

STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
The Honorable Thomas A. Russo, Circuit Court Judge

Appellate No.: 2012-212327
Civil Action No.: 2009-CP-46-3103

Felecia Dicks WilsonAppellant

vs.

Cedar Fair Entertainment Co.,
Cedar Fair, L.P. d/b/a Carowinds
Amusement Park.....Respondent.

MOTION TO DISMISS

Respondent Cedar Fair Entertainment Co., Cedar Fair, L.P. d/b/a/ Carowinds Amusement Park hereby moves to dismiss this appeal. The ground for this Motion is Appellant's failure to perfect her appeal pursuant to the South Carolina Rules of Appellate Procedure and the Orders of this Court. The accompanying memorandum of law sets fort this ground in more detail.

[SIGNATURE TO FOLLOW]

RECEIVED

MAR 04 2014

SC Court of Appeals

Respectfully submitted,

Sheila M. Bias

Sheila M. Bias, Esquire
Steven J. Pugh, Esquire
Joseph E. Thoensen, Esquire
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*COUNSEL FOR RESPONDENT CEDAR FAIR
ENTERTAINMENT CO., CEDAR FAIR, L.P. D/B/A
CAROWINDS AMUSEMENT PARK*

March 4, 2014

STATE OF SOUTH CAROLINA

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APPEAL FROM YORK COUNTY

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The Honorable Thomas A. Russo, Circuit Court Judge

Appellate No.: 2012-212327

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Felecia Dicks WilsonAppellant

vs.

Cedar Fair Entertainment Co.
Cedar Fair, L.P. d/b/a Carowinds
Amusement Park.....Respondent.

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS ON BEHALF OF
RESPONDENT CEDAR FAIR ENTERTAINMENT CO., CEDAR FAIR, L.P. d/b/a
CAROWINDS AMUSEMENT PARK**

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March 4, 2014

INTRODUCTION/BACKGROUND

Appellant Felecia Dicks-Wilson (“Appellant”) commenced this appeal after a jury returned a verdict in favor of Respondent Cedar Fair Entertainment Co., Cedar Fair, L.P. d/b/a/ Carowinds Amusement Park (“Carowinds”). Appellant filed a civil action in York County, South Carolina contending that in July 2006, she sustained “severe personal injuries” while attempting to exit the Wild Thornberry’s Log Ride located at Carowinds. Appellant contended Carowinds was negligent in, *inter alia*, failing to properly staff the ride, assist in her disembarkation, and failing to advise her of any present danger. The matter was tried in York County on May 15-16, 2012.

During the pendency of this appeal, the parties filed their Initial Briefs and Designations of Matters to be Included in the Record on Appeal. Appellant requested an extension of time to file the Record on Appeal, which this Court granted on October 4, 2013. See Exhibit A. Thereafter, Appellant served a purported Record on Appeal. The served Record on Appeal was deficient in that the title page was not properly formatted, as highlighted by this Court in a letter dated November 18, 2013. Additionally, the Record on Appeal only contained those matters designated in Appellant’s Designation of Matter to be Included in the Record on Appeal and omitted items designated by Carowinds. Further, the served Record on Appeal was not properly paginated such that the Initial Briefs could not be converted to Final Briefs.

Carowinds served and filed a Motion to Compel compliance with the South Carolina Appellate Court Rules on November 19, 2013. Appellant filed a Motion for Extension of Time to file a corrected Record on Appeal on what appears to be December 7, 2013. By Order filed January 23, 2014, this Court granted Carowinds’ Motion to

SMB

Compel—ordering Appellant to serve a Record on Appeal which includes “all matters designated by both parties and include proper pagination with each page number consecutively beginning with the index.” See Exhibit B. This Court additionally granted Appellant’s request for an extension of time and ordered the Appellant to serve and file an Amended Record on Appeal within twenty days with the parties’ final briefs due thirty days after the service of the Amended Record on Appeal.

Based on this Court’s order, counsel for Carowinds calendared the deadline for service of the Amended Record on Appeal as February 12, 2014. The Amended Record on Appeal was not served on that date. Recognizing that South Carolina experienced severe inclement weather in early February, counsel for Carowinds sent a letter to Appellant, dated February 18, 2014, and attached as Exhibit C, advising her that our office had yet to receive the Amended Record on Appeal. The letter further advised that if the Amended Record on Appeal was not received by February 27, 2014, Carowinds would file a Motion to Dismiss the Appeal.

On February 28, 2014, counsel for Carowinds received a purported Amended Record on Appeal dated February 20, 2014. The served Amended Record on Appeal is, again, not properly paginated. See Excerpt from served Record on Appeal, attached as Exhibit D. Additionally, the Amended Record on Appeal is not signed, nor is the certificate of counsel signed. Accordingly, Carowinds moves this honorable Court for an order dismissing the instant appeal.

