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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jessica Ann Salvini, Circuit Court Judge

Case No. 2022-CP-40-05610

Appellate Case No. 2024-001569

Daisy Crump, ... Appellant,

v.

Glenfield Capital, LLC D/B/A Glen 1441, LLC, Colliers International South Carolina, Inc., and tk Elevator Corporation. . . . . .Respondents.

FINAL JOINT BRIEF OF RESPONDENTS

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court properly granted summary judgment as to Plaintiff's claim for negligence when the trial court found that Plaintiff did not have physical injuries and therefore did not have actionable damages?

STATEMENT OF THE CASE

Plaintiff Daisy Crump ("Plaintiff" or "Crump") appeals an order from the Richland County Court of Commons Pleas granting Summary Judgment to Defendants Glenfield Capital, LLC d/b/a Glen 1441, LLC; Colliers International South Carolina, Inc.; and tk Elevator Corporation's (collectively, "Respondents"). On October 26, 2022, Plaintiff filed suit and asserted a cause of action for negligence related to an incident in an elevator at 1441 Main St. in Columbia, South Carolina, on November 4, 2019. Respondents filed a Joint Motion for Summary Judgment on the grounds Plaintiff failed to allege recoverable damages because she did not witness the death or serious injury of a relative, and she did not suffer any physical or bodily injury, as required to recover for negligent infliction of emotional distress. On July 24, 2024, the circuit court heard oral arguments on the Joint Motion for Summary Judgment. The court granted Defendants' Joint Motion for Summary Judgment and concluded that Plaintiff failed to establish recoverable damages under a negligence claim. Plaintiff filed a Motion to Reconsider, which the court denied. This appeal followed.

STANDARD OF REVIEW

In an appeal concerning the grant of a summary judgment motion, "this court applies the same standard which governs the trial court." *Hawkins v. City of Greenville*, 358 S.C. 280, 289, 594 S.E.2d 557, 562 (Ct. App. 2004). "Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law." *Faile v. S.C. Dep't of Juv. Justice*, 350 S.C. 315, 323–24, 566 S.E.2d 536, 540 (2002) (*citing Bishop v. South Carolina Dep't of Mental Health*, 331 S.C. 79, 85–86, 502 S.E.2d 78, 81 (1998)). "In determining whether a genuine question of fact exists, the court must view the evidence and all inferences which can be reasonably drawn from the evidence in the light most favorable to the nonmoving party." *Id.*

If the moving party meets its initial burden of showing an absence of evidentiary support for the nonmoving party's case, the nonmoving party cannot simply rest on mere allegations or denials contained in the pleadings. *Singleton v. Sherer*, 377 S.C. 185, 197–98, 659 S.E.2d 196, 203 (Ct. App. 2008). Instead, the nonmoving party must come forward with specific evidentiary support showing there is a genuine dispute for trial. *Rife v. Hitachi Const. Mach. Co.*, 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005); *see also Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (holding that the "mere scintilla" standard does not apply under Rule 56(c); rather, the proper standard is the "genuine issue of material fact" standard set forth in the text of the Rule.). "The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." *Gauld v. O'Shaugnessy Realty Co.*, 380

S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008) (*quoting Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 579, 556 S.E.2d 732, 736 (Ct. App. 2001).

STATEMENT OF FACTS

Plaintiff worked as an "outbound" LPN at Absolute Total Care, located at 1441 Main Street in Columbia, SC. (R. 81.) On November 4, 2019, Plaintiff finished her workday between 4:30 and 5:00 p.m. and used the elevator when she exited the building. (R. 83-87.) When she got to her car, Plaintiff realized she had forgotten her phone and returned to the building to get it. (R. 83.) Plaintiff walked back into the lobby of the building and entered one of the elevators to take her up to the 11th floor. (R. 83.) Plaintiff entered the elevator and pushed the button for the 11th floor. (*Id.*) The doors began to close but stopped about 8 inches apart. (R. 89.) The elevator did not move on its own, and the doors did not open. (R. 83-90.) Plaintiff soon realized she was stuck in the elevator. (R. 24.)

Crump pressed the door-open and door-close buttons, but the doors did not respond. (R. 84.) She testified that she believed the motor was running and that the cables holding the elevator could break at any second. (*Id.*) Crump testified that she was scared the elevator would crash and that she would go down with it. (*Id.*)

The building's property manager also came to check on Plaintiff, and the property manager told her that an engineer was on his way to fix the elevator. (R. 85.) The engineer opened the doors to the elevator and Plaintiff exited. (R. 86.) Plaintiff acknowledged that she had no physical injury as a result of the incident, but also testified that the incident caused her emotional distress. (R. 93.)

