

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2014CP2400396

**RECEIVED**

JAN 15 2016

**SC Court of Appeals**

Tony King

Rosella King

Christopher T Miller

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 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.  See Page 2 for additional information.
- 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: \_\_\_\_\_

2015 NOV 13 PM 1:18  
 CLERK OF COURT  
 SC COURT OF APPEALS  
 1015

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:  
**ORDER INFORMATION**

This order  ends  does not end the case.  
 Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT 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

Judge Code

11/13/2015

Date

**For Clerk of Court Office Use Only**

This judgment was entered on **November 13, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **November 13, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

**Robert Jamison Tinsley Jr.** PO Box 49145 Greenwood, SC  
29649

**Grenville D. Morgan Jr.** PO Box 2980 Greenville, SC  
29602

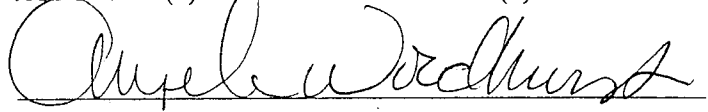
**Amanda Leigh Check Bradley** PO Box 2980 Greenville, SC  
29602-2980

---

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

---

**ATTORNEY(S) FOR THE DEFENDANT(S)**



**Court Reporter**

**Angela Woodhurst - Clerk of Court**

---

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

---

---

---

---

---

---

---

---

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENWOOD )  
 )  
TONY KING AND ROSELLA KING, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CHRISTOPHER T. MILLER, )  
 )  
Defendant. )

**RECEIVED**  
IN THE COURT OF COMMON PLEAS  
JAN 15 2016  
Civil Action No. 2014-CP-24-00398  
**SC Court of Appeals**

**DEFENDANT'S ORDER GRANTING  
SUMMARY JUDGMENT**

FILED IN COMMON PLEAS  
COURT OF GREENWOOD COUNTY  
JAN 13 2016 13 PM 14 34

This matter came before me on the Defendant's motion for summary judgment. For the reasons set forth below, the Defendant's motion is granted.

**FACTUAL BACKGROUND**

This case arises out of an accident on January 8, 2013 when the Plaintiff was up on a ladder repairing some shingles on the Defendant's house. The Defendant had discovered a leak, so he contacted Freddie Pope about fixing the leak. Mr. Pope gave the Defendant an estimate on the job and informed the Defendant that he needed to wait to get his roofing guy up there to do the job. The Plaintiff was that roofing guy. The Plaintiff was paying Mr. Pope directly for the job.

On the day of the accident, the Plaintiff and Mr. Pope arrived at the house around 9:00 a.m. The Defendant was home all day studying for an exam. Mr. Pope provided the ladder to do the work. The Defendant went outside a few times during the day to check on the progress of the job and to ask if Mr. Pope and the Plaintiff needed anything. The Defendant testified that at around 5:15 p.m., he went outside and turned some lights on because the Plaintiff and Mr. Pope were still working. The Plaintiff denied that any lights were on, but he testified he was already up on the ladder working anyway when the Defendant came outside.

According to the testimony of the Plaintiff, Mr. Pope had been holding the ladder for the Plaintiff the entire day and was actually holding it at that time when the Defendant came outside. The Plaintiff was up on the ladder working when Mr. Pope apparently let go of the ladder and started talking to the Defendant. At that time, the ladder came out from under the Plaintiff causing him to fall and injure himself. The Plaintiff subsequently filed this lawsuit against the Defendant.

### STANDARD OF REVIEW

A trial court may properly grant a motion for summary judgment 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 the moving party is entitled to a judgment as a matter of law.” Rule 56(c) South Carolina Rules of Civil Procedure. In determining whether any material issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988). The plain language of Rule 56(c) mandates the entry of summary judgment against the party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case. Carolina Alliance for Fair Employment v. SC Department of Labor, Licensing and Regulation, 334 S.C. 476, 523 S.C.2d 795 (Ct. App. 1999). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999). The non-moving party

must produce at least a scintilla of evidence to withstand a motion for summary judgment. Hancock v. Mid-South Management Company, 381 S.C. 326, 673 S.E.2d 801 (2009). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 593 S.E.2d 183 (Ct. App. 2004).

### DISCUSSION

In order to recover in a negligence action, the Plaintiff must establish: 1) the Defendant owed a duty of care to the Plaintiff; 2) the Defendant breached the duty by a negligent act or omission; 3) the Defendant's breach was the actual and proximate cause of the Plaintiff's injury; and 4) the Plaintiff suffered an injury or damages. Moore v. Weinberg, 373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007). A crucial and important element in a cause of action for negligence is the existence of a legal duty of care owed by the Defendant to the Plaintiff. Burnett v. Family Kingdom, Inc., 387 S.C. 183, 691 S.E.2d 170 (Ct. App. 2010). This legal duty can be created by statute, status, contractual relationship, property interest or some other special circumstance. Madison v. Babcock Center, Inc., 371 S.C. 123, 638 S.C.2d 650 (2006). It is the Plaintiff's burden to establish the duty of care is owed to him by the Defendant. An essential element is the existence of the legal duty of care owed by the Defendant to the Plaintiff and without such a duty, a Plaintiff cannot establish negligence. McKnight v. S.C. Department of Corrections, 385 S.C. 380, 684 S.E.2d 566 (Ct. App. 2009). If no duty exists, then the Defendant is entitled to judgment as a matter of law. Chastain v. Hiltabidle, 381 S.C. 508, 673 S.C.2d 826 (Ct. App. 2009).

