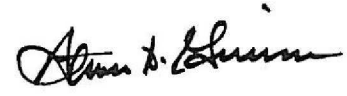


EXHIBIT 4



CLERK OF THE COURT

1 **NEOJ**
2 **ROBERT O. KURTH, JR.**
3 Nevada Bar No. 4659
4 **KURTH LAW OFFICE**
5 3420 North Buffalo Drive
6 Las Vegas, NV 89129
7 Tel: (702) 438-5810
8 Fax: (702) 459-1585
9 E-mail: kurthlawoffice@gmail.com
10 Attorney for Plaintiffs

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

10 **MAKANI KAI PAYO,**

11 Plaintiff,

12 vs.

Case No. A-12-668833-C
Dept. XV

13 **CLARK COUNTY SCHOOL DISTRICT;**
14 **DOE CLARK COUNTY SCHOOL**
15 **DISTRICT EMPLOYEES I-V; DOES I-V**
16 **and ROE COMPANIES I-V, inclusive,**
17 **Defendants.**

18 **NOTICE OF ENTRY OF ORDER**

19 PLEASE TAKE NOTICE that an ORDER was entered in the above-referenced matter
20 on or about the 15th day of May, 2015, and was filed on the 20th day of May, 2015; a copy of which
21 is attached hereto.

22 DATED this 20th day of May, 2015.

23 Respectfully submitted by:
24 **KURTH LAW OFFICE**

25 /s/Robert O. Kurth, Jr.
26 **ROBERT O. KURTH, JR.**
27 Nevada Bar No. 4659
28 Attorney for the Plaintiffs

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CERTIFICATE OF SERVICE/MAILING

I HEREBY CERTIFY that on the 20th day of May, 2015, I electronically served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** via Electronic Service in accordance with EDCR 8.05, and I deposited a true and correct copy of the foregoing in a sealed envelope in the U.S. Mail, first class, postage prepaid, and addressed as follows:

Daniel L. O'Brien, Esq.
Clark County School District
Office of the General Counsel
5100 W. Sahara Ave.
Las Vegas, NV 89146
Attorney for Defendants

/s/Maritsa Lopez
An employee of **KURTH LAW OFFICE.**


CLERK OF THE COURT

1 **ORDR**
2 ROBERT O. KURTH, JR.
3 Nevada Bar No. 4659
4 **KURTH LAW OFFICE**
5 3420 North Buffalo Drive
6 Las Vegas, NV 89129
7 Tel: (702) 438-5810
8 Fax: (702) 459-1585
9 E-mail: kurthlawoffice@gmail.com
10 Attorney for Plaintiff

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 MAKANI KAI PAYO,

14 Plaintiff,

Case No. A-12-668833-C
Dept. XV

15 vs.

16 CLARK COUNTY SCHOOL DISTRICT;
17 DOE CLARK COUNTY SCHOOL DISTRICT
18 EMPLOYEES I-V; DOES I-V and ROE
19 COMPANIES I-V, inclusive,

20 Defendants.

21 **ORDER**

22 **THIS MATTER** having come before this Court on May 11, 2015, for the hearing of
23 the Defendant's CLARK COUNTY SCHOOL DISTRICT's ("CCSD"), Motion and Notice of
24 Motion for Summary Judgment and the Plaintiff's, MAKANI KAI PAYO's ("MAKANI")
25 Opposition to Motion for Summary Judgment and Counter-Motion for Summary Judgment. The
26 Plaintiff MAKANI appeared through his counsel, Robert O. Kurth, Jr., of the KURTH LAW
27 OFFICE, and the Defendant CCSD appeared through their attorney, Daniel Louis O'Brien, Esq.
28 The Court having reviewed the pleadings and papers on file herein, together with argument, and it
appearing to the satisfaction of the Court, and good cause appearing therefor:

The COURT FINDS it to be undisputed that the Defendant, Clark County School
District ("CCSD"), has a general duty to exercise due care. Additionally, the Defendant CCSD
knew risks of injury were inherent in the sport of field hockey.

KURTH LAW OFFICE
3420 North Buffalo Drive
Las Vegas, NV 89129
(702) 438-5810

MAY 15 2015

KURTH LAW OFFICE
3420 North Buffalo Drive
Las Vegas, NV 89129
(702) 438-5810

1 The COURT FURTHER FINDS that the question of duty is not reliant on the
2 Plaintiff's testimony; whether or not duty exists is a question of law. Therefore genuine questions
3 of material fact exist as to: 1. - duty; 2. - whether CCSD exercised reasonable care in allowing an
4 eleven year old student to play field hockey in Physical Education (P.E.) without providing him
5 with any safety equipment; 3. - whether CCSD's treatment of the eleven year old student and advice
6 given to the Plaintiff MAKANI were reasonable; and 4. - whether additional training, supervision or
equipment could have prevented the injury to the Plaintiff MAKANI.

7 NOW THEREFORE, IT IS HEREBY ORDERED that the Defendant's CCSD's
8 Motion for Summary Judgment as to the first cause of action - Negligence, and as to the second
9 cause of action - Negligent Supervision, is DENIED WITHOUT PREJUDICE.

10 IT IS FURTHER ORDERED that the Plaintiff's Opposition and Counter-Motion
11 for Summary Judgment is also DENIED WITHOUT PREJUDICE as the COURT FINDS that no
12 concise statement setting forth each fact material to the disposition of the motion that Plaintiff's
claims is or is not genuinely in issue as required by NRCP 56 (c).

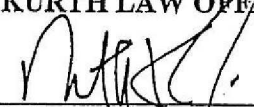
13 IT IS FURTHER ORDERED that the Court directed Mr. Kurth, Esq. to prepare the
14 Order and submit to Mr. O'Brien, Esq. for his review and signature prior to submitting to the Court
15 for signature.

16 DATED and DONE this 15th day of May, 2015.

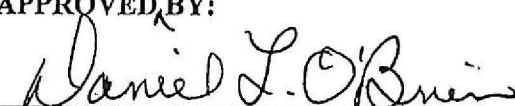
17 IT IS SO ORDERED.

