THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Charleston County
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2016-CP-10-05379
Appellate Case No. 2024-001377

The Estate of Delila Parrott,

Petitioner,

v.

Sandpiper Independent and Assisted Living-Delaware, LLC,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

This action arises from a negligence action brought by the Estate of Delila Parrott ("Petitioner"). Petitioner appeals the Court of Appeals' reversal of the circuit court's order awarding Petitioner $500,000 for her wrongful death claim and $500,000 for her survival claim against Respondent Sandpiper Independent and Assisted Living-Delaware, LLC ("Sandpiper").

No special or important reason exists for this Court to grant the Petition for Writ of Certiorari. Petitioner does not present a novel question of law, and the Court of Appeals' decision has no dissent and is consistent with prior decisions of this Court and statutory authority. None of the considerations of Rule 242(b), SCACR, are implicated. Accordingly, this Supreme Court should exercise its sound judicial discretion and deny the Petition for Writ of Certiorari.

QUESTIONS PRESENTED FOR REVIEW BY PETITIONER

I. Did the Court of Appeals err in holding that Sandpiper owed no legal duty to Ms. Parrott where the Trial Judge correctly stated and applied the law in concluding that Sandpiper undertook/assumed a duty of care to its Resident to conduct a daily check where the evidence shows that (1) Sandpiper had an established policy of conducting daily wellness checks; (2) Sandpiper affirmatively represented the existence of that policy to Ms. Parrott; and (3) Ms. Parrott relied upon the policy in choosing to enter into a lease?

A. Did the Court of Appeals err in its consideration of the written protocol/procedure as an internal policy that could not create a duty of care?

B. Did the Court of Appeals err in its finding that there was no

evidence that Ms. Parrott's harm was caused by her reliance on the daily check policy?

II. Did the Court of Appeals err in reversing the Trial Court's judgment and damages award to the Estate because the Court of Appeals ignored the proper standard of review of the verdict rendered by the Trial Judge sitting as the fact finder in the place of a jury?

COUNTER-QUESTIONS PRESENTED FOR REVIEW

I. Did the Court of Appeals err in holding that Sandpiper owed Ms. Parrot no duty?

II. Did the Court of Appeals apply the proper standard of review?

COUNTER-STATEMENT OF THE CASE

Sandpiper is an independent living retirement community in which residents live in private apartments they rent from Sandpiper pursuant to a written lease.[1] (R. p. 6.) On June 6, 2014, Sandpiper staff found a resident, eighty-year-old Delila Parrott, on the floor of her apartment with a broken hip. (R. pp. 6-7.) EMS arrived and transported Ms. Parrott to the hospital. (R. p. 7.) After four days of treatment in the hospital, Ms. Parrott went to Sandpiper's rehabilitation facility, which is a different facility from the independent living facility. (R. p. 385.)

Ms. Parrott made a full recovery from all of her physical injuries; her hip healed well with no infections or complications. (R. pp. 365-366; R. p. 383.) After her rehabilitation was complete, her family moved her to an assisted care facility not

[1] It is not an assisted living facility, much less a nursing home or skilled care facility.

associated in any manner with any Sandpiper facility. (R. p. 385.) Her own doctor conceded it was after this move that she had a "progressive downhill course." (R. p. 386.) Ms. Parrott passed away about eight months after the fall, on February 9, 2015. Her death certificate listed her cause of death as failure to thrive and chronic schizophrenia among other things. (R. p. 9; R. p. 407.)

How Ms. Parrott fell is undisputed: She was alone in her apartment, with the door locked, not wearing her panic button,[2] standing on a rocker-recliner chair[3] trying to hang curtains or a curtain rod. (R. p. 123:25 – p. 124:21; R. p. 509:4-14; R. p. 1142; R. p.1160.) Ms. Parrott decided to try to do this herself without telling anyone rather than take advantage of the maintenance services included in her lease with Sandpiper. Even Ms. Parrott's counsel called this "a stupid thing to do." (R. p. 509:10-11.)

