THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

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APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Perry M. Buckner, III, Circuit Court Judge

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Circuit Case No. 2015-CP-15-1124 & 1125
Appellate Case No. 2017-000636

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Amy Garrett, as Parent and Natural Guardian of C. A. V. S. ......................Respondent,

v.

Antoine Van Steenwick............................................................... Appellant.

And

Amy Garrett, .................................................................... Respondent,

v.

Antoine Van Steenwick............................................................... Appellant

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**RESPONDENT'S INITIAL BRIEF**

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## STATEMENT OF ISSUES ON APPEAL

**I. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT FOR THE PLAINTIFF ON THE SOLE ISSUE OF LIABILITY**

## STATEMENT OF THE CASE

These suits arise out of a single vehicle accident that occurred in Texas. Appellant Antoine Van Steenwicjk is married to Respondent Amy Garrett and it is undisputed that venue and jurisdiction are proper in the Circuit Court for Colleton County, South Carolina.

The Appellant was driving a Ford Excursion vehicle with an Airstream RV in tow. Respondents were passengers in the vehicle. A single vehicle accident occurred due in part to a tire failure. This accident resulted in serious injuries to Respondent Garrett and her son; who has brought claims both individually and as Guardian Ad Litem for their son, Charles Van Steenwicjk.

Respondent filed these two lawsuits in the Colleton County Court of Common Pleas on or about October 9, 2015. After engaging in a period of discovery and taking the Defendant's deposition, Respondent proceeded to file a motion for summary judgment on the matter of liability in each case. Those motions were heard by the trial court on February 8, 2017, and the trial court issued orders that were filed on February 21, 2017. The trial court granted the Respondent's motions for summary judgment as to the issue of liability in each case. Appellant proceeded with filing this appeal on March 16, 2017.

## STATEMENT OF FACTS

Around noon on August 30, 2014, Van Steenwicjk, Garrett, and their son loaded up their 2005 Ford Excursion that was pulling an Airstream trailer and resumed their two-week long family vacation by departing from the Davis Mountain State Park in Texas. Steenwicjk Depo., page 11, lines 2-11. They were headed over 400 miles due east to Austin on Interstate 10. Antoine Van Steenwicjk was driving, Amy Garrett was the front passenger and their son was in the seat directly behind Garrett. Id. On rural Interstate 10 in western Texas, the speed limit varies from eighty to eighty-five miles per hour; nevertheless, Van Steenwicjk would normally drive his vehicle with the Airstream trailer in tow at approximately seventy miles per hour. Id., page 22, lines 7.

In rural Sutton County, Texas, Van Steenwicjk started to experience a vibration in the vehicle that he described as "ta-dum, ta-dum, ta-dum and then your steering wheel shakes a little bit." Id., page 13, lines 6-8. See Garrett Video. The vibration was loud and significant enough that it was shaking the object and passengers in the vehicle which was concerning to Van Steenwicjk. Id., page 18, lines 1-5. Due to the intensity of the vibration and the noise, Van Steenwicjk concluded that it was important to figure out the cause of it. Id., page 13, line13 to page 14 line 5. At first, he thought it may have been caused by the road surface. Id., page 14, lines 2-5. But after switching lanes and not visually observing anything unusual, he determined it was not the roadway. Id., page 14, lines 2-25. He continued to drive down the interstate at approximately seventy miles per hour, his normal speed while pulling the Airstream trailer. Id., page 22, lines 3-7. From the time that the vibrations started, they had traveled approximately a half hour when a decision was made by Van Steenwicjk to stop. Id., page 33, lines 16-17. Van Steenwicjk decided to stop because he had recognized that a significant vibration was going on, that he was concerned, and that the vibration could possibly result in damage to his vehicle or Airstream trailer. Id., page 17, lines 22 to page 18, line 24.

During the stop, Van Steenwicjk attempted to discover the source of the problem. In fact, he performed an exhaustive search of a number of the vehicle's and Airstream trailer's components and parts. Id., page 19-20, 34-35. He checked the vehicle's tire surfaces and pressures. The pressure in the rear tire "was a little high" but "that was because it was a hundred degrees." Id., page 15, lines 14-20. He then proceeded to check the transmission and other components by having Garrett drive the vehicle as he walked and jogged next to it. Id., page 16, lines 2-4. However, nothing was discovered. At that point, Van Steenwicjk and Garrett had a discussion about going forward. Garrett asked if they should call a tow truck. Garret Depo., page 14, line 19. But, Van Steenwicjk decided not to stop. Id., page 14, lines 22-24. Garrett objected to continuing on and asked her husband, "are you sure about that?" Id., page 15, line 3. To which Van Steenwicjk replied, "there's nothing wrong, I can't see anything." Id., page 15, lines 5-6. He basically determined that since he couldn't find anything "***everything was fine***." Van Steenwicjk Depo., page 16, lines 6-7 (emphasis added).

