

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Charleston County
Court of Common Pleas
The Honorable Bentley Price, Circuit Court Judge

Civil Case No. - 2016-CP-10-05379
Ct. App. Op. No. 6067, filed June 26, 2024
Sup. Ct. App. Case No. 2024-001377

The Estate of Delila Parrott,

Petitioner,

v.

Sandpiper Independent and Assisted Living-Delaware, LLC,

Respondent.

REPLY OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIESii

ARGUMENTS IN REPLY1

 Respondent is Ignoring the Applicable Standard of Review and Inviting This Court to
 Reweigh the Evidence.....1

 Ms. Parrott’s Privacy Concerns are Not a Part of this Appeal.....1

 Respondent Invites this Court to reweigh the expert testimony and come to a different
 conclusion2

 Respondent is Mistaken When Asserting there is No Evidence Ms. Parrott Decided to
 Live at Sandpiper Because of the Daily Check in Policy.....3

 Respondent and the Court of Appeals Fail to Recognize the Difference Between a Wholly
 Internal Policy with No Connection to the Injury at Issue and an Internal Policy that is a
 Marketing Tool Upon Which Sandpiper Intended for Prospective Residents to Rely, and
 Upon Which Ms. Parrott Did Rely..... 6

 Respondent, and the Court of Appeals Focus on the Wrong Point in Time in its “No
 Reliance” Argument.7

 Respondent Focuses on the Wrong Point in Time in its Comparative Negligence
 Argument.....8

CONCLUSION9

TABLE OF AUTHORITIES

Cases	Page(s)
<u>Doe 2 v. Citadel</u> , 421 S.C. 140, 805 S.E.2d 578 (Ct. App. 2017).....	6
<u>Doe ex rel. Doe v. Wal-Mart Stores, Inc.</u> , 393 S.C. 240, 711 S.E.2d 908 (2011).....	6
<u>Townes Assoc., Ltd. v. City of Greenville</u> , 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).....	1
<u>Wright v. PRG Real Estate Mgmt., Inc.</u> , 426 S.C. 202, 826 S.E.2d 285 (2019).....	4,5,7

ARGUMENTS IN REPLY

Respondent is Ignoring the Applicable Standard of Review and Inviting This Court to Reweigh the Evidence

As both parties addressed in their initial briefs, the applicable standard of review for matters decided by the trial judge is the “any evidence” standard. Townes Assoc., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). Despite this, Respondent is not addressing whether there is any evidence to support the trial Judge’s findings. Rather, Respondent is inviting this Court, as the Court of Appeals did, to form its own view of the evidence. This Court should decline the invitation.

Ms. Parrott’s Privacy Concerns Are Not a Part of this Appeal

Respondent repeatedly references Ms. Parrott’s privacy concerns. The trial judge’s verdict made clear that, whether Ms. Parrott had privacy concerns, she was entitled to be rescued by the daily check policy. Apparently, Respondents want to put forth an argument to this Court that because Ms. Parrott was a private person, it was either OK for Ms. Auld to ignore the daily check policy and not enter the apartment to rescue Ms. Parrott or, Ms. Parrott was not entitled to the benefits of the policy. Petitioner asserts Mrs. Parrott’s privacy concerns are not part of the appeal and repeated references to them are a veiled invitation to have this Court reweigh the evidence.

Respondent states: “The record clearly demonstrates it was anathema to Ms. Parrott to ever lose her privacy.” (Br. of Resp. p. 3.) “Privacy and independence were Ms. Parrott’s primary concerns.” (Br. of Resp. p. 8.) “Ms. Parrott disagreed and told Ms. Carrington that she did not want anyone else to have access to her apartment.” (Br. of Resp. p. 8.) “Ms. Parrott reiterated that she did not want anyone in her apartment.” (Br. of Resp. p. 9.) “In light of Ms. Parrott’s concerns for privacy and concerns about who could enter her apartment, it was determined that Ms. Munoz would not make any further attempt to enter Ms. Parrott’s apartment...” (Br. Resp. p. 9.) On the

other hand, the record contains ample evidence of Ms. Parrott's aversion to the daily check-in policy [because of privacy concerns]. (Br. Resp. p. 16.)

The trial judge reviewed the evidence and apparently decided Mrs. Parrott's privacy concerns were not an issue in the case. Whether it was reasonable for Ms. Auld to walk away rather than enter the apartment is not a point on appeal. Petitioner respectfully requests this Court to ignore the repeated references to Ms. Parrott's privacy concerns.

Respondent Invites This Court to Reweigh the Expert Testimony and Come to a Different Conclusion

In its **Argument III**, Respondent includes excerpts from the testimony of Dr. Bergman and Dr. Mills to again invite this Court to review the evidence and come to a different conclusion. Respondent includes some testimony by Dr Mills, Ms. Parrott's treating physician (a board-certified internist who was qualified as an expert witness without objection) but ignores the testimony supporting the trial Judge's decision:

Dr. Mills, testified that based on his review of the lab results and his knowledge of his patient's medical history: "I would be willing to say with a reasonable degree of medical certainty that she was on the ground most likely, in my mind, somewhere between 36 hours to three days." [R. p. 396:5-10.] The medical records, as found by the trial judge, clearly demonstrate the pain and suffering Ms. Parrott went through while on the ground those three days:

"In addition to the broken hip, she was soaked in urine and caked in feces; she was dehydrated with dry mucosa, her skin showed signs of dehydration, and she had cracked lips. She also had developed a vaginal infection and a urinary infection. Ms. Parrott had spent days in these conditions. [R. p. 007 ¶ 5.]"

