THE STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

---

Appellate Case No. 2021-000535

---

Logan Wood and Sarah Wood,……..…….Respondents,

v.

Horry County School District,…….……...Appellant.

---

# INITIAL BRIEF OF RESPONDENTS

---

BARNES LAW FIRM, LLC
Kathleen C. Barnes, SC Bar No. 78854
P.O. Box 897
Hampton, SC 29924
803-943-4529
kbarnes@barneslawfirmsc.com

EVANS MOORE, LLC
James B. Moore, III, SC Bar No. 74268
james@evansmoorelaw.com
Scott C. Evans, SC Bar No. 77684
scott@evansmoorelaw.com
121 Screven Street
Georgetown, SC 29440
843-995-5000

THE LOVELY LAW FIRM
Justin Lovely, SC Bar No. 79073
justin@justiceislovely.com
Amy Lawrence, SC Bar No. 77242
amy@justiceislovely.com
804 N. Oak Street
Myrtle Beach, SC 29577
843-839-4111

***Attorneys for Respondents***

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**



**Statutes**

**Rules**

## COUNTERSTATEMENT OF ISSUES ON APPEAL

I. Whether the lower court correctly interpreted and applied the South Carolina Tort Claims Act definition of "occurrence" to the jury's verdict?

II. Whether the lower court correctly entered judgment for Respondent Logan Wood for $600,000.00 based on the jury and the court's findings of two occurrences under S.C. Code Ann. § 15-78-120(a)?

III. Whether the lower court properly exercised its discretion to deny HCSD's Rule 67, SCRCP, motion to pay the judgment amounts into the court?

## STATEMENT OF THE CASE

In October 2016, fourteen-year-old Logan Wood suffered five-to-seven successive concussions while playing in a football game for a team in the Horry County School District ("HCSD"). Because Logan's team played away at another school, HCSD did not provide an athletic trainer for each team. Instead, it provided one athletic trainer for over 100 players. One important responsibility of an athletic trainer is to monitor players for signs of a concussion and immediately remove from play an athlete suspected of suffering a concussion. Suffering another or multiple concussions before an existing concussion heals causes second impact syndrome and can lead to permanent brain injury. That is what happened to Logan Wood in this case. The one athletic trainer present to monitor the players failed to do her job to detect Logan's concussions and remove him from the game. He suffers from permanent brain injury.

Logan and his mother brought an action under the South Carolina Tort Claims Act ("SCTCA") against HCSD alleging its multiple acts of gross negligence caused Logan and Mrs. Wood's injuries. (Cmplt.). HCSD argued for a directed verdict on the basis that, *inter alia*, there was only one occurrence as a matter of law. The lower court denied the motion. It charged the jury on the definition of "occurrence" and listed three alleged occurrences on the verdict form. After a four-day trial from April 12-15, 2021, a jury returned a verdict for the Woods and found two occurrences of gross negligence by HCSD. (Verdict Form). The jury found HCSD acted

grossly negligent by allowing Logan to play without an athletic trainer present for his team and failing to assess Logan for signs and symptoms associated with a concussion. *Id.* The jury awarded Logan $825,000.00 and Mrs. Wood $25,000.00. *Id.*

HCSD filed post-trial motions arguing, *inter alia*, that there was only one occurrence as a matter of law and the court should enter judgment for $300,000.00 for Logan. Alternatively, HCSD asked the court to reduce the verdict for Logan to the $600,000.00 cap for two occurrences. The lower court denied the JNOV motion on the number of occurrences but granted the motion to reduce the verdict. It entered judgment for Logan for $600,000.00 to reflect two occurrences and for Mrs. Wood for $25,000.00.

HCSD filed a motion under Rule 67, SCRCP, to deposit the judgment amounts into the court. The lower court denied the motion. HCSD filed an appeal.

**FACTS**

In the fall of 2016, Logan Wood played on the North Myrtle Beach High School B football team. (Tr. p. 289). B-team players are seventh and eighth grade students. (Tr. p. 200). An athletic trainer is required to be present for all sports. (Tr. p. 466). HCSD's athletic trainer staffing model provided that, in some instances, each team has its own athletic trainer. (Tr. pp. 198-99, 465-67, 479-81). However, for a B-team away game, each team did not have its own athletic trainer. *Id.* Instead, the host school provided one athletic trainer for both teams, which could include over 100 players. (Tr. pp. 147, 198-99, 465-67, 479-81).

An athletic trainer is responsible for injury prevention, care, and rehabilitation. (Tr. pp. 130, 228). An athletic trainer is responsible for monitoring football players for signs of a concussion.[1] (Tr. p. 130). Younger players, such as the B-team, have developing brains that are at greater risk for injury from a concussion than older players. (Tr. pp. 200-01, 231-32, 346). It

[1] S.C. Code Ann. § 59-63-75 (requiring school districts to develop guidelines and procedures for identification, management, and return to play decisions for concussions).

is safer and lower risk for the student athletes to have one athletic trainer present for each team. (Tr. pp. 479, 209).

