

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

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Sep 28 2026

SC Court of Appeals

Michael and Mary Smith,

Appellants,

v.

King Asphalt, Inc.

Respondent.

FINAL 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 (Handwritten filing of Appellants, filed March 25, 2024; R. p. 84). We asked every court for help with a lawyer and we were told no (Handwritten filing of Appellants, filed March 25, 2024; R. p. 84; Appellants' Opposition to Motion for Summary Judgment and Cross Motion for Summary Judgment, filed December 13, 2024; R. pp. 143-145, 147, 154-157; Form 4, Judgment in a Civil Case, entered February 18, 2025, page 2; R. p. 8). 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 (Appellants' Supplement to Motion to Reconsider, filed March 20, 2025; R. pp. 1026-1027; Appellants' Second Supplemental Submission, filed April 11, 2025; R. p. 1218), 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 (Order Granting Summary Judgment, filed March 10, 2025; R. pp. 11, 14). We sued in 2021 (Summons and Complaint, filed March 23, 2021; R. pp. 38-48). King Asphalt asked the court for summary

judgment (King Asphalt Inc.'s Motion for Summary Judgment, filed January 19, 2024; R. pp. 81-82). The court held a hearing on January 27, 2025 (Transcript of Record, hearing of January 27, 2025; R. pp. 1511-1530). The court granted summary judgment by an order entered February 18, 2025 (Form 4, Judgment in a Civil Case, entered February 18, 2025; R. pp. 7-9). We asked the court to look at it again under Rule 59(e), SCRCP, on February 28, 2025 (Plaintiffs' Motion to Reconsider Pursuant to Rule 59(e), filed February 28, 2025; R. pp. 826-858). The court filed a longer order on March 10, 2025 (Order Granting Defendant King Asphalt, Inc.'s Motion for Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment, filed March 10, 2025; R. pp. 11-22). On May 27, 2025, the court denied our motion in a final order (Final Order Regarding Motion to Reconsider, filed May 27, 2025; R. pp. 31-32). We filed our notice of appeal on June 23, 2025 (Notice of Appeal, filed June 23, 2025; R. pp. 1504-1506). 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 (Plaintiffs' Opposition to

Defendant King Asphalt, Inc.'s Motion for Summary Judgment, Cross-Motion for Summary Judgment, and Prayer for Alternative Relief, filed December 13, 2024; R. pp. 95, 113). 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 (SCDOT Proposal and Contract No. 3948130, filed January 27, 2025; R. pp. 647-773). 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 (Contract No. 3948130, Special Provisions, page 22; R. pp. 239, 668). 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 (Contract No. 3948130, Special Provisions, page 23; R. pp. 240, 669). We raised this in our opposition papers of December 13, 2024, before the hearing (Plaintiffs' Opposition to Defendant King Asphalt, Inc.'s Motion for Summary Judgment, Cross-Motion for Summary Judgment, and Prayer for Alternative Relief, filed December 13, 2024; R. pp. 95, 113). Michael tried to explain it at the hearing and was stopped (Transcript of January 27, 2025 hearing, 15:4 to 9 and 16:3 to 16; R. p. 1525, lines 4-9; R. p. 1526, lines 3-16). 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 (Plaintiffs' Response to Defendant's Memorandum in Support of Summary Judgment and Arguments at the Hearing, filed January 30, 2025, section I.2; R. pp. 778-780; Plaintiffs' Motion to Reconsider Pursuant to Rule 59(e); R. pp. 834, 852; Plaintiffs' Second Supplemental Submission Regarding Motion to Reconsider Pursuant to Rule 59(e), filed April 11, 2025, pages 3 to 6; R. pp. 1211-1214). The court's own order said the height difference was 2 inches or less and treated that as allowed (Order Granting Summary Judgment, filed March 10, 2025, page 4; R. p. 14). 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 (Order Granting Summary Judgment, filed March 10, 2025, pages 2 and 6; R. pp. 12, 16). 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 (Plaintiffs' Opposition, filed December 13, 2024, section II; R. pp. 135-138; Plaintiffs' Response, filed January 30, 2025, sections II.B, III, IX, and X; R. pp. 785, 786-787, 790-792; Plaintiffs' Motion to Reconsider, section VI; R. pp. 855-857; Plaintiffs' Second Supplemental Submission, filed April 11, 2025, section A; R. pp. 1210-1214). 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 (Plaintiffs' Request to Clarify Rulings and Preserve Issues for Appeal, dated January 22, 2025; R. pp. 546-550). 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 (Form 4, Judgment in a Civil Case, entered February 18, 2025, page 2; R. p. 8). We asked the court to fix this in our Rule 59(e) motion and it said no (Plaintiffs' Motion to Reconsider, section VI; R. pp. 855-857; Final Order Regarding Motion to Reconsider, filed May 27, 2025; R. p. 31).

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 (Plaintiffs' Response, filed

January 30, 2025, section I.1; R. p. 777). 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 (Memorandum in Support of King Asphalt's Motion for Summary Judgment and in Opposition to Plaintiffs' Cross-Motion for Summary Judgment, filed January 27, 2025, page 3; R. p. 572). 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 (Plaintiffs' Motion to Reconsider Pursuant to Rule 59(e), filed February 28, 2025; R. pp. 826, 837-838). The court's order did not address the statute at all (Order Granting Summary Judgment, filed March 10, 2025; R. pp. 11-22). We asked the court to consider it in our Rule 59(e) motion and the court denied the motion (Plaintiffs' Motion to Reconsider, filed February 28, 2025, including section VI.B.5; R. pp. 826, 837-838, 856; Final Order Regarding Motion to Reconsider, filed May 27, 2025; R. p. 31).

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 (Appellants' Supplement to Motion to Reconsider, filed March 20, 2025; R. pp. 992, 1002, 1026-1027, 1045; Appellants' Second Supplemental Submission, filed April 11, 2025; R. pp. 1216-1218; Final Order Regarding Motion to Reconsider, filed May 27, 2025; R. p. 31). We asked for a lawyer and were refused (Handwritten filing of Appellants, filed March 25, 2024; R. p. 84; Appellants' Opposition to Motion for Summary Judgment and Cross Motion for Summary Judgment, filed December 13, 2024; R. pp. 143-145, 147, 154-157; Form 4, Judgment in a Civil Case, entered February 18, 2025, page 2; R. p. 8). We wrote the courts by hand on March 25, 2024 asking for help, and

that letter is in the record (Handwritten filing of Appellants, filed March 25, 2024; R. p. 84).

Everything we say here we already said to the trial court before it ruled (Plaintiffs' Opposition, filed December 13, 2024; R. pp. 95, 113, 135-138; Plaintiffs' Response, filed January 30, 2025; R. pp. 777-780, 785-787, 790-792). 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: September 28, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2026, I served a true and correct copy of the foregoing FINAL BRIEF OF APPELLANTS with Certificate of Service:

On a USB Drive (digital) by US PRIORITY MAIL, Certified 9589 0710 5270 3677 8501 73, return e-receipt requested:

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Michael D. Smith, Pro Se Appellant

/s/ Mary Smith
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September 28, 2026