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STATE OF SOUTH CAROLINA **COUNTY OF ANDERSON**	)	**IN THE COURT OF COMMON PLEAS** **TENTH JUDICIAL CIRCUIT**
Brenda Gail New, **Plaintiff,**	)	**C/A NO. 2025-CP-04-01995**
vs. **Anderson County,** **Defendant.**	)	**ORDER**

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SC Court of Appeals

This matter is before me on Defendant's Motion for Summary Judgment. A hearing was held on this matter on August 19, 2026, at which time Steven M. Pruitt appeared on behalf of the Defendant and Thomas Whitfield Dunaway, IV appeared on behalf of the Plaintiff. For the reasons discussed below, the Court grants Defendant's Motion and dismisses Plaintiff's action.

Plaintiff alleges that she was injured on August 12, 2023, when she fell at the Gracie Floyd Event Center at McFall's Landing (the Facility) which is owned by Defendant. Plaintiff claims that she fell over the hearth of a fireplace which she claims was in an "unexpected place". Plaintiff claims that she was injured in the fall and seeks damages in relation to her fall.

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; see also Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997).

In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the party opposing summary judgment. Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997); Hamiter v. Retirement Div. of South Carolina, 326 S.C. 93, 484 S.E.2d 586 (1997); City of Columbia v. American Civil

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Liberties Union, 323 S.C. 384, 475 S.E.2d 747 (1996).

Defendant argued that Plaintiff's action should be dismissed because Plaintiff failed to establish negligence on the part of Defendant. In order to recover in an action for negligence, Plaintiff "must show: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach." Washington v. Lexington County Jail, 337 S.C. 400, 405, 523 S.E.2d 204, 206 (Ct. App. 1999) (further citation omitted). Defendant does not dispute that Plaintiff was injured but argues that Plaintiff fails to show any negligent act or omission of Defendant which was the proximate cause of this injury.

Plaintiff was attending a wedding shower at the Facility which is owned by Defendant Anderson County and claims she was injured as a result of a fall at the Facility. Defendant submitted portions of Plaintiff's deposition with its Summary Judgment Memorandum. Defendant also attached several photographs which were exhibits to Plaintiffs' deposition in order to show the area where Plaintiff fell.[1] Defendant's Exhibit 1 shows a frontal view of the fireplace and the hearth where Plaintiff states she fell and there is a red X made by Plaintiff on the photograph which shows where she states she fell. Defendant's Exhibit 2 shows a view from the side and somewhat behind the fireplace and the hearth where Plaintiff states she fell. There is again a red X marked on Exhibit 2 showing where Plaintiff states she fell. Defendant's Exhibit 5 shows a side view of the fireplace and hearth and also the wall to the far left of the Facility where Plaintiff stated the gift table was located. There is a red G on Exhibit 5 which Plaintiff states shows where the gift table was located. Finally, Defendant's Exhibit 6 has a legal pad beside the hearth to show the approximate height of the hearth.

Defendant argued that Plaintiff fails to show negligence on the part of Defendant and the Court agrees. As shown on the photographs, the fireplace and hearth are open and obvious and not a

1 The photographs submitted by Defendant with its Memorandum were used in Plaintiff's deposition and Defendant used the exhibit numbers used in Plaintiff's deposition.

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dangerous condition. Plaintiff would have seen them if she had been paying proper attention. Plaintiff testified that she entered the Facility and was going to the far, left side of the Facility to take her gift to the gift table. Plaintiff testified that her foot caught on the corner of the hearth in front of the fireplace and she fell. Plaintiff testified that there was nothing that blocked her view of the hearth. Plaintiff in her deposition testified as follows:

Question: "And just to be clear, there was---was there something that blocked your view of the hearth?"

Plaintiff's Response: "Not that I know of. I just wasn't looking down. I didn't know that there was a fireplace that close to the door entrance."

Question: "There wasn't anything blocking your view; is that correct?"

Plaintiff's Response: "Yes."

Question: "That's correct?"

Plaintiff's Response: "Yes."

Plaintiff does not claim that her view of the hearth was obstructed in any way. The fireplace and hearth are prominent features in the Facility which Plaintiff should have seen if she had been paying proper attention.

