON, SC 29401		B. Received by (Printed Name) <u>Rhodes</u> C. Date of Delivery	
2. Article Number (Transfer from service label) 7018 2290 0002 0970 7901		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
3. Service Type ☐ Adult Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☒ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☒ Return Receipt for Merchandise ☐ Collect on Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery			

PS Form 3811, July 2015 PSN 7530-02-000-9053

2019-CP-10-113

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Dana Mazyck, Guardian Ad Litem For
Tyler M., A Minor Child Under The Age Of
(14),

Plaintiffs,

vs.

Charleston County School District,

Defendant,

IN THE COURT OF COMMON PLEAS

CASE NO: 2019-CP-10-0113

**DEFENDANT'S REPLY TO PLAINTIFF'S
MEMORANDUM IN OPPOSITION OF
DEFENDANT'S MOTION TO DISMISS**

TO: PLAINTIFFS AND THEIR COUNSEL TIFFANY R. SPANN-WILDER, ESQUIRE

COMES NOW the Defendant, Charleston County School District (hereinafter "District") and respectfully submits their Reply To Plaintiff's Memorandum In Opposition Of Defendant's Motion To Dismiss on the grounds of *Res Judicata*, Collateral Estoppel, and Rule 12(b)(5) and (6), SCRPC.

BACKGROUND FACTS

Plaintiff brought this action under the South Carolina Tort Claims Act for damages allegedly sustained as a result of a fall which occurred on April 22, 2015 on the playground at Jennie Moore Elementary School, Whipple Road, Charleston County, South Carolina. Plaintiff alleges that the minor child, Tyler M., either fell on or off the playground equipment.

PROCEDURAL HISTORY

Plaintiff's Complaint in the instant matter, captioned above, is a nearly-verbatim replica of Plaintiff's Complaint in C/A 2017-CP-10-1970 (hereinafter Mazyck I). District filed a Motion to Dismiss Mazyck I on the grounds that Plaintiff failed to properly file and serve Mazyck I within the applicable statute of limitations. Judge Young dismissed Mazyck I for Plaintiff's

failure to properly file and serve the Summons and Complaint in Mazyck I within the Statute of Limitations set forth in the South Carolina Tort Claims in S.C. Code Ann. § 17-18-10, *et. seq.* by virtue of the Order Granting District's Motion to Dismiss (attached hereto as "Exhibit A"). Plaintiff neither moved the Court to alter or amend this Order, nor appealed from the same.

Plaintiff filed the instant matter on January 9, 2019, nearly six months after the dismissal of Mazyck I. The instant matter involves identical parties and nearly-verbatim¹ allegations as set forth above. On February 8, 2019, District filed its Answer and Motions to Dismiss the instant matter on the grounds set forth above.

APPLICABLE LAW

Under the doctrine of res judicata, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). To establish res judicata, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Riedman Corp. v. Greenville Steel Structures, Inc., 308 S.C. 467, 419 S.E.2d 217 (1992). Res judicata precludes parties from subsequently relitigating issues actually litigated and those that might have been litigated in a prior action. S.C. Dep't of Soc. Servs. v. Basnight, 346 S.C. 241, 249, 551 S.E.2d 274, 278 (Ct. App. 2001).

Collateral estoppel or issue preclusion prevents a party from relitigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action. Shelton v. Oscar Mayer Foods Corp., 325 S.C. 248, 251, 481 S.E.2d 706, 707 (1997).

¹ The lone distinction is the use of T.M. throughout in the instant matter versus use of Tyler M. throughout in C/A No. 2017-CP-10-1970 as the identifier for the minor child.

Per the United States Supreme Court, the rules of finality, both statutory and judge made, treat a dismissal on statute-of-limitations grounds the same way they treat a dismissal for failure to state a claim, for failure to prove substantive liability, or for failure to prosecute: as a judgment on the merits. Plaut v. Spendthrift Farm, 514 U.S. 211, 228, 115 S. Ct. 1447, 1457 (1995)(emphasis added). It is also of significance that Rule 41, SCRCP “is the same as the Federal Rule....” See Note to Rule 41, SCRCP. Further, “[A] dismissal under [Rule 41(b), SCRCP] and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for failure to join a party under Rule 19, operates as an adjudication upon the merits.” Rule 41(b), SCRCP.

It is appropriate to dismiss untimely claims under Rule 12(b)(6) when they are brought after the expiration of the statute of limitations. See Clearwater Trust v. Bunting, 367 S.C. 340, 353, 626 S.E.2d 334, 340 (2006). Also, Rule 12(b)(5) is the proper vehicle for challenging both “the mode of delivery or the *lack of delivery* of the summons and complaint.” Unisun Ins. v. Hawkins, 342 S.C. 537, 543, 537 S.E.2d 559, 562 (Ct. App. 2000).

ARGUMENT

I. THIS ACTION MUST BE DISMISSED UNDER THE DOCTRINE OF *RES JUDICATA*.

As above, in order to prevail on *res judicata*, the party asserting the defense must prove (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.

There is no dispute that the parties to this action are the same parties to Mazyck I. There is, likewise, no dispute that the subject matter in this case is identical to that of Mazyck I. The parties disagree as to the third element; Plaintiff asserts that the District is not “able to show that there was an adjudication on the merits,” of Mazyck I.

As above, Judge Young dismissed Mazyck I based on Plaintiff's failure to institute Mazyck I within the statute of limitations set forth in the South Carolina Tort Claims Act. Judge Young noted on page 2 of his Order that:

"Plaintiff had two (2) years, until April 22, 2017, in which to commence this action.... The Plaintiff filed a Summons and Complaint [in Mazyck I] against the Defendant in this matter on or about April 21, 2017. As such, and in accordance with the S.C. Code Ann. § 15-3-20, the Plaintiff had until August 19, 2017 to properly serve the Defendant in this matter so as to be determined to have commenced this action."

As Plaintiff failed to institute Mazyck I within the statute of limitations, Judge Young granted the District's Motion to Dismiss pursuant to Rules 12(b)(1), (4), and (5) as well as the South Carolina Tort Claims Act. Judge Young ordered the dismissal of Mazyck I in spite of Plaintiff's argument contained in its April 18, 2018 Memorandum in Opposition of Defendant's Motion to Dismiss (attached hereto as "Exhibit B") that:

"the Tort Claims Act's limitations have exceptions, for person [sic] laboring under a disability and the injured party here Tyler M. is a minor, currently age 14 and so technically this action could have brought [sic] within two (2) years past his 18th birthday. There is no statute of limitations issue in this claim." (Plaintiff's Memorandum at page 5).

As above, the United States Supreme Court has ruled that a dismissal based upon statute of limitations grounds is a judgment on the merits. Application of Rule 41(b), SCRCR, which is "the same as the Federal Rule," provides that all orders of dismissal "operate as an adjudication on the merits" other than those which: 1) say otherwise; or 2) are based upon lack of jurisdiction, improper venue, or failure to join a party under Rule 19. There is no inference, much less a direct statement, that Judge Young's order dismissing Mazyck I was anything other than an adjudication on the merits. Further, on its face, the Order was based upon and made reference to Plaintiff's failure to commence Mazyck I within the statute of limitations.

In light of these things, the District is entitled to the dismissal of this action under the doctrine of *res judicata*. The common identity of the parties to this action, the subject matter hereof, and those of Mazyck I is not the subject of legitimate debate. Further, in the context of the identical Rule 41, Fed. R. Civ. P., the United States Supreme Court has ruled that a dismissal based upon the statute of limitations is a judgment on the merits. As such, the instant matter must be dismissed.

II. THIS ACTION MUST BE DISMISSED UNDER THE COLLATERAL ESTOPPEL DOCTRINE.

As above, collateral estoppel prevents a party from relitigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action. The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. Carolina Renewal, Inc. v. S.C. DOT, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "Collateral estoppel applies to specific issues, regardless of whether the claims in the first and subsequent suits are the same." Judy v. Judy, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct. App. 2009).

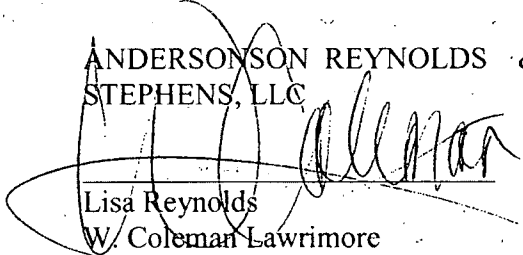
As above, a dismissal based upon the statute of limitations is a judgment on the merits. As shown in "Exhibit B," the issue of the statute of limitations was both raised by Plaintiff and ruled upon by the Court in Mazyck I, thus satisfying the first element of collateral estoppel. As to the requirement that an issue be directly determined in the prior action, Judge Young's reference to the statute of limitations in the Order dismissing Mazyck I is *prima facie* evidence that the issue has been directly determined. Finally, the reliance upon the expiration of the statute of limitations in the dismissal of Mazyck I indicates the extent to which the issue supported Judge Young's conclusion.

Plaintiff takes the position that "Collateral estoppel prevents litigation of matters which have been taken to valid final judgment. This is simply not the case here. A dismissal based on service of process without prejudice does not equate to an entire [sic] having been litigated." (Plaintiff's Memorandum at pages 4 – 5). This argument must fail in light of the Supreme Court precedent, above. Additionally, an application of Rule 41, SCRPC to the Order dismissing Mazyck I can only yield the conclusion that said dismissal was "an adjudication upon the merits."

CONCLUSION

It is clear that Mazyck I was dismissed based upon Plaintiffs failure to commence the action within the Statute of Limitations. The Order of Dismissal in Mazyck I was both prejudicial and an adjudication upon the merits. As such, this action must be dismissed under the doctrines of *res judicata* and collateral estoppel.

ANDERSONSON REYNOLDS &
STEPHENS, LLC



Lisa Reynolds
W. Coleman Lawrimore
37 1/2 Broad Street
P.O. Box 87
Charleston, SC 29401
(843) 723-0185 –phone
(843) 405-0313 –fax
lreynolds@arlawsc.com
clawrimore@arlawsc.com

June 13, 2019
Charleston, South Carolina

2017 CP-10-1970

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO: 217-CP-10-1970
Dana Mazyck, Guardian Ad Litem For)
Tyler M., A Minor Child Under The Age)
Of (14),)
Plaintiffs,)
vs.)
Charleston County School District,)
Defendant.)

**ORDER GRANTING CHARLESTON
COUNTY SCHOOL DISTRICT
MOTION TO DISMISS**

FILED
JUL 1 2018
JANIS TRONG
CLERK OF COURT
2018 JUN - 1 PM 1:06

FILED

This matter came before the Court on Wednesday, April 18, 2018 pursuant to Charleston County School District's (hereinafter "District") Motion to Dismiss for insufficiency of process and insufficiency of service of process within the statute of limitations period of two years as set forth in S.C.R.C.P. 12(b)(1), (4) and (5) and S.C. Code Annotated §15-78-10, et. seq. (South Carolina Tort Claims Act) for Plaintiffs' failure to properly file and serve their Complaint against the Charleston County School District.

Background Facts

Plaintiff brought this action under the South Carolina Tort Claims Act for damages allegedly sustained as a result of a fall which occurred on April 22, 2015 on the playground at Jennie Moore Elementary School, Whipple Road, Charleston County, South Carolina. Plaintiffs allege that on April 22, 2015, the minor child was playing with other children when "through this interaction fell on or off the playground equipment, hitting his head" and suffering injuries.

Law/Analysis

The South Carolina Tort Claims Act is the exclusive remedy for claims and actions brought against governmental entities. S.C. Code Ann. §§ 15-38-65, 15-78-10, 15-78-40. The South Carolina Tort Claims Act provides a two year statute of limitations period for actions

B

against a governmental entity unless the Plaintiff files a verified claim within the first year following the alleged incident thereby extending the statute of limitations an additional year. In this matter, the Plaintiff did not file a verified claim and therefore, in accordance with S.C. Code Ann. § 15-78-110, the Plaintiff had two (2) years, until April 22, 2017, in which to commence this action.

S.C. Code Ann. § 15-3-20 states in relevant part, "Any civil action is commenced when the Summons and Complaint are filed with the Clerk of Court if actual service is accomplished within one hundred and twenty (120) days after filing." The Plaintiff filed a Summons and Complaint against the Defendant in this matter on or about April 21, 2017. As such, and in accordance with the S.C. Code Ann. § 15-3-20, the Plaintiff had until August 19, 2017 to properly serve the Defendant in this matter so as to be determined to have commenced this action.

The Charleston County School District is a governmental subdivision of the State of South Carolina and therefore the requirements for proper service of a Summons and Complaint upon the District is contained in S.C.R.C.P. 4(d)(6). S.C.R.C.P. 4(d)(6) requires that the Summons and Complaint shall be served together and when being served upon a governmental subdivision that service shall be made "...by delivering a copy of the summons and complaint to the chief executive officer or clerk thereof, or by serving the summons and complaint in the manner prescribed by statute for the service of summons and complaint or any like process upon any such defendant." In the case at bar there is no relevant statute which prescribes process for "any like . . . defendant."

Here, Plaintiffs mailed a copy of the Summons and Complaint via certified mail to Dr. Gerrita Postlewait, Superintendent. The District asserts that pursuant to Rule 4(d)(6) of the South

Carolina Rules of Civil Procedure the Plaintiff was required to serve the Summons and Complaint upon the District by personally serving the chief effective officer thereof. The Plaintiff argues that service by certified mail is acceptable upon the District. The Court agrees with District.

