THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jessica Ann Salvini, Circuit Court Judge

Common Pleas No. 2022-CP-40-05610

Daisy Crump, Appellant,

v.

Glenfield Capital, LLC d/b/a Glen 1441, LLC; Colliers International South Carolina Inc.; tk Elevator Corporation; and Sizemore, Inc., Respondents.

Appellate Case No. 2024-001569

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the circuit court erred in granting the Defendants' joint motion for summary judgment based on its erroneous conclusion that Mrs. Crump had no physical injury where she was diagnosed with post-traumatic stress disorder as a result of being trapped in the elevator which caused her to suffer from frequent, severe, and debilitating panic attacks which manifested in a variety of physical symptoms and therefore met the threshold for establishing the damages element of her claim for negligent infliction of emotional distress?

STATEMENT OF THE CASE

This is an appeal from an order granting the Defendants' motion for summary judgment.

On October 26, 2022, Daisy Crump filed a summons and complaint pleading causes of action for negligent infliction of emotional distress against Glenfield Capital, LLC, Colliers International South Carolina Inc., tk Elevator Corporation, and Sizemore, Inc.[1]

The Defendants answered the complaint and filed a joint motion for summary judgment. The circuit court heard arguments on the motion on July 24, 2024. At that hearing, Shaquana Cuttino, Nicholas Spetsas, and Charles Buist appeared on behalf of Mrs. Crump. Mark Barrow and Grace Brown appeared for Glenfield, W. Bryant Neal and Joshua Shaw appeared for Colliers, and Everett Kendall and J.D. Elliott appeared for tk. R. 158.

The court granted the Defendants' motion for summary judgment and denied Mrs. Crump's motion to reconsider.

[1] Sizemore was never served with the complaint and therefore references to "Defendants" in this brief do not include Sizemore.

STANDARD OF REVIEW

"Appellate courts apply the same standard of review applied by the trial court to review the grant of summary judgment pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure." *Williams v. Jeffcoat*, 444 S.C. 224, 233, 906 S.E.2d 588, 593 (2024) (citing *Knight v. Austin*, 396 S.C. 518, 521, 722 S.E.2d 802, 804 (2012)). "Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011).

"When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002) (citing *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997). "On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below." *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008) (citing *Willis v. Wu*, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004)).

Summary judgment is not proper "where further inquiry into the facts of the case is desirable to clarify the application of the law." *Middleborough Horizontal Prop. Regime Council of Co.-Owners v. Montedison S.p.A.*, 320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct. App. 1995) (citing *Baugus v. Wessinger*, 303 S.C. 412, 401 S.E.2d 169 (1991)). "Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Nelson v. Charleston Cty. Parks & Rec. Comm'n*, 362 S.C. 1, 5, 605 S.E.2d 744, 746 (Ct. App. 2004).

STATEMENT OF FACTS

On November 4, 2019, Mrs. Crump was working as a Licensed Nurse Practitioner for Absolute Total Care on the 11th floor of the building located at 1441 Main Street in Columbia, South Carolina. R. 81, l. 13 – 82, l. 25. Crump left the building at approximately 5:00 pm when she got off work but realized she left her phone inside. She returned to the building and entered one of the elevators. She pressed the button for the 11th floor, but the doors failed to completely close. The doors stuck when they were about eight inches apart and Mrs. Crump was trapped inside. Crump Depo. R. 83, ll. 3 – 17.

To get out, Mrs. Crump pressed the door-open button which did not work. R. 84, ll. 2 – 11. Mrs. Crump could hear the elevator motor running and believed that the cables holding the elevator could break at any second. Mrs. Crump was terrified because she thought the elevator might crash to the basement and kill her. R. 84, ll. 12 – 21.

