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Subject:	Appellate Case No. 2025-000272; Estate of Susan Shaffer v. Ceres Env. and Beaufort County, et al.; Petitioners" Reply Brief for Writ of Certiorari - for filing on March 7, 2025
Date:	Friday, March 7, 2025 10:22:31 PM
Attachments:	Petitioners" Reply Brief for Writ of Certiorari Filed 3-7-2025.pdf Certificate of Service of Reply 3-7-2025.pdf Copy of Petitioners" Counsel"s Email Serving Reply Brief 3-7-2025.pdf

Good evening:

I have attached, for filing as of March 7, 2025 with the South Carolina Supreme Court and the South Carolina Court of Appeals, the Petitioners' Reply Brief for Writ of Certiorari by Ceres Environmental Services and Beaufort County in the above-referenced matter. I have also attached a copy of the Certificate of Service, along with a copy of the email that was sent serving the same upon all counsel of record earlier this evening.

If you need anything further, please let me know.

Respectfully submitted,

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Mar 07 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appellate Case No. 2025-000272

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.

PETITIONERS' REPLY BRIEF FOR WRIT OF CERTIORARI

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March 7, 2025

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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*. and *Wade v. Berkeley County*, 348 S.C. 224, 559 S.E.2d 586 (2002)?

STATEMENT OF THE CASE IN REPLY

I. Causation.

In its Summary Judgment Order entered February 11, 2022 (the "SJ Order," R. p. 26), the Trial Court set forth two separate bases for granting summary judgment to the Petitioners. The first basis was that the Respondent failed to offer any evidence to establish the but-for causation element of his negligent hiring claim against the Petitioners. The second basis was that, because a negligent hiring claim is not independent of a vicarious liability claim, when the Respondent (Plaintiff) dismissed the vicarious liability claim against Petitioners, the negligent hiring claim was to be dismissed as well.

After briefing and before oral arguments at the Court of Appeals, the South Carolina Supreme Court decided *Ruh v. Metal Recycling Servs., LLC*, 439 S.C. 649, 889 S.E.2d 577 (2023), which held that a negligent hiring claim actually is independent of a vicarious liability claim. Accordingly, that particular basis for summary judgment in the Trial Court's SJ Order was invalidated. However, the Trial Court's initial basis for summary judgment, the absence of proof of the causation element of the negligent hiring claim, was unaffected by *Ruh,* and the Court of Appeals erred by disregarding that basis and reversing the Trial Court's SJ Order. Indeed, the

Trial Court's SJ Order was reversed even though the Court of Appeals found no genuine issue of material fact regarding but-for causation, which was the valid remaining basis for that SJ Order. For that reason, the Court of Appeals' Opinion must be reversed and the Summary Judgment in favor of Petitioners must be restored.

In its very first argument on page 7 of its Return, the Respondent misrepresented that "[t]he ***sole basis*** for the Trial Court's granting summary judgment was the erroneous conclusion that the Respondent's direct negligence claims against Beaufort County and Ceres were not independent of the acts and omissions of the previously dismissed Defendants." Return at p. 7 (emphasis added). That statement contradicts the specific language of the Trial Court's SJ Order, which states 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 (R. p. 30) (emphasis added).

On page 9 of the Return, Respondent once again contradicts the specific language of the Trial Court's SJ Order, when he claims that "the Trial Court never ruled upon the causation issue as a ground for summary judgment." Not only did the Trial Court rule on the causation issue, it specifically found that Respondent offered no evidence about what caused the pintle hitch to fail, and that was the primary basis for granting summary judgment. SJ Order (R. pp. 29-30). The Court of Appeals overlooked this valid remaining basis for summary judgment, and its reversal of the Trial Court's SJ Order was, itself, reversible error that must be corrected.

II. Summary Judgment Standard.

At the hearing of the Summary Judgment Motion, the Respondent offered zero evidence about why the pintle hitch failed. Respondent could not offer any such evidence, because the

critical components of the pintle hitch were never recovered after the accident; were never observed by any witness after the accident; and were never analyzed or tested by any expert witness. (R. p. 1543). Without the ability to show the actual cause of the pintle hitch failure through the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," the Respondent failed to overcome the burden imposed by Rule 56(c), SCRCP, and summary judgment was properly granted.

The Court of Appeals tacitly admitted that it did not even consider the lack of proof of but-for causation when it issued its reversal opinion: "We see 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). The Court of Appeals was obligated to fully review all bases for summary judgment in the Trial Court's SJ Order and, even though the *Ruh* decision invalidated one basis, the Court of Appeals was obligated to affirm on the valid remaining basis.

Rule 56(c) commands the non-moving party to show evidence establishing a genuine issue of material fact in order to avoid summary judgment. As the non-moving party, the Respondent "cannot simply rest on mere allegations or denials contained in the pleadings" in order to overcome its burden. Instead, the Respondent "must come forward with specific facts showing there is a genuine issue for trial." *Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 588–89, 635 S.E.2d 649, 654 (Ct. App. 2006). When Respondent failed to meet his burden, the Trial Court properly recognized that, under Rule 56(c), "the judgment sought ***shall be*** rendered forthwith" and the Trial Court granted the Petitioners' motion. Rule 56(c), SCRCP (emphasis added).

By ignoring the valid remaining basis for summary judgment and issuing its reversal, the Court of Appeals effectively concluded that the Respondent's failure to meet that burden under

Rule 56(c) does not matter. To affirm the Court of Appeals' opinion would create unnecessary confusion about the otherwise straightforward language of Rule 56(c). The Court of Appeals erred by failing to consider the non-moving party's inability to establish the but-for cause of the pintle hitch failure, and this Petition must be granted in order to correct that error.

III. Preservation of Issues for Appeal.

In his response to the Petitioners' Summary Judgment Motion, Respondent offered no evidence for the Trial Court to consider as to why the pintle hitch failed. The Respondent submitted thousands of pages of deposition transcripts which offered no proof about why the pintle hitch failed, but no memorandum of law in opposition to summary judgment. Respondent certainly offered no evidence that the safety chains or other conditions of the truck or trailer actually caused the pintle hitch to fail. The Trial Court recognized that the accident would not have occurred "but for" the failure of the pintle hitch and, further, because the pintle hitch components were never recovered after the accident, Respondent was unable to offer evidence to establish what actually caused that failure. Respondent, thus, failed to meet its burden under Rule 56(c) as a non-moving party, and the Trial Court properly granted summary judgment in favor of Petitioners.