It is noted that Rule 4(d)(8) of the South Carolina Rule of Civil Procedure only allows service by certified mail, restricted delivery upon defendants who are found to be of any class referred to in paragraph (1) or (3) of Rule 4(d). This restriction provides for such service only upon individuals, partnerships, or corporations. The District is not found within any class referred to in paragraphs (1) or (3) of S.C. R. Civ. P. 4(d). Therefore, Rule 4(d)(8) is not applicable to the District. The acceptable methods of service upon the District must be determined by a reading of Rule 4(d)(6) of the South Carolina Rules of Civil Procedure. The Charleston County School District must be served in accordance with Rule 4(d)(6) requiring the "delivering a copy of the summons and complaint to the chief executive officer or clerk thereof." While Rule 4(d)(6) does not define delivery the section utilizes the same language as Rule 4(d)(5) which draws a clear distinction between the requirement to effectuate service by both "sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia" and "delivering a copy of the summons and complaint to such officer or agency." This distinction in Rule 4(d)(5) leads to the determination that "delivering" is tantamount to personal service and certified mail does not suffice to effectuate service against the District.

While this Court finds that personal service is required, in further analyzing Plaintiff's argument that the District was amenable to service of process of certified mail, such service was not obtained in this matter. The purpose and intent of the South Carolina Rules of Civil

Procedure regarding service of process are two fold and require substantial compliance with the Rules to put the District on notice and to confer personal jurisdiction. Richard v. P.V., 383 S.C. 610 (2009); McClurg v. Deaton, 380 S.C. 563 (Ct. App. 2009); BB&T v. Taylor, 369 S.C. 548 (2006); Moore v. Simpson, 322 S.C. 518, 473 S.E.2d 64 (Ct. App. 1996); Roche v. Young Bros., 318 S.C. 207, 455 S.E.2d 897 (1995). When the Plaintiff shows compliance with the rules there is a presumption of proper service and the burden shifts to the Defendant to demonstrate that the service of process was signed by an unauthorized person. Roberson v. Southern Finance of SC, Inc., 365 S.C. 6, 615 S.E.2d 112 (2005); Roche v. Young Bros., 318 S.C. 207, 455 S.E.2d 897 (1995). "When service of process is accomplished by certified mail under Rule 4(d)(8), the defendant and not the plaintiff, must prove the receipt was signed by an authorized person." Roche v. Young Bros., 318 S.C. 207, 455 S.E.2d 897 (1995). The Plaintiff has not shown compliance with the rules and is not entitled to the presumption; however, even giving the Plaintiff the benefit of presumption still finds the Plaintiff's attempts at service improper.

The return receipt for the mailing was signed by E. Rhoades. Testimony and evidence was offered that "E. Rhoades" is Eugene Rhoades, an employee of Ricoh. Mr. Rhoades is not an employee of Charleston County School District and is not authorized to accept service on behalf of the District, nor is of the character of a clerk for the executive officer described in South Carolina Rule of Civil Procedure 4(d)(6). The Plaintiff alleges that since E. Rhoades signed for the certified mail, apparently Mr. Rhodes was allowed to accept certified mail and therefore to accept service. The Court finds this argument to be without merit. Plaintiff fails to recognize the distinction between the authority to sign for certified mail and the authority to sign for service of process. The Plaintiff presented no evidence that E. Rhoades was allowed to accept service on behalf of the District and provided no evidence that the District manifested E. Rhoades was its

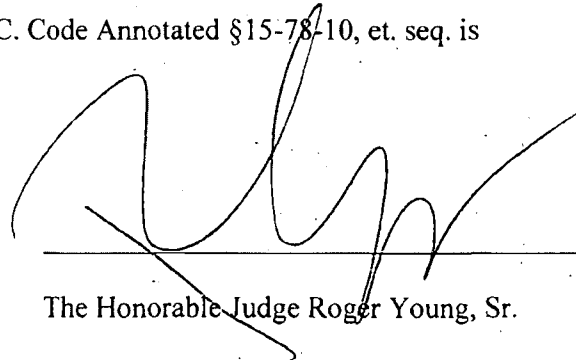


agent or apparent agent in any way. Additionally, apparent authority must be relied upon at the time service is made. The Plaintiff did not direct this mailing to E. Rhoades and was not aware of E Rhoades until the green card was returned.

The Court finds that service upon District was not proper in accordance with the South Carolina Rules of Civil Procedure. As such, the Plaintiff has failed to properly serve the Summons and Complaint upon the District, and therefore, service has not been affected upon the District.

IT IS THEREFORE ORDERED, ADJUGED, AND DECREED that:

Based upon the above, Defendant Charleston County School District's Motion to Dismiss based on S.C.R.C.P. 12(b)(1), (4) and (5) and S.C. Code Annotated §15-78-10, et. seq. is **GRANTED.**



The Honorable Judge Roger Young, Sr.

6/1, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Dana Mazyck, Guardian ad Litem for Tyler
M., a minor child under the age of fourteen
(14),

Plaintiff,

vs.

Charleston County School District,
Defendant.

) IN THE COURT OF COMMON PLEAS
) THE NINTH JUDICIAL CIRCUIT
)
) CASE NO.: 2017-CP-10-1970

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION OF DEFENDANT'S
MOTION TO DISMISS**

FILED
2018 APR 18 AM 11:08
JULIE J. ARMSTRONG
CLERK OF COURT
BY

**TO: THIS HONORABLE COURT AND LISA REYNOLDS, ESQ. AND THOMAS F.
DRAZAN, ESQ., ATTORNEYS FOR THE DEFENDANTS:**

**MEMORANDUM IN OPPOSITION OF DEFENDANT'S
MOTION TO DISMISS**

This matter arises from an incident which Plaintiff Tyler M was injured at Jennie Moore Elementary School on April 22, 2015 at approximately 2:15 p.m. Plaintiff filed a complaint on April 21, 2017 alleging negligence of the abovementioned Defendant. Defendant filed an answer on May 23, 2017 asking the Court to Dismiss the Complaint pursuant to South Carolina Rules of Civil Procedure 12(b)(1), (4) and (5) alleging improper service on the Defendant as set forth in S.C.R.C.P 4. Plaintiff submits this memorandum in opposition of Defendant's Motion to Dismiss and submits that Defendant's Motion to Dismiss should be denied.

RELEVANT FACTS

On or about April 22, 2015, the minor child was properly enrolled as a fourth (4th) grader at Jennie Moore Elementary School when it was housed at 942 Whipple Road, Mt. Pleasant, SC, County of Charleston and was left at the school by his mother for the instructional day under the direction of his teacher, Ms. Judi Popowich. At about 2:15 PM on April 22, 2015, Plaintiff

TYLER M. was with his class on the playground under the care and supervision of Ms. Judi Popowich and while playing with the other children through this interaction fell on or off the playground equipment, hitting his head and rendering him unconscious for some period of time. It is Plaintiff's position that the Defendant failed to provide an adequate and proper fall zone (area under and around the playground equipment where a child might fall), as such a fall zone would have protected and cushioned several feet from the equipment on all sides. During Plaintiff **TYLER M.**'s period of unconsciousness, unaware of his injury and need for assistance, Ms. Judi Popowich took the other students in her class from the playground and returned to her classroom, leaving Plaintiff alone and unattended on the playground. Another class entered the playground and Plaintiff **TYLER M.** was discovered on the playground and taken to the school nurse's office. Plaintiff **DANA MAZYCK** was called to the school and when she arrived to pick up Plaintiff **TYLER M.**, the child was visibly shaken and unable to recognize her as his mother.

LAW/ANALYSIS

I. Plaintiff's Summons and Complaint were properly served pursuant to Rule 4 of the South Carolina Rules of Civil Procedure.

Defendant Charleston County School District (CCSD) alleges that Plaintiff failed to properly file and serve Defendant as set forth in S.C.R.C.P 4 and that this Court should dismiss the complaint pursuant to Rule 12(b)(1), (4) and (5) of the South Carolina Rules of Civil Procedure. Rule 4(d)(6) of the S.C.R.C.P proscribes the procedure for perfecting service upon a governmental entity. Pursuant to this rule, service is made "Upon a municipal corporation, county or other governmental or political subdivision subject to suit, by delivering a copy of the summons and complaint to the chief executive officer or clerk thereof, or by serving the

summons and complaint in the manner prescribed by statute for the service of summons and complaint or any like process upon any such defendant.” S.C.R.C.P 4(d)(6).

Further, Rule 4(d)(6) is proper because per S.C. Code Ann. § 15-78-30 of the South Carolina Tort Claims Act, subsection h states that “Political subdivision” means the counties, municipalities, school districts, regional transportation authority, and special purpose districts of the State and any agency, governmental health care facility, department, or subdivision thereof. CCSD is a school district which falls under the definition “political subdivision”. In an effort to strictly comply with Rule 4, Plaintiff served by certified mail and restricted delivery, a copy of the summons and complaint on the Superintendent of CCSD on April 21, 2017. The same was signed for by E. Rhodes on April 24, 2017. (See Exhibit A). Defendant argues that the signature listed as “E. Rhodes” is a Eugene Rhoades (the full name is not disclosed on the card and the last name does not contain an “a”) and is not and never has been employee of CCSD. They further state that “E. Rhodes a/k/a E. Rhoades” is an employee of Ricoh and not authorized to accept service on behalf of the District.

The certified, return-receipt mailing was sent to Dr. Gerrita Postlewait, Superintendent of CCSD at 75 Calhoun Street, Charleston, SC 29401. Not only was this mailing certified but it was also sent “restricted delivery”.(Exhibit A). Plaintiff had no reason to know that the person who signed a certified mail return receipt was not an employee of CCSD and therefore could not act as an agent of the Superintendent, for whom delivery was restricted to. In accepting Plaintiff's Summons and Complaint on behalf of the Superintendent, “E. Rhodes a/k/a E. Rhoades” affirmatively represented that he was an agent of the same. It is peculiar that the Defendant asserts that “E. Rhodes a/k/a E. Rhoades” is not an employee of CCSD, and are able to identify him fully by name and note his actual employer. By way of personal experience at the District

Office, the Superintendent and District Staff are behind a locked door and one must be granted access after being admitted into the area. In order for "E. Rhodes a/k/a E. Rhoades" to have signed for this mailing he would have to be behind these secured doors. By virtue of signing the return receipt for the Superintendent, "E. Rhodes a/k/a E. Rhoades" demonstrated implied authority to accept service on behalf of the School District and Plaintiff relied upon this authority. Even other CCSD employees who do not work at the District Office are not permitted to go into the secured area without establishing their destination within the building so it is highly improbable that a postal worker was given access to someone not permitted to receive mail on behalf of the Superintendent. Plaintiff would have no way of knowing that the Defendant would have arbitrary persons in the secure access areas signing for documents and yet still having access to the proper people to provide the document such that Defendants were able to respond to the same. The United States Postal Service procedures allow for someone other than the addressee to sign for certified mail, even where the same is marked "restricted delivery" if the signatory is an agent of the addressee. (See Exhibit B). It seems highly unlikely that a postal carrier would have just allowed an arbitrary person passing along the corridors of the District office to sign for mail, especially a piece classified for "restricted delivery". The Superintendent serves as the chief executive officer for CCSD and as such, service was proper.

II. Plaintiff's Summons and Complaint were properly filed and served within the statute of limitations period as set forth in S.C.R.C.P. 12(b)(1), (4) and (5) and S.C. Code Ann. § 15-78-110 of the South Carolina Tort Claims Act.

Defendant alleges that Plaintiff did not properly serve the Defendant within the statute of limitations period as set forth in S.C.R.C.P 12(b)(1), (4) and (5) and S.C. Code Ann. § 15-78-110 of the South Carolina Tort Claims Act. The Plaintiff properly served the Defendant within the

statute of limitations period. Generally, personal injury claims shall be filed within three (3) years of the date of loss. However, the Tort Claims Act states that Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is "commenced" within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered. S.C. Code Ann. § 15-78-110. However, the act itself does not define "commenced." Therefore, since there is no special statutory definition, the term "commenced" is governed by the Rules of Civil Procedure. S.C.R.C.P 3(a) provides that "A civil action is commenced when the summons and complaint are filed with the clerk of court: (1) not served within the statute of limitations in any manner prescribed by law; or (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days of filing."

The injury or date of loss in this case was April 22, 2015. The summons and complaint were filed on April 21, 2017 which is within the statute, thus giving Plaintiff 120 days to serve the same. Service was accepted and signed for on April 24, 2017, three days after filing within the one hundred and twenty day window. With the summons and complaint being served within one hundred and twenty days of filing, the action was "commenced" on April 21, 2017, when it was filed. Additionally, the Tort Claims Act's limitations have exceptions, for person laboring under a disability and the injured party here Tyler M. is a minor, currently age 14 and so technically this action could have brought within two (2) years past his 18th birthday. There is no statute of limitation issue in this claim. Therefore, Defendant's Motion to Dismiss pursuant to the statute of limitations should be denied.

III. Alternatively, service of Plaintiff's Summons and Complaint is effective under the doctrine of substantial compliance.

If the Court finds that service was not proper and failed to strictly comply with Rule 4, Plaintiff asserts that service is proper under the doctrine of substantial compliance. "The principal object of service of process is to give notice to the [defendant] of the proceedings against it." Burris Chemical, Inc. v. Daniel Const. Co. 251 S.C. 483, 487; 163 S.E.2d 618, 620 (1968). "Rule 4, SCRCP, serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995). "Exacting compliance with the rules is not required to effect service of process." Mull v. Ridgeland Realty, LLC, 387 S.C. 479, 485, 693 S.E.2d 27, 30 (Ct. App. 2010) (citing Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 456 S.E.2d 897 (1995)). "Rather, [the court must] inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." Roche at 210, 456 S.E.2d at 899.

