

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

IN THE MAGISTRATE'S COURT  
CASE NO. 2022-CV-0410900261

Melody Gant,

Plaintiff,

vs.

Elizabeth M. Kern,  
aka Elizabeth Kern-Gibson,

Defendant.

ORDER OF JUDGMENT

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SC Court of Appeals

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This case was tried as a non-jury bench trial before the Court from February 9 - 10, 2023.

Plaintiff was present for trial but was not represented by counsel. Defendant was present and was represented by counsel Howard E. Sutter, III.

Plaintiff initiated this negligence action seeking \$1,063.00 in damages she alleges resulted from the falling of Defendant's tree across the property line onto her fence and yard. Defendant denied that the tree in question was on Defendant's property. Defendant argued in the alternative that Defendant did not owe any duty of care to Plaintiff. Defendant also raised the defense of comparative negligence and filed a counterclaim alleging a violation of the South Carolina Frivolous Proceedings Act.

Based on the testimony and documentary evidence presented at trial as well as arguments presented by the parties and counsel, the Court finds by preponderance of the evidence as follows:

1. That the Plaintiff and Defendant are residents of Anderson County, South Carolina, and this Court has jurisdiction over the parties and subject matter of this case.
2. That the tree that fell onto Plaintiff's property was located on the Defendant's property. Multiple witnesses testified that the trunk of the tree in question was located on Defendant's side of the property and was several feet apart from the Plaintiff's fence line.

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Moreover, the Defendant did not deny that that the tree was located on her property in a contemporaneous letter to Plaintiff in which she referenced an attached notice from her insurance company denying coverage for damages “caused by the fallen tree when it crosses the property line onto a neighbors [sic] property.” Pl. Ex. 3.

3. That the property at issue in this case is located in a residential neighborhood and is therefore “urban” for purposes of determining the duty of care owed by a property owner to those outside the property. *Ford v. South Carolina Dept. of Trasp.*, 328 S.C. 481, 486, 492 S.E.2d 811, 814 (Ct. App. 1997) (“[South Carolina courts] have adopted the rule that a landowner in a *residential or urban* area has a duty to others outside the property to prevent an unreasonable risk of harm arising from defective or unsound trees on the premises.”) (emphasis added); *Israel v. Carolina Bar-B-Que, Inc.*, 292 S.C. 282, 356 S.E.2d 123 (Ct. App. 1987).

4. That Defendant owed Plaintiff a duty of reasonable care to inspect her property and to prevent an unreasonable risk of harm arising from any defective or unsound trees. *Underwood v. Coponen*, 367 S.C. 214, 217, 625 S.E.2d 236, 238 (Ct. App. 2006) (“In South Carolina, urban landowners have a duty of reasonable care to inspect trees on their property and to make certain they are safe.”) (citing *Staples v. Duell*, 329 S.C. 503, 494 S.E.2d 639 (Ct. App. 1997))

5. That, moreover, the Defendant owed Plaintiff a duty of care to prevent an unreasonable risk of harm arising from trees for which she had actual notice were in an unsafe or dangerous condition. *Estate of Cantrell v. Green*, 302 S.C. 557, 397 S.E.2d 777 (Ct. App. 1990) (observing that an owner of rural land owes a duty of care with respect to an unsafe condition of which the owner had actual knowledge). Prior to the incident that gave rise to this case, Plaintiff warned Defendant by letter that a tree on her property was leaning across the property line and posed a risk of falling and causing damage to Plaintiff’s property. Pl. Ex. 1. Defendant did not

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dispute receiving the letter but argued that the tree which Plaintiff warned her about was not the same tree that ultimately fell. Even if the tree mentioned in the letter was different from the tree that ultimately fell, the letter was nevertheless sufficient to put the Defendant on inquiry notice of the unsafe condition of other trees on her property. *See Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 64, 504 S.E.2d 117, 122 (1998) (observing that actual notice is “imputed to a person whose knowledge of facts is sufficient to put him on inquiry; if these facts were pursued with due diligence, they would lead to other undisclosed facts.”).

6. Pursuant to her duty to inspect her property, the Defendant should have known that the trees were defective or unsafe, and that, moreover, the Defendant had actual notice that the trees were defective and posed a risk of falling and damaging Plaintiff’s property.

7. That Defendant breached her duties to Plaintiff in failing to inspect her property and failing to take reasonable measures to prevent defective trees on her property from causing damage to Plaintiff’s property.

8. That as a direct and proximate result of Defendant’s breach, the Plaintiff suffered actual damages in the amount of \$1,063.00.

9. That the Plaintiff had a duty to take reasonable measures to prevent damage to her property by the Defendant’s trees which the Plaintiff knew were defective. *See Israel*, 292 S.C. at 290, 356 S.E.2d at 128 (observing that a business owner may be liable for injuries to invitees from trees located on adjoining property if he knew or should have known of the unsafe condition).

10. That, prior to the damage suffered by the Plaintiff, the Plaintiff knew that Defendant’s trees were defective.

11. That the Plaintiff breached this duty by failing to take reasonable measures to prevent the damage that she suffered.

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12. That, therefore, both parties were negligent and the comparative negligence rule applies. *Berberich v. Jack*, 392 S.C. 278, 709 S.E.2d 607 (2011) (stating that South Carolina has adopted a modified comparative negligence rule whereby a Plaintiff may recover damages if the Plaintiff's negligence is less than or equal to the negligence of the Defendant).

13. That the Court finds that the Plaintiff was twenty percent negligent in this matter, and the Defendant was eighty percent negligent.

14. That the amount of Plaintiff's recovery shall be reduced in proportion to the amount of her negligence. *Berberich*, 392 S.C. at 286, 709 S.E.2d at 611.

15. That, therefore, the Plaintiff's actual damages shall be reduced to \$850.40.

16. That the Plaintiff is entitled to recover costs in this action in the amount of \$80.00.

17. That on Defendant's counterclaim alleging a violation of the South Carolina Frivolous Proceedings Act, the Court finds for Plaintiff.

THEREFORE, IT IS ORDERED that judgment shall be entered in favor of Plaintiff Melody Gant and against Defendant Elizabeth M. Kern aka Elizabeth Kern-Gibson in the principal amount of \$850.40, plus costs of \$80.00, for a total judgment in the amount of \$930.40.

IT IS SO ORDERED.



Mary Frances Cole  
Magistrate Judge  
Anderson County Summary Court

February 6, 2024  
Williamston, South Carolina

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**Williamston Summary Court  
Anderson County, S.C.**