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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Opinion No. 2024-UP-414 (S.C. Ct. App. Filed Dec. 11, 2024)

Mark Shaffer, as Personal Representative of the Estate of Susan Shaffer, ...Respondent,

v.

DEH Disaster Recovery, LLC; Ceres Environmental Services, Inc.; Beaufort County, A Political Subdivision of the State of South Carolina; Ryan Colter Stoltz; Matt T. Dotson; Tim Tod Dotson; Brandi Dotson; Spencer A. Olson Trucking, LLC; Buyers Products, Co.; and TruckPro, LLC,..... Defendants,

of which

Ceres Environmental Services, Inc. and Beaufort County, a Political Subdivision of the State of South Carolina, are the..... Petitioners.

PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

On February 11, 2022, the Trial Court granted Petitioners' Motion for Summary Judgment. (R. p. 26, hereinafter referred to as the "SJ Order"). After appellate briefing was completed, but before oral argument at the Court of Appeals, the Supreme Court handed down its decision of *Ruh v. Metal Recycling Servs., LLC*, 439 S.C. 649, 889 S.E.2d 577 (2023), which effectively disposed of one of the bases for summary judgment.

On December 11, 2024, relying solely on the *Ruh* decision, the Court of Appeals issued its Opinion reversing the Trial Court's SJ Order (R. p. 26). The Court of Appeals erred by disregarding the two remaining valid bases for summary judgment and failing to affirm the SJ Order on those separate bases. *See* Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."); *Sims v. Amisub of SC, Inc.,* 408 S.C. 202, 214-15, 758 S.E.2d 187, 194 (2014) (holding that Petitioners may properly "raise on appeal any additional reasons the appellate court should affirm the [trial court's] ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.") (Citations omitted).

In essence, the Trial Court properly found that Respondent failed to adduce evidence to support the causation element of its negligence claim and failed to establish a genuine issue of material fact on that issue. By failing to recognize that fundamental basis supporting summary judgment, the Court of Appeals, illogically, reversed the Trial Court's SJ Order despite the fact that the Respondent failed to meet its burden under Rule 56(c), SCRCP. For the following reasons, the Court of Appeals' Opinion must be reversed, and the Trial Court's Order granting summary judgment to Petitioners must be affirmed.

CERTIFICATION OF COUNSEL

Counsel for Petitioners hereby certifies that they filed a Petition for Rehearing with the Court of Appeals on December 23, 2024. The Court of Appeals filed its denial of that petition on January 15, 2025, and this Petition for Writ of Certiorari is being submitted within the time permitted under Rule 242(c), SCACR.

QUESTIONS PRESENTED FOR REVIEW

I. Did the Court of Appeals Err by Failing to Acknowledge All of the Bases for Trial Court's Summary Judgment Order?

   A. Only one of the Bases for Summary Judgment Order Was Disposed by the *Ruh* Decision

   B. Petitioners' Second Basis for Summary Judgment: No Proof of Causation Element of Respondent's Negligence Claim against Petitioners

   C. Respondent Failed to Establish a Genuine Issue of Material Fact Under Rule 56(c), SCRCP

II. Did the Court of Appeals Err by Failing to Apply the Proper Standard of Review?

III. Did the Court of Appeals Err by Overlooking Respondent's Failure to Preserve Issues on Appeal?

IV. Did the Court of Appeals Err by Overlooking Beaufort County's Immunity Under the South Carolina Tort Claims Act, § 15-78-10, *et seq*.?

   A. Respondent's Claim Against Beaufort County is Specifically Barred by the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*

   B. The South Carolina Tort Claims Act Also Bars This Claim Against Beaufort County Under *Wade v. Berkeley County*, 348 S.C. 224, 559 S.E.2d 586 (2002)

STATEMENT OF THE CASE

The Petitioners Beaufort County and Ceres Environmental Services entered into a contract under which Ceres carried out storm clean-up efforts following Hurricane Matthew, which struck in September of 2016. (R. p. 3499). Ceres had subcontracted work to Spencer A. Olson Trucking

("Olson") on many projects since 2013 pursuant to a Master Subcontract (R. p. 3568), including the hauling of debris for this Beaufort County Project. Olson then subcontracted trucking duties on this project to DEH Disaster Recovery, LLC ("DEH") on March 21, 2017. (R. p. 3592).

On May 3, 2017, Ms. Susan Shaffer was killed instantly when a storm-debris trailer detached from its truck, crossed the center line of U.S. Highway 21 in Beaufort County, veered into the oncoming lane of traffic, and collided with Ms. Shaffer's vehicle. (Verified Petition of Mark Shaffer at para. 2; R. p. 254). The truck and trailer were owned, maintained, inspected, and operated by DEH. (R. p. 3592). The driver of the truck and trailer, Ryan Stoltz ("Stoltz") was employed by DEH, and he was driving when the trailer detached and the accident occurred (R. p. 554). He testified at deposition that there were no problems with the trailer hitch (known as the "pintle hitch") when he conducted a pre-trip inspection that morning. Stoltz died a year after that deposition, and there has been no further direct evidence offered by any witness to contradict his testimony. Neither Beaufort County, Ceres, nor Olson ever had ownership of the truck and trailer involved in the accident, nor did they employ Stoltz at any time.

Respondent Mark Shaffer brought the underlying lawsuit against all of the above-captioned parties after the accident, (R. p. 46), and Ceres is defending Beaufort County pursuant to their agreement. On November 20, 2020, Respondent dismissed all claims against Olson, DEH, and Stoltz in exchange for their $1,150,000 aggregate settlement. (R. p. 33). Respondent then dismissed its vicarious liability claims, leaving only a claim against Petitioners for negligence in their hiring practices. (Third-Amended Complaint, R. p. 201).

