The Supreme Court of South Carolina

RE: Hurricane Irma

ORDER

On Friday, September 8, 2017, the Governor of South Carolina issued orders requiring the evacuation of certain barrier islands in Beaufort, Colleton and Jasper Counties in response to the approach of Hurricane Irma. Further, as a result of Hurricane Irma, state and county offices in six counties were closed on Friday, September 8, 2017. Twenty-four of the forty-six counties were closed on Monday, September 11, 2017, and the state and county offices in eleven counties remained closed on Tuesday, September 12, 2017. State and county offices were not open in all counties until Wednesday, September 13, 2017.

In addition to the mandatory evacuations mentioned above, many of the citizens of South Carolina voluntarily evacuated their homes as Hurricane Irma approached. While the harm to other states has been far more severe, Hurricane Irma did cause significant damage and disruption in South Carolina.

In light of the foregoing, this Court finds that Hurricane Irma adversely affected the ability of many lawyers and litigants to comply with deadlines in court proceedings. Accordingly, this Court finds it appropriate to declare the days of Friday, September 8, 2017, Monday, September 11, 2017, Tuesday, September 12, 2017, and Wednesday, September 13, 2017, to be statewide "holidays" for the purpose of Rule 263 of the South Carolina Appellate Court Rules, Rule 6 of the South Carolina Rules Civil Procedure, Rule 35 of the South Carolina Rules of Criminal Procedure, and Rule 3 of the South Carolina Rules of Magistrates Court.

s/ Donald W. Beatty C.J.

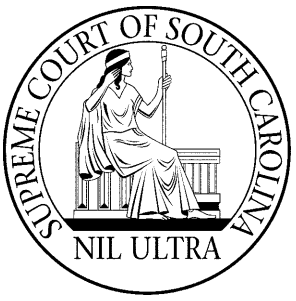
s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
September 14, 2017



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 37
September 27, 2017
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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The Supreme Court of South Carolina

In the Matter of Mozella Nicholson, Respondent.

Appellate Case No. 2017-001781

ORDER

The Office of Disciplinary Counsel petitions this Court to place respondent on interim suspension pursuant to Rule 17(b), RLDE, Rule 413, SCACR, and/or transfer respondent to incapacity inactive status pursuant to Rule 28, RLDE, Rule 413, SCACR. The petition also seeks appointment of the Receiver to protect the interests of respondent's clients pursuant to Rule 31, RLDE, Rule 413, SCACR.

IT IS ORDERED that respondent is transferred to incapacity inactive status until further order of this Court.

IT IS FURTHER ORDERED that Peyre Thomas Lumpkin, Esquire, Receiver, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain. Mr. Lumpkin shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Lumpkin may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow, and/or operating account(s) of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that the Receiver, Peyre Thomas Lumpkin, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that the Receiver, Peyre Thomas Lumpkin, Esquire, has been

duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Lumpkin's office.

Mr. Lumpkin's appointment shall be for a period of no longer than nine months unless an extension of the period of appointment is requested.

s/ Donald W. Beatty C.J.

Columbia, South Carolina

September 21, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

John Doe 2, Appellant,

v.

The Citadel, Respondent.

Appellate Case No. 2015-001505

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 5504
Heard May 9, 2017 – Filed August 2, 2017
Withdrawn, Substituted, and Refiled September 27, 2017

AFFIRMED

William Mullins McLeod, Jr., and Jacqueline LaPan Edgerton, both of McLeod Law Group, LLC, of Charleston, for Appellant.

M. Dawes Cooke, Jr., Randell Croft Stoney, Jr., and John William Fletcher, all of Barnwell Whaley Patterson & Helms, LLC, of Charleston, for Respondent.

WILLIAMS, J.: In this civil matter, John Doe 2 (Doe) appeals the circuit court's grant of summary judgment to The Citadel, arguing the court erred in dismissing his claims of negligence/gross negligence and outrage. We affirm.

FACTS/PROCEDURAL HISTORY

This case is one of many lawsuits stemming from a child sexual abuse scandal involving a summer camp at The Citadel, The Military College of South Carolina (The Citadel), and Louis "Skip" ReVille. On April 23, 2007, the father of a former camper at The Citadel's youth summer camp notified Mark Brandenburg, The Citadel's general counsel, that one of the camp's counselors had engaged in sexual misconduct at the camp with his son five years earlier. The former camper's father told Brandenburg a counselor named Skip invited his son into his dorm room, where the two watched pornography together and masturbated. Brandenburg subsequently spoke by telephone with the former camper, then nineteen years old, who confirmed that Skip had invited him into his room, showed him pornography, and convinced him to masturbate. After reviewing camp records, Brandenburg was able to identify the counselor as ReVille, who worked at the camp for three summers from 2001 to 2003.

On April 24, 2007, Brandenburg—along with Colonel Joseph Trez, an executive assistant to John Rosa, The Citadel's president—met with ReVille, a Citadel graduate who had also worked with college students as a part-time, temporary tutor at The Citadel's writing center from August 2006 to April 2007. During the meeting, ReVille emphatically denied the former camper's allegations. Brandenburg continued to investigate the allegations from April through July 2007, and by May 2007, had informed President Rosa of the allegations. On July 1, 2007, Brandenburg traveled to Texas to meet with the former camper and his parents. At some point during that summer, however, Brandenburg fell out of touch with the former camper. Brandenburg then contacted potential witnesses who may have been present during the commission of ReVille's alleged misconduct, but he failed to find one that could corroborate the former camper's accusations. The Citadel ended its investigation without reporting the complaint to law enforcement.[1]

[1] Neither the former camper nor his family reported the incident to law enforcement officials during this time.

In October 2011, ReVille was arrested after confessing to abusing numerous boys while employed in various educational and athletic positions in the Charleston area over the span of nearly a decade. On June 13, 2012, ReVille pleaded guilty to numerous charges involving the abuse of twenty-three boys in Charleston, Berkeley, and Dorchester counties and was sentenced to fifty years in prison.