The day after the incident, Plaintiff visited her primary care physician, Dr. Martha Parker Hester. (R. 92.) Dr. Parker-Hester testified that Plaintiff did not have any physical injuries when she treated the Plaintiff on November 5, 2019. (R. 97-99.)

Plaintiff only sought therapy after her attorney told her to see Shenna Ganzy of She's Counseling. (R. 66.) Plaintiff briefly attended counseling with Ms. Ganzy but was told she needed

"more extensive counseling than what she could provide." Despite this admission, Ms. Ganzy diagnosed Plaintiff with post-traumatic stress disorder and panic attacks as a result of being trapped in the elevator. (R. 149.) In her affidavit, Ms. Ganzy affirmed that Plaintiff "has been diagnosed with Post Traumatic Stress Disorder, Panic Attacks, and [Plaintiff] exhibits symptoms of anxiety and panic following a traumatic incident of being trapped in an elevator." (R. 150.) Furthermore, Ganzy testified Plaintiff's "panic disorder began following a traumatic incident where she was trapped in an elevator" and Plaintiff "was stuck in an elevator for an extended period, which served as the initial traumatic trigger for her panic disorder." (*Id.*) Ms. Ganzy is a Licensed Professional Counselor and a Licensed Cosmetologist. (R. 149.)

Plaintiff sued Glenfield Capital, LLC d/b/a Glen 1441, LLC as the owner of 1441 Main Street; Colliers International South Carolina, Inc. as the property manager for 1441 Main Street; and tk Elevator Corporation as the manufacturer of the elevator at issue. (R. 18-20.) Plaintiff asserted a claim for negligence against all Respondents and sought damages for mental, emotional, and physical pain, as well as lost wages. (R. 17.)

After deposing Plaintiff and her treating physician, Dr. Martha Parker Hester, Respondents filed a Joint Motion for Summary Judgment. (R. 45-46.) On July 24, 2024, the Circuit Court heard oral arguments. During oral arguments, Defendants argued that Plaintiff did not have a physical injury to accompany her emotional damages, or in the alternative, if Plaintiff does have a physical injury, the conduct of Defendants was not extreme to allow Plaintiff to recover. In addition, Defendant Glenfield Capital, LLC D/B/A Glen 1441, LLC, argued that it did not maintain control or possession of the building. (R.162, 165, 177.)

On July 25, 2024, the Circuit Court issued a Form 4 Order granting the Motion in Part and Denying the Motion in Part. (R. 10-11.) The Court granted Defendants' Motion because the Court

determined that Plaintiff did not have a physical injury; therefore, Plaintiff cannot establish actionable damages under negligence. (*Id.*) Without evidence of physical injury, there is no genuine issue of material fact. (*Id.*) The Court denied Defendant Glenfield Capital, LLC D/B/A Glen 1441, LLC's Motion for Summary Judgment on the control issue. (*Id.*) The Court held that there was a genuine issue of material fact regarding which party had possession or control of the elevator. (*Id.*)

ARGUMENT

The undisputed evidence establishes that Plaintiff did not sustain physical injury when she was temporarily stuck on an elevator at work. Nonetheless, Plaintiff opposed Respondents' Motion for Summary Judgment on the grounds that she suffered recoverable damages in the form of emotional distress because of the incident. The Circuit Court correctly applied well settled law when it granted summary judgment to Respondents. At the summary judgment stage, and now on appeal, Plaintiff has identified no evidence that her emotional distress amounted to recoverable damages under a negligence claim. This Court must affirm the Circuit Court's Order granting summary judgment.

I. The Circuit Court correctly ruled that Plaintiff did not suffer physical injuries and therefore could not establish recoverable damages under a negligence claim.

To sustain an action rooted in negligence, a plaintiff must establish (1) a duty of care owed that was (2) breached by a negligent act or omission and (3) damages proximately related to the breach. *Shaw v. City of Charleston*, 351 S.C. 32, 40, 567 S.E.2d 530, 534 (Ct. App. 2002) (*citing Hubbard v. Taylor*, 339 S.C. 582, 588, 529 S.E.2d 549, 552 (Ct. App. 2000). Furthermore, damages must stem from either physical injury or property damage. *Babb v. Lee County Landfill SC*, *LLC*, 405 S.C. 129, 153, 747 S.E.2d 468, 481 (2013). "Damages for emotional or mental

suffering are typically not recoverable, unless there is some physical manifestation of the emotional distress." *Id*.