Petitioners moved for Summary Judgment on September 28, 2021 because Respondent failed to adduce any evidence to support the causation element of its remaining negligence claim against Petitioners. As a separate basis for summary judgment, Petitioners also asserted that,

because Respondent's negligence claim against Petitioners was not independent of its previously dismissed vicarious liability claim, that remaining negligence claim against Petitioners was invalid. As a third basis for their summary judgment motion, Petitioners pointed out that Respondent's claim against Beaufort County was invalid under the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.* and applicable case law.

On February 11, 2022, the Trial Court granted Petitioners' Motion for Summary Judgment. (R. p. 26, hereinafter referred to as the "SJ Order"). Respondent filed its appeal and, after the parties completed their briefing, but before oral argument before the Court of Appeals, the South Carolina Supreme Court decided *Ruh v. Metal Recycling Servs., LLC*, 439 S.C. 649, 652, 889 S.E.2d 577, 579 (2023), which established, *inter alia*, that negligence claims were, in fact, independent of vicarious liability claims.

On December 11, 2024, the Court of Appeals reversed the Trial Court's SJ Order, but that Opinion was fatally flawed because the reversal was entirely based upon the *Ruh* decision, which only affected one of the three bases upon which the Petitioners sought Summary Judgment against Respondent.

The affected language in the Trial Court's SJ Order was as follows:

> The Plaintiff failed to establish that those alleged acts and omissions were independent of the acts and omissions which Plaintiff previously attributed to Olson, DEH, and Stoltz. Because Plaintiff dismissed the vicarious liability claims relating to those acts or omissions of Olson, DEH, and Stoltz, Ceres and Beaufort County have no liability for the acts and omissions of Olson, DEH, and Stoltz. Merely restating the negligence cause of action cannot revive the vicarious liability claim in this manner.

Trial Court's SJ Order at p. 5 (R. p. 30).

The other basis for summary judgment in the Trial Court's SJ Order was the absence of proof of causation, which was unaffected by the *Ruh* decision. That language follows:

> 1. ***In order to establish its cause of action for negligence in the Third Amended Complaint, Plaintiff must prove*** that Ceres and Beaufort county: (1) owed Plaintiff a duty of care; (2) that they breached that duty of care; and (3) ***that a breach of that duty of care proximately caused Plaintiffs damage.*** (Citations omitted).
>
> 2. . . . ***To prove causation, a plaintiff must demonstrate both causation in fact and legal cause. Causation in fact is proved by establishing the plaintiff's injury would not have occurred 'but for' the defendant's negligence.*** Legal cause turns on the issue of foreseeability. An injury is foreseeable if it is the natural and probable consequence of a breach of duty. . . . (Citations omitted).
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> Trial Court's SJ Order, para. 1-2 at p. 4 (R. p. 29) (emphasis added)

Applying that standard to the findings of fact in its SJ Order (R. pp. 26-27), the Trial Court concluded that *"**[t]he Plaintiff's Memorandum, Exhibits, and arguments in opposition to this Motion failed to establish a genuine issue of material fact that the death of Ms. Shaffer would not have occurred but for the acts and omissions which Plaintiff now attributes to Ceres and Beaufort County.***" Trial Court's SJ Order, para. 7 at p. 5 (R. p. 30) (emphasis added).

The above-quoted passages from the Trial Court's SJ Order establish that there were, indeed, two separate bases for the Trial Court's decision to grant summary judgment: one based upon the absence of evidence of "but-for" causation; and a separate basis being the asserted lack of independence of the previously dismissed vicarious liability claim and the remaining negligence cause of action in Respondent's Third-Amended Complaint. The Court of Appeals seized upon the second basis noted above—the independence of the vicarious liability and negligence claims—and reversed the entire SJ Order based upon the newly decided *Ruh* case.

In their Summary Judgment Motion, Petitioners asserted that there were no genuine issues of material fact which would establish that any alleged acts or omissions of Petitioners caused the death of Ms. Shaffer or the Respondent's damages (R. pp. 376, 388). Petitioners preserved the "but-for" causation issue as it was included in Petitioners' Memorandum in Support of their

Motion for Summary Judgment (R. pp. 376, 388); it was included in Petitioners' Brief of Appellants-Respondents before the Court of Appeals (Brief of Appellants-Respondents at pp. 6-11); and it was also included in Petitioners' Motion for Rehearing submitted to the Court of Appeals (Motion for Rehearing at pp. 12-15).

Respondent simply failed to establish that there was a genuine issue of material fact to support its causation element against Petitioners, and the Trial Court properly granted summary judgment on this basis under Rule 56, SCRCP. (SJ Order at pp. 4-5; R. pp. 29-30). Because the Court of Appeals failed to consider this separate basis for the Trial Court's SJ Order, the Court of Appeals' Opinion must be reversed, and the Trial Court's SJ Order must be affirmed.

Additionally, as noted above, when Petitioners moved for summary judgment (R. p. 376), they included, as a third basis, the bar imposed by the South Carolina Tort Claims Act on Respondent's claims against the County (R. pp. 380-85). This third basis is preserved for appeal as it was included in Petitioners' Memorandum in Support of their Motion for Summary Judgment (R. pp. 380-85); it was included in Petitioners' Brief of Appellants-Respondents before the Court of Appeals (Brief of Appellants-Respondents at pp. 6-11); and it was also included in Petitioners' Motion for Rehearing submitted to the Court of Appeals (Motion for Rehearing at pp. 12-15).

