THE STATE OF SOUTH CAROLINA
in the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
B. Alex Hyman, Circuit Court Judge

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

v.

Walgreen Co. and Bluffton WG, LLC, Respondents.

and

Walgreen Co., Third-Party Plaintiff,

v.

Hussmann Services Corporation, Third-Party Defendant.

FINAL BRIEF OF APPELLANT

Justin Bice, Esq.
Bice Law LLC
406 Tom Hall Street
Fort Mill, SC 29715
Phone/Fax: 803-639-8777
Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES

STATEMENT OF ISSUES ON APPEAL

1. Did the Trial Court err in granting summary judgment by erroneously determining that Respondents owed no duty to ensure Dennis Anderson's protection and safety on the premises?

2. Did the Trial Court err in granting summary judgment by erroneously determining that no genuine issues of material fact remained regarding whether Respondents breached their duty to ensure Dennis' protection and safety?

3. Did the Trial Court err in granting summary judgment by erroneously determining that no genuine issues of material fact remained regarding causation of Plaintiff's injuries?

4. Did the Trial Court err in granting summary judgment by erroneously determining that no genuine issues of material fact remained regarding whether Respondents negligently handled decedent's body?

STATEMENT OF THE CASE

On March 13, 2020, Dennis Anderson died alone on the roof of Walgreen's Okatie Store, but his body was not found until March 14, 2020, approximately 21 hours later.

On June 7, 2021, Appellant Cordelia Anderson, Dennis' sister and Personal Representative of the Estate of Dennis R. Anderson, brought this action alleging that Respondents breached their duty of reasonable care for Dennis' protection and safety while on Respondents' premises by failing to send an employee to the roof with Dennis and failing to monitor the roof in any way. Additionally, Appellants allege that Respondents knew or should have known that Dennis was dead on Respondents' roof and Respondents breached their duty of care by their indecent handling, desecration, and unwarranted exposure of Dennis' body to the elements after his death.

On May 12, 2023, Respondents filed a Second Amended Answer to Plaintiff's Complaint and Amended Third-Party Complaint, alleging claims against Dennis' employer Hussmann Services Corp.

On October 27, 2023, Respondents filed a Motion for Summary Judgment. On February

27, 2024, the Honorable B. Alex Hyman held a hearing ("Hearing") on the Motion for Summary Judgment.

On April 8, 2024, a Form 4 Order was filed, granting Respondents' Motion for Summary Judgment. On April 22, 2024, a formal Order granting Respondents' Motion for Summary Judgment ("Order") was filed. On May 1, 2024, Appellant filed & served the Notice of Appeal on Respondents. On May 1, 2024, Appellant requested the transcript from the Hearing. On July 3, 2024, Appellant received the transcript from the Court Reporter.

STANDARD OF REVIEW

In reviewing a trial court's decision granting summary judgment, this Court applies the same standard as the trial court applies under SCRCP 56(c). See, e.g., Brockbank v. Best Capitol Corp., 341 S.C. 372, 378-379, 534 S.E.2d 688, 692 (2000). Summary judgment is appropriate only where it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. See, e.g., Calvert v. House Beautiful Paint and Decorating Center, Inc., 313 S.C. 494, 443 S.E.2d 398 (1994); SCRCP 56(c). In deciding whether there are any genuine issues of material fact, the court must construe all inferences arising from the evidence against the moving party. See, e.g., Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999).

"All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant." Bayle v. SCDOT, 542 S.E.2d 736 (Ct. App. 2001). "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." Id. at 738. Moreover, summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. See, e.g., Middleborough Horizontal v. Montedison, S.p.A., 320 S.C. 470, 465 S.E.2d 765 (Ct. App. 1995).

"[S]ummary judgment is a drastic remedy" and "should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues." Platt v. CSX Transportation, Inc., 379 S.C. 249, 256-7, 665 S.E.2d 631, 635 (Ct. App. 2008).

