

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI**

**MINOR CHILD BY AND THROUGH HIS
PARENTS AND NEXT FRIENDS JOHN DOE
AND JANE DOE; ET AL.**

PLAINTIFFS

VS.

CAUSE NO. 251-12-942-CIV

MADISON-RIDGELAND ACADEMY

DEFENDANT

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR RESPONSE IN
OPPOSITION OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
ON THE CLAIMS OF JOHN AND JANE DOE**

COMES NOW the Plaintiffs jointly pursuant to the Mississippi Rules of Civil Procedure and files this their Memorandum in Support of Their Response in Opposition of Defendant's Motion for Summary Judgment on the Claims of John and Jane Doe and would show unto the Court the following:

I. INTRODUCTION

Madison-Ridgeland Academy (hereinafter "MRA") is not entitled to summary judgment. This case involves bullying, harassment, physical assault, and verbal assault which took place during the 2011 fall semester over several months. MRA had a duty to protect its students from bullying, harassment, and assaults. MRA had a duty to follow its policy and procedures regarding bullying, harassment, and assaults. It failed to do this. There is a material dispute of fact regarding MRA's duty and causation which prevent summary judgment.

For the reasons discussed below, there are genuine issues of material fact as to the claims asserted by Minor Doe and Defendant is not entitled to judgment as a matter of law.

II. OVERVIEW OF FACTUAL ALLEGATIONS

Minor Doe began attending MRA in fall 2011 as a seventh grader. In August 2011 male students at MRA began spreading a hurtful false rumor about Minor Doe and his sister, B.K.

John and Jane Doe reported the harassment and bullying to the MRA Headmaster, Tommy Thompson, the middle school principal, Brian Smith, and the football coach, Forest Williams. The Does were assured the problem would be addressed and stopped as it was a violation of school policy. Football Coach Williams even told Minor Doe if he heard the rumors to tell the person they are false and punch them. The harassment and bullying continued while the Minor Doe was on school property and at school controlled functions. Minor Doe stopped advising his parents John and Jane Doe the names of his abusers because he was now also being harassed for being a “snitch.”

On Monday, November 28, 2011, Minor Doe was riding as a basketball player on the school bus with the other boys and girls basketball teams. MRA’s policy required a male coach be on the bus to supervise the boys’ teams. The boys coach Jim Delaughter, in violation of school policy did not go on the bus and sent the boys 8th grade and 7th grade teams on the bus alone. Coach Jennie Vandevere, the female team coach, was on the bus to supervise the girls and she sat at the front of the bus to supervise the girls’ team.

Minor Doe was sitting in his seat alone popping an empty candy container. While the bus was traveling in Jackson, Hinds County, Mississippi on Interstate I-55, an eighth grade boy who had previously bullied Minor moved to Minor’s seat and grabbed Minor Doe around the neck. Several other eighth grade boys joined in began bullying Minor Doe making statements to him indicating he was inferior, weak, and non-deserving of being on the bus and using derogatory language against him. The first boy choked Minor Doe cutting Minor Doe’s circulation until Minor Doe was almost unconscious and called him derogatory words. The force used by the boy caused bruising and hemorrhages on Minor Doe’s neck. After initially being choked, a second boy on the bus slapped Minor Doe in the head. In defense, Minor Doe struck this boy. This boy then left Minor Doe alone. A third boy pinched Minor Doe on his chest or “titty-twisted” minor’s

chest causing Minor Doe to sustain a bruise the size of a lemon. Minor Doe was also thrown to the floor and assaulted.

The first boy repeatedly assaulted Minor Doe on the bus ride putting Plaintiff child in a headlock and choking him three to four more times and calling Minor derogatory words. Minor Doe left his seat near the back of the bus and moved to a seat closer to the front of the bus. The first boy moved and sat by Minor Doe again. The first boy choked Minor Doe one more time. The entire time while the harassment and bullying was occurring Minor Doe was under the supervision of MRA and its coach, Jennie Vandevere. The coach should have been aware of the incident but made no attempt to stop it. Also, in violation of MRA policy and procedure there was no coach or adult supervision in the back of the bus or monitoring the boys' basketball team to stop the event from occurring..