In the case at bar, Defendant claims that service on CCSD was insufficient because it was not personally served. Rule 4(d)(6) does not require that a governmental entity be served "personally". Defendant also argues service was not proper because the Summons and Complaint were sent by certified mail and was accepted by "E. Rhodes a/k/a E. Rhoades" who allegedly is not and has never been employed with CCSD. Defendant has submitted an affidavit claiming that E. Rhodes is not authorized to accept service of process on behalf of the District. Assuming E. Rhodes is unauthorized to accept service, that fact, alone, should not affect the validity of service in this action.

First, in accepting Plaintiff's Summons and Complaint on behalf of the Department, E. Rhodes affirmatively represented that he or she was an agent authorized to do so. As previously stated, by signing the return receipt which was marked "restricted delivery" and was addressed properly, E. Rhodes demonstrated implied authority to accept service on behalf of the Defendant and Plaintiff relied upon this authority. Additionally, notwithstanding E. Rhodes' disputed authority, Plaintiff substantially complied with the requirements of Rule 4 and, in so doing, satisfied the notice objective underlying the rule.

In fact, the Defendant was served within five (5) days of filing the suit and counsel noted her appearance by way of a letter dated May 1, 2017 (See Exhibit C) and able to draft and serve an Answer well within the specified 30 days from the date of service. If "E. Rhodes a/k/a E. Rhoades" was not the proper person to have received the Summons/Complaint there was sufficient time to correct the same had counsel been forthcoming with the same. As we were still well with the 120 days for service, counsel could have accepted for CCSD or asked for the Plaintiff to attempt service again. The burden cannot be on the Plaintiff to know that an "unauthorized" person working in a secured facility was able to sign for the Defendant. This could only be if the Defendant placed "E. Rhodes a/k/a E. Rhoades" in a posture to do this. Otherwise, it would appear that such assertions are set in place as a barrier for litigation against CCSD. There is no set of circumstances under which Defendant can claim lack of notice of this action and it is similarly unlikely that any alleged defect in service caused any prejudice to the Defendant in this regard. Personal Jurisdiction is satisfied by the defendant being a governmental entity in the county of Charleston, state of South Carolina. Defendant also appeared by filing an Answer and Motion with this court. Because Plaintiff relied upon E. Rhodes apparent authority in sufficiently complying with the rules of process and because service of process itself is

required only to effect notice, which was accomplished in this action, Defendant's Motion to Dismiss should be denied, even if the Court decides that exacting compliance with Rule 4 was not accomplished.

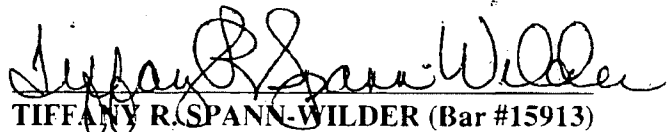
CONCLUSION

WHEREFORE, Plaintiff respectfully requests that the Court deny Defendant's Motion to Dismiss. Plaintiff further requests an award of its costs and attorney's fees associated with this Motion and any other relief the Court deems just and proper.

This 18th day of April, 2018.

Respectfully Submitted,

SPANN WILDER LAW, LLC
2131 Dorchester Road
P.O. Box 70488
North Charleston, SC 29415
(843) 266-7792
tiffany@spannwilderlaw.com
deon@spannwilderlaw.com



TIFFANY R. SPANN-WILDER (Bar #15913)

DEON T. TEDDER (Bar # 103060)

Attorney(s) for the Plaintiff

CERTIFICATE OF SERVICE

I certify that on this date that a copy of the foregoing was served on counsel for the Defendants by ☐ electronic filing, ☒ email, ☐ Personal Delivery, ☐ US Mail ☐ facsimile in the manner prescribed by the applicable Rule of Civil Procedure.

This 18th Day of April, 2018

x Deon T. Tedder

EXHIBIT A

U.S. Postal Service
CERTIFIED MAIL - RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

1. Article Addressed to:
 Dr. Gerrita Postlewait, Superintendent
 Charleston County School District
 75 Calhoun Street
 Charleston, SC 29401

2. Article Number (Transfer from service label)
 7011 2970 0004 5211 3203

3. Service Type
☒ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)

4. Priority Mail Express
☐ Registered Mail
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation
☐ Signature Confirmation Restricted Delivery

5. Signature
 X *[Signature]*

6. Received by (Print Name)
 Rhodes

7. Date of Receipt
 7/21/17

8. Is delivery address different from item 1?
 If YES, enter delivery address below: ☐ Yes ☒ No

PS Form 3811, July 2015 PSN 7530-02-000-0053

U.S. Postal Service
CERTIFIED MAIL - RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL

Postage \$ 1.45
 Certified Fee 3.35
 Return Receipt Fee (Endorsement Required) 2.15
 Restricted Delivery Fee (Endorsement Required) 4.05
 Total Postage & Fees \$ 11.00

Postmark Here
 2017
 AVERA BRANCH

Send To
 Dr. Gerrita Postlewait, Superintendent
 Charleston County School District
 75 Calhoun Street
 Charleston, SC 29401

PS Form 3811, August 2016

USPS TRACKING#
 9590 9402 1857 6104 4881 38

First-Class Mail
 Postage & Fees Paid
 USPS
 Permit No. G-10

**United States
 Postal Service**

* Sender: Please print your name, address, and ZIP+4® in this box*

The Spann-Wilder Law Firm, LLC
 Tiffany Spann-Wilder, Esquire
 2131 Dorchester Road
 P.O. Box 70498
 North Charleston, SC 29415

[Signature]
 R. J. Mazyck

ALERT: AS OF APRIL 30, USPS.COM WILL NO LONGER SUPPORT OUTDATED BROWSERS. TO...

USPS Tracking®

FAQs > (<http://faq.usps.com/?articleId=220900>)

Track Another Package +

Tracking Number: 70112970000452113203

Remove X

Your item was delivered to an individual at the address at 12:58 pm on April 24, 2017 in CHARLESTON, SC 29401.

 **Delivered**

April 24, 2017 at 12:58 pm
Delivered, Left with Individual
CHARLESTON, SC 29401

Tracking History

April 24, 2017, 12:58 pm

Delivered, Left with Individual
CHARLESTON, SC 29401

Your item was delivered to an individual at the address at 12:58 pm on April 24, 2017 in CHARLESTON, SC 29401.

April 22, 2017, 10:11 am

Delivery Attempted - No Access to Delivery Location
CHARLESTON, SC 29401

April 22, 2017, 7:49 am

Arrived at Unit
CHARLESTON, SC 29401

April 21, 2017, 10:13 pm

Arrived at USPS Regional Facility

EXHIBIT B



- S900 Special Postal Services
- S910 Security and Accountability

S916 Restricted Delivery

Summary S916 describes restricted delivery and what services must be used with restricted delivery. It also covers the procedures for obtaining restricted delivery and the delivery of restricted mail.

1.0 BASIC INFORMATION

Description Restricted delivery service permits a mailer to direct delivery only to the addressee or addressee's authorized agent. The addressee must be an individual (or natural person) specified by name.

Eligible Matter Restricted delivery service is available for First-Class Mail (including Priority Mail) and Package Services that is sent COD, insured for more than \$50, registered, or certified.

Fee and Postage The applicable fee for restricted delivery service must be paid in addition to postage and other fees.

Return Receipt The mailer may also obtain a return receipt by checking the appropriate block on Form 3811 and paying the applicable fees.

Endorsement Mail for which restricted delivery service is requested must be endorsed "Restricted Delivery." The endorsement must be placed above the address, and to the right of the return address.

Refund Restricted delivery fees are refunded only when the USPS fails to give restricted delivery service.

Additional Services In addition to the prerequisites listed in 1.2, the following services may be combined with restricted delivery if the applicable standards for the services are met and the additional service fees are paid:

- a. Delivery Confirmation.
- b. Parcel airlift service (PAL).
- c. Signature Confirmation.
- d. Special handling.

2.0 OBTAINING SERVICE

At Time of Mailing The mailer may request restricted delivery at the time of mailing by advising the USPS clerk or by marking the mail "Restricted Delivery." A firm mailer must enter the proper fee in the correct column of the firm sheet and place the required endorsement on the mail. If a return receipt is requested, the correct block on Form 3811 must be checked to show that restricted delivery is also required.

After Mailing The mailer may request restricted delivery after mailing by notifying the mailing post office in writing. The mailer must identify the article, including item number and addressee, and pay the service fee and communication costs required to effect restricted delivery. USPS failure to provide the service because delivery was made before the delivery office received the request is not grounds for a refund of the fee or communication costs.





S916.3.0

Restricted Delivery

3.0 DELIVERY

Conditions

3.1

Mail marked "Restricted Delivery" is delivered only to the addressee or to the person authorized in writing as the addressee's agent to receive the mail, subject to D042 and these exceptions:

- a. Mail for famous personalities and executives of large organizations is normally delivered to an agent authorized to sign for such mail.
- b. Mail for officials of executive, legislative, and judicial branches of the government of the United States or of the states and possessions and their political subdivisions, or to members of the diplomatic corps, may be delivered to a person authorized by the addressee or by regulations or procedures of the agency or organization to receive the addressee's mail.
- c. Mail for the commander, staff sections, or other officials of military organizations by name and title, is delivered to the unit mail clerk, mail orderly, postal clerk, assistant postal clerk, or postal finance clerk, when such individuals are designated on DD (Department of Defense) Form 285 to receipt for all mail addressed to the units for which they are designated. If the person accepting mail is designated on DD Form 285 to receipt for ordinary mail only, then restricted delivery mail addressed to the commander, or other official by name and title, is delivered to the mail clerk only if the addressee authorizes under 3.2.
- d. Mail for an inmate of a city, state, or federal penal institution, in cases where a personal signature cannot be obtained, is delivered to the warden or designee.
- e. Mail for minors or persons under guardianship may be delivered to their parents or guardians.

Identification

3.2

The USPS may require proof of identification from the addressee (or agent).

Agent Authorization

3.3

An addressee who regularly receives restricted delivery mail may authorize an agent on Form 3801 or by letter to the postmaster. The addressee must make the notation "this authorization is extended to include restricted delivery mail" on Form 3801 (in the area for signatures of authorized agents) or in the letter to the postmaster. Form 3849 may be left for the authorization if the post office has no standing delivery order or letter on file. The addressee may enter the name of the agent on the back of Form 3849 in the space provided and sign the form. The agent must sign for receipt of the article on the back of the form.

Joint Addressees

3.4

When mail is addressed to two or more persons jointly (as shown by the word "and" or symbol "&" connecting their names), all addressees or their agents are notified to be present to accept delivery together. The delivery receipt obtained and the return receipt, if any, must be signed by all joint addressees or their agents. The mail may then be delivered to any of the addressees or their agents unless one or more addressees or their agents object, in which case delivery is not made until all the addressees or their agents sign a statement designating who is to receive the mail.

Addressed "In Care Of"

3.5

Either person may sign for mail addressed to one person in care of another.

EXHIBIT C

ANDERSON REYNOLDS & STEPHENS, LLC

ATTORNEYS AT LAW
37 ½ BROAD STREET
POST OFFICE BOX 87
CHARLESTON, SOUTH CAROLINA 29402

JONATHAN J. ANDERSON
LISA A. REYNOLDS
SHANNA M. STEPHENS
CURTIS B. MARTIN
KATHERINE C. MIARS
THOMAS F. DRAZAN

TEL. 843-723-0185
FAX. 843-405-0313
email: lreynolds@arslawsc.com

May 1, 2017

Tiffany R. Spann-Wilder, Esquire
Spann Wilder Law, LLC
P.O. Box 70488
North Charleston, SC 29415

RE: T. Mazyck v. Charleston County School District
Case No.: 2017-CP-10-1970
Claim No.: GL016400
AR&S No.: 20170.19

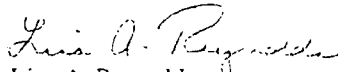
Dear Tiffany:

Please allow this correspondence to advise that I have been asked by South Carolina School Boards Insurance Trust (hereinafter "SCSBIT") to represent Charleston County School District in the above referenced matter. Please note in your file that I am the attorney for this Defendant.

It is my understanding that the Summons and Complaint were served on April 24, 2017 thereby requiring Defendant to Answer or otherwise respond by May 24, 2017. If I am mistaken, please contact me immediately upon receipt of this correspondence and advise of same.

Thank you in advance for your attention to this matter. I look forward to working with you. With kindest regards, I am

Sincerely yours,


Lisa A. Reynolds

LAR/kl

cc: Scott Suthard (via electronic correspondence only)
John Emerson (via electronic correspondence only)

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2 COUNTY OF CHARLESTON) CASE NO. 2019-CP-10-0113
 3 DANA MAZYCK, GUARDIAN)
 AD LITEM FOR TYLER M.,)
 4 A MINOR CHILD UNDER) Transcript of Record
 THE AGE OF 14,)
 5)
 Plaintiff,)
 6) Date: June 14, 2019
 vs.)
 7)
 CHARLESTON COUNTY)
 8 SCHOOL DISTRICT,
 9 Defendants.

10 * * * * *

11

12 B E F O R E:

13 The Honorable Craig Brown

14

15

16

17

18

19

20

21 * * * * *

22

23 Denise J. Lauder, RPR

24 Ninth Judicial Circuit

25

A P P E A R A N C E S

REPRESENTING THE PLAINTIFF:

TIFFANY R. SPANN-WILDER, ATTORNEY AT LAW

Spann Wilder Law, LLC

2131 Dorchester Road

North Charleston, SC 29405

REPRESENTING THE DEFENDANT:

COLE LAWRIMORE, ESQUIRE

Anderson, Reynolds & Stephens, LLC

37 1/2 Broad Street

Charleston, SC 29401

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Page No.

