

Oct 02 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Elyse Decker,

Plaintiff,

vs.

Caishen II, LLC and Columbia
Property Management, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No. 2025-CP-40-03138

**ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER, ALTER
OR AMEND, OR CLARIFY ORDER
GRANTING DEFENDANT COLUMBIA
PROPERTY MANAGEMENT, LLC'S
MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court on Plaintiff's Motion to Reconsider, Alter or Amend, or Clarify Order Granting Defendant Columbia Property Management, LLC's Motion for Summary Judgment (hereinafter "Motion for Reconsideration"), which was heard on September 2, 2026. The matter was initially before the Court on separate motions for summary judgment filed by Defendants Caishen II, LLC and Columbia Property Management, LLC (hereinafter "Defendant"), and a hearing was held on both motions on May 19, 2026. Defendant was represented by Stephen Foster, Defendant Caishen II, LLC was represented by Stephen Porter and Kevin Maroney, and Plaintiff was represented by Brady Thomas. For the reasons set forth herein, having considered the parties' memoranda, the arguments heard at the hearing on September 2, 2026, and the applicable law, this Court hereby DENIES Plaintiff's Motion for Reconsideration for the following reasons.

STANDARD OF REVIEW

"A party may wish to file [] a [Rule 59(e)] motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Elam v. South Carolina Dept. of Transp.*,

361 S.C. 9, 24, 602 S.E.2d 772 (2004). On the other hand, a “party must file such a motion when an issue or argument has been raised, but not ruled on[.]” *Id.* It must be remembered, however, that a “party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment but did not.” *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014). New “theories or arguments that were not advanced earlier” cannot be presented for the first time in a Rule 59(e) motion. *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) (citing *Natural Resources Defense Council v. U.S. E.P.A.*, 705 F.Supp. 698, 701 (D.C. Cir.1989), *vacated on other grounds*, 707 F.Supp. 3 (D.C. Cir. 1989)).

ANALYSIS

Neil v. Byrum, 288 S.C. 472, 473, 343 S.E.2d 615, 616 (1986) *Controls*

Plaintiff first argues that *Neil* does not control because Plaintiff’s “voluntary-undertaking” theory of the case removes the case from an analysis under *Neil*. Under Plaintiff’s theory, she maintains that Columbia Property Management, LLC, undertook a duty to properly inspect the premises, and this duty extends to Plaintiff despite the fact that Plaintiff was not a tenant and merely visiting Alayna Causey, the actual tenant. Plaintiff is mistaken for several reasons. First, Plaintiff was, by her own admission, a social guest.

A social guest is a licensee. A licensee is a person who is privileged to enter upon land by virtue of the possessor's consent. The possessor is under no obligation to exercise care to make the premises safe for his reception, and is under no duty toward him except:

- (a) To use reasonable care to discover him and avoid injury to him in carrying on activities upon the land.
- (b) To use reasonable care to warn him of any *concealed dangerous conditions* or activities which are known to the possessor, or of any change in the condition of the premises which may be dangerous to him, and which he may reasonably be expected to discover.

Neil, 288 S.C. at 473, 343 S.E.2d at 616 (emphasis in original) (citations omitted). “[S]ince a licensee is there for his own benefit, he can be said to accept the premises as they are and demand no greater safety than his host provides himself.” *Sims v. Giles*, 343 S.C. 708, 721, 541 S.E.2d 857, 864 (Ct. App. 2001) (citing F.P. Hubbard & R.L. Felix, *The South Carolina Law of Torts* 111 (2d ed.1997)). Further, “[t]he duty owed to a licensee differs from the duty owed to an invitee ‘in that the [landowner] has no duty to search out and discover dangers or defects in the land or to otherwise make the premises safe for a licensee.’” *Singleton v. Sherer*, 377 S.C. 185, 201, 659 S.E.2d 196, 204 (Ct. App. 2008).

Because Plaintiff was a licensee, Defendant owed “no duty to search out and discover dangers or defects” at the Property or “otherwise make the premises safe” for Plaintiff. *Singleton*, 377 S.C. at 201, 659 S.E.2d at 204. Thus, the only duty Defendant may have owed Plaintiff was the duty to “use reasonable care to warn [her] of any *concealed* dangerous conditions or activities which [were] known to” them. *Neil*, 288 S.C. at 473, 343 S.E.2d at 616.

Plaintiff has expressly admitted that the condition of the bricks at issue was not hidden or concealed, and this is the pertinent material fact, along with her status as a licensee, which triggers the application of *Neil*. As discussed in this Court’s Order granting Defendant’s Motion for Summary Judgment, multiple lines of evidence leave no question of material fact remaining regarding Plaintiff’s knowledge of the alleged condition or her status as a licensee. Thus, Plaintiff’s “voluntary-undertaking” theory fails on this basis alone.

