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 REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

1.

The circuit court erred in granting summary judgment.

Physical Injury

In Mrs. Crump's opening brief, undersigned pointed out that the defendants and the circuit court relied primarily on this Court's unpublished decision in *K.S. v. Richland Sch. Dist. Two*, Op. No. 2022-UP-312 (S.C. Ct. App. filed July 27, 2022) (*Seeger I*) in support of their erroneous view that Mrs. Crump failed to show physical manifestations of her emotional distress sufficient to satisfy the damages element of her negligence cause of action. Undersigned also pointed out that the Supreme Court granted Seeger's cert petition and held oral argument prior to the circuit court's order granting summary judgment in this case. BOA, 8 n.3.

The Supreme Court reversed this Court's *Seeger I* 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) (*Seeger II*). The Supreme Court first noted that Seeger's claim was not for negligent infliction of emotional distress and that "[t]he cause of action for the negligent infliction of emotional distress is limited to the bystander context." *Id*. at 24 (citing *Kinard v. Augusta Sash & Door Co.*, 286 S.C. 579, 582-83, 336 S.E.2d 465, 467 (1985)). The Court explained though that in a negligence case, "South Carolina law has long allowed a negligence plaintiff to recover for emotional harm in cases where the plaintiff has also suffered physical harm." *Id*. The Court noted that "physical harm may take one of two forms: physical harm caused by physical impact from an external or outside force, or physical harm consisting of the *physical manifestations caused by emotional distress*." *Id*. (emphasis added)

The Supreme Court in *Seeger II* ultimately concluded that Seeger fell into the first category of physical harm—physical impact from an external force—and therefore did not reach the question presented in Mrs. Crump's case. However, the Supreme Court acknowledged that the theory that a plaintiff may recover in a negligence action for physical manifestations of emotional distress is rooted in numerous cases including *Mack v. South Bound R. Co.*, 52 S.C. 323, 29 S.E. 905 (1898), *Spaugh v. Atl. Coast Line R. Co.*, 158 S.C. 25, 155 S.E. 145 (1930), *Padgett v. Colonial Wholesale Distrib. Co.*, 232 S.C. 593, 103 S.E.2d 265 (1958), *Bray v. Marathon Corp.*, 356 S.C. 111, 588 S.E.2d 93 (2003), and *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 650 S.E.2d 68 (2007). The Supreme Court noted that its decision in *Seeger II* "does not affect these cases." *Id*. at 24-25. Thus, despite the Defendants' continued complaint that the cases relied on by Mrs. Crump are "old," Defendants do not cite to *Seeger II* in which the Supreme Court acknowledged the long history of South Carolina allowing a plaintiff to recover in a negligence case for physical manifestations of emotional trauma.

The Defendants instead point to the Supreme Court's decision in *Dooley v. Richland Mem'l Hosp.*, 283 S.C. 372, 375, 322 S.E.2d 669, 671 (1984) as one example of an insufficient factual basis to support a claim under the physical manifestation of emotional trauma theory. BOR, 9-10. *Dooley* is easily distinguishable from Mrs. Crump's situation. The plaintiffs in *Dooley* "received *no medical treatment* and simply took valium that had been prescribed for Ms. Dooley *prior to this incident*." *Id*. (emphasis added). Mrs. Crump was diagnosed with a debilitating mental disorder as a direct consequence of her being trapped in the elevator. She doesn't suffer simply from nervousness. She has post-traumatic stress disorder and suffers from frequent, severe and debilitating panic attacks. R. 149. Her injuries are far more severe than anything referenced in *Dooley*.

Respectfully, the Defendants continue to conflate the common understanding of the term "physical injury" with the separate and distinct legal definition as articulated in *Seeger II* and the numerous cases before it. Defendants claim that because Mrs. Crump and Dr. Hester (her treating physician) both testified that Mrs. Crump wasn't physically injured, that Mrs. Crump was not injured *as a legal matter*. BOR, 11. However, Mrs. Crump and Dr. Hester's testimony can easily be explained by their not understanding that the legal definition of physical injury includes physical manifestations of emotional trauma.

Defendants attempt to couch Mrs. Crump and Dr. Hester's testimony that she wasn't "physically injured" as a legal conclusion and ignore their testimony about the physical manifestations of Mrs. Crump's emotional trauma. For instance, Dr. Hester confirmed that when she saw Mrs. Crump after she had been trapped in the elevator, Mrs. Crump was obviously shaken, had pressured speech, and was suffering from insomnia. Dr. Hester prescribed Mrs. Crump with Xanax as a result. R. 133, l. 8 – 137, l. 7. Despite taking the prescribed Xanax, Mrs. Crump continued to experience insomnia because she could hear the constant sound of the elevator motor running in her head. Crump Depo. R. 65, ll. 15 – 21. Mrs. Crump returned to Dr. Hester two more times with worsening symptoms. R. 136, l. 17 – 137, l. 7. Mrs. Crump and Dr. Hester's testimony confirm that Mrs. Crump suffered from a physical injury under the legal definition of that term. *See Seeger II* at 24 (defining "physical harm" as including "physical manifestations caused by emotional distress").