Proceedings.....	4
REPORTER'S CERTIFICATE.....	18

INDEX OF EXHIBITS

(No exhibits were offered or
marked for identification.)

1 (The following proceedings were had
2 6/14/19, Charleston County Common Pleas, 9:31 a.m.)

3 THE COURT: Good morning, sir.

4 MR. LAWRIMORE: Good morning, Your
5 Honor, and may it please the Court. Cole Lawrimore
6 here standing in for Lisa Reynolds on behalf of the
7 Charleston County School District.

8 THE COURT: Tell me your name again.

9 MR. LAWRIMORE: Cole Lawrimore,
10 L-A-W-R-I-M-O-R-E.

11 THE COURT: All right.

12 MR. LAWRIMORE: Your Honor, we're
13 before the Court today on the district's motion to
14 dismiss. That motion is based upon the collateral
15 estoppel and res judicata doctrine. We submitted a
16 reply to plaintiff's memoranda in opposition
17 submitted yesterday.

18 Do you have a copy of that, Your Honor?

19 THE COURT: Yeah. Do you have a hard
20 copy?

21 MR. LAWRIMORE: I do. May I approach?

22 THE COURT: Yes.

23 MS. SPANN-WILDER: Your Honor, would
24 you mind if we pass ours up as well?

25 THE COURT: That would be fine. Thank

1 you.

2 MR. LAWRIMORE: Your Honor, this is
3 second in a series of two actions that arises from
4 an alleged playground injury occurring in April of
5 2015. The original action that I referred to is
6 Mazyck 1 throughout our reply filed in April of
7 2017.

8 Judge Young dismissed that action based
9 on a failure to timely file and serve that action
10 within the applicable statute of limitations under
11 the South Carolina Tort Claims Act. That order is
12 attached as Exhibit A to the brief.

13 This action is identical in that the
14 parties are the exact same. The best I can tell,
15 the language and allegations of the complaint in
16 this action are identical to Mazyck 1 with the one
17 exception is the identifier used for the minor
18 child and all other instances and occasions are the
19 exact same allegations.

20 With that in mind, we believe that this
21 case is unusually suited to disposition through the
22 doctrine res judicata. I believe it's beyond
23 dispute that the parties and causes of action and
24 subject matter are identical.

25 I suppose where I would disagree with

1 the plaintiff in this action is that there has been
2 an adjudication of the issues on the merits.

3 Judge Young on page 2 of his order
4 discusses the applicable statute of limitations at
5 length. He sets forth the applicable dates and
6 then he goes on to discuss why service was
7 inadequate.

8 And then in his ruling, Your Honor, he
9 dismisses Mazyck 1 based on Rule 12(b)(1)(4)(5) and
10 the South Carolina Tort Claims Act and the
11 applicable statute of limitations contained
12 therein.

13 I have cited the Supreme Court case in
14 my brief wherein the United States Supreme Court in
15 addressing 41(b) of the Rules of Civil Procedure,
16 which is identical to the South Carolina Rules of
17 Civil Procedure as set forth in the notes, provides
18 in pertinent part that orders of dismissal, unless
19 they state otherwise, or it falls within a certain
20 series of exceptions, including lack of
21 jurisdiction or improper venue or failure to join a
22 party under Rule 19, is an adjudication on the
23 merits.

24 Judge Young in his order on its face
25 does not say that is anything other than a

1 adjudication on the merits. Further, the United
2 States Supreme Court has opined that dismissal
3 based on the statute of limitation is an
4 adjudication on the merits, just like any other
5 dismissal based on Rule 41(b).

6 With that in mind, Your Honor, we do
7 believe that dismissal based on the statute of
8 limitations as set forth in Judge Young's order is
9 an adjudication on the merits; therefore, we
10 believe that this action should be dismissed under
11 the doctrine of res judicata.

12 Similarly, Your Honor, we believe
13 collateral estoppel applies to the facts of the
14 case that's presently at bar. Attached as Exhibit
15 B to my reply is the Plaintiff's Memorandum in
16 Opposition to Our Motion to Dismiss in Mazyck 1.

17 On page 5 of that memorandum, the
18 statute of limitations is discussed at length.
19 Judge Young references the statute of limitations
20 in his order and bases his dismissal upon failure
21 to comply with the South Carolina Tort Claims Act
22 applicable statute of limitations.

23 With that in mind, Your Honor, we
24 believe that the issue before the Court has been
25 actually litigated, as evidenced by the parties and

1 the Court's attention to it.

2 It was directly determined in Judge
3 Young's order, and he bases his dismissal, in part,
4 on the issue of the applicable statute of
5 limitations having not been met.

6 With that in mind, Your Honor, we
7 believe that the doctrine of collateral estoppel
8 also applies, and on those grounds the case should
9 be dismissed. Thank you, Your Honor.

10 THE COURT: Yes, ma'am.

11 MS. SPANN-WILDER: Thank you.

12 Good morning. I'm Tiffany Spann-Wilder
13 here for the plaintiffs, and I have Daniel Martin,
14 the Third, who is my summer associate, soon to be
15 sworn in. And we are here on behalf of the
16 plaintiff, a minor child.

17 Your Honor, most of the facts as
18 stated, I believe, are pretty much on point. I
19 want to go back to the background of the case.
20 This child was injured while under the care of
21 Charleston County School District, and to this day
22 there is no clear understanding of what transpired
23 for this, but we are really clear that he was left
24 unsupervised in an unconscious state for some
25 unidentified period of time and later found by

1 another class that returned.

2 An action was filed and it was timely
3 filed. The issue in that other motion was that we
4 served the district based on an agreement of the
5 prior counsel. Sent it certified mail, return
6 receipt restricted delivery.

7 The plaintiff had no way of knowing
8 that someone in the mail office who signed for it
9 was not authorized per the district to accept it
10 because he was a contractor for someone else.

11 These were things really outside of the
12 plaintiff's knowledge and understanding. The
13 defendant responded in an answer timely. We then
14 moved forward with discovery, and this all came to
15 light when the plaintiff filed a motion to compel
16 the discovery.

17 The defendants then came forward and
18 said we have a motion to dismiss pending as well --

19 THE COURT: In the other case?

20 MS. SPANN-WILDER: Yes, sir. And,
21 apparently, when I was served, I was -- there was
22 never a motions sheet -- the clerk's office said
23 there was not a motions sheet, but in light of both
24 matters coming before Judge Young that morning, he
25 said of course it made sense to hear the motion to

1 dismiss prior to a motion to compel, because it
2 would determine whether anything would be
3 compelled.

4 We moved forward that morning and
5 presented our claims and subsequently got just a
6 single e-mail from Judge Young's law clerk just
7 saying, Judge Young will go with the defendant.
8 There was no other full basis, but at that point,
9 it was clear.

10 The action was filed with the clerk's
11 office on 4/21/17; so it was in the window. It was
12 cutting it close, but it was there.

13 We served the County within three days
14 of that 4/24/17, got the card back, filed all of
15 that, but there was nothing specifically pled in
16 that answer that clarified that we have a problem
17 with this person.

18 It wasn't until months later when the
19 -- when we came forward with the motion to compel
20 and had the argument that an affidavit was attached
21 by the district's new counsel saying this person
22 doesn't work for the district. He's a Xerox
23 contractor.

24 THE COURT: Let me ask you this:
25 Assuming it's the truth everything you're telling

1 me here today --

2 MS. SPANN-WILDER: Yes, sir.

3 THE COURT: -- prior suit was filed in
4 April of '17, which you have argued to me just
5 barely, but it was within the statute of
6 limitations?

7 MS. SPANN-WILDER: Yes, sir.

8 THE COURT: This new case that's been
9 filed, it wasn't filed until January of '19?

10 MS. SPANN-WILDER: Yes, sir.

11 THE COURT: Almost two more years
12 later.

13 MS. SPANN-WILDER: A few months after
14 that decision.

15 THE COURT: Okay. But it's still
16 almost four years after this incident.

17 MS. SPANN-WILDER: Yes, sir.

18 THE COURT: Was there any motions to
19 reconsider on Judge Young's decision?

20 MS. SPANN-WILDER: No, sir, because it
21 was dismissed without prejudice. And our position
22 is that the child is a minor. And based on the
23 Tort Claims Act, it gives exceptions for minors.

24 And there is the two years; however,
25 lawyers just typically move forward with that for

1 -- out of an abundance of caution; however, persons
2 moving under -- suffering under disability and
3 being under the age of 18, he is that, gives him
4 that exception.

5 The statute of limitations and
6 1578-10-110 says except as provided in 15340.

7 THE COURT: And let me ask you this:
8 If Judge Young in his prior order ruled on the
9 statute of limitations issue --

10 Isn't that what you said,
11 Mr. Lawrimore?

12 MR. LAWRYMORE: That's correct, Your
13 Honor.

14 MS. SPANN-WILDER: Your Honor --

15 THE COURT: Let me ask the question --
16 and I will look at the order.

17 MS. SPANN-WILDER: Okay.

18 THE COURT: If he ruled on the statute
19 of limitations issue in the prior complaint that
20 was filed and served by you-all, no motions to
21 reconsider, no appeal in the matter, is that not
22 the law of the case at that point?

23 MS. SPANN-WILDER: Your Honor, reading
24 this order, I don't believe that that is how it
25 happened. It's the last paragraph says, the Court

1 finds that service was not proper in accordance
2 with the rules, as such Plaintiff failed to
3 properly serve the summons and complaint;
4 therefore, service has not affected on the
5 district.

6 That is our understanding of the sole
7 issue that Judge Young went to.

8 THE COURT: Okay.

9 MS. SPANN-WILDER: And that is why in
10 looking and weighing our options, an appeal would
11 still be going on, as opposed to bringing the
12 action forward. And so in regards to that, Your
13 Honor, the action was filed again.

14 It essentially has -- there is one
15 significant change in paragraph 20 where we talk
16 further about what issues the minor child has
17 suffered. That is a distinction in that. Our
18 causes of actions are essentially the same, but
19 it's our position that this matter is right for
20 further processing through the courts and it should
21 be one in which a jury is able to entertain.

22 As such, because the findings really
23 went to the service issue, I think Judge Young
24 would have been explicit in that matter if he went
25 to the merits; and he did not. We focused on the

1 service.

2 We, again, contend that that wasn't the
3 case and, Your Honor, I've attached here in Exhibit
4 B -- and, again, it's one of those things where,
5 you know, we believe that it was a move of the
6 district -- and they have a right to certainly
7 defend their client, but that wasn't -- it wasn't
8 the most forthright presentation to the Court
9 because in Exhibit B, I attached an affidavit of
10 service where this same person, E. Rose, has again
11 accepted service on behalf of the district in an
12 action that is currently pending before the Court.
13 It happened after our case.

14 And so, clearly, if this person caused
15 this issue previously, I would think that by now
16 things would have been hashed out in the district
17 about who was accepting service.

18 So at this time we move forward and had
19 an affidavit of acceptance done by the paralegal
20 there in the legal department so we knew that that
21 was not going to be an issue. So, as such, with
22 service being the issue, res judicata is not
23 applicable because the judge did not go to the
24 merits of the case.

25 This wasn't a dismissal on 12(b)(6).

1 It was on 12(1), which is about lack of
2 jurisdiction over the subject matter: (4),
3 insufficiency of process and by insufficiency
4 assist of process.

5 So even to their argument about Rule
6 41, Rule 41 does not -- it would not take this out
7 of place because it was an issue with subject
8 matter in the process. So it's our position that
9 the minor child is not outside of the statute of
10 limitations for the Tort Claims Act and should have
11 an opportunity -- I also passed up and I gave to
12 Mr. Lawrimore the Estate of Mimms v South Carolina
13 Department of Disabilities, and I passed that up to
14 you.

15 THE COURT: Yes, ma'am.

16 MS. SPANN-WILDER: I got their memo
17 yesterday afternoon about 4:00, so I did not have
18 time to draft a full-fledged response, but
19 presented this case to you to, again, support our
20 higher court's positions about persons who act
21 under disability. In this case, it's someone with
22 the issue of insanity, but children labor under
23 those same rules.

24 Thank you, Your Honor.

25 THE COURT: Thank you.

1 Where in this order, Mr. Lawrimore,
2 that you handed up as part of your memorandum, does
3 Judge Young discuss the statute of limitations
4 issue?

5 MR. LAWRIMORE: Your Honor, if you
6 would look at the very bottom of page 1 of that
7 order attached as Exhibit A, under where it says
8 law analysis. The first statement under law
9 analysis section, South Carolina Tort Claims Act is
10 the exclusive remedy for claims and actions brought
11 against governmental entities.

12 The South Carolina Tort Claims Act
13 provides a two-year statute of limitations for
14 actions against a governmental entity.

15 The last sentence of that paragraph, in
16 this matter the plaintiff did not file a verified
17 claim and, therefore, in accordance with the South
18 Carolina Tort Claims Act the plaintiff had two
19 years until April 22nd, 2017 in which to commence
20 this action.

21 Then a discussion of the statute of
22 limitations under the South Carolina Tort Claims
23 Act follows that. And following up to the argument
24 of Plaintiff's counsel, I -- as it appears on the
25 face of the order under the order to judge and

1 decree section, the district's motion to dismiss
2 based on 12(b)(1)(4)(5), and the South Carolina
3 Tort Claims Act is granted.

4 With those things in mind, we look at
5 the face of this order. The Tort Claims Act is
6 both considered and ruled upon, was also raised in
7 the memorandum in opposition to that, Your Honor.

