THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Patrick C. Fant III, Circuit Court Judge

Appellate Case No. 2025-001344

Case No. 2023-CP-23-01912

Patricia Diehl, ...Appellant,

v.

Home Depot Store SW #1127, Home Depot Management Company, LLC, HD Development of Maryland, Inc., Charles Hilliard, and Home Depot, U.S.A., Inc. .....Respondents.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF CASE

This is a premises liability case, where Appellant Patricia Diehl ("Appellant" or "Diehl") alleges she was injured while shopping at a Home Depot store (the "Store") located in Greenville, South Carolina (Pl. Compl. at ¶¶s 16, 18). Appellant is now appealing the April 17, 2025 Order from the Honorable Patrick Fant, which granted multiple dispositive motions in favor of Defendants Home Depot Store SE #1127; Home Depot Management Company, LLC; HD Development of Maryland, Inc.; and Home Depot U.S.A., Inc. (collectively "Home Depot").

Procedural History

Diel filed her initial Summons and Complaint on April 18, 2023, asserting a sole cause of action under a negligence theory rooted in premise liability against Home Depot. (See generally Pl. Compl.).

Specifically, Appellant's Complaint alleges that she "slipped and/or tripped, and fell while walking" in the Store (the "Incident"), and as a result she allegedly "suffered an extreme high-impact collision with the floor, resulting in severe and acute injury." (See Compl. ¶¶ 18,19).

On September 1, 2023, Home Depot filed a timely Answer, raising general denials, including certain Home Depot defendants being improper parties, negligence on the part of Appellant, and lack of notice. (See generally Defs. Answer). Discovery ensued and Appellant was deposed on two (2) separate occasions per consent of the Parties. Appellant's first Deposition ("Diehl Dep. I") began on February 6, 2024. The deposition was temporarily halted and Appellant's deposition resumed and concluded on March 19, 2024 ("Diehl Dep. II"). As discovery continued, on February 8, 2024, the trial court issued a Consent Scheduling Order (the "Scheduling Order"). The Scheduling Order stated that all discovery was to be concluded by August 10, 2024.

On September 12, 2024, shortly after the discovery deadline expired, and without first seeking leave to amend, Appellant filed an Amended Summons and Complaint naming Charles Hilliard ("Hillard") as an additional Defendant. (See generally Pl. Am. Compl.).

The same day, on September 12, 2024, because discovery was complete, Home Depot filed a Motion for Summary Judgment as to the Original Complaint. (See HD's Mtn for Summary Judgment).

Shortly thereafter, on September 23, 2024, Home Depot filed a Motion to Strike the Amended Complaint, and Hilliard filed a Motion to Dismiss. (See HD's Mtn to Strike and Hillard's Mtn to Dismiss).

On February 28, 2025, the Honorable Patrick C. Fant, III heard arguments from all parties concerning Home Depot and Hilliard's pending dispositive Motions (the "Hearing"). During the Hearing, Appellant's Counsel confirmed that Appellant consented to the trial court granting Hillard's Motion to Dismiss and striking Appellant's Amended Complaint. (See Motion for Summary Judgment Transcript, p. 1). Judge Fant took the arguments under advisement for consideration along with the memorandums, deposition transcripts, affidavits, and related exhibits.

On April 17, 2025, the Honorable Patrick C. Fant, III, issued an Order Granting Defendant Charles Hillard's Motion to Dismiss; Striking Appellant's Amended Complaint; and Granting Defendant Home Depot's Motion for Summary Judgment (the "Order"). (See Honorable Patrick C. Fant Order, dated April 17, 2025).

On April 25, 2025, Appellant filed a Motion to Amend the Order (See Pl.'s Mtn to Reconsider), which the Court denied by issuing an Order on May 7, 2025 (See Form 4 Order, dated May 7, 2025).

Appellant then filed her Notice to Appeal the Order.

