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SC Court of Appeals

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. 2025-002444

Ava Sykes……Appellant,

v.

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

APPELLANT'S FINAL REPLY BRIEF

Respectfully submitted,

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REPLY

Appellant filed her notice of appeal 10 days after a final judgment was entered and nearly three weeks before the deadline to appeal. Appellant's appeal is therefore timely.

Summary judgment was granted in this case notwithstanding the existence of genuine issues of material fact and even though the plaintiff was never allowed to take a single deposition. Appellant scheduled Respondent's SCRCP 30(b)(6) deposition and then agreed to postpone it at Respondent's request to allow for counsel's necessary medical treatment. After receiving that accommodation, Respondent proceeded with a hearing on its summary judgment motion without allowing Appellant to take the deposition that she had moved to accommodate Respondent. The Circuit Court granted the Respondent's motion even though Appellant submitted a verified complaint and an attorney's affidavit confirming that Appellant had been denied the opportunity to conduct discovery.

The Circuit Court's grant of summary judgment conflicts with clearly established law. The order should therefore be reversed and this case remanded to the Circuit Court.

I. Appellant timely filed her appeal.

An appeal is proper when it is filed and served within thirty days of the entry of a final judgment. SCACR 203. An order or judgment is not final until a SCRCP 59(e) motion to alter or amend that order has been ruled on. "[A] motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion. *See* Rule 203(b)(1), SCACR; Rules 50(e), 52(c), and 59(f), SCRCP." *Elam v. South Carolina Dept. of Transp*., 361 S.C. 9, 15, 602 S.E.2d 772 (2004).

The Circuit Court granted Greenville County's motion for summary judgment on September 30, 2025, with instructions for Greenville County to submit a proposed order. (R. p. 1).

In an abundance of caution, Sykes timely filed a SCRCP 59(e) motion to alter or amend that judgment on October 10, 2025. (R. p. 81). The Circuit Court adopted Greenville County's proposed order on October 28, 2025. (R. p. 11). The plaintiff then timely filed a SCRCP 59(e) motion to alter or amend that final order on November 4, 2025. (R. p. 91). The Circuit Court denied both SCRCP 59(e) motions on November 24, 2025. (R. p. 19). That denial made the deadline for Sykes to file her notice of appeal December 24, 2025. (SCRCP 203(b): "A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment."). Appellant filed her notice of appeal with this Court and with the Circuit Court on December 3, 2025, several weeks before that deadline. (R. p. 111).

Respondent argues that "[n]either of the two orders noticed and filed by Sykes' [*sic*] are wholly final and substantive." (Resp. brief, p. 7.) However, the Public Index and the filed documents referenced above and included in the Record on Appeal confirm that the Court's formal summary judgment order was entered on October 28, 2025, and Appellant's SCRCP 59(e) motion was timely filed on November 4, 2025, which stayed the time to appeal. *Elam,* 361 S.C. at 15. The judgment became final on November 24, 2025, when the Court denied Respondent's SCRCP 59(e) motion. Appellant filed a notice of appeal on December 3, 2025, well within thirty days of the final order.

II. The lower court's decision ignores multiple issues of fact that exist for a jury's determination.

Respondent's first substantive argument is that it is shielded from liability because *S.C. Code* 15-78-60 provides immunity where dangerous conditions like the one that caused the injury in this case are repaired, "within a reasonable time after actual notice of the defect or condition." *S.C. Code* 15-78-60 (16). The problem for Respondent is that a fact question exists as to whether

Respondent repaired the defect within a reasonable time. Appellant has set forth sworn allegations in a verified complaint that Respondent did work on the trail and stopped work, "[b]y October of 2023," leaving "a large, dangerous hole"[1] on the trail. (R. p. 24, Paragraphs 12-13). If Appellant's sworn allegations are taken as true, as they must be at the summary judgment stage, this means not only that Respondent created the dangerous condition, and so had actual knowledge, but also that more than two weeks passed without Respondent correcting the dangerous problem it created. Whether two and a half weeks was a reasonable time for Respondent to allow thousands of patrons per day to traverse the area where the dangerous condition existed is a question of fact for a jury. A jury could very well determine that it was not reasonable for Respondent to create a large, dangerous hole on a trail traversed by hundreds of cyclists and pedestrians each day and then leave that hole in a state of disrepair for two and a half weeks until a cyclist is injured. "If more than one reasonable inference can be drawn from the evidence, the case must be submitted to the jury." *Ray v. Simons*, 140 S.E.2d 575, 245 S.C. 346, 354 (1966).