STATEMENT OF THE FACTS

On March 13, 2020, Dennis Anderson was employed by Hussmann Corp. as an air conditioning technician. (Walgreen 30(b)(6) Dep. 30:1-5) (R. p. 71, lines 1-5). At approximately 1:35 pm, Dennis reported to the Okatie Walgreens to repair the air conditioner. (Complaint ¶ 8 & Second Amended Answer ¶ 9) (R. p. 38 & R. p. 48). Dennis was an invitee on Respondents' premises. (Complaint ¶ 20 & Second Amended Answer ¶ 21) (R. p. 39 & R. p. 49).

On March 13, 2020, Brandon Conner was the manager for three different Walgreen stores, including the Okatie Store. (Walgreen 30(b)(6) Dep. 13:1-12) (R. p. 65, lines 1-12). On March 13, 2020, Mr. Conner was managing one of the other stores, and on March 14, 2020, he was on vacation. On March 13 & 14, 2020, assistant manager Tracey Gilbert was in charge at the Oakie Store. (Tracey Gilbert Dep. 7:16-23) (R. p. 89, lines 16-23).

On March 13, 2020, an unknown Walgreens employee escorted Dennis to the Okatie Store storeroom to the vertical ladder used to access the roof where the air conditioner was located. (Complaint ¶ 9, Second Amended Answer ¶ 10, & Walgreen 30(b)(6) Dep. 44:19-45:25) (R. p. 38, R. p. 48, & R. p. 68, line 19-p. 69, line 25). The unknown employee, possibly a manager, then used a manager's key to unlock the roof access door. See id. Respondents' security video allegedly showed Dennis last climbing to the roof at approximately 2:45 pm. Respondents allege to no longer have possession of this video.

On March 13, 2020, no one went to the roof with Dennis, and no one checked on Dennis for the remainder of the day. (Complaint ¶ 12 & Second Amended Answer ¶ 13) (R. p. 38 & R. p. 48). Kiara "Pinky" Fields was the shift lead responsible for closing the Okatie Store. (Gilbert

Dep. 23:17-22) (R. p. 90, lines 17-22). Ms. Fields knew Dennis was on the roof working, but never went to check on Dennis before locking the store. (Gilbert Dep. 35:2-8) (R. p. 93, lines 2-8).

The Okatie Walgreens closed at 10 pm that night, and everyone left the building. (Complaint ¶ 13 & Second Amended Answer ¶ 14) (R. p. 38, R. p. 48). Walgreens employees noticed Dennis' work van parked in the Walgreens' parking lot, but they did not go back to check on Dennis. (Complaint ¶ 14 & Second Amended Answer ¶ 15) (R. p. 38 & R. p. 48).

On Saturday, March 14, 2020, at 8 am, Mr. Gilbert opened the Okatie Store. (Complaint ¶ 15, Second Amended Answer ¶ 16, & Gilbert Dep. 40:15-45:14) (R. p. 38, R. p. 48, & R. p. 94, line 15-p. 69, line 14). Mr. Gilbert was the first employee to the store and noticed Dennis' work van parked in the parking lot before entering the building, but he did not go to check on Dennis. See id.

At approximately 10 am, Mr. Gilbert saw the roof access hatch was still open, but he did not go to check on Dennis. See id. No one checked on Dennis until noon on Saturday, when Mr. Gilbert finally climbed the ladder to the roof and found Dennis dead. (Complaint ¶ 16 & Second Amended Answer ¶ 17) (R. p. 38 & R. p. 49).

The coroner and death certificate listed Dennis' cause of death as cardiomegaly (enlarged heart). (Complaint ¶ 17 & Second Amended Answer ¶ 18) (R. p. 38 & R. p. 49). There is no evidence that Dennis had preexisting heart conditions or work restrictions. (Walgreen 30(b)(6) Dep. 122:17-123:9) (R. p. 84, line 17-p.85, line 9).

