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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

William A. McKinnon, Circuit Court Judge

Appellate Case No. 2023-0001427

Lisa Weston and Brandon Weston ..... Appellants,

v.

Wal-Mart Stores East, LP d/b/a Wal-Mart Store #1286,
John Doe, Danica Adams and the City of Columbia ..... Defendants,

Of Which, Wal-Mart Stores East, LP d/b/a Wal-Mart Store #1286 and
Danica Adams are the ..... Respondents.

BRIEF OF APPELLANTS

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2. DID THE LOWER COURT ERR IN GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT BECAUSE APPELLANTS HAD ESTABLISHED GENUINE ISSUES OF MATERIAL FACT FROM WHICH A REASONABLE JURY COULD FIND THAT THE APPELLANTS MET THEIR BURDEN OF PROVING THE ELEMENTS OF DEFAMATION, INTENTIONAL INFLICITION OF EMOTIONAL DISTRESS, FALSE IMPRISONMENT AND NEGLIGENCE.

STATEMENT OF THE CASE

On June 2, 2021, Lisa Weston and Brandon Weston filed separate complaints against Wal-Mart Stores East, LP, John Doe, Danica Adams and the City of Columbia alleging defamation, false imprisonment, intentional infliction of emotional distress, assault and negligence. (R. pp. 23-39). Defendant Wal-Mart Stores East, LP filed answers to each complaint on July 1, 2021. (R. pp. 40-59). Defendant City of Columbia filed answers to each complaint on July 7, 2021 (R. pp. 60-71). Answers were never entered on behalf of Defendant Danica Adams and John Doe.

Appellants' depositions were taken on June 8, 2022. Additionally, Respondent Danica Adams' deposition was taken as was that of two City of Columbia police officers – Officer Gabrielle Mihelic and Officer Chelsea Bowen. Defendant City of Columbia filed its Summary Judgment Motions on December 7, 2022 (R. pp. 72-75). Even though Respondents' counsel had not appeared on behalf of Doe or Adams, summary judgment motions were filed on behalf of Respondents Wal-Mart Stores East, LP, John Doe and Danica Adams on December 12, 2022. (R. pp. 76-79). A consent

order consolidating the two civil actions was signed by the Honorable Jocelyn Newman on December 30, 2022. (R. pp. 3-6).

The City of Columbia's Motion for Summary Judgment was heard by the Honorable William a McKinnon on July 24, 2023. Before the Court were Defendant City of Columbia's memorandum, video of the incident that makes the basis of the lawsuit, and deposition transcripts from Respondents Danica Adams (Barber), Officer Mihelich and Appellants. In an order dated July 24, 2023, Judge McKinnon granted partial summary judgment as to the City of Columbia on the claims of defamation, intentional infliction of emotional distress and Assault and Battery. (R. pp. 7-11) Judge McKinnon denied Defendant City of Columbia's summary motion with regards to the causes of action of False Imprisonment and Negligence.

On July 26, 2023, Judge McKinnon heard Respondents' Motion for Summary Judgment which was granted in full by an Order dated August 8, 2023. (R. pp. 12-18). Before the Court in the July 26, 2023 hearing were Respondents' memorandum, video of the incident that makes the basis of the lawsuit, and deposition transcripts from Respondent Danica Adams (Barber), Officer Mihelich and Appellants. (R. pp. 76-77; R. pp. 99-201)

Appellants subsequently filed a Motion to Reconsider on August 18, 2023 which was denied without a hearing by Judge McKinnon on August 29, 2023. (R. pp. 202-205) The lower court's orders with regards to Respondents' Motion for Summary Judgment are the basis of this appeal. On September 6, 2023, the Notice of Appeal was served on Respondents and Defendant City of Columbia (R. p. 327).