Ganzy Affidavit

Defendants argue that Ganzy's affidavit does not "provide evidence for actionable damages" because "panic attacks and heightened nervousness" are not actionable. BOR, 12.

Defendants further argue that Ganzy's affidavit fails to establish that Mrs. Crump's injuries were caused by her being stuck in an elevator. Both arguments are meritless.

In arguing that Ganzy's affidavit fails to establish that Mrs. Crump was injured, not once do Defendants acknowledge that Ganzy diagnosed Mrs. Crump with post-traumatic stress disorder. Defendants also claim that Ganzy's affidavit doesn't contain an opinion that Mrs. Crump's panic attacks prevent her from participating in daily activities even though Ganzy's affidavit states exactly that: "These attacks have become frequent and severe, significantly affecting Mrs. Crump's daily functioning and quality of life." R. 150.

Defendants also claim that there is "no evidence" that Mrs. Crump would require medical treatment. BOR, 13. Again, this claim is flatly refuted by Ganzy's affidavit. Ganzy personally observed Mrs. Crump hyperventilating, sweating profusely, and visibly trembling. *Id*. Ganzy further opined that her observations of Mrs. Crump "provide clear evidence of the severe impact and debilitating nature of her panic disorder," and that "[t]his underscores the necessity for appropriate therapeutic interventions and accommodations to support Mrs. Crump's mental health and well-being." R. 151.

Defendants' attempt to downplay Mrs. Crump's physical suffering is not surprising and *might* even make for a decent argument to a jury. However, this case is before this Court on the granting of a motion for summary judgment. All evidence in the record must be viewed in the light most favorable to Mrs. Crump. Defendants have made every effort to portray the facts in the light most favorable to them. This Court however is bound to take a different view of the evidence. *See USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008) ("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").

As to causation, Defendants ignore the statement in Ms. Ganzy's affidavit which describes the "trigger" for Mrs. Crump's post-traumatic stress disorder. Specifically, Ganzy said that Mrs. Crump being trapped in the elevator "served as the initial traumatic trigger for her panic disorder." R. 150. Ganzy also indicated that Mrs. Crump's physical symptoms followed the "traumatic incident of being trapped in an elevator." R. 149. Ganzy also detailed her personal observations of Mrs. Crump's reaction to the sight of the elevator in Ganzy's office including that she "attempted to avoid the elevator, [and] show[ed] agitation and restlessness." R. 150. When viewed in the light most favorable to Mrs. Crump, the evidence easily supports the conclusion that Mrs. Crump's PTSD was caused by her being trapped in the elevator.

Public Policy

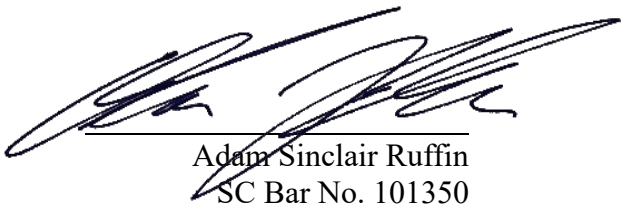
Defendants argue that allowing Mrs. Crump's lawsuit against them to go forward "will open Pandora's box" because there are many Americans who suffer from "anxiety disorder[s]." BOR, 16. Defendants point to the National Alliance on Mental Illness in asserting that 19.1 percent of the U.S. population suffers from an anxiety disorder. Interestingly, Defendants neglect to point out the Alliance's statistics regarding post-traumatic stress disorder—the condition that Mrs. Crump was actually diagnosed with. According to the Alliance, only 3.6 percent of American adults suffer from PTSD. *Posttraumatic Stress Disorder*, National Alliance on Mental Illness, https://www.nami.org/about-mental-illness/mental-health-conditions/posttraumatic-stress-disorder/ (last reviewed Dec. 2017).

Certainly, some line must be drawn in negligence cases involving claims for emotional distress. And thankfully, our Supreme Court has drawn that line. Most recently in *Seeger II* where

the Court reaffirmed the long line of cases beginning with *Mack*. *Seeger II* at 24 ("physical harm" includes "physical manifestations caused by emotional distress"). Considering that South Carolina has permitted the kind of recovery that Mrs. Crump seeks for more than one hundred years, it's hard to imagine how letting this case survive summary judgment would suddenly lead to an influx of frivolous lawsuits. While it may be beneficial to the bench and bar for our Supreme Court to draw a more precise line than "physical manifestations," Mrs. Crump's injuries—PTSD characterized by frequent, severe, and debilitating panic attacks that significantly affect her daily life—would easily pass any line that could be drawn.

CONCLUSION

For the reasons argued in Mrs. Crump's opening brief, and this reply brief, 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.