This third basis was also ignored by the Court of Appeals, and that is another reason why the Court of Appeals' Opinion must now be reversed, and the Trial Court's dismissal of claims against Beaufort County must be affirmed. Despite the fact that the Trial Court did not incorporate this third basis into its SJ Order, the Court of Appeals was still obligated to fully consider that Tort Claims Act argument, and to affirm the Trial Court's Order on that basis as well. *See Sims v. Amisub of SC, Inc., supra,* 408 S.C. at 214-15, 758 S.E.2d at 194.

The Court of Appeals, thus, failed to follow the applicable standard of review in this appeal,

and it also overlooked Respondent's failure to preserve for appeal any legal argument in opposition to Petitioners' Summary Judgment Motion. Astonishingly, Respondent did not submit a legal brief or memorandum in opposition prior to the Summary Judgment hearing. Instead, Respondent simply filed twenty-four deposition transcripts in their entirety, expecting the Trial Court to wade through thousands of pages in a search for evidence supporting the causation element of Respondent's remaining negligence claim against Petitioners. (R. pp. 484-85). By waiving its right under Rule 56 to submit legal arguments in opposition to summary judgment, Respondent failed to establish a genuine issue of material fact regarding the cause of the pintle hitch failure, and the Trial Court granted summary judgment on that basis. The fact that a separate basis for summary judgment was disposed of by the *Ruh* decision, *supra,* did not justify reversal of the Trial Court's SJ Order.

Rule 242(b), SCACR, sets forth a non-exclusive list of reasons why the Supreme Court may choose to grant certiorari within its discretion. Two of those reasons are particularly applicable justifications for granting certiorari in the instant Petition: Rule 242(b)(1) (novel questions of law); and 242(b)(3) (conflicts with a prior decision of the Supreme Court).

On page 4 of its Opinion, the Court of Appeals implicitly suggests that the *Ruh v. Metal Recycling* decision, *supra,* 439 S.C. at 652, 889 S.E.2d at 579, involves a novel question of law that is appropriate for review by the Supreme Court. The Court of Appeals acknowledged that, in the *Ruh* decision, the Supreme Court "stressed that it was not breaking any new ground and was only applying longstanding principles of negligence in coming to this decision." (Opinion at p. 4, citing *Ruh* at 654, 889 S.E.2d at 580). However, the Court of Appeals then failed to fully analyze *Ruh* or even attempt to apply it to the questions presented in the instant appeal. Instead, the Court of Appeals admitted that "[w]e see no way to reconcile the circuit court's decision with *Ruh*" and

then concluded, without any further analysis, that "[t]he circuit court accordingly erred in granting summary judgment as to the negligent hiring claims." (Court of Appeals Opinion at p. 4).

Such a conclusion provides no guidance as to the application of the *Ruh* decision to the instant appeal. Indeed, because the Supreme Court declared that the *Ruh* decision "was not breaking any new ground and was only applying longstanding principles of negligence," *id.* at 654, 889 S.E.2d at 580, it is apparent that the Supreme Court did not intend to overturn any precedent regarding the need to prove causation as an element of Respondent's negligence claim against Petitioners. Thus, it was improper for the Court of Appeals to rely upon the *Ruh* decision as its sole basis for reversing the Trial Court's SJ Order in this matter. The Court of Appeals erred by failing to acknowledge the absence of a genuine issue of material fact as to causation in Respondent's negligence claim, and by failing to affirm the Trial Court's SJ Order on that basis.

The Court of Appeals apparently mistook the application of *Ruh* as a novel question of law. In reality, the Court of Appeals simply overlooked the lack of a genuine issue of material fact regarding causation, when it was a valid basis to affirm the Trial Court's SJ Order. Ironically, the Court of Appeals' reversal of the Trial Court's SJ Order actually conflicts with *Ruh* as a prior decision of the Supreme Court, and this Petition for Certiorari must be granted in order to reverse that erroneous ruling by the Court of Appeals. See Rule 242(b)(3), SCACR, *supra.*

ARGUMENT

I. The Court of Appeals Erred by Failing to Acknowledge All of the Bases for the Trial Court's Summary Judgment Order.

A. Only One of the Bases for Summary Judgment Order Was Disposed by the *Ruh* Decision.

The Trial Court's SJ Order (Para. 7, R. p. 30) was based on two separate points: (1) there was no case law, at that time, which confirmed that the remaining negligence claim against

Petitioners was independent of its dismissed vicarious liability claim; and (2) Respondent failed to establish any evidence of the causation element of its remaining negligence claim against Petitioners. The Court of Appeals properly recognized that the *Ruh* decision, *supra,* 439 S.C. at 652, 889 S.E.2d at 579, disposed of the Trial Court's first basis for summary judgment noted above.

However, the Court of Appeals fixed its attention solely on the independent relationship between vicarious liability and negligence as decided in the *Ruh* decision, *supra,* 439 S.C. at 649, 889 S.E.2d at 577, and reversed the Trial Court's SJ Order without examining the remaining valid bases for summary judgment below. The Court of Appeals effectively gave up at that point, stating that it saw "no way to reconcile the circuit court's decision with *Ruh*. The circuit court accordingly erred in granting summary judgment as to the negligent hiring claims." (Court of Appeals Opinion at p. 4).