FACTS

On June 11, 2019, Mr. and Mrs. Weston entered the Wal-Mart store on Garners Ferry Road

in Richland County with the primary purpose to purchase 3 televisions. The three televisions were purchased and paid for in the electronics department near the back of the store. (R. p. 231, lines 8-11, 23-24; R. p. 234, lines 14-18; R. p. 278, lines 19-24). Once they were purchased, employees of Wal-Mart went to the back of the store to retrieve the purchased televisions. (R. pp. 231-234; R. p. 279, lines 1-5). Wal-mart employees also retrieved a cart for the Westons to transport the televisions to the front of the store and assisted them in getting the televisions outside the store. (R. p. 280, line 12 – R. p. 281, lines 3; R. p. 282, lines 1-5; R. p. 285, lines 1-20; R. p. 232, lines 5-8; R. p. 235, lines 22 – R. p. 236 line 6; R. p. 252, lines 19-22; R. p. 272, lines 14-18).

Officers from the City of Columbia police department were already at the incident location when the Westons were purchasing their televisions. (R. p. 294, lines 20 – R. p. 295, line 11). Wal-mart had called the City of Columbia Police Department for assistance earlier in the day for a suspected shoplifting incident. (R. p. 294, lines 20 – R. p. 295. Line 11; R. 298-300). The officers were still on scene and Officer Mihelic was in the Asset Protection Room with Respondent Adams when the Appellants were leaving the store. (R. p. 296, lines 319). Respondent Adams left the Asset Protection Room after she was beckoned to the front of the store. (R. p. 296, lines 3-19, R. p. 329 (usb drive)). Officer Mihelic, without being requested to do so, followed Respondent Adams out of the Asset Protection Room to the front of the store where the Appellants were attempting to roll their purchased televisions to their vehicle. (R. p. 296, lines 3-19, R. p. 329 (usb drive)).

While Appellants were immediately outside the Wal-Mart Store, Officer Mihelic told the Westons three separate times that they were not allowed to leave. (R. p. 329 (usb drive)) Ms. Adams said that she did not believe that the televisions were paid for and additionally told the Westons they were not allowed to leave with the televisions until they showed their receipt. (R. p. 232, lines 14-

16, line 25; R. p. 233, lines 1-4; R. p.241, line 5 – p. 242, line 7; R. p. 243, lines 3-19; R. p. 244, line 13 – R. p. 245, line 9; R. p. 263, lines 4-6; R. p. 266, line 22 – R. p. 267, line 10; R. p. 275, lines 2-10; R. p. 282, lines 6-17; R. p. 283, lines 14 – R. p. 284, line 6; R. p. 290, lines 10-17). Once Mrs. Weston provided the receipt to Ms. Adams, Officer Mihelic took the receipt from Mrs. Adams and proceeded to check the SKU numbers on the TV with the receipt. (R. p. 329 (usb drive); R. p. 305, lines 6-9). At no time during the interaction, did Ms. Adams or a police officer ask any other employee of Wal-mart if the purchase of the televisions had indeed occurred. (R. p. 234, lines 7-17; R. p. 247, lines 18-24; R. p. 269, lines 2-21; R. p. 271, lines 2-5; R. p. 283, lines 14-16; R. p. 306, lines 13-15). The Westons repeatedly asked why they were required to show their receipt (R. p. 329 (usb drive)). Both the City of Columbia police officer and Ms. Adams stated that it was Wal-mart's policy. At no time during the interaction was the actual policy shown to the Westons.

STANDARD OF REVIEW

"When reviewing the grant of a summary judgment motion, the appellate court applies the same standard of review as the trial court under Rule 56(c), [South Carolina Rules of Civil Procedure]." *Holst v. KCI Konecranes Intl. Corp.*, 390 S.C. 29, 35, 699 S.E.2d 915, 916 (Ct. App. 2010) (citing *Companion Prop. & Cas. Ins. Co. v. Airborne Exp., Inc.*, 369 S.C. 388, 390, 631 S.E.2d. 915, 916 (Ct. App. 2006) "Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law." *Id.* (citing *Wilson v. Moseley*, 327 S.C. 144, 146, 488 S.E.2d. 862, 863 (1997) "In ruling on a motion for summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party." *Id.*

"Summary judgment is not appropriate where further inquiry into the facts of the case is

desirable to clarify the application of the law." *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d. 196, 203 (Ct. App. 2008) (citing *Gadson v. Hembree*, 364 S.C. 316, 613 S.E.2d 196, 203 (2005) and *Montgomery v. CSX Transp., Inc.*, 362 S.C. 529, 608 S.E.2d 440 (Ct. App. 2004)). "Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Montgomery v. CSX Transp., Inc.*, 376 S.C. 37, 656 S.E.2d 20, 29 (2008). "The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." *Singleton,* 659 S.E.2d at 202.