ReVille met Doe—a young male about to enter the seventh grade—and his family in the summer of 2005, through ReVille's involvement with AAU basketball at Pinewood Preparatory School (Pinewood Prep) in Summerville, South Carolina. That summer, ReVille began "grooming" Doe and later abused Doe at ReVille's residence, and he continued to abuse Doe throughout the 2005–2006 school year. At the time, ReVille was a teacher at Pinewood Prep. Doe, however, neither attended Pinewood Prep nor any summer camps or educational programs at The Citadel. In the spring of 2006, ReVille was terminated from his teaching position at Pinewood Prep and accepted Doe's parents' offer to move into the mother-in-law suite connected to their house. While living there from May 2006 to June 2007, and for a short period after moving out, ReVille continuously abused Doe. ReVille's sexual abuse of Doe ended when Doe and his family moved to Georgia in the summer of 2007.

Doe filed the instant action against The Citadel on March 19, 2012, alleging claims of negligence/gross negligence and outrage. In his complaint, Doe claimed actions taken by The Citadel created a risk that ReVille would be placed in positions to enable him to victimize young boys, and subsequently, its failure to prevent this risk allowed ReVille to sexually abuse him. Doe asserted The Citadel was in a unique position to warn or prevent ReVille from sexually abusing young victims like Doe because The Citadel knew of the reported sexual abuse and it had a special relationship with ReVille. The Citadel filed a renewed motion for summary judgment on April 24, 2015.[2] After conducting a hearing, the circuit court granted The Citadel's motion on July 6, 2015.

In its order, the circuit court dismissed Doe's negligence claims because it found The Citadel did not owe Doe a duty of care to prevent ReVille from sexually abusing Doe. Specifically, the court noted the majority of the abuse of Doe

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[2] The Citadel initially filed a motion for summary judgment in this and related cases on March 6, 2014. On December 9, 2014, the circuit court denied The Citadel's motion.

occurred before the April 2007 allegations by the former camper. Moreover, the circuit court found it was "impossible to differentiate the injury that [Doe] suffered after The Citadel arguably should have stopped ReVille from abusing him from the unquestionably devastating injury that [Doe] suffered from his longstanding, ongoing abuse by ReVille." Accordingly, the court concluded Doe's injuries arose before, and were not proximately caused by, any breach of duty by The Citadel. The court also dismissed the outrage claim as a matter of law because it was barred by the South Carolina Tort Claims Act[3] (TCA) and alternatively found no evidence suggested The Citadel directed any conduct toward Doe. This appeal followed.

STANDARD OF REVIEW

"An appellate court reviews a grant of summary judgment under the same standard applied by the [circuit] court pursuant to Rule 56, SCRCP." *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). Summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that . . . no genuine issue [exists] as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. When determining whether triable issues of material fact exist, the court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Fleming v. Rose*, 350 S.C. 488, 493–94, 567 S.E.2d 857, 860 (2002). When the preponderance of the evidence standard applies, the nonmoving party is only required to submit a mere scintilla of evidence to withstand a motion for summary judgment. *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

LAW/ANALYSIS

I. Negligence/Gross Negligence

Doe first argues the circuit court erred in finding The Citadel did not owe a duty to Doe. We disagree.

To prove negligence, the plaintiff must show "(1) [the] defendant owes a duty of care to the plaintiff; (2) [the] defendant breached the duty by a negligent act or

[3] S.C. Code Ann. §§ 15-78-10 through -220 (2005 & Supp. 2016).

omission; (3) [the] defendant's breach was the actual or proximate cause of the plaintiff's injury; and (4) [the] plaintiff suffered an injury or damages." *Roe v. Bibby*, 410 S.C. 287, 293, 763 S.E.2d 645, 648 (Ct. App. 2014) (quoting *Doe v. Marion*, 373 S.C. 390, 400, 645 S.E.2d 245, 250 (2007)). Negligence is a mixed question of law and fact with the existence and scope of a duty being questions of law and a breach of duty being a question for the jury. *Miller v. City of Camden*, 317 S.C. 28, 31, 451 S.E.2d 401, 403 (Ct. App. 1994). "In a negligence action, the court must determine, as a matter of law, whether the defendant owed a duty of care to the plaintiff." *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 545 (2002). Negligence is not actionable without a duty of care. *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998).

South Carolina law does not recognize a general duty to warn a third party or potential victim of danger or to control the conduct of another. *Rogers v. S.C. Dep't of Parole & Cmty. Corr.*, 320 S.C. 253, 255, 464 S.E.2d 330, 332 (1995). However, this rule has five recognized exceptions: (1) when the defendant has a special relationship to the victim; (2) when the defendant has a special relationship to the injurer; (3) when the defendant voluntarily undertakes a duty; (4) when the defendant intentionally or negligently creates the risk; and (5) when a statute imposes a duty on the defendant. *Faile*, 350 S.C. at 334, 566 S.E.2d at 546.

Doe does not argue the existence of any special relationship to qualify for the special relationship exceptions. Rather, Doe asserts The Citadel is liable to Doe "for its own failure to act with due care in voluntarily undertaking the duties to investigate, arrest, and punish ReVille; for taking actions that negligently created the risk that ReVille would sexually abuse [Doe]; and for action[s] to conceal ReVille's pedophilia in violation of Title IX."[4] We address each argument in turn.

A. Voluntary Undertaking

Doe first asserts The Citadel established a duty of care to Doe when it voluntarily undertook the duty to investigate claims of sexual abuse on its campus, turn offenders over to its own law enforcement entity, and arrest offenders. We disagree.

[4] Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681–1688 (2012).

Under South Carolina law, the Restatement of Torts establishes the recognition of a voluntarily assumed duty and states,

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if
>
> > (a) his failure to exercise such care increases the risk of such harm, or
> >
> > (b) the harm is suffered because of the other's reliance upon the undertaking.

Johnson v. Robert E. Lee Acad., Inc., 401 S.C. 500, 504–05, 737 S.E.2d 512, 514 (Ct. App. 2012) (quoting RESTATEMENT (SECOND) OF TORTS § 323 (AM. LAW INST. 1965)).

