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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Jessica Ann Salvini, Circuit Court Judge

Case No. 2022-CP-40-05610

Appellate Case No. 2024-001569

Daisy Crump,Appellant,

v.

Glenfield Capital, LLC D/B/A Glen 1441, LLC, Colliers International South Carolina, Inc., and tk Elevator Corporation..... Respondents.

RESPONDENTS' PETITION FOR REHEARING

Pursuant to Rules 221(a) and 240 of the South Carolina Rules of Appellate Procedure, Respondents Glenfield Capital, LLC D/B/A Glen 1441, LLC, Colliers International South Carolina, Inc., and tk Elevator Corporation (collectively, "Respondents") hereby respectfully petition this Court for rehearing on this Court's July 22, 2026 Opinion ("the Opinion") reversing the circuit court's grant of summary judgment to Respondents and remanding the case for a jury trial. Rehearing is warranted because the Opinion overlooks or misapprehends two controlling points: first, South Carolina law precludes recovery for emotional distress damages without physical impact absent competent evidence of a physical or bodily injury caused by the emotional distress suffered during the event; and second, Appellant Daisy Crump ("Crump") offered no

competent causation evidence tying an alleged physical manifestation of a physical or bodily injury to the elevator incident. For both reasons, summary judgment was properly granted. This Court should therefore grant rehearing, vacate the July 22, 2026 opinion, and affirm the circuit court’s grant of summary judgment to Respondents.

ARGUMENT

I. The Opinion conflicts with South Carolina precedent by allowing emotional-distress damages without competent evidence of a resulting physical or bodily injury.

The Opinion correctly recognizes that emotional-distress damages may proceed under two theories: emotional distress following a physical injury, or emotional distress that produces a physical or bodily injury absent a physical impact. Respondents do **not** contend that a plaintiff must suffer an initial physical injury to recover emotional-distress damages. Respondents contend that, under the second theory, the plaintiff still must offer competent evidence that the alleged emotional distress produced an actionable physical manifestation of a physical or bodily injury caused by the defendant’s conduct. Emotional distress alone, without legally sufficient proof of a resulting physical manifestation and causation, is not enough. The circuit court’s conclusion that a plaintiff must offer evidence of a physical injury still holds—damages for emotional distress are only recoverable when prompted by a physical injury or, when a physical impact does not occur, the emotional distress later manifests itself in a physical manner. In either case, recovery for emotional distress damages is still predicated on the existence of a physical or bodily injury.

The Opinion overlooks the consistent application of this physical injury requirement in the authority it cites to reverse summary judgment in this case. *See, e.g. K.S. by & through Seeger v. Richland Sch. Dist. Two (Seeger)*, 445 S.C. 111, 120, 912 S.E.2d 240, 244–45 (2025) (“The physical harm may take one of two forms: physical harm caused by physical impact from an

external or outside force, or physical harm consisting of the physical manifestations caused by emotional distress.”); *Spaugh v. Atl. Coast Line R. Co.*, 158 S.C. 25, 30, 155 S.E. 145, 147 (1930) (holding the weight and force of testimony regarding **physical injuries due to suffered mental anguish** was a matter for the jury, rendering a directed verdict improper); *Mack v. South-Bound R. Co.*, 52 S.C. 323, 29 S.E. 905 (1898) (holding defendant liable for **injuries sustained** as a result of mere fright and mental disturbance caused by its negligence). In *Bray v. Marathon Corp.*, our Supreme Court explained, “a plaintiff may recover for **a physical or bodily injury** that **results from** mental and emotional trauma in the absence of physical impact.” 356 S.C. 111, 588 S.E.2d 93 (2003). The plaintiff in *Spaugh* was bed-ridden for nearly three weeks and became sick due to exposure to cold temperatures. In *Padgett*, the plaintiff likewise suffered a later physical condition—a skin rash—after exposure to cold temperatures, and his physician offered a causation opinion attributing the rash to both the shock of the incident and the cold exposure. *Padgett v. Colonial Wholesale Distributing Co.*, 232 S.C. 593, 598, 103 S.E.2d 265, 267 (1958).

Crump declined emergency treatment after she was extracted from the elevator and acknowledged she was not physically injured during the incident. Op. 4; R. pp. 119–20. She testified that her high blood pressure, which pre-existed this incident, returned to normal later the same night. R. p. 121. Crump’s primary care physician confirmed she did not identify any physical injuries directly resulting from the incident at an appointment the following day. R. pp. 135–36. She was later treated for anxiety, including panic attacks, and insomnia by her primary care physician and a professional counselor. R. pp. 136, 149–51. The circuit court correctly concluded these symptoms do not establish actionable damages arising from the emotional distress Crump experienced in the incident.

