

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Cordelia Anderson, individually and  
as PR of the Estate of Dennis R.  
Anderson,

Plaintiff,

v.

Walgreen Co. and Bluffton WG,  
LLC,

Defendants.

Civil Action No. 2021-CP-07-01049

**ORDER  
GRANTING SUMMARY JUDGMENT TO  
DEFENDANTS WALGREEN CO. AND  
BLUFFTON WG, LLC**

Walgreen Co.,

Third-Party Plaintiff,

v.

Husmann Services Corporation,

Third-Party Defendant.

**RECEIVED**

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SC Court of Appeals

**THIS MATTER CAME BEFORE ME** for argument on February 27, 2024 on Defendants Walgreen Co. and Bluffton WG, LLC (collectively hereinafter, "Walgreens") Motion for Summary Judgment filed on October 27, 2023. Present for Plaintiff was Justin D. Bice, Esq., and present for Walgreens was William H. Cox, III, Esq. Joshua G. Hill, Esq., counsel for Third-Party Defendant Husmann Services Corporation (hereinafter, "Husmann") was also present. For the reasons stated herein and below, the Court **GRANTS** Walgreens' Motion for Summary Judgment.

## **FACTS AND PROCEDURAL BACKGROUND**

On March 13, 2020, Hussmann sent its employee, Dennis Anderson, a licensed heating and air technician, to perform repairs to the Walgreens' heating and air system. Mr. Anderson was replacing a motor in an air conditioning unit located on the roof of the Walgreens. On March 14, 2020, Walgreens employees discovered Mr. Anderson deceased on the roof and contacted Beaufort County Sheriff's Office to respond.

The Beaufort County investigation confirmed that there was no evidence of foul-play and power to the air conditioning unit was disconnected. An autopsy of Mr. Anderson's body was performed at the Medical University of South Carolina. The autopsy confirmed there was no evidence of an electrical injury. Instead, the autopsy found that Mr. Anderson died naturally from his enlarged heart condition.

Plaintiff filed this premises liability action against Walgreens seeking damages for the death of Dennis Anderson allegedly caused by Walgreens' negligent acts and omissions. Walgreens moved for summary judgment as to all of Plaintiff's claims on the basis that there is no question of material fact that Walgreens did not breach the duty owed to Mr. Anderson and that the cause of Mr. Anderson's death was a natural heart condition.

## **LEGAL STANDARD**

Summary judgment is appropriate when the movant demonstrates that the material facts of the case are undisputed, and the moving party is entitled to judgment as a matter of law. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991); Rule 56(c), SCRCP. If the moving party meets its initial burden of showing an absence of evidentiary support for the nonmoving party's case, the nonmoving party cannot simply

rest on mere allegations or denials contained in the pleadings. *Singleton v. Sherer*, 377 S.C. 185, 197–98, 659 S.E.2d 196, 203 (Ct. App. 2008). Instead, the nonmoving party must come forward with specific evidentiary support showing there is a genuine dispute for trial. *Rife v. Hitachi Const. Mach. Co.*, 363 S.C. 209, 213, 609 S.E.2d 565, 568 (Ct. App. 2005). “[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *BPS, Inc. v. Worthy*, 362 S.C. 319, 326, 608 S.E.2d 155, 159 (Ct. App. 2005).

### **ANALYSIS**

**a. Walgreens does not owe a duty to supervise the work of an independent contractor.**

Plaintiff asserts that Walgreens owed a duty to ensure Mr. Anderson’s protection and safety. Notwithstanding Plaintiff’s desire for Walgreens to effectively supervise Mr. Anderson perform his work, Walgreens had no duty to do so.