ARGUMENTS

1. **Because Respondents owed a duty to ensure Dennis Anderson's protection and safety on the premises, the Trial Court erred in granting summary judgment by determining that Respondents did not owe a "duty to supervise the work of an independent contractor."**

"Invitees include patrons of stores . . . and workmen invited to work on the premises." *See* Sims v. Giles, 343 S.C. 708, 717 (Ct. App. 2001) (citing F.P. Hubbard R.L. Felix, The South Carolina Law of Torts 112-13 (2d ed. 1997)). "Unlike a licensee, an invitee enters the premises with the implied assurance of preparation and reasonable care for his protection and safety while he is there." Bryant v. City of North Charleston, 304 S.C. 123, 128, 403 S.E.2d 159, 161 (Ct. App. 1991) (emphasis added, citing RESTATEMENT (SECOND) OF TORTS § 341A cmt. a (1965)).

"As a general rule, an individual is under no duty to provide aid or protection to another. However, an affirmative legal duty to act may be created by statute, contract, relationship, status, property interest, or some other special circumstance." Hubbard v. Taylor, 339 S.C. 582, 588, 529 S.E.2d 549, 552 (Ct. App. 2000) (citations omitted). The duty owed by a business owner to an invitee "is an active or affirmative duty." Sims v. Giles, 343 S.C. 708, 719 (S.C. Ct. App. 2001).

This duty even included the duty to provide first aid to Dennis after Respondents knew or had reason to know that he was ill or injured, and to care for him until he could be cared for by others. (F. P. Hubbard & R. L. Felix, The South Carolina Law of Torts, pp. 103-106 (5th Ed. 2023) (R. pp. 134-138) citing Restatement (Second) of Torts § 314A) & Restatement (Second) of Torts § 314A stating that a possessor of land who holds it open to the public must take reasonable action to protect the public from "unreasonable risk of physical harm and give them first aid after it knows or has reason to know that they are ill or injured, and to care for them until

they can be cared for by others.")

Respondents admit Dennis was an invitee on Respondents' premises. (Complaint ¶ 20 & Second Amended Answer ¶ 21) (R. p. 39 & R. p. 49). Accordingly, Respondents indisputably owed Dennis a duty of reasonable care for his protection and safety while on Respondents' premises.

2. Because genuine issues of material fact remain regarding whether Respondents breached their duty to ensure Dennis' protection and safety, the Trial Court erred in granting summary judgment.

The Order granting Respondents' Motion for Summary Judgment incorrectly states that a business owner only has a duty of care "to warn of latent or hidden dangers on the property of which Walgreens had knowledge or should have knowledge." However, as discussed above, Respondents owed Dennis a duty of reasonable care for his protection and safety while on Respondents' premises. In SC, the duty to provide an invitee protection and safety is often breached by creating an unsafe environment, not only by failing to warn of a property defect. See, e.g., Callum v. CVS Health Corp., 137 F. Supp. 3d 817, 859 (D.S.C. 2015) (employee summoning a crowd around an invitee with PTSD created a reasonable inference that CVS breached its duty to the invitee to provide reasonable care for his protection and safety).

Additionally, the duty to provide an invitee protection and safety is often breached by providing an inadequate number of employees to ensure a safe environment. See id.; see also Greenville Mem'l Auditorium v. Martin, 301 S.C. 242, 245–46, 391 S.E.2d 546, 547–48 (1990) (affirming jury verdict based on insufficient number of security personnel); Corbett v. City of Myrtle Beach, S.C., 336 S.C. 601, 609–11, 521 S.E.2d 276, 280–81 (Ct. App. 1999) (reversing summary judgment and trial court's determination that lack of dedicated lifeguards was not proximate cause of swimmer's death).

Here, Respondents breached their duty to provide Dennis protection and safety by failing to provide an employee to accompany Dennis to the roof and by failing to take any other efforts to ensure his safety.

