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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

FROM THE 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Unpublished Opinion No. 2026-UP-062 (S.C. Ct.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.

PETITIONERS' REPLY TO RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI

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Respondent's return does not show that this case is routine. It shows the opposite. Respondent asks this Court to leave undisturbed an unpublished decision that: (1) treats a specific beekeeper notification undertaking as legally irrelevant because the prior warnings concerned truck spraying rather than aerial spraying; (2) extends S.C. Code Ann. § 15-78-60(4) to bar claims based on a county employee's individualized operational undertaking; and (3) treats trespass intent as if Petitioners had to prove the County intended the resulting bee deaths, rather than merely the physical invasion that caused the injury.

Those are precisely the kinds of legal questions that warrant certiorari. Petitioners do not seek correction of error in a narrow factual dispute. They seek review of legal rules that will govern future cases involving governmental safety undertakings, public-health operations, regulatory programs, and intentional physical invasions of private property.

I. Respondent's return confirms that review is needed on the voluntary-undertaking and Tort Claims Act issues.

Respondent's principal duty argument is that the County satisfied the public-notice regulation governing aerial pesticide applications and therefore owed no additional duty to Petitioners. That argument addresses a different case. Petitioners' claim is not that the Pesticide Control Act or its regulations independently required personal notice. Rather, Petitioners' claim is that Dorchester County, through its mosquito-abatement coordinator, voluntarily undertook a specific protective measure for identified beekeepers and that Petitioners relied on that undertaking.

South Carolina recognizes a duty when one undertakes to render services for another's protection and, because of the plaintiff's reliance, the failure to exercise reasonable care either increases the risk of harm or causes harm. *Wright v. PRG Real Estate Mgmt., Inc.*, 426 S.C. 202, 213, 826 S.E.2d 285, 291(2019). That doctrine does not require a plaintiff to show that the defendant previously

performed the undertaking under identical operational circumstances. It asks whether there was an undertaking, whether it was for the plaintiff's protection, and whether reliance or an increased risk resulted.

At the summary-judgment stage, the record evidence identified in the petition supports each element. Petitioners contacted the County official responsible for mosquito spraying, were placed on the County's beekeeper list, had received prior individual notice, and relied on that notice to protect their hives. Respondent's return does not dispute that Mr. Gaskins maintained a beekeeper list or had made individualized courtesy calls. Instead, Respondent recasts those calls as limited to truck spraying and argues that the County had never conducted an aerial spray.

That distinction may be a jury question on breach, reliance, or reasonableness. It should not eliminate the duty as a matter of law. Petitioners' evidence was not merely that the County had once performed an unrelated courtesy. Rather, it showed that the County maintained a beekeeper notification list for mosquito spraying and issued individualized warnings so beekeepers could take protective measures. The danger to bees did not become less foreseeable because the pesticide was delivered by aircraft rather than a truck. If anything, the method of delivery made the promised notice more important.

Respondent's position would add an "identical prior event" requirement to the voluntary-undertaking doctrine. Under that rule, a governmental entity could maintain a notification list, give repeated assurances, induce reliance, and then avoid any duty whenever the next risk arises through a modified method of carrying out the same program. That rule cannot be reconciled with the reliance branch of § 323 as recognized in *Wright*.

Nor does the summary-judgment posture support Respondent's approach. At this stage, reasonable inferences must be drawn in Petitioners' favor. *Madison v. Babcock Center, Inc.*, 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006). A reasonable factfinder could conclude that the County's undertaking

was not "truck-spray-only" notice, but beekeeper notice before mosquito spraying likely to endanger bees. The Court of Appeals' contrary conclusion turns a factual limitation argued by Respondent into a categorical legal bar.

II. Respondent's Tort Claims Act argument would convert subsection 15-78-60(4) into immunity for any negligent operational undertaking connected to a regulated program.

Respondent next argues that, even if the County assumed a duty, § 15-78-60(4) bars the claim because the County was acting within a regulated mosquito-control program and because the Act is construed to limit governmental liability. That position is broader than the statute and broader than the holding in *Repko v. Cnty. of Georgetown*, 424 S.C. 494, 818 S.E.2d 743 (2018).

Subsection 15-78-60(4) immunizes losses arising from the adoption, enforcement, or compliance with the law, or from the failure to adopt or enforce the law, including regulations and written policies. Petitioners' claim is not that the County adopted the wrong public-notice regulation, enforced it incorrectly, or failed to promulgate a different rule. Petitioners' claim is that, apart from the general regulation, the County undertook an individualized operational practice directed to known beekeepers and then failed to exercise reasonable care in carrying it out.

That distinction matters.

If subsection (4) applies whenever a negligent undertaking occurs within a regulated governmental program, the exception would swallow much of the Tort Claims Act's waiver. Almost every governmental operation occurs against a backdrop of statutes, regulations, ordinances, or written policies. Under Respondent's theory, once an agency identifies any governing legal framework, a separate voluntary undertaking to identified citizens becomes immune because it occurred "in compliance with" the broader law.