ARGUMENT

Dismissal is appropriate because Appellant continually fails to perfect this appeal through non-compliance with the Appellate Court Rules and orders of this Court. The

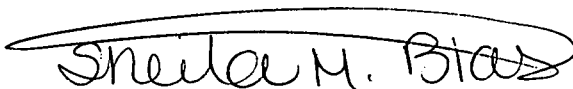
served Amended Record on Appeal is not numbered consecutively beginning with the index as required by Rule 210, SCACR, and this Court's January 23, 2014, order. See Exhibits C and D. The failure to paginate the Amended Record on Appeal makes converting the Initial Briefs to Final Briefs virtually impossible. Neither party can convert their references to the transcript, answer, or other materials to the respective pages in the Record on Appeal due to the lack of pagination.

Appellant has had several opportunities and four months to serve a proper Record on Appeal and has failed to do so. "[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this court with an orderly mechanism through which to guide appeals in this State." Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). "It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review." Id. Appellant has failed to comply with the South Carolina Appellate Court Rules and this Court's orders. Indeed, "this Court would be completely justified in dismissing this appeal based on appellant's numerous violations of the Rules, . . ." Id. Accordingly, Carowinds moves this honorable Court for an order dismissing the instant appeal.

CONCLUSION

Based on the foregoing, Carowinds respectfully requests this Court issue an Order dismissing this appeal due to Appellant's failure to comply with the South Carolina Appellate Court Rules and orders of this Court.

Respectfully submitted,



Sheila M. Bias, Esquire
Steven J. Pugh, Esquire
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*COUNSEL FOR RESPONDENT CEDAR FAIR
ENTERTAINMENT CO., CEDAR FAIR, L.P. D/B/A
CAROWINDS AMUSEMENT PARK*

March 4, 2014

The South Carolina Court of Appeals

Felecia Dicks Wilson, Appellant,

v.

Cedar Fair Entertainment Company, Cedar Fair, LP d/b/a
Carowinds Amusement Park, Respondents.

Appellate Case No. 2012-212327

The Honorable Thomas A. Russo
York County
Trial Court Case No. 2009CP4603103

ORDER

The time for serving and filing the record on appeal and proof of service is hereby extended until November 5, 2013.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

FILED

cc:

Felecia Dicks Wilson
Joseph E. Thoensen
Steven James Pugh
Sheila Marlouvon Bias

10-4-13 AP

EXHIBIT

A

tabbies

The South Carolina Court of Appeals

Felecia Dicks Wilson, Appellant,

v.

Cedar Fair Entertainment Company, Cedar Fair, LP d/b/a
Carowinds Amusement Park, Respondents.

Appellate Case No. 2012-212327

ORDER

After careful consideration, Respondents' motion requesting Appellant to correct the record on appeal is granted. Appellant has requested an extension of time in which to correct the record on appeal. Appellant's request is granted. Within twenty days, Appellant shall serve and file the amended record on appeal. Specifically, the record on appeal shall include all matters designated by both parties and include proper pagination with each page numbered consecutively beginning with the index. The parties' final briefs shall be due thirty days after the service of the amended record on appeal.

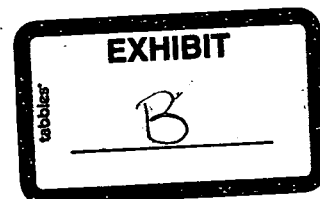

FOR THE COURT

Columbia, South Carolina

cc:

Felecia Dicks Wilson
Joseph E. Thoensen, Esquire
Steven James Pugh, Esquire
Sheila Marlouvon Bias, Esquire

FILED
1/23/14



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February 18, 2014

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Felicia Dicks Wilson
Post Office Box 31562
Augusta, Georgia 30903-3051

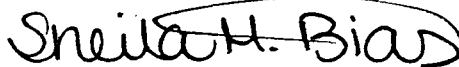
Re: *Felecia Dicks Wilson v. Cedar Fair Entertainment Co., Cedar Fair L.P., d/b/a Carowinds Amusement Park*
Appellate Case # 2012-212327
Our File No. 6611.014

Dear Ms. Dicks-Wilson:

By Order dated January 23, 2014, the Court of Appeals granted your request for an extension of time in which to file the Record on Appeal. I have attached a copy of the Order I am referring to for your convenience. The Order also indicated that the Record on Appeal was to be served within twenty days of the date of the letter. My office calendared that date as Wednesday, February 12, 2014. I know we have experienced some inclement weather recently, but I wanted to let you know that to date, we have not received the Record on Appeal in this matter. We cannot perfect our portion of the appeal without your service of a proper Record on Appeal in accordance with the South Carolina Appellate Court Rules. I would request that you serve the Record on Appeal as soon as possible, but no later than Thursday, February 27, 2014 - thirty five days after the Court of Appeals' order. If we do not have the Record on Appeal by then, we will file a Motion to Dismiss the Appeal pursuant to Rules 210 and 240 of the South Carolina Appellate Court Rules. Please do not hesitate to contact me if you have any questions.