Factual History

Appellant alleges that she was injured while shopping in the Store on May 18, 2021. (Pl. Compl. ¶ 18). During her deposition, Appellant clarified the appearance of the aisle where the Pallet was located, and her testimony illustrates there were no other pallets lined up in front of the Pallet. (Diehl Depo I, p. 32, ln. 24 – p. 33, ln. 8). Rather, as Appellant approached the Pallet, Appellant's feet went underneath the Pallet, which allegedly caused her injuries. (Id., p. 36, ln. 19-21).

Additionally, throughout her deposition, Appellant did not critique the condition of the Pallet. Rather, Appellant simply took issue with the Pallet being in the aisle at all. (Diehl Depo II, p. 72, ln 2-3). Appellant stated that she did not see the Pallet, including the merchandise sitting atop the Pallet, until after she fell, even though she confirmed the Pallet contained merchandise stacked up to her hip or groin area. ((Id., p. 73, ln 6-14) Diehl Depo I, p. 35, ln 8-12). Rather, Appellant stated she was looking down at her feet while she walking in the Store. (Id., p. 72, ln 17-20). She agreed that she would have seen the Pallet had she been looking up and she agreed that it is normal for people to look where they are walking. (Diehl Depo I, p. 37, ln 23-25, Diehl Depo II, p. 74, ln 24 – p. 75, ln 1). Further, Appellant agreed that she looks up more than ninety percent (90%) of the time when walking. (Diehl Depo II, p. 74, ln 18-23).

Also in her deposition, Appellant stated that she did not try to walk around the Pallet. (Diehl Depo II, p. 72, ln 21-23). Appellant stated she has seen similar pallets in Home Depot and other competitors stores (i.e. Lowes) prior to this Incident, and she agreed that she was aware these types of pallets are out on display in these stores (Id., p. 36, ln 22 – p. 37, ln 2).

Appellant's Counsel attempted to minimize his client's testimony at the Hearing, claiming the trial court needed to take Appellant's deposition "with a grain of salt" because "she contradicts

herself many times" throughout her depositions. (Motion for Summary Judgment Transcript, dated February 27, 2025, p. 20, ln. 24 – p. 21, ln. 7). Additionally, instead of relying on his own client's testimony, Appellant Counsel relied exclusively on the Affidavit of Andrew Edward McCue ("McCue"), another patron at the store at both the Hearing and in his Memorandum in Opposition to Home Depot's Motion for Summary Judgment. (See generally Mtn for Summary Judgment Transcript).

McCue's Affidavit, produced well after the close of discovery, stated that he was in front of Appellant at the time of the Incident. (See Affidavit of Edward Andrew McCue, dated December 12, 2024, ¶ 6). Also in his Affidavit, McCue stated that merchandise was hanging off of the Pallet by and "sticking out into the walking path about 4"-6" and that is what caused [Appellant] to fall." (Id., ¶ 8).

During McCue's deposition, McCue stated the Pallet had merchandise for sale and almost all merchandise had been purchased. (Deposition Transcript of Edward Andrew McCue, dated February 20, 2025, p. 21, ln 25 – p. 22, ln 1; p. 48, ln 22 – p. 49, ln 1). McCue confirmed that the Pallet was not messy or distorted. (Id., p. 49, ln 5-6). McCue also confirmed that it is normal for Home Depot to sell merchandise on pallets in the middle of the aisles, as was the case on the date of the Incident, and he confirmed there was a sign marketing the merchandise for sale, drawing further attention to the Pallet (Id. p. 21, ln 5-14; 49, ln 7-14, p. 22, ln 3-5). Further, McCue confirmed that there was an unobstructed view of the Pallet immediately upon entry of the store. (Id., p. 20, ln 7-14; p. 49, ln 21-23).

STANDARD OF REVIEW

In reviewing a trial court's granting of summary judgment, this Court must apply the same standard of review as the trial court did under Rule 56, SCRCP. See Cowburn v. Leventis, 366 S.C. 20, 30, 619 S.E.2d 437, 443 (Ct. App. 2005).

"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); Rule 56, SCRCP. "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." Id. "However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." Town of Hollywood v. Floyd, 403 S.C. 468, 477, 744 S.E.2d 161, 166 (2013).

