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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Charleston County
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2025-002480
Circuit Court Case No. 2023-CP-10-01923

Jeffrey Patrick Cepin,

Appellant,

v.

Samet Corporation and Metromont Corporation,

Respondents.

**INITIAL BRIEF OF RESPONDENT
SAMET CORPORATION**

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COUNTER-STATEMENT OF ISSUES ON APPEAL

- I. Where the circuit court granted summary judgment in favor of Samet¹ (and Metromont²) by a form order filed December 9, 2025, that expressly requested the submission of a proposed formal order; where Plaintiff³ served/filed a notice of appeal of the circuit court’s December 9, 2025, form summary judgment order on December 12, 2025; and where summary judgment was thereafter granted in favor of Samet (and Metromont) by formal order filed January 8, 2026 (January 6, 2026, as to Metromont) that Plaintiff did not appeal, is Plaintiff’s appeal of the circuit court’s December 9, 2025, form summary judgment order moot (or otherwise unavailing) because the subsequent unappealed formal summary judgment order is the law of the case and appellate jurisdiction no longer exists to upset it?**
- II. Assuming, *arguendo*, Plaintiff’s appeal of the circuit court’s December 9, 2025, form summary judgment order is not moot (or otherwise unavailing), has Plaintiff met his burden to show that the circuit court committed reversible error in granting summary judgment in favor of Samet (and, for that matter, Metromont)?**

COUNTER-STATEMENT OF THE CASE

Filed April 20, 2023, in the Charleston County Court of Common Pleas,⁴ this personal injury lawsuit arises out of an alleged jobsite accident that occurred on May 1, 2020 (the “Subject Accident”), while Plaintiff was working as a welder for Davis Erecting and Finishing, Inc. (“Davis”) on the construction of a parking garage at the Charleston Technology Center. (Compl. ¶ 8; Dep. of Pl. p. 19:11–15; 10/14/24 Aff. of J. Woodard ¶¶ 2, 4, 6; 7/21/25 Aff. of J. Woodard ¶¶ 2, 4.)⁵

¹ “Samet” refers to Defendant/Respondent Samet Corporation.

² “Metromont” refers to Defendant/Respondent Metromont Corporation. “Defendants” refers to Samet and Metromont, collectively. Samet and Metromont are represented by separate counsel. Accordingly, this brief focuses on Samet.

³ “Plaintiff” refers to Plaintiff/Appellant, Jeffrey Patrick Cepin.

⁴ (Summons & Compl.)

⁵ At the time this lawsuit was filed Plaintiff was represented by counsel. (Summons & Compl.) On December 5, 2023, however, Plaintiff’s counsel moved to be relieved on “[t]he grounds . . . that Plaintiff . . . has instructed counsel to be released from pursuing [this] action immediately.” (Mot. to be Relieved as Counsel, filed 12/5/23.) Plaintiff’s counsel re-submitted this motion on April 3, 2024 (Mot. to be Relieved as Counsel, filed 4/3/24) and filed a supplement thereto on June 25, 2024. (Supplement to Mot. to be Relieved as Counsel, filed 6/25/24.) Plaintiff’s personally signed request for his counsel to be relieved was filed on July 10,

Samet, the project's general contractor,⁶ contracted with Metromont to design and construct the structural pre-cast concrete components of the parking garage,⁷ and Metromont contracted with Davis to install/erect those components. (10/14/24 Aff. of J. Woodard ¶¶ 7–9, 14; 7/21/25 Aff. of J. Woodard ¶ 3.)

The Subject Accident happened when, while Plaintiff was wearing a harness needed for welding work he was doing, an employee/agent of Davis Equipment Rental, LLC, was operating a crane to move a pre-cast concrete panel, the panel fell, and, as it fell, the panel snagged the lines attached to Plaintiff's harness. (Compl. ¶¶ 10–11.)

The only cause of action Plaintiff's complaint alleges is negligence. (Compl.) Samet (and Metromont) timely answered Plaintiff's complaint, denying liability and raising various affirmative defenses. (Samet's Answer; *see also* Metromont's Answer.)