Crump's symptoms are more like those experienced by the plaintiffs in *Dooley v. Richland Memorial Hospital*, 283 S.C. 372, 375, 322 S.E.2d 669, 671 (1984). There, parents wrongly told that their son had been critically injured testified that they became upset and nervous. The Court held:

The Dooleys testified that they were upset and nervous. They received no medical treatment and simply took valium that had been prescribed for Mrs. Dooley prior to this incident. Therefore, respondents have failed to show any objective evidence of physical injury upon which to rest a claim for damages for emotional injury under the circumstances of this case.

283 S.C. 372, 375, 322 S.E.2d 669, 671 (1984). *Dooley* concluded that a plaintiff's complaints about subjective upset, nervousness, and limited medication use were insufficient absent objective evidence of physical injury supporting emotional-distress damages. The record here is materially similar on the points *Dooley* identified, and the circuit court correctly concluded that Crump could not establish actionable damages for purely emotional damages absent some physical or bodily injury resulting from the emotional distress complained about.

II. The Court overlooked the lack of competent evidence that the elevator incident proximately caused any physical manifestation of emotional distress.

Rehearing lies where the Court has "overlooked or misapprehended" a point. Rule 221(a), SCACR. Respondents offered, and the Court's opinion did not address, an independent reason to affirm the circuit court's grant of summary judgment: Crump cannot rely on the Affidavit of Ms. Ganzy to establish actionable damages in a cause of action for negligence. (Resp. Br. p. 12-13). The Court's opinion collapses the analysis in concluding "Crump presented sufficient evidence of physical manifestations of emotional distress to create a question of fact for the jury," Op. 5, without addressing whether such evidence was sufficient, as a matter of law, to create a question of fact as to causation.

Crump offers no competent evidence that her emotional distress was proximately caused by the elevator incident. For example, *Padgett* reversed summary judgment on the basis that the appellant offered competent evidence on proximate cause sufficient to create an issue of fact for the jury. *See Padgett*, 232 S.C. at 598, 103 S.E.2d at 267 (citing expert testimony that “shock and exposure **were the cause**” of the plaintiff’s persistent skin condition after the plaintiff was exposed to cold temperatures when a truck ran into his house). Crump's only causation evidence is the three-page affidavit of Shenna Ganzy, a licensed professional counselor, which **does not include a causation opinion**. R. pp. 149–51. It states that Crump “has been diagnosed with Post Traumatic Stress Disorder, Panic Attacks, and [she] exhibits symptoms of anxiety and panic following a traumatic incident of being trapped in an elevator”; that her “panic disorder began following a traumatic incident where she was trapped in an elevator”; and that she “was stuck in an elevator for an extended period, which served as the initial traumatic trigger for her panic disorder.” R. p. 150. The affidavit does not state that any condition most probably resulted from Respondents' negligence, and neither opinion is offered to any stated degree of professional certainty. That distinction is dispositive here.

“When the opinions of medical experts are relied upon to establish causal connection of negligence to injury, the proper test to be applied is that the expert must, with reasonable certainty, state that in his professional opinion the injuries complained of most probably resulted from the alleged negligence of the defendant.” *Armstrong v. Weiland*, 267 S.C. 12, 16, 225 S.E.2d 851, 853 (1976). Our Supreme Court explains the rule as follows:

It is not sufficient for the expert . . . to testify merely that the ailment might or could have resulted from the alleged cause. He must go further and testify that taking into consideration all the data it is his professional opinion that the result in question most probably came from the cause alleged.

Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 111, 410 S.E.2d 537, 543 (quoting *Eubanks v. Piedmont Natural Gas Co.*, 198 F. Supp. 522, 526–27 (W.D.S.C. 1961)).

Dr. Martha Parker-Hester is the only physician who testified. She examined Crump the day after the incident, performed a physical examination, and “did not find any physical injuries directly resulting from the incident.” Op. 4; R. pp. 98–99. She testified she has no background in psychology, psychiatry, or counseling. R. p. 139. She testified that Crump's gout was pre-existing and “certainly not related” to the incident. R. p. 138. Crump herself testified she was not injured. R. p. 120. A plaintiff opposing summary judgment must come forward with evidence on each essential element. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023). Crump did not meet her burden here, and the circuit court’s Order should be affirmed.

CONCLUSION

Based on the above, Respondents respectfully request that this Court vacate the Opinion and reinstate the circuit court’s order granting summary judgment in this case. Respondents request this Court grant a rehearing of this matter *en banc*.

Respectfully submitted,

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CERTIFICATE OF SERVICE OF RESPONDENTS' PETITION FOR REHEARING

It is hereby certified that the foregoing Petition for Rehearing on behalf of Respondents in
the above-captioned case has been served on the following parties via e-mail on August 6, 2026:

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August 6, 2026