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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Court of Common Pleas

Martha Rivers, Circuit Court Judge

Case No.: 2025-000208

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, Estate of Travis Robinson are the.....Respondents,

RESPONDENTS' FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. THE ISSUES RAISED ARE NOT PRESERVED FOR APPELLATE REVIEW AND THE APPEAL SHOULD BE DISMISSED.
 - A. The arguments that the trial judge erroneously charged the jury are not preserved for appellate review.
 - B. The argument that a special relationship existed between Ms. Williams and the defendants was a jury question and any attempt to argue that a special relationship existed as a matter of law for the purpose of this appeal is not preserved for appellate review.
- II. SOUTH CAROLINA DOES NOT RECOGNIZE A DUTY TO RESCUE UNDER THE FACTS PRESENTED AT TRIAL.

STATEMENT OF THE CASE

Respondents Estate of Diane Warren (hereinafter “Diane”), Estate of Calvin Warren (hereinafter “Calvin”) and Estate of Travis Robinson (hereinafter “Travis”) are satisfied with the Statement of the Case provided by Appellant Estate of Helen Williams (hereinafter “Ms. Williams”).

STANDARD OF REVIEW

Diane, Calvin and Travis are satisfied with the Standard of Review provided by Ms. Williams.

ARGUMENTS

I. THE ISSUES RAISED ARE NOT PRESERVED FOR APPELLATE REVIEW AND THE APPEAL SHOULD BE DISMISSED.

A. The arguments that the trial judge erroneously charged the jury are not preserved for appellate review.

Rule 51, SCRPC, provides the following:

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds for his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

However, this Court reminded the bar that Rule 51, SCRPC, “only requires an objection on the record, opportunity for discussion, and a specific ruling by the trial court on the jury charge at issue.” *Dixon v. Ford*, 362 S.C. 614, 625, 608 S.E.2d 879, 885 (Ct. App. 2005) citing *Keaton ex rel. Foster v. Greenville Hospital System*, 334 S.C. 488, 494-95, 514 S.E.2d 570, 573-74 (1999)

At the conclusion of Ms. Williams' case, the trial judge instructed counsel to provide any cases for the trial court to consider for the directed verdict motion and jury charges by 5:00 pm. [R. p, 259, line 24-p. 260, line 9]. Additionally, the trial judge informed counsel that she would provide the jury charges she had to the parties by the same 5:00 pm deadline. [R. p. 261, lines 8-15].

The trial judge stated court would reconvene the next day at 11:00 am., at which time directed verdict motions could be made, and the potential jury charges would be taken up. [R. p. 261, lines 2-5]. The jury would return at 1:00 pm at which time counsel would make closing arguments. [R. p. 261, lines 5-7].

The court reconvened on January 9th at which time the trial judge stated she had circulated the jury charges and that she wanted to hear any motions that could be presented at the conclusion of Ms. Williams' case "with the understanding that those are the charges [she] was looking at." [R. p. 262, line 22-p. 263, line 6].

The undersigned then made a directed verdict motion. [R. p. 263, lines 12-15]. As part of the directed verdict motion, the undersigned discussed the trial judge's jury charge concerning whether a special relationship existed between Ms. Williams and each of the defendants. [R. p. 265, lines 12-16].

First, the undersigned conceded there was a special relationship between Ms. Williams and her daughter, Dianne based on the agreement between Diane and Gloria Allen's (hereinafter "Ms. Allen") agreement as to how they would take care of Ms. Williams after her stroke. The undersigned conceded that the special relationship between

Ms. Williams and Diane would relate to Diane's duty concerning the care and keeping of Ms. Williams.¹ [R. p. 265, line 17-p. 266, line 11].

As to Calvin, it was argued that the only testimony was he would help move her when Ms. Williams came to the subject home, that he was trained to get her out of the car or in and out of Ms. Williams' wheelchair or bed, but there was no evidence giving rise to his acceptance of an affirmative duty to provide care and keeping for a disabled person. [R. p. 266, lines 12-21]. The undersigned argued that absent a special relationship, the general law applicable to a licensee would apply. [R. p. 266, lines 22-25].