It is true that the *Ruh* case was decided after briefing and before oral argument at the Court of Appeals, and *Ruh* certainly held that a negligent hiring claim is independent of a vicarious liability claim, which disposed of one of the bases of the Trial Court's SJ Order. However, the *Ruh* decision did not establish any novel legal concepts which gutted the reasoning of the Trial Court's SJ Order. It certainly did not eliminate the need to establish causation in a negligence claim, nor did it change the need to establish a genuine issue of material fact to overcome a summary judgment motion.

To the contrary, the *Ruh* Court declared only that its holding was "a straightforward application of the defining principles of tort law in this State, and we believe our answer should come as no surprise to even a casual student of the law." *Ruh,* 439 S.C. at 654, 889 S.E.2d at 580. While Petitioners did argue at the summary judgment stage and in appellate briefs submitted to

the Court of Appeals—before *Ruh* was decided—that a negligent hiring claim was dependent upon the same elements of proof of the vicarious liability claim, that was only one part of Petitioners' summary judgment argument (See R. p. 376). *Ruh* has since disposed of that particular issue.

B. Petitioners' Second Basis for Summary Judgment: No Proof of Causation Element of Respondent's Negligence Claim against Petitioners

The Court of Appeals failed to recognize that the second basis for summary judgment, the absence of proof of causation, was sufficient to affirm the Trial Court's SJ Order. That was reversible error by the Court of Appeals, because the Court of Appeals is required to affirm if either ground supports the summary judgment ruling. *See* Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."); *Sims v. Amisub of SC, Inc.,* 408 S.C. 202, 214-15, 758 S.E.2d 187, 194 (2014) (holding that Petitioners may properly "raise on appeal any additional reasons the appellate court should affirm the [trial court's] ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.") *citing I'On, LLC v. Town of Mt. Pleasant,* 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000); *see also Whiteside v. Cherokee Cty. School Dist. No. One*, 311 S.C. 335, 340-41, 428 S.E.2d 886, 889 (1993).

The Respondent offered no evidence to establish the but-for cause of the pintle hitch failure at the summary judgment stage. Not only did it not show a nexus between any alleged acts or omissions by Petitioners in relation to the fatal accident and the damages claimed, Respondent was completely unable to establish a genuine issue of material fact as to what caused the pintle hitch to fail in the first place. The Trial Court recognized that, because the hitch components were missing and never recovered after the accident, neither Respondent's expert Napier nor any other fact or expert witness tested or even observed the pintle hitch prior to or after its failure. The Trial Court recognized that any deposition testimony by those witnesses was, accordingly, speculative

and insufficient to establish causation of that hitch failure (Napier Depo., R. p. 2932). If, for example, the hitch failure had been caused by the hitch manufacturer or through third-party criminal misconduct, and not by the negligence of the driver, then the hitch failure would have been unforeseeable to Petitioners, and would have been unrelated to their hiring practices.

According to *Ruh, supra,* one of the "defining principles of law of this State" is that in order to satisfy the elements of a negligent hiring claim, Respondent was required to prove that Ceres and Beaufort County's hiring practices were the "but-for" cause of the death of Ms. Shaffer:

> [I]f a principal hires a contractor unqualified to handle emergencies that may arise while hauling toxic chemicals, the principal is negligent in hiring the contractor. But if the contractor causes an accident by negligently failing to yield the right of way, and the dangerous quality of his cargo plays no part in the accident or injury, then the Respondent will be unable to establish cause-in-fact and thus unable to establish proximate cause. *See Wickersham v. Ford Motor Co.*, 432 S.C. 384, 390, 853 S.E.2d 329, 332 (2020) ("Proximate cause requires proof of cause-in-fact and legal cause."). In this example, the principal may be liable for his negligence in selecting the contractor only when the contractor's lack of qualifications to handle an emergency involving toxic chemicals is the cause-in-fact of the Respondent's injury.
>
> *Ruh,* 439 S.C. at 659-60, 889 S.E.2d at 583.

However, because the pintle hitch components were never recovered, the Respondent was not even able to establish why the pintle hitch failed, much less that its failure was a foreseeable consequence of any alleged negligent hiring practices. ***"[Petitioners] may be liable for [any] negligence in selecting [Olson] only when [Olson's] lack of qualifications [or administrative history] is the cause-in-fact of the [pintle hitch failure]***." *Id*. (emphasis added). *See also Doe v. ATC, Inc.*, 367 S.C. 199, 206, 624 S.E.2d 447, 450 (Ct. App. 2005) (requiring nexus or similarity between any prior acts of the employee and the ultimate harm caused, which must be foreseeable); *McCall v. IKON*, 380 S.C. 649, 659-60, 670 S.E.2d 695, 701 (Ct. App. 2008) (holding that the appealed order is presumed to be correct and that the appellant has the burden of demonstrating reversible error); *id.,* quoting *Harris v. Campbell*, 293 S.C. 85, 87, 358 S.E.2d 719, 720 (Ct. App. 1987) (noting that the appellate court is obligated to reverse when error

is pointed out by the appellant, but the appellate court is "not in the business of figuring out on [its] own whether error exists").

The Trial Court needed Respondent to provide timely responsive evidence to overcome Petitioners' summary judgment motion according to Rule 56, SCRCP. Instead of providing a memorandum in opposition with relevant legal arguments, the Respondent simply flooded the Trial Court with thousands of pages of non-probative deposition testimony. The Trial Court understood from Petitioners' briefs that, because none of those witnesses had ever even seen, much less tested, the pintle hitch that failed and caused the accident, any deposition testimony by those witnesses was speculative and incapable of proving causation. Rather than plowing through thousands of pages of irrelevant deposition testimony, the Court correctly determined that Respondent simply failed to overcome its burden under Rule 56, and ruled accordingly.

