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SC Court of Appeals

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 REHEARING OF RESPONDENTS

The Respondents, Bill R. Sharpe and Angela Sharpe, hereby petition this Court for rehearing of this Court's Decision reversing the Circuit Court's grant of Summary Judgment for Respondents in this action, as set forth in the following Memorandum.

Submitting counsel:

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RESPONDENTS' MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

Respondents respectfully submit that this Court has overlooked or misapprehended the correct construction and application of the law which applies to the facts of this case in finding that the Circuit Court was incorrect in granting summary judgment in favor of the Respondents based on the facts and arguments submitted at the hearing.

ARGUMENT

In its Opinion, this Court states that there is evidence from which a jury could reasonably infer that Respondent Bill R. Sharpe failed to keep a proper lookout as set forth in *Thomasko v. Poole*, 349 S.C. 7, 561 S.E.2d 597 (2002). In *Thomasko*, Defendant Poole exited a parking lot and attempted to cross three lanes of traffic and merge into the far left lane. He saw two vehicles 150-200 feet away when he looked for oncoming traffic before crossing at 8-10 miles an hour. Thomasko was in the far left lane of oncoming traffic and going at a low speed. The vehicles sideswiped in the left lane. There was very little property damage.

The South Carolina Supreme Court, in a divided opinion, found that there was evidence from which a jury could reasonably infer that the plaintiff (Thomasko) failed to keep a proper lookout because, "Although nothing obstructed Thomasko from seeing Poole's vehicle, she did not notice the vehicle until it was upon her." *Thomasko*, at 13. That is not the fact in the instant case.

Respondent Sharpe clearly testified that he saw the Appellants' 18 wheeler driven by Rocky Rutherford sitting in the turn lane as he approached the intersection of Bluff

Road and South Beltline. Just as he approached the entrance to the intersection, Rutherford turned in front of him. He did not have any time to avoid Appellants' truck. R. p. 127, line 22 – p. 128, line 14. This is not a case like Thomasko where Sharpe was oblivious to Rutherford's vehicle as he approached the intersection and only noticed it an instant prior to the collision. In fact, Rutherford is the party who only saw Respondent Sharpe's pickup an instant prior to the collision. (Testimony of Rutherford, R. p. 139, lines 16-21). Thus, the only reasonable inference is that Rutherford, not Sharpe, failed to keep a proper lookout because he admittedly only saw Sharpe's vehicle an instant before the collision. "By the time I seen him, there was nowhere I could go."

Similarly, this court misconstrues or misapprehends the evidence in this case as being analogous to the evidence in *Abdelgheny v. Moody*, 442 S.C. 346, 852 S.E.2d 225 (Ct. App. 2020). In that case a pedestrian crossed two lanes of a four lane highway. The pedestrian then paused in the median. She then crossed another lane before being struck in the right hand lane by the defendant who only saw her when she was ten feet in front of him and he looked up and saw her raising her arms. This court held that a reasonable juror could interpret the truck driver's testimony that he first saw the plaintiff when he "looked up" to find her only 10 feet in front of his truck as incompatible with a careful lookout. *Abdelgheny*, at 351. In this case Sharpe testified that as he proceeded on Bluff Road, he saw Appellants' 18 wheeler sitting still in the left turn lane in oncoming Bluff Road traffic at the intersection. It did not take him by surprise or appear suddenly in front of him. He knew it was there. Just as he started to enter the intersection, the 18 wheeler turned left in front of him. He was going at or below the speed limit of 35 miles per hour and did not have time to hit the brakes. R. p. 127, line 22 - R. p. 137, line 10.

Conversely, Rocky Rutherford testified that, "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 is how it happened." R. p. 239, lines 16-21. According to Rutherford, Sharpe hit his front tire and the front bumper on the passenger side. R. p. 239, line 13 – p. 240, line 8. Thus the only evidence of failure to keep a proper lookout and being surprised by the appearance of another vehicle on the roadway is on the part of Rutherford, not Sharpe.

The other case cited by the Court is equally inapplicable. The Court states that a jury could reasonably infer that Respondent Sharpe failed to keep a proper lookout pursuant to *Wilson v. Marshall*, 260 S.C. 271, 195 S.E.2d 610 (1973). That case involved two cars approaching an intersection at a country crossroads. The car on the disfavored highway ran through a stop sign without ever slowing down and was struck by the car on the dominant highway. The plaintiff who was driving on the dominant highway stated that he only saw the defendant vehicle that ran the stop sign just prior to the collision even though he had an unobstructed view of it from his left for several hundred yards as it approached the intersection and the stop sign. An independent witness who had been passed by the driver on the dominant highway saw the driver on the subservient highway from 200 yards away from the stop sign and saw it was going so fast he had a "pretty good idea" it wouldn't stop. *Wilson*, at 275.