As to Travis, it was also argued the only testimony was he sometimes assisted with helping move Ms. Williams, that he received training as to how to lift her, and that he sometimes would provide Ms. Williams her medication while she was at the subject property. It was argued that Travis was providing gratuitous services either as Ms. Williams' grandson or because he was Diane's son and living at the subject home, but there was no evidence he undertook to provide any services for Ms. Williams that Ms. Allen and Diane specifically agreed upon. [R. p. 277, line 20-p. 278, line 7].

As to whether any of the defendants should have "rescued" Ms. Williams, it was argued that there is no duty to rescue someone in South Carolina. [R. p. 278, lines 15-16; p. 279, line 13-p. 280, line 1]. Regardless, it was argued that it was impossible for Dianne

¹ The undersigned opined that Diane's legal duty to Ms. Williams based upon their special relationship was set forth in *Madison v. Babcock* cite, which stated under the common law, a private person which accepts the responsibility of providing care or services to a disabled client has a duty to exercise reasonable care in supervising the client and providing appropriate care and treatment to the client. [R. p. 270, line 15-p. 271, line 7]. It was argued Diane was entitled to a directed verdict because the duty was limited to providing reasonable supervision and care to Ms. Williams and the duty did not extend to the allegations of removing a fire hazard from the garage. [R. p. 271, line 8-p. 272, line 17; p. 280, lines 2-15].

or Calvin to rescue Ms. Williams because both died in the house as a result of the fire and, therefore, it was impossible for either of them to have rescued Ms. Williams. [R. p. 277, lines 11-19].

As to whether Calvin should have rescued Ms. Williams, it was argued that at the summary judgment stage, Ms. Williams' counsel argued Calvin attempted to get his keys to the house, which were in his vehicle. It was argued that by trying to get the keys to gain access to the home, he commenced a rescue and then had a duty to see that rescue through. However, the undersigned argued first, there was no duty to rescue and second, the testimony was once Travis got to the house keys in his vehicle, the fire prevented him from accessing the door, so any rescue was also impossible. [R. p. 278, line 15-p. 279, line 5; p. 280, lines 2-15; p. 281, line 25-p. 282, line 5].

At the conclusion of the undersigned's arguments in support of a directed verdict, the trial judge set forth the following:

THE COURT: Well, and for the record, as we discussed late in the afternoon, I asked counsel to send me any of their proposals and that I would impose the same timeline on myself. So probably shortly before five o'clock, I sent what I thought could be potential jury charges to submit. I did not look at the Babcock case in that regard, so I'll take a while to look at Mr. Harte's response. Both counsel responded and I ask that we just have everything on the record here today for full argument, which is what we're doing now. We did not take up really the arguments of counsel and, certainly, no ruling by e-mail.

[R. p. 283, lines 7-22]. After which, the trial judge asked for arguments in response to the directed verdict motion.

Concerning whether a special relationship existed between Ms. Williams and Calvin, counsel argued that when Ms. Williams stayed at the subject home, that "the evidence is clear that everyone in that house performed care for Ms. Williams. When they do that, they have assumed the duty to exercise due care." [R. p. 288, lines 6-15]. Counsel

then argued, “[c]andidly, my position is that [Calvin] had a duty that – he and all of them had a duty to [Ms. Williams] at the very least as is owed to a licensee, but all three of them had a duty because they were occupants of the house. . . .” [R. p. 289, lines 7-11].

Counsel went on to state the well-established law concerning legal duties owed to a licensee as follows: “Now, I maintain that in addition to that, yes, [Calvin] did, by virtue of what he and his wife had taken on, he did indeed, have a duty to this lady arising from the understanding that had been reached with Ms. Allen.” The trial judge inquired as to what Calvin’s duty was. [R. 289, lines 15-20].

Counsel answered, having assumed the house with smoke detectors in place, he had a duty to maintain those smoke detectors, that he had a duty to use reasonable care to warn social guests/licensees of any concealed dangerous condition or activity known to the possessor or of any changes of the condition of the premises that might be dangerous and which the guests may not reasonably be expected to discover and the failure to maintain the smoke detectors was a change in condition in the premises that makes them more dangerous. [R. p. 289, line 21-p. 290, line 15].

Counsel also argued that the garage was filled with flammable material that was a dangerous condition maintained by all three defendants which constituted conducting activity on the land by which dangerous conditions were created. [R. p. 291, lines 4-20].

