THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

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Appellate Case No. 2016-001865



Caroll Freeman and Brook Freeman ..... Appellants,

v.

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

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# RESPONDENT COUNTY OF CHESTERFIELD'S INITIAL BRIEF

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Columbia, South Carolina

February 17, 2017

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## STATEMENT OF ISSUES ON APPEAL

I. Did the trial court properly grant summary judgment to the County of Chesterfield on the grounds that Chesterfield County did not own nor have any responsibility to maintain the road and stop sign in question?

## STATEMENT OF THE CASE

The Appellants commenced this action in negligence against the County of Chesterfield on March 3, 2015. They alleged that the County was negligent in not maintaining the traffic control device (stop sign) at the intersection of Crowley Road and Isaac Road and by not installing a guardrail.

The Respondent filed a motion for summary judgment. After conducting a hearing on May 23, 2016, the Court issued an Order granting summary judgment to Respondent County of Chesterfield on August 10, 2016 on the basis that Chesterfield County had no responsibility for the maintenance of the road or stop sign in question. The Appellants timely filed this appeal.

## STATEMENT OF FACTS

On April 18, 2014, Appellant Caroll Freeman was driving his vehicle on Crowley Road near Patrick, South Carolina, in the County of Chesterfield, South Carolina on his way to work. As a result of a downed stop sign at the intersection of Crowley Road and Isaac Road, Appellant did not stop, lost control of his vehicle and veered into a ditch on the side of Isaac Road. The intersection is a T intersection with Isaac Road ending at Crowley Road. The stop sign on Isaac Road, the SCDOT owned and maintained road, was missing. It is undisputed that Chesterfield County is responsible for the upkeep and maintenance of Isaac Road and South Carolina Department of Transportation ("SCDOT") is responsible for the upkeep and maintenance of Crowley Road. In response the Chesterfield County's motion for summary judgment, the Plaintiff provided no evidence that Chesterfield County was responsible for the maintenance of

Isaac Road or this SCDOT owned stop sign. To the contrary, the evidence in the record indicates that SCDOT maintained the sign. SCDOT's records indicated that they performed maintenance at this location one month prior to this accident and that their stop sign was in place at the time.

## ARGUMENT

### I. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT TO CHESTERFIELD COUNTY WHERE THE EVIDENCE SHOWS CHESTERFIELD COUNTY DID NOT OWN THE STOP SIGN

"The South Carolina Tort Claims Act provides that the State, its agencies, political subdivisions, and other governmental entities are 'liable for their torts in the same manner and to the same extent as a private individual under like circumstances,' subject to certain limitations and exemptions with the Act." *Jinks v. Richland County,* 355 S.C. 341, 344, 585 S.E.2d 281, 283 (2003) (quoting S.C. Code Ann. § 15–78–40 (Supp.2002)). Section 15–78–60 of the South Carolina Code provides several exceptions to the waiver of sovereign immunity. "These exceptions act as limitations on the liability of a governmental entity." *Id.* at 344, 585 S.E.2d at 283. Among these exceptions is one providing that a government entity is not liable for a loss resulting from "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).

"In order to recover in a negligence action, the plaintiff must show 1) a duty of care owed by the defendant to the plaintiff; 2) a breach of that duty by a negligent act or omission; and 3) damage proximately resulting from the breach." *Crolley v. Hutchins*, 300 S.C. 355, 356, 387 S.E.2d 716, 717 (Ct. App. 1989). "[N]egligence is the failure to use due care," i.e., "that degree

of care which a person of ordinary prudence and reason would exercise under the same circumstances." *Hart v. Doe,* 261 S.C. 116, 122, 198 S.E.2d 526, 529 (1973).

Generally, the common law does not impose any duty to act. *Miller v. City of Camden,* 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997). However, an affirmative duty to act may be created by statute, contract, status, property interest, or some other special circumstance. *Jensen v. Anderson County Dep't of Soc. Serv.,* 304 S.C. 195, 199, 403 S.E.2d 615, 617 (1991).

Here, it is undisputed that Chesterfield County is responsible for the upkeep and maintenance of Isaac Road and South Carolina Department of Transportation ("SCDOT") is responsible for the upkeep and maintenance of Crowley Road. Whether or not Respondent had notice, actual or constructive, of the downed stop sign is irrelevant to this matter as this Defendant did not own or maintain the subject stop sign. Appellant cannot point to a specific duty owed to the Appellant to keep and maintain roads which are not owned by this Defendant nor can the Appellant show a breach of that duty. Appellant cannot point to a specific duty or statute mandating that "contacting a parallel government who has, and is responsible for maintaining roads directly adjacent to the road in question" creates an affirmative duty to act.

Further, this Respondent has not undertaken any action which would create an affirmative duty to repair and maintain the road nor the stop sign in question. The affidavit of Melissa Roscoe alleges that she notified Chesterfield County Administration of the downed stop sign. However, an erroneous phone call to Chesterfield County does not create an affirmative duty to act. The Appellant is correct that the alleged telephone call by Melissa Roscoe would create a factual issue as to notice. This however supposes that the stop sign in question was owned and maintained by Chesterfield County, which it is not.

The Respondent's motion for summary judgment raised in grounds one and two that the Respondent did not own the road or stop sign and that the road and stop sign were owned and

maintained by the SCDOT. The Appellant's response to the motion for summary judgment does not reveal any fact which creates a legal duty upon Respondent to act in any way. No facts appear in this record of any ownership or control over the SCDOT's stop sign. Therefore, the Court was correct in granting summary judgment as there is no duty owed by Respondent to the Appellant.

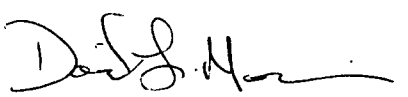
Because the Appellant cannot show a duty owed to the Appellant by this Respondent Respondent is entitled to have this Court affirm the grant of summary judgment as a matter of law.

## CONCLUSION

The Court properly granted summary judgment as this Respondent is not responsible for the maintenance of the road or stop sign in question.

For these reasons, the Respondent requests that this Court affirm the grant of summary judgment from the lower court.

MORRISON LAW FIRM, LLC

By: 

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**CERTIFICATE OF SERVICE**

The undersigned employee of Morrison Law Firm, LLC, attorney for the Defendant, County of Chesterfield, South Carolina, does hereby certify that service of the **Respondent County of Chesterfield's Initial Brief** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 17th day of February, 2017, addressed as follows:

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