"Summary judgment is a drastic remedy and should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues." *Id.* at 203. (citing *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 594 S.E.2d 455 (2004); *Hawkins v. City of Greenville*, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004)).

"In order to recover in a negligence action, the plaintiff must show (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach." *Crolley v. Hutchins*, 300 S.C. 355, 356, 387 S.E.2d. 716, 717 (Ct. App. 1989) (citing *South Carolina Insurance Company v. James C. Greene & Co.*, 290 S.C. 171, 348 S.E.2d 617 (Ct. App. 1986)).

"Summary judgment is appropriate only when it is **perfectly clear** that no genuine issue of material fact is involved and **further inquiry into the facts is not desirable** to clarify the application of the law." *Duck v. Wallace Associates, Inc.*, 313 S.C. 448, 451, 438 S.E.2d 269, 270 (Ct. App. 1993) (citing *Hook v. Rothstein*, 275 S.C. 187, 268 S.E. 2d 288 (1980) (emphasis added). "In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party..." *Dawkins v. Fields*,

354 S.C. 58, 580 S.E.2d 433 (S.C. 2003) "The judgment sought shall be rendered forthwith if the pleadings, deposition, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material facts and that the moving party is entitled to judgment as a matter of law." South Carolina Rules of Civil Procedure, Rule 56(c).

"Summary judgment should not be granted even when there is no dispute at to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts." *Huffman v. Sunshine Recycling, LLC*, 417 S.C. 514, 790 S.E.2d 410 (Ct. App. 2016) (quoting *Lanham v. Blue Cross & Blue Shield of S.C., Inc.* 349 S.C. 356, 362, 563 S.E2d 331, 333 (2002))

ARGUMENTS

I. THE LOWER COURT IMPROPERLY GRANTED RESPONDENTS' MOTION FOR SUMMARY JUDGMENT. APPELLANTS ESTABLISHED A GENUINE ISSUE OF MATERAL FACT REGARDING THE AGENCY RELATIONSHIP BETWEEN WAL-MART AND THE OFFICER(S) FROM THE CITY OF COLUMBIA.

"The test to determine agency is whether or not the purported principal has the right to control the conduct of his alleged agent." *Easler v. Hejaz Temple A.A.O.N.M.S. of Greenville*, 329 S.E.2d 753, 285 S.C. 348 (1985) (citing *Fernander v. Thigpen*, 278 S.C. 140, 144, 293 S.E.2d 424 (1982)) "Generally agency may be implied or inferred and may be circumstantially proved by the conduct of the purported agent exhibiting a pretense of authority with the knowledge of the alleged principal." *Fernander v. Thigpen*, 278 S.C. 140, 143, 426 293 S.E.2d 424 (1982) (citing *Fochtman v. Clanton's Auto Auction Sales*, 233 S.C. 581, 106 S.E.2d 272 (1958)) "The doctrine of apparent authority provides that the principal is bound by the acts of its agent when it has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and

customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption." *Fernander v. Thigpen*, 278 S.C. 140, 293 S.E.2d 424 (1982) (citing *Fochtman v. Clanton's Auto Auction Sales*) "The test to determine agency is whether or not the purported principal has the right to control the conduct of his alleged agent." *Fernander v. Thigpen*, 278 S.C. 140, 293 S.E.2d 424 (1982) The doctrine of apparent authority provides that the principal is bound by the acts of his agent when he has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption. *Spence v. Spence*, 628 S.E.2d 869, 879, 368 S.C. 106 (2006) (citing *Fernander v. Thigpen*, 278 S.C. 140, 143, 293 S.E.2d 424, 426 (1982); *Frasier v. Palmetto Homes of Florence, Inc.*, 323 S.C. 240, 244, 473 S.E.2d 865, 868-69 (Ct. App. 1996))

