THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Perry M. Buckner Circuit Court Judge

Appellate case No. 2015-001988

Mark and Elizabeth Heil,

Appellants,

v.

Stewart and Christina Hines
and Sam Imler d/b/a Sam's
Tree Service

Defendants

Of whom Stewart and
Christina Hines are the

Respondents.

RESPONDENTS' INITIAL RESPONSE TO APPELLANTS' PETITION FOR REHEARING

Mindful that Rule 240(e) states that a response to a Petition for Rehearing is not required, Respondents Stewart and Christina Hines submit this initial response to the Heils' submission. Respondents stand ready to provide a full legal rebuttal should the Court so order, as provided in Rule 240(e).

The Heils' Petition repeats many of the arguments previously made and ruled upon by this court and should be denied.

The Appellants contend in **"Error I"** of their Petition that damages claimed to have been caused by the tree limb were observable in contradiction to the lower court's ruling and findings. In support of this alleged error the Appellants refer to the deposition transcript of Elizabeth Heil. (Appellants' Motion P. 2) However, a complete reading of the transcript portion referenced by the Appellants clearly demonstrates that even the Appellants were unable to see any roof damage as Ms. Heil could not even say if the limb was touching the roof (R. p. 36, 15:25-16:3). The Appellants are asking this Court to ignore this evidence and admissions of the party and instead to improperly rule based upon an edited and incomplete understanding of the testimony in the case.

As to the alleged **"Error II"** in the Petition for Rehearing, the Appellants appear to be making an argument about whether the lower court judge, in the motion to alter or amend the original order, made an error about whether counsel presented evidence that damages occurred to the Heils' residence as a result of delay in having the work completed. This supposed error the court is asked to "infer" is completely devoid of all evidentiary support and is in fact contradicted by uncontested testimony presented by the Respondents in their motion for summary judgment. Specifically, the Appellants' inspected their property, but did not observe any damage to their roof or property at that time. (R. p. 60, ln 25 – p. 61, ln 10; R. p. 37 at depo p.19 ln 2 – depo p .20 ln 7).[1] The Appellants requested the Respondents pay for removing the encroaching growth from their tree

[1] The Appellant, Mark Heil, is a contractor specializing in cleaning property, repairing roofs and maintaining property –R. pp 57-58; R. p. 34 at depo p. 8)

sometime in late November and the Respondents paid Sam's Tree Service who had completed the tree trimming by December 7, 2011. (R. pp. 47-48; R. pp. 63-64). Mr. Imler, the only tree removal professional in the case, invariably concludes that he did not observe the damage to the roof claimed by the Appellants in this case and that he did nothing improper. (R. p. 52, ln 23 - p. 53, ln 5; R. p. 55. ln 6-18; R. pp. 63 & 64). This testimony was never contested nor disputed. The Appellants have the burden to put forth some evidence to prove every element of their case and they have failed to do so. Chastain v. Hiltabidle, 381, S.C. 508, 514, 673 S.E.2d 826, 829 (Ct. App. 2009).

Furthermore, it is simply not reasonable for anyone to contend that the Respondents' rapid and complete handling of the request for help from their neighbor, in which they had not only scheduled but had the work completed in about ten (10) days since notice, was anything but reasonable. The Appellants are asking this court to make assumptions not supported by any evidence and then ignore all reasonableness in their petition for rehearing.

Even where the Court to accept that the lower court made an error in its ruling, which is denied, it still would not be basis to overturn the ruling of the trial judge for all the other reasons asserted in the Defendant's motion for summary judgment, where the Plaintiff has a duty to provide evidentiary support for all elements of their causes of action and failed to do so on multiple points.

Finally, the Appellants current argument was not even plead in this case and should not be the basis for granting the petition requested.

As to the alleged "**Error III**" the Appellants (p. 4 Petition for Rehearing) again present no case law which would support their contention that hiring the lowest (or a lower priced) service is negligent. The case law does not support, and it is not reasonable to presume, evidence of negligence in this situation. The court should not grant a rehearing on this grounds as the Appellants have not provided any new or distinguishing arguments.