South Carolina has long recognized that a plaintiff may recover damages for emotional distress in negligence cases only where the plaintiff suffers a physical harm proximately caused by that same emotional distress. *See Padgett v. Colonial Wholesale Distrib. Co.,* 232 S.C. 593, 608, 103 S.E.2d 265, 272 (1958); *see also Norris v. Southern Ry. Carolina Division*, 84 S.C. 15, 65 S.E. 956 (1909) ("The law in this state does not allow recovery of damages for mental suffering in the absence of bodily injury, [without statutory authority]."); *Taylor v. Atlantic Coast Line R. Co.,* 78 S.C. 552, 59 S.E. 641 (1907) ("The complaint alleges merely that the conduct of defendant caused 'great mental and nervous shock and anxiety' to plaintiff. There is no allegation of physical or bodily injury. The law in this state does not allow recovery of damages for mental suffering in the absence of bodily injury, [without statutory authority]."); *Lewis v. Western Union Tel. Co*., 57 S.C. 325, 35 S.E. 556 (1900) ("The common law never recognized such damages [for mental suffering disconnected with, or in the absence of, any bodily injury]…[o]ur own state may be classed among those who adhere to the old common–law rule"). A plaintiff ordinarily cannot recover damages for mental suffering in the absence of bodily injury; however, "injuries to the nervous system could be regarded as 'an injury to the body rather than to the mind, even though the mind be at the same time injuriously affected.'" *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 355, 650 S.E.2d 68, 70 n.1 (2007).

In *Padgett*, a truck crashed into the plaintiff's residence while the plaintiff was inside. 232 S.C. 593, 597, 103 S.E.2d 265, 266–267. It was cold on the night of the accident, and the plaintiff spent several hours in the yard speaking with investigating officers and cleaning debris. *Id.* at 267, 103 S.E.2d at 597. There was also a hole in his house from the accident. *Id.* The plaintiff testified

that he almost froze from being exposed to the elements. *Id.* The plaintiff developed a rash from being exposed to the elements. *Id.* at 597–598, 103 S.E.2d at 267. At trial, the defendant moved for directed verdict on the basis that the plaintiff failed to prove recoverable damages. *Id.* at 597, 103 S.E.2d at 266. The trial court denied the motion. *Id.* On appeal, the Court of Appeals held that a plaintiff can recover for emotional damages when there is no physical impact if the plaintiff suffers physical injuries from the negligence of the defendant. *Id.* at 608, 103 S.E.2d at 272. In holding that the trial court did not err in submitting the issue of negligence to the jury, the Court noted that the plaintiff developed a skin ailment as a result of the incident and therefore had *some* evidence of a physical injury. *Id.* at 604, 103 S.E.2d at 270.

This issue was also addressed in *Dooley v. Richland Memorial Hospital*. Unlike the cases cited by Crump, *Dooley* is a holding from the last 50 years. In *Dooley*, a driver was injured in a single-car accident and was in serious condition. 283 S.C. 372, 373, 322 S.E.2d 669, 670 (1984). The driver did not have any identification on his person, but responding law enforcement officers found an ID for Doug Dooley. *Id.* The plaintiffs, Doug Dooley's parents, were called to the hospital and informed of the serious nature of their son's injuries. *Id.* at 373–374, 322 S.E.2d at 670. It was later determined that the driver was not Doug Dooley, and the plaintiffs filed suit against the defendant hospital. *Id.* The plaintiffs testified that the misidentification of the injured driver caused them to become upset and nervous, and required them to be medicated with Valium. *Id.* at 375, 322 S.E.2d at 671. The Court determined that the plaintiffs did not have an "evidence of physical injury upon which to rest a claim for damages for emotional injury." *Id.*

Courts in other jurisdictions have similar holdings to *Dooley*. Virginia courts have held that "typical symptoms of an emotional disturbance" do not constitute "physical injury" for purposes of a negligent infliction of emotional distress claim. *Dao v. Faustin*, 402 F. Supp. 3d 308