Plaintiff testified more than once in her deposition that she did not see the hearth as she was not looking down. Plaintiff testified:

Question: "I mean, do you know why you didn't see the hearth?"

Plaintiff's Response: "I wasn't looking down. I was looking to see where the table was at."

Plaintiff also testified that she may have been talking to her cousin when she fell. Plaintiff testified, "my cousin was behind me. So, I may have been actually talking to her, going – when I was going around the corner. I don't remember." Based on Plaintiff's own testimony, she was not paying proper attention to where she was going when she fell but instead was looking to see where the gift table was located, and also may have been talking to her cousin.

Plaintiff was also asked in her deposition what she claimed Defendant did wrong and stated

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that "I think it's a safety hazard, the hearth being that close to an entranceway." However, Plaintiff also admitted that the hearth is not in the opening or doorway. Plaintiff also testified that she had no facts or information to show that the fireplace or the hearth does not comply with any applicable building codes. Plaintiff argued that she is not required to show that the construction does not comply with applicable building codes. Even assuming this is accurate, Plaintiff must show more than her opinion that it is a safety hazard because it was in an "unexpected place".

Plaintiff has the burden of proof and must prove the allegations in her Complaint. McKnight v. S.C. Dep't of Corrs., 385 S.C. 380, 390-91, 684 S.E.2d 566, 571 (Ct. App. 2009). Plaintiff fails to point to any improper or negligent act of the Defendant. Plaintiff claims that the hearth was in an "unexpected place," but fails to show that it does not comply with any applicable building codes. Plaintiff acknowledges in her deposition that she was not looking where she was going but was looking for the gift table. She further states that she may have been talking to her cousin who was behind her when she fell. Based on her testimony, Plaintiff was looking across the room at the gift table and was not looking where she was going when she fell. As shown on Exhibits 1 and 2, the fireplace and hearth are prominent fixtures in the facility that Plaintiff would have seen had she been paying proper attention. Plaintiff has failed to satisfy her burden of proof as she fails to point to any improper or negligent act by Defendant.

Plaintiff did submit a Memorandum in opposition to Defendant's Motion. Plaintiff argues that she is an invitee and Defendant failed to warn of a latent defect or hidden danger and cites to the Court of Appeals' decision of Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (Ct. App. 2001). However, the Court finds there was no latent defect. The Supreme Court defined a latent defect as "one which an owner has, or should have, knowledge of, and of which an invitee is reasonably unaware." Callander v. Charleston Doughnut Corp., 305 S.C. 123, 406 S.E.2d 361 (1991)(further citation omitted). The Court went on to state that a latent defect "is one which a reasonably careful inspection will not reveal." The Court finds as a matter of law there was no latent defect. Based on the photographs and other evidence submitted by the parties, a reasonable inspection would have revealed the hearth, as it

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was open and obvious.

Plaintiff also argues that even if the hearth was open and obvious and there was no latent defect, Defendant should have anticipated that Plaintiff would be distracted and would still have liability. Plaintiff cites to Callander stating:

> A possessor of land is not liable to his invitee for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness. Callander, 305 S.C. at 126.

Plaintiff argues that she was attending a wedding shower and Defendant should have anticipated Plaintiff would be distracted. Plaintiff also states that she was carrying a present which should have been anticipated by Defendant, but Plaintiff testified that the present was a card. Regardless, the Court does not need to determine if Defendant should have anticipated Plaintiff would be distracted as the Court finds there was no dangerous condition. The Court's statement in Callander that a possessor of land can be liable if they should have anticipated if the invitee may be distracted only applies if there is a dangerous condition. After considering all evidence, the Court finds as a matter of law there was no dangerous condition.

As shown above, Plaintiff claims only that the hearth was in an "unexpected place" and admitted in her deposition that she was not paying proper attention. After considering all evidence and arguments of the parties, the Court finds there was no dangerous condition and grants Defendant's Motion for Summary Judgement and dismisses Plaintiff's action.

IT IS SO ORDERED.

_____
The Honorable R. Lawton McIntosh
Tenth Judicial Circuit

_____, 2026
Anderson, South Carolina

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Anderson Common Pleas

Case Caption: Brenda Gail New VS Anderson County
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Type: Order/Other

S/R. LAWTON McINTOSH

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