In his Return to this Petition, the Respondent offered a lengthy discourse about the conditions of tires, safety chains, and other arguments that were not causally related to the failure of the pintle hitch. None of those arguments and theories were included in a memorandum of law for the Trial Court to consider before entering the SJ Order, because the Respondent neither filed any such memorandum before the hearing, nor offered any supplemental briefing before the SJ Order was entered. Because he failed to present probative evidence in opposition to summary judgment prior to the entry of the SJ Order, Respondent cannot now offer revised arguments and

new theories which were not presented to the Trial Court at the summary judgment hearing stage. On the basis of what was submitted to the Trial Court prior to entry of the summary judgment in favor of Petitioners, the Court of Appeals erred in reversing that SJ Order.

IV. Sovereign Immunity of Beaufort County.

The Court of Appeals also failed to recognize that the claims against Beaufort County are specifically prohibited under S.C. Code § 15-78-10, *et seq.* and the Supreme Court's precedent, including *Wade v. Berkeley County,* 348 S.C. 224, 559 S.E.2d 586 (2002). The Court of Appeals disregarded the application of that statute to the Respondent's claims, and failed to recognize that the settlement between Respondent and other Defendants in this case constitutes a complete bar to any further action by the Respondent against Beaufort County in this matter. S.C. Code § 15–78–70(d). The Petitioners' requested Writ of Certiorari must be granted in order to correct these errors by the Court of Appeals.

Finally, in his Return at p. 10, the Respondent relies upon comments of the Trial Court Judge after hearing some thirteen pages of scripted PowerPoint text, when the Judge stated: "Mr. Kuhn, with all due respect, this is probably one of the best ***opening presentations*** I've ever seen in my entire life, but that's probably for a jury. You met your standard. Okay?" (emphasis added). The emphasized language is important, because the scripted presentation by Respondent's counsel was more properly presented as an opening statement before a jury, which is not evidence upon which a jury or other finder of fact can decide the outcome of the case. Rule 43(g), SCRCP.

The Judge's observation may have meant that the Respondent met his standard for an opening statement, which was limited to introducing his position to the fact-finder, *see* Rule 43(g), SCRCP ("Counsel for any party may read his pleadings to the jury or make a statement to the jury of the facts alleged in the pleadings and the theory of his case; but counsel shall not argue his case

during his opening statement. The pleadings shall not be submitted to the jury for its deliberations.")

In any event, Respondent's reliance on those comments by the Judge is misplaced. Whatever the Judge's reason for making those comments, it was not a ruling from the bench because, after the hearing was concluded, the Judge prepared a written order granting Petitioners' Motion for Summary Judgment. SJ Order (R. p. 26). Respondent did not supplement the record by providing a copy of the scripted PowerPoint text, or provide a Memorandum of Law in Opposition to the pending summary judgment motion before the Judge entered the SJ Order. Without any such guidance regarding any legal basis or factual support for Respondent's argument, the Judge granted the Petitioners' Summary Judgment Motion.

The Trial Court Judge may have made a preliminary comment after hearing thirteen scripted pages of an opening presentation, but after properly reviewing the record in chambers after the hearing, the Judge issued the correct ruling, based upon the absence of any evidence regarding the but-for cause of the pintle hitch failure.

ARGUMENT IN REPLY

I. The Court of Appeals Erred by Failing to Acknowledge That the Trial Court Included Lack of Causation as a Basis for Summary Judgment.

The Trial Court's SJ Order (Para. 7, R. p. 30) provided that (1) Respondent failed to establish any evidence of the but-for causation element of its remaining negligent hiring claim against Petitioners; and (2) that there was no authority, at that time, providing that the remaining negligence claim against Petitioners was independent of the previously dismissed vicarious liability claim. 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 vicarious liability related basis for summary

judgment noted above. The Court of Appeals erred, however, when it stopped there and failed to acknowledge the absence of but-for causation evidence as the valid remaining basis for summary judgment.

The Court of Appeals disregarded this crucial part of the Trial Court's SJ Order, when it stated in its Opinion, at p. 4, that "[t]he 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." In his Return, the Respondent also ignored the absence of evidence of causation as a basis for summary judgment.

Actually, the Trial Court did not rely on that vicarious liability related basis as the sole basis for summary judgment. In fact, even before it ruled on that vicarious liability related basis, the Trial Court specifically ruled 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." SJ Order (R. p. 30).

The truth is that Respondent simply had no evidence to establish that any acts or omissions of Petitioners caused the failure of the pintle hitch. There was no evidence of that but-for causation from witness observations or expert witness testing of the pintle hitch components, which were never recovered after the accident. (R. p. 1543). Of the thousands of pages of deposition transcripts offered by the Respondent to the Trial Court for consideration, the only relevant and conclusive testimony was from the driver Stoltz, who observed no problems with the pintle hitch in his pre-trip inspection on the day of the accident. (R. p. 554). Without any evidence of why the pintle hitch failed, much less evidence that the Petitioners somehow contributed to that failure, the Trial Court had no choice but to grant summary judgment. The Court of Appeals failed to

acknowledge that there simply was no evidence of but-for causation, and that such a lack of evidence, alone, is a sufficient basis for affirming the Trial Court's SJ Order. *See* Rule 220(c), SCACR; *Sims v. Amisub of S.C., Inc.,* 408 S.C. 202, 214-15, 758 S.E.2d 187, 194 (Ct. App. 2014) (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).

II. The Court of Appeals Erred by Disregarding the Absence of a Genuine Issue of Material Fact as to Causation of the Pintle Hitch Failure Under Rule 56(c), SCRCP

The Trial Court's SJ Order was specific, direct, and accurate when it stated 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) (emphasis added).

As a matter of logic, in order to reverse the Trial Court's SJ Order in favor of the Petitioners, the Court of Appeals needed to first determine that the Respondent overcame its burden under Rule 56(c), SCRCP by proving the existence of a genuine issue of material fact as to the but-for causation element of the negligent hiring claim. However, the Court of Appeals failed to even recognize that valid remaining basis of summary judgment from the plain language of the Trial Court SJ Order at Para. 7 (R. p. 30). Reversing the Trial Court's SJ Order was error, because the Respondent never presented any evidence establishing proof of why the pintle hitch failed, which was the but-for causation element of the negligent hiring claim. No such evidence was presented at the summary judgment hearing stage. Respondent offered no Memorandum in

Opposition; no written legal argument; and no affidavits for the Trial Court to review prior to granting Petitioners' Motion for Summary Judgment.