"When opposing a summary judgment motion, the nonmoving party must do more than 'simply show that there is a metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial.'" Russell v. Wachovia Bank, N.A., 353 S.C. 208, 220, 578 S.E.2d 329, 335 (2003) (quoting Baughman v. American Telephone & Telegraph Co., 306 S.C. 101 S.C., 107 410 S.E.2d 537, 545 (1991)) (emphasis added).

"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 essential element to the party's case and on which that party will bear the burden of proof at trial." Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation, 337 S.C. 476, 485, 523 S.E.2d 795, 800 (Ct. App. 1999). A complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts

immaterial. See Gauld v. O'Shaugnessy Realty Co., 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008).

"It is a fundamental rule that 'if the plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the [trial] court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law.'" Higgins v. Medical University of South Carolina, 326 S.C. 592, 598, 486 S.E.2d 269, 272 (Ct. App. 1997).

ARGUMENT

Appellant has abandoned the first two grounds listed in her Notice of Appeal by failing to provide any arguments past the initial conclusory statement in its Notice of Appeal. For this reason, the trial court's Order granting summary judgment was appropriate.

As to Appellant's remaining issue on appeal, the underlying trial court's grant of summary judgment was proper and should be affirmed. Throughout the course of discovery, Appellant failed to show genuine issues of material facts on multiple elements required to make her claim viable. Appellant failed to show that the Pallet constituted a dangerous condition. Appellant then failed to show that Home Depot had knowledge of the dangerous condition. Appellant and McCue's testimony then illustrated that the condition of the Pallet was open and obvious; that Appellant should have seen the Pallet; and that Appellant knew Home Depot, generally and in this specific Store, marketed materials on pallets in the aisle. For these reasons, the trial court's Order granting summary judgment was appropriate.

I. Appellant abandoned her first two (2) grounds stated in Appellant's Notice of Appeal.

Appellant's Notice of Appeal states that Appellant is appealing Judge Fant's Order with respect to "granting of Charles Hillard's Motion to Dismiss" and "granting of Defendants' Motion

to Strike Plaintiff/Appellant's Motion Amend Complaint, or in the alternative, Denial of Plaintiff/Appellant's Motion to Amend Complaint."

Appellant did not argue these grounds for appeal in Appellant's Initial Brief. Therefore, these issues on appeal must be deemed as abandoned. See Wright v. Craft, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006) ("An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court.") (quoting Fields v. Melrose Ltd. P'ship, 312 S.C. 102, 106, 439 S.E.2d 283, 284 (Ct. App. 1993)).

II. The Circuit Court properly granted summary judgment in its April 17, 2025 Order.

As an initial matter, Appellant attempted to create a genuine issue of material fact through confusion of which conflicting version of testimony is correct. Appellant—as admitted by Appellant's Counsel during the Hearing—provided testimony in her second deposition that directly conflicted with her first deposition. Likewise, McCue provided testimony that directly conflicted with McCue's Affidavit as it related to the condition of the Pallet and the actual cause of the fall. The trial court correctly understood that a party cannot attempt to survive summary judgment by submitting contradicting testimony of the same witness. See Barwick v. Celotex Corp., 736 F.2d 946, 960 (4th Cir. 1984) ("A genuine issue of material fact is not created where the only issue of fact is to determine which of the two conflicting versions of the plaintiff's testimony is correct.").

a. The Circuit Court correctly found the wooden pallet was not a dangerous condition.

In order to proceed on a claim for negligence rooted in premises liability theory, "[a]n essential element in a cause of action for negligence is the existence of a legal duty owed by the defendant to the plaintiff. Without a duty, there is no actionable negligence." Bishop v. South

Carolina Dep't of Mental Health, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998). If there is no duty, then the defendant in a negligence action is entitle to summary judgment as a matter of law." Singleton v. Sherer, 377 S.C. 185, 200, 659 S.E.2d 196, 204 (Ct. App. 2008) (citations omitted).