Dr. Mills further offered his expert opinion that the long lie was a cause of her declining physical and mental condition:

Q. Do you have an opinion whether the long lie of three days on the ground contributed to her failure to thrive?

A. Yes, sir, I do. I think it harmed her both physically and emotionally, to a great extent.

Q. Do you have an opinion, to a reasonable degree of medical certainty that it contributed to -- she only lived eight months after this, rather than eight years. Do you have an opinion that this long lie shortened her life?

A. Yes, sir, I do. [R. pp. 382:22-383:18.]

This evidence in the record meets the “any evidence” standard. Respondent’s focus on other evidence is a misplaced effort to have this Court reweigh the evidence.

Respondent is Mistaken When Asserting There is No Evidence Ms. Parrott Decided to Live at Sandpiper Because of The Daily Check in Policy

A central tenet of this Appeal is the fact that the daily check policy was initially represented to Ms. Parrott when she was deciding to live at Sandpiper, that it was a constant part of her day-to-day experience while living at Sandpiper and Sandpiper intended its residents to rely on this policy. It is Petitioner’s basis for the claim that Respondent owed Ms. Parrott a duty, which duty was then breached.

Respondent states in its brief: “*The record contains no evidence that Ms. Parrott decided to live at Sandpiper due to its daily check-in policy.* (Br. Resp. p. 15.)

This testimony from Ms. Parrott’s daughter, Ms. Acosta, makes it clear that Ms. Parrott was in the meeting when the daily check-in policy was described. Ms. Acosta testified:

Q. Tell the Court what, if anything, Ms. Carrington said about the policy.

A. About the policies, specifically?

Q. Yes.

A. They had a 24-hour visualization of every resident policy. Now, they did not

necessarily see every resident every 24 hours. They would call the ones that were not visualized during that day. They had a sign-off sheet, and every resident was to be checked off every day at the time you've been seen or checked.

Q. Was that policy important to you?

A. It was paramount to me, absolutely. I was in Columbia. I was counting on that 24-hour check policy.

Q. And Ms. Carrington told your mother at the same time that she told you about this policy?

A. Yes. I mean, it was very much part of our first meeting. [R. p. 108:16-23.]

While there is no specific evidence that Ms. Parrott said “the daily check policy is why I want to live here,” it is reasonable that all elements of a meeting regarding the benefits of living at Sandpiper, including the daily check policy, formed a part of the decision. This case is similar to the case of Wright v. PRG Real Estate Mgmt., Inc., 426 S.C. 202, 826 S.E.2d 285 (2019) where the Plaintiff in Wright "was told that there are security officers" and that when Wright moved into the complex, she had that expectation. Wright at 206. In the instant case, Ms. Parrott was told there was a daily check policy and as a result she would have had that expectation.

There was no evidence in Wright that the representation of security officers was why she decided to live there. In Wright, the representation of security officers was only part of the allure. She testified it was near to her job, there were nearby walking trails and members of her church recommended the complex to her. The Wright case contains no statement that she focused on the security officers as the paramount reason for moving there. It was enough that the existence of security officers was represented to her which created an expectation of security.

Another similarity between this case and Wright concerns the ongoing representation of the policy and that it was never qualified, limited or ended. In Wright the monthly tenant newsletter announced "[s]ecurity is also [a] very top priority with us," and there is no evidence to

suggest Respondents notified Wright or any other tenants of the actual limitations of the courtesy officer program. Wright at 207. The Wright Court noted the ongoing representation of Security was important to its analysis.

Similarly, in this case the daily check policy was continually practiced, never disavowed and created an ongoing expectation that residents could rely on it. There is clear evidence that the daily check policy was represented to Ms. Parrott. That she understood it, agreed with it and relied on it is also clear when considered in light of other testimony in the record.

Four months before the fall, Ms. Parrott changed the locks on her apartment. Had she not wanted to avail herself of the daily check policy she could have refused to give the staff a key. She could have left Sandpiper. Instead, she did give them a key. The record also contains this evidence from Ms. Acosta:

Q. Did that particular event [giving the key to the sandpiper staff], based on what you observed, change your mother's outlook about the policy and what the policy was to do for her, as far as being checked on daily?

A. Mother understood that she was to be visualized and checked on daily. And she had had the experience where they had checked on her when she didn't come to lunch. They checked on her that day to make sure that she was OK. (R. p. 1:13-21.)