Just as the Trial Court was not required to scour thousands of pages of deposition transcripts to locate a genuine issue of material fact, the Court of Appeals was not required "figure out on [its] own whether reversible error exist[ed]." *Id.* The Court of Appeals tacitly acknowledged in its denial of Petitioners' Rehearing Motion that it was neither practical nor necessary to review more than 3,600 pages of material in the Record on Appeal, including all of those deposition transcripts. "After careful consideration of the petition for rehearing, ***the Court is unable to discover that any material fact*** or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing." (Denial of Rehearing Order entered Jan. 15, 2025) (emphasis added). Respondent had no basis for reversal of the Trial Court's SJ Motion, and the Court of Appeals erred by assuming that the *Ruh* decision justified reversal of all three bases for summary judgment which were presented to the Trial Court. Only one valid basis is required to affirm the decision being reviewed, and the Court of Appeals violated this

standard in its appellate review. Rule 220(c), SCACR, *supra*; *Sims v. Amisub of SC, Inc., supra,* 408 S.C. at 214-15, 758 S.E.2d at 194.

The *Ruh* decision specifically and directly held that "there can be no recovery against the principal unless the Respondent separately proves the negligence of the principal in selecting that particular independent contractor and that the principal's negligence was a proximate cause of the alleged injuries." *Id.* at 654, 889 S.E.2d at 580. Regardless of its clarification that a negligent hiring claim was independent of a vicarious liability claim, the *Ruh* opinion also reaffirmed the existing law that Negligent Hiring requires proof of causation. That was plainly articulated in the Trial Court's SJ Order (R. p. 30), and the reversal of that SJ Order was reversible error, because that Opinion, at p. 4, entirely ignored the lack of causation as a separate basis for summary judgment:

> The circuit court found the negligence claims in the third amended complaint were not independent of Shaffer's previous vicarious liability claims and granted summary judgment in favor of Beaufort and Ceres on that basis.
>
> At the summary judgment hearing, Shaffer argued that negligent hiring is a direct negligence claim, chiefly relying on section 411(a) of the Restatement (Second) of Torts; a Ninth Circuit case—*L.B. Foster Co., Inc. v. Hurnblad*, 418 F.2d 727 (9th Cir. 1969); and the deposition testimony of Michael Napier, another party's intended expert on trucking/shipping standards. Beaufort and Ceres argued no South Carolina authority existed to support the idea that a negligent hiring claim is a direct negligence claim.

Contrary to the implication by the Court of Appeals quoted above, the Trial Court's SJ Order did not solely rely on the relationship between the Respondent's negligence claim and its dismissal of the vicarious liability claim. Instead, the Trial Court specifically concluded that "[t]he Respondent's Memorandum, Exhibits, and arguments in opposition to this Motion failed to establish a genuine issue of material fact that the death of Ms. Shaffer would not have occurred but for the acts and omissions which Respondent now attributes to Ceres and Beaufort County." (R. p. 30).

Based upon the lack of direct evidence from witness observations or testing, other than the conclusive testimony from the driver who observed no problems with the pintle hitch in his pre-trip inspection, Respondent simply cannot establish a genuine issue of material fact that any acts or omissions of Petitioners caused the detachment of the trailer and the ensuing accident. That basis alone was sufficient to justify the Trial Court's SJ Order, so the Court of Appeals' Opinion must be reversed and the Trial Court's SJ Order affirmed. *See* Rule 220(c), SCACR, *supra; Sims v. Amisub of SC, Inc.,* 408 S.C. at 214-15, 758 S.E.2d at 194 (Petitioners may properly "raise on appeal any additional reasons the appellate court should affirm the [trial court's] ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.") *citing I'On, LLC v. Town of Mt. Pleasant,* 338 S.C. at 419, 526 S.E.2d at 723; *see also Whiteside v. Cherokee Cty. School Dist. No. One*, 311 S.C. at 340-41, 428 S.E.2d at 889.

C. Respondent Failed to Establish a Genuine Issue of Material Fact Under Rule 56(c), SCRCP

The Trial Court's SJ Order was specific, direct, and accurate when it stated that *"*The Respondent's Memorandum, Exhibits, and arguments in opposition to this Motion ***failed to establish a genuine issue of material fact*** that the death of Ms. Shaffer ***would not have occurred but for the acts and omissions*** which Respondent now attributes to Ceres and Beaufort County.*"* (R. p. 30) (emphasis added).

As a matter of logic, in order to reverse a summary judgment order, an appellate court would need to determine that the Respondent satisfied Rule 56(c), SCRCP, and that there exists a genuine issue of material fact that must be submitted to the trier of fact. In the instant case, the Court of Appeals needed to determine whether the Respondent adduced evidence to establish a genuine issue of material fact regarding the but-for causation element of its negligence claim against Petitioners. Because the Court of Appeals overlooked that lack of but-for causation at the

summary judgment stage, it erred in reversing the Trial Court's SJ Order.