To effectively identify a possible concussion, an athletic trainer needs to watch the game and interact with the players on the sidelines. (Tr. pp. 229-30, 234-35, 238, 143, 148). Signs of a player with a concussion in a football game include laying on the ground longer than normal after a tackle, holding his helmet, not knowing what to do on a play, stumbling, balance, headache, nausea, dizziness, confusion, light sensitivity, and ringing in the ears (Tr. pp. 139-43, 237-38). Any one of these symptoms is treated as a concussion. (Tr. pp. 140).

Concussion protocol starts with the principle that a player should be automatically taken out of a game if he is suspected of suffering a head injury. (Tr. pp. 123, 131). Second impact syndrome is caused when a player who suffers a concussion gets a second concussive hit before the first concussion heals. (Tr. pp. 124, 130-31). Second impact syndrome can lead to permanent injury and death. (Tr. pp. 131-32).

In the spring of 2016, the head athletic trainer for North Myrtle Beach High School, Keeter Hayes, publicly stated in news articles that HCSD schools needed more athletic trainers to adequately protect and care for the student athletes. (Tr. pp. 203, 207, 209; Pl. Exhs. 6-7). At the time, North Myrtle Beach High School employed two athletic trainers on salary and a third trainer on a stipend. (Tr. pp. 221-22). For the 2016-2017 school year, HCSD provided another athletic trainer salaried position. *Id.* North Myrtle Beach kept the three existing trainers and simply changed the stipend-paid trainer to a salaried position. *Id.*

On October 20, 2016, the North Myrtle Beach B-team played an away game at Carolina Forest High School. (Tr. p. 291). North Myrtle Beach did not bring its own athletic trainer. One athletic trainer from Carolina Forest was responsible for approximately 120 athletes. (Tr. p. 147).

Logan Wood played the lineman position for offense and defense on the North Myrtle Beach B-team. (Tr. p. 290). He played every play in a game except for special teams. (Tr. p. 290). During the game against Carolina Forest, Logan took numerous helmet-to-helmet hits and head-to-ground hits. (Tr. p. 293). His mother and sister saw Logan continue chasing a player after the whistle blew, not knowing what to do in a play, wandering around the field, and lining up on the wrong side of the field. (Tr. pp. 293-94, 366). Ms. Wood tried to go down onto the field but a school resource officer prohibited her from doing so. (Tr. pp. 294, 367). A partial game video taken by a coach's wife shows Logan exhibiting symptoms of concussion. (Tr. pp. 51, 230). It shows Logan clutching his helmet, not knowing a play, appearing dazed, and staggering. (Tr. pp. 240-44).

After the game, the team rode the bus back to North Myrtle Beach High School. Logan complained about his head hurting when he got off the bus and suffered light sensitivity in the locker room. (Tr. p. 178-79). When his mother arrived, Logan was screaming and sobbing about his head pain. (Tr. p. 295). At the emergency room, Logan was diagnosed with concussion. (Tr. pp. 296, 74). When he finally got home that night, Logan did not know his mother or sister, where he was, how to shower or brush his teeth, or that he wore contact lenses. (Tr. p. 298). A pediatric neurologist at MUSC who performed a later evaluation of Logan found that he suffered five-to-seven concussions, which Logan's neurology expert stated is consistent with a traumatic brain injury. (Tr. pp. 300, 81). One of Logan's treating physicians wrote: "In my 25 years of practice, I've never encountered a patient with such severe post-concussion symptoms." (Tr. p. 78). Logan's frontal lobe injury is permanent and affects his ability to process and learn. (Tr. pp. 346-48, 359, 312).

On October 11, 2017, Logan and his mother, Sarah Wood, filed an action against HCSD for gross negligence asking for an award of medical expenses and damages for Logan's injuries.

(Cmplt.). The action falls under the South Carolina Tort Claims Act ("SCTCA"). (Cmplt.). The SCTCA limits a state entity's liability to $300,000.00 per person for "loss arising from a single occurrence." S.C. Code Ann. § 15-78-120(a)(1).

Judge William Seals tried the case before a jury from April 12-15, 2021. (Tr.). The Woods's expert in athletic training, Rodwell Walters, testified to three occurrences of HCSD's negligence—the decision by HCSD and North Myrtle Beach High School officials to require only one athletic trainer for both teams, the Carolina Forest High School athletic trainer's failure to identify Logan's concussion symptoms during the game, and failure of the officials at North Myrtle Beach High School to train their coaches on post-concussive syndrome. (Tr. pp. 62, 246-47, 249-50). Mr. Walters testified that these acts are not part of the same unfolding problem but are separate areas of concern. (Tr. p. 247).

HCSD moved for a directed verdict on the issue of multiple occurrences. (Tr. pp. 411-14). It argued "that there was one occurrence and that was failure to recognize that Logan was injured and not removing him from the game." (Tr. p. 414). HCSD stated "[t]here could have been more than one proximate cause of that, but it was one single occurrence." *Id.* It asked the lower court to rule as a matter of law that there could only be one occurrence. (Tr. pp. 411-14). The lower court denied the motion. (Tr. p. 417).

