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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Court of Common Pleas

B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2024-000748
Circuit Court Case No. 2021-CP-07-01049

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.

Hussman Services Corporation

Third-Party Defendant.

RESPONDENTS' FINAL BRIEF

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INTRODUCTION

Appellant Cordelia Anderson, individually and as PR of the Estate of Dennis R. Anderson asserts that Respondents Walgreen Co. and Bluffton WG, LLC ("Walgreens") owed decedent Dennis Anderson a duty to accompany him onto Walgreens's roof and remain with him while he worked on an air conditioning unit as an independent contractor. While Mr. Anderson's death due to cardiac arrest is tragic and unfortunate, Appellant's assertion that Walgreens owed him a duty to supervise his work or remain with him on the roof is contrary to our state's jurisprudence.

Walgreens owed Mr. Anderson, an invitee, a duty to exercise reasonable care for his safety. The degree of care owed to an invitee must be commensurate with the particular circumstances involved, including the invitee's age and capacity. As an independent contractor, Walgreens's duty to Mr. Anderson was limited to warning him of latent or hidden defects on the property of which Walgreens knew or should have known. Mr. Anderson's heart failure was not a latent or hidden defect on the property and not a foreseeable injury. Accordingly, Walgreens is not liable for his death.

A duty to supervise independent contractors while they work would set a precedent that would require property owners to accompany plumbers under houses and roofers into attics. It would stretch the concept of duty to an area it has never gone and should not go. To do otherwise would eviscerate the entire parameters of

when a duty exists. Accordingly, we ask this Court to recognize the untenable nature of this unsupported extensive duty and affirm the circuit court's order granting summary judgment to Walgreens.

COUNTER-STATEMENT OF THE ISSUES ON APPEAL

I. Did the circuit court err in finding that Walgreens did not owe Mr. Anderson a duty to accompany him onto the roof and remain with him while he worked?

II. Did the circuit court err in finding there was no genuine issue of material fact that Walgreens did not breach its duty to warn of latent defects on the property?

III. Did the circuit court err in finding there was no genuine issue of material fact that Mr. Anderson's enlarged heart caused his death?

IV. Did the circuit court err in finding there was no genuine issue of material fact that Walgreens did not negligently handled Mr. Anderson's body?

COUNTER-STATEMENT OF THE CASE

On March 13, 2020, Hussman Services Corporation ("Hussman") sent an experienced heating and air technician, Mr. Anderson, to the Okatie Walgreens to perform repairs on its heating and air system. **(R. p. 38 ¶ 8, R. p. 48 ¶ 9.)** At approximately 12:15 p.m. the following day, Walgreens employee Tracey Gilbert discovered Mr. Anderson deceased on the roof. **(R. p. 186.)** Mr. Gilbert immediately contacted the Beaufort County Sheriff's Office to respond. **(R. p. 186.)** The investigating officers observed Mr. Anderson lying next to the air conditioning unit, the air conditioning unit disassembled, and Mr. Anderson's cell phone placed

on top of the unit. **(R. p. 187.)** The investigation confirmed that power to the air conditioning unit was off, and the autopsy confirmed Mr. Anderson died naturally from cardiomegaly, or an enlarged heart, rather than an electrical injury. **(R. pp. 179, 181-182.)**

On June 7, 2021, Appellant filed this negligence action against Walgreens; in turn, Walgreen Co. filed a third-party action against Hussmann. **(R. pp. 46-60.)** On October 27, 2023, Walgreens filed a motion for summary judgment arguing that it did not owe Mr. Anderson a duty to accompany him onto the roof and remain with him, it did not breach its duty to warn of latent defects on the property, Mr. Anderson's heart condition was the sole cause of his death, and it did not negligently handle Mr. Anderson's body. **(R. pp. 12-13.)** The circuit court heard arguments on Walgreens' Motion for Summary Judgment on February 27, 2024. **(R. pp. 1-8.)** On April 22, 2024, the circuit court issued an order granting Walgreens' Motion for Summary Judgment ruling that Walgreens did not owe Mr. Anderson a duty to accompany him onto the roof and remain with him while he worked, Walgreens did not breach their duty to warn of laten defects on the property, Mr. Anderson's enlarged heart caused his death, and Walgreens did not negligently handle Mr. Anderson's body. **(R. pp. 1-8.)** This appeal followed.