To explain his failure to present evidence or a legal memorandum in opposition to the Summary Judgment Motion, the Respondent offered the following in his Return to this Petition, at p. 20:

> This is not your ordinary automobile wreck case. It involves safety rules and requirements imposed upon commercial motor vehicles and their operators by the Federal Motor Carriers Safety Act, additional safety requirements imposed upon emergency management vehicles by the Federal Emergency Management Agency, and safety components such as pintle hooks and safety chains, whose maintenance and inspection requirements are not within the realm of ordinary knowledge. These are concepts that are better explained using charts, diagrams, photographs, and other visual medium, as opposed to simply the printed word. Accordingly, Respondent chose to present his argument to the Trial Judge by way of a power point presentation in lieu of a routine Memorandum. (ROA, p. 3413, pp. 17-20). Additionally, in order for the Court to have a full and complete understanding of the lawsuit, depositions were submitted in lieu of affidavits.

Importantly, however, the Respondent never provided a copy of the above-referenced "PowerPoint" script or any other written guidance to the Trial Court for consideration during the hearing or after the hearing as a supplemental brief prior to the issuance of the SJ Order. The Trial Court correctly observed that the Respondent attempted to defend this summary judgment motion by making a non-evidentiary opening presentation (R. p. 3426, lines 8-11), but such an opening statement was properly deemed non-evidentiary in nature by the Trial Court Judge, *see* Rule 43(g), SCRCP and was, thus, insufficient for overcoming Respondent's burden under Rule 56(c).

"Once the [Petitioners met] the initial burden of showing an absence of evidentiary support for the [Respondent's] case, the [Respondent] cannot simply rest on mere allegations or denials contained in the pleadings. . . . ***The [Respondent] must come forward with specific facts showing there is a genuine issue for trial***." *Bennett v. Investors Title Ins. Co.*, *supra,* 370 S.C. at 588–89, 635 S.E.2d at 654 (emphasis added). Petitioners satisfied their burden by pointing out the absence

of evidence to support the Respondent's but-for causation element, *see Baughman v. American Tel. & Tel. Co*., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) but Respondent simply failed to present any evidence in opposition prior to the entry of the Trial Court's SJ Order. (R. p. 30).

In fact, the lack of evidence of that but-for causation element of the negligent hiring claim made summary judgment mandatory. The Rules provide no discretion to the Trial Court Judge when zero evidence is provided in opposition to summary judgment. Rule 56(c) ("[T]he judgment sought ***shall be*** rendered forthwith") (emphasis added). The Court of Appeals erred by ignoring the fact that Respondent did not overcome its burden under Rule 56(c), and compounded its error by reversing the Trial Court's SJ Order without any justification. Instead, the proper standard for appellate review required that the SJ Order be affirmed, based upon "***any ground(s)*** appearing in the Record on Appeal." Rule 220(c), SCACR (emphasis added); s*ee also Sims v. Amisub of S.C., Inc., supra,* 408 S.C. at 214-15, 758 S.E.2d at 194.

Not only did the Respondent fail to offer any actual evidence of but-for causation of the pintle hitch failure prior to the entry of the SJ Order, the Respondent then failed to incorporate that PowerPoint opening statement script into his Motion to Reconsider, Alter, or Amend (hereinafter, Respondent's "Rule 59(e) Motion," R. p. 486). Without any physical evidence of the pintle hitch which was never recovered after the accident (R. p. 1543), none of the expert witnesses had seen, much less tested, the pintle hitch, and the thousands of pages of deposition testimony submitted by Respondent could not change that fact. Respondent simply had no evidence to show why the pintle hitch failed, and the Court of Appeals erred by failing to recognize that Respondent did not meet its burden under Rule 56(c), SCRCP.

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

Once the Petitioners met their burden at the summary judgment hearing under Rule 56(c),

the Respondent "failed to come forward with specific facts showing there is a genuine issue for trial" as to what caused the pintle hitch to fail. Rule 56(c), SCRCP. As noted above, Respondent did not even offer his opening statement PowerPoint script as a part of his Rule 59(e) Motion after the Trial Court's SJ Order was entered (R. p. 486).

Of course, without offering a memorandum of law in opposition to summary judgment at the hearing, any attempt to add arguments or offer evidence for the first time on a Motion to Reconsider violates Rule 59(e), SCRCP. The Trial Court recognized this as a basis for denying the Respondent's Rule 59(e) motion: "In other words, '[a] party cannot use Rule 59(e) to present to the Court an issue that the party could have raised prior to judgment but did not.'" Order Denying Respondent's Rule 59(e) Motion, citing *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) (R. p. 18).

Moreover, Respondent certainly cannot, at the appellate briefing or petition for certiorari 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 hearing stage. These principles are established by the South Carolina Supreme Court in *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004):

> [O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

Id. at 24, 602 S.E.2d at 780.

Because Respondent failed to present anything other than thousands of pages of irrelevant deposition transcripts, coupled with a presentation at the summary judgment hearing characterized as an "opening statement" by the presiding Judge, the South Carolina Supreme

Court cannot accept or consider any revised or new arguments or evidence offered in Respondent's Rule 59(e) motion, and certainly not in Respondent's subsequent appellate briefs, because the Respondent failed to present such arguments and evidence to the Trial Court Judge for his consideration and adjudication at the summary judgment hearing stage. *Elam,* 361 S.C. at 24, 602 S.E.2d at 780.

In his Return at p. 20, the Respondent attempts to turn this lack of preservation argument back on Petitioners, by stating that their arguments were not raised until this stage of the appeal. In making this argument, Respondent overlooks the written briefs filed by Petitioners on this exact point at every stage of this summary judgment motion and appeal. *See* Petitioners' Motion for Summary Judgment at p. 2, R. p. 389) ("The Plaintiff has not produced evidence or testimony by fact or expert witnesses which would establish that the Plaintiff's claims were caused by any act or omission of Beaufort County or Ceres."); *see also* Petitioners' "Brief of Respondent" before the Court of Appeals, at p. 12 ("The fallacy in Appellant's logic is that there is, in fact, no evidence as to why the hitch failed and allowed the trailer to detach, because the top half of the pintle hitch and the hinge bolt were never recovered by investigators, and were not seen by anyone immediately before or after the accident.").