In the instant case, The Citadel's general counsel, Brandenburg, conducted an investigation into the former camper's allegations of sexual abuse by ReVille after the former camper's father called The Citadel on April 23, 2007. Under section 323 of the Restatement of Torts, however, this undertaking cannot create a duty unless (1) Brandenburg's failure to exercise reasonable care actually *increased* the risk of harm to Doe or (2) Doe suffered harm because he relied upon Brandenburg's undertaking. *See id.* at 505, 737 S.E.2d at 514.

Upon our review of the record, we find no evidence supports a showing that Brandenburg's actions increased the risk of harm to Doe. In fact, the record demonstrates that ReVille was already abusing Doe—for nearly two years—when the April 23, 2007 allegations were made. Thus, any failure of The Citadel to exercise due care in its investigation regarding a former camper could not have reasonably increased the risk of harm to Doe when the harm was already occurring. Moreover, the record indicates Brandenburg conducted his investigation as the college's general counsel to "find out what happened" and determine possible avenues for settlement for the protection of The Citadel. It was not conducted as part of a criminal investigation. *See Goode v. St. Stephens United*

Methodist Church, 329 S.C. 433, 444–45, 494 S.E.2d 827, 833 (Ct. App. 1997) (finding an owner of an apartment complex did not undertake a duty to protect a social guest from a criminal assault occurring at the complex when providing security to the complex was taken for the protection of the tenants and not the general public). Last, because Doe had no prior relationship with The Citadel and no evidence indicates Doe relied on Brandenburg's investigation to prevent further harm, The Citadel did not create a duty when it investigated the April 23, 2007 allegations.

Nevertheless, Doe claims the evidence presented at summary judgment[5] established The Citadel violated its own policies[6] from 1998 to 2005 by not investigating ReVille for sexual abuse of children. Additionally, Doe argues The Citadel's policies required action following the April 2007 allegations and its failure to adhere to the policies demonstrated a lack of due care.

We disagree with Doe's contention that The Citadel's deviations from its own policies and procedures, both prior to and following the April 23, 2007 allegations, demonstrate a lack of due care and create a triable issue as to whether The Citadel voluntarily assumed a duty to investigate and arrest ReVille for sexual abuse of children. Indeed, we find the internal policies created by The Citadel do not establish a voluntary undertaking of a duty; rather, they can only serve as evidence of the standard of care if the duty was established by law. *See Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 247, 711 S.E.2d 908, 912 (2011) ("[I]f no duty has been established, evidence as to the standard of care is irrelevant. Only

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[5] While Doe states facts in support of his argument, we note that some of the facts cited are not supported by evidence in the record. In particular, Doe asserts The Citadel was aware of ReVille's pedophilia as early as 1998, when he received services from the campus counseling center. Moreover, Doe asserts that one of ReVille's victims (Camper Doe 6), a former camper and counselor, was fired by Jennifer Garrott, the camp's deputy director, when he attempted to report ReVille's abuse to her in 2005. Because these facts do not appear in the record, we do not consider them. *See* Rule 210(h), SCACR ("[T]he appellate court will not consider any fact which does not appear in the Record on Appeal.").

[6] The Citadel implemented new policies in 2001 for the supervision of its camp and counselors after it learned of the sexual abuse of campers by a former senior counselor.

when there is a duty would a standard of care need to be established."); *id.* at 248, 711 S.E.2d at 912 (holding Wal-Mart did not voluntarily undertake a duty despite creating an internal policy that its photo technician violated by destroying photographs depicting child abuse and not informing the store manager or keeping them as evidence, and finding the policy only served as evidence of the standard of care). Therefore, any violation of an internal policy does not give rise to the voluntary assumption of a duty and does not establish that The Citadel owed a duty of care as a matter of law.

B. Negligent Creation of the Risk

Doe next asserts The Citadel is liable for negligently creating the risk that ReVille would sexually abuse Doe. We disagree.

In *Edwards v. Lexington County Sheriff's Department*, our supreme court imposed a duty of care on a county and its sheriff's department because it found the entities created a risk of injury to the appellant. 386 S.C. 285, 293–94, 688 S.E.2d 125, 129–30 (2010). In that case, the appellant, a domestic violence victim, sued the respondents, the county and department, after she was attacked by her ex-boyfriend in a magistrate's court bond revocation hearing in which no security was provided. *Id.* at 287–88, 688 S.E.2d at 127. An employee of the sheriff's department, who was aware of the ex-boyfriend's multiple bond violations and threats against the appellant, requested to schedule the bond revocation hearing, where the ex-boyfriend subsequently attacked the appellant. *Id.* at 288, 688 S.E.2d at 127. Despite being aware of the appellant's fear of her ex-boyfriend, the respondents strongly encouraged the appellant to be present at the bond revocation hearing. *Id.* at 293, 688 S.E.2d at 130. Our supreme court found the respondents could not claim a lack of knowledge of the ex-boyfriend's violent tendencies towards the appellant because the respondents were seeking to revoke his bond for his failing to obey a no-contact order, which was issued in response to his violent actions. *Id.* The court found the respondents "created a situation they knew or should have known posed a substantial risk of injury to [the appellant]," and given their knowledge of the ex-boyfriend's demonstrated threats against the appellant, the respondents owed the appellant a duty of care. *Id.* at 294, 688 S.E.2d at 130. Importantly, the court noted the respondents' duty "is one of due care and whether [the respondents] acted reasonably, negligently[,] or grossly negligently is not before us." *Id.*

In the instant case, Doe argues The Citadel's duty to Doe is based upon "The Citadel's own affirmative actions that created the circumstances for ReVille to sexually abuse [Doe]," and The Citadel should have foreseen its negligent actions "would probably cause injury to someone in the form of sexual abuse by ReVille." Doe again cites evidence of The Citadel's policy violations and alleged concealment of ReVille's actions. However, we again find any purported violation of the policy does not amount to the existence of a duty, but rather, focuses more on the standards of due care establishing the extent and nature of the duty, which would help a fact-finder determine whether a duty was breached. *See Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006) (rejecting defendants' all or nothing approach with regard to the existence of a duty and noting that argument "confuses the existence of a duty with standards of care establishing the extent and nature of the duty in a particular case"). Unlike *Edwards*, Doe does not present any evidence indicating The Citadel actively created a situation that increased the risk of harm to Doe—such as placing ReVille and Doe in the same room, encouraging the two to meet, or placing Doe in ReVille's custody. In fact, no evidence suggests The Citadel was even aware of Doe's very existence before the commencement of this lawsuit because Doe had no affiliation with The Citadel's programs or camps.