The Defendants did not call the fire department, law enforcement, or EMS to assist Mrs. Crump. Instead, they called an engineer. R. 85, ll. 3 – 6. One of Mrs. Crump's coworkers retrieved her phone and handed it to her through the narrow opening of the elevator door. R. 115, l. 22 – 116, l. 5. Mrs. Crump contacted her husband and children to tell them that she was trapped. R. 116, ll. 6 – 23. Mrs. Crump received a phone call from a 911 dispatcher after her daughter contacted them. R. 117, ll. 9 – 16. The elevator motor was running and was so loud that Mrs. Crump could not hear the 911 dispatcher on the phone. Mrs. Crump still has nightmares where she can hear the noise of the motor running and is reminded of her sense of impending death. R. 117, ll. 16 – 21.

While still trapped in the elevator, Mrs. Crump felt someone jump on the top of the elevator and start shaking it. Mrs. Crump did not know it was the engineer because no one told her he was

going to be getting on top of the elevator. When the elevator began shaking, Mrs. Crump recalled thinking to herself: "Oh my God. I'm dead now, I know." R. 118, ll. 5 – 14.

Finally, the doors to the elevator came open and Mrs. Crump was freed. R. 118, ll. 15 – 25. Mrs. Crump recalled the fire department being there and taking her blood pressure. She was told that her blood pressure was 200 over 100 and that she needed to be taken to the hospital immediately. However, because Mrs. Crump was so traumatized from being trapped inside the small elevator, she told them she could not bring herself to get inside of a small ambulance. R. 119, ll. 4 – 19.

The firefighter agreed to wait fifteen minutes before checking Mrs. Crump's blood pressure a second time. He said that if her blood pressure had not decreased, he would insist that she go to the hospital. On the second check of Mrs. Crump's blood pressure, it had decreased but was still elevated and she did not have to go to the hospital. R. 87, ll. 3 – 12. At the time Mrs. Crump was trapped in the elevator she was sixty-nine years old, married, and had children. She was trapped in the elevator for more than one hour.

That night, Mrs. Crump did not sleep at all, and her husband insisted that she go to a doctor to get checked out the following day. R. 64, ll. 12 – 22. Mrs. Crump saw Dr. Hester who prescribed her Xanax. R. 64, l. 23 – 65, l. 4. When asked whether the Xanax helped her, Mrs. Crump replied that it helped her fall asleep initially but "then that motor noise kept—in my head, woke me up. So I did—I didn't relax. I couldn't relax. I was up most of the night. Even the night after I was up with the Xanax." R. 65, ll. 15 – 21.

Dr. Hester testified at her deposition that Mrs. Crump had been a patient of hers since 2014. R. 133, ll. 5 – 7. Dr. Hester saw Mrs. Crump in her office on November 5, 2019. At that time, Mrs. Crump's chief complaint was insomnia and anxiety from having been trapped in the elevator the

day before. R. 133, ll. 8 – 22. Dr. Hester recalled that although Mrs. Crump did not have any bruises or "obvious physical harm," Mrs. Crump was "obviously . . . emotionally shaken and appeared anxious and had pressured speech." R. 135, ll. 11 – 25. When asked by defense counsel whether Mrs. Crump had a "physical injury," Dr. Hester said there was no physical injury but indicated that Mrs. Crump exhibited signs of anxiety and was also suffering from insomnia. R. 136, ll. 1 – 6. Mrs. Crump returned to Dr. Hester's office just a week later with worsening symptoms of anxiety and insomnia. At that time Dr. Hester talked with Mrs. Crump about referring her to a counselor. Mrs. Crump again came to Dr. Hester with worsening symptoms on December 11, 2019. R. 136, l. 17 – 137, l. 7.

Mrs. Crump began seeing a Licensed Professional Counselor Supervisor named Shenna Ganzy who diagnosed Mrs. Crump with post-traumatic stress disorder and panic attacks as a result of being trapped in the elevator. R. 149. Ganzy explained that panic attacks are "sudden intense episodes of fear or discomfort reaching peak intensity within minutes." R. 150. Ganzy explained that the symptoms of panic attacks include "palpitations, sweating, trembling, shortness of breath, chest pain, dizziness, chills or hot flashes, numbness or tingling, feelings of unreality or detachment, and fear of losing control or dying." *Id*.