At every opportunity, Petitioners pointed out that there was no evidence of what caused the pintle hitch to fail and, at every opportunity, Respondent attempted to get past that causation element by simply assuming that "the bolt fell out" and that caused the pintle hitch to fail. *See, e.g.*, Return at p. 1. Based upon his failure to timely raise legal defenses at the summary judgment hearing stage, the Respondent failed to preserve any basis to challenge the Trial Court's SJ Order in his Rule 59(e) motion or 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. *Elam, supra,* 361 S.C.

at 24, 602 S.E.2d at 780; *see also South Carolina 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*** [i.e., Mr. Shaffer, now the Respondent at this stage of the appeal], (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)) (emphasis added).

Because of the Respondent's failure to offer evidence in support of the but-for cause of the pintle hitch failure before the Trial Court at the summary judgment hearing stage, none of his subsequent efforts to create arguments and offer alternative theories after that time are preserved for appeal. The Court of Appeals failed to recognize that point, and its reversal of the Trial Court SJ Order was in error.

IV. The Court of Appeals Erred by Overlooking Beaufort County's Immunity Under the South Carolina Tort Claims Act § 15-78-10, *et seq*. and *Wade v. Berkeley County,* 348 S.C. 224, 559 S.E.2d 586 (2002)

In his Return at p. 21, the Respondent argues that his claims are not barred by the Tort Claims Act because they relate to the County's independent acts and omissions which, for reasons Respondent did not and could not explain at the summary judgment hearing stage, somehow caused the pintle hitch to fail. Instead of offering proof of why the pintle hitch actually failed, the Respondent simply alleges that the hitch failed because the "bolt fell out" s*ee, e.g.*, Return at p. 1.

Respondent has never been able to offer proof that the bolt actually fell out, as opposed to failure by a manufacturing defect or third-party criminal intervention, because the crucial components of the pintle hitch were never recovered and, thus, were never observed or tested after the accident. (R. p. 1543). Indeed, the only relevant deposition testimony was by the driver, who testified that there was no problem with the pintle hitch assembly during his pre-trip inspection.

(R. p. 554). Despite that testimony, the Respondent ignored the more likely causes of pintle hitch failure from either a manufacturing defect or some third-party criminal act unrelated to any act or omission by Petitioners, DEH, or Stoltz. The Tort Claims Act bars Respondent's claims against the County because, without establishing a causal link between the acts of any employee and the failure of the pintle hitch, the claim must be considered to be 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).

In his Return at p. 22, the Respondent argues that *Wade v. Berkeley County* does not apply to the instant lawsuit because "Olson, DEH, and Stoltz were not County employees . . . . The settlement with them, accordingly, had absolutely nothing to do with the South Carolina Tort Claims Act." So, Respondent first alleged that Beaufort County negligently managed the actions of Olson, DEH, and Stoltz, *see* Second Amended Complaint, at subparagraph 36 (dd), (R. p. 146), but Respondent now argues that he never actually made any claims which would have been covered by the Tort Claims Act.

The plain language of the Tort Claims Act provides: "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). The Supreme Court in *Wade* concluded that the General Assembly intended "under this chapter" to modify both a "settlement or judgment in an action" and a "settlement of a claim." *Wade,* 348 S.C. at 224, 559 S.E.2d at 586. The Shaffer lawsuit was brought against the County on the basis that DEH's employee-driver Stoltz was an agent of the County acting within the scope of official duty in this storm clean-up project.

Respondent settled his claims in this lawsuit against Olson Trucking, DEH, and Stoltz on

December 28, 2021, which was approved by Order of the Court of Common Pleas (R. p. 33). Under a plain reading of section 15–78–70(d) and *Wade,* 348 S.C. at 224, 559 S.E.2d at 586, Respondent's settlement with Olson, DEH, and Stoltz acts as a "complete bar to any further action" by Respondent against Beaufort County in this lawsuit. S.C. Code § 15–78–70(d).

Further, section 15–78–20(b) plainly states that "[t]he remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, *or its agents*." (emphasis added). Respondent's latest effort to somehow sever its claims in this lawsuit against alleged agents of the County from its claims that the County negligently hired those same subcontractors is a nonsensical effort to avoid application of the plain language of the Act. The Court of Appeals failed to recognize the application of the Tort Claims Act and *Wade* as a complete bar to Respondent's claims against Beaufort County as described above, and the Court of Appeals erred in reversing the Trial Court's SJ Order. This Petition for Certiorari must be granted in order to correct the Court of Appeals' error by restoring the SJ Order.

CONCLUSION

For the reasons stated above, the Petitioners request that the Petition for Certiorari be granted.

Respectfully Submitted,

March 7, 2025

Charleston, SC

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appellate Case No. 2025-000272

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.

CERTIFICATE OF SERVICE

The undersigned certifies that on March 7, 2025, the Petitioners' Reply Brief for Writ of Certiorari by Ceres and Beaufort County and this Certificate of Service were electronically filed with the South Carolina Supreme Court and the South Carolina Court of Appeals, as well as served upon all counsel of record in this matter, by email addressed to the following:

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March 7, 2025

Charleston, SC

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COPY OF PETITIONERS' COUNSEL'S EMAIL TO ALL COUNSEL OF RECORD DATED MARCH 7, 2025

SERVING THE REPLY BRIEF FOR WRIT OF CERTIORARI IN APPELLATE CASE NO. 2025-000272

Respectfully submitted,

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March 7, 2025

From: Patrick Flynn
Sent: Friday, March 7, 2025 10:09 PM
To: stacey.monaco@mgclaw.com; sue@fkuhnlawfirm.com; kdean@griffithfreeman.com; lsmyth@griffithfreeman.com; spattee@donnalaw.com; gwhite@griffithfreeman.com; shawn.bevans@mgclaw.com; fred@fkuhnlawfirm.com; mgriffith@griffithfreeman.com; Falin, Stormy <sfalin@sccourts.org>; Marc Meister <marc@meisterlegal.com>; Glynn Capell <gcapell@capellthomson.com>; Charles Thomson <cthomson@capellthomson.com>
Subject: Appellate Case No. 2025-000272; Estate of Susan Shaffer v. Ceres Env. and Beaufort County, et al.; Petitioners' Reply Brief for Writ of Certiorari - for Service on March 7, 2025

Good evening counsel:

I have attached for service upon each of you a copy of the Petitioners' Reply Brief for Writ of Certiorari in the above-referenced matter by Ceres Environmental Services and Beaufort County, along with a copy of the Certificate of Service of the Reply.

