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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Roger M. Young, Circuit Court Judge

Appellate Court Case No. 2023-000951
Unpublished Opinion No. 2026-UP-062

Mitch Randall Yawn and Juanita Mae Stanley
d/b/a Flowertown Bee Farm and Supplies,

Appellants,

v.

Dorchester County,

Respondent.

PETITION FOR REHEARING

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INTRODUCTION

Appellants Mitch Randall Yawn and Juanita Mae Stanley d/b/a Flowertown Bee Farm and Supplies respectfully petition this Court for rehearing under Rule 221, SCACR. The Opinion filed February 18, 2026 (Opinion No. 2026-UP-062) contains errors of law on two independent grounds that warrant reconsideration.

First, the panel misapprehended the voluntary undertaking doctrine in holding that Gaskins created no duty of individual notice to Appellants. The panel's analysis focused exclusively on whether an aerial spray had been conducted before, overlooking the unrebutted record evidence that Gaskins specifically told Appellants they were on his personal notification list—a representation upon which Appellants relied to their detriment.

Second, the panel misunderstood the intent element for trespass under South Carolina law. The panel confused intent to cause harm (the County's purpose) with intent to invade (the legal standard). According to *Snow v. City of Columbia*, 305 S.C. 544 (Ct. App. 1991), trespass intent only requires that the defendant act voluntarily and knew or should have known the result would occur. The record clearly shows both: the County intentionally flew the aircraft over the Appellants' property and sprayed the pesticide, and the pesticide's own label warned it was "highly toxic" to bees.

ARGUMENT

I. THE PANEL MISAPPREHENDED THE VOLUNTARY UNDERTAKING DOCTRINE

Under the voluntary undertaking doctrine, a duty arises when (a) the undertaker's failure to exercise reasonable care increased the risk of harm to the plaintiff, or (b) the plaintiff suffered harm because she relied upon the undertaking. *Wright v. PRG Real Est. Mgmt., Inc.*, 426 S.C. 202, 213 (2019) (citing Restatement (Second) of Torts § 323).

The panel held that Gaskins assumed no duty because "prior to 2016, the County had never conducted aerial sprays for mosquitoes" and his prior notification calls "only took place before truck sprays." Op. at 5–6. This reasoning overlooks a critical factual distinction: unlike other beekeepers who merely received courtesy calls, Appellants specifically sought out and registered with Gaskins's notification list, a list Gaskins maintained precisely for the purpose of protecting beekeepers from pesticide applications. Appellants took affirmative steps in reliance on that representation: they contacted the City, were referred to Gaskins, and were told he "would call and notify before spraying."

The panel's analysis addressed only whether a duty was created by prior aerial spray calls. The actual question is whether the County's specific promise to notify Appellants before any spray, combined with Appellants' reliance on that promise, created a duty. Under § 323(b) of the Restatement and *Wright*, it plainly did. The panel's failure to address the reliance prong constitutes a misapprehension of controlling law that justifies rehearing.

Even if the panel correctly found that Gaskins assumed a duty, it erred in applying S.C. Code Ann. § 15-78-60(4) to immunize the County from that duty. The subsection immunizes losses resulting from "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law." The panel's reliance on *Repko v. County of Georgetown*, 424 S.C. 494 (2018), is misplaced: *Repko* involved a duty allegedly created by regulations, whereas the duty here arose from the County's own individualized promise to Appellants, entirely apart from any statutory requirement.

Extending § 15-78-60(4) to bar claims based on voluntarily assumed individual promises would effectively negate the TCA's waiver of immunity for negligence, since virtually any governmental act can be characterized as performance of a governmental duty. This Court has held that immunity provisions "must be liberally construed in favor of limiting the liability of governmental entities," *Steinke v. S.C. Dep't of Lab., Licensing & Regul.*, 336 S.C. 373, 393 (1999), but that principle cannot be stretched to immunize the County for breaching a specific, individualized promise on which

Appellants directly relied.

II. THE PANEL MISAPPREHENDED THE INTENT ELEMENT FOR TRESPASS

To establish trespass, a plaintiff must show "an affirmative act," that "the invasion of the land must be intentional," and that "the harm caused must be the direct result of that invasion." *Snow*, 305 S.C. at 553. "Intent is proved by showing that the defendant acted voluntarily and that he knew or should have known the result would follow from his act." Id.

The panel acknowledged the affirmative act, that the County intentionally flew a plane over Appellants' property and released Naled. Op. at 7. The panel nonetheless found no intentional invasion, reasoning that the County's "stated objective was to abate mosquitoes" and it "took specific measures to avoid the death of the bees." Id.

This reasoning conflates intent to cause harm with the intent to invade required under *Snow*. The County's purpose was irrelevant to the intent analysis. What matters is whether the County voluntarily directed the aircraft over Appellants' property (undisputed) and whether it knew or should have known that spraying Naled would harm the bees. On the second point, the record is conclusive: the pesticide's own labeling stated it was "highly toxic" to bees exposed to direct treatment. Gaskins' consistent practice of calling beekeepers before truck sprays further demonstrates the County's actual knowledge that pesticide applications harmed bees.

The panel's analysis also overstates the County's precautions. While the County issued a press release and provided a map of beehive locations to the pilot, it failed to call Appellants, the one step Gaskins himself admitted was his obligation. Those who were called protected their bees successfully; those who were not, lost everything. This disparity demonstrates both foreseeability and causation.

By effectively requiring plaintiffs to prove that a governmental actor intended the harmful

consequence, rather than the physical invasion, of a pesticide application, the panel's ruling diverges from *Snow* and creates a standard that would insulate governmental actors from trespass liability in virtually all public health contexts.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court grant rehearing under Rule 221, SCACR, to correct the misapprehension of the voluntary undertaking doctrine and the trespass intent standard.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Rehearing in the above referenced case has been served upon the following by emailing a digital copy this 5th day of March. 2026 to counsel listed below:

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