

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2012-212327
Case No. 2009-CP-46-3103

Felecia Dicks Wilson

Appellant

v.

Cedar Fair Entertainment Co.
Cedar Fair, LP d/b/a Carowinds
Amusement Park

Respondent.

[INITIAL] BRIEF OF APPELLANT

Felecia Dicks Wilson
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Appellant Pro Se

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN CHARGING THE JURY ON ASSUMPTION OF RISK?
2. DID THE TRIAL COURT ERR IN NOT CHARGING THE JURY ON COMPARATIVE NEGLIGENCE?

STATEMENT OF THE CASE

On July 19, 2009 Felecia Dicks Wilson brought this action alleging willful and wanton negligence against Cedar Fair Entertainment Company, Cedar Fair, LP d/b/a Carowinds Amusement Park. On July 20, 2006 Felecia Dicks Wilson sustained an injury to her lower back while exiting the "Wild Thornberry Log Ride". The amount of proposed judgment was \$150,000.00 (one hundred fifty thousand dollars) for the plaintiff. The case was tried on May 15, 2012 in the Court of Common Pleas. and judgment for the defendant was entered on May 17, 2012. The Appeal was filed on June 20, 2012.

FACTS

On July 20, 2006, Felecia Dicks Wilson attended Carowinds Amusement Park with her church youth group. Because of her disability she attended to the smaller children. Staying in the Nickelodeon area of the amusement park.

The plaintiff presented a case that proved there was an accident at the amusement park where her back was injured. The negligence was in that the attendant did not remain in place while Felecia was disembarking. While Felecia was in the process of exiting the log on the disabled side of the ride, another log came in to the loading/unloading area striking the log she was exiting. This caused her lower body to move forward while in a twisted position because of exiting, the upper body was stationary while she was holding the rails to exit. This action caused the injury to the lower back. The attendant had stepped away from the disabled side of the ride and was assisting on the general loading/unloading side.

ARGUMENTS

- I. BECAUSE THE COURT DID NOT ADVISE THE JURY OF COMPARTIVE NEGLIGENCE. THE COURT ONLY CHARGED THE JURY ON NEGLIGENCE IN GENERAL. SOUTH CAROLINA ADOPTED COMPARATIVE NEGLIGENCE AS ITS TORT STANDARD IN NELSON V. CONCRETE SUPPLY CO

South Carolina adopted Comparative Negligence as its Tort standard in NELSON V. CONCRETE SUPPLY CO. 303SC 243, 399 S.E. 2d 783 (1991) The Jury was given explanations of negligence. There was no mention of Comparative negligence.

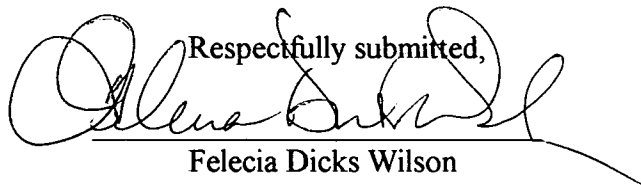
- II. THE COURT ADVISED THE JURY OF ASUMPTION OF RISK, WHEN THE DEFENDANT DID NOT CLAIM AN ASSUMPTION OF RISK DEFENSE. THE APELLANT SAID THAT THERE WASN'T ANY ASSUMED RISK OR DANGER.

The Jury was made to believe upon the direction of the court that there was a known element of danger. The defendant never claimed that the ride was dangerous. The defendant showed D-01 a DVD of a young girl enjoying the Wild Thornberry Log Ride. During the course of the trial assumption of risk was never discussed. The defendant never presented an assumed risk defense. There was no discussion of a presumption of danger. The defendant affirmed that there was no apparent danger associated with the amusement park ride. Transcripts of Proceedings pp 33-34,129-130,179-182,185-196 and 197-199

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court and award a monetary judgment of \$150,000.00 for actual, pain and suffering and punitive damages.

July 15, 2013

Respectfully submitted,


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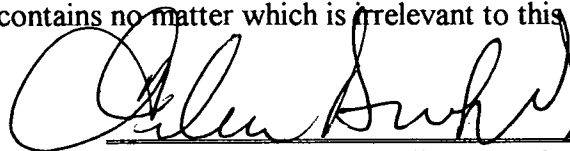
DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Judgment entered May 17,2012
2. Complaint;
3. Answer;
4. Transcript of Proceedings pp.33-34; 129-130;179-182;185-196;and 197-199
5. Defendant's Exhibits 1

I certify that this designation contains no matter which is irrelevant to this appeal.

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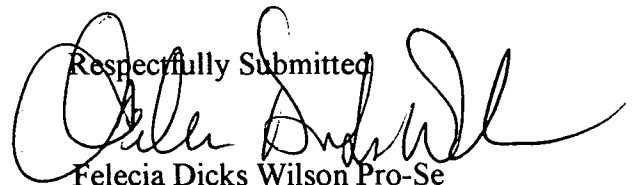
Respondent.

PROOF OF SERVICE

I certify that I have served the "Initial Brief" and "Designation of Matter" to, on Cedar Fair Entertainment Co. Cedar Fair, LP d/b/a Carowinds Amusement Park by depositing a copy of it in the United States Mail, postage prepaid, on July 15, 2013, addressed to the Respondent's Attorney of record Joseph E. Thoensen, Richardson Plowden & Robinson PA 1900 Barnwell Street Columbia, SC 29201

July 15, 2013

Respectfully Submitted



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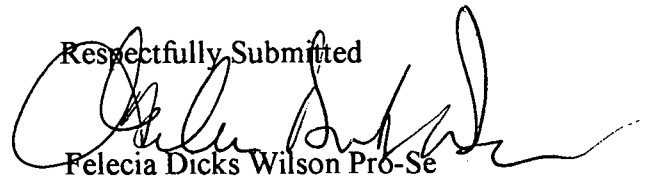
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