"A merchant **is not** an insurer of the safety of his customer but owes only the duty of exercising ordinary care to keep the premises in reasonably safe condition." Garvin v. Bi-Lo, Inc., 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001) (emphasis added). It is well established in South Carolina that a customer who seeks to recover for injuries caused by a dangerous or defective condition on a storekeeper's premises "must show either (1) that the injury was caused by a specific act of the defendant which created the dangerous condition; or (2) that the defendant had actual or constructive knowledge of the dangerous condition and failed to remedy it." Wintersteen v. Food Lion, Inc., 344 S.C. 32, 35, 542 S.E.2d 728, 729 (2001).

In Garvin, a customer ("Customer") entered a store ("Store") and saw canned items (the "Cans) stacked inside boxes (the "Boxes"), with the tops of the Boxes cut off, displayed in an aisle for sale. Id. at 628. Customer retrieved and placed multiple Cans in her shopping cart. Id. Before Customer could retrieve additional Cans, approximately fifteen (15) or so Cans struck Customer in the face. Id. Customer argued that the Store had created a dangerous condition. Id. The Store was granted summary judgment on the basis that the Store a) lacked notice of any alleged issue; and b) that there was no evidence that the Store created a dangerous condition. Id.

The Supreme Court of South Carolina held that summary judgment by the trial court was appropriate. Id. Customer failed to present any evidence that the Boxes were a dangerous condition. Id. Customer further failed to present any evidence that, even if the Boxes and Cans were a dangerous condition, the Store was on notice of the dangerous condition. Id. The Supreme Court of South Carolina found that, "[t]o accept [Customer's] contention would render [the Store]

an insurer of its customers' safety. This is **simply not the law in South Carolina.**" Id. at 629 (citing Felder v. K-Mart, 297 S.C. 446, 377 S.E.2d 332 (1989) (emphasis added).

Similar to Garvin, Appellant's testimony fails to offer any evidence on how the Pallet was a dangerous condition. Appellant did not offer any testimony to illustrate the Pallet was dangerous due to materials on top of the Pallet being stacked or kept haphazardly. (Diehl Depo I, p. 35, ln 8-12). Rather, Appellant argued that the sheer existence of the Pallet, in and of itself, was dangerous because it was in an aisle. (Diehl Depo II, p. 72, ln 2-3).

In an attempt to create a genuine issue of material fact, an affidavit, issued by McCue outside the time allotted for discovery, was produced. McCue swore under oath that the merchandise was hanging off of the Pallet, causing Appellant to fall. (McCue Aff., ¶ 8). When deposed, McCue backtracked, stating that the Pallet was essentially empty, not overflowing with merchandise, to the extent that McCue could see the Store's floor beneath the Pallet. (McCue Depo., p. 48, ln 22 – p. 49, ln 11). Diehl and McCue's depositions do not illustrate that the Pallet was broken, messy, or in need of repair.

Appellant's theory of liability is weaker than those contained in Garvin. In this instance, Appellant has not produced any evidence that the Pallet, unlike falling merchandise in Gavin, caused her injuries. Rather, the only way Appellant could have been injured is for Appellant to walk into the Pallet—a stationary object—which Appellant agrees is how the Incident occurred. (Diehl Depo II, p. 71, ln 20-22).

Appellant is asking the Court to overturn longstanding South Carolina law and render all conditions within a store dangerous. This, in turn, would make Respondents the insurer of Appellant. As the Supreme Court of South Carolina previously held, "this is simply not the law in South Carolina." Garvin, 343 S.C. at 629, 541 S.E.2d at 833 (2001). Without the Pallet being a

dangerous condition, Appellant fails to meet the duty element as a matter of law and the trial court's order granting summary judgment must be affirmed.

b. Appellant failed to provide any evidence that Home Depot had notice of the dangerous condition.