STATEMENT OF FACTS

Walgreens gave Mr. Anderson access to the roof after he arrived at the store on March 13. **(R. p. 68.)** Mr. Gilbert explained that Walgreens management typically only interacted with contractors to verify their identity and provide them with access to the area of the store they needed. **(R. p. 100.)** Mr. Gilbert elaborated that contractors were familiar with the property, knew where they needed to be, and knew what they were going to be working on. **(R. p. 100.)** Mr. Gilbert testified that Walgreens' employees followed Walgreens' procedures in closing the store on March 13 and did not make any errors or mistakes that could have prevented leaving Mr. Anderson on the roof. **(R. p. 100.)**

Mr. Gilbert recalled that he noticed a van in Walgreens' parking lot when he opened the store on March 14 but explained that he did not recognize that it was Mr. Anderson's van because it was too far away for him to recognize the van's markings. **(R. pp. 96-97.)** Mr. Gilbert elaborated that it was not unusual for work trucks or vans to be in Walgreens' parking lot because of the nearby hotel and explained that Mr. Anderson's van was parked on the far side of the parking lot towards that hotel. **(R. p. 98.)** Mr. Gilbert also testified that he noticed the hatch was open after he opened the store but thought that Mr. Anderson forgot to close it after finishing his work the previous day. **(R. p. 95.)** When Mr. Gilbert climbed up the ladder to close the hatch, he noticed Mr. Anderson's body on the roof. **(R. pp. 98-99.)** Mr. Gilbert

immediately contacted emergency services and had a pharmacist check on Mr. Anderson. **(R. p. 99.)**

STANDARD OF REVIEW

"When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Id.* (citing Rule 56(c), SCRCP)).

Additionally, "the 'mere scintilla' standard does not apply under Rule 56(c)." *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023). "Rather, the proper standard is the 'genuine issue of material fact' standard set forth in the text of the Rule." *Id.* Therefore, "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Id* (quoting *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 388, 701 S.E.2d 776, 779 (Ct. App. 2010).

ARGUMENT

I. The circuit court properly determined that Walgreens did not owe Mr. Anderson a duty to accompany him onto the roof and remain with him while he worked.

"First, the court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, the defendant is entitled to a judgment as a matter of law." *Id* at 391, 701 S.E.2d at 781.

A. The circuit court properly determined that the duty Walgreens owed Mr. Anderson as an independent contractor was limited to warning of latent defects on the property.

A "[land]owner owes . . . an invitee . . . the duty of exercising reasonable or ordinary care for his safety[] and is liable for injuries resulting from the breach of such duty." *Larimore v. Carolina Power & Light*, 340 S.C. 438, 444–45, 531 S.E.2d 535, 538 (Ct. App. 2000) (quoting *Israel v. Carolina Bar–B–Que, Inc.,* 292 S.C. 282, 289, 356 S.E.2d 123, 128 (Ct. App. 1987)). However, a "landowner has a duty to warn an invitee only of latent or hidden dangers of which the landowner has knowledge or should have knowledge." *Id.* at 445, 531 S.E.2d at 538. Moreover, the degree of care "required is commensurate with the particular circumstances involved, including the age and capacity of the invitee." *Id.*

In *Nelson*, a Piggly Wiggly customer was harmed when her grandmother's car, which had pulled into a parking spot, suddenly accelerated and pinned the customer in between the building and the car. The customer sued Piggly Wiggly,

arguing that its wheel stops in the parking lot did not sufficiently protect her because they did not stop her grandmother's car. *Id.* at 386.