If you have any questions, please let me know. Best regards ----Pat Flynn

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From:	Falin, Stormy
To:	Court Of Appeals Filings
Subject:	FW: Appellate Case No. 2025-000272; Estate of Susan Shaffer v. Ceres Env. and Beaufort County, et al.; Petitioners" Reply Brief for Writ of Certiorari - for Service on March 7, 2025
Date:	Monday, March 10, 2025 8:22:17 AM
Attachments:	Petitioners" Reply Brief for Writ of Certiorari Filed 3-7-2025.pdf Certificate of Service of Reply 3-7-2025.pdf

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<gcapell@capellthomson.com>; Charles Thomson <cthomson@capellthomson.com>
Subject: RE: Estate of Susan Shaffer v. DEH Disaster Recover LLC, Petition for CertioriariR. Patrick FlynnR. Patrick Flynn

Good afternoon counsel:

I have attached for service upon each of you a copy of the Petition for Certiorari in the above-referenced matter by Ceres and Beaufort County, along with a copy of the Certificate of Service.

If you have any questions, please let me know. Best regards ----Pat Flynn

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Mar 07 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appellate Case No. 2025-000272

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.

PETITIONERS' REPLY BRIEF FOR WRIT OF CERTIORARI

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March 7, 2025

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III. Did the Court of Appeals Err by Overlooking the 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*. and *Wade v. Berkeley County*, 348 S.C. 224, 559 S.E.2d 586 (2002)?

STATEMENT OF THE CASE IN REPLY

I. Causation.

In its Summary Judgment Order entered February 11, 2022 (the "SJ Order," R. p. 26), the Trial Court set forth two separate bases for granting summary judgment to the Petitioners. The first basis was that the Respondent failed to offer any evidence to establish the but-for causation element of his negligent hiring claim against the Petitioners. The second basis was that, because a negligent hiring claim is not independent of a vicarious liability claim, when the Respondent (Plaintiff) dismissed the vicarious liability claim against Petitioners, the negligent hiring claim was to be dismissed as well.

After briefing and before oral arguments at the Court of Appeals, the South Carolina Supreme Court decided *Ruh v. Metal Recycling Servs., LLC*, 439 S.C. 649, 889 S.E.2d 577 (2023), which held that a negligent hiring claim actually is independent of a vicarious liability claim. Accordingly, that particular basis for summary judgment in the Trial Court's SJ Order was invalidated. However, the Trial Court's initial basis for summary judgment, the absence of proof of the causation element of the negligent hiring claim, was unaffected by *Ruh,* and the Court of Appeals erred by disregarding that basis and reversing the Trial Court's SJ Order. Indeed, the

Trial Court's SJ Order was reversed even though the Court of Appeals found no genuine issue of material fact regarding but-for causation, which was the valid remaining basis for that SJ Order. For that reason, the Court of Appeals' Opinion must be reversed and the Summary Judgment in favor of Petitioners must be restored.

In its very first argument on page 7 of its Return, the Respondent misrepresented that "[t]he ***sole basis*** for the Trial Court's granting summary judgment was the erroneous conclusion that the Respondent's direct negligence claims against Beaufort County and Ceres were not independent of the acts and omissions of the previously dismissed Defendants." Return at p. 7 (emphasis added). That statement contradicts the specific language of the Trial Court's SJ Order, which states 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 (R. p. 30) (emphasis added).

On page 9 of the Return, Respondent once again contradicts the specific language of the Trial Court's SJ Order, when he claims that "the Trial Court never ruled upon the causation issue as a ground for summary judgment." Not only did the Trial Court rule on the causation issue, it specifically found that Respondent offered no evidence about what caused the pintle hitch to fail, and that was the primary basis for granting summary judgment. SJ Order (R. pp. 29-30). The Court of Appeals overlooked this valid remaining basis for summary judgment, and its reversal of the Trial Court's SJ Order was, itself, reversible error that must be corrected.

II. Summary Judgment Standard.

At the hearing of the Summary Judgment Motion, the Respondent offered zero evidence about why the pintle hitch failed. Respondent could not offer any such evidence, because the

critical components of the pintle hitch were never recovered after the accident; were never observed by any witness after the accident; and were never analyzed or tested by any expert witness. (R. p. 1543). Without the ability to show the actual cause of the pintle hitch failure through the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," the Respondent failed to overcome the burden imposed by Rule 56(c), SCRCP, and summary judgment was properly granted.

The Court of Appeals tacitly admitted that it did not even consider the lack of proof of but-for causation when it issued its reversal opinion: "We see 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). The Court of Appeals was obligated to fully review all bases for summary judgment in the Trial Court's SJ Order and, even though the *Ruh* decision invalidated one basis, the Court of Appeals was obligated to affirm on the valid remaining basis.

Rule 56(c) commands the non-moving party to show evidence establishing a genuine issue of material fact in order to avoid summary judgment. As the non-moving party, the Respondent "cannot simply rest on mere allegations or denials contained in the pleadings" in order to overcome its burden. Instead, the Respondent "must come forward with specific facts showing there is a genuine issue for trial." *Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 588–89, 635 S.E.2d 649, 654 (Ct. App. 2006). When Respondent failed to meet his burden, the Trial Court properly recognized that, under Rule 56(c), "the judgment sought ***shall be*** rendered forthwith" and the Trial Court granted the Petitioners' motion. Rule 56(c), SCRCP (emphasis added).

By ignoring the valid remaining basis for summary judgment and issuing its reversal, the Court of Appeals effectively concluded that the Respondent's failure to meet that burden under

Rule 56(c) does not matter. To affirm the Court of Appeals' opinion would create unnecessary confusion about the otherwise straightforward language of Rule 56(c). The Court of Appeals erred by failing to consider the non-moving party's inability to establish the but-for cause of the pintle hitch failure, and this Petition must be granted in order to correct that error.

