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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Vernon F. Dunbar, Circuit Court Judge

Case No. 2024-CP-23-04497
APPELLATE CASE NO. 2025-002444

Ava Sykes..... Appellant,

v.

Greenville County, City of Greenville, and Prisma Health, Defendants, of which Greenville
County is the Respondent..... Respondent.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
COUNTERSTATEMENT OF ISSUES ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS.....	4
STANDARD OF REVIEW.....	5
ARGUMENTS.....	6
I. Dismissal is warranted given Sykes’ improper notice of appeal.....	6
II. Summary Judgment was appropriate given SCTCA and SCRUS protections.....	8
III. Sykes could not demonstrate the likelihood that further discovery would uncover additional relevant evidence or establish a genuine issue of fact.....	11
CONCLUSION.....	14

CASES

<i>Anderson v. Liberty Lobby, Inc.</i> , 477 US 242, 106 S.Ct.2505 91 L.Ed.2d 202 (1986).....	10
<i>Baughman v. Am. Tel. & Tel. Co.</i> , 306 S.C. 101, 410 S.E.2d 537 (1991).....	5, 10, 11, 12
<i>Bayle v. South Carolina Dept. of Transp.</i> , 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).....	6
<i>Brooks v Northwood Little League</i> , 327 S.C. 400, 489 S.E.2d 647 (Ct. App. 1997).....	9
<i>CAFE v SCDLLR</i> , 337 S.C. 476, 523 S.E.2d 795 (Ct. App. 1999).....	11
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).....	5, 10, 11, 12
<i>Charleston Lumber Co. v Miller Hous. Corp.</i> , 318 S.C. 47, 458 S.E.2d 431 (Ct. App. 1995)....	8
<i>Chrisley v. United States</i> , 620 F. Supp. 285 (D. S.C. 1985) (Aff’d 791 F.2d 165 (4 th 1986))....	9
<i>City of Columbia v. A.C.L.U.</i> , 323 S.C. 384, 475 S.E.2d 747 (1996).....	10
<i>Clark v. SC Dept. of Public Safety</i> , 362 S.C. 377, 608 S.E.2d 573 (2005).....	9
<i>Clyburn v. Sumter County School District</i> , 451 S.E.2d 885 (1994).....	9
<i>Collins Music Co. Inc. v. IGT</i> , 353 S.C. 559, 579 S.E.2d 524 (Ct. App. 2002).....	6, 7
<i>Connor v City of Forest Acres</i> , 348 S.C. 454, 560 S.E.2d 606 (2002).....	5, 7
<i>CSNB v Landlord</i> , 313 S.C. 540, 443 S.E.2d 549 (1994)	10
<i>Dawkins v Fields</i> , 354 S.C. 58, 580 S.E.2d 433 (2003).....	5, 11, 13
<i>Doe v. Batson</i> , 345 S.C. 316, 548 S.E.2d 854 (2001).....	12
<i>Dunn v. Dunn</i> , 298 S.C. 499, 381 S.E.2d 734 (1989).....	6
<i>Fleming v. Rose</i> , 350 S.C. 488, 567 S.E.2d 857 (2002).....	6
<i>Fontaine v. Peitz</i> , 291 S.C. 536, 354 S.E.2d 565 (1987).....	6
<i>Hammond v Scott</i> , 268 S.C.137, 232 S.E.2d 336 (1977).....	10
<i>I’ON, LLC v Town of Mt. Pleasant</i> , 338 S.C. 406, 526 S.E.2d 716 (2000).....	5, 12
<i>Kimsey v. City of Myrtle Beach</i> , 109 F.3d 194, 195-196 (4 th Cir. 1997).....	9
<i>Kitchen Planners, LLC v. Friedman</i> , 440 S.C. 456, 892 S.E.2d 297 (2023).....	10
<i>Manley v Manley</i> , 291 S.C. 325, 353 S.E.2d 312 (Ct. App. 1987).....	10
<i>Mason v. Mason</i> , 412 S.C. 28, 770 S.E.2d 405 (Ct. App. 2015).....	7
<i>Matsushita v. Zenith</i> , 475 US 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).....	10
<i>Mears v. Mears</i> , 287 S.C. 168, 337 S.E.2d 206 (1985).....	5, 7
<i>Osborne v. Adams</i> , 338 S.C. 82, 525 S.E.2d 268 (Ct.App.1999).....	6
<i>Peterson v. West Am. Ins. Co.</i> , 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999).....	6