Van Steenwicjk decided to resume driving the vehicle, continue the trip, and to have someone address the problem once they had arrived in Austin. Id., page 20, line 22 to page 21, line 20. Van Steenwicjk admittedly recognized before, during, and after the stop that the vibration was so substantial that it ultimately had to be addressed and could not be ignored. Id., page 21, lines 7-12. Nonetheless, since he personally was unable to discover any cause of the vibration, he decided that they could continue to Austin and address the problem later. Id., page 21, line 21 to page 22, line 2.

As they resumed their trip, the substantial vibration continued. Van Steenwicjk continued to be concerned, but despite the substantial vibration Van Steenwicjk did not reduce his speed and continued to drive at seventy miles per hour, as is his normal practice when pulling the Airstream trailer and as he had done for the entire trip. Id., page 23, lines 2. As they proceeded down the interstate, Garrett took a video of the family's cat that was being mesmerized by the substantial vibrations. Garrett Depo., page 15, line 17 to page 17, line 23. The substantial, repetitive sound of that vibration can be heard very clearly in the background of that video. See Garrett Video. In that ominous video the cat, luggage, and other objects in the rear of the vehicle can easily be seen shaking and vibrating. Id.

Unfortunately, approximately a half hour to an hour after resuming their trip, the driver's side rear tire blew out and the vehicle made a sudden and rapid swerve off the right side of the interstate, crossed over a dividing section, crossed over an entrance ramp, and then collided with some trees. Van Steenwicjk Depo., page 24, line 20 to page 25, line 1.

## ARGUMENT

### I. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT FOR THE PLAINTIFF ON THE SOLE ISSUE OF LIABILITY.

Generally, a negligence action requires the claimant to prove three fundamental elements: (1) a duty of care between the parties; (2) a breach of that duty by negligent act or omission; (3) resulting in damages; and (4) proximately resulting from that breach. Fettler v. Gentner, 396 S.C. 461, 466-67, 722 S.E.2d 26, 29 (Ct. App. 2012). The lower court's findings and this appeal only concern the first and second elements provided above which together comprise the negligence aspect of the case. The trial court found that there is no genuine issue of material fact as to the Defendant's negligence, but that the issue of damages and causation remain open. (Trial Court Order filed February 28, 2017, page 3).

Every driver must exercise due care under the circumstances. Fettler, 396 S.C. at 467, 722 S.E.2d at 29. The driver of a motor vehicle owes a duty to passengers to use reasonable care in the operation of the vehicle. Howard v. Robertson, 376 S.C. 143, 654 S.E.2d 877 (Ct. App. 2007). Rule 56(c) of the South Carolina Rules of Civil Procedure provides that summary judgment may be granted only when there is no genuine issue of fact and that the moving party is entitled to judgment as a matter of law. Cherry v. Myers Timber Co., Inc., 404 S.C. 596, 600, 745 S.E. 2d 405, 408 (Ct. App. 2013). Therefore, in this particular case the trial court made a determination that there is no issue of fact that Van Steenwicjk did fail to exercise reasonable care in his operation of the vehicle.

In making the determination of negligence, the trial court properly relied on the evidence presented before him, notably deposition testimony and admissions contained therein. (Trial Court Order filed February 28, 2017, page 2); see George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (noting that summary judgment decisions shall be based on the pleadings, depositions, answers to interrogatories, and admission on file). The Court relied heavily on the deposition testimony of the Van Steenwicjk and the admissions contained therein. The unreasonableness of Van Steenwicjk's actions is clearly inferred through his own recognition of the severity and danger presented by the vibration:

> Q. Okay. And I understand that this vibration that y'all were experiencing it was a significant vibration that was going on when you were out on the highway.
>
> A. Yes
>
> Q. And it was –
>
> A. It was.
>
> Q. It was concerning to you?
>
> A. It was.
>
> Q. It was concerning enough that you stopped and did the things that we just talked about to try to figure out what it was?
>
> A Yes.
>
> Q. And – and – and you were doing those things because – were you doing those things because you were worried about that this could be a safety issue?
>
> A. Safety? I don't think that was on my mind at the time about safety. I was probably more thinking about if we keep – is this something that if we keep driving would cause the – some damage.
>
> Q. Some damage to your unit to –

A. Yeah.

Q. -- your rig?

A. Yeah, is this something that the – the transmission would overheat, the engine would overheat, you know, brake rotor would – would start to overheat or something was wrong that would cause damage that wouldn't allow us to continue.

Van Steenwicjk Depo., page 17, line 22 to page 18, line 24. However, after recognizing that the vibration was serious enough to stop, serious enough to potentially cause damage to the vehicle, and serious enough that it had to ultimately be addressed, Van Steenwicjk concluded that everything was fine and decided continue at the normal speed of seventy miles per hour while continuing to pull the airstream Id. page 16, lines 6-7.

It is now known that everything was not fine and a tire failure was in the process, but even without that hindsight, a person in that same or similar situation should have acted reasonably by exercising caution and driving slower due to the very apparent problem from the substantial vibration; such exercise of reasonableness required Van Steenwicjk to drive slower. Van Steenwicjk's failure to exercise care or caution was negligent conduct that directly brought about the accident. He was negligent in deciding, despite the substantial vibration, to drive at seventy miles per hour, as though the vehicle was operating normally:

Q. Okay. And what if you had – instead of driving 70 miles an hour what if you had been driving 45 miles an hour and the tire blew out?

