STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF HORRY	)	**CIVIL ACTION 2017-CP-26-6643**

LOGAN WOOD and SARAH WOOD,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**ORDER**
	)	
HORRY COUNTY SCHOOL DISTRICT,	)	
	)	
Defendant.	)	
	)	
	)	

This matter is before the Court for consideration of the post-trial motions for judgment notwithstanding the verdict; for new trial absolute; or for remittitur filed by the Horry County School District. After careful and deliberate consideration, this Court finds as follows:

1. The Jury's Verdict Was Supported by Evidence of Gross Negligence

"[A] motion for JNOV under Rule 50(b), SCRCP, is a renewal of a directed verdict motion." Wright v. Craft, 372 S.C. 1, 20, 640 S.E.2d 486, 496 (Ct. App. 2006). In ruling on a motion for JNOV, the trial Court must view the evidence and its inferences in the light most favorable to the nonmoving party. This motion must be denied if either the evidence yields more than one reasonable inference or its inferences are in doubt. The verdict will be upheld if there is any evidence to sustain the factual findings implicit in the jury's verdict. Sabb v. S.C. State Univ., 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002).

In its motion, Defendant Horry County School District contends that there was not sufficient evidence of gross negligence to support the jury's finding. "Gross negligence is the intentional, conscious failure to do something which is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." Faile v. S.C. Dep't of Juvenile Justice, 350 S.C.

315, 331, 566 S.E.2d 536, 544 (2002) (internal quotation marks omitted). Gross negligence is "also defined [] as a relative term that means the absence of care that is necessary under the circumstances." Id. at 332, 566 S.E.2d at 544 (internal quotation marks omitted).

Plaintiffs provided the expert testimony of Rod Walters, a certified athletic trainer who testified about numerous violations of the standards for acceptable and safe operations in high school and middle school sports. Further, current and former employees and volunteers of the Horry County School District testified in both the Plaintiffs' case-in-chief and in the Defendant's case-in-chief, and several of these current and former employees and volunteers of the Defendant provided testimony regarding specific deficiencies in the District's operations and management of sports related concussions which support the jury's finding. "In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury." Id. at 332, 566 S.E.2d at 545 (internal quotation marks omitted). As such, this Court finds that the verdict of the jury should not be disturbed and the District's motion for JNOV must be denied.

2. The Jury Found Two Separate Occurrences of Gross Negligence

The South Carolina Supreme Court has held that state entities can be subject to multiple caps under the South Carolina Tort Claims Act in situations in which independent acts of negligence result in a single injury. Boiter v. S.C. Dept. of Transp., 393 S.C. 123, 132, 712 S.E.2d 401, 405(2011). In Boiter, the Supreme Court reviewed a case involving allegations of independent acts of negligence by the South Carolina Department of Transportation and the South Carolina Department of Public Safety stemming from a single car accident caused by the red bulb burning out on a stoplight. The South Carolina Supreme Court rejected the state defendants' argument that each allegedly separate act of negligence claimed by the Plaintiffs "was a part of the *same unfolding sequence of events* that resulted in the Boiter's damages." Id. at 133, 406. Instead,

the Court held that "[w]e are persuaded that two independent and separate acts of negligence occurred here." Id. at 134, 406. In rejecting this argument, the Supreme Court held that it was error to attempt to tie the number of occurrences to the number of injuries sustained. Id. at 134, 406. As the Honorable R. Markley Dennis, Jr. further explained in 2014:

> [t]he courts that have held that a single entity is NOT limited to a single occurrence where more than one state employee has committed separate acts of negligence supports the TCA's protection of employees from individual liability. For the state entity bears responsibility for the negligence of its employees, and since multiple employees cannot be sued for separate and distinct acts of negligence, it makes sense that the state entity can be held liable for each of the separate and distinct acts of negligence by each of its employees. Case law supports such a position.

(Doe 2 v. The Citadel, 2014 WL 8727884, at *31 (S.C.Com.Pl. Dec. 09, 2014)(citing Chastain v. AnMed Health Foundation, 694 S.C.2d 541, 543 (S.C. 2010))(emphasis in original).