(E.D. Va. 2019) (*citing Myseros v. Sissler*, 239 Va. 8, 12, 387 S.E.2d 463 (1990)). Like Virginia courts, courts in Kanas, North Dakota, and Utah have held that typical symptoms of emotional disturbance, like headaches, insomnia, weight loss, and anxiety, do not constitute a physical injury. *See Anderson v. Scheffler,* 242 Kan. 857, 752 P.2d 667, 669 (1988) ("There may be no recovery in Kansas for emotional distress unless that distress results in 'physical impact': an actual physical injury to the plaintiff. Generalized physical symptoms of emotional distress such as headaches and insomnia are insufficient to state a cause of action."); *Muchow v. Lindblad*, 435 N.W.2d 918, 921–22 (N.D.1989) (affirming the district court's determination that the plaintiffs failed to raise a reasonable inference that they suffered the "bodily harm" necessary for recovery under negligent infliction of emotional distress because the loss of sleep and weight is transitory and inconsequential and therefore, not "bodily harm."); *Hansen v. Mountain Fuel Supply Co.*, 858 P.2d 970, 982–83 (Utah 1993). ("[T]he emotional distress suffered must be severe; it must be such that 'a reasonable [person,] normally constituted, would be unable to adequately cope with the mental stress engendered by the circumstances of the case.'… Therefore, transitory anxiety and sleeplessness…do not constitute illness or injury [].”). Rather than distinguishing what is not a physical injury, Florida courts have held "that such psychological trauma must cause a demonstrable physical injury such as death, paralysis, muscular impairment, or similar objectively discernible physical impairment before a cause of action may exist." *Brown v. Cadillac Motor Car Div.*, 468 So.2d 903, 904 (Fla. 1985).

Here, Plaintiff does not have a physical injury to pursue a negligence cause of action. Plaintiff testified that she was not injured as a result of the accident. Further, her treating physician testified that she was not injured. Unlike the plaintiff in *Padgett* who had a skin ailment as a result of the accident, Plaintiff has not shown any physical injury as a result of the accident. Rather,

Plaintiff's panic attacks are analogous to the upset and nervousness experienced by the plaintiffs in *Dooley*, which do not amount to a physical injury on which to rest a claim for damages under a negligence claim.

Crump argues on appeal that "our Supreme Court has repeatedly affirmed the principle that physical manifestations of emotional distress satisfy the damages element in negligence causes of action." (App. Br. 11). It's important to note that the cases cited by Crump to support this proposition do not use the word "manifestation" at all. *See generally*, *Mack v. South-Bound R. Co.,* 52 S.C. 323, 29 S.E. 905 (1898); *Spaugh v. Atlantic Coast Line R. Co.*, 158 S.C. 25, 155 S.E. 145 (1930). Rather, in *Mack* and *Spaugh*, our Supreme Court uses the terms "physical injury" or "bodily injury." *Mack*, at 323, 29 S.E.2d at 908-909. Simply put, South Carolina law requires a plaintiff to prove that her mental anguish or emotion distress caused a physical or bodily injury to recover under a negligence theory. Plaintiff's panic attacks do not rise to the level of physical injury. There is no evidence that Plaintiff had a physical skin rash like the plaintiff in *Padgett*, and Plaintiff's panic attacks are more similar to the upset and nervous behaviors of the plaintiffs in *Dooley*, which did not rise to the level of a physical injury. The Circuit Court correctly concluded that Plaintiff failed to prove such injury in this case, and the Order granting summary judgment must be affirmed.

II. Plaintiff cannot rely on the Affidavit of Ms. Ganzy to establish actionable damages in a cause of action for negligence.

Plaintiff submitted an affidavit in opposition to Respondents' Motion for Summary Judgment prepared by licensed counselor Shenna Ganzy. (R. 149-51.) However, the affidavit does not provide evidence of actionable damages because, as explained above, panic attacks and heightened nervousness are not actionable damages under a negligence theory and, even if this

Court found the affidavit contained evidence of actionable damages, the affidavit fails to establish that the elevator incident was the proximate cause of her panic attacks.

First, Ms. Ganzy's affidavit does not provide evidence of actionable damages under a negligence theory. Ms. Ganzy stated that, since the elevator incident, Crump "experienced sudden and intense panic attacks characterized by symptoms such as shortness of breath, chest pain, dizziness, and an overwhelming fear of dying or losing control." (R. 150.) Even when crediting Ms. Ganzy's statements as true from the perspective of a counselor, the symptoms described do not rise to the level of actionable damages for emotional distress. Unlike the plaintiff in *Padgett*, Crump did not develop a "bodily injury" as a result of her "sudden and intense panic attacks." Crump's symptomology is closer to the anxiety symptoms developed by the plaintiffs in *Dooley*, where our Supreme Court held that anxiety attacks requiring medication did not amount to actionable damages.

