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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Martha M. Rivers, Circuit Court Judge

Lower Court Case No. 2018-CP-02-01903

Gloria Allen, Personal Representative of the Estate of Helen Williams,
Appellant,

v.

Estate of Calvin Warren, Estate of Diane Warren, Estate of Travis Robinson,
and Marcus Williams, Defendants,

of which Estate of Calvin Warren, Estate of Diane Warren and Estate of
Travis Robinson are the Respondents.

Appellate Case No. 2025-000208

INITIAL REPLY BRIEF OF APPELLANT

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ARGUMENTS IN REPLY

1.

The issue raised on appeal is preserved because Counsel for Mrs. Allen requested the circuit court to charge the jury that where a special relationship exists between the parties there is a duty to rescue and the circuit court denied this request.

"Once a party requests a charge and the trial court denies it, no further objection or resubmission of the charge is necessary to preserve the issue for appellate review." Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 203 (3d ed. 2016); *see also State v. Johnson*, 333 S.C. 62, 64 n.1, 508 S.E.2d 29, 30 n.1 (1998) (clarifying the Supreme Court's decision in *State v. Whipple*, 324 S.C. 43, 476 S.E.2d 683 (1996) and holding that "where a party requests a jury charge and, after opportunity for discussion, the trial judge declines the charge, it is unnecessary, to preserve the point on appeal, to renew the request at conclusion of the court's instructions"); *State v. Grant*, 275 S.C. 404, 407, 272 S.E.2d 169, 171 (1980) (once the positions of the parties are made known to the circuit court prior to the giving of the jury charge, further objection is not required to preserve the issue for appeal).

Although *Johnson*, *Whipple*, and *Grant* were all criminal cases, this rule of issue preservation has also been applied in the civil context. In *Keaton v. Greenville Hosp. Sys.*, our Supreme Court reversed this Court's decision which found an objection to a jury instruction unpreserved. 334 S.C. 488, 494, 514 S.E.2d 570, 573 (1999). The Supreme Court noted that Rule 20(b), of the South Carolina Rules of Criminal Procedure is equivalent to Rule 51, of the Rules of Civil Procedure and that the rules "encompass similar policy goals." *Keaton*, 334 S.C. 488, 495, 514 S.E.2d at 573-74. Accordingly, the *Keaton* Court found that objecting to a jury charge prior to

it being given to the jury is sufficient to preserve the argument for appeal even where the party does not renew the objection after the charge is given. *Id*.

Counsel for Mrs. Allen argued that Travis had a special relationship to Mrs. Williams, (Tr. 334, ll. 5 – 15), and that special relationship gave rise to a duty to rescue. (Tr. 342, l. 8 – 343, l. 13). The circuit court failed to instruct the jury correctly on the duties that arise in a special relationship situation—a denial of Counsel's request. The fact that Counsel did not renew this request after the jury charge was given is immaterial. Whether the circuit court erred in failing to correctly instruct the jury that where a special relationship exists a duty to rescue arises is preserved for appeal. Accordingly, this Court should reach the merits.

2.

The circuit court erred in refusing to correctly instruct the jury regarding the legal duties in special relationship situations.

Respondents devote fifteen pages of their brief to issue preservation and less than one page to the merits. Respondents cite to Section 314 of the Second Restatement of Torts for the proposition that "*as a general rule*, an individual is under no duty to provide aid or protection to another." (BOR p. 16) (emphasis added). Respondents ignore the many exceptions to this general rule as fully outlined in Mrs. Allen's opening brief. *See* Restatement (Second) of Torts § 314A cmt. b. (noting that the duty to render aid arises out of a special relationship between the parties which removes it from the general rule that there is no duty to rescue). Respondents also ignore the many exceptions to this general rule listed in Section 2.A.5.b(1) of The South Carolina Law of Torts. *See* Patrick Hubbard & Robert L. Felix, *The South Carolina Law of Torts* § 2.A.5.b(1).

Respondents also argue that the opening brief "does not cite any South Carolina case that has held an individual has a legal duty to initiate a rescue of another individual under any

circumstance." (BOR p. 16). But the opening brief did point out that this Court has acknowledged that "[a]lthough there is no general duty to aid or protect others, such a duty does exist where the defendant has a special relationship to the victim." *McCord v. Laurens Cty. Health Care Sys.*, 429 S.C. 286, 296, 838 S.E.2d 220, 225 (Ct. App. 2020) (quoting Patrick Hubbard & Robert L. Felix, *The South Carolina Law of Torts* at 106 (4th ed. 2011)).

The issue on appeal is not whether this Court should declare a new duty as a matter of law, but whether the jury should have been correctly instructed on the legal consequences of a special relationship where evidence supporting such a relationship existed. Recognizing the need for a proper instruction in this case does not expand South Carolina tort law, but simply ensures that juries are permitted to apply existing law when the evidence supports a finding of a special relationship.

There was ample evidence in the record to support a finding that Travis was in a special relationship with Mrs. Willaims and the circuit court's refusal to correctly instruct the jury on the duties that arise in special relationship cases was error. *See Clark v. Cantrell*, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000) ("It is error for the trial court to refuse to give a requested instruction which states a sound principle of law when that principle applies to the case at hand, and the principle is not otherwise included in the charge").

CONCLUSION

For the reasons argued in Mrs. Allen's opening brief, and this reply brief, this Court should to reverse the judgment below and remand for a new trial.

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This 20th day of January 2026.