A. Respondents acknowledged they could not fulfill their own safety policy without accompanying Dennis to the roof.

"Evidence of a company's deviation from its own internal policies is relevant to show the company deviated from the standard of care and is properly admitted to show the element of breach." Roddey v. Wal-Mart Stores E., LP, 415 S.C. 580, 589–90, 784 S.E.2d 670, 675 (2016).

In its 30(b)(6) deposition, Walgreen stated that its policy is that employees must call 911 as soon as possible when any invitee requires immediate medical attention. (Walgreen 30(b)(6) Dep. 86:3-88:25) (R. p. 79, line 3-p. 81, line 25). Walgreen admitted Dennis required immediate medical attention while he was on the roof of the Okatie store. See id. Walgreen further admitted there was no way that Walgreen's employees could have known that immediate medical attention was required without assigning an employee to go on the roof with Dennis. See id.

Walgreen knew it could not fulfill its own policy to call 911 as soon as possible when an invitee requires immediate medical attention, unless they sent someone to the roof with Dennis. By failing to send an employee to the roof with Dennis, Walgreen violated their own safety policy.

B. Respondents acknowledged only allowing one contractor on the roof is negligence, but Respondents retained all the control and responsibility for safety.

Walgreen admitted that just climbing to the roof is a dangerous activity that requires more than one employee present. (Walgreen 30(b)(6) Dep. 90:1-91:6; R. p. 82, line 1-p. 83, line 6 "I would have paged somebody to come back to the stockroom. I would never go up there by

myself, no.") (Gilbert Dep. 29:17-30:5 & 44:7-11; R. p. 91, line 1-p. 92, line 6 & R. p. 98, lines 7-11 "And then when Marsha came in and we started doing, you know, just daily tasks, I did – I'm like, 'Oh, come with me. I want to go close this hatch door.' And I'm like, I don't want to be climbing up there, you know, alone in the stockroom.") The store manager 30(b)(6) deponent and the assistant store manager always ensured their own safety when going to the roof. Like failing to provide lifeguards for swimmers in Corbett, additional personnel or monitoring was needed when sending invitees to the roof. See Corbett, 336 S.C. at 609–11. Respondents knew this danger, required the additional personnel for their own safety, but took no steps to ensure Dennis' protection and safety.

Walgreen was asked if they were aware of anything that Hussmann Services did negligently in this case. Walgreen responded "[y]eah. I mean -- I mean, they didn't have anybody with him." (Walgreen 30(b)(6) Dep. 29:15-19) (R. p. 66, lines 15-19). Walgreen further stated:

> Q. Earlier you stated that Hussmann was negligent by not having anyone assigned to work with Dennis, is that right?
> A. Well, I mean, if they -- if they knew he had something wrong with him, then I would assume that you would bring somebody with him, yes.
> Q. And what if they didn't know that Dennis had any issue? Would they still be negligent for letting him work on the roof alone?
> A. Possibly.
> Q. And why is that?
> A. Because he's by himself, or I'll defer that to the attorney, one of the two, but in my mind he's on a roof by himself.
> Q. And what's the danger in Hussmann leaving him on a roof by himself?
> A. I don't know.
> Q. Is it that he could have a medical emergency like he did in this case?
> A. Sure. I mean, I don't go on roofs by myself.

(Walgreen 30(b)(6) Dep. 65:11-66:6) (R. p. 70, line 11-p. 71, line 6).

Respondents admitted that allowing a contractor on a roof alone is a breach of a duty of care. Respondents, as the business owner, owed Dennis a duty of reasonable care for his

protection and safety that would be breached by Walgreen's admitted standard of care that no one should go to the roof unattended. Walgreen admits that it:

- Had an obligation to provide a safe environment for contractors working at its store. (Walgreen 30(b)(6) Dep. 75) (R. p. 73).
- Store managers were in-charge at the Okatie Store of overall safety for customers and contractors. (Gilbert Dep. 51) (R. p. 100).
- Store managers had sole authority to decide who went to the roof and whether they went alone. (Walgreen 30(b)(6) Dep. 126:4-10) (R. p. 87, lines 4-10).