If a condition is not inherently dangerous, then a plaintiff must illustrate that the defendant had actual or constructive knowledge of and failed to remedy the dangerous condition. See Legette v. Piggly-Wiggly, Inc., 368 S.C. 576, 579, 629 S.E.2d 375, 376-77 (Ct. App. 2006). A merchant is chargeable only with actual knowledge or with knowledge that he should have known by the exercise of reasonable care. See Darter v. Greenville Cmty. Hotel, 194 F. Supp. 642, 645 (D.S.C. 1961) (The Court held that a motel owner was not liable for a woman being scalded by hot water in her bath. Further, the Court opined that "to hold [the motel] responsible for this unfortunate occurrence would be to hold it an insurer. Under South Carolina law the [motel] was not an insurer."). In the underlying litigation, Appellant failed to produce any evidence that Home Depot had knowledge of the dangerous condition purported to exist.

Through one iteration of McCue's testimony, Appellant's Counsel argues that the Pallet was protruding into the aisle more than other pallets lined up directly behind the Pallet. (McCue Depo, p. 28, ln 9-10). McCue stated that the Pallet was largely empty, illustrating that customers had taken the inventory from the Pallet. (Id. p. 21, ln 25 – p. 22, ln 1). There is reason to believe that, if this Pallet was off-center, the Pallet could have shifted throughout the day.

Appellant did not depose Home Depot. Appellant does not know if this condition is different than the condition of the Pallet at the time of the Incident. There is no evidence that the Pallet caused injuries to any other customers on the date of the Incident. There was no reason Home Depot should have or could have anticipated any injuries or incidents arising from the Pallet as Plaintiff cannot deny that other customers traversed the area without any issues. Therefore,

similar to Darter, Appellant cannot maintain that Home Depot was on notice of any dangerous conditions. Without illustrating that Respondents knew or should have known of a dangerous condition, Appellant fails to meet the duty element as a matter of law and the trial court's order granting summary judgment must be affirmed.

c. Appellant's testimony illustrates that any purported condition was open and obvious.

The trial court determined that the Pallet, even if dangerous, was an open and obvious condition that Appellant was in the best position to appreciate. Landowners owe a duty to warn their invitees of latent dangers to which the owner is aware. Larimore v. Carolina Power & Light, 340 S.C. 438, 445, 531 S.E.2D 535, 538 (Ct. App. 2000). However, the duty to warn ceases to exist when the condition is open and obvious. Callender v. Charleston Doughnut Corp., 305 S.C. 123, 126, 406 S.E.2d 361, 362 (1991); see also Sides v. Greenville Hosp. Sys., 362 S.C. 250, 256, 607 S.E.2d 362, 365 (Ct. App. 2004) (Holding that "[a] property owner generally does not have a duty to warn others of open and obvious conditions . . ..").

McCue stated that the Pallet was immediately visible from more than fifty (50) feet. (McCue Depo, p. 20, ln 7-12; p. 49, ln 21-23). McCue further testified that there was nothing obstructing the view of the Pallet. (Id. p. 20, ln 7-14). Appellant agreed that she would have seen the Pallet if not for Appellant looking down at her own feet. (Diehl Depo I p. 37, ln 23-25). Thus, Appellant would have noted the condition of said Pallet if Appellant was looking where she was walking.

Appellant's Counsel attempts to argue that this case falls under an exception to the "open and obvious" rule. An exception to the "open and obvious" rule only exists should the owner have reason to anticipate a customer will suffer a specific harm, and it is the burden of the plaintiff to show that this exception applies. See Garvin, 343 S.C. at 628-29, 541 S.E.2d at 833. However, this

"reasonably anticipated harm" exception is inapplicable under the evidence presented before this Court.

Appellant's Counsel attempts to argue that an exception to the "open and obvious" rule applies because Home Depot should have anticipated this specific harm from the condition created by the Pallet. Despite bearing the burden to show the exception applies, Appellant's Counsel's rhetoric consists of no evidentiary backing, as Appellant's Counsel did not depose Home Depot during the course of the underlying litigation. Appellant's Counsel can only make conclusory statements as to what Home Depot should and should not have anticipated.