8 THE COURT: Okay. Thank you. I'll
9 look at this and let you know. Thank you.

10 MS. SPANN-WILDER: Your Honor, may I?

11 THE COURT: Briefly. I've got other
12 people waiting.

13 MS. SPANN-WILDER: Yes, sir. Yes, sir,
14 I know. Based on what Mr. Lawrimore read, and he
15 said that the filing by April 22nd, I would just
16 take note that the other matter was filed on
17 April 21st. And, again, that this plaintiff labors
18 under disability and we believe that Mimms is
19 controlling. Thank you, Your Honor.

20 THE COURT: Okay. Thank you.

21 (These proceedings were concluded at
22 9:48 a.m.)

23

24

25

1 CERTIFICATE OF REPORTER

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I, Carol Denise Lauder, Registered

Professional Reporter and Notary Public for the

State of South Carolina at Large, do hereby certify

that the foregoing transcript is a true, accurate,

and complete record.

I further certify that I am neither related

to nor counsel for any party to the cause pending

or interested in the events thereof.

Witness my hand, I have hereunto affixed my

official seal this 13th day of September, 2019 at

Charleston, Charleston County, South Carolina.

Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
February 27, 2008

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

DANA MAZYCK, Guardian ad Litem
TYLER M., a minor child under the age
of fourteen (14),

Plaintiff,

v.

CHARLESTON COUNTY SCHOOL
DISTRICT,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2017-CP-10- 1970

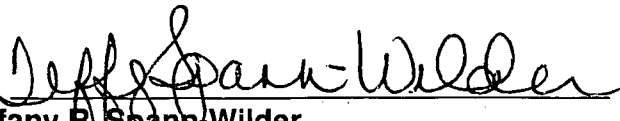
SUMMONS

FILED
2017 APR 21 AM 8:40
JULIE J. ARMSTRONG
CLERK OF COURT

YOU ARE HEREBY SUMMONED and required to appear and defend the action(s) set forth in the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer on Plaintiff's attorney at Spann Wilder Law, LLC, 2131 Dorchester Rd., Post Office Box 70488, N. Charleston, South Carolina 29415, within thirty (30) days after the service thereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the day of such service, judgment by default will be entered against you for the relief demanded in the said Complaint.

SPANN WILDER LAW, LLC

By: 

Tiffany R. Spann-Wilder

2131 Dorchester Rd (29405)

PO Box 70488

N. Charleston, SC 29415

(843) 266-7792

(843) 266-7797, facsimile

North Charleston, South Carolina

Dated: April 21, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON,	)	
DANA MAZYCK , Guardian ad Litem for)	)	Docket No.: 2017-CP-10- 1970
TYLER M. , a minor child under the age)	)	
of fourteen (14),	)	COMPLAINT
	)	(Jury Trial Requested)
Plaintiffs,	)	
vs.	)	
CHARLESTON COUNTY SCHOOL	)	
DISTRICT ,	)	
Defendants.	)	

FILED
2017 APR 21 AM 8:40
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiffs, by and through their undersigned attorney, would respectfully allege and show unto this Honorable Court:

1. The Plaintiff, **TYLER M.** is a minor under the age of fourteen (14) years of age and is a citizen and resident of the County of Charleston, State of South Carolina.
2. The Plaintiff, **DANA MAZYCK**, is a citizen and resident of the County of Charleston, State of South Carolina and is the mother and care giver for the minor child, **TYLER M.** and has been duly appointed Guardian Ad Litem to bring this action on behalf of Plaintiff **TYLER M.**
3. That the Defendants **CHARLESTON COUNTY SCHOOL DISTRICT** (hereinafter "CCSD") is a political subdivision of the State of South Carolina as that term is defined in the South Carolina Tort Claims Act, S.C. Code 15-78-10 *et. seq.* This action is brought pursuant to the South Carolina Tort Claims Act, S.C. Code 15-78-10 *et seq.* to recover damages for personal injuries sustained by Plaintiff **TYLER M.**
4. On or about April 22, 2015, the minor child was properly enrolled as a fourth (4th) grader at **JENNIE MOORE ELEMENTARY SCHOOL** located then at 942 Whipple

Road, Mt. Pleasant, SC, County of Charleston and was left at the school by his mother for the instructional day under the direction of his teacher, Ms. Judi Popowich.

5. Upon information and belief, about 2:15 PM on April 22, 2015, Plaintiff **TYLER M.** was with his class on the playground under the care and supervision of Ms. Judi Popowich and while playing with the other children through this interaction fell on or off the playground equipment, hitting his head and rendering him unconscious for some period of time.

6. Upon information and belief, the sand beneath the surface area is not properly maintained to ensure that it does not become compacted due to rain or standing water, and that there is insufficient cushioning in the area.

7. Upon information and belief, the Defendant failed to provide an adequate and proper fall zone (area under and around the playground equipment where a child might fall), as such a fall zone would have protected and cushioned several feet from the equipment on all sides.

8. That during Plaintiff **TYLER M.**'s period of unconsciousness, unaware of his injury and need for assistance, Ms. Judi Popowich took the other students in her class from the playground and returned to her classroom. Plaintiff **TYLER M.** was left alone and unattended on the playground.

9. Upon information and belief, another class entered the playground and Plaintiff **TYLER M.** was discovered on the playground and taken to the school nurse's office.

10. Plaintiff **DANA MAZYCK** was called to the school and when she arrived to pick up Plaintiff **TYLER M.** the child was visibly shaken and unable to recognize her as his mother.

CAUSE OF ACTION-GROSS NEGLIGENCE

11. No one at **JENNIE MOORE ELEMENTARY** could clearly explain to Plaintiff **DANA MAZYCK** how the injury occurred or how Plaintiff **TYLER M.** was left outside alone.

12. The Defendant, it's teachers and staff had a duty to protect and guard the well being of Plaintiff **TYLER M.** while on the school playground of Jennie Moore Elementary School.

13. Upon information and belief, there were other classes on the playground and teachers/staff present yet none witnessed the injury and none were present in the immediate area of the minor child's fall.

14. As a direct and proximate cause of the aforesaid wrongful conduct on the part of Defendant, its agents or employees, the Plaintiff **TYLER M.** sustained damages, including but not limited to the following:

- a. Medical evaluations, treatment diagnostic procedures for a concussion, loss of consciousness, and memory loss;
- b. Medical bills and expenses;
- c. Conscious pain and suffering and lost of enjoyment of life for a prolonged period of time in which he was unable to attend school, after school activities and the inability to enjoy his family's company.

15. Plaintiff **TYLER M.** is informed and believes that his severe injuries were due to and caused by carelessness, recklessness, willfulness, wantonness, gross negligence and reckless disregard of the Defendants' agents/employees.

FOR A SECOND CAUSE OF ACTION
DOCTRINES OF RESPONDEAT SUPERIOR AND AGENCY AS TO CCSD
(Vicarious Liability)
FOR A THIRD CAUSE OF ACTION - NEGLIGENT SUPERVISION

16. Plaintiffs realleges and reincorporates Paragraphs 1 through 13 above of the complaint as if fully set forth herein.

17. Defendant **CHARLESTON COUNTY SCHOOL DISTRICT** is vicariously liable to Plaintiff **TYLER M.**, under the doctrine of *respondeat superior* and agency, for the negligent, careless, reckless, willful and wanton conduct of its employee and/or agent, Ms. Judi Popowich and other employees present at the time of Plaintiff **TYLER M.'s** injury and abandonment such conduct consisting of one or more of the Particulars described herein.

18. That on or around April 22, 2015, Ms. Judi Popowich was an employee of Defendants in charge of Plaintiff **TYLER M.** and had a duty to watch and monitor his activities on the playground to ensure his safety.

19. Defendants failed to exercise ordinary care in supervising Plaintiff **TYLER M.** on the playground at Jennie Moore Elementary School. The Defendants, by the acts or omission of its agents or employees, was negligent, careless or reckless in at least one of the following particulars:

- a. In failing to properly supervise the children within its facilities;
- b. In failing to provide a safe environment for the children, including Plaintiff **TYLER M.** to play;
- c. In failing to provide proper and adequate cushioning to the fall zone area of the playground equipment in which Plaintiff **TYLER M.** played;
- d. In failing to account for all students at the time of removing them from the playground area;
- e. In leaving a minor child unattended for an extended period of time;

- f. In failing to follow proper protocol for medical care to be provided to a child suffering from a head injury by not calling emergency personnel.

20. As a direct result of Defendants' negligent conduct, Plaintiff **TYLER M.** has suffered the injuries and damages described herein.

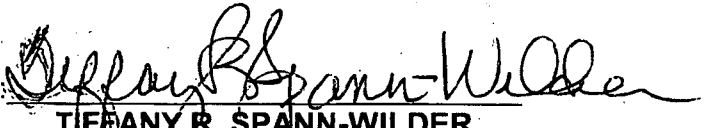
21. As a direct and proximate result of the acts and/or omission(s) of Defendants, as alleged, Plaintiff **TYLER M.** has been injured and he is entitled to damages for:

- a. past, present and future medical expenses;
- b. physical pain and suffering;
- c. loss of enjoyment of life;
- d. alteration of lifestyle;
- e. susceptibility of future injury; and
- f. future damages resulting from permanent injury.

WHEREFORE, Plaintiffs pray for judgment against the Defendant in a sum of actual damages to be determined by the trier of fact in an amount exceeding Ten Thousand (\$10,000.00) Dollars; for the costs of this action, and for such other and further relief as determined by this Honorable Court.

SPANN WILDER LAW, LLC
2131 Dorchester Road
P.O. Box 70488
N. Charleston, South Carolina 29415
(843) 266-7792
tiffany@spannwilderlaw.com

By:


TIFFANY R. SPANN-WILDER
Attorney for the Plaintiff

N. Charleston, South Carolina
Dated: April 21, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	CASE NO: 2017-CP-10-1970
Dana Mazyck, Guardian Ad Litem For	)	
Tyler M., A Minor Child Under The Age Of	)	
(14),	)	
	)	CHARLESTON COUNTY SCHOOL
	)	DISTRICT'S ANSWER TO PLAINTIFFS'
Plaintiffs,	)	SUMMONS AND COMPLAINT
vs.	)	
	)	(Jury Trial Demanded)
Charleston County School District,	)	
	)	
Defendant.	)	

FILED
 2017 MAY 23 PM 1:18
 JULIE J. ARMSTRONG
 CLERK OF COURT

TO: PLAINTIFFS AND THEIR COUNSEL TIFFANY R. SPANN-WILDER, ESQUIRE

Defendant Charleston County School District (hereinafter "CCSD"), by and through undersigned counsel, answers Plaintiffs' Complaint filed April 21, 2017 as follows:

FOR A FIRST DEFENSE

(Insufficiency of Process and Insufficiency of Service of Process)

1. Defendant, CCSD, moves for a dismissal of the claim pursuant to S.C.R.C.P. 12(b)(1), (4) and (5) for Plaintiff's failure to properly file and serve the Defendant as set forth in S.C.R.C.P 4 and moves to dismiss this Summons and Complaint as to Defendant pursuant to Rule 12(b)(1), (4) and (5) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE

(Insufficiency of Process, Insufficiency of Service of Process and Statute of Limitations)

2. Defendant moves for a dismissal of the claims for Plaintiff's failure to properly serve the Defendant within the statute of limitations period as set forth in S.C.R.C.P 12(b)(1), (4) and (5) and S.C. Code Annotated § 15-78-110. (South Carolina Tort Claims Act) and moves to dismiss this Complaint as to Defendant pursuant to Rule 12(b)(1), (4)

and (5) of the South Carolina Rules of Civil Procedure and S.C. Code Annotated § 15-78-110.

***FOR A THIRD DEFENSE
(General Denial)***

3. CCSD denies each and every allegation of the Plaintiff's Complaint not specifically admitted, qualified, or explained herein and demands strict proof thereof.
4. Paragraphs 1 and 2 of Plaintiff's Complaint are not directed towards CCSD and therefore a response is not necessary. To the extent a response is required the allegations are denied and strict proof is demanded thereof.
5. In response to paragraph 3 of the Plaintiff's Complaint Defendant affirmatively asserts that Defendant is a governmental entity as defined in S.C. Code Ann. § 15-78-30, and any and all actions alleged against Defendant are controlled by the South Carolina Tort Claims Act, including but not limited to any and all limitations to liability contained therein. Defendant is without sufficient information with which to admit or deny the rest and remainder of the allegations contained in paragraph 3 and therefore the same are denied and strict proof is demanded thereof.
6. CCSD is without sufficient information to admit or deny the allegations contained in Paragraph 4 of Plaintiff's complaints and as such the allegations are denied and strict proof is demanded thereof.
7. CCSD denies the allegations contained in paragraphs 5 – 15 of Plaintiff's Complaint and demands strict proof thereof.
8. In response to paragraph 16 of Plaintiff's Complaint, CCSD restates each preceding paragraph as if set forth fully verbatim herein.

9. CCSD denies the allegations contained in paragraphs 17 – 21 of Plaintiff's Complaint and demands strict proof thereof.
10. CCSD denies the allegations contained in the "WHEREFORE" paragraph and demands strict proof thereof.

***FOR A FOURTH DEFENSE
(Public Duty Rule)***

11. Defendant reasserts and realleges each and every preceding paragraph as if each were fully repeated verbatim herein.
12. The Plaintiff's Complaint fails to state a claim against Defendant in that as a matter of law the Defendant violated no duty which it owed to the Plaintiff for which the Plaintiff is entitled to relief in the form of damages.

***FOR A FIFTH DEFENSE
(12(b)(6) S.C.R.C.P.)***

13. Plaintiff fails to state facts sufficient to constitute a cause of action against the Defendant answering herein, and any claim against Defendant should be dismissed pursuant to Rule 12(b)(6) South Carolina Rules of Civil Procedure.

