

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2015-001505

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SEP 12 2017

SC Court of Appeals

John Doe 2 Appellant,
v.
The Citadel Respondent.

REPLY TO RETURN TO PETITION FOR REHEARING

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TABLE OF AUTHORITIES

CASES

Crowley v. Spivey, 285 S.C. 397, 329 S.E.2d 774 (Ct.App.1985)..... 1

Fickling v. City of Charleston, 372 S.C. 597, 643 S.E.2d 110 (Ct. App. 2007)..... 1, 2

Graham v. Whitaker, 282 SC 393, 321 S.E.2d 40 (1984) 3

Green v. Atlanta & Charlotte Air line Railway Co., 131 S.C. 124, 126 S.E. 441 (1925) 2

Miller v. City of Camden, 329 S.C. 310, 494 S.E.2d 813 (1997) 1, 2

Roundtree Villas Ass’n, Inc. v. 4701 Kings Corp., 282 S.C. 415, 321 S.E.2d 46 (1984)..... 1

Stone v. Bethea, 251 S.C. 157, 161 S.E.2d 171 (1968) 2

Vaughn v. Town of Lyman, 370 S.C. 436, 635 S.E.2d 631(2006)..... 1, 2

OTHER SOURCES

Restatement [Second] of Torts, § 323 1, 2, 3, 4

COMES NOW John Doe 2 in reply to The Citadel's Return to John Doe 2's Petition for Rehearing, whereby Doe 2 requests that the Court of Appeals hold that whether The Citadel volunteered to investigate and respond to sexual abuse by its employee, Skip ReVille, for the protection of minor boys, to include Doe 2, is a mixed question of fact and law for the jury that was improperly decided on summary judgment.

The Citadel's Return advances a flawed argument from the get go, erroneously asserting that whether The Citadel volunteered to act, and with it the duty to act with due care, must be analyzed under the Restatement (Second) of Torts § 323. The Citadel's duty to Doe 2 is based on the well settled common law of negligence of our State that one who volunteers to act for the benefit of others assumes the duty to carry forth those acts with due care. *See, e.g., Vaughn v. Town of Lyman*, 370 S.C. 436, 446-448, 635 S.E.2d 631, 637-638 (2006); *Miller v. City of Camden*, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997); *Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp.*, 282 S.C. 415, 423, 321 S.E.2d 46, 51 (1984); *Fickling v. City of Charleston*, 372 S.C. 597, 607-611, 643 S.E.2d 110, 116-118 (Ct. App. 2007); *Crowley v. Spivey*, 285 S.C. 397, 406, 329 S.E.2d 774, 780 (Ct. App. 1985). However, even directly applying the Restatement (Second) of Torts § 323 in this case makes clear that The Citadel owed a duty to Doe 2 when it volunteered to investigate and respond to child sexual abuse by its current and former employees.

First, the Restatement (Second) of Torts § 323 imposes liability on "[o]ne who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things..." The references to "another" and to "the other's person or things" in § 323 establishes a volunteer relationship between a volunteer and those persons who it is reasonably foreseeable would be injured if the volunteer carries out his actions negligently. Nowhere in § 323 is the requirement that the injured person be individually

named and known prior to injury, which clearly is in line with South Carolina's common law that one who volunteers to act owes a duty of due care in those actions to those persons who it is reasonably foreseeable would be injured by the volunteer's negligence. *See, e.g., Vaughn*, 370 S.C. at 439, 446-448, 635 S.E.2d at 633, 637 (duty to unknown sidewalk user who tripped on broken part of sidewalk uprooted by trees); *Fickling v. City of Charleston*, 372 S.C. at 599, 607-611, 643 S.E.2d at 112 116-118 (duty to unknown sidewalk user who stepped in hole in sidewalk and fell); *Miller*, 329 S.C. at 313-314, 494 S.E.2d at 814-815 (defendants' duty to act with due care in monitoring dam for hazards for benefit of reasonably foreseeable injured persons- those in the path of water overflow- not previously named and known).

Accordingly, even under the Restatement (Second) of Torts § 323, a volunteer relationship was established between The Citadel and Doe 2 when The Citadel voluntarily undertook to investigate and respond to child sexual abuse by its current and past employees. It was reasonably foreseeable and anticipated by The Citadel that when it failed to act with due care in its investigation and response to child sexual abuse by Louis "Skip" ReVille that ReVille would continue to sexually abuse minor boys, to include Doe 2. *See, e.g., Stone v. Bethea*, 251 S.C. 157, 161, 161 S.E.2d 171, 173 (1968); *Green v. Atlanta & Charlotte Air line Railway Co.*, 131 S.C. 124, 133, 126 S.E. 441, 444 (1925).