**III. ITEMIZATION OF UNDISPUTED FACTS
RELEVANT TO THE SUBJECT MOTION**

Plaintiff objects to Defendant's Itemization of Undisputed Facts because these facts are genuinely disputed. Furthermore, Defendant places significant emphasis on alleged facts that are not relevant to the Plaintiffs claims. Defendant's facts should not be relied upon.

1. Denied. The alleged incident involving Minor Doe and his sister occurred prior to Minor Doe starting school at MRA. However, the incidents giving rise to this claim occurred from August 2011 through December 2011. Ex. "A" Complaint; Ex. "C" Depo Jane 30:7-24, 38:1-7, 50:2-8; Ex. "D" Depo John 54:2-55:11.

2. Denied. The incidents giving rise to this claim occurred from August 2011 through December 2011. Additionally, the boys involved in the incidents giving rise to this claim were students at MRA. The boys who allegedly witnessed the incident involving Minor Doe and his sister were not MRA students. Ex. "A" Complaint; Ex. "C" Depo Jane 31:1-7, 38:1-7, 50:2-8

Ex. "D" Depo John 54:2-55:11.

3. Denied. The incidents giving rise to this claim occurred from August 2011 through December 2011 and the boys involved in the incidents giving rise to this claim were students at MRA. It is irrelevant to Plaintiffs' claims whether or not the rumor was spread around Madison Middle School. Ex. "A" Complaint; Ex. "C" Depo Jane 38:1-7, 50:2-8 Ex. "D" Depo John 54:2-55:11.

4. Denied. Jane and John Doe spoke to administration and staff at MRA in fall 2011 repeatedly regarding the verbal and physical bullying that was occurring against Minor Doe. Jane Doe was told by Mr. Smith and Mr. Thompson that Minor Doe would not be left alone or unsupervised and that he would be safe and protected by MRA. Ex "A" Complaint; Ex. "C" Depo Jane 33:16-34:2-3, 36:4-6, 36:21-24, 38:15-18; 45:11-13; Ex. "D" Depo John 54:2-55:11.

5. Denied. MRA became aware of the verbal and physical bullying in August 2011. At that time administration or staff met with Minor Doe and his parents. The bully may have been censured about spreading rumors. Ex. "A" Complaint; Ex. "C" Depo Jane 34:2-3; Ex. "D" Depo John 40:11-41:13, 45:4-10 Ex. "E" Depo Minor 33:4-23. Headmaster Thompson promised the Does the minor would not be left alone, unsupervised, or unsafe. Ex. "D" 36:21-24. Mr. Smith assured Jane Doe that Minor would be okay. Ex. "D" 38:15-18.

6. Denied. After the initial discussion with MRA there were multiple subsequent meetings regarding the bullying of Minor Doe. Ex. "A" Complaint; Ex. "C" Depo Jane 45:11-13; Ex. "D" Depo John 48:5-8; Ex. "E" Depo Minor 39:9-21, 44:14-23.

7. Denied. MRA produced disciplinary reports indicating Minor Doe was the aggressor in a couple incidents at school but Minor Doe has denied he was the aggressor. Ex. "C" Depo Jane 39:13-21, 44:6-8; Ex. "D" Depo John 52:1-3, 53:16-20; Ex. "E" Depo Minor 35:23-36:3, 60:5-9.

8. Denied. On November 28, 2011 Minor Doe and the other seventh and eighth grade basketball players were provided transportation by MRA to an away basketball game at East Rankin Academy. This was a school event and the school provided transportation. Ex. "A" Complaint; Ex. "G" Depo Delaughter 16:8-9.