III. Preservation of Issues for Appeal.

In his response to the Petitioners' Summary Judgment Motion, Respondent offered no evidence for the Trial Court to consider as to why the pintle hitch failed. The Respondent submitted thousands of pages of deposition transcripts which offered no proof about why the pintle hitch failed, but no memorandum of law in opposition to summary judgment. Respondent certainly offered no evidence that the safety chains or other conditions of the truck or trailer actually caused the pintle hitch to fail. The Trial Court recognized that the accident would not have occurred "but for" the failure of the pintle hitch and, further, because the pintle hitch components were never recovered after the accident, Respondent was unable to offer evidence to establish what actually caused that failure. Respondent, thus, failed to meet its burden under Rule 56(c) as a non-moving party, and the Trial Court properly granted summary judgment in favor of Petitioners.

In his Return to this Petition, the Respondent offered a lengthy discourse about the conditions of tires, safety chains, and other arguments that were not causally related to the failure of the pintle hitch. None of those arguments and theories were included in a memorandum of law for the Trial Court to consider before entering the SJ Order, because the Respondent neither filed any such memorandum before the hearing, nor offered any supplemental briefing before the SJ Order was entered. Because he failed to present probative evidence in opposition to summary judgment prior to the entry of the SJ Order, Respondent cannot now offer revised arguments and

new theories which were not presented to the Trial Court at the summary judgment hearing stage. On the basis of what was submitted to the Trial Court prior to entry of the summary judgment in favor of Petitioners, the Court of Appeals erred in reversing that SJ Order.

IV. Sovereign Immunity of Beaufort County.

The Court of Appeals also failed to recognize that the claims against Beaufort County are specifically prohibited under S.C. Code § 15-78-10, *et seq.* and the Supreme Court's precedent, including *Wade v. Berkeley County,* 348 S.C. 224, 559 S.E.2d 586 (2002). The Court of Appeals disregarded the application of that statute to the Respondent's claims, and failed to recognize that the settlement between Respondent and other Defendants in this case constitutes a complete bar to any further action by the Respondent against Beaufort County in this matter. S.C. Code § 15–78–70(d). The Petitioners' requested Writ of Certiorari must be granted in order to correct these errors by the Court of Appeals.

Finally, in his Return at p. 10, the Respondent relies upon comments of the Trial Court Judge after hearing some thirteen pages of scripted PowerPoint text, when the Judge stated: "Mr. Kuhn, with all due respect, this is probably one of the best ***opening presentations*** I've ever seen in my entire life, but that's probably for a jury. You met your standard. Okay?" (emphasis added). The emphasized language is important, because the scripted presentation by Respondent's counsel was more properly presented as an opening statement before a jury, which is not evidence upon which a jury or other finder of fact can decide the outcome of the case. Rule 43(g), SCRCP.

The Judge's observation may have meant that the Respondent met his standard for an opening statement, which was limited to introducing his position to the fact-finder, *see* Rule 43(g), SCRCP ("Counsel for any party may read his pleadings to the jury or make a statement to the jury of the facts alleged in the pleadings and the theory of his case; but counsel shall not argue his case

during his opening statement. The pleadings shall not be submitted to the jury for its deliberations.")

In any event, Respondent's reliance on those comments by the Judge is misplaced. Whatever the Judge's reason for making those comments, it was not a ruling from the bench because, after the hearing was concluded, the Judge prepared a written order granting Petitioners' Motion for Summary Judgment. SJ Order (R. p. 26). Respondent did not supplement the record by providing a copy of the scripted PowerPoint text, or provide a Memorandum of Law in Opposition to the pending summary judgment motion before the Judge entered the SJ Order. Without any such guidance regarding any legal basis or factual support for Respondent's argument, the Judge granted the Petitioners' Summary Judgment Motion.

The Trial Court Judge may have made a preliminary comment after hearing thirteen scripted pages of an opening presentation, but after properly reviewing the record in chambers after the hearing, the Judge issued the correct ruling, based upon the absence of any evidence regarding the but-for cause of the pintle hitch failure.

ARGUMENT IN REPLY

I. The Court of Appeals Erred by Failing to Acknowledge That the Trial Court Included Lack of Causation as a Basis for Summary Judgment.

The Trial Court's SJ Order (Para. 7, R. p. 30) provided that (1) Respondent failed to establish any evidence of the but-for causation element of its remaining negligent hiring claim against Petitioners; and (2) that there was no authority, at that time, providing that the remaining negligence claim against Petitioners was independent of the previously dismissed vicarious liability claim. 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 vicarious liability related basis for summary

judgment noted above. The Court of Appeals erred, however, when it stopped there and failed to acknowledge the absence of but-for causation evidence as the valid remaining basis for summary judgment.

The Court of Appeals disregarded this crucial part of the Trial Court's SJ Order, when it stated in its Opinion, at p. 4, that "[t]he 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." In his Return, the Respondent also ignored the absence of evidence of causation as a basis for summary judgment.

Actually, the Trial Court did not rely on that vicarious liability related basis as the sole basis for summary judgment. In fact, even before it ruled on that vicarious liability related basis, the Trial Court specifically ruled 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." SJ Order (R. p. 30).

The truth is that Respondent simply had no evidence to establish that any acts or omissions of Petitioners caused the failure of the pintle hitch. There was no evidence of that but-for causation from witness observations or expert witness testing of the pintle hitch components, which were never recovered after the accident. (R. p. 1543). Of the thousands of pages of deposition transcripts offered by the Respondent to the Trial Court for consideration, the only relevant and conclusive testimony was from the driver Stoltz, who observed no problems with the pintle hitch in his pre-trip inspection on the day of the accident. (R. p. 554). Without any evidence of why the pintle hitch failed, much less evidence that the Petitioners somehow contributed to that failure, the Trial Court had no choice but to grant summary judgment. The Court of Appeals failed to

acknowledge that there simply was no evidence of but-for causation, and that such a lack of evidence, alone, is a sufficient basis for affirming the Trial Court's SJ Order. *See* Rule 220(c), SCACR; *Sims v. Amisub of S.C., Inc.,* 408 S.C. 202, 214-15, 758 S.E.2d 187, 194 (Ct. App. 2014) (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).

