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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Circuit Court for the Eleventh Judicial Circuit

Debra R. McCaslin, Circuit Court Judge

App. Case No. 2022-000597

Suzan Garland .... Respondent,

vs.

Robert Cade, Christy Cade, and Roger Singleton, ... Defendants,

of Whom

Robert Cade and Christy Cade are the .... Appellants,

and Roger Singleton is a .... Respondent.

ROBERT CADE AND CHRISTY CADE'S
PETITION FOR REHEARING AND REHEARING *EN BANC*

Pursuant to Rules 219 and 221(a) of the South Carolina Appellate Court Rules, Appellants Robert Cade and Christy Cade hereby file this Petition for Rehearing and Rehearing *En Banc*. Appellants respectfully submit that rehearing and/or issuance of a new opinion reversing the Trial Court's Opinion (consistent with the arguments raised in their Final Appellant's Brief which are incorporated by reference herein), with the exception of the Court's findings and ruling on Punitive Damages, with respect to the Appellant's Directed Motion (Law/Analysis, Section A), the viewing of the property by the jury (Law/Analysis Section B), the expert testimony of Matthews (Law/Analysis Section C), Storm Water Ordinance/Land Disturbance Permit (Law/Analysis

Section D), Proximate Cause – Negligence and Nuisance Claims (Law/Analysis Section E), and Actual Damages Award (Law/Analysis Section F). This Petition is made on the grounds that the Court's Opinion 2025-UP-076 dated March 5, 2025, overlooked and/or misapprehended matters of both law and fact.

INTRODUCTION

In Opinion No. 2025-UP-076 filed March 5, 2025, a Panel of this Court affirmed the Lower Court's Award of Actual Damages to Respondent Susan Garland and reversed the Jury's award of Punitive Damages. More specifically, the Court's opinion affirmed the Lower Court's granting of a directed verdict in favor of Singleton, and the denial of a directed verdict in favor of themselves; held that the issue regarding whether or not the jury was entitled to view the property unpreserved for review; held that the issue regarding the expert testimony of Respondent Garland's expert William Matthews was unpreserved for review; held that the Trial Court properly submitted storm water ordinance to the jury for consideration; held that the Respondent established that the alleged actions of Appellants proximately caused Respondent Singleton harm; and that the Respondent Singleton established his entitlement to actual damages. Appellants respectfully submit the Panel overlooked and/or misapprehended matters of law and fact in rendering this opinion. As a result, this Court should grant rehearing and/or rehearing *En Banc* as to the issues and arguments set forth below.

ARGUMENTS

I. THE COURT'S OPINION MISAPPREHENDS THE FACTS PRESENTED TO THE LOWER COURT AND ERRONEOUSLY AFFIRMED THE LOWER COURT'S DIRECTED VERDICT RULINGS.

At the close of the evidence, counsel for Mr. Singleton moved for a Directed Verdict. (R. p. 599, ll. 12-22). Counsel for Appellants also moved for a Directed Verdict. (R. p. 606, ll. 2-3). The Trial Court granted Mr. Singleton's Motion for a Directed Verdict but denied Appellants'

Motion for a Directed Verdict. (R. p. 606, l. 12 – p. 608, l. 23). The Court's opinion affirming these rulings misapprehended the facts set forth in the record and erroneously affirmed the Lower Court's Rulings as to the Directed Verdict Motions.

The Court's opinion was based on its mistaken conclusion and finding that Singleton did nothing wrong and was entitled to a directed verdict as to all claims brought against him. The Appellants hired Roger Singleton to fix the issues with their dam and to prepare their property for use as pastureland by removing all stumps and debris and filling in where the stumps had been pulled. (R. p. 492, l. 18 – p. 494, l. 6). They paid him $130,000.00 to do this work. (R. p. 560, l. 25 –p. 561, l. 1). Mr. Singleton testified that other than cutting trees or constructing the Appellants' farm buildings, he did all of the work on their property. (R. p. 499, ll. 5-7). In fact, Mr. Singleton testified at length about the work that he did on and to Appellants' property. Both of the Appellants' testified that if anything was done incorrectly or negligently on their property, Mr. Singleton did it. (R. p. 552, ll. 1-11; p. 561, ll. 9-11). The Lower Court's conclusion affirmed by this Court that there was no evidence of Mr. Singleton's involvement or potential wrongdoing is simply not supported by the facts of this case and the facts presented to the Lower Court.