Despite its knowledge of the dangers of the roof, its admission that sending Dennis to the roof alone was negligence, and its admission that it alone controlled safety for the roof, Walgreen further admitted:

- Walgreen had no policy related to inspections of the premises and failed to conduct any inspections during the workday. (Walgreen 30(b)(6) Dep. 77:19-78:1-15) (R. p. 74, line 19-p. 75, line 15).
- Walgreen had no idea exactly how Dennis got access to the roof. See id. at 45:22-25 & 124:16-20 (R. p. 69, lines 22-25 & R. p. 86, lines 16-20).
- Walgreen could have connected the roof access door to the security system and inspected it daily with a tag and log, like every other door in the building, which would have prevented Dennis from being left in the building. See id. at 81 & 84:20-25 & 85:7-12 (R. p. 76, R. p. 77, lines 20-25 & R. p. 78, lines 7-2).
- Walgreen never installed security cameras on the roof of the Okatie store and does not actively monitor any of their cameras. (Gilbert Dep. 62:1-9 & Walgreen 30(b)(6) Dep. 74: 14-16) (R. p. 103, lines 1-9 & R. p. 72, lines 14-16).
- Walgreen regularly assigned employees to accompany invitees at the store, but despite the known dangers of going to the roof alone, Walgreen never assigned anyone to accompany invitees to the roof. (Gilbert Dep. 53-54) (R. pp. 101-102) (management accompanies all pharmacy delivery drivers, auditors, and OSHA inspectors).

C. Plaintiff's safety expert states that Respondents failed to provide a safe work environment by failing to send a Walgreen employee to the roof with Dennis.

Plaintiff has retained Fred Graham, a safety expert with almost 60 years' experience as a corporate safety manager and safety consultant. (Fred Graham Expert Report & CV) (R. pp. 139-167). Mr. Graham states in his report that Walgreen was obligated to provide Dennis with a safe work environment while he was exposed to the numerous dangers related to working on the roof of Walgreen Company's Okatie Store. See id. at 1. Mr. Graham further stated that Walgreen

failed to provide a safe work environment by allowing Dennis to work on the roof alone and by failing to send a store employee to the roof whenever Dennis or any contractor was working on the roof alone. See id. at 2.

Plaintiff has presented genuine issues of material fact whether Respondent failed to provide a safe work environment by leaving invitees alone on their roof. Respondent has provided no evidence on this point. "Whether a business proprietor's security measures were reasonable in light of a risk will, at many times, be identified by an expert. Here, Lord presented such expert testimony. At this stage, it is not the role of the circuit court or this Court to determine whether Lord will prevail on her negligence claim . . . ." See Lord v. D & J Enterprises, Inc., 407 S.C. 544, 560, 757 S.E.2d 695, 703 (2014) (quotations and citations omitted); see also Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 459 (S.C. 2023) (holding that the moving party is only entitled to summary judgment if the evidence before the court show[s] that there is no genuine issue as to any material fact.)

D. Genuine issues of material fact remain regarding whether the danger to Dennis was obvious.

"Where a duty to protect exists, a defendant cannot claim that the injury was the result of assumption of risk or contributory negligence if the injured person's conduct was within the foreseeable risk to be protected." Hubbard & Felix, The South Carolina Law of Torts at 103-104. Additionally, an "owner is liable for injuries to an invitee, despite an open and obvious defect, if the owner should anticipate that the invitee will nevertheless encounter the condition." Callander v. Charleston Doughnut Corp., 305 S.C. 123, 125-26 (S.C. 1991). A plaintiff can only assume a risk if he understands and appreciates a known danger, then freely and voluntarily exposed himself to it. See Mayes v. Paxton, 313 S.C. 109, 115-16 (1993).