When he was deposed, Plaintiff confirmed that his sole theory of Defendants' liability is products liability relating to Metromont's allegedly defective manufacture of the pre-cast concrete panel that fell and Samet's alleged failure to inspect the panel to discover its alleged defectiveness. (Dep. of Pl. pp. 39:14–40:14, p. 45:4–21, pp. 46:16–48:11, pp. 50:24–51:10.)⁸ Plaintiff also confirmed that he cannot remember anything about the Subject Accident,⁹ that he had not hired

2024 (Pl.'s Consent to Release Counsel, filed 7/10/24), and by order filed August 27, 2024, Plaintiff's counsel were relieved. (Order Relieving Counsel, filed 8/27/24.) Since that time, Plaintiff has proceeded pro se.

⁶ (Compl. ¶ 9.)

⁷ (Compl. ¶ 9; 10/14/24 Aff. of J. Woodard ¶¶ 2–6; 7/21/25 Aff. of J. Woodard ¶ 2.)

⁸ By orders filed December 3, 2024, the circuit court established March 15, 2025, as the deadline for the completion of discovery. (Samet Order filed 12/3/24; Metromont Order filed 12/3/24.) Plaintiff's deposition was not completed until after March 15, 2025, because it was necessary to obtain an order compelling Plaintiff's deposition. (Order filed 4/2/25.)

⁹ (Dep. of Pl. pp. 26:25–29:21.)

anyone to investigate the Subject Accident on his behalf,¹⁰ that he had not retained any expert to testify to the alleged defectiveness of the pre-cast concrete panel,¹¹ and that he himself is not an expert in this subject matter. (Dep. of Pl. pp. 41:13–42:8.)

On June 27, 2025, Samet moved for summary judgment. (Samet MSJ filed 6/27/25; *see also* Samet’s Mem. in Support of MSJ with Ex. A.)¹² Following a hearing on September 2, 2025,¹³ the circuit court, the Honorable Jennifer B. McCoy presiding, announced its decision to grant Samet and Metromont’s motions by respective form orders filed December 9, 2025. (Samet Order filed 12/9/25; Metromont Order filed 12/5/25.) The circuit court’s December 9, 2025, form summary judgment orders expressly asked for the submission of proposed formal orders. (Samet Order filed 12/9/25; Metromont Order filed 12/5/25.)

This appeal by Plaintiff of the circuit court’s December 9, 2025, form summary judgment orders followed by notice served and filed December 12, 2025. (Notice of Appeal and Proof of Service.)

The circuit court’s formal summary judgment orders in favor of Samet and Metromont were filed on January 8, 2026,¹⁴ and January 6, 2026,¹⁵ respectively. Defendant did not appeal these orders; nor, to be clear, did Defendant move for alteration, amendment, and/or reconsideration of any of the circuit court’s orders pursuant to Rule 59(e), SCRCP.

¹⁰ (Dep. of Pl. p. 28:24–29:4.)

¹¹ (Dep. of Pl. pp. 40:15–41:12.)

¹² Metromont had moved for summary judgment on May 5, 2025. (Metromont MSJ filed 5/5/25; *see also* Metromont’s Mem. in Support of MSJ with Ex. A; 7/21/25 Aff. of J. Woodard.) Both Samet’s motion and Metromont’s motion were renewed motions for summary judgment, the circuit court having denied Defendants’ earlier motions for summary judgment by orders filed December 3, 2024, which orders established a March 15, 2025, discovery deadline and expressly allowed Defendants to renew their motions for summary judgment after the completion of discovery. (Samet Order filed 12/3/24; Metromont Order filed 12/3/24.)

¹³ (Mot. Hr’g Tr.)

¹⁴ (Samet Order filed 1/8/26.)

STANDARD OF REVIEW

“Appellate courts apply the same standard of review applied by the trial court to review the grant of summary judgment pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure.” *Williams v. Jeffcoat*, 444 S.C. 224, 234, 906 S.E.2d 588, 593 (2024).

Under Rule 56(c), summary judgment should be granted “if 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. In ruling on a motion for summary judgment, the court must view the evidence and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party. *Byrd v. City of Hartsville*, 365 S.C. 650, 656, 620 S.E.2d 76, 79 (2005). “However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Rife v. Hitachi Const. Machinery Co. Ltd.*, 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005).