The parties also discussed how to draft the verdict form on the occurrence issue. (Tr. pp. 420-22). The Woods suggested asking the jury to write in the number of occurrences. (Tr. pp. 420-21). HCSD objected to that, and the lower court suggested writing out the occurrences that the Woods intended to argue. (Tr. p. 421). The parties then discussed what occurrences would be listed on the verdict form and agreed to ask the jury about three alleged occurrences. (Tr. pp. 421-22, 499-502). HCSD did not object to this verdict form. *Id.*

The lower court charged the jury on the definition of an occurrence:

> The plaintiff has alleged multiple occurrences of gross negligence. An occurrence is defined as an unfolding sequence of events which proximately flow from a single act of negligence.

(Tr. p. 556). It charged the jury on the standard for finding an occurrence:

> The plaintiff has the burden of proving that each act of gross negligence was separate and independent in order for you to find that more than one occurrence has occurred.

*Id.* After deliberating for over five hours, the jury returned a verdict for the Woods. (Tr. pp. 569, 578-79).

The jury found HCSD committed two separate acts of gross negligence: (1) "it allowed Logan Wood to play without an athletic trainer present for his team" and (2) "it failed to assess Logan Wood for signs and symptoms associated with a concussion." (Verdict Form). The jury awarded Logan $825,000.00 and Ms. Wood $25,000.00. *Id.*

HCSD filed a JNOV motion on the occurrence issue.[2] (Memo. in Supp. of JNOV). It acknowledged that the lower court correctly charged the jury on the "occurrence" definition and correctly instructed the jury to find whether each of the three acts constituted gross negligence. (Memo. p. 8). HCSD disputed that the jury's finding of two instances of gross negligence meant it found two occurrences. It argued that the lower court should have determined as a matter of law whether each act of gross negligence is a separate "occurrence." (Memo. p. 8). HCSD argued the two acts of gross negligence are not separate occurrences because the acts "combined or 'unfolded' to result in Logan's concussion not being recognized." (Memo. pp.11-12).

The Woods submitted a memorandum in opposition. They argued that HCSD failed to object to the occurrence jury charge or the verdict form that listed the three alleged occurrences. (Memo. in Opp. pp. 6-8). They cited to numerous state and federal court cases in which courts

[2] It also argued that there was no gross negligence as a matter of law and, alternatively, the lower court should grant a new trial. (Memo. in Supp. of JNOV). HCSD abandoned those issues on appeal.

have asked the jury to determine the number of occurrences. (Memo. in Opp. pp. 7-8). The Woods argued that there are multiple occurrences in this case because HCSD's separate negligent acts resulted in the Woods's injuries. (Memo. in Opp. pp. 3-6).

The lower court ruled in the Woods's favor. It held that "the issue of occurrences is to be addressed in the Judge's charge and on the verdict form." (Order p. 5). The court found on its own analysis that "[t]he 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." (Order pp. 4-6). The court reduced Logan's damages from $825,000.00 to $600,000.00 (consistent with two occurrences) and entered judgment for Ms. Wood for $25,000.00.[3] (Order p. 7; Form 4).

HCSD filed a motion to deposit the entire judgment amounts into the court and stop the accrual of post-judgment interest. (Mot.). The Woods opposed the motion. (Resp. in Opp.). After a hearing on the motion, the lower court denied it. (Order).

## STANDARD OF REVIEW

"When reviewing the trial court's ruling on a motion for a directed verdict or a JNOV, this Court must apply the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331-32, 732 S.E.2d 166, 171 (2012). "The trial court's ruling on a directed verdict or JNOV motion will be reversed only if the ruling is governed by an error of law or no evidence supports the ruling." *Dawkins v. Sell*, 865 S.E.2d 1, 5 (Ct. App. 2021).

[3] A parent and child's claims are "separately cognizable under the" SCTCA. *Wright v. Colleton Cnty. Sch. Dist.*, 301 S.C. 282, 289-90, 391 S.E.2d 564, 569 (1990).

Whether leave to stay the accrual of interest is granted under Rule 67, SCRCP, is in the discretion of the trial court "and will not be overturned absent an abuse of that discretion." *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 369 S.C. 150, 153, 631 S.E.2d 533, 535 (2006).

## ARGUMENT

The SCTCA defines "occurrence" as "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g). At issue in this appeal is the occurrence definition and how a lower court is to apply it. HCSD makes a procedural argument and a merits argument.

Procedurally, it argues that the lower court should have taken the jury's findings of two acts of gross negligence and decided as a matter of law whether or not each act satisfies the definition of "occurrence." (Br. of App. p. 6) (identifying this as alleged errors one and two). In other words, it argues that, after a jury's findings of multiple acts of gross negligence, there is another analytical step that only the court may perform to determine the number of occurrences.

On the merits, HCSD argues that there is only one occurrence in this case because the two acts of gross negligence "combined" to cause HCSD's failure to recognize Logan's concussion symptoms and remove him from the game. (Br. of App. pp. 6, 13).

These arguments misconstrue the law on "occurrence" and misapply it to the facts. The lower court used a proper procedure and properly entered judgment for Logan for two occurrences.