It was also argued that Travis was a “dangerous entity” because it was known he had a tendency to abuse alcohol and there was testimony that Diane would not let Travis around when he drank, but Diane let Travis stay in the house when Ms. Williams was there. [R. p. 292, line 21-p. 293, line 6]. Counsel also argued Diane had a duty to warn Ms. Williams, as a licensee, of the dangerous conditions in the garage. [R. p. 294, lines 11-19].

Finally, the trial judge asked counsel to address whether there was a duty to rescue.

In response, counsel set forth the following argument:

MR. HARTE: Well, it's difficult on -- it's not so difficult on Travis, and I'll tell you why in just a moment. But -- or offer to you why. The matter -- the thing about this situation is that -- here's the position I take. Given the fact that we have a law in this state that says no duty to warn, no duty to rescue absent one of the five conditions, one of them being a special relationship. I believe the law is that if you have an individual who is disabled, as Ms. Williams was, that that fact has to be taken into consideration when you define the duty that exist to where both is a licensee and then under the special relationship. And because merely shouting at her to tell her that there's a fire would be useless, logically, the only way that a person having the special relationship can discharge his duty is to rescue her. And the reality is, as I'll discuss with you in a moment, there was more likely than not ample opportunity to rescue her. But the bottom line is whether there's any duty to rescue her. And I maintain in deciding what the duty is, you have to take into consideration what the conditions were. And, of course, whenever someone undertakes a duty, they have the duty to exercise due care, which means if you know this lady is disabled and cannot save herself that you have a duty to -- since you have undertaken the duty, then you have a duty to exercise the opportunity to rescue.

[R. p. 296, line 8-p. 297, line 13].

The trial judge then asked counsel to address the motion as to punitive damages, to which counsel responded. [R. p. 297, lines 14-15]. At the conclusion of the arguments on punitive damages, counsel asked for a charge on voluntary intoxication, which the trial judge took under advisement. [R. p. 300, lines 9-14].

The trial judge then stated that she had directed her law clerk to look into the specific charge emailed by Ms. Williams' counsel regarding a special relationship based on the *Babcock* case, stating that defense counsel did not object to that charge. In response, the undersigned affirmed that there was no objection to charging that there is no general duty absent the five exceptions cited in the *Babcock* and other cases. The undersigned then requested that the common law duty for an undertaking caretaker discussed above be charged, to which the trial judge responded, "[o]kay." [R. p. 301, lines 6-20].

After discussing other charges not at issue in this appeal, the trial judge asked if there was anything else from the parties regarding the proposed charges. Ms. Williams' counsel had nothing to add. [R. p. 303, lines 6-8].

After further discussion on various charges as to damages, the trial judge denied the directed verdict motion. The trial judge then stated,

And I agree with Mr. Harte that whether a special relationship existed or other evidence as to Calvin and Travis and the duty that they may have undertaken is an issue to leave to the jury for them to determine as we will charge what the duty may be to her based upon that special relationship.

...

The jury is coming back at 1:00. I hope you can get something to eat or a snack or something, prepare for your closing. We'll continue to work on this and come back in. Mr. Harte, I have Plaintiff's request to charge number one, which is the Babcock. We have the voluntary drunkenness you talked about. We'll take that up after closing. And you, also, asked for what was your charge number seven, ability to pay. I'll look at that as well.

[R. p. 306, lines 14-19; p. 307, line 23-p. 308, line 5].

The trial was reconvened at 1:18 pm with closing arguments. [R. p. 308, line 11]. Ms. Williams' counsel argued in part that "if you have a special relationship with a guest, with that licensee, then you have a duty to warn and you have a duty to rescue that person." [R. p. 313, lines 10-14]. Counsel later argued that "if you find the facts demonstrate that there was as special relationship, that they did have a duty to warn, a duty to rescue and they did have a duty to take care, that the house was safe for them and for her, then you will find for the Plaintiff." [R. p. 318, lines 3-8].

At the conclusion of closing arguments, the trial judge excused the jury and provided counsel a printed copy of the revised jury charges for review. The trial judge then stated, "Mr. Harte, I see you sent at 10:44 this morning some additional charges. Two of those I had, I believe, but I want to make sure we don't have any other issues." The court then recessed to allow counsel to review the revised jury charges. [R. p. 354, lines 13-21].

