THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

FROM SOUTH CAROLINA
COURT OF APPEALS

Appeal from Dorchester County
The Honorable Roger M. Young, Sr.
Circuit Court Judge

Appellate Court Case No.: 2023-000951
Unpublished Opinion No. 2026-UP-062 (S.C. Ct. App. Filed February 18, 2026)
Circuit Court Case No.: 2017-CP-18-00138

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

v.

Dorchester County.....Respondent

Respondent's Return to Petition for Writ of Certiorari

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II. The Court of Appeals properly affirmed the circuit court's order granting summary judgment as to the trespass claim.

RESPONDENT'S COUNTER STATEMENT OF THE CASE

This case stems from an aerial mosquito control spray conducted in August 2016 by Respondent, Dorchester County, (hereinafter "Dorchester County" or "the County"), to control mosquito-borne illnesses following notification from the South Carolina Department of Health and Environmental Control ("DHEC") that there were three Zika cases in the county[1]. (R. p. 153, line 14 - p. 155, line 20). Unable to adequately conduct a truck spray in the radius specified by DHEC around the Zika cases' addresses, Dorchester County entered into a contract with an experienced aviation company that performed aerial mosquito sprays in several counties including neighboring Berkeley County. (R. p. 156, line 18 - p. 157, line 2; R. p. 156, line 18 - p. 157, line 2; R. pp. 253-258).

Pursuant to section 27-1084(A)(4) of the Rules and Regulations for Enforcement of the South Carolina Pesticide Control Act § 46-13-10 *et. seq.* (2017 & Supp. 2025), the County was required to provide the public with 24-hour notice before an aerial spray. (R. p. 170, line 20 - p. 171, line 5). In accordance with this section, the County issued a press release which was disseminated to and published/broadcast by numerous media outlets in the area. (R. p. 225 -p.226; R. p. 228, lines 13-17; R.p.266). Clayton "Scott" Gaskins, the Mosquito Abatement Coordinator for Dorchester County kept a list of beekeepers in the county. Although he was not required to by law, Mr. Gaskins had in the past, called individual beekeepers prior to a truck spray as a courtesy. (R. p. 172, line 25 - p. 173, line 5). Mr. Gaskins did not call the Petitioners prior to the aerial spray.

[1] Dorchester County refers to its Final Reply Brief to the Court of Appeals for a detailed statement of the facts in this case, and its full arguments to the Court of Appeals.

The day after the aerial spray, Petitioners contacted the County and claimed that the mosquito spray caused the death of the bees in 46 of their hives[2]. Following notification, the County immediately contacted Clemson University's Department of Pesticide Regulation, the entity responsible under South Carolina law, for regulating and investigating pesticide use and complaints. While the report did not rule out the pesticide used in the aerial spray as a cause of the Appellants' loss of bees, it found no violations as to the aerial mosquito spray. (R. pp. 242-245).

On January 30, 2017, the Appellants filed suit in circuit court against Dorchester County, the Town of Summerville, Allen Aviation and Al Allen,[3] alleging claims for both United States and South Carolina Constitutional violations, as well as negligence, gross negligence and trespass claims pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.*

Given the federal causes of action, Dorchester County removed the case to the District Court for the District of South Carolina on February 17, 2017. After extensive discovery was conducted, on December 16, 2019, the County filed a motion for summary judgment with regard to the federal causes of action. A hearing was held via telephone on February 26, 2020. Each party was represented by counsel at the hearing.

On May 5, 2020, the Federal District Court for the District of South Carolina granted Dorchester County's motion for summary judgment as to the United States Constitutional Claims and remanded the remaining state law claims to state court. (R. pp. 27-35)[4]. Appellants appealed the ruling to the United States Court of Appeals for the Fourth Circuit. On May 6, 2021, oral

[2] The County contests the number of honeybees the Plaintiffs claim to have lost as well as the income Plaintiffs claim to have lost as a result of the honeybee deaths. However, the County does not dispute that the Plaintiffs lost honeybees during the immediate timeframe after the spray.
[3] Only Dorchester County remains as a defendant in the case.
[4] The original order granting summary judgment was issued on March 17, 2020. The Court issued an amended order on May 5, 2020.

arguments were held via WebEx before the Fourth Circuit Court of Appeals. On June 11, 2021, in a published opinion, the United States Court of Appeals for the Fourth Circuit affirmed the district court's order granting summary judgement on all of the federal claims and remanding the remaining state law claims to circuit court. *Yawn v. Dorchester Cnty.*, 1 F. 4th 191 (4th Cir. 2021).