<i>Rakestraw v. SCDHPT</i> , 323 S.C. 890, 473 S.E.2d 890 (Ct. App. 1996)	9
<i>Richardson v. State-Record Co.</i> , 330 S.C. 562, 499 S.E.2d 822 (Ct.App.1998).....	10
<i>Rogers v Florence Printing Co.</i> , 233 S.C. 567, 106 S.E.2d 258 (1958).....	9
<i>Sadisco v Greenville Bd. of Zoning</i> , 340 S.C. 57, 530 S.E.2d 383 (2000).....	5, 7
<i>Scott v Harris</i> , 550 US 372, 127 S.Ct. 1769, 167 L.Ed.2d 686 (2007).....	10
<i>Sides v. Greenville Hosp. System</i> , 362 S.C. 250, 607 S.E.2d 362 (Ct. App. 2004).....	11
<i>Strother v. Lexington County Recreation</i> , 332 S.C. 54, 504 S.E.2d 117 (1998).....	9
<i>Stroup v. Duke Power Co.</i> , 216 S.C. 79, 56 S.E.2d 745 (1949).....	5, 7
<i>Summer v. Carpenter</i> , 328 S.C. 36, 492 S.E.2d 55 (1997).....	6
<i>Wade v. Gore</i> , 154 S.C. 262, 151 S.E. 470 (1930).....	5, 7
<i>Weatherford v. Price</i> , 340 S.C. 572, 532 S.E.2d 310 (Ct. App. 2000).....	8

STATUTES AND REGULATIONS

<i>S.C. Code Ann. §14-3-330</i>	6
<i>S.C. Code Ann. §15-78-20(b) and (f)</i>	8
<i>S.C. Code Ann. §15-78-60 (16)</i>	9
<i>S.C. Code Ann. §15-78-40</i>	8
<i>S.C. Code Ann. §15-78-200</i>	8
<i>S.C. Code Ann. § 27-3-30</i>	9
<i>S.C. Code Ann. § 27-3-40</i>	9
<i>S.C. Code Ann. § 27-3-60</i>	9

OTHER AUTHORITIES

<i>Rule 1, SCRCP</i>	12
<i>Rule 12(b)(6), SCRCP</i>	12
<i>Rule 56(c),(e) and (f), SCRCP</i>	6, 10, 11, 12, 13, 14
<i>Rule 203 and 203(d)(1)(B), SCACR</i>	5, 6, 7
<i>Rule 243, SCACR</i>	7
<i>Rule 263, 263(b), SCACR</i>	5, 7

COUNTERSTATEMENT OF ISSUES ON APPEAL

1. Appellant failed to notice the appeal of the formal and final order of the Circuit Court that properly granted summary judgment.
2. Even absent Appellant's failure of proper notice, the Circuit Court properly granted summary judgment where Respondent's motion was properly made and supported, but Appellant's necessary response failed to demonstrate the likelihood that further discovery would uncover additional relevant evidence or set forth specific facts showing that there was a genuine issue for trial.

STATEMENT OF THE CASE

Ava Sykes purports to appeal orders granting summary judgment to Greenville County. However, the final and formal “Order Granting Defendant Greenville County’s Motion for Summary Judgment” was filed October 28, 2025 (R. pp. 11-18), while Sykes’ notice of appeal is for those orders of the lower court dated September 30, 2025 (R. pp. 8-9) and November 24, 2025 (R. pp. 19-20) (which are also the only two orders accompanying the proof of service in her filing with this Court).¹

Sykes filed her Complaint on July 23, 2024 (R. pp. 22-34), asserting causes of action against Greenville County, the City of Greenville and Prisma Health for injuries sustained from an October 17, 2023 bicycle wreck on the Swamp Rabbit Trail (“SRT”). Greenville County timely filed its Answer on November 27, 2024 (R. pp. 35-44), raising a “Motion to Dismiss and/or for Judgment” as a first defense, noting the significant protections of both the South Carolina Tort Claims Act (“SCTCA”) and the South Carolina Recreational Use Statute (“SCRUS”) and contesting any: duty of care, alleged breach thereof, or notice sufficient for a required finding of grossly negligent, willful or malicious conduct.

