THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Appellate Case No:

Caroll Freeman and Brooke Freeman,

Appellants,

v.

South Carolina Department of Transportation,
and County of Chesterfield, South Carolina

Respondents.

INITIAL BRIEF

M.W. Cockrell, III, SC BAR # 69417
Sarah C. Campbell, SC BAR # 100581
Barrister Building
Olde Towne Centre
159 Main Street
Chesterfield, South Carolina 29709
Phone: (843) 623-5911
Fax: (843) 623-5700
Attorneys for Appellant

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STATEMENT OF THE CASE

This case arises out of an action for personal injury in an automobile accident involving Appellants Carroll and Brooke Freeman. South Carolina Department of Transportation and the County of Chesterfield (hereafter "the County") filed a Motion for Summary Judgment. The trial court granted the County's Motion for Summary Judgment but denied the Motion for Summary Judgment of the South Carolina Department of Transportation (hereinafter "SCDOT") . Appellants received written notice of the Court's order on August 16, 2016. Appellants appeal this decision.

STATEMENT OF FACTS

On April 18, 2014, Appellant, Carroll Freeman was traveling down Crowley Road near Patrick, South Carolina, County of Chesterfield, State of South Carolina. As appellant approached the intersection of Crowley Road and Issac Road, his vehicle veered over the side of the road, down an embankment, and collided into a ditch on the opposite side of the intersecting roadway. Appellant filed a Summons and Complaint initiating this action against Respondents on March 3, 2015, alleging that no stop sign or other device was present at this intersection to determine a safe rate of speed and/or caution (Complaint). Service was made through certified mail to the Office of Attorney General on March 10, 2015 and filed with the Chesterfield County Clerk of Court on

April 5, 2015 (Copy of Certified Letter March 10, 2015). Acceptance of Service for the County was made by Attorney Heath Ruffner, Attorney for Chesterfield County on March 19, 2015 and the same was filed with the Chesterfield County Clerk of Court on April 14, 2015 (Acceptance of Service). The County mailed a timely Answer on April 16, 2015 (County Answer). SCDOT filed a timely Answer on April 17, 2015 (SCDOT Answer). Appellants filed a timely Reply to SCDOT's and the County's Answers on May 4, 2015 (Reply).

This matter came before the Court on Motion for Summary Judgment filed by the County and SCDOT (Motions for Summary Judgment) on May 23, 2016. The County alleged that it had no duty to maintain Crowley Road, as it is owned and maintained by SCDOT. (County Notice and Motion for Summary Judgment). The County also alleged that it had no (constructive or actual) notice that the stop sign on Crowley Road had been missing. (Id.) SCDOT similarly alleged a lack of actual or constructive notice. (SCDOT Memorandum in Support of Summary Judgment p. 1-3).

At the hearing, SCDOT submitted an Affidavit from Kenton Harold Wagner, Resident Maintenance Engineer for Chesterfield County, alleging that SCDOT had no record of reports of the missing stop sign (Affidavit of Kenton Harold Wagner). The County submitted a similar Affidavit from Tim Eubanks, Public Works Director for Chesterfield County alleging no record of reports that the sign was down. (Affidavit of Tim Eubanks). In response to these Affidavits, Appellants produced an Affidavit from Melissa Eason Roscoe, a resident of Chesterfield County who is familiar with this

particular intersection. (Affidavit of Melissa Eason Roscoe). Ms. Roscoe states that she specifically remembered this particular sign being down prior to the Appellant's accident and had notified Chesterfield County Administration about the missing sign via a phone telephone conversation the first week of April 2014. (Id.)

The County countered this argument claiming that even if notice was given, the County had neither a duty to maintain this road nor to notify SCDOT of the missing sign. (Transcript of Motion for Summary Judgment p. 12-14). Counsel for Appellants referred to Tim Eubanks's Affidavit stating that he would be the official to know whether or not a stop sign would be missing which would imply that the County had a duty to notify SCDOT of a missing sign on SCDOT maintained property. (Id. at 14-15). The matter was taken under advisement by the Honorable Roger E. Henderson. (Id. at 17). Judge Henderson granted the County's Motion for Summary Judgment but denied SCDOT's Motion (Order Summary Judgment p. 2-3).