With kind regards, I am

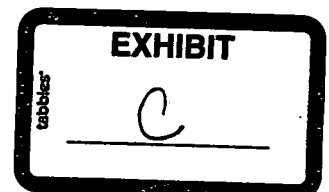
Sincerely,



Sheila M. Bias
SC Bar # 100005

SMB/dfb
Enclosure

cc: The Honorable Jenny Abbott Kitchings (w/enclosure)
Joseph E. Thoensen (w/enclosure)
Steven J. Pugh (w/enclosure)



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2012-212327
Case No. 2009-CP-46-3103

Felecia Dicks Wilson

Appellant

v.

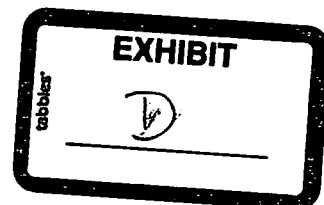
Cedar Fair Entertainment Co.
Cedar Fair, LP d/b/a Carowinds
Amusement Park

Respondent.

RECORD ON APPEAL

Felecia Dicks Wilson Pro-Se
Post Office Box 31562
Augusta, GA 30903-3051
(706)-951-3051
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Order of May 17, 2012

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

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JUDGMENT IN A CIVIL CASE
CASE NUMBER 2009CP4603103

Felecia Dicks Wilson	Cedar Fair Entertainment Company Carowinds Amusement Park
DAVID HAMILTON C.C.C.P. & GS YORK COUNTY, SC	
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
---------------	---

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

SEE ATTACHED VERDICT FORM

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

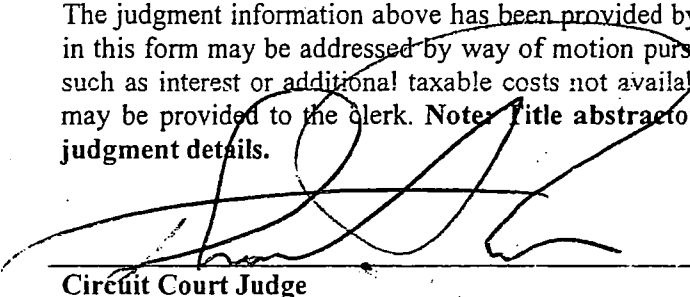
INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**



Circuit Court Judge

2141

Judge Code

5/16/2012

Date

For Clerk of Court Office Use Only

This judgment was entered on the 17th day of May, 2012, and a copy mailed first class or placed in the appropriate attorney's box on the 17th day of May, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Felecia Dicks Wilson
PO Box 31562
Augusta, GA 30903

ATTORNEY(S) FOR THE PLAINTIFF(S)

Joseph E. Thoensen
Richardson Plowden & Robinson PA
1900 Barnwell Street
Columbia, SC 29201

ATTORNEY(S) FOR THE DEFENDANT(S)

DAVID HAMILTON

David Hamilton - Clerk of Court

Court Reporter: SHIRLEY BROOM

Complaint 2009-CP-46-03103 filed July 17, 2009

**STATE OF SOUTH CAROLINA
COUNTY OF YORK**

IN THE COURT OF COMMON PLEAS

**FELECIA DICKS WILSON
Plaintiff,**

**COMPLAINT
Case No. 09-CP-46 03103
(JURY TRIAL DEMANDED)**

vs.

**CEDAR FAIR ENTERTAINMENT CO.
CEDAR FAIR, LP
dba CAROWINDS AMUSMENT PARK
Defendant**

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DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC**

The Plaintiff, complaining of the Defendant above-named, would show unto the Court as follows:

1. That the Plaintiff is a resident of Richmond County, Georgia and was at the time of the occurrence mentioned herein, at which time she was visiting the Carowinds Amusement Park.
2. That the Defendant is a corporation, doing business York County, South Carolina as Carowinds Amusement Park, at which time was responsible for the safe operation of the water ride Wild Thornberry's Log Ride.
3. That on or about July 20, 2006, the Plaintiff was exiting the ride on the disabled side after completing the ride. While in the midst of exiting the Plaintiff's log was struck by another log which was not attended. The collision caused severe physical injuries to the Plaintiff.
4. That as a result of the collision, the Plaintiff has sustained serious personal injuries, physical harm, pain and suffering, medical and drug expense, loss of enjoyment of life, emotional distress and other personal injuries. Such injuries have continued to cause pain and suffering and are of a permanent nature.
5. That the direct and proximate cause of the Plaintiff's damages and person injuries without which the same would not have occurred, was the

negligence, willfulness, wantonness carelessness and gross negligence of the Defendant in the following particulars.