Though Sykes served discovery requests upon the other two co-defendants, no discovery requests were ever served upon Greenville County.² Greenville County did serve discovery requests upon Sykes though, in January of 2025, seeking potential witnesses or other evidence of the required prior notice to Greenville County per the SCTCA and/or the SCRUS. (R. p. 122, ll. 24-25; p. 123, l. 25 – p. 124, l. 11).

¹ Greenville County counsel has informed Sykes’ counsel of this concerning omission but includes the October 28, 2025 Order within its “Designation of Matter” in furtherance of overall affirmation of Judge Dunbar’s ruling.

² Sykes erroneously claimed in her Initial Brief that Greenville County was served discovery on April 14, 2025 and never responded. Such a claim was NOT maintained before Judge Dunbar – properly so. Upon review of this claim, it seems apparent Sykes served discovery upon the City of Greenville on April 14, 2025, but erroneously prepared a certificate of service with those requests naming Greenville County. Greenville County counsel has informed counsel for Sykes that the erroneous claim necessitated mention and clarification.

Greenville County filed a Motion for Summary Judgment and supporting affidavits of agents Steward Lawrence and Ty Houck, with exhibits, on May 28, 2025 (R. pp. 45-47, 55-73). The next day, an initial hearing was set for July 31, 2025. The co-defendants filed separate motions for summary judgment: the City of Greenville on June 19, 2025 and Prisma Health on June 20, 2025. On July 18, 2025, without seeking confirmation of witness availability, Sykes noticed a 30(b)(6) deposition upon Greenville County for July 29, 2025 (R. pp. 100-110); this despite the fact that counsel for Greenville County had assured Sykes' counsel on July 16, 2025, that he would "protect you on at least the attempt to seek this discovery prior to the hearing" whether he served notice or not, with the knowledge Greenville County would likely move for appropriate protection through the July 31, 2025 hearing. (R. p. 140, l. 13 – p. 41, l. 7); exhibit A to Defendant Greenville County's Memorandum in Response and Opposition to Plaintiff's Motion to Reconsider dated October 16, 2025 - R. pp. 89-90). Counsel for Greenville County was injured soon thereafter in an accident requiring surgery and the 30(b)(6) notice was withdrawn and the hearing for Defendants' summary judgment motions was eventually rescheduled for September 24, 2025. No subsequent deposition notice or discovery response was served prior to the September 24, 2025 hearing. Greenville County's Memorandum in Support of Summary Judgment was filed September 19, 2025 (R. pp. 48-54) and Sykes filed her Memorandum in Opposition, along with her sworn verification of her Complaint on the eve of the hearing. (R. pp. 74-80)

Based largely upon the Greenville County affidavits and the concession of Sykes at the hearing, orders granting summary judgment were filed on September 25, 2025 for the City (R. pp. 1-4) and September 26, 2025 for Prisma (R. pp. 5-7).

The Circuit Court's Form 4 Instructional Order in favor of Greenville County was filed on September 30, 2025 (R. pp. 8-10), and the requested Formal Order was filed on October 28, 2025 (R. pp. 11-18). Sykes timely filed Motions to Reconsider (R. pp. 81-83 and 91-94) as to each order and Greenville County timely filed a Memoranda in Response and Opposition to both of Sykes' Motions to Reconsider (R. pp. 86-90 and 95-99). The Circuit Court issued a Form 4 Order denying both of Sykes' Motions to Reconsider on November 24, 2025 (R. pp. 19-21).

On December 3, 2025 Sykes filed a Notice of Appeal to the September 30, 2025 and November 24, 2025 orders (R. pp. 111-113). Likewise, those were the only two orders accompanying the Notice of Appeal when all were filed with the Court of Appeals on December 10, 2025.

STATEMENT OF FACTS

Ava Sykes' suit regarding her bike wreck faced formidable challenges from the outset. As noted by the Greenville County affiants, the SRT was specifically created for free (without charge), public, recreational purposes and use, with no deviation since its opening, with the lower court properly finding SCRUS applicability. Greenville County "owns" and maintains the section of the SRT where Plaintiff's accident occurred, near the northernmost end past "downtown" Travelers Rest; hence, this was always a matter for which great protection was afforded Greenville County, rightfully so, per the SCTCA and SCRUS.