STANDARD OF REVIEW

In reviewing the grant of a summary judgment motion, the appellate court applies the same standard that governs the trial court under Rule 56, SCRCP. *See Boyd v Bellsouth Telephone Telegraph Co., Inc.*, 369 S.C. 410, 633 S.E.2d 136 (2006). "Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *City of Columbia vs.*

American Civil Liberties Union etc. et al., 323 S.C. 384, 386, 475 S.E.2d 747, 748 (S.C.

1996). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in light most favorable to the nonmoving party." *Id.*

Even when there is no dispute as to evidentiary facts, but only as to the conclusions to be drawn from them, summary judgment should be denied. *See Redwend Limited Partnership v. Edwards*, 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003). Moreover, summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *See Middleborough Horizontal Property Regime Council of Co-owners v. Montedison, S.p.A.*, 320 S.C. 470, 465 S.E.2d 765 (Ct. App. 1995).

In cases in which the burden of proof is the preponderance of the evidence, "the non-moving party is only required to submit a mere scintilla of evidence to withstand a motion for summary judgment." *Hancock v Mid-South Management Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). The scintilla of evidence standard is met "if there is **any evidence at all in a case**...tending to support a material issue..." Henry C. Black Black's Law Dictionary 1207 (5th ed. 1979) (emphasis added).

Summary judgment is a drastic remedy. Since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of trial on disputed factual issues. *See Cunningham v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003).

A trial judge's decision regarding the comparative probative value and prejudicial

effect of evidence should be reversed only in exceptional circumstances. *Jamison v. Ford Motor Co.*, 373 S.C. 248, 269, 644 S.E.2d 755, 766 (Ct. App. 2007). An appellate court reviews a trial court ruling to exclude relevant evidence on the grounds of prejudice, confusion, or waste of time pursuant to an abuse of discretion standard and gives great deference to the trial court. *Lee v. Bunch*, 373 S.C. 654, 658 647 S.E.2d 197, 199 (2007).

ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING THE CHESTERFIELD COUNTY'S MOTION FOR SUMMARY JUDGMENT

South Carolina law mandates that a government entity is liable for a loss resulting in the:

> absence, condition, or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier unless the absence, condition, or malfunction is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or ***constructive notice***. S.C. Code Ann. §15-78-60(15) (emphasis added).

The South Carolina Supreme Court has further defined what constitutes constructive notice under this statute in *Giannini v. Department of Transportation,* 378 S.C. 573, 664 S.E.2d 450 (2008). The *Giannini* Court held that SCDOT is not immune from liability on a stretch of road where "accidents had been publicized by local media." *Id.* at 453.

The Court harkened back to a South Carolina Court of Appeals case, *Wooten v. SCDOT*,

333 S.C. 464, 511 S.E.2d 355 (1999) that held "such immunity does not extend to maintenance issues after the DOT has notice of a hazardous condition." *Id.* at 454. The Court of Appeals noted that such immunity is not "perpetual". *Id* at 467.

The trial court erred by granting the County's Motion for Summary Judgment. Appellants presented a genuine issue of material fact through the Affidavit of Melissa Eason Roscoe. In a light viewed most favorably to Appellants as the nonmoving party, there is a genuine issue of material fact as to negligence on the part of the County based upon Ms. Roscoe notifying Chesterfield County Administration prior to Appellants' accident and Mr. Eubanks's statement that he, as an employee of Chesterfield County, would know of a downed stop sign in the county. This telephone call, by a county resident, constitutes constructive notice under the *Giannini* and *Wooten* test. If the County failed to notify SCDOT of this report the County must be held liable for their negligence in failing to notify SCDOT of the report and in the absence of such a reporting, may be found negligent.