While Boiter involved allegations against two separate governmental entities, the prior South Carolina cases addressing the issue of "occurrences" as it is defined by the Tort Claims Act which were referenced by the South Carolina Supreme Court in Boiter both involved allegations of multiple, independent acts of negligence against single entities that pursuant to the Tort Claims Act (in one case as applicable against a private, charitable medical facility pursuant to the South Carolina Solicitation of Charitable Funds Act, S.C. Code Ann. §§ 33-56-180(A) which incorporates the Tort Claims Act damages caps and "occurrence" definition for non-governmental, charitable medical facilities). The South Carolina Supreme Court's decision in Chastain v. AnMed Health Foundation, discussed in more detail below, has been widely cited over the last 11 years as the basis for requiring that the jury be properly instructed on the law regarding occurrences and required to make a finding of fact in cases in which evidence of multiple, distinct acts of negligence comes before the jury. 694 S.E.2d 541 (S.C. 2010). Although the plaintiffs in that case had filed separate claims against individual nurses, the jury found against the plaintiffs on their claims

against individual employees, and the Supreme Court's discussion regarding occurrences was related solely to the claim of multiple occurrences caused by the multiple, distinct acts of negligence by representatives of Defendant AnMed Health Foundation, a *single* medical provider subject to the tort claims act pursuant to S.C. Code Ann. §§ 33-56-180(A). The South Carolina Supreme Court referenced that evidence indicating multiple occurrences can create a factual issue to be addressed in the jury charge and on the verdict form.

The second case referenced by the South Carolina Supreme Court in Boiter is Williamson v. South Carolina Ins. Rsrv. Fund, a case in which the plaintiffs alleged that two independent acts of negligence by two physicians employed by a single governmental entity (the Spartanburg County Services District, Inc., a political subdivision of South Carolina which operated the Spartanburg Regional Hospital) resulted in a single, catastrophic injury to the plaintiffs' minor child. 355 S.C. 420, 586 S.E.2d 115 (2003). The Circuit Court made a specific finding that by establishing that the minor child's injury was caused by two independent acts of negligence by two separate physicians employed by a single governmental defendant, the plaintiffs "had established two separate 'occurrences' for purposes of the TCA." Williamson v. S.C. Ins. Rsrv. Fund, 355 S.C. 420, 423, 586 S.E.2d 115, 116 (2003). The South Carolina Supreme Court declined to address the Circuit Court's finding on appeal.

In the instant case, the Plaintiff presented expert testimony and concessions from the Defendant's employees at trial which created a factual issue regarding the number of occurrences. The evidence supported a finding that Logan Wood's injury resulted from the independent, gross negligence of different sets of employees; taking place on different dates; and taking place at different locations.

The South Carolina Supreme Court has further indicated the issue of occurrences is to be addressed in the Judge's charge and on the verdict form. See, Chastain v. AnMed Health Foundation, 694 S.E.2d 541 (S.C. 2010). During argument on motions made during trial, the Defendant argued that the question regarding the number of occurrences should not go to the jury for determination. This Court held otherwise based upon the testimony and evidence which had come before the jury. After this Court announced its ruling, the Defendant thereafter requested that the jury not be provided with a separate line on the verdict form on which to write in a numeral assigning the number of occurrences. Rather, it was determined that the jury was to make a separate finding as to each occurrence as detailed in separate interrogatories and based on the jury charges. After much argument between the parties on the record regarding the number of occurrences which were supported by the evidence and the wording of the interrogatories, and after concessions by each party, this Court prepared a verdict form which was disseminated to the parties for review and given to the jury.

In completing the verdict form, the jury found for the Plaintiff that the first and second independent occurrences were supported by the evidence, and rejected the Plaintiffs' allegations as to the third occurrence. As such, there was a finding of fact by the jury of two occurrences in accordance with the South Carolina Supreme Court's guidance in Chastain.