The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. The moving party need not support its motion with affidavits or other similar materials negating the opponent’s claim but must clearly establish by the record the absence of a triable issue of fact. After the moving party has met this initial burden, the opposing party must, under Rule 56(e), “do more than simply show that there is some metaphysical doubt as to the material facts” and “must come forward with ‘specific facts showing that there is a *genuine issue for trial*.’” *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 461, 892 S.E.2d 297, 300 (2023) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986)) (emphasis in original).

¹⁵ (Metromont Order filed 1/6/26.)

With respect to an issue upon which the non-moving party bears the burden of proof, the moving party may discharge this initial responsibility by pointing out to the Court the absence of evidence to support the non-moving party's case. *Rife*, 363 S.C. at 214, 609 S.E.2d at 568. The non-moving party must show a genuine issue as to any material fact, as set forth in Rule 56(c), requiring the non-moving party show a "reasonable inference" be drawn from the evidence. *Kitchen Planners*, 440 S.C. at 461, 892 S.E.2d at 300. In *Kitchen Planners*, our Supreme Court clarified that the "scintilla" rule which had been applied in a number of cases was an incorrect analysis of Rule 56. *Id.* at 463, 892 S.E.2d at 301. Therefore, if there is no genuine issue as to any material fact, summary judgment must be granted.

ARGUMENT

An appealed order comes to the appellate court with a presumption of correctness, and the burden is on the appellant to demonstrate reversible error. *McCall v. IKON*, 380 S.C. 649, 659–60, 670 S.E.2d 695, 701 (Ct. App. 2008). And the appellant's demonstration of reversible error must be based on issues/arguments that are properly preserved and presented to the appellate court for review. *See Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532–33, 564 S.E.2d 322, 323 (2001) (recognizing that preserving issues for appellate review is a fundamental component of appellate practice, as South Carolina appellate courts do not recognize the plain error rule); *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004) (noting that South Carolina's preservation requirements are "mandatory"); *id.* at 23, 602 S.E.2d at 779–80 ("Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court."); *id.* at 24, 602 S.E.2d at 780 ("[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e)[, SCRCP,] motion. A party *may* wish to file such a 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. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.”) (emphasis in original). Moreover, where a lower court’s ruling is not appealed, the ruling is the law of the case, with any challenge thereto abandoned. *Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (“[A]n unappealed ruling, right or wrong, is the law of the case.”); *see also First Savings Bank v. McLean*, 314 S.C. 361, 444 S.E.2d 513 (1994) (an issue which is not argued in the brief is deemed abandoned and precludes consideration on appeal).

I. Plaintiff’s appeal of the circuit court’s December 9, 2025, form summary judgment orders is moot (or otherwise unavailing) because the subsequent unappealed formal summary judgment orders are the law of the case and appellate jurisdiction no longer exists to upset them.

As explained above, after Plaintiff took this appeal of the circuit court’s December 9, 2025, form summary judgment orders by notice served/filed December 12, 2025,¹⁶ formal summary judgment orders were entered in favor of Samet and Metromont on January 8, 2026, and January 6, 2026, respectively. (Samet Order filed 1/8/26; Metromont Order filed 1/6/26.) And Plaintiff did not appeal these orders. Because Plaintiff did not appeal these orders, and the time for appealing them has expired,¹⁷ they are the law of the case¹⁸ and appellate jurisdiction no longer exists to upset them. *Elam*, 361 S.C. at 14–15, 602 S.E.2d at 775 (“The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the

¹⁶ (Notice of Appeal and Proof of Service.)

¹⁷ Rule 203(b)(1), SCACR, requires a notice of appeal from an order or judgment of the Court of Common Pleas to be served within thirty (30) days after receipt of written notice of entry of the order or judgment. While Rule 203(b)(1) provides for a stay of this time period in the event of a timely motion under Rules 50, 52, or 59, SCRCP, no such motion was made here.

delinquent party by extending or ignoring the deadline for service of the notice.”). Consequently, Plaintiff’s appeal of the circuit court’s December 9, 2025, form summary judgment orders is moot (or otherwise unavailing) because, even assuming, *arguendo*, the Court were inclined to reverse the circuit court’s December 9, 2025, form summary judgment orders, the circuit court’s subsequent unappealed formal summary judgment orders of January 6 and 8, 2026, must nonetheless remain intact.