The authorities cited in Plaintiff's initial brief illustrate that more is required to prove actionable damages when a plaintiff does not allege physical contact caused the "injury." For example, our Supreme Court noted the plaintiff in *Mack* "was incapacitated from performing or attending to his ordinary duties" because of his fright and shock. *Mack*, 52 S.C. at 326, 29 S.E. at 906. Ms. Ganzy's affidavit does not contain any medical opinion that Crump's panic attacks incapacitated her or prevented her from participating in daily activities. In *Turner v. A B C Jalousie Co.*, another case cited by Plaintiff, our Supreme Court noted that the plaintiff's "nervous system collapsed, necessitating hospital and medical care and treatment." 251 S.C. 92, 95, 160 S.E.2d 528, 529 (1968). There is no evidence, either in Ms. Ganzy's affidavit or otherwise, that Crump would require hospital care or medical treatment because of her panic disorder. In fact, Plaintiff's primary care physician testified Plaintiff was not injured in the elevator incident. The Circuit Court

correctly concluded that counselor Ganzy's affidavit did not provide evidence of actionable damages, and the Order granting summary judgment must be affirmed.

Second, Ms. Ganzy's affidavit does not provide any evidence of a causal connection between the panic attacks and the alleged tortious acts of Defendants. Plaintiff has improperly relied on the testimony of Ms. Ganzy, which fails to establish to a reasonable degree of medical certainty that Plaintiff's injuries were proximately caused by the accident. Thus, Plaintiff has not met the burden of proof as to causation.

"In a negligence action, the plaintiff must prove proximate cause." *Rush v. Blanchard*, 310 S.C. 375, 379 426 S.E.2d 802, 804 (1993). "When the opinions of medical experts are relied upon to establish causal connection of negligence to injury, the proper test to be applied is that the expert must, with reasonable certainty, state that in his professional opinion the injuries complained of most probably resulted from the alleged negligence of the defendant." *Armstrong v. Weiland*, 267 S.C 12, 16, 225 S.E.2d 851, 853 (1976) (*citing Gambrell v. Burleson*, 252 S.C. 98, 165 S.E.2d 622 (1969); *Cross v. Concrete Materials*, 236 S.C. 440, 114 S.E.2d 828 (1960)). South Carolina courts have generally held that, before expert testimony is admissible upon the question of the causal connection between the plaintiff's injuries and the acts of the defendant, the testimony must satisfy the "most probably" rule. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 111, 410 S.E.2d 537, 543 (1991) (*citing Armstrong v. Weiland,* 267 S.C. 12, 225 S.E.2d 851 (1976); *Martin v. Mobley,* 253 S.C. 103, 169 S.E.2d 278 (1969); *Gambrell v. Burleson,* 252 S.C. 98, 165 S.E.2d 622 (1969)). The "most probably" rule states:

> it is not sufficient for the expert ... to testify merely that the ailment might or could have resulted from the alleged cause. He must go further and testify that taking into consideration all the data it is his professional opinion that the result in question most probably came from the cause alleged.

Eubanks v. Piedmont Nat. Gas Co., 198 F.Supp. 522, 526–27. (W.D.S.C. 1961).

Ms. Ganzy's Affidavit does not establish a causal link between Plaintiff's panic attacks and the alleged incident. By stating that the panic attacks "began following" the elevator incident, Ms. Ganzy is effectively creating a timeline rather than providing a causal link linking the panic attacks to the elevator incident. (R. 150.) Ms. Ganzy does not state, for example, that Plaintiff's panic disorder arose "because of" the incident in the elevator. Instead, Ms. Ganzy simply relies on the panic disorder manifesting itself after the elevator incident without providing any opinion as to causation. *Id*. Furthermore, Ms. Ganzy statement that Plaintiff "was stuck in an elevator for an extended period, which served as the initial traumatic trigger for her panic disorder," does not meet the standard required by the "most probably" rule because Ms. Ganzy does not testify to a reasonable degree of medical certainty. *Id*. Therefore, Plaintiff's reliance on the affidavit of Ms. Ganzy to establish causal connection of negligence to injury does not meet Plaintiff's burden of proof in establishing her injuries were proximately caused by the negligence of Defendants.

III. From a public policy perspective, allowing Plaintiffs to file lawsuits for incidents that cause panic attacks would overburden the South Carolina Court System.