18 
19 DISTRICT COURT JUDGE
20 MB

21 Respectfully Submitted By:
22 KURTH LAW OFFICE

23 
24 ROBERT O. KURTH, JR.
25 Nevada Bar No. 4659
26 Attorney for Plaintiff MAKANI

27 APPROVED BY:

28 
DANIEL LOUIS O'BRIEN, ESQ.
Nevada Bar No. 983
Attorney for Defendant CCSD


CLERK OF THE COURT

1 NEOJ
2 Office of the General Counsel
3 Clark County School District
4 DANIEL L. O'BRIEN, ESQ.
5 Nevada Bar No. 983
6 CARLOS L. McDADE, ESQ.
7 Nevada Bar No. 11205
8 5100 W. Sahara Avenue
9 Las Vegas, NV 89146
10 (702) 799-5373
11 Attorneys for Defendant

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 MAKANI KAI PAO,
15
16 Plaintiff,
17
18 v.

Case No. A-12-668833-C
Dept. No. II

NOTICE OF ENTRY OF ORDER

19 CLARK COUNTY SCHOOL DISTRICT; DOE
20 CLARK COUNTY SCHOOL DISTRICT
21 EMPLOYEES I-V; DOES I-V AND ROE
22 COMPANIES I-V, inclusive,
23
24 Defendants.

25 NOTICE is hereby give that an Order Granting In Part and
26 Denying In Part Defendant's Motion to Strike Plaintiff's Damages
27 Calculation or, in the Alternative, Motion in Limine was entered
28 on the 10th day of April, 2015, regarding the above-entitled
matter, a copy of which is attached hereto as Exhibit "A".

Respectfully submitted this 14th day of April, 2015.

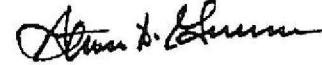
29 /s/ Daniel L. O'Brien
30 DANIEL L. O'BRIEN, ESQ.
31 Nevada Bar No. 983
32 Clark County School District
33 5100 W. Sahara Avenue
34 Las Vegas, NV 89146
35 Attorneys for District

[illegible]

Robert O. Kurth, Jr.
Kurth Law Office
3420 North Buffalo Drive
Las Vegas, NV 89129
Kurthlawoffice@gmail.com
Attorney for Plaintiffs

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EXHIBIT A



CLERK OF THE COURT

1 OGM
2 Office of the General Counsel
3 Clark County School District
4 DANIEL L. O'BRIEN, ESQ.
5 Nevada Bar No. 0983
6 CARLOS L. McDADE, ESQ.
7 Nevada Bar No. 11205
8 5100 W. Sahara Avenue
9 Las Vegas, NV 89146
10 (702) 799-5373
11 Attorneys for Defendant

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 MAKANI KAI PAYO,

15 Plaintiff,

16 v.

17 CLARK COUNTY SCHOOL DISTRICT; DOE
18 CLARK COUNTY SCHOOL DISTRICT
19 EMPLOYEES I-V; DOES I-V and ROE
20 COMPANIES I-V, inclusive,

21 Defendants.

Case No. A-12-668833-C
Dept. No. II

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO STRIKE
PLAINTIFF'S DAMAGES
CALCULATION OR, IN THE
ALTERNATIVE, MOTION IN
LIMINE

22 TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

23 ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S
24 MOTION TO STRIKE PLAINTIFF'S DAMAGES CALCULATION OR, IN THE
25 ALTERNATIVE, MOTION IN LIMINE

26 This matter came on regularly before the Court, in Chambers,
27 on the third day of March, 2015, for consideration of Defendant's
28 January 28, 2015, Motion to Strike Plaintiff's Damages
Calculation or, in the Alternative, Motion in Limine. The Court,
having considered the Defendant's Motion, Plaintiff's Opposition
and Defendant's Reply, hereby GRANTS IN PART and DENIES IN PART
Defendant's Motion, as follows:

1. Defendant's motion to strike Plaintiff's untimely
damages calculation is hereby DENIED.

2. Defendant's motion in limine is hereby GRANTED IN PART. Plaintiff may not seek recovery of special damages beyond those identified in the January 22, 2015, letter wherein Plaintiff listed past medical Expenses.

3. Defendant's motion in limine is hereby GRANTED IN PART.
Plaintiff may not seek recovery of wage loss.

4. Defendant's motion in limine is hereby GRANTED IN PART.
Plaintiff's medical expenses are capped at \$50,000.00.

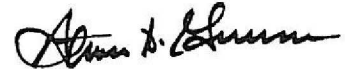
IT IS SO ORDERED this 7th day of April, 2015.

By:

Hon. Richard F. Scotti *BASS*
District Court Judge
Eighth Judicial District Court
Department 2
Clark County, Nevada

Submitted by:

Daniel L. O'Brien
Nevada Bar No. 983
Counsel for District



CLERK OF THE COURT

1 NOE
2 Office of the General Counsel
3 Clark County School District
4 DANIEL L. O'BRIEN, ESQ.
5 Nevada Bar No. 983
6 CARLOS L. McDADE, ESQ.
7 Nevada Bar No. 11205
8 5100 W. Sahara Avenue
9 Las Vegas, NV 89146
10 (702) 799-5373
11 Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

12 MAKANI KAI PAYO,
13 Plaintiff,
14 v.

Case No. A-12-668833-C
Dept. No. II

15 CLARK COUNTY SCHOOL DISTRICT; DOE
16 CLARK COUNTY SCHOOL DISTRICT
17 EMPLOYEES I-V; DOES I-V and ROE
18 COMPANIES I-V, inclusive,
19 Defendants.

NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO DISMISS

NOTICE OF ENTRY OF ORDER

20 TO: ALL PARTIES AND THEIR ATTORNEYS:

21 NOTICE is hereby given that an Order was entered on the 21st
22 day of August, 2013, a copy of which is attached hereto as Exhibit
23 "A" regarding the above-entitled matter.

24 DATED this 21st day of August, 2013.

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL

By:



DANIEL L. O'BRIEN, ESQ.
Nevada Bar No. 983
5100 West Sahara Avenue
Las Vegas, NV 89146
Attorney for Defendant, CLARK COUNTY
SCHOOL DISTRICT

1
2 CERTIFICATE OF MAILING

3 I HEREBY CERTIFY that on the 22nd day of August, 2013, I
4 served the parties hereto with the foregoing NOTICE OF ENTRY OF
5 ORDER by depositing a true and correct copy hereof in the United
6 States mail at Las Vegas, Nevada, postage fully prepaid, addressed
7 as follows:

8 Robert O. Kurth, jr.
9 Kurth Law Office
10 3420 North Buffalo Drive
11 Las Vegas, NV 89129
12 Attorney for Plaintiff

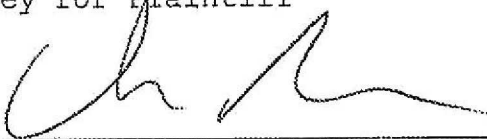
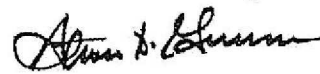
13 
14 _____
15 An Employee of CCSD
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EXHIBIT A



CLERK OF THE COURT

1 ORDR
2 Office of the General Counsel
3 Clark County School District
4 DANIEL L. O'BRIEN, ESQ.
5 Nevada Bar No. 983
6 CARLOS L. McDADE, ESQ.
7 Nevada Bar No. 11205
8 5100 W. Sahara Avenue
9 Las Vegas, NV 89146
10 (702) 799-5373
11 Attorneys for Defendant

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 MAKANI KAI PAYO,

10 Plaintiff,

11 v.

