

## ARGUMENTS

### **I. CIRCUIT COURTS DO NOT HAVE AUTHORITY TO GRANT SUMMARY JUDGMENT SIMPLY BECAUSE THE DISPOSITIVE ISSUE IS A MATTER OF LAW FOR THE COURT.**

To say that an issue should be decided as a matter of law simply means that the court decides the issue; it does not necessarily mean that the issue is properly decided on summary judgment. A factual dispute on an issue to be decided as a matter of law precludes summary judgment. Summary judgment protects litigants' rights to a trial on disputed factual issues. Cunningham v Helping Hands, Inc., 352 S.C. 485, 575 S.E.2d 549, 552 (2003).

### **II. THIS COURT NEED NOT RELY ON CASES FROM OTHER STATES TO DECIDE THIS CASE.**

In his Brief, the Respondent cites and analyzes at length several cases from other states, (Resp. Brief, pp. 7-10). As demonstrated in the Coles' Brief, resort to authority from other states is unnecessary. (App. Brief, pp. 6-10). For jurisprudential reasons, this Court should not decide this case on out-of-state authority when controlling South Carolina authority is up to the task.

### **III. EVEN IF THIS COURT RELIES ON AUTHORITIES FROM OTHER STATES, IT MUST STILL FIND THAT THE TRIAL JUDGE COMMITTED REVERSIBLE ERROR IN GRANTING SUMMARY JUDGMENT.**

#### **A. Knigh t v Jewett**

Knigh t v Jewett, 3 Cal.4th 296, 834 P.2d 696 (1992), which is heavily relied upon by the Respondent in his Brief (Resp. Brief, pp. 7-8), actually supports the Coles' argument that evidence of recklessness and evidence of a safety rule violation preclude summary judgment on the issue of duty. As do the overwhelming majority of courts in

other states, the Knight court held that a participant in a contact sport (touch football) has liability if he “engages in conduct that is so reckless as to be totally outside the range of ordinary activity involved in the sport.” 3 Cal.4th at 320, 834 P.2d at 698.

The lesson of Knight and the many cases with the same holding is that even though participants in contact sports have no negligence duty, they still have the duty to refrain from reckless conduct. In other words, the contact sports exception extinguishes a participant’s negligence duty but a duty to refrain from recklessness survives. This corollary to the contact sports exception provides additional support for the argument that even if the court finds that the Respondent had no negligence duty as a matter of law, summary judgment is still precluded.

**B. Landrum v Gonzales**

Landrum v Gonzales, 257 Ill.App.3d 942, 629 N.E.2d 710 (Ill.App., 1 Dist.1994) also supports the Coles’ argument concerning recklessness. In Landrum, the trial court denied summary judgment on a contact sport (softball) recklessness claim. On appeal, the Landrum court upheld a grant of directed verdict on the recklessness claim but did not disturb the trial court’s decision denying summary judgment on the recklessness claim. 257 Ill.App.3d at 186, 629 N.E.2d at 711.

**C. Nabozny v Barnhill**

In Nabozny v Barnhill, 31 Ill.App.3d 212, 334 N.E.2d 258 (Ill.App. 1 Dist 1975), one of the first contact sport (soccer) cases, the court observed that when a sport has a safety rule, “a player is then charged with a legal duty to every other player on the field to refrain from conduct proscribed by a safety rule.” 334 N.E.2d at 260-261. The Nabozny court held that “a player is liable for injury in a tort action if his conduct is such that it

is ... with reckless disregard for the safety of the other player so as to cause injury to that player.” 334 N.E.2d at 261. Nabozny stands for the proposition that violating a safety rule of a contact sport is evidence of recklessness.

**IV. THE COLES PRESENTED EVIDENCE OF THE RESPONDENT’S RECKLESSNESS THAT PRECLUDED SUMMARY JUDGMENT EVEN UNDER THE APPLICABLE AUTHORITIES FROM OTHER STATES.**

The Coles presented ample evidence of the Respondent’s recklessness. First, the Respondent ran full speed toward David Cole, who was standing near home plate. (R. pp. 61-63, Affidavit of Keith Corley). Second, the Respondent continued at full speed toward home plate and “simply ran over David Cole.” (R. pp. 61-63, Affidavit of Keith Corley). Third, in simply running over David Cole, the Respondent violated a clear safety rule of softball that prohibits running over the catcher at home plate. (R. pp. 61-63, Affidavit of Keith Corley).

**CONCLUSION**

For the reasons stated above and the reasons given in the Brief of Appellant, the trial court erred in granting summary judgment to Wagner. This Court should reverse and remand this case for a trial on the merits.

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