II. The Court of Appeals Erred by Disregarding the Absence of a Genuine Issue of Material Fact as to Causation of the Pintle Hitch Failure Under Rule 56(c), SCRCP

The Trial Court's SJ Order was specific, direct, and accurate when it stated 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) (emphasis added).

As a matter of logic, in order to reverse the Trial Court's SJ Order in favor of the Petitioners, the Court of Appeals needed to first determine that the Respondent overcame its burden under Rule 56(c), SCRCP by proving the existence of a genuine issue of material fact as to the but-for causation element of the negligent hiring claim. However, the Court of Appeals failed to even recognize that valid remaining basis of summary judgment from the plain language of the Trial Court SJ Order at Para. 7 (R. p. 30). Reversing the Trial Court's SJ Order was error, because the Respondent never presented any evidence establishing proof of why the pintle hitch failed, which was the but-for causation element of the negligent hiring claim. No such evidence was presented at the summary judgment hearing stage. Respondent offered no Memorandum in

Opposition; no written legal argument; and no affidavits for the Trial Court to review prior to granting Petitioners' Motion for Summary Judgment.

To explain his failure to present evidence or a legal memorandum in opposition to the Summary Judgment Motion, the Respondent offered the following in his Return to this Petition, at p. 20:

> This is not your ordinary automobile wreck case. It involves safety rules and requirements imposed upon commercial motor vehicles and their operators by the Federal Motor Carriers Safety Act, additional safety requirements imposed upon emergency management vehicles by the Federal Emergency Management Agency, and safety components such as pintle hooks and safety chains, whose maintenance and inspection requirements are not within the realm of ordinary knowledge. These are concepts that are better explained using charts, diagrams, photographs, and other visual medium, as opposed to simply the printed word. Accordingly, Respondent chose to present his argument to the Trial Judge by way of a power point presentation in lieu of a routine Memorandum. (ROA, p. 3413, pp. 17-20). Additionally, in order for the Court to have a full and complete understanding of the lawsuit, depositions were submitted in lieu of affidavits.

Importantly, however, the Respondent never provided a copy of the above-referenced "PowerPoint" script or any other written guidance to the Trial Court for consideration during the hearing or after the hearing as a supplemental brief prior to the issuance of the SJ Order. The Trial Court correctly observed that the Respondent attempted to defend this summary judgment motion by making a non-evidentiary opening presentation (R. p. 3426, lines 8-11), but such an opening statement was properly deemed non-evidentiary in nature by the Trial Court Judge, *see* Rule 43(g), SCRCP and was, thus, insufficient for overcoming Respondent's burden under Rule 56(c).

"Once the [Petitioners met] the initial burden of showing an absence of evidentiary support for the [Respondent's] case, the [Respondent] cannot simply rest on mere allegations or denials contained in the pleadings. . . . ***The [Respondent] must come forward with specific facts showing there is a genuine issue for trial***." *Bennett v. Investors Title Ins. Co.*, *supra,* 370 S.C. at 588–89, 635 S.E.2d at 654 (emphasis added). Petitioners satisfied their burden by pointing out the absence

of evidence to support the Respondent's but-for causation element, *see Baughman v. American Tel. & Tel. Co*., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) but Respondent simply failed to present any evidence in opposition prior to the entry of the Trial Court's SJ Order. (R. p. 30).

In fact, the lack of evidence of that but-for causation element of the negligent hiring claim made summary judgment mandatory. The Rules provide no discretion to the Trial Court Judge when zero evidence is provided in opposition to summary judgment. Rule 56(c) ("[T]he judgment sought ***shall be*** rendered forthwith") (emphasis added). The Court of Appeals erred by ignoring the fact that Respondent did not overcome its burden under Rule 56(c), and compounded its error by reversing the Trial Court's SJ Order without any justification. Instead, the proper standard for appellate review required that the SJ Order be affirmed, based upon "***any ground(s)*** appearing in the Record on Appeal." Rule 220(c), SCACR (emphasis added); s*ee also Sims v. Amisub of S.C., Inc., supra,* 408 S.C. at 214-15, 758 S.E.2d at 194.

Not only did the Respondent fail to offer any actual evidence of but-for causation of the pintle hitch failure prior to the entry of the SJ Order, the Respondent then failed to incorporate that PowerPoint opening statement script into his Motion to Reconsider, Alter, or Amend (hereinafter, Respondent's "Rule 59(e) Motion," R. p. 486). Without any physical evidence of the pintle hitch which was never recovered after the accident (R. p. 1543), none of the expert witnesses had seen, much less tested, the pintle hitch, and the thousands of pages of deposition testimony submitted by Respondent could not change that fact. Respondent simply had no evidence to show why the pintle hitch failed, and the Court of Appeals erred by failing to recognize that Respondent did not meet its burden under Rule 56(c), SCRCP.

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

Once the Petitioners met their burden at the summary judgment hearing under Rule 56(c),

the Respondent "failed to come forward with specific facts showing there is a genuine issue for trial" as to what caused the pintle hitch to fail. Rule 56(c), SCRCP. As noted above, Respondent did not even offer his opening statement PowerPoint script as a part of his Rule 59(e) Motion after the Trial Court's SJ Order was entered (R. p. 486).

Of course, without offering a memorandum of law in opposition to summary judgment at the hearing, any attempt to add arguments or offer evidence for the first time on a Motion to Reconsider violates Rule 59(e), SCRCP. The Trial Court recognized this as a basis for denying the Respondent's Rule 59(e) motion: "In other words, '[a] party cannot use Rule 59(e) to present to the Court an issue that the party could have raised prior to judgment but did not.'" Order Denying Respondent's Rule 59(e) Motion, citing *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) (R. p. 18).

Moreover, Respondent certainly cannot, at the appellate briefing or petition for certiorari 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 hearing stage. These principles are established by the South Carolina Supreme Court in *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004):

> [O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

Id. at 24, 602 S.E.2d at 780.

