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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean Hoefer Toal, Circuit Court Judge

Appellate Case No.: 2023-000060
Trial Court Case No.: 2021-CP-40-03672

Bill R. Sharpe and Angela Sharpe,..... Respondents,

v.

Rocky Rutherford, Legacy Equipment, Inc., and
G.A. West and Company, Inc. ..... Appellants.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on January 16, 2025.

QUESTION PRESENTED

I. **DID THE COURT OF APPEALS ERR IN REVERSING THE CIRCUIT COURT'S GRANT OF SUMMARY JUDGMENT FOR THE PETITIONER ON THE GROUNDS THAT THE TESTIMONY OF PETITIONER AND RUTHERFORD RAISED QUESTIONS OF COMPARATIVE NEGLIGENCE AND GENUINE ISSUES OF MATERIAL FACT DESPITE THE CLEAR PRECEDENTS SET FORTH BY THIS COURT.**

STATEMENT OF THE CASE

This action concerns an eighteen wheeler versus pickup truck accident which occurred in the intersection of Bluff Road and South Beltline Boulevard in Richland County. The Petitioner filed suit on July 23, 2021 alleging that the Appellants, through their agent and servant Rocky Rutherford, were liable because Rutherford turned an eighteen wheeler owned by G.A. West and Company, Inc. left in front of him while he was approaching the intersection of Bluff Road and South Beltline Boulevard and caused a bad accident. The Appellants answered the Complaint on September 3, 2021 denying the material allegations and alleging that the Petitioner was negligent at the time of the accident in failing to keep a proper lookout and failing to yield the right-of-way. After discovery was swapped and depositions were taken the Petitioner moved for summary judgment on June 28, 2022. A summary judgment hearing was held and the Circuit Court issued an Order granting Petitioner's Motion for Summary Judgment on the issue of liability on December 9, 2022. The Summary Judgment was appealed by the Appellants to the South

Carolina Court of Appeals. The Court of Appeals issued its Opinion on December 11, 2024. The Court of Appeals reversed the Circuit Court and remanded the case. The Court of Appeals decided the case without oral argument and issued an unpublished Opinion.

The Court of Appeals held that because of conflicting testimony between Petitioner Bill R. Sharpe and Appellant Rocky Rutherford concerning the accident, genuine issues material fact had been raised concerning comparative negligence and therefore Summary Judgment on the issue of liability in favor of Petitioner was improper. Petitioner filed a Petition for Rehearing with the Court of Appeals on December 23, 2024. The Court of Appeals denied the Petition on January 16, 2025.

ARGUMENT

I. THE COURT OF APPEALS ERRED IN FAILING TO FOLLOW THE CLEAR, LONGSTANDING PRECEDENT OF THIS COURT AS SET FORTH IN *HORTON V. GREYHOUND CORP.* AND ITS PROGENY WHEN IT REVERSED THE CIRCUIT COURT'S ORDER GRANTING PETITIONER SUMMARY JUDGMENT ON THE ISSUE OF LIABILITY.

The facts of this case are clearcut. Petitioner was driving straight on Bluff Road and as he came to the intersection of Bluff Road and South Beltline Boulevard, an out-of-state driver, driving an eighteen wheeler hauling a crane, turned left in the intersection attempting to get on to South Beltline from Bluff Road. He turned directly in front of Sharpe and a serious collision occurred. The driver of the eighteen wheeler, Rutherford, had a mandatory duty to yield the right-of-way when making his lefthand turn to any vehicle approaching from the opposite direction which was within the intersection or so close thereto as to constitute an immediate

hazard. Section 56-5-2320, S.C. Code Ann. (1976 as amended) It is uncontested Rutherford did not do so and he admitted that he failed the yield of right-of-way in his deposition. (Depo. of Rutherford, R. p. 241, lines 1-4) Rutherford had no estimate of Sharpe's speed except that the collision shook his truck. (Depo. of Rutherford, R. p. 240, lines 10-14.)

This uncontested evidence entitles Sharpe to summary judgment on the issue of liability unless the Appellants present evidence sufficient to raise a reasonable inference that this accident would not have occurred but for the negligence of Sharpe. In other words, the uncontested evidence entitles Sharpe to summary judgment unless the Respondents present evidence which raises a *reasonable* inference that Sharpe's negligence was a proximate cause of the accident such that the accident would not have occurred but for the negligence of Sharpe. "Our conclusion does not and need not rest on a certainty that, if the bus had been operating at a reasonable speed, the collision would have happened anyway. It does rest on the absence of evidence sufficient to raise a reasonable inference that it would have not occurred but for the negligence of the bus driver, which amounts to a failure of proof of an essential element of Plaintiff's cause of action." *Horton v. Greyhound*, 241 S.C. 430, at 441, 128 S.E.2d 776 (1962). This proposition of law has been reiterated by this Court and reaffirmed again and again for over 60 years. See *Odom v. Steigerwald*, 260 S.C. 422, 196 S.E.2d 635 (1973); *Kennedy v. Carter*, 249 S.C. 168, 153 S.E.2d 312 (1967); *Blanding v. Hammell*, 267 S.C. 352, 228 S.E.2d 271 (1976); *Miller v. FerrellGas, L.P., Inc.*, 392 S.C. 295, 709 S.E.2d 616 (2011).