After the recess, the trial judge inquired if there was anything in reference to the proposed jury charges. The only issues raised were pecuniary losses was included in the charge where the parties agreed there were no pecuniary losses, so that charge was deleted. A charge on punitive damages was repeated twice, so one was deleted. Finally, voluntarily drunkenness is not a defense was added. No other changes or objections were requested by the parties. [R. p. 354, line 23-p. 358, line 1].

After the trial judge reconvened, the jury was charged with the law. In pertinent part, the jury received the following charge:

Plaintiff, also, has alleged that one or more of the Defendants owed a duty to Ms. Williams due to a special relationship between her and the Defendants. A special relationship may be created when a defendant has the ability to monitor, supervise and control a person presenting a threat such that the defendant had a duty of notice of a threat from a person who injures another or whether as a special relationship with the victim such that the victim may require warning of the threat of danger of another.

If you find such a relationship existed, then you may determine that one or more of the Defendants owed a duty to warn Plaintiff of a known danger.

Under South Carolina law, there is no general duty to control the conduct of another or to warn a third person or potential victim of danger. There are five exceptions to this rule that there is no general duty to warn. Where the defendant has a special relationship to the victim, where the defendant has a special relationship to the injurer, the person doing the injury, where the defendant voluntarily undertakes a duty, where the defendant negligently or intentionally creates the risk and whether a statute imposes a duty upon the defendant.

Next, the Plaintiff must show that the Defendant or Defendants had actual or constructive notice of the unsafe condition. Constructive notice may be proven by showing that the unsafe condition had existed for a long enough time for the Defendant to have discovered and fixed it. Just because an unsafe condition existed, this is not enough in and of itself to show that the defendant had notice of an unsafe condition.

...

The defendant has a duty to warn a third person or potential victim of a danger where the defendant has a special relationship to the victim or whether defendant has a special relationship to the injurer.

When a party is in a position to monitor, supervise and control a person's conduct, a special relationship between the defendant may trigger a duty to warn potential victims of the danger posed by an individual. This special duty is limited to situations where the person under the defendant's control has made a specific threat directed at a specific individual, where the defendant voluntarily undertakes a duty or where the defendant negligently or intentionally creates a risk or where a statute imposes a duty. I believe we went over that.

And, please, pardon me, sometimes these charges, the statements of the law, there's elements that repeat each other several times. So I want to make sure -- and we will have an opportunity for the attorneys to review and talk to you further, if necessary.

Although a person is not required by law to act, if the person voluntarily undertakes an act, the person has the duty to use due care.

[R. p. 363, line 19-p. 365, line 22].

At the conclusion of the charge, the jury was excused and the trial judge asked if there were any objections to the charge. Ms. Williams' counsel responded and the following exchange took place:

THE COURT: I thought I struck out a repeat, but I think I found another repeat. Are there any objections to the charge to the jury?

MR. HARTE: I didn't notice it when we were talking before, but I did not hear a charge on negligence as a failure to exercise due care. That's the only thing. I just realized it as you were going through it. It may be sufficiently covered in the overall matter, but I just didn't hear a specific definition of what negligence is, just simple negligence.

THE COURT: Take a second, Mr. Harte, and look at the wrongful death portion and let's go through that. Because I do want to make sure. We talked about the duty. We talked about proximate cause and legal cause.

MR. HARTE: That's true. That all goes to the proximate cause and duty, but I just -- maybe -- I'm still having a problem being sure that they know what negligence is. It may be that you're satisfied it's covered -- you know what, it's not expressly stated, but I think it's covered. By the way the charge reads, I think it's sufficiently covered.

THE COURT: I want to make sure. I'm looking at the licensee discussion, we talked about that portion of it. In looking at it, are you satisfied, or you want me to take some time to go over this again?

MR. HARTE: No, I don't think you need to go over it again. I think it's sufficient. It's in there sufficiently, Your Honor. I'm not going to insist on a further charge.

MR. WLODARCZYK: Just renew the objection on the punitive charge, Judge. That's all.

THE COURT: And that is so noted, but it has been submitted.

[R. p. 376, line 10-p. 377, line 18].

The jury began its deliberation, and during the deliberation sent a question to the trial judge. The following exchange took place:

(WHEREUPON, the jury enters the courtroom at 5:31 p.m.)

THE COURT: Okay, Mr. Foreman, I have received your question, which states, Can we have a copy of what the Judge read? If not, can we have the definition of negligence? You are not required to study the law or obtain a law degree to do your duty here as a jury. And I can assure you, you have all of the necessary information to do the task that's been given to you.

