

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 5th day of December, 2008.

Charles Allen Halsey, Administrator for
the Estate of Garrett Rush Halsey, Deceased, Appellant,

against Record No. 080023
Circuit Court No. 06-513

Grafton School, Inc., Appellee.

Upon an appeal from a
judgment rendered by the Circuit
Court of City of Winchester.

Upon consideration of the record, the briefs, and the argument of counsel, the Court is of opinion there is error in the judgment of the said circuit court.

After sustaining a plea in bar filed by the Grafton School, Inc., asserting charitable immunity, the circuit court dismissed Charles Allen Halsey's wrongful death claim alleged in his amended complaint on the basis that the allegations were insufficient as a matter of law to state a cause of action for gross negligence. Gross negligence is defined as "that degree of negligence which shows indifference to others as constitutes an utter disregard of prudence amounting to a complete neglect of the safety of [another]. It must be such a degree of negligence as would shock fair minded [people] although something less than willful recklessness." Ferguson v. Ferguson, 212 Va. 86, 92, 181 S.E.2d

648, 653 (1971) (emphasis removed); see also Harris v. Harman, 253 Va. 336, 340, 486 S.E.2d 99, 101 (1997); Griffin v. Shively, 227 Va. 317, 321, 315 S.E.2d 210, 213 (1984). Gross negligence "'is a heedless and palpable violation of legal duty respecting the rights of others,' [and] amounts to the absence of slight diligence, or the want of even scant care." Frazier v. City of Norfolk, 234 Va. 388, 393, 362 S.E.2d 688, 691 (1987) (quoting Town of Big Stone Gap v. Johnson, 184 Va. 375, 378, 35 S.E.2d 71, 73 (1945)).

When the sufficiency of allegations are challenged, the Court accepts "as true all material facts properly pleaded . . . and all inferences properly drawn from those facts." Koffman v. Garnett, 265 Va. 12, 14, 574 S.E.2d 258, 259 (2003); see also Yuzefovsky v. St. John's Wood Apartments, 261 Va. 97, 102, 540 S.E.2d 134, 136 (2001). The Court also "examine[s] not only the substantive allegations of the pleading attacked but also any accompanying exhibit mentioned in the pleading." Flipppo v. F & L Land Co., 241 Va. 15, 17, 400 S.E.2d 156, 156 (1991).

Applying these principles of appellate review and the definition of gross negligence, the Court concludes the circuit court erred in its dismissal of the wrongful death claim because reasonable minds could differ on whether the facts, as alleged, amounted to gross negligence. Koffman, 265 Va. at 17, 574 S.E.2d at 261. "Whether certain actions constitute gross negligence is generally a factual matter for resolution by the jury and becomes a question of law only when reasonable people cannot differ." Id. at 15, 265 Va. at 260, (citing Griffin, 227 Va. at 320, 315 S.E.2d at 212).

Accordingly, the judgment of the circuit court is reversed, and this case is remanded to the circuit court for further proceedings consistent with this order.

This order shall be certified to the said circuit court.

JUSTICE KINSER dissents.

A Copy,

Teste:

*original order signed by the
Clerk of the Supreme Court of
Virginia at the direction of the
Court*