The Appellants took the position that they did nothing wrong to cause any silting of the Respondent's pond. They took the position that while they did not believe they did anything wrong, if anything was in fact done wrong (or negligently), responsibility lay with Mr. Singleton who actually did the work that Respondent claims silted her pond and damaged her.

The Trial Court granted Mr. Singleton's Directed Verdict Motion on the grounds that the Appellants themselves failed to present any evidence that Mr. Singleton was negligent in this case. This erroneous ruling basically put Appellants in a "Catch 22" situation of having to prove the Respondent's case in order to keep Mr. Singleton in the case and submit any claims that they

asserted against him to the jury. While the Appellants continue to take the position that they did nothing wrong, if the evidence presented by Respondent in her case was enough to keep Appellants in the case, it should have been enough evidence to keep Mr. Singleton in the case as well since he did all of the work. Appellants presented sufficient evidence that the work complained of by Respondent was actually performed by Mr. Singleton, who they paid to do the work. The Trial Court's denial of the Appellants' Directed Verdict Motion and post–trial motion for a JNOV and New Trial were clearly erroneous and an abuse of discretion and should have been reversed by the opinion of this court.

The Court compounded this erroneous ruling by denying the Appellants' own Directed Verdict Motion made immediately after the Court dismissed Mr. Singleton from the case. After the Court ruled as a matter of law that there was no evidence that Mr. Singleton did anything wrong, counsel for Appellants renewed their Motion for a Directed Verdict and moved before the Court to strike all of the allegations in the complaint against Appellants related in any way to anything Mr. Singleton did or did not do. (R. p. 606, l. 25 – p. 607, l. 23). Based on the ruling regarding exonerating Mr. Singleton, this was entirely proper. The Court denied Appellants' Motion. (R. p. 607, l. 24 – p. 608, l. 23). The Court's exoneration of Mr. Singleton by granting his Directed Verdict Motion should have resulted in the granting of Appellants' Motion for a Directed Verdict – or at the very least – a Directed Verdict for Appellants as to any of the work performed by Mr. Singleton. The Court's opinion fails to state any specific acts of the Appellants that proximately caused hard to Respondents (as argued below). The Courts opinion affirming these rulings misapprehends and misconstrues the evidence presented to the Lower Court at the trial of this case.

II. JURY VIEWING OF THE PROPERTY AT ISSUE

During the cross-examination of the Respondent, Appellants' counsel moved to place the properties at issue in this case into evidence and have the jury view them. Appellants' counsel agreed to pay for any costs that would be accrued in connection with the jury's visit. (R. p. 412, ll. 1-4). Counsel for Respondent objected. (R. p. 412, ll. 5-6).The Court denied this request. (R. p. 413, ll. 4-5).

The Court based this ruling on grounds the parties had introduced numerous pictures of the properties at issue and surrounding areas into evidence. (R. p. 413, ll. 1-25). While Counsel for Appellants asked the Court to hold off on its ruling, the denial was never revisited by the Court (R. p. 412, ll. 5-6).