Ganzy explained that the trauma experienced by Mrs. Crump from being trapped in the elevator has caused her to experience "frequent and debilitating panic attacks." *Id*. Mrs. Crump's panic attacks are characterized by "shortness of breath, chest pain, dizziness, and an overwhelming feeling of dying or losing control." *Id*. Mrs. Crump's panic attacks are "frequent and severe," and have "significantly affect[ed] Mrs. Crump's daily functioning and quality of life." *Id*. During Mrs. Crump's first visit to Ganzy's office, Ganzy personally observed Mrs. Crump "hyperventilating, sweating profusely, and . . . visibl[y] trembling" at the sight of the elevator in Ganzy's office. *Id*.

ARGUMENT

The circuit court erred in granting the Defendants' joint motion for summary judgment based on its erroneous conclusion that Mrs. Crump had no physical injury because she was diagnosed with post-traumatic stress disorder as a result of being trapped in the elevator which caused her to suffer from frequent, severe, and debilitating panic attacks which manifested in a variety of physical symptoms and therefore met the threshold for establishing the damages element of her claim for negligent infliction of emotional distress.

Relevant Facts

The Defendants filed a joint motion for summary judgment on November 22, 2023. R. 45. The Defendants each filed separate memoranda in support of their motion and attached excerpts from Mrs. Crump and Dr. Hester's depositions for the court's consideration. Each of the Defendants argued that they were entitled to summary judgment based on Mrs. Crump's and Dr. Hester's deposition testimony that Mrs. Crump did not have a physical injury.[2] R. 48; R. 72; R. 100.

Mrs. Crump filed an opposition to the Defendants' motion for summary judgment on July 23, 2024, and attached an affidavit from Shenna Ganzy, Mrs. Crump's Counselor. Counsel argued that Mrs. Crump did sustain a physical injury because she had physical manifestations of the emotional distress caused by being trapped in the elevator. R. 141-151.

The circuit court heard arguments on the motion on July 24, 2024. Counsel for tk argued that both Mrs. Crump and Dr. Hester testified at their depositions that Mrs. Crump did not suffer a physical injury from being trapped in the elevator. R. 162, ll. 7 – 16. Counsel for tk argued that

[2] Glenfield also argued that it didn't owe a duty of care to Mrs. Crump because it had delegated control of the building to Colliers. R. 51-52. In its initial Form 4 Order, the circuit court rejected that argument. In the final order, however, the circuit court made no ruling on this argument.

a physical injury is required in a negligence action in South Carolina and that a plaintiff cannot maintain a negligent infliction of emotional distress claim absent some physical manifestation of the emotional distress. R. 162, ll. 17 – 22.

Counsel for tk relied almost entirely on this Court's unpublished opinion in *K.S. v. Richland Sch. Dist. Two*, Op. No. 2022-UP-312 (S.C. Ct. App. filed July 27, 2022) ("*Seeger*").[3] Counsel argued that a negligent infliction of emotional distress claim can only be maintained in three contexts: (1) when the plaintiff witnesses physical harm to a family member, (2) when the plaintiff suffers emotional distress as a result of a physical injury, and (3) when a plaintiff experiences physical manifestations of emotional distress. R. 164, ll. 8 – 17.

Counsel for tk acknowledged that Ganzy's affidavit placed Mrs. Crump squarely in the third category outlined in *Seeger* because Ganzy stated that Mrs. Crump has physical manifestations of emotional distress. R. 164, ll. 18 – 25. Counsel maintained however that *Seeger* established a "bright line rule," establishing that when a plaintiff relies on physical manifestations of emotional distress to support her damages that the defendant's conduct must be "extreme." Counsel argued that summary judgment should be granted in this case because Defendants' conduct was not "extreme" enough. R. 165, l. 1 – 166, l. 22.