The lower court correctly exercised its discretion to deny HCSD's Rule 67, SCRCP, motion to deposit the judgment amounts into the court and stop the accrual of interest. A motion under Rule 67 is a matter of discretion, and the lower court did not abuse its discretion in denying HCSD's motion under the circumstances of this case.

### I. THE LOWER COURT CORRECTLY INTERPRETED AND APPLIED THE SCTCA DEFINITION OF "OCCURRENCE" TO THE JURY'S VERDICT.

HCSD never argued at trial that only the court may determine the number of occurrences. Therefore, the issue is not preserved for appeal. Regardless, the lower court correctly asked the jury (without objection) to determine the number of occurrences. Even if this Court holds that the lower court should not have asked the jury to determine the number of occurrences, it may still affirm because the lower court itself agreed with the jury's determination when it denied HCSD's post-trial motions. Therefore, any procedural error is harmless.

First, the issue is not preserved. In this case, the parties and the court unequivocally agreed to list three alleged occurrences on the verdict form for the purpose of having the jury determine the number of occurrences. (Tr. pp. 420-23, 499-502). HCSD never objected to the jury determining the number of occurrences. It argued only that the definition of occurrence (as stated in the statute) is "confusing" and "has the potential to distract them [the jury] from the true issues in this case"—meaning HCSD's liability. (Tr. p. 421). The Woods told the jury in closing argument that "[w]e would ask that you return a verdict for $300,000 for each of the three occurrences of gross negligence for a total of $900,000." (Tr. p. 550). HCSD did not object to the statement that the jury was to determine the number of occurrences and did not raise it to the court after the closing arguments. HCSD did argue for a directed verdict on the basis that the evidence showed only one occurrence as a matter of law. (Tr. pp. 412-14). But this is vastly different from arguing that only the court is legally allowed to determine the number of occurrences. The argument is not preserved, and the Court should decline to address it. *State v. Taylor*, 399 S.C. 51, 64, 731 S.E.2d 596, 603 (Ct. App. 2012) (holding that an issue first raised in a post-trial motion is not preserved for appellate review).

Second, even if preserved, HCSD is wrong on the law. In *Chastain v. AnMed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010), the Supreme Court addressed whether the lower court properly reduced a verdict to the $300,000.00 cap for one occurrence where the jury

entered a general verdict. The Court affirmed because "the jury was never instructed on the definition of occurrence nor was it asked to determine whether there was more than one occurrence, either in the instructions or in its verdict." *Id.* at 174, 694 S.E.2d at 545. This statement plainly shows that it is legally and procedurally proper for the jury to determine occurrences and that the issue is not a matter of law solely for the court.

The lower court charged the jury that the Woods "alleged multiple occurrences of gross negligence" and then defined "occurrence" using the statutory definition. (Tr. p. 556) (emphasis added). The lower court charged the jury that the Woods must prove "that each act of gross negligence was separate and independent in order **for <u>you</u> to find that more than one occurrence has occurred**." (Tr. p. 556) (emphasis added). HCSD did not object to the lower court charging the jury that it must decide how many occurrences occurred in this case. The court properly charged the jury and used the jury's findings to enter judgment for two occurrences under the procedure stated in *Chastain*. Numerous state and federal trial courts have used this procedure. (Exhs. 1- to Plaintiff's Memo. in Opp. to JNOV).[4]

HCSD cites to *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005), as authority that requires the trial court to determine the number of occurrences as a matter of law. (Br. of App. pp. 6-9). HCSD refers to it as a "self-executing duty" according to *Parker*. *Parker* says no such thing.

[4] *See Knox v. United States*, C/A No. 0:17-cv-36-CMC, 2018 U.S. Dist. LEXIS 111445, *15 (D.S.C. July 3, 2018) ("If Plaintiff presents evidence at trial to support more than one act of negligence, the jury will be instructed on the definition of occurrence and asked to determine whether Plaintiff has proven more than one occurrence."); *Doe 2 v. The Citadel*, Case No. 2012-CP-10-01858, 2014 WL 8727884, *30 (S.C. Com. Pl. Dec. 9, 2014) (finding that, under *Chastain*, "[t]he jury must be instructed on the definition of occurrence and asked to determine whether there were more than one occurrence, either in the jury charges or in the verdict form"). HCSD disputes the lower court's citation to a circuit court order. (Br. of App. p. 13 n.2). However, that a decision is not binding precedent does not preclude it from being persuasive or supporting authority.

In *Parker*, the issue was "whether the statutory cap is an affirmative defense which is waived if not pled." 362 S.C. at 282, 607 S.E.2d at 714. The plaintiff's complaint stated that she brought the action under the SCTCA, but the defendant did not plead the statutory cap as an affirmative defense. *Id.* at 279, 607 S.E.2d at 713. During trial, the defendant moved to amend the answer to assert the cap, and the judge denied the motion and entered judgment for $450,000.00 without applying the statutory cap. *Id.* at 279-80, 607 S.E.2d at 713. On appeal, the Court of Appeals reversed and held "that the monetary statutory cap is self-executing and the court is required to apply the monetary statutory cap" regardless of whether the defendant pleads it as an affirmative defense. *Id.* at 282-85, 289, 607 S.E.2d at 714-16, 718.

