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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2026-001670
Case No. 2024-CP-40-03730

Shirley Castillo and Charles Cooper ……...…… Appellants,

v.

Canterbury Park at Lake Carolina Association, Inc.,
a/k/a Lake Carolina Masters Association, Inc.,……...……Respondent.

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STATEMENT OF ISSUES ON APPEAL

I. Did the trial court properly hold that there was insufficient evidence to create a genuine issue of material facts as to whether Canterbury Park at Lake Carolina Association, Inc., voluntarily undertook a duty to maintain and repair the sidewalk at issue?

II. Did the trial court properly hold that there was insufficient evidence for a jury to find that Canterbury Park at Lake Carolina Association, Inc., had constructive notice of the defect in the sidewalk at issue?

STATEMENT OF THE CASE

This is an appeal from the trial court's Order denying Shirley Castillo and Charles Cooper's Motion to Reconsider the court's Order granting Summary Judgment to Canterbury Park at Lake Carolina Association, Inc., ("Canterbury Park") on June 30, 2026. (Notice of Appeal).

Ms. Shirley Castillo tripped and fell, shattering her ulna and radius in her left forearm, on a dangerous uneven portion of sidewalk in her neighborhood, Canterbury Park at Lake Carolina Association, Inc., on March 20, 2024. The Complaint filed June 24, 2024, alleged Canterbury Park and its agents had a duty to maintain and/or repair the portion of the sidewalk where Ms. Castillo fell and failed to do so. (Complaint). The Complaint further alleged that Canterbury Park had or should have had notice of the defect at issue before Ms. Castillo's fall. (Id.)

After a jury was picked, the Honorable Perry H. Gravely heard Canterbury Park's Motion for Summary Judgment. The basis of which, was that Canterbury Park did not own the sidewalk at issue, nor did they undertake a duty to maintain or repair the sidewalk at issue. (Canterbury Park's Motion for Summary Judgment). Canterbury Park further argued that they did not have constructive notice of the defect and if they did have notice, they had no duty to warn of the defect, because Ms. Castillo was a licensee on the property. (Id.) The trial court granted Canterbury Park's Motion for Summary Judgment, finding that it did not undertake a duty to maintain or repair the sidewalk and that Ms. Castillo was likely a licensee, therefore Canterbury Park had no duty to inspect the sidewalk and would not have had constructive notice. (Order granting Summary Judgment). Shirley Castillo and her husband, Charles Cooper, filed a Motion to Reconsider. (Plaintiff's Motion to Reconsider) This motion was denied by the trial court. (Form 4 Order Denying Plaintiffs Motion to Reconsider). The Appellants initiated this Appeal.

STATEMENT OF FACTS

Appellant Shirley Castillo lives with her husband, Appellant Charles Cooper, at 207 Sherborne Lane in Canterbury Park, a neighborhood within the Lake Carolina development in Richland County. (Castillo Dep. 6:14-23.) It is uncontested that the Ms. Castillo and Mr. Cooper are paying members of the Canterbury Park's homeowners association. On March 20, 2024, between 1:00 and 1:30 in the afternoon, Ms. Castillo set out on her daily walk through the neighborhood. (Castillo Dep. 13:16-19, 23:10-13.) Ms. Castillo testified that it was "a beautiful day," and the ground was dry. (Castillo Dep. 23:14-17.) That afternoon she walked, for the first time, toward the stop sign at the end of Sherborne Lane, where it meets Lake Carolina Drive. (Castillo Dep. 21:6-11.) The stretch of sidewalk she walked runs along the entrance of the neighborhood where there is a road on one side of the sidewalk and a common area on the other side.

A. Duty

It is undisputed that Richland County owns the sidewalk where Ms. Castillo fell. This ownership creates a duty on Richland County to ensure the sidewalk is reasonably safe for use. S.C. Code Ann. § 5-27-120. During litigation, Richland County asserted the defense that it relies on entities such as homeowners' associations, similar to Canterbury Park, who voluntarily undertake a duty to maintain sidewalks in their neighborhoods, to inform them of defects and dangers associated with the sidewalk, so that it can be repaired. (Maloney Dep. 12:2–10).