Appellant's sworn allegations in the Verified Complaint alone are sufficient to withstand Respondent's motion.[2] Respondent's own documents, too, show the existence of fact questions. In support of its motion, Respondent submitted the affidavit of Ty Houck, which confirms Respondent is the entity that maintains and repairs issues like the large, dangerous hole that

[1] This is in direct conflict with Ty Houck's affidavit, which asserts that "…no 'large dangerous hole' ever existed…" (R. p. 55) This conflict is required to be resolved in favor of Appellant at the summary judgment stage. SCRCP 56(c).

[2] "[A] verified complaint is an acceptable substitute for an affidavit at the summary judgment phase as long as the pleading satisfies Rule 56(e)." *Dawkins v. Fields*, 580 S.E.2d 433 (2003). Appellant's Verified Complaint satisfies SCRCP 56(e) because her sworn allegations are based upon her personal knowledge and information and facts that are publicly available. Appellant describes the hole that caused her injury, which she observed. Further, it is uncontested that Respondent did the work which created the hole, as Respondent has produced an affidavit confirming that it did the work.

Respondent left unrepaired for weeks until inevitably someone was injured. Although a fact question exists as to whether the hole was present as Appellant alleged in her Verified Complaint, there is no question that, if there was a hole created by Respondent's work as alleged in the Verified Complaint, it was Respondent who created it.

Respondent's argument regarding the South Carolina Recreational Use Statute also fails. First, Respondent acknowledges that the Statute does not, "…limit the landowner's liability for a grossly negligent…failure to guard or warn against a dangerous condition. *See S.C. Code Ann. § 27-3-60*," language that Respondent quotes from *Strother v. Lexington County Recreation*, 504 S.E.2d 117 (1998). (Resp. brief, p. 9). "'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). It can hardly be argued that, once Respondent created a large, dangerous hole on the Swamp Rabbit Trail, Respondent ought to fix that hole and ought not to leave that large, dangerous hole for two and a half weeks until it caused Appellant's injury. In any event, a jury could determine Respondent's actions in creating and leaving the hole unrepaired constituted gross negligence.

III. Respondent requested its SCRCP 30(b)(6) deposition be postponed to accommodate counsel's medical treatment and then proceeded with its summary judgment motion without allowing Appellant to take the previously noticed deposition.

"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." *Dawkins v. Fields*, 580 S.E.2d 433 (2003). Summary judgment is inappropriate in this case because of the fact questions plainly present, such as whether Respondent was reasonable in creating a large hole on a walking and biking trail and then leaving the hole unrepaired for weeks. But summary judgment is also inappropriate because Respondent prevented a scheduled SCRCP 30(b)(6) deposition from taking

place, then moved for summary judgment, and the lower court granted summary judgment before that deposition, or any deposition, was taken.[3] This is in conflict with *Dawkins*.

Respondent acknowledges *Doe v. Batson*, 345 S.C. 316, 548 S.E.2d 857 (2001) requires that summary judgment be denied where additional discovery is needed. The SCRCP 30(b)(6) deposition that Respondent requested be postponed before the hearing on its summary judgment motion is the very mechanism for determining why Respondent left such a large, dangerous hole in a high-traffic area that it controlled and maintained for such a long period of time until someone was injured. That is likely the most important deposition in the case, and it is a deposition that was scheduled and that Respondent prevented from happening before the summary judgment hearing.

Respondent submitted affidavits of Ty Houck and Steward Lawrence, neither of whom Appellant has been able to depose. The affidavits are almost identical, and portions of them make assertions that the affiants are unlikely to have personal knowledge about such as:

> The Swamp Rabbit Trail ("SRT") was specifically created for free (without charge), public, recreational purposes and use; there has been no deviation since the opening, with such measures specifically intended to ensure the needed protections of the South Carolina Tort Claims Act exceptions to the waiver of immunity and the South Carolina Recreational Use statute.

(R. p. 72). These statements should have been disregarded by the lower court because they are legal arguments, not observations of fact based upon personal knowledge. See *Dawkins v. Fields*, 580 S.E.2d 433 (2003). There is no statement that either of the affiants observed the area where Appellant was injured – rather, the affidavits contain hearsay statements that a witness named Andrew Blackstock (another individual Appellant needs to depose) indicated that there was no

[3] It should also be noted that in addition to the fact that Respondent has prevented Appellant from having a full and fair opportunity to conduct discovery is clear, counsel for Appellant submitted an attorney affidavit in support of Appellant's motion to reconsider outlining the need for additional discovery. (Affidavit of Sulaiman Ahmad).

dangerous condition at the time Appellant was injured. Respondent did not submit an affidavit for Blackstock. Even if it had, that affidavit would conflict with Appellant's verified allegations, based upon her personal knowledge, that a large, dangerous hole existed on the trail and caused her to be injured. That conflict must be resolved in Appellant's favor at the summary judgment stage. SCRCP 56(c).