Per her verified Complaint, Sykes' wreck was due to a danger or defect causing injury. However, as set forth by the affiants, the very two who would have addressed any potential 30(b)(6) topics (R. p. 129, ll. 10-18; p. 140, ll. 13-16), there was no report to Greenville County of any dangerous or "defective" condition in the area of Sykes' accident and Greenville County had no notice (constructive, actual or otherwise) of any dangerous defect, condition or structure

that had caused or contributed to an alleged loss or injury in that area prior to October 17, 2023. (See affidavits of Lawrence and Houck, with exhibits - R. pp. 55-73).

The required prior notice was the prime focus of the summary judgment hearing. Through its affiants, Greenville County made a proper demonstration per *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986), but Sykes failed to make the required showing in response. Sykes' appeal essentially concedes that no genuine issue of material fact was raised as to the required prior notice, even when the erroneous notice of appeal is ignored. Sykes instead asserts error in the lower court's determination to not allow a 30(b)(6) deposition to proceed. However, neither Sykes' verification nor her counsel's later affidavit demonstrated "the likelihood that further discovery will uncover additional relevant evidence and that the party is "not merely engaged in a 'fishing expedition.'" *Dawkins v Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003), citing *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991).³

STANDARD OF REVIEW

"This Court has consistently stated that service of the Notice of Appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the Notice of Appeal must be served." *Sadisco v Greenville Bd. of Zoning*, 340 S.C. 57, 59, 530 S.E.2d 383 (2000), citing *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985). See also *Rules 203(d)(1)(B)* and 263, SCACR; *Stroup v. Duke Power Co.*, 216 S.C. 79, 56 S.E.2d 745 (1949); *Wade v. Gore*, 154 S.C. 262, 151 S.E. 470 (1930); *Connor v City of Forest Acres*, 348 S.C. 454, 461, 560

³ To the extent the lower court's ruling is deemed unclear on whether Sykes made a sufficient *Dawkins* demonstration, it was her responsibility to obtain such a ruling. See *I'ON, LLC v. Town of Mt. Pleasant*, 338 S.C.406, 526 S.E.2d 716 (2000).

S.E.2d 606, 609 (2002); and *Collins Music Co. Inc. v. IGT*, 353 S.C. 559, 579 S.E.2d 524 (Ct. App. 2002).

“When reviewing the grant of a summary judgment motion, the appellate court applies the same standard that governs the trial court under *Rule 56(c), SCRCP*. *Peterson v. West Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999). Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Rule 56(c), SCRCP*. When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997).” *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002).

“The rulings of a trial judge in matters involving discovery will not be disturbed on appeal absent a clear showing of an abuse of discretion. *Dunn v. Dunn*, 298 S.C. 499, 381 S.E.2d 734 (1989); *Osborne v. Adams*, 338 S.C. 82, 525 S.E.2d 268 (Ct. App.1999). An abuse of discretion occurs when the trial judge's ruling is based upon an error of law or, when based on factual conclusions, is without evidentiary support. *Fontaine v. Peitz*, 291 S.C. 536, 354 S.E.2d 565 (1987); *Osborne, supra.*” *Bayle v. South Carolina Dept. of Transp.*, 344 S.C. 115, 128, 542 S.E.2d 736 (Ct. App. 2001).

ARGUMENTS

I. Dismissal is warranted given Sykes’ improper notice of appeal.

Appellate jurisdiction exists with regard to final orders. *S.C. Code Ann. §14-3-330*. Per *Rule 203, SCRAR*, the notice of appeal should be served within thirty days after receipt of written notice of entry of the order or judgment. However, when a form or other short order or judgment indicates that a more full and complete order is to follow, the time is accordingly extended.

Moreover, once the notice of appeal is filed with the clerk of the lower court and served upon all respondents, within ten days thereafter appellant is to file the notice with the clerk of the appellate court along with the proof of service and a copy of the orders and/or judgments to be challenged on appeal. “The notice filed with the appellate court shall be accompanied by the following: (i) Proof of service showing that the notice has been served on all respondents: (ii) A copy of the order(s) and judgment(s) to be challenged on appeal if they have been reduced to writing.” *Rule 203 (d)(1)(B), SCACR*.

“The time prescribed by these Rules for performing any act **except the time for serving the notice of appeal** under *Rules 203* and *243* may be extended or shortened by the appellate court, or by any judge of justice thereof.” *Rule 263(b), SCACR (emphasis added)*.

Neither of the two orders noticed and filed by Sykes are wholly final and substantive. The full, final and substantive formal order was reduced to writing on October 28, 2025. Sykes has unfortunately failed to timely and appropriately appeal the definitive October 28, 2025 order granting summary judgment.

