

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No.: 2016-000077

Tony King and Rosella King, Appellants,

v.

Christopher T. Miller Respondent.

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AUG 17 2017

SC Court of Appeals

PETITION FOR REHEARING

Appellants Tony King and Rosella King (“the Kings”) respectfully petition the Court for rehearing pursuant to Rule 221(a), SCACR, of Opinion No. 2017-UP-325 (S.C. Ct. App. filed Aug. 2, 2017). This petition is submitted on the grounds that this Court misapprehended that conflicting evidence existed of whether Mr. King’s injuries were reasonably foreseeable based upon the actions of Respondent Christopher T. Miller (“Miller”) so that a question of fact existed. For the reasons set forth below, the Kings respectfully ask this Court to grant this Petition for Rehearing and reverse the circuit court’s grant of summary judgment to Respondent Christopher T. Miller (“Miller”).

OVERLOOKED OR MISAPPREHENDED MATTERS

A petition for rehearing shall “state with particularity the points supposed to have been overlooked or misapprehended by the court.” Rule 221, SCACR. Accordingly, the Kings

respectfully submit that in affirming the circuit court, this Court overlooked or misapprehended certain material matters as follows:

EVIDENCE WAS PRESENT WITHIN THE RECORD TO CREATE A QUESTION OF FACT AS TO WHETHER MR. KING'S INJURY WAS REASONABLY FORESEEABLE.

This Court upheld the trial court's finding that Miller was entitled to summary judgment because it was not foreseeable that Mr. King would be injured by Miller's actions in calling away Freddie Pope, who worked on the roofing job with Mr. King, from holding the ladder that Mr. King was climbing. Given that summary judgment is not appropriate if there is any genuine issue of material fact, the Kings respectfully submit that this Court overlooked or misapprehended that the record contains at least a mere scintilla of evidence that Mr. King's injury was foreseeable. To wit:

1. Early in the roofing job on Miller's house, Mr. King responded to Miller's concerns about Mr. King climbing up the ladder with knee stiffness by telling Miller he was fine if somebody held the ladder. (R. p. 97, ll. 8-22; p. 164, ll. 2-9.)
2. Prior to King falling off the ladder on Miller's back porch, Miller called Pope away from the ladder, which Pope was holding while King repaired a roof shingle, to discuss the price of the job with Pope. (R. p. 109, l. 25-p. 110, l. 6; p. 111, ll. 5-10; p. 171 ¶3.)
3. While Miller and Pope talked away from the ladder, it fell with King on it and resulted in a severe ankle injury to King. (R. p. 150, l. 14-p. 152, l. 5.)

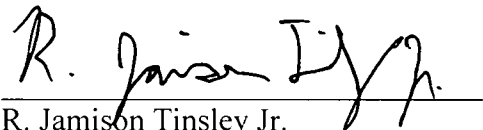
In a summary-judgment setting, all inferences from the evidence must be viewed in the light most favorable to the party opposing summary judgment. Thus, the Kings respectfully submit that the finding that King's injury was not a natural and legal consequence of Miller's negligence

because such injury was not reasonably foreseeable was based on a misapprehension of the relevant record available for the Court's review.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Kings respectfully ask this Court to grant this Petition for Rehearing and issue a substituted opinion reversing the summary judgment in favor of Miller by the trial court below.

Respectfully submitted,



R. Jamison Tinsley Jr.
S.C. Bar No. 79903
212 Oak Ave.
Greenwood, SC 29646
(864) 223-0770
Attorney for Appellant

Greenwood, South Carolina

August 16, 2017

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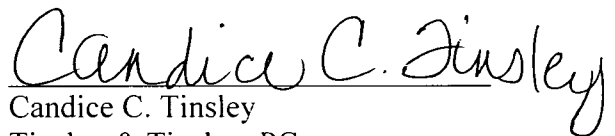
Christopher T. Miller,

Respondent.

PROOF OF SERVICE

I certify that I have served Appellants's Petition For Rehearing on South Carolina Court of Appeals via UPS and counsel for the Respondent by depositing a copy of it in the United States Mail, postage pre-paid, on August 16, 2017, addressed to South Carolina Court of Appeals at 1220 Senate Street Columbia, South Carolina 29201, Helen F. Hiser, Esq. at PO Box 650007, Mount Pleasant, South Carolina 29465 and Doc Morgan, Jr., Esq. and Amanda L. C. Bradley, Esq. at PO Box 2980, Greenville, SC 29602.

August 16, 2017



Candice C. Tinsley
Tinsley & Tinsley, PC
212 Oak Avenue
Greenwood, South Carolina 29646
Phone: (864) 223-0770
FAX: (864) 377-8278
Email: Tinslerj@gmail.com
Attorney for Appellants

Tinsley & Tinsley, P. C.
Attorneys at Law
212 Oak Avenue
Greenwood, South Carolina 29646
(864) 223-0770
FAX: (864) 377-8278

August 16, 2017

Honorable Jenny Abbott Kitchings
Clerk of Court
Court of Appeals
1220 Senate St.
Columbia, South Carolina 29201

Re: Tony King and Rosella King, Appellants
v.
Christopher T. Miller, Respondent
Appellate Case No. 2016-000077

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Dear Clerk of Court Kitchings:

Enclosed please find the original and six (6) copies of Appellants's Petition For Rehearing in the above-referenced case along with a Proof of Service. Also enclosed is check # 2221 in the amount of twenty five dollars (\$25.00) for the filing fee.

Please contact me should you have questions or concerns.

Yours truly,



R. Jamison Tinsley, Jr.

RJTJr/cct

Enclosures as indicated

Cc: Helen F. Hiser, Esq.
Doc Morgan, Jr., Esq.
Amanda L. C. Bradley, Esq.

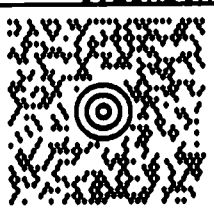
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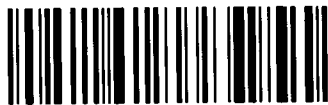
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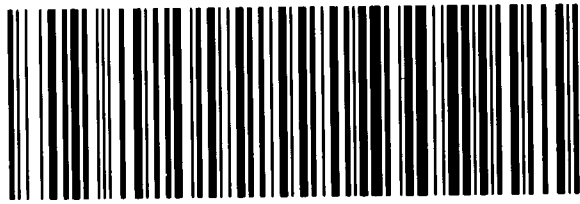
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