What do you think would have occurred?

A. I think the rig would have been able to stop before hitting the trees.

Q. Okay. Just because of the sheer distance that it ended up going at the 70-mile-an-hour speed?

A. Yes

Q. Okay. And as we look back at this accident given that you had the substantial vibration going for this time period and given that you weren't able to determine what was causing it, do you think the reasonable thing to do at that time would have been to drive 45 miles an hour or less?

MR. COBB: Object to form.

A. With the information I have now, yes.

Id. page 26, line 25 to page 27, line 16. This action of driving at a high rate of speed while experiencing the substantial vibration from an unknown cause was negligence, and in that regard Van Steenwicjk unequivocally assigns fault to himself for the accident:

Q. (BY MR. MURDAUGH) And so as we sit here knowing that there's a claim against you by Charlie and Amy, do you believe that this accident was your fault in the sense that you could have avoided causing it to occur?

MR. COBB: Objection, form.

THE WITNESS: I need a minute.

MR. MURDAUGH: You take your time, Okay?

THE WITNESS: What was the question again?

Q. (BY MR. MURDAUGH) Understanding that there – that we're making a legal claim, that Charlie and Amy are making a legal claim against you and understanding – understanding that, do you believe that the reasonable thing for you to have done as a driver would have been to drive at a reduced speed for example, 45 miles an hour or less?

MR. COBB: Object form.

A. Yes.

Q. (BY MR. MURDAUGH) And so with regard to this legal claim do you believe that failing to drive at that slower rate makes you at fault for this accident?

MR. COBB: Object form.

A. Yes.

(Van Steenwicjk Depo., page 28, lines 1-23). These answers by Van Steenwicjk are clear admissions that he did not act reasonable by reducing his speed which would have prevented the collision and accident. Van Steenwicjk was very aware that there was a substantial likelihood of a vehicle or tire failure, and he disregarded it by continuing to drive at the normal speed of seventy miles per hour with the Airstream trailer. Such negligent by his own admission caused the accident.

Van Steenwicjk's arguments within his brief overlook and focus narrowly on Van Steenwicjk's knowledge of the condition of the tire as the sole source of his negligence. In support of this position he cites to a Maryland Court of Special Appeals case that contains the argument that the mere fact that a tire failure occurred does not render the operator liable unless there is evidence of notice of the defect. (Appellant's Brief at 5; citing Brock v. Sorrell, 15 Md.App. 1, 5, 288 A.2d 640, 643 (Md. Ct. Spec. App. 1972)). However, the testimony provided above clearly indicates that Van Steenwicjk had notice of a "substantial vibration," that he acted reasonably on that notice by stopping and performing various inspections; but then, he failed to act as a reasonable person would, and instead resumed the trip, traveled at his normal rate of speed of seventy miles per hour while pulling the Airstream trailer which was negligent. It is the simple failure to drive slower in light of the substantial vibration that is the basis of Respondents' motions for summary judgment.

Accordingly, based on the testimony and admissions of Van Steenwicjk and the other evidence within the record, there is no issue for the factfinder to determine as to whether Van Steenwicjk was negligent in continuing to drive at his normal speed of seventy miles per hour while pulling the Airstream trailer despite the substantial vibration. The trial court properly granted summary judgment on the sole issue of Van Steenwicjk's negligence.

## CONCLUSION

Based on the evidence presented in the case, the arguments contained in the record, and the arguments presented in this brief, Respondents respectfully asks this Court to affirm the lower court's grant of summary judgment, and that it be remanded exclusively for a trial on the remaining issues of causation and damages.

Respectfully Submitted,

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

By:______________________________

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Amy Garrett, ................................................................................ Respondent,

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## CERTIFICATE OF SERVICE

This is to certify that I, ***Shanna M. Jarrell***, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Attorneys for the Plaintiff(s), have this date forwarded via facsimile and mailed via the U.S. Postal Service, a true and correct copy of the within ***Respondents' Initial Brief and Designation of Matter to be Included in Record on Appeal*** with first class postage prepaid to:

Turner Padget Graham & Laney, PA
David S. Cobb, Esquire
P.O. Box 22129
Charleston, SC 29413

PETERS, MURDAUGH, PARKER, ELTZROTH
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August 3, 2017
Hampton, SC

BY: ______________________________
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***Re:*** ***Amy Garrett v. Antoine Van Steenwijk***
***Appellate Case No. 2017-000636***

Dear Ms. Kitchings:

Enclosed please find the original and one copy of Respondent's Initial Brief, Designation of Matter of Matter to be Included in the Record on Appeal and Certificate of Service for filing in your office. Please return the filed copy of each in the envelope provided.

By copy of this letter a copy of Respondent's Initial Brief, Designation of Matter of Matter to be Included in the Record on Appeal and Certificate of Service is being served on counsel of record.

With kind regards, I am

Sincerely,

R. Murdaugh

Randolph Murdaugh, IV

RMIV/smj
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CC: David Starr Cobb, Esquire

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