Because Respondent failed to present anything other than thousands of pages of irrelevant deposition transcripts, coupled with a presentation at the summary judgment hearing characterized as an "opening statement" by the presiding Judge, the South Carolina Supreme

Court cannot accept or consider any revised or new arguments or evidence offered in Respondent's Rule 59(e) motion, and certainly not in Respondent's subsequent appellate briefs, because the Respondent failed to present such arguments and evidence to the Trial Court Judge for his consideration and adjudication at the summary judgment hearing stage. *Elam,* 361 S.C. at 24, 602 S.E.2d at 780.

In his Return at p. 20, the Respondent attempts to turn this lack of preservation argument back on Petitioners, by stating that their arguments were not raised until this stage of the appeal. In making this argument, Respondent overlooks the written briefs filed by Petitioners on this exact point at every stage of this summary judgment motion and appeal. *See* Petitioners' Motion for Summary Judgment at p. 2, R. p. 389) ("The Plaintiff has not produced evidence or testimony by fact or expert witnesses which would establish that the Plaintiff's claims were caused by any act or omission of Beaufort County or Ceres."); *see also* Petitioners' "Brief of Respondent" before the Court of Appeals, at p. 12 ("The fallacy in Appellant's logic is that there is, in fact, no evidence as to why the hitch failed and allowed the trailer to detach, because the top half of the pintle hitch and the hinge bolt were never recovered by investigators, and were not seen by anyone immediately before or after the accident.").

At every opportunity, Petitioners pointed out that there was no evidence of what caused the pintle hitch to fail and, at every opportunity, Respondent attempted to get past that causation element by simply assuming that "the bolt fell out" and that caused the pintle hitch to fail. *See, e.g.*, Return at p. 1. Based upon his failure to timely raise legal defenses at the summary judgment hearing stage, the Respondent failed to preserve any basis to challenge the Trial Court's SJ Order in his Rule 59(e) motion or 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. *Elam, supra,* 361 S.C.

at 24, 602 S.E.2d at 780; *see also South Carolina 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*** [i.e., Mr. Shaffer, now the Respondent at this stage of the appeal], (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)) (emphasis added).

Because of the Respondent's failure to offer evidence in support of the but-for cause of the pintle hitch failure before the Trial Court at the summary judgment hearing stage, none of his subsequent efforts to create arguments and offer alternative theories after that time are preserved for appeal. The Court of Appeals failed to recognize that point, and its reversal of the Trial Court SJ Order was in error.

IV. The Court of Appeals Erred by Overlooking Beaufort County's Immunity Under the South Carolina Tort Claims Act § 15-78-10, *et seq*. and *Wade v. Berkeley County,* 348 S.C. 224, 559 S.E.2d 586 (2002)

In his Return at p. 21, the Respondent argues that his claims are not barred by the Tort Claims Act because they relate to the County's independent acts and omissions which, for reasons Respondent did not and could not explain at the summary judgment hearing stage, somehow caused the pintle hitch to fail. Instead of offering proof of why the pintle hitch actually failed, the Respondent simply alleges that the hitch failed because the "bolt fell out" s*ee, e.g.*, Return at p. 1.

Respondent has never been able to offer proof that the bolt actually fell out, as opposed to failure by a manufacturing defect or third-party criminal intervention, because the crucial components of the pintle hitch were never recovered and, thus, were never observed or tested after the accident. (R. p. 1543). Indeed, the only relevant deposition testimony was by the driver, who testified that there was no problem with the pintle hitch assembly during his pre-trip inspection.

(R. p. 554). Despite that testimony, the Respondent ignored the more likely causes of pintle hitch failure from either a manufacturing defect or some third-party criminal act unrelated to any act or omission by Petitioners, DEH, or Stoltz. The Tort Claims Act bars Respondent's claims against the County because, without establishing a causal link between the acts of any employee and the failure of the pintle hitch, the claim must be considered to be 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).

In his Return at p. 22, the Respondent argues that *Wade v. Berkeley County* does not apply to the instant lawsuit because "Olson, DEH, and Stoltz were not County employees . . . . The settlement with them, accordingly, had absolutely nothing to do with the South Carolina Tort Claims Act." So, Respondent first alleged that Beaufort County negligently managed the actions of Olson, DEH, and Stoltz, *see* Second Amended Complaint, at subparagraph 36 (dd), (R. p. 146), but Respondent now argues that he never actually made any claims which would have been covered by the Tort Claims Act.

The plain language of the Tort Claims Act provides: "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). The Supreme Court in *Wade* concluded that the General Assembly intended "under this chapter" to modify both a "settlement or judgment in an action" and a "settlement of a claim." *Wade,* 348 S.C. at 224, 559 S.E.2d at 586. The Shaffer lawsuit was brought against the County on the basis that DEH's employee-driver Stoltz was an agent of the County acting within the scope of official duty in this storm clean-up project.

Respondent settled his claims in this lawsuit against Olson Trucking, DEH, and Stoltz on

December 28, 2021, which was approved by Order of the Court of Common Pleas (R. p. 33). Under a plain reading of section 15–78–70(d) and *Wade,* 348 S.C. at 224, 559 S.E.2d at 586, Respondent's settlement with Olson, DEH, and Stoltz acts as a "complete bar to any further action" by Respondent against Beaufort County in this lawsuit. S.C. Code § 15–78–70(d).

Further, section 15–78–20(b) plainly states that "[t]he remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, *or its agents*." (emphasis added). Respondent's latest effort to somehow sever its claims in this lawsuit against alleged agents of the County from its claims that the County negligently hired those same subcontractors is a nonsensical effort to avoid application of the plain language of the Act. The Court of Appeals failed to recognize the application of the Tort Claims Act and *Wade* as a complete bar to Respondent's claims against Beaufort County as described above, and the Court of Appeals erred in reversing the Trial Court's SJ Order. This Petition for Certiorari must be granted in order to correct the Court of Appeals' error by restoring the SJ Order.

CONCLUSION

For the reasons stated above, the Petitioners request that the Petition for Certiorari be granted.

Respectfully Submitted,

March 7, 2025

Charleston, SC

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appellate Case No. 2025-000272

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.

CERTIFICATE OF SERVICE

The undersigned certifies that on March 7, 2025, the Petitioners' Reply Brief for Writ of Certiorari by Ceres and Beaufort County and this Certificate of Service were electronically filed with the South Carolina Supreme Court and the South Carolina Court of Appeals, as well as served upon all counsel of record in this matter, by email addressed to the following:

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March 7, 2025

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