As noted above, in response to Petitioners' Motion for Summary Judgment, Respondent offered no Memorandum in Opposition; no written legal argument; and no affidavits prior to the hearing. Instead, Respondent merely provided twenty-four full deposition transcripts to the Trial Court, (R. p. 484), which covered thousands of pages of testimony. Not only was that an insufficient response to Petitioners' Summary Judgment Motion, but Respondent knew, or should have known, that those twenty-four deposition transcripts could not establish causation. Not a single one of the expert witnesses had ever seen the pintle hitch prior to the accident, and not a single expert witness was able to see the upper portion, nut, and bolt of the pintle hitch after the accident, because those components were never recovered after the accident. (R. p. 1543). For that reason, the deponents simply had no probative testimony about the causation issue, and the Trial Court recognized that Respondent offered no proof of causation to defeat summary judgment.

In its Memorandum in Support of Summary Judgment (R. p. 389), Petitioners specifically argued that "'[c]ausation in fact is proved by establishing the plaintiff's injuries would not have occurred 'but for' the defendant's negligence.' . . . The Plaintiff has not produced any evidence which establishes that Plaintiff's claims were caused by any act or omission of Ceres or Beaufort County." *Id.* (citations omitted).

Respondent's only written reference to this issue was in its Motion to Reconsider the Trial Court's Order (R. p. 491) in which Respondent stated: "In this case what happened is that, first, the hinge bolt fell out." That is precisely why Respondent failed to establish a genuine issue of material fact as to causation of this accident: Respondent's attempt to prove causation began at the point when he alleges that the hinge bolt fell out. This was an assumption by the Respondent, and the Trial Court recognized that the Respondent had no proof as to whether the hinge bolt

actually fell out, or whether the hitch came apart due to a manufacturing flaw or some third-party intervention or criminal activity, none of which could have been foreseen by Petitioners. The Trial Court's SJ Order was proper and must now be affirmed because Respondent offered nothing more than thousands of pages of miscellaneous deposition transcripts (which offered no probative evidence as to causation) as well as pleadings and statements by Respondent's counsel, all of which were insufficient under the requirements of Rule 56(c), SCRCP.

The Trial Court properly recognized that, without any physical evidence to test or eyewitness testimony as to whether or why that hinge bolt fell out, Respondent had no evidence to show what caused the pintle hitch to fail, and certainly no evidence to base that failure on any party's acts or omissions. Rule 56(c), SCRCP ("The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."); *Baughman v. American Tel & Tel. Co.,* 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citations omitted) ("The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial"); *Carolina Alliance for Fair Employment v. South Carolina L.L.R.,* 337 S.C. 476, 485, 523 S.E.2d 795, 800 (1999) ("A complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial."); *Bradley v. Doe*, 374 S.C. 622, 634-35, 649 S.E.2d 153, 160 (Ct. App. 2008) (disregarding witness observations before and after an accident because they did not establish with reasonable certainty a causal connection between Respondent's injury and an unknown vehicle); *Peterson v. National RR Passenger Corp*., 365 S.C. 391, 398, 618

S.E.2d 903, 907 (2005) (expert testimony, while admissible, failed to survive the scrutiny required to establish their asserted theory as to the proximate cause of a train's derailment).

The Court of Appeals erred in failing to recognize that the Respondent's inability to establish a genuine issue of material fact as to causation was sufficient justification for summary judgment in Petitioners' favor. "A complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." *Carolina Alliance, supra*, 337 S.C. at 485, 523 S.E.2d at 800. Accordingly, the Court of Appeals' Opinion must be reversed, and the Trial Court's SJ Order must be affirmed.

II. The Court of Appeals Erred by Failing to Apply the Proper Standard of Review

As noted in the foregoing arguments, the Court of Appeals erred by failing to affirm the Trial Court's SJ Order in light of the lack of causation: "The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR. See also *Sims v. Amisub of SC, Inc.,* 408 S.C. 202, 214-15, 758 S.E.2d 187, 194 (2014). That error was compounded because it was in conflict with *Ruh v. Metal Recycling*, *supra,* 439 S.C. at 652, 889 S.E.2d at 579, which reaffirmed the elements of the duty, breach, damages, and causation required to prove Respondent's negligence claim.

The Court of Appeals overlooked the fact that Respondent relied on the allegations of the pleadings and statements of counsel, in addition to thousands of pages of non-probative and speculative deposition testimony about the cause of the pintle hitch failure. Once Petitioners established the absence of a genuine issue of material fact, the Respondent failed to come forward with specific facts showing there is a genuine issue for trial regarding the causation element. *See Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 588–89, 635 S.E.2d 649, 654 (Ct. App. 2006).

The non-moving party must "do more than simply show that there is some metaphysical

doubt as to the material facts." *Baughman v. American Tel & Tel. Co., supra,* 306 S.C. at 115, 410 S.E.2d at 545 (citations omitted). "Even though courts are required to view the facts in the light most favorable to the nonmoving party, to survive a motion for summary judgment, 'it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.'" *Grimsley v. S.C. Law Enforcement Div.*, 415 S.C. 33, 40, 780 S.E.2d 897, 900 (2015), *citing Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013). Respondent's lack of evidence of why the pintle hitch failed can only lead to an issue of fact about causation that is not genuine. The Court of Appeals failed to apply this standard when it reviewed the Trial Court's SJ Order.

Petitioners met their burden under Rule 56 by pointing out to the Court the absence of evidence to support the Respondent's causation element. *See, e.g., Baughman, supra,* 306 S.C. at 115, 410 S.E.2d at 545. Faced with an insufficient response to Petitioners' Motion for Summary Judgment, the Court of Appeals was obligated to affirm based upon the lack of proof of the causation element of the negligence claim. "Although summary judgment is a drastic remedy which should be cautiously invoked, where a verdict is not reasonably possible under the facts presented, summary judgment is proper." *Evans v. Stewart,* 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006), *citing Bloom v. Ravoira,* 339 S.C. 417, 425, 529 S.E.2d 710, 714 (2000).