***FOR A SIXTH DEFENSE
(Sovereign Immunity-Tort Claims Act)***

14. Defendant reasserts and realleges each and every preceding paragraph as if each were fully repeated verbatim herein.
15. The Defendant allege that the Plaintiffs' Complaint is barred or otherwise limited by the provisions of the South Carolina Tort Claims Act, and, specifically but not limited to, Section 15-78-60 (1), (2), (3), (4), (5), (7), (9), (12), (13), (15), (16), (17), (18), (20), (21), and (25) of the Act.

FOR A SEVENTH DEFENSE
(Sole, Intervening and Superseding Negligence of a Third-Party)

16. Defendant reasserts and realleges each and every preceding paragraph as if each were fully repeated verbatim herein.
17. The Defendant allege that the injuries and damages alleged by the Plaintiff, if any, which the Defendant expressly deny, were due to and caused by the negligence of a third-party or third-parties, which alone or concurring, supervening and/or intervening with the negligence, if any, of the Plaintiff, and/or unknown third parties so as to be the sole proximate cause of Plaintiff's alleged injuries and damages, if any, so as to bar the Plaintiff's claims as to Defendant.

FOR A EIGHTH DEFENSE
(Comparative/Contributory Negligence)

18. CCSD reasserts and realleges each and every preceding paragraph as if each were fully repeated verbatim herein.
19. CCSD allege that any injuries or damages alleged by the Plaintiff, if any, which CCSD expressly denies, were due to and caused by the contributory and comparative negligence, carelessness, willfulness, wantonness and recklessness of Plaintiff, in an amount exceeding fifty percent 50% of the total causal negligence, if any, so as to bar Plaintiff's claim as to CCSD. In the alternative CCSD alleges that the injuries and damages alleged by the Plaintiff, if any, which CCSD expressly denies, were due to and caused by the comparative negligence, carelessness, willfulness, wantonness and recklessness of the Plaintiff in an amount to be determined by the trier of fact, so as to reduce Plaintiff's claims proportionally, pursuant to South Carolina Law.

FOR A NINTH DEFENSE
(Sole, Intervening and Superseding Negligence of Plaintiff)

20. CCSD reasserts and realleges each and every preceding paragraph as if each were fully repeated verbatim herein.
21. The Defendant allege that any injuries and damages alleged by the Plaintiff, if any, which the Defendant expressly deny, were due to and caused by the intervening and superseding negligence of a third-party, including but not limited to the Plaintiff, over whom Defendant had no control, so as to bar the claims of the Plaintiff as to this Defendant.
22. CCSD alleges that the injuries and damages alleged by the Plaintiff, if any, which Defendant expressly denies, were due to and caused by the negligence of the Plaintiff, which alone or concurring, supervening and/or intervening with the negligence, if any, of other persons, unknown third parties, so as to be the sole proximate cause of Plaintiff's alleged injuries and damages, if any, so as to bar Plaintiff's claims as to CCSD.

FOR AN TENTH DEFENSE
(Limitation of Remedies)

23. Defendant reasserts and realleges each and every preceding paragraph as if each were fully repeated verbatim herein.
24. Any recovery by Plaintiff must be limited to the remedies allowed under the South Carolina Tort Claims Act, including but not limited to S.C. Code Ann. § 15-78-120(a)(1) and (2) and S.C. Code Ann. § 15-78-120(b).

FOR A ELEVEENTH DEFENSE
(Reservation of Additional and Further Defenses)

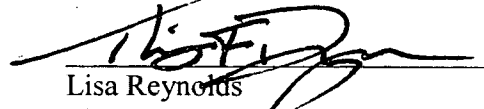
25. Defendant repeats and realleges each and every preceding paragraph as if each were fully repeated verbatim herein.
26. Defendant reserve any additional and further defenses as may be revealed by additional

information through the course of discovery and investigation in a manner the consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, Defendant prays as follows:

- a. That this action against them be dismissed with prejudice;
- b. That the Plaintiff's claim for any damages not allowed or in excess of that provided by the South Carolina Tort Claims Act be stricken;
- c. That the Plaintiff's claim for any damages not allowed or in excess of that provided by the South Carolina Code be stricken;
- d. That this matter be tried by jury on all issues so triable;
- e. That the cost of this action be taxed to parties other than Defendant;
- f. That Defendant be awarded their costs and expenses of this action; and
- g. That Defendant be granted such other and further relief as this court deems just and proper.

ANDERSON REYNOLDS &
STEPHENS, LLC



Lisa Reynolds
Thomas F. Drazan
37 1/2 Broad Street
P.O. Box 87
Charleston, SC 29401
(843) 723-0185 –phone
(843) 405-0313 –fax
lreynolds@arslawsc.com
tdrazan@arslawsc.com

May 22, 2017
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO: ~~211~~ ²⁰¹⁷ -CP-10-1970
	)	
Dana Mazyck, Guardian Ad Litem For	)	
Tyler M., A Minor Child Under The Age	)	
Of (14),	)	
	)	CHARLESTON COUNTY SCHOOL
	)	DISTRICT'S MEMORANDUM IN
Plaintiffs,	)	SUPPORT OF MOTION TO DISMISS
	)	
vs.	)	
	)	
Charleston County School District,	)	
	)	
Defendant.	)	

FILED
CLERK OF DISTRICT COURT
2017 APR 13 PM 3:38

TO: PLAINTIFFS AND THEIR COUNSEL TIFFANY R. SPANN-WILDER, ESQUIRE

COMES NOW the Defendant, Charleston County School District (hereinafter "District") and respectfully submits their Memorandum in Support of Defendant's Motion to Dismiss for insufficiency of process and insufficiency of service of process within the statute of limitations period of two years as set forth in S.C.R.C.P. 12(b)(1), (4) and (5) and S.C. Code Annotated §15-78-10, et. seq. (South Carolina Tort Claims Act) for Plaintiffs' failure to properly file and serve their Complaint against the Charleston County School District.

Background Facts

Plaintiff brought this action under the South Carolina Tort Claims Act for damages allegedly sustained as a result of a fall which occurred on April 22, 2015 on the playground at Jennie Moore Elementary School, Whipple Road, Charleston County, South Carolina, in which the Plaintiff alleges that the minor child either fell on or off the playground equipment.

Law/Analysis

The South Carolina Tort Claims Act is the exclusive remedy for claims and actions brought against governmental entities. S.C. Code Ann. §§ 15-38-65, 15-78-10, 15-78-40. The South Carolina Tort Claims Act provides a two year statute of limitations period for actions against a governmental entity unless the Plaintiff files a verified claim within the first year following the alleged incident thereby extending the statute of limitations an additional year. In this matter, the Plaintiff did not file a verified claim and therefore, in accordance with S.C. Code Ann. § 15-78-110, the Plaintiff had two (2) years, until April 22, 2017, in which to commence this action or it would forever be barred. S.C. Code Ann. § 15-3-20 states: "Any civil action is commenced when the Summons and Complaint are filed with the Clerk of Court if actual service is accomplished within one hundred and twenty (120) days after filing." The Plaintiff filed a Summons and Complaint against the Defendant in this matter on or about April 21, 2017. As such, and in accordance with the S.C. Code Ann. § 15-3-20, the Plaintiff had until August 19, 2017 to properly serve the Defendant in this matter so as to be determined to have commenced this action.

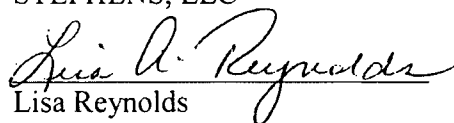
The Charleston County School District is a governmental subdivision of the State of South Carolina and therefore the requirements for proper service of a Summons and Complaint upon the District is contained in S.C.R.C.P. 4(d)(6). S.C.R.C.P. 4(d)(6) requires that the Summons and Complaint shall be served together and when being served upon a municipality that service shall be made "...by delivering a copy of the summons and complaint to the chief executive officer or clerk thereof, or by serving the summons and complaint in the manner prescribed by statute for the service of summons and complaint or any like process upon any such defendant." The South Carolina Rules of Civil Procedure only allows service by certified mail upon defendants who are individuals or corporations. S.C.R.C.P. 4(d)(8). The Charleston

County School District is neither an individual nor a corporation. As such, Plaintiff was required to serve the Summons and Complaint upon the District by personally serving same upon the Chief Executive Officer or Clerk thereof. In the case at bar the Plaintiff mailed a copy of the Summons and Complaint via certified mail to Dr. Gerrita Postlewait, Superintendent. This is not proper service upon the District in accordance with the South Carolina Rules of Civil Procedure that required that this party be served via personal service. Therefore, the Plaintiff has failed to properly file and serve the Summons and Complaint upon Defendant. Additionally, the return receipt card was signed by E. Rhoades. "E. Rhoades" is Eugene Rhoades. Mr. Rhoades is an employee of Ricoh, he is not an employee of Charleston County School District and is not authorized to accept service on behalf of the District. (See Exhibit A).

Conclusion

For the foregoing reasons, the Defendant moves this Court for an Order dismissing the Plaintiff's Complaint for failure to properly file and serve this Defendant.

ANDERSON REYNOLDS &
STEPHENS, LLC



Lisa Reynolds
Thomas F. Drazan
37 1/2 Broad Street
P.O. Box 87
Charleston, SC 29401
(843) 723-0185 –phone
(843) 405-0313 –fax
lreynolds@arslawsc.com
tdrazan@arslawsc.com

4/13, 2018
Charleston, South Carolina

EXHIBIT A

) IN THE COURT OF COMMON PLEAS

) CASE NO: 217-CP-10-1970

—

)

1

1

1

1. That she is the General Counsel for Charleston County School District.
2. That I have reviewed the alleged Proof of Service filed by the Plaintiff and that the signature thereon is "E. Rhoades."
3. That "E. Rhoades" is Eugene Rhoades.
4. That I have reviewed the employment records for Charleston County School District and that there is not and has not been an employee at the District by the name of "E. Rhoades" or Eugene Rhoades.
5. That Eugene Rhoades is not authorized to accept service on behalf of Charleston County School District.


Natalie A. Ham, Esquire

Sherron C. Brightbaird
Commission Expires
7/24/2025

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Dana Mazyck, Guardian ad Litem for Tyler
M., a minor child under the age of fourteen
(14),

Plaintiff,

vs.

Charleston County School District,
Defendant.

) IN THE COURT OF COMMON PLEAS
) THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2017-CP-10-1970

) **PLAINTIFF'S MEMORANDUM IN**
) **OPPOSITION OF DEFENDANT'S**
) **MOTION TO DISMISS**

FILED
2018 APR 18 AM 11:08
JULIE J. ARMSTRONG
CLERK OF COURT
BY

**TO: THIS HONORABLE COURT AND LISA REYNOLDS, ESQ. AND THOMAS F.
DRAZAN, ESQ., ATTORNEYS FOR THE DEFENDANTS:**

MEMORANDUM IN OPPOSITION OF DEFENDANT'S
MOTION TO DISMISS

This matter arises from an incident which Plaintiff Tyler M was injured at Jennie Moore Elementary School on April 22, 2015 at approximately 2:15 p.m. Plaintiff filed a complaint on April 21, 2017 alleging negligence of the abovementioned Defendant. Defendant filed an answer on May 23, 2017 asking the Court to Dismiss the Complaint pursuant to South Carolina Rules of Civil Procedure 12(b)(1), (4) and (5) alleging improper service on the Defendant as set forth in S.C.R.C.P 4. Plaintiff submits this memorandum in opposition of Defendant's Motion to Dismiss and submits that Defendant's Motion to Dismiss should be denied.

RELEVANT FACTS

On or about April 22, 2015, the minor child was properly enrolled as a fourth (4th) grader at Jennie Moore Elementary School when it was housed at 942 Whipple Road, Mt. Pleasant, SC, County of Charleston and was left at the school by his mother for the instructional day under the direction of his teacher, Ms. Judi Popowich. At about 2:15 PM on April 22, 2015, Plaintiff

TYLER M. was with his class on the playground under the care and supervision of Ms. Judi Popowich and while playing with the other children through this interaction fell on or off the playground equipment, hitting his head and rendering him unconscious for some period of time. It is Plaintiff's position that the Defendant failed to provide an adequate and proper fall zone (area under and around the playground equipment where a child might fall), as such a fall zone would have protected and cushioned several feet from the equipment on all sides. During Plaintiff **TYLER M.**'s period of unconsciousness, unaware of his injury and need for assistance, Ms. Judi Popowich took the other students in her class from the playground and returned to her classroom, leaving Plaintiff alone and unattended on the playground. Another class entered the playground and Plaintiff **TYLER M.** was discovered on the playground and taken to the school nurse's office. Plaintiff **DANA MAZYCK** was called to the school and when she arrived to pick up Plaintiff **TYLER M.**, the child was visibly shaken and unable to recognize her as his mother.

LAW/ANALYSIS

I. Plaintiff's Summons and Complaint were properly served pursuant to Rule 4 of the South Carolina Rules of Civil Procedure.

Defendant Charleston County School District (CCSD) alleges that Plaintiff failed to properly file and serve Defendant as set forth in S.C.R.C.P 4 and that this Court should dismiss the complaint pursuant to Rule 12(b)(1), (4) and (5) of the South Carolina Rules of Civil Procedure. Rule 4(d)(6) of the S.C.R.C.P proscribes the procedure for perfecting service upon a governmental entity. Pursuant to this rule, service is made "Upon a municipal corporation, county or other governmental or political subdivision subject to suit, by delivering a copy of the summons and complaint to the chief executive officer or clerk thereof, or by serving the

summons and complaint in the manner prescribed by statute for the service of summons and complaint or any like process upon any such defendant.” S.C.R.C.P 4(d)(6).