9. Denied. The MRA junior high girls' basketball coach, Jennie Vandevere, was the only adult supervision on the bus although the boys' basketball coach, Jim Delaughter, was also required by school rules to be on the bus supervising the boys' team. Ex. "A" Complaint; Ex. "C" Depo Jane 108:14-15; Ex. "D" Depo John 58:22-59:2, 116:19-20; Ex. "E" Depo Minor 128:22-25; Ex. "F" Depo Vandevere 12:3-7, 16:2-13; Ex. "G" Depo Delaughter 16:7-13.

10. Denied. Coach Vandevere did not stop the bullying or fighting because she did not see or hear anything in the front of the bus. She was wearing headphones. Ex. "A" Complaint; Ex. "C" Depo Jane 54:20-24, 108:16-20; Ex. "D" Depo John 95:12-21; Ex. "F" Depo Vandevere 14:1-15:11.

11. Denied. Both John Doe and Jane Doe testified MRA purposely did not do something which was a proximate cause of their damages. Ex. "D" 89:11-90:1; Ex "C" 122:5-123:5.

12. Denied. John Doe testified he participated with group counseling sessions with Dr. Gaines related to the problems experience at MRA. Ex. "D" 68:13-69:8. John Doe also testified without, objection by the Defendant, that he suffers from weight loss, depression, anxiety, diarrhea and insomnia. And he takes Ambian to help with insomnia. Ex. "D" 133:12-134:5.

13. Denied. Jane Doe suffered from extreme panic attacks, headaches, and stomach ulcers related to the problems at MRA. Ex. "C" 84:6-85:1; See also, Ex. "D" Depo John 134:19-135:14.

14. Denied. John and Jane Doe can prove they suffered demonstrable harm. “If the testimony at trial is uncontradicted, and additionally is ‘inherently probably, reasonable, credible and trustworthy,’ this Court will find that they [trier of fact] must have accepted the evidence as true.” *Odom v. Roberts*, 606 So. 2d 114, 118 (Miss. 1992) (quoting *James v. Mabus*, 574 So. 2d 596, 600 (Miss. 1990)). A Plaintiff may testify to their health prior to the subject accident and that treatment is proximately caused by an incident. See, *Bolden v. Williams*, 17 So. 3d 1069, 1071-72 (Miss. 2009). No evidence has been presented that contradicts Plaintiffs’ claim that they suffered physical and emotional damages as a result of the incidents at MRA.

15. Denied. Plaintiffs have presented factual evidence that proves that MRA was grossly negligent in its supervision of Minor Child.

There are multiple material facts which are in genuine issue. Defendant is not entitled to judgment as a matter of law.

IV. STANDARD FOR SUMMARY JUDGMENT

To prevail on a Motion for Summary Judgment the moving party must show that there is no genuine dispute as to any material fact and that the movant is entitled to a judgment as a matter of law. Upon review of “[a]dmissions, and pleadings, answers to interrogatories, depositions, affidavits are viewed in a light most favorable to the nonmoving party, as he is given the benefit of every reasonable doubt.” *Spartan Food Systems, Inc. v. American National Insurance Co.*, 582 So. 2d 399, 402 (Miss. 1991); see also, *McFadden v. State*, 580 So. 2d 1210, 1213 (Miss. 1991). “Summary judgments, in whole or in part, should be granted with great caution.” *Brown v. Credit Center, Inc.*, 444 So. 2d 358, 363 (Miss. 1984).

Multiple genuine issues of material fact exist in this case; therefore the Defendant is not entitled to Summary Judgment. Simply filing a motion for summary judgment does not entitle the movant to a favorable ruling. The Court “does not try issues. Rather, [it] only determine[s]