Second, Plaintiff’s “voluntary-undertaking” theory is not a coherent theory of liability under the well-established material facts of the case. Plaintiff maintains that Defendant performed its safety inspection “negligently,” and this alleged negligent act forms a basis for liability. However, because Plaintiff’s theory logically requires that the bricks represented a concealed

condition that Defendant should have discovered during the inspection, the theory is not relevant to the facts presented by Plaintiff herself. Plaintiff and Alayna Causey both admitted they were aware of the condition of the bricks, and Causey testified that she saw the condition of the bricks *during the move-in inspection because Defendant pointed them out to her*. Thus, Plaintiff contends that the bricks were a condition that Defendant negligently failed to uncover during the move-in inspection, despite also providing testimony that Defendant pointed out the bricks to Causey during the move-in inspection and testimony that Plaintiff herself was well aware of the bricks prior to the alleged incident. As such, Plaintiff's theory is internally inconsistent.

Third, it is undisputed that Defendant conducted a standard inspection of the Property prior to Causey's move-in, as she was the tenant of the Property at issue. However, it is also undisputed that Causey participated in this inspection and did not denote any issue or condition with the bricks on the front porch on the inspection sheet, which is part of the record. Every property manager and landlord engages in basic property management functions such as a move-in inspection. If these standard practices gave rise to a special assumed duty of care that extends to all future visitors of a property, *Neil* would, as a practical matter, never apply to rental properties. Taken to its logical conclusion, Plaintiff's theory of the case would negate *Neil* even as to homeowners, as homeowners frequently undertake preventative maintenance tasks to make a property safe for visitors. Accordingly, Plaintiff is asking the Court to negate well-established law. *See Neil*, 288 S.C. at 473, 343 S.E.2d at 616 (holding the possessor of land is under no obligation to exercise care to make the premises safe for a plaintiff's reception, and is under no duty toward him except to use reasonable care to warn him of any *concealed dangerous conditions* or activities which are known to the possessor).

Fourth, Plaintiff's argument that she failed to "appreciate" any supposed danger is entirely without merit under the facts of the present case. As the Court explained in the Order granting summary judgment, *Lewis v. Circle K Stores, Inc.*, 175 F.4th 520, 525 (D.S.C. 2026), provides the quintessential example of the exceedingly rare circumstance where a hazardous condition could exist that a plaintiff might encounter without being able to appreciate the danger. Plaintiff's arguments on reconsideration do not attempt to address the analysis in this Court's Order regarding the fact that the alleged condition in this case consisted of uneven brick, and, therefore, no special knowledge was needed to ascertain the nature of the condition. Thus, Plaintiff's admission that she was aware of the conditions of the bricks prior to the alleged incident is dispositive. Accordingly, Plaintiff has shown no basis to reconsider that finding.

Finally, the condition of the bricks was open and obvious to Plaintiff, absolving Defendant of any liability. *See Fountain v. Fred's, Inc.*, 436 S.C. 40, 50, 871 S.E.2d 166, 171 (2022) (holding a landowner is not liable to his invitees for harm caused by any condition on the land whose danger is known or obvious to them). Plaintiff's and Causey's testimony on this issue negates the duty element of negligence as a matter of law, regardless of Plaintiff's status while visiting the Property. *See Padgett v. Colleton Cty.*, 383 S.C. 431, 438, 679 S.E.2d 533, 537 (Ct. App. 2009) (holding "[a] possessor of land is not liable to his invitees 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." (quoting *Callender v. Charleston Doughnut Corp.*, 305 S.C.123, 124, 406 S.E.361, 362 (1991))).

Carson and Miller Do Not Extend the Scope of Any Alleged Duty to Plaintiff

Next, Plaintiff makes several arguments relying on *Carson v. Adgar*, 326 S.C. 212, 218, 486 S.E.2d 3, 6 (1997) and *Miller v. City of Camden*, 329 S.C. 310, 494 S.E.2d 813 (1997). These arguments fail because they misapply *Carson* and *Miller*.

As an initial matter, the Court finds that these arguments are not preserved. Plaintiff's "voluntary duty" theory was first raised at the hearing on the defendants' motions for summary judgment. Plaintiff presented a supplemental packet to the Court at the May 19, 2026, summary judgment hearing containing references to a variety of cases, with no argumentation or context provided. Plaintiff then filed these materials with the Court on June 16, 2026. These supplemental materials do not contain any arguments, but do contain a 1-page framing of the issues as to Defendant, which was stated as follows:

1. [Defendant] assumed a duty to use reasonable care in performing safety-related turnover and occupied inspections.
2. [Defendant] assumed a duty during inspections to identify and report observable dangerous conditions that would cause the property not to be rented or occupied safely.
3. [Defendant] assumed a duty during inspections and walkthroughs to observe the general condition of entrances, walkways, stairs, and landing, including observable trip hazards.