Further, Rule 4(d)(6) is proper because per S.C. Code Ann. § 15-78-30 of the South Carolina Tort Claims Act, subsection h states that “Political subdivision” means the counties, municipalities, school districts, regional transportation authority, and special purpose districts of the State and any agency, governmental health care facility, department, or subdivision thereof. CCSD is a school district which falls under the definition “political subdivision”. In an effort to strictly comply with Rule 4, Plaintiff served by certified mail and restricted delivery, a copy of the summons and complaint on the Superintendent of CCSD on April 21, 2017. The same was signed for by E. Rhodes on April 24, 2017. (See Exhibit A). Defendant argues that the signature listed as “E. Rhodes” is a Eugene Rhoades (the full name is not disclosed on the card and the last name does not contain an “a”) and is not and never has been employee of CCSD. They further state that “E. Rhodes a/k/a E. Rhoades” is an employee of Ricoh and not authorized to accept service on behalf of the District.

The certified, return-receipt mailing was sent to Dr. Gerrita Postlewait, Superintendent of CCSD at 75 Calhoun Street, Charleston, SC 29401. Not only was this mailing certified but it was also sent “restricted delivery”.(Exhibit A). Plaintiff had no reason to know that the person who signed a certified mail return receipt was not an employee of CCSD and therefore could not act as an agent of the Superintendent, for whom delivery was restricted to. In accepting Plaintiff’s Summons and Complaint on behalf of the Superintendent, “E. Rhodes a/k/a E. Rhoades” affirmatively represented that he was an agent of the same. It is peculiar that the Defendant asserts that “E. Rhodes a/k/a E. Rhoades” is not an employee of CCSD, and are able to identify him fully by name and note his actual employer. By way of personal experience at the District

Office, the Superintendent and District Staff are behind a locked door and one must be granted access after being admitted into the area. In order for "E. Rhodes a/k/a E. Rhoades" to have signed for this mailing he would have to be behind these secured doors. By virtue of signing the return receipt for the Superintendent, "E. Rhodes a/k/a E. Rhoades" demonstrated implied authority to accept service on behalf of the School District and Plaintiff relied upon this authority. Even other CCSD employees who do not work at the District Office are not permitted to go into the secured area without establishing their destination within the building so it is highly improbable that a postal worker was given access to someone not permitted to receive mail on behalf of the Superintendent. Plaintiff would have no way of knowing that the Defendant would have arbitrary persons in the secure access areas signing for documents and yet still having access to the proper people to provide the document such that Defendants were able to respond to the same. The United States Postal Service procedures allow for someone other than the addressee to sign for certified mail, even where the same is marked "restricted delivery" if the signatory is an agent of the addressee. (See Exhibit B). It seems highly unlikely that a postal carrier would have just allowed an arbitrary person passing along the corridors or the District office to sign for mail, especially a piece classified for "restricted delivery". The Superintendent serves as the chief executive officer for CCSD and as such, service was proper.

II. Plaintiff's Summons and Complaint were properly filed and served within the statute of limitations period as set forth in S.C.R.C.P. 12(b)(1), (4) and (5) and S.C. Code Ann. § 15-78-110 of the South Carolina Tort Claims Act.

Defendant alleges that Plaintiff did not properly serve the Defendant within the statute of limitations period as set forth in S.C.R.C.P 12(b)(1), (4) and (5) and S.C. Code Ann. § 15-78-110 of the South Carolina Tort Claims Act. The Plaintiff properly served the Defendant within the

statute of limitations period. Generally, personal injury claims shall be filed within three (3) years of the date of loss. However, the Tort Claims Act states that Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is "commenced" within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered. S.C. Code Ann. § 15-78-110. However, the act itself does not define "commenced." Therefore, since there is no special statutory definition, the term "commenced" is governed by the Rules of Civil Procedure. S.C.R.C.P 3(a) provides that "A civil action is commenced when the summons and complaint are filed with the clerk of court: (1) not served within the statute of limitations in any manner prescribed by law; or (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days of filing."

The injury or date of loss in this case was April 22, 2015. The summons and complaint were filed on April 21, 2017 which is within the statute, thus giving Plaintiff 120 days to serve the same. Service was accepted and signed for on April 24, 2017, three days after filing within the one hundred and twenty day window. With the summons and complaint being served within one hundred and twenty days of filing, the action was "commenced" on April 21, 2017, when it was filed. Additionally, the Tort Claims Act's limitations have exceptions, for person laboring under a disability and the injured party here Tyler M. is a minor, currently age 14 and so technically this action could have brought within two (2) years past his 18th birthday. There is no statute of limitation issue in this claim. Therefore, Defendant's Motion to Dismiss pursuant to the statute of limitations should be denied.

III. Alternatively, service of Plaintiff's Summons and Complaint is effective under the doctrine of substantial compliance.

If the Court finds that service was not proper and failed to strictly comply with Rule 4, Plaintiff asserts that service is proper under the doctrine of substantial compliance. "The principal object of service of process is to give notice to the [defendant] of the proceedings against it." Burris Chemical, Inc. v. Daniel Const. Co. 251 S.C. 483, 487, 163 S.E.2d 618, 620 (1968). "Rule 4, SCRCP, serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995). "Exacting compliance with the rules is not required to effect service of process." Mull v. Ridgeland Realty, LLC, 387 S.C. 479, 485, 693 S.E.2d 27, 30 (Ct. App. 2010) (citing Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 456 S.E.2d 897 (1995)). "Rather, [the court must] inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." Roche at 210, 456 S.E.2d at 899.

In the case at bar, Defendant claims that service on CCSD was insufficient because it was not personally served. Rule 4(d)(6) does not require that a governmental entity be served "personally". Defendant also argues service was not proper because the Summons and Complaint were sent by certified mail and was accepted by "E. Rhodes a/k/a E. Rhoades" who allegedly is not and has never been employed with CCSD. Defendant has submitted an affidavit claiming that E. Rhodes is not authorized to accept service of process on behalf of the District. Assuming E. Rhodes is unauthorized to accept service, that fact, alone, should not affect the validity of service in this action.

First, in accepting Plaintiff's Summons and Complaint on behalf of the Department, E. Rhodes affirmatively represented that he or she was an agent authorized to do so. As previously stated, by signing the return receipt which was marked "restricted delivery" and was addressed properly, E. Rhodes demonstrated implied authority to accept service on behalf of the Defendant and Plaintiff relied upon this authority. Additionally, notwithstanding E. Rhodes' disputed authority, Plaintiff substantially complied with the requirements of Rule 4 and, in so doing, satisfied the notice objective underlying the rule.

In fact, the Defendant was served within five (5) days of filing the suit and counsel noted her appearance by way of a letter dated May 1, 2017 (See Exhibit C) and able to draft and serve an Answer well within the specified 30 days from the date of service. If "E. Rhodes a/k/a E. Rhoades" was not the proper person to have received the Summons/Complaint there was sufficient time to correct the same had counsel been forthcoming with the same. As we were still well with the 120 days for service, counsel could have accepted for CCSD or asked for the Plaintiff to attempt service again. The burden cannot be on the Plaintiff to know that an "unauthorized" person working in a secured facility was able to sign for the Defendant. This could only be if the Defendant placed "E. Rhodes a/k/a E. Rhoades" in a posture to do this. Otherwise, it would appear that such assertions are set in place as a barrier for litigation against CCSD. There is no set of circumstances under which Defendant can claim lack of notice of this action and it is similarly unlikely that any alleged defect in service caused any prejudice to the Defendant in this regard. Personal Jurisdiction is satisfied by the defendant being a governmental entity in the county of Charleston, state of South Carolina. Defendant also appeared by filing an Answer and Motion with this court. Because Plaintiff relied upon E. Rhodes apparent authority in sufficiently complying with the rules of process and because service of process itself is

required only to effect notice, which was accomplished in this action, Defendant's Motion to Dismiss should be denied, even if the Court decides that exacting compliance with Rule 4 was not accomplished.

CONCLUSION

WHEREFORE, Plaintiff respectfully requests that the Court deny Defendant's Motion to Dismiss. Plaintiff further requests an award of its costs and attorney's fees associated with this Motion and any other relief the Court deems just and proper.

This 18th day of April, 2018.

Respectfully Submitted,

SPANN WILDER LAW, LLC

2131 Dorchester Road

P.O. Box 70488

North Charleston, SC 29415

(843) 266-7792

tiffany@spannwilderlaw.com

deon@spannwilderlaw.com



TIFFANY R. SPANN-WILDER (Bar #15913)

DEON T. TEDDER (Bar # 103060)

Attorney(s) for the Plaintiff

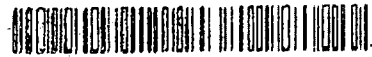
CERTIFICATE OF SERVICE

I certify that on this date that a copy of the foregoing was served on counsel for the Defendants by ☐ electronic filing, ☒ email, ☐ Personal Delivery, ☐ US Mail ☐ facsimile in the manner prescribed by the applicable Rule of Civil Procedure.

This 18th Day of April, 2018

x Deon T. Tedder

EXHIBIT A

SENDER COMPLETES THIS SECTION		ADDRESSEE COMPLETES THIS SECTION	
☐ Completes Items 1, 2, and 3. ☐ Print your name and address on the reverse so that we can return the card to you. ☐ Attach this card to the back of the mailpiece, or on the front if space permits. 1. Article Addressed to: Dr. Gerrita Postlewait, Superintendent Charleston County School District 75 Calhoun Street Charleston, SC 29401		A. Signature X <i>E. Rhodes</i> B. Received by (Printed Name) <i>Rhodes</i> C. Date of Receipt <i>7/21/93</i>	
2. Article Addressed to:		D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below:	
 9500 9402 1857 6104 4881 38		3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500)	
2. Article Number, (transfer from service label) 7011 2970 0004 5211 3203		☐ Priority Mail Express® ☐ Registered Mail® ☐ Registered Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Signature Confirmation® ☐ Signature Confirmation Restricted Delivery	
PS Form 3811, July 2015 PSN 7630-02-000-0053		Don't let a Return Receipt	

USPS TRACKING#
CHARLESTON SC 29
11 APR 2017 PM 3:11
9590 9402 1857 6104 4881 38

**United States
Postal Service**

° Sender: Please print your name, address, and ZIP+4® in this box°

The Spann-Wilder Law Firm, L.L.C.
Tiffany Spann-Wilder, Esquire
~~2131 Dorchester Road~~
P.O. Box 70498
North Charleston, SC 29415

Re: T. Mazurek

ALERT: AS OF APRIL 30, USPS.COM WILL NO LONGER SUPPORT OUTDATED BROWSERS. TO...

USPS Tracking®

FAQs > (<http://faq.usps.com/?articleId=220900>)

Track Another Package +

Tracking Number: 70112970000452113203

Remove X

Your item was delivered to an individual at the address at 12:58 pm on April 24, 2017 in CHARLESTON, SC 29401.

 **Delivered**

April 24, 2017 at 12:58 pm
Delivered, Left with Individual
CHARLESTON, SC 29401

Tracking History

April 24, 2017, 12:58 pm

Delivered, Left with Individual
CHARLESTON, SC 29401

Your item was delivered to an individual at the address at 12:58 pm on April 24, 2017 in CHARLESTON, SC 29401.

April 22, 2017, 10:11 am

Delivery Attempted - No Access to Delivery Location
CHARLESTON, SC 29401

April 22, 2017, 7:49 am

Arrived at Unit
CHARLESTON, SC 29401

April 21, 2017, 10:13 pm

Arrived at USPS Regional Facility

111

EXHIBIT B

- S900 Special Postal Services
- S910 Security and Accountability

S916 Restricted Delivery

Summary S916 describes restricted delivery and what services must be used with restricted delivery. It also covers the procedures for obtaining restricted delivery and the delivery of restricted mail.

1.0 BASIC INFORMATION

Description Restricted delivery service permits a mailer to direct delivery only to the addressee or addressee's authorized agent. The addressee must be an individual (or natural person) specified by name.

1.1

Eligible Matter Restricted delivery service is available for First-Class Mail (including Priority Mail) and Package Services that is sent COD, insured for more than \$50, registered, or certified.

1.2

Fee and Postage The applicable fee for restricted delivery service must be paid in addition to postage and other fees.

1.3

Return Receipt The mailer may also obtain a return receipt by checking the appropriate block on Form 3811 and paying the applicable fees.

1.4

Endorsement Mail for which restricted delivery service is requested must be endorsed "Restricted Delivery." The endorsement must be placed above the address and to the right of the return address.

1.5

Refund Restricted delivery fees are refunded only when the USPS fails to give restricted delivery service.

1.6

Additional Services In addition to the prerequisites listed in 1.2, the following services may be combined with restricted delivery if the applicable standards for the services are met and the additional service fees are paid:

1.7

- a. Delivery Confirmation.
- b. Parcel airlift service (PAL).
- c. Signature Confirmation.
- d. Special handling.

2.0 OBTAINING SERVICE

At Time of Mailing The mailer may request restricted delivery at the time of mailing by advising the USPS clerk or by marking the mail "Restricted Delivery." A firm mailer must enter the proper fee in the correct column of the firm sheet and place the required endorsement on the mail. If a return receipt is requested, the correct block on Form 3811 must be checked to show that restricted delivery is also required.

2.1

After Mailing The mailer may request restricted delivery after mailing by notifying the mailing post office in writing. The mailer must identify the article, including item number and addressee, and pay the service fee and communication costs required to effect restricted delivery. USPS failure to provide the service because delivery was made before the delivery office received the request is not grounds for a refund of the fee or communication costs.