There is a complete failure of any evidence whatsoever that any action or omission of Sharpe was a proximate cause of this accident. There is absolutely no evidence that leads to a *reasonable* inference that he was speeding at all, much less speeding to an extent so that such speed was a proximate cause of the accident. There is absolutely no evidence whatsoever that he failed to keep a proper lookout.

Indeed, the Court of Appeals opinion accurately states that both Rutherford and Sharpe testified that once Rutherford started his turn there was nothing either one of them could do to avoid the accident. "When traffic cleared I started to make my turn and out of nowhere Mr. Sharpe came. By the time I seen him there was nowhere I could go. He never – I'm assuming never slowed down. He hit me and that's how it happened." (Depo. of Rutherford, R. p. 239, line 5 – line 21) Sharpe testified that as he approached the intersection of Bluff Road and South Beltline traveling 35 to 40 miles an hour he saw Rutherford's truck in the left turn lane of oncoming Bluff Road traffic. Just as he approached the intersection Rutherford turned in front of him and there was nothing he could do to avoid the collision and did not even have time to hit the brakes. (Depo. of Sharpe, R. p. 127, line 22 – p. 128, line 14) (R. p. 145, line 6 and 7) (R. p. 145, line 10 – p. 146, line 2). Thus both drivers agree that the operative fact in this case is Rutherford failing to yield the right-of-way and turned left in front of Sharpe. There is no evidence sufficient to raise a *reasonable* inference that this accident would not have occurred but for the negligence of Sharpe. Rutherford's bald assertion that it may not have occurred if Sharpe was not going "way too fast" is not sufficient to raise a reasonable inference when he also testified that he has no idea of Sharpe's speed. Simply saying that

another driver is negligent because if he was not speeding the accident would not have happened, without any reasonable evidence as to his actual speed, is insufficient to raise a reasonable inference. If that were the standard then summary judgment would be impossible in South Carolina.

This Court has repeatedly held that in cases of this type, the party opposing the motion of summary judgment must present evidence which raises a reasonable inference that the moving parties' negligence was a proximate cause of the accident. Mere conjecture or speculation is insufficient. Such evidence must be real, material and pertinent and relevant evidence, not speculative and theoretical deductions. *Johnson v. Metropolitan Life Insurance Company*, 206 S.C. 415, 419, 34 S.E.2d 757 (1945).

The Court of Appeals engages in theoretical deductions and speculation in theorizing that although the Plaintiff presents "a strong argument" there is evidence from which a jury could conclude that Sharpe's negligence was a proximate cause of the accident because Rutherford testified he shook his truck pretty hard on collision or there was a difference in testimony about whether Sharpe's pickup truck struck Rutherford's truck on the front tire or back tire. These are distinctions without differences. The operative fact is that an eighteen wheeler hauling a crane turned left in front of Sharpe's pickup truck as it was entering the intersection of Bluff Road and South Beltline and caused a serious collision. There is absolutely no evidence from which a jury could *reasonably* conclude that the accident would not have happened but for Sharpe's speed or lookout. This requirement that a reasonable inference of proximate cause be shown in order to defeat a motion for summary

judgment or a directed verdict has been repeatedly reaffirmed by this Court. It is not enough that a nonmoving party show that the Defendant was driving above the posted speed limit unless it is also reasonably inferable that such speed was a proximate cause of the accident. Even if the Defendant is shown to be speeding it must be reasonably inferable that such speed proximately caused the accident. Otherwise, the driver on the dominant highway is entitled to a directed verdict or summary judgment. *Blanding* at 356. Similarly, even if a driver on the dominant highway looks in the mirror just before the accident for over a split second of time, that is not enough to give rise to an inference of improper lookout. *Blanding* at 358. "An automobile may not be controlled by brakes or steering so as to avoid a hazard which becomes apparent for only a split second before the point of impact is reached." *Blanding* at 358.

In this case, not only is there no evidence reasonably inferring that the Petitioner was speeding, or that he was keeping an improper lookout, there is absolutely none that can be reasonably construed to infer that speeding or improper lookout proximately caused this accident. Both drivers in this case clearly state that once Rutherford started his left turn of the eighteen wheeler the accident was unavoidable and there was nothing either one of them could do. Given these uncontroverted facts the Petitioner was entitled to summary judgment and the Court of Appeals reversal of Justice Toal's order granting summary judgment was in error and should be reversed by this Court.

The South Carolina Supreme Court states the law and establishes the precedents for the common law in South Carolina. A 60 year precedent which has

been repeatedly reaffirmed and adopted by this Court time and again should not be ignored or overturned as a practical matter by the South Carolina Court of Appeals. If *Horton*, *Odom*, and *Blanding* are no longer the law in South Carolina then that should be stated by this Court and not simply assumed away by the Court of Appeals in unpublished opinions without oral argument.

CONCLUSION

For the reasons stated, the Respondents ask that this Court grant this Petition for Writ of Certiorari to consider whether the *Horton* line of cases is still the law in South Carolina and the Court of Appeals erred in reversing the grant of summary judgment for Petitioner.

Respectfully submitted,

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