Here, Dennis was unaware Walgreen conducted no safety inspections of the roof or any of the premises, Walgreen employees knew the roof was dangerous and never went to the roof alone, Walgreen neither installed nor monitored security cameras on the roof, etc. So, Dennis could not have voluntarily exposed himself to the danger without fully understanding and appreciating the danger.

Walgreen knew the dangers of going to the roof alone and knew a medical emergency was a foreseeable risk of going to the roof alone. Walgreen was asked what's the danger in Hussmann leaving Dennis on a roof by himself; is it that he could have a medical emergency like he did in this case. Walgreen's response was "[s]ure. I mean, I don't go on roofs by myself." (Walgreen 30(b)(6) Dep. 65:11-66:6) (R. p. 70, line 11-p. 71, line 6). Walgreen knew the danger, yet still led Dennis to the roof alone, so it was foreseeable to Walgreen that Dennis would "nevertheless encounter the condition" of working alone on the dangerous roof.

3. Because genuine issues of material fact remain regarding causation of Plaintiff's injuries, the Trial Court erred in granting summary judgment.

Plaintiff has retained Dr. Donald Jason, a forensic pathologist with decades of experience as a physician, professor, medical examiner, and forensic pathologist. (Donald Jason Expert Report & CV) (R. pp. 168-178). Dr. Jason states in his report that "if someone from Walgreens had been present and witnessed Anderson working on the roof, they would have been able to see Anderson's symptoms of heart failure and immediately been able to assist him and if necessary, called 911 for further assistance." See id. at 2. Dr. Jason further states that "[w]ith such assistance Anderson would most probably have survived." See id.

Plaintiff has presented genuine issues of material fact that Dennis' injuries and death would have been prevented if Walgreen had provided a safe work environment and sent a Walgreen employee to the roof with Dennis, so a jury must determine negligence in this case.

A. Summary judgment must be denied because whether Respondents breached their duty to ensure Dennis' protection and safety & whether this breach was the proximate cause of Dennis' death are questions for the Jury.

"Whether the relation between two persons is such as gives rise to a duty to use care is a pure question of law for the court to determine." Ballou v. Sigma Nu Gen. Fraternity, 291 S.C. 140, 146–47, 352 S.E.2d 488, 493 (Ct. App. 1986). The cases cited above demonstrate Respondents owed Dennis a duty to ensure his protection and safety on the premises.

Once a duty has been established, a jury must decide whether Respondents provided a reasonable safe premises:

> It is unessential that the precise manner in which the injuries might have occurred, or where sustained, be foreseeable, or foreseen. It is sufficient that there is a reasonable generalized gamut of greater than ordinary dangers of injury and that the sustaining of the injury was within this range. It is, therefore, a jury question whether the defendant had provided reasonably safe premises.
>
> Other questions for the jury are the issues of negligence, contributory negligence, and proximate cause, and, if more than one reasonable inference can be drawn from the evidence, the trial judge is required to submit these issues to the jury. Similarly, if more than one reasonable inference can be drawn from the evidence as to whether the defendant's behavior was reckless, wilfull, or wanton, the issue of punitive damages must also be submitted to the jury.

Graham v. Whitaker, 282 S.C. 393, 321 S.E.2d 40 (1984) (citations omitted, emphasis added).

> As to the first contention, as explained above, the question of negligence is a mixed question of law and fact. Moore, 373 S.C. at 221, 644 S.E.2d at 746. If a duty does exist, the jury then determines whether a breach of the duty that resulted in damages occurred. *Id.* Thus, the Amusement Park's argument that it did not breach a duty fails because that determination rests with the jury.
>
> Amusement Park's argument that it did not proximately cause Husband's injuries also fails. Only on the rarest occasion should the trial court determine the issue of proximate cause as a matter of law. Bailey v. Segars, 346 S.C. 359, 367, 550 S.E.2d 910, 914 (Ct. App. 2001) ("Ordinarily, the question of proximate cause is one of fact for the jury. The trial court's sole function regarding the issue is to determine whether particular conclusions are the only reasonable inferences that can be drawn from the evidence. Only in rare or exceptional cases may the

issue of proximate cause be decided as a matter of law.").