Every South Carolina Circuit Court and United States District Court to apply Boiter and Chastain in situations in which the evidence in the trial record indicates a dispute regarding the number of occurrences of negligence or gross negligence that resulted in an injury has determined that it is proper to submit the question to the jury for determination. See Knox v. United States of America et al., D.S.C. C/A No. 0:17-cv-36-CMC, July 3, 2018 Order at Pages 10-11; Verdict Form in W.S. v. South Carolina Department of Social Services, et al., D.S.C. C/A 16-cv-01032-DCC;

Doe 2 v. The Citadel, 2014 WL 8727884, at *30 (S.C.Com.Pl. Dec. 09, 2014) (citing Chastain v. AnMed Health Foundation, 694 S.C.2d 541, 543 (S.C. 2010)); Baby Girl Smith v. South Carolina Department of Social Services, Case No.: 2015-CP-42-3147; George Johnson as P.R. of the Estate of Oliver Johnson v. SCDC, Case No.: 2018-CP-34-00019.

This Court finds that the evidence presented at trial raised a question of fact as to the number of occurrences of gross negligence which caused Logan Wood's brain injury. After an accurate charge on the law, the jury found that there were two separate and distinct occurrences of gross negligence which caused Logan Wood's brain injury, and this Court finds no basis to overturn the jury's factual finding that two separate and distinct occurrences resulted in the permanent injury of Logan Wood.

3. No New Trial is Warranted

Finally, the Horry County School District has asserted that a new trial is necessary pursuant to the "thirteenth juror" doctrine. The thirteenth juror doctrine "is a vehicle by which the trial court may grant a new trial absolute when [the Court] finds that the evidence does not justify the verdict." Folkens v. Hunt, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). As set forth in Section 1 above, the jury's verdict in this matter was supported by evidence from which it was justified in making a finding of two separate occurrences of gross negligence. As such, the Horry County School District's motion for a new trial is denied.

4. A Partial Reduction of Logan Wood's Damages Award is Warranted

The jury's finding of two separate, independent occurrences of gross negligence which caused the brain injury of Logan Wood requires the application of two caps of $300,000.00 each pursuant to the South Carolina Tort Claims Act. As such, this Court finds that Logan Wood's

damages award is hereby reduced from eight hundred twenty-five thousand dollars ($825,000.00) to six hundred thousand dollars ($600,000.00).

The damages award for Sarah Wood warrants no reduction. Sarah Wood presented evidence of specific out-of-pocket expenses in the amount of $10,907.00, but further testified that these were only a portion of the total expenses incurred prior to Logan's eighteenth birthday. Sarah Wood further testified that she had substantial additional expenses related to Logan's medical care associated with his brain injury prior to his eighteenth birthday, including significant time taken from work and thousands of unreimbursed miles for travel throughout the state associated with Logan's medical care. A parent may recover for loss of a child's services and earning capacity, as well as "other pecuniary losses, including medical expenses incurred as a result of the injury." Doe v. Greenville County Sch. Dist., 375 S.C. 63, 68, 651 S.E.2d 305, 308 (2007). That the Supreme Court listed medical expenses as included within the category of "pecuniary losses" necessarily means that a parent's recovery is not limited to medical expenses. Even if it were, the evidence presented at trial supports a finding of total expenses related to Logan's medical expenses as a minor of $25,000.00. As such, the jury was justified in awarding $25,000.00 to Sarah Wood in connection with her claim for loss of parental services.

CONCLUSION

For the reasons set forth herein, this Court finds that the Defendant's motion should be denied in part and granted in part as set forth herein, and directs that Judgment be entered against the Horry County School District in favor of Logan Wood in the amount of six hundred thousand dollars ($600,000.00) and that Judgment be entered against the Horry County School District in favor of Sarah Wood in the amount of twenty-five thousand dollars ($25,000.00).

IT IS SO ORDERED.

William H. Seals, Jr.
South Carolina Circuit Judge

May __, 2021
Conway, South Carolina

Horry Common Pleas

Case Caption: Sarah Wood , plaintiff, et al VS Horry County School District

Case Number: 2017CP2606643

Type: Order/JNOV

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157