I will read to you the following: Negligence is defined in the law as the absence of due care, the want or lack of due care or ordinary care. The word carelessness conveys the same idea as negligence. Those two terms are synonymous. Negligence is the breach of a duty of care owed to the Plaintiff by the Defendant. Negligence is the failure by omission or commission to exercise due care of a person of ordinary -- that a person of ordinary reason and prudence would exercise in the same or similar circumstances. It is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances.

I believe that answers your question. I'm going to ask you to return to your jury room.

[R. p. 379, line 18-p. 380, line 15].

After addressing the jury, the trial judge asked counsel if there were any objections to the statements made by the trial judge to the jury. There were no objections by either party. [R. p. 381, lines 7-16]

The jury returned a verdict in favor of Diane, Calvin, and Travis. No post-trial motions were made. [R. p. 385, line 11-p. 386, line 12; p. 387, line 23-p. 388, line 1].

On appeal, Ms. Williams argues the trial judge erred in failing to charge the jury that defendants had a legal duty to rescue Ms. Williams based upon a special relationship. [App. Br. pp. 24-25]. Additionally, when the trial judge re-charged the jury on negligence, Ms. Williams alleges the trial judge erred in failing to “further explain the duty of care and did not correct its earlier erroneous instruction on the difference between the duty owed by a possessor of land and a licensee as opposed to the duty owed by a defendant who has a special relationship with the victim.” [App. Br. p. 27].

As shown from the trial transcript excerpts above, Ms. Williams’ counsel never objected to the proposed jury charges submitted by the trial judge the evening before the directed verdict motion and charge conference took place, even though those charges did not contain a duty to rescue charge. Counsel never made a formal request to include a jury charge stating that if the jury found a special relationship existed, then a legal duty existed for the defendant with a special relationship to rescue Ms. Williams.

When the revised jury charges were provided to counsel prior to charging the jury, which did not contain a duty to rescue charge, counsel never objected that the proposed charge did not instruct the jury that if it found a special relationship existed, then a legal duty existed for the defendant with a special relationship to rescue Ms. Williams.

After the jury was charged but prior to the start of the deliberation, counsel was given the opportunity to raise any objection to the charges. Counsel never objected that

the proposed charge did not instruct the jury that if it found a special relationship existed, then a legal duty existed for the defendant with a special relationship to rescue Ms. Williams.

Finally, when the trial judge re-charged the jury on negligence and counsel was given an opportunity to object to the statements made by the trial judge to the jury, no objection was made and no request was made to instruct the jury that if it found a special relationship existed, then a legal duty existed for the defendant with a special relationship to rescue Ms. Williams.

Based upon well-established law, (1) the failure to make an objection to the proposed jury charges, (2) the failure to request a charge that if the jury found a special relationship existed, then a legal duty existed for the defendant with a special relationship to rescue Ms. Williams, and (3) the failure to secure a ruling from the trial judge on the issue of whether a duty to rescue should or should not be charged fails to preserve the issue for appellate review and, therefore, the appeal should be dismissed. *Ford*, 362 S.C. at 625, 608 S.E.2d at 885 (stating Rule 51, SCRPC's requirement that no party may assign as error the giving or the failure to give an instruction unless he objects before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds for his objection "only requires an objection on the record, opportunity for discussion, and a specific ruling by the trial court on the jury charge at issue"); *State v. Johnson*, 315 S.C. 485, 487, 445 S.E.2d 637, 638 (1994) (stating argument that the trial judge's instruction was in error was not preserved for appeal where appellant did not object to the jury charge).

B. The argument that a special relationship existed between Ms. Williams and the defendants was a jury question and any attempt to argue that a special relationship existed as a matter of law for the purpose of this appeal is not preserved for appellate review.

The appeal brief appears to assert that as a matter of law, a special relationship between Ms. Williams and Travis existed and, therefore, Travis was legally required to perform a rescue. [App. Br. p. 23, second para.).

During the directed verdict motion/charge conference, the following exchange took place between Ms. Williams' counsel and the trial judge:

MR. HARTE: Incidentally, Your Honor, the question arose yesterday about whether it was up to the Court to decide whether there was a special relationship or whether it was up to the jury. And my research tells me that it can be a matter of law, but if there are factual determinations that have to be made as to whether or not the special relationship exist, then the question of whether there's a special relationship falls to the jury.