Respondent includes a footnote that cites *I'ON, LLC v Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000), and suggests that Appellant did not preserve the issue of whether Appellant had a full and fair opportunity to conduct discovery. (Resp. brief, p. 5). Of course, the transcript and Appellant's SCRCP 59(e) motion make it unambiguously clear that Appellant contested dismissal because, in addition to the existence of genuine fact questions, Respondent prevented the scheduled deposition of its SCRCP 30(b)(6) representative and Appellant has not been able to take any depositions.

Respondent is simply incorrect in its argument that Appellant's Verified Complaint contains primarily "conclusory allegations." As set forth above, Appellant swore to statements that, if assumed true, allow her to recover. For example, the sworn allegations of the Verified Complaint contain the following, based upon Appellant's personal knowledge:

> On October 17, 2023, the plaintiff was riding her bicycle on the Swamp Rabbit Trail when she came upon a large dangerous hole that the defendants had failed to repair and/or had inadequately repaired. Because of the location of the hole and the dark color of the asphalt, the plaintiff was unable to see the dangerous condition until it was too late for her to avoid it. The plaintiff hit the hole. She flew off of the bicycle, hitting her head on the ground and landing on her left elbow.

(R. p. 25, Paragraph 15). This statement is not made on information and belief, but rather what Appellant observed when she was injured. This sworn statement directly conflicts with the affidavits of Ty Houck and Steward Lawrence. The lower court resolved this conflict and fact question in favor of Respondent when it was required to resolve it in favor of Appellant.

The Verified Complaint contains other sworn testimony based on personal knowledge, which should be considered:

> The plaintiff reported the dangerous condition that caused her significant injuries to Greenville County employee Ty Houck. Rather than assisting the plaintiff with obtaining an incident report, Houck began publicly disseminating information about the plaintiff's injury and informed multiple third parties that the plaintiff intended to sue Greenville County, even though the plaintiff had no intention at that time of filing suit and had never informed Houck that she planned to file suit. As a result of Houck's dissemination of inaccurate and untrue information, the plaintiff was banned from cycling by the owner of a property that she frequently visited and lost a sponsorship with a wheel manufacturer.

(R. p. 26 Paragraphs 19-20). These statements were set forth by Appellant before Respondent ever had Ty Houck sign the affidavit that is nearly identical to the affidavit of Steward Lawrence. Appellant's sworn allegations, based on personal knowledge, create questions about Houck's credibility, and Appellant should be able to take depose Houck. This statement also demonstrates that Appellant "frequently visited" the trail and therefore had personal knowledge about the trail.

Appellant offered sworn testimony concerning her personal knowledge that Respondent acknowledged that a hole existed when she was injured and that two other people were injured because of the hole before she was. This evidence further supports the allegation that Respondent had notice of the hole:

> Long called the plaintiff the following day and told her that Superior Insurance Services was denying her claim, telling her, "I'm not trying to be a smartass, Ava, but holes are holes." The plaintiff requested the recording that Long made with her statement, but Long refused to give it to the plaintiff. The plaintiff has since learned that, prior to her collision, two other people had hit the unreasonably dangerous condition that caused her injuries and that one of those individuals was seriously injured by the condition. These prior collisions show that the defendants had actual and/or constructive notice that the condition that caused the plaintiff's injuries was dangerous and, despite having such notice, failed to make the condition safe for cyclists.

(R. p. 26-27, Paragraphs 22-23).

CONCLUSION

Appellant filed her notice of appeal 10 days after a final judgment in this case, well within 30 days of entry of the judgment. Appellant's sworn testimony in her Verified Complaint is based upon personal knowledge, and a jury could find in her favor. Appellant has not had a full and fair opportunity to conduct discovery because Respondent prevented the scheduled SCRCP 30(b)(6) deposition of Respondent's representative from taking place before the lower court granted summary judgment. For these reasons, Appellant respectfully requests that this case be sent back to the Circuit Court so that the parties may conduct discovery and try the case.

The constitutions of South Carolina and the United States require that controversies exceeding twenty dollars and disputed factual issues be submitted to a jury. Appellant respectfully submits that her constitutional rights, including her rights under the Seventh and Fourteenth Amendments of the United States Constitution, and under Article I, Section 14, will be violated if she is not provided a fair jury trial.

Respectfully submitted,

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