- a) In failing to have proper staff to man the entering and exiting of the ride,
- b) In failing to advise of any present danger,
- c) In failing to assist with exiting of the ride,
- d) In failing to keep a proper outlook,
- e) In failing to keep the operation of the ride under proper control,
- f) In failing to warn the Plaintiff when the Defendant became aware of the perilous situation,
- g) In creating a perilous situation, and
- h) In failing to act as a reasonable and prudent person would under the circumstances then and there existing.

6. The plaintiff is informed and believes that she is entitled to judgment against the Defendant for the damages and injuries she sustained in this collision.

7. The Plaintiff does demand a jury trial.

WHEREFORE, the Plaintiff prays for judgment against the Defendant in an appropriate amount, for such punitive damages as the Court would deem just and proper, for the costs of the action, and for such other and further relief as the Court would deem just and proper

By 

July 17, 2009

Answer 2009-CP-46-03103 filed August 20, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Felecia Dicks Wilson,)
)
Plaintiff,)
)
vs)
)
Cedar Fair Entertainment Company)
Cedar Fair, LP d/b/a Carowinds)
Amusement Park,)
)
Defendant.)
_____)

C/A No. 09-CP-46-3103

ANSWER

FILED - RECEIVED
2009 AUG 20 AM 9:56
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

Defendant Cedar Fair, L.P. d/b/a Carowinds Amusement Park ("Carowinds") (incorrectly identified as "Cedar Fair Entertainment Company Cedar Fair, LP d/b/a Carowinds Amusement Park") files this Answer to Plaintiff's Complaint and would respectfully show unto the Court:

FOR A FIRST DEFENSE

1. Carowinds denies each and every allegation of the Complaint not specifically admitted or explained herein and demands strict proof thereof.
2. Carowinds lacks sufficient information to form a belief as to the truth of the allegations of paragraph 1, and, therefore, denies the same.
3. As to paragraph 2 of the Complaint, it is admitted that a portion of the park known as "Carowinds" lies within York County, South Carolina. The remaining allegations of paragraph 2 of the Complaint are denied.
4. Carowinds denies the allegations contained in paragraphs 3 through and including 6, including all subparagraphs, of the Complaint.

5. Paragraph 7 of the Complaint requires no substantive response from Carowinds.

6. Carowinds denies the allegations contained in the Prayer of the Complaint.

FOR A SECOND DEFENSE

7. Carowinds asserts that the Complaint, in whole or in part, fails to state a claim upon which relief may be granted against Carowinds and should therefore be dismissed.

FOR A THIRD DEFENSE

8. If it is determined that Carowinds was negligent as alleged in the Complaint, which is expressly denied, then the negligence of Carowinds, the Plaintiff and any other's negligence should be compared, and the damages awarded to the Plaintiff, if any, should be apportioned by the amount of each party's fault and negligence in accordance with the Comparative Negligence Law of this State.

FOR A FOURTH DEFENSE

9. The Plaintiff's alleged injuries and damages were caused by concurring, superseding and/or intervening causes.

FOR A FIFTH DEFENSE

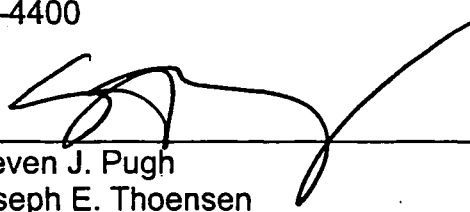
10. The Plaintiff's claim for punitive damages is violative of both the United States Constitution and the South Carolina Constitution and is, therefore, barred.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendant Cedar Fair, L.P., as successor to Paramount Parks, Inc., d/b/a Paramount's Carowinds prays for a jury trial, that Plaintiff take nothing by this cause and that it recover its costs. This

Defendant prays for such other and further relief, both general and special, legal and equitable, to which it may be justly entitled.

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Columbia, South Carolina 29202
(803) 771-4400