"Agency is a question of fact. The relationship of agency need not depend upon express appointment and acceptance, but may be, and frequently is, implied from the words and conduct of the parties and the circumstances of the particular case. If there are any facts tending to prove the relationship of agency, it then becomes a question for the jury." *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 226, 317 S.E.2d 748, 752 (Ct. App. 1984) (citing *Reid v. Kelly*, 274 S.C. 171, 262 S.E.2d 24 (1980); *Hunter v. Hyder*, 236 S.C. 378, 114 S.E.2d 493 (1960); *City of Greenville v. Washington American L.B. Club*, 205 S.C. 495, 32 S.E.2d 777 (1945)). In *Gathers*, County Police Officer Ackerman was on duty and was in the Harris Teeter supermarket taking a coffee break. While in Harris Teeter, he believed he saw Lois Gathers shoplift a pack of cigarettes. With permission of the assistant manager, but of his own accord, Officer Ackerman stopped Lois Gathers for shoplifting. Mrs. Gathers was taken into a glass walled office in full view of patrons of

the store and interrogated by Ackerman. Officer Ackerman then enlisted a female employee of Harris Teeter (Ms. Jansen) to assist him in searching Lois Gathers. Mrs. Gathers was not read her Miranda warnings and not allowed to call her attorney. The Court of Appeals in *Gathers* found "[t]here was sufficient evidence to submit the question of Ackerman's agency to the jury" as the assistant manager of Harris Teeter was aware that Ackerman was going to detain Mrs. Gathers. "Marks knew what Ackerman was about to do, allowed the use of his office for the interrogation, and was present during the questioning." *Gathers* at 227. "Based on this evidence, the jury could have reasonably concluded that Ackerman was acting as an agent for Harris Teeter." *Id*.

"There was abundant testimony from which the jury might have inferred that the employees of Harris Teeter participated in the proceedings." *Id*. (citing *Falls v. Palmetto Power and Light, Co.*, 117 S.C. 327, 109 S.E. 93 (1921)). "It is clear that both Marks and Ms. Jansen were acting in furtherance of Harris Teeter's business when they took part in the detention and search of Mrs. Gathers." *Id.*

In the instant case, Danica Adams, in her role with Wal-Mart as Asset Protection was present as Officer Mihelic detained the Westons. (R. p. 247, line 18 – R. p. 248, lines 2). Defendant Adams was fully aware of the actions being taken by Officer Mihelich. (R. p. 259, lines 8-10; R. p. 260, lines 1-4; R. p. 303, line 10 – R. p. 304, line 1). In fact, this was the second incident that day which the City of Columbia Police Officers were investigating at the request of Wal-Mart. Defendant Adams was present during the detention, did not stop Officer Mihelic and even assisted Officer Mihelic by handing her the receipt for the televisions during the Westons' detention (R. p. 329 (usb drive), R. p. 304, line 19 – p. 305, line 11).

It is clear that Defendant Adams was acting in furtherance of Wal-Mart's business when she

engaged with Officer Mihelic and the Westons during their detention. Taking the evidence in the light most favorable to the Appellants, the Appellants have established a genuine issue of material fact with regards to an agency relationship existed between the City of Columbia police officers and Wal-mart and its employees.

Appellants argue that the Respondents had the right to control the acts of the police officers from the City of Columbia. The police officers were at Wal-mart at the request of Wal-mart and its employees. Respondent Adams handed the receipt to Officer Mihelic and stood there while Officer Mihelic further investigated whether the televisions matched the receipt. Both Officer Mihelic and Respondent Adams stated multiple times that it is the policy of Wal-Mart for large items to be checked against receipts. (R. p. 329 (usb drive)) Officer Mihelic by doing so exhibited conduct that she was acting under the authority of Wal-mart and its policies. This was conduct from which a reasonable jury could infer an agency relationship. (See *Fernander v. Thigpen*, 278 S.C. 140, 143, 426 293 S.E.2d 424 (1982))

II. THE LOWER COURT IMPROPERLY GRANTED RESPONDENTS' MOTION FOR SUMMARY JUDGMENT. APPELLANTS ESTABLISHED THE ELEMENTS OF THE CAUSES OF ACTION OF DEFAMATION, INTENTIONAL INFLICITION OF EMOTIONAL DISTRESS, FALSE IMPRISONMENT, AND NEGLIGENCE.