Second, The Citadel's Return only addresses whether Doe 2 relied on The Citadel's undertaking to investigate and respond to child sexual abuse by ReVille and entirely ignores that the Restatement also imposes liability for negligence when the volunteer's negligence increases the risk of harm to another. Specifically, the Restatement (Second) of Torts § 323 goes on to impose liability on the volunteer for physical harm to another resulting from the volunteer's failure to exercise reasonable care in his actions if "(a) his failure to exercise such care increases the risk

of such harm, or (b) the harm is suffered because of the other’s reliance upon the undertaking.” (Emphasis added). It is “either or” for imposition of liability for injury; not a dual requirement. Accordingly, assessing whether The Citadel’s failure to exercise reasonable care in its investigation and response to child sexual abuse by ReVille injured Doe 2 includes examining whether The Citadel’s negligence “increase[d] the risk of such harm” to Doe 2. *Id.* The Citadel ignores the liability provision in § 323, because its application establishes The Citadel’s negligence increased the risk of sexual abuse of Doe 2 by ReVille.

Our negligence common law is clear that “[l]iability exists for the natural and probable consequences of negligent acts and omissions, proximately flowing therefrom. The intervening negligence of a third person will not excuse the original wrongdoer if such intervention ought to have been foreseen in the exercise of due care.” *Graham v. Whitaker*, 282 SC 393, 399, 321 S.E.2d 40, 44 (1984) (internal citations omitted). The Citadel’s duty to act with due care in volunteering to investigate and respond to sexual abuse extends to Doe 2 as a reasonably foreseeable party injured by The Citadel’s breach of the duty. The Citadel had the knowledge of the probable consequences of its failure to act with due care in investigating and responding to ReVille’s abuse—that being, of course, that ReVille would continue to sexually abuse boys, to include Doe 2. Child sexual abuse is an area where scientific, medical, social studies and research establish that the risk of a predator continuing to abuse children is substantially certain to happen. (R. pp. 1868-1871; 1196-1197).

Moreover, The Citadel acted for the benefit of those children who foreseeably would be abused should The Citadel fail to carry out its actions with due care. It is reiterated that The Citadel’s General Counsel, Mark Brandenburg, admitted under oath that The Citadel’s actions to investigate and respond to child sexual abuse by its past and current employees was to protect


children from subsequent abuse. (R. p. 1298). The Citadel not only failed to act with due care to carry out what it voluntarily undertook to do in regards to ReVille's child sexual abuse, but The Citadel acted to do the exact opposite. The Citadel acted to conceal ReVille's dangerous proclivities and to conceal any evidence of The Citadel's knowledge of ReVille's abuse. (R. pp. 480-499; 1831-1833). The Citadel's negligence in investigating and responding to ReVille's child sexual abuse clearly increased the risk of Doe 2's subsequent sexual abuse by ReVille, rendering The Citadel liable to Doe 2 under the Restatement (Second) of Torts § 323, as well as under South Carolina common law.

Last, The Citadel's Return entirely ignores the evidence in this case, making bald unsupported claims with no reference to any supporting evidence whatsoever. At summary judgment, the abundance of the evidence establishes that The Citadel volunteered to investigate and respond to child sexual abuse by its past and current employees, to include Skip ReVille; that The Citadel acted to conceal ReVille and its knowledge of his sexual abuse; that The Citadel knew that ReVille would continue to sexually abuse boys, to include Doe 2; and that The Citadel's negligence in doing what it volunteered to do proximately caused Doe 2's sexual abuse.¹

In conclusion, Doe 2 respectfully petitions this Honorable Court for rehearing of its Opinion filed August 2, 2017, whereby the Court affirmed summary judgment for The Citadel by holding that The Citadel owed no duty to John Doe 2. John Doe 2 petitions for rehearing due to the errors of law and erroneous application of the standard of review of the evidence that form the basis of the Court's Opinion. Whether The Citadel volunteered to investigate and respond to Skip ReVille as a child sexual abuser for the protection of minor boys, to include Doe 2, is a question

¹ Doe 2 incorporates in full as if fully stated herein all referenced evidence in his *Petitioner's Final Brief* and his *Petition for Rehearing*, as found in the Record on Appeal.

for the jury. Summary judgment for The Citadel was improper, and the case should be remanded for trial in its entirety.

Respectfully submitted this  7 day of September 2017,



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PROOF OF SERVICE OF REPLY TO RETURN TO PETITION FOR REHEARING

I certify that I have served Appellant's Reply to Return to Petition for Rehearing on the above-named Respondent and to the South Carolina Court of Appeals by depositing it in the U.S. Mail, with sufficient postage, on September 7, 2017, addressed to the following:

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September 7, 2017

Via Facsimile and US Mail

South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk
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Columbia, SC 29211

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SC Court of Appeals

Re.: John Doe 2 v. The Citadel
Appellate Case No. 2015-001505

Dear Ms. Kitchings:

Please find enclosed the original and seven (7) copies of the Appellant's Reply to Return to Petition for Rehearing. Also, enclosed, please find the Proof of Service of Appellant's Reply to Return to Petition on Respondent. Please file the original and return a filed copy to me in the self-addressed stamped envelope.

With kind regards, I am

Sincerely,

Brooke A. DiMeo, paralegal to
Jacqueline LaPan Edgerton

/bad

Enclosures

cc: M. Dawes Cooke, Jr.
Randall C. Stoney, Jr.
John W. Fletcher