In this case, Sharpe saw the 18 wheeler driven by Rocky Rutherford sitting in the left turn lane of the intersection as he approached the intersection. It then turned immediately in front of him when he was so close there was nothing he could do about it. Just as Rutherford testified, by the time Sharpe saw him, there was nowhere he could go.

There is no evidence from which a jury could reasonably infer that Sharpe did anything, or failed to do anything, which proximately caused this accident. When Rutherford turned there was nowhere Sharpe could go.

The Respondents respectfully submit that this Court seems to state that a jury could find there is a reasonable inference that Sharpe was in some way negligent in this case simply by virtue of the fact that a collision occurred. There is no evidence that he failed to keep a proper lookout or was driving too fast for conditions. *Wilson* would only be analogous to this case if the driver on the subservient highway had stopped at the stop sign, Wilson had seen her, and then she had pulled in front of Wilson just as he reached the crossroad. Had that been the case, there could be no such reasonable inference.

The only evidence is that Appellant Rutherford failed to see what was plainly visible before making his turn. He admittedly failed to yield the right of way. There is no doubt that Respondent Sharpe was there at the time. He did not come out of nowhere. Rutherford simply failed to see what was there.

Respondents respectfully submit that this decision effectively overturns *Odom v. Steigerwald* and its progeny as an implicit and practical matter if not explicitly. This case falls squarely within the *Odom* line of cases and is very analogous to *Blanding v. Hammell*, 267 S.C. 352, 228 S.E.2d 271 (1976).

In *Blanding*, the Supreme Court ruled that although the defendant was traveling over the speed limit, as a matter of law that was not a contributing factor to the accident when the plaintiff stopped at the dominant highway and then proceeded across a four lane highway from a private drive. Because there was no evidence that the defendant's speeding was a proximate cause of the accident, the court ruled a directed verdict for the

defendant was appropriate pursuant to *Odom*, supra; *Horton v. Greyhound*, 241 S.C. 430, 128 S.E.2d 776 (1962) and *Kennedy v. Carter*, 249 S.C. 168, 153 S.E.2d 312 (1967). Our Supreme Court also noted that even though more than a split second of time had lapsed while the defendant looked at his mirror and then looked up and saw the defendant in the road, that was not enough time to give rise to an inference of improper lookout. *Blanding*, at 358.

The Respondents respectfully submit that this Court ignores the *Odom* line of cases. Rutherford says it best, "By the time I seen him, there was nowhere I could go." Similarly, once Rutherford turned, there was nowhere Sharpe could go and nothing he could do. That is the only *reasonable* inference to be drawn from the evidence in this case. The driver of an 18 wheeler from out of town and thus unfamiliar with the area did not see a pickup truck coming and turned left in front of it at an intersection. The Circuit Court's Order granting Summary Judgment on this issue of liability should not be reversed.

Respectfully submitted,

By: _____

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The Honorable Jean Hoefer Toal, Circuit Court Judge

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

v.

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

PROOF OF SERVICE

I certify that I have served one (1) copy of the ***Respondents' Petition for Rehearing and Memorandum in Support of Petition for Rehearing*** on Appellants by emailing to their attorneys of record as follows: Everett A. Kendall, Esquire (*rkendall@murphygrantland.com*) and Phillip Florence, Jr., Esquire (*pflorence@murphygrantland.com*) - Post Office Box 6648 – Columbia, SC 29260; Mark B. Goddard, Esquire (*mgoddard@turnerpadget.com*) - Post Office Box 1473 – Columbia, SC 29202; Thomas Jonathan Clark, Esquire (*jclark@wardfirm.com*) and John Elliott Rogers, II, Esquire (*jrogers@wardfirm.com*) – Post Office Box 5663 – Spartanburg, SC 29304.

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December 23, 2024

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Re: Bill R. Sharpe and Angela Sharpe -vs- Rocky Rutherford, Legacy Equipment, Inc., and G.A. West and Company, Inc.
Appellate Case No.: 2023-000060

Dear Ms. Kitchings:

Please find attached for filing Petition for Rehearing of Respondents and Respondents' Memorandum in Support of Petition for Rehearing, in the above-referenced matter.

By copy of this letter and as evidenced by the attached Proof of Service, I am serving counsel for Appellants with the same via Email.

Please return a clocked copy of each via email.

Respectfully submitted,

GARY W. POPWELL, JR.

GWPJr/gsr
Enclosures

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