“This Court has consistently stated that service of the Notice of Appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the Notice of Appeal must be served.” *Sadisco v Greenville Bd. of Zoning*, 340 S.C. 57, 59, 530 S.E.2d 383 (2000), citing *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985). See also *Stroup v. Duke Power Co.*, 216 S.C. 79, 56 S.E.2d 745 (1949); *Wade v. Gore*, 154 S.C. 262, 151 S.E. 470 (1930); *Connor v City of Forest Acres*, 348 S.C. 454, 461, 560 S.E.2d 606, 609 (2002); *Mason v. Mason*, 412 S.C. 28, 770 S.E.2d 405 (Ct. App. 2015); *Collins Music Co. Inc. v. IGT*, 353 S.C. 559, 579 S.E.2d 524 (Ct. App. 2002).

Though “[c]lerical errors in a notice of appeal do not destroy the appeal[,]” none of the seemingly applicable exceptions exist herein, where the proper order was neither noticed nor filed with the Court of Appeals and no motion seeking leave to correct has been timely filed. *See Charleston Lumber Co. v Miller Hous. Corp.*, 318 S.C. 471, 478, 458 S.E.2d 431, 435 (Ct. App. 1995); *Weatherford v. Price*, 340 S.C. 572, 578, 532 S.E.2d 310, 313 (Ct. App. 2000). Moreover, Greenville County cannot concede a lack of prejudice in having to fully research and address this matter. Additionally, the lack of any specific dates beyond the Complaint and Answer in the Appellant’s Designation of Matter, defies a “lack of prejudice” in response, such that affirmation of the lower court determination per the omission and/or via jurisdictional dismissal would be proper.

Nonetheless, even putting aside the improper notice of appeal, the grant of summary judgment was proper and should be affirmed.

II. Summary Judgment was appropriate given SCTCA and SCRUS protections.

As noted throughout, the SCTCA and SCRUS provided Greenville County exceptional protections. The SCTCA is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or agents; the provisions of the SCTCA must be liberally construed in favor of limiting the liability of the State and/or governmental entity. *See S.C. Code Ann. §§15-78-200 and 15-78-20(b) and (f)*. Governmental entities are only “liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.” *S.C. Code Ann. §15-78-40*.

The numerous designated exceptions to the waiver of immunity within the SCTCA include:

“(16) maintenance, security, or supervision of any public property, intended or permitted to be used as a park, playground, or open area for recreational purposes, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for maintenance, security, or supervision within a reasonable time after actual notice of the defect or condition[.]”

S.C. Code Ann. §15-78-60(16). See also, *Strother v. Lexington County Recreation*, 332 S.C. 54, 504 S.E.2d 117 (1998).

The SCRUS declares that its purpose "is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes." The SCRUS therefore provides that a landowner who opens his property to the public for recreational uses without charge owes the public no duty of care to keep the premises safe or to warn of dangerous conditions on the property. See *S.C. Code Ann. § 27-3-30*. Furthermore, a landowner who permits the public to use his property in such a manner does not thereby extend any assurance that the premises are safe or confer the legal status of an invitee or licensee upon those who enter his property. See *S.C. Code Ann. § 27-3-40*. The SCRUS does not, however, limit the landowner's liability for a grossly negligent, willful, or malicious failure to guard or warn against a dangerous condition. See *S.C. Code Ann. § 27-3-60*.

Kimsey v. City of Myrtle Beach, 109 F.3d 194, 195-196 (4th Cir. 1997)(additionally confirming that the SCRUS applies to state governmental entities). See also *Chrisley v. United States*, 620 F. Supp. 285(D. S.C. 1985) (Aff'd 791 F.2d 165 (4th 1986)).

Gross negligence has been defined as “the failure to exercise even slight care.” See *Clark v. SC Dept. of Public Safety*, 362 S.C. 377, 608 S.E.2d 573 (2005). As the Supreme Court has explained, the conduct required to demonstrate gross negligence requires a consciousness of wrongdoing. *Rogers v Florence Printing Co.*, 106 SE2d 258, 264 (1958). “Gross negligence” is the intentional, conscious failure to do something which one ought to do or the doing of something one ought not to do.” *Brooks v Northwood Little League*, 489 S.E.2d 647, 651 (Ct. App. 1997)(citing *Clyburn v. Sumter County School District*, 451 S.E.2d 885, 887 (1994) and *Rakestraw v. SCDHPT*, 473 S.E.2d 890 (Ct. App. 1996)).