12 CLARK COUNTY SCHOOL DISTRICT; DOE
13 CLARK COUNTY SCHOOL DISTRICT
14 EMPLOYEES I-V; DOES I-V and ROE
15 COMPANIES I-V, inclusive,

16 Defendants.

Case No. A-12-668833-C
Dept. No. II

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO DISMISS

17 ORDER GRANTING IN PART AND DENYING IN PART
18 DEFENDANT'S MOTION TO DISMISS


19 This matter came on regularly before this Court on July 15,
20 2013 by way of Defendant's June 10, 2013, Notice of Motion and
21 Motion to Dismiss Plaintiff's complaint for the failure to state
22 a claim upon which relief can be granted. Appearing on behalf of
23 the School District was Daniel L. O'Brien. Representing
24 Plaintiff was Robert O. Kurth, Jr., Esq. After considering the
25 motion, the Opposition and the Reply briefs, together with
26 argument of counsel, and Good Cause appearing, it is hereby
27 ORDERED that Defendant's Motion is hereby Granted in Part and
28 Denied in Part, as follows:

1. Defendant's Motion to Dismiss is Granted in part:
Plaintiff's Second Cause of Action, Negligent
Infliction of Emotional Distress, is hereby Dismissed,
without prejudice;
2. Defendant's Motion to Dismiss is Granted in part:
Plaintiff's Third Cause of Action, Negligence Per Se,
is hereby Dismissed, without prejudice;
3. Defendant's Motion to Dismiss is Granted in part:
Plaintiff's claims for punitive or exemplary damages
are hereby Dismissed pursuant to NRS 41.035;
4. Defendant's Motion to Dismiss is Denied in part:
Defendant has not demonstrated sufficient prejudice,
thus the case will not be dismissed on the grounds of
laches;
5. Defendant's Motion to Dismiss is Denied in part: The
Coverdell Act does not apply to the allegations set
forth in Plaintiff's Complaint, thus Plaintiff's case
will not be dismissed upon the grounds that the
Coverdell Act provides immunity in this case.
6. Defendant's Motion to Dismiss is Denied in part: The
Court finds that the student who injured Plaintiff and
his parents are not indispensable parties to this
action, thus Plaintiff's case will not be dismissed for
failure to join an indispensable party.
7. Defendant's Motion to Dismiss on the grounds of
assumption of the risk, for the failure of Plaintiff to
identify any recoverable special damages, and the
Defendant's request for declaratory relief as to the

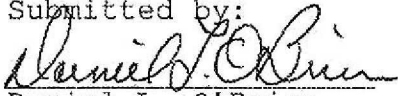
1 number of statutory caps on damages, and the maximum
2 amount thereof which is applicable in this case are
3 hereby denied. *

4 Plaintiff shall have twenty (20) days from notice of entry
5 of this Order in which to file an amended complaint incorporating
6 the foregoing rulings. Defendant shall have ten (10) days from
7 receipt of the proposed amended complaint to answer or otherwise
8 plead in this case.

9 IT IS SO ORDERED this ^{14th} day of ^{August} ~~April~~, 2013.

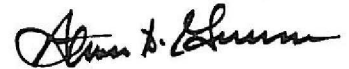
10
11 
12 Hon. Valerie J. Vega
District Court Judge
Department II

13 Submitted by:

14 
15 Daniel L. O'Brien
Nevada Bar No. 983
16 Counsel for District

17 * The rulings are pursuant to NRCP 12(b)(5),
18 Simpson v. Mars, 113 Nev. 188 (1997),
19 Vacation Village v. Hitachi America, 110 Nev. 481 (1994),
20 The Coverdell Act, NRS § 41.0305, and
21 NRS 386.010 (2)
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EXHIBIT 1



CLERK OF THE COURT

1 ACOM
2 Robert O. Kurth, Jr.
3 Nevada Bar No. 4659
4 **KURTH LAW OFFICE**
5 3420 North Buffalo Drive
6 Las Vegas, NV 89129
7 Tel: (702) 438-5810
8 Fax: (702) 459-1585
9 E-mail: kurthlawoffice@gmail.com
10 Attorney for Plaintiff

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DISTRICT COURT
CLARK COUNTY, NEVADA

MAKANI KAI PAYO,

Plaintiff,

vs.

CLARK COUNTY SCHOOL DISTRICT;
DOE CLARK COUNTY SCHOOL DISTRICT
EMPLOYEES I-V; DOES I-V and ROE
COMPANIES I-V, inclusive,

Defendants.

Case No.: A-12-668833-C

Dept.: II

SECOND AMENDED COMPLAINT

COMES NOW the Plaintiff, MAKANI KAI PAYO ("PAYO"), by and through his
counsel, Robert O. Kurth, Jr., of the KURTH LAW OFFICE, and hereby files his Complaint against
the Defendants, CLARK COUNTY SCHOOL DISTRICT ("CCSD"); DOE CLARK COUNTY
SCHOOL DISTRICT EMPLOYEES I-V, DOES I-V and ROE COMPANIES I-V, inclusive;
alleging as follows:

