

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

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DEC 10 2015

Carmen T. Mullen, Circuit Court Judge

S.C. Supreme Court

Appellate Case No. 2013-000133

Case No.: 2004-CP-25-00267

Willie Homer Stephens, Guardian ad Litem for Lillian
C., a minor..... Petitioner,

v.

CSX Transportation, Inc. and the South Carolina
Department of Transportation..... Respondents.

RETURN TO PETITION FOR REHEARING

Appellant Willie Homer Stephens, Guardian ad Litem for Lillian C., (hereinafter, "Stephens") submits his Return to the Petitions for Rehearing of Respondents South Carolina Department of Transportation (SCDOT) and CSX Transportation, Inc. (CSXT). In separate Petitions for Rehearing pursuant to Rule 221(a), SCACR, both CSXT and SCDOT seek rehearing or alteration of this Court's Opinion No. 27587.

Pursuant to Rule 240(e), SCACR, a return to a motion for rehearing under Rule 221 "need not be filed unless requested by the court." The Court has not requested a Return from Appellant and being mindful of that fact, the undersigned submits only this general and concise return to the Petitions of CSXT and SCDOT.


No reason exists for the Court to rehear or reconsider its Opinion and the Petitions for Rehearing must be denied. The majority did not overlook or misapprehend any point of law or of the record. Rather, the majority's conclusions and findings complained of by CSXT and SCDOT fully comport with the precedent relied upon to reach those conclusions.

In seeking rehearing, Respondents generally argue that the Court has impermissibly "speculated" on the effects the flawed jury charge may have had on the jury. The opinion and its finding are not founded upon impermissible speculation, but rather upon rational analysis of the errors in the charge and the logical effect those errors would have had on the jury in this case.

This Court correctly reviewed the trial court's fatally flawed and prejudicial jury charge and concluded that a retrial is required. In properly conducting the review of the jury charge issues (unlike the Court of Appeals) this Court considered the charge as a whole in light of the evidence and issues presented at trial. *Cole v. Raut*, 378 S.C. 398, 404, 663 S.E.2d 30, 33 (2008) (emphasis added). After undertaking that review, the majority correctly concluded that numerous errors in the charge may have contributed to the jury's general verdict. Having concluded that these erroneous jury charges may have contributed to the jury's findings on the liability issues, this Court was obligated to reverse for a new trial. An erroneous jury charge is harmless only if the appellate court determines beyond a reasonable doubt that the alleged error did not contribute to the verdict. *Wells v. Halyard*, 341 S.C. 234, 237, 533 S.E.2d 341, 343 (Ct. App. 2000) (emphasis added).

By correctly concluding that these errors “may have” affected the verdict, this Court could not have determined beyond a reasonable doubt that the errors did not contribute to the verdict. Respondents CSXT and SCDOT’s Petitions for Rehearing should be denied.

Respectfully submitted,



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December 7, 2015

Ridgeland, S.C.

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PROOF OF SERVICE

This is to certify that I, *Matthew V. Creech*, with the Law Firm of PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK, PA, Attorneys for the Petitioner, have this date mailed via the U.S. Postal Service with first class postage prepaid, a true and correct copy of the within *Return to Petitions for Rehearing* to the following:

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December 7, 2015
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