By: _____


Steven J. Pugh
Joseph E. Thoensen

ATTORNEYS FOR DEFENDANT CEDAR FAIR, L.P.,
d/b/a CAROWINDS AMUSEMENT PARK

August 12, 2009

**Opening Argument of Joe Thoensen regarding the testimony of Mr. Ed
Bailey**

Transcript Pages 33-34

1 Mr. Thoensen: Ladies and gentlemen, good afternoon. I introduced myself to you
2 earlier. My name is Joe Thoensen. I'm an attorney from Columbia, South Carolina, right
3 down the interstate. I'm with Richardson, Plowden and Robinson. I'm here representing
4 Carowinds, the defendant in the case. Mr. Bailey is here with us. I introduced him to you
5 earlier, as an employee of Carowinds. He's the manager of safety and security. I'm also
6 joined by Ms. Kathy Hawkinson. Kathy is with Cedar Fair Entertainment Company. They're
7 the parent company of Carowinds. Kathy's down from Sandusky, Ohio.
8 This is a very important case to Carowinds. They've give it a lot of attention. They're very
9 serious about it. We have Ed, we have Kathy, as I said, all the way from Ohio, who's here.
10 The plaintiff in this case alleges that she had an unpleasant experience at Carowinds.
11 Something happened to her on the log flume ride while she was there. And certainly anytime
12 a guest at Carowinds has any type of unpleasant experience we regret that. It's a place for
13 families to come and enjoy themselves, have fun, have a good time. And so anytime
14 anything happens that causes anyone any sort of unpleasantness we regret it. And obviously
15 something happened to her that caused her to file a lawsuit and bring her case into court.

16 But the issue that you're gonna be asked to decide is not whether or not something
17 happened to the plaintiff at Carowinds. That's not the issue. The issue you're gonna be asked
18 to decide is what is Carowinds' negligence. Did they fail to do something they should have
19 done or did they do something they should not have done. And then, beyond that, did the
20 negligence of the park cause the injuries that the plaintiff claims she suffered. That's what
21 you'll be asked to decide.

22 You're going to hear testimony from the plaintiff herself. She's gonna get on the
23 witness stand and tell you some more about her case. She may offer a couple of other
24 witnesses to talk to you about her case as well. I'm gonna ask you to pay close attention to

1 all of the evidence that you see and all the documents that might come into evidence. But I
2 also want you to keep in mind the evidence that you don't see during the course of this trial.

3 You will not see any of the plaintiff's doctors walk through that door and take this
4 witness stand and talk to you about her condition, whether or not it's related to what
5 happened to her at Carowinds. You won't see or hear any evidence in this trial that a
6 Carowinds employee did something he or she was not supposed to do, did something that he
7 or she was not trained to do, or did anything in violation of any of their training and
8 procedures. You won't see or hear anything with regard to that.

9 You will hear from Mr. Bailey, and Ed's gonna talk to you about this ride, the things
10 that guests can experience on this ride, the type of changes in speed and elevation and that
11 kind of thing. He's gonna talk to you about the duties and responsibilities of the attendants
12 on this ride, what they're trained to do, what they're supposed to do. He's also gonna tell you
13 that in his more than thirteen years at the park there has never been another incident where
14 someone claimed to have been injured on this ride in the way that plaintiff claims that she
15 was injured. So, keep that in mind as well when you consider how did this happen and could
16 it have possibly caused the injuries that plaintiff said that it did.

17 As the judge told you, after you hear all the evidence, he's gonna tell you what the
18 law is. Y'all are gonna have to determine what the facts are. As I have said in my opening,
19 you are gonna have to determine whether Carowinds did something negligent to cause these
20 injuries. And I think once you hear all the witnesses and see all the testimony and look t the
21 documents that we introduce, you're gonna have to answer that question in the negative. And
22 when that time comes I'll ask you to respectfully render a verdict in favor of Carowinds.

23 Thank you.

24 The Court: Thank you, Mr. Thoensen. Ms. Wilson, call your first witness.

25 Ms. Wilson: Thank you, Your Honor. I call to the stand Juanita Chaney.

Testimony of Juanita D. F. Chaney

**Direct Examination of Juanita Chaney by Felecia Dicks Wilson...
Transcript Pages 35-37**

1 The Court: Ms. Chaney, if you would please come up and be sworn, ma'am.

2 **JUANITA CHANEY**, duly sworn, testified as

3 follows:

4 **DIRECT EXAMINATION BY MS. WILSON:**

5 Q Could you state your name again for the record?

6 A Juanita Chaney.

7 Q Your relationship to me?

8 A I am your daughter.

9 Q When were you born?

10 A June 7, 1988.

11 Q And do you remember when we went to Carowinds July 20 of '06?

12 A Yes.

13 Q Can you tell me what you remember and tell the court what you remember?

14 A About the incident?

15 Q From the incident, yes.

16 A I remember getting off the ride and I was holding a bag and I was waiting for
17 you to get off the ride. And I turned my head and I heard ow, really, really loud. And
18 you were standing there and you had one foot up and the other foot was still on the
19 boat. And....

20 Q Okay. After you heard me say Ow, what did I do then? Do you remember?

21 A I don't remember exactly what you did. I did watch you get out of the boat.

22 Q Okay. And after I got out the boat, do you remember me calling for any
23 assistance or anything like that that?

24 A I remember you looking for attendants.

25 Q Okay. And do you remember when the attendant came?

1 A I think it was just a few minutes, maybe three minutes after.

2 Q After I was looking for one?

3 A Yeah.

4 Q And after we got off the ride do you remember how long it was before

5 someone came to assist me with the injury?

