

STATE OF SOUTH CAROLINA  
In the Supreme Court

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Oct 11 2024

S.C. SUPREME COURT

Appeal from Charleston County  
Court of Common Pleas  
The Honorable Bentley Price, Circuit Court Judge

Civil Case No. - 2016-CP-10-05379  
Ct. App. No. 2020-001643  
Ct. App. Op. No. 6067, filed June 26, 2024

The Estate of Delila Parrott,

Petitioner,

V.

Sandpiper Independent and Assisted Living-Delaware, LLC,

Respondent.

Reply To Return To Petition for Writ of Certiorari

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### **Importance of this Case**

Sandpiper begins its Return to the Petition for Writ of Certiorari by stating: “No special or important reason exists for this Court to grant the Petition for Writ of Certiorari.” In other words, this case does not matter. It is not important. Nothing to see here.

As outlined below, this case warrants certiorari under S.C. App. Ct. R. 242 (b)(3) as the Court of Appeals’ decision is in conflict with the controlling authority of this Court in Wright v. PRG Real Estate Mgmt., Inc., 426 S.C. 202, 826 S.E.2d 285 (S.C. 2019) as it relates to section 323 of the Restatement (2nd) of Torts.

It also raises an important issue on which the citizens of South Carolina should have clarity. The uncontroverted evidence in this case is that Sandpiper made representations, both to Ms. Parrott and to her daughter, that one of the reasons she should come and live at Sandpiper is because safety is important, and she would be checked on every day according to their safety policy. [R.pp. 108:16-23 (Daughter); 158:24 -159:17 (Director).] Both the Court of Appeals and Sandpiper would like to cast this representation about the policy as nothing more than an internal policy to which Sandpiper cannot be held to account and which creates no duty.

The issues presented by this case are important to the residents of South Carolina. Can a senior living center make representations regarding a safety policy in an effort to procure business and earn money, then completely fail to live up to those promises and the policy and then escape liability for the harm caused?

Ms. Parrott’s estate represents that this case is incredibly important, and the issues presented should be decided by this Court rather than the lower Court that both ignored the

evidence as found by the trier of fact and misapplied long standing precedent. This Court should decide whether senior living centers, or any business for that matter, can make promises regarding the health and safety of its customers, create policies implementing those promises, advertise and promote those policies, encourage reliance on those policies yet suffer no consequences for the failure to live up to the policies.

### **The Court of Appeals Should Have Accepted the Findings of Fact**

Sandpiper is inviting this Court to revisit and reinterpret the facts of the case. As aptly demonstrated in the Estate's Petition for Writ of Certiorari, every finding of fact by the trial judge is supported by the evidence with specific and detailed references to the record. Those findings include the express policy by Sandpiper that each resident would be checked on every day. [R.p. 006] It was a policy that actually existed in written form, was understood by all, was represented to all, was never rescinded and was in effect on the days that Ms. Parrot lay helpless on the floor of her apartment waiting to be rescued.

The Court of Appeals chose to review and reconsider the evidence rather than simply accept the findings as determined by the finder of fact. Sandpiper is inviting this Court to do the same. In its counter statement of the case, Sandpiper discusses Ms. Parrott's doctor's testimony, her death certificate, whether she was wearing a panic button, whether she was stupid to try to hang a curtain on her own, whether Ms. Parrott was standing on a cushy chair, the wisdom of her decision in not calling for maintenance, and how long it took the judge to consider the case before issuing his ruling.

