

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

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APR 07 2015

SC Court of Appeals

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.

RETURN TO APPELLANT'S MOTION FOR EXTENSION OF TIME TO FILE "MOTION FOR REHEARING" AND PETITION FOR REHEARING

Sheila M. Bias, Esquire, SC Bar # 100005
Steven J. Pugh, Esquire
Joseph E. Thoensen, Esquire
RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street (29201)
P.O. Drawer 7788
Columbia, South Carolina 29202
803-771-4400

**COUNSEL FOR RESPONDENT CEDAR FAIR
ENTERTAINMENT CO., CEDAR FAIR, L.P. D/B/A
CAROWINDS AMUSEMENT PARK**

April 7, 2015

The instant appeal arises 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, Felecia Dicks-Wilson, 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. This Court issued an Opinion in this matter on March 11, 2015, affirming the jury verdict.

ARGUMENTS

I. THE MOTION FOR EXTENSION OF TIME TO FILE THE PETITION FOR REHEARING MUST BE DENIED.

Pursuant to Rule 221, SCACR, any Petition for Rehearing should be received by the Court of Appeals no later than fifteen days after the filing of the opinion.¹ Therefore, in this case, any Petition for Rehearing must have been filed by March 26, 2015.

Appellant’s Petition for Rehearing is dated April 2, 2015. Defendants are not insensitive to the delicate nature of the justifications cited by Appellant as to why her Motion should be granted. However, the rules are clear in that the Petition for Rehearing must be received by the Court no later than fifteen days after the filing of the Opinion—not within fifteen days of a party’s receipt of the Opinion. Moreover, Appellant has not indicated any other events after March 18, 2015, which precluded Appellant from timely filing her Petition for Rehearing. Indeed, on March 18, 2015, Appellant still had eight (8) days to submit her Petition for Rehearing on time. Finally, a review of the filings in this case demonstrate Appellant’s habitual non-compliance with the deadlines and rules of

¹ Rule 221, SCACR further provides that the remittitur should be sent to the lower court after fifteen days have elapsed. To date, the remittitur has not been issued.

this Court—from a dismissal of this Appeal in 2012 for Appellant’s failure to Order the transcript and serve and file the initial brief and designation of matter, to Appellant’s delay of almost eight (8) months to correct deficiencies in the Record on Appeal.

Appellant’s Petition for Rehearing is untimely and this Court should deny the Motion for Extension of Time to file the Petition for Rehearing and reject the Petition for Rehearing as untimely.

II. NOTWITHSTANDING THE FOREGOING, SHOULD THIS COURT GRANT APPELLANT’S MOTION TO ACCEPT THE PETITION FOR REHEARING OUT OF TIME, THIS COURT SHOULD DENY THE PETITION FOR REHEARING.

The Petition for Rehearing must be denied. This Court correctly applied the law to the facts of this situation. Appellant failed to preserve her arguments related to the jury charges. Specifically, the Record on Appeal reveals Appellant failed to object to the jury charge on comparative negligence. Instead, the issue of comparative negligence was raised by Respondent, not Appellant, as a potential jury charge. In analyzing the charge, the trial judge stated that based on the evidence presented he did not see this as a comparative negligence case. [R.p.188, line 10-p.189, line 14]. Appellant did not object or otherwise present comment that the judge was not going to charge the jury on comparative negligence. Accordingly, Appellant cannot now, on appeal, raise the denial to charge the jury on comparative negligence as an argument of her own. See McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004) (an appellant cannot raise an issue on appeal that was raised by respondent at trial, but on which appellant advanced no arguments to the trial court; the argument must have been raised by appellant in order for appellant to raise it on appeal).

Appellant’s failure to raise an objection to the absence of a comparative

negligence charge means the issue is not preserved for this Court's review. Accordingly, this Court properly found the jury charge issue with regard to comparative negligence was not preserved.

With regard to the assumption of the risk jury charge issue, Appellant abandoned this issue on appeal by failing to cite any authority to support the issue. See Broom v. Jennifer J., 403 S.C. 96, 115, 742 S.E.2d 382 (2013) ("Issues raised in a brief not supported by authority may be deemed abandoned and not considered on appeal."); Transp. Ins. Co. and Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 432, 699 S.E.2d 687, 692 (2010) (finding an issue was abandoned when the party failed to cite any authority for its position); First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (issue deemed abandoned where petitioner failed to provide arguments or supporting authority for his assertion); Eaddy v. Smurfit-Stone Container Corp., 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003) ("[S]hort conclusory statements without supporting authority are deemed abandoned on appeal and therefore not preserved for our review.")

CONCLUSION

Based on the foregoing, Respondent respectfully requests this Court deny Appellant's Motion to hear the Petition for Rehearing out of time. Should the Court grant the Motion to accept the Petition for Rehearing out of time, Respondent respectfully submits this matter need not be reheard as this Court's opinion correctly applies the law to the facts of this case.

Signature to follow

Respectfully submitted,



Steven J. Pugh
Joseph E. Thoensen
Sheila M. Bias
Richardson Plowden & Robinson, P.A.
1900 Barnwell Street (29201)
P.O. Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400

**ATTORNEYS FOR RESPONDENT CEDAR FAIR
COMPANY, CEDAR FAIR, L.L.C. D/B/A
CAROWINDS AMUSEMENT PARK**

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vs.

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Amusement ParkRespondent.

Proof of Service

I certify that I have served the *Respondent's Return to Appellant's Motion for Extension of Time to File "Motion for Rehearing" and Petition for Rehearing* upon the Appellant by depositing a copy of it in the United States Mail, postage prepaid, on April 7, 2015, to *Felecia Dicks Wilson, Post Office Box 31562, Augusta Georgia, 30903-3051*

Richardson Plowden & Robinson, P.A.
PO Drawer 7788
Columbia, SC 29202
(803) 771-4400

By:



Sheila M. Bias

April 7, 2015

April 7, 2015

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

VIA FACIMILIE and HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201
(803) -734-1839

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SC Court of Appeals

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 *Return to Appellant's Motion for Extension of Time to File "Motion for Rehearing" and Petition for Rehearing*, along with our Certificate of Service. I have also enclosed one additional copy of our Motion and would request that it be file stamped and returned to our courier.

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/

cc: Felecia Dicks Wilson, *pro se*
Joseph E. Thoensen
Steven J. Pugh