Appellant's Counsel's rhetoric is undone by Appellant and McCue's testimony. According to both Appellant and McCue, it is a normal business practice for merchandise to be sold on Pallets. (Id. p. 36, ln 22-24; McCue Depo p. 49, ln 7-14). Thus, Home Depot should expect customers, such as Appellant, to be looking in the aisle for the Pallet containing merchandise. Home Depot would have anticipated that Appellant would have seen the Pallet from fifty feet away, as McCue testified he did. (McCue Depo p. 20, ln 7-12). Based on the testimony and evidence before the Court, Home Depot could not have anticipated this harm. Thus, Appellant fails to meet the breach of duty element as a matter of law, as the condition was open and obvious. Thus,the trial court's order granting summary judgment must be affirmed.

d. The trial court correctly determined that Appellant's own negligence barred Appellant's claim

In South Carolina, "[a] plaintiff in a negligence action may recover damages if his or her own negligence is not greater than that of the defendant." Ross v. Paddy, 532 S.E.2d 612, 614 (S.C. Ct. App. 2000). South Carolina courts have held no liability exists "for injuries resulting from dangers that were obvious or that should have been observed in the exercise of reasonable

care." Sides v. Greenville Hosp. Sys., 362 S.C. 250, 256, 607 S.E.2d 362, 365 (Ct. App. 2004) (citing Larimore v. Carolina Power & Light, 340 S.C. 438, 531 S.E.2d 535 (Ct. App. 2000)).

In Cerny v. Columbia Sussex Mgmt., the Horry County Circuit Court held that a change in elevation to an outdoor shower deck was a condition that a person should have discovered by reasonable care. Cerny v. Columbia Sussex Mgmt., 2019 S.C. C.P. LEXIS 10173, C/A No. 2018-CP-26-02552 (South Carolina Court of Common Pleas, June 14, 2019). Specifically, the Court concluded that a person should have seen the change in elevation because "The exercise of reasonable care involves a person watching where he or she is walking." Cerny v. Columbia Sussex Mgmt. at *6.

Appellant stated she knew that Home Depot had merchandise pallets on display throughout the Store. (Diehl Depo I, p. 36, ln 22-24). Despite knowing Pallets were out on display, Appellant stated she walked throughout the Store while looking at her feet. (Diehl Depo II, p. 72, ln 17-20). Appellant stated that this was unusual in that she looks where she is walking more than ninety percent (90%) of the time when walking. (Id. p. 74, ln 18-23). Appellant agreed that it is normal for people to look where they are walking. (Id., p. 74, ln 24 – p. 75, ln 1). Finally, Appellant acknowledged had she been looking where she was walking, as she normally does and as a reasonable person does, she would have seen the Pallet. (Diehl Depo I, p. 37, ln 23-25). Thus, similar to Cenry, Appellant's own testimony and acknowledgment of her failure to use reasonable care that she utilizes ninety percent (90%) of the time while traversing the Store served as an evidentiary basis that Appellant's negligence was greater than Respondents.

CONCLUSION

For the reasons stated herein, the Order of the Honorable Patrick C. Fant, III, dated April 17, 2025, granting summary judgment in favor of Respondents should be affirmed.

Appellant has abandoned her first two grounds in Appellant's Notice of Appeal by failing to argue these two (2) grounds.

Appellant failed to raise a genuine issue of material fact as to a duty owed by Respondents in that the Pallet, a stationary object, was not a dangerous condition. Thus, the trial court properly granted summary judgment to Respondents in that no duty was owed to Appellant.

Should this Court find that a dangerous condition existed, Appellant failed to produce any evidence that Respondents were on notice of any dangerous condition. Thus, the trial court properly granted summary judgment to Respondents in that no duty owed to Appellant was breached.

Appellant failed to dispute that the condition of the Pallet was open and obvious. Thus, the trial court properly granted summary judgment to Respondents as Appellant's claim was barred by the condition being "open and obvious."

Appellant admitted that she would have seen the Pallet had Appellant been walking in a manner consistent with how she walks more than ninety percent (90%) of the time and how Appellant maintained other individuals should walk. Thus, the trial court properly granted summary judgment to Respondents in that Appellant's claims were barred.

Respectfully Submitted,

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