6 A No, I don't remember exactly.

7 Q I wanted to ask you this: Have I done anything since that accident occurred to

8 coerce you or put words in your mouth or try to make you remember this incident

9 during this, during this time, preparing for court?

10 A No.

11 Q Okay. Did we discuss these things in detail?

12 A No.

13 Q And I don't know if you... What changes have you noticed in me physically

14 since the accident occurred?

15 A I noticed since then you have a lot of pain in your leg. You have a lot of pain

16 in your leg and you will say that your back is hurting so bad and your hip is hurting

17 so bad. *And you and be cramping up so bad and I would have to get your medicine

18 or

19 Q How long did that go on for?

20 A Still. I remember being at home not too long ago and you were in the lawn

21 and couldn't get up. You sat down and said come here and give me my medicine and

22 bring some water.

23 Q Okay. And I call you May-May?

24 A Yes. May-May is my childhood name.

25 Q Have I ever as far as you can remember back asked you to lie for me?

1 A No. No. You always told me to tell the truth.

2 Ms. Wilson: I have no further questions, Your Honor.

3 The Court: Mr. Thoensen.

4 Mr. Thoensen: Thank you, Your Honor.

5 **CROSS EXAMINATION BY MR. THOENSEN:**

6 Q You were with your mother on the date of the incident?

7 A Yes.

8 Q And you said you turned around and her say ow, and she had one foot in the
9 boat and one foot out of the boat?

10 A Yeah, I heard her holler ow.

11 Q Did you see anything that to your impression that would have caused her to be
12 hurt?

13 A Well, did I see anything? No.

14 Q Okay.

15 A I remember her being hurt while she was there.

16 Q Did you have any conversations with any Carowinds employee about the
17 incident that occurred on the log ride?

18 A No, I did not.

19 Q And you don't have any information about how the attendants on that ride are
20 trained to operate that ride, do you?

21 A No.

22 Q And you don't have any information regarding whether or not any of the
23 attendants that day did anything wrong, do you?

* 24 A No. I know there was no one there.

25 Q Okay.

Testimony of Ed Bailey

**Testimony is of Ed Baily describing the Wild Thornberry ride at
Carowinds
Transcript Pages 129-130**

1 would, I'll ask you to stand on that side facing this way and keep your voice up loud
2 so the court reporter can hear you. Okay?

3 A Understood.

4 The Court: Thank you, sir.

5 Q You're free to come around.

6 A Thank you.

7 (Whereupon witness exited witness stand for demonstration with Defendant's Exhibit

8 Number One)

9 Q Mr. Bailey, what I'm going to ask you to do is just sort of narrate for the jury
10 what we're seeing as this video is played.

11 (Whereupon video is played for the jury)

12 A We'll start with a couple of quick slides and then we'll move along. Here's an
13 overall layout of what the ride looks like, and the person who produced it actually did
14 a good job of fading it in.

15 That's lift two. That's the coming down that lift into a splash run-off and into
16 the station. This is coming around into the station itself.

17 At the beginning of the ride, the boat is still in the station, just leading the load
18 point, and now you can see the guests actually riding the ride.

19 And the boat will go around to what we call lift one. A conveyer system takes
20 it up to the top of the lift.

21 This is the splash down. In fact, we have a couple of little s-turns here. These
22 are both contacting the sides and bumping.

23 The boat's coming into a section of the spillway. The boats are designed with
24 a guide wheel so when it bumps it will guide it around.

1 This is the spillway here and the break here. The release from the break. It
2 comes around now to the second lift. And here's the base of lift two.

3 Here we have at this point in time what's known as freewheeling, rolling.
4 And it runs out into the splash.

5 From here it will wind its way back around to where the actual unload section.
6 You can see it as the boat comes around.

7 There is a gate that actually directs the boats to one side or the other side of
8 the section. This boat is coming into the unload and I think they-- You see the
9 attendant. The boat stops just then and the video ends there.

10 The Court: Thank you, Mr. Bailey. You may return to your seat.

11 (Whereupon witness returns to witness stand)

12 Q Mr. Bailey, near the end of that video we saw an attendant sort of stick his
13 foot out to stabilize the boat as it came in. Correct?

14 A Yes, once the boat's in the station itself.

15 Q Is the proper method and the way those folks are trained?

16 A That's my understanding, yes.

17 Mr. Thoensen: May I approach the witness, Your Honor?

18 The Court: Yes sir.

19 Q Mr. Bailey, I'm handing you a document entitled, Guide For Guests With
20 Disabilities.

21 A Okay.

22 Q Please take a look at that and tell us if you can identify it and tell us what it is.

23 A This is the Paramount Carowinds', which is the name we were using at the
24 time, Guide For Guests With Disabilities.