The Trial Court erred in denying the Appellants' request to have the jury view the properties at issue in this case. Her denial of the Appellants' request was a clear abuse of discretion on her part. South Carolina Code Section 14-7-1320 (1976 as Amended) provides that the jury in any case may, at the request of either party, be taken to view the place or premises in question or any property, matter or thing relating to the controversy between the parties when it appears to the court that such view is necessary to a just decision, if the party making the motion advances a sum sufficient to pay the actual expenses of the jury and the officers who attend them in taking the view. The purpose of a jury view is to enable the jury to better understand the evidence presented in the courtroom. *Jacks v. Townsend,* 228 S.C. 26, 88 S.E.2d 776 (1955). Viewing the premises is not regarded as the taking of evidence. *Baroody v. Anderson,* 195 S.C. 422, 11 S.E.2d 860 (1940). Under South Carolina Code Section 14–7–1320, a request to allow the jury to view the place in controversy is addressed to the discretion of the trial judge. *Moody v. Dillon Co.,* 210 S.C. 458, 43 S.E.2d 201 (1947). The exercise of a trial judge's discretion in this regard will not be reversed on

appeal absent an abuse of discretion. *Johnson v. South Carolina State Highway Dept.,* 236 S.C. 424, 114 S.E.2d 591 (1960).

The Trial Court's denial of the Appellants' request to have the jury view the properties at issue in this case, which is properly before the Court for review, was erroneous and a clear abuse of discretion. This case involved a large watershed consisting of multiple pieces of property and multiple competing theories of how silt got into the Respondent's pond. The present condition of the Respondent's pond was also an issue of conflicting testimony. There was conflicting testimony as to the existence or condition of the berm on Davis Drive. There was conflicting testimony as to the condition of the ditch on Davis Drive. There was conflicting testimony as to the drainage pipe that passed under Davis Drive and onto the Respondent's property. The parties introduced multiple photos and maps, as well as witnesses, and even expert witnesses, who struggled on the stand to orient themselves as to these properties. (R. p. 362, l. 2 – p. 365, l. 10). An inspection of the properties would have been extremely beneficial to assisting the jury understand this case and the evidence presented to them. The Trial Court clearly erred and abused her discretion in denying the Appellants' request and this ruling should have been grounds for the reversal of the Lower Court's verdict in this case. This Court's opinion affirming this ruling misconstrues the facts in the record and misapplies South Carolina law.

III. EXPERT TESTIMONY OF WILLIAM MATTHEWS

The Respondent called William Matthews as an expert witness. (R. p. 338, l. 20). Mr. Matthews was identified as a potential expert by Respondent on December 30, 2020. (R. pp. 62-69). In her expert disclosures, Respondent indicated that Mr. Matthews would testify consistent with his report. (R. pp. 62-69). A copy of Mr. Matthews' report was introduced as an Exhibit during the trial. (R. pp. 1187-1197; p. 343, ll. 9-14).

During his direct examination, Mr. Matthews admitted that the report he previously issued in no way identified any of the sediment in the Respondent's pond as coming from the Appellants' property, which he testified to at trial. (R. p. 353, ll. 14-19). He testified that he came up with this opinion after "subsequent discussions" after the issuance of his report. (R. p. 353, l. 25 – p. 354, l. 3). He reached these new conclusions without ever visiting Appellants' property. (R. p. 354, ll. 8-20). He came up with this additional opinion after looking at maps on a computer. (R. p. 355, ll. 6-11). Appellants' counsel raised the prejudicial nature of these "new" and undisclosed opinions. Counsel for Respondent noted that Appellants' counsel did not take Mr. Matthews' deposition, but had provided a copy of Mr. Matthews' report (which did not contain these new opinions) and that Appellants' counsel's bringing this matter before the Court was "prejudicial." (R. p. 356, ll. 2-7). Court stated on the record that, "I do think it's prejudicial and it should have been brought up long before today's date, so let's move on. I'm – I don't even want to go to that subject." (R. p. 356, ll. 8-16).

The Court should have limited or excluded Mr. Matthews' testimony because it was beyond the scope of his disclosure/report during discovery, and allowing such testimony would be prejudicial to the Appellants. The South Carolina Rules of Civil Procedure state, "a party is under a duty seasonably to supplement his response with respect to any question directly addressed to (1) the identity and location of persons having knowledge of discoverable matters, and (2) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony." SCRCP 26(e).

