RECEIVED
Mar 07 2025
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

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,..... Petitioners,

v.

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

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

GARY W. POPWELL, JR., ESQUIRE
Attorneys Lee, Eadon, Isgett,
Popwell & Owens, P.A.
Post Office Box 1505
Columbia, South Carolina 29202
Telphone: (803) 799-9811
Email: gary@leiplaw.com
Attorney for Petitioners

Other Counsel of Record:
EVERETT A. KENDALL, ESQUIRE
PHILLIP FLORENCE, JR., ESQUIRE
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, South Carolina 29260
Telephone: (803) 782-4100
Email: rkendall@murphygrantland.com
Email: pflorence@murphygrantland.com
Attorneys for Respondents

INDEX

ARGUMENT

I. RESPONDENTS ARGUE THE WRONG STANDARD OF REVIEW FOR SUMMARY JUDGMENT IN ASKING THIS COURT NOT TO REVIEW THE COURT OF APPEALS' REFUSAL TO FOLLOW *HORTON V. GREYHOUND CORP.* AND ITS PROGENY AND RESPONDENTS MISSTATE THIS COURT'S HOLDINGS IN THE *HORTON* LINE OF CASES

In their Return the Respondents state that the Court of Appeals correctly applied this Court's summary judgment standard in reversing the circuit court's grant of summary judgment to the Petitioner on the issue of liability. Respondents state the nonmoving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment and cite *Hancock v. Mid-South Mgmt. Co.,* 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) as well as other cases. Hancock was specifically reversed by this Court in *The Kitchen Planners, LLC v. Samuel E. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023). In that case this Court clearly stated "We now clarify that the 'mere scintilla' standard does not apply under Rule 56C. Rather the proper standard is the 'genuine issue of material fact' standard set forth in the text of the Rule. As we stated in *Town of Hollywood v. Floyd*, "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that it is not genuine." 403 S.C. at 477, 744 S.E.2d at 166. *Kitchen Planners*, at 463. This Court also noted the correct standard set forth in *Baughman v. American Tel. & Tel. Co.,* 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). A party opposing summary judgment "must do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with specific facts showing there is a genuine issue for trial".

Thus the question is whether the evidence submitted at the hearing in this case did more than raise some metaphysical doubt as to the material facts in this case which amount to specific facts showing there is a genuine issue for trial. The Court of Appeals (unlike Respondent) set forth the correct standard but then failed to apply it.

The Respondents' whole argument comes down to Respondent Rutherford stating that he did not see Sharpe before he started to make his turn and then when he began his turn "out of nowhere Mr. Sharpe came". (R. p. 239, lines 13-21). However, he clearly stated he did not have an estimate as to Sharpe's speed. (R. p. 240, lines 10-14). He said he thought it was "pretty extensive" because it "shook me pretty hard."

So the question is whether the old cliché "came out of nowhere" is enough to defeat a motion for summary judgment when the moving party admittedly has the right-of-way. While "came out of nowhere" is a slogan often offered by unobservant motorists who turn left in front of other cars or pull from stop signs into the path of other cars, Petitioner respectfully submits that this is the "metaphysical" evidence which is specifically rejected by The Kitchen Planners and Baughman.

The Court of Appeals held and the Respondents argue that Rutherford testifying that he did not see Sharpe before turning creates a reasonable inference that Sharpe was so far away from the intersection when Rutherford began his turn that he was invisible to Rutherford. Note that Rutherford did not testify that Sharpe was not there, he simply testified that he did not see him. Conversely, Sharpe testified that he clearly saw Rutherford in the left turn lane as he approached the intersection and just as he was entering or about to enter the intersection, Rutherford turned in front of him. (R. p. 127, line 22 – p. 128, line

14). Rutherford had no idea of Sharpe's speed except to say it was too fast "because he shook me pretty hard". (R. p. 240, lines 10-14). Sharpe clearly testified his speed was 35 to 40 MPH in a 40 MPH zone. (R. p. 137, lines 5-10).

The question is whether it is a *reasonable* inference that Sharpe went from such an extensive distance that he was *invisible* to Rutherford to "coming out of nowhere" almost instantaneously at an astronomical speed and hitting Rutherford or is it a metaphysical exercise as set forth in The Kitchen Planners. In that case this Court specifically rejected such evidence which would require speculation on the part of a jury as opposed to raising a reasonable inference. *The Kitchen Planners*, at 464.

The Respondents' reliance on the cases they cite in their Return is misplaced. The Respondents rely extensively on *Clark v. Cantrell*, 332 S.C. 433, 439, 504 S.E.2d 605, 608 (Ct. App. 1998), *Tubbs by Duren v. Bowie*, 308 S.C. 155, 158, 417 S.E.2d 550, 552 (1992) and *Blanding v. Hammell*, 267 S.C. 352, 357, 228 S.E.2d 271, 273 (1976). The facts of those cases are wholly different from the evidence presented in this case and in fact support the Petitioner's position that he was entitled to summary judgment.