Counsel for Mrs. Crump responded by arguing that Mrs. Crump did suffer a physical injury as a result of being trapped in the elevator including chest pain, foot pain, and nightmares. R. 168, l. 22 – 169, l. 7. Counsel cited to both *Mack v. S. Bound R.R. Co.*, 52 S.C. 323, 29 S.E. 905 (1898) and *Spaugh v. Atlantic Coast Line R. Co.*, 158 S.C. 25, 155 S.E. 145 (1930) in support of her

[3] The Supreme Court granted Seeger's petition for a writ of certiorari on May 24, 2023, and oral argument was held on April 16, 2024. The Supreme Court reversed this Court's decision on January 23, 2025. *K.S. v. Richland Sch. Dist. Two*, Op. No. 28254 (S.C. Sup. Ct. filed Jan. 23, 2025) (Howard Adv. Sh. No. 4 at 21).

position that the damages element of a negligent infliction of emotional distress claim is satisfied as long as there is some physical manifestation of the emotional distress. R. 169, l. 8 – 171, l. 8.

Counsel for Mrs. Crump pointed out that Mrs. Crump has many physical manifestations from the trauma she experienced. Specifically, Mrs. Crump has been diagnosed with PTSD and has panic attacks which cause her to experience sweating and shortness of breath. R. 170, ll. 5 – 13. Counsel argued that summary judgment was improper because there was a genuine dispute as to the material fact of whether Mrs. Crump had a physical injury. R. 171, l. 19 – 172, l. 1.

Counsel for tk responded that the cases relied on by Mrs. Crump were old and that this Court's unpublished decision in *Seeger* was "more controlling." R. 172, ll. 6 – 21. Counsel for Mrs. Crump pointed out that these cases have never been overruled. Furthermore, the Defendants' conduct in this case was extreme because the engineer got on top of the elevator causing it to shake without informing Mrs. Crump that was going to happen. R. 173, l. 15 – 174, l. 7. Glenfield and Colliers both fully joined tk's arguments. R. 173, ll. 4 – 10; R. 177, ll. 15 – 18.

The circuit court initially entered a Form 4 Order granting the Defendants' joint motion for summary judgment. The court relied heavily on this Court's unpublished decision in *Seeger* and found that a physical injury is required in a negligence cause of action. The circuit court found that Mrs. Crump was not physically injured and there was no genuine issue of material fact.

In its final order, the circuit court found that "[Mrs. Crump] and [Mrs. Crump's] treating physician have testified that [Mrs. Crump] did not suffer a physical injury at all." R. 7. The court found that Mrs. Crump's "hyperventilating, sweating, and trembling do not constitute a physical injury as defined in *Seeger* and the prevailing authorities referenced therein." *Id*. The court thus concluded that Mrs. Crump was not physically injured and could not meet the damages element of her negligence claim and therefore granted the Defendants' motion for summary judgment.

Mrs. Crump filed a motion to reconsider on August 16, 2024.[4] Counsel correctly pointed out that *Seeger* has no precedential value. R. 152-153. Counsel further argued that the court failed to consider Ganzy's affidavit which established that Mrs. Crump had physical manifestations of her emotional trauma which constitute physical injuries for purposes of establishing the damages element in a negligence cause of action as supported by several binding opinions from our Supreme Court. R. 154-155.. The circuit court denied Mrs. Crump's motion to reconsider. R. 1.

Discussion

The circuit court erred in granting the Defendants' motion for summary judgment because Mrs. Crump had many physical manifestations of her emotional distress which our Supreme Court has repeatedly held is sufficient to send a negligence claim to a jury.

