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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

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2022-000328

Mark Shaffer, as Personal Representative of the Estate of Susan Shaffer, Appellant,

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 Appellants-Respondents,

and Spencer A. Olson Trucking, LLC, DEH Disaster Recovery, LLC, and Ryan Colter Stoltz are the Respondents.

APPELLANTS-RESPONDENTS' PETITION FOR REHEARING

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December 23, 2024

ISSUES SUPPORTING PETITION FOR REHEARING

In its Opinion filed on December 11, 2024, the Court of Appeals overlooked and/or misapprehended the following issues when it reversed the Circuit Court's Order which granted summary judgment against the Appellant on March 10, 2022 (hereinafter, "Lower Court's Order"), (R. p. 26). The portion of the above-referenced Opinion which reversed the Lower Court's Order is hereinafter referred to as the "Reversal Order," and other parts of the Opinion which related to the reversal of the summary judgment as to Respondent Spencer A. Olson Trucking, LLC and affirming of the summary judgment as to Respondents DEH Disaster Recovery, LLC and Ryan Colter Stoltz are not the subject of this Petition for Rehearing.

According to their agreement, Appellant-Respondent Ceres Environmental Services has defended Beaufort County in this lawsuit. For the sake of brevity and clarity throughout this Petition, the Appellants-Respondents Ceres and Beaufort County shall be collectively referred to as "Ceres," unless otherwise specified, and the Appellant shall be referred to as "Plaintiff." All references to the Record herein relate to the Record on Appeal previously filed in this matter. Pursuant to Rule 221(a), SCACR, and the following reasons, Ceres' Petition for Rehearing must be granted; the Reversal Order must be vacated; and the Lower Court's Order must be affirmed.

I. The Reversal Order Must Be Vacated Because the Plaintiff Failed to Establish the Causation Element of its Negligent Hiring Claim

The Lower Court's Order (Para. 7, R. p. 30) granted summary judgment in favor of Ceres, at least in part, because Plaintiff failed to establish the causation element of the Negligent Hiring claim, which was within the Negligence cause of action in the Third-Amended Complaint (R. p. 199). To reverse the Lower Court's Order, the Court of Appeals needed to find that Plaintiff actually did establish a genuine issue of material fact as to the causation element of the Negligent Hiring claim. The Court of Appeals made no such finding, and it erred in reversing the Lower

Court's Order.

Instead, the Court of Appeals held that the reasoning of *Ruh v. Metal Recycling Servs., LLC,* 439 S.C. 649, 889 S.E.2d 577 (2023), somehow upended the reasoning of the Lower Court's Order, and required that it be reversed. The Court of Appeals stated 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." Reversal Order at p. 4. The Court of Appeals misapprehended the impact that the *Ruh* decision had on the Lower Court's Order, and the Reversal Order was wrongly decided. It is true that the *Ruh* case was decided after briefing and before oral argument in the present appeal, and *Ruh* certainly held that a Negligent Hiring claim is independent of a Vicarious Liability claim, which clarified one of the points in the Lower Court's Order.

However, the *Ruh* decision did not establish any novel legal concepts which gutted the reasoning of the Lower Court's Order. 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 Ceres did argue in its appellate briefs—before *Ruh* was decided—that a Negligent Hiring claim was dependent upon the same elements of proof of the Vicarious Liability cause of action, that was only one part of Ceres' argument.

Ceres also argued, in its Brief of Respondent at p. 12, that "[i]n his opposition to Ceres' Summary Judgment Motion, Plaintiff did not offer a shred of evidence that would establish what caused the pintle hitch to fail. Plaintiff did offer 24 deposition transcripts, most by expert witnesses who had never seen the pintle hitch prior to the accident, and were unable to see the upper portion, nut, and bolt of the pintle hitch after the accident, as it was never recovered. (R. p. 1543)." The Lower Court agreed with this part of Ceres' argument, and granted summary judgment against

Plaintiff as a result. Lower Court's Order, R. pp. 26, 30.

The Lower Court's Order was specific, direct, and accurate when it stated that **"The 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."** R. p. 30 (emphasis added).