2.2

**3.0 DELIVERY**

- Conditions**
3.1 Mail marked "Restricted Delivery" is delivered only to the addressee or to the person authorized in writing as the addressee's agent to receive the mail, subject to D042 and these exceptions:
- a. Mail for famous personalities and executives of large organizations is normally delivered to an agent authorized to sign for such mail.
 - b. Mail for officials of executive, legislative, and judicial branches of the government of the United States or of the states and possessions and their political subdivisions, or to members of the diplomatic corps, may be delivered to a person authorized by the addressee or by regulations or procedures of the agency or organization to receive the addressee's mail.
 - c. Mail for the commander, staff sections, or other officials of military organizations by name and title, is delivered to the unit mail clerk, mail orderly, postal clerk, assistant postal clerk, or postal finance clerk, when such individuals are designated on DD (Department of Defense) Form 285 to receipt for all mail addressed to the units for which they are designated. If the person accepting mail is designated on DD Form 285 to receipt for ordinary mail only, then restricted delivery mail addressed to the commander, or other official by name and title, is delivered to the mail clerk only if the addressee authorizes under 3.2.
 - d. Mail for an inmate of a city, state, or federal penal institution, in cases where a personal signature cannot be obtained, is delivered to the warden or designee.
 - e. Mail for minors or persons under guardianship may be delivered to their parents or guardians.
- Identification**
3.2 The USPS may require proof of identification from the addressee (or agent).
- Agent Authorization**
3.3 An addressee who regularly receives restricted delivery mail may authorize an agent on Form 3801 or by letter to the postmaster. The addressee must make the notation "this authorization is extended to include restricted delivery mail" on Form 3801 (in the area for signatures of authorized agents) or in the letter to the postmaster. Form 3849 may be left for the authorization if the post office has no standing delivery order or letter on file. The addressee may enter the name of the agent on the back of Form 3849 in the space provided and sign the form. The agent must sign for receipt of the article on the back of the form.
- Joint Addressees**
3.4 When mail is addressed to two or more persons jointly (as shown by the word "and" or symbol "&" connecting their names), all addressees or their agents are notified to be present to accept delivery together. The delivery receipt obtained and the return receipt, if any, must be signed by all joint addressees or their agents. The mail may then be delivered to any of the addressees or their agents unless one or more addressees or their agents object, in which case delivery is not made until all the addressees or their agents sign a statement designating who is to receive the mail.
- Addressed
"In Care Of"**
3.5 Either person may sign for mail addressed to one person in care of another.

EXHIBIT C

ANDERSON REYNOLDS & STEPHENS, LLC

ATTORNEYS AT LAW
37 ½ BROAD STREET
POST OFFICE BOX 87
CHARLESTON, SOUTH CAROLINA 29402

JONATHAN J. ANDERSON
LISA A. REYNOLDS
SHANNA M. STEPHENS
CURTIS B. MARTIN
KATHERINE C. MIARS
THOMAS F. DRAZAN

TEL. 843-723-0185
FAX. 843-405-0313
email: lreynolds@arslawsc.com

May 1, 2017

Tiffany R. Spann-Wilder, Esquire
Spann Wilder Law, LLC
P.O. Box 70488
North Charleston, SC 29415

RE: T. Mazyck v. Charleston County School District
Case No.: 2017-CP-10-1970
Claim No.: GL016400
AR&S No.: 20170.19

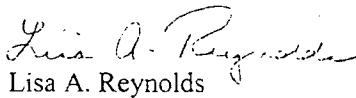
Dear Tiffany:

Please allow this correspondence to advise that I have been asked by South Carolina School Boards Insurance Trust (hereinafter "SCSBIT") to represent Charleston County School District in the above referenced matter. Please note in your file that I am the attorney for this Defendant.

It is my understanding that the Summons and Complaint were served on April 24, 2017 thereby requiring Defendant to Answer or otherwise respond by May 24, 2017. If I am mistaken, please contact me immediately upon receipt of this correspondence and advise of same.

Thank you in advance for your attention to this matter. I look forward to working with you. With kindest regards, I am

Sincerely yours,


Lisa A. Reynolds

LAR/kl

cc: Scott Suthard (via electronic correspondence only)
John Emerson (via electronic correspondence only)

2017 CP-10-1970

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

CASE NO: 217-CP-10-1970

Dana Mazyck, Guardian Ad Litem For
Tyler M., A Minor Child Under The Age
Of (14),)

Plaintiffs,)

vs.)

Charleston County School District,)

Defendant.)

**ORDER GRANTING CHARLESTON
COUNTY SCHOOL DISTRICT'S
MOTION TO DISMISS**

FILED
JUN - 1 PM 1:06
J. L. ARMSTRONG
CLERK OF COURT

This matter came before the Court on Wednesday, April 18, 2018 pursuant to Charleston County School District's (hereinafter "District") Motion to Dismiss for insufficiency of process and insufficiency of service of process within the statute of limitations period of two years as set forth in S.C.R.C.P. 12(b)(1), (4) and (5) and S.C. Code Annotated §15-78-10, et. seq. (South Carolina Tort Claims Act) for Plaintiffs' failure to properly file and serve their Complaint against the Charleston County School District.

Background Facts

Plaintiff brought this action under the South Carolina Tort Claims Act for damages allegedly sustained as a result of a fall which occurred on April 22, 2015 on the playground at Jennie Moore Elementary School, Whipple Road, Charleston County, South Carolina. Plaintiffs allege that on April 22, 2015, the minor child was playing with other children when "through this interaction fell on or off the playground equipment, hitting his head" and suffering injuries.

Law/Analysis

The South Carolina Tort Claims Act is the exclusive remedy for claims and actions brought against governmental entities. S.C. Code Ann. §§ 15-38-65, 15-78-10, 15-78-40. The South Carolina Tort Claims Act provides a two year statute of limitations period for actions

against a governmental entity unless the Plaintiff files a verified claim within the first year following the alleged incident thereby extending the statute of limitations an additional year. In this matter, the Plaintiff did not file a verified claim and therefore, in accordance with S.C. Code Ann. § 15-78-110, the Plaintiff had two (2) years, until April 22, 2017, in which to commence this action.

S.C. Code Ann. § 15-3-20 states in relevant part, "Any civil action is commenced when the Summons and Complaint are filed with the Clerk of Court if actual service is accomplished within one hundred and twenty (120) days after filing." The Plaintiff filed a Summons and Complaint against the Defendant in this matter on or about April 21, 2017. As such, and in accordance with the S.C. Code Ann. § 15-3-20, the Plaintiff had until August 19, 2017 to properly serve the Defendant in this matter so as to be determined to have commenced this action.

The Charleston County School District is a governmental subdivision of the State of South Carolina and therefore the requirements for proper service of a Summons and Complaint upon the District is contained in S.C.R.C.P. 4(d)(6). S.C.R.C.P. 4(d)(6) requires that the Summons and Complaint shall be served together and when being served upon a governmental subdivision that service shall be made "...by delivering a copy of the summons and complaint to the chief executive officer or clerk thereof, or by serving the summons and complaint in the manner prescribed by statute for the service of summons and complaint or any like process upon any such defendant." In the case at bar there is no relevant statute which prescribes process for "any like . . . defendant."

Here, Plaintiffs mailed a copy of the Summons and Complaint via certified mail to Dr. Gerrita Postlewait, Superintendent. The District asserts that pursuant to Rule 4(d)(6) of the South



Carolina Rules of Civil Procedure the Plaintiff was required to serve the Summons and Complaint upon the District by personally serving the chief executive officer thereof. The Plaintiff argues that service by certified mail is acceptable upon the District. The Court agrees with District.

It is noted that Rule 4(d)(8) of the South Carolina Rule of Civil Procedure only allows service by certified mail, restricted delivery upon defendants who are found to be of any class referred to in paragraph (1) or (3) of Rule 4(d). This restriction provides for such service only upon individuals, partnerships, or corporations. The District is not found within any class referred to in paragraphs (1) or (3) of S.C. R. Civ. P. 4(d). Therefore, Rule 4(d)(8) is not applicable to the District. The acceptable methods of service upon the District must be determined by a reading of Rule 4(d)(6) of the South Carolina Rules of Civil Procedure. The Charleston County School District must be served in accordance with Rule 4(d)(6) requiring the "delivering a copy of the summons and complaint to the chief executive officer or clerk thereof." While Rule 4(d)(6) does not define delivery the section utilizes the same language as Rule 4(d)(5) which draws a clear distinction between the requirement to effectuate service by both "sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia" and "delivering a copy of the summons and complaint to such officer or agency." This distinction in Rule 4(d)(5) leads to the determination that "delivering" is tantamount to personal service and certified mail does not suffice to effectuate service against the District.

While this Court finds that personal service is required, in further analyzing Plaintiff's argument that the District was amenable to service of process of certified mail, such service was not obtained in this matter. The purpose and intent of the South Carolina Rules of Civil

Procedure regarding service of process are two fold and require substantial compliance with the Rules to put the District on notice and to confer personal jurisdiction. Richard v. P.V., 383 S.C. 610 (2009); McClurg v. Deaton, 380 S.C. 563 (Ct. App. 2009); BB&T v. Taylor, 369 S.C. 548 (2006); Moore v. Simpson, 322 S.C. 518, 473 S.E.2d 64 (Ct. App. 1996); Roche v. Young Bros., 318 S.C. 207, 455 S.E.2d 897 (1995). When the Plaintiff shows compliance with the rules there is a presumption of proper service and the burden shifts to the Defendant to demonstrate that the service of process was signed by an unauthorized person. Roberson v. Southern Finance of SC, Inc., 365 S.C. 6, 615 S.E.2d 112 (2005); Roche v. Young Bros., 318 S.C. 207, 455 S.E.2d 897 (1995). "When service of process is accomplished by certified mail under Rule 4(d)(8), the defendant and not the plaintiff, must prove the receipt was signed by an authorized person." Roche v. Young Bros., 318 S.C. 207, 455 S.E.2d 897 (1995). The Plaintiff has not shown compliance with the rules and is not entitled to the presumption; however, even giving the Plaintiff the benefit of presumption still finds the Plaintiff's attempts at service improper.

The return receipt for the mailing was signed by E. Rhoades. Testimony and evidence was offered that "E. Rhoades" is Eugene Rhoades, an employee of Ricoh. Mr. Rhoades is not an employee of Charleston County School District and is not authorized to accept service on behalf of the District, nor is of the character of a clerk for the executive officer described in South Carolina Rule of Civil Procedure 4(d)(6). The Plaintiff alleges that since E. Rhoades signed for the certified mail, apparently Mr. Rhodes was allowed to accept certified mail and therefore to accept service. The Court finds this argument to be without merit. Plaintiff fails to recognize the distinction between the authority to sign for certified mail and the authority to sign for service of process. The Plaintiff presented no evidence that E. Rhoades was allowed to accept service on behalf of the District and provided no evidence that the District manifested E. Rhoades was its

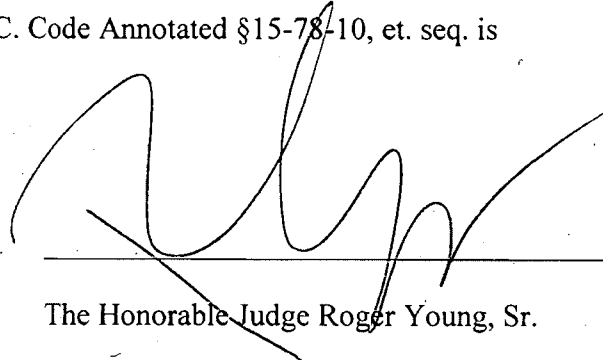


agent or apparent agent in any way. Additionally, apparent authority must be relied upon at the time service is made. The Plaintiff did not direct this mailing to E. Rhoades and was not aware of E Rhoades until the green card was returned.

The Court finds that service upon District was not proper in accordance with the South Carolina Rules of Civil Procedure. As such, the Plaintiff has failed to properly serve the Summons and Complaint upon the District, and therefore, service has not been affected upon the District.

IT IS THEREFORE ORDERED, ADJUGED, AND DECREED that:

Based upon the above, Defendant Charleston County School District's Motion to Dismiss based on S.C.R.C.P. 12(b)(1), (4) and (5) and S.C. Code Annotated §15-78-10, et. seq. is **GRANTED.**

A handwritten signature in black ink, appearing to read 'R. Young', is written over a horizontal line. The signature is fluid and cursive.

The Honorable Judge Roger Young, Sr.

6/1, 2018
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable D. Craig Brown

Appellate Case No. 2019-001235

Dana Mazyck, Guardian Ad Litem for Tyler M., a Minor Child under the age of
fourteen (14)..... Appellant,

v.

Charleston County School District.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed
to be included by any of the parties and not any other material.

May 13, 2020

By:

Kathleen C. Barnes

Kathleen Chewning Barnes, SC Bar No. 78854
Barnes Law Firm, LLC
P.O. Box 897
Hampton, SC 29924
803-943-4529

Tiffany R. Spann-Wilder, SC Bar No. 15913
Post Office Box 70488
North Charleston, SC 29415
843-266-7792

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable D. Craig Brown

Appellate Case No. 2019-001235

RECEIVED
MAY 14 2020
SC Court of Appeals

Dana Mazyck, Guardian Ad Litem for Tyler M., a Minor Child under the age of
fourteen (14)..... Appellant,

v.

Charleston County School District.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed
to be included by any of the parties and not any other material.

May 13, 2020

By:

Kathleen C. Barnes

Kathleen Chewning Barnes, SC Bar No. 78854
Barnes Law Firm, LLC
P.O. Box 897
Hampton, SC 29924
803-943-4529

Tiffany R. Spann-Wilder, SC Bar No. 15913
Post Office Box 70488
North Charleston, SC 29415
843-266-7792

Attorneys for Appellant