It is elementary that a negligence action requires the plaintiff to show "a duty on the part of the defendant, a breach of that duty by an act of omission or commission, and that such breach of duty was the proximate cause of plaintiff's injuries." *Sherrill v. S. Bell Tel. & Tel. Co.*, 260 S.C. 494, 499, 197 S.E.2d 283, 285 (1973). South Carolina explicitly adopted a cause of action for negligent infliction of emotional distress in *Kinard v. Augusta Sash & Door Co.*, 286 S.C. 579, 582, 336 S.E.2d 465, 467 (1985). And while *Kinard* was limited to "bystander recovery" claims where the plaintiff had witnessed harm to a family member, the Court noted that it "express[ed] no opinion as to whether the action is viable in other factual settings." *Id*. at n.2.

Generally, "the damages element [in a negligence case] requires a plaintiff to establish physical injury or property damage." *Babb v. Lee Cty. Landfill SC, LLC*, 405 S.C. 129, 153, 747

[4] Counsel first filed the motion to reconsider on August 2, 2024, which was after the circuit court's initial Form 4 Order granting the Defendants' motion for summary judgment but before the full order had been filed. Counsel then refiled the motion to reconsider after the court issued its final summary judgment order on August 9, 2024.

S.E.2d 468, 481 (2013). Damages for emotional distress are recoverable when there is "some physical manifestation of the emotional distress." *Id*. (citing *Dooley v. Richland Mem'l Hosp.*, 283 S.C. 372, 322 S.E.2d 669 (1984)).

For more than a century our Supreme Court has repeatedly affirmed the principle that physical manifestations of emotional distress satisfy the damages element in a negligence cause of action. As far back as 1898, our Supreme Court recognized this. In *Mack v. S. Bound R.R. Co.*, 52 S.C. 323, 29 S.E. 905 (1898) a boy was almost hit by a train while riding his mule. A lawsuit was filed alleging that the boy was frightened and shocked which caused him to suffer "great mental anguish and physical pain, arising from the terrible shock to his nervous system and the fright which he received; and by reason thereof he was incapacitated from performing or attending to his ordinary duties." *Id*. at 326, 29 S.E. at 906.

The question before the Court in *Mack* was whether the railroad company was "liable for injuries sustained in consequence of fright caused by its negligence." *Id*. at 332, 29 S.E.2d at 908. The Court answered in the affirmative, holding that the railroad could be liable for injuries caused by the fright. The *Mack* Court pointed out that "fright, terror, alarm or anxiety . . . do, in fact, deprive one of enjoyment and of comfort, cause real suffering, and, to a greater or less extent, disqualify one for the time being from doing the duties of life." *Id*. at 333, 29 S.E.2d at 909.

The Court in *Mack* went on to explain that "[i]f these results flow from a wrongful or negligent act, a recovery therefor[e] cannot be denied on the ground that the injury is fanciful and not real." *Id*. Our Supreme Court explained:

> Danger excites alarm. Few people are wholly insensible to the emotion caused by imminent danger, though some are less affected than others. It must also be admitted that a timid or sensitive person may suffer, not only in mind, but also in body, from such a cause. *Great emotion may, and sometimes does, produce physical effects. The action of the heart, the circulation of the blood, the temperature*

> *of the body, as well as the nerves and appetite, may all be affected*. A physical injury may be directly traceable to fright, and so may be caused by it.

Id. (emphasis added). The Court in *Mack* correctly recognized that it is "a matter of general knowledge that an attack of sudden fright, or an exposure to imminent peril, has produced in individuals a complete change in their nervous system, and rendered one who was physically strong and vigorous, weak and timid." *Id*. at 335, 29 S.E.2d at 909. This change in a plaintiff's nervous system "*must be regarded as an injury to the body rather than to the mind*, even though the mind be at the same time injuriously affected." *Id*. (emphasis added).

Likewise, in *Spaugh v. Atlantic Coast Line R.R. Co.*, 158 S.C. 25, 155 S.E. 145 (1930) our Supreme Court addressed whether physical manifestations of emotional distress was sufficient in a negligence claim. Mrs. Spaugh and her husband left their infant child and invalid mother with a caretaker at home and traveled from Holly Hill to Florence. The Spaughs were expecting to return home the same day, but Mr. Spaugh learned he had to spend the night in Florence. They decided it best for Mrs. Spaugh to return home by train. *Id*. at 27, 155 S.E. at 146.

