NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 1919

JANET HERNANDEZ MILLER
VERSUS
ST. TAMMANY PARISH SCHOOL BOARD

CONSOLIDATED WITH

NUMBER 2010 CA 1920

JANET HERNANDEZ MILLER
VERSUS
ABC INSURANCE COMPANY, ET AL.

Judgment Rendered: May 6, 2011

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Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 2002-10,363 c/w 2002-10,365

Honorable Allison H. Penzato, Judge

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BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

WELCH, J.

P.D. Slocum and his insurer, Metropolitan Property & Casualty Insurance Company ("Metropolitan"), appeal a judgment sustaining a peremptory exception raising the objection of no cause of action and dismissing, with prejudice, their claims against the St. Tammany Parish School Board ("school board"). We affirm in compliance with Uniform Rules, Courts of Appeal Rule 2-16-.1(B).

We borrow from our earlier opinion, **Miller v. St. Tammany Parish School Board**, 2008-2582, 2008-2583, p. 2 (La. App. 1st Cir. 9/11/09) (*unpublished opinion*):

> [Janet Hernandez] Miller was employed by the school board as a full-time special education teacher and was assigned to Clearwood Junior High School (Clearwood) in Slidell, Louisiana. One of Ms. Miller's two students was D.S., an autistic child. On January 23, 2001, D.S. began engaging in self-injurious behavior—a symptom of his autism—when Ms. Miller and others intervened to prevent him from injuring himself. For approximately 50 minutes, Ms. Miller and others struggled with D.S., who at the time, was 14 years old, over 5 feet 5 inches, and weighed approximately 185 pounds. As a result of this struggle, Ms. Miller allegedly sustained injuries which have rendered her disabled.
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> On January 24, 2002, Ms. Miller filed a petition against the school board, asserting that because she was injured as a result of an "assault or battery" by a student, she was entitled to sick leave without reduction in pay for the duration of her disability pursuant to the provisions of La. R.S. 17:1201(C)(1)(a).[1] By separate petition, Ms. Miller also filed suit on the same date against P.D. Slocum, as the administrator of the estate of his minor child and ABC Insurance Company, for damages arising from the incident. [Metropolitan] was later substituted for ABC Insurance Company, and the two suits were subsequently consolidated.

The school board intervened in Ms. Miller's suit against Slocum and Metropolitan, claiming that it was subrogated to the rights of Ms. Miller for all sums the school board had already paid (or will be obligated to pay in the future) to Ms. Miller and seeking reimbursement for those sums out of any damages or recovery received by Ms. Miller against Slocum and Metropolitan. In response,

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[1] The plaintiff was receiving workers' compensation benefits.

Slocum and Metropolitan filed a reconventional demand against the school board, claiming that they were entitled to indemnity, or in the alternative, contribution, from the school board under the provisions of La. C.C. art. 2318, for its negligence and since D.S. was, at the time of the incident, under the care of the school board. The school board responded to the reconventional demand by filing a peremptory exception raising the objection of no cause of action, contending that Slocum and Metropolitan's claims against it were eliminated by the 1996 amendments to La. C.C. art. 2323 and 2324.[2] After a hearing on July 21, 2010, the trial court rendered judgment sustaining the exception and dismissed the claims of Slocum and Metropolitan against the school board. A judgment in accordance with the trial court's ruling was signed on July 26, 2010, and it is from this judgment that Slocum and Metropolitan appeal.

In reviewing a trial court's ruling on an exception of no cause of action, the appellate court should subject the case to *de novo* review because the exception raises a question of law, and the trial court's decision is based only on the sufficiency of the petition. **Fink v. Bryant**, 2001-0987, p. 4 (La. 11/28/01), 801 So.2d 346, 349. The peremptory exception raising the objection of no cause of action is designed to test the legal sufficiency of the petition by determining whether the petitioner is afforded a remedy in law based on the facts alleged in the pleading. **Fink**, 2001-0987 at p. 3, 801 So.2d at 348-349. No evidence may be introduced to support or controvert the objection that the petition fails to state a cause of action, as the exception is triable on the face of the pleadings, and for the purposes of determining the issues raised by the exception, the well-pleaded facts in the petition must be accepted as true. **Fink**, 2001-0987 at pp. 3-4, 801 So.2d at 349. A petition should not be dismissed for failure to state a cause of action unless it appears beyond doubt that the plaintiff can prove no set of facts in support of any

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2 See 1996 La. Acts, 1st Ex. Sess., No. 3, § 1, eff. April 16, 1996.

claim. **Fink**, 2001-0987 at p. 4, 801 So.2d at 349.