The South Carolina Supreme Court has long recognized that emotional distress claims involve an inherent risk of fraud. In *Mack v. South-Bound R. Co.*, the court stated:

> We cannot say, therefore, that such consequences may not flow proximately from unintentional negligence; and, if compensation in damages may be recovered for a physical injury so caused, it is hard, on principle, to say why there should not also be a recovery for the mere mental suffering, when not accompanied by any perceptible physical effects. It would seem, therefore, that the real reason for refusing damages sustained from mere fright must be something different, and it probably rests on the ground that in practice it is impossible satisfactorily to administer any other rule. The logical vindication of this rule is that it is unreasonable to hold persons who are merely negligent bound to anticipate and guard against fright, and the consequences of fright, and that *this would open a wide door for unjust claims, which could not successfully be met.*

52 S.C. 323, 323, 29 S.E. 905, 909 (1898) (emphasis added). In *Lewis v. Western Union Tel. Co*., the court noted that South Carolina courts have traditionally found damages for emotional distress to be "too vague, shadowy, and uncertain." 57 S.C. 325, 325, 35 S.E. 556, 558 (1900).

Almost a century later, the South Carolina Supreme Court continued to evaluate the risk of emotional distress claims and put in place objective measures to attempt to mitigate such risk. In *Kinard*, the Court adopted the tort of negligent infliction of emotional distress subject to express, objective limitations related to foreseeability, such as a plaintiff's physical proximity to an accident, whether a plaintiff directly witnessed the accident, or whether a plaintiff was "closely related" to a victim. 286 S.C. 579, 582–83, 336 S.E.2d 465, 467 (1985). In *Boan*, the Court noted damages for "loss of enjoyment of life" were connected to the plaintiff's "objective loss of the ability to engage in [certain physical] activities." *Boan v. Blackwell*, 343 S.C. 498, 502, 541 S.E.2d 242, 245 (2001).

"In order to prevent claims for intentional infliction of emotional distress from becoming 'a panacea for wounded feelings rather than reprehensible conduct', the court plays a significant gatekeeping role in analyzing a defendant's motion for summary judgment." *Hansson,* 374 S.C. at 358, 650 S.E.2d at 72 (*quoting Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 171, 321 S.E.2d 602, 611 (Ct. App. 1984)). In *Hansson*, the Court reiterated that a prima facie claim of intentional emotional distress involves a heightened evidentiary standard that ordinarily requires corroborating evidence and third-party witness testimony. *Hansson,* 374 S.C. at 358, 650 S.E.2d at 72. The Court further limited the cause of action to instances when a plaintiff can show both severe or extreme conduct by a defendant and corresponding distress such that "no reasonable man could be expected to endure it." *Id.*

Reversing the Circuit Court's Order will open Pandora's box if this Court decides that panic attacks and anxiety amount to a physical injury, particularly if premised solely on a non-physician counselor's "diagnosis." According to the National Alliance on Mental Illness, over 40 million people in the United States, or 19.1 percent of the U.S. population, have an anxiety disorder. *Anxiety Disorders*, National Alliance on Mental Illness, https://www.nami.org/about-mental-illness/mental-health-conditions/anxiety-disorders/ (last reviewed Dec. 2017). The increasing pervasiveness of anxiety disorders and other mental illnesses shows how important it is to prove a physical injury to recover damages under a negligence claim. A physical injury can be a rash, like the plaintiff in *Padgett*, or a heart attack. But a physical injury cannot be mere nervousness or anxiety, as our Supreme Court explained in *Dooley*. This Court should adhere to the longstanding limitation on negligence claims involving only emotional or mental distress and affirm the Circuit Court's Order granting summary judgment to Respondents.

CONCLUSION

For these reasons, Defendants respectfully request this Court affirm the Circuit Court's Order granting summary judgment in favor of Defendants.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jessica Ann Salvini, Circuit Court Judge

Case No. 2022-CP-40-05610

Appellate Case No. 2024-001569

Daisy Crump, ... Appellant,

v.

Glenfield Capital, LLC D/B/A Glen 1441, LLC, Colliers International South Carolina, Inc., and tk Elevator Corporation. . . . . .Respondents.

CERTIFICATE OF COUNSEL

The undersigned counsel hereby certify that the foregoing Joint Final Brief of Respondents complies with Rule 211(b), SCACR.

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May 30, 2025

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing Joint Final Brief of Respondents in the above-captioned case has been served on the following parties via e-mail, on June 3, 2025, pursuant to the South Carolina Supreme Court Order No. 2020-000447, as amended on May 5, 2022:

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On Behalf of Attorneys for Respondents