Sandpiper, along with the Court of Appeals, blames Ms. Parrott for her initial injuries as if that excuses Sandpiper for not performing the policy it created and the duty they undertook to check on her daily. Sandpiper's and the Court of Appeals' efforts to blame Ms. Parrott miss the

point. The whole reason for creating a safety policy and promising Ms. Parrott and her daughter that she will be checked on every day is – “bad things happen!” Sandpiper’s policy has no exceptions. Seniors are at risk of being injured for a myriad of reasons. The policy was not “we will check on you every day unless you do something stupid;” not “we will check on you every day as long as you're wearing your panic button;” not “we will check on you every day unless you overestimate your balance or your abilities or your decision making in which case you're on your own.” Discussions of how and why she fell are irrelevant to the issue at hand. The issue is: did Sandpiper have a duty to check on Ms. Parrott and did it fail in that duty. The trial judge said yes on both counts and cited overwhelming evidence in support of his findings. [R.pp. 009-110]

The Court of Appeals and Sandpiper want to recast the facts of this case as if the daily safety policy of checking on every resident every day was an internal policy not directed at the safety of the residents, unknown to the residents, unacted on by the staff, unexpressed to prospective customers and did not form a basis of justified reliance. This policy was a core tenant of the relationship between the staff and the residents, was supposed to be performed every day and was relied upon by the residents and their families.

This safety policy was specifically directed to, and would have prevented, the harm for which Ms. Parrott’s estate received an award of damages. That she would be checked on daily was specifically represented to Ms. Parrott in an effort to get her to live at Sandpiper; to get her to give them money. The only harm alleged in the complaint and the only harm for which the trial judge awarded damages was the harm of being left on the floor with a broken hip, unable to move from Tuesday night to Friday night. The harm came specifically from the failure to do the safety check. Nothing else. Blaming her for the initial injury has no place in this case.

If residents did not get hurt, fall, or forget to check in, there would be no need for a daily safety check. If residents always wore their panic button, there would be no need for a safety check. If safety was not recognized as important to residents and their families, there would be no reason to make representations about the safety check policy at the initial meetings. There could be no clearer example of an undertaking which created a duty which, when not performed, created harm.

Had Ms. Munoz opened the door and rescued Ms. Parrott as the policy required, this case would not have been filed. [R.pp. 276-278.] Ms. Munoz failed to open the door, so Ms. Parrott did suffer a long lie, did suffer incredible pain for three days and did die as a result. [R. p. 110] Those are findings of fact and should not be subject to review, despite Sandpiper's urging to revisit them. They are amply supported by the evidence in the case. This Court should accept the findings of fact and correct the error of the Court of Appeals in substituting its view of the facts for that of the true finder of fact.

### **The Court of Appeals Misapplied Wright and Section 323**

The Court of Appeals has misapplied section 323 of the Restatement (2nd) of Torts and this Court's jurisprudence as articulated in Wright v. PRG Real Estate Mgmt., Inc., 426 S.C. 202, 826 S.E.2d 285 (S.C. 2019). Sandpiper suggests, and the Court of Appeals held, that for liability to attach, the Estate would have to prove that immediately before hanging the curtains, Ms. Parrott brought to mind the daily safety check policy. The Estate would have to prove that Ms. Parrott thought, "If I injure myself while hanging these curtains it will be OK because I will be rescued by the daily safety check policy." Neither the Court of Appeals nor Sandpiper have pointed to any authority supporting the proposition that liability for failure to perform a duty only attaches if the

victim considers the defendant's duty and consciously decides to rely on that duty immediately before injury.

Under the Court of Appeals reasoning, if the facts were different and Ms. Parrott fell and broke her hip getting out of the bathtub or mopping the floor or doing any number of daily routine things that might result in injury, she would have to contemplate the daily check policy before doing any of those actions. Certainly, that cannot be the law in South Carolina. The daily check policy did not make a value judgment on whether you should be rescued depending on how you got hurt. And liability for failure to follow the policy cannot be predicated on whether you called the policy to mind immediately before your injury.

Sandpiper suggests that the Court of Appeals properly distinguished Wright, however, Wright is directly on point and in support of Ms. Parrott's case. There was no evidence in the Wright case that, prior to getting out of the car before being kidnapped, the victim consciously considered the existence of security guards and therefore decided to get out of the car. The Wright case properly focused on when the representation of the existence of security guards was made. This Court specifically references that Wright chose to live at the apartment complex because at the time she was choosing to live there, they represented security officers would be on duty. Wright at 219-220. The fact that she had lived there for 5 years did not change her reasonable reliance on the representation of security made at the outset. Similarly, the Court of Appeal should not have considered whether there was evidence that immediately before beginning to hang curtains Ms. Parrott consciously considered that she would be rescued if she fell while hanging her curtain. That's an unreasonable demand of proof and would eviscerate this Court's holding in Wright.