Respondent's failure to supplement during the discovery process represents a violation of SCRCP Rule 26. Moreover, Mr. Matthews' departure from the previously disclosed scope and expertise of his testimony represents an unfair prejudice to the Appellants. Inclusion of this

expanded testimony would unfairly prejudice the Appellants' ability to properly defend themselves at trial. Therefore, Mr. Matthews' testimony at trial should be limited/excluded because Respondent failed to supplement the scope of her expert's testimony, and allowing such a divergent testimony at trial would unfairly prejudice the Appellants. Even if the Appellants failed to raise a contemporaneous objection during Mr. Matthews' direct testimony, the Court abused its discretion in failing to strike this prejudicial testimony after it was given by Mr. Matthews. *McPeters v. Yeargin Construction Company,* 290 S.C. 327, 350 S.E.2d. 208 (Ct. App. 1986). The Court erred in denying the Appellants' Motion for a New Trial based on this erroneous ruling and the Court's opinion affirming this erroneous ruling misapprehends the facts in the record and South Carolina Law.

IV. STORMWATER ORDINANCE/LAND DISTURBANCE PERMIT

At the close of the Respondent's case, Appellants' counsel moved for a Directed Verdict as to the Lexington County Stormwater Ordinance. (R. p. 357, l. 3 – p. 359, l. 5). Appellants' counsel argued that the applicability of the ordinance was a matter of law to be decided by the Trial Court. (R. p. 357, l. 3 – p. 359, l 5). Appellants' counsel argued that the ordinance did not apply as a matter of law as evidenced by the clear language of the ordinance (its inapplicability to agricultural property) and the testimony of the Lexington County Officials called as witnesses by the Respondent. The Trial Court disagreed and denied Appellants' Motion. The jury heard much testimony regarding the Lexington County Stormwater Ordinance. The Stormwater Ordinance was charged to the jury. However, the Appellants' property was zoned agricultural and as a result, the ordinance did not apply to them. (R. p. 259, ll. 4-19; pp. 1261-1278; pp. 1279-1286; p. 261, ll. 12-21). No evidence was presented by the Lexington County Officials called as witnesses by the Respondent that this ordinance applied to Appellants. The Trial Court erred in denying the Appellants' Directed Verdict Motion and in charging the ordinance, which on its face did not apply

to the Appellants, to the jury. Charging the Stormwater Ordinance to the jury clearly created a "standard" of care that was not applicable to Appellants. This was a clear abuse of discretion on the part of the Trial Judge. The Court's charging of this ordinance (which clearly did not apply to Appellants) was erroneous. The Trial Court's Order denying Appellants' post-trial motions was clearly erroneous and should have been reversed by this Court on appeal.

V. PROXIMATE CAUSE

The Court erred in submitting Respondent's negligence and nuisance causes of action to the jury as Respondent failed to establish what, if anything, Appellants (or Mr. Singleton) actually did to cause her harm. In addition, Respondent failed to present any evidence to the jury that any specific act or omission on the part of Appellants caused her any harm. Respondent's claims for both negligence and nuisance fail as a matter of law and the Court erred in denying the Appellants' Post-Trial Motions.

A. THE RESPONDENT'S NEGLIGENCE CLAIM FAILS AS A MATTER OF LAW

In order to prove a cause of action for negligence, a plaintiff must establish: "(1) the defendant owes a duty of care to the plaintiff; (2) the defendant breached that duty by a negligent act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages." *Roddey v. Wal-Mart Stores E., LP*, 415 S.C. 580, 589, 784 S.E.2d 670, 675 (2016) (citing, *Madison ex rel. Bryant v. Babcock Ctr., Inc.,* 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006)). Furthermore, the plaintiff bears the burden of establishing the negligence of the defendant. *Ross v. Paddy*, 340 S.C. 428, 433, 532 S.E.2d 612, 614 (Ct. App. 2000). The plaintiff also bears the burden of proving that the injury or damage was caused by the actionable conduct of the particular defendant. *Ryan v. Eli Lilly & Co.*, 514 F. Supp. 1004, 1018 (D.S.C. 1981). "A determination of negligence, standing alone, is a far cry from a

determination of liability. Liability encompasses all elements of a negligence claim, including damages proximately caused by the alleged negligence." *Hinds v. Elms*, 358 S.C. 581, 585, 595 S.E.2d 855, 857 (Ct. App. 2004). Therefore, the failure to prove on element of negligence is fatal to the cause of action. *Id*.