Furthermore, the evidence does not demonstrate The Citadel was aware of ReVille's pedophilia prior to the April 2007 allegations, despite Doe's claims to the contrary. The record does not support Doe's assertions that The Citadel knew of ReVille's sexual misconduct while he was a counselor at the camp. In particular, Doe asserts The Citadel should have investigated and arrested ReVille when Garrott found ReVille alone in his room with a camper in 2002, and again in 2003 when she discovered him in his room rubbing "Icy Hot" on a junior counselor's leg following a run. However, the record does not indicate that any improper behavior was occurring at the time when Garrott "caught" ReVille to warrant termination or an investigation. Garrott stated, at the time, she did not think either incident amounted to a violation of the camp policies. Instead, she viewed the incidents as "lapse[s] in judgment." Doe's arguments again "confuse the existence of a duty with standards of care establishing the extent and nature of the duty in a particular case." *Madison ex rel. Bryant*, 371 S.C. at 135, 638 S.E.2d at 656. Inasmuch as Doe failed to prove the existence of a duty of care, any argument involving the standards of care are not properly before this court. *See Bishop*, 331 S.C. at 86, 502 S.E.2d at 81 ("An essential element in a cause of action for negligence is the

existence of a legal duty of care owed by the defendant to the plaintiff. Without a duty, there is no actionable negligence.").

In conclusion, while ReVille's continued sexual abuse of Doe was beyond despicable, we find that, as it relates to any failure to respond after the April 2007 allegations, The Citadel's purported failure to intervene did not create a risk of harm to Doe when Doe was already exposed to ReVille's abuse. *See, e.g.*, *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 201 (1989) ("While the State may have been aware of the dangers that Joshua faced in the free world, it played no part in their creation, nor did it do anything to render him any more vulnerable to them."); *Doe v. Rosa*, 795 F.3d 429, 439 (4th Cir. 2015) ("[A]llowing continued exposure to an existing danger by failing to intervene is not the equivalent of creating or increasing the risk of that danger."), *cert. denied sub nom. John Doe 2 v. Rosa*, 136 S. Ct. 811 (2016).

C. Title IX

Doe next argues the federal statute, Title IX of the Educational Amendments of 1972, imposed a duty on The Citadel not to conceal ReVille's sexual abuse following the April 2007 allegations.[7] We disagree.

A plaintiff will prove the first element of a negligence claim—that the defendant owes him a statutorily-created duty of care—if the plaintiff shows two things: "(1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect." *Rayfield v. S.C. Dep't of Corr.*, 297 S.C. 95, 103, 374 S.E.2d 910, 914–15 (Ct. App. 1988). "Title IX prohibits discrimination occurring under any educational program or activity." *Doe by Doe v. Berkeley Cty. Sch. Dist.*, 989 F. Supp. 768, 770 (D.S.C. 1997). Title IX provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education

[7] We do not find it necessary to address any of Doe's arguments that The Citadel's alleged violations of Title IX demonstrate its failure to act with due care because, as previously mentioned, these arguments involve the standards of due care, which presuppose the existence of a duty. *See Edwards*, 386 S.C. at 294, 688 S.E.2d at 130.

program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a) (2012).

We find Doe's claim fails because he is not a member of the class of persons the statute intends to protect. Title IX intends to protect participants and students of educational programs. *See, e.g.*, *Dipippa v. Union Sch. Dist.*, 819 F. Supp. 2d 435, 446 (W.D. Pa. 2011) ("Generally speaking, parents of a student whose rights were violated do not have standing to assert personal claims under Title IX, but do have standing to assert claims on the student's behalf. . . . On its face, the statutory language of Title IX, 20 U.S.C. § 1681 *et seq.*, applies only to students and participants in educational programs." (citations omitted)); *Doe v. Oyster River Co-op. Sch. Dist.*, 992 F. Supp. 467, 481 (D.N.H. 1997) ("Ordinarily, only participants of federally funded programs . . . have standing to bring claims under Title IX."). In the instant case, both parties agree that Doe never attended The Citadel or its summer camps. Because Doe was never a student or participant in any educational program at The Citadel, he is not a member of the class of persons Title IX intends to protect. Thus, Doe failed to prove The Citadel owed him a statutorily-created duty, and we affirm the circuit court's grant of summary judgment.[8]

II. Outrage

Last, Doe asserts the circuit court erred in granting summary judgment to The Citadel on Doe's outrage claim because more than a scintilla of evidence exists to establish that The Citadel's conduct was outrageous and directed at Doe. We disagree.

Under South Carolina law, outrage claims are limited to a defendant's egregious conduct toward a plaintiff. *Upchurch v. N.Y. Times Co.*, 314 S.C. 531, 536, 431 S.E.2d 558, 561 (1993). "It is not enough that the conduct is intentional and outrageous. It must be *directed at the plaintiff*, or occur in the presence of a plaintiff of whom the defendant is aware." *Id.* (emphasis added).

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[8] We do not address Doe's essential purpose requirement argument because we find the resolution of this issue is dispositive. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not address remaining issues when its resolution of a prior issue is dispositive).

In the instant case, while The Citadel's failure to notify law enforcement of ReVille's alleged abuse in 2007 is highly lamentable, Doe did not present any evidence that The Citadel directed any tortious conduct specifically toward him. Indeed, The Citadel was unaware of Doe's very existence prior to the commencement of this lawsuit. Accordingly, we uphold the circuit court's finding on this issue.[9]

CONCLUSION

Based on the foregoing analysis, the circuit court's grant of summary judgment to The Citadel is

AFFIRMED.