The court acknowledged that merchants owe their customers a general duty of care. 390 S.C. at 391–92, 701 S.E.2d at 781. The court also articulated that the more specific question a court must answer on summary judgment is "whether the scope of the acknowledged duty of reasonable care extends to the particular risk that led to [the plaintiff's] injury." *Id.* at 392, 701 S.E.2d at 781. The court reasoned that the plaintiff's injury was not foreseeable because the loss of control of a vehicle does not happen within the ordinary and normal course of events. *Id.* at 394, 701 S.E.2d at 782. The court concluded that the plaintiff's injuries were outside the scope of the duty Piggly Wiggly owed the plaintiff because Piggly Wiggly had no duty to protect against unforeseeable events. *Id.* at 394, 701 S.E.2d at 782.

Here, Mr. Anderson suffered heart failure while working on Walgreens's roof. Heart failure is not something that occurs within the ordinary and normal course of air conditioning maintenance repairs, regardless of whether such repairs are done alone or with a companion. Thus, the injury was unforeseeable, and Respondent had no specific legal duty to prevent it. Indeed, Walgreens had no legal duty to monitor Mr. Anderson for a medical emergency when he was alone on the roof, just as it has no legal duty to monitor other invitees for medical emergencies in other areas of their premises, such as the restrooms, where they are knowingly alone. Accordingly,

the circuit court properly determined that Walgreens did not owe Mr. Anderson a duty to accompany him onto the roof and remain with him while he worked.

II. The circuit court properly determined that Walgreens did not breach its duty to warn of latent defects on the property.

A. Mr. Anderson's harm did not result from a latent or hidden danger on the property and was not foreseeable.

"Where a duty of due care exists, a person is required to consider only the foreseeable risks of his conduct or failure to act. If an injury is not foreseeable, he is not liable for that injury." *Nelson*, 390 S.C. at 392, 701 S.E.2d at 781 (quoting Hubbard, F.P. and Felix, R.L., *The Law of Torts In South Carolina* 43 (3d ed. 2004). "Foreseeability 'is determined by looking to the natural and probable consequences of the defendant's act or omission.'" *Id.* at 392, 701 S.E.2d at 781 (quoting Baggerly v. CSX Transp., Inc., 370 S.C. 362, 369, 635 S.E.2d 97, 101 (2006)).

Appellant cites *Callum v. CVS Health Corp.*,[1] *Greenville Memorial Auditorium v. Martin*,[2] and *Corbett v. City of Myrtle Beach*[3] to show how landowners have breached their duty of ordinary care. In each of these cases, however, the harm was foreseeable.

In *Callum*, the plaintiff informed a CVS manager that he suffered from post-traumatic stress disorder ("PTSD"), fear of crowds, and agoraphobia and asked if he

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1 137 F. Supp. 3d 817 (D.S.C. 2015).
2 301 S.C. 242, 391 S.E.2d 546 (1990).
3 336 S.C. 601, 521 S.E.2d 276 (1999).

could shop in the store after hours. 137 F. Supp. 3d at 830. Despite knowledge of the plaintiff's medical condition, the manager summoned a crowd over to the plaintiff and physically kept him from leaving the premises. *Id.* at 830–31. The court ruled that the plaintiff properly pled a claim for negligence because the facts created a reasonable inference that the defendant failed to exercise due care for the plaintiff's safety after he informed the defendant of his medical condition. *Id.* at 859.

In *Greenville*, the plaintiff was injured by a glass bottle thrown from a balcony at a rock concert. 301 S.C. at 243, 391 S.E.2d at 547. The South Carolina Supreme Court upheld a jury finding that the harm was foreseeable. *Id.* at 245, 391 S.E.2d at 548. The court noted that the evidence revealed that people were drinking from open bottles, people were smoking marijuana, broken pieces of glass and liquor bottles were on the floor of the auditorium. *Id.* The court also noted that the crowd was unruly, and the defendant made no effort to stop any of the drinking, smoking, pushing, or shoving. *Id.* Accordingly, the court found that the plaintiff had presented "ample evidence from which a jury could find that [the plaintiff]'s injuries were foreseeable and that [the defendant] was liable" for those injuries. *Id.* at 246, 391 S.E.2d at 548.