Canterbury Park is one of many homeowners' associations in Richland County. Through its prior conduct; Covenants, Conditions, and Restrictions; Recorded Plat; and landscaping contracts, Canterbury Park has created an affirmative duty to maintain and repair portions of the sidewalk in the Canterbury Park neighborhood—specifically the portion in which Ms. Castillo was

injured due to a dangerous uneven section of sidewalk. The evidence clearly establishes sufficient issues of material fact that this portion of the sidewalk where Ms. Castillo was injured was an area that Canterbury Park had a duty to maintain and repair.

B. Notice

Both Richland County and Canterbury Park's 30(b)(6) witnesses identified tree roots as the cause of the uneven sidewalk that resulted in Ms. Castillo's fall and subsequent injuries. Michael Maloney, Richland County's Director of Public Works and its Rule 30(b)(6) designee, testified that a change in height between panels comes from "[r]oots." (Maloney Dep. 8:1-9, 20:22-21:2.) Looking at a photograph of the spot, he pointed to "a tree just out of frame" and explained that the rise was "on one side but not the other," which "means that there was an expansion of roots—roots coming from this direction and trying to probably get to this grass terrace. And -- and as they develop over time, something like that could happen." (Maloney Dep. 21:14-24, 22:1-4.)

Canterbury Park's designee, Michael Dhunjishah, is a civil engineer who has testified as an expert in construction-defect cases. (Dhunjishah Dep. 6:6-18.) When Mr. Dhunjishah was asked how tree roots affect sidewalks, he answered: "They push them up. They push them up on one side." (Dhunjishah Dep. 35:3-4.) He also agreed that this phenomenon occurs overtime allowing ample opportunity for the defect to be identified and repaired before someone was injured.

C. The Fall

As she was walking, Ms. Castillo tripped where one concrete panel had risen above the next. (Castillo Dep. 24:4-8.) A tree root was growing under the sidewalk, and over an extended period of time caused an elevation at the expansion joint between two concrete slabs. The rise which sat at the expansion gap between the two panels measured "a little bit over two inches." (Castillo Dep. 25:25-26:3, 27:5.) Ms. Castillo plummeted to the ground, when her foot caught the

lip of the uneven sidewalk panel. The violent impact with the sidewalk resulted in the shattering of both bones in Ms. Castillo's left forearm. (Castillo Dep. 45:4-10.) On March 26, 2024, surgeons repaired the fracture. (Castillo Dep. 53:13-20.) Ms. Castillo still has two plates and over seventeen screws in her left arm and may likely require future surgery. (Castillo Dep. 61:17–62:7). Ms. Castillo asserted claims against both Richland County and Canterbury Park as Richland County has a common law duty to maintain the sidewalk in a reasonably safe condition and Canterbury Park has an affirmative contractual duty to maintain and repair the sidewalk at issue.

STANDARD OF REVIEW

"An appellate court reviews a grant of summary judgment under the same standard applied by the trial court." South Carolina Rules of Civil Procedure, Rule 56. Summary Judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there are no genuine issues as to material fact and the moving party is entitled to judgment as a matter of law." *See Lanham v. Blue Cross & Blue Shield of S.C. Inc.,* 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). "Summary judgment should not be granted even when there is no dispute as to the evidentiary facts if there is a disagreement concerning the conclusion to be drawn from those facts." *Id.* "On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below." *Id.* (citing *Williams v. Chesterfield Lumber Co.,* 267 S.C. 607, 230 S.E.2d 447 (1976)).

ARGUMENT

I. The trial court erred when ruling there was insufficient evidence to create a genuine issue of material fact as to whether Canterbury Park voluntarily undertook a duty to maintain and repair the sidewalk at issue.