“Summary judgment is appropriate when it is clear that there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law.” *City of Columbia v. A.C.L.U.*, 323 S.C. 384, 386, 475 S.E.2d 747, 748 (1996) *citing CSNB v Landlord*, 443 S.E.2d 549 (1994).

“The purpose of summary judgment is to obviate delay where there is no material issue of fact involved.” *Manley v Manley*, 353 S.E.2d 312, 314 (Ct. App. 1987), *citing Hammond v Scott*, 232 S.E.2d 336 (1977). “[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment. The requirement is that there be no *genuine* issue of *material* fact.” *Scott v Harris*, 550 US 372, 380 (2007), *quoting Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 US 574, 586-7 (1986) and *Anderson v. Liberty Lobby, Inc.*, 477 US 242, 247-8 (1986). “[T]he “mere scintilla” standard is not the correct standard for decision under *Rule 56(c)*. . . . [A] party opposing summary judgment “must . . . ‘do more than simply show that there is some metaphysical doubt as to the material facts’ but ‘must come forward with ‘specific facts showing that there is a *genuine issue for trial*.’” *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023) (*quoting Baughman v AT&T*, 410 S.E.2d 537 at 545 (1991) and *Matsushita, Id.* at 586-7).

"Under *Rule 56(c)*, the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). "With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility 'may be discharged by "showing" — that is, pointing out to the [trial] court — that there is an absence of evidence to support the nonmoving party's case.'" *Id.* (alteration in original) (*quoting Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)). "The moving party need not 'support its motion with affidavits or other similar materials negating the opponent's claim.'" *Id.* (*quoting Celotex*, 477 U.S. at 323, 106 S.Ct. 2548); *see also Richardson v. State-Record Co.*, 330 S.C. 562, 499 S.E.2d 822 (Ct.App.1998). Once the moving party carries its initial burden, the opposing party must come forward

with specific facts that show there is a genuine issue of fact remaining for trial. *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545.

Sides v. Greenville Hosp. System, 362 S.C. 250, 255; 607 S.E.2d 362 (Ct. App. 2004).

"The plain language of *Rule 56(c)*, *SCRCP*, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." *CAFE v. SCDLLR*, 337 S.C. 476, 485, 523 S.E.2d 795, 800 (Ct. App. 1999).

Given the filing of the affidavits and exhibits concurrent with the motion for summary judgment, Greenville County met its initial responsibility of demonstrating the absence of a genuine issue of material fact with regard to the required prior notice per *Celotex, supra*. The lower court's final order appropriately granted summary judgment when Plaintiff failed to "come forward with specific facts" to show a genuine issue of material fact remained for trial with regard to the required proper notice per the unique protections of the SCTCA and SCRUS.

III. Sykes could not demonstrate the likelihood that further discovery would uncover additional relevant evidence or establish a genuine issue of fact.

While it is recognized that summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery, the non-moving party must nonetheless demonstrate "the likelihood that further discovery will uncover additional relevant evidence and that the party is 'not merely engaged in a 'fishing expedition.'" *Dawkins v Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003), citing *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991).

While Sykes' cited cases of *Doe*⁴ and *Baughman* admittedly remind that discovery is favored prior to the drastic grant of summary judgment, both are distinguishable under their circumstances. In *Doe* "there clearly existed some confusion regarding whether the hearing was pursuant to Rule 12(b)(6) or Rule 56." *Doe* at 321. No such confusion existed herein. *Baughman* indeed cites to a variety of jurisdictions across the country (though one is Alabama, not Alaska), but Sykes ignores the prime distinction immediately thereafter, referenced in *Doe*, that summary judgment was ruled premature because in *Baughman* "plaintiffs demonstrated a likelihood that discovery would uncover additional relevant evidence" *Doe* at 322, "and they are not merely engaged in a fishing expedition." *Baughman* at 112 and 544. Judge Dunbar implicitly found that neither Sykes' verification nor her counsel's supplemented affidavit within a Motion to Reconsider provided the required demonstration.⁵ The lower court's determination correctly recognized that the desire to depose affiants who had already provided sworn testimony that no prior notice existed, could not overcome Sykes' required and independent *Celotex* response. How could it be deemed likely that conducting the 30(b)(6) deposition would uncover relevant evidence regarding the requisite prior notice when the two persons who would respond had already provided sworn testimony that no such notice existed? The lower court's closing reference to the base of the South Carolina Rules of Civil Procedure was appropriate and overarching.⁶ The proper query was not what additional discovery Sykes desired or might attempt to obtain from Greenville County, but whether Sykes could credibly substantiate her original allegation of prior notice in opposition of the affidavits. Greenville County was adamant

⁴ *Doe v Batson*, 345 S.C. 316, 548 S.E.2d 857 (2001).