COMMON ALLEGATIONS

1. That the subject matter of this Complaint concerns an incident and personal injury matter that occurred on or about May 12, 2004, in Las Vegas, Clark County, Nevada, at C.W. Woodbury Middle School.
2. That the Plaintiff, MAKANI KAI PAYO ("PAYO"), is an individual, and resides in the State of California, but was a resident of the State of Nevada, County of Clark, at the time of subject incident.
3. That the Defendant, CLARK COUNTY SCHOOL DISTRICT ("CCSD"), is now and, at all times mentioned herein, is a political subdivision of the State of Nevada or other governmental entity, whose purpose is to administer the State System of Public Education. C.W. Woodbury Middle School is a school located within the Clark County School District.
4. That the Defendants, DOE CLARK COUNTY SCHOOL DISTRICT EMPLOYEES I-V, are set forth herein pursuant to Rule 10 of the Nevada Rules of Civil Procedure as all unknown persons currently unknown to the Plaintiff who have a claim to any interest in the subject matter of this action, whose true name(s) is (are) unknown to Plaintiff, and who are believed to be responsible for the events and happenings referred to in the Complaint causing injuries and damages to Plaintiff, or who are otherwise interested in the subject matter of this Complaint. At such time when the names of said DOES have been ascertained, Plaintiff will request leave from the court to insert their true names and capacities and adjoin them in this action so that the Complaint will be amended to include the appropriate names of said DOES.
5. That the Defendants, DOES I-V and ROE COMPANIES I-V, are set forth herein pursuant to Rule 10 of the Nevada Rules of Civil Procedure as all unknown persons currently unknown to the Plaintiff who have a claim to any interest in the subject matter of this action, whose true name(s) is (are) unknown to Plaintiff, or who are believed to be responsible for the events and happenings referred to in the Complaint

1 causing injuries and damages to Plaintiff, or who are otherwise interested in the
2 subject matter of this Complaint. At such time when the names of said DOES have
3 been ascertained, Plaintiff will request leave from the court to insert their true names
4 and capacities and adjoin them in this action so that the Complaint will be amended
5 to include the appropriate names of said DOES and ROE COMPANIES.

6 I.

7 **FIRST CAUSE OF ACTION**

8 **NEGLIGENCE**

- 9 6. The Plaintiff incorporates paragraphs one (1) through five (5) of the Common
10 Allegations of the Complaint as though fully set forth herein.
- 11 7. That on or about May 12, 2004, the Plaintiff PAYO was a minor child and student
12 attending C.W. Woodbury Middle School.
- 13 8. That on or about May 12, 2004, PAYO was attending his physical education class
14 and was required to participate and play field hockey.
- 15 9. That the Defendants, and each of them, did not provide helmets, face protector(s),
16 safety glasses or other safety equipment to PAYO or the other students prior to
17 playing field hockey.
- 18 10. That during the field hockey game, on or about May 12, 2004, another student lifted
19 his hockey stick to strike the ball and struck PAYO in his head and left eye, causing
20 him to briefly black out.
- 21 11. That after PAYO was struck with the hockey stick, he was escorted by another
22 student to the nurse's office at C.W. Woodbury Middle School, wherein he was
23 examined by the nurse and/or nurse's assistant.
- 24 12. That on or about May 12, 2004, PAYO's mother and legal guardian was contacted
25 concerning PAYO's injury(ies) and was advised that PAYO did not require
26 immediate medical attention.
- 27
28

13. That PAYO's mother was not asked to retrieve PAYO from C.W. Woodbury Middle School.
14. That PAYO's mother was never contacted again by the nurse and/or nurse's assistant concerning PAYO's injury(ies).
15. That PAYO's mother chose to have PAYO retrieved from C.W. Woodbury Middle School.
16. That PAYO's symptoms worsened; consequently, he was transported by ambulance on or about May 14, 2004 to University Medical Center.
17. That PAYO's mother requested and was denied a copy of any incident report on file with C.W. Woodbury Middle School.
18. That PAYO was admitted to the hospital on or about May 19, 2004 for head pressure, left eye hyphema with associated increased intraocular pressure and corneal blood staining, which resulted in an anterior chamber washout.
19. That PAYO continues to suffer from decreased eyesight in his left eye and blurred vision, as a result of the subject incident.
20. That PAYO has continued ongoing treatment throughout his life since the subject incident and may require additional surgery(ies).
21. That the Defendants, and each of them, knew or should have known that an incident and/or injury could have happened to PAYO from being required to participate in or play field hockey.
22. That the Defendants, and each of them, failed to warn or safely protect PAYO from injury.
23. That the Defendants, and each of them, owed a duty to PAYO to supply safety equipment necessary to protect PAYO and other students from injury while participating in certain activities on school property.
24. That the Defendants, and each of them, negligently disregarded their aforementioned duties and obligations, which resulted in injuries to PAYO.

1 25. That as a direct and proximate result of the Defendants' afore-stated negligence,
2 PAYO suffered injuries, both physical and mental in nature, together with other
3 economic losses, in an amount in excess of Ten Thousand Dollars (\$10,000.00).

4 26. That the Plaintiff has been forced to initiate this action and has incurred attorney's
5 fees and costs in prosecuting this action as a result of the Defendants'
6 actions/omissions, for which he seeks relief therefrom.

7
8 II.

9 SECOND CAUSE OF ACTION

10 NEGLIGENT SUPERVISION

11
12 27. The Plaintiff incorporates paragraphs one (1) through five (5) of the Common
13 Allegations, and paragraphs six (6) through twenty-six (26) of the First Cause of
14 Action, NEGLIGENCE of the Complaint as though fully set forth herein.

15 28. That the Defendants, and each of them, had a duty to supply safety equipment
16 necessary to protect PAYO and other students from potential injury, while
17 participating in certain activities on school property.

18 29. That the Defendants, and each of them, had a duty to use efforts no less than a
19 reasonable, ordinary prudent person, to inform, warn or protect the Plaintiff PAYO
20 from potential injury, while participating in certain activities on school property.

21 30. That the Defendants, and each of them, had a duty to use efforts no less than a
22 reasonable, ordinary prudent person, to supervise their employee(s), agents, students
23 or other persons under their supervision and control at the time of the incident
24 involving the Plaintiff PAYO, which is the subject of this Complaint.

25 31. That the Defendant(s) failure to supervise their employee(s), agents, students or other
26
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persons under their supervision and control at the time of the incident involving PAYO, resulted in the Plaintiff PAYO incurring an injury(ies) and damages, while participating in certain activities on school property.

32. That the Defendants, and each of them, knew or should have known that an incident and/or injury could have happened to PAYO from being required to participate in or play field hockey.

33. That the Defendants, and each of them, failed to supervise, warn or safely protect PAYO from injury.

34. That as a direct and proximate result of the Defendants' afore-stated negligent supervision, failure to warn or safely protect PAYO from injury, PAYO suffered injuries, both physical and mental in nature, together with other economic losses, in an amount in excess of Ten Thousand Dollars (\$10,000.00), for which he seeks relief therefrom.

35. That the Plaintiff PAYO has been forced to initiate this action and has incurred attorney's fees and costs in prosecuting this action as a result of the Defendants' actions/omissions, for which he seeks relief therefrom.