On appeal, Slocum and Metropolitan contend that the trial court erred in sustaining the exception and in dismissing their claim for indemnity against the school board. Essentially, Slocum and Metropolitan contend that they are entitled to indemnity from the school board pursuant to express provisions of La. C.C. art. 2318, which provides, in pertinent part: "The father and the mother are responsible for the damage occasioned by their minor child, who resides with them or who has been placed by them under the care of other persons, *reserving to them recourse against those persons*." (Emphasis added). Slocum and Metropolitan contend that since Ms. Miller's claims against Slocum for damage cause by his son, D.S., are predicated on La. C.C. 2318, and since Slocum placed D.S. under the care of the school board, Slocum and Metropolitan are entitled to recourse—indemnity, or alternatively, contribution—against the school board to the extent of his liability to Ms. Miller.

In **White v. Naquin**, 500 So.2d 436 (La. App. 1st Cir. 1986), another panel of this court was presented with virtually identical facts and the same issue of whether a defendant/third-party plaintiff could obtain indemnification from the plaintiff's employer, when the plaintiff received workers' compensation benefits for the injury sued upon. In **White**, the plaintiff was a bus driver for the Ascension Parish School Board and was injured when she bumped into or was tripped by a minor student on the grounds of East Ascension High School. The plaintiff was paid workers' compensation benefits for the injury she sustained, but the plaintiff also filed suit against the student's father (Naquin) and his homeowner's insurer. Naquin and his insurer filed a third-party demand against the Ascension Parish School Board seeking indemnification of any amounts for which they were held liable on the basis that the employees of East Ascension High School failed to properly supervise Naquin's daughter. The Ascension Parish School Board sought

dismissal of that claim, contending that its liability was limited to workers' compensation benefits. Naquin contended that the Ascension Parish School Board was liable for indemnification, not in its capacity as the plaintiff's employer, but in its capacity as the custodian of Naquin's daughter while she was on school grounds. In rejecting this "dual capacity" argument, this court concluded that it would be inconsistent with the spirit of the Workers' Compensation Act to require the Ascension Parish School Board to indemnify Naquin for damages to the plaintiff/employee, because it would allow the plaintiff/employee to recover tort damages, albeit indirectly, from the Ascension Parish School Board, when its liability to the injured employee is limited exclusively to the payment of workers' compensation benefits. **White**, 500 So.2d at 437-438.

A dissent was filed in **White**, which argued that the majority had confused the issue of the Ascension Parish School Board's liability to the plaintiff under workers' compensation with its completely separate liability to Naquin under La. C.C. art. 2318, and that the defendant/third party plaintiff (Naquin) had the right to seek indemnity. Slocum and Metropolitan urge us to follow the dissenting opinion in **White**; however, the majority's holding in **White**—that a defendant/third-party plaintiff is not entitled to indemnification from the plaintiff's employer, when the plaintiff received workers' compensation benefits for the injury sued upon—has been the law of this circuit since 1986. Moreover, the supreme court, in **Stelly v. Overhead Door Company of Baton Rouge**, 94-0569 p. 5 (La. 12/8/94), 646 So.2d 905, 910, has cited this court's decision in **White** with approval.

Accordingly, because we are unable to distinguish **White** from the case before us, we are bound by its holding.[3] Therefore, after reviewing Slocum and Metropolitan's reconventional demand against the school board and accepting all

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[3] Without an *en banc* reversal, we are bound by a previous decision of this court based on the rules of the First Circuit Court of Appeal.

of those allegations as true for purposes of the exception raising the objection of no cause of action, we agree with the trial court and find that Slocum and Metropolitan have not stated a cause of action for which the law affords a remedy. Under **White**, Slocum and Metropolitan are not entitled to indemnification from the Ms. Miller's employer, the school board, since Ms. Miller has received workers' compensation benefits for the injury sued upon.

Therefore, the July 26, 2010 judgment of the trial court sustaining the school board's peremptory exception raising the objection of no cause of action and dismissing Slocum and Metropolitan's claims against the school board is affirmed. All costs of this appeal are assessed to the appellants, P.D. Slocum and Metropolitan Property & Casualty Insurance Company.

AFFIRMED.