The *Ruh* opinion was similarly specific and direct when it stated that "there can be no recovery against the principal unless the plaintiff 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. Accordingly, the Court of Appeals misapprehended the impact of the *Ruh* decision on the Lower Court's Order. Regardless of its clarification that Negligent Hiring was independent of Vicarious Liability, the *Ruh* opinion merely restated the existing law that Negligent Hiring required proof of causation, a point which was clearly stated in the Lower Court's Order. R. p. 30.

The Reversal Order did not include any analysis of the Lower Court's finding that the Plaintiff failed to prove causation, nor did it address that point as it was articulated in the Lower Court's Order. Instead, its reversal was based on a misapprehended application of *Ruh* to the Lower Court's Order as follows (Reversal Order at p. 4):

> 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.

As noted above, Ceres argued that Plaintiff's Negligent Hiring claim was dependent upon the same elements of proof as the Vicarious Liability cause of action, but that point was later clarified by *Ruh.* Brief of Respondent at p. 12. The Lower Court also, however, recognized and agreed with Ceres that causation was an element of Plaintiff's Negligent Hiring claim, and that Plaintiff was unable to adduce evidence to establish that causation element. R. p. 30. As evidenced by the inset quote from the Reversal Order above, the Court of Appeals overlooked that aspect of Ceres' argument, and misapprehended the Lower Court's finding that Plaintiff failed to prove the causation element of the Negligent Hiring claim. Reversal Order at p. 4.

Had the Court of Appeals recognized that Plaintiff failed to satisfy its burden under Rule 56, SCRCP as to the causation element of the Negligent Hiring claim, the Court of Appeals would certainly have affirmed the Lower Court's Order despite the unrelated argument about independent torts which was later clarified by *Ruh.* Because the Lower Court's Order was based upon those two separate issues, the Court of Appeals is obligated 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."); *see also Whiteside v. Cherokee Cty. School Dist. No. One*, 311 S.C. 335, 340-41, 428 S.E.2d 886, 889 (1993).

The Lower Court's Order 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" R. p. 30. That was an accurate conclusion of law at the time that Lower Court's Order was entered, and it remains an accurate conclusion of law as applied to this case today. Ceres offers the following analysis regarding Plaintiff's failure to establish the

causation element of its Negligent Hiring claim:

A. <u>Plaintiff Failed to Establish a Genuine Issue of Material Fact Under Rule 56(c), SCRCP</u>

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

Astonishingly, in response to Ceres' Motion for Summary Judgment, Plaintiff offered no Memorandum in Opposition; no written legal argument; and no affidavits prior to the Lower Court's Order. Instead, Plaintiff merely provided twenty-four full deposition transcripts to the Lower Court, *see* R. p. 484, which covered thousands of pages of testimony. Plaintiff 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).

Plaintiff's only written reference to this issue was in its Motion to Reconsider the Lower Court's Order, R. p. 491, in which Plaintiff stated: "In this case what happened is that, first, the hinge bolt fell out." That is precisely why Plaintiff failed to establish a genuine issue of material fact as to causation of this accident. Plaintiff's attempt to prove causation began at the point when he alleges that the hinge bolt fell out. This was an assumption by the Plaintiff. The Lower Court recognized that the Plaintiff 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 Ceres. The Lower Court's ruling was properly

based on the Plaintiff's failure to prove foreseeability or but-for causation with anything other than his pleadings or statements by Plaintiff's counsel.

The Lower Court properly recognized that, without any physical evidence to test or eyewitness testimony as to whether or why that hinge bolt fell out, Plaintiff's reliance upon his pleadings and statements of counsel are insufficient to establish a genuine issue of material fact as to the failure of the hitch. 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 Plaintiff'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).

B. <u>Plaintiff Had No Evidence to Establish the But-For Cause of the Pintle Hitch Failure</u>

The Lower Court recognized that, because the hitch components were missing and never

recovered after the accident, neither Plaintiff's expert Napier nor any other fact or expert witness tested or even observed the pintle hitch prior to or after its failure, and any such testimony would be speculative and insufficient to establish causation of that hitch failure. If, for example, the failure of the hitch was caused by the hitch manufacturer or through third-party criminal misconduct, and not by the negligence of the driver, then the hitch failure was unforeseeable to Ceres and Beaufort County, and was 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, Plaintiff 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 plaintiff 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 plaintiff's injury.
>
> *Ruh,* 439 S.C. at 659-60, 889 S.E.2d at 583.