Petitioner, Ms. Parrott's estate, brought this wrongful death and survival action alleging only that Sandpiper was negligent in not checking on Ms. Parrott on June 4 and June 5, 2014. (R. pp. 60-63.) Petitioner asserted that Sandpiper owed Ms. Parrott a legal duty to check on her due to its internal daily check-in policy, and Sandpiper's negligence in failing to check on Ms. Parrott after she fell during the evening of June 3, 2014 resulted in two additional days she went without help, or a

[2] Wearable as a bracelet or a pendant, a 24-hour emergency call button, or "panic button," is issued to every Sandpiper Village resident. Since Sandpiper is an independent living facility, it can only encourage, but not require residents to wear their panic buttons.

"long lie,"[4] that ultimately caused her to lose her will to live and resulted in her death eight months after her fall.

The Honorable Bentley D. Price presided over a non-jury trial that began on September 8, 2020 and concluded on September 10, 2020. (R. pp. 75-632; 653-757.) The circuit court announced its ruling for Petitioner from the bench after considering the case for less than an hour. (R. pp. 620:8 – p. 631:16.) The circuit court entered a formal order on October 16, 2020 in which it found that Sandpiper undertook and owed Ms. Parrott a duty to exercise reasonable care in conducting daily wellness checks. (R. pp. 3-25.) The circuit court also found that Sandpiper breached that duty by failing to check on Ms. Parrott on June 4 and June 5, and that Sandpiper's breach of duty resulted in a long lie that ultimately caused Ms. Parrott's death. (R. pp. 3-25.) Petitioner's counsel conceded Ms. Parrott's fall on June 3 and the first 24 hours she was on the floor were not the basis of this case.

On appeal, the Court of Appeals reversed the circuit court's judgment. *Est. of Parrott v. Sandpiper Indep. & Assisted Living-Delaware, LLC*, 443 S.C. 405, 423, 904 S.E.2d 455, 465 (Ct. App. 2024). First, the Court of Appeals reversed the circuit court's finding that Sandpiper owed Ms. Parrott a duty "[t]o the extent that

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[3] The chair was described as a "big cushy chair," a La-Z-Boy or the like, that rocked and reclined. (R. p. 124.)

[4] Throughout trial, Petitioner's counsel used the term "long lie," which was said to be "defined by the literature [a]s when an elderly [person] falls and can't get up for over an hour." (R. pp.86:11-15.) The sole article this was based upon did not limit its scope to elderly people falling; it

[it] relied on the mere existence of Sandpiper's check-in policy." *Id.* at 421, 904 S.E.2d at 46. The Court of Appeals reiterated extensive precedent that the mere existence of an "internal polic[y] cannot, standing alone, create a duty in South Carolina." *Id.* at 415, 904 S.E.2d at 461.

Next, the Court of Appeals reversed the circuit court's finding that Sandpiper owed Ms. Parrott a duty because "no evidence in the record support[ed] the circuit court's conclusion that [Ms.] Parrott's reliance on the check-in policy caused her harm." *Id.* at 421, 904 S.E.2d at 464. The Court of Appeals noted that Petitioner "proffered no evidence to suggest that [Ms.] Parrott took the risk of hanging curtains while standing on a rocking chair—or of not wearing her panic button—*because* she was relying on the expectation that someone from Sandpiper would have come by pursuant to the check-in policy to rescue her." *Id.* at 422, 904 S.E.2d at 464. The Court of Appeals also explained that it was unnecessary to analyze whether "Sandpiper's negligent execution of its check-in policy increased [Ms.] Parrott's risk of harm" because "the circuit court made no [such] finding. *Id.* at 423, 904 S.E.2d at 465[5]. The Court of Appeals concluded that it was unnecessary to address Petitioner's remaining issues because it reversed the circuit court's finding that Sandpiper owed Ms. Parrott a duty. *Id.*

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included everything from botched suicide attempts to other situations where individuals of different ages were immobilized for various periods of time.