On August 30, 2022, Dorchester filed a motion for summary judgment in circuit court with regard to Appellants' remaining state law claims. (R. pp. 98-290). On March 28, 2023, a hearing was held before the Honorable Roger M. Young, Sr., via WebEx. Again, both parties were represented by counsel. After consideration of the memorandums with exhibits filed by both parties as well as oral arguments, Judge Young granted Dorchester County's motion for summary judgment on Appellants' remaining causes of action. The order was filed on May 30, 2023. The Appellants filed notice of Appeal on June 13, 2023. (See notice of Appeal dated June 13, 2023). On February 18, 2026, the Court of Appeals issued an unpublished opinion, 2026-UP-062 affirming the circuit court's order. The Petition for Rehearing was denied on March 24, 2026.

ARGUEMENT

I. The Court of Appeals properly held that Dorchester County did not assume a duty to personally notify Petitioners of the aerial mosquito spray under the voluntary undertaking doctrine, and that even if it did, the negligence claim is barred pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60(4).

A. There was no duty to personally notify Plaintiff's of the aerial spray

In a negligence action, "[t]he court must determine as a matter of law, whether the law recognizes a particular duty." *Repko v. Cnty of Georgetown*, 424 S.C. 494, 818 S.E.2d 743 (2018) citing *Steinke v. Dep't of Labor, Licensing & Regulation,* 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999). If there is no duty, then the defendant in a negligence action is entitled to a directed verdict. *Id.* In this appeal, Appellants claim that the County was negligent and grossly negligent because it did not personally notify them of the aerial mosquito spray.

Pesticide use in South Carolina is governed by Pesticide Control Act, S.C. Code Ann. 46-13-10 *et seq*, and accordingly, the regulations regarding the same are contained in Article 17 of the South Carolina Pesticide Control Regulations.[5] https://www.clemson.edu/public/regulatory/pesticide-regulation/pdfs/rules-and-regs-dpr.pdf. The Regulations contain a specific notice provision which states that a governmental entity must provide the public with 24 hours-notice "by announcement or publication of the nature and timing of pesticide application[] in the appropriate media outlets not less than 24 hours prior to the application." Section 27-1083(A) Rules and Regulations for Enforcement of the South Carolina Pesticide Control Act.

The Clemson investigation found that the Department of Public Relations for the County provided appropriate notice of the nature and timing of the pesticide application as it "was published in a mass media outlet greater than 24-hours prior to the application." (R. pp. 242-245). In fact, Tracey Langley testified that she created the press release and that in addition to the Summerville Journal Scene, she sent it to Channel 2; Channel 4; Channel 5; the Post and Courier; The Eagle Record; radio stations 103.5; 102.5; 94.3; and 104.5, and the Town of Summerville. (R. pp. 266-267; R. p. 225, line 9 - p. 226, line 3). Ms. Langley further testified that The Town of Summerville also would have received the press release so they could post the information on their website, and social media sites. (R. p. 225, line 9 - p. 226, line 3).

Ms. Langley stated that she knew for sure that Channel 4 and Channel 5 had the information on their Friday night and Saturday broadcasts, and that she believed it was on their websites. (R. p. 226, lines 4-17). She stated that the Post and Courier and the Summerville Journal Scene both had the information on their websites, and she believed that the Journal Scene put the information

[5] The regulations govern a voluminous number of topics ranging from licensing requirements of applicators to enforcement of violations.

on its Facebook page as well. (R. p. 226, line 18 - p. 227, line 6). With regard to the Journal Scene, Ms. Langley testified that the notice was not in the physical edition of the paper, but only on the online edition and Facebook page. (R. p. 227, lines 12-23). There is no issue of fact that the County performed its duty as required by the Regulations and provided proper notice to the public prior to the aerial spray.