II. Assuming, *arguendo*, Plaintiff’s appeal of the circuit court’s December 9, 2025, form summary judgment orders is not moot (or otherwise unavailing), Plaintiff has not met his burden to show that the circuit court committed reversible error in granting summary judgment in favor of Samet (and, for that matter, Metromont).

“To establish a negligence cause of action under South Carolina law, the plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty.” *Baggerly v. CSX Transp., Inc.*, 370 S.C. 362, 368–69, 635 S.E.2d 97, 101 (2006); *see also McCord v. Laurens Cnty. Health Care Sys.*, 429 S.C. 286, 296, 838 S.E.2d 220, 225 (Ct. App. 2020) (“In tort law, the existence of a duty is a question of law.”); *Bishop v. S.C. Dep’t of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998) (“Without a duty, there is no actionable negligence.”). Here, the circuit court correctly determined as a matter of law that Plaintiff’s claim against Samet (and, for that matter, Metromont) failed for lack of the duty and breach elements.

While “[a]n affirmative legal duty may be created by statute, a contractual relationship, status, property interest, or some other special circumstance,”¹⁹ a jury question cannot be created

¹⁸ *Atlantic Coast Builders*, 398 S.C. at 329, 730 S.E.2d at 285; *see also McLean*, 314 S.C. 361, 444 S.E.2d 513.

¹⁹ *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 136, 638 S.E.2d 650, 656–57 (2006).

based on speculation,²⁰ and here, with discovery closed, Plaintiff was unable to present the circuit court with anything on which it could base a reasonable, non-speculative conclusion that Samet owed Plaintiff a duty to inspect the concrete panel at issue.

Moreover, even assuming, *arguendo*, Samet owed Plaintiff a duty to inspect the concrete panel at issue, Plaintiff presented no evidence from which a reasonable, non-speculative inference can be drawn that Samet failed to properly inspect the panel, the standard of care for any required inspection being outside the realm of lay knowledge and requiring expert evidence, none of which Plaintiff has. *See Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010) (“[E]xpert evidence is *required* where a factual issue must be resolved with scientific, technical, or any other specialized knowledge.”) (emphasis added); *see also Fletcher v. Medical Univ. of S.C.*, 390 S.C. 458, 463, 702 S.E.2d 372, 374 (Ct. App. 2010) (“South Carolina does not recognize the doctrine of *res ipsa loquitur*.”).

Lastly, and in any event, an essential premise of Plaintiff’s claim against Samet (and Metromont) is that the panel was indeed defective,²¹ and here again, Plaintiff presented no evidence from which a reasonable, non-speculative inference can be drawn that the panel was defective, the issue of the proper manufacture of the panel being outside the realm of lay

²⁰ *See The Huffines Co., LLC v. Lockhart*, 365 S.C. 178, 188, 617 S.E.2d 125, 129–30 (Ct. App. 2005) (“When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence. The issue must be submitted to the jury whenever there is material evidence tending to establish the issue in the mind of a reasonable juror. Yet, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury. Our courts have recognized that when only one reasonable inference can be deduced from the evidence, the question becomes one of law for the court. A corollary of this rule is that verdicts may not be permitted to rest upon surmise, conjecture, or speculation.”) (internal citations omitted).

²¹ To be clear, at a minimum, Samet contends that Plaintiff’s claim against it cannot possibly succeed if Plaintiff cannot prove that the panel was defective and that, if summary judgment in favor of Metromont is affirmed, summary judgment in favor of Samet must be affirmed.

knowledge and requiring expert evidence, none of which Plaintiff has. *See Watson*, 389 S.C. at 445, 699 S.E.2d at 175; *see also Fletcher*, 390 S.C. at 463, 702 S.E.2d at 374.

CONCLUSION

For the foregoing reasons, together with, pursuant to Rules 208(b)(2) and 220(c), SCACR, any reason appearing in the record, including in the circuit court's summary judgment orders themselves, as well as, pursuant to Rule 208(b)(6), SCACR, for any reason appearing in Metromont's brief, the entirety of which Samet joins in and adopts to the extent not inconsistent with its position, the circuit court's summary judgment in favor of Samet (and, for that matter, Metromont) should be affirmed, and, in any event, the circuit court's formal summary judgment orders in favor of Defendants should remain intact.

Respectfully submitted,
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