Of course, because the pintle hitch components were never recovered, the Plaintiff 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. "[Ceres] 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*. *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 called to pointed out by the appellant, but the appellate court is "not in the business of figuring out on [its] own whether error exists").

In the present appeal, Plaintiff failed to meet its burden of showing that reversible error existed. Not only did it not show a nexus between any alleged negligent hiring decision and the ultimate harm, Plaintiff 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 Court of Appeals is not required "figure out on [its] own whether reversible error exist[ed]." *Id.* Because the Plaintiff presented no evidence that could establish the causation element of the Negligent Hiring claim, the Petition for Rehearing must be granted; the Reversal Order must be vacated; and the Lower Court's Order must be affirmed.

II. The Court of Appeals' Reversal Order Did Not Adhere to Applicable Precedent

The Court of Appeals misapprehended the applicability of the following authorities in issuing the Reversal Order and, had these been properly applied, the Lower Court's Order granting summary judgment against Plaintiff would have been affirmed:

A. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *Dawkins v. Fields,* 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a trial court may grant a motion for summary judgment "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."

B. A non-moving party cannot rest on the allegations of the pleadings. Once the moving party

establishes the absence of a genuine issue of material fact, the non-moving party must then come forward with specific facts showing there is a genuine issue for trial. *See Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 588–89, 635 S.E.2d 649, 654 (Ct. App. 2006).

C. 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). By unanimous opinion in 2015, the South Carolina Supreme Court ruled that "[e]ven 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).

D. Ceres and Beaufort County may discharge their burden by pointing out to the Court the absence of evidence to support the Plaintiff's case. *See, e.g., Baughman, supra,* 306 S.C. at 115, 410 S.E.2d at 545. "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).

E. "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.

F. The Lower Court properly disregarded irrelevant arguments by Plaintiff's counsel at the hearing, and recognized that it was the Plaintiff's obligation to establish the genuine existence of a material fact, rather than the Court's obligation to digest and dissect the twenty-four deposition transcripts filed before the hearing which did not, in any event, offer sufficient proof required to meet the summary judgment standard or the liability of Beaufort County under the South Carolina Tort Claims Act. "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.

Because the Reversal Order was based on a misapplication or misapprehension of the applicable authorities, the Petition for Rehearing must be granted; the Reversal Order must be vacated; and the Lower Court's Order must be affirmed.

III. The Reversal Order Did Not Properly Address the Consequences of Plaintiff's Failure to Preserve Issues on Appeal

Plaintiff failed to submit a Memorandum in Opposition to Ceres' Motion for Summary Judgment. In fact, Plaintiff simply presented twenty-four deposition transcripts, without any written commentary or reference to any relevant portions of those transcripts that would allow Plaintiff to meet its burden of establishing a genuine issue of material fact. Plaintiff' Motion to Reconsider the Lower Court's Order, R. pp. 486, 491, contained only conclusory statements and failed to offer proof of the elements to survive the summary judgment standard. See Rule 56(c), SCRCP. Plaintiff's Brief of Appellant similarly contained only conclusory statements and failed to address any inadequate or non-existent proof offered by Plaintiff before the Lower Court.

Plaintiff's effort to inundate the Lower Court with irrelevant and speculative deposition testimony does not satisfy the Plaintiff's duty to overcome a motion for summary judgment. The

Lower Court cannot be expected to wade through an ocean of deposition testimony in an effort to rescue Plaintiff's claims. The Lower Court recognized that all of those deposition transcripts were irrelevant to the issue at hand, which was whether the Plaintiff had cognizable claims which it could prove against Ceres.

Plaintiff cannot, at this stage, offer new theories or alternative views of evidence which were not presented to the Lower Court during its consideration of Ceres' Motion for Summary Judgment. The Reversal Order did acknowledge the consequences of failing to preserve other issues for appellate review with the following statement:

> For example, arguments about whether any of Beaufort and Ceres's contractual duties were delegated to the subcontractors were not fully developed at the circuit court and are therefore not before us. *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) (stating, 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))).
>
> Reversal Order at p. 5.