*Parker* held the trial court must apply the cap regardless of whether it is pled. That is not at issue in this case. In this case, the lower court did apply the cap to reduce the damages award to Logan from $825,000.00 to $600,000.00. *Parker* is irrelevant to this appeal.

The lower court properly charged the jury on the definition of occurrence and instructed it to find the number of occurrences on the verdict form.

Third, even if the issue is preserved and the Court finds that the lower court used an improper procedure, it should still affirm because the lower court found on its own analysis that there was evidence of two occurrences. In its order denying HCSD's post-trial motions, the lower court held that "[t]he 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." (Order p. 4). Because the court looked at the evidence independent of the jury's findings of two occurrences, any procedural error is harmless and not a basis for reversal.

For any one of these reasons, the Court should affirm the lower court's unchallenged procedure to submit the occurrences issue to the jury.

## II. THE LOWER COURT CORRECTLY ENTERED JUDGMENT FOR LOGAN WOOD FOR $600,000.00 BASED ON THE JURY AND THE COURT'S FINDINGS OF TWO OCCURRENCES UNDER S.C. CODE ANN. § 15-78-120(a).

The jury and the lower court correctly found two occurrences in this case, and this Court should affirm.

The starting point is the statutory language. The SCTCA defines an "occurrence" as "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g). Using this plain language, it is apparent that there is more than one occurrence in this case. *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 608, 670 S.E.2d 674, 678 (Ct. App. 2008) ("Words in the statute should be given their plain and ordinary meaning without resulting to forced or subtle construction."). An occurrence is something that flows from "a **single** act of negligence" and not something that flows from a combination of multiple acts of negligence. S.C. Code Ann. § 15-78-30(g) (emphasis added). The jury found two occurrences of gross negligence that are not causally connected.

HCSD tortures the statutory definition of "occurrence." (Br. of App. pp. 9-10). It discounts the entire second half of the definition by arguing that "an occurrence is an 'unfolding sequence of events.'" (Br. of App. pp. 9, 14-15). Using that half-definition, it then equates an event to an occurrence by arguing that "[t]he event (or occurrence) was the failure to remove Logan Wood from the middle school football game and have him assessed for a concussion." (Br. of App. p. 10). HCSD argues that its multiple acts of gross negligence "combined" "to proximately cause that single occurrence." (Br. of App. pp. 10, 15). This is legally and factually incorrect.

Legally, the General Assembly's deliberate use of the words "single act of negligence" forecloses the combination argument made by HCSD. Factually, the combination argument ignores the evidence. A pediatric neurologist at MUSC found that Logan suffered five-to-seven

concussions. (Tr. pp. 300, 81). The jury and court found HCSD "allowed Logan Wood to play without an athletic trainer present for his team" and "failed to assess Logan Wood for signs and symptoms associated with a concussion." (Verdict Form; Order). The evidence of at least five concussions shows that these separate occurrences of gross negligence caused separate concussions and second impact syndrome, and did not "combine" into anything. Using only the statutory language, the Court should affirm the judgment.

Further, the case law also requires affirmance in this case. Only two appellate cases in South Carolina have considered the issue of occurrence under § 15-78-30. The first, *Chastain v. AnMed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010), is not applicable to this case because the jury rendered a general verdict from which "it was impossible to conclude that the jury had found more than one occurrence" and the jury was never instructed on the definition of occurrence. *Id.* at 174, 694 S.E.2d at 543-44. The second, *Boiter v. S.C. Dep't of Transp.*, 393 S.C. 123, 712 S.E.2d 401 (2011), is applicable to this case.

The Boiters were injured when their motorcycle collided with a car at an intersection. *Id.* at 126, 712 S.E.2d at 402. The red-light bulbs for the road the car traveled on burned out earlier that day. *Id.* The Boiters filed an action against (1) SCDOT for failing to implement a policy to replace traffic signal bulbs before they burned out and (2) SCDPS for failing to send an officer to direct traffic at the light when someone reported the outage over an hour before the collision. *Id.* The jury returned a verdict for the Boiters against both entities for $1.875 million dollars. *Id.* at 126, 712 S.E.2d at 402-03. The trial court found only one occurrence and reduced the verdict to $600,000.00. *Id.* at 126-27, 712 S.E.2d at 403.

On appeal, the Supreme Court reversed, finding two occurrences. The plaintiff argued that the Court should equate occurrence to the number of negligent acts and the defendants argued it should equate occurrence to the number of injuries. 393 S.C. at 133, 712 S.E.2d at 406.

The Supreme Court outright rejected the defendants' argument based on injuries by finding the trial court "erred" in using that analysis. *Id.* at 134, 712 S.E.2d at 406. It did not outright reject the notion that, in certain circumstances, the number of negligent acts may equal the number of occurrences. Instead, it simply chose not to "adopt a bright-line test based on the existence of multiple acts of negligence." *Id.* at 133-34, 712 S.E.2d at 406. The Court decided the occurrence issue "based solely on the peculiar facts of this case." *Id.* at 133, 712 S.E.2d at 406.