To prosecute this case, Plaintiff must demonstrate that Walgreens owed Mr. Anderson the duty to accompany him to the roof and remain with him at all times while he was on their property. See *Steinke v. S.C. Dep’t of Labor, Licensing & Regulation*, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999) (requiring circuit court to determine as a matter of law whether a “particular duty” exists before sending the case to a jury). This Court must first determine, as a matter of law, whether South Carolina recognizes the particular duty asserted by Plaintiff. *Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 391, 701 S.E.2d 776, 780–81 (Ct. App. 2010) (citing *Moore v. Weinberg*, 373 S.C. 209, 221, 644 S.E.2d 740, 746 (Ct.App.2007)). If there is no duty, then Walgreens is entitled to a judgment as a matter of law. *Id.* (citing *Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 72, 651 S.E.2d 305, 309 (2007)). The *Nelson* Court reaffirmed the *Steinke* Court’s holding

that a plaintiff must identify a duty that the defendant has to protect her from a particular harm to merit consideration of her claim by a jury. *Id.*

Mr. Anderson was an invitee on the Defendants' premises because he was a workmen invited to fix the air conditioning unit. *Sims v. Giles*, 343 S.C. 708, 717, 541 S.E.2d 857, 862 (Ct. App. 2001)(citations omitted). Because Mr. Anderson was an invitee on the premises, the duty of care owed was to warn of latent or hidden dangers on the property of which Walgreens had knowledge or should have knowledge. *Id.* citing *Chandler v. Charleston Doughnut Corp.*, 305 S.C. 123, 406 S.E.2d 361 (1991). The duty to warn contrasts greatly with the duty asserted by Plaintiff: that Walgreens was required to send an employee to accompany Mr. Anderson on the roof while he performed his work. Plaintiff's argument would amount to Walgreens owing the duty to supervise a licensed independent subcontractor. What Plaintiff asks this court to recognize as a "duty" falls outside the currently-established duties of care owed by a property owner. The case law in South Carolina is clear, and our courts have not imposed such a duty on a property owner.

As a matter of law, Defendants are granted summary judgment as there is no duty to supervise a licensed independent subcontractor while he performs his work.

**b. Walgreens did not breach their duty to warn of latent defects.**

The parties do not dispute that Mr. Anderson was employed by Hussmann and an "invitee" on Walgreens' premises because he was a workmen invited to fix the Walgreens' air conditioning unit. *Sims v. Giles*, 343 S.C. 708, 717, 541 S.E.2d 857, 862 (Ct. App. 2001)(citations omitted). Generally, the duty of care owed by a property owner to an invitee is to warn of and protect the invitee from injury caused by any latent or hidden

dangers on the property for which the owner had or should have knowledge. *Id.* citing *Chandler v. Charleston Doughnut Corp.*, 305 S.C. 123, 406 S.E.2d 361 (1991). However, the degree of care required is commensurate with the particular circumstances involved, including the age and capacity of the invitee. *Larimore v. Carolina Power & Light*, 340 S.C. 438, 445, 531 S.E.2d 535, 538 (Ct. App. 2000).

In *Larimore*, where plaintiff was an experienced contractor, the court found that there was no basis to hold the defendant liable as a landowner as the dangerous condition on the property that caused plaintiff's injury, a trench, was known by plaintiff and therefore plaintiff did not lack knowledge of the dangerous condition. *Larimore v. Carolina Power & Light*, 340 S.C. 438, 447, 531 S.E.2d 535, 540 (Ct. App. 2000).

Here, Plaintiff testified that Mr. Anderson was a licensed heating and air mechanic, with 20 years of work experience and that Mr. Anderson previously owned and operated his own heating and air company and held a general contractors license in South Carolina.<sup>1</sup> The Court finds that there is no question of material fact that Mr. Anderson is akin to the experienced contractor in *Larimore*. Therefore, Walgreens' duty of care is limited to warning of and protecting Mr. Anderson from injury caused by any latent dangers that were not known by Mr. Anderson.

