

RECEIVED

Mar 21 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No.: 2022-000981

Ralph Hooker as Personal Representative of the Estate of Linda Hooker, Appellant,
v.

McDonald's Corporation, McDonald's Real Estate Company, JKS & K, Inc., Pam Hampton, and
Proline Striping Service, Inc, Defendants,

Of which McDonald's Corporation, McDonald's Real Estate Company, JKS & K, Inc., and Pam
Hampton are Respondents.

FINAL INITIAL BRIEF OF APPELLANT

J. Eric Cavanaugh, S.C. Bar No. 100044
Joseph O. Thickens, S.C. Bar No. 101398
William H. Yarborough, Jr., S.C. Bar No. 102868
Cavanaugh & Thickens, LLC
1717 Marion Street (29201)
Post Office Box 2409
Columbia, SC 29202
Tel: (803) 888-2200
Fax: (803) 888-2219
eric@ctlawsc.com
joe@ctlawsc.com
will@ctlawsc.com

AND

Clyde C. Dean, Jr., S.C. Bar No. 1606
The Dean Law Firm, LLC
146 Centre St.
Orangeburg, SC 29115

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF CONTENTS

<i>TABLE OF AUTHORITIES</i>	<i>iii</i>
<i>STATEMENT OF THE ISSUES ON APPEAL</i>	<i>1</i>
<i>STATEMENT OF THE CASE</i>	<i>1</i>
<i>STANDARD OF REVIEW</i>	<i>2</i>
<i>ARGUMENT</i>	<i>3</i>
<i>CONCLUSION</i>	<i>5</i>

TABLE OF AUTHORITIES

Cases

<i>Baril v. Aiken Regl Med. Ctrs.</i> , 352 S.C. 271, 573 S.E.2d 830 (Ct. App. 2002).....	2
<i>Bayle v. South Carolina Dept of Transp.</i> , 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).....	3
<i>Ferguson v. Charleston Lincoln Mercury, Inc.</i> , 349 S.C. 558, 563, 564 S.E.2d 94, 96 (2002).....	2
<i>Fleming v. Rose</i> , 350 S.C. 488, 567 S.E.2d 857 (2002); <i>Regions Bank v. Schmauch</i> , 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003)	2
<i>Hendricks v. Clemson Univ.</i> , 353 S.C. 449, 578 S.E.2d 711 (2003)	2
<i>Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers</i> , 355 S.C. 104, 584 S.E.2d 375 (2003).....	2
<i>McNair v. Rainsford</i> , 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998)	2
<i>Redwend Ltd. Pship v. Edwards</i> , 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003)	2
<i>Regions Bank v. Schmauch</i> , 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003).....	2,3
<i>Russell v. Wachovia Bank, N.A.</i> , 353 S.C. 208, 578 S.E.2d 329 (2003).....	3
<i>Sauner v. Public Serv. Auth.</i> , 354 S.C. 397, 581 S.E.2d 161 (2003).....	2
<i>Young v. South Carolina Dept of Corrections</i> , 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999).....	2
<i>Russell v. Wachovia Bank, N.A.</i> , 353 S.C. 208, 578 S.E.2d 329 (2003).....	2

Rules

Rule 25(a), SCRCP.....	1
Rule 56(c), SCRCP	2, 3

STATEMENT OF THE ISSUES ON APPEAL

Did the trial court err in granting summary judgment to Respondents?

STATEMENT OF THE CASE

The underlying action arises out of a slip-and-fall accident that occurred at a McDonald's franchised location at 8940 Old Number Six Highway in Orangeburg County on or about July 28, 2018. Appellant initially brought suit against Respondents McDonald's Corporation, McDonald's Real Estate Company, J K S & K, Inc., the franchisee, and Pam Hampton, the store manager. Appellant alleged, in relevant part, that she slipped and fell on a white painted line in the parking lot. Complaint, March 30, 2020, at ¶¶ 12 – 16 (R. pp. 015-016). After initial discovery, Appellant amended her Complaint to add Proline Striping Service, LLC, the entity that allegedly painted/striped the parking lot at the direction of McDonald's Corporation and/or its franchisee. Amended Complaint, October 23, 2020, at ¶¶ 13 – 19 (R. p. 023). During the pendency of this appeal, Appellant and Respondent Proline Striping Service, LLC, were able to reach a confidential settlement and resolve the claims brought against Proline Striping Service, LLC.

Appellant passed away from unrelated causes during the pendency of the litigation and her husband, Ralph Hooker, was appointed the personal representative of her estate. Counsel for Appellant filed a Statement Noting Death pursuant to Rule 25, South Carolina Rules of Civil Procedure. Statement Noting Death, March 12, 2021. Despite the filing, the caption was not amended to reflect the change in status.

Respondents each filed motions for summary judgment, Appellant filed a Memorandum in Opposition and a hearing was held on February 2, 2022. The trial court ultimately granted each of the Respondents summary judgment "due to the absence of even a scintilla of competent evidence as to how or why Linda Hooker went to the ground on July 28, 2018." Order Granting

Summary Judgment, June 20, 2022, at p. 5 (R. p. 005). Appellant filed a Motion to Reconsider that was subsequently denied. Appellant appeals the trial court order and would show that despite Appellant passing away without giving a statement under oath subject to cross examination, the testimony of the two people with her present more than a scintilla of evidence that the painted lines caused Appellant's fall.