III.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, MAKANI KAI PAYO, respectfully requests that this Court enter the following relief against the Defendants, CLARK COUNTY SCHOOL DISTRICT ("CCSD"); DOE CLARK COUNTY SCHOOL DISTRICT EMPLOYEES I-V, DOES I-V AND ROE COMPANIES I-V, and each of the Defendants herein:

A. For general and special damages, including such incidental and consequential damages resulting from the Defendants' actions in excess of Ten Thousand Dollars (\$10,000.00).

B. For compensatory damages in excess of Ten Thousand Dollars (\$10,000.00).

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- C. That any and all lawful measures be allowed to be taken to execute upon and collect the monies owed the Plaintiff.
- D. For pre-judgment and post-judgment interest at the statutory maximum.
- E. For reasonable attorney's fees and costs incurred in the prosecution of this matter.
- F. For such other relief as this Court deems appropriate.


DATED this 5th day of March, 2015.

Respectfully Submitted by,
KURTH LAW OFFICE

/s/Robert O. Kurth, Jr.

ROBERT O. KURTH, JR.
Nevada Bar No. 4659
Attorney for Plaintiff

EXHIBIT 2



CLERK OF THE COURT

1 **NEO**
2 **ROBERT O. KURTH, JR.**
3 Nevada Bar No. 4659
4 **KURTH LAW OFFICE**
5 3420 North Buffalo Drive
6 Las Vegas, NV 89129
7 Tel: (702) 438-5810
8 Fax: (702) 459-1585
9 E-mail: kurthlawoffice@gmail.com
10 Attorney for Plaintiff

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

10 **MAKANI PAYO,**

11 Plaintiff,

12 vs.

13 **CLARK COUNTY SCHOOL DISTRICT,**

14 Defendant.

Case No. A-12-668833-C
Dept. XV

16 **NOTICE OF ENTRY OF ORDER**

18 PLEASE TAKE NOTICE that an ORDER REGARDING DAMAGES POST-JURY
19 VERDICT was entered in the above-referenced matter on or about the 16th day of June, 2015, and was
20 filed on the 16th day of June, 2015; a copy of which is attached hereto.

21 DATED this 17th day of June, 2015.

22 Respectfully submitted by:
23 **KURTH LAW OFFICE**

24 /s/Robert O. Kurth, Jr.
25 **ROBERT O. KURTH, JR.**
26 Nevada Bar No. 4659
27 Attorney for the Plaintiff

28 ///

///

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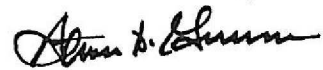
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CERTIFICATE OF SERVICE/MAILING

I HEREBY CERTIFY that on the 17th day of June, 2015, I electronically served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** via Electronic Service in accordance with EDCR 8.05, and I deposited a true and correct copy of the foregoing in a sealed envelope in the U.S. Mail, first class, postage prepaid, and addressed as follows:

DANIEL O'BRIEN, ESQ.
Office of General Counsel
Clark County School District
5100 W. Sahara Avenue
Las Vegas, NV 89146
E-serve: obriedl@interact.ccsd.net
Attorneys for Defendant

/s/Maritsa Lopez
An employee of **KURTH LAW OFFICE.**



CLERK OF THE COURT

1 **ORDER**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5 **MAKANI PAYO,**

6 **Plaintiff,**

7 **vs.**

8 **CLARK COUNTY SCHOOL DISTRICT,**

9 **Defendant.**

Case No.: A-12-668833-C
Dept No.: XV

**ORDER REGARDING DAMAGES
POST-JURY VERDICT**

10
11 This case was tried before a jury which resulted in a verdict being awarded in favor of
12 Plaintiff Makani Payo ("Payo") and against Defendant Clark County School District
13 ("CCSD") in a total amount of \$60,288.06 on June 2, 2015. Prior to and during trial, the
14 parties filed and served briefs relating to issues with damages and have submitted those briefs
15 to the Court for consideration and ruling. This Order constitutes the Court's ruling and
16 decision on those issues.

17 **I. Plaintiff May Recover Medical Expenses Incurred By His Parents While**
18 **Plaintiff Was a Minor**

19 The Court hereby rules that Payo may recover medical expenses incurred by his parents
20 while Payo was a minor.

21 As the parties are aware, the undersigned was assigned this case on the eve of trial.
22 Prior to that assignment, various issues had been briefed and orders entered by the Court.
23 Notably, such briefs included CCSD's Motion to Strike Plaintiff's Damages Calculation or, in
24 the Alternative, Motion in Limine filed herein on January 28, 2015. In that motion, CCSD
25 argued, among other things, that Payo "lists medical expenses which were incurred while he
26 was a minor and which he is not entitled to as a matter of law." Motion to Strike at 6:14-16.
27 CCSD requested that Payo be precluded "from presenting as damages medical expenses
28 incurred by his parents while he was a minor." Motion to Strike at 1:27-28. CCSD further

1 requested "[a]n order precluding Plaintiff from putting on any evidence or making any
2 argument at trial regarding alleged past or future special damages." Motion to Strike at 9:1-3.

3 In opposition, Payo argued, among other things, that he "is entitled to medical expenses
4 he incurred as a minor child and which were paid by his parents when he incurred such as a
5 minor child." Opposition, filed on February 13, 2015, at 6:12-13. Payo went on to request
6 that the Court "allow this case to proceed on the merits . . . rather than on the technicalities of
7 not having the parents named as parties to the suit. In the alternative, the Plaintiff PAYO is
8 requesting that this Court allow PAYO to amend his Complaint to include his parents as
9 parties if necessary." Opposition at 8:8-13.

10 In reply, CCSD devoted three pages to the argument that "Plaintiff is not entitled to
11 recover medical expenses incurred while he was a minor." Reply, filed on February 23, 2015.

12 In ruling on the issues raised, rather than strike or disallow the medical expenses
13 incurred by Payo's parents while he was a minor, this Court ruled Payo "may not seek
14 recovery of special damages beyond those identified in the January 22, 2015, letter wherein
15 Plaintiff listed past medical expenses" and "Plaintiff's medical expenses are capped at
16 \$50,000.00." Order, filed on April 10, 2015. As demonstrated at trial, the January 22, 2015
17 letter included various medical expenses incurred by Payo's parents while he was a minor. In
18 other words, prior to the commencement of trial this Court ruled then that Payo could seek
19 recovery of special damages, including the medical expenses incurred by his parents while he
20 was a minor. Notably, neither party sought reconsideration of the April 10, 2015 Order and
21 the Court sees no reason to reconsider its prior order at this time.