Taking the evidence in a light most favorable to the Appellants, the only testimony that the jury heard regarding the source of the silt in the Respondent's pond came from William Matthews who, relying solely on "some maps," testified that in his opinion 90 percent of the silt in Respondent's pond came from Appellants' property. Again, this opinion was based on his review of "maps" and not on any detailed soil investigation or analysis.

Further, the Respondent failed to prove that anything the Appellants did or did not do on their property caused the silt to flow from their property into the Respondent's pond. Other than proving that Appellants cut timber, cleared debris, and removed and filled stumps on their property, the Respondent failed to establish a specific act of the Appellants which caused the silting of her pond. In her trial testimony, the Respondent admitted under cross examination that she initiated this case on the "assumption" that since her pond silted and the Appellants were doing work on their property, the work done by Appellants was responsible for the condition of her pond. This testimony effectively summarizes the Respondent's case. Respondent presented no testimony that linked anything that the Appellants specifically did to her injury or damages in this case. The Respondent's engineering expert witness, Mr. Matthews could not say that the Appellants did anything wrong in connection with their property to cause injury to the Respondent. Mr. Matthews was specifically asked if he was, "….able to tell this jury what regulations…law, any other type of legal requirement… (Appellants)…violated when they basically went out and cut – timbered the trees and cut up the stumps." (R. p. 380, ll. 12-16). Mr. Matthews replied, "I can't tell you. I

don't know." (R. p. 380, l. 17). Attorney Moore asked Mr. Matthews once again, "So as the paid professional witness in this case, you're not able to tell this jury that my client violated any kind of law or standard?" (R. p. 380, ll. 18-20). Once again Mr. Matthews responded, "I cannot tell you that." (R. p. 380, l. 21). Attorney Moore then asked, "So as far as you know, everything that my client did was proper" and Mr. Matthews replied, "It may have been. I don't know." (R. p. 380, l. 22 – p. 381, l. 1). Attorney Moore concluded, "Do you know of anything my client did that would have deviated from any lawful standard of care?" to which Mr. Matthews replied, "I don't know." (R. p. 381, ll. 2-4).

The jury was asked to assume that Appellants breached a duty to the Respondent and/or that their actions caused the silting of her pond without offering any proof of what specific acts of Appellants breached any duty to her and/or caused the silting and without tying any action of the Appellants (or dirt from their property) to the silt in her pond. The Respondent completely failed to prove her case of negligence against Appellants and the Court erred in submitting these claims it to the jury. In addition, the jury's finding of negligence on the part of Appellants was entirely unsupported by the evidence presented at Trial.

B. THE RESPONDENT'S NUISANCE CLAIM FAILS AS A MATTER OF LAW

The Respondent's claims for nuisance also fail as a matter of law and the Trial Court erred in submitting these claims to the jury for consideration in this case. Generally, a private nuisance is that class of wrongs that arises from the unreasonable, unwarrantable, or unlawful use by a person of his own property, personal or real. *Clark v. Greenville County,* 313 S.C. 205, 437 S.E.2d 117 (1993). Nuisance law is based on the premise that every citizen holds his property subject to the implied obligation that he will use it in such a way as not to prevent others from enjoying the use of their property. *Id.* The traditional concept of private nuisance requires the plaintiff to

demonstrate that the defendants unreasonably interfered with his ownership or possession of the land. *Ravan v. Greenville County,* 315 S.C. 447, 434 S.E.2d 296 (Ct.App.1993). A nuisance is a substantial and unreasonable interference with the plaintiff's use and enjoyment of his property. *Id.* It is anything which hurts, inconveniences, or damages; anything which essentially interferes with the enjoyment of life or property. *Strong v. Winn–Dixie Stores, Inc.,* 240 S.C. 244, 125 S.E.2d 628 (1962).