While these specific theories were not raised in Plaintiff's memorandum in opposition to summary judgment, nor clearly argued at the May 19, 2026, hearing, they nevertheless represent a theory of liability based on a landlord-tenant relationship. There is nothing in Plaintiff's own dilatory framing of the issues that implicates a voluntary undertaking to a third-party. However, Plaintiff presents *Carson* and *Miller* in her effort to advance such a theory. This is an entirely new argument that Plaintiff is now attempting to raise, for the first time, in her Rule 59(e), SCRCp, motion, which is improper. *See Stevens & Wilkinson of S.C., Inc.*, 409 S.C. at 567, 762 S.E.2d at

695 (holding a “party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment but did not.”).

However, to the extent that these arguments are properly before the Court, *Carson* and *Miller* are not applicable here. In *Carson*, the Court of Appeals considered whether the circuit court erred in granting Adgar’s motion for a directed verdict where the estate of Carson, a mentally disabled man, argued that it presented evidence that Adgar had “taken charge of” Carson and, thereby, had assumed a duty to leave him in no worse a position than when he took charge of him. *See Carson*, 326 S.C. at 216, 486 S.E.2d at 5. Thus, *Carson* was considering “what action is necessary in order to find one has ‘taken charge of’ a helpless person and, thereby assumed a legal duty of care.” *Id.* at 218, 486 S.C. at 5. Therefore, the case was solely focused on the voluntary actions of one party with respect to another, and not the actions of a party as they pertain to a third party.

Miller likewise does not support Plaintiff’s argument. *Miller* involved the death of an individual as a result of a dam breach. 329 S.C. at 312, 494 S.E.2d at 814. The circuit court awarded summary judgment to one of the parties, Kendall Company, which was listed on Land Resource’s emergency notification forms as personnel assigned to monitor the dam. *Id.* at 313, 494 S.E.2d at 815. The Supreme Court held that:

[F]acts indicate a Kendall employee was listed on the Land Resources emergency notification form and Kendall had an employee present at the meeting during which an emergency plan was formulated. Summary judgment should be denied if more than one inference can be drawn from the evidence. *Koester v. Carolina Rental Center, Inc.*, 313 S.C. 490, 443 S.E.2d 392 (1994). We find more than one inference can be drawn from this evidence. Whether these facts establish that Kendall volunteered to monitor the lake level for the benefit of *third parties* or was simply facilitating its own arrangement with City is an issue that should be resolved by the jury.

Id. at 315, 494 S.E.2d at 815-16 (emphasis in original).

Thus, *Miller* involved a contract between Kendall and the City to monitor the dam and notify appropriate officials in the event of an imminent dam failure. *Id.* at 313, 494 S.E.2d at 815. The *Miller* Court expressly relied on the principle that “[o]ne who controls the use of property has a duty of care not to harm others by its use.” *Id.* at 314, 494 S.E.2d at 815 (citing *Dunbar v. Charleston & W.C. Ry. Co.*, 211 S.C. 209, 44 S.E.2d 314 (1947)). Accordingly, *Miller* is not analogous to Plaintiff’s case, as the *Miller* Court held that it was a question of material fact as to whether Kendall, by virtue of its contract with the City, voluntarily undertook to control the dam. *Miller* would be analogous to a situation where Defendant was contracted to *control* a property on which Plaintiff was injured. However, those are not the facts. *Causey* controlled the Property per her Lease Agreement, and Defendant owed no duty to Plaintiff arising from this contract. Indeed, *Miller* more aptly supports the position that a “landlord is liable to third persons for a defective condition of premises only...where the landlord retains control over the premises or a part thereof where the injury occurred, such as a common passageway to this and other property, or an elevator.” *Binnicker v. Adden*, 204 S.C. 487, 30 S.E.2d 142, 143 (1944). Accordingly, Plaintiff’s attempt to expand the scope of *Carson* and *Miller* to apply to the present case is without merit.

In sum, there is no evidence in the record showing that Defendant’s actions were undertaken for the benefit of anyone other than Causey, the tenant at the Property, and Plaintiff’s attempt to expand the scope of the voluntary undertaking principle runs contrary to the law. *See, e.g., Miller*, 329 S.C. at 315 n.2, 494 S.E.2d at 815 n.2 (“We decline to adopt the expanded liability of Restatement 2d of Torts § 324A (1965) [which] imposes a duty on ‘one who undertakes ... to render services to another which he should recognize as necessary for the protection of a third person’ and requires no actual volunteer relationship between the defendant and the third party.” (emphasis added)).

CONCLUSION

Plaintiff has failed to show that the Court misunderstood, failed to fully consider, or failed to rule on an argument or issue before the Court. Accordingly, for the foregoing reasons and the reasons set forth in the Court's Order granting Defendant's Motion for Summary Judgment, Plaintiff's Motion for Reconsideration is hereby **DENIED**.

IT IS SO ORDERED.

The Honorable Thomas W. McGee, III

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Richland Common Pleas

Case Caption: Elyse Decker vs Caishen Li Llc , defendant, et al
Case Number: 2025CP4003138
Type: Order/Other

So Ordered

s/ Thomas W. McGee III, Judge Code 2786