Finally, in *Corbett*, the plaintiff's husband drowned while swimming in the ocean. 336 S.C. at 604, 521 S.E.2d at 278. Three lifeguards tried to save the plaintiff's husband but were unsuccessful. *Id.* The court of appeals noted that the facts in that case needed to be developed further before it could determine exactly

what duty the defendant owed to the decedent. *Id.* at 610, 521 S.E.2d at 281. Nevertheless, the only reason that the defendant could have owed the decedent a duty to protect him from drowning is because drowning is an unfortunately common, inherent, and foreseeable risk of swimming.

In *Callum*, it was foreseeable that calling over a crowd and preventing the plaintiff from leaving would cause him distress because the manager knew about the plaintiff's PTSD, fear of crowds, and agoraphobia. Here, however, it is undisputed that Mr. Anderson did not inform Walgreens of his heart condition.[4] Thus, Mr. Anderson's harm of heart failure was completely unforeseeable to Walgreens, unlike the harm in *Callum*.

Similarly, in *Greenville*, it was foreseeable that someone in a group of unruly drunk people at a concert holding glass bottles could throw one and injure someone else. It was not foreseeable that Mr. Anderson would go into cardiac arrest while fixing an air conditioner, unlike the harm in *Greenville*.

Finally, in *Corbett*, it was foreseeable that a person swimming in the ocean could drown without adequate lifeguards. Indeed, the very act of swimming requires one to submerge oneself in a liquid that, if inhaled, could kill. Cardiac arrest is not common, inherent, or foreseeable to working alone on a roof to repair an air conditioning unit, unlike the harm in *Corbett*.

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[4] Indeed, even Mr. Anderson was likely unaware that he had an enlarged heart.

Mr. Anderson's heart failure was indisputably not within the ordinary or normal course of events of working alone on a roof. Cardiac arrest is not a normal, foreseeable, or ordinary event or injury resulting from working on a roof. Because Mr. Anderson's heart failure was not a foreseeable harm, the circuit court properly found that Walgreens did not breach its duty to Mr. Anderson.

B. An expert's opinion cannot establish a duty.[5]

An expert's opinion is not sufficient to create a duty where one does not exist. *Nelson*, 390 S.C. at 392–93, 701 S.E.2d at 781–82. Because Walgreens had no duty to accompany Mr. Anderson onto the roof and remain with him while he worked, Appellant's expert's opinion is not sufficient to create a question of fact regarding Walgreens's duty to Mr. Anderson. *See Nelson*, 390 S.C. at 392–93, 701 S.E.2d at 781–82 ("The circuit court correctly found [the expert]'s assertion of alternate parking lot designs was insufficient to create a question of fact as to Respondents' duty to conform to any of those designs. [The expert] attested only to his own preferences rather than to the requirements of any law, ordinance, or recognized industry safety standard. His opinion did not, as a matter of law, establish a duty on

[5] This issue is not preserved for appellate review because the circuit court's order does not address it, and Appellant did not move for reconsideration. *Cox v. S.C. Education Lottery Comm.,* 441 S.C. 209, 893 S.E.2d 209 (Ct. App. 2023); *Nationwide Mutual Ins. Co. v. Tate*, 313 S.C. 444, 438 S.E.2d 266 (Ct. App. 1993). Nevertheless, we address it out of an abundance of caution.

Respondents to guard against the possibility that an improperly operated vehicle would injure [the plaintiff].").

Walgreens owed Mr. Anderson a duty to provide reasonable or ordinary care for Mr. Anderson's safety, and that duty was limited to warning of latent and obvious defects on the property because Mr. Anderson was an independent contractor. Appellant has not cited any authority that establishes a duty for landowners to monitor invitees for remote medical emergencies by providing constant supervision. Because the alleged duty to supervise invitees is not recognized by South Carolina law and Mr. Anderson's heart failure was not a result of a latent defect or a foreseeable injury, the circuit court properly found that Walgreens did not breach its duty of care.