Repko does not require that result. *Repko* involved a county's alleged failure to comply with

its subdivision regulations in the handling of a financial guarantee required by those regulations. The plaintiff's theory in *Repko* depended on the county's regulatory enforcement obligations. *Repko*, 424 S.C. at 499, 818 S.E.2d at 746 (Respondent alleged that the County failed to comply with or enforce its rules, regulations, and written policies governing its handling of the LOC).

Here, Petitioners' theory depends on a separate, individualized undertaking: the County's beekeeper notification list and the promise or practice of personal notice so Petitioners could protect their bees. The County was not legally required to make those individualized calls, and that is exactly why the voluntary-undertaking doctrine matters.

Respondent's reliance on the statute's instruction that liability limitations be liberally construed does not answer the question. The issue is not whether the Tort Claims Act contains immunity exceptions. It does. The issue is whether subsection (4) should be extended to an employee's specific protective undertaking to identified persons when the alleged negligence is the failure to carry out that undertaking with reasonable care. This Court's review is warranted because the Court of Appeals' unpublished opinion answers that question in a way that threatens to eliminate governmental voluntary-undertaking liability whenever the government is also performing a public function.

The public-duty cases cited by Respondent do not bar review. Petitioners do not rely on a duty owed to the public at large. Instead, they rely on a specific undertaking to a discrete class of known beekeepers, including Petitioners. South Carolina law distinguishes generalized public obligations from duties arising from specific conduct, special relationships, or voluntary undertakings. *Steinke v. S.C. Dep't of Labor, Licensing, & Regulation*, 336 S.C. 373, 388, 520 S.E.2d 142, 149 (1999) ("An exception to this general rule of non-liability exists when a duty is owed to individuals rather than the public only.") This case presents an important opportunity to clarify how those principles apply when the defendant is a governmental entity invoking § 15-78-60(4).

III. Respondent's trespass argument confirms the need to clarify that intent to invade is not intent to harm.

Respondent's trespass argument rests on the same error identified in the petition: it treats the absence of intent to kill bees as defeating the intent element of trespass. Trespass does not require intent to cause the precise damage that follows. It requires an intentional act that results in a physical invasion of land, with harm directly resulting from that invasion. *Snow v. City of Columbia*, 305 S.C. 544, 552, 409 S.E.2d 797, 802 (Ct. App. 1991).

The County intentionally arranged an aerial pesticide application. Petitioners contend that the application included their property and caused pesticide to enter the airspace and land associated with their apiary. Respondent answers that the County supplied a shapefile map showing beekeeper locations, that the pilot intended to turn off the sprayer near those locations, and that the County's purpose was public-health mosquito abatement. Those facts do not resolve the legal issue. They show why the issue belongs before this Court.

If the pilot did not spray Petitioners' property, that is a factual defense. If the pesticide did enter Petitioners' property as part of the planned aerial application, the County cannot defeat trespass merely by saying it hoped not to harm bees or intended to reduce mosquitoes. A defendant's benign objective does not transform an intentional physical invasion into a non-intentional act.

Respondent also relies on the Fourth Circuit's federal takings decision in *Yawn v. Dorchester Cnty.*, 1 F.4th 191 (4th Cir. 2021), which held that the bee deaths were not intended or foreseeable for purposes of Petitioners' federal constitutional claims under the Takings Clause.

> The death of Appellants' bees is undoubtedly a tragedy, but we cannot conclude that it was the foreseeable or probable result of the County's action when it is a clear outlier in terms of collateral damage arising out of the County's mosquito abatement effort. Ultimately, because we conclude the death of Appellants' bees was neither intended nor foreseeable, the Takings Clause does not require compensation.

Yawn, 1 F.4th at 196.

That decision does not control the state-law trespass issue. A federal takings analysis asks a different question than South Carolina trespass law. The fact that the County did not intend to take Petitioners' bees for constitutional purposes does not answer whether the County intentionally caused pesticide to invade Petitioners' property for trespass purposes.

Respondent's causation argument likewise fails to justify denying review. The case reached the Court of Appeals after summary judgment. Petitioners presented evidence that the aerial spray was immediately followed by massive bee deaths and the destruction of their hives and business. Respondent disputes causation and damages, but that dispute does not justify redefining trespass intent. At a minimum, the Court should grant certiorari to clarify the correct legal standard and allow the case to be evaluated under it.

The Court of Appeals' ruling risks broad consequences. If intent to invade can be defeated by showing a lack of intent to cause the resulting damage, trespass will be unavailable in many cases involving the deliberate dispersal of water, chemicals, smoke, debris, or other physical matter onto private property. That is not a minor, fact-bound issue. It is a recurring property and tort question appropriate for this Court's review.

CONCLUSION

Respondent's return confirms that this case presents important questions of South Carolina law. The first concerns whether governmental entities may avoid duties they voluntarily assume toward identified citizens by characterizing those duties as courtesies or by invoking § 15-78-60(4) whenever the undertaking occurs within a regulated public program. The second concerns whether trespass requires intent to cause the resulting harm or only the intentional physical invasion from which that harm directly follows.

For the reasons stated in the petition and in this reply, Petitioners respectfully request that this Court grant the petition for a writ of certiorari.

Respectfully submitted,

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