22 Further, the Nevada case law relied upon by CCSD in an attempt to exclude Payo's
23 medical damages clearly uses the discretionary "may" rather than the mandatory "shall"
24 regarding potential limiting of damages. *Walker v. Burkham*, 63 Nev. 75, 83, 165 P.2d 161,
25 164 (1946); *Hogle v. Hall*, 112 Nev. 599, 916 P.2d 814 (1996). The use of "may" indicates a
26 grant of discretion to the district court in determining whether to limit the incurred damages.
27 In this case, the Court determines to exercise its discretion to permit Payo to seek and obtain
28 an award of damages for the medical expenses incurred by his parents while he was a minor.

1 Finally, the ultimate policy behind any division of medical expenses between the minor
2 child and the parents is simply to prevent a double recovery. *See Estate of DeSela v. Prescott*
3 *Unified School Distr. No. 1*, 249 P.3d 767 (Ariz. 2011); *Garay v. Overholtzer*, 631 A.2d 429
4 (Md. Ct. App. 1993). The clear trend is “hold that the right to recover pre-majority medical
5 expenses belongs to both the injured minor and the parents, but double recovery is not
6 permitted.” *Estate of DeSela*, 249 P.3d at 770 (various citations omitted). Payo’s parents
7 have not asserted any claims to the medical expenses, nor could they at this juncture due to
8 statute of limitation issues. Additionally, Payo’s mother attended the trial and testified as a
9 witness on her son’s behalf, thereby impliedly waiving any right to claim the damages for
10 herself.

11 Thus, this Court determines that Payo was permitted to recover medical expenses
12 incurred by his parents while Payo was a minor and the Court will not disturb the jury’s
13 verdict awarding the past medical and related expenses to him in the amount of \$48,288.06.

14 **II. Plaintiff’s Damages Are Limited to \$50,000 Under the Applicable Version of**
15 **NRS 41.035**

16 The Court hereby rules that Payo’s damages are limited to \$50,000.00 under the
17 applicable version of NRS 41.035.¹

18 At least by 1965, if not sooner, the State of Nevada waived its sovereign immunity. *See*
19 *NRS 41.031*. That waiver likewise applies to political subdivisions of the state such as
20 Defendant Clark County School District. *Id.* The waiver, however, is not absolute. For
21 decades, NRS 41.035 has provided a cap on “damages in an action sounding in tort brought
22 under NRS 41.031.” Throughout that time, the amount of the cap has increased with various
23 amounts being in effect at various times. For example, on May 12, 2004, the date of this
24 case’s accident, the statute provided for a \$50,000.00 cap. On September 21, 2012, the date
25

26 ¹ The \$50,000.00 cap applies to prejudgment interest, but does not apply to post-judgment
27 interest, nor does it limit CCSD’s potential liability for attorney fees and costs. *Arnesano v.*
28 *State ex rel. Dept. of Transp.*, 113 Nev. 815, 821-822, 942 P.2d 139, 143-144 (1997). Thus,
should Payo believe he has a basis for attorney fees and costs, he may file the appropriate
motion and/or memorandum for the Court’s consideration.

1 the complaint was filed, the cap was \$100,000.00. CCSD argues the \$50,000 cap applies to
2 reduce the jury verdict and Payo argues the \$100,000 cap applies.

3 The statute and its various iterations are ambiguous as to when the various caps take
4 effect. However, the Nevada Supreme Court discussed the applicable determination date in
5 *Las Vegas Metropolitan Police Dep't v. Yeghiazarian*, 129 Nev. Adv. Op. 81, 312 P.3d 503
6 (2013). There, the Court stated, "The version of NRS 41.035(1) that was in effect at the time
7 of the accident provided that awards for damages in tort actions filed against state entities
8 'may not exceed the sum of \$50,000.00.'" *Id.*, 312 P.3d at 509 (emphasis added). Although
9 that statement is *dicta*, it indicates the applicable cap for any claim filed under NRS 41.031 is
10 the version "in effect at the time of the accident," rather than at the time the complaint is filed.

11 For additional confirmation, the factual and procedural background of *Yeghiazarian* is
12 helpful. *Yeghiazarian* involved an accident that occurred on July 4, 2007, when the cap was
13 \$50,000. See Complaint, filed in Case No. A-09-594543-C. The complaint, however, was
14 filed on July 2, 2009, when the cap was \$75,000. *Id.* Under those circumstances it is
15 reasonable to believe that the Nevada Supreme Court intended to guide the trial courts that the
16 applicable date is when the accident occurred, not when the complaint was filed. The
17 legislative history goes so far as to explicitly state that the increase from \$50,000 to \$75,000
18 applies "to a cause of action that accrues on or after October 1, 2007," and the increase from
19 \$75,000 to \$100,000 applies "to a cause of action that accrues on or after October 1, 2011."
20 Laws 2007, c. 512, § 5.5 eff. July 1, 2007. A cause of action for negligence accrues when the
21 accident occurs and injury is sustained. *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18
22 (1990). Here, Payo's causes of action accrued on May 12, 2004, the date of the accident, and
23 thus the applicable cap is \$50,000.00.

24 Finding that the \$50,000 cap applies does not, however, end the inquiry. In his Second
25 Amended Complaint, Payo asserted two causes of action—one for negligence, the other for
26 negligent supervision. Payo argues that because he pleaded and proved two causes of action
27 at trial, he is entitled to \$50,000 for each cause of action and the jury's verdict of \$60,288.06
28 falls below the total \$100,000 cap. The Court disagrees.