KONDUROS, J., and LEE, A.J., concur.

[9] Because our resolution of this issue is dispositive, we decline to address whether the circuit court erred in finding the TCA barred Doe's outrage claim. *See Futch*, 335 S.C. at 613, 518 S.E.2d at 598 (ruling an appellate court need not address remaining issues when its resolution of a prior issue is dispositive).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Kiawah Resort Associates, L.P., a Delaware Limited Partnership, and Kiawah Development Partners II, Inc., Appellants/Respondents,

v.

Kiawah Island Community Association, Inc., a South Carolina Not-for-Profit Corporation, Respondent,

and

Kiawah Property Owners Group, Inc. and Inlet Cove Club Homeowners Association, Inc., Respondents/Appellants.

Appellate Case No. 2015-001146

Appeal From Charleston County
Mikell R. Scarborough, Master-in-Equity

Opinion No. 5517
Heard March 8, 2017 – Filed September 27, 2017

AFFIRMED

Ellis R. Lesemann and Michelle A. Matthews, both of Lesemann & Associates, of Charleston, for Appellants/Respondents.

Allison Carter Jett, of Weissman, P.C., of Atlanta, GA, for Respondent.

Amy E. Armstrong and Jessie A. White, both of the South Carolina Environmental Law Project, of Pawleys Island, for Respondents/Appellants.

LOCKEMY, C.J.: In these cross-appeals Kiawah Resort Associates, L.P. (KRA) and Kiawah Development Partners II LLC (KDP II) (collectively Appellants) appeal from the Master-in-Equity's order declining to reform a deed given to Kiawah Island Community Association (KICA). Appellants assert the master erred by refusing to consider KICA's subsequent conduct as evidence of mutual mistake and finding there was no evidence KICA did not intend to accept 4.62 acres of oceanfront property as common area. Kiawah Property Owners Group, Inc. (KPOG) and Inlet Cove Club Homeowners Association (ICCHA) assert the master properly declined to reform the deed, but appeal the master's order finding KPOG and ICCHA did not have standing to participate in the action between Appellants and KICA. We affirm.

FACTS

KRA is the developer of a substantial area on Kiawah Island. On September 26, 1994, KRA entered into a Development Agreement with the Town of Kiawah Island. As part of that agreement, KRA agreed to convey certain property to KICA as common property. Those lands included "a strip of scenic dunes and high land owned primarily by the Property Owner . . . which extends along the Kiawah Island beachfront for approximately 10 miles as generally depicted on Exhibit 16.2." KRA agreed to convey by quit claim deed that property to KICA on or before January 1, 1996. KRA also agreed to convey property known as "Captain Sam's Spit" to KICA by January 1, 2008, "provided, however, that [KRA] may convey the eastern half of the spit to Charleston County Park & Recreation Commission prior to January 1, 2008."

On that same day, KRA entered into an Agreement for Conveyance with KICA. The stated purpose of the agreement was "to evidence its agreement to the conveyance of such properties in accordance with the terms and provisions of the Development Agreement." In consideration of the sum of $5.00, KRA agreed to

convey, and KICA agreed to accept several tracts of land. Specifically, parcel 8, entitled "Approximately 10 Miles of Beachfront Property pursuant to Paragraph 16(b) of the Development Agreement" included a full legal description with specific metes and bounds. On December 29, 1995, KRA issued KICA a quit claim deed using the same legal description found in the Agreement for Conveyance.

Subsequently, KRA determined the property it conveyed in the 1995 deed included a 4.62-acre tract not contemplated in the Development Agreement. On March 1, 2013, KRA filed its complaint requesting the court reform the deed based on a mutual mistake and issue a declaratory judgment that the inclusion of this additional tract was "unintentional, in error, and a mistake, and contrary to the intent of the parties to the two Development Agreements of which KICA was a named third party beneficiary." After a trial, the master found KRA failed to present clear and convincing evidence of a mutual mistake and denied KRA's requests for a declaratory judgment and reformation of the deed. This appeal followed.

KRA's APPEAL

KRA asserts the master erred by denying its request for reformation of the 1995 deed based upon the intent expressed in the 1994 Development Agreement and KICA's subsequent conduct. KRA alleges all of the evidence presented during trial evidences a mutual mistake by KICA and KRA in deeding an additional 4.62 acre tract to KICA.

a) Consideration of Subsequent Conduct

KRA presented evidence of subsequent conduct by KICA that could support their claim for reformation. In its final order the master gave little weight to that evidence and stated, "given the lack of any evidence of KICA Board's discussion of the Beachfront Strip *prior to the execution of the Beachfront Deed*, that the best evidence of KICA's intent during the relevant period of 1994 and 1995 is its President's execution of the Agreement for [C]onveyance" (emphasis added). KRA alleges the master improperly relied upon this court's decision in *Penza v. Pendleton Station, LLC* for the proposition that a court cannot look to parole evidence if a deed is unambiguous on its face. 404 S.C. 198, 743 S.E.2d 850 (Ct. App. 2013).

To the extent the master found *Penza* to preclude its consideration of parole evidence if it found the deed was unambiguous, the master erred. The plaintiff in *Penza* appealed the master's order finding a mortgage was intended to cover two tracts rather than one. *Id*. at 201, 743 S.E.2d at 851. Penza asserted the master erred in granting summary judgment because there was an issue of fact as to whether the mortgage was intended to encumber both tracts; alternatively Penza argued the master's order reformed the deed without a showing of mutual mistake. *Id*. This court found the mortgage to be ambiguous, and that a genuine issue of material fact precluded summary judgment. *Id*. at 205, 743 S.E.2d at 853. This court then found an analysis of Penza's reformation argument was unnecessary. *Id*. at 205, 743 S.E.2d at 853-54.