"The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." *Baughman, supra,* 306 S.C. at 116, 410 S.E.2d at 545-46 (citations omitted). "A complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." *Carolina Alliance, supra,* 337 S.C. at 485, 523

S.E.2d at 800. Without physical evidence for its witnesses to observe regarding the pintle hitch, the Court of Appeals was obligated to view Respondent's causation argument as a complete failure of proof.

Because the Court of Appeals failed to apply the foregoing standard of review, its reversal of the Trial Court's SJ Order was reversible error, and the Trial Court's SJ Order must be affirmed.

III. The Court of Appeals Erred by Overlooking the Respondent's Failure to Preserve Issues on Appeal

Respondent failed to submit a Memorandum in Opposition to Petitioners' Motion for Summary Judgment. Instead, Respondent elected to defend the summary judgment motion by filing twenty-four deposition transcripts, without any written commentary or analysis for the Trial Court to consider. It was not until its Motion to Reconsider the Trial Court's Order (R. p. 491) in which Respondent stated argued with conclusory statements that were not supported by any speculative deposition testimony by witnesses who had never seen the pintle hitch. Instead of offering proof of causation, Respondent made conclusory statements by counsel, including: "In this case what happened is that, first, the hinge bolt fell out." As noted above, the Trial Court recognized that the Respondent had no proof as to whether the hinge bolt actually fell out, or whether the hitch came apart due to a manufacturing flaw or some third-party intervention or criminal activity, none of which could have been foreseen by Petitioners.

Conclusory statements and speculative witness deposition testimony are insufficient bases to overcome a summary judgment motion, and a failure of proof of the causation element justified the Trial Court's SJ Order. Respondent knew, or should have known, that the depositions of the expert witnesses were inapplicable, because not a single expert witness had ever seen the pintle hitch prior to the accident, and not a single expert witness was able to see the upper portion, nut, and bolt of the pintle hitch after the accident, as those components were never recovered after the

accident. (R. p. 1543).

Confronted with the deposition transcripts and nothing more (R. pp. 484-85), the Trial Court properly granted summary judgment under Rule 56(c), which states that "[t]he adverse party may serve opposing affidavits not later than two days before the hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Even if, *arguendo,* a case actually supported a genuine issue of material fact, the Trial Court has no choice but to grant summary judgment if that party fails to provide probative affidavits or other support and legal arguments in favor of its position. That result is mandated by Rule 56, SCRCP ("The judgment sought ***shall be rendered forthwith*** if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law"). Neither the Trial Court nor the Court of Appeals were obligated to wade through twenty-four deposition transcripts in search of a genuine issue of material fact. *See, e.g., InterRoyal Corp. v. Sponseller,* 889 F.2d 108, 111 (6th Cir. 1989), *cert. denied,* 494 U.S. 1091, 110 S. Ct. 1839, 108 L.Ed.2d 967 (1990) (trial court is "not required to speculate on which portion of the record the nonmoving party relies, nor is it obligated to wade through and search the entire record for some specific facts that might support the nonmoving party's claim.").

Because Respondent failed to provide the necessary legal analysis and probative factual support prior to the summary judgment hearing according to Rule 56, SCRCP, Respondent cannot, at this stage, offer new theories or alternative views of evidence which were neither presented to nor ruled upon by the Trial Court at the summary judgment stage.

Based upon its failure to timely raise legal defenses at the summary judgment hearing, the Respondent failed to preserve any basis to challenge the Trial Court's SJ Order on appeal, and the Court of Appeals erred when it ignored the lack of preservation of issues for appeal and reversed the Trial Court's SJ Order. *See S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301–02, 641 S.E.2d 903, 907 (2007) (to preserve an issue for appellate review, "[t]he issue must have been (1) raised to and ruled upon by the [circuit] court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the [circuit] court with sufficient specificity") (quoting Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002)).

IV. The Court of Appeals Erred by Overlooking Beaufort County's Immunity Under the South Carolina Tort Claims Act § 15-78-10, *et seq*.

A. Respondent's Claim Against Beaufort County is Specifically Barred by the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq*.

The Court of Appeals overlooked the fact that summary judgment was proper because Respondent's claims against Beaufort County were barred by the South Carolina Tort Claims Act, S.C. Code § 15-78-10, *et seq.; see, e.g., Sabb v. S.C. State Univ.*, 350 S.C. 416, 428, 567 S.E.2d 231, 237 (2002) ("Discretionary immunity is contingent on proof the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards.").

Beaufort County is a governmental entity that is statutorily governed by the South Carolina Tort Claims Act, which "governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity . . . ." *Flateau v. Harrelson*, 355 S.C. 197, 203, 584 S.E.2d 413, 416 (Ct. App. 2003).

The Tort Claims Act offers limited relief to the doctrine of sovereign immunity in very few circumstances, and only when individuals from the State, its political subdivisions, and employees

are specifically "acting within the scope of official duty." S.C. Code § 15-78-20(b). To emphasize the restrictive nature of this doctrine, our legislature further declared that the Tort Claims Act "***must be liberally construed in favor of limiting the liability of the State***." S.C. Code § 15-78-20(f) (emphasis added).

S.C. Code § 15-78-30(c) provides that "Employee" means any officer, employee, agent, or court appointed representative of the State or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty . . . but the term does not include an independent contractor doing business with the State or a political subdivision of the State." The legislature also provided that a governmental entity is not liable for a loss resulting from "an act or omission of a person other than an employee including but not limited to the criminal actions of third persons." S.C. Code § 15-78-60(20).