A. Defamation

"In order to prove defamation, the complaining party must show: (1) a false and defamatory statement was made; (2) the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable irrespective of harm or the publication of the statement caused special harm" *Fleming v. Rose*, 567 S.E.2d 857, 350 S.C. 488, 494 (2002) (citing

Holtzscheiter v. Thomson Newspapers, 332 S.C. 502, 506 S.E.2d 497 (1998))

"Statements [ ] may be either defamatory on their face, or defamatory by way of innuendo." *Fountain v. First Reliance Bank*, 730 S.E.2d 305, 398 S.C. 434 (2012) "To render the defamatory statement actionable, it is not necessary that the false charge be made in a direct open and positive manner. A mere insinuation is as actionable as a positive assertion if it is false and malicious and the meaning is plain." *Timmons v. News & Press, Inc*., 103 S.E.2d 277, 232 S.C. 639 (1958) (citing *Duncan v. Record Publishing Co.*, 145 S.C. 196, 143 S.E. 31 (1927) "[ ] [W]here words used are capable of different meanings, one of which is slanderous, the jury must ascertain sense in which they were published and decide which meaning was, in fact, conveyed to readers, and plaintiff may offer evidence of the surrounding circumstances from which defamatory meaning may be inferred." *Timmons* at 280. A reasonable jury could insinuate from the actions of Walmart when its employee asked for Appellants' receipt that Wal-mart had made a false and defamatory statement about the Appellants.

A reasonable jury could also determine that there was an unprivileged publication to a third party. Ms. Adams stated that she did not believe the televisions were paid for. (R. p. 232, lines 11-13; R. p. 237, lines 1-6; R. p. 239, line 1 – R. p. 24, line 1; R. p. 251, line 18 – R. p. 252, line 4; R. p. 261, line 15 – R. p. 262, line 19). The video presented to the lower court shows other persons watching the incident between the Appellants and Respondents. Additionally, Lisa Weston testified to the same. (R. p. 234, lines 17-22, R. p. 238, lines 24-25; R. p. 253, lines 8 – 18; R. p. 255, line 1 – R. p. 256, line 1). Whether such publication occurred is a question of fact for a jury. *Duckworth v. First Nat. Bank*, 176 S.E.2d 297, 254 S.C. 563 (1970)

"Most jurisdictions require a private-figure plaintiff to prove negligence to recover for

defamation." *Holtzscheiter v. Thomson Newspapers, Inc.*, 506 S.E.2d 497, 332 S.C. 502 (1998) Appellants testified in their depositions that they were embarrassed and humiliated by the actions of the Defendants (R. p. 253, lines 2-11; R. p. 288, lines 5-14; R. p. 289, lines 9-21).

B. False imprisonment

"False imprisonment is defined as a deprivation of a person's liberty without justification. To establish the cause of action, the evidence must demonstrate (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful." *Caldwell v. K-Mart Corp*., 410 S.E.2d 21, 306 S.C. 27 (Ct. App. 1991) (citing *Andrews v. Piedmont Air Lines*, 297 S.C. 367, 377 S.E.2d 127 (Ct. App. 1989).

"False imprisonment is necessarily a wrongful interference with the personal liberty of an individual. The wrong may be committed by words alone, or by acts alone, or by both, and be merely operating on the will of the individual, or by personal violence, or by both. It is not necessary that the individual be confined within a prison, or within walls, or that he be assaulted, or even touched." *Westbrook v. Hutchison*, 190 S.C. 414, 3 S.E.2d 207, 209 (1939) "It is not necessary that there should be any injury done to the individual's person, or to his character, or reputation." *Id*. "Nor is it necessary that the wrongful act be committed with malice, or ill-will, or even with the slightest wrongful intention." *Id.* Respondent Adams told the Appellants that they were not allowed to leave until they showed their receipt. (R. p. 329 (usb drive)) Additionally, the Appellants did not believe they were free to leave (R. p. 233, lines 1-4; R. p. 242, lines 4-6; R. p. 246, lines 1-4; R. p. 286, lines 22 – R. p. 287, line 10). Respondent Adams and Officer Mihelich whom Appellants argue was acting as an agent of Wal-Mart intended to cause a confinement and not allow the Appellants to leave Wal-

Mart. Additionally, it is a question of fact for a jury to decide if the restraint was unlawful.