The Spaughs were incorrectly informed by the railroad company that the train they were purchasing a ticket for would get Mrs. Spaugh home to Holly Hill that same evening. *Id*. at 28, 155 S.E. at 146. Based on this incorrect information, the Spaughs purchased a ticket for the train and Mrs. Spaugh boarded it. *Id*. The train carried Mrs. Spaugh to a connecting station where she missed her connection to Holly Hill because that train had already left the station. Mrs. Spaugh was eventually able to secure a ride with a farmer who got her home to Holly Hill, but she was a "nervous wreck" because of the experience. *Id*.

Mrs. Spaugh brought an action against the railroad company for negligence where she claimed damages for emotional distress. The company argued that Mrs. Spaugh could not recover because she sustained no physical injury. The Supreme Court held otherwise:

> In order to receive bodily injury, it was not necessary that the plaintiff should lose a limb or receive a broken limb, or to have wounds inflicted on her body. *Having her nervous system injured and being made sick constitutes bodily injury*, and for which she should be entitled to receive damages in proportion to such injury provided the proof establishes negligence on part of defendant's agent in misinforming the plaintiff or the plaintiff's husband, acting for her, as to the train schedules between the points in question, and such negligence caused the alleged injury complained of.

Id. (emphasis added). Thus, the *Spaugh* Court allowed Mrs. Spaugh's claim for emotional distress to go to the jury because there were physical manifestations of her distress. The weight of the evidence was properly a question for the jury. *Id*. at 30, 155 S.E. at 147.

In *Padgett v. Colonial Wholesale Distrib. Co.*, our Supreme Court was faced with a case where a wholesale liquor truck crashed into a man's house and "broke off three or four of the asbestos shingles and knocked a whole on in through the wood." 232 S.C. 593, 597, 103 S.E.2d 265, 266-67 (1958). The plaintiff in *Padgett* testified that after the crash he spent two hours out in the cold and "almost froze" and that he developed a rash approximately a week later. *Id.* at 597-98, 103 S.E.2d at 267. A skin specialist testified that the rash was caused by the shock that the plaintiff experienced from the truck crashing into his home. *Id*. at 598, 103 S.E.2d at 267. The *Padgett* Court relied on the Supreme Court's decision in *Mack* and held that whether the plaintiff sustained a physical injury because of the shock, fright, and emotional upset was a jury question. 232 S.C. 593, 607-08, 103 S.E.2d 265, 272.

In *Turner v. A B C Jalousie Co.*, 251 S.C. 92, 160 S.E.2d 528 (1968), a corporate agent entered into an agreement with the plaintiff to install aluminum siding on her house. After the

plaintiff allegedly breached the agreement, the agent "became enraged and in a loud and threatening voice, and with vile, profane and abusive language, threatened to bring suit against the [plaintiff] and her husband, sell their said dwelling house and throw them and their children into the street." *Id*. at 95, 160 S.E.2d at 529.

The plaintiff in *Turner* alleged that the agent's conduct caused her to become "frightened and terrified," and her "nervous system collapsed, necessitating hospital and medical care and treatment . . . and since said time has been in a highly nervous state and condition and will continue to suffer in the future from said nervous condition, resulting in loss of time from her employment and inability to perform her duties in the usual manner." *Id*. Relying on *Padgett*, the Supreme Court in *Turner* found that the allegation of nervous system collapse was "an allegation of physical or bodily injury" and that the case should be submitted to a jury. *Id*. at 96-97, 160 S.E.2d at 530.