25 Q Is there a copyright date on this particular guide?

Closing Argument of Appellant regarding Jury Charge

Transcript Pages 196-198

1 Remember, ladies and gentlemen, that your verdict in this case must be
2 unanimous.

3 Madam forelady, the verdict form is in the front of this notebook. It's in the
4 pocket here in the front. It's a simple verdict form. You basically have two choices.
5 You will either find in favor of the plaintiff or you will find in favor of the defendant.
6 And the verdict form is self-explanatory. If you have any questions, certainly you can
7 let me know.

8 Now, I'm gonna get you to do me a favor. I want you to step back in the jury
9 room. Don't begin deliberations yet. I'm gonna confirm with the parties that I've
10 covered everything that needs to be covered. If I have left anything out or omitted
11 anything I'll bring you back out and give you that.

12 If I have included everything then we'll gather up the exhibits. When you
13 receive the exhibits and this notebook, that's your clue to begin your deliberations.
14 So, please, if you would retire to the jury and await the delivery of those items.

15 (Whereupon the jury exited the courtroom)

16 Are there any exceptions or objections to the charge by the plaintiff?

17 Ms. Dicks Wilson: I have a question, Your Honor. I was just trying to find
18 where... Okay. Maybe it's just my understanding. But this assumption of the risk?

19 The Court: Yes ma'am.

* 20 Ms. Dicks Wilson: It says the defendant in this case takes the position that the
21 ride in question was not dangerous. However, the defendant believes that if there was
22 a dangerous element to this ride, then by voluntarily exposing herself to an obvious
23 danger with appreciation thereof, the plaintiff assumes the risk of such danger,
24 thereby nullifying any duty that may be owed to the plaintiff.

25 The Court: Yes ma'am.

1 Ms. Dicks Wilson: And I guess... I guess what I'm saying is, if it's not a
2 dangerous ride and there is some, they know it's not dangerous, well, of course, when
3 I got on that I just, that it wasn't dangerous, it's like saying because I got on I didn't
4 care if it was dangerous.

5 The Court: The law in this state and most states is... Here's an example:
6 Somebody's got a lawsuit. There's a lawsuit right now going on, a huge lawsuit
7 going on now in the NFL. Players are suing the NFL because they were injured. The
8 NFL position is you know football is a dangerous sport, a contact sport, and there's
9 opportunity. Yet, you chose to voluntarily expose yourself to those dangers. That's
10 an assumption of risk. Okay?

11 Ms. Dicks Wilson: Okay.

12 The Court: In this case, the position of the defendant is we don't believe this
13 is a dangerous ride. But if you think it's a dangerous ride, if you find that it is a
14 dangerous ride, then our duty has been relieved because the plaintiff knew of the
15 dangers, exposed, voluntarily exposed herself to those dangers. And that relieves of
16 any duty that we may have owed. That's the law. It's a question of fact. The jury
17 has to decide that.

18 But it is true, the law in this state and in most states is that if you voluntarily
19 expose yourself to a known danger, then you may very well be relieving the other
20 party of any responsibility.

21 Ms. Dicks Wilson: That's what I thought. And I was just looking... I guess
22 the part that you said, you made it seem not right to me, because if they didn't
23 believe, the defendant didn't believe that it was---

24 The Court: It doesn't matter what the defendant believed.

1 Ms. Dicks Wilson: ---not a danger. Then I guess the part that I'm not reading
2 in this is they figured that it's dangerous. And I don't see that in the reading of it.
3 It's like---

* 4 The Court: They don't believe it's dangerous.

5 Ms. Dicks Wilson: Right. The defendant believe that there was a dangerous
6 element.

7 The Court: No, I didn't---

8 Ms. Dicks Wilson: Believes that if there was a dangerous element to this ride,
9 then by voluntarily exposing herself to such an obvious danger with appreciation
10 thereof, the plaintiff assumes the risk of such danger, thereby nullifying any duty that
11 may be owed to the plaintiff.

12 Okay. And then the end, under South Carolina law if you find that the
13 plaintiff knowingly and impliedly assumed risk inherent with the activity she
14 participated in at the park, then there is no duty owed to the plaintiff by this
15 defendant.

16 The Court: Correct.

* 17 Ms. Dicks Wilson: And it's like saying... And I guess, maybe, I'm trying to
18 figure out where they would come in and be able to say, well, there was no danger, or
19 there-- It's no opening for that. That's what I don't see.

* 20 The Court: I'm not understanding your questions. The law is as it says right
21 here, ---

22 Ms. Dicks Wilson: Uh-huh.

* 23 The Court: ---and that is in this case, they don't believe that it's a dangerous
24 ride.

25 Ms. Dicks Wilson: Uh-huh.

1 The Court: But what they're saying is, even if it was a dangerous ride – and
2 I'm paraphrasing – Ms. Wilson knew of the dangers. She knew about the ride. She
3 watched it operate. She's been on it before. And she assumed the risk. She took on
4 voluntarily, of her own, decided that even in the face of the possible dangers, I'm
5 gonna ride this ride. And so, she did so, and by doing that, that relieves us of any
6 duty that we have. That's their position, the law says.