Furthermore, our supreme court's decision in *Sims v. Tyler* indicates subsequent conduct is proper evidence in a reformation dispute. 276 S.C. 640, 281 S.E.2d 229 (1981). The Sims purchased two lots in a subdivision in 1969 from James Perry. *Id*. at 641, 281 S.E.2d at 229. Perry executed a deed in favor of the Sims and they recorded it. *Id*. The Sims built a house on one lot and built a doghouse and garden on the other. *Id*. at 641, 281 S.E.2d at 230. Several years later, Perry purportedly sold one of the lots to the Tylers. *Id*. at 642, 281 S.E.2d at 230. The Tylers asked the Sims to remove the doghouse so they could build a fence. *Id*. The Sims complied, then brought suit for trespass. *Id*. The trial court found the Sims' deed should be reformed and the Tylers should have possession of the lot, based on a mutual mistake between the Sims and Perry. *Id*. The *Sims* court reversed, finding "There is no evidence to support respondents' contention that the Sims did not intend to purchase this lot. The purchase price, the payment of taxes since its purchase, the construction of the doghouse and the planting of the garden are clear and convincing evidence the Sims intended to purchase" both lots. *Id*.

Because the *Penza* court specifically declined to address the reformation argument before it, the master erred in applying the summary judgment analysis in this case.[1] Additionally, applying *Sims*, we believe the master erred to the extent it failed to consider KICA's subsequent acts in determining whether to reform the deed. Therefore, we will consider those facts in the reformation analysis.

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[1] KICA asserts the master properly declined to reform the deed because it was unambiguous pursuant to *Prenza*. For the foregoing reasons, we disagree.

b) Reformation of Deed

"Before equity will reform an instrument, it must be shown by clear and convincing evidence not simply that there was a mistake on the part of one of the parties, but that there was a mutual mistake." *Timms v. Timms*, 290 S.C. 133, 137, 348 S.E.2d 386, 389 (Ct. App. 1986). "A mutual mistake is one whereby both parties intended a certain thing but because of a mistake in drafting did not get what they intended." *Id*.

"In an appeal from an action in equity, tried by a judge alone, we may find facts in accordance with our own view of the preponderance of the evidence." *U.S. Bank Tr. Nat'l Ass'n v. Bell*, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009). "However, this broad scope of review does not require an appellate court to disregard the findings below or ignore the fact that the trial judge is in a better position to assess the credibility of the witnesses." *Id*. (quoting *Pinkney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001)). "Moreover, the appellant is not relieved of his burden of convincing the appellate court the trial judge committed error in his findings." *Id*. (quoting *Pinkney*, 344 S.C. at 387-88, 544 S.E.2d at 623).

1. KRA's Argument

Though the facts and procedural posture of this case are complex, the issue is simple: Did KRA and KICA intend for the ten-mile beachfront parcel to begin at the eastern boundary of Tract 13, as KRA claims, or the eastern boundary of the Employee Tract, where the deed begins?

During trial, KRA presented the testimony of three KICA board members to establish KICA's intent. Leonard Long, a partner in KRA and the secretary of KICA in 1995, testified as to his understanding about the property lines. Long testified, as secretary of KICA, that he understood the beachfront strip would terminate at Tract 13, not the Employee Tract. Long testified the property description in the Agreement for Conveyance and the deed were identical, but he alleged they were both incorrect. According to Long, there was no plat of the island at the time, and, regarding a property description for the ten-mile strip, KRA "knew it was going to be loosey-goosey, but we thought we could do it." Long asserted it would have been cost and time prohibitive to survey the beachfront property before deeding it to KICA.

Long also testified about other instances where property descriptions were mistakenly drafted. Long testified that dune fields, which were supposed to have been deeded to KICA, were mistakenly not conveyed. Long also recalled that one deed mistakenly conveyed to KICA a tract in the center of the island. These improper conveyances were remedied with corrective deeds. According to KRA, these confirmatory quit claim deeds established a course of conduct for the correction of incorrect conveyances between KRA and KICA.

Patrick McKinney, another KRA partner and KICA board member, also testified. McKinney confirmed the board was comprised of four KRA members and three homeowners. According to McKinney, the board was "one man one vote" at that time. McKinney also testified KICA was a South Carolina nonprofit corporation.

Testifying in his capacity as a partner in KRA and member of KICA's board, McKinney stated he believed that the beachfront strip would begin at the eastern boundary of Tract 13, not the Employee Tract. More pointedly, McKinney testified that neither KRA nor KICA intended the additional 4.62 acres be conveyed to KICA.

On cross-examination, McKinney testified he could not recall the KICA board discussing the terms of the Agreement for Conveyance. McKinney believed he had discussions with the homeowner members of the board, but could not recall if they occurred during board meetings. McKinney also could not remember if the KICA board ever took any official action regarding the Agreement for Conveyance or the quit claim deed itself.

The last KRA partner and KICA board member to testify was Townsend Clarkson. Clarkson was CFO for KRA and the president of KICA. In this capacity, Clarkson signed the Agreement for Conveyance on behalf of KICA. According to Clarkson, it was KICA's intent that the beachfront property begin at Tract 13 and continue for ten miles. Clarkson also testified that KRA has paid the property taxes on the 4.62 acres.

Clarkson recalled a conversation he had with Craig Weaver, the 2012 chairman of KICA's board. According to Clarkson, Weaver "recognized that . . . this property should not have been transferred; that it was a mistake; and that their attorney . . . at that time had told them that they – the covenants required them to go to a vote."

KRA asserted a memorandum drafted by Weaver, entitled "Talking Points for KDP," evidenced the KICA board's understanding that the additional 4.62 acres was conveyed by mistake.

Clarkson acknowledged on cross-examination that he too could not recall whether there was a formal vote of the KICA board to accept the Agreement for Conveyance.

KRA also presented maps, some created by KICA, showing common areas under KICA control that do not include the additional 4.62 acres. KRA relied upon Exhibit 16.2, attached to the Development Agreement, as evidence of its intent to convey only the ten-mile stretch of beachfront property beginning at Tract 13. While it is not clear that the map begins at Tract 13, it is clear that the 4.62 acre additional lot, which is physically disconnected from the beachfront property, is not shaded in the same way the beachfront property is. KRA also presented maps it created that show the additional 4.62 acres was developable property owned by KRA. According to zoning maps maintained by the Town, the additional 4.62 acres is zoned R-3 commercial while the beachfront property is zoned as a park. Finally, maps published by KICA on its website do not show the additional 4.62 acres as common area owned by the association, though there was no evidence presented to establish when those maps were created. KRA asserted these graphical depictions demonstrate KICA had no intent to receive the additional property and has not acted as if it did receive that property.