In Clark, an independent witness testified the vehicle driven by Cantrell (who had the right-of-way) passed her at a speed of 75 to 80 MPH in a 35 MPH zone right before the accident when she struck the vehicle which had failed to yield a right-of-way. Another independent eyewitness estimated Cantrell's speed at 75 to 100 MPH right before the accident. The trooper who investigated the accident and performed an accident reconstruction estimated Cantrell's speed at 61 to 71 MPH in a 35 MPH zone when she first applied the brakes. Cantrell's own accident reconstruction expert placed her at 22

MPH over the speed limit at the time of the accident. Thus there was evidence that her speed was anywhere from 22 to 65 MPH over the speed limit at the time of the accident. Of course this strong, specific evidence gives rise to a reasonable inference that the vehicle with the right-of-way (Cantrell) was comparatively negligent in causing the accident by driving anywhere from 22 to 65 MPH over the speed limit. Similarly in *Tubbs* there was evidence that Bowie, driving the vehicle with the right-of-way, was traveling at a high and excessive speed at the time of the accident and saw the dump truck with which she collided entering the highway in front of her at a distance of some 350 feet and still failed to take any appropriate action to avoid the collision. *Tubbs*, at 157. There is no such evidence in this case.

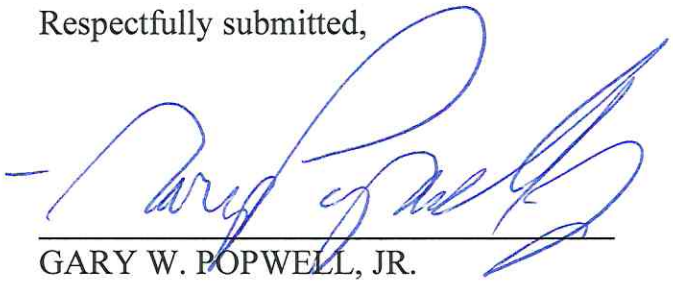
Finally the Respondents rely on *Blanding v. Hammell* when in fact that case followed the principles set forth in *Horton* and its progeny even though the Defendant with the right-of-way was exceeding the speed limit and took his eyes off the road in front of him to check his mirrors and change lanes right before the accident. *Blanding*, at 358. The facts and holding in *Blanding* wholly support the Petitioners' position and undercut the whole argument of Respondents. It involved specific questions of speed and lookout which this Court held could not reasonably be said to infer causation.

CONCLUSION

If "he came out of nowhere" and "he was going too fast" are sufficient evidence to defeat a motion for summary judgment when the moving party admittedly has the right-of-way pursuant to *Horton* and its progeny, then summary judgment motions and hearings have indeed become a metaphysical realm where tired clichés and excuses suffice to create

jury issues in the absence of evidence of specific facts giving rise to reasonable inferences from which a jury can reach a reasonable conclusion. The opinion of the Court of Appeals reversing the circuit court's grant of summary judgment to the Petitioner is in error and ignores this Court's long held precedent in *Horton* and its progeny and the requirement that actual specific facts be shown which give rise to reasonable inferences creating a jury issue.

Respectfully submitted,



GARY W. POPWELL, JR.
Attorneys Lee, Eadon, Isgett,
Popwell & Owens, P.A.
Post Office Box 1505
Columbia, South Carolina 29202
Telephone: (803) 799-9811
Email: gary@leiplaw.com
Attorney for Petitioners

March 7, 2025.

RECEIVED
Mar 07 2025
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

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,..... Petitioners,

v.

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

PROOF OF SERVICE

I certify that I have served one (1) copy of the ***Reply to Return to Petition for Writ of Certiorari*** on Respondents 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, South Carolina 29260.

March 7, 2025.

GARY W. POPWELL, JR.
Attorneys Lee, Eadon, Isgett,
Popwell & Owens
Post Office Box 1505
Columbia, South Carolina 29202
Telephone: (803) 799-9811
Email: gary@leiplaw.com
Attorney for Petitioners

Attorneys

LEE, EADON, ISGETT, POPWELL AND OWENS, P.A.

LUTHER M. LEE (1923-1996)
SHEROD H. EADON, JR., OF COUNSEL
CHRISTOPHER G. ISGETT
GARY W. POPWELL, JR.
BRETT A. OWENS
ZACHARY D. LINOWSKI

1314 LINCOLN STREET
POST OFFICE BOX 1505
COLUMBIA, SOUTH CAROLINA 29202
TELEPHONE (803) 799-9811
FAX (803) 807-9820
TOLL FREE (800) 882-0742
www.leiplaw.com

March 7, 2025

Via email: supctfilings@sccourts.org
Patricia A. Howard
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: *Bill R. Sharpe, et al. v. Rocky Rutherford, et al.*
Appellate Case Number: 2023-000060

Dear Ms. Howard:

Attached please find for filing ***Petitioners' Reply to Return to Petition for Writ of Certiorari*** in the above-referenced matter.

As affirmed by this letter and the attached Proof of Service, I am serving Respondents' Counsel of Record via email.

Please return a *stamped* copy via email.

Respectfully submitted,

GARY W. POPWELL, JR.

GWPJr/sl
Attachment(s)

cc: Everett A. Kendall, Esquire (rkendall@murphygrantland.com)
Phillip Florence, Jr., Esquire (pflorence@murphygrantland.com)
Court of Appeals (ctappfilings@sccourts.org)