While it's ordinarily true that the upkeep of sidewalks lies with the owners of the property, a non-owner may voluntarily undertake an affirmative duty to maintain and/or repair them. *See Vaughn v. Town of Lyman*, 370 S.C. 436, (*citing Russel v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991)). An affirmative duty to act may be created by a statute, contract, status, property interest or some other special circumstance. *See Jensen v. Anderson County Dep't of Soc. Serv.,* 304 S.C. 195, 199, 403 S.E.2d 615, 617 (1991). In *Landry v. Hilton Head Plantation Property Owners Ass'n, Inc.*, the trial court found that the homeowner's association had a contractual duty to maintain the common areas of the Plantation pursuant to the covenants governing the land. *See* 317 S.C. 200, 452 S.E.2d 619 (S.C. App. 1994). Ms. Landry was walking across a sidewalk in a common area when she fell in a hole and broke her wrist. *Id.* The South Carolina Court of Appeals held that Hilton Head Property Owner's Association had an affirmative duty, due to their contracted covenants to maintain and repair the sidewalk where Ms. Landry fell. *Id.*

Similarly, Canterbury Park's Covenants, Conditions and Restrictions create a contractual duty on behalf of Canterbury Park to maintain and repair the portion of the sidewalk where Ms. Castillo fell. Beyond the Covenants, Conditions and Restrictions, Canterbury Park also had an affirmative duty to maintain and repair the sidewalk because the Plat marks that portion of the sidewalk as an area within the common area, Canterbury Park's 30(b)(6) designee identifies the sidewalk as common areas that are to be maintained, and because Canterbury Park has consistently hired landscaping companies to maintain that portion of the sidewalk.

A. Canterbury Park's recorded Declaration and Plat create a duty for the association to maintain and repair the common areas, including the portion of the sidewalk where Ms. Castillo fell.

Canterbury Park's Declaration of Covenants, Conditions and Restrictions is recorded with the Richland County Register of Deeds. (CANTERBURY000003.) It states that it exists "to provide for the administration and maintenance of the Areas of Common Responsibility." (CANTERBURY000007.) The Declaration defines an "Area of Common Responsibility" to include:

> any area for which the Association has or assumes the responsibility for maintenance, repair and management, including, without limitation, (i) the Common Areas and (ii) portions of the Property that are not owned by the Association, but which contain facilities or improvements that benefit more the Units. Such areas may include, without limitation, (a) street shoulders and curbs, intersections and entrances, private road rights-of-way or easements and road surfaces, walkways and bicycle paths, signage, landscaping and irrigation, . . . or unpaved portions of public or private road rights-of-way in which the Association retains or obtains the right to maintain, improve or landscape certain areas . . . .

(CANTERBURY000008, § 1.1.3.) "Common Areas" are the areas designated as common area on a recorded plat of the property. (CANTERBURY000008, § 1.1.8.) Section 4.5.3 then places responsibility for those areas on the Association:

> Unless expressly approved by the Association and the Declarant, all Common Areas within the Property shall be conveyed to the Association no later than ninety (90) days after the date of closing the sale of the last Unit in the Property. After approved conveyance of a Common Area or designation of an Area of Common Responsibility, the Association shall be fully responsible for its operation, maintenance and repair, except as otherwise stated in the document conveying or designating such property.

(CANTERBURY000013-14, § 4.5.3.) The Association's annual budget and the assessments its members pay cover "the use, maintenance and operation of the Common Area and Area of Common Responsibility." (CANTERBURY000019, § 6.1.2.) The Declaration also directs the

Board to obtain liability insurance covering "loss or damages resulting from accident or occurrences on or about the Common Area." (CANTERBURY000017, § 5.9.1(C).

The recorded plat of Canterbury Park Phases 1 and 5, dated June 2002, designates the areas on both sides of the Sherborne Lane entrance as common area. (Dhunjishah Dep. Ex. 4; Dhunjishah Dep. 30:11-31:20.) The sidewalk where Ms. Castillo tripped and fell runs along the north side of the entrance, beside the wooded common area. (Dhunjishah Dep. 31:21-22.) Note 10 on the plat provides: "Common Areas and Areas of Common Responsibility, including any improvements thereto, shall be maintained by Canterbury Park at Lake Carolina Association, Inc. or The Lake Carolina Master Association, Inc. as noted." (Dhunjishah Dep. Ex. 4, n.10.)

When shown the plat, Canterbury Park's designee agreed that the plat marks those areas "as common area maintained by Canterbury Park": "Yes, ma'am, it does. That's what it says." (Dhunjishah Dep. 31:23-32:2.) He later read the label on the north-side area as "maintained by Lake Carolina Master Association," the name Canterbury Park itself goes by. (Dhunjishah Dep. 33:18-21.)