whether there are issues to be tried.” *Burkes v. Fred’s Stores of Tennessee, Inc.*, 768 So. 2d 325, 328 (Miss. 2000). Further, “motions for summary judgment are to be viewed with a skeptical eye, and if a trial court should err, it is better to err on the side of denying the motion.” *Id.* The Court will overrule a summary judgment motion unless, “beyond any reasonable doubt [the] Court believes that [the] non moving party would be unable to prove any facts which would support his claim.” *McFadden*, 580 So. 2d at 1213-1214. See also, “Motion for summary judgment should be denied unless it is established that the trial court finds, beyond a reasonable doubt, that the plaintiff would be unable to prove any facts to support the issues presented in the complaint.” *Branch v. State Farm Fire and Casualty Co.*, 759 So. 2d 430, 433 (Miss. 2000). “Issues of fact sufficient to require denial of a motion for summary judgment obviously are present where one party swears to one version of the matter in issue and another says the opposite.” *Titus v. Williams*, 844 So. 2d 459, 464 (Miss. 2003). MRA is unable to prove its position beyond a reasonable doubt which is the required standard concerning summary judgment reviews. *McFadden*, 580 So. 2d at 1213.

V. ARGUMENT

a. John and Jane Doe’s Claims for Emotional Distress

An individual may recovery for damages for emotional distress when proven to be a reasonably foreseeable result of the defendant’s conduct. *Adams v. U.S. Homecrafters, Inc.*, 744 So. 2d 736, 743 (Miss. 1999). Mental anguish damages may stem from a breach of contract in certain circumstances. *Morris Newspaper Corp. v. Allen*, 932 So. 2d 810, 817 (Miss. Ct. App. 2005). MRA contracted with John and Jane Doe to educate and protect Minor Doe beginning in fall 2011. Part of that contract included John and Jane Doe signing the Student Handbook which included MRA’s Mission Statement and Harassment Policy. Ex. “K” Student Handbook excerpts. The Does expected based on their contract with MRA that Minor Doe would be safe

and not bully or assaulted. The Does also expected Minor to be supervised by adults as the contract states. This did not occur. Minor Doe became the victim of systematic and mobntly physical and emotional bullying. Because of this breach of contract Plaintiffs suffered from mental and emotional anguish that was accompanied with physical and mental injury.

MRA's harassment policy states in part:

Harassment is a behavior, which is *UNWELCOME* and *REPEATED*; it must *NOT* be allowed to continue.

...

Harassment is ongoing verbal and/or physical attacks against a person. IT includes intimidation in all forms. It is done with intent to disrupt physically and/or emotionally. This can be done by an individual or by a group gathered together to harass someone.

See, Ex."K." John and Jane Doe contracted and expected their child Minor Doe would not be a victim of harassment based on this policy. MRA's System of Beliefs states, "A safe and physically comfortable environment promotes student learning" and "Teachers, administrators, parents, and the community share the responsibility for advancing the school's mission." Ex. "K." This did not happen for Minor Doe. John and Jane Doe had to watch Minor Doe become an emotional wreck due to the constant bullying and harassment he was receiving at school.

It was foreseeable that John and Jane Doe would suffer mental anguish as a result of MRA's breach of contract. Bullying is a growing epidemic which MRA was aware. MRA put its student harassment policy into place in 2006. Ex. "I" Depo Self 14:20-22. Middle school principal, Brian Smith, testified at the beginning of the year the students watch "Monster" by Frank Peretti. Ex. "J" Depo Smith 25:7-10. In the video Frank Peretti talks about his experiences being bullied. School was more a place of torture than of learning. This is like what Minor Doe experienced at MRA. It got to the point John and Jane Doe had to remove Minor Doe's door and take all potential dangerous things from him because Minor Doe was suicidal. Jane Doe testified:

I had to take my son's door off the hinges so that he could not hang

himself from the door because he has already had one child commit suicide while he was principal, and he would not have another do it. He had me take all of these precautions because I came to him and told him that my child was telling me that he was going to commit suicide, that he was being told by these students at MRA that he would be better off dead. Mr. Thompson is telling me to take all of these precautions, but Mr. Thompson is not doing anything in his school.

Just what I told you, about the door, about the – to remove all belts, remove all ties, to remove any strings, any – if we had any guns to lock them up. If we had – I think that’s about the extent of it, and, you know, all of our guns, they’re just hunting guns and are in a safe. We took the door off. He locked it in his office. We took his belts, his shoe strings, his, you know, whatever else because if a child tells you that, or anyone tells you that, you don’t know if they’re serious or not, and a 7th grader does not know that if he hangs himself, he hangs himself, he’s dead.