KRA also avows that KICA has not taken any actions to demonstrate ownership of the 4.62 acres since 1995. Clarkson testified that, during his time on the KICA board between 1995 and 2001, KICA did nothing to exercise any control or ownership over the 4.62 additional acres. Mark Pemar, a KRA employee tasked with long-range planning for Kiawah Island, agreed with Clarkson that there were no signs KICA had used the additional property.

2. KICA's Argument

KICA asserts KRA failed to provide clear and convincing evidence that the deed contradicts the terms of an antecedent agreement between KICA and KRA. KICA asserts the "Agreement for Conveyance obligated KRA to convey and KICA to accept a deed in precisely the same form as the Beachfront Deed."

KICA further asserts the testimony from Long, Clarkson, and McKinney "cannot be considered competent testimony" because a majority of the homeowner representatives had to approve the transaction with KRA pursuant to the South Carolina Nonprofit Corporation Act. The Act defines a conflict of interest transaction as "a transaction with the corporation in which a director of the corporation has a direct or indirect interest." S.C. Code Ann. § 33-31-831(a) (2006). According to the official comment to section 33-31-831, the subsection applies to a transaction if a director "is a general partner in a partnership or a director, officer or trustee of another entity that has an interest in the transaction." S.C. Code Ann. § 33-31-831 cmt. 1 (2006). To have a quorum to vote on a conflict of interest transaction, "a majority of the directors on the board who have no direct or indirect interest in the transaction" must vote to authorize, approve, or ratify the transaction. S.C. Code Ann. § 33-31-831(e) (2006). KICA argues there is no evidence the board ever took a vote of the three homeowner members of the board to approve the transaction, therefore, the testimony from the KRA members of the KICA board is not sufficient to express KICA's intent. KICA's argument thus appears to be that it could not have an intent because the disinterested homeowner members never voted to express an intent.

KICA presented testimony from two of its members that they actively use and enjoy the 4.62-acre property. Wendy Kulick, a resident of Kiawah Island since 1989, testified she walked on the beach in the area of the 4.62-acre property and generally enjoyed the property. She testified if the master were to find the property is not common property, she believed she would need explicit permission from the property owner to walk in that area. However, Kulick acknowledged that there was a 99-year lease that will allow her to cross the property, regardless of who owns it.

Dr. Peter Mugglestone, who also owns property on Kiawah Island, testified that he runs most mornings and cuts through the 4.62 acres. Dr. Mugglestone also testified that he often walks in the afternoon and used the property to get to the boardwalk. Dr. Mugglestone stated he takes pictures of the wildlife on the 4.62 acre property and enjoys the property in its unaltered state.

Regarding the memo from the 2012 board chair, KICA asserts it simply demonstrated KICA's understanding that KRA did not intend to convey the 4.62 acres to KICA. KICA notes "[t]he Taking Points for [Kiawah Development Partners (KDP] document does not say that the 2011 KICA Board had determined

that the 1995 KICA Board had not intended to receive" the additional 4.62 acres. Rather, the memo states, "Based on the examination of the record of documents available to KICA, the board is satisfied that the transfer of the property to KICA was not intended by the original parties to the [Development] [A]greement, which included [KRA] and the Town of Kiawah Island," and that "KICA does not desire to benefit from this unintended transfer of property."

Finally, KICA asserts whatever the intentions of the KRA and the Town of Kiawah Island when they signed the 1994 Development Agreement, those intentions cannot be implied to KICA because it was not a party to that agreement. KICA states there is no evidence its representatives ever saw the Development Agreement, and an agreement between KRA and the Town of Kiawah Island cannot be demonstrative of its intent.

3. The Master's Orders

The master issued its final order on June 4, 2014. The master found the Agreement for Conveyance was the only document related to the additional 4.62 acres that was signed by KICA. The master also found the legal descriptions in the Agreement for Conveyance and the quit claim deed were identical.

The master detailed the graphical evidence and testimony presented by KRA. The master also analyzed whether the 4.62 acres was developable, as there was testimony that KRA intended only to convey non-developable property to KICA.

The master stated, "The court finds that whatever evidence exists of KRA's intent not to convey the Beachfront Strip to KICA is only relevant to the extent the court finds the deed and Agreement for Conveyance to be ambiguous." The master determined the deed and the Agreement were unambiguous, and KRA's claims must fail. However, the master continued to analyze the evidence as if the deed were ambiguous. The master again noted the Agreement for Conveyance was the only written agreement between KRA and KICA, and the deed mirrored that agreement. Because the two property descriptions were identical, there was no mistake between the agreement and the drafting of the deed.

The master also found that KRA did intend to convey the 4.62 acres as part of the ten-mile strip of property. The master then found the 4.62-acre property was not developable; therefore, the conveyance of the additional property was consistent

with the purpose of the 1994 Development Agreement, which was to convey non-developable property to KICA to hold as common area.

Finally, the master found KICA's position as a third-party beneficiary of the 1994 agreement did nothing to answer the question of KICA's intent. The master also noted it could find "no guiding legal authority to authorize, much less require, that it weigh or examine the intent of anyone who is not an immediate party to the instrument, or at least in privity thereto when determining intent for the purposes of proving mutual mistake in the context of reformation." Accordingly, the master denied KRA's request that it reform the deed.