7 Now, the jury may find-- The jury can look at that and go, well, we disagree,
8 because we don't think she knew of that danger. We think it was maybe a hidden
9 danger. Maybe it was something that she couldn't be appreciate and be aware of. So,
10 we don't think she did. We don't think she did assume the risk, and therefore, we do
11 find that there is a duty. They may find that.

12 That's a question of fact for the jury to find based on the testimony and the
13 evidence that's before it. But the law on assumption of risk is just as it's written
14 there. And that is, if you find these four things, and you find that the plaintiff has
15 voluntarily exposed herself to that danger, then she assumes risk and there would be
16 no duty on the defendant's part.

17 Anything from the defendant regarding the charge?

18 Mr. Thoensen: No object to the charge or the verdict form, Your Honor.

19 The Court: Ms. Wilson and Mr. Thoensen, if y'all would get with the madam
20 court report and look over the exhibits and just make sure that everything that's
21 supposed to be there is there. This is the deposition and it doesn't go back.

22 (whereupon parties reconciled exhibits)

23 Now, once they verify they've got everything there, y'all take this notebook
24 and these exhibits on back.

25 Have you got everything?

Defendant's Exhibit 1

**DVD of Wild Thornberry Ride recorded from You-Tube, on file with
court documents.**

Jury Verdict Form

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2011-CP-46-1081

FELICIA DICKS WILSON,)
PLAINTIFF,)
VS.)

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MAR 04 2014

CEDAR FAIR)
ENTERTAINMENT)
COMPANY,)
CEDAR FAIR, LP d/b/a)
CAROWINDS)
AMUSEMENT PARK,)
DEFENDANT.)

SC Court of Appeals

VERDICT FORM

FILED-RECEIVED
2012 MAY 17 AM 8:35
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC


AS TO ACTUAL DAMAGES
PERSONAL INJURY

_____ We, the Jury, unanimously find that the negligence of the defendant proximately caused the Plaintiff's injuries and find for the Plaintiff, **FELICIA DICKS WILSON**, in the amount of \$ _____ Dollars, actual damages.

OR

We, the Jury, unanimously find for the Defendant, **CEDAR FAIR ENTERTAINMENT COMPANY, CEDAR FAIR, LP d/b/a CAROWINDS AMUSEMENT PARK**

May 16, 2012
DATE



JOAN G. GESELL, FORELADY

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY

Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

11459

Civil Action No. 09-CP-46-3103
Appellate Case No.: 2012-212327

Felecia Dicks Wilson.....Appellant,

v.

Cedar Fair Entertainment Company
Cedar Fair, L.L.C. d/b/a Carowinds
Amusement Park.....Respondent.

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., attorneys for Respondent Cedar Fair Entertainment Company, Cedar Fair, L.L.C. d/b/a Carowinds Amusement Park, do hereby certify that I have this date served the foregoing Motion to Dismiss and supporting memorandum by personally depositing a copy of the same in a United States Postal Service mailbox, postage prepaid, addressed to the following:

Felicia Dicks Wilson
Post Office Box 31562
Augusta, GA 30903-3051

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MAR 04 2014

SC Court of Appeals


Daisy F. Bonds

Dated: March 4, 2014

March 4, 2014

Columbia
Direct Dial: (803) 576-3718
sbias@RichardsonPlowden.com

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: *Felecia Dicks Wilson v. Cedar Fair Entertainment Co., Cedar Fair L.P., d/b/a Carowinds Amusement Park*
Appellate Case # 2012-212327
Our File No. 6611.014

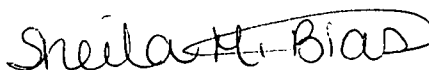
Dear Ms. Kitchings:

As counsel for the Respondent Cedar Fair Entertainment Company, Cedar Fair, L.L.C. d/b/a Carowinds Amusement Park, I have enclosed for filing an original and six copies of Respondent's Motion to Dismiss and supporting memorandum in the above referenced matter, along with our original Certificate of Service. I have also enclosed one additional copy of our Motion and memorandum and would request that it be file stamped and returned to our courier. Also, enclosed please find a check for \$25.00 for the filing fee.

We are this day serving a copy of Respondent's Motion on the *pro se* Appellant.

Thank you for your assistance.

Sincerely,



Sheila M. Bias
SC Bar # 100005

SMB/dfb

Enclosures

cc: Felecia Dicks Wilson, *pro se* (w/enclosure)
Joseph E. Thoensen (w/enclosure)
Steven J. Pugh (w/enclosure)

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MAR 04 2014

SC Court of Appeals