

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENWOOD COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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Case No.: 2016-000077

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**RECEIVED**

MAY 31 2016

**SC Court of Appeals**

Tony King and Rosella King,

Appellants,

v.

Christopher T. Miller

Respondent.

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FINAL REPLY BRIEF OF APPELLANTS

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## ARGUMENT

### THE EVIDENCE SHOWS THAT MILLER'S BREACH OF DUTY CAUSED KING'S DAMAGES.

Respondent Christopher Miller ("Miller") argued that summary judgment is appropriate because Miller's failure to turn on the outside lights on the back porch did not cause Appellant Tony King ("King") to fall from the ladder and suffer injuries. (Resp. Br. pp. 9-10.) Even if the Court assumes for the sake of argument that Miller's failure to turn on the outside lights while King was working on the roof on the back porch did not cause King to fall, Miller's breach of his duty otherwise still caused King to fall and break his leg.

"To show proximate cause, a plaintiff must show both causation in fact and legal cause." Roddey v. Wal-Mart Stores East, LP, Op. No. 27615 (S.C. Sup. Ct. filed Mar. 30, 2016) (Shearouse Adv. Sh. No. 13 at 22, 29) (internal citations omitted). Causation in fact requires showing that the injury would not have happened "but for" the defendant's negligence, and legal cause requires showing that the injury was a foreseeable consequence of the defendant's negligence. Id. "Foreseeability is determined by looking at the natural and probable consequences of the complained of act...." Id.

The evidence supports that King would not have fallen from the ladder "but for" Freddie Pope ("Pope") walking away from the ladder when Miller began talking to Pope. (R. p. 109, ll. 13-p. 110, l. 6.) The evidence also supports that King's fall from the ladder was a foreseeable result of Miller distracting Pope while Pope held the ladder King was on. The complained of act is that Miller interfered with the work by distracting Pope when he called Pope over to discuss the price of the job. (R. p. 110, ll. 3-6; p. 111, ll. 5-10.) It was foreseeable to Miller that Pope would walk away from the ladder when he began discussing the price issue with Pope. When Pope left the ladder he was holding to talk with Miller, the natural and probable consequence

was the ladder slipping and King falling off of it because Pope was the only means of securing the ladder to the porch. It was specifically foreseeable to Miller that the ladder would give away and fall when no one held it because King told Miller earlier in the day that he was fine working on the roof as long as someone held the ladder. (R. p. 97, ll. 14-22.)

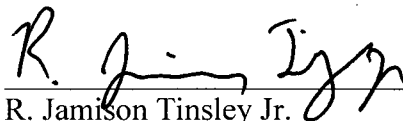
An intervening force can be a superseding cause that absolves the first wrongdoer of liability but not if that force could have been reasonably foreseen or anticipated. Roddey at 30 (internal citations omitted). “Accordingly, if the intervening acts are set in motion by the original wrongful act and are the foreseeable result of the original act, the final result, as well as every intermediate cause, is considered in law to be the proximate result of the first wrongful cause.” Id.

Pope walking away from the ladder prior to King falling does not qualify as an intervening cause that absolves Miller of liability because it was foreseeable that Pope would walk away from the ladder when Miller called him over to discuss the price. The evidence points to Miller calling Pope away from the ladder as the only reason Pope was not holding the ladder when King fell off the ladder. Miller’s wrongful act of interfering with Pope while Pope held the ladder for King, therefore, is still the legal cause of King falling because Pope walking away from the ladder was a foreseeable response.

## CONCLUSION

Even if Miller is correct that his failure to turn on the lights to the back porch while King worked on the roof was not a cause of King’s injury, summary judgment is still inappropriate because Miller’s negligence in distracting Pope caused King’s damages. The Court should reverse the circuit court’s grant of summary judgment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Jamison Tinsley Jr.", written over a horizontal line.

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May 26, 2016

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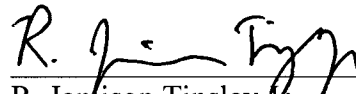
Respondents.

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CERTIFICATE OF COUNSEL

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Counsel for the Appellant hereby certifies that the Final Brief of Appellant and Final Reply Brief of Appellant comply with Rule 211(b).



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May 27, 2016

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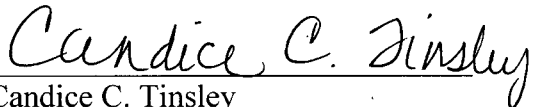
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PROOF OF SERVICE

I certify that I have served Final Brief of Appellants and Final Brief of Appellants on South Carolina Court of Appeals and counsel for the Respondent by depositing a copy of it in the United States Mail, postage pre-paid, on May 27, 2016, addressed to South Carolina Court of Appeals at 1220 Senate Street Columbia, South Carolina 29201, Helen F. Hiser, Esq. at 735 Johnnie Dodds Blvd. Mount Pleasant, South Carolina 29465 and Doc Morgan, Jr., Esq. and Amanda L. C. Bradley, Esq. at PO Box 2980 55 E. Camperdown Way, Suite 300 (29601) Greenville, SC 29602.

May 27, 2016

  
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