III. The circuit court properly determined that Mr. Anderson's enlarged heart was the sole cause of his death.

"[L]egal cause is ordinarily a question of fact for the jury." *Oliver v. South Carolina Dep't of Hwys. & Pub. Transp.*, 309 S.C. 313, 317, 422 S.E.2d 128, 131 (1992). "Only when the evidence is susceptible to only one inference does it become a matter of law for the court." *Id.*

"Proximate cause requires proof of both causation in fact and legal cause." *Hurd v. Williamsburg Cnty.*, 353 S.C. 596, 611, 579 S.E.2d 136, 144 (Ct. App. 2003). "Causation in fact is established by establishing the plaintiff's injury would not have occurred 'but for' the defendant's negligence." *Id.* In contrast, "[l]egal cause . . . is proved by establishing foreseeability." *Id.*

"The touchstone of proximate cause in South Carolina is foreseeability." *Id.* at 612, 579 S.E.2d at 144. "The standard by which foreseeability is determined is that of looking to the natural and probable consequences of the complained of act." *Id.* "[I]f the [injury] would have happened as a natural and probable consequence, even in the absence of the alleged breach, then a plaintiff has failed to demonstrate proximate cause." If "the injury complained of is not reasonably foreseeable, there is no liability." *Id.*

Moreover, a defendant "is not charged with foreseeing that which is unpredictable or which would not be expected to happen as a natural and probable consequence of the defendant's negligent act." *Id.* at 612–13, 579 S.E.2d at 144–45. "Foreseeability is not determined from hindsight, but rather from the defendant's perspective at the time of the alleged breach." *Id.* at 613, 579 S.E.2d at 145.

Walgreens was clearly neither the cause nor the proximate cause of Mr. Anderson's death. Liability in this case again returns to whether it was foreseeable that Mr. Anderson would have suffered a fatal cardiac episode while working on the roof. Cardiac arrest is not a natural and probable consequence of Walgreens' failure to send someone onto the roof with Mr. Anderson. Therefore, Appellant is unable as a matter of law to show that Walgreens's failure to send an employee to the roof with Mr. Anderson caused his death. Thus, the circuit court properly determined that Mr. Anderson's enlarged heart caused his death.

IV. The circuit court properly determined that Walgreens did not negligently handle Mr. Anderson's body.

Appellant's claim that Walgreens negligently handled Mr. Anderson's body is unsupported by the facts and the law. The single case Appellant cites, *Lyles v. Western Union Tel. Co.*,[6] in no manner supports this cause of action.

In *Lyles*, a telegraph company failed to timely deliver a message instructing the deceased's family member to pick up his body from a train station and make funeral arrangements. 65 S.E. at 833. The decedent's body was exposed to the sun for several hours because of the telegraph company's delay in delivering the message. *Id.* The court reasoned that the message put the telegraph company on notice that delay in delivering the message would result in "some want of care of the body and some delay in the burial." *Id.*

Here, Walgreens had no notice that Mr. Anderson's body remained on the roof. Once aware that Mr. Anderson was still on the roof, Walgreens immediately checked on him and called emergency services. Therefore, the circuit court properly found that Walgreens did not mishandle or desecrate the body in any way.

CONCLUSION

The circuit court properly determined that Walgreens had no duty to send an employee to the roof with Mr. Anderson and did not breach any duty to Mr.

[6] 84 S.C. 1, 65 S.E. 832 (1909).

Anderson. Alternatively, the circuit court properly determined that Mr. Anderson's enlarged heart caused his death. Finally, the circuit court properly determined that Walgreens did not negligently handle Mr. Anderson's body.[7] Accordingly, this Court should affirm the circuit court's order granting summary judgment.

Respectfully submitted,

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[7] The argument that Walgreens somehow negligently handled Mr. Anderson's body after his death is not only wrong: it is offensive.

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I, Stephen L. Brown, do hereby certify that Respondents' Final Brief complies with Rule 211(b), SCACR. Additionally, the undersigned hereby certifies that this filing complies with the Supreme Court order of April 15, 2014.

Respectfully submitted,

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