The Respondent does not allege that the driver Stoltz was an employee of the County, and specifically acknowledges that Stoltz was, in fact, merely an employee of DEH, which was a sub-subcontractor to Ceres. The driver was four levels below Beaufort County in the organization of this hurricane relief project, and was far removed from the category of County employees whose acts and omissions could possibly be invoke this limited relief from immunity.

To justify reversal of the Trial Court's SJ Order, the Court of Appeals required proof that acts or omissions of Beaufort County's hiring process were a "but-for" cause of the accident between a third-tier subcontractor's (DEH) employee and Ms. Shaffer. The Respondent failed to provide any such proof to support reversal of its Summary Judgment. *See Parks v. Characters Night Club*, 345 S.C. 484, 491, 548 S.E.2d 605, 609 (Ct. App. 2001) ("To prove causation, a plaintiff must demonstrate both causation in fact and legal cause. Causation in fact is proved by establishing the plaintiff's injury would not have occurred 'but for' the defendant's negligence").

The Court of Appeals overlooked the lack of causation by any acts or omissions of Beaufort County in its hiring process. Indeed, Respondent offered no evidence to establish what caused the pintle hitch to fail, much less evidence establishing that the County's hiring process caused that mysterious failure. Moreover, even if, *arguendo,* there was any evidence that an employee of a third-tier subcontractor (such as DEH) actually caused the pintle hitch to fail, S.C. Code § 15-78-30(c) bars Beaufort County from liability which can be attributed to the negligent acts or omissions of an independent contractor. *Smith v. Regional Med. Ctr. of Orangeburg & Calhoun Ctys.,* 394 S.C. 110, 713 S.E.2d 656 (Ct. App. 2011).

Respondent failed to offer any proof at the summary judgment stage that any County employee's acts or omissions, in the hiring process or otherwise, were related to--much less caused--the pintle hitch to fail in this matter. That absence of causation fully supports summary judgment in favor of Beaufort County in this matter, and the Court of Appeals erred by disregarding this basis for summary judgment in the Trial Court's SJ Order.

B. The South Carolina Tort Claims Act Also Bars This Claim Against Beaufort County Under *Wade v. Berkeley County,* 348 S.C. 224, 559 S.E.2d 586 (2002)

Further, the Court of Appeals failed to properly apply *Wade v. Berkeley County*, 348 S.C. 224, 559 S.E.2d 586 (2002), which makes it clear that the Tort Claims Act automatically released the County from any liability as soon as the Respondent settled with Olson, DEH, and Stoltz. The Court of Appeals committed reversible error when it failed to acknowledge this statutory protection and improperly reversed the Trial Court's SJ Order.

The Tort Claims Act, S.C. Code § 15–78–70(d), when read consistent with *Wade v. Berkeley County*, 348 S.C. 224, 559 S.E.2d 586 (2002), releases Beaufort County from potential liability because Respondent released Spencer Olson, DEH, and Stoltz, and dismissed its vicarious liability claims against Beaufort County and Ceres with prejudice. "A settlement or judgment in

an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence. S.C. Code § 15–78–70(d).

In *Wade v. Berkeley County,* the South Carolina Supreme Court ruled that (1) a release and dismissal of the type Respondent granted to Olson, DEH, and Stoltz is a settlement under the Tort Claims Act[1]; and (2) if a settlement occurs in a lawsuit in which the Tort Claims Act is implicated as it is here, then that settlement bars any further action against Beaufort County. *Wade,* 348 S.C. at 224, 559 S.E.2d at 586. This collision between the truck driven by Stoltz and the Respondent's decedent was the basis for all of Respondent's claims, so settlement with Olson, DEH, and Stoltz mandates the dismissal of claims against Beaufort County. "[T]o invoke the provisions of § 15–78–70(d), there must be a settlement or judgment in an action under the Act or a settlement of a claim under the Act." *Wade,* 348 S.C. at 230, 559 S.E.2d at 588-89.

The instant case is actually a much more clear and concise application of the *Wade* court's ruling because, in this case, (1) there is no question but that this was a settlement between Respondent, Olson, DEH, and Stoltz; (2) there is no question that this lawsuit constituted "an action under the act" under § 15–78–20(b)[2]; and (3) there is no question about Beaufort County actually being a party-defendant in the instant case when the settlement occurred. The Court of Appeals committed reversible error by overlooking this critical protection afforded to Beaufort

[1] In *Wade v. Berkeley County*, *supra*, there was some discussion as to whether the covenant not to execute had the same force and effect of a release and constituted a settlement of the claim. There is no such dispute or discussion of that question in the Shaffer case, because the Appellant formally released Olson, DEH, and Stoltz and, further, Appellant additionally dismissed the vicarious liability claim against Beaufort County and Ceres.

[2] The Shaffer lawsuit was brought against the County on the basis that Stoltz was acting within the scope of official duty as a driver in this storm clean-up project. For that reason, the Shaffer lawsuit is "an action under the Act." *See* S.C. Code § 15–78–20(b) ("The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents . . . .")

County and by reversing the Trial Court's SJ Order. That reversal directly conflicts with the *Wade* decision as noted above, and certiorari is necessary for further review pursuant to Rule 242(b)(3), SCACR.

CONCLUSION

For the reasons stated above, the Petitioner requests that the Petition for Certiorari be granted.

Respectfully Submitted,

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