It is clear from the record that the daily check policy was part of the discussions when Sandpiper staff were encouraging Ms. Parrott to live there. It is also clear that the daily check policy formed part of the routine of life at Sandpiper. It was a policy understood by all residents and followed by all staff at Sandpiper. Ms. Parrott had been checked on before when she did not come to lunch. The record contains no reference, and Respondent does not try to suggest, that the residents were ever told they could not rely on the daily check policy, that it was internal only and

if you fall you may well be on your own. The trial court found that Ms. Parrott relied on the policy in deciding to live at Sandpiper and the record supports that finding.

Respondent and the Court of Appeals fail to recognize the Difference Between a Wholly “Internal Policy” With No Connection to a Plaintiff’s Injury and an Internal Policy That is a Marketing Tool for Prospective Residents, a Policy Upon Which Sandpiper Intends for Prospective Residents to Rely, and Upon Which Ms. Parrott Did Rely

Respondent seizes on the term “internal policy” as license to equate this case with other cases dealing with internal policies. Petitioner agrees that the law does not create a duty simply because a company has created an internal policy. In situations such as Doe ex rel. Doe v. Wal-Mart Stores, Inc., 393 S.C. 240, 248, 711 S.E.2d 908, 912 (2011) and Doe 2 v. Citadel, 421 S.C. 140, 805 S.E.2d 578 (Ct. App. 2017) where those policies had no connection with the harm caused, and there was no reliance by the injured plaintiff on the internal policy, the connection is simply not there.

In Doe v. Wal-Mart Stores, Inc., the plaintiff sought to establish that Wal-Mart owed a legal duty to a third-party victim of sexual abuse based on the store’s internal policy regarding processing photographs depicting nudity. The Plaintiff had no connection to Walmart and Walmart made no representation to the Plaintiff.

In Doe 2 v. Citadel, the Citadel was sued by a plaintiff who had been sexually abused as a child by a counselor who had previously worked at a summer camp associated with the College. Again, the Plaintiff had no connection to the Citadel and the Citadel made no representations to the plaintiff and the plaintiff had no reliance on the Citadel to do or not do anything.

None of the other cases cited by the Court of Appeals or Respondent have facts similar to the case at hand. None have representations affirmatively made to the plaintiff, where the plaintiff

relied on those representations and the exact harm the internal policy was intended to prevent is the harm at issue. Only this Courts holding in Wright should have any precedential value and it supports Petitioner’s claim of a duty created.

What both the respondent and the Court of Appeals fail to acknowledge is Sandpiper advertised its internal policy in its personal marketing efforts. It used the fact that it checked on every resident every day to encourage prospective residents to come and live at Sandpiper. It made a promise that if you come live here, we will check on you every day. The record on appeal supports the trial judge’s finding that it was, at least in part, based on that promise that Ms. Parrott came to live at Sandpiper. This case is dramatically different from the cases respondent sites and the Court of Appeals relies on.

Respondent, and the Court of Appeals Focus on the Wrong Point in Time in Its “No Reliance” Argument

Respondent and the Court of Appeals focus on the wrong points in time in determining whether a duty to rescue Ms. Parrott attached. The duty attached when the policy was first described to Ms. Parrot, when it formed a basis for her decision to live there, when it was reiterated by being practiced every day, when it was never rescinded, further qualified or ended. It is impossible to know what decisions were or were not made by Ms. Parrott or any of the residents in reliance on the policy. It is pure speculation as to why residents did or did not wear their call buttons or what Ms. Parrot may have been thinking about prior to her injury. The Court of Appeals focuses on the lack of evidence immediately before Ms. Parrot chose to hang her curtains to determine if she was relying on the check in policy. This is an evidence standard which seems impossible to meet and for which no authority has been cited.

The proper point in time on which to focus is when the representations were made and every day thereafter when the policy was followed, which gave Ms. Parrott and every resident the expectation that they would be checked on every day if they continued to live there.

Respondent Focuses on the Wrong Point in Time in its Comparative Negligence Argument

Respondent is focused on what Ms. Parrott did to cause her injury and alleges that her actions constitute negligence which should be compared to Respondent's negligence. Respondent is focused on the wrong point in time.

If Petitioner was alleging Respondent had some responsibility for the initial injury, they would be correct. That is not and never has been Petitioner's case. Sandpiper's negligence begins at the point they failed to follow their policy of checking on Ms. Parrott by not walking 30 seconds to get the correct key and enter the apartment. The case begins when Ms. Auld calls her mother, and they jointly decide to not bother checking on Ms. Parrott. At that point, Ms. Parrott is helpless and on the floor with a broken hip. She was in the dire circumstances the daily check policy was designed to address. Beginning at that point, what could possibly have been Ms. Parrott's contributory negligence? Was she negligent by not pulling herself to the door, by not screaming loud enough?

The daily check policy is specifically designed to rescue those in need: in need for any reason. The policy has no merit system where only those not at fault for their own helplessness are entitled to be rescued. The policy is absolute with no exceptions and Petitioner is, and only ever has been, seeking damages for the negligence beginning at the point where the policy was violated.

CONCLUSION

This Court should refuse Respondent's invitation to reweigh the evidence and substitute its judgement for that of the trial judge. The decision of the Court of Appeals should be overturned, the remaining issues Respondent initially raised on appeal should be resolved by this Court and the verdict for both the wrongful death and survival actions affirmed.

Respectfully submitted,

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