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**Jun 01 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

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Appellate Case No.: 2022-000082

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Case No. 2019-CP-26-005892

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RONALD L. MIMS

Appellant

vs.

DIANE W. RAY

Respondent.

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**PETITION FOR REHEARING**

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The Appellant requests a rehearing of the decision in this appeal on the following grounds:

This Court was asked to review the lower court's conclusion that the evidence generated only a single inference – that Appellant's negligence amounted to more than fifty percent (50.00%) of the total fault. Appellant presented evidence from which a jury could draw multiple conclusions to the contrary. The lower court improperly chose among those inferences, rather than leaving it to a jury, the exclusive decision maker when multiple inferences emerge from the evidence.

South Carolina has adopted a modified version of the traditional comparative negligence standard known as the "less than or equal to" approach. In this version, the plaintiff's cause of

action will be successful so long as their negligence does not exceed fifty percent (50.00%), or the combined total negligence of the other parties. *Singleton v. Sherer*, 377 S.C. 185, 205, 659 S.E.2d 196, 206 (Ct. App. 2008). “The determination of respective degrees of negligence attributable to the plaintiff and the defendant presents a question of fact for the jury, at least where conflicting inferences may be drawn.” *Hurd v. Williamsburg County*, 363 S.C. 421, 429, 611 S.E.2d 48, 492 (2005).

The lower court examined the evidence and took it upon itself to choose among several inferences to reach its conclusion, rather than allowing those conflicts to be resolved by a jury. Respondent testified she understood drivers have a duty to maintain a proper lookout, to yield the right-of-way, and to yield the right-of-way to pedestrians (R. p. 211, lines 11-22). A reasonable juror could conclude despite understanding these duties, Respondent violated these duties by failing to keep a proper lookout when she testified she did not see Appellant until she made contact with him (R. p. 211, lines 11-13). Respondent further testified that she drives on the street where the crash takes place every day (R. p. 213, line 25-p. 214, line 1) and is aware delivery trucks and pedestrians are often in the vicinity (R. p.214, line 2-p.215, line 4). A second juror could conclude a driver with this knowledge should have driven cautiously wide of the delivery truck to give her a better view of any potential pedestrians crossing adjacent to the same delivery truck. The same juror could conclude not doing so is a duty violation. These are only two simple, reasonable, alternative inferences a jury could reach from the evidence presented. It was improper for the lower court to do the job of a jury and select its own inferences to reach its conclusion.

### **CONCLUSION**

Arriving at its conclusion that Appellant’s negligence amounted to more than fifty percent (50.00%) of the total fault required choosing between multiple inferences emerging from the

evidence. A jury is the exclusive decision maker when presented with multiple inferences. The lower court took it upon itself to usurp this power and it is the imperative this Court correct this injustice.

For the foregoing reasons, Appellant respectfully requests rehearing in this matter.

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May 26, 2023  
North Charleston, South Carolina

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Appellant

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Respondent.

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CERTIFICATE OF SERVICE

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I certify that I have served the Petition for Rehearing on Diane Ray by depositing a copy of it in the United States mail, postage prepaid, on May 26, 2023 addressed to its attorneys of record as follows:

Christopher H. Pearce, Esq.  
L. Raymond Wells, Esq.  
Charles B. Jordan, Esq.  
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Myrtle Beach, SC 29577  
*Attorneys for Respondent*

Dated: May 26, 2023  
North Charleston, South Carolina

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May 26, 2023

**Via Email Only**

Jacklyn Orr  
South Carolina Court of Appeals  
1220 Senate Street  
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E: JOrr@sccourts.org

Re: Ronald L. Mims v. Diane W. Ray  
Appellate Case No.: 2022-000082

Dear Ms. Orr,

Enclosed for filing, please find Appellant's Petition for Rehearing and Certificate of Service of the same in the above referenced matter. A copy of the same is being sent to opposing counsel via U.S. mail and Email.

If you have any questions, or require additional information, please do not hesitate to contact me.

With kindest regards, I am,

Very truly yours,



Patrick T. Napolski

PTN

Enclosures

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