The Court found two occurrences because the evidence did not show that SCDOT's negligent act could have unfolded into SCDPS's negligent act. That *Boiter* involved two entities was relevant to the Court's occurrence decision but not dispositive in and of itself. The following passage is the heart of the Court's decision in *Boiter* and the reason why this Court should affirm the finding of two occurrences in this case.

> Based on the facts presented here, we cannot see how SCDOT's negligent act "unfolded" into SCDPS' negligent act. SCDPS only became involved due to a citizen call regarding the burned-out light bulb; SCDOT never called SCDPS regarding the light, and SCDPS never informed SCDOT about the citizen call. We can find no causal connection between the actions of SCDOT and SCDPS; had the jury not found SCDOT negligent, the verdict against SCDPS could still stand, and the converse is also true. Therefore, we do not believe that these two separate and independent acts of negligence constituted an unfolding sequence of events which injured the Boiters.

*Boiter*, 393 S.C. at 134, 712 S.E.2d at 407.

This reasoning applies to the peculiar facts of this case. There is no evidence that HCSD's negligent act of allowing only athletic trainer to cover two teams could have unfolded into its trainer's negligent act of failing to assess Logan for signs of a concussion. Kary-Anne Cyr was the athletic trainer present for both teams at the game where Logan was injured. (Tr. pp. 143-44). The evidence is not that she was so busy monitoring all of the players that she did not have time to assess Logan. The evidence is that she sat on the sidelines and did not do her job. (Tr. pp. 148, 192-93, 234-35, 438). HCSD's decision to staff only one athletic trainer did not

unfold into the one athletic trainer present failing to perform her job. There is no causal connection in this case between the policy-level action of permitting one trainer to cover both teams and the employee-level action of failing to properly perform her job. Had the jury not found HCSD negligent for allowing one trainer to cover both teams, the verdict for Kary-Anne Cyr's failure to properly perform her job could still stand, and the converse is also true. Applying this law and reasoning to the facts of this case, the Court should affirm the finding of two occurrences and entry of a $600,000.00 judgment for Logan.

HCSD urges this Court to interpret *Boiter* as "forecast[ing]" how the Supreme Court would decide a case that "involves a single governmental entity that committed multiple acts of gross negligence." (Br. of App. p. 11). It relies on the Supreme Court's statement that cases from other jurisdictions are "inapposite because they involve a single government entity which committed multiple acts of negligence, a completely different situation than the one before us" and its citation to out-of-state opinions where courts found one occurrence.[5] *Boiter*, 393 S.C. at 133, 712 S.E.2d at 406; Br. of App. pp. 11-12. HCSD's reliance on this passage is misplaced. The Supreme Court's point was simply to say that it did not find a factually on point opinion from another jurisdiction. It did not mean to "forecast" how it would decide a case not before it. In fact, the Court expressly rejected that notion by specifying that it decided "the issue before us based solely on the particular facts of this case." *Id.* at 133, 712 S.E.2d at 406.

[5] HCSD relies heavily on comparing this case to *Folz v. State*, 797 P.2d 246 (N.M. 1990). (Br. of App. pp. 12-13). The cases are not comparable. In *Folz*, the New Mexico legislature did not define the term "occurrence", and the court was presented with choosing an "approach" for "recovery for multiple plaintiffs or claims" in a case where a runaway truck driving through highway construction hit multiple vehicles. *Id.* at 250-51. The court adopted a "triggering event" approach and held the separate negligent acts of the defendants "combined to form but a singular, unitary, ongoing risk." *Id.* at 252. In this case, the General Assembly defined "occurrence" and the Court must apply that definition. Further, there is no combined "unitary" risk under the facts of this case. The risk of only having one athletic trainer present to monitor over 100 student-athletes did not contribute to the risk that the sole athletic trainer present would fail to do her job.

The Supreme Court determined the number of occurrences in *Boiter* using an analysis of whether one negligent act unfolded into another, as discussed above. Applying that analysis to this case, the lower court correctly entered judgment for Logan for $600,000.00 for two occurrences. This Court should affirm.

## III. THE LOWER COURT PROPERLY EXERCISED ITS DISCRETION TO DENY HCSD'S RULE 67, SCRCP, MOTION TO PAY THE JUDGMENT AMOUNTS INTO THE COURT.

After the lower court denied HCSD's post-trial motions, it filed a motion to deposit the $600,000.00 and $25,000.00 judgment amounts into the court and stop the running of post-judgment interest. (Mot.). It filed the motion under Rule 67, SCRCP. Notably, HCSD sought to deposit the **entire** judgment into the court—even the uncontested $300,000.00 for Logan and $25,000.00 for Mrs. Wood.

The Woods opposed the motion. (Resp. in Opp.). They noted that Rule 67 is discretionary, not mandatory. (Resp. in Opp.). They argued that the Insurance Reserve Fund is a solvent debtor that will be able to pay the judgment at a later date, and allowing HCSD to deposit the funds and stop the accrual of interest will prejudice them by allowing HCSD to pursue a frivolous appeal and delay the resolution of the case for years. (Resp. in Opp.).