THE COURT: Mr. Harte, I agree with you in this case. I think there are cases that it's already been defined as a legal matter based upon the relationship. The Babcock case probably being one of them in the sense of we can lay out those facts pretty definitively. But in this case, we cannot, which the whole essence of Defense's argument is that Calvin and Travis should be treated differently than Diane. And I think that's probably a factual issue to submit to the jury to determine if they are all in the same position or not.

MR. HARTE: I agree with that, Your Honor.

[R. p. 295, line 14-p. 296, line 7].

As discussed above, the jury was charged on the law concerning the special relationship exception to the general no duty rule in South Carolina. There are no arguments on appeal that the trial judge erred in not giving the correct charge on the applicable law as to a special relationship. In fact, the trial judge charged the specific law on special relationships requested by Ms. Williams' counsel [R. p. 301, lines 6-20] (where the trial judge stated that she had directed her law clerk to look into the specific charge emailed by Ms. Williams' counsel regarding a special relationship based on the *Babcock* case, stating that defense counsel did not object to that charge).

After the directed verdict motion was denied, the trial judge informed the jury that Ms. Williams rested her case, and the defense now had the opportunity to present their portion of the case. The undersigned informed the trial judge that the defense had no additional witnesses and rested but renewed the directed motion verdict on the same grounds which was denied. Ms. Williams' counsel did not make a motion for directed verdict on any issue, to include a ruling as a matter of law that a special relationship existed between Ms. Williams and any other party. [R. p. 308, lines 12-25].

As stated above, following the verdict in favor of defendants, no post-trial motions were made.

The appeal brief now argues conclusively that a special relationship existed between Ms. Williams and Travis.

In an action at law tried by a jury, the appellate court's standard of review applies only to the correction of errors of law. A jury's findings of fact will not be disturbed on appeal unless the record discloses that there is no evidence to support the findings. *Broom v. Marshall*, 284 S.C. 530, 532, 328 S.E.2d 639, 641 (Ct. App. 1984). A jury's verdict can be reversed when the only reasonable inference that can be drawn from the evidence is one contrary to the factual findings implicit in the jury's verdict. *Id.*

There is no argument on appeal that there was no evidence to support a jury finding that no special relationship between Ms. Williams and either Calvin or Travis. In fact, Ms. Williams' trial counsel conceded that enough evidence existed to submit the question to the jury rather than for the trial judge to determine the issue as a matter of law as discussed above, and as further evidenced by the fact that no motion for a directed verdict, Rule 59 motion to alter or amend motion, or motion for a new trial on that issue was ever made.

For the reasons set forth, any argument that there was a special relationship between Ms. Williams and any of the defendants would challenge the jury's findings of fact, and are not preserved for appellate review.

II. SOUTH CAROLINA DOES NOT RECOGNIZE A DUTY TO RESCUE UNDER THE FACTS PRESENTED AT TRIAL.

“The common law ordinarily imposes no duty on a person to act. If an act is voluntarily undertaken, however, the actor assumes the duty to use due care.” *Hubbard v. Taylor*, 339 S.C. 582, 588, 529 S.E.2d 549, 552 (Ct. App. 2000) (internal citations omitted). “The Restatement (Second) of Torts § 314 (1965) also embodies this principle and provides that, as a general rule, an individual is under no duty to provide aid or protection to another even if the individual realizes or should realize that action on his part is necessary to protect the other party.” *Id.*

The appeal 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. Moreover, the appeal brief does not cite any extra jurisdictional case or any treatise to suggest that under any circumstance a person has a legal duty to risk personal harm or death to attempt a rescue of another individual.

Based upon the current law in South Carolina and to the extent the issue is preserved for appellate review, the trial judge did not err in not instructing the jury that if it found a special relationship existed, then a legal duty existed for any defendant with a special relationship to rescue Ms. Williams. *Clark v. Cantrell*, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000) (internal citations omitted) (stating “the trial court is required to charge only the current and correct law of South Carolina”). Accordingly, the appeal should be dismissed.

CONCLUSION

For the reasons set forth, Respondents respectfully request that the jury verdict be affirmed and that this appeal be denied.

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March 11, 2026