1 The language of NRS 41.035 on this issue appears unambiguous to the Court in that it
2 refers to a single cap on "[a]n award for damages in an action sounding in tort." To this
3 Court, the reference to "an action" would appear to encompass all tort claims asserted in an
4 action. See NRCP 2 ("There shall be one form of action to be known as 'civil action.'"). In
5 the seminal case of *State v. Webster*, 88 Nev. 690, 504 P.2d 1316 (1972), however, the
6 Nevada Supreme Court clarified, "Although joined in one complaint, an action for wrongful
7 death and an action for personal injuries suffered by the plaintiff in the same accident are
8 separate, distinct and independent. They rest on different facts, and may be separately
9 maintained." *Id.*, 88 Nev. at 695. Consequently, one cap applied to the plaintiff's personal
10 injury claim and a separate cap applied to the plaintiff's wrongful death claim. *Id.*

11 Post-*Webster*, the Nevada Supreme Court has interpreted "an action" to mean "a claim."
12 See, e.g., *State ex rel. Dep't of Transp. v. Hill*, 114 Nev. 810, 818, 963 P.2d 480 (1998) (in a
13 case with a claim for personal injuries and a claim for negligent infliction of emotional
14 distress, holding, "each claim could be separately maintained, and each claim was subject to
15 its own \$50,000.00 statutory cap"), abrogated on other grounds by *Grotts v. Zahner*, 115 Nev.
16 339, 989 P.2d 415 (1999); *County of Clark ex rel. Univ. Med. Ctr. v. Upchurch*, 114 Nev. 749,
17 759, 961 P.2d 754 (1998) (stating NRS 41.035 allows "plaintiffs to recover damages on a per
18 person per claim basis"). In the *Upchurch* case, the Nevada Supreme Court limited recovery
19 as follows: "NRS 41.035 allows one statutory limitation for each cause of action, regardless of
20 the number of actors."

21 Although it was subsequently withdrawn based on a stipulation of the parties, the case of
22 *State, Dept. of Human Resources v. Jimenez*, 113 Nev. 356, 935 P.2d 274 (1997), op.
23 withdrawn in 113 Nev. 735, 941 P.2d 969 (1997), is instructive. There, the Nevada Supreme
24 Court upheld awards of \$50,000 each for nine instances of sexual assault, but reversed the
25 award of \$50,000 for negligent supervision because that award "to permit further recovery on
26 the basis of negligent supervision is tantamount to awarding the victim an improper double
27 recovery." *Id.*, 113 Nev. at 373, 935 P.2d at 284. The withdrawal of the opinion, however,
28

1 leaves this Court without a binding decision directly on point. Nevertheless, the Court must
2 rule on the issue.

3 Here, Payo's damages as a result of negligence or negligent supervision by CCSD are
4 the same damages regardless of the claim asserted. Both claims are essentially for negligence.
5 Thus, the claims asserted in this case differ substantially from the distinct claims of personal
6 injury and wrongful death or personal injury and negligent infliction of emotional distress set
7 forth in the *Webster* and *Hill* cases. Additionally, the jury verdict simply awards amounts of
8 damages and makes no distinction between the two causes of action. Alternatively, to the
9 extent needed to support the Court's ruling that a single \$50,000.00 cap applies, and based on
10 the evidence presented at trial, the Court would find that Payo failed to prove a sufficient issue
11 for the jury regarding his claim for negligent supervision and that CCSD is entitled to
12 judgment as a matter of law on that claim. In Nevada, negligent supervision is a claim against
13 an employer for failing to properly supervise its own employee and is not based on an
14 employee's alleged failure to properly supervise a plaintiff. See *Rockwell v. Sun Harbor*
15 *Budget Suites*, 112 Nev. 1217, 1226, 925 P.2d 1175, 1181 (1996). Payo's claim is based on
16 alleged failure by CCSD to properly "supervise, warn or safely protect PAYO from injury"
17 (First Amended Comp. at ¶¶ 27-35), and thus CCSD would be entitled to judgment as a matter
18 of law on the claim.

19 Consequently, the Court finds and rules that one cap applies to limit the jury verdict to
20 \$50,000.00.

21 **III. Conclusion and Order**

22 IT IS HEREBY ORDERED that Payo is entitled to recover medical and related
23 expenses incurred by his parents while he was a minor.

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IT IS FURTHER ORDERED that Payo's damages are reduced from the \$60,288.06 in the Verdict to \$50,000.00. The Court will issue a separate judgment.

DATED this 16th day of June, 2015.




JOE HARDY
DISTRICT COURT JUDGE
DEPARTMENT XV


CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was electronically served, mailed or placed in the attorney's folder on the first floor of the Regional Justice Center as follows:

Robert Kurth, Esq.
Daniel O'Brien, Esq.

robertk@robertkurth.com
obriedl@interact.ccsd.net


Amanda Rivera
Judicial Executive Assistant



CLERK OF THE COURT

1 NJUD
2 ROBERT O. KURTH, JR.
3 Nevada Bar No. 4659
4 KURTH LAW OFFICE
5 3420 North Buffalo Drive
6 Las Vegas, NV 89129
7 Tel: (702) 438-5810
8 Fax: (702) 459-1585
9 E-mail: kurthlawoffice@gmail.com
10 Attorney for Plaintiff

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

10 MAKANI PAYO,

11 Plaintiff,

12 vs.

12 CLARK COUNTY SCHOOL DISTRICT,

13 Defendant.

Case No. A-12-668833-C
Dept. XV

16 **NOTICE OF ENTRY OF JUDGEMENT**

18 PLEASE TAKE NOTICE that a JUDGEMENT UPON JURY VERDICT was entered in the
19 above-referenced matter on or about the 16th day of June, 2015, and was filed on the 16th day of June,
20 2015; a copy of which is attached hereto.

21 DATED this 17th day of June, 2015.

22 Respectfully submitted by:
23 KURTH LAW OFFICE

24 /s/Robert O. Kurth, Jr.
25 ROBERT O. KURTH, JR.
26 Nevada Bar No. 4659
27 Attorney for the Plaintiff

27 ///

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CERTIFICATE OF SERVICE/MAILING

I HEREBY CERTIFY that on the 17th day of June, 2015, I electronically served a true and correct copy of the foregoing **NOTICE OF ENTRY OF JUDGEMENT** via Electronic Service in accordance with EDCR 8.05, and I deposited a true and correct copy of the foregoing in a sealed envelope in the U.S. Mail, first class, postage prepaid, and addressed as follows:

DANIEL O'BRIEN, ESQ.
Office of General Counsel
Clark County School District
5100 W. Sahara Avenue
Las Vegas, NV 89146
E-serve: obriedl@interact.ccsd.net
Attorneys for Defendant

/s/Maritsa Lopez
An employee of KURTH LAW OFFICE.


CLERK OF THE COURT

JUV

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MAKANI PAYO,

Plaintiff,

vs.

CLARK COUNTY SCHOOL DISTRICT,

Defendant.

Case No.: A-12-668833-C
Dept No.: XV

JUDGMENT UPON JURY VERDICT

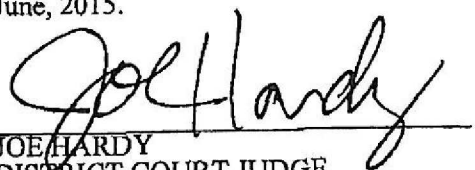
This action came on for trial before the Court, Honorable Joe Hardy, District Judge, presiding and a jury on May 27, 2015 through June 2, 2015. The issues having been duly tried; the jury having duly rendered its verdict on June 2, 2015; and the Court having filed its Order Regarding Damages Post-Jury Verdict; the Court enters this judgment pursuant to NRCP 54.