B. Canterbury Park's designated 30(b)(6) witness agreed that the sidewalks are part of the common areas.

On multiple occasions, Mr. Michael Dhunjishah, a board member of the Canterbury Park Homeowners Association and Canterbury Park's designated 30(b)(6) witness, stated unequivocally that the sidewalks are designated as common areas in the subdivision. When asked to identify Canterbury Park's common areas, the Association's designee testified as follows:

> Q. And then, what are the common areas at Canterbury Park?
> A. Sidewalks. Paving. The pavement, the asphalt and concrete pavement. And then we've got an area off of Fabersham Crescent that's a common area that you've got trees planted there. It's a crescent-shaped area. And then, as you enter the subdivision, from Lake Carolina Drive on both sides, on the right and left side, there's

> some common areas that have trees and woods and that type of thing.

(Dhunjishah Dep. 17:24-18:7.) He confirmed the point when asked directly:

> Q. Okay. And so, if the streets and sidewalks are a part of -- it's your testimony today that the streets and sidewalks at Canterbury Park are part of the common areas of Canterbury Park; is that correct?
> A. Yes, ma'am.

(Dhunjishah Dep. 23:17-21; see also id. 23:10-16.)

Mr. Dhunjishah was then shown an aerial photograph of the Sherborne Lane entrance where he once again testified that the wooded areas at the entrance are common areas and that the sidewalks that run adjacent to those wooded areas are common areas as well. (Dhunjishah Dep. 25:13-26:1.) Asked whether the place where Ms. Castillo fell, in front of the tree lot on the north side of Sherborne Lane, is a common area, he answered: "It is a common area, yes." (R. Dhunjishah Dep. 33:10-17.) At the summary judgment hearing, its counsel told the court that "[t]he HOA admittedly owns the common areas, and that includes the -- the grass and the -- and the trees and the bushes," that it collects assessments from the neighborhood's homes to pay for that maintenance, and that "the public sidewalk runs through the common areas." (Hr'g Tr. 30:2-12.)

C. Canterbury Park voluntarily maintains the portion of the sidewalk at issue in this case, thus creating a duty to safely maintain and repair the property.

Furthermore, Canterbury Park admits that this sidewalk doesn't simply abut the property in which Canterbury Park maintains, but it runs through the property, and Canterbury Park hires landscapers to maintain the grass, trees, and bushes on both sides of the sidewalk. Canterbury Park pays, through its management company, for a landscaping contractor to maintain the grass, trees and shrubs in its common areas. (Dhunjishah Dep. 26:16-24, 39:7-19.)

In its supplemental interrogatory answers, Canterbury Park identified the company: "Turfworks SC, LLC performs all landscaping work." (Canterbury Park's Resp. to Pls.' Supp.

Interrogs. No. 1 (Dec. 3, 2025).) The designee testified that Turf Works cuts the grass, cleans up the bushes and trees, and cuts branches as necessary. (Dhunjishah Dep. 43:8-12.) After being shown a photograph of the spot where Ms. Castillo fell, with trees on one side of the sidewalk and grass on the other, he identified the landscaper, hired through the Lake Carolina management company, as the one that maintains that grass and cleans the trees, and agreed that its crews come several times a year. (Dhunjishah Dep. 36:5-37:5.) He also confirmed that the landscaper's crews clear the sidewalks themselves:

> Q. So, part of their duties are to use a blower to clean off the sidewalks?
> A. Yes, sir.
> Q. Okay.
> A. And the street.

(Dhunjishah Dep. 55:3-19.) Ms. Castillo likewise testified that the Sherborne Lane sidewalks are kept clear of leaves and pine needles by "[t]heir landscapers, I believe." (Castillo Dep. 38:19-39:1.)

The landscaping contract Canterbury Park produced with those answers is addressed to "CAMS / Canterbury Park." Its scope of work includes "Mowing, Edging, and Blowing all walk ways and sidewalks as needed during each visit" and "Pruning shrubs and trees to maintain an acceptable height and good appearance," for a monthly fee that "[t]he association shall pay." (Turfworks SC LLC Contract for Services to Canterbury Park (Sept. 22, 2022).)