Although some of these cases are "old," as Counsel for Mrs. Crump pointed out to the circuit court, they have never been overruled. And unlike this Court's unpublished decision in *Seeger*, all of these cases are binding on the circuit court, and this Court. In fact, *Mack*, *Padgett*, and *Turner* were all cited with approval by our Supreme Court in *Hansson v. Scalise Builders of S.C.*, which noted that "the theory regarding recovery for emotional damages has an extensive history in South Carolina." 374 S.C. 352, 355, 650 S.E.2d 68, 70 (2007). These cases collectively establish that South Carolina has a long history of recognizing that physical manifestations of emotional distress *are physical injuries* and may support the damages element of a negligent infliction of emotional distress claim.

Mrs. Crump's Counselor, Shenna Ganzy, diagnosed Mrs. Crump with post-traumatic stress disorder and panic attacks which resulted from her being trapped in the elevator. R. 149. Ganzy explained that symptoms of panic attacks can include "palpitations, sweating, trembling, shortness

of breath, chest pain, dizziness, chills or hot flashes, numbness or tingling, feelings of unreality or detachment, and fear of losing control or dying." *Id*.

The emotional trauma Mrs. Crump has suffered has caused her to experience "frequent and debilitating panic attacks." *Id*. Mrs. Crump's panic attacks are characterized by "shortness of breath, chest pain, dizziness, and an overwhelming feeling of dying or losing control," all physical manifestations of her emotional distress. *Id*. Mrs. Crump's panic attacks are "frequent and severe," and have "significantly affect[ed her] daily functioning and quality of life." *Id*. During her first visit to Ganzy's office, Ganzy personally observed her "hyperventilating, sweating profusely, and . . . visibl[y] trembling" at the mere sight of an elevator. *Id*.

As in each of the cases cited above, Mrs. Crump has suffered tremendously both emotionally and physically as a result of her being trapped in the elevator. This is not a case of "hurt feelings," but rather a case of PTSD which causes frequent, severe, and debilitating panic attacks that physically prevent Mrs. Crump from carrying on with her ordinary life. The physical manifestations of her emotional distress are physical injuries.

As a final point, it is important for this Court to note that the Defendants' argument that *Seeger* established a "bright line rule" that "extreme" conduct is required in a negligent infliction of emotional distress claim was not ruled on by the circuit court. However, this argument appears to flow from a misguided conflation of the distinct causes of action for negligent infliction of emotional distress and intentional infliction of emotional distress, also known as outrage.

These causes of action have separate elements, the latter of which does require extreme and outrageous conduct on the part of the defendant. *See Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981) (expressly adopting a distinct cause of action for *intentional* infliction of emotional distress and providing that, as an element of that claim, the plaintiff must prove that the

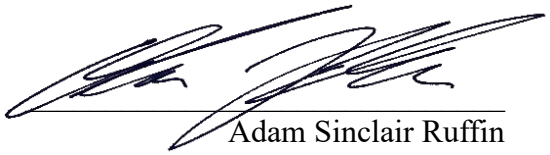
defendant's "conduct was so 'extreme and outrageous' as to exceed 'all possible bounds of decency' and must be regarded as 'atrocious, and utterly intolerable in a civilized community'"). While the recoverability of emotional distress in a negligence cause of action requires some physical manifestation of emotional distress, it does not require the defendant's conduct to be extreme. That requirement is limited to the tort of outrage.

Furthermore, even if extreme and outrageous conduct were required to recover for emotional distress in a negligence cause of action, whether the defendant's conduct was extreme would be a jury question. *See Hutson*, 276 S.C. 157, 166, 276 S.E.2d 776, 780 ("When evidence is in conflict and susceptible of more than one reasonable inference, it is the province of the jury to make a factual determination").

The circuit court erred in granting the Defendants' motion for summary judgment and this Court should reverse and remand this case for a jury trial.

CONCLUSION

By reason of the foregoing argument, this Court should reverse the circuit court's order granting the Defendants' motion for summary judgment and remand this case for a jury trial.



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This 14th day of May 2025.