

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No. 2012-CP-23-02379

Frankie Orr,Respondent,

v.

Greenville Hospital System,Appellant.

INITIAL REPLY BRIEF OF APPELLANT

Kenneth N. Shaw, S.C. Bar # 77859
J. Ben Alexander, S.C. Bar # 15323

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SC Court of Appeals

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ARGUMENT IN REPLY 1

CONCLUSION 3

TABLE OF AUTHORITIES

CASES

Cook v. Food Lion
328 S.C. 324, 491 S.E. 2d 690 (Ct. App. 1997)..... 1

Rock Hill Tel. Co. v. Globe Communs., Inc.
363 S.C. 385, 611 S.E.2d 235 (2005) 2

Smith v. Reg'l Med. Ctr. of Orangeburg
394 S.C. 110, 713 S.E.2d 656 (Ct. App. 2011)..... 2

Watson v. Ford Motor Co.
389 S.C. 434, 699 S.E.2d 169 (2010) 2

STATUTES

S.C. Code § 15-78-60(20) 2

ARGUMENT IN REPLY

The parties are generally in agreement about the statement of case, the facts, and the standard of review. However, Ms. Orr continues to draw legal conclusions that simply are not supported by the facts in the record. Ms. Orr's entire argument is summarized toward the end of her brief when she states, "[g]iven the unrefuted evidence that there was a large framed picture hanging on the wall in a patient room at Hillcrest Hospital and that this picture fell off the wall injuring Ms. Orr, it was certainly reasonable for the jury to infer that GHS created the hazard, failed to properly maintain the premises, and is liable for Ms. Orr's injuries." While the jury could and did reach such a conclusion, it unquestionably did so based upon pure conjecture and speculation rather than actual evidence.

Ms. Orr correctly cites Cook v. Food Lion, 328 S.C. 324, 327, 491 S.E. 2d 690, 691 (Ct. App. 1997) for the proposition that to prove negligence in this case she had to show "either that the defendant or defendant's employees created the condition, or the defendant had notice of it." Ms. Orr then asserts that the only reasonable inference that can be reached from the evidence is GHS either hung the picture or contracted for the picture to be hung. She then concludes that "[b]y hanging the picture, GHS created the condition that led to appellee's injuries." But this conclusion has no factual or legal basis.

First, just because the picture was hanging on a wall in a GHS hospital room does not mean GHS was responsible for hanging it. Though it is uncontested that GHS currently owns Hillcrest Hospital and owned it at the time of this incident, there is nothing in the record to indicate whether GHS built the facility or whether it purchased it

from another entity sometime before this incident took place. It is possible the picture was hung by another entity prior to GHS acquiring the facility.

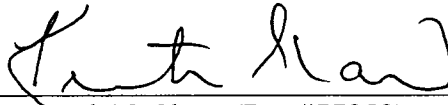
As Ms. Orr concedes, it is also possible that GHS contracted with a third party to hang the picture. Pursuant to the Tort Claims Act, GHS is not liable for a loss resulting from “an act or omission of a person other than an employee.” S.C. Code § 15-78-60(20). Independent contractors are specifically excluded from the definition of “employee.” Therefore, if an independent contractor negligently hung the picture, GHS would not be liable for the independent contractor’s actions. See Smith v. Reg’l Med. Ctr. of Orangeburg, 394 S.C. 110, 713 S.E.2d 656 (Ct. App. 2011)(holding governmental hospital could not be liable for alleged negligent acts or omissions committed by an independent contractor) (cert. granted Smith v. Reg’l Med. Ctr., 2012 S.C. LEXIS 281 (Nov. 15, 2012)); see also Rock Hill Tel. Co. v. Globe Communs., Inc., 363 S.C. 385, 611 S.E.2d 235 (2005) (holding utility company was not vicariously liable for negligence of independent contractor hired to install an underground cable along a highway).

Finally, regardless of who may have been responsible for hanging the picture, Ms. Orr continues to ignore the reality that she put forth no evidence the picture was hung in a defective manner. The mere fact that the picture fell, standing alone, is insufficient to establish that it was hung defectively. See Watson v. Ford Motor Co., 389 S.C. 434, 452-53, 699 S.E.2d 169, 179 (2010)(holding that plaintiffs could not rely solely on the fact that an accident occurred to prove the product was defective since South Carolina did not recognize the doctrine of *res ipsa loquitur*) Ms. Orr clearly believes the fact that it fell should speak for itself, and while that may be a reasonable belief, that is not sufficient to establish liability under the laws of South Carolina.

CONCLUSION

For reasons cited herein and in its Initial Brief, GHS respectfully requests the Court reverse and set aside the verdict and judgment appealed from and remand the case to the trial court with instructions to enter judgment in favor of GHS.

Respectfully submitted,



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May 13, 2014
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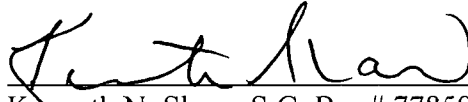
Greenville Hospital System,Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that, on the date indicated below, he served counsel for the Respondent with a copy of Appellant's Initial Reply Brief by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

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Respectfully submitted,



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May 13, 2014

The Honorable Jenny Abbott Kitchings
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Columbia, S.C. 29211

Re: Frankie Orr v. Greenville Hospital System
Appellate Case No.: 2013-002583
Greenville County C.A. No.: 12-CP-23-2379
HSB File No.: 08565.0582

Dear Ms. Kitchings:

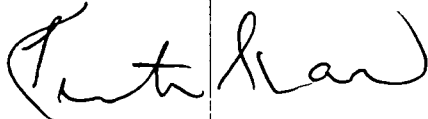
Enclosed for filing is the original and one copy of the Initial Reply Brief of Appellant, together with our Proof of Service of same. After filing, please return a file-stamped copy to me in the enclosed self-addressed, postage paid envelope.

By copy of this letter, I am serving a copy of same upon counsel for Respondent, Randy Chambers, Esq.

Please feel free to contact me should you have any questions or concerns.

Very truly yours,

HAYNSWORTH SINKLER BOYD, P.A.



Kenneth N. Shaw

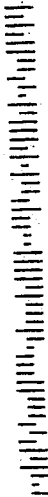
Enclosures

cc: Randy Chambers, Esq.

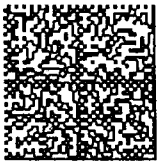
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