ARGUMENT

I. The Court of Appeals properly found that Sandpiper owed no legal duty to Ms. Parrott.

Section 15-51-10 of the South Carolina Code creates a cause of action to recover damages for the wrongful death of a person. S.C. Code Ann. § 15-51-10. "[T]he plaintiff in a wrongful death action must establish that the wrongful act or *negligence* of the defendant caused the death of the decedent." *Land v. Green Tree Servicing, LLC*, 140 F. Supp. 3d 539, 545 (D.S.C. 2015) (emphasis added). "[T]o establish a claim for negligence, a plaintiff must show: (1) the defendant owes a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual or proximate cause of the plaintiff's injury; and (4) plaintiff suffered an injury or damages." *Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 246, 711 S.E.2d 908, 911 (2011).

"First, the court must determine, as a matter of law, whether the law recognizes a particular duty." *Id.* "If there is no duty, the defendant is entitled to a judgment as a matter of law." *Id*. Moreover, "if no duty has been established, evidence as to the standard of care is irrelevant." *Id.* at 247, 711 S.E.2d at 912. "Only when there is a duty would a standard of care need to be established." *Id.*

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[5] *Smith v. Phillips*, 318 S.C. 453; 458 S.E.2d 427 (1995) (Appellate court will generally not address an issue not ruled upon by the trial court)

Under South Carolina law, "there is no general duty to control the conduct of another." *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 136, 638 S.E.2d 650, 656 (2006). In this case, the only relevant exception to that rule is "where the defendant voluntarily undertakes a duty." *Id.* South Carolina courts have consistently cited section 323 of the Restatement (Second) of Torts when addressing this exception.

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking.

Id. at 136, 638 S.E.2d at 657 (quoting Restatement (Second) of Torts § 323 (Am. L. Inst. 1965)).

A. The Court of Appeals properly found that internal policies, standing alone, cannot establish the voluntary undertaking of a duty.

"[I]nternal policies do not establish a voluntary undertaking of a duty; rather, they can only serve as evidence of the standard of care if the duty was established by law." *Doe 2 v. Citadel*, 421 S.C. 140, 148, 805 S.E.2d 578, 583 (Ct. App. 2017); s*ee also Wal-Mart*, 393 S.C. at 248, 711 S.E.2d at 912 (finding that an "internal policy cannot be said to constitute the voluntary undertaking of a duty. Rather, it could

simply serve as evidence of the standard of care, *once that duty was established by law.*" (emphasis added)).

The Court of Appeals correctly applied relevant authority and determined that internal policies on their own cannot establish the voluntary undertaking of a duty. Petitioner attempts to put the cart before the horse and use Sandpiper's alleged deviation from its internal policy as evidence that it owed Ms. Parrot a duty. However, our state's case law makes clear that violations of internal policies are only relevant in determining whether there is a breach of duty, not the existence of a duty. If there is no duty, then deviations from internal policies are irrelevant because one cannot breach a duty that does not exist. Accordingly, the Court of Appeals did not err in finding that the mere existence of Sandpiper's internal policy could not establish its voluntary undertaking of a duty. *See id.* at 248, 711 S.E.2d at 912 ("We also hold Wal–Mart did not voluntarily undertake a duty. It is undisputed that Wal–Mart created an internal policy that was subsequently violated . . . . However, this internal policy cannot be said to constitute the voluntary undertaking of a duty. Rather, it could simply serve as evidence of the standard of care, once that duty was established by law.").

B. The Court of Appeals properly found that no evidence supported that Ms. Parrott's harm was caused by her reliance on Sandpiper's check-in policy.

One is liable for the physical harm of another if they fail to exercise reasonable care in performing a duty voluntarily undertaken and "(a) [the] failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking." Restatement (Second) of Torts § 323 (Am. L. Inst. 1965). The Court of Appeals aptly explained why Petitioner's reliance on *Wright v. PRG Real Estate Mgmt., Inc.*[6] is misplaced. In *Wright*, an apartment complex gave law enforcement officers a discounted rent if they agreed to be a courtesy officer for the apartment complex. 426 S.C. at 207, 826 S.E.2d at 287. The courtesy officers were required to walk the property, answer calls from tenants, and report to the property manager daily. *Id.*

The plaintiff in *Wright* was the victim of an armed robbery in the apartment complex's parking lot. *Id.* at 207–09, 826 S.E.2d at 287–88. Prior to moving into the apartment complex, a manager told the plaintiff there were security officers on duty, even though an internal employee manual instructed employees not to inform residents that the complex provided security. *Id.* at 206, 826 S.E.2d at 287. The South Carolina Supreme Court held that summary judgment was inappropriate

[6] 426 S.C. 202, 826 S.E.2d 285 (2019).

because there were genuine issues of material fact regarding the analyses of section 323 (a) and (b) that a jury needed to resolve. 426 S.C. at 221, 826 S.e.2d at 295.