Plaintiff asserts that Walgreens not only knew of, but they created, the latent dangers that caused Mr. Anderson's death: working alone on the roof and working with an energized heating and air system. However, Plaintiff has failed to present any evidence that Mr. Anderson lacked knowledge of these conditions or that Mr. Anderson perceived the conditions as dangerous. Contrary to Plaintiff's assertions, the evidence in

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<sup>1</sup> Depo. Cordelia Anderson page 11, lines 24-25, page 13, lines 10-13, 18-22, page 17, lines 12-20, page 26, lines 1-2, 7-8, 12-20

the record is clear that Mr. Anderson arrived at Walgreens alone and Mr. Anderson performed his work alone. These facts coupled with the facts of Mr. Anderson's 20 plus years of experience in the heating and air industry, the Court finds that the only reasonable inference is that Mr. Anderson had or should have had knowledge that he was working alone on the roof and that he was working with an energized heating and air system. Therefore, similar to the property owner in *Larimore*, Walgreens' did not breach its duty to warn of or protect Mr. Anderson from latent dangers unknown to Mr. Anderson because there is no latent danger at issue. As a matter of law, summary judgment is granted as there is no question of material fact that Walgreens did not breach their duty owed to Mr. Anderson.

**c. Decedent's enlarged heart is the cause of death.**

Plaintiff's identified Dr. Donald Jason, MD, JD as an expert witness in this matter. Dr. Jason issued multiple letters providing his opinions pertaining to his review of the facts and evidence on the record. Dr. Jason opines, with reasonable medical probability, that heart failure due to dilated cardiomyopathy was the cause of death of Dennis Anderson. Dilated cardiomyopathy is defined as an enlarged (dilated) left ventricle of the heart.<sup>2</sup>

Dr. Ellen C. Riemer, MD, JD, a pathologist with the Medical University of South Carolina, performed an autopsy of Dennis Anderson's body. Dr. Riemer's diagnosis and significant findings were cardiomegaly – left ventricular dilation and no evidence of recent injury. Dr. Riemer determined that cardiomegaly caused Mr. Anderson's heart failure and death. Cardiomegaly is defined as an enlarged heart.<sup>3</sup>

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<sup>2</sup> [Cardiomyopathy - Definition - Mayo Clinic](https://www.mayoclinic.org/diseases-conditions/cardiomyopathy/symptoms-causes/syc-20370709) <https://www.mayoclinic.org/diseases-conditions/cardiomyopathy/symptoms-causes/syc-20370709>

<sup>3</sup> [Cardiomegaly - Definition - Mayo Clinic](https://www.mayoclinic.org/diseases-conditions/enlarged-heart/symptoms-causes/syc-20355436) <https://www.mayoclinic.org/diseases-conditions/enlarged-heart/symptoms-causes/syc-20355436>

The Court finds that there is no question of material fact that Mr. Anderson's death was caused by his enlarged heart and not by any act or omission of Walgreens. Therefore, summary judgment is granted as a matter of law because Mr. Anderson's enlarged heart caused his death.

**d. Walgreens employees did not negligently handle decedent's body.**

The Plaintiff alleged that Walgreens had the duty to exercise ordinary care to properly care for Mr. Anderson's body after he died on the premises. Plaintiff alleges that Walgreens breached their duty by indecent handling, desecration, and unwarranted exposure of Mr. Anderson's body to the elements after his death by leaving him alone on the roof. However, the Court finds the evidence is clear that upon discovery of the deceased body, Walgreens did not handle or desecrate the body in any way. Also, the Court finds Walgreens immediately contacted the Beaufort County Sheriff's Office for assistance once it had notice of the deceased body which was proper under the circumstances. Therefore, summary judgment is granted as a matter of law as to Plaintiff's negligent handling of a body claim.

**CONCLUSION**

For the reasons explained herein, the Court **GRANTS** Walgreens Motion for Summary Judgment.

**IT IS SO ORDERED!**

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The Honorable B. Alex Hyman

Beaufort, South Carolina

April \_\_, 2024



Beaufort Common Pleas

**Case Caption:** Cordelia Anderson , plaintiff, et al VS Walgreen Co , defendant, et al

**Case Number:** 2021CP0701049

**Type:** Order/Summary Judgment

15th Circuit Resident Judge

s/ B. Alex Hyman