The point in time when reliance matters is when Sandpiper was trying to encourage Ms. Parrott to take action and lease an apartment. Wright at 219. Representations made when Ms.

Parrott was choosing where to live is what matters. Id. Their representation of the existence of a safety check policy was to encourage her to live there and pay them money so they could continue their business and earn a profit. [R.pp. 108:16-23 (Daughter); 158:24 -159:17 (Director).]

That representation, its accompanying policy, the reliance on that representation and the duty created thereby remains in effect until something happens to change it. Until Sandpiper changes the policy and communicates that change to everyone, the duty created by the undertaking remains.

In Wright, the plaintiff had not seen a security guard for 5 years yet the undertaking to provide security was still there. Wright at 219-220. "The complex would have the right to impose limitations upon the program or even discontinue the program; however, the complex would be incentivized to simply let its tenants know." Wright at 221. At Sandpiper, the program was actively still in force. The policy was being practiced every day and it was reasonable for Ms. Parrott to rely on it.

Both Sandpiper and the Court of Appeals are considering the wrong point in time. The relevant time is when reliance on the policy was manifest, and that reliance occurred when Ms. Parrott chose to live there. Wright at 219. Had the policy been rescinded, had the residents been told we will no longer check on you every day, this would be a different case. But that is not this case. In this case every resident and every staff member knew that every day everyone would be checked on for their safety.

Sandpiper points to section 323 of the Restatement (2nd) of Torts as applied by this Court in Madison ex rel. Bryant v. Babcock Ctr., Inc, 371 S.C. 123, 136, 638 S. E. 2d 650, 656 (2006) as supportive of their argument. Section 323 provides:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of

the others 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 harm, or (b) the harm is suffered because of the others reliance upon the undertaking.

Simply by substituting the names of the actors and the facts in this case, the liability of Sandpiper under 323 becomes clear. *Sandpiper* undertook, gratuitously or for consideration, to render services (*the daily safety check policy*) to *Ms. Parrott* which *Sandpiper* should recognize as necessary for the protection of *Ms. Parrott's* person or things, is subject to liability to *Ms. Parrott* for physical harm resulting from *Sandpiper's* failure to exercise reasonable care to perform *Sandpiper's* undertaking, if (a) *Sandpiper's* failure to exercise such care increased the risk of harm (*Ms. Parrott suffered a long lie*), or (b) the harm was suffered because of *Ms. Parrott's* reliance (*by choosing to live there*) upon *Sandpaper's* undertaking (*to perform the safety check*). This case is tailor made for liability under Section 323 of the Restatement of Torts as adopted by Madison.

The facts of this case, as found by the trial judge, do not allow for the interpretation of this daily safety check to be considered simply an internal policy. This is not the case of an internal policy standing alone creating the undertaking of a duty. If Sandpaper had this policy but never told anyone about it, never used it in their marketing, did not affirmatively represent it to *Ms. Parrott* as part of their sales pitch, did not have all of their employees trained on it and actively exercise those activities daily and make it known to every resident, perhaps *Sandpiper's* interpretation, and that of the Court of Appeals, would be justified. That is simply not this case.

The Court of Appeals has misapplied Section 323 of the Restatement and this Court's jurisprudence as articulated in Wright. The issue of when an undertaking creates a duty is too important to be left in a muddled state for future litigants and courts to try and apply. This Court

should speak on the issue of duty and whether our seniors can rely on the representations and the policies of the facilities in which they live.

**Conclusion**

Wherefore, based on the foregoing, Ms. Parrott's Estate respectfully petitions this Court to review the decision of the Court of Appeal, grant The Writ of Certiorari and affirm the trial judge's verdict and awards in all respects.

Respectfully submitted,  
Reeves Law Firm, LLC

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