STANDARD OF REVIEW

The appellate Court applies the same standard which governs the trial court under Rule 56(c), SCRPC when reviewing the grant of a summary judgment motion: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003); *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002); *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003); *Redwend Ltd. Pship v. Edwards*, 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (2003); *Hendricks v. Clemson Univ.*, 353 S.C. 449, 578 S.E.2d 711 (2003); *McNair v. Rainsford*, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998); *see also Laurens Emergency Med. Specialists*, 355 S.C. at 108, 584 S.E.2d at 377. If triable issues exist, those issues must go to the jury. *Baril v. Aiken Regl Med. Ctrs.*, 352 S.C. 271, 573 S.E.2d 830 (Ct. App. 2002); *Young v. South Carolina Dept of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999).

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 578 S.E.2d 329 (2003); *Regions Bank*, 354 S.C. at 659, 582 S.E.2d at 438; Rule 56(c), SCRPC. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. *Bayle v. South Carolina Dept of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).

ARGUMENT

The Court's Order dated June 20, 2022 granted summary judgment solely due to the finding of an "absence of even a scintilla of competent evidence as to how or why Linda Hooker went to the ground on July 28, 2018." Order Granting Summary Judgment, June 10, 2022, at p. 5 (R. p. 005). However, the record presented both in Appellant's Memorandum in Opposition to the Motions for Summary Judgment and presented at the hearing of the same contains direct witness evidence that the cause of the fall was the painted white lines in the parking lot. The facts immediately preceding the fall, as presented by counsel for Respondent's at the summary judgment hearing, show that Appellant was walking behind Ralph Hooker and her daughter, Michelle Foxworth, as they left McDonald's. Transcript of Hearing, February 2, 2022, at p. 4 (R. p. 123). Appellant began slipping, Ralph Hooker and Michelle Foxworth heard something happening, turned around and saw her in the process of falling. *Id.* The following testimony from Ralph Hooker's was attached as an exhibit to Appellant's Memorandum in Opposition, read aloud at the hearing, and quoted in Appellant's Motion to Reconsider:

A: And I could see where she slipped. I could see it. You could see the mark.

Q: You could?

A: Yes.

Q: Okay.

A: Where she slipped.

Q: What did it look like?

A: Just you could see like it smeared a little bit. That's all. That's all I could see. You could see it.

Q: It was a smear?
A: It was a smear?
Q: Okay. The paint was dry, correct?
A: No. The paint was wet.
Q: Okay.
A: From the rain, it was still rain --

Ralph Hooker Deposition dated 6/3/2021, p. 74:9-24 (R. p. 166, lines 9-24); Transcript of Hearing, February 2, 2022, at pp. 19 – 20 (R. p.p. 138-139); Motion to Reconsider, June 20, 2022, at p. 3 (R. p. 117).

After Appellant fell, she was unable to move until paramedics arrived. A screenshot of responding authorities video footage, that was attached to Appellant’s Memorandum in Opposition to the Motions for Summary Judgment, shows Appellant still seated within the crosswalk right at the painted lines. *See* Memorandum in Opposition to Motions for Summary Judgment, February 1, 2022, at p. 2 (R. p. 076). Further testimony was also presented to the trial court that Michelle Foxworth, also experienced the slipperiness of the painted lines while she was attending to her mother who was still on the ground. Michelle Foxworth Deposition; June 3, 2021, p. 40:2–10 (R. p. 176, lines 2-10).

In the light most favorable to Appellant, the above testimony and evidence establishes the fact that Ralph Hooker saw a smear beginning on the painted line that indicates the exact location where Appellant lost traction and her slip and fall began. The screenshot of Appellant’s location following the fall puts her right at the lines that allegedly caused the fall. Appellant’s daughter testified that she also experienced the condition that allegedly caused Appellant’s fall at the same time in the same place as Appellant. Accordingly, in the light most favorable to the non-moving party, there is at least a scintilla of evidence is that Ralph Hooker saw the cause of the Plaintiff’s fall: the slippery, wet painted lines.

CONCLUSION

Based on the foregoing, Appellant respectfully submits that this Court should reverse the circuit court's grant of Respondents' Motion for Summary Judgment because a scintilla of evidence as to what caused Appellant's fall is in the record.

RECEIVED

Mar 21 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No.: 2022-000981

Estate of Linda Hooker,.....Appellant,

v.

McDonald’s Corporation, McDonald’s Real Estate Company, JKS & K, Inc., Pam Hampton, and
Proline Striping Service, Inc.....Respondents.

PROOF OF SERVICE

I certify that I have served Appellant’s Final Initial Brief on all attorneys of record, by depositing a copy of it in the United States Mail, postage prepaid on March 21, 2023, addressed to the Respondents’ attorneys of record.

March 21, 2023

SIGNATURE PAGE FOLLOWS



J. Eric Cavanaugh, S.C. Bar No. 100044
Joseph O. Thickens, S.C. Bar No. 101398
William H. Yarborough, Jr., S.C. Bar No. 102868
Cavanaugh & Thickens, LLC
1717 Marion Street (29201)
Post Office Box 2409
Columbia, SC 29202
Tel: (803) 888-2200
Fax: (803) 888-2219
eric@ctlawsc.com
joe@ctlawsc.com
will@ctlawsc.com
Attorneys for Appellant

AND

Clyde C. Dean, Jr., S.C. Bar No. 1606
The Dean Law Firm, LLC
146 Centre St.
Orangeburg, SC 29115

Attorneys for Appellant