As the alleged "**Error IV**" the Appellants ask the court to read isolated sections of testimony (this time of Mr. Imler) and to misunderstand the lower court's ruling to suggest negligence, but again the argument fails. Mr. Imler clearly testified that while performing the tree trimming the climber noticed only a dented shingle, however, the climber made Imler aware that the dented shingle was not significantly damaged and did not affect the roof's integrity in such a way as to allow any leakage into the home. (R. p. 52, ln 21-22; R. p. 51, ln 12- 15; R. p. 52 ln 23- p. 53 ln 4 and R. p. 55, ln 6- 18). Imler did not make the Hines aware of the dent in the shingle as it posed no risk to the integrity of the home. (R. p. 52, ln 23- p. 53, ln 5; R. p. 54, ln 9- 16).

The Court's order simply notes that there was no evidence presented from any other tree service which would contest this finding, nor was there any evidence presented that Mr. Imler was negligent in any aspect of his work. No opposing testimony at all was presented on these points.

Finally, this Court can affirm the decision of the lower court (and subsequently deny rehearing) on any grounds found in the record, pursuant to SCACR 220(c), which supports the holdings of the lower court.

CONCLUSION

The Respondents asks this court to deny the petition for rehearing.

Brian D. McDaniel
Law Office Of Brian McDaniel, LLC
Post Office Box 2085
Beaufort, South Carolina 29901
SC Bar # 68618
(843) 379-5117

Attorney for the Respondent
December 5, 2016

Other Counsel of Record:
Charles W. Thomson, Esq.
Glynn L. Capell, Esq.
The Capell Law Firm, LLC
Post Office Box 6628
Hilton Head Island, SC 29938

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Case No. 2013-CP-07-1231
Appellate case No. 2015-001988

Mark Heil and Elizabeth Heil,

Appellants,

v.

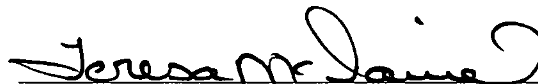
Stewart Hines and Christina Hines and Sam Imler d/b/a Sam's Tree Service — Defendants

Of whom Stewart Hines and Christina Hines are the — Respondents.

PROOF OF SERVICE

I, Teresa McDaniel, legal Assistant for Law Office of Brian McDaniel, certify that I have served the Respondents' Initial Response to Appellants' Petition for Rehearing upon the Appellants by depositing a copy of it in the United States mail, postage prepaid, on December 6, 2016, addressed to their attorneys of record, Charles W. Thomson, Esquire, Glynn L. Capell, Esquire of The Capell Law Firm, LLC, Post Office Box 6628, Hilton Head Island, SC 29938.

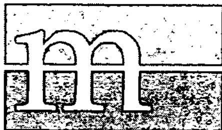
December 6, 2016



Teresa McDaniel
Law Office of Brian McDaniel, LLC
Post Office Box 2085
Beaufort, South Carolina 29901
(843) 379-5117
Attorney for Respondents

Other Counsel of Record:

Charles W. Thomson, Esquire
Glynn L. Capell, Esquire
The Capell Law Firm, LLC
Post Office Box 6628
Hilton Head Island, SC 29938



Law Office of
BRIAN McDANIEL, LLC

bmcdaniel@attorneymcdaniel.com

VIA US MAIL
December 6, 2016

The Honorable Jenny Abbot Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211-1629

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**RE: Mark and Elizabeth Heil, Appellants v.
Stewart and Christina Hines, Respondents;
Appellate Case No. 2015- -001988.**

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the **Respondents' Initial Response to Appellants' Petition for Rehearing,** and the original of the **Proof of Service** for filing in the above referenced case.

Also enclosed is an additional copy of the documents and a stamped, self-addressed envelope which I would appreciate you returning to my office after filing. Thank you.

Sincerely,

Brian D. McDaniel
Law Office of Brian McDaniel, LLC
Attorney for Respondents
SC Bar # 68618

Enclosures

**cc: Charles W. Thomson, Esquire
Glynn L. Capell, Esquire
Robert Dills, Esquire
The Capell Law Firm, LLC
Post Office Box 6628
Hilton Head Island, SC 29938**