The lower court held a hearing on the motion. (Tr. of hearing). HCSD argued that it has an absolute "right to pay the money into the court under Rule 67 . . . to stop the accrual of interest pending an appeal." (Tr. p. 5). The Woods argued that "Rule 67 is a discretionary rule" and there can be no "automatic right" where a party must request a court order to do something. (Tr. p. 10).

The lower court denied the motion. (Order). It agreed with the Woods that Rule 67 is discretionary and held that it should consider "factors specific to an individual case." (Order pp. 1-2). The court found that, given the nature of the case and the jury's award, "it would be

unconscionable and/or fundamentally unfair to allow the Defendant to avoid interest during the pendency of an appeal." (Order p. 2). HCSD filed a motion to reconsider, which the lower court denied. (Mot.; Order).

Rule 67, SCRCP, states in relevant part: "In an action in which any part of the relief sought is a judgment for a sum of money . . . a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing . . . ."

A judgment "debtor may prevent accrual of interest by depositing the funds 'under an order of the court.'" *Russo v. Sutton*, 317 S.C. 441, 444, 454 S.E.2d 895, 897 (1995). The "debtor must comply with the plain language of Rule 67" which requires notice to the other party and "obtain[ing] leave of the circuit court prior to depositing the funds." *Id.* at 444-45, 454 S.E.2d at 897. "The granting of leave to deposit money with the court pursuant to Rule 67, SCRCP[,] is a matter within the **discretion** of the trial court and will not be overturned absent an abuse of that discretion." *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 369 S.C. 150, 153, 631 S.E.2d 533, 535 (2006) (emphasis added).

HCSD's request to deposit $300,000.00 of the judgment owed to Logan and the $25,000.00 judgment owed to Mrs. Wood should be treated separately from the contested $300,000.00 owed to Logan because the $325,000.00 is uncontested on appeal. "The deposit of uncontested funds with the court does nothing but delay payment of funds that are legally due. That is not the intent of Rule 67." *Bakala v. Bakala*, 352 S.C. 612, 632-33, 576 S.E.2d 156, 167 (2003). HCSD never had a discretionary or mandatory right to deposit those funds into the court.

As to the contested $300,000.00 judgment for Logan, the lower court correctly exercised its discretion to deny HCSD's motion. HCSD argues that, because it was prepared to deposit the judgment into the court, gave the Woods notice, and asked for leave of the court, then it was entitled to deposit the money and stop the accrual of post-judgment interest as a matter of law.

(Br. of App. pp. 16-19). There is no entitlement or right to deposit a judgment amount into the court and stop the accrual of post-judgment interest.

The Supreme Court expressly stated that a motion under Rule 67 "is a matter within the discretion of the trial court." *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 369 S.C. 150, 153, 631 S.E.2d 533, 535 (2006). A discretionary rule allows a trial court to deny relief sought under that rule.

In some cases, Rule 67 may ensure that the "funds will be available at the conclusion of the appeal", but that is not always an applicable consideration. *Russo*, 317 S.C. at 444, 454 S.E.2d at 896. When the trial court concludes that there is a likelihood the debtor will be able to pay the judgment after the debtor's appeal has not succeeded on the merits, this benefit turns into prejudice for the judgment creditor by pausing the judgment creditor's statutory right to post-judgment accrual of interest during the pendency of the debtor's appeal. *See* S.C. Code Ann. § 34-31-20 (2020); *Hunting v. Elders*, 359 S.C. 217, 229, 597 S.E.2d 803, 809 (Ct. App. 2004) ("[A] claimant is entitled to interest from the date of the rendition of the verdict, or post-judgment interest, as a matter of course.").

Under Fed. R. Civ. P. 67, a judgment deposited with the court "must be deposited in an interest-bearing account or invested in a court-approved, interest-bearing instrument." Fed. R. Civ. P. 67(b). This safeguard on the judgment creditor's right to the accrual of interest is not in place in South Carolina, and instead, the right must be safeguarded by the discretion of the trial court.

The law is that a trial court must exercise discretion in ruling on a Rule 67 motion. In this case, the lower court properly decided HCSD's motion as discretionary rather than a matter of right. *See Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 155, 399 S.E.2d 439, 441 (Ct. App. 1990) ("It is an equal abuse of discretion to refuse to exercise discretionary

authority when it is warranted as it is to exercise the discretion improperly." (internal quotation marks omitted)).

HCSD refers to a "*Manning/Russo* rule" that a judgment debtor is entitled to deposit funds into the court and stop the accrual of interest simply by making the request under Rule 67. (Br. of App. pp. 17-18). There is no such thing as a "*Manning/Russo* rule", and those cases only state that the accrual of interest does stop with a proper deposit. They do not state that a judgment debtor is entitled to a court order allowing it to do so.

