STATE OF SOUTH CAROLINA COUNTY OF BARNWELL	)	IN THE COURT OF COMMON PLEAS
Ashley Whitehead, individually and as Guardian ad Litem for Brantley W., a minor under the age of fourteen (14) years and William B. Whitehead, Plaintiffs, vs. Barnwell School District 45, Defendant.	)	C.A. No. 2021-CP-06-00028 **ORDER**

This case came before the Court on April 1, 2021 on a motion that the Defendant, Barnwell School District 45 ("District), filed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. The District seeks to dismiss the Plaintiffs' complaint on the ground that South Carolina law does not permit a claim for an alleged negligence claim under the facts alleged in the Plaintiffs' complaint.

All parties were present and represented by counsel of record for the hearing on the District's motion. For the reasons set forth herein, the Court grants in part and denies in part the District's motion to dismiss.

Plaintiffs allege that, on or about September 11, 2020, the District's school bus driver negligently dropped the minor Plaintiff, B.W., off at the wrong location. For some period of time, B.W.'s whereabouts were unknown to the Defendant, and Plaintiffs Ashley and William Whitehead were informed that their son, B.W., was lost. B.W. was reunited with his parents later that afternoon. The complaint does not allege any physical impact to B.W. or his parents. Rather B.W. and his parents seek to recover for the emotional distress, allegedly manifested by physical symptoms, they experienced because B.W. was missing for a period of time, along with the lingering emotional effects of that traumatic event. Ashley Whitehead brings this case as the

guardian of B.W, and both William and Ashley Whitehead also allege claims individually seeking to recover for their own emotional distress as well as medical expenses incurred for treatment received by B.W.

The South Carolina Supreme Court's opinion in *Kinard v. Augusta Sash and Door Co.*, 286 S.C. 579, 336 S.E.2d 465 (1985) is instructive on the District's motion. In that case, the plaintiff, a mother, sought to recover for her own physical injuries, as well as her alleged emotional distress from witnessing a serious injury to her daughter as the result of a vehicle accident. The Court adopted a cause of action for negligent infliction of emotional distress, but strictly limited the claim to the "bystander" context. In other words, the Court established the elements of this cause of action to require that it only applies when a defendant's negligence causes a death or serious physical injury to another while the plaintiff bystander is in close proximity to the accident and is closely related to the victim. Plaintiffs have conceded that they are not alleging a bystander claim.

Additional South Carolina authorities are consistent with the narrow scope of this claim. For example, in *Doe v. Greenville County School District,* 375 S.C. 63, 651 S.E.2d 305 (2007), a student's parents brought an action against a school district alleging several causes of action arising from incidents of sexual activity between a female student and a substitute teacher. The parents alleged, among other things, a claim for negligent infliction of emotional distress. With regard to this claim, the Court stated as follows:

> In this case, Mr. and Mrs. Doe admit that they did not and cannot allege facts which would support a bystander liability cause of action. **Because South Carolina courts have limited the recognition of negligent infliction of emotional distress claims in circumstances such as the one presented in this case to bystander liability, Mr. and Mrs. Doe have not stated a claim which is cognizable under South Carolina law**.

Doe, 651 S.E.2d at 307 (emphasis added). *See also Pope v. Barnwell County School District No. 19*, 2017 WL 1148741 (D.S.C. 2017) (recognizing that South Carolina law only permits recovery

for negligent infliction of emotional distress in the very limited context of situations involving bystander trauma).

In *Dooley v. Richland Memorial Hosp.*, 283 S.C. 372, 322 S.E.2d 669 (1984), parents sued a hospital for alleged negligent infliction of emotional distress based on the misidentification of their son as an individual seriously injured in an automobile accident. The Court rejected the parents' cause of action in part because they "failed to make any showing of physical injury to support their claim." As in this case, the parents in *Dooley* alleged to have sustained emotional trauma because of fear and concern about the wellbeing of their child, who had been misidentified as an accident victim. The facts of *Dooley* are analogous to this case, in that the Plaintiffs here allege that for a period of time they were concerned about the wellbeing of their child.

In this case the Plaintiffs admit that they have not alleged a "bystander" liability claim. They instead argue that this is a negligence claim in which they suffered a "direct" injury. Plaintiffs' argument ignores the clear holding of the *Kinard* and *Doe* decisions. They cite to several cases to argue that they can pursue this negligence claim outside of the bystander context. The Court disagrees.

First, the Plaintiffs rely on three older court decisions—*Mack v. South-Bound R. Co.*, 52 S.C. 323, 29 S.E. 905 (1898); *Spaugh v. Atlantic Coast Line R. Co.*, 158 S.C. 25, 155 S.E. 145 (1930); and *Padgett v. Colonial Wholesale Distributing Co.,* 232 S.C. 593, 103 S.E.2d 265 (1958). Plaintiffs' reliance on these decisions is misplaced. All of these cases were decided many years ago, prior to the *Kinard* decision. The *Kinard* decision controls, not the older cases relied upon by the Plaintiffs.

Finally, Plaintiffs also rely on *Bray v. Marathon Corp.,* 356 S.C. 111, 588 S.E.2d 93 (2003). The *Bray* decision is distinguishable from this case. The Supreme Court of South

Carolina in *Bray* held that a worker who was operating a trash compactor when a coworker was crushed to death could bring a products liability claim against the manufacturer and lessor of the compactor for strict liability and negligence. The Court's reasoning in that case was based on the fact that the Plaintiff was alleging a products liability claim under the strict liability statute for defective products. Because the Plaintiff's claim involved strict liability, the Court also allowed a negligence claim to proceed. However, *Bray* did not overrule the *Kinard* and *Doe* decisions, and is limited to the facts of that case, involving a strict liability case based on a defective product.

Therefore, the Court dismisses the claims of Ashley Whitehead and William Whitehead insofar as they seek to recover for their own emotional distress. The parents can proceed with their individual claims, but only with regard to any alleged medical or counseling bills incurred to provide care for B.W. [1]

IT IS THEREFORE ORDERED that the District's motion to dismiss is **GRANTED IN PART AND DENIED IN PART**.

AND IT IS SO ORDERED.

[1]The factual recitations above are based on the complaint in this action and the memoranda filed in support of this motion, and are not intended to and shall not be construed to make any finding of fact in this action. The factual statements in this Order are procedural and cannot be used to prejudice or bind any party who would seek to assert different facts during the pendency of this action.

Barnwell Common Pleas

Case Caption: Ashley Whitehead , plaintiff, et al VS Barnwell School District 45

Case Number: 2021CP0600028

Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127