Ex. “C” Depo Jane 58:6-17, 59:18-60:4. Minor Doe was suicidal due to the “taunting and bullying at school.” Ex. “D” Depo John 127:15. John and Jane Doe suffered tremendous emotional distress due to MRA breaching its contract to care for and educate Minor Doe. Additionally, John and Jane Doe as the parents of Minor Doe are responsible for Minor Doe’s reasonable medical expenses. *McLain v. W. Side Bone & Joint Ctr.*, 656 So. 2d 119, 122 (Miss. 1995); *Lane v. Webb*, 220 So.2d 281, 285 (Miss.1969). This is a legal duty of both the father and the mother. *Alexander v. Alexander*, 494 So.2d 365, 368 (Miss.1986). This obligation exists on the part of both parents even though the custodial parent has the discretion to select the proper medical care that may be needed for a minor child. *Clements v. Young*, 481 So.2d 263, 267 (Miss.1985).

Both John and Jane Doe testified they had physical manifestations of their emotional distress. John Doe testified he participated with group counseling sessions with Dr. Gaines related to the problems experience at MRA. Ex. “D” Depo John 68:13-69:8. John Doe also testified that he suffers from weight loss, depression, anxiety, diarrhea and insomnia.

- Q. Now, you are entitled to make a claim for physical injuries and emotional injuries. What physical injuries did you suffer from the process of having to deal with the MRA problem?
- A. I'd lost a bunch of weight.
- Q. Okay. What else?
- A. I was depressed.
- Q. Okay. What else?
- A. I took Ambien to go to sleep at night because I kept waking up and stuff like that.
- Q. All right. What else? Did you ever have headaches, vomiting?
- A. Diarrhea, I guess. My stomach was upset.
- Q. Did you have any anxiety attacks or sleep issues?
- A. Sleep issues –
- Q. Okay.
- A. – for a while.

Ex. “D” 133:15-134:7. Jane Doe suffered from extreme panic attacks, headaches, and stomach ulcers related to the problems at MRA.

- Q. Have you had to go see – for physical problems related to this time at MRA, have you had to go see a physician?
- A. I believe so, and if I can find – I know that I was having extreme panic attacks to the point where I couldn't breathe or I felt – I felt that my air was being cut off, and I couldn't concentrate at work. I had an extreme headache. I know I had to – I don't remember because I could have just ran down to MEA and gotten – I know I did. I will get you the – I will get Ashley the documents of who I saw because I saw – I had to be put on the stomach medicine for – and checked for an ulcer, and for my panic attacks, they tried to put me on Zoloft, but I said no because of Minor Doe getting off of it.
- Q. Okay. You've mentioned panic attacks, headaches, stomach ulcers. Any other physical problems that you were having?
- A. The panic attack was probably the most extreme.

Ex. “C” Depo Jane 84:6-85:1. John Doe confirmed that Jane Doe has suffered physically as a result of MRA failing to protect Minor Doe. Ex. “D” Depo John 134:19-135:14.

John and Jane Doe can prove they suffered demonstrable harm. “If the testimony at trial is uncontradicted, and additionally is ‘inherently probably, reasonable, credible and trustworthy,’ this Court will find that they [trier of fact] must have accepted the evidence as true.” *Odom v. Roberts*, 606 So. 2d 114, 118 (Miss. 1992) (quoting *James v. Mabus*, 574 So. 2d 596, 600 (Miss.