The Court of Appeals overlooked the Plaintiff's failure to preserve its issues and arguments for appellate review when Plaintiff failed to properly raise those before the Lower Court. Under the authorities cited in the inset quote above, Reversal Order at p. 5, the Court of Appeals must grant the Petition for Rehearing; vacate the Reversal Order; and affirm the Lower Court's Order based upon the analysis set forth within this Petition as well as Plaintiff's failure to preserve issues and arguments for appellate review.

IV. The Court of Appeals Overlooked Plaintiff's Failure to Establish Liability of Beaufort County Under the South Carolina Tort Claims Act

The Court of Appeals overlooked the impact of the South Carolina Tort Claims Act, S.C. Code § 15-78-10, *et seq.* when it reversed the summary judgment granted to Beaufort County by

the Lower Court. Plaintiff failed to adduce any evidence or articulate any argument which would establish that Beaufort County has any liability which overcomes the long-established restrictions in the Tort Claims Act. *See 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."). Further, the Court of Appeals apparently misapprehended *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 Plaintiff settled with Olson, DEH, and Stoltz. The following is an analysis of the Tort Claims Act issues:

A. The Plaintiff's Claim is Specifically Barred by the South Carolina Tort Claims Act

Beaufort County is a governmental entity that is statutorily governed by the South Carolina Tort Claims Act, S.C. Code § 15-78-10, *et seq*. That statute "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).

To provide relief from the oppressive doctrine of absolute sovereign immunity, the Tort Claims Act, S.C. Code § 15-78-40, grants some Plaintiffs a very limited opportunity to seek recovery from the State, its political subdivisions, and employees. This "immunity from liability and suit for any tort except as waived" is only afforded 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).

The Tort Claims Act "must be liberally construed in favor of limiting the liability of the State," S.C. Code § 15-78-20(f), and specifically excluded any independent contractors from the

definition of "employee." S.C. Code § 15-78-30(c). In order to reverse the Lower Court's Order granting summary judgment to Beaufort County, the Court of Appeals needed to see 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, but the Plaintiff 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) ("[t]o 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 absence of evidence establishing causation by any acts or omissions of Beaufort County in its hiring process. Indeed, Plaintiff has offered no evidence to establish what caused the pintle hitch to fail, which led to the separation of the trailer and the resulting accident. 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).

B. <u>The Tort Claims Act Also Bars This Claim Under *Wade v. Berkeley County*</u>

The South Carolina Tort Claims Act, S.C. Code § 15–78–70(d), when read consistent with *Wade v. Berkeley County, supra*, 348 S.C. at 229-30, 559 S.E.2d at 588-89, requires that Beaufort County be released from liability because Plaintiff's settlement with Olson, DEH, and Stoltz constituted "[a] a settlement of a claim under this chapter" which results in "a complete bar to any further action by the claimant against an employee or governmental entity" in that same litigation. S.C. Code § 15–78–70(d).

Pursuant to *Wade, supra*, 348 S.C. at 229-30, 559 S.E.2d at 588-89, the Plaintiff's claims against Beaufort County must be dismissed because (1) Plaintiff settled with Olson, DEH, and Stoltz; (2) this lawsuit constituted "an action under the act" under § 15–78–20(b); and (3) Beaufort County was actually a party-defendant in the Shaffer lawsuit when that settlement occurred. The Court of Appeals overlooked this aspect of Ceres and Beaufort County's arguments on appeal, and the Reversal Order was based upon a misapprehension of the law as applied to this governmental entity. For this reason, the Petition for Rehearing must be granted; the Reversal Order must be vacated; and the Lower Court's Order must be affirmed.

CONCLUSION

Because the Court of Appeals overlooked and/or misapprehended numerous issues articulated in its Reversal Order as set forth above, the Petition for Rehearing must be granted; the Reversal Order must be vacated; and the Lower Court's Order must be affirmed.

Respectfully Submitted,

December 23, 2024

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CERTIFICATE OF SERVICE

The undersigned certifies that on December 23, 2024, the Petition for Rehearing by the Appellants-Respondents and this Certificate of Service were served upon all counsel of record in this matter by email addressed to the following:

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