Canterbury Park has never disputed these facts. Its memorandum in support of summary judgment acknowledged "the maintenance of areas around the sidewalks and the HOA fees." (Canterbury Park's Mem. Supp. Summ. J. 4.)

Canterbury Park's Covenants, Conditions and Restrictions, Canterbury Park's 30(b)(6) testimony designating the sidewalks as common areas, and the contract with the landscaping company to maintain the sidewalks in the common areas creates an affirmative duty of Canterbury

Park to maintain, repair, and operate the sidewalks. At minimum, it creates a question of fact for the jury as to whether Canterbury Park did voluntarily undertake an affirmative duty to maintain and repair the sidewalks in the neighborhood.

II. The trial court erred when it held there was insufficient evidence for a jury to find that Canterbury Park at Lake Carolina Association, Inc., had constructive notice of the defect in the sidewalk at issue?

Canterbury Park had constructive notice of the dangerous uneven sidewalk that caused Ms. Castillo to suffer severe and traumatic injuries. "Constructive notice is a legal inference which substitutes for actual notice." *Major v. City of Hartsville*, 410 S.C. 1, (*quoting Strother v. Lexington Cnty. Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998). Constructive notice arises when a condition has existed for such a period of time that if the entity had used reasonable care they would have discovered the condition. *See Fickling v. City of Charleston,* 372 S.C. 597, 609-10 n. 34, 643 S.E.2d 110, 117, n.34 (Ct. App. 2007). All parties agree that tree roots were the cause of the uneven elevation that created the hazard that caused Ms. Castillo to fall.[1] Michael Maloney, Richland County's Director of Public Works and its 30(b)(6) designee, testified that the change in height between panels comes from "[r]oots." (Maloney Dep. 8:1-9, 20:22-21:2.) While looking at a photograph of the spot, he pointed to "a tree just out of frame" and explained that the rise was "on one side but not the other," which "means that there was an expansion of roots -- roots coming from this direction and trying to probably get to this grass terrace. And -- and **as they develop over time,** something like that could happen." (Maloney Dep. 21:14-24, 22:1-4.) (emphasis added). When asked directly whether tree roots from a nearby tree growing under the sidewalk caused the uneven elevation, Mr. Maloney answered: "That would be my opinion." (Maloney Dep. 22:5-9.).

Canterbury Park's designee, Michael Dhunjishah, is a civil engineer who has testified as an expert in construction-defect cases. (Dhunjishah Dep. 6:6-18.) Asked how tree roots affect sidewalks, he answered: "They push them up. They push them up on one side." (Dhunjishah Dep. 35:3-4.) He agreed that such an elevation "certainly could be a trip hazard." (Dhunjishah Dep. 35:5-11.) The trees in the common area along that sidewalk were already there when he moved into the neighborhood. (Dhunjishah Dep. 35:13-15.)

This is a phenomenon that does not occur overnight; rather, it occurs overtime. Reasonable care by Canterbury Park and their agents would have uncovered this dangerous condition and allowed for Canterbury Park to repair the condition and prevent the injuries suffered by Ms. Castillo.

A. Ms. Castillo is not a Licensee.

The trial court held that Ms. Castillo "was likely a licensee on the property" and therefore, Canterbury Park did not have a duty to inspect the sidewalk, thus precluding their ability to have constructive notice. The *Landry* case presents clear authority that Ms. Castillo is not a licensee when using Canterbury Park common areas. 317 S.C. 200, 202, 452 S.E.2d 619 (1994). In *Landry*, the South Carolina Supreme Court analyzed whether a member of a homeowner's association would be a licensee or invitee. The Court found that because the member pays dues to the homeowner's association for the promise of a benefit, which includes maintaining common areas in good and safe repair, that the member is a business visitor and therefore an invitee. *Id.* It is uncontested that Ms. Castillo is a paying member of Canterbury Park's Homeowners Association and is therefore an invitee. Because of Ms. Castillo's invitee status, Canterbury Park does have duty to inspect the areas in which it maintains, and therefore would have had constructive notice of the dangerous uneven sidewalk that caused Ms. Castillo's injuries.

CONCLUSION

For these reasons, this Court should reverse the decisions of the lower court and remand this matter for a new trial.

Respectfully submitted,

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