The Court of Appeals properly distinguished *Wright* from this case by noting the record in *Wright* contained conflicting evidence as to whether the plaintiff relied on the courtesy officer program and whether plaintiff's harm arose from that reliance. *Parrott*, 443 S.C. at 421–23, 904 S.E.2d at 464–65. The Court of Appeals also noted that the *Wright* court was not asked to address or consider whether the courtesy officer program constituted an internal policy, and the *Wright* court empathized that its holding was tailored to the narrow facts of that case. *Id.* at 422, 904 S.E.2d at 464.

The Court of Appeals properly found that no evidence supported the circuit court's conclusion that Ms. Parrott suffered the harm from her "long lie" by relying on Sandpiper's check-in policy. Petitioner provided no evidence that Ms. Parrott decided to hang curtains while standing on a rocking chair in reliance on a Sandpiper employee checking on her pursuant to the check-in policy. Indeed, the record contained evidence of Ms. Parrott's aversion to the check-in policy, which undermines Petitioner's argument that Ms. Parrot's harm was caused by her reliance on the check-in policy. *Id.* at 412, 904 S.E.2d at 459 (noting that Sandpiper staff described Ms. Parrott as "very private" and that Ms. Parrott told Sandpiper staff she was "fearful of people coming in [her apartment] without her knowledge). Because the circuit court made no finding under section 323(a), it is irrelevant whether

Sandpiper's alleged failure to exercise due care in performing the check-in policy increased Ms. Parrott's risk of harm. Accordingly, the Court of Appeals properly found that no evidence supported that Ms. Parrott's harm was caused by her reliance on Sandpiper's check-in policy. As such, Sandpiper did not owe Ms. Parrott a duty under the circumstances presented.

II. The Court of Appeals applied the correct standard of review.

"Wrongful death and survival actions are actions at law." *See Longshore v. Saber Sec. Servs., Inc.*, 365 S.C. 554, 560, 619 S.E.2d 5, 9 (Ct. App. 2005) ("An action in tort for damages is an action at law."); S.C. Code Ann. § 15-51-10 (2005) (establishing the wrongful death cause of action as "an action for damages."). "In an action at law tried by a judge without a jury, the appellate court will correct any error of law, but it must affirm the trial court's factual findings *unless no evidence reasonably supports those findings*." *Frazier v. Smallseed*, 384 S.C. 56, 61, 682 S.E.2d 8, 11 (Ct. App. 2009) (per curiam) (emphasis added).

Contrary to Petitioner's arguments, the Court of Appeals did not ignore the findings of the circuit court. Instead, the Court of Appeals found the record contained "no evidence supporting the circuit court's conclusion that [Ms.] Parrott suffered the harm from her long lie because of her reliance on Sandpiper's check-in policy." *Parrott*, 443 S.C. at 422, 904 S.E.2d at 464. Issues of law are reviewed without any particular deference to the trial court. *Frazier*, 384 S.C. at

61, 682 S.E.2d at 11. A trial court's findings are properly reversed where no evidence reasonably supports them. *Id*. Therefore, the Court of Appeals applied the correct standard of review in reversing the trial court.

CONCLUSION

Counsel acknowledges this is a very sad case, but the Court of Appeals did as all courts should do; it avoided sympathy and good intentions and decided this case strictly on a matter of law. *SC Dept. of Transportation v. Horry County*, 391 S.C.76, 705 S.E.2d 21 (2011) (deciding cases on a purely legal basis may result in harsh results and sympathetic feelings from the court). As then Justice Pleicones first informed counsel (Stephen Brown) in oral arguments in *Sabb v. S.C. State University*, 350 S.C. 416, 567 S.E.2d (2002), when cases are decided based on sympathy, bad law results. For the foregoing reasons and for the reasons set forth in the Court of Appeals' opinion, this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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