IT IS ORDERED AND ADJUDGED that Judgment on the jury verdict is entered in favor of Plaintiff Makani Kai Payo ("Payo") against Defendant Clark County School District in the total amount of FIFTY THOUSAND DOLLARS (\$50,000.00).

Within ten (10) days after entry of this Judgment, Payo shall serve written notice of entry of this Judgment together with a copy of this Judgment upon CCSD and shall file the notice of entry with the clerk of the court.

IT IS SO ORDERED.

DATED this 16th day of June, 2015.

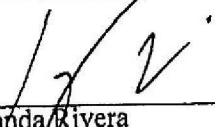

JOE HARDY
DISTRICT COURT JUDGE
DEPARTMENT XV

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this document was electronically served, mailed or placed in the attorney's folder on the first floor of the Regional Justice Center as follows:

Robert Kurth, Esq.
Daniel O'Brien, Esq.

robertk@robertkurth.com
obriedl@interact.ecsd.net


Amanda Rivera
Judicial Executive Assistant

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

CLARK COUNTY SCHOOL DISTRICT,

Appellant,

vs.

MAKANI KAI PAYO,

Respondent.

No. 68443

Electronically Filed
Aug 07 2015 03:42 p.m.

DOCKETING STATEMENT
CIVIL APPEALS
Tara M. Lindeman
Clerk of Supreme Court

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Revised June 2014

1. Judicial District Eighth Department 15
County Clark Judge Joe Hardy, Jr.
District Ct. Case No. A-12-668833-c

2. Attorney filing this docketing statement:

Attorney Daniel L. O'Brien Telephone (702) 799-5373

Firm Clark County School District, Office of General Counsel

Address 5100 West Sahara Avenue
Las Vegas, Nevada 89146

Client(s) Clark County School District

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Robert O. Kurth, Jr. Telephone (702) 438-5810

Firm Kurth Law Office

Address 3420 N. Buffalo
Las Vegas, Nevada 89129

Client(s) Makani Payo

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input checked="" type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following? NO .

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

NONE.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

NONE.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Plaintiff alleged negligence on the part of the District after being struck on the side of his face by another player's hockey stick while playing floor hockey at school.

9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

PLEASE SEE THE ATTACHED.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

NONE THAT THIS COUNSEL IS AWARE OF.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: PLEASE SEE THE ATTACHED.

13. Trial. If this action proceeded to trial, how many days did the trial last? 5

Was it a bench or jury trial? JURY TRIAL

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

NO.

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from Jun 16, 2015

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served Jun 17, 2015

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

18. Date notice of appeal filed Jul 15, 2015

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The judgment on a jury verdict constitutes a final judgment in the action.

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

CLARK COUNTY SCHOOL DISTRICT, Defendant below;

MAKANI KAI PAYO, Plaintiff below.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

PLEASE SEE THE ATTACHED.

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

CLARK COUNTY SCHOOL DISTRICT

Name of appellant

August 7, 2015

Date

Clark County, Nevada

State and county where signed

Daniel L. O'Brien

Name of counsel of record



Signature of counsel of record

NEVADA BAR #983

CERTIFICATE OF SERVICE

I certify that on the 7th day of August, 2015, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Robert O. Kurth, Jr.
3420 N. Buffalo
Las Vegas, NV 89129
Attorney for Plaintiff/Respondent

Janet Trost
501 S. Rancho Dr. Ste. H-56
Las Vegas, NV 89106
Supreme Court Settlement Judge

Dated this 7th day of August, 2015


Signature

APPELLANT'S DOCKETING STATEMENT
(Issues on Appeal)

9. **Issues on appeal.** State specifically all issues in this appeal (attach separate sheets as necessary):
- A. Did the district court err, where the facts were undisputed, by denying the school district's motion for summary judgment and by permitting the jury to decide whether the District owed Plaintiff a duty to provide safety equipment for Plaintiff's use while playing floor hockey during P.E. class?
 - B. Did the district court err, where there were no disputed issues of material fact, by denying the school district's motion for summary judgment on the negligent supervision claim?
 - C. Did the district court err by permitting the jury to consider whether the school district was negligent for exercising its discretion to offer a floor hockey unit as part of the P.E. curriculum?
 - D. Did the district court err by refusing to instruct the jury on the inherent risk doctrine, where it was undisputed that the risk of injury of the type suffered by Plaintiff was a risk inherent in the sport of floor hockey?
 - E. Did the district court err by permitting the jury to consider and award Plaintiff damages for past medical expenses incurred by his parents while he was a minor?
 - F. Did the district court err, in derogation of a prior court order limiting Plaintiff's recovery of special damages to past medical expenses, by permitting the jury to consider and award Plaintiff future medical expenses, where no medical or other expert testimony was elicited demonstrating that such were a result of the 2004 accident "to within a reasonable degree of medical probability?"

Clark County School District v. Makani Payo
CASE NO. 68443
Supreme Court of the State of Nevada

APPELLANT'S DOCKETING STATEMENT
(Other Issues)

12. Other issues. Does this appeal involve any of the following issues:

- * * *
- * * *
- X A substantial issue of first impression.
- X An issue of public policy.
- * * *
- * * *

If so, explain:

1. Whether the inherent risk doctrine protects a school district from claims that a student was injured in a P.E. class as a result of a risk inherent in the activity being conducted, and the scope of that duty, if any, have not been directly addressed by the Nevada Supreme Court, although the issue arises with regularity in the district courts and has resulted in inconsistent treatment amongst the various departments.

2. The issue of whether a minor, after reaching the age of majority, is entitled to recover past medical expenses incurred while he or she was still a minor, has not been expressly addressed by the Nevada Supreme Court, although the issue arises with regularity in the district courts and has resulted in inconsistent treatment amongst the various departments.

3. Public policy, as expressed by legislative enactments, favors limitations on the scope of recovery in tort judgments against public entities

Clark County School District v. Makani Payo
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APPELLANT'S DOCKETING STATEMENT
(Each party's separate claims)

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiff's Claims:

D.O.R.:

Negligence

06/16/15

Negligent Supervision

06/16/15

Counterclaims, Cross-claims and Third Party Claims:

None.