With regard to petitioner's argument that Mr. Gaskin's courtesy calls prior to truck sprays created a duty, the Court of Appeals properly rejected the argument. As stated by the Court of Appeals, "the voluntary undertaking does not create a duty of care unless (a) the undertaker's failure to exercise reasonable care in performing the undertaking increased the risk of harm to the plaintiff, or (b) the plaintiff suffered harm because she relied upon the undertaking." (Unpublished Op.No. 2026-UP-062, p.5). The Petitioners cannot satisfy either requirement of a "voluntary undertaking." First, there was no "increase in harm." As discussed above, the Regulations contain specific notice requirements with regard to pesticide application, and there is no dispute that the County adhered to those requirements with the noticed being published or broadcast by numerous different media outlets.[6] Second, there is no dispute that Dorchester County had never conducted an aerial spray prior to the one at issue. (R. p. 159, line 13 - p. 160, line 12; R. p. 235, line 6 - p. 236, line 1). Therefore, there is no history of action prior to an aerial spray. The Court of Appeals properly held that the County satisfied its duty by complying with the notice provision contained in the Regulations on pesticide use, and that the County did not assume a duty to personally notify the Petitioners prior to the aerial spray.

B. Even if Mr. Gaskin's prior calls created a duty, Petitioners' claim is barred by S.C. Code Ann. § 15-78-60(4).

[6] The Petitioners were the only Beekeepers to report damage to the County after the aerial spray.

The Court of Appeals properly held that even if Mr. Gaskin's previous courtesy calls to beekeepers prior to truck sprays created a duty, Petitioners claim is barred by the South Carolina Tort Claims Act, specifically, S.C. Code Ann. § 15-78-60(4).

The South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 et seq, governs all tort claims against governmental entities and is the exclusive civil remedy for any alleged tort committed by a governmental entity or its employees or agents. S.C. Code Ann. § 15-78-20. It is "the public policy of the State of South Carolina that the State, and its political subdivisions, are only liable for torts within the limitations of this chapter and in accordance with the principles established herein." *Id.* However, within the Tort Claims Act, the Legislature preserved the State's immunity from certain claims. The provisions of the Act state that it "must be liberally construed in favor of limiting the liability of the State." S.C. Code Ann. § 15-78-20(f).

South Carolina Code Ann. § 15-78-60 provides for certain exceptions to the waiver of immunity. The exception most applicable to Appellants' claim that personal notification prior to mosquito treatment was a County policy and practice and thus required, is S.C. Code § 15-78-60(4). Section 15-78-60(4) provides in pertinent part, that a governmental entity is not liable for a loss resulting from:

> (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, ***including, but not limited to***, any charter, provision, ordinance, resolution, rule, regulation, or written policies;

(emphasis added).

At the Court of Appeals, Petitioners claimed that section 15-78-60(4) was inapplicable because Mr. Gaskins' practice of courtesy calls was never "codified as a law, or as a written policy having the force of law." (Appellants' Final Brief, p. 13). However, S.C. Code Ann. § 15-78-60(4) applicability is not limited only to "codified law" or "written policy having the force of law" as

specifically written in section (4); *Cf. Lawson v. S.C. Dep't of Corrs.*, 2:20-cv-01527-DCC-MGB decided June 29, 2021 (finding S.C. Code Ann. § 15-78-60(4), applied to a mission statement).

Moreover, this Court applied S.C. Code Ann. § 15-78-60(4) in a similar context to the case at hand in *Repko v. Cnty of Georgetown,* 424 S.C. 494, 818 S.E.2d 743 (2018)[7]. In *Repko*, Georgetown County allowed a developer to post a financial guarantee with the county in lieu of completing required infrastructure such as roads, drainage, sewer, etc, prior to selling residential lots. *Id.* at 498, 881 S.E.2d 743, 746. The developer began selling the residential lots, and over a period of time, the developer submitted several requests to Georgetown County to reduce its letter credit, which the county approved. The developer sold the residential lots but went bankrupt, leaving the infrastructure incomplete, thus rendering the lots unbuildable. The plaintiff lot owner claimed Georgetown County was negligent and grossly negligent in failing to comply with its own rules, regulations and policies to verify that the infrastructure work had been completed before approving the developer's requests to reduce the letter of credit. *Id.*