KRA filed a motion to alter or amend the final judgment and the master issued an order denying the motion to alter or amend on May 4, 2015. In that order, the master found his earlier discussion of the developability of the 4.62 acres "does not impact the [c]ourt's ultimate conclusion that [KRA] did not meet [its] burden on [its] claim for reformation." The master also found the 1994 agreement was inapplicable to the determination of KICA's intent, and any discussion of the Development Agreement or Exhibit 16.2, "while perhaps demonstrative of KRA's intent, does nothing to bolster any inference that it is a reflection of KICA's intent." The master noted that the potentially gratuitous nature of the transfer also does not change the analysis of the reformation claim. The master again noted its belief that the unambiguous nature of the Agreement for Conveyance and the deed militated against reforming the deed.

For the first time in the order denying KRA's motion to alter or amend, the master detailed the testimony by the KRA directors that were also KICA board members. The master found the KRA directors engaged in a "conflict of interest transaction" as defined in the South Carolina Non-Profit Corporation Act. Under the Act, a non-profit corporation may transact business with an interested director, but the transaction must be approved by a majority of the disinterested directors. The master found there was no evidence of any meeting by the KICA board to discuss the property transfer, and no evidence was presented about the homeowner KICA board members or their understanding of the agreement. After considering the application of the Act to these facts, the master found there was not clear and convincing evidence of a mutual mistake, and again refused to reform the deed.

Finally, the master found KPOG and ICCHA did not show that they asserted any discrete claims that were separately derived from their membership in KICA. The

master stated, "It is KICA who has the sole right and authority to prosecute or defend [its] rights." The master then found KPOG and ICCHA did not demonstrate they had separate standing from their capacity as KICA members and should be dismissed from the case.

4. Analysis

While KRA did present some evidence to support their assertion that KICA shared a mutual mistake regarding what property it intended to receive, we find KRA failed to carry its high burden to reform the deed. *See Timms*, 290 S.C. at 137, 348 S.E.2d at 389 ("Before equity will reform an instrument, it must be shown by clear and convincing evidence not simply that there was a mistake on the part of one of the parties, but that there was a mutual mistake."). The only written agreement between KICA and KRA provides that KRA will convey, and KICA will accept, the ten-mile strip of property beginning at the Employee Tract, including the 4.62 acres. We acknowledge the 1994 Development Agreement evidences that KRA intended to convey the ten-mile strip of beachfront property beginning at Tract 13; however, KICA was not a party to that agreement and KICA's intent cannot be inferred from its terms.

Admittedly, there was some evidence to support KRA's argument that KICA did not take actions consistent with owning the disputed property. KICA's maps do not indicate it owns the disputed property and the memo from KICA's former board chairman suggests the property was mistakenly conveyed. However, there is no evidence in the record that KICA intended to receive anything other than what KRA conveyed. The language in the deed and the executed Agreement for Conveyance are identical, and no witness can produce evidence that KICA's board considered the matter in any way. At its core, this case is the result of KRA's failure to have the property properly surveyed and the consequential results of that failure.

KPOG and ICCHA'S APPEAL

A party must be permitted to intervene, as of right, in an action when the party claims an "interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." Rule 24(a)(2), SCRCP. If a

party is not permitted to intervene as of right, the trial court may permit it to intervene "when an applicant's claim or defense and the main action have a question of law or fact in common." Rule 24(b)(2), SCRCP.

"The decision to grant or deny a motion to join an action pursuant to Rule 19, SCRCP, or intervene in an action pursuant to Rule 24, SCRCP, lies within the sound discretion of the trial court." *Ex parte Gov't Emp.'s Ins. Co. v. Goethe*, 373 S.C. 132, 135, 644 S.E.2d 699, 701 (2007). "This [c]ourt will not disturb the lower court's decision on appeal unless a manifest abuse of discretion is found resulting in an error of law." *Id*. (quoting *Jeter v. S.C. Dep't of Transp.*, 369 S.C. 433, 438, 633 S.E.2d 143, 146 (2006)). "Moreover, the error of law must be so opposed to the lower court's sound discretion as to amount to a deprivation of the legal rights of the party." *Id*. (quoting *Jeter*, 369 S.C. at 438, 633 S.E.2d at 146).

"Generally, the rules of intervention should be liberally construed where judicial economy will be promoted by declaring the rights of all affected parties." *Id*. at 138, 644 S.E.2d at 702. "Accordingly, the [c]ourt should consider the practical implications of a decision denying or allowing intervention." *Id*. "However, a party must have standing to intervene in an action pursuant to Rule 24, SCRCP." *Id*. "A party has standing if the party has a personal stake in the subject matter of a lawsuit and is a 'real party in interest.'" *Id*. "A real party in interest . . . is one who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action." *Id*. (quoting *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994)).

"It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [master] to be preserved." *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006).

The issue KPOG and ICCHA raise in their appeal of the master's order is not preserved for this court's review. In the early stages of the litigation, KPOG and ICCHA petitioned to intervene, either as a matter of right or with the master's permission. *See* Rule 24, SCRCP. The master found KPOG and ICCHA raised distinct interests in the disposition of the 4.62-acre property because of their proximity to the tract. The master also found KPOG and ICCHA's interests would not be adequately protected by KICA's defense because KICA did not take a position on its intent or whether there was a mutual mistake while KPOG and

ICCHA asserted there was evidence KICA intended to accept the additional land. Accordingly, the master allowed KPOG and ICCHA to intervene pursuant to Rule 24(a), SCRCP, and Rule 24(b), SCRCP.

Following the master's final order, KRA filed a motion to alter or amend that order and a motion for relief from the order granting intervention. KPOG and ICCHA filed a response to KRA's motion. In its order on the motion to alter or amend the final order, the master declined to amend any substantive portions of the order pertaining to the reformation; however, the master did decide that KPOG and ICCHA did not have standing and should not be allowed to intervene. The master found "neither intervening entity has asserted any discrete claims that are separately derived from their membership in KICA." KPOG and ICCHA immediately filed an appeal from the master's order, without filing a motion for reconsideration.

On appeal, KPOG and ICCHA assert the master confused and misapplied the legal standards for standing and intervention, which lead to a ruling wholly inconsistent with its previous ruling. This argument was never raised to the master. Therefore, we decline to address it.

CONCLUSION

Accordingly, the decision of the trial court is

AFFIRMED.

HUFF and THOMAS, JJ., concur.