In South Carolina, one who controls the use of property has a duty of care not to harm others by its use. Miller v. City of Camden, 329 S.C. 310, 494 S.C.2d 813 (1997). An owner of

land has a general duty to warn others of latent hazardous conditions on his land. This duty arises from the owner's superior knowledge of conditions on the premises within his control. Byerly v. Conner, 307 S.C. 441, 415 S.E.2d 796 (1992). In this case, the Plaintiff was an invitee. The duty is only that of due care and if there is no negligence, there is no liability. A land owner owes a duty to exercise reasonable or ordinary care for the safety of the invitee and to warn only of latent or hidden dangers of which the land owner has knowledge or should have knowledge. Larmore v. Carolina Power and Light, 531 S.E.2d 535 (Ct. App. 2000).

I find the Plaintiff has not produced a scintilla of evidence to establish any breach of duty on the part of the Defendant. The Defendant hired Freddy Pope to do the work and in turn Mr. Pope hired the Plaintiff to do the actual roof repair. The Defendant had nothing to do with the work and did not even supply any of the materials including the ladder. According to the testimony of the Plaintiff, he had been going up and down the ladder from 9 in the morning until 5 with a few breaks and at all times the ladder was held by Mr. Pope. At no time was the Defendant responsible for holding the ladder or doing anything related to the roof repair. The evidence is clear that that is why Mr. Pope and the Plaintiff were hired to do the work.

At the time of the accident, the Defendant had walked outside and was talking to the Plaintiff and Mr. Pope, who was holding the ladder, when Mr. Pope walked away from the ladder. Immediately after Mr. Pope quit holding the ladder for the Plaintiff, the ladder came out from under the Plaintiff and he fell. The Defendant had nothing to do with causing the Plaintiff to fall. By the Defendant talking to the Plaintiff and Mr. Pope walking away from the ladder, it does not rise to the level of any negligence on behalf of the Defendant. Additionally, there were no latent or hidden dangers that the Defendant would have had superior knowledge and Defendant did not create any hazardous condition.

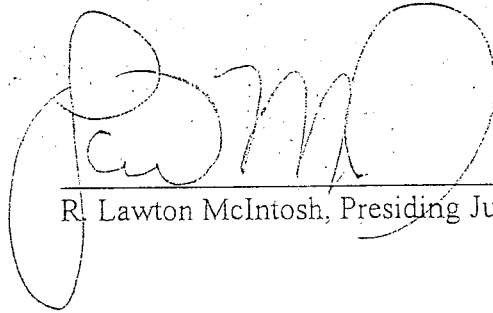
The Plaintiff argues that the Defendant was negligent in not turning on the outside lights. I find the Defendant did not owe the Plaintiff a duty to turn on the outside lights and even if he did owe a duty, he did not breach any duty. When the Defendant walked outside, the Plaintiff was already on the ladder working and had been doing so without any lights prior to the Defendant walking outside, and therefore there was no negligence in the part of the Defendant. I find the lights had nothing to do with the fall and was not the proximate cause of the Plaintiff's injuries.

### CONCLUSION

I find there is no genuine issue of material fact and there is no evidence or legal theory to hold the Defendant liable. The Plaintiff has not produced a scintilla of evidence to withstand the Defendant's motions. It is therefore ordered, that the Defendant's Motion for Summary Judgment is granted.

*File*  
*November 9/12*

This the \_\_\_\_ day of October, 2015



R. Lawton McIntosh, Presiding Judge

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-24-00396

Tony King and Rosella King

Christopher T. Miller

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for :  Plaintiff  Defendant  
or  
 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.  See Page 2 for additional information.
- 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

2015 APR 16 PM 4:25  
FILED IN CIVIL PLEAS  
BY JUDGE J. M. COULT  
GREENWOOD COUNTY, SC

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:

**ORDER INFORMATION**

PLAINTIFF'S RULE 59 MOTION TO RECONSIDER IS DENIED WITHOUT NECESSITY OF A HEARING; NO FORMAL ORDER REQUESTED

This order  ends  does not end the case.

Additional Information for the Clerk :

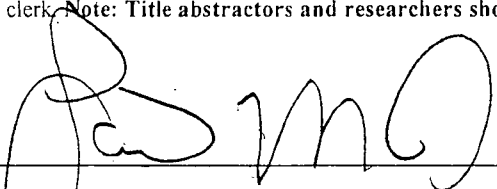
**INFORMATION FOR THE JUDGMENT INDEX**

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.



2155 12-4-15

For Clerk of Court Office Use Only

This judgment was entered on the 16 day of Dec, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 16 day of Dec, 2018 to attorneys of record or to parties (when appearing pro se) as follows:

Jamison Tinsley

Genevieve Morgan

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

April Woodbury  
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Lined area for additional information regarding the decision.