The *Repko* Court first recognized that in a negligence action, "[t]he court must determine as a matter of law, whether the law recognizes a particular duty." *Id.* citing *Steinke v. S.C. Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999). "If there is no duty, then the defendant in a negligence action is entitled to a directed verdict." *Id.* The Court first held that it need not determine whether the regulation created a duty of care, because "even if such duty was created, the County is immune from liability to Repko under subsection 15-78-60(4) of the TCA." *Id.* at 500, 881 S.E.2d 743, 747. It then recognized that "because subsection (4) does not contain a gross negligence standard, standing alone, subsection (4) would entitle the

[7] The County refers to its Final Brief to the Court of Appeals for a more detailed discussion of *Repko.*

County to immunity from liability from its failure to comply with or enforce its regulations." *Id.* at 504, 818 S.E.2d 743, 749.

Based on the language of S.C. Code Ann. § 15-78-60(4) and *Repko*, the Court of Appeals properly determined that even if Mr. Gaskins "assumed a duty through his prior calls, the negligence claim is still barred pursuant to section 15-78-61(4) *See Repko* 424 S.C. at 500, 818 S.E.2d at 747 (finding there was a dispute as to whether regulation created a private duty of care owned by the county to Repko; however, declining to resolve that dispute because 'even if such a duty was created, the County is immune for liability to Repko under subsection 15-78-60(4) of th4 TCA.')." (Unpublished Op.No. 2026-UP-062, p.6-7).

II. The Court of Appeals properly affirmed the circuit court's order granting summary judgment as to the trespass claim.

To constitute an actionable trespass, there must be an affirmative act, the invasion of the land must be intentional and the harm caused must be the direct result of that invasion. *Snow v. City of Columbia*, 305 S.C. 544, 409 S.E.2d 797 (Ct. App. 1991). In the present case, the circuit court properly held that the Appellants cannot satisfy the "intentional act" requirement. There is no issue of fact that the County provided a shapefile map with the locations of the beekeepers to Allen Aviation so the pilot could turn off the spray in those locations. (R. p. 218, lines 3-24; R. pp. 268-270). The pilot for Allen testified that the map provided to him by the County had the beekeeper locations marked and that he used the map to make the determination as to when to turn off the sprayers during the flight. (R. p. 203, lines 4-8). In fact, the pilot testified that he specifically remembered cutting off the sprayer as he approached the beehive locations per the map. (R. p. 199, lines 1-5). Moreover, the County provided notice to the public via numerous mass media outlets. (R. p. 225, line 9 - p. 227, line 6). As the Fourth Circuit Court of Appeals concluded, "the death of [Appellants'] bees was neither intended nor foreseeable." *Yawn v. Dorchester Cnty,*

1 4th 191, 196 (4th Cir. 2021). Accordingly, the circuit court properly found there was no issue of material fact and that the County was entitled to summary judgment on the trespass claim.

CONCLUSION

The Court of Appeals properly held that that 1) Mr. Gaskin's previous courtesy calls to beekeepers prior to truck sprays did not create a duty to personally notify petitioners prior to the aerial spray; 2) even if a duty was created, S.C. Code Ann. §15-78-60(4) bars Petitioners' claims against the County; and 3) that summary judgement as to the trespass claim was proper as the invasion was not intentional nor was it conclusively proven that the bee deaths were a direct result of that invasion. Rule 249(b)of the South Carolina Appellate Court Rules provides that "a writ of certiorari is not a matter of right but of sound judicial discretion, and will be granted only where there are special and important reasons." While not controlling, Rule 249(b) lists five considerations that govern review: novel issues of law; a dissent at the Court of Appeals; where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court; where substantial constitutional issues are involved; and where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court. None of these considerations are present in the case at hand. Accordingly, the Court should deny the Petition for a Writ of Certiorari.