Respondent Adams did not investigate the Appellants' purchase prior to her and Officer Mihelich's contact with Appellants. Respondent Adams did not review any surveillance video prior to stopping the Appellants (R. p. 296, lines 20-22; R. p. 304, lines 7-10). Respondent Adams did not inquire as to where in the store the televisions had been purchased (R. p. 296, line 23 – R. p. 297, line 1). Respondent Adams had not seen anything to lead her to believe that the Appellants had shoplifted or had any evidence of them shoplifting. Therefore, the reasonableness of this detention is a question of fact for a jury *Caldwell v. Kmart*, 41 S.E.2d 21, 306 S.C. 27 (Ct. App. 1991)

Appellants did not believe they were free to leave the store and believed if they did try to leave they would be arrested. (R. p. 246, lines 1-4; R. p. 265, lines 16-24; R. p. 273, lines 16-18; R. p. 286, line 22 – R. p. 287, line 10). From the evidence presented, a finder of fact could draw more than one inference whether Walmart's actions in investigating were conducted for a reasonable time and in a reasonable manner.

C. Intentional Infliction of Emotional distress

"To recover under the tort of outrage, a plaintiff must establish the following essential elements: "(1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so `extreme and outrageous' as to exceed `all possible bounds of decency' and must be regarded as `atrocious, and utterly intolerable in a civilized community'; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was `severe' so that `no reasonable man could be expected to endure it.'" *Roberts v. City of Forest Acres*, 902

F.Supp. 662 (D.S.C. 1995) (citing *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776, 778 (1981)) The evidence presented to the lower Court established genuine issues of material fact as to the elements of intentional infliction of emotional distress and the cause of action should be presented to a jury. Respondents were reckless in that they never called back to electronics to ask whether the Appellants had purchased the televisions. (R. p. 296, line 23 – R. p. 297 line 1). Additionally, even though Respondent Adams and Officer Mihelich were in the video room when Respondent Adams was called to the front of the store, neither reviewed any of the video. (R. p. 296, lines 20-22). The Appellants testified that they suffered emotionally because of Defendants' actions. (R. p. 235, lines 5 – 11; R. p. 249, lines 1-4; R. p. 250, lines 19-25; R. p. 253, lines 2-11; R. p. 257, lines 9-24; R. p. 263, line 24 – p. 264, line 25; R. 268, lines 19-25; R. p. 270, lines 6-8; R. p. 274, lines 1-18; R. p. 288, lines 5-14; p. 289, lines 9-21).

D. Negligence

"In order to recover in a negligence action, the plaintiff must show (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach." *Crolley v. Hutchins*, 300 S.C. 355, 387 S.E.2d 716 (Ct. App. 1989) (citing *South Carolina Insurance Company v. James C. Greene & Co*., 290 S.C. 171, 348 S.E.2d 617 (Ct. App.1986). Wal-mart owed a duty to the Appellants as patrons of its store to not falsely imprison them or accuse them of not making purchases in its store. Respondents breached that duty when they stopped the Respondents outside the store and would not let them leave. Respondents testified that they suffered harm. Therefore, Appellants have established facts from which a reasonable jury could find that they have established the elements of this cause of action by a preponderance of the evidence.

CONCLUSION

Viewing the evidence in a light most favorable to the Appellants, Appellants provided the lower court genuine issues of material fact that could lead a reasonable jury to conclude that the officer of the City of Columbia Police Department were acting as agents of the Respondents and that the Respondents defamed, falsely imprisoned, inflicted emotion distress and otherwise acted negligently with regards to the Appellants. Therefore, the lower court's granting of summary judgment as to Respondents was improper in this case. To hold otherwise, would deprive Appellants of a trial on disputed facts. *Singleton*, 377 S.C. 185.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellant certifies that the Final Brief of Appellant complies with Rule 211(b), SCACR.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant certifies that the Final Brief of Appellant complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), the undersigned employee of the Law Office of Barry B George, counsel for the Appellant, does hereby certify that service of the Final Brief of Appellant in the above-captioned matter was made upon all counsel of record by email only this the 7th day of May 2024 as follows:

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s/Paige B. George