The lower court did not abuse its discretion. "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support." *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 369 S.C. 150, 153, 631 S.E.2d 533, 535 (2006). The lower court considered that there was no allegation that the Insurance Reserve Fund would be unable to satisfy the judgment with interest at a later date, the Woods met a heightened burden to prove liability and extensive damages to a jury, and HCSD challenged the amount of the award it owed. (Order; Resp. in Opp.). Weighing those factors, the court properly found that staying the interest would be unfair and prejudice the Woods. (Order p. 2).

HCSD contends the lower court used an "unconstitutional test" by considering the results of the case.[6] (Br. of App. pp. 20-21). This is incorrect. The point is not which party won or lost but is, instead, the likelihood of success on the merits and whether it is fair to stop the statutory right to accrual of post-judgment interest.

[6] HCSD cites to law that a court cannot decide a case on a ground not before it by incorrectly arguing that the lower court *sua sponte* raised an argument about the results of the case. (Br. of App. p. 20). A "ground" before the court was whether to deny HCSD's motion. The Woods expressly argued that allowing HCSD to stop the accrual of interest "incentivizes" it "to pursue a meritless appeal." (Resp. in Opp. p. 2).

Finally, HCSD challenges the lower court's citation to two circuit court decisions.[7] (Br. of App. p. 19). HCSD cites to law that a circuit court decision is not controlling precedent but cites to no law prohibiting one circuit court judge from citing another judge's decision as persuasive.

## CONCLUSION

For these reasons, the Court should affirm the decisions of the lower court to enter judgment for Logan Wood for $600,000.00 for two occurrences and to deny HCSD's Rule 67, SCRCP, motion.

s/Kathleen C. Barnes
Kathleen C. Barnes, SC Bar # 78854
Barnes Law Firm, LLC
P.O. Box 897
Hampton, SC 29924
Office: 803-943-4529
kbarnes@barneslawfirmsc.com

Scott C. Evans, SC Bar #77684
James B. Moore III, SC Bar #74268
121 Screven Street
Georgetown, SC 29440
Office: (843) 995-5000
Fax: (843) 527-4128
scott@evansmoorelaw.com
james@evansmoorelaw.com

Amy Lawrence, SC Bar #77242
Justin Lovely, SC Bar #79073
The Lovely Law Firm
804 N Oak St, Myrtle Beach, SC 29577
Office: (843) 839-4111
amy@justiceislovely.com
justin@justiceislovely.com

Attorneys for the Respondents

[7] One decision HCSD complains of, *Davis v. Agape Nursing Rehab. Ctr., Inc.*, C/A No. 2016-CP-32-00950 (S.C. Com. Pl. Nov. 30, 2018), was recently affirmed by this court with a ruling that the lower court did not abuse its discretion in denying the defendant's Rule 67 motion. *Davis v. Agape Nursing Rehab. Ctr.*, Op. No. 2022-UP-094 (March 9, 2022).

March 22, 2022

RECEIVED
Mar 22 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

---

Appellate Case No. 2021-000535

---

Logan Wood and Sarah Wood,……..…….Respondents,

v.

Horry County School District,…….……...Appellant.

---

# PROOF OF SERVICE

---

The undersigned certifies that a copy of the Initial Brief of Respondents, Respondents' Designation of Matter for the Record on Appeal, and Notice of Appearance of Kathleen C. Barnes for Respondents have been served upon counsel for Appellant via electronic mail at the email addresses stated in the Attorney Information System as set forth below on March 22, 2022

LINDEMANN & DAVIS, P.A.
Andrew F. Lindemann
andrew@ldlawsc.com

CLARKE JOHNSON PETERSON & MCLEAN, P.A.
Joseph P. McLean
jmclean@cjpmlaw.com

March 22, 2022

s/Kathleen C. Barnes
Kathleen Chewning Barnes, SC Bar No. 78854
P.O. Box 897
Hampton, SC 29924
803-943-4529

Kathleen C. Barnes
kbarnes@barneslawfirmsc.com

William F. Barnes III
wbarnes@barneslawfirmsc.com

RECEIVED
Mar 22 2022
SC Court of Appeals

March 22, 2022

**Via E-Mail**

The Honorable Jenny Abbott Kitchings
Clerk of Court for the Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211
ctappfilings@sccourts.org

Re: *Logan Wood and Sarah Wood v. Horry County School District*
Appellate Case No. 2021-000535

Dear Mrs. Kitchings:

Attached for electronic filing and service please find:

(1) Notice of Appearance of Kathleen C. Barnes on Behalf of Respondents,
(2) Initial Brief of Respondents,
(3) Respondents' Designation of Matter for the Record on Appeal, and
(4) Proof of Service.

Please file the documents and return one file-stamped copy to me via email. By electronic copy of this letter, I am serving all counsel of record with a copy of the same.

With kind regards, I am,

s/Kathleen C. Barnes

cc: Andrew F. Lindemann (andrew@ldlawsc.com)
Joseph P. McLean (jmclean@cjpmlaw.com)
James B. Moore, III (james@evansmoorelaw.com)
Scott C. Evans (scott@evansmoorelaw.com)
Justin Lovely (justin@justiceislovely.com)
Amy Lawrence (amy@justiceislovely.com)