

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM PICKENS COUNTY

Court of Common Pleas
Jessica A. Salvini, Circuit Court Judge

Case No. 2021-CP-39-00329
Court of Appeals Case No. 2025-001327

Michael and Mary Smith,

Appellants,

v.

King Asphalt, Inc.

Respondent.

INITIAL BRIEF OF APPELLANTS

We are filing this brief so our appeal is not thrown away. We are elderly and in poor health. We cannot read or write well. We asked every court for help with a lawyer and we were told no. We told this Court in a motion on February 9, 2026 that about 300 of the 830 exhibit pages in the record are ruined and cannot be read, and that our video and audio evidence is missing from the record, and we asked for that to be fixed. It was not fixed. We do not give up any of those objections by filing this. We are doing the best we can.

STATEMENT OF ISSUES ON APPEAL

1. The 1-Inch vs. 2-Inch Rule: Whether the trial court erred in applying a 2-inch height differential standard when the SCDOT contract and the South Carolina Work Zone Safety Guidelines prohibited a height differential exceeding 1 inch for milled surfaces reopened to traffic.
2. Expert Witness Requirement: Whether a trial court may impose a mandatory expert witness requirement in a negligence per se action based on statutory violations, and whether doing so at the Summary Judgment stage without prior notice constitutes reversible error.
3. Work Zone Definition: Whether the Court erred in its legal interpretation of a “highway work zone” under S.C. Code § 56-5-1535(F)(1), which fundamentally impacted the standard of care applied to the Respondent.

STATEMENT OF THE CASE

We were hurt in a crash on March 22, 2019, on Highway 8 in Pickens County. We were on a moped. A car hit us where King Asphalt was doing road work for the SCDOT. We sued in 2021. King Asphalt asked the court for summary judgment. The court held a hearing on January 27, 2025. The court granted summary judgment by an order entered February 18, 2025. We asked the court to look at it again under Rule 59(e), SCRPC, on February 28, 2025. The court filed a longer order on March 10, 2025. On May 27, 2025, the court denied our motion in a final order. We filed our notice of appeal on June 23, 2025. This appeal followed.

STANDARD OF REVIEW

This appeal is from summary judgment. This Court looks at the case fresh, under the same rule the trial court had to use, and reads every fact and every inference in our favor. *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002). Whether the trial court applied the right legal standards is a question of law.

ARGUMENT

Issue 1. Summary judgment was improper because these legal standards were misapplied. We raised the 1-inch rule to the trial court in writing before it ruled. King Asphalt's own contract with the SCDOT, which King Asphalt filed with the court on January 27, 2025, does not forbid a height difference from ever existing. The work cannot be done without one. The contract prohibits opening lanes to traffic while a height difference exists between a milled lane and the adjacent paved lane, where that difference is greater than 1 inch. The contract's word for it is PROHIBITED, printed in capital letters. The contract even says how to end the difference: mill the paved lane, or pave the milled lane, and keep the lane closed to traffic until that is done. We raised this in our opposition papers of December 13, 2024, before the hearing. Michael tried to explain it at the hearing and was stopped. We raised it again in our response filed January 30, 2025, in our Rule 59(e) motion, and in our filing of April 11, 2025 at pages 3 to 6. The court's own order said the height difference was 2 inches or less and treated that as allowed. We do not argue about the number. Even 2 inches is more than the 1 inch the contract allows. There is no fight about the facts on this issue. The only question is which rule applies, and the contract answers it.

Issue 2. Summary judgment was improper because these legal standards were misapplied. Our case was based on King Asphalt breaking written safety rules. That is called negligence per se. We told the court no expert was needed for this in our opposition papers of December 13, 2024, in our response of January 30, 2025 at sections II.B, III, IX, and X, in our Rule 59(e) motion at section VI, and in our April 11, 2025 filing at section A. Before the hearing we filed a written request on January 22, 2025 asking the court to state its findings and preserve every issue for appeal. No rule and no court order before the judgment said we had to have an expert or our case would end. The first time the court ruled that an expert was required was the order that granted judgment against us. We asked the court to fix this in our Rule 59(e) motion and it said no.

Issue 3. Summary judgment was improper because these legal standards were misapplied. We raised the work zone law, S.C. Code § 56-5-1535(F)(1), to the trial court in writing. We quoted the statute in full in our response of January 30, 2025 at section I.1. The law says the work zone is the area between the sign that tells drivers a work zone is starting and the sign that tells them the work zone has ended. King Asphalt's own papers said permanent signs marked the area as a construction zone for the whole project. Where the cones sit on any one day does not change what the law says. We raised this again in our Rule 59(e) motion. The court's order did not address the statute at all. We asked the court to consider it in our Rule 59(e) motion and the court denied the motion.

CONCLUSION

We are asking this Court to look at these three issues on the record it has. We told the courts that exhibit pages in the file are ruined and that our video and audio evidence is missing, and we asked for help fixing that, and it was not fixed. We asked for a lawyer and were refused. We

wrote the courts by hand on March 25, 2024 asking for help, and that letter is in the record.

Everything we say here we already said to the trial court before it ruled. We ask this Court to reverse the order granting summary judgment.

Respectfully submitted,



/s/Michael Smith, Appellant pro se



/s/Mary Smith, Appellant pro se

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Dated: July 6, 2026

RECEIVED

Jul 06 2026

SC Court of Appeals

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2026, I served a true and correct copy of the foregoing **INITIAL BRIEF OF APPELLANTS** via email upon:

SC Court of Appeals: ctappfilings@sccourts.org

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/s/ Michael D. Smith
Michael D. Smith, Pro Se Appellant



/s/ Mary Smith
Mary Smith, Appellant pro se

July 6, 2026