Accordingly, the trial court's decision is REVERSED.

Burnett v. Fam. Kingdom, Inc., 387 S.C. 183, 191–94, 691 S.E.2d 170, 174–76 (Ct. App. 2010).

"In sum, we find the existence of a common law duty owed by Babcock Center to Appellant. The precise extent and nature of that duty, which is grounded in relevant standards of care, and whether the duty was breached must be determined by a jury on remand." Madison ex rel. Bryant v. Babcock Ctr., Inc., 370 S.C. 42, 58–59, 634 S.E.2d 275, 283–84, opinion withdrawn and superseded on denial of reh'g, 371 S.C. 123, 638 S.E.2d 650 (2006).

4. Because genuine issues of material fact remain regarding whether Respondents negligently handled decedent's body, the Trial Court erred in granting summary judgment.

Plaintiff has brought an additional claim related to Respondents' negligent handling of Dennis' body after he died on Walgreen's roof. South Carolina recognizes a negligence claim related to indecent handling, desecration, or unwarranted exposure of a body. See, e.g., Lyles v. Western Union Tel. Co., 84 S. C. 1, 65 S. E. 832 (1909) (allowing damages for a wife's mental anguish when telegraph company failed to deliver message instructing her brother to pick up the body from the train station and make funeral arrangements; as a result, the body was exposed to the July sun for several hours and interred late at night) see also 6 S.C. Jur. Dead Bodies § 32 ("Any indecent handling, desecration, or unwarranted exposure of a body may be actionable at civil law").

Dennis died on Friday, March 13, 2020. (Autopsy of Dennis Anderson p. 1) (R. p. 179). On March 13, 2020, no one checked on Dennis at the end of the business day or at 10 pm when closing the store, despite knowing Dennis was working on the roof and seeing Dennis' work van in the parking lot. (Complaint ¶ 12-14, Second Amended Answer ¶ 13-15, Gilbert Dep. 23:17-22 & 35:2-8) (R. p. 38, R. p. 48, R. p. 90, lines 17-22, & R. p. 93, lines 2-8).

On Saturday, March 14, 2020, no one checked on Dennis at 8 am when opening the store, despite again seeing Dennis' work van in the parking lot. (Complaint ¶ 15; Second Amended Answer ¶ 16, & Gilbert Dep. 40:15-45:14) (R. p. 38, R. p. 48, & R. p. 94, line 15-p. 99, line 14). No one checked on Dennis at 10 am, despite seeing the roof hatch was still open. See id. In fact, no one checked on Dennis until noon on Saturday. (Complaint ¶ 16 & Second Amended Answer ¶ 17) (R. p. 38 & R. p. 49).

Genuine issues of material fact remain regarding whether Respondents knew or should have known that Dennis was dead on Respondents' roof and whether Respondents breached their duty of care by their indecent handling, desecration, and unwarranted exposure of Dennis' body to the elements after his death.

CONCLUSION

Because Respondents owed a duty to ensure Dennis Anderson's protection and safety on the premises, because genuine issues of material fact remain regarding whether Respondents breached their duty to ensure Dennis' protection and safety, because genuine issues of material fact remain regarding causation of Plaintiff's injuries, and because genuine issues of material fact remain regarding whether Respondents negligently handled decedent's body, the Trial Court erred in granting summary judgment to Respondents.

This Court should reverse and remand this case for a trial on the merits.

November 25, 2024

s/ Justin Bice
Justin Bice, Esq.
Bice Law LLC
406 Tom Hall Street
Fort Mill, SC 29715
Phone/Fax: 803-639-8777
Attorney for Appellant