⁵ Again, to the extent it is deemed that Judge Dunbar did not adequately rule or so find, then Sykes' appeal is of no avail per "the long-established preservation requirement" of *I'ON, LLC v Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716 (2000).

⁶ [These rules] "shall be construed to secure the just, speedy, and inexpensive determination of every action." *Rule 1, SCRPC*.

throughout that no prior notice existed. At the time of the hearing, it had been 14 months since the Complaint filing, 8 months since the service of discovery requests and over 23 months since the accident itself (R. p. 122, ll. 23-25; p. 124. ll. 7-11), but Sykes was able to put forth no credible evidence that Greenville County had any prior notice. Conversely, the sworn affidavits denied prior notice and depicted the timely and appropriate response that did occur once Greenville County was made aware of Sykes' allegation. The lower court's determination implicitly and correctly found Sykes' responsive "demonstration" insufficient. At no time during the hearing or through subsequent filings did Sykes appropriately assert a basis to refuse judgment or continue a judgment determination to obtain known facts essential to justify her opposition per *Rule 56(f)*, *SCRCP*. Neither Sykes' verification nor the subsequent affidavit of her counsel was sufficient. Despite her assertions otherwise, Sykes' verified complaint, just as in her cited case of *Dawkins v Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003), failed to meet the requirements of *Rule 56(e)*, *SCRCP*;⁷ contained an abundance of conclusory allegations, notably with regard to allegations of notice to Greenville County; and was "simply not an appropriate substitute for an affidavit." *Dawkins* at 68. Likewise, the affidavit of her counsel filed October 16, 2025 (intended to be filed with Sykes' original Motion to Reconsider), merely claimed the 30(b)(6) deposition "was necessary to obtain testimony regarding Greenville County's maintenance responsibilities and notice of hazardous conditions along the Swamp Rabbit Trail – central issues in this case that are directly relevant to Plaintiff's claims of negligence and gross negligence. Additionally, it was the Plaintiff's intent to inquire as to previous instances where individuals were hurt on the trail, that Greenville County had notice of." (Affidavit of Sulaiman Ahmad, Esq. - R. pp. 84-85). However, as noted at the hearing with regard to the 30(b)(6)

⁷ "[A]n adverse party may not rest upon the mere allegations . . . of [her] pleadings, but . . . must set forth specific facts showing that there is a genuine issue for trial." *Rule 56(e)*, *SCRCP*

request regarding these issues, the allegedly desired sworn testimony was already adequately provided: “It’s these two gentlemen. . . . They’ve already testified under oath.” (R. p. 129, ll. 10-18). Moreover, unrelated “previous instances” would be irrelevant given the SCTCA and SCRUS protections.

What was required and not provided, were either: the affidavit of even one of the alleged “two other people” prior to Sykes who “had hit the unreasonable, dangerous condition that caused her injuries” (Complaint, ¶ 23 - R. pp. 26-27) along with competent evidence that Greenville County had appropriate notice of the same; or an affidavit that Sykes could not “for reasons stated present by affidavit facts essential to justify [her] opposition.” *Rule 56(f), SCRCP*. The record was devoid of any such showing.

The uncontested affidavits of Lawrence and Houck justified the grant of summary judgment to Greenville County just as they justified the grant of summary judgment to both co-defendants. There was simply no error of law or lack of evidentiary support in Judge Dunbar’s proper determination, especially given the unique protections provided to Greenville County by the SCTCA and SCRUS.

CONCLUSION

While Sykes’ failure to properly notice appeal of the final order granting summary judgment might be deemed jurisdictional and justify perfunctory dismissal, even full review reveals the propriety of the lower court’s grant of summary judgment to Greenville County, which should be affirmed.

s/John Patrick Jack Riordan
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