Just as certain as media publications of prior accidents are sufficient to put a government entity on notice of a hazardous condition; thus losing immunity under the law, it follows logic that contacting a parallel government entity who has, and is responsible for maintaining, roads directly adjacent to the road in question, that the County has a duty to its citizens to notify the SCDOT of the report. These Affidavits meet the "mere scintilla" standard for surviving Summary Judgment established by the

Hancock Court. As such, the County's Motion for Summary Judgment should not have been granted, and the trier of fact should have had an opportunity to weigh the sufficiency and credibility of the evidence presented. Finally, and most importantly, the County asserts its lack of responsibility then admits that its employee, Tim Eubanks, would be the one responsible for knowing of downed stop signs. (Affidavit of Tim Eubanks). If the County is the responsible party to be aware, certainly the County is responsible to respond or report.

CONCLUSION

Based upon the foregoing argument and citations of authority, the Appellant respectfully requests that this Court reverse the ruling of the trial court and grant Appellant a new trial on the merits.

Respectfully Submitted,

COCKRELL LAW FIRM

By: _____
William D. Curtis, Jr. SC BAR# 101163
with express permission by Attorneys for Appellants
M.W.Cockrell, III, SC BAR # 69417
Sarah C. Campbell, SC BAR # 100581
BARRISTER BUILDING
159 Main Street
Chesterfield, South Carolina
Phone: 843-623-5911
Fax: 843-623-5700

January 20, 2017
Chesterfield, South Carolina

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PROOF OF SERVICE

I certify that I have served Appellants' Initial Brief by depositing a copy of the same in the United States Mail, postage prepaid, on January 20, 2017, addressed to the follow attorneys of record:

David L. Morrison, Esquire
Kassi B. Sandifer, Esquire
Morrison Law Firm, LLC
7453 Irmo Drive Suite B
Columbia, South Carolina 29212

Samuel F. Arthur, III, Esquire
J. Rufus Bratton, III, Esquire
Aiken, Bridges, Elliot, Tyler & Saleeby, P.A.
Post Office Drawer 1931
Florence, South Carolina 29503

JANUARY 20, 2017

COCKRELL LAW FIRM

By: W. D. Curtis, Jr.
William D. Curtis, Jr. SC BAR# 101163
with express permission by Attorneys for Appellants
M.W.Cockrell, III, SC BAR # 69417
Sarah C. Campbell, SC BAR # 100581
BARRISTER BUILDING
159 Main Street
Chesterfield, South Carolina
Phone: 843-623-5911
Fax: 843-623-5700

January 20, 2017
Chesterfield, South Carolina

COCKRELL
LAW FIRM, P.C.

M.W. Cockrell, III (SC)
Sarah C. Campbell (SC)
M.W. Cockrell, Jr. (TX)*+

*of counsel
+ Board Certified: Oil, Gas & Mineral Law
Texas Board of Legal Specialization

January 20, 2017

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Caroll Freeman and Brooke Freeman vs. South Carolina Department of Transportation and County of Chesterfield, South Carolina
Case No: 2015-CP-13-118
Appellate Case No: 2016-001865

Dear Madam Clerk:

I hope this letter finds you well. Enclosed herewith, please find the original and one (1) copy of Appellant's Initial Brief, Designation of Matters to Be Included in the Record on Appeal and Proofs of Service of the same. Please files the originals and return the clocked copy to my office in the enclosed self-addressed, stamped envelope I have provided for your convenience.

If you have any questions or concerns, please do not hesitate to contact my office.

With Highest Regards, I remain

Sincerely,

MWC

M.W. Cockrell, III
MWC/wc
Enclosure(s)

CC: David L. Morrison, Esquire
Kassi B. Sandifer, Esquire
Samuel F. Arthur, III, Esquire
J. Rufus Bratton, III, Esquire

COCKRELL
LAW FIRM, P.C.

Olde Towne Centre
Barrister Building
159 Main Street
Chesterfield, South Carolina 29709

The Honorable Jenny Abott Kitchings
Clerk of Court
SC Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211