1990)). A Plaintiff may testify to their health prior to the subject accident and that treatment is proximately caused by an incident. See, *Bolden v. Williams*, 17 So. 3d 1069, 1071-72 (Miss. 2009). No evidence has been presented that contradicts Plaintiffs' claim that they suffered physical and emotional damages as a result of the incidents at MRA. Therefore, it was entirely foreseeable the MRA that John and Jane Doe would suffer emotional distress due to the breach of contract and failure to protect Minor Doe. Plaintiffs are entitled to damages for emotional distress.

b. John and Jane Doe's Claims for Negligent Infliction of Emotional Distress

Assuming *arguendo* that John and Jane Doe have failed to prove they suffered significant actual mental harm as a result of MRA's actions, John and Jane Doe are still able to recover under the theory of negligent infliction of emotional distress because there is factual support that MRA acted in reckless disregard. A party may "recover for mental anguish unaccompanied by demonstrable physical or mental injury" if the defendant's conduct is "malicious, intentional, willful, wanton, grossly careless, indifferent or reckless." *Am. Bankers' Ins. Co. of Fla. v. Wells*, 819 So. 2d 1196, 1208 (Miss. 2001). Both John and Jane Doe testified that MRA's actions in dealing with their requests to resolve the bullying were intentional, gross, careless, indifferent or reckless in the way the requests to fix the problem with ignored. John Doe testified:

- A. You mean like they purposely did something?
- Q. That they purposely were not investigating these incidents?
- A. I think they swept it under the rug and wanted to hush-hush. If they didn't purposely do something, they would have done something about it.
- Q. Okay.
- A. Did they have a school meeting while Minor Doe was there with the school and talk about bullying, no. Did they show a video or movie or something, not that I know, that he went to anyway.
- Q. Okay.
- A. I don't know how many times my wife was crying in the office because of this, either, because they weren't doing anything

about it.

Ex. “D” Depo John 89:11-90:1. Jane Doe also testified MRA acted willfully in not addressing the issues brought to their attention.

Q. Okay. And one last question. Do you have any indication that MRA did not attempt to address the issues that you brought to their attention?

A. I have a lot of indications that they did not address the issues that I brought to their attention.

Q. Okay. What are those?

A. He continued to be bullied; he got beat up on a bus; he got choked; he was left with bruises; he was left with abrasions; he was left with hand marks around his neck; he was left with social issues; he does not get out of his room; he does not want to do anything; he freaks out to go to the movies. He – before that, he was a very, very social kid.

Q. Okay.

A. And so the indications of did MRA not do what they said they were going to do, yeah, they didn’t do anything they said they were going to do.

Q. Do you have any indication that MRA purposefully didn’t address your concerns or your son’s concerns?

A. I don’t know if they were purposely or not, but they said they were going to do something, and they never did.

Ex. “C” Depo Jane 122:5-123:5. Thus, there is a material question of fact for the jury to determine and Defendant MRA is not entitled to summary judgment as a matter of law.

VI. CONCLUSION

Defendant disagrees with Plaintiffs facts in this case. However, this does not mean they are entitled to summary judgment as a matter of law. “Issues of fact sufficient to require denial of a motion for summary judgment obviously are present where one party swears to one version of the matter in issue and another says the opposite.” *Titus*, 844 So. 2d at 464. Plaintiffs respectfully request that Defendant’s Motion for Summary Judgment on the Claim of John and Jane Doe be denied for the reasons stated herein. Defendant is not entitled to a Judgment as a Matter of Law. Defendant is unable to prove its position beyond a reasonable doubt which is the required

standard concerning summary judgment reviews. *McFadden*, 580 So. 2d at 1213. Plaintiffs have shown there are material facts in dispute which are for a jury to determine.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request this Court deny Defendant's Motion for Summary Judgment on the Claims of John and Jane Doe. Plaintiffs pray for any additional relief the Court deems proper.

This the 25th day of November, 2014.

Respectfully submitted,
MINOR CHILD ET AL

By: /s/ J. Ashley Ogden
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CERTIFICATE OF SERVICE

I, J. Ashley Ogden, hereby notify that I have this day electronically filed the foregoing document with the Clerk of Court using the MEC/ECF system which will send notification of such filing to:

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This the 25th day of November, 2014.

/s/ J. Ashley Ogden
J. Ashley Ogden