The Respondent's nuisance claim fails as a matter of law. Respondent's property does not join the Appellants' property. It is separated by a natural buffer, a wetlands, property owned by Mr. Shearer, and a road containing an 18 inch berm. The Respondent's pond is in a large watershed involving other properties other than the Appellants' property. The jury heard testimony that some of these properties which are located further upstream are plowed and denuded on an annual basis for the planting of wheat. (R. pp. 772-773). In addition, the jury heard ample testimony that water, dirt and silt enter the Respondent's property from a variety of sources in addition to any water or silt that may enter the Respondent's property from the property of Appellants, and that this process has been occurring ever since Respondent purchased her property.

Taking the evidence in a light most favorable to the Plaintiff, the only testimony that the jury heard regarding the source of the silt in the Respondent's pond came from Mr. Matthews who, relying solely on "some maps," testified that in his opinion 90 percent of the silt in Respondent's pond came from Appellants' property. Again, this opinion was based on his review of "maps" and not on any detailed soil investigation or analysis. All other evidence presented to the jury was based on assumptions and conjecture.

Further, the Respondent failed to prove that anything the Appellants did or did not do caused the silt to flow from their property into the Respondent's pond. Other than proving that

Appellants cut timber, cleared debris, and removed and filled stumps on their property, the Respondent failed to establish a specific act of the Appellants which caused the silting of her pond. The jury was asked to assume that Appellants' actions caused the silting of Respondent's pond without her offering any proof of what specific acts of Appellants caused the silting and without tying any action of the Appellants (or dirt from their property) to the silt in her pond. The Respondent completely failed to prove her case of nuisance against Appellants and the Court erred in denying the Appellants' trial and post-trial motions and in submitting nuisance to the jury. The Court's opinion affirming these rulings completely misapprehends and misconstrues South Carolina law as well as the evidence presented to the Lower Court in this case.

VI. THE JURY'S ACTUAL DAMAGE AWARD IS IMPROPER AND NOT SUPPORTED BY THE EVIDENCE PRESENTED AT TRIAL

The jury returned a verdict against Appellants of $125,000.00. This award was not supported by any of the evidence presented at trial. The Trial Judge erred in denying the Appellants' Motion for Directed Verdict as well as their post-trial motions regarding Respondent's damages and submission of this issue to the jury.

First, based on the Jury Verdict form that was submitted to the jury and returned by the jury, it appears that actual damages in this case were only awarded for the Respondent's nuisance cause of action. (R. pp. 52-53; p. 759, ll. 2-23). While the jury found for the Respondent on her negligence claims, no damages appear to have been awarded for these claims. (R. pp. 52-53; p. 759, ll. 2-23).

Generally, in order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy. While proof with mathematical certainty of the amount of loss or damage is not required under South Carolina Law, neither the existence, causation nor can the amount of damages be left to the judge

or jury's conjecture, guess or speculation. *Piggy Park Enterprises, Inc. v. Schofield*, 251 S.C. 385, 162 S.E.2d 705 (1968); *Gray v. Southern Facilities, Inc.,* 256 S.C. 558, 183 S.E.2d 438 (1971). The evidence should be such that a court or jury can determine an appropriate amount. Bald allegations are insufficient to establish a claim for diminution in value, and the evidence must not be speculative as to the amount of the alleged diminution. *Yadkin Brick Company, Inc. v. Materials Recovery Company,* 339 S.C.640, 529 S.E.2d. 764 (Ct. App. 2000).

Under South Carolina Law, the correct measure of damages for a nuisance is the diminution in the value of property caused by the nuisance. *Babb v. Lee County Landfill, SC LLC,* 405 S.C. 129, 747 S.E.2d. 468 (2013). The only credible evidence that was introduced at trial as to the value of the Respondent's property was its tax evaluation of $90,000.00. (R. p. 460, ll. 6-25; p. 463, ll. 4-14; p. 471, ll. 18-25). The Respondent testified as to what she believed to be the value of properties surrounding her own (even though these properties were not compatible with the Respondent's property). Respondent presented no testimony or evidence as to the diminution in value to her property caused by the alleged nuisance. Respondent did not offer any testimony as to the diminution in value to her property she claims that were the result of Appellants' actions. (R. p. 402, ll. 10-19; p. 403, ll. 5-13). Respondent also offered unsubstantiated testimony as to the amount that she believes she has spent in connection with her property through the years. (R. p. 404). However, she never testified as to how much she believes her property has been damaged or decreased in value as a result of the Appellants' alleged activities on their property and any alleged nuisance on the part of Appellants. Therefore the award of $125,000.00 for alleged nuisance is totally and completely speculative and is not supported by any of the evidence presented to the jury in this case. The verdict appears to be some type of impermissible

compromise verdict, pulled out of thin air by the Respondent. It was certainly not based on any evidence presented to the Jury by Respondent in her case.

If this Court finds that the award in this case occurred under a negligence theory or cause of action, the evidence presented at trial still does not support the $125,000.00 award. Respondent presented testimony that the cost of removing the silt she alleges is in her pond would be approximately $435,000.00. (R. p. 188, ll. 12-13). This cost of removing the silt from Respondent's pond far exceeds the actual value of the Respondent's entire property as presented to the jury by any witness in this case and is unreasonable. The true measure of damages to the Respondent should be either the diminution of value of the property (if the injury were deemed to be permanent in nature), or the depreciation in the usable value of the property in the event that the injury was non-permanent or temporary. *Yadkin Brick Company, Inc. v. Materials Recovery Company,* 339 S.C.640, 529 S.E.2d. 764 (Ct. App. 2000). In this case the jury heard conflicting testimony as to whether or not the Respondent's claimed damages to her pond were permanent or temporary. Under either theory, the Respondent failed to present any evidence that the jury could determine either the diminution in value of her property or the depreciation in value of her property allegedly caused by the Appellants' actions. The Trial Court erred in failing to grant Appellants' Directed Verdict or JNOV/New Trial motions as to the insufficiency of proof as to damages. The Court's Order denying Appellants' post-trial relief should have been reversed by this Court. The Court's opinion completely overlooks and misconstrues the evidence that was presented to the jury in this case.

CONCLUSION

For the reasons set forth above, and the reasons discussed in the Brief of Appellants, this Court should reconsider its prior ruling. Based on the foregoing, the Appellants Robert Cade and Christy Cade respectfully request that this Court grant rehearing or a rehearing *en banc* as to the Court's opinion in this case.

Respectfully submitted,

s/S. Jahue Moore
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March 19, 2025

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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Debra R. McCaslin, Presiding Judge

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Suzan Garland..Respondent,

vs.

Robert Cade, Christy Cade, and Roger Singleton, ... Defendants,
of Whom
Robert Cade and Christy Care are the .... Appellants,
and Roger Singleton is a ....Respondent.

PROOF OF SERVICE

I, Lynn G. Ivey, an employee of the Moore Bradley Myers Law Firm, P.A., certify that I have served Robert Cade and Christy Cade's Petition for Rehearing and Rehearing *En Banc* by mailing a copy with sufficient postage attached thereto and via electronic mail on March 19, 2025, addressed to their attorneys of record as follows:

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March 19, 2025

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211
VIA US Mail and Email

RECEIVED
Mar 19 2025
SC Court of Appeals

RE: Suzan Garland v. Robert Cade and Christy Cade
App Case No. 2022-000597

Dear Ms. Kitchings:

You will please find enclosed our firm check in the amount of $50.00. Earlier today we filed our Petition for Rehearing and Rehearing En Banc by email.

Thank you in advance for your assistance in this matter. Please let us know if you have any questions or need anything to complete the process.

Sincerely,

Lynn G. Ivey
Assistant to S. Jahue Moore

Enclosures
cc: Freeman Belser, Esq. (by email only)
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