



The Supreme Court of South Carolina

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COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

March 4, 2015

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: Neshen Mitchell v. Juan Marruffo
Lower Court Case No. 2009CP1006574
Appellate Case No. 2013-000670

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,



CLERK

cc: J. Joseph Condon, Jr., Esquire
Richard S. Rosen, Esquire
Andrew D. Gowdown, Esquire
Samuel R. Clawson, Esquire
Christina Rae Fagnoli, Esquire
Timothy Alan Domin, Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Neshen Mitchell, Individually and as the next friend of
her minor child, Hakeem T.M., Petitioners,

v.

Juan Marruffo, d/b/a Liberty Express, Adrian Moralez,
RET Partnership, William T. McQueeney, Carl E.
Roberts, Karl R. Henderson, and Steven Parham,
Defendants,

Of whom RET Partnership, William T. McQueeney, Carl
E. Roberts, Karl R. Henderson, and Steven Parham are
the, Respondents.

Appellate Case No. 2013-000670

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Charleston County
Roger M. Young, Sr., Circuit Court Judge

Memorandum Opinion No. 2015-MO-010
Heard February 4, 2015 – Filed March 4, 2015

DISMISSED AS IMPROVIDENTLY GRANTED

Richard S. Rosen and Andrew D. Gowdown, both of
Rosen, Rosen & Hagood, LLC, of Charleston, and J.
Joseph Condon, Jr., of North Charleston, for Petitioners.

Samuel R. Clawson, Timothy A. Domin, and Christina R.
Fargnoli, all of Clawson and Staubes, LLC, of
Charleston, for Respondents.

PER CURIAM: We granted certiorari to review the Court of Appeals' decision in *Mitchell v. Marruffo*, Op. No. 2013-UP-010 (S.C. Ct. App. filed Jan. 9, 2013). We now dismiss the writ as improvidently granted.

DISMISSED AS IMPROVIDENTLY GRANTED.

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ.,
concur.**

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Neshen Mitchell, individually and as the next friend of
her minor child Hakeem T.M., Appellants,

v.

Juan P. Marruffo d/b/a Liberty Express, Adrian Moralez,
RET Partnership, William T. McQueeney, Carl E.
Roberts, Karl R. Henderson, and Steven Parham,
Defendants,

Of whom RET Partnership, William T. McQueeney, Carl
E. Roberts, Karl R. Henderson, and Steven Parham, are
the Respondents.

Appellate Case No. 2011-198047

Appeal From Charleston County
Roger M. Young, Circuit Court Judge

Unpublished Opinion No. 2013-UP-010
Heard December 13, 2012 – Filed January 9, 2013

AFFIRMED

Richard S. Rosen and Andrew D. Gowdown, both of
Rosen, Rosen & Hagood, LLC, of Charleston, and J.
Joseph Condon, Jr., of North Charleston, for Appellants.

Samuel R. Clawson, Timothy A. Domin, and Christina R. Fagnoli, all of Clawson & Staubes, LLC, of Charleston, for Respondents.

PER CURIAM: This appeal arises out of Appellants Neshen Mitchell and Hakeem T.M.'s claim of negligence against Respondents RET Partnership, William T. McQueeney, Carl E. Roberts, Karl R. Henderson, and Steven Parham. The trial court granted Respondents' motion for summary judgment, finding Respondents owed no duty of care to Appellants. On appeal, Appellants argue the trial court erred as a matter of law in finding Respondents owed Appellants no duty of care because: (1) Respondents created an artificial condition on the highway; (2) Respondents retained possession, control, and ownership of the property; and (3) the lease created a duty of care. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: Rule 56(c), SCRPC (noting summary judgment is appropriate when "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"); *Bailey v. Segars*, 346 S.C. 359, 366, 550 S.E.2d 910, 913 (Ct. App. 2001) ("To establish a cause of action for negligence, a 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) damages proximately resulting from the breach of duty."); *Skinner v. S.C. Dep't of Transp.*, 383 S.C. 520, 524, 681 S.E.2d 871, 873 (2009) ("South Carolina common law only imposes a duty for highway conditions where an individual or business has undertaken an activity that creates an artificial condition on the highway which is dangerous to travelers."). Here, Appellants make several arguments that Respondents engaged in activity that created an artificial and dangerous condition on the highway. However, after careful consideration of their arguments and a thorough examination of the record, we find no evidence that Respondents did anything that gave rise to a duty. Therefore, the trial court correctly granted summary